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No Go for Employers with Non-Compete Clauses

Vijay Anand s/o Prabhakaran & Ors v The Continuity Company (M) Sdn Bhd^[1]

| by Ang Hean Leng and Lee Khoon Chuan |

The Court of Appeal recently re-affirmed the legal principle that non-compete clauses in employment contracts are void in Malaysia.^[2]

Non-compete clauses usually restrict the employee from working in a similar business for a fixed period of time after termination of the employment.

Section 28 of the Contracts Act 1950 provides that any agreement restraining anyone from exercising a lawful profession, trade or business of any kind is to that extent void with three exceptions. The three exceptions that do not apply to employment contracts are:

- (a) agreements involving the sale of goodwill of a business;
- (b) agreements between partners prior to dissolution;
- (c) agreements during continuance of the partnership.

Unlike the position under English law, non-compete clauses in employment contracts are still void even if they are reasonable in the context of the interest of the parties as well as the public.

Non-compete clauses are void if they restrict employee from seeking for jobs in the similar business after termination. However, there is no such prohibition for clauses designed to prevent disclosure of company trade secrets and confidential information during and after termination.

Ang Hean Leng and **Lee Khoon Chuan** (Pupil-in-Chambers)

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^[1] No B-02(NCVC)(W)-679-04/2016

^[2] This decision is final as no appeal has been made to the Federal Court