

Team acquisitions

Key points to consider if you are thinking about acquiring a team from a competitor

— **What do the team's existing employment contracts say?**

Notice periods, garden leave, confidentiality obligations, restrictive covenants and any express terms requiring disclosure of approaches by third parties are all likely to impact on your plans.

— **Assess the risks and take legal advice early**

Understanding the commercial and legal risks at an early stage is essential to avoid finding yourself in court.

— **Beware inducement to breach team members' contracts**

Encouraging team members to breach their existing terms of employment can expose you to direct legal liability. Be careful what you ask potential recruits to do and the consequences of receiving confidential information from them.

— **Avoid prolonging the process unnecessarily**

Resignations should take place quickly and simultaneously. Potential recruits should not use working time or their employer's premises or resources to discuss the proposed move.

— **Can litigation be avoided?**

If your competitor is threatening injunctive action, consider offering written undertakings not to use confidential information and/or deal with certain clients to reduce the risk of litigation.

Each of the above points will need to be carefully considered in the particular circumstances.

The Employment team at CMS Cameron McKenna has considerable experience in advising clients on team moves, and handling related litigation.

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Team departures

Key points to prevent a competitor poaching one of your teams

— **Do the team members' employment contracts contain the necessary restrictions?**

Careful contract drafting is essential to ensure you are well placed to respond to an approach by a competitor. Restrictions should be carefully tailored to ensure enforceability.

— **Assess the situation and take legal advice early**

If you suspect a team is planning to move or has been approached by a competitor, an early assessment of your legal position is central to formulating your response strategy.

— **Decide what approach is right commercially for your organisation**

Whether you allow the team to go or try to persuade individual team members to stay, the protection of business relationships / confidential information and market reputation will always be important considerations.

— **In the event of resignations, act to secure client connections and confidential information**

Acting swiftly to place team members on garden leave, restricting access to confidential information and contact with clients and colleagues, and securing company property can all mitigate the impact of a team move.

— **Seek to enforce restrictions**

If not already done, alert team members and your competitor to restrictions and consequences of breach. If appropriate, negotiate a settlement, obtain written undertakings, or pursue claims for injunctive relief and damages for losses arising from breach of contract and loss of profit.

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