



# General adjournment in Hong Kong does not extend duration of *ex parte* injunction

29 April 2020

## Introduction

In Hong Kong, the courts have generally been closed, save for urgent and essential court business as a result of COVID-19. Details have been set out in various public notifications issued by the judiciary administration. However, a court has held that the general adjourned period (GAP) does not generally extend the duration of an injunction granted on an urgent basis before the GAP commenced on 29 January 2020 and listed for a return date (for continuation or discharge) during the GAP. In such circumstances, the proper thing for a plaintiff to do is to apply to extend the duration of the *ex parte* injunction before its expiry on the basis that the application is an urgent matter that may be dealt with during the GAP.

## Background

In *Essilor Manufacturing (Thailand) Co. Ltd v Wong & Ors* [2020] HKCFI 547, the plaintiff had obtained *ex parte* (without notice) injunctions on 24 January 2020, which was to last until 7 February 2020. On 28 January 2020, the judiciary announced the GAP in light of the COVID-19 public health emergency. The GAP commenced on 29 January 2020 and has been extended

several times since – most recently until 3 May 2020. According to the latest judiciary announcement, the GAP is due to end on 3 May 2020, with a gradual reopening of court proceedings and court registries (as safely as the circumstances permit) from 4 and 6 May, respectively.

In *Essilor Manufacturing (Thailand)*, a hearing on or before the return date did not take place because of the GAP. On 13 March 2020 – during a brief spell in which the courts had re-opened – the plaintiff applied to continue the duration of the injunctions.

An issue arose as to whether the injunctions had expired or remained in force because of the GAP and in the absence of any order varying or discharging them.

## Decision

The Court of First Instance of the High Court held that, in the absence of any order prolonging the duration of the injunctions, they had expired and ceased to have any effect after 7 February 2020. The plaintiff's application was dismissed. The court noted that an application for an order to extend the duration of an injunction granted on an *ex parte* basis

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was properly to be regarded as an urgent matter and, as such, it could have been heard and disposed of during the GAP.

The court also rejected the plaintiff's application for new injunctions in the absence of an *inter partes* (with notice) application. By the time of the hearing, some six weeks had passed since the expiry date of the original injunctions such that the matter was no longer urgent or deserving of secrecy. If the plaintiff wished to apply for new injunctions, it would have to make a fresh application on an *inter partes* basis.

### Comment

When the GAP was announced on 28 January 2020, there had been little prior notice and it would be fair to suggest that a significant degree of confusion existed as to how matters would transpire in the early stages.

Since then, the judiciary has provided more clarity as to what constitutes urgent and essential court business. This includes hearings of "urgent matters" before the duty judge e.g. applications for *mareva* (freezing of assets) injunctions and *anton piller* (search and seizure) orders (subject to public health considerations). It also includes applications for the appointment of provisional liquidators. In these type of urgent matters court documents may be filed through one-way "no-reply" email accounts and, in some circumstances (in the case of submissions, legal authorities and electronic hearing bundles), via a new court e-lodgement platform.

While general court business may have been adjourned, court users should review their litigation matters and manage any cases that are urgent and essential (the ambit of which has widened as the GAP has been extended). The courts in Hong

Kong are actively dealing with them and determining some by remote hearings using video-conferencing facilities.

For related articles, please see:

Apr 9: COVID-19 – Hong Kong courts handling urgent and essential matters.

[Read more](#)

Apr 15: Hong Kong courts begin use of video conferencing. [Read more](#)

### Contact Us

Please contact us if you have any queries regarding the above, or if you wish to consider any commercial disputes matters and, in particular, the consequences of the GAP – for example, according to a judiciary announcement dated 22 April 2020 ("[Resumption of court proceedings](#)"), where appropriate, judges and judicial officers will consider disposing of cases on paper, as far as possible. Judges and judicial officers may also invite parties to explore the use of remote hearings conducted by video-conferencing facilities or by telephone conference, where appropriate. We can advise and assist with respect to such matters.

A version of this article was originally published in the Litigation Newsletter of the *International Law Office* – [www.internationallawoffice.com](http://www.internationallawoffice.com)

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