PRESS CUTTING

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Credit Suisse's urge to claw back cash bonuses from departing employees may prove purest fantasy

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Credit Suisse doesn't want its managing directors to leave. As we observed last week, the bank wants to impose a new compensation policy, under which anyone leaving voluntarily within two years of receiving a cash bonus will be obliged to return it to their employer.

This is the case in theory. The reality may prove harder to effect.

Employment lawyers say it will be difficult to impose this kind of clawback on existing staff without asking them to sign a new contract.

"People will be very reluctant to sign up to this," observes **Ronnie Fox** of **Fox solicitors** in the City of London. "It seems that the bank is using the concept of a claw back system improperly.

"If Credit Suisse managing directors decline to sign an amended contract allowing for this, and are dismissed as a result, they could claim for unlawful dismissal," Fox adds. "If they decline to sign and receive a much smaller bonus than they reasonably expect, they could claim constructive dismissal."

Because of these difficulties, headhunters say Credit Suisse will probably just impose the new clawback only on new hires. Then again, this may mean no one wants to work there.

"This is the kind of Swiss idea that might be possible to implement in Zurich but is going to go down like a bomb in London," says one.

MDs who sign up to the two year clawback, leave, and then refuse to pay back their cash bonuses, may find that Credit Suisse can't oblige them to do so anyway.

"You could possibly argue either that provisions of this kind are an unenforceable restraint of trade because the aim is to prevent people from leaving to work for a competitor, or that they are unenforceable as a penalty," contemplates Jonathan Fenn, employment partner at Slaughter & May.

"Whether the courts will enforce this type of provision is likely to depend on how reasonable the court thinks relevant arrangement is in all the circumstances," he muses.