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RESTRICTIVE & POST-CONTRACTUAL CLAUSES

We are pleased to present the latest edition of the ILLN Newsletter. This issue focuses on restrictive and post-contractual clauses including non-compete, non-solicitation, confidentiality and related provisions as applied across ILLN member states. While the legal frameworks, conditions for validity and enforcement mechanisms vary considerably between jurisdictions, a common thread runs through each contribution: the need to strike a proportionate balance between protecting legitimate employer interests and preserving the employee's freedom to work.

This cross-jurisdictional overview highlights both shared principles and key differences in how post-contractual restrictions are regulated and enforced across Europe.

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RESTRICTIVE & POST-CONTRACTUAL CLAUSES

1. Legal framework

Post-contractual non-compete covenants ('KonkurrenzklauseIn') have long been a standard feature of Austrian employment contracts, particularly for sales staff, key account managers and executives. The statutory regime is contained in Sections 36 to 38 of the White Collar Workers Act and has applied to all categories of employees since 2006 by virtue of Section 2c AVRAG. The legislative approach is restrictive: such clauses are permissible in principle, but only within narrow, mandatory limits designed to safeguard the employee's freedom to pursue an occupation. The regime protects employees only; restraints imposed on genuinely self-employed contractors are measured solely against general civil-law standards.

2. Validity requirements

A post-contractual non-compete clause is valid only if all of the following conditions are met cumulatively:

- Age: The employee must have been of full age (18 years) when the clause was agreed.
- Subject matter and duration: The restriction may only cover activities in the employer's branch of business and must not exceed one year after the end of the employment relationship.
- Proportionality: Courts apply a balancing test that takes into account the territorial reach of the clause, the breadth of the prohibited activities and the employee's remaining career options. Excessively broad clauses are not necessarily void in their entirety — Austrian courts may reduce them to a permissible scope.
- Remuneration threshold: The clause is unenforceable if the employee's remuneration for the last month of employment does not exceed twenty times the daily maximum social security contribution basis. In 2026, this corresponds to a gross monthly salary of EUR 4,620, excluding special payments. Notably — and in contrast to neighbouring Germany — Austrian law does not make the validity of a non-compete clause conditional upon the payment of compensation ('Karenzentschädigung') for the restricted period.

3. The manner of termination matters

Whether a valid clause can actually be invoked depends decisively on the manner in which the employment relationship ends (Section 37 AngG). The clause remains enforceable where the employee resigns by giving ordinary notice, leaves prematurely without good cause or is summarily dismissed for cause. Conversely, the employer cannot rely on the clause where it terminates the relationship by giving notice, unless (i) the employee culpably gave cause for the dismissal or (ii) the employer declares, at the time of termination, its willingness to pay the employee's full last remuneration (100%) for the duration of the restriction. In mutual termination agreements, the fate of the clause should be addressed expressly.

4. Contractual penalties and the employee's "buy-out" option

Non-compete clauses are almost invariably backed by a contractual penalty. Where a penalty has been agreed, the employer may claim only the penalty — it can neither obtain an injunction to enforce compliance nor recover damages exceeding the penalty. For clauses agreed since 29 December 2015, the penalty is statutorily capped at six net monthly remunerations. Any contractual penalty remains subject to judicial mitigation, which courts apply generously. 5. Related restrictive covenants Customer non-solicitation clauses ('KundenschutzklauseIn') are treated by the Supreme Court as non-compete clauses in the wider sense and are therefore subject to the same statutory regime, including the salary threshold. Post-contractual confidentiality obligations may validly be agreed without any time limit as regards genuine trade secrets, which additionally enjoy statutory protection under the Austrian Unfair Competition Act implementing the EU Trade Secrets Directive.

6. Practical takeaways

Employers are well advised to draft non-compete clauses narrowly along their actual competitive exposure, to verify at the time of exit whether the salary threshold is met, and to weigh carefully whether a contractual penalty or the uncapped damages and injunction route better serves their interests.





RESTRICTIVE & POST-CONTRACTUAL CLAUSES

Non-compete clauses and other restrictive clauses under Belgian law: Useful protection or expensive habit?

Under Belgian employment law, non-compete clauses are subject to strict statutory requirements. In principle, they must be agreed in writing, may only apply to employees whose remuneration exceeds certain statutory thresholds, must be limited to similar activities, are subject to geographical restrictions and may not exceed twelve months in duration. Furthermore, the employer must pay a non-compete indemnity amounting to at least 50% of the employee's remuneration corresponding to the period covered by the restriction. Employers should also be aware of a frequently overlooked aspect of Belgian law. If the employer does not waive the non-compete clause within fifteen days following the end of the employment contract, the non-compete indemnity automatically becomes due. In practice, employers sometimes forget this formality and unexpectedly find themselves liable for a significant compensation payment, even though they never intended to rely on the clause. Moreover, enforcing a non-compete clause is not always straightforward — proving that a former employee is effectively carrying out prohibited competing activities can be difficult in practice.

Recommended alternatives to non-compete clauses

Belgian employees remain bound by confidentiality obligations and Belgian law prohibits acts of unfair competition. A carefully drafted confidentiality clause can clearly identify what information is considered confidential and specify the obligations that continue after termination of employment. Non-solicitation clauses are another powerful tool — they may prohibit former employees from approaching customers, suppliers or employees of their former employer for a specified period. In many situations, this addresses the employer's real concern more effectively than a traditional non-compete clause. An important advantage is that confidentiality and non-solicitation clauses are generally not subject to the strict statutory requirements applicable to non-compete clauses, nor do they trigger an obligation to pay a statutory compensation indemnity. Employers may also consider exclusivity clauses during the employment relationship itself, and should seriously consider supporting restrictive covenants with a contractual penalty clause — a predetermined financial sanction significantly increases both enforceability and deterrent effect.

Self-employed service providers

The position of self-employed service providers is fundamentally different. No comparable statutory regime applies to service agreements concluded with independent contractors. Parties generally enjoy broad contractual freedom when negotiating post-contractual restrictions, without statutory remuneration thresholds, mandatory geographical limitations or obligation to provide a non-compete indemnity.

Conclusion

For many employers, a carefully drafted combination of confidentiality, non-solicitation, exclusivity and contractual penalty clauses will provide more practical, more flexible and ultimately more cost-effective protection than relying solely on a traditional non-compete clause.





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Employers often seek to protect their business interests after an employee leaves.

Typical concerns include the loss of clients, disclosure of know-how, misuse of confidential information, or poaching of key employees. Czech law offers several tools to address these risks, but their effectiveness depends largely on proper drafting and compliance with statutory requirements.

Post-contractual non-compete clause

The primary statutory tool is the post-contractual non-compete clause, which allows an employer to restrict an employee from engaging in a gainful activity that would compete with the employer after termination of employment. Such clause is valid only if strict statutory conditions are met:

- the non-compete period may not exceed 1 year;
- the clause must be agreed in writing;
- the employee must receive monetary compensation of at least 50% of their average earnings for each month of the restriction;
- the restriction must be proportionate in scope.

In practice, proportionality is often the most challenging requirement. An employer may withdraw from the non-compete clause during the employment relationship. An employee may withdraw from the non-compete clause only if the employer fails to pay the agreed compensation.

Non-solicitation clauses

Unlike non-compete clauses, non-solicitation obligations are not expressly regulated under Czech labour law. They are typically based on the principle of contractual freedom under the Civil Code and are intended to prevent former employees from approaching clients or recruiting colleagues after their departure. Their enforceability, however, remains uncertain. Confidentiality and trade secrets Under Czech law, employees are required to protect confidential information and trade secrets based on their statutory duty of loyalty during employment, and on civil law protection of trade secrets which continues even after the employment relationship ends.

Managing directors and statutory body members

A different regime applies to managing directors and other statutory body members, as their relationship with the company is governed by corporate and civil law rather than labour law. Non-compete obligations may be agreed for longer periods (subject to a general maximum of 5 years), and financial compensation is not a statutory requirement, although it is standard market practice.

Conclusion

Post-contractual restrictions are an important tool for protecting business interests, but Czech law imposes significant limits, particularly in employment relationships. A valid and enforceable arrangement typically requires a balanced approach combining statutory non-compete clauses with other contractual tools. Careful drafting is therefore essential — overly aggressive restrictions may ultimately prove unenforceable and create a false sense of protection.





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1. Non-competition clause

A non-competition clause prohibits the employee from engaging in an activity that competes with that of their former employer after the termination of their employment contract. To be valid, the clause must:

- be limited in time, geographical scope, and as to the nature of the activities the employee is prohibited from exercising;
- take into account the specificities of the employee's job, so as to allow them to continue exercising a professional activity consistent with their training and professional experience;
- provide for the payment by the employer of non-compete indemnity (either in the form of an annuity or a lump sum) after the termination of the contract;
- be indispensable to the protection of the legitimate interests of the company.

The clause may provide for the employer's right to waive its application in accordance with the terms defined therein.

2. Non-solicitation of clients clause

A non-solicitation of clients clause aims to prevent an employee from soliciting or diverting the employer's clients after termination. Unlike a non-compete clause, it does not prevent the employee from joining a competing business or establishing a competing company. French courts exercise strict control over such clauses. Case law shows that a non-solicitation clause is likely to be treated as a non-compete clause where it is drafted in excessively broad or imprecise terms, or where it prevents the former employee from working with clients who approach them on their own initiative.

3. Exclusivity clause

An exclusivity clause prohibits the employee from engaging in a parallel activity or requires them to obtain the employer's prior authorisation. To be valid, it must be indispensable to the protection of the legitimate interests of the company, justified by the nature of the task to be performed, and proportionate to the target pursued. It is invalid if it is drafted in general and imprecise terms or fails to specify the boundaries of the prohibited complementary activity.

4. Training bond clause

In return for training provided by the employer, a training bond clause requires the employee to remain in the employer's service for a certain period of time and, in the event of an early departure, to pay compensation corresponding to the training costs incurred. To be valid, the clause must be concluded before the start of the training, specify the date, nature, duration, and actual cost of the training, and specify the amount and methods of reimbursement to be borne by the employee. The clause cannot be implemented when the termination of the employment contract is attributable to the employer.





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Under German employment law, non-compete clauses are a classic instrument to seek stronger protection for employers' sensitive business interests and their competitive position. The legal requirements seek to strike a balance with the employee's constitutionally protected freedom of occupation.

1. General non-compete clause

During the employment the employee is not allowed to compete with the employer. A statutory non-compete obligation already applies by law (§ 60 German Commercial Code (HGB)). This statutory protection ends upon termination of the employment relationship.

2. Post-contractual non-compete clauses

A post-contractual non-compete clause is a contractual agreement by which the employer "purchases" the employee's refraining from competing for a certain period after the termination of the employment relationship. A distinction must be made between activity based and company-based non-compete clauses. Both are permissible. Another example is the so-called client protection clause, commonly found in agreements between members of the liberal professions and their employees.

3. Legal basis and validity

The clause must be in writing (§ 74 para. 1 HGB) and the signed document must be handed over to the employee. Most importantly, the post-contractual non-competition clause is only binding if the employer undertakes to pay compensation for the duration of the non-compete which, for each year, amounts to at least half of the employee's last contractual remuneration (§ 74 para. 2 HGB). The clause must be limited in a reasonable manner in terms of subject matter, geographical scope, and duration (max. two years) and must not unreasonably impede the employee's professional advancement. A post-contractual clause cannot be imposed on an apprentice.

4. Consequences of invalid post-contractual clauses

If a post-contractual non-compete clause is void, it does not apply. If the compensation falls below the statutory minimum, the clause is non-binding. In that case, the employee has the right to choose either to comply with the non-compete obligation and accept the lower compensation, or to disregard the clause and waive the compensation.

5. Legal consequences of violation

If an employee violates a valid post-contractual non-compete agreement, the employer is entitled to various remedies: requiring the employee to cease the competing activity (with an injunction if necessary), compensation for damages, and a contractual penalty if one has been agreed upon.





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Post-Contractual Restrictive Covenants in Italy

During employment, employees in Italy are subject to a statutory duty of loyalty under Article 2105 of the Italian Civil Code, which prevents them from competing with their employer or misusing confidential business information. This duty ceases upon termination of employment.

Pursuant to Article 2125 of the Italian Civil Code, a non-compete covenant is valid only if:

(i) it is in writing;

(ii) it provides for specific and adequate compensation. Its adequacy is assessed in light of factors such as salary, role, term, geographical scope and the activities subject to restriction; the broader the restriction, the greater the risk that the compensation may be regarded as insufficient;

(iii) the restricted business is clearly identified. It is advisable to describe in writing the activities that the employee is prevented from performing after termination. The restriction may not be so broad as to prevent the employee from using his/her professional background altogether;

(iv) the geographical scope is defined and objectively determinable. This requirement may be particularly sensitive in international and remote-working contexts;

(v) the covenant is limited in time. The statutory maximum duration is three years for regular employees and five years for executives.

From a drafting perspective, the safest approach is usually to pay the compensation after termination, while the employee is actually bound by the non-compete obligation. Italian case law does not exclude payment during employment. If the amount is linked to the length of the relationship, it may be challenged as inadequate where employment ends shortly after signing — a minimum guaranteed amount is therefore advisable.

Non-compete covenants often include liquidated damages clauses. Such clauses are generally admissible, although the amount may be reduced by the court if it is manifestly excessive. In principle, the employer may seek injunctive relief aimed at preventing the continuation of the competitive conduct — in practice, however, Italian courts are sometimes reluctant to grant such measures.

In the Italian system, non-compete covenants should not be treated as generic, one-size-fits-all clauses. They may be effective and enforceable, but only if carefully tailored to the employee's role, the employer's protectable interest and the relevant market.





RESTRICTIVE & POST-CONTRACTUAL CLAUSES

Restrictive and post-contractual clauses under Luxembourg Labour Law

Restrictive and post-contractual clauses are common features of employment contracts in Luxembourg, particularly for employees occupying managerial or strategic positions. Such clauses aim to protect the employer's legitimate business interests, confidential information, customer relationships, and know-how. Luxembourg labour law imposes strict conditions on their validity and enforceability in order to preserve the employee's freedom to work and economic liberty.

General loyalty duty during employment

During employment, employees are bound by duties of loyalty even absent an express contractual clause. The position differs after termination: any post-employment restriction must generally be expressly agreed and carefully drafted to comply with applicable statutory and case-law requirements.

Legal non-compete undertakings

According to Article L.125-8 of the Labour Code, a non-compete clause is valid only if it is agreed in writing, applies to employees aged 18 or over, and concerns an employee whose remuneration exceeds the statutory threshold (currently an annual gross salary of EUR 67,641.69 at index 992.24). It may not exceed 12 months following termination, must be geographically restricted to the territory of Luxembourg, and may cover only activities genuinely capable of competing with the employer's business. Most importantly, it only prevents the former employee from carrying on a competing activity on their own name, as an individual entrepreneur. It does not prevent the employee from joining a competitor as an employee — this is often misunderstood by international employers using standard templates developed for broader legal systems. Luxembourg law does not require compensation for a non-compete that remains within this statutory framework.

Contractual extension of non-compete undertakings

Some court decisions have accepted extended non-compete clauses, including a restriction on certain salaried activities, where the employee received financial compensation during the restricted period. However, the case law remains limited and should be treated with caution.

Other restrictive covenants

Confidentiality obligations are generally enforceable during and after the employment relationship, provided they concern legitimate confidential information and remain proportionate. Non-solicitation clauses are not specifically regulated by the Labour Code; their validity is assessed under general principles of contract law and proportionality. Luxembourg courts tend to accept such clauses more readily than non-compete clauses because they impose a less severe restriction.

Key takeaway

Post-termination restrictions can be valuable, but their validity and enforceability depend on careful, proportionate and Luxembourg-specific drafting. Employers should avoid relying on standard boilerplate or clauses imported from other jurisdictions without adaptation.





RESTRICTIVE & POST-CONTRACTUAL CLAUSES

Restrictive covenants during and after employment in the Netherlands

Restrictive covenants are an important tool in Dutch employment contracts. If drafted properly, they help employers protect commercial interests, confidential information, client relationships and internal know-how. If drafted too broadly or agreed incorrectly, they may be unenforceable or limited by a Dutch court.

Non-compete clause after employment

A non-compete clause restricts an employee from working for a competitor or starting a competing business after employment ends, usually for a fixed period. Under Article 7:653 of the Dutch Civil Code, a non-compete clause is valid only if agreed in writing with an adult employee. In fixed-term contracts, the employer must also include a specific written justification explaining why the clause is necessary due to compelling business interests. Even when formally valid, a Dutch court may annul, limit or suspend the clause if the employee is unfairly disadvantaged compared with the employer's legitimate interest.

Non-solicitation and non-poaching clause

A non-solicitation clause prohibits an employee from approaching or doing business with the employer's clients, suppliers, prospects or other business relations after the employment agreement has ended. A non-poaching clause focuses on the solicitation of former colleagues. If they restrict post-employment activities, they are generally assessed under the same framework as non-compete clauses.

Confidentiality clause

A confidentiality clause usually applies both during and after employment. Its purpose is to prevent employees from disclosing or using confidential business information such as client data, pricing, strategy, financial information, internal processes, know-how or other commercially sensitive information. Contractual confidentiality obligations may also be supported by statutory trade secret protection.

Ban on additional work

Under Dutch law, a clause restricting additional work is null and void unless justified by an objective reason. Employers should therefore avoid general bans and instead require notification or approval for activities that may conflict with their legitimate interests.

Penalty clause and enforcement

Restrictive covenants are often linked to a penalty clause. A penalty clause strengthens enforcement because the employer does not need to immediately prove the exact damage suffered before claiming a contractual penalty. Dutch courts may reduce excessive penalties.

Conclusion

Restrictive covenants are most effective when they are specific, proportionate and tailored to the employee's role and the employer's actual risk. They should be agreed at the start of employment and reviewed when circumstances change.





RESTRICTIVE & POST-CONTRACTUAL CLAUSES

Restrictive / Post-Contractual Clauses in Poland

Under Polish labour law, there are two main legal mechanisms designed to protect an employer's interests after the termination of an employment relationship: a post-employment non-compete agreement, and provisions regarding the protection of trade secrets and confidentiality clauses.

Non-Competition Agreement Following Termination of Employment

A non-compete agreement may be entered into for the duration of the employment relationship or for a fixed period following the termination of the employment contract. Non-compete provisions are governed by Articles 1011–1014 of the Labour Code. A non-compete agreement is a separate agreement from the employment contract. It may be entered into simultaneously with the employment contract or at a later date. Such an agreement is permissible if the employee has access to particularly important information, the disclosure of which could expose the employer to harm. The agreement specifies the duration of the non-competition clause and the amount of compensation due to the employee — not less than 25% of the employee's last gross salary. A non competition agreement following the termination of the employment relationship must be in writing under penalty of nullity. An employer may only prohibit an employee from engaging in activities that compete with the employer's own business. The scope of the restriction should be defined as specifically and precisely as possible, by referring to a specific set of products or services. A non-compete clause ceases to be effective before the expiration of the agreed term in the event of: the cessation of the grounds justifying such a prohibition, the employer's failure to fulfil the obligation to pay compensation, or if the parties agree to terminate the contract.

Confidentiality Agreement

Under the Labour Code and the Act on Combating Unfair Competition, an employee is obligated to maintain confidentiality. A confidentiality agreement may cover the period following the termination of the employment relationship and may include contractual penalties. This is not an agreement that provides for compensation paid to the employee for complying with it.

Protection of Trade Secrets

Trade secrets are regulated under the Act on the Prohibition of Unfair Competition. The confidentiality obligation applies to former employees without exception for a period of 3 years following termination.

Summary

A non-compete agreement does not exempt a party from the obligation to protect trade secrets, nor does it exempt a party from the obligations set forth in a confidentiality agreement. Furthermore, the absence of a non-compete agreement does not permit the use of trade secret information with a competitor.





RESTRICTIVE & POST-CONTRACTUAL CLAUSES

Post-Contractual Restrictive Covenants in Portugal

Under Portuguese employment law, any contractual provision restricting an employee's future freedom to work is, as a general rule, null and void. However, there are limited exceptions under which such restrictions may be valid and enforceable, provided that the relevant statutory requirements are satisfied.

Validity conditions

Post-termination non-compete agreements are valid and enforceable only if the following conditions are met:

- the restriction is set out in writing, either in the employment contract or in the termination agreement;
- the restricted activity is capable of causing harm to the former employer; and
- the employee is entitled to receive compensation throughout the restricted period.

A non-compete covenant may not exceed a maximum duration of two years following the termination of the employment contract. In exceptional circumstances, this period may be extended to a maximum of three years where the nature of the employee's role involves a position of particular trust or access to particularly sensitive information.

Compensation

The Portuguese Labour Code does not establish any specific rules on the calculation of compensation payable in consideration for a non-compete agreement, nor does it prescribe a minimum amount. Nevertheless, the compensation must be proportionate and sufficient to compensate the employee for the level of restriction imposed on their freedom to work.

If at the end of the contract the employer considers that the post-contractual restriction is ultimately unnecessary, it is not entitled to unilaterally release the employee from such an obligation. In order to release the employee and be relieved of the obligation to pay compensation, the parties must agree on the termination or waiver of such commitment.

Other covenants

Portuguese law also permits the parties to enter into a covenant pursuant to which the employee undertakes not to unilaterally end the employment contract for a period of up to three years, where the employer has incurred significant expenses in connection with the employee's professional training. Should the employee terminate the employment contract before the expiry of the agreed period, they may be required to reimburse the employer for the relevant training expenses.

Finally, any agreement that prohibits the employment of an employee who is providing or has provided services to the employer, or that requires the payment of compensation in the event of such employment, shall be null and void. Such no-poach or non-solicitation agreements are considered to impose disproportionate restrictions on employees' right to work and are therefore deemed inadmissible under labour law.





RESTRICTIVE & POST-CONTRACTUAL CLAUSES

Post-Contractual Non-Compete Clauses in Spain

Under Spanish labour law, employees are generally free to work wherever they choose after leaving a company. A postcontractual non-compete clause is an exception to this rule. The aim is to protect the employer's legitimate business interests — preventing a former employee from using confidential information, client relationships or internal know-how to compete against the company.

Validity conditions

A post-contractual non-compete clause is only valid if the following legal conditions are met:

1. There must be a real business interest.

The clause must protect a genuine competitive interest of the employer. It is limited to real competitive interests such as relationships with clients, suppliers, and colleagues; confidential or technical information; or knowledge of business processes, commercial strategy, or market positioning. The restriction must be clearly defined and limited to a specific activity or market.

2. The worker must receive financial compensation.

Compensation is essential for the validity of the clause. It must be clearly agreed and identifiable as payment for the noncompete obligation — it should not be mixed or confused with the employee's normal salary. The amount must be clear and proportionate to the restriction.

3. The duration must stay within the legal maximum.

The maximum duration, starting from the end of the contract, is: two years for technical employees, or six months for all other workers. The concept of "technical employee" depends on the role and level of knowledge or access to information, not just the job title.

4. The clause must be reasonable and proportionate.

The clause may be invalid if it is excessive or if the compensation is not properly defined or adequate.

Enforcement

The employer cannot unilaterally avoid the effects of a non-compete obligation. Even if at the termination date it decides that it has no interest in the employee competing with the company, it cannot avoid the payment of the clause. It will only be possible to render the clause without effect if both parties agree.

Practical takeaway

A post-contract non-compete clause can be useful, but only if carefully drafted and properly balanced. To be enforceable it must protect a real business interest, be clearly defined and limited, include adequate and clear compensation, and be reasonable in duration and scope. The key is to strike the right balance between protecting the company and not unduly restricting the employee.





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Restrictive Covenants in Swedish Employment Contracts

Post-termination restrictive covenants including non-compete, non-solicitation and non-recruitment clauses are used in Swedish employment agreements with senior executives and key personnel. Their enforceability under Swedish law is subject to significant limitations.

The legal framework – non-compete clauses

Non-compete clauses are primarily regulated by Section 38 of the Swedish Contracts Act (avtalslagen), which provides that a non-competition clause may be set aside if it is more far-reaching than considered reasonable. The assessment of reasonableness is heavily influenced by the collective bargaining agreement on the use of non-competition clauses in employment agreements from 2015 (2015 års överenskommelse om konkurrensklausuler), concluded between the Confederation of Swedish Enterprise and the Council for Negotiation and Cooperation (PTK). Although formally binding only on parties to the relevant collective bargaining agreements, it serves as a key benchmark for courts and practitioners.

Under the CBA from 2015, a non-competition clause may be enforceable if:

- (i) the employer has a legitimate interest to uphold the non-competition clause (e.g. to protect trade secrets, other company-specific know-how, customer relations);
- (ii) the restrictive period is not longer than reasonable — normally not longer than nine months post termination, though in specific cases up to 18 months. The most commonly used restriction period is twelve months;
- (iii) the employee receives compensation during the restricted period post termination, typically amounting to at least 60% of the employee's salary at the time of termination.

Importantly, the clause may typically not be invoked where the employer terminates the employment due to redundancy.

Non-solicitation and non-recruitment clauses

These are not specifically addressed in law or by the CBA from 2015. Swedish courts tend to apply a somewhat less restrictive standard compared to non-competition clauses. A restriction period of twelve months is generally regarded as acceptable for non-solicitation of customers, while six months is considered the maximum for non-recruitment of other employees. Compensation obligations are not required for such clauses to be enforceable.

Enforceability and practical considerations

Contractual penalties are the most common enforcement mechanism and should be set at a proportionate level — normally six times the employee's average monthly compensation. Excessive penalties risk being adjusted by the court. Employers are encouraged to seek legal advice when designing post-termination restrictions for senior executives and other key employees.





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Restrictive Covenants under Swiss Employment Law – Key Considerations for Employers

Post-contractual restrictive covenants are frequently used to protect an employer's business interests when an employee leaves the company. Under Swiss employment law, such restrictions are subject to specific statutory requirements and limitations. Employers should ensure that restrictive covenants are carefully drafted, properly executed and realistically enforceable.

Written form is essential

Under Articles 340 et seq. of the Swiss Code of Obligations, a non-compete obligation is only valid if agreed in writing. A verbal agreement, a reference in an employee handbook or acceptance by conduct is insufficient. The requirement is fulfilled only by a document bearing the employee's handwritten signature or a qualified electronic signature (QES) under Swiss law. A scanned signature, a pasted signature image or a simple electronic signature generated through common online signing platforms will generally not satisfy the statutory form requirement.

Legitimate business interest required

A non-compete clause is enforceable only if the employee had access to customers, business secrets or other confidential information and if the use of such knowledge could significantly harm the employer. Non-compete obligations are generally easier to justify for senior employees, sales personnel with significant customer relationships or employees with access to strategically important information.

Restrictions must be expressly defined and reasonable

Swiss law requires restrictive covenants to be proportionate. The agreement should clearly define the duration, geographical scope and the restricted activities. Failure to adequately define these elements may result in the non-compete clause being wholly or partially unenforceable. Although Swiss law provides for a maximum duration of three years, significantly shorter periods are more common in practice.

Automatic lapse

A validly agreed non-compete clause may automatically cease to apply depending on how the employment relationship ends. The restriction lapses if the employer terminates the employment relationship without the employee having given justified cause, or if the employee resigns for good cause attributable to the employer.

No mandatory compensation

Unlike several European jurisdictions, Swiss law does not require employers to compensate employees during the restricted period. Employers may, however, voluntarily agree to provide compensation in exchange for broader restrictions.

Contractual penalties

A non-compete clause without an effective enforcement mechanism is often little more than a paper tiger. Employers seeking stronger protection should expressly provide that payment of the contractual penalty does not release the employee from the restrictive covenant, and that the employer remains entitled to seek injunctive relief and specific performance.

Key takeaway

Swiss law offers employers considerable flexibility when implementing post-contractual restrictions. Careful drafting, compliant execution and thoughtful termination management are essential to ensure that restrictive covenants achieve their intended purpose.





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