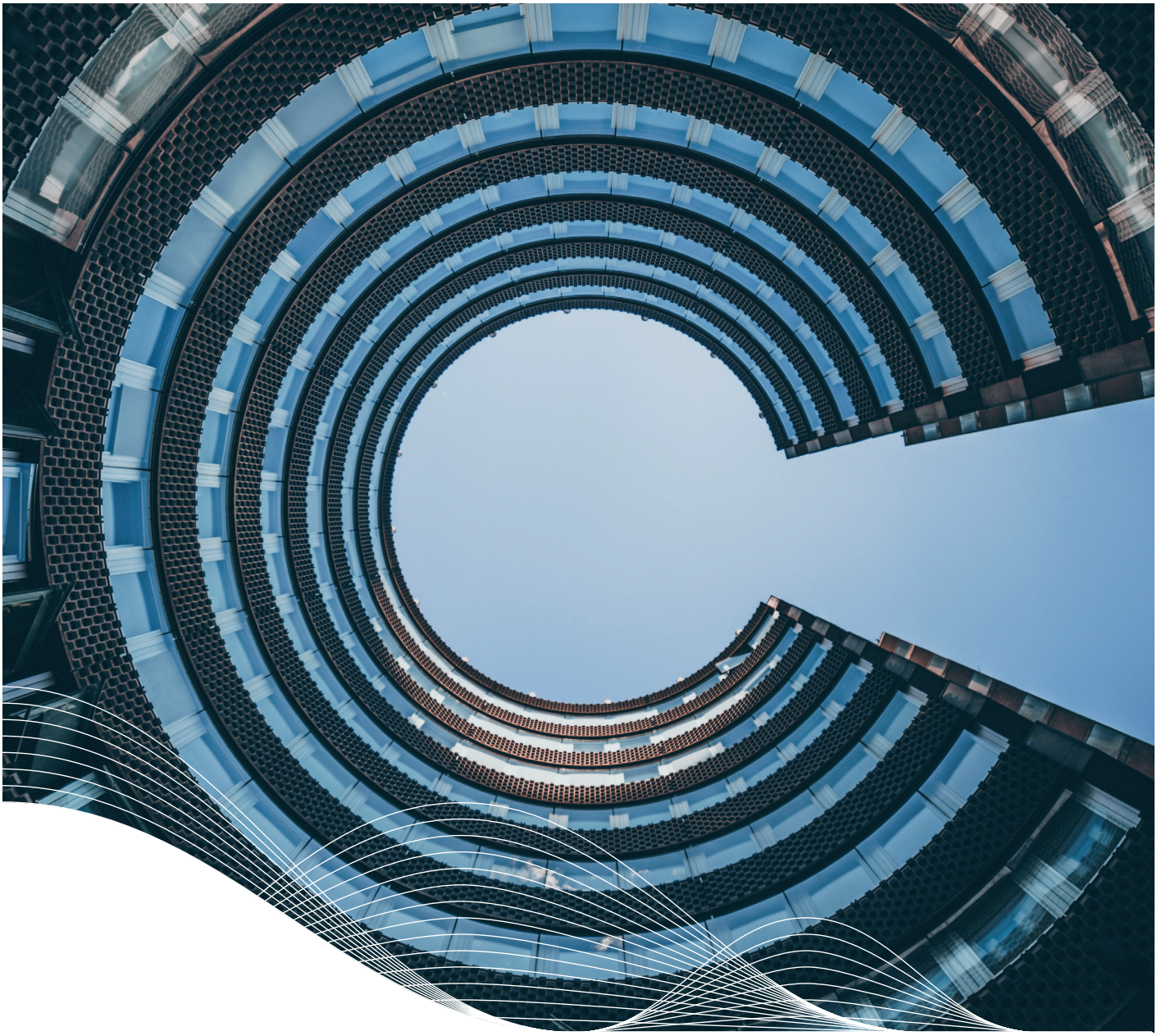


Non-competes around the world: Top issues and strategies for global employers

DLA PIPER

Employers around the world have long relied on non-compete provisions in employment agreements to protect their investments in IP, talent, and customer relationships. These provisions typically prohibit employees from engaging in activities that would compete directly or indirectly with the business activities of the employer during and after their employment for a specified duration.

Local laws vary widely, however, making it critical for employers to take care when assessing and implementing non-competes for their global workforce.

In this handbook, we identify key considerations for global employers, requirements in select jurisdictions around the world, and potential steps companies can take to ensure compliance with diverse constraints while protecting their business.

You can review the complete report with detailed information about country requirements, access country reports, and compare restrictive covenant laws across jurisdictions on our global employment site GENIE. If you are not yet a GENIE subscriber, please speak to your usual DLA Piper contact, email employment@dlapiper.com, or subscribe here.

1. Consider who should receive restrictive covenants and why

As a threshold issue, employers should consider the purpose of the non-compete and whether it is reasonably necessary to protect their legitimate business interests. Issues to consider include:

- Does the employee pose a risk to the legitimate business interests of the company?
- Does the employee access confidential information or trade secrets?
- Does the employee have contact with actual or prospective clients or customers?
- Is the employee unique or extraordinary in the specific services they perform?
- Could the employee take advantage of the company's goodwill or reputation?

Some jurisdictions limit the use of non-competes to certain employees (eg, senior executives, employees above a certain salary). For example, in Belgium, non-competition clauses are only valid if the employee earns annual gross remuneration of (currently) at least EUR78,706 at the date of termination, with limited exceptions.

Similarly, several states in the US (eg, Colorado, Illinois, Maryland, Massachusetts, New Hampshire, Nevada, Oregon, Rhode Island, Virginia, Washington), as well as District of Columbia, have enacted laws establishing salary thresholds or banning non-competes for workers deemed not to pose a competitive threat, such as employees who are 18 years old or younger and/or employees paid on an hourly basis.

Even in the absence of legal requirements, courts often consider a variety of other factors like the employee's position, seniority, and access to confidential information when determining the enforceability of a non-compete clause.

While there is no one-size-fits-all approach, focusing on the most important areas of protection can help employers draft covenants that function to protect the business.

2. Review enforceability

Post-termination non-competes are generally enforceable if carefully drafted to comply with local laws. However, in some jurisdictions, such as Colombia, Malaysia, Mexico, India, the Ontario province in Canada, and several US states (eg, California, Minnesota, North Dakota, Oklahoma), post-termination non-competes are largely prohibited (with limited exceptions, such as for the sale of a business). If prohibited by applicable law, criminal or other laws (eg, unfair competition, IP, principles of fiduciary duty) may provide alternative protections to employers in the event of employee theft or misuse of confidential business information or other deliberate actions detrimental to their employer.

Even where allowed, it may be difficult to enforce restrictive covenants in many countries. For example, while post-termination restraints are not prohibited in Chile, courts may be unwilling to enforce such restraints based on the Chilean Constitution, which protects an employee's right to work. Similarly, while non-competes are, in theory, permissible in Indonesia based on freedom of contract principles codified in the country's civil code, they are difficult – if not impossible – to enforce in practice.

The remedies available in the event an employee breaches their agreement can also differ. For example, in Spain, injunctions generally are not available in cases involving discrete employment agreements; rather, the company's recovery is limited to the consideration paid to the employee and compensatory damages, if any.

A liquidated damages clause providing for a specific amount for which the employee will be liable if found in breach

of post-termination restrictions may be an option depending on the jurisdiction. However, such provisions may be challenged and are likely to be scrutinized for reasonableness. Additionally, in some jurisdictions, those provisions may adversely impact an employer's ability to seek actual damages and/or injunctive relief.

Regardless of enforceability and depending on the jurisdiction, it may be common for companies to include restrictive covenants in employment agreements for their deterrent effect. However, in some jurisdictions like California, including an unenforceable clause in an agreement may lead to liability, even if the employer does not take any action to enforce it.

3. Draft non-competes based on local requirements

Most jurisdictions have enacted legislation regulating the use of restrictive covenants and establishing requirements for their enforceability.

For example, the Danish Act on Restrictive Covenants outlines specific requirements for a non-competition agreement, including the following:

- The employee must hold a special position of trust
- The clause must indicate the specific circumstances as to why such a clause is necessary, and
- Certain compensation must be paid during the restricted period.

In Colorado, the Uniform Restrictive Employment Agreement Act addresses various obligations, including employee compensation thresholds, notice requirements, and choice-of-law and venue provisions. An employer's failure to comply with requirements may void the restrictive covenant agreement and lead to statutory penalties.

Non-competes may be drafted in different ways to cover (or leave uncovered) various activities that may constitute "competition." Employers should consider how to define the "business" of the company, the forbidden competitors or relevant industry, and the specific activities to be prohibited. Covenants with a broad and vaguely defined scope, including those covering activities competitive with affiliated entities or other business lines with which the employee was not involved, are more likely to be deemed unreasonable.

For example, a Delaware Chancery Court recently ruled that a 30-month non-compete in a sale of a business agreement was unenforceable where the definition of "business" encompassed all of the purchaser's business lines and geographic areas rather than just the one in which the seller worked. According to the Court, the purchaser's legitimate economic interest could support restraining the seller's employment only in the goodwill and competitive space of the purchased asset and the market it serves, and not that of the purchaser's subsidiaries.

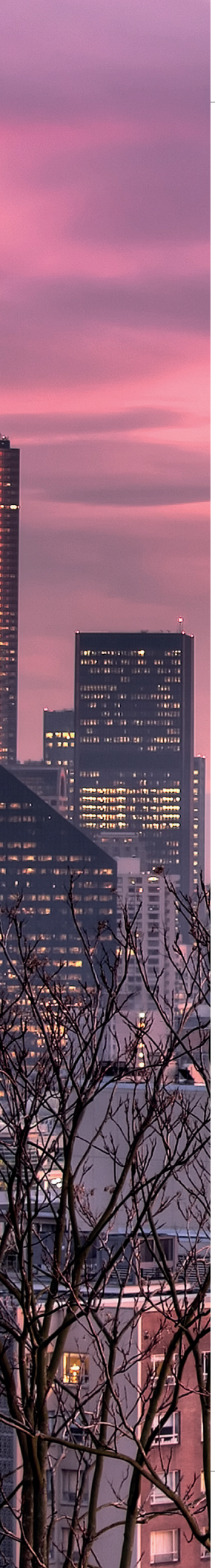
The **maximum duration** of post-termination non-competes can vary considerably, with 6 to 12 months considered standard (but not always enforceable) in many countries where non-competes are allowed. While non-competes for two or more years post-termination may be legal in some countries depending on the circumstances (eg, Argentina, Brazil, Chile, Italy, and Portugal), it may be difficult for a company to prove a restraint of this duration is necessary and reasonable.

When it comes to **geography**, the general rule is that clauses should be (1) reasonable, (2) limited to places where the employee represents actual competition to the employer, and (3) not unduly restrict an employee's ability to earn an income. For example, in New Zealand, non-compete restraints generally should not have a broader geographical scope than the city where the employee is based or should bear direct relevance to the employee's duties/trade.

To maximize the chances of enforcement, companies are encouraged to tailor the agreement based on the applicable legal and judicial standards and risk posed by individual employee to their legitimate business interests.

4. Plan for consideration and compensation requirements

In some jurisdictions, new or continued employment may be adequate to support a restraint. In others, additional consideration and/or compensation during the period of the restraint may be required to ensure it is legally binding.



Many countries (eg, China, Belgium, Denmark, Finland, France, Germany, Poland, Portugal, Spain, Sweden) require employers to pay extra compensation during a post-termination non-compete in order for it to be valid and enforceable. For example, in Germany, the employee must be paid at least 50 percent of the employee's total earnings in the year before termination (including base salary, bonus, other benefits in kind), during the entire period covered by the restraint. In Denmark, compensation for a non-competition clause must amount to either 40 or 60 percent of the employee's monthly salary (depending on the duration of the restriction) at the effective date of termination of employment.

In those without a statutory amount, compensation generally should be proportionate to the duration, territorial extent, and scope of the non-competition obligation and consider the employee's title, salary, and local customs. Even where extra compensation is not required, some courts may consider compensation when determining enforceability.

Notably, once a non-compete is agreed, the employer may not be able to waive the non-compete clause in order to avoid paying related compensation upon termination. In Germany, for instance, the employer is obligated to pay compensation for a period of one year following the waiver. Similarly, in Spain, the employer generally cannot unilaterally waive the benefit of the restraint. Where permissible, the possibility for employers to unilaterally waive the non-compete should be included in the agreement.

5. Understand the jurisdiction's approach to severance and modification

A court's power and willingness to sever or modify an otherwise invalid covenant can vary by jurisdiction. In some jurisdictions, the so-called "blue pencil doctrine" may allow courts to strike unreasonable clauses from a non-compete agreement, leaving the rest of the agreement intact.

Courts in other jurisdictions may "read down" a restrictive covenant to rewrite an unenforceable provision. In Australia, for example, it is common for a restraint to be drafted in the form of a "cascading clause" which has multiple temporal and geographical limitations (eg, 12 months, 6 months, or 3 months; Australia, New South Wales, or Sydney) to allow a court to strike out any part of the restraint it regards as exceeding what is reasonably necessary to protect the business's legitimate interests, but still enforce a more limited restraint. If the court is presented with no options, it may simply strike out an entire clause it regards as excessive, leaving no restraint at all.

Courts may be unwilling to correct a facially overbroad covenant. For example, in several decisions this year, the Delaware Chancery Court in the US declined to blue-pencil or otherwise modify an overbroad covenant (even where the agreement expressly authorized the court to do so), noting that the practice can create a "no-lose" incentive.

During the drafting process, employers are encouraged to consider which judicial approach to severance and modification is most likely to apply in the event of a dispute to minimize the risk of losing all non-compete protections. In addition, where permissible, companies should consider including a severability clause, as well as language allowing the court to reform an agreement.

6. Be mindful of mobility issues

When an employee performs services abroad – depending on the period of the stay – local employment laws may be deemed to apply and override the contract the employee has with the "home" employer with respect to various terms and conditions of employment. Whether or not local laws apply is a fact specific analysis that can depend on a variety of factors, such as the duration of time spent in the country, the employing entity, where payroll is paid, and what work permits are held.

Where a dispute arises – such as over termination of the employee while abroad – the employee is likely to pursue the "best of both worlds," meaning the employee will try to claim benefits from the better of the laws of their home and host countries. Accordingly, restrictive covenants with mobile executives, for example, should be implemented with

a high degree of care to enable employers to use them to maximum advantage. Key issues to consider include:

- Do you need to enter into a new employment contract with the expatriate?
- Do you need to include new restrictive covenants to take account of the employee's role and host country's laws?
- What happens if the expatriate needs to be terminated during their assignment?
- Where is the employee likely to end up after their secondment or employment ends? The home country, the host country, or somewhere else?

While the scope of post-termination non-compete restrictions may best be addressed as part of negotiations over the employee's exit, it is still advisable to consider these issues when structuring the assignment.

Relatedly, when an employee permanently relocates abroad, employers should generally enter into a new employment relationship in the new jurisdiction, including executing a locally compliant employment agreement, which can contain a non-compete provision if appropriate. Of course, the employment laws of the employee's new country of residence and work will apply, so it will be critical to ensure compliance with all applicable laws and to draft the non-compete in light of that country's rules.

7. Carefully choose governing law and venue

Employers should consider including choice-of-law and jurisdiction provisions, as courts may initially look to the parties' agreement in the event of a dispute. Jurisdictions may limit the ability of employers to designate another jurisdiction's laws as controlling. For example, in the US, a growing number of states, like California, have passed or introduced laws limiting an employer's ability to select either the forum or law (or both) to be applied in the context of restrictive covenants. Likewise, the courts of most countries will apply local law when reviewing the enforceability of an employee's non-compete provision, notwithstanding any choice-of-law provision to the contrary.

8. Keep up to date on jurisdictional developments and trends

In recent years, lawmakers and/or regulators in some countries have moved to limit the ability of employers to enter into noncompetition agreements with employees. For example, in the US, President Joe Biden's administration has sought to broaden employee rights. From the Federal Trade Commission's proposed rule to ban non-competes and the Department of Justice's antitrust enforcement initiatives to the National Labor Relations Board General Counsel's memorandum asserting that certain non-compete provisions in employment-related agreements violate federal labor law, US federal agencies are targeting restrictive covenants that limit employee mobility.

Likewise, several states, as well as the District of Columbia, have imposed rules limiting the use of restrictive covenants. Notable and/or common reform include:

- Banning almost all non-competes (eg, Minnesota)
- Banning non-competes for workers not deemed to pose a competitive threat, such as employees who are 18 years old or younger, non-exempt employees, and/or wage earners below a certain threshold (eg, Colorado, Illinois, Maine, Maryland, Massachusetts, New Hampshire, Nevada, Oregon, Rhode Island, Virginia, Washington, District of Columbia)
- Prohibiting enforcement depending on the reason for separation (eg, layoff) (eg, Massachusetts, Washington)
- Imposing consideration requirements such as a minimum period of employment after the agreement is signed, garden leave, or other express consideration (eg, Illinois, Maine, Massachusetts)
- Imposing notice and/or consideration period requirements (eg, Illinois, Colorado, Maine, Massachusetts, Virginia, District of Columbia)
- Limiting the duration of post-employment restrictions (eg, Louisiana, Oregon, District of Columbia), and
- Mandating that agreements be governed by the laws of, and enforced in, the jurisdiction in which the employee works (eg, Colorado, Massachusetts, Washington)

Other countries have also enacted reforms in recent years (eg, the Ontario province in Canada and Finland) or are considering changes (eg, the UK, the Netherlands, and Uganda). In addition, in some jurisdictions, like the US and Canada, non-compete agreements are the focus of antitrust and competition laws and enforcement actions.

In light of this, employers are encouraged to review their non-competes from time to time to account for changes in the law, their business, and employee roles and responsibilities.

9. Consider alternatives

While non-competes are a useful tool to retain valuable employees and protect confidential information, they are not the only option. Other types of restrictive covenants (eg, employee and/or client non-solicitation, IP, and confidentiality agreements) can provide additional protections. Like non-competes, these may be prohibited or restricted by statute and/or common law (and, in some countries, such as in South Korea, the enforceability analysis for non-solicitation clauses is very similar to that for non-competes).

Other methods of business protection may also be considered. For instance, garden leave is commonly used by employers in many jurisdictions around the world (eg, China, Hong Kong, the UK, New Zealand, Singapore, Saudi Arabia, the UAE, and Uganda) and becoming more common in others (eg, Canada) to keep senior employees and/or those with access to particular confidential information and/or customer connections out of the business during the notice period. However, salary typically must be paid in full during garden leave. An express contractual garden leave provision is often advisable.

Employers are also encouraged to focus on protection of trade secrets with confidentiality agreements and clear policies around the use of confidential information, as well as review post-employment checklists and exit procedures.

For more information

If you have questions about the use of restrictive covenants, please contact your usual DLA Piper employment attorney or the contacts below.

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Thank you to the authors of this handbook, Samantha Saltzman, Jose Irias, and Alison Lewandowski, and the many contributors from our global employment practice group.

Country Appendix

Jurisdiction	Are post-termination employee non-competes enforceable?	Is there an applicable salary threshold?	Are there geographical restrictions?	Are there limitations on the duration?	Is new or continued employment sufficient consideration?	Is extra compensation required? If extra compensation is required, can the employer waive the non-compete at the time of termination to avoid the additional payment?	Is court modification (eg, blue pencil, reformation) possible?	Other considerations
APAC								
Australia	**Yes**, subject to strict limitations. A court may enforce a post-employment restraint if it (1) is necessary to protect the employer's legitimate business interests and (2) goes no further than is reasonably necessary protect those interests.	**Not specifically**, but the employee's position and seniority are relevant to whether the restraint is enforceable. It is normal practice to use covenants in relation to relatively senior employees, employees who have rare or specialized skill sets, or those who have access to the company's most important/protected confidential information.	**Yes**. The acceptable geographical restriction will vary according to the nature of the restraint. Generally, the more a restrictive covenant is limited in time and geographical coverage, the more likely it is to be enforceable.	**Yes**. The acceptable duration will vary according to the nature of the restraint and the employee's position. Generally, the more a restrictive covenant is limited in time and geographical coverage, the more likely it is to be enforceable. The typical recommended maximum period is 12 months.	**Yes.**	**No**. There is no requirement for the employer to pay a specific amount. Compensation will not render enforceable an otherwise unenforceable restraint.Whether or not compensation is paid to the employee may be taken into account when assessing the enforceability of restraints. **N/A.**	**Yes**, but a court will not wholly rewrite a restraint. A court may delete excessive parts of a restraint where severance is possible in line with the structure of the clause. The use of a "cascading clause," which presents multiple options and permutations in terms of temporal and geographical limits, may be advisable. In New South Wales, a court can "read down" a restrictive covenant to render it enforceable.	A restraint is more likely to be enforced if there is a connection between the employee's activities during the year prior to termination and the restricted activities. Factors relevant to enforceability typically include (1) whether the new employer is a competitive business, (2) the closeness of relationships between the employee and customers, (3) the restraint period, (4) geographic scope, (5) the nature of the business and industry, and (6) the employee's position and seniority.
China	**Yes**, subject to strict limitations.	**Not specifically**, but post-employment restrictive covenants may be used for certain employees. The employee generally must be in senior management, be a senior technician, or have access to the employer's trade secrets.	**No**. There is no statutory limit, but the requirement for reasonableness is applied by the courts.	**Yes**. The term cannot exceed two years.	**No** (see next column).	**Yes**. The employer must pay monthly compensation to the individual throughout the restraint period. The minimum amount required depends on local regulations. **Yes**. Some local rules require the employee to be notified a certain period before the termination date. Employers are allowed to waive the non-compete during the restraint period if extra compensation is paid.	**Possibly**. Courts have significant discretion. For example, if the restriction period is longer than legally permitted, a court may rule that the legal requirement (ie, two years) applies.	There must be a written non-compete agreement between the employer and employee covering (1) the post termination non-compete period, (2) geographic scope, (3) the nature of the non-compete obligations, (4) the amount of compensation payable to the employee, and (5) the amount of liquidated damages payable by the employee to the employer for breaching the non-compete agreement.

Jurisdiction	Are post-termination employee non-competes enforceable?	Is there an applicable salary threshold?	Are there geographical restrictions?	Are there limitations on the duration?	Is new or continued employment sufficient consideration?	Is extra compensation required? If extra compensation is required, can the employer waive the non-compete at the time of termination to avoid the additional payment?	Is court modification (eg, blue pencil, reformation) possible?	Other considerations
Hong Kong	**Yes**, subject to strict limitations. Assuming that all contractual formalities and requirements are satisfied, a court may enforce a restraint if it (1) is necessary to protect the employer's legitimate business interests and (2) goes no further than is reasonably necessary to protect those interests.	**No**, there is no statutory salary threshold. Courts generally will consider various factors when assessing reasonableness, including the nature of the employee's role, seniority, and the extent to which the employee has access to confidential information, trade secrets, customers, clients, or suppliers.	**Yes**, a restriction that does not specify a geographical scope is unlikely to be considered reasonable.	**No**, there are no statutory limitations or requirements; however, reasonable limitations are recommended. Generally, the more time limited a covenant is, the more likely it is to be enforceable. Broadly speaking, the appropriate restraint period for a non-compete is 1 to 6 months (except for very senior or key hires where 9 to 12 months may be feasible).	**Potentially**. If an employer wants to introduce or update restraints for an employee who is already in their employment, based on case law and common practice, it is prudent to obtain consent and provide additional consideration.	**No**. There is no requirement to pay any specific amount. Compensation will not render enforceable an otherwise unenforceable restraint. Whether or not compensation is paid to the employee may be taken into account by courts when assessing enforceability of restraints. **N/A.**	**Generally, yes**. The common view is that the blue-pencil rule permits parts of a post-termination restrictive covenant to be severed to ensure the enforceability of the rest of a reasonable restraint. However, courts will not rewrite an otherwise unenforceable clause. For example, if the duration of a restraint is found to be excessive, the court will not reduce the period of the restriction to make it enforceable but will strike it out.	Other factors that courts have taken into account in determining reasonableness include (1) whether the restrictive covenant was oppressive to the employee, (2) the bargaining power of the individual at the time the contract was negotiated, and (3) whether the employee had access to legal advice before signing the agreement.
India	**No**. Post-termination non-competition clauses are void and unenforceable.	**N/A.**	**N/A.**	**N/A.**	**N/A.**	**N/A.**	**Yes**. The courts are not barred from striking off any part of the contract which creates an illegality.	Restrictions to ensure non-solicitation and protection of confidential information may be enforceable.
Japan	**Yes**, subject to strict limitations. A court may enforce a non-competition covenant if it (1) is necessary to protect the employer's legitimate business interests and (2) reasonable in the particular circumstances.	**Not specifically**, but whether the employee is highly paid may be relevant when considering enforceability. A court will also consider whether the employee was in a position to access the employer's confidential information.	**Yes**. Geographical scope of the restraint is considered. It should be limited to a certain reasonable area considering the company's business.	**Yes**. Whether the scope of a restraint is reasonable will depend on the facts and circumstances of each case. Restraint periods of 6 to 12 months are common but not always enforceable. Yes (but see next column).	**Yes** (but see next column).	**Not specifically**. While there is no legal requirement, based on certain court decisions, compensating an employee for a restraint can bolster its enforceability. Other courts have held that compensation is not required. **N/A.**	**Yes**. Some courts have interpreted non-compete obligations in a limited manner to make them enforceable.	Factors a court will take into account in determining enforceability typically include (1) whether there is legitimate reason for the employer to protect its business, (2) the restraint period, (3) geographic scope, (4) the position that the employee is restrained from taking, (5) whether there is a clear agreement between the employer and employee as to the scope of the restrictions, (6) whether the employee was in a position to access the employer's confidential information, and (7) whether any consideration was provided to the employee.

Jurisdiction	Are post-termination employee non-competes enforceable?	Is there an applicable salary threshold?	Are there geographical restrictions?	Are there limitations on the duration?	Is new or continued employment sufficient consideration?	Is extra compensation required? If extra compensation is required, can the employer waive the non-compete at the time of termination to avoid the additional payment?	Is court modification (eg, blue pencil, reformation) possible?	Other considerations
New Zealand	**Yes**, but restraints of trade in employment agreements are generally presumed to be unenforceable as anti-competitive and contrary to the public interest. The Employment Relations Authority (ERA) or Employment Court will only uphold a restraint if it is deemed necessary and reasonable in order to protect an employer's legitimate proprietary interest.	**No.**	**No**, there is no statutory limitation. However, the reasonableness of a restraint is assessed in light of its geographic scope. For example, if a restraint has a broad geographic scope, it would be less likely to be upheld as reasonable if it also has a duration of more than six months. Non-compete restraints generally should not have a broader geographical scope than the city where the employee is based or should bear direct relevance to the employee's duties/trade.	**Yes**. The restraint should only last as long as it is necessary to protect the proprietary interests of the employer. Generally, the greater the impact on the ability of the employee to pursue their chosen work, the shorter the period of restraint should be. Non-compete restraints generally should not last more than three to six months. A longer period is generally only justified for very senior employees.	**Yes**, for new employment. **No**, for continued employment.	**Yes**. The provision of remuneration and other benefits under the employment agreement will usually be adequate. If a restraint is entered into after the employment agreement is agreed, the employer will need to provide extra compensation. **N/A.**	**Yes**. The ERA can modify the ambit or duration of a restraint if the Authority believes the clause is unreasonable. Of the three variables of a restraint (ie, duration, geographic scope, and ambit), the ERA is most likely to alter the duration.	Restraints are common across most industries. The risk arises if the restraint is not properly tailored. Restraint clauses drafted in the "waterfall" style (which is common in Australia) and templated restraints are more likely to be deemed unreasonable.
Singapore	**Yes**, subject to limitations. Post-employment restrictive covenants are prima-facie void, but a court may enforce a post-employment restrictive covenant if it is held to be (1) necessary to protect the employer's legitimate business interests and (2) reasonable – both in the interests of the parties and of the public.	**Not specifically**, but the employee's position and seniority are relevant when considering enforceability.	**Yes**. Geographical scope of the restraint is considered in determining enforceability.	**Yes**. The acceptable period of a restraint will vary according to the nature of the restraint. Generally, the more the restrictive covenant is limited in time, the more likely it will be enforceable. The recommended maximum period is generally 6 to 12 months post-employment. Restraint periods may be reduced by any period of notice which the employee spends on garden leave.	**Yes**. If an employer wants to introduce or amend existing restraints for an employee, consent is required. In such cases, consideration should be provided unless the amendment is undertaken by way of a deed. While the employee's continued employment with the company may be sufficient in view of mutual consideration and covenants, providing additional consideration (eg, a payment or promotion linking to the restrictive covenants) may help to avoid any potential dispute.	**No**. There is no requirement at common law that an employer must pay any specific amount, although paying salary during the period of restraint may make the clause more reasonable. Compensation will not render enforceable an otherwise unenforceable restraint. **N/A.**	**Yes**. The courts use the blue-pencil test. An unenforceable provision must be capable of being removed without the necessity of adding to or modifying the wording of what remains. However, the courts have cascading clauses that may leave vulnerable employees uncertain as to which cascading restriction binds them until the matter is settled in court.	Factors that a court will take into account depend on the circumstances, but typically include (1) the period of restraint; (2) geographic scope; (3) the nature of the restraint and its severity; (4) the seniority and position of the employee; (5) the bargaining power of the individual at the time the contract was negotiated, and whether the employee had access to legal advice before signing the agreement; and (6) whether the employee was in a position to access the employer's confidential information or other legitimate interests.

Jurisdiction	Are post-termination employee non-competes enforceable?	Is there an applicable salary threshold?	Are there geographical restrictions?	Are there limitations on the duration?	Is new or continued employment sufficient consideration?	Is extra compensation required? If extra compensation is required, can the employer waive the non-compete at the time of termination to avoid the additional payment?	Is court modification (eg, blue pencil, reformation) possible?	Other considerations
EMEA								
Belgium	**Yes**, but under strict conditions.	**Yes**. The amount is indexed annually. For 2023, the employee must earn an annual remuneration of at least EUR78,706 (gross) at the time of separation. For sales representatives, the remuneration threshold is EUR39,353. The remuneration threshold is assessed on the basis of the total remuneration, all benefits included.	**Yes**. The geographical scope must be limited to the region the employee was working. Normally, a non-compete clause cannot apply outside of Belgium, but companies with their own research departments and companies active in international markets can use an exceptional non-compete clause, which can have a territorial scope beyond Belgium. The territorial scope should be clearly defined, as clauses like "Europe" have been considered as void due to being too vague.	**Yes**. Post-termination non-competition clauses agreed at the start of or during employment may not exceed 12 months. The only exception to this is where the employer's operations are international in scope, the employer has significant economic, technical or financial interests in international markets or has its own research department. In such cases, an "exceptional non-competition" restraint is permitted. Such a clause is not subject to a fixed maximum duration, but its duration should remain reasonable (which is generally construed as not exceeding 2 years). The longer the clause applies, the higher the non-compete indemnity will be.	**No** (but see next column).	**Yes**, the non-compete clause must stipulate the payment of a non-compete indemnity equaling 50 percent of the remuneration (all benefits included) during the post-termination restrictive period. This is not a requirement for sales representatives. **Yes**. The employer can waive the clause within 15 days of the termination. In that case, the non-compete indemnity is not due. A waiver is best produced by signing an agreement or by registered mail for evidence purposes.	**No.**	To be enforceable, the non-compete must be drafted in the appropriate local language (ie, French or Dutch for the seat of exploitation situated in Brussels, in Dutch for the those situated in the Dutch speaking part of Belgium, and in French for those located in the French speaking part of Belgium). Even a valid non-compete clause can only prohibit entering into service of a competitor in a similar function. Non-compete clauses are often waived, as it can be difficult to verify which function a former employee is performing at a competitor.

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Denmark	**Yes**. An employee may be subject to a non-competition clause only if they hold a significant position of trust, and the clause must indicate the specific circumstances as to why such a clause is necessary. For a restrictive covenant to be upheld, the covenant must be reasonable (ie, the impact of the restraint must be proportionate to the interest to be protected). In general, the restraint cannot go further than necessary in order to protect legitimate business interests.	**No**. However, only employees who hold a very special position of trust can be covered by a competition clause. Whether an employee is specially entrusted is an individual assessment.	**Yes**. The geographical scope relating to the restraint should cover areas only where the majority of the employer's business connections are located. If the scope is too wide, there is a risk that the covenant could be set aside, in part or in full.	**Yes.** The maximum post-termination restraint period is 12 months, or, in combined non-solicitation clauses, a maximum period of 6 months after the effective date of termination applies.	**No** (but see next column).	**Yes**. Compensation for a non-competition clause must amount to a minimum of 60 percent of the monthly salary at the effective date of termination of employment, if the duration of the restriction is between 6 and 12 months after the termination. If the duration of the restriction is 6 months or less, the compensation must amount to a minimum of 40 percent of the monthly salary at the effective date of termination. The first two months are considered minimum compensation. The compensation (save for the minimum compensation) may be reduced to 16 or 24 percent if the employee secures another suitable job. This will depend on the employee's individual notice of termination. The employer can waive the competition clause with 1 months' notice; however, in most cases, minimum compensation, corresponding to two months compensation, must be paid even if waived.	**No.**	**N/A.**

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Finland	**Yes**. A post-termination non-competition obligation is possible only where there is a compelling reason related to the operations of the employer or to the employment relationship. If the employment is terminated for employer-related reasons, a non-competition obligation will not be enforceable.	**No**.	**Yes**. Although there are no express restrictions, the geographic scope will be taken into account when assessing whether the covenant is reasonable. A court will do an overall assessment, taking into account whether a covenant restricts the employee's ability to earn income to an unreasonable extent.	**Yes**. A non-compete restraint may restrict an employee's right to take up employment with a competitor or to engage in the trade concerned for a maximum period of one year. Restrictions on the duration of the restraint do not apply to employees who, in view of their duties and status, are deemed to be engaged in directing the enterprise (or an independent part of it) or who have independent status similar to such managerial duties.	**No** (but see next column).	**Yes**. The required remuneration for a non-competition clause of six months is 40 percent of the employee's salary during the restricted period. The required remuneration for a non-competition clause of up to 12 months is 60 percent of the employee's salary for the restricted period. **Yes**. Before termination, the non-compete may be terminated by following a notice period of 1/3 of the length of the non-compete period and at least 2 months. After an employee has resigned, the non-compete can be terminated only by mutual agreement.	**Yes**. A court may find the non-compete partially invalid or not compliant with the law, in which case the non-compete restriction remains in force to the extent it is compliant with the law.	**N/A**.

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France	**Yes**, particularly for senior executives and employees with access to confidential and strategic information, but non-compete clauses should be tailored to individual employees. The impact of the restraint must be proportionate to the interest to be protected. In general, the restraint cannot go further than necessary in order to protect legitimate business interests. The terms of a restraint must also be proportionate to the employee's seniority and must never prevent an employee from finding a new job which is appropriate to their training and skills. In addition, the restraint must comply with applicable CBA provisions, if any, regarding duration, geographical scope and compensation.	**No.**	**Yes**. The scope must take into account the employee's level and functions within the company and access to confidential information and must balance the legitimate interest of the company and the impact on the employee (as it must not prevent the employee from working). In any event, the geographical scope may only include jurisdictions in which the employee has been active and/or for which they were responsible (typically during the 12 or 24 months preceding termination of the contract, depending on the level of the employee concerned and nature of responsibilities).	**Yes**. The maximum duration is set forth by the applicable industry-wide CBA. In the absence thereof (or absent relevant provisions in the applicable CBA), common practice is to provide for a duration of 12 months.	**No** (but see next column).	**Yes**. The compensation – the level of which must be set out in the contract – cannot be included as part of the remuneration paid during employment, but does constitute salary and must be paid on a monthly basis to the employee until the end of the period of the restraint. The minimum level of the monthly compensation may be set forth in the applicable CBA. In the absence thereof (or absent relevant provisions in the applicable CBA), common practice is to provide for a monthly indemnity amounting to 33 to 50 percent of the average monthly salary (either base plus variable or base compensation only) received by the employee during the 12 months preceding termination. **Yes**, if the applicable CBA (or in the absence of an applicable CBA, the employment agreement) provides for the possibility of a waiver.	**Yes**, except if the clause does not provide for any compensation (in which case the clause is null and void).	**N/A.**

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Germany	**Yes**. The legitimate interests of the employer must justify the restraint.	**No**.	**Yes**. The restraint may not extend beyond the employer's business sector and can rarely be extended worldwide.	**Yes**. The maximum duration is two years post termination.	**No** (but see next column).	**Yes**. An employee must be paid compensation during the entire restraint period amounting to at least 50 percent of the employee's total earnings in the year before termination, including base salary, bonus, and other benefits in kind. Where the remuneration changed over a year, the average of the preceding three years must be taken into account. If the clause does not make provision for payment of compensation, it will be null and void. Where a non-competition obligation is waived, the requirement on the employer to pay compensation will nonetheless continue for a period of one year following the waiver.	**Yes**, but only in limited circumstances (eg, in the case of geographical scope). If the non-compete does not provide for a compensation payment, this cannot be remedied.	Both parties must be provided a non-compete hard-copy document that includes the wet-ink signatures of both parties. This is a requirement for the non-compete to be enforceable.
Ireland	**Yes**, but non-compete covenants are often deemed unenforceable as an unlawful restraint of trade. Restrictive covenants may be enforceable if they protect a legitimate business interest and go no further than is necessary to protect the legitimate business interest.	**No.**	**Yes.**	**Yes.**	**Yes**, for new employment.	In order to be enforceable, restrictive covenants are subject to the contractual requirements of offer, acceptance, and consideration. There is no set amount required to be offered as consideration, and, where the covenants are entered into under a contract of employment, separate consideration is not generally required. **N/A.**	**Yes**, potentially.	**N/A.**

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Italy	**Yes**, provided the restraint complies with legal requirements and, after the employment ends, allows the employee substantial job opportunities consistent with their skills.	**No.**	**Yes**, the geographical limitation of the restriction should be reasonable.	**Yes.** The maximum duration for a non-compete agreement is five years for executives (*Dirigenti*) and three years for other employees. If a longer period is set, it will be reduced in line with these limits by operation of law. Common practice is usually 6 or 12 months.	**No** (but see next column).	**Yes**. Restraints must be supported by adequate and fair monetary consideration. There is no statutory amount, but it must be proportionate to the duration, territorial extent, and scope of the non-competition obligation. According to case law, remuneration in the region of 35 to 50 percent of the annual salary is generally considered fair for a 12-month restriction. **Yes**, but such possibility is subject to strict limitations, which can make it difficult in most cases. The possibility to waive must be expressly provided by the covenant within a certain date before termination.	**Yes**. Some elements of the non-compete agreement (eg, penalty reduction) may be subject to modification.	**N/A.**
Netherlands	**Yes**. Post-employment restrictions are common and included in most employment agreements. Post-employment restraints must be reasonable. Non-competition (including non-solicitation) clauses in fixed-term employment contracts are prohibited, unless they are necessary to protect a legitimate business interest, and the business interests are clearly and extensively described in the employment agreement with sound written rationale that is tailored to the individual employee.	**No.**	**No.** In principle, there is no requirement for a geographical restriction; however, if the geographical scope is reasonable, the restraint is more likely to be enforced.	**Yes.** A period of 12 months for business protection clauses is not unreasonable if necessary to protect the interests of the company.	**Yes** (but see next column).	**No.** There is no legal requirement to pay compensation; however, if a non-competition clause restrains an employee to a significant extent from working other than in the services of the employer, the employee can start legal proceedings, and the court may direct that the employer must pay compensation for the duration of the restraint. **Yes**. The non-compete can be waived, including at the time of termination.	**Yes**, the court can reduce the geographical scope or the length of the non-competition clause.	In redundancy cases where the initiative to terminate the employment agreement comes from the employer, it is common to release the employee from their non-compete clause upon termination, if feasible from a business perspective, taking into account the interests of the business and the employee's role and knowledge.

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Poland	**Yes**. However, the extent of a restriction should not be too general and should be no wider than necessary to protect a legitimate business interest. It should be relative to a person's position in the business.	**No**, but post-employment non-competes are generally entered into with employees who have access to particular important or sensitive information of the employer.	**Yes.** The restraint should be reasonable in terms of geographical scope. What is reasonable will depend on the nature and area of the employee's activities.	**No**. Polish law does not impose any limits on the duration of post-termination restraints. In general, the restraint should last only as long as it will take for any competitive activities to represent less than a material threat to the employer's legitimate interest. In practice, post-termination non-competition restraints in Poland generally last between six months and two years.	**No** (but see next column).	**Yes**. The compensation must not be lower than 25 percent of the remuneration received by the employee prior to the employment terminating for a period corresponding to the duration of the restraint and must be paid for the duration of the restraint. All components of remuneration must be taken into account in calculating the amount of compensation, including, for example, performance bonuses. **Yes**, but only if the restraint provides for the employer's right to waive or terminate them.	**Yes**, in exceptional cases.	Non-compete restrictions are highly recommended, bearing in mind that, under current law, employers are not allowed to prohibit their employees from taking up a secondary employment. The risk of an employee's undertaking competitive activities is usually lower if the post-employment non-competitive restrictions provide for a contractual penalty.
Portugal	**Yes**. Post-termination restraints aimed at protecting the employer's legitimate business interests may be enforced provided that the activity carried on by the employee may cause a potential loss to the employer.	**No.**	**Yes.** There are no express limits, but the geographical area must be defined and must be reasonable and justified.	**Yes.** The maximum period of limitation is two years, or three years in case of positions of trust or with access to information of particular relevance.	**No** (but see next column).	**Yes**. The law does not provide any criteria, but it usually varies between 40 and 80 percent of the last monthly base remuneration during the period of limitation. **No.**	**No**, except that the court may reduce the amount of any penalty clause established for non-compliance of the obligations if such amount is deemed unreasonable and excessive.	**N/A.**
Romania	**Yes**. However, in certain termination contexts (eg, in redundancy or terminations due to restructuring), the non-compete cannot be enforced. Non-compete restraints cannot result in the absolute prohibition of the employee to practice their trade or profession.	**No.** However, non-competes are most frequently used for employees in senior management positions.	**Yes**. The territory covered should be limited to areas where the employee could genuinely compete with the employer. For example, a restraint should not cover areas where the employer does not, in fact, have any presence, nor trade its products or services.	**Yes**. Non-compete restraints can be implemented for a maximum period of 24 months post termination.	**No** (but see next column).	**Yes.** The amount cannot be lower than 50 percent of the (former) employee's average total gross income during the last six months of their employment. **No**. This is not expressly allowed by law – thus, it is highly debatable whether the employer can unilaterally (without the employee's consent) waive the non-compete obligation.	**Yes**, subject to the request of the employee or the labor inspectorate, the competent court may reduce the effects of the non-competition clause.	**N/A.**

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Saudi Arabia	**Yes.**	**No.**	**Yes**. It must be reasonable in geographical scope. What is reasonable will depend on the nature and area of the employee's activities. Typically, the non-compete should be limited to the city or region where the employee works in order for it to be enforceable. However, restrictions are frequently expressed to apply to all of the KSA.	**Yes**. The non-compete should not last more than two years from the termination date.	**Yes** (but see next column).	**No**, although this may assist in compliance with the post termination restrictions. **N/A**, but it would be open to the employer to waive the non-compete.	**Unlikely**. The court will not likely amend the non-compete restriction to make it enforceable, particularly where it is perceived to be prejudicial to the interests of the employee.	While there is low risk in implementing non-competes, the probability of it being enforced can be low.
Spain	**Yes**, but only if the restraint is no wider than is necessary to protect a legitimate business interest.	**No.**	**Yes**. While there is no express geographical limitation, non-competes should be tailored to each individual employee and take account of the area of business activity of the company or group.	**Yes**. For skilled professionals, the maximum duration is two years; for non-skilled employees, the maximum duration is six months.	**No** (but see next column).	**Yes**, "adequate compensation" is required. In general terms, 40 to 50 percent of the employee's base salary is generally considered adequate compensation. The consideration can be paid either during employment or on termination. **No**. In principle, companies cannot unilaterally waive the obligation.	**Yes**. A court may reduce its enforceability period or reduce or even eliminate the penalty to be paid by the employee in case of a proven breach.	**N/A.**

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Sweden	**Yes**, as long as they are reasonable. Post-employment non-compete clauses are generally used only for white-collar key employees on indefinite-term contracts.	**No.** However, in order for such restrictions to be held reasonable, they should only be used for employees who are privy to sensitive trade secrets, the disclosure of which to a competitor would be harmful to the employer's business. Moreover, the employee should hold such a position so as to be expected to be able to make use of such information in the new employment or business.	**Yes**, in the sense that it should not be broader than necessary. Historically, geographic limitations have been given greater significance.	**Yes**. The duration may not be longer than motivated by the trade secrets in question. In general, 18 months is considered the maximum, or 9 months if the sensitivity of the trade secrets is expected to be brief.	**No** (but see next column).	**Yes.** The employee should be compensated for the loss of income caused by the restriction, but such compensation is normally capped at 60 percent of the employee's average income in over preceding 12 months (including any variable salary and bonus). **Yes**, if properly drafted. Generally, there is a mechanism whereby the employee asks whether the clause will be enforced. If the clause will be enforced, the employer may not then change its mind without the employee's consent.	**Yes.**	**N/A.**
United Arab Emirates	**Yes**, but only if the restraint is no wider than necessary to protect a legitimate business interest	**No.**	**Yes.** It must also be reasonable in geographical scope. What is reasonable will depend on the nature and area of the employee's activities. Typically, the non-compete should be limited to the Emirate in which the employee works in order for it to be enforceable. Any wider, and it would likely be unenforceable.	**Yes**. By law, the non-compete should not last more than two years from the termination date. In practice, anything more than 12 months is unlikely to be enforceable.	**Yes** (but see next column).	**No**, although this would assist in compliance with the post-termination restrictions. **N/A**. However, it would be open to an employer to waive the non-compete.	**Yes.** If a non-compete clause extends to a degree that is considered "unjust" (eg, too long in duration, too widely worded, too wide in geographical scope), the courts will either amend the clause or declare it invalid.	The employee or new employer can pay three months' salary (as per the employment contract with the previous employer) to the previous employer imposing the non-compete in order for the non-compete provisions to be removed, provided that the previous employer agrees to this in writing. While there is low risk in implementing non-competes, the probability of it being enforced can be low.

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United Kingdom	**Yes**, but only if the restraint is no wider than necessary to protect a legitimate business interest. Post-termination restraints are common in the UK – particularly for senior executives and employees with access to confidential information, trade connections, or influence over other employees – but should always be tailored to individual employees.	**No.**	**Yes**. It must also be reasonable in geographical scope. What is reasonable will depend on the nature and area of the employee's activities. It is important that the employee is only prevented from performing specific activities or soliciting/ dealing with specific clients or customers.	**Yes**. These include (1) the shelf life of the confidential information, (2) the seniority of the employee, and (3) the industry standard for a sector. Time limits should be approached with caution as the restraint must be specifically tailored to the individual risk posed by the employee to the business. The government recently confirmed its plans to limit the length of non-compete clauses to three months. However, it is not yet clear how far this limit will be applied.	**Yes**.Restraints must be supported by adequate consideration, but in most cases, the employee commencing or continuing to work under the contract will be adequate.	**No**. Note that, in some cases, it may be necessary to provide monetary consideration (eg, where new restraints are introduced in a settlement agreement). Nominal or "peppercorn" payment for the restriction will be sufficient from a contractual perspective. However, note that payment for new restrictions in settlement agreements attract a charge to tax. Accordingly, HM Revenue and Customs may review the payment made to assess the tax payable. In such a situation, given the consequences on the other payments contained in the agreement, a small but reasonable payment (eg, GPB100) is likely to be considered adequate consideration. **N/A.**	**Yes.** A court considering the enforceability of a contractual restrictive covenant will not rewrite a covenant to make it enforceable, but it may delete unenforceable elements leaving the remainder intact.	**N/A.**
Americas								
Argentina	**Yes**, provided they meet certain requirements.	**No.**	**Yes**. The geographical reach of the clause should be reasonable, taking into account the employer's legitimate interest. For example, a nationwide restriction would not be valid if the employer only operates in a limited area of the country.	**Yes**. Most agreed restrictive periods range from two years to five years. However, in an important case, the court accepted a ten-year post-termination restraint period, taking into account in its decision the business and activity of the employer and the amount of consideration paid to the employee.	**No** (but see next column).	**Yes**. Consideration is required for valid restrictive covenants. The amount must be fair and in accordance with the salary of the employee, their position in the company, the agreements that the company intends to impose, and the extension (ie, period and territory) of the restrictive covenant. **Yes**	**Yes**, but the courts may declare null and void a covenant that has been drafted too widely.	**N/A.**

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Brazil	**Yes**. Post-employment restrictive covenants are, in general, enforceable, subject to certain requirements.	**No.**	**Yes**. In geographical terms, the covenant's scope should be restricted to the roles and territory established during the terminated employment.	**Yes**. While there is no statutory maximum, the generally accepted period is up to 24 months, although the nature of the employer's industry is highly relevant.	**No** (but see next column).	**Yes.** Employers should make a specific payment as consideration for a non compete obligation. Recent trends have set this indemnity at 50 to 100 percent of the amount of the last monthly salary per month that the employee remains subject to the restriction. The higher the restriction, the higher the indemnity should be. In some cases, an employer may choose to only restrict the employee from working for one or two competitors, as it is justifiable for the indemnity to be lower in comparison to the amount paid to an employee that will be highly restricted. **Yes**. The parties must establish the conditions of the non-compete (ie, duration, geographic area, compensation), and a provision stating that the company will have a certain number of days from the termination date to waive the non-compete obligations. Between five and ten days is generally a reasonable deadline for the employer to waive the non-compete.	**Yes**. Alterations are not prohibited by law but are rare.	**N/A.**
Canada – Alberta	**Yes**, such covenants are generally unenforceable for mere employees. However, they are unenforceable where a non-solicitation provision would have been sufficient to protect the employer's legitimate business interests.	**No.**	**Yes**. The geographical restrictions must be no greater than reasonably necessary to protect the employer's legitimate business interests.	**Yes**. Courts generally will not enforce restrictive covenants more than 12 months outside the sale of a business.	**Yes**, for new employment. **No**, for continued employment.	**Yes**, fresh consideration should be provided for a restriction entered during employment. **No**, as consideration must be given at the time the agreement is entered into.	**No.**	While post-termination non-competes are difficult to enforce, restrictions to ensure non-solicitation and protection of confidential information are common and more likely to be enforceable.

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Canada – British Columbia	**Generally, no**. They are generally unenforceable for mere employees and unenforceable where a non-solicitation provision would have been sufficient to protect the employer's legitimate business interests.	**No**.	**Yes**. The geographical restrictions must be no greater than reasonably necessary to protect the employer's legitimate business interests.	**Yes**. Courts generally will not enforce restrictive covenants more than 12 months outside the sale of a business.	**Yes**, for new employment. **No**, for continued employment.	**Yes**, fresh consideration should be provided for a restriction entered during employment. **No**, as consideration must be given at the time the agreement is entered into.	**No.**	While post-termination non-competes are difficult to enforce, restrictions to ensure non-solicitation and protection of confidential information are common and more likely to be enforceable.
Canada – Ontario	**Generally, no.** Since October 25, 2021, employers are prohibited from entering into any agreement with an employee containing a non-competition clause that applies after the end of employment, with limited exceptions for senior-level executives (ie, president and C-suite executives) and in the context of a sale of a business.	**No**.	**Yes**. The geographical restrictions must be no greater than reasonably necessary to protect the employer's legitimate business interests.	**Yes**. Where permitted, courts generally will not enforce restrictive covenants more than 12 months outside the sale of a business.	**Yes**, for new employment. **No**, for continued employment.	**Yes**, fresh consideration should be provided for a restriction entered during employment. **No**, as consideration must be given at the time the agreement is entered into.	**No.**	While post-termination non-competes are difficult to enforce, restrictions to ensure non-solicitation and protection of confidential information are common and more likely to be enforceable.
Canada – Quebec	**Generally, yes,** if they are reasonable as to their scope, territory, and duration and if fresh consideration is given. However, employers cannot rely on restrictive covenants when an employee has been terminated without cause.	**No**.	**Yes.**	**Yes**. Courts generally will not enforce restrictive covenants more than 12 months.	**Yes**, for new employment. **No**, for continued employment.	**Yes**, fresh consideration should be provided for a restriction entered during employment. **No**, as consideration must be given at the time the agreement is entered into.	**No.**	All restrictive covenants become unenforceable when an employee is terminated without cause.

Jurisdiction	Are post-termination employee non-competes enforceable?	Is there an applicable salary threshold?	Are there geographical restrictions?	Are there limitations on the duration?	Is new or continued employment sufficient consideration?	Is extra compensation required? If extra compensation is required, can the employer waive the non-compete at the time of termination to avoid the additional payment?	Is court modification (eg, blue pencil, reformation) possible?	Other considerations
Chile	**In principle, yes.** However, they may be difficult to enforce due to the constitutional protections for an employee's right to work. Post-termination non-competes are not regulated by law, so the labor courts have detailed certain criteria which, if followed, will enhance the chances of enforceability of the non-compete.	**No**. However, a post-termination non-compete should not be agreed with all employees. One of the criteria considered by labor courts when analyzing enforceability is whether the restriction is applied to a key employee of the company (ie, an individual with access to sensitive confidential information or contact with clients important for the business). Therefore, when deciding whether to agree a post-termination non-compete with an employee, the company should pay attention to the aforementioned aspects in order to justify a legitimate business reason for the restriction to be enforced.	**Not specifically**, given that post-termination non-competes are not regulated by law. However, if the validity of the restriction is questioned before a court, a judge may take the geographical scope of the restriction into consideration. In this case, the broader the restriction is, the less enforceable it will be. The idea is that the geographical scope is aligned with the legitimate business reason pursued. For example, if an employee had constant contact with clients in other countries, it might be justifiable to have a broader geographical scope.	**Not expressly.** Given that post-termination non-competes are not regulated by law, there is no express restriction. Although there are no clear parameters regarding the maximum term of the non-compete, this aspect has been analyzed by courts, and they have generally considered a maximum term of one to two years to be acceptable.	**Yes** (but see next column).	**Not specifically,** given that post-termination non-competes are not regulated by law. However, in practice, the main element a judge considers when analyzing the enforceability of a non-compete is whether extra compensation has been paid. To date, almost all of the post-termination non-competes accepted by the courts are those that provide compensation to the employee to compensate for the prohibition against competing. There are no clear parameters regarding the amount of the compensation, but 50 to 75 percent of the employee's monthly base salary per month of restriction is customary. **Potentially.** It is not uncommon to include a reference in the non-compete agreement stating that the employer may waive the non-compete at the time of termination. Notwithstanding this, it is not possible to entirely discard inconveniences if an employee tries to enforce the restriction before a judge, if compensation were to be paid.	**Not in principle**, because a judge mandate, following Chilean practice, is either to rule that a post-termination non-compete is null and void or is valid, or whether the compensation should be paid or not to the employee. However, hypothetically speaking, if a post-termination non-compete agreement states clearly in writing that, in case a term is deemed unenforceable, the court should be enforced to the maximum extent authorized by a judge (eg, agreeing that a non-compete is valid for two years after termination of employment or the maximum term authorized by a court of law), an employer could argue when defending itself that the judge should modify the non-compete in this regard.	—
Colombia	**No**, Article 44 of the Colombian Labor Code establishes that the stipulation forbidding an employee from working for competitors after their employment ends is not valid. Non-competition clauses are not enforceable even if the employer pays a compensation.	**N/A.**	**N/A.**	**N/A.**	**N/A.**	**N/A.**	**N/A.**	While post-termination non-compete clauses or agreements are not enforceable, such provisions are typically included in employment agreements as they can have a deterrent effect or create a sense of moral obligation on the part of an employee.

Jurisdiction	Are post-termination employee non-competes enforceable?	Is there an applicable salary threshold?	Are there geographical restrictions?	Are there limitations on the duration?	Is new or continued employment sufficient consideration?	Is extra compensation required? If extra compensation is required, can the employer waive the non-compete at the time of termination to avoid the additional payment?	Is court modification (eg, blue pencil, reformation) possible?	Other considerations
Mexico	**No.** Post-termination non-competition clauses are void and unenforceable.	**N/A.**	**N/A.**	**N/A.**	**N/A.**	**N/A.**	**N/A.**	While post-termination non-compete clauses or agreements are not enforceable, such provisions are typically included in employment agreements as they can have a deterrent effect or create a sense of moral obligation on the part of an employee.
Peru	**Yes**. However, as there is no legal regulation, it may be difficult to enforce due to the constitutional protections for an employee's right to work. Also, it is necessary to meet certain requirements (eg, the restraint should not be wider than necessary to protect a legitimate business interest, the employee should be reasonably paid).	**No.** Since there is no legal regulation, the compensation should be reasonable and based on the salary of the employee and the scope of the restrictions.	**No**. Since there is no legal regulation, no geographical restrictions have been established.	**Yes.** Since there is no legal regulation, the restraint should be reasonable; that is, they cannot exceed a two-year period.	**No** (but see next column).	**Yes.** Since there is no legal regulation, the compensation should be reasonable and based on the salary of the employee and the scope of the restrictions. **Yes**, if it is agreed between the parties.	**Yes**, but courts usually prefer to protect the employee's right to work.	In practice, post-termination covenants have a deterrent effect or create a sense of moral obligation on the part of an employee.

Jurisdiction	Are post-termination employee non-competes enforceable?	Is there an applicable salary threshold?	Are there geographical restrictions?	Are there limitations on the duration?	Is new or continued employment sufficient consideration?	Is extra compensation required? If extra compensation is required, can the employer waive the non-compete at the time of termination to avoid the additional payment?	Is court modification (eg, blue pencil, reformation) possible?	Other considerations
United States*	**It depends**. Some states – California, Minnesota, North Dakota, and Oklahoma – ban almost all non-compete agreements (with limited exceptions, such as with the dissolution or sale of a business). Other states strictly limit non-competes for employees generally and/or in specific industries. Even in the absence of legal requirements, courts often consider a variety of factors when determining the enforceability of a non-compete, such as the employee's position, seniority, and access to confidential information.	**Yes**, some states have adopted salary thresholds. For example, in Illinois, for covenants entered into on or after January 1, 2022, the employee must earn more than USD75,000. In Maine, the employee must earn more than 400 percent of the federal poverty level. In Maryland, an employee must earn at least USD15/hour or USD31,200 per year. In Colorado, at the time the covenant is entered into, the employee must earn an amount of annualized cash compensation equivalent to or greater than the threshold amount for highly compensated workers (USD112,500 in 2023). In the District of Columbia, the employee must be highly compensated as defined by the statute.	**Yes**. While state statutes may not address them, geographic restrictions generally are evaluated based on (1) their reasonableness, (2) whether they impose an undue hardship, and (3) whether or not they are greater than necessary to afford the required protection. Some state statues may address. For example, Arkansas's law provides that the lack of a specific or defined geographic descriptive restriction in a covenant not to compete agreement does not make it overly broad if it is limited with respect to time and scope in a manner that is not greater than necessary to defend the protectable business interest of the employer. The District of Columbia's law provides that the agreement must specify "geographical limitations of the work restriction."	**Yes**. While state statutes may not address them, temporal restrictions generally are evaluated based on (1) their reasonableness, (2) whether they impose an undue hardship, and (3) whether or not they are greater than necessary to afford the required protection. Where non-competes are permitted, post-employment restrictions lasting from six months to one year are generally deemed reasonable. Some states recognize a longer period. For example, under Arkansas' statute, a post-termination restriction of two years can be presumptively reasonable.	**It depends.** It is a best practice to secure restrictive covenants upon the start of employment. Covenants entered after the start of employment may still be enforceable in many states, but some states require additional consideration to support such agreements.	**It depends.** Some state statutes outline requirements. For example, in Illinois, a non-compete agreement is void without adequate consideration – that is, either the employee worked for the employer for at least two years after the employee signed an agreement or the employer otherwise provided adequate consideration. This consideration can consist of a period of employment plus additional professional or financial benefits, or merely professional or financial benefits adequate by themselves. Courts in some states have held that an offer of employment and/or continued employment for an at-will employee are sufficient to support a restrictive covenant. —	**It depends.** Some state laws provide for modification. For example, in Illinois in some circumstances, a court may choose to reform or sever provisions of a non-compete agreement rather than hold the agreement unenforceable (820 ILCS 90/35). Case law standards for blue penciling or reformation vary from state to state. In general, courts in many states may exercise discretion to blue pencil overly broad non-competes to the extent reasonably necessary to protect the value of the employer's legitimate business interests. The following factors may be relevant to a court's decision: the fairness of the restraints as originally written, whether the original restriction reflects a good-faith effort to protect a legitimate business interest of the employer, the extent of the reformation, and whether the parties included a clause authorizing such modifications in their agreement. However, some courts may decline to exercise their discretion in order "not to allow an employer to 'back away from an overly broad covenant by proposing to enforce it to a lesser extent than written.'"	State limits on non-competes are spreading, with many states enacting limits on their use and/or imposing various requirements.

* There currently is no federal law governing non-competes. On January 5, 2023, the Federal Trade Commission (FTC) announced a sweeping new proposed rule banning non-compete agreements between nearly all employers and workers with its release of a Notice of Proposed Rulemaking (NPRM). If enacted in its current form, the FTC rule would constitute a drastic change in the US labor market across all sectors. However, it remains to be seen how the NPRM will be affected by public comments and whether it will survive anticipated litigation challenging the FTC's antitrust rulemaking authority.

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Sept 22 2023 | MRKT0002994_v4LM