



## POST-CONTRACTUAL NON-COMPETITION CLAUSES: WHAT EMPLOYERS NEED TO KNOW

### INTRODUCTION

An employer who is concerned that an employee will compete with them after leaving the company will consider agreeing to a post-contractual non-competition clause.

For example, such a clause aims to prevent the employee from working as an employee for a competitor after the end of the employment relationship or from setting up a rival business of their own.

The requirements that the legal systems of the individual states place on the agreement, the form, and the cancellation of post-contractual non-competition clauses with employees vary greatly.

This concerns issues such as the conditions under which it is permissible to restrict the employee in their future professional activity. Another essential point is whether and, if applicable, what consideration the former employer must provide to the former employee in return for not competing with them. The company concerned will also be interested in knowing how it can effectively enforce compliance with a post-contractual non-competition clause and what claims it is entitled to in the event of breaches. Finally, it is also important whether and, if applicable, how the employer can exempt themselves from a post-contractual non-competition clause in which they no longer have an interest.

In particular, in cases where a company operates abroad and employs people there on the basis of local law, it is important to know which rules

apply locally to post-contractual non-competition clauses. This is the only means of protection against unpleasant and sometimes costly consequences that can arise from the foreign legal system.

Consequently, we have created an overview below of the legal situation in different countries and in particular examine the aforementioned aspects.

### CHINA

#### **I. Under what conditions is it permissible to restrict the employee in his/her future professional activity?**

An employer may agree to a non-competition clause with certain employees (such as senior executives and highly qualified professionals). With this non-competition clause, the employer can prevent the employee from working for a rival company for a maximum period of two years after they have left the company. From a geographical point of view, the non-competition clause may only apply to countries and regions in which the employer actually conducts business.

#### **II. Does the former employer have to pay something in return to his former employee for refraining from competing with him?**

The former employer must pay the former employee monthly compensation for the duration of the non-competition clause. The compensation must be at least 30 % of the average monthly salary of the last 12 months before the



end of the contract but not less than the statutory minimum wage at the former place of work.

### **III. How can the employer effectively enforce compliance with a post-contractual non-competition clause and what claims do they have in the event of breaches?**

Breaches of the non-competition clause can be effectively prosecuted in court. In this respect, the former employee and their new employer are jointly and severally liable for compliance with the clause. Both parties can be prohibited from continuing the new employment relationship and held liable for damages.

### **IV. Can the employer exempt himself from a post-contractual non-competition clause in which he no longer has an interest?**

Before the termination of the employment contract, the employer may unilaterally and without compensation exempt themselves from the non-competition clause by written waiver to the employee. After termination, they must pay compensation equivalent to three monthly payments as part of the declared waiver.

## **GERMANY**

### **I. Under what conditions is it permissible to restrict the employee in his/her future professional activity?**

A post-contractual non-competition clause must be in writing and serve to protect a legitimate business interest. For example, it might prevent a former employee from taking customers to a competitor. The prohibition must not exceed the legitimate business interest. For instance, an employer operating only in Germany cannot impose a worldwide non-competition clause. Additionally, the clause must not unreasonably hinder the employee's professional advancement. It can be agreed upon for a maximum of two years from the end of the employment relationship.

### **II. Does the former employer have to pay something in return to his former**

### **employee for refraining from competing with him?**

During the prohibition, the employer must pay at least 50 % of the employee's last remuneration. All salary components are considered. A clause without compensation is void, and insufficient compensation (less than 50 %) makes the clause non-binding. The employee can then decide whether to adhere to the clause or waive the compensation and compete freely.

### **III. How can the employer effectively enforce compliance with a post-contractual non-competition clause and what claims does he have in the event of breaches?**

It is advisable to include a penalty clause specifying a payment amount for breaches. Even without this, the employer can seek injunctive relief and damages exceeding any agreed penalties. If the employee breaches the clause, they lose their entitlement to non-compete compensation.

### **IV. Can the employer exempt himself from a post-contractual non-competition clause in which he no longer has an interest?**

The clause can be mutually canceled before or after employment ends. The employer may waive the clause before the employment ends, and the employee's obligation ceases immediately upon receipt of the waiver. However, non-compete compensation must continue for one year after the waiver.

## **FRANCE**

### **I. Under what conditions is it permissible to restrict the employee in his/her future professional activity?**

A non-competition clause can be added after signing the contract via a separate agreement signed by the employee. It must:

- Protect legitimate business interests
- Be limited in time and location



- Consider the employee's role
- Provide financial compensation

## **II. Does the former employer have to pay something in return to his former employee for refraining from competing with him?**

The non-competition clause impairs the employee's freedom to carry out a professional activity, which is why a financial consideration, which is also referred to as compensation for the non-competition clause, must be provided.

To be valid, the amount of compensation for the non-competition clause may not be insignificant.

The compensation is paid after the end or termination of the employment contract and can be made in a lump-sum payment or in regular instalments.

A restriction of payment of the consideration to certain situations is not permitted, e. g. it cannot be excluded if the employee gives notice of employment termination.

## **III. How can the employer effectively enforce compliance with a post-contractual non-competition clause and what claims does he have in the event of breaches?**

In practice, an employer who believes that his former Employee does not comply with the competition clause to which he is bound should first ask him to comply with the clause.

Thereafter, the employer should take the matter to a labour court in order to claim compensation for the damages incurred but he must provide proof of non-compliance with the clause, for example through witness statements (from former colleagues, customers, etc.), a report from a bailiff (Commissaire de justice) or the detailed investigation report of a private detective.

## **IV. Can the employer exempt himself from a post-contractual non-competition clause in which he no longer has an interest?**

To waive the clause, the employer must check if the contract or collective agreement allows it. If not, written consent from the employee is needed. If allowed by a collective agreement, the employer can always waive the clause.

## **ITALY**

### **I. Under what conditions is it permissible to restrict the employee in his/her future professional activity?**

Under Italian law, a post-contractual non-competition agreement must be concluded in writing. The geographical and material scope must align with the employee's potential to harm the employer. An overly broad scope renders the agreement invalid. Violation of statutory conditions results in the agreement's invalidity. The maximum permitted duration is three years or five years for senior employees. Excessive durations are reduced to the legal maximum, but unlimited commitments are void.

### **II. Does the former employer have to pay something in return to his former employee for refraining from competing with him?**

A post-contractual non-competition clause is valid only if appropriate compensation is provided. The exact amount is unspecified by law but is generally 20-25 % of the last gross annual salary for each year of the restriction. Payment can be made upon termination or monthly with regular salary, though timing risks exist depending on the contract's duration.

### **III. How can the employer effectively enforce compliance with a post-contractual non-competition clause and what claims does he have in the event of breaches?**

In case of breach, the employer may claim damages. Injunctions are possible but difficult to ob-



tain due to the need to consider the new employer's interests. Contractual penalties are advisable to simplify enforcement.

#### **IV. Can the employer exempt himself from a post-contractual non-competition clause in which he no longer has an interest?**

A non-competition clause is a bilateral contract and can only be terminated by mutual agreement. Unilateral release by the employer is not permitted.

### **AUSTRIA**

#### **I. Under what conditions is it permissible to restrict the employee in his/her future professional activity?**

A post-contractual restriction requires explicit agreement. A minimum salary of 20 times the daily maximum contribution basis (EUR 4,040 gross in 2024) at termination is necessary. The clause is valid for up to 12 months and applies only if the employee resigns or is dismissed justifiably. For termination by the employer, full compensation is required.

#### **II. Does the former employer have to pay something in return to his former employee for refraining from competing with him?**

Basically no, unless the employer terminates the contract, in which case full compensation must be paid to enforce the clause.

#### **III. How can the employer effectively enforce compliance with a post-contractual non-competition clause and what claims does he have in the event of breaches?**

The possible legal consequences of a post-contractual non-competition clause are claims for injunctive relief from competing activity or a penalty in the form of a contractual penalty. However, such a sanction must be regulated in advance with the agreement on the post-contractual restriction, whereby a choice is to be made between injunctive relief and contractual

penalty. If a contractual penalty has been agreed, only this can be enforced. No further demand can be made for the discontinuation of the prohibited activity.

#### **IV. Can the employer exempt himself from a post-contractual non-competition clause in which he no longer has an interest?**

The employer may, in principle, waive the enforcement of the post-contractual non-competition clause against the employee at any time. This does not entitle the employee to make any claims against the employer.

### **POLAND**

#### **I. Under what conditions is it permissible to restrict the employee in his/her future professional activity?**

Non-competition clauses require written contracts, limited duration, and appropriate compensation. Employees must have access to sensitive information that could harm the employer if disclosed.

#### **II. Does the former employer have to pay something in return to his former employee for refraining from competing with him?**

The former employer must pay compensation if the employee agrees to a restriction of competition clause after the employment relationship. This payment is at least 25 % of the employee's last gross salary and must be made for the entire duration of the restriction of competition. The amount can be set higher, but cannot be lower.

#### **III. How can the employer effectively enforce compliance with a post-contractual non-competition clause and what claims does he have in the event of breaches?**

The employer can ensure compliance with a post-contractual non-competition clause by contractual agreements and, if necessary, by setting a contractual penalty. In the event of breaches, he can assert a claim for damages if





actual damage has occurred. In addition, the contractual penalty agreed in the contract may become due if the employee violates the non-competition clause, whereby the amount of the penalty must be proportionate.

#### **IV. Can the employer exempt himself from a post-contractual non-competition clause in which he no longer has an interest?**

An employer may unilaterally terminate the post-contractual non-competition clause, provided the contract permits this. According to case law, the employer does not have to state a reason for termination, and the notice period and its calculation can be freely determined by the parties. What matters most is that the possibility of termination is expressly addressed in the contract.

### **ROMANIA**

#### **I. Under what conditions is it permissible to restrict the employee in his/her future professional activity?**

Pursuant to Art. 21 para. 1 of the Labour Code, the non-competition clause can be negotiated both at the time of signing the employment contract and during its performance. It implies that the employee is obliged, after termination of the contract, not to carry out an activity in his/her own interest or in the interest of a third party that is in competition with the activity carried out at his employer. This requires the payment of a monthly remuneration by the employer for the entire duration of the non-competition clause, which may not exceed a maximum period of two years from the end of the employment contract. In addition, no absolute restrictions may be placed on the employee, such as a prohibition of employment throughout the country or with all employers. The clause must contain specific information on these restrictions.

#### **II. Does the former employer have to pay something in return to his former employee for refraining from competing with him?**

According to Art. 21 para. 3 of the Labour Code, the former employer must provide consideration, with a payment equal to at least 50% of the average salary earned by the employee in the last 6 months of the Contract.

#### **III. How can the employer effectively enforce compliance with a post-contractual non-competition clause and what claims does he have in the event of breaches?**

In the event of culpable non-compliance with the non-competition clause by the former employee, the former employer may appeal to the court to oblige the former employee to return the remuneration received and to pay compensation, provided that the damage caused and the breach of the non-competition clause are proven. A prior determination of the damage in the non-competition clause as a sanction against the employee is not permitted.

#### **IV. Can the employer exempt himself from a post-contractual non-competition clause in which he no longer has an interest?**

The non-competition clause is based on mutual consent, meaning that its conclusion, modification, or termination requires the agreement of both the employee and the employer. The legal regulation applicable to the non-competition clause imposes mutual and interdependent obligations on both parties, so that a refusal by the employer to pay the remuneration because he is no longer interested in the prohibition is not possible.

### **SLOVAKIA**

#### **I. Under what conditions is it permissible to restrict the employee in his/her future professional activity?**

In the employment contract, the employer and employee can agree that the employee will not engage in any gainful activity that competes with the employer's business for a certain period of time, but for a maximum of one year.



Such a restriction can only be agreed if the Employee has the opportunity to acquire information or knowledge during the term of the employment relationship that would normally not be available to him and the use of which could cause considerable damage to the employer.

If the restriction of employment agreed in the employment contract is greater than the required level of protection of the employer, the court can restrict or cancel the above obligation of the employee.

## **II. Does the former employer have to pay something in return to his former employee for refraining from competing with him?**

The employer grants the employee appropriate financial compensation in the amount of at least 50% of the employee's average monthly earnings for each month of fulfilment of the above-mentioned obligation. Unless otherwise agreed, the financial compensation is payable on the salary payment date specified by the employer for the previous month.

## **III. How can the employer effectively enforce compliance with a post-contractual non-competition clause and what claims does he have in the event of breaches?**

Employees and employers can agree on appropriate financial compensation in the employment contract, the payment of which the Employee is obliged to pay, if he violates the obligation to refrain from competing activities. The amount of the monetary compensation may not exceed the total amount of the monetary compensation granted by the employer (see above). The amount of the monetary compensation is reduced accordingly if the employee has partially fulfilled his obligation. With the payment of the monetary compensation, the obligation of the employee expires.

The employer may enforce its claims in court and enforcement proceedings.

## **IV. Can the employer exempt himself from a post-contractual non-competition clause in which he no longer has an interest?**

The employer may only withdraw from the non-competition clause during the term of the employee's employment; the obligation expires on the first day of the calendar month following the month in which the termination was delivered to the employee, but at the latest on the last day of the employment relationship.

## **CZECH REPUBLIC**

### **I. Under what conditions is it permissible to restrict the employee in his/her future professional activity?**

An agreement on a non-competition clause is permissible in accordance with §§ 310, 311 of the Czech Labour Code if the employee has acquired information, knowledge and work procedures within the framework of his work for the employer, the use of which could seriously make it difficult to carry out the employer's work. The clause may not be agreed with teachers in social service institutions, schools and educational institutions established by public law entities. In the competition clause, the Employee undertakes not to carry out any employment for a specific period of max. one year after the end of his employment relationship that is identical to or competes with the activity of the original employer.

The competition clause, its termination and withdrawal must be in writing.

### **II. Does the former employer have to pay something in return to his former employee for refraining from competing with him?**

In the competition clause, it must be agreed that the employee is entitled to appropriate financial compensation for each month of compliance with the competition clause, which, however, may not be less than half of his average monthly salary. Compensation is due monthly in arrears, unless the parties have agreed another due date.



### **III. How can the employer effectively enforce compliance with a post-contractual non-competition clause and what claims does he have in the event of breaches?**

According to the provision of § 310 (3) of the Labour Code, the agreement of a contractual penalty is permissible, which the employee must pay to the employer in the event of a violation of the non-competition clause. The amount of the contractual penalty must be appropriate to the nature and significance of the conditions specified in the competition clause. Upon payment of the contractual penalty, the employee's obligation under the non-competition clause expires; in other words, the employee can 'exempt' himself from the non-competition clause.

### **IV. Can the employer exempt himself from a post-contractual non-competition clause in which he no longer has an interest?**

Pursuant to § 310 (4) of the Labour Code, the employer may only withdraw from the competition clause during the term of the employment relationship. The parties may agree in advance that the employer may withdraw from the competition clause without stating the reasons for this. This agreement is only valid if the Employer does not act autonomously or abusively in individual cases (e.g. resignation on the last day of the employment relationship).

## **TURKEY**

### **I. Under what conditions is it permissible to restrict the employee in his/her future professional activity?**

Restrictions on the future professional activity of an employee are generally regulated by a post-contractual non-competition agreement. According to Turkish Code of Obligations, a prerequisite for such an agreement is that the employer has a legitimate interest such as customer information or business secrets and the employee has access to this information. The non-competition clause therefore does not apply to every employee, but only to those who can

access this data through their position. The non-competition clause must also be limited and appropriate in terms of duration, geographical area and scope; excessively restrictive regulations are invalid.

### **II. Does the former employer have to pay something in return to his former Employee for refraining from competing with him?**

The former employer is not obliged to provide the former employee with any consideration in return for the latter refraining from competing with him. If, however, the non-competition clause disproportionately restricts the employee's economic future, the court may order a compensation payment, limit the scope of the prohibition or declare the non-competition clause ineffective. This compensation is intended to compensate for possible income losses of the employee and is determined taking into account the duration and scope of the non-competition clause and the employee's income.

### **III. How can the employer effectively enforce compliance with a post-contractual non-competition clause and what claims does he have in the event of breaches?**

The employer may enforce compliance with a post-contractual non-competition clause by setting a contractual penalty. In addition, the employer may apply for preliminary injunctions in court to prevent the violation of the non-competition clause. If no contractual penalty has been agreed, the employer is also entitled to compensation for the material damage suffered in the event of a breach. If a contractual penalty has been agreed, the employer is entitled to the contractual penalty, if the damage exceeds the amount of the contractual penalty, the employee is additionally obliged to compensate for the damage beyond the amount of the contractual penalty.



#### **IV. Can the employer exempt himself from a post-contractual non-competition clause in which he no longer has an interest?**

According to Turkish law, the employer can unilaterally cancel a post-contractual non-competition clause if it is no longer interested in it. In this case, the prohibition is deemed to be lifted and the employer can no longer assert any claims due to a violation by the employee of the non-competition clause. However, the cancellation must be made explicitly and in writing by the employer; otherwise, there may be legal problems with regard to the effectiveness of the waiver.

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