Global HR Lawyers
Ius Laboris

Non-Compete Covenants

About Ius Laboris

Ius Laboris is a close-knit alliance of leading HR law firms working together in one global group. We offer employers advice on cross-border employment law, employee benefits and pension issues. We have over 1,400 lawyers focusing on HR law based in more than 160 cities in over 50 countries and deliver labour and employment legal professional services to the highest international quality standards.

For successful management of a multinational workforce, an in-depth knowledge of local HR laws and practices is crucial. Through the best independent local firms, Ius Laboris provides employers with a deep and thorough knowledge of local employment laws, culture and processes.

Why Ius Laboris?

- With over 20% more ranked employment lawyers and recommendations in over 10% more jurisdictions than any other global competitor, Ius Laboris really does offer access to the best HR law experts in one global team.
- "Elite" band one ranking in Chambers' Global Guide 2016.
- Our combination of leading local HR lawyers operating in a seamless global group, means we understand and advise on local employment laws and processes in an international setting.
- Ius Laboris firms are handpicked on the basis of being a leading specialist in labour and employment law in their country, ensuring quality and scale across the board.
- Ius Laboris has a market-leading quality program of continuous assessment, for which it has been recognised with an award at The Lawyer European Awards.
- Clients benefit from access to international HR training events, workshops and the online Global HR Law Guide at www.globalhrlaw.com

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On behalf of Ius Laboris, the Alliance of leading Human Resources law practitioners, we are delighted to introduce the second edition of our guide on the essential principles of post-employment competition restrictions.

Non-compete covenants are amongst the most sophisticated contractual instruments in employment law today. This is even truer in a global work environment, where employees choose their workplace in an increasingly international context and employers have an interest in discouraging former employees from engaging in competition or soliciting customers in such a way that avoids infringing their fundamental right to professional freedom.

This second edition is updated with the most recent legal changes and outlines each country's rules on non-compete covenants, the formal requirements, the principles regarding compensation, scope and permissible duration, along with guidance on local enforceability. Its purpose is to provide employers with a comprehensive overview of each national system in its global context and to facilitate the protection of legitimate interests without imposing overly-broad restrictions.

The authors are aware that although the law consists of standards that may be relatively easy to formulate, they may be difficult to apply with certainty in any given case. Nevertheless, adhering to each country's standards will enable employers to reduce the number of invalid covenants – and potentially the number of disputes.

All authors are lawyers from across Ius Laboris and have extensive practical experience in advising international clients on labour and employment law. We would like to express our appreciation to all firms for their contributions and knowledge-sharing.

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Russia

1. Introduction

Provisions of employment contracts which impose non-compete obligations on an employee are unenforceable in Russian law in most cases.

One of the main labour law principles of the Labour Code of Russia is that each employee is entitled to freedom of labour. This includes the right to work, the right of the employee to dispose of his or her own labour capacity and the right to choose his or her profession or type of activity.

Following these principles, Russian law does not allow for an employee to be restricted from working for another employer (a competitor of the company) during the employment or for some time after its termination. If a non-compete clause is included in an employment contract, it cannot be legally applied and will not be enforceable in the Russian courts.

In practice, many employers (especially companies with foreign management) often include non-compete provisions in their employment contracts and other labour related documents as a 'moral' obligation on the employee.

2. Conditions

2.1 General

Despite the general unenforceability of non-compete clauses in Russia, there are a few cases when similar obligations can be imposed. The head of a company must obtain the consent of the authorised body of the company or of the owner of the company's property, or the person (body) authorised by the owner, in order to take up additional employment with another employer.

This limitation is aimed at protecting the company's interests in relation to competition. However, it would be quite difficult to hold the employee to account (i.e. terminate his employment) for failure to obtain consent for secondary employment and due to a lack of case law it is quite difficult to assess the level of protection that would be granted to the employer for breach of this obligation.

As they are unable to conclude non-compete agreements, employers may use indirect means of protecting their interests, at least partially, for example, via confidentiality agreements with employees in order to ensure they do not use commercial secrets of the company to violate its interests, either whilst employed or afterwards.

The law on the protection of commercial secrets (including production secrets) of the company is quite specific. By law, 'information comprising commercial secrets' includes, but is not limited to, information of any character (production, technical, economic, organisational, etc.), including information on the results of intellectual activity in scientific and technical areas, as well as information on the methods of performance of professional activities of an actual or a potential commercial value, where it is unknown to third parties, and third parties have no free access to it on lawful grounds, and with respect to which the owner of the information has introduced a regime of commercial secrecy.

The obligation not to disclose information comprising commercial secrets of the company, its clients, its affairs, finances or business other than information generally known or easily accessible by the public, applies until the exclusive right of the company to the information ceases.

2.2 Age
Not applicable.

2.3 Written form
Not applicable.

2.4 Renewal
Not applicable.

2.5 Liability for compensation for dismissal
Not applicable.

3. Requirements

3.1 General
Not applicable.

3.2 Geographical, functional and temporal limitations
Not applicable.

3.3 Job changes
Not applicable.

4. Enforceability

4.1 General
Non-compete clauses are generally not enforceable in Russia.

4.2 Balance of interests
Not applicable.

4.3 Remedies
Not applicable.

4.4 Penalty clauses
Not applicable.

4.5 Damages
Not applicable.

4.6 Liability of new employer
Not applicable.

5. SPECIAL SITUATIONS

5.1 No clause
Not applicable.

5.2 Transfers of undertakings
Not applicable.

5.3 Cross-border competition
Not applicable.

5.4 Non-solicitation clauses
The term 'non-solicitation clause' does not exist in Russian law and is thus not applicable.

5.5 Insolvency
There are no specific provisions relating to non-compete provisions in cases of insolvency.

5.6 Enforceability of foreign non-compete clauses
If the employer is a foreign entity – which is quite rare – it is possible to enter into a non-compete agreement under foreign law if that law recognises non-compete agreements. The agreement must be regulated by the laws of the chosen state and disputes will not be resolved by a Russian court.

Note however, that a decision of a foreign court may not be recognised in Russia, on the basis that non-compete obligations are not part of the mandatory norms of Russian law. In any event, recognition will most likely be impossible if Russia does not have an international agreement on mutual recognition and enforcement of court judgments with the country concerned. In such cases it will only be possible to recover damages for breaches of non-compete obligations from an employee located outside Russia or from assets located outside Russia.

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