

## Global Non-Compete Reform – At a Glance

The US is not the only country currently debating reform to the law on non-competes (see here in relation to [Federal law](#) and [New York](#)). Notably the UK Government has announced legislation which would limit the duration of non-competes to a period of 3 months after the termination of employment.

Multi-national employers will want to understand the extent to which these developments mark the start of a global trend. That said most European jurisdictions have long-standing restrictions controlling the use of non-competes and, generally, they have not experienced the more egregious excesses that seem to have influenced proposals in the US.

We summarise below both the **current rules** on enforceability for employees and include details of **key proposals** for reform outside the US.

### Current Law and Proposals -- At a Glance

Are the following post termination restrictions enforceable “in principle” against employees:

| Country   | Non-Compete | Non-Solicitation (clients) | Non-Poaching (staff) | Proposals for Reform?  | Littler Contact                       |
|-----------|-------------|----------------------------|----------------------|--|---------------------------------------|
| Australia | ✓           | ✓                          | ✓                    | No legislative proposal yet, but the Australian Competition and Consumer Commission and Treasury has been called to carry out a review of non-compete clauses (see above). | <a href="#">Naomi Seddon</a>          |
| Austria   | ✓           | ✓                          | ✓                    | None   | <a href="#">Markus Löscher</a>        |
| Belgium   | \$          | ✓                          | ✓                    | None   | <a href="#">Edward Carlier</a>        |
| Denmark   | \$          | \$                         | ✗                    | None   | <a href="#">Bo Enevold Uhrenfeldt</a> |
| France    | \$          | ✓                          | ✓                    | None   | <a href="#">Laura Jousselin</a>       |

|             |    |    |   |  |  |
|-------------|----|----|---|--|--|
| Germany     | \$ | \$ | ✓ | None   | <a href="#">Dr. Matthias Sandmaier</a> |
| Ireland     | ✓  | ✓  | ✓ | No but any reform in US/UK will be influential   | <a href="#">Niall Pelly</a>            |
| Italy       | \$ | ✓  | ✓ | None   | <a href="#">Carlo Majer</a>            |
| Netherlands | ✓  | ✓  | ✓ | Consultation on reforms to non-competes and non-solicitation clauses by end of 2023, including to limit duration of non-competes and require payment of part-salary. | <a href="#">Wouter Engelsman</a>       |
| New Zealand | ✓  | ✓  | ✓ | Draft legislation is being passed to prevent the use of post-termination restrictions for those earning below a certain threshold (see above).                       | <a href="#">Emily Partridge</a>        |
| Norway      | \$ | ✓  | ✓ | Legislation enacted in 2016 is being reviewed  | <a href="#">Ole Kristian Olsby</a>     |
| Poland      | \$ | ✓  | ✓ | None   | <a href="#">Slawomir Paruch</a>        |
| Portugal    | \$ | ✓  | ✗ | None (however, new rules on the “waiver of rights” are currently for discussion and soon to be published and enacted)  | <a href="#">David Carvalho Martins</a> |
| Spain       | \$ | ✓  | ✓ | None   | <a href="#">Sonia Cortés</a>           |
| Switzerland | ✓  | ✓  | ✓ | None   | <a href="#">Ueli Sommer</a>            |
| UK          | ✓  | ✓  | ✓ | Legislation announced to limit non competes to 3 months  | <a href="#">Daniel Pollard</a>         |

## Key

- ✓ Enforceable “in principle” subject to local legal tests and exceptions. May be limited to employees with a basic salary over a minimum threshold and/or may depend on manner of termination. Separate rules may apply when the employee is also a business owner.
- \$ May be enforced as per above provided that paid full or part salary during period of restriction. Right to payment may depend on manner of termination and local legal rules
- ✗ Not enforceable.

## Terminology

The focus of the proposals for reform are to traditional post-termination non-compete restrictions which typically prevent an employee from setting up or joining a competitor for a period of time after the termination of employment. These should be distinguished from non-solicitation and non-poaching provisions that seek to prevent employees from soliciting or dealing with former clients or enticing away former colleagues. These restrictions are usually far less onerous and more likely to be enforceable.

This note does not consider the more nuanced topic of indirect restrictions which bonuses or other economic benefits may contingent on or subject to forfeiture or purported clawback if an employee if an employee breaches them.

Separate principles may where employees are selling a business which is outside the scope of this note.

## Proposals in Detail

Our current understanding of the proposals outside the US are as follows:

### **Australia**



In March 2023, Andrew Leigh MP (Assistant Minister for Employment) publicly announced that he had asked the Australian Competition and Consumer Commission and Treasury (the “ACCC”) for advice on the competitive impacts of non-compete clauses and any action the Australian Government should take in response. Mr Leigh also called on Australia’s large franchisors to publicly disclose whether their standard agreements contain no-poach clauses, and, if so, to justify why they are in the public interest. At present there has been no public response from the ACCC. It is anticipated that the ACCC will carry out a period of public consultation, which may then pave the way for legislative change, which may include the possibility of the restriction on use of non-compete provisions in certain employment contracts.

### **Netherlands**



On 2<sup>nd</sup> June 2023, the Minister of Social Affairs wrote to the Dutch senate indicating that she will prepare a new bill limiting the use of non-compete restrictions. The Minister’s intention is to impose a legal limit on the duration of non-competes, to require the inclusion of a geographical limit which must be specific and justified, to require employers to have a “weighty business interest” when invoking a non-compete clause, and to require payment of compensation to employees for the duration of the non-compete, expressed as a percentage of the employee’s salary. The draft bill is expected to be delivered to the Dutch senate at the end of 2023, but this is expected to be delayed in light of the recent dissolution of the Dutch Government and impending new elections.

### **Norway**

Earlier this year the Norwegian government gave a mandate to three external parties to collectively review the use of restrictive covenants since 2016, when the current legislation on restrictive covenants in Norway was enacted. The



government received a report on the outcome of this review in April 2023. At present it is unclear what further action will be taken.

### ***New Zealand***

Draft legislation is proposed in New Zealand that would prohibit the use of restraints of trade in employment agreements for employees who earn less than three times the minimum wage.



The draft legislation applies to clauses that prohibit an employee from working in a similar field to the former employer, contacting or dealing with employees or clients of the former employer, or offering employment to employees of the former employer. The Employment Relations (Restraint of Trade) Amendment Bill is currently going through the select committee submissions process, which closes on 18 September 2023.

### ***United Kingdom***

The UK Government has announced a proposal to limit the duration of non competes for a period of 3 months after the termination of employment.



The proposals will only apply to restrictions contained within employment contracts and will not extend to non-solicitation, non-poaching and nor to “garden leave”. A number of commentators believe that the proposals may not be passed before the general election which is expected during the course of 2024. Reform is unlikely to be priority for the opposition Labour Party if they win that election. For further details see [here](#).

## **Visit our Tracker to Stay Up to Date**

This note sets out the law as at 7 September 2023. For up to date details please visit our [Global Non-Compete Reform Tracker](#).

For questions please contact:

Daniel Pollard  
Partner  
GQ|Littler  
T: +44 (0) 20 3375 0331  
M: +44 (0) 7761 284495  
E: [dan.pollard@gqlittler.com](mailto:dan.pollard@gqlittler.com)