

LÉGALÍCS

Enforceability of Non-compete and Non-solicitation Provisions under Indian Laws

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Under Indian law, it is usual to have non-compete and non-solicitation clauses in an employment contract. Indian courts normally enforce a non-compete clause during the subsistence of employment term. However, such a negative covenant (stipulating that the employee would not engage itself in a trade or business or would not get employment under any other master for whom it would perform similar or substantially similar duties) which tends to operate even after the employment ceases to exist, i.e. the employment contract is terminated / expired, is not enforceable. In other words, a non-compete provision cannot be enforced post termination of the employment contract.

Indian courts have consistently refused to enforce non-compete provision post termination / expiry of the employment contract, as they regard such provision as 'restraint of trade' and opposed to public policy, and thus void under Section 27 of the Indian Contract Act, 1872.

Whilst on the subject, it is worth mentioning that Indian Courts usually take similar view in respect of '*garden leave clauses*' pursuant to which employer agrees to pay monetary compensation to the employee for compliance with non-compete covenant post termination of employment agreement.

As to non-solicitation clause in an employment contract (which prevents an employee, or former employee of a company from enticing or soliciting employees or customers of the company) are usually enforced in India, even after expiry of the employment term but for a reasonable period of time. Much would however depend on the facts of the case. Indian Courts usually uphold non-solicitation clauses as such clauses do not always amount to restraint of trade, business or profession and would not be subject to Section 27 of the Contract Act.