



TMI Eyes No. 31: Post-Employment Non-Compete Clause

TMI has recently received several inquiries regarding whether a post-employment non-compete clause in an employment agreement is legally enforceable. In this article, TMI discusses the issue and provides some initial guidance for readers.

What Is a Non-Compete Clause in an Employment Agreement?

A non-compete clause is a contractual provision included in an employment agreement to prevent an employee, after leaving the company, from working for a competitor or engaging in any business that competes with the former employer.

The purpose of such a clause is to protect the employer's confidential business information, trade secrets, and marketing strategies, and to minimize the risk that a former employee might use the employer's information, know-how, or business connections acquired during employment to benefit a competitor.

Typically, this restriction applies for a specified period after the termination of employment, e.g., one to two years.

Is a Non-Compete Clause Legally Enforceable?

In general, a non-compete clause can be legally binding. Thai law recognizes non-compete agreements as a legitimate means to protect an employer's business interests and to provide clarity for employees, provided that the scope and terms of the restriction are fair and reasonable.

In Supreme Court Judgment No. 3580/2561, the Court ruled that when the restricted business is clearly defined, the duration is limited, and the clause does not absolutely prohibit the employee's right to work or earn a living, such a restriction is valid.

The Court further emphasized that a non-compete clause is a reciprocal contract protecting the legitimate interests of both parties in the course of business. Since it does not unreasonably deprive either party of the ability to make a living, it does not contravene public order or good morals and is therefore not void.

Accordingly, the employer may file a civil lawsuit with the Labor Court to claim damages in the event of a breach, while employees remain free to pursue any work or activities outside the agreed non-compete scope.

Criteria Considered by the Court in Evaluating Non-Compete Agreements

Thai Supreme Court rulings provide guidance on how courts assess the validity and fairness of non-compete clauses. The main factors considered are as follows:

1. Protection of Legitimate Business Interests

The clause must be reasonably necessary to protect the employer's legitimate interests, such as preventing the disclosure or misuse of trade secrets, customer lists, or confidential information.

- Fairness and Reasonableness: The restriction should be limited to the same industry or line of business, such as barring work with direct competitors or in positions involving access to sensitive data. However, the clause must not unreasonably prevent the employee from earning a living, such as by imposing a lifelong or overly broad restriction.
- Reasonable Scope of Restriction: Courts assess other details, e.g., whether the restriction's duration, nature of prohibited work are reasonable in context.
 - A period of 1–2 years after termination is generally acceptable. Longer periods, such as five years, may be deemed excessive (Supreme Court Judgment No. 3580/2561).
 - The restricted activities must be clearly defined. Overly broad or vague clauses are likely unenforceable.

TMI's Note

A non-compete clause in an employment agreement is generally enforceable under Thai law as long as it is fair, reasonable, and proportionate.

Importantly, a well-drafted non-compete agreement can benefit both employers and employees. Employers gain protection over their legitimate business interests, while employees receive clarity regarding post-employment expectations and may negotiate fair compensation for the temporary restriction.

It is also a fair and common practice for the parties to enter into a Non-Disclosure Agreement (NDA), which helps protect the company's confidential information without imposing excessive restrictions on the employee's future career opportunities.

*Daiki Koso, Partner
Monchai Varathan, Partner
TMI Associates (Thailand) Co., Ltd.*

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