



## Global Non-Compete Reform – At a Glance Tracker

The US is not the only country currently debating a reform to the law on non-competes (see here in relation to [federal law](#) and [New York](#)). Notably, the UK Government has announced legislation that would limit the duration of non-competes to a period of 3 months after 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 and Asian jurisdictions have long-standing restrictions controlling the use of non-competes and, generally, they have not experienced the 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 types of restriction enforceable “in principle”:

Country	Non-Compete	Non-Solicitation (clients)	Non-Poaching (colleagues)	Proposals for Reform?	Littler Contact
Australia	✓	✓	✓	On 23 August 2023, the Treasurer announced a 2-year Competition Review and one of the areas is assessing the impact of non-compete clauses and no-poach agreements on the labour market and workers.	<a href="#">Naomi Seddon</a>
Austria	✓	✓	✓	None	<a href="#">Markus Loescher</a>
Belgium	\$	✓	✓	None	<a href="#">Edward Carlier</a>
China	\$	✓	✓	None	<a href="#">Nancy Zhang</a>
Denmark	\$	\$	✗	None	<a href="#">Bo Enevold Uhrenfeldt</a>
France	\$	✓	✓	None	<a href="#">Laura Jouselin</a>
Germany	\$	\$	✓	None	<a href="#">Dr. Matthias Sandmaier</a>
Hong Kong	✓	✓	✓	None	<a href="#">Betty Lee</a>

Country	Non-Compete	Non-Solicitation (clients)	Non-Poaching (colleagues)	Proposals for Reform?	Littler Contact
India	✗	✓	✓	None	<a href="#">Isha Malhotra</a>
Ireland	✓	✓	✓	No but any reform in US/UK may be influential.	<a href="#">Niall Pelly</a>
Italy	\$	✓	✓	None	<a href="#">Carlo Majer</a>
Japan	✓	✓	✓	None	<a href="#">Aki Tanaka</a>
Korea	✓	✓	✓	None	<a href="#">Soowon Hong</a>
Malaysia	✗	✓	✓	None	<a href="#">Shiau Sang Tee</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.	<a href="#">Emily Partridge</a>
Norway	\$	✓	✓	None	<a href="#">Ole Kristian Olsby</a>
Philippines	✓	✓	✓	None	<a href="#">Trent M. Sutton</a>
Poland	\$	✓	✓	None	<a href="#">Slawomir Paruch</a>
Portugal	\$	✓	✗	None	<a href="#">David Carvalho Martins</a>
Singapore	✓	✓	✓	None	<a href="#">Trent M. Sutton</a>
Spain	\$	✓	✓	None	<a href="#">Sonia Cortés</a>
Switzerland	✓	✓	✓	None	<a href="#">Ueli Sommer</a>
UK	✓	✓	✓	Government has announced limit on non-compete duration 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 restriction which typically prevent an employee from setting up or joining a competitor 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 tracker does not consider the more nuanced topic of indirect restrictions by which bonuses or other economic benefits may be contingent on or subject to forfeiture or purported clawback if an employee breaches them.

Separate principles may apply where employees are selling a business, which is also outside the scope of this tracker.

## Proposals in Detail

Our current understanding of the proposals outside the US is 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.

On 23 August 2023, the Treasurer announced a 2-year Competition Review, which will focus on the government’s priorities for modernising the Australian economy. The Competition Review will provide advice to the government on how to improve competition across the economy.

### Netherlands



On 2nd 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. Despite this, there is no current plan for any legislative changes.

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## 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 with the select committee following consultation but has not yet been passed into law. It is unclear when or if this will happen following the election of the National Party in coalition with Act and NZ First in November 2023.

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## United Kingdom



Government announced a proposal in May 2023 to cap non-competes to three months post termination. This will only apply to restrictions in employment contracts and will not extend to non-solicitation, non-poaching or 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. As of November 2023, this measure is not included in the list of key policies that the Government intend to implement in the current term of Parliament. Reform is unlikely to be a 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 of 1st January 2024.

For up to date details, please visit our [Global Non-Compete Reform Tracker](#)

## 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)