Restrictive Employment Agreements

Part 1:

Enforceable in Philippines?

Our office received a professional letter from a prominent outsourcing organization recently. It was presented on attractive letterhead and was professionally worded and clearly put forth. The message it contained can be summarized as follows, “All our senior employees have signed non-compete agreements with us, so don’t try to recruit them or we’ll sue to prevent their movement.”

A young Software Developer I met recently had been provided with an excellent training program by her employer. Before commencing it, she was required to sign an agreement to refund the cost of the program to the company if she voluntarily departed her employment within 2 years. However, there was no provision for fractional payback based on length of service -- in other words, if she left the company after 1 year and 11 months, she would still owe the full amount. The declared cost of the training program was Php500K while the Software Developer’s monthly income was Php30K.

I have been told a number of times recently by senior managers in Philippines that restrictive employment agreements are making it difficult for them to grow their businesses. The comments I hear are similar to this one I received by email: “I can't hire any top management due to these commitment clauses. It’s forces me to promote within and inbreed the workforce.”

Surely these abusive tactics aren't enforceable?

Most people reading this message will know that in the majority of developed countries (US, France, UK, Canada, Australia, Hong Kong, as a start) non-competition agreements are unenforceable except in rare situations when information acquired by an employee is “highly market sensitive and would be of demonstrable and immediate value to a competitor.” The legal requirements for proof are great and most proceedings are thrown out of court as “a restraint of trade” and “denying a person the right to earn a living.”

I spoke to Angelo Avincula of Zambrano & Gruba about the situation in Philippines. He says that if an employment contract is “reasonable” with respect to time and place, then it is enforceable. He believes that a non-competition agreement would be considered “reasonable” under Philippine law if the time requirement for the person to be banished from his chosen industry was up to 2 years(!). Similarly, Angelo thought that the reimbursement of training costs was also legal if the person agreed to this beforehand. Rene Soriano of SyCip Salazar came to roughly the same conclusion.

Others don’t agree.

The lawyers’ opinions seem straightforward enough except that HR managers with experience working with restrictive agreements don’t agree. They say many of these onerous employment covenants would not be deemed enforceable in court – although some might be. The confusion about all of this is due to the lack of legal precedence. The most recent relevant court cases date from the 1920’s. No one since then has felt it worthwhile to endure the 7 to 10 years required to have a case brought to final judgment in a superior court in Philippines.

Human Resource Managers say employees generally abide by these restrictive agreements for “moral reasons.” Despite what we read about Filipinos having an “ambiguous appreciation of the law,” people in this country do not easily break promises agreed to in writing. (Unlike us in the west who eagerly sign these same agreements and are all lying about ever abiding by them.) Of course, we should also acknowledge that most Filipinos are justifiably terrified with the notion
of defending themselves against legal action from a vengeful former employer given the costs and uncertainty involved.

**Who uses Restrictive Employment Agreements?**

Restrictive Employment Agreements are used in Philippines by both local and multinational companies. For cultural reasons, locally owned companies seem to be the most comfortable -- and aggressive -- at tying down their employees with the threat of legal action. The few multinational companies that apply these sorts of anti-competitive practices are those with longer histories in Philippines. Most recent entrants into the country do not use restrictive employment covenants and are usually shocked and disgusted that others do. As to the types of contracts used, this is a complicated subject which would have to be discussed in person.

Contact me directly if you need answers to specific questions.

---

**Richard Mills** CFA  
Director  

Chalre Associates  
executive search  

email: rmills@chalre.com  
telephone: 632 895 5551  
mobile: 0926 647 1819