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Employment and Privacy Issues in Non-Competition Agreements

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The mobility of employees in today's global economy, and the ease with which electronic data can be moved and copied, make it essential for employers and employees to under-stand whether non-competition agreements will be enforced in jurisdictions around the world. Preventing an employee from joining a competitor is a key element in a company's corporate security program. In this article, attorneys with Morrison & Foerster review the complexities of non-competition agreements and the difficulties of enforcing injunctions across jurisdictional lines.

Enforcing Non-Competition Agreements in the Global Economy: United States and European Union Law Compared and Contrasted

The ease with which employees move between jurisdictions in today's global economy, combined with the ease with which electronic data can be copied and moved, make it essential for employers and employees alike to understand whether non-competition agreements[1] will be enforced in jurisdictions around the world. To illustrate, our firm recently filed a non-competition lawsuit against several former employees of our client, a fenetics research company headquartered in Iceland[2]. The individuals were citizens of Scotland, Slovenia, the United States and Iceland who relocated to Iceland to work for our client. When they left Iceland to establish an allegedly competitive enterprise in the United States, our client's lawsuit seeking enforcement of its non-competition agreements raised a myriad of multi-jurisdictional considerations.

Data security, both of personal information and of confidential business information, is crucial for all organizations. However, some organizations, while focusing on the technological aspects of data protection, often neglect the most critical components of any data security program: their employees. Investments in technological protections such as firewalls, encryption and passwords, and other technology-dependent security measures can be completely undermined by a single employee, especially a disgruntled, departing employee. Preventing such an employee from joining a competitor is therefore a key element in a company's corporate security program.

Unfortunately, there is much variation within the United States and internationally with respect to enforceability of non-competition agreements. In the United States, different states adopt different stances on whether non-competition agreements may be enforced. Much variation also exists across the European Union (EU). This article will highlight the different legal approaches found in the United States and the EU, and suggest methods of addressing the challenges of enforcing non-competition agreements across borders. With the current economic downturn, which we can see is already resulting in headcount reductions, it is vitally important for employers to review how well both their business interests and their confidential business information are protected and, if necessary, take steps to increase that protection, for example with appropriately drafted non-competes, before making any dismissals. Although the detailed drafting of such agreements may be left to labor attorneys, anyone involved with data security should have at least an awareness of the issues that will be raised when seeking to enforce them.

The United States

The spectrum of the different schools of thought in the United States regarding enforceability of non-competition agreements can be seen from a summary of the approaches taken by the courts in Delaware, California, and Virginia.

Delaware's stance on the enforceability of non-competition agreements is consistent with that taken by the majority of states in the United States. Delaware's courts will closely scrutinize non-competition agreements as restrictions on trade, but will generally enforce them if they are part of valid agreements supported by consideration, are reasonable in time and scope, and serve to protect the employer's legitimate economic interests,[3] which generally include the employer's confidential information and goodwill developed through customer relationships.[4] Furthermore, Delaware courts have adopted the 'reasonable alteration' approach, which means that if the non-competition agreement is overbroad and unenforceable as written, rather than finding the non-competition agreement to be completely unenforceable, the court may choose to enforce the non-competition agreement to the extent that it is reasonable to do so.[5] For these reasons, Delaware law is often selected in non-competition agreements by corporations which are incorporated in Delaware.

California and a small minority of other U.S. jurisdictions have adopted a very restrictive approach to non-competition agreements. California's Business and Professions Code Section 16600 declares that, with a few exceptions, 'every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.' The general rationale for this prohibition on non-competition agreements is that '[t]he interests of the employee in his own mobility and betterment are deemed paramount to the competitive business interests of the employers.'[6] However, there are exceptions to the prohibition where non-competition agreements are connected to the sale of a business or partnership, dissolution of a partnership, or dissociation of a partner from a partnership.

Between the ends of the spectrum represented by Delaware and California lies Virginia. Virginia courts consider restrictive covenants to be restraints of trade that are to be carefully examined and strictly construed.[7] Virginia courts have long disfavored the inclusion of non-competition agreements in employment contracts and construe them in favor of employees.[8] The Virginia Supreme Court has stated that a non-competition agreement is lawful if an employer shows that the restraint, including the time and geographic restrictions, is no greater than necessary to protect some legitimate business interest; is not unduly harsh and oppressive in curtailing the employee's legitimate efforts to earn a livelihood; and is reasonable from the stand-point of a sound public policy.[9] Legitimate business interests include trade secrets or other confidential information, customer contacts, and knowledge of methods of operation.[10] However, in contrast with Delaware law which allows courts to modify restrictive covenants, Virginia law does not allow courts to modify a non-competition agreement that is overbroad as drafted. As a practical matter, this means that non-competition agreements that apply to employees in Virginia, as well as in other states that follow a similar stance, must be drafted with extreme care, and are often not enforced.[11]

The European Union

A similar spectrum of views is evident in the various Member States of the EU, as show by a brief review of the different approaches taken by the United Kingdom (U.K.), France, Germany and Italy.

United Kingdom

In the U.K., non-competition agreements are commonly included in the employment contracts of senior employees. If an employer wishes to enforce such an agreement post-termination, it should ensure that it terminates the employee's employment in accordance with the employment contract. If the employer breaches the contract, for example by not giving the employee the contractually-required notice of termination, the non-competition agreement will not be enforceable.

Non-competition agreements are *prima facie* against public policy and therefore unenforceable unless found to be reasonable in the interests of the contracting parties and of the public. There are two stages in assessing reasonableness. Firstly, the agreement must be drafted to protect only the legitimate proprietary interests of the ex-employer.[12] Legitimate interests include customer/client/supplier connections, trade secrets (or other information of a confidential nature), and the stability of the workforce. Secondly, the scope of the restraint must go no further than is necessary to give adequate protection to the ex-employer's legitimate interests.[13] Scope refers to geographical area, activities/subject-matter and duration.

Of all the post-termination restraints placed on ex-employees, non-competition agreements are assumed to be the most onerous and are therefore scrutinized most carefully by the courts. Accordingly, they have generally been harder to enforce than other post-termination restrictions, although the courts have up-held non-competes on the basis that a restriction on solicitation would be difficult to police and therefore might not effectively protect the employer's business interests.[14]

Non-competition covenants were historically drafted with reference to a radius or geographical area from the employer's premises, but nowadays are more usually drafted to cover a territory over which the employee had influence or to which the employee's activities related while in employment. The courts pay particular attention to the definition of the activities or businesses in which the covenant restrains the ex-employee from involvement. Covenants must be limited to activities or businesses that are in direct competition with the ex-employer's business and which relate to activities that the ex-employee carried out while employed by the ex-employer. Also, the more junior an ex-employee, the more reluctant the courts will be to enforce non-competition covenants. Further, the duration of such covenants must be as short as possible. Covenants for periods up to 6 months will generally be held to be of reasonable duration. Anything longer will be closely scrutinized[15] and a duration of longer than 12 months will only be enforceable in exceptional circumstances and with clear documentary evidence regarding the rationale behind such a lengthy restraint period. Further, if an employee has spent any time on 'garden leave' prior to termination of employment-that is, receiving severance pay while performing no duties-it is advisable to reduce the duration of the covenant by an equivalent period.

The fact that the employer has provided the employee with payment for any period of restraint does not absolve the employer from having to demonstrate that the covenant does not offend the public interest. As the courts will not necessarily strike down the entire contract between the parties if one or more of the covenants in restraint are found to be unenforceable, it is common practice to expressly provide for the survival of each covenant separately from one another if one or more are found to be unreasonable and void. The courts may strike out sections of a covenant that are considered unreasonable, provided what is left has meaning in its own right and does not require the court to rewrite any part of it. However, the courts will not alter the period of a restraint in order to make an unreasonably lengthy restraint reasonable with regard to duration. Finally, employers should be aware of the *contra proferentem* rule whereby courts will construe any ambiguity against an employer who has been careless in drafting.

France

Non-compete agreements are common in employment contracts in France. They are not regulated by statute but by case law and collective bargaining agreements. They usually prohibit the employee from working for a competitor for a period of time, within a certain location. They must be limited in duration and may be reduced in ambit if considered to be unduly restrictive. Accordingly, in order to be enforceable, a non-compete must:

a. be limited to what is reasonably necessary to protect the employer's business;

b. not unreasonably restrict the legitimate rights of the employee to find a new job;

c. be reasonably limited in time and place; and

d. oblige the employer to provide financial compensation for the restrictive covenant.

The most important element in determining validity is whether in fact the non-compete prevents the employee from working in his field. Thus, even if the legitimate interests of the employer justify the restriction, the courts will focus on whether the employee's right to work is in fact impeded. The non-compete cannot preclude the employee from performing an activity which is consistent with his education, professional training and professional experience. The courts will take into account the employee's breadth of technical knowledge and the ease with which he could find a job in a different sector or industry.

In order for an employer to be deemed to have a legitimate interest in enforcing a non-competition agreement, the employer must be at risk of suffering damage as a result of the employee's violation of the covenant. In making this determination, the courts look to see if the old employer and the new employer compete in the same industry or sector, and the extent to which the employee poses a genuine threat to his former employer. In assessing the latter, French courts look to the extent to which the employee, during his employment, had:

a. contact with customers;

b. access to sensitive company information; and

c. access to know-how *('savior faire')* which is deemed to be the property of the employer.

While there are no specific guidelines regarding the legally enforceable duration of a non-competition agreement, covenants limited to 12-24 months are generally upheld, but the assessment is made on a case-

by-case basis. Further, French courts have not defined the permitted geographical scope of a restrictive covenant. Each case must be analyzed individually, considering whether the scope precludes the employee from finding another job in his field. The court has the power to re-duce the duration and geographical scope of a restrictive covenant.

A non-competition agreement is ineffective and unenforceable unless it includes an obligation on the employer's part to pay financial compensation in consideration of the employee's performance of the covenant. Three recent decisions from the Labor Law Division of the French Supreme Court[16] have reviewed the details of this requirement and an employer's ability to waive enforcement of a covenant and thereby avoid payment of any financial compensation. It is now clear that an employer cannot pay the financial compensation during the employment relationship, by way of pre-payment as part of the employee's monthly salary; the financial consideration must be paid after the termination of the employment relationship.

The employer does not have to pay the employee the same level of remuneration that he was earning for the whole of the non-compete period; however, the financial compensation must at least be equal to 30-50 per-cent of the employee's monthly remuneration for each month of restraint. Further guidance as to the level of financial compensation may be obtained from collective agreements that govern the employment terms of most employees in France. One such agreement provides that 50 percent of the average monthly remuneration (including fringe benefits and bonus) must be paid for the duration of the period of non-competition. Another agreement provides that one third of monthly remuneration is payable if only one manufacturing technique or product is concerned, two-thirds if more than one product or technique is concerned, and 100 percent for any period exceeding two years. An employer is unable to insert an obligation into the contract unilaterally to pay the consideration, or to render the non-compete effective by paying the consideration voluntarily; the employee will have to agree to the change and there can be no compulsion on him to do so.

As the level of financial compensation can be quite high, when considering the dismissal of an employee and assessing the risks of any competitive activity, an employer may decide that, as the risks are low, it does not wish to enforce the non-compete. Under French law an employer can waive enforcement of a covenant and thereby avoid payment of any financial compensation. However, the French Supreme Court has recently con-firmed that, in the absence of any provisions in collective agreements or employment contracts regarding the procedure for waiving non-competes, the employer must notify the employee within a reasonable time-frame, i.e. within one month of its decision, of its intention to waive the non-compete.

Germany

In Germany, the following conditions must be met for competition restrictions to be valid:

a. the prohibition must serve to protect the legitimate business interest of the former employer. Normally, it can only give the employer protection with respect to that part of the business in which the employee was employed;

b. the prohibition may not unreasonably hinder the employee from making a living;

c. the prohibition is only binding if the employer undertakes to pay compensation for the duration of the prohibition of at least 50 percent of the income (including bonus and benefits) earned by the employee immediately prior to his or her employment ending (the obligation to pay compensation can be excluded in contracts with managing directors and supervisory board members). If the con-tract specifies less than this, the employee can choose between taking the payment and being bound by the restrictive covenant or refusing payment, in which case the restrictive covenant is in-effective;

d. the prohibition may only be imposed for a maximum of two years. Any clause purporting to prohibit competition for more than two years can only be valid for the initial two year period and is invalid for any period thereafter; and

e. the contract must be in writing and the employer has the burden of proving that the employee received a copy of the contract duly signed by the employer in original form.

The employer may at any time during the employment waive the covenant with 12 months' notice. Further, summary termination-i.e., termination without notice-for an important reason by the employer gives the employer the right to declare within one month of termination that he will not enforce the restrictive covenant. The same applies *vice versa:* upon summary termination by the employee-i.e., an employee resignation without notice-the employee may notify the employer that he will not observe the covenant. If the employer dismisses the employee for operational reasons, the employee may also choose to declare within one month

from termination that he will not observe the restrictive covenant. The employer can only avoid this result by paying the full salary as at the date of termination for the duration of the restrictive covenant.

The 50 percent compensation will be set off against the employee's other income during the period of restriction, as far as such new income plus the compensation exceed 110 percent of the employee's last income with the employer. Additional complications may arise if the employee is unemployed while the restrictive covenant applies, in that the employer will be obliged to reimburse to the employment office 30 percent of the unemployment benefit paid to the employee, this reimbursement being treated as if it were salary received by the employee for the purposes of any potential set off.

Italy

In Italy, non-competition agreements are only allowed if:

a. evidenced in writing;

b. compensation is paid to the employee; and

c. the restriction is confined within specified limits as to purpose, time and location.

The duration of the restriction cannot be in excess of five years, in the case of executive personnel, and three years in other cases. If a longer duration is agreed upon, it is reduced to the length indicated above.[17] However, it is common practice to limit the restrictive period to six to 12 months for all employees.

The compensation in favor of the employee should not be symbolic, unfair or lacking proportion with comparison to the concrete sacrifice of the employee. The amount depends on the following elements:

a. the duration of the non-compete;

b. the geographic extension of the non-compete;

c. the kind of activities carried out during the employment; and

d. the employee's salary.

The parties can agree that the compensation for the non-competition clause shall be paid every month together with the salary during the course of the employment. In this case the compensation has the form of an additional percentage added to the salary.[18] There is no minimum amount of compensation.

The non-competition can cover activities different from those that the employee carried out at the employer's company, as long as it does not prevent the employee from carrying out any working activity related to his previous experience.

Enforcement Issues

From this brief survey of non-competition practice in the jurisdictions referred to above, it is clear that the courts have developed (in common law jurisdictions such as the U.K.) or have in place (in codified jurisdictions such as France and Italy) comprehensive guidelines on the reasonableness and enforceability of non-competition agreements. However, these guidelines only function effectively where both employer and employee consider themselves bound by the same local law. To illustrate some of the problems that arise when one or both parties seeks to rely on a foreign law, the difficulties of trying to enforce a foreign law non-compete in California and in the U.K. are set forth be-low. This review concentrates on two aspects of such enforcement: whether the courts will respect and apply a foreign choice of law clause if themselves determining enforceability; and how, if enforceability has been determined by a foreign court and judgment issued, that judgment can be enforced. We then offer some potential solutions to some of these cross-border issues.

California

In the United States, the states vary on whether they will enforce a choice of law clause that requires a non-competition agreement to be interpreted under another state's law. Some states will enforce the choice of law

provision as long as there is a sufficient connection to that other state to support the choice of that state's law, and so long as that state's law would not violate the public policy of the forum state. However, California's strong public policy against restricting employee mobility requires that California courts generally disregard the parties' choice of the law of a jurisdiction other than California.[19] Further, based on this strong public policy,California courts have overridden a choice of law clause even though the employment contract containing the non-competition agreement was performed outside California by an employee who was not a California resident but who was subsequently recruited by a California employer for competitive 'employment in California.'[20]

The practical reality that jurisdictions such as California rarely enforce non-competition agreements has created an incentive for parties to non-competition agreements to win the 'race to the courthouse.' For example, in *Advanced Bionics, Inc. v. Medtronic, Inc.,*[21] a Minnesota resident who formerly worked for Medtronic filed a declaratory judgment action in California seeking to invalidate his non-competition agreement with Medtronic. The former employee filed suit in California because his new employer, Advanced Bionics, was headquartered in California. In addition, the former employee sought an order from the California court prohibiting Medtronic from taking any action to enforce the non-competition agreement. In the meantime, Medtronic filed suit in Minnesota, and sought an order from the Minnesota court prohibiting the former employee from pursuing the California lawsuit. Months of expensive motions and appeals ensued.

If a former employer wins the race to the courthouse and obtains an injunction enforcing a non-competition agreement, the former employer may have to take additional steps to enforce any injunction that is awarded against an employee who is not a resident of the state in which the injunction was awarded. Generally, under the Full Faith and Credit clause of the U.S. Constitution, if the forum court had adjudicatory authority over the subject matter and persons governed by a judgment, then a final judgment in one state qualifies for recognition in all 50 states.[22] However, other states are not necessarily required to enforce the injunction if doing so would contravene another state's fundamental public policy.[23] Accordingly, winning the race to the court-house in a favorable jurisdiction may be a hollow victory if the injunction obtained in that jurisdiction can-not be enforced in the state or country to which a former employee has relocated.

United Kingdom

Although the English courts will generally treat a choice of law clause as definitive, where a contract is entirely domestic, i.e. where the employer, employee and place of work are in the U.K., the courts will not al-low the parties to elect a foreign law as the applicable law. Also, choice of law will be restricted by the 'mandatory rules of law' of the law of the country which would be applicable in the absence of a choice of law clause. Whether rules on restraint of trade which limit the extent of non-competition agreements are mandatory rules is unclear; if they are then they would apply to any attempt at enforcement of a non-compete where, for example, the employee habitually worked in the U.K., regardless of any express choice of law. Further, the courts are entitled to refuse to apply foreign law where it is manifestly incompatible with English law public policy, although there has in practice been little reliance on this principle.[24]

The process for enforcing a foreign judgment in the U.K. depends upon which, if any, statutory regime applies. If the country where the judgment was obtained is a signatory to Council Regulation (EC) No 44/2001 of 22nd December on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters [25] or the Lugano Convention 1988 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters,[26] there are reciprocal arrangements in place whereby the recognition and enforcement of a judgment of one country in another country is simple and will not involve reassessing the merits of the case. Given the number of countries that are signatories to these instruments, this is enormously useful for employers. However, a foreign judgment which is contrary to English public policy, or is incompatible with an English judgment, or is irreconcilable with an earlier judgment given in a signatory state involving the same causes of actions and between the same parties will not be recognized. There is no time-limit for making an application to enforce a judgment. Further, in uncontested claims the European Enforcement Order is available for enforcing judgments. This is a simplified method of enforcement and does not require registering the foreign judgment. Such judgments will be treated as if they were English judgments.

Unfortunately, other statutory regimes are not as helpful. For example, judgments of countries with which the U.K. has bilateral conventions which are given effect by the Administration of Justice Act 1920[27] will only be enforced if they are orders for the payment of a sum of money. Accordingly, the enforcement of a judgment for injunctive relief is not allowed. Similarly, judgments of countries covered by the Foreign Judgments (Reciprocal Enforcement) Act 1933[28] will also only be enforced if they are orders for the payment of a sum of money. Judgments must be registered within 12 months of the date of the judgment under the 1920 Act and six years under the 1933 Act.

The position under common law is similarly unsatisfactory. Where the statutory regimes referred to above do not apply, a foreign judgment *in personam* can only be enforced via the common law. However, there are

significant conditions and restrictions on such enforce-ability; in particular, that the foreign judgment must be for a debt or a definite sum of money; again, the enforcement of a judgment for injunctive relief is not allowed.

Potential Solutions to Cross-Border Issues

While perhaps an unfortunate reality of the existing United States and international legal regimes, the fact remains that the likelihood that a non-competition agreement will be enforced, and an effective injunction will be obtained, turns largely on where the dispute is litigated. For that reason, businesses should consider choice of forum provisions which provide that any disputes over non-competition agreements will be resolved exclusively in the forum agreed to by the parties. If such exclusive forum selection provisions are not feasible, then at least provisions in which employees consent to be sued in a specific forum, and waive any defenses to lack of jurisdiction or improper venue, should be considered. Again, the law may vary from jurisdiction to jurisdiction as to whether such forum selection provisions are enforceable. Such provisions can lend a measure of certainty to employers and employees as to likelihood of enforcement. However, choice of law clauses are frequently ineffective in restrictive covenants that apply in Member States of the EU, as individual employment contracts must not deprive employees of the protection granted to them under the mandatory rules of law that would apply in the absence of choice.[29]

Also, given the vagaries of enforcing injunctions across jurisdictions, companies should consider agreements which provide financial disincentives for breaching non-competition agreements. For example, in *IBM v. Bajorek*[30] the employer's stock option plan provided that employees forfeited any profits made from exercising stock options if the employees went to work for a competitor. The Ninth Circuit upheld this forfeiture provision, reasoning that the provision did not prevent the former employee from practicing his profession. The enforceability of such forfeiture provisions likewise may vary between jurisdictions.

Conclusion

As illustrated above, non-competition agreements may not be the panacea that protects all employers in all jurisdictions around the world. However, they are a key element in a company's corporate security pro-gram. An economic downturn and head count reductions in a global economy, where electronic data can easily be copied and moved, mean that employers will be looking at their non-competition agreements closely and how they may or may not be able to enforce them in jurisdictions around the world. In particular, if their employees are already working or likely to work in more than one jurisdiction, employers should consider the requirements for enforceability of non-competes in all relevant jurisdictions to maximize the chances of enforceability. However, given the difficulties discussed above of enforcing injunctions across jurisdictional lines, employers may wish to consider financial disincentives for breach of non-competition agreements.

Footnotes

[1] This article only addresses non-competition agreements that impose post-employment restrictions. This article does not address the enforceability of non-solicitation agreements oragreements that impose restrictions on competitive activities during employment.

[2] *deCODE genetics, Inc. v. Hákonarson et al.,* No. 06-CV-3461 (E.D. Pa.).

[3] *Faw, Casson & Co. v. Cranston,* 375 A.2d 463, 466-67 (Del. Ch. 1977).

[4] *TriState Courier & Carriage, Inc. v. Berryman,* No. C.A. 20574-NC, 2004 WL 835886, at *10 (Del. Ch. Apr. 15, 2004).

[5] *Knowles-Zeswitz Music, Inc. v. Cara,* 260 A.2d 171, 175 (Del. Ch. 1969).

[6] *Diodes, Inc. v. Franzen,* 260 Cal. App. 2d 244, 255 (1968).

[7] *Northern Virginia Psychiatric Group, P.C. v. Halpern,* 19 Va. Cir. 279, 282 (1990) (non-solicitation agreement case); *Richardson v. Paxton Co.,* 203 Va. 790, 795 (1962).

[8] *Richardson,* 203 Va. at 795.

[9] *ParamountTermite Control Co. v. Rector,* 238 Va. 171, 174 (1989).

[10] *Id.* at 175.

[11] The Virginia Supreme Court has consistently refused to enforce non-competition agreements in a series of recent cases. *See Parikh v. Family Care Ctr. Inc.,* 641 S.E.2d 98, 100 (Va. 2007); *Saks Fifth Ave., Inc. v. James, Ltd.,* 272 Va. 177, 630 S.E.2d 304 (2006); *Omniplex World Servs. Corp. v. US Investigations Servs., Inc.,* 270 Va. 246, 618 S.E.3d 340 (2005); *Mod-ern Env'ts, Inc. v. Stinnett,* 561 S.E.2d 694, 696 (Va. 2002); *Motion Control Sys., Inc. v. East,* 262 Va. 33, 546 S.E.2d 424 (2001); *Simmons v. Miller,* 261 Va. 561, 544 S.E.2d 666 (2001).

[12] *Stenhouse Ltd v. Phillips* [1974] AC 391.

[13] *Herbert Morris Ltd v. Saxelby* [1916] AC 688.

[14] See, e.g. *TFS Derivatives Ltd v. Morgan* [2004] EWCH 3181.

[15] *Thomas v. Farr plc & Hanover Park Commercial Ltd* [2007] EWCA Civ 118. In this case the Court rejected the previously well-accepted argument that, where an employer imposed non-competition and non-solicitation clauses, the former should be shorter in duration than the latter (e.g. 6 months and 12 months respectively). A duration of 12 months for the non-compete was held to be 'a conservative estimate of the time for which [the employer's] confidential information would retain is currency' and therefore reasonable.

[16] *Vasilescu v. SARL Argo Hytos* (Labor Law Division, French Supreme Court, June 13, 2007); *X v. Societe Publications Pierre Johanet* (Labor Law Division, French Supreme Court, March 7, 2007); *X. v. Societe Allegre* (Labor Law Division, French Supreme Court, February 27, 2007).

[17] Article 2125 of the Italian Civil Code.

[18] For example, it has been held that it was fair to provide an additional amount of 18 percent of the salary per month as compensation with regard to a six month non-competition agreement, geographically limited to the Region of Lombardy.

[19] *See Frame v. Merrill Lynch, Pierce, Fenner & Smith Inc.,* 20 Cal. App. 3d 668, 673 (1971); *Scott v. Snelling & Snelling, Inc.,* 732 F. Supp. 1034, 1039-40 (N.D. Cal. 1990).

[20] *See Application Group, Inc. v. Hunter Group, Inc.,* 61 Cal.

App$_2$. 4th 881, 885 (1998).

[21] 29 Cal. 4th 697 (2002).

[22] *Baker v. General Motors Corp.,* 522 U.S. 222, 232 (1998).

[23] *Id.* at 235.

[24] See, e.g. *Apple Corporation Limited v. Apple Computer Incorporated* [1992] F.S.R. 431 where the proposition that public p$_2$olicy overrode the proper law of the contract was rejected.

[25] Signatories are Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

[26] Signatories are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Iceland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland and the UK.

[27] Mainly former or current Commonwealth countries.

[28] Includes Crown states such as Isle of Man and Jersey.

[29] Article 6, Rome Convention on the law applicable to contractual obligations (1980/934/EEC).

[30] 191 F.3d 1033 (9th Cir. 1998).