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Limits on Post-Employment Non-Compete Enforcement in Korea

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Two recent Korean court decisions—Seoul Eastern District Court (Case No. 2025KaHap10208, 24 November 2025) and Seoul Central District Court (Case No. 2025KaHap21041, 19 January 2026)—have refused to enforce post-employment non-compete agreements, even where the employees held senior positions and the restrictive covenants were contained in detailed agreements supported by substantial compensation packages. These decisions signal that Korean courts apply rigorous scrutiny to non-compete enforcement and impose a high bar on employers seeking to restrain former employees from joining competitors. In this newsletter, we examine the two decisions, distil the key legal principles, and provide practical guidance on the non-compete clause in the Korean market.

In the first case, a major e-commerce company sought non-compete and non-solicitation injunctions against two senior employees who had resigned and joined another apparel e-commerce company that had recently launched its own logistics and delivery service. Both employees had signed confidentiality and non-compete agreements, and departure confirmation letters, with a one-year non-compete period and a contractual penalty of KRW 3 million per day. They had received substantial compensation packages of KRW 360 million or above, including base salaries, significant performance bonuses, and long-term equity incentives. The court dismissed all applications, finding that: the employer's logistics systems were not protectable trade secrets as the underlying concepts were well-known in the industry; the standard compensation (i.e., salary, bonuses, and equity) did not constitute adequate consideration for post-employment restrictions; the definition of "competitive business" was overly broad; no evidence of actual misuse of proprietary information had been adduced; and, despite a dozen former colleagues moving to the same competitor, there was no concrete evidence of active solicitation.

In the second case, a private equity firm sought an injunction to restrain a former senior employee from working at a competing private equity firm. The employee had signed a contract containing a three-year post-employment non-compete clause and resigned after approximately three years of service. The court again dismissed the application, finding that the employer had asserted only general and abstract claims about its interests in overseas LP fundraising activities, failed to identify specific trade secrets with competitive value, provided no explicit compensation for the non-compete obligation, and adduced no evidence of actual misuse of information at the competitor.

Both decisions apply the framework established by the Supreme Court in Case No. 2015Da21903, under which (i) non-compete agreements that excessively restrict an employee's right to choose one's occupation or free competition guaranteed by the Constitution shall be void under Article 103 of the Civil Code, (ii) the following factors shall be

assessed holistically in deciding the validity of such agreements : the employer's protectable interests (e.g., trade secrets, unique know-how and customer relationships); the restriction period, geographic scope, and breadth of restricted activities; whether adequate consideration was provided; the employee's position and circumstances of departure; and public interest considerations, and (iii) the burden of proving each factor rests entirely on the employer.

In light of the foregoing, companies should not assume that restrictive covenants drafted to international standards will be enforced in Korea without careful localization. Employers must define "competitive business" narrowly, identifying particular business lines or technologies rather than broad industry sectors. A separate, explicit financial consideration specifically designated for the non-compete obligation is preferred—standard compensation will not suffice. Employers should identify and document specific protectable trade secrets at the time agreements are signed, limit non-compete duration to the minimum necessary, and consider garden leave provisions as an alternative to traditional post-employment restrictions. Critically, employers should not seek injunctive relief without first gathering concrete evidence of actual misuse of proprietary information.

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