

Employment in Financial Services

Contributing Editor

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13. Are there any particular rules that apply in relation to the use of post-termination restrictive covenants for employees in the financial services sector?

Hong Kong

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There are no particular rules that apply concerning the use of post-termination restrictive covenants for employees in the financial services sector. The rules concerning post-termination restrictive covenants are governed by common law principles in which they will only be enforced if the restriction is necessary for the protection of the employer's legitimate business interest and is reasonable in scope and duration.

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The SM&CR does not regulate the use of post-termination restrictive covenants for employees in the financial services sector. It is fairly typical for financial services firms in the UK to include non-dealing, non-solicitation, non-compete and similar restrictive covenants in their employment contracts. These are subject to the same common law rules on interpretation and enforceability as in any other sector. The only caveat to this is that firms should ensure that such terms do not include any provision that might conflict with the regulatory duties of either the firm or the employee. This will be a rare occurrence in practice for most types of restrictive covenant, but could arise in respect of post-termination contractual obligations that are closely associated with restrictive covenants, namely those relating to confidentiality. As such, firms should ensure that confidentiality clauses in employment contracts or other agreements such as NDAs include appropriate carve-outs.

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