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# Taking counsel

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**Restricting manager competition in Latvia**
Company management has special knowledge, skills and experience gained from running a company, which can often have strategic commercial importance in a particular business sector.

Therefore, it is highly desirable to ensure that while terminating employment relations such persons - for example, board members - do not take up a job with a competing company and use the acquired know-how to the detriment of their former employers. This can be achieved by including "restriction of competition" clauses in employment contracts or other legal agreements with board members, which are enforceable both during employment and for a certain term after the termination of employment.

If an employment contract exists between the board member and the company, the employer must observe the provisions of Latvia's labor law regarding restrictions on competition and supplementary work. In an employment relationship - i.e. governed by an employment contract - the employer may restrict the right of his board members to do supplementary work for other employers, provided that it is justified by legitimate interests of the current employer - for example, if such supplementary work could negatively affect the respective employee's performance.

In this way the current employer may prohibit board members from carrying out additional work for another company that would be competitive and thus contrary to the employer's interests. The definition of what activity is considered competitive should be elaborated in detail in order to ensure its effectiveness.

A restriction on competition that would bind the board member following the termination of employment has to follow certain conditions provided specifically in the labor law. First, it must be agreed between these parties in writing, either as a separate document or incorporated into the employment contract. Second, its purpose must be to protect the employer from any such occupational activity on the part of the employee that could create competition for the employer. It must also provide for the duration of the restriction, which may not extend beyond two years. Furthermore, the scope if the restriction on competition must also be stipulated, and while it may protect the employer from genuine competition, it must not unreasonably restrict the right of the board member to pursue further employment. Again, expert advice on defining the precise scope of the restriction is desirable.

As a last condition, the restriction must provide for adequate compensation to the board member for the burden of limited employment rights. No settled practice on the matter of "adequate" compensation exists in Latvia as yet, and it would be subject to what the parties agree to, for example, a certain percentage of the board member's monthly salary as prescribed by the employment contract. Importantly, the compensation only becomes an obligatory condition for restrictions after the termination of employment.

As a precaution, it is useful to include a "statement of approval" clause in the employment contract, whereby the board member declares that he is aware of the meaning of the restrictions and the legal consequences and considers the prescribed compensation adequate.

Competition-restrictive clauses in an employment contract; however, are not the only possible solution. The labor law provides that an employer may conclude other contracts with board members, for example, contracts for work-performance or authorization. These and other civil agreements are governed by Latvia's civil law. They need not comply with the specific conditions set out in the labor law, as the latter only applies to employment contracts. However, "restriction of competition" clauses in those types of agreements do need to comply with the principles of good faith and contractual liberty, which

are fundamental in civil law.

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