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This issue covers the following topics:

India

Delhi High Court Reaffirms Limits of Post-Employment Non-Compete Clauses

Shejal Verma

Vietnam

New Pilot Mechanism under Resolution 171/2024/QH15 Regarding Commercial Housing Projects: Unlocking Projects on 100% Non-Residential Land

Hoai Tran

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Delhi High Court Reaffirms Limits of Post-Employment Non-Compete Clauses

今般インドのデリー高等裁判所において、雇用契約終了後の従業員の就労を制限する競業避止条項が、原則として無効であるという判断が示された。情報漏洩の懸念が根拠に欠けると判断され、従業員が転職先で働くことが認められたもので、今後、雇用主にとっては他の手段により退職従業員による情報漏洩の対策等をより検討する必要があると思われる。

Introduction

In India, it is not uncommon for companies to rely on post-employment non-compete clauses to protect their business interests and proprietary data. The enforceability of these clauses has always been a disputed legal issue in India given that such clauses are considered to be in restraint of trade. This issue has once again gained attention in the recent case of Varun Tyagi vs. Daffodil Software Private Limited (judgement dated June 25, 2025), where the Delhi High Court has reaffirmed the extent to which such post-employment non-compete restrictions are allowed under Indian law.

Background

Varun Tyagi (the “**Employee**”), an IT engineer, being initially employed with an associate company of Daffodil Software Private Limited (“**DSPL**”), was transferred to DSPL. Among other restrictions, the Employee’s agreement with DSPL included a non-compete clause preventing him, during the period of his employment and for three years thereafter, from working with or soliciting any business associate he was introduced to through DSPL’s business activities—whether directly or indirectly, or in any capacity.

DSPL assigned the Employee to work closely with Digital India Corporation (“**DIC**”), a business associate of DSPL. Subsequently, the Employee resigned from DSPL and joined DIC. DSPL sought to prevent the Employee from joining DIC for three years post-employment in accordance with the employment agreement, claiming risk to proprietary information and business interests.

Legal Issue in Focus

The fundamental question was whether a post-employment non-compete clause, which prohibited the Employee from engaging with DSPL’s business associate (i.e., DIC), was valid under Section 27 of the Indian Contract Act, 1872 (“**ICA**”). This section provides that all agreements in restraint of trade are void, except in the limited case involving the sale of goodwill.

Court's Analysis and Decision

The Delhi High Court analyzed the non-compete clause in the Employee's agreement with DSPL considering Section 27 of the ICA and concluded that the clause constituted a restraint of trade. The High Court set aside the interim injunction passed by the lower court in favor of DSPL, thereby allowing the Employee to join DIC.

In rendering its judgment, the Court, among other things, reiterated the legal position on post-employment restraints and held the following¹:

- It is clear that any term of the employment contract that imposes a restriction on the right of the employee to get employed post-termination of the contract of employment shall be void being contrary to Section 27 of the ICA.
- The reasonableness and whether the restraint is partial or complete is not required to be considered when an issue arises as to whether a particular term of contract is or is not in restraint of trade, business or profession.
- A post-employment restrictive covenant is enforceable only to protect an employer's confidential or proprietary information, or to prevent the employee from soliciting the employer's clients. In this case, the business between DIC and DSPL was based on a contract and such contract stated that all intellectual property and related documentation arising from the assignment would belong to DIC. Therefore, DSPL's concern that the employee might share confidential information or intellectual property with DIC was unfounded, as those rights already vested in DIC. There was no question of any improper disclosure of confidential information or intellectual property to DIC.
- An employee cannot be confronted with the situation where he has to either work for the previous employer or remain idle.
- The balance of convenience is in favour of the Employee as the Employee has already joined DIC and if the Employee is restrained from working with DIC during the pendency of the judgement, it would cause irreparable loss to the Employee. In case DSPL is able to prove breach of the employment agreement, it can be compensated by way of damages.

Conclusion

The Delhi High Court's decision upholds India's stringent restrictions on post-employment non-compete covenants. While employers may impose reasonable limits during the employment of an employee, post-employment non-compete clauses are typically unenforceable regardless of their extent or duration, unless they fall under one of the few legal exceptions.

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¹ Paragraphs 66, 67, 68, and 72 of the judgement.

Vietnam

New Pilot Mechanism under Resolution 171/2024/QH15 Regarding Commercial Housing Projects: Unlocking Projects on 100% Non-Residential Land

2014 年住宅法の施行に伴い、非居住目的の土地を商業用住宅開発に使うことは基本的にできなくなったが、同法施行前にすでに商業用住宅開発のために非居住目的の土地を確保していた案件は相応に存在し、これらの案件には今に至るまで塩漬けになっているものも少なくない。こうした案件について一定の条件の下で商業用住宅開発を認める国会決議及び政令が成立した。本稿では、これらについて概説する。

Background

Under the current land laws of Vietnam, there are four methods for investors to acquire land for developing their projects: (i) land allocation or lease without land auction or project tendering, (ii) land auction, (iii) project tendering, (iv) agreement with existing land user.

With respect to commercial housing projects, the investors may only acquire residential land for development if they select the land acquisition through method (iv) ("**Agreement Method**"). However, there is an exception under the current law that they may be permitted to develop a commercial housing project if they have already acquired residential land through the Agreement Method for the entirety or a portion of the project land, ***before*** the effective date (i.e., 1 August 2024) of the Law on Land 2024 ("**LOL**"). If the proposed development is permitted (through issuing an Investment Policy Approval ("**IPA**") and Investor Approval ("**IA**") to the investors/project enterprise by the competent authority), the project enterprise must then obtain a land conversion permit ("**LCP**") for the non-residential land portion (if any) to convert land use purposes from non-residential land to residential land and pay a substantial amount known as land use fees to the State. That is to say, the enterprise must hold 100% residential land to satisfy conditions (among other things) for applying the IPA/IA to develop a commercial housing project if the land is acquired ***after*** the effective date of the LOL.

As a result of the aforesaid restrictions, enterprises that already hold land use rights for non-residential land for 100% of project land before the effective date of the LOL, or acquire a certain portion of residential land (i.e., less than 100% of project land) after the effective date of the LOL, were not permitted to develop a commercial housing project. This has stalled many housing projects for several years since most of them were not able to acquire residential land for the entire project land because most of land planned for housing development is non-residential land.

To resolve this situation, the National Assembly of Vietnam issued Resolution No. 171/2024/QH15 on pilot scheme for commercial housing projects implemented through land use rights acquired via the Agreement Method or already held by project enterprises ("**Resolution 171**"), which took effect on 1 April 2025. The Government of Vietnam then promulgated Decree No. 75/2025/ND-CP dated 1 April 2025 detailing the implementation of Resolution 171 ("**Decree 75**"). Resolution 171 and Decree 75 allow certain commercial housing projects that satisfy specific conditions to be implemented on non-residential land. In this article, we will explore and discuss this pilot scheme for commercial housing projects in Vietnam.

Pilot Projects

Generally, the pilot scheme shall apply to projects carried out by real estate business enterprises in one of the following cases:

- (1) projects to be developed on non-residential land which is acquired by the enterprise through Agreement Method;
- (2) projects to be developed on non-residential land which is already held by the enterprise;
- (3) projects to be developed on non-residential land of which a portion is already held by the enterprise and the other portion is acquired by the enterprise through the Agreement Method; and
- (4) projects to be developed on land previously used by parent company of the enterprise for production or

business facilities which is required to relocate due to environmental pollution or incompatibility with construction/land use zoning.

Case (1) seems to refer to those land acquisitions to be conducted through the Agreement Method after the effective date of Resolution 171, while case (2) may mention the land acquisitions by various methods (e.g., the Agreement Method or method (i) mentioned above) which land may be vacant or being used for other purposes (e.g., warehouse or sports center). Case (3) is a combination of case (1) and case (2), where the developer may wish to develop a commercial housing project on a larger land area than that of case (2). Case (4) refers to those facilities (e.g., factory, warehouse, sport center or office building) that are subject to a compulsory relocation plan.

Resolution 171 also makes clear that if the enterprise already holds residential land use rights for 100% project land, or both residential land and other types of land, the commercial housing project shall be implemented in accordance with the provisions of LOL rather than this Resolution 171.

Eligibility Criteria

Under Article 3 of Resolution 171, enterprises and their projects must meet the following conditions to be eligible for selection and implementation of the commercial housing projects under this pilot scheme:

- **Location.** The project should be in an urban area, or an area planned for urban development.
- **Planning compatibility.** The land plot or land area designated for the pilot project must comply with the district land use plan¹, construction/urban planning, and approved local housing development program or plan. In the case of projects involving the acquisition of land use rights through the Agreement Method, the land must not fall under the list of facilities/projects subject to land recovery by the State approved by the provincial People's Council in accordance with Article 72.5 of the LOL.
- **Residential land quota control.** The total residential land area of the pilot projects (including both existing residential land and other-type land proposed to be converted to residential use) must not exceed 30% of the additional residential land area allocated in the provincial land use plan for the 2021–2030 period approved by the competent authority.
- **Approval of provincial People's Council.** The land plot or land area designated for the pilot project must be included in the list of proposed land plots for pilot projects approved by the provincial People's Council² (“**List of Proposed Land Plots**”).

Approval Procedures

Under Decree 75, the provincial land management authority (i.e., previously the department of natural resources and environment, and now the department of agriculture and environment (“**DAE**”)) shall open a registration book so that enterprises with eligible projects may register within a prescribed time limit. For example, the DAE of Ho Chi Minh City opened such a book recently, and the registration period ended on 30 April 2025.

After evaluating the registered projects based on criteria provided in Resolution 171 as discussed above, the DAE prepares the List of Proposed Land Plots, along with the real estate enterprises desiring to develop the pilot projects and submit the same to the provincial People's Council for approval.

If multiple enterprises propose to implement a commercial housing project on the same land plot(s), the enterprise that already holds land use rights will be prioritized. If all enterprises fall under the category of acquiring land use rights through the Agreement Method, then priority will be given to the enterprise that has submitted the registration documents first.

¹ Basically, most of functions and responsibilities of district-level governments are transferred to ward-level governments from 1 July 2025 according to the Law on Organization of Local Governments 2025. It appears that the district land use plan will be changed to ward/commune land use plan.

² The provincial People's Council is like the legislative body of the province, while the provincial People's Committee is like the administrative body of the province.

Following the approval of the provincial People's Council, the provincial People's Committee shall publish the List of Proposed Land Plots and issue a notice of approval to the selected enterprise. The selected enterprise will then proceed to acquire land use rights through agreement (if applicable) and/or convert the land use purpose to residential land and carry out other procedures to obtain necessary approvals (e.g., IPA/IA, master plan approval, LCP, land use right certificate, construction permit, etc.) to implement the pilot project.

Notably, Article 4.13 of Decree 75 stipulates that the List of Proposed Land Plots may be supplemented after being approved by the provincial People's Council, if a real estate enterprise proposes a new land plot that meets the eligibility criteria. The wording of this article suggests that if the total residential land area stated in the approved List of Proposed Land Plots does not exceed 30% of the additional residential land area allocated in the provincial land use plan, other enterprises may still have opportunities to register their participation.

Pilot Term

According to Resolution 171, the pilot scheme is implemented over a period of five years from its effective date. Resolution 171 also makes clear that real estate enterprises which are implementing pilot projects in accordance with the project implementation schedule may continue to develop the project until the development is completed, regardless of the expiry of the five-year pilot program. Under current law, the enterprise is strictly required to comply with the project implementation schedule which is proposed by the enterprise and approved by the investment licensing authority. Furthermore, although the pilot program may end, the rights and obligations of those acquiring land use rights or ownership of assets attached to the land within the pilot projects will remain protected under the law in the same way as with any other land users or house purchasers.

Comments

The enactment of Resolution 171 and Decree 75 is to unlock the restrictions on the use of non-residential land for commercial housing projects, which was imposed in the past ten years (since the effective of the Law on Residential Housing ("LRH") 2014³) and to improve the supply of commercial housing in the country. We anticipate that hundreds of commercial housing projects in the country that have land use rights of non-residential land would be permitted to proceed with projects to develop commercial housing on these lands.

Previously, the relaxation was proposed by the Government to be stipulated under the LRH 2023 or the LOL. However, this proposal was not adopted in these laws, which as previously noted, still require the enterprises to either acquire residential land for the entirety or a portion of the project site to be able to proceed with commercial housing development, meaning that using 100% of the non-residential land for a commercial housing project is not permitted.

Since the imposition of the restrictions was made largely due to concerns over land speculation and the uncontrolled conversion of agricultural land — both of which could pose threats to land use fee collections by the State and the construction/land use zoning, it is likely that the pilot program will be temporary in nature rather than being incorporated into the LRH or the LOL as a permanent policy.

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³ LRH 2014 was repealed by LRH 2023.

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