

Strafford

Presenting a live 90-minute webinar with interactive Q&A

Noncompete Agreements for Multinational Employers

Structuring Enforceable Noncompetes for Employees in Europe and Asia

TUESDAY, JANUARY 29, 2013

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Christopher P. Stief, Partner, **Fisher & Phillips**, Radnor, Pa.

William D. Wright, Partner, **Fisher & Phillips**, Philadelphia

Clare Murray, Managing Partner, **CM Murray**, London, England

David Fisher, Consultant, **CM Murray**, London, England

The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service** at **1-800-926-7926 ext. 10**.

Tips for Optimal Quality

Sound Quality

If you are listening via your computer speakers, please note that the quality of your sound will vary depending on the speed and quality of your internet connection.

If the sound quality is not satisfactory and you are listening via your computer speakers, you may listen via the phone: dial 1-866-320-7825 and enter your PIN when prompted. Otherwise, please send us a chat or e-mail sound@straffordpub.com immediately so we can address the problem.

If you dialed in and have any difficulties during the call, press *0 for assistance.

Viewing Quality

To maximize your screen, press the F11 key on your keyboard. To exit full screen, press the F11 key again.

Continuing Education Credits

FOR LIVE EVENT ONLY

For CLE purposes, please let us know how many people are listening at your location by completing each of the following steps:

- In the chat box, type (1) your **company name** and (2) the **number of attendees at your location**
- Click the word balloon button to send

Noncompete Agreements for Multinational Employers – Europe & Asia

*Presented for Strafford
Publications, Inc.*

January 29, 2013

Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]

CM
MURRAY

Presented By:



Clare Murray
CM Murray

clare.murray@cm-murray.com



David Fisher
CM Murray

David.fisher@cm-murray.com



Christopher Stief
Fisher & Phillips

cstief@laborlawyers.com



William Wright
Fisher & Phillips

wwright@laborlawyers.com

Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]



Cross Border Employment-Restrictive Covenants

Key Concepts for Drafting

- Tailoring Restrictions to individual jurisdictions
- Preserving as much corporate consistency as feasible

Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

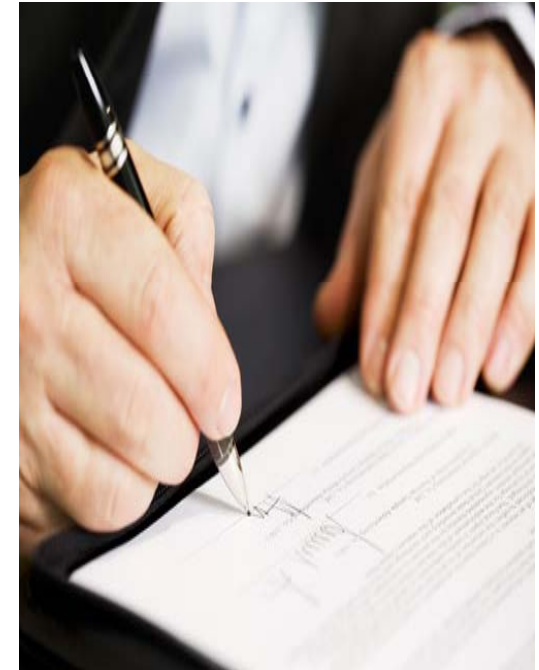
Solutions at Work[®]

6



Frequently Used Types of Covenants

- Confidentiality/Non-Disclosure
- Notice Clause/Garden Leave
- Non-Solicitation of Clients
- Non-Solicitation of Employees
- Non-Compete



Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]

7



Covenants in Europe and Asia



Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]

8

CM
MURRAY

England & Wales

- Garden Leave Clauses
 - Enforcing garden leave
 - Effect on restrictive covenants
- Post-employment restrictions
 - Protectable Interests
 - Reasonableness
 - Key remedies available
 - Effect of Wrongful Termination



Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]



England & Wales

- Cross-border issues
 - Are foreign law restrictions enforceable in England & Wales?
 - Can an employee domiciled in England & Wales be sued overseas?
 - Some practical points



Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]

10



Germany

- Generally only enforceable if in writing
- Employee must receive an original signed copy of the clause
- May not exceed 2 years
- May not “unfairly jeopardize” employee’s future career



Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]

11



Germany

- For non-competes, must provide employee compensation during restraint of at least 50% of last salary (including bonus, commission etc.)
- No compensation needed during a non-solicit period



Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]

12



Russia

- Russian Constitution gives right of free disposal of capacity to work by employees
- In general, no restriction on having a second job
- Maximum notice period for an employee to resign is two weeks
- Non-competes and non-solicitation of clients and/or staff provisions are unenforceable



Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]

13

CM
MURRAY

Russia

- Employer confidential information is protectable only if agreed in employment contract and 7 requirements are met
- Russian courts will not enforce contractual provisions or foreign court decisions which infringe local employment rights
- Employees can complain to Federal Labor Inspection about breaches of constitutional and mandatory rights by employer



Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]

14

CM
MURRAY



India

- Post-termination non-competes generally unenforceable
 - Indian Contract Act
 - Constitution
- In-term non-competes are enforceable
- Post-termination non-solicits... *maybe enforceable*
- Non-disclosure clauses

Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]

15



India



- Protection of confidential info and client lists
 - no statute but courts may protect info
- Will not honor choice of other law or forum
- Sale of business covenants, enforceable if reasonable

Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

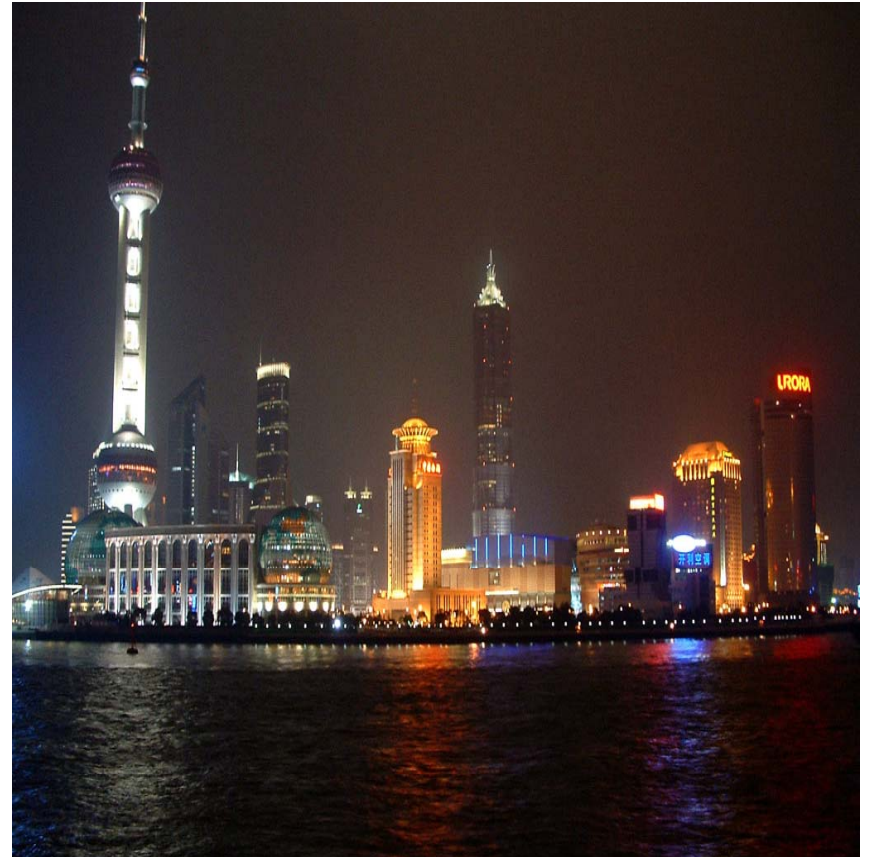
Solutions at Work[®]

16



China

- Confidentiality, non-compete and non-solicits generally enforceable
 - 2008 Employment Contract Law
 - Must harmonize with collective bargaining agreement terms



Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

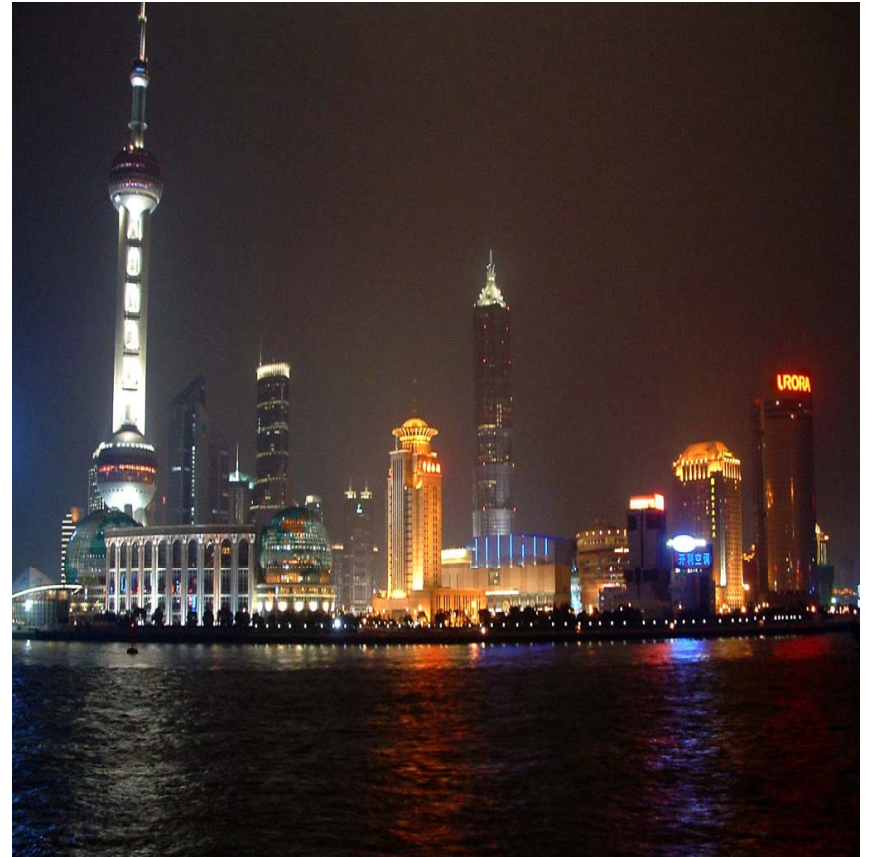
Solutions at Work[®]

17



China

- Non-competes
 - Only for senior management, senior technicians and those with trade secrets access
 - No more than 2 years
 - Reasonable geography
 - Compensation paid during restricted term
 - Varies by province



Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]

18



Global Benefits Plan

Another Strategy for Restrictive Covenants-

- Supplemental Approach; or
- Alternative Approach



Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]

19

CM
MURRAY

Global Benefits Plan

- Phantom Equity
- Stock Option Plans
- Stock Appreciation Rights
- Stock Purchase Plans



Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]

20

CM
MURRAY

THANK YOU!

- Christopher P. Stief

+1 610.230.2130

- William D. Wright

+1 610.230.2137

- Clare Murray

+44 (0) 207 718 0090

- David Fisher

+44 (0) 207 718 0090

Fisher & Phillips^{LLP}

ATTORNEYS AT LAW

Solutions at Work[®]

21

