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Protection of employee partner

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Resume: *The French Court of cassation (Commercial Court, September 17th, 2025, n°24-14.883) partially quashed the decision of the trial judges because the Court of Appeal refrained from examining the succession of contractual acts and the legal effects attached to the entire agreement clause. Thus, this decision reaffirms the protection afforded to employees bound by non-competition clauses. It specifies that such clauses, even when included in a reiterative agreement, are only valid if they are limited in geographical scope and duration, justified by the interests of the company, and accompanied by financial compensation.*

In this case, a partner sold his shares in Groupe Arcante to Arcante Développement, a company whose purpose is to provide services to businesses, including administrative, commercial, accounting, marketing and financial services, as well as consulting and training.

The partner has undertaken, via a non-competition clause included in the deed of transfer, not to become involved in any company engaged in the same business as the Arcante group, either directly or indirectly.

Subsequently, the parties entered into a new transfer agreement containing the same non-competition clause and included a clause cancelling the previous commitments. However, at the date of this new agreement, the transferor had become an employee of the Arcante Group.

At the end of October, he set up Armonia Consultant, a company whose corporate purpose includes providing services to businesses, including consulting and support, after resigning from his position in July 2022.

Thus, the transferee undertaking brought summary proceedings against the former partner, who had become an employee before resigning, and the company created by the latter, arguing that he had breached the non-competition clause to which he was bound.

Following a judgment handed down at first instance, on 28 March 2024, the Douai Court of Appeal ordered the former employee and his company to comply with the non-competition clause contained in the transfer agreement for a period of twelve months from the date of service of the judgment.

As a result, the Court of Appeal prohibited the former employee from appearing in any media or on any social network as someone engaged in an activity related to consulting or training in professional negotiation. Consequently, the former employee and his company appealed to the Court of Cassation.

The French Supreme Court considered whether a non-compete clause entered into by a shareholder upon the transfer of their shares, without any financial consideration, remains valid and enforceable when that shareholder subsequently becomes an employee of the transferee company.

This decision confirms that a non-competition clause stipulated at the time of a transfer of company rights is valid provided that it is limited in time and space and proportionate to the legitimate interests of the partner to be protected. However, when the partner is an employee at the time of their commitment, the non-competition clause must include financial compensation. Consequently, the non-competition clause in the reiterative deed is not enforceable against the former employee.

In its decision of September 17, 2025, the French Supreme Court confirmed both the protection afforded to the employee-shareholder (I) and the primacy of employee status over the entire agreement clause (II).

I. Confirmation of the protection afforded to the employee-partner.

The validity of a non-competition clause requires an assessment of the legal status of the co-contracting party on the date the contract was formed (A), in order to identify the applicable regime and, by extension, whether or not financial compensation is required for the employee-partner (B).

A. The importance of the legal standing of the other party at the time the contract is concluded.

In French contract law, a non-competition clause signed by a co-contractor is only lawful if it is essential to the protection of the creditor's legitimate interests[1], and limited in both time and space. However, in labour law, case law has added an additional condition of validity by requiring that it include an obligation for the employer to pay the employee financial compensation[2]. Thé determination of the applicable regime thus depends on the legal status of the debtor of the obligation, assessed on the date the commitment is entered into. Indeed, case law consistently specifies that the conditions for

[1] Cass. Soc., 14 mai 1992, n°89-45.300.

[2] Cass. Soc., 15 décembre 2021, n°20-18.144.

the validity of a non-competition clause are analysed on the date it is signed[3]. Therefore, when the debtor under the clause doesn't, or doesn't yet, have the status of employee on the date of signing the non-competition obligation, the validity of this commitment isn't subject to the existence of financial compensation[4].

The ruling of 17 September 2025, discussed above, perfectly illustrates this logic. The Court of Cassation held that the non-competition clause was neither valid nor enforceable against the employee-partner. The Court based its reasoning on the status of the contracting party at the time of the execution of the final deed of transfer. While the initial agreement already included a non-competition clause, the former partner had since become an employee. Consequently, because the new agreement substituted a new obligation for the previous one, the clause was deemed invalid for lack of financial compensation.

Consequently, the Court adopts a personal approach to the clause: the applicable legal regime is determined not by the nature of the instrument, but by the status of the individual entering into the commitment. Thus, the legal standing of the contracting party at the time of execution is the essential prerequisite for any legal analysis. This status alone dictates the conditions required for the non-competition clause to be deemed valid and enforceable.

B. Extending the requirement of financial compensation to thé employee-partner.

Unlike corporate law, employment law requires the provision of financial compensation as a condition for the validity of a non-competition clause entered into by an employee, as set out above[5]. The ruling delivered by the Commercial Chamber of the Court of Cassation on 17 September 2025 lies precisely at the intersection of these two legal frameworks. Indeed, the Court affirms that while a non-competition clause stipulated in a share transfer agreement is lawful regarding the shareholders who enter into it - provided it's limited in time and space and proportionate to the legitimate interests to be protected - its validity is nevertheless contingent upon the existence of financial compensation when the partner involved held, at the date of their commitment, the status of employees of the company they undertook not to compete with.

Thus, the employee-partner benefits from the protection afforded by employment law, unlike the non employee partner who remains subject to the classical corporate law regime,

[3] Cass. Soc., 28 septembre 2011, n°09-68.537.
[4] Cass. Com., 23 juin 2021, n° 19-24.488.
[5] Cass. Soc., 10 juillet 2002, n°00-45.135.

which does not require financial compensation. Indeed, the employer must provide financial compensation for the benefit of the employee partner failing which, the non-competition clause is null and void. By this ruling, the Court of cassation aligns itself with a position previously held regarding employee partner in cases where the non-competition clause was included in a shareholders' agreement[6] or in a share transfer protocol[7].

Consequently, it suffices that the status of employee pre-exists that of partner, or, as in this case, is concurrent with it, for the case law established by the labor chamber to prevail, which requires the presence of consideration, even if the non-competition clause appears only in the contract for the transfer of shares.

This solution was reaffirmed by the Commercial Chamber in a ruling dated November 5, 2025, which states that the validity of a non-competition clause signed by a transferor of corporate rights is subject to the existence of real financial compensation if the person concerned is an employee on the date on which they make the commitment[8].

Through these various rulings, the High Court strengthens the protection of employee-partners by preventing employers from circumventing the requirement for financial compensation by inserting the clause into a corporate document rather than an employment contract. Indeed, it neutralizes circumvention strategies and guarantees the effectiveness of employee protection.

II. The prevalence of employee status though the entire agreement clause.

The French Court of cassation upholds the validité of the entire agreement clause (A) and the obligation to investigation the chronology of commitments by the judge (B).

A. Recognition of the validity of the entire agreement clause.

The transfer of shares is part of an often-lengthy process involving a succession of different documents, from the initial memorandum of understanding to the final deed of transfer. Thus, to stabilize this chronology, contractual practice employs a specific tool: the 'entire agreement' clause. Its purpose is to confine the rights and obligations of the parties to the express content of the written contract.

Consequently, the parties intend to partition the contract and ensure that their rights and

[6] Cass. Com., 15 mars 2011, n°10-13.824.
[7] Cass. Com., 8 octobre 2013, n°12-25.984.
[8] Cass. Com., 5 novembre 2025, n°23-16.431.

duties are strictly limited to what they have expressly stipulated[9].

The ruling handed down on September 17, 2025, by the Commercial Chamber of the Court of Cassation confirms the full effectiveness of this clause. In this case, after the conclusion of an initial transfer agreement containing a non-competition clause, a subsequent agreement described as a "complete and sole agreement" between the parties stipulated that any previous agreement with the same purpose was null and void. However, between these two stages, the transferor had become an employee of the transferred company, thereby changing his legal status.

That is why, in its ruling of September 17, 2025, the Court of Cassation overturned the appeal ruling on the grounds that the Court of Appeal had failed to draw the consequences of the entire agreement clause. For the High Court, this clause had the effect of substituting obligations: the reiterative act rendered the first deed of assignment null and void, replacing it with a new agreement.

Consequently, the validity of the non-competition obligation had to be assessed exclusively on the date of reiteration, at which point the debtor had acquired the status of employee[10]. This ruling reaffirms the efficacy of the entire agreement clause: it serves not only to strip preparatory acts of any contractual weight but also to redefine the scope of the final agreement, effectively nullifying any prior commitments contained therein.

B. <u>The judge's duty to investigate the chronology of commitments.</u>

The ruling of 17 September 2025 delivered by the Commercial Chamber of the Court of Cassation overturned the Court of Appeal's decision under Article 1103 of the Civil Code, due to a lack of due diligence in the analysis of the final deed of transfer. Indeed, the High Court reaffirmed that contracts legally formed are binding upon the parties. Consequently, if the parties choose, through an entire agreement clause, to render any prior agreement null and void, the judge cannot disregard this intent in favor of a simplified overview of the transfer transaction.

Thus, the judge is under a duty to investigate the contractual chronology of the transfer operation. By stipulating that the final deed represented the entire and unique agreement, the parties shifted the temporal framework of their commitment. This resulted in displacing

[9] M. Lamoureux, « *Clause d'intégralité* » in Les principales clauses des contrats d'affaires, 3e édition, LGDJ, 2025.

[10] F. Buy, « *Perte de validité d'une clause de non concurrence par application d'une clause d'intégralité* », Revue pratique droit des affaires, 27 novembre 2025.

the inception of the non competition obligation to a date when the transferor already held the status of an employee.

Consequently, the ruling demonstrates that contractual formalism can backfire on the creditor. In an attempt to secure the final agreement through an 'entire agreement' clause, the purchaser inadvertently caused the lapse of a valid initial commitment, only to substitute it with a void obligation due to the lack of financial compensation.

It’s therefore necessary to take into account the temporal nature of the acts that follow one another in the context of a transfer of corporate rights with regard to the legal status of the co-contracting party at the time of signing the various acts.

To conclude, the ruling is not confined to the protection of the employee partner, it reasserts the need for methodological rigor in the assessment of non-compete restraints embedded in share transfer agreements. The review of a non-competition clause can’t be conducted independently from the identification of the legal act that gives rise to the restriction.

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