

### Recent Court Judgments Concerning Non-Competition Agreements

The Polish Labour Code allows employers to enter into a separate non-competition agreement with employees who have access to particularly important information, the disclosure of which may cause damage to the employer. Such an agreement should specifically define the scope of competitive activity, the period of non-competition and the amount of compensation due to the employee.

The application of the non-competition provisions still causes many difficulties for employers, as evidenced by the tremendous increase in the number of claims to labour courts and complaints to the State Labour Inspectorate in 2009. There were also a number of important court judgments last year:

#### Supreme Court Judgment dated 4 February 2009 (ref. no II CP 223/08)

The Supreme Court adjudicated that an employer may include in a non-competition agreement a clause specifying the period within which it will be permitted to withdraw from the agreement, even after termination of the employment relationship. In the case of use of such a clause by the employer, it is not obliged to pay the employee compensation for non-competition. This judgment gives employers more freedom to decide how long the competition ban applies to the employee in the light of changing market conditions.

#### Supreme Court Judgment dated 27 May 2009 (ref. no II CP 300/08)

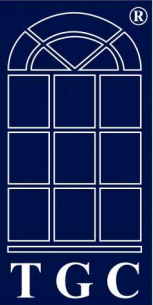
The Supreme Court ruled that, where there is a delay of a few months in the payment of compensation by the employer, the employee is exempt from the competition ban and preserves the right to full compensation at the same time.

#### Judgment of the District Court in Siedlce - December 2009

In circumstances where an employee breached a non-competition agreement with his former employer, the Court terminated the employment contract with the current employer on behalf of the employee under Art. 32 Labour Code. The termination notice was delivered to the current employer by the bailiff with immediate effect.

This was the first case in Poland where a court took such a strict approach to breach of a non-competition agreement by an employee. Up to this time, the courts had in similar cases awarded only compensation for damages to the former employer, enforcement of which was not easy. These judgments indicate the importance of attention to detail when entering into a non-competition agreement. We will be pleased to assist you in conducting an audit of existing non-competition and confidentiality policies and to propose solutions to protect the best interests of your company. We will also be pleased to advise on the enforceability of non-competition agreements which you already have in place.





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