

International Implications of Clawbacks of Equity Compensation

- Dodd–Frank Wall Street Reform and Consumer Protection Act Clawback Restrictions
- Clawbacks linked to Non-Competition Restrictive Covenants
- Clawbacks linked to Non-Solicitation Restrictive Covenants
- Special Financial Institutions’ Clawbacks or Forfeiture provisions

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This Matrix is designed to provide an overview of the enforceability of and other legal issues related to clawback provisions in equity award agreements in 40 key countries, including (i) clawbacks adopted to comply with the Dodd–Frank Wall Street Reform and Consumer Protection Act, (ii) clawbacks that are triggered by an employee’s breach of a non-competition or non-solicitation covenant, and (iii) clawbacks or forfeiture provisions that are required to be imposed by legislation directed at financial sector companies.

This Matrix should not be relied upon for specific legal advice and is not a substitute for obtaining such advice. It does not address any tax consequences that may occur as a result of the inclusion of clawback provisions in equity awards or the tax considerations where a clawback is enforced. Although every effort has been made to provide an accurate and up-to-date summary, non-U.S. laws applicable to clawbacks change frequently and are often unclear in their application to a company’s equity grants. Also, specific plan features may affect particular legal results. Specifically, depending on the terms of the plan/grant, the legal consequences can vary greatly. Accordingly, reliance on this Matrix for answering specific legal questions is not advised. Instead, this Matrix should only be used as a guide to potential legal issues/consequences and you should seek additional information/advice from legal counsel.

Country	Dodd-Frank Legislation Provision Enforceable? ¹	Clawback Triggered by Non-Compete Provision Enforceable? ²	Clawback Triggered by Non-Solicitation Provision Enforceable? ³	Local Legislation Providing Clawback/Forfeiture for Financial Institutions? ⁴
Argentina	Unenforceable under Argentine labor law, particularly if clawback is triggered without any misconduct or individual culpability on the part of the employee.	<p>Not enforceable as to either the clawback of equity compensation or prevention of competition. Any agreement allowing clawback provisions would be deemed null and void as a penalty since it would affect the employees' acquired rights. The exposure is high if a company actually tries to clawback awards that have vested/been earned.</p> <p>The validity of non-compete agreements after the termination of the labor relationship must be balanced against the freedom to work right set forth in the Argentine Constitution. Some legal opinions state that brief post-termination non-compete agreements for a valuable consideration, are valid.</p>	<p>Not enforceable as to either the clawback of equity compensation or prevention of solicitation of customers/clients or employees. Any agreement allowing clawback provisions would be deemed null and void as a penalty since it would affect employees' acquired rights. The exposure is high if a company actually tries to clawback awards that have vested/been earned.</p> <p>Non-solicitation provisions not tied to clawbacks are enforceable provided that they do not imply abuse of rights.</p>	There is currently no legislation which requires financial section employers to establish remuneration policies including forfeiture and/or clawback provisions.

¹ The Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173) signed into law on July 10, 2010 (the “Dodd-Frank legislation”) requires companies with securities listed on a U.S. exchange to adopt a clawback policy applicable to executive officers in the event of an accounting restatement due to material noncompliance with financial reporting requirements. The policy must provide for the recovery of amounts in excess of what would have been paid under the restated financial statements from any current or former executive who received incentive compensation (including stock options) during the three-year period preceding the date of the restatement. Misconduct by the executive is not required. This would not apply to rank-and-file employees.

² In this column, we primarily analyze whether a clawback of equity or other incentive compensation is enforceable if the reason for the clawback is the employee’s breach of a provision in the equity award agreement stating that the employee may not work for a competitor for a specified period of time following termination of employment. We also briefly address whether a non-compete provision is itself enforceable in terms of validly preventing an employee from engaging in post-termination competition.

³ In this column, we primarily analyze whether a clawback of equity or other incentive compensation is enforceable if the reason for the clawback is the employee’s breach of a provision in the equity award agreement stating that the employee may not solicit the issuer company’s employees or customers (with whom the employee worked) for a specified period of time following termination of employment. We also briefly address whether a non-solicitation provision is itself enforceable in terms of validly preventing an employee from engaging in post-termination solicitation.

⁴ In this column, we address whether the country in question has enacted any legislation (or has legislation pending) that requires financial sector companies to institute remuneration policies that include forfeiture and/or clawback provisions pursuant to which an employee forfeits vested and/or unvested equity awards and/or must disgorge any profits received from participating in an equity plan in specified circumstances, including without limitation, poor financial performance of the employer company or its consolidated company group.

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Australia	No, likely not enforceable.	<p>No, likely not enforceable as to the clawback as it is will be enforceable only to the extent that that the value clawed back equates to a genuine pre-estimate of the damage or loss suffered by the company as a result of the employee's breach of the non-compete.</p> <p>May be enforceable as to the non-compete if certain conditions are met, but if the remedy for violating the non-compete is taking away equity compensation, this may be deemed to be unreasonable and/or against public policy and hence unenforceable. Australian courts may enforce non-compete provisions if a legitimate business interest is at stake and may vary an unreasonable restraint by making it reasonable.</p>	<p>As with non-compete provisions, no, likely not enforceable as to the clawback but may be enforceable as to the non-solicitation. Australian Courts may enforce non-solicitation provisions if they are reasonable/appropriate to protect the legitimate interests of the business. As with non-compete restraint provisions, courts may deem unreasonable restraints to be unenforceable in whole or in part.</p>	Australia has no legislation equivalent to the Dodd-Frank legislation.
Austria	May be enforceable provided that it is explicitly agreed to in advance and included in a written agreement between the parties.	<p>Likely enforceable as to the clawback of equity award income if expressly agreed to in advance in writing.</p> <p>May also be enforceable as to the prevention of competition if a court does not conclude that such obligation constitutes an unreasonable constraint on the employee's professional advancement. However, it would not be enforceable if the employer (not the employee) terminates the employment relationship or the employer has (due to its culpable behavior) caused the employee to terminate employment.</p>	<p>Likely enforceable as to the clawback of equity award income if expressly agreed to in advance in writing.</p> <p>May also be enforceable as to the non-solicitation obligation if limited in scope and duration. Also, the non-solicitation obligation is not enforceable where the employer terminates the employment relationship or the employer has caused the employee to immediately terminate employment.</p>	Yes, national laws enacted to implement the remuneration-related amendments to the EU Capital Requirements Directive (required to be implemented by January 1, 2011) require financial institutions to ensure that variable remuneration is granted/paid out only where justified given (i) the overall financial situation of the financial institution, (ii) the performance of the respective business division and (iii) the performance of the employee in question.

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Belgium	Clawback of incentive compensation (including equity compensation) as a consequence of erroneous financial information reported may be enforceable, regardless of whether the clawback is based on the employee's misconduct, as long as it is precisely worded and does not infringe any mandatory provisions under Belgian labor law.	<p>May be enforceable provided the post-termination non-compete provision is also enforceable. Among other things, the former employee should be compensated for the period of the non-compete and the scope of the non-compete should be limited to (i) similar work activities as those previously performed by the former employee, (ii) a specific territory and (iii) a definite term.</p> <p>It is unlikely a Belgian court would find the clawback enforceable in isolation, although this is arguable based on the fact that the equity awards are granted by a U.S. parent, not the Belgian employer. However, this issue has not been tested in a Belgian court.</p>	<p>Uncertain, as the enforceability of post-termination non-solicitation provisions is not specifically regulated under Belgian labor law and is subject to much debate.</p> <p>It is unlikely a Belgian court would find the clawback enforceable in isolation, although this is arguable based on the fact that the equity awards are granted by a U.S. parent, not the Belgian employer. However, this issue has not been tested in a Belgian court.</p>	<p>Yes, pursuant to the remuneration-related amendments to the EU Capital Requirements Directive ("CRD") (required to be implemented by January 1, 2011), financial institutions may implement national laws with clawback provisions which call for adjustments (downward) of variable remuneration (including equity awards) in case of poor financial performance of the employer or its consolidated company group or in case of the employee's misconduct. To date, Belgium has not enacted any legislation. However, the Banking, Finance and Insurance Commission has instructed financial institutions to implement and apply the required remuneration rules.</p> <p>The amendments to the CRD expressly stipulate they are without prejudice to general principles of national contract and labor law. It is therefore possible that Belgium will prohibit the use of clawbacks.</p>
Brazil	There are no similar Brazilian law provisions. Accordingly, such provision will be considered unenforceable in Brazil.	<p>May be enforceable as to the prevention of competition as some courts recognize the validity of non-compete provisions, provided they are limited to a certain territory (or clients) and to a certain period, and further, they provide for the payment of compensation to the employees for the term of the non-compete. However, there is another group of courts that denies the validity of such provisions, due to the constitutional</p>	<p>Enforceability is uncertain as non-solicitation provisions are unusual in Brazil and rarely analyzed by the labor courts. However, as noted with respect to the non-compete provisions, the non-solicitation provisions may be challenged due to the constitutional principle of full right to work.</p> <p>It is not clear how the enforceability question would be answered as to the</p>	There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.

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		<p>principle of full right to work. Hence, enforceability depends on the court, payment of consideration, limitation to certain territory or clients, and non-compete periods.</p> <p>It is not clear how the enforceability question would be answered as to the clawback of income previously earned.</p>	<p>clawback of income previously earned.</p>	
Canada	<p>Likely enforceable in Canada to the extent that the Dodd-Frank legislation specifically requires a clawback of a Canadian resident's awards.</p>	<p>No, likely not enforceable to prevent competition or as the basis for a clawback. Courts in Canada will enforce clawback provisions only when the anticipated (or "liquidated") damages are commensurate with the sanction. In most equity clawback situations, there is no clear link between the anticipated harm and the sanction, making this type of provision a "penalty provision" and, prima facie, unenforceable under Canadian law.</p> <p>In addition, courts will enforce restrictive covenant provisions only with absolute certainty of terms. If non-compete provision is broad in geographic scope, it will likely not be considered certain enough to be enforceable.</p>	<p>No, likely not enforceable to prevent solicitation or as the basis for a clawback. It may be unenforceable due to scope. For example, non-solicitation periods of more than 12 months have generally been viewed as unreasonable. Further, the inclusion of a clawback may be seen as an unreasonable penalty.</p>	<p>There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.</p>
Chile	<p>Likely enforceable, assuming that the governing law provision is honored and the equity award is not considered part of the local employment arrangement.</p> <p>After employment termination, an</p>	<p>Likely enforceable as to the clawback of equity income and may be enforceable to prevent competition as well. If the duration of the non-compete restriction is one year or less and consideration is paid to the employee for this limitation, it is a</p>	<p>Yes, enforceable. A restriction against solicitation of employees/customers should be regarded as a civil agreement by which one party is obliged to avoid specified conduct (solicitation of employees and customers) and the other is obliged to</p>	<p>There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.</p>

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	additional civil agreement between the employer and employee which details the continuing nature of the clawback provisions is recommended, although this may be inconsistent with the grant of the equity by a parent company issuer, not the Chilean employer.	lawful provision.	benefit the other party with income from equity awards.	
China	May be enforceable depending on language concerning incentive compensation in the award agreement. More likely to be enforceable if the agreement is with a U.S. parent company and governed by U.S. law. In the unlikely event the agreement is governed by Chinese law, the fact that the clawback may apply without specific employee misconduct may make a court less willing to enforce it. In any event, it is difficult to enforce clawback clauses in practice.	May be enforceable as to the clawback depending on language concerning incentive compensation in the award agreement. More likely to be enforceable if the agreement is with a U.S. parent company and governed by U.S. law. Post-termination non-compete agreements can be enforceable in China, subject to specific requirements being met (in particular, a requirement to compensate the former employee on a monthly basis during the non-compete term).	May be enforceable as to the clawback depending on language concerning incentive compensation in the award agreement. More likely to be enforceable if the agreement is with a U.S. parent company and governed by U.S. law. Enforceability of a non-solicitation covenant is uncertain as Chinese law has no specific legal requirements for the enforceability of these provisions. The risk however is that arbitrators/judges may view them as essentially being a subset of non-compete restrictions.	Under compensation guidelines issued by the China Bank Regulatory Commission (“CBRC”), banks and other financial institutions under the CBRC’s authority have the right (but not the duty) to claw back performance-based incentive compensation in certain circumstances. However, these guidelines are not legally binding so it is unclear whether courts would enforce a clawback based on these guidelines.
Colombia	Likely enforceable in accordance with Colombian laws, provided that the equity or other incentive compensation is not considered to be part of the local employment arrangement, and is merely performance-based compensation of a commercial nature. Enforceability will depend on how well the issuer company describes the situations that trigger the clawback, and the evidence of the occurrence of such situations.	Possibly enforceable as to the clawback as such provisions are, in general, valid in accordance with Colombian laws, provided that the equity compensation is not considered to be part of the local employment arrangement. However, the fact the clawback is triggered by breach of a non-compete may reduce its enforceability as it may be deemed to breach antitrust/competition laws, or limit the constitutional right of freedom of work.	Possibly enforceable as to the clawback as such provisions are, in general, valid in accordance with Colombian laws, provided that the equity compensation is not considered to be part of the local employment arrangement. However, the fact the clawback is triggered by breach of a non-solicitation may reduce its enforceability as it may be deemed to limit the constitutional right of freedom of work and the liberty to choose any profession.	There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.

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		Likely unenforceable as to the non-compete as such a provision may be deemed null and void according to antitrust/competition laws, and based on the constitutional right to work and the liberty to choose any profession.	Likely unenforceable as to the non-solicitation covenant as such a provision may be deemed to limit the constitutional right of freedom of work.	
Czech Republic	<p>There is a risk that the clawback would be unenforceable under Czech labor law, particularly if it is triggered without any misconduct or individual culpability on the part of the employee. To increase enforceability, the clawback provision should be in very specific and objective terms in a written agreement with the employee.</p> <p>Further, such clawback provisions may not be adopted with retroactive effect and, to the extent applicable, earned compensation may not be reduced below minimum statutory salary of employees.</p>	<p>May be enforceable as to the clawback if the provision is in very specific and objective terms in a written agreement with the employee. However, there is a risk that a clawback triggered by breach of a non-compete provision would be unenforceable.</p> <p>May be enforceable to prevent competition if the duration of the non-compete period is no more than one year and the employee receives a special remuneration for each month of the period. However, a court will not prohibit the employee from working if he/she is in a breach of non-compete.</p>	May be enforceable as to the clawback if the provision is in very specific and objective terms in a written agreement with the employee. However, there is a risk that a clawback triggered by non-solicitation provisions, in particular, non-solicitation of employees, would be unenforceable.	There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.
Denmark	Likely unenforceable under Danish labor law, particularly if clawback is triggered without any misconduct or individual culpability on the part of the employee.	<p>No, likely not enforceable as to the clawback and possibly unenforceable as to prevention of competition.</p> <p>Under Danish law, non-competition restrictions for salaried employees are valid only to the extent the employer agrees to compensate the employee. Moreover, the non-compete provisions will be valid and enforceable only where the employee resigns voluntarily or is terminated for reasonable personal reasons.</p>	<p>No, likely not enforceable as to the clawback and possibly unenforceable as to the non-solicitation covenant.</p> <p>Under Danish law, non-solicitation of customers restrictions for salaried employees are valid only to the extent the employer agrees to compensate the employee. Non-solicitation of employees restrictions are not valid or enforceable unless those employees affected by the provision (i.e., the colleagues that cannot be hired by the</p>	Yes, national laws were required to be enacted to implement the remuneration-related amendments to the EU Capital Requirements Directive by January 1, 2011. Pursuant to new rules adopted on remuneration policies in financial institutions and financial holding companies effective as of January 1, 2011, affected financial sector companies must ensure that directors and risk takers receiving variable remuneration (including equity awards) are required

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			restricted former employee) consent to being subject to such restriction and are compensated.	to return all or part of that remuneration if it has been calculated on the basis of performance information that is provably erroneous and the recipient acted in bad faith.
Finland	May be enforceable provided that it is explicitly agreed in advance and included in a written agreement between the parties.	Likely enforceable as to the clawback of equity compensation and may be enforceable to prevent competition as well. The employer and the employee may enter into a non-competition agreement provided that the employer has a significant business reason for the restriction. A non-competition restriction may remain in force for up to six months after termination of employment. This period may be extended to twelve months if the employee receives reasonable monetary compensation. The restrictions, except for the requirement of a particularly significant reason, do not apply to executives.	Yes, generally enforceable as to the clawback and to prevent solicitation. Finnish legislation does not contain any specific provisions regarding non-solicitation restrictions. However, such restrictions must be reasonable.	Changes to national laws are pending to implement the remuneration-related amendments to the EU Capital Requirements Directive.
France	No, likely not enforceable even if included in the individual's employment agreement, rather than the equity award agreement, which is not recommended. The clawback of equity income where there is no misconduct by the employee would not be enforceable. If there was misconduct by the employee that resulted in the inaccuracies in the financial statements and the clawed back amounts were equivalent to the damage done to the company, then there might be a possibility of enforcing the clawback.	No, likely not enforceable as to the clawback of equity compensation or the prevention of competition. Further, restrictive covenants are clearly a counterpart of the employee's work (and not of a grant of equity awards). As such, they should be included in the employment contract and not related to the stock plan or agreement. When a non-compete with the employer is included as a term of the grant, courts may consider stock awards granted through the stock plan as local	No, likely not enforceable as to the clawback of equity compensation or the prevention of solicitation. The reasoning for non-compete provisions also applies to non-solicitation provisions. We do not recommend including a non-solicitation provision in the stock plan or agreement.	Yes, forfeiture under national laws enacted to implement the remuneration-related amendments to the EU Capital Requirements Directive. The Decree on compensation paid to certain professionals in the financial sector issued in November 2009 applies to credit institutions and investment companies operating in France and imposes many requirements on the remuneration packages provided to employees whose activities could have a significant impact on the risk exposure of the business. Among

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		employment remuneration (with all vested rights consequences attached thereto in terms of social security contributions, calculation of severance payments, etc.), and the relationship with the parent issuer as an employment relationship.		these requirements is a requirement that variable compensation (including equity awards) paid to such individuals must be reduced if it relates to fiscal years for which the business showed a loss.
Germany	Likely yes, as a contractual provision in the underlying equity award agreement, provided the agreement is governed by U.S. law.	No, likely not enforceable as to the clawback of equity compensation or the prevention of competition because the non-compete itself is unenforceable without payment of at least 50% of the employee's last contractual remuneration for the duration of the non-compete. It is very unlikely that a clawback of equity compensation may be enforced independently of the non-compete since it would be considered a contractual penalty for violating an obligation that may not be imposed on the employee.	No, very likely unenforceable as to the solicitation of employees/customers for the same reasons discussed under non-competes (this type of employee non-solicitation will be deemed a non-compete).	Yes, under national laws enacted to implement the remuneration-related amendments to the EU Capital Requirements Directive ("CRD III"), namely the German Remuneration Act (effective July 27, 2010), and the German Remuneration Ordinance (effective October 6, 2010). CRD III provides for clawbacks of share and share-linked compensation. Under the German Remuneration Ordinance, "important" institutions (with average balance sheet assets of at least €10bn during the preceding three fiscal years) are subject to key remuneration requirements, including that variable remuneration (including equity and bonuses) must be calculated so that any negative contributions of the relevant manager or employee, or of their respective business units, to the institution's performance, as well as any overall negative performance of the institution, must result in a reduction of the variable remuneration.
Hong Kong	Likely enforceable if incorporated into the terms of the relevant equity award agreement. Note that cash amounts	Likely enforceable as to the clawback of equity compensation based on the terms of the award agreement. Will	Likely enforceable as to the clawback of equity compensation based on the terms of the award agreement. Will	No legislation, but guidelines have been introduced that feature clawback and forfeiture. The "Guidelines on a

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	to be clawed back likely cannot be deducted from an employee's wages as there are strict laws on deductions from wages in Hong Kong and unlawful deductions are a criminal offence.	not be enforceable to prevent competition unless the non-compete is sufficiently limited/tailored in duration, scope of prohibited activities and geographical scope. A non-compete of more than three months duration is unlikely to be enforced.	not be enforceable to prevent solicitation unless the non-solicitation is sufficiently limited/tailored in duration and scope of prohibited activities. A non-solicitation provision of more than six months duration is unlikely to be enforced.	Sound Remuneration System" issued by the Hong Kong Monetary Authority in March 2010 apply to "authorized institutions" operating in Hong Kong (primarily deposit-taking banks) and impose many requirements on the remuneration packages provided to senior management, employees who are involved in risk-taking activities or risk control functions and employees whose duties require them to meet quotas/targets in return for variable compensation such as equity awards and bonuses. The requirements include a clawback of unvested deferred remuneration if the data on which such remuneration is based is revealed to be "manifestly misstated". In such case, the amount payable to the employee must be adjusted downward to take into account the corrected data.
Hungary	May be enforceable if explicitly agreed in writing between the parties in advance, provided that the parties are not in a direct employer-employee relationship and the relevant agreement is governed by non-Hungarian law.	Not likely enforceable as to the clawback of equity compensation or the prevention of competition. Under Hungarian Labor Law, a post-termination non-compete provision is enforceable only if appropriate compensation (at least 50% of the employee's last salary) is paid for the non-compete period.	Not enforceable. The same rules apply as to the non-compete provision. However, if compensation has been agreed to with respect to the non-compete provision, no additional compensation is needed with respect to the non-solicitation provision.	Yes, under national laws, <i>i.e.</i> , the Hungarian Banking Act and the Hungarian Investment Firms Act, enacted to implement the remuneration-related amendments to the EU Capital Requirements Directive. According to those rules, financial institutions must have a remuneration policy for their chief officers under which the institution must set a ratio between base salary and performance-based compensation and the latter must be reduced if the institution's performance declines because the relevant officer has taken excessive risks.

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India	Likely unenforceable in practice. In theory, the provision should be enforceable if an executive is required to agree to it under the equity award agreement as Indian law does not offer much legal protection to executive-level employees and they are held to the terms of the contracts they execute. In practice, however, it will likely be difficult to enforce a clawback of equity compensation and further, Reserve Bank of India (“RBI”) permission would likely be required to do so.	No, not enforceable as to the clawback of equity compensation or the prevention of competition because the non-compete would be deemed an agreement in restraint of trade under Section 27 of the Indian Contract Act 1872, and therefore void and unenforceable. It may also be necessary to obtain RBI approval to enforce the clawback provision because it may be considered as a transfer of shares from a resident to a non-resident without consideration.	Likely unenforceable in practice as to the clawback of equity compensation (see Dodd-Frank legislation column). Possibly enforceable as to the prevention of solicitation although given the employer-employee context, it will be necessary to show that the non-solicitation provision is reasonable and is not an agreement in restraint of trade under Section 27 of the Indian Contract Act 1872.	No legislation or pending legislation which includes financial sector forfeiture/clawback provisions. Clawbacks of compensation are not common in India.
Indonesia	In theory, the Dodd-Frank legislation provision would be enforceable (as long as it is set forth in the relevant award agreement) as it does not run afoul of current Indonesian labor laws and regulations. However, as this is an untested area of law, it is uncertain whether the provision would be upheld by the labor courts in practice.	In theory, a clawback based on the breach of a non-compete provision would be enforceable (as long as it is set forth in the relevant award agreement) as it does not run afoul of current Indonesian labor laws and regulations. The non-compete itself is also, in theory, enforceable under current law. However, as these are untested areas of law, it is uncertain whether the provision would be upheld by the labor courts in practice.	In theory, a clawback based on the breach of a non-solicitation provision would be enforceable (as long as it is set forth in the relevant award agreement) as it does not run afoul of current Indonesian labor laws and regulations. The non-solicitation itself is also, in theory, enforceable under current law. However, as these are untested areas of law, it is uncertain whether the provision would be upheld by the labor courts in practice.	There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.
Ireland	Provided the incentive scheme arrangements make clear that a clawback will apply in the event of an accounting restatement/non-compliance with financial reporting requirements, this provision should, be enforceable prospectively. It will not be enforceable retrospectively (<i>i.e.</i> , in respect of incentive compensation awarded prior to the adoption of the	If the underlying non-compete provision is enforceable, then it is possible as a matter of contract to provide for the clawback of equity compensation. However, the clawback will not be enforceable independently of the non-compete and non-competes are very difficult to enforce in practice. To be enforceable, a non-compete must be reasonable in	If the underlying non-solicitation provision is enforceable, then it is possible as a matter of contract to provide for the clawback of equity compensation. In order for a non-solicitation provision to be enforceable, it must meet similar criteria as those applicable to non-compete provisions. Further, a provision of this nature should typically	Potentially yes. As part of emergency financial measures taken in Ireland, the Minister for Finance provided financial support to certain credit institutions and where such financial support is provided, the Minister has power to impose terms and conditions regarding bonus payments payable by the institution as part of the conditions upon which financial support is

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	policy).	duration and geographical extent, must protect the legitimate interest of an employer and must go no further than is reasonably necessary to protect that interest. A restriction on trade for longer than six months is unlikely to be enforced in Ireland, with some scope for longer periods for senior or highly-specialized staff but not exceeding nine to twelve months in exceptional circumstances.	not have a duration of longer than six to nine months.	provided to the institution.
Israel	Possibly enforceable as a contractual provision in the underlying equity award agreement, provided the agreement is governed by U.S. law. However, there is a risk that an Israeli labor court would disregard the choice of law provision and under Israeli labor law, it is unlikely that a clawback of compensation would be enforceable.	Possibly enforceable as to the clawback and the prevention of competition provided that the award agreement is governed by U.S. law and is clear that receipt of the award and any benefit thereunder is contingent upon compliance with the non-compete provision. Whether the non-compete and the clawback are enforceable will also depend upon the seniority and rank of the employee, the period of non-compete, the type of industry in which the company operates and the benefit granted in exchange for the non-compete (the greater the benefit/size of equity award granted in exchange for the non-compete, the better the chance of enforcement).	Same analysis as discussed under non-compete clawbacks.	There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.
Italy	The Dodd-Frank legislation clawback may be enforceable since it is required to be imposed to comply with U.S. law. However, the enforceability in practice is uncertain as clawback provisions are not expressly regulated under Italian law and it is therefore	No, likely not enforceable as to the clawback of equity compensation or the prevention of competition because the non-compete itself is unenforceable without compensation to the employee for the duration of the non-compete and limits in terms of	Enforceability is uncertain because no statutory provisions expressly regulate non-solicitation covenants. A non-solicitation obligation may be viewed as a non-compete, subject to the same considerations set forth in the previous column. If a non-solicitation	The EU Capital Requirements Directive has not yet been implemented in Italy, but the Bank of Italy has prepared a preliminary draft of the new implementing provisions. The new provisions will apply to financial institutions' directors, general

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	<p>unclear whether a court would view such a clawback as an enforceable contractual provision or (for example) as an unenforceable reduction in remuneration.</p>	<p>duration, business scope and geographical scope. However, if the non-compete was valid under Italian law, the clawback would also likely be valid and enforceable.</p> <p>It is uncertain whether the clawback of equity compensation could be enforced independently of the non-compete since there is currently no case law on this issue and it is unclear how an Italian court would view such a provision.</p>	<p>provision is not viewed as a non-compete, both the provision and the related clawback is more likely to be enforceable (although there is no Italian case law on this issue).</p>	<p>managers, top managers and employees performing professional activities that are relevant to financial risks borne by their employer. The draft includes both clawback and forfeiture provisions, including that the payment of at least 40% (60% for directors and top managers) of variable compensation must be deferred for three to five years so that such compensation may be reduced based on the results of the financial risks taken by the bank towards third parties and account holders, and that upfront payments of variable compensation and deferred payments may be subject to clawback both in case of fraud or gross misconduct by the employee and if the company performance results do not meet expectations. In addition, clawback provisions may be required in the event a financial institution is required to increase its corporate capital.</p>
<p>Japan</p>	<p>No, the Dodd-Frank legislation provision is likely not enforceable and may in fact be considered illegal under Article 16 of the Labor Standards Law of Japan which prohibits an employer from making a contract which fixes in advance either a sum payable to the employer for breach of contract or an amount of indemnity for damages. That said if it can be shown that the employee received an unjustifiable profit based on inaccurate financial statements, it is possible that the</p>	<p>No, likely not enforceable as to the clawback of equity compensation or the prevention of competition because the non-compete itself is unenforceable without compensation to the employee and limits/tailoring in terms of duration, geographical scope, the nature of the interests the company is trying to protect and the nature of the employee's duties and responsibilities. If the underlying non-compete is not enforceable, it is unlikely that a Japanese court would</p>	<p>No, likely not enforceable as to the clawback of equity compensation for the reasons discussed under non-competes. May be enforceable as to the prevention of solicitation if such is considered separately from the clawback since non-solicitation provisions are generally valid under Japanese laws unless the provision is unreasonable in terms of its duration and the geographical scope.</p> <p>Further, as discussed in the Dodd-</p>	<p>There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.</p>

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	provision could be enforced under general rules of unjust enrichment.	separately enforce the clawback of compensation. Further, as discussed in the Dodd-Frank legislation column, a clawback may be considered illegal under the Labor Standards Law of Japan.	Frank legislation column, a clawback may be considered illegal under the Labor Standards Law of Japan.	
Korea	Likely enforceable as long as the executive officers covered by Dodd-Frank legislation are not considered employees under the Korean Labor Standards Act.	<p>The clawback is enforceable if the individual is not an employee for purposes of the Korean Labor Standards Act (“LSA”) (e.g., an executive). The clawback may be limited under the LSA if included in an award agreement with an employee.</p> <p>The non-compete provision may be separately enforceable as long as the restriction is deemed reasonable under the totality of the circumstances.</p>	<p>The clawback is enforceable if the individual is not an employee for purposes of the Korean LSA (e.g., an executive). The clawback may be limited under the LSA if included in an award agreement with an employee.</p> <p>The non-compete provision may be separately enforceable as long as the restriction is deemed reasonable under the totality of the circumstances.</p>	There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.
Malaysia	Likely enforceable. An employee’s entitlement under an equity award agreement is a matter of contract and the parties are free to agree to the terms governing such grant including forfeiture and/or clawback provisions.	<p>Possibly enforceable as to the clawback of equity compensation if the employee agrees to the terms of the award agreement. However, the fact the non-compete is unlikely to be enforceable (see below) creates the risk that the clawback would also be unenforceable.</p> <p>Not likely enforceable as to the prevention of competition. Under Malaysian law, the general rule is that non-compete provisions which apply post-termination are void if they are construed to be in restraint of trade. Accordingly, the non-compete provision is likely to be declared void under Malaysian law if it prevents employees from exercising lawful</p>	<p>Yes, likely enforceable as to the clawback of equity compensation and the prevention of solicitation.</p> <p>Malaysian case law has established that non-solicitation provisions are generally enforceable under Malaysian law unless such provisions are construed to be in restraint of trade. Will be enforceable where the acts involved entail a breach of confidentiality obligations.</p>	There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.

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		employment with a competitor after post-termination of service.		
Mexico	Likely enforceable, because the clawback provision is part of a contract not governed by Mexican law between a U.S. company and an executive employed by a subsidiary in Mexico.	No, likely not enforceable as to the clawback of equity compensation or as to the prevention of competition as a non-compete restriction would likely be viewed as a violation of constitutional fundamental rights and Federal Labor Law.	Yes, likely enforceable as to the clawback of equity compensation and the prevention of solicitation.	There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.
Netherlands	Likely enforceable as long as the clawback provision is included in the terms of the incentive plan and meets Dutch law requirements of reasonableness and fairness.	Possibly unenforceable as to the clawback of equity compensation and the prevention of competition, although this will depend on the governing law in the agreements and international conflict of laws on jurisdiction. Such a non-compete provision would not be enforceable with respect to the Dutch entity as an employer, unless a similar clause has been agreed to in writing between the Dutch employer and the employee.	Possibly unenforceable as to the clawback of equity compensation and the prevention of solicitation, although this will depend on the governing law in the agreements and international conflict of laws on jurisdiction. Such a non-solicitation provision would not be enforceable with respect to the Dutch entity as an employer, unless a similar clause has been agreed to in writing between the Dutch employer and the employee.	Yes, in principle, under national laws enacted to implement the remuneration-related amendments to the EU Capital Requirements Directive. Pending Dutch legislation on clawback of compensation may also be applicable to certain financial sector companies under the Dutch Financial Services Act.
New Zealand	Likely enforceable, provided that the ability to clawback and the circumstances in which the clawback will occur are spelled out in a written award agreement (or other agreement) between the issuer company and the executive.	Likely unenforceable as to the non-compete if the duration extends beyond two to three months or if the employee is not very senior or privy to trade secrets or other proprietary information which the issuer can demonstrate it needs to protect. May be separately enforceable as to the clawback – in fact, if the only consideration for the non-compete is the ability to participate in the equity plan and payments made under that	Likely enforceable to prevent solicitation as long as the employee involved is senior or has a key role in the business. May be separately enforceable as to the clawback – in fact, if the only consideration for the non-solicitation is the ability to participate in the equity plan and payments made under that plan, if those payments are clawed back, it will not likely be possible to enforce the non-solicitation to prevent	There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.

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		plan, if those payments are clawed back, it will not likely be possible to enforce the non-compete to prevent competition.	solicitation.	
Norway	In general, this may be enforceable provided that it is explicitly agreed in advance and included in a written agreement between the parties.	<p>Likely enforceable as to the non-compete as long as it does not go further than needed to protect against competition, and does not unreasonably restrict the employee's ability to take employment elsewhere, weighing the employer's needs against the employees' disadvantages.</p> <p>The validity of a clawback provision must be assessed separately and independent of the non-compete provision, although if a court finds the non-compete unenforceable, it will influence whether the clawback is deemed enforceable.</p>	<p>The enforceability of a non-solicitation provision will depend on an evaluation of the situation of each employee and whether it is reasonable to enforce the provision.</p> <p>The validity of a clawback provision must be assessed separately and independent of the non-solicitation provision, although if a court finds the non-solicitation unenforceable, it will influence whether the clawback is deemed enforceable.</p>	Yes, under national laws enacted to implement the remuneration-related amendments to the EU Capital Requirements Directive. On December 1, 2010, the Norwegian Ministry of Finance adopted a regulation (effective January 1, 2011) regarding compensation in financial institutions, investment firms and fund management companies. According to the regulation, at least 50% of any annual bonus must be deferred for at least three years and paid in the form of shares or "contingent capital". Such deferred bonus may be reduced in case of poor performance by the company.
Philippines	Likely enforceable provided that it is explicitly agreed to in advance and included in a written agreement between the parties.	<p>Likely enforceable as to the clawback of equity compensation if expressly agreed to in advance in writing.</p> <p>May also be enforceable as to the prevention of competition – the Philippine Supreme Court applies a "test of reasonableness". Stipulations in restraint of trade have been held to meet this test if (i) the restraint is reasonably necessary for the protection of the contracting parties, (ii) there is a limitation of time and place, and (iii) the field of coverage is limited.</p>	<p>Likely enforceable as to the clawback of equity compensation if expressly agreed to in advance in writing.</p> <p>May also be enforceable as to the prevention of solicitation – although we are not aware of any decided cases on the issue of the validity of a non-solicitation provision, the "test of reasonableness" for non-compete provisions may also be applied to determine whether a non-solicitation provision (particularly with respect to clients), is valid.</p>	There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.

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Poland	<p>May be enforceable if agreed to between parties that are not in an employer-employee relationship and the relevant agreement is governed by non-Polish law (provided that the provision would be enforceable under such law). Under Polish law, provisions of this nature would require misconduct on the part of the relevant executive.</p>	<p>May be enforceable as to the clawback if agreed to between parties that are not in an employer-employee relationship and the relevant agreement is governed by non-Polish law (provided that the provision would be enforceable under such law) and as long as the clawback is deemed a reasonable penalty for breach of the non-compete.</p> <p>However, under Polish law, the non-compete is not enforceable without compensating the employee during the post termination non-compete period.</p>	<p>May be enforceable as to the clawback if agreed to between parties that are not in an employer-employee relationship and the relevant agreement is governed by non-Polish law (provided that the provision would be enforceable under such law) and as long as the clawback is deemed a reasonable penalty for breach of the non-solicitation.</p> <p>Under Polish law, the non-solicitation is governed by the Act on Counteracting Unfair Competition which creates statutory obligations to refrain from solicitation in certain circumstances.</p>	<p>No, Poland has not yet implemented the amendments of the EU Capital Requirements Directive (CRD III) and there is no pending legislation in this area.</p>
Portugal	<p>May be enforceable if it is agreed between the parties as part of a required international policy to comply with U.S. law, since there are no provisions in Portuguese labor legislation specifically concerning incentive compensation plans or clawback provisions.</p>	<p>No, likely not enforceable as to the clawback of equity compensation or the prevention of competition because the non-compete itself is unenforceable without payment to the employee for the duration of the non-compete (payment of equity awards is not sufficient). In addition, a non-compete is only enforceable under the Portuguese Labor Code if (i) its maximum duration is two years (three years in special situations); (ii) it is contained in a written agreement between the company and employee; and (iii) the competitive activity may cause losses to the company.</p> <p>If, however, the non-compete is valid, the clawback may also be enforceable. It is unlikely that a clawback of equity compensation may</p>	<p>Likely only enforceable as to the clawback of equity compensation if the underlying non-solicitation clause is valid under Portuguese law – such clauses must be carefully drafted as they are subject to certain limits under Portuguese law.</p>	<p>The CMVM (Portuguese Securities Exchange Commission) issued Ruling no. 11/2003 – governance of listed companies – which established that companies must inform the CMVM of stock option plans offered to employees and executives as well as a description of the remuneration policies applicable to members of the board of directors of such companies. However, so far, no legislation relating to clawback provisions has been implemented.</p>

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		be enforced independently of the non-compete.		
Singapore	May be enforceable. Clawback provisions will likely be unenforceable <u>unless</u> it can be shown that any amount clawed back represents a genuine pre-estimate of the loss arising out of the specified breach. As the Dodd-Frank legislation clawback is limited to the excess of the incentive compensation paid over that which would have been paid in the absence of a restatement, it may be deemed enforceable as a genuine pre-estimate of loss.	<p>Unenforceable as to the clawback unless any amount clawed back represents a genuine pre-estimate of the loss arising out of the specified breach. In addition, the clawback will not likely be enforceable unless the non-compete is valid, which requires that there be a legitimate business reason that reasonably requires such protection and the scope of the restraint is reasonable. If a non-compete provision is contained within a company's global equity plan and applied to employees across the globe without any distinction as to position or duties, it likely will be deemed unreasonable and unenforceable in Singapore, in which case, the clawback will also be unenforceable.</p> <p>If the clawback is enforceable, it may limit the extent to which it is possible to get an injunction to enjoin competition as the court may consider that there is an adequate financial remedy.</p>	Unenforceable as to the clawback unless any amount clawed back represents a genuine pre-estimate of the loss arising out of the specified breach. In addition, the clawback will not likely be enforceable unless the non-solicitation is valid.	<p>The Monetary Authority of Singapore recently finalized its review of the corporate governance regulations and guidelines in Singapore. The amended regulations are generally effective no later than from the first Annual General Meeting of each financial institution held on or after January 1, 2011. The amended guidelines take effect immediately from December 9, 2010.</p> <p>The amendments made to the guidelines include adopting the Financial Stability Board ("FSB") Principles for Sound Compensation Practices. The FSB Principles for Sound Compensation Practices promote risk adjustment of compensation and expressly provide for placing a portion of compensation in escrow and subject to a clawback.</p>
Slovakia	Likely enforceable. Under Slovak conflict of law rules, parties to a contract are allowed to elect the law by which the contract should be governed and such election will be respected as long as it would not result in a violation of Slovak public policy. If the equity plan is governed by U.S. law and that law would permit	Yes, enforceable both as to the clawback of equity compensation and prevention of competition. Under Slovak conflict of law rules, parties to a contract are allowed to elect the law by which the contract should be governed and such election will be respected as long as it would not result in a violation of Slovak public	Yes, enforceable both as to the clawback of equity compensation and prevention of solicitation. Under Slovak conflict of law rules, parties to a contract are allowed to elect the law by which the contract should be governed and such election will be respected as long as it would not result in a violation of Slovak public	Yes, under the amended EU Capital Requirements Directive the Slovak Republic is obliged to enact legislation requiring credit institutions to implement remuneration policies that include reductions in payouts of previously earned amounts by, inter alia, participating in an equity plan; such reductions are to be carried out

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	enforcement of a clawback, then it is likely enforceable as to Slovak employees.	policy. If the equity plan is governed by U.S. law and that law would permit enforcement of a clawback, then it is likely enforceable as to Slovak employees.	policy. If the equity plan is governed by U.S. law and that law would permit enforcement of a clawback, then it is likely enforceable as to Slovak employees.	through bonus-malus schemes or clawback arrangements in specified circumstances, including without limitation, in the case of subdued or negative financial performance of the employer company.
South Africa	Likely enforceable provided the clawback provision is not at odds with any provision contained in the employment agreement in respect of equity awards. The employment contract should be reviewed and if necessary amended to ensure that there is no conflict, and that the executive agrees to any such clawback.	Yes, likely enforceable both as to the clawback of equity compensation and prevention of competition, provided in the case of the clawback that the provision is not at odds with any provision contained in the employment agreement in respect of equity awards. The employment contract should be reviewed and if necessary amended to ensure that there is no conflict, and that the executive agrees to any such clawback. The equity incentive plan should also specifically provide for the clawback in these circumstances	Yes, likely enforceable both as to the clawback of equity compensation and prevention of solicitation, provided in the case of the clawback that the provision is not at odds with any provision contained in the employment agreement in respect of equity awards. The employment contract should be reviewed and if necessary amended to ensure that there is no conflict, and that the executive agrees to any such clawback. The equity incentive plan should also specifically provide for the clawback in these circumstances.	There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.
Spain	Likely unenforceable under Spanish labor law, particularly as the clawback is triggered without any misconduct or individual culpability on the part of the employee.	Likely enforceable as to the clawback as long as the employees expressly accept the provision, the awards are given voluntarily by the issuer company and are conditioned on respecting the non-compete provision. The non-compete provision itself is enforceable only to the extent that (i) it respects the legal maximum duration (two years for qualified employees, six months for others), (ii) the company has a commercial or industrial interest that requires protection, and (ii) it is "adequately compensated" (meaning that the employee must receive equity	Yes, enforceable as to the clawback of equity compensation - see discussion under non-competes. Unclear whether a non-solicitation provision would itself be enforceable – likely that the same considerations that apply to a non-compete would be relevant.	No national laws have been enacted to implement the remuneration-related amendments to the EU Capital Requirements Directive. However, Spanish credit institutions that have received public funds from the Spanish Fund for Orderly Banking Restructuring must comply with the Commission Recommendation of April 30, 2009 on remuneration policies in the financial services sector. Further, the Spanish Securities Authority has proposed to update its corporate governance recommendations for listed companies to comply with this Commission Recommendation as

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		award income in an amount equivalent to, at a minimum, approximately 50% of his remuneration for the duration of the non-compete obligation).		regards the regime for the remuneration of directors of listed companies. In addition, it is expected that the Bill on Sustainable Economy, currently under discussion in the Spanish Parliament, will include certain measures to increase the transparency of remuneration policies of financial institutions.
Sweden	No, likely not enforceable in practice. Sweden has no legislation regarding clawbacks, as such. However, successfully reclaiming previously-paid compensation is generally difficult.	No, likely not enforceable as to either the clawback of equity compensation or prevention of competition. The use of non-competition clauses is highly restricted. For example, the employee must be entitled to compensation during the period when his/her possibility to engage in new employment is restricted. The compensation must correspond to the difference between the salary the employee was entitled to upon termination of his/her employment and any lower salary he/she receives from a new employer, up to a maximum of 60% of the employee's salary on his/her termination date.	No, likely not enforceable as to the clawback of equity compensation. May be enforceable to prevent solicitation – Swedish law is not as strict in the non-solicitation context, as compared to the non-competition context. Assuming that the non-solicitation clause is drafted in such a manner that it does not restrict the employee's chances of taking up a new employment at the same salary level as the employee's current position, additional compensation is normally not required to prevent solicitation.	Yes, Sweden has implemented regulations that require financial sector companies to institute remuneration policies that include forfeiture provisions. However, there are no regulations on clawbacks. Currently, 60% of the variable compensation due to certain employees in certain financial institutions must be withheld for no less than three years. The withheld remuneration may be cancelled in part or in whole depending on the company's results during the subsequent years. There are plans to implement even more strenuous regulations based on the EU Capital Requirements Directive, possibly effective as of March 1, 2011. The new regulations will apply to most types of banks, credit market companies and securities companies.

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Switzerland	Likely enforceable if the equity awards are not considered as salary, which they should not be as long as their value is not an “important part” of an employee’s total compensation – i.e., between 16% and 50% of total compensation, depending on the total income of the employee. The more highly paid the employee, the higher the threshold between salary and discretionary compensation.	<p>May be enforceable as to the clawback of equity compensation if the equity awards are not considered salary (see discussion in Dodd-Frank legislation column) and if the duration of the clawback is not longer than two years.</p> <p>Likely not enforceable to prevent competition unless the employee voluntarily resigns and (i) and (iii) below do not apply. According to Article 340c of the Swiss Code of Obligations (which is part of mandatory law), a non-compete obligation is <u>not</u> enforceable in the following circumstances: (i) the employee proves that the employer no longer has a significant interest in its maintenance; (ii) the employer terminates the employment relationship without justified reason; or (iii) the employee terminates the employment relationship for a justified reason for which the employer is responsible.</p>	May be enforceable as to the clawback of equity compensation but likely not enforceable to prevent solicitation, each on the same basis as discussed under non-compete provisions.	The Swiss surveillance authority for the financial sector issued guidelines concerning the remuneration of employees in the financial sector (Circular letter 2010/1). These guidelines are mandatory for major banks only (those having more than CHF 2 billion of equity). In summary, they set the following principles: (i) the remuneration of the employees should be oriented on a long term basis; (ii) the remuneration should take into consideration the risks of the institution and the responsibility of the employee; (iii) deferred compensation or claw-back is appropriate if such remuneration is related to the future evolution of success or risk. Except for these recommendations, there is no mandatory clawback requirement under Swiss law.
Taiwan	Likely yes. From a Taiwan labor law perspective, as the equity awards are granted on a discretionary basis and not in fulfillment of any legal requirement, Taiwan labor law does not restrict a forfeiture and/or clawback provision from being enforced.	<p>Yes, enforceable as to the clawback of equity compensation as long as the employee agrees to it.</p> <p>May also be enforceable as to prevention of competition. The laws in Taiwan do not prohibit non-competition agreements in the employment context. Non-competition agreements will usually be recognized and enforced by the courts as long as they come with reasonable time and</p>	<p>Yes, enforceable as to the clawback of equity compensation as long as the employee agrees to it.</p> <p>May also be enforceable as to prevention of solicitation for the reasons discussed under non-competes.</p>	There is currently no legislation which requires financial sector employers to establish remuneration policies including forfeiture and/or clawback provisions.

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		geographical limitations and consideration (in this case, the value of the equity awards would constitute consideration). It may however be necessary to pay the employee 50% compensation for the period of the non-compete.		
Thailand	Likely yes. As the equity awards are granted on a discretionary basis and not in fulfillment of any legal requirement, Thai labor law does not restrict a forfeiture and/or clawback provision from being enforced.	<p>Yes, enforceable as to the clawback of equity compensation. Equity awards are a discretionary benefit granted by the parent company, not an obligation of employment. As such, a company is free to condition the grant on a non-compete tied to a clawback provision. It is enforceable as long as the employee agrees to the terms of the grant.</p> <p>A non-compete will only be enforceable to prevent competition to the extent it is deemed fair and reasonable in the circumstances under the Unfair Contract Terms Act. It is likely that a period of restriction beyond five years in case of a foreigner working in Thailand, or two years in case of a Thai employee would be deemed unfair.</p>	<p>Yes, enforceable as to the clawback of equity compensation, for the same reasons outlined in the non-compete discussion.</p> <p>Likely also enforceable as to the prevention of solicitation as this does not directly restrict the freedom of the employees with regard to their occupation/profession.</p>	There is no specific legislation in Thailand that requires financial institutions to establish remuneration policies that include forfeiture and/or clawback provisions. However, pursuant to the Financial Institution Business Act of Thailand, if the equity awards granted by a financial institution are regarded as gratuities and/or benefits normally payable to employees, the employees would be entitled to receive such equity awards in accordance with terms and conditions attached thereto. In this case, to ensure the enforceability of forfeiture and/or clawback mechanism, it is necessary to make clear in the equity award agreement and other relevant communications (such as, any prospectus) that the vested and/or unvested equity awards held by the eligible employees, including any profits they may receive from participating in the equity plan, will be subject to forfeiture or clawing back in particular circumstances.
United Kingdom	Likely yes, provided that the clawback provision is expressly and clearly stated in the award agreement which is signed by the employee. If it is	May be enforceable as to the clawback of equity compensation and prevention of competition in some circumstances. However, the	May be enforceable as to the clawback of equity compensation and prevention of solicitation in some circumstances as the legal tests	Yes. The FSA Remuneration Code (the "Code") has been amended to implement the remuneration-related amendments to the EU Capital

Country	Dodd-Frank Legislation Provision Enforceable? ¹	Clawback Triggered by Non-Compete Provision Enforceable? ²	Clawback Triggered by Non-Solicitation Provision Enforceable? ³	Local Legislation Providing Clawback/Forfeiture for Financial Institutions? ⁴
	<p>desired to deduct any clawed-back amounts from the employee's future wages, the employee would also have to agree to such deductions in writing. This clawback is unlikely to be viewed as an unenforceable penalty as the amounts clawed back should represent a genuine pre-estimate of the issuer's losses arising from the accounting restatement.</p>	<p>clawback is unlikely to be enforceable in isolation since restraints of trade are a matter of UK public policy.</p> <p>The non-compete restriction will be upheld by the English courts only if (i) it is imposed to protect a legitimate business interest, (ii) it goes no further than is reasonably necessary to protect that interest, and (iii) it is reasonable between the parties and the public interest. In addition to these factors, the clawback will be enforceable only if the amount to be clawed-back is calculated to compensate the issuer company for loss incurred, rather than to penalize the employee.</p> <p>If a non-compete restriction is not enforceable, the courts will not amend it so as to make it enforceable - they will simply strike the whole provision down, leaving the company with no protection.</p>	<p>identified under non-competes apply equally to a non-solicitation provision.</p> <p>In addition, a non-solicitation will be enforceable only if it only restricts the employee from (i) soliciting employees of the company group who were employed with the company at the date the employee left employment, and with whom the employee had material dealings; or (ii) soliciting customers of the company group with whom the employee had material dealings or contact in the months/year prior to termination of employment and who were customers or prospective customers in that time.</p> <p>A restriction lasting for longer than 12 months is likely problematic.</p>	<p>Requirements Directive. The new provisions are intended to curb excessive risk-taking by targeting variable remuneration (bonuses, equity awards, etc.) paid to senior managers and "risk-takers" among others. These provisions, effective on January 1, 2011, expressly require the terms of equity awards (and other variable remuneration) to provide for a reduction in the amount of an unvested award where (i) there is evidence of employee misbehavior or material error; or (ii) the firm and/or the business unit in which the employee works suffers a material downturn in its financial performance; or (iii) the firm and/or the business unit in which the employee works suffers a material failure in risk management.</p> <p>The Code does not impose absolute obligations in respect of the clawback of already vested compensation. However, based on the general requirements of the Code, it is likely that the FSA would consider it appropriate for firms to include clawback provisions in their remuneration arrangements in certain circumstances.</p>

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