

5 Considerations for Drafting Non-competes

While the FTC considers a court strategy, firms should **START** at the beginning and take into account the following 5 considerations when reviewing and drafting provisions:



Stakeholder selectivity —

Identify the critical stakeholders that have proprietary knowledge and trade secrets and consider limiting non-competes to this universe.

- Partners / MDs — talent with deep relationships, strategic and institutional knowledge
- Investment team — talent responsible for deal diligence, management and execution with access to proprietary information, differentiated strategy and knowledge
- Portfolio company execs — talent responsible for leading portfolio companies has knowledge of firm playbooks, strategy, etc.
- Operating partners — talent that has access to the entire portfolio with deep relationships, expertise, knowledge

Think about alternative agreements —

Consider non-solicitation or non-disclosure agreements as they may be more enforceable and less restrictive and cumbersome than non-competes.

Airtight —

Be bulletproof, making provisions clear and unquestionable as it relates to enforceability.

Reasonable restrictiveness —

Ensure non-compete clauses are narrowly tailored, reasonable and not overly restrictive in terms of geography, time and scope to avoid overreach.

Targeted and specific —

Be specific about departures to competitors or to found competing firms.