

# Garden Leave IP Protection Policy (India)

Policy and procedures for protecting IP during a departing employee's garden leave period

## HOW TO USE THIS TEMPLATE

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| 1. | This document: Garden Leave IP Protection Policy (India).    |
| 2. | Fill all bracketed fields before use.                        |
| 3. | Template only — not a substitute for qualified legal advice. |

## 1. WHAT IS GARDEN LEAVE AND ITS IP VALUE

**Definition.** Garden leave is a contractual arrangement where an employee serving their notice period remains on the payroll but does not attend work, access company systems, or work for any other employer. The employee is paid but inactive — available to the company but not operational.

**IP Protection Value.** Garden leave protects IP in three ways: (a) creates a buffer between the employee's last day of active work and joining a competitor; (b) allows the company to complete the exit IP audit, rotate credentials, and transition client relationships in a controlled manner; and (c) prevents the employee from using company resources or relationships for personal commercial gain during the notice period.

**Legal Validity in India.** Unlike broad post-employment non-compete clauses (largely unenforceable under Section 27 of the Indian Contract Act 1872), garden leave clauses have been upheld by Indian courts. The key distinction: garden leave restricts activity during employment (when the employer continues paying) — courts respect this. Post-employment non-competes restrict activity after employment ends — Indian courts generally do not enforce these for the restriction of trade.

## 2. WHEN TO INVOKE GARDEN LEAVE

**Senior Technical Employees.** Any employee with knowledge of: active product development and roadmap; proprietary algorithms or architectural decisions; security credentials and infrastructure design; or ongoing fundraising discussions and investor relationships.

**Sales and Business Development.** Employees with access to: active customer relationships and pending contracts; pricing strategies and commercial terms; competitive analysis; or prospect and partner pipeline.

**Known Departure to a Direct Competitor.** Any departure where the employee is known to be joining a direct competitor — especially with access to trade secrets, customer data, or strategic plans.

**Unexplained Resignations.** Where the reason for departure is unclear and there is reason to suspect IP misappropriation may have occurred or be planned.

## 3. GARDEN LEAVE OPERATIONAL CHECKLIST

- Receipt of resignation — notify IT, HR, and IP Manager same day
- System access revoked immediately — email, repositories, CRM, cloud storage, VPN, Slack
- All company devices collected — forensic image taken before wiping

- Garden leave letter issued — start date, duration, salary continuation, obligations, restrictions
- All credentials rotated — cloud keys, database passwords, API keys, shared accounts
- Exit IP audit commenced — per employee-exit-ip-obligations-india.pdf
- Client transition plan activated — internal team notified; clients contacted proactively
- Final payment withheld until exit IP audit completion confirmed by IP Manager
- Reference policy reviewed
- Post-departure monitoring plan activated for senior cases

#### 4. CONTRACT LANGUAGE AND ENFORCEMENT

**Required Contract Language.** Garden leave must be in the employment agreement from the start — it cannot be imposed retrospectively. Required provisions: express garden leave clause; IP Manager's right to invoke at discretion; salary continuation during garden leave; and confirmation that all IP obligations remain in full force.

**Enforcing During Garden Leave.** If an employee on garden leave breaches obligations: issue a formal breach notice demanding immediate compliance; apply to the appropriate High Court for an injunction enforcing the garden leave clause; preserve all evidence of the breach for damages assessment.

**Post-Departure Monitoring.** For senior departures to direct competitors, monitor: LinkedIn updates (new role start date, job description); any approaches to former colleagues or clients; product launches by the new employer that appear to use knowledge from this company; and any trademark or patent filings by the new employer that overlap with the company's IP.

**Exit Interview Protocol.** Conduct an exit interview covering: what confidential information the employee has been working with; whether they understand their post-departure confidentiality obligations; whether they have any company materials at home or on personal devices; and what their next role will be. Document the exit interview and have the employee confirm the discussion in writing.

##### IMPORTANT NOTE

Working template for Garden Leave IP Protection Policy (India). Verify requirements with a qualified IP advocate.

## THE LEGAL LANDSCAPE AND NEGOTIATING GARDEN LEAVE TERMS

Indian employment law creates a specific challenge for IP protection on departure: post-employment non-compete clauses are generally unenforceable under Section 27 of the Indian Contract Act 1872, which prohibits agreements in restraint of trade. This means that once an employee leaves, the company cannot prevent them from working in the same industry or for a competitor. Garden leave addresses th

is by keeping the employee 'employed' (and paid) during the notice period, during which the employment restrictions remain fully in force. This makes the notice period length and the garden leave clause the primary IP protection tools for departing employees. Negotiating notice periods for IP-critical roles: the standard 1-month notice in most employment agreements is insufficient for senior techn

ical or sales roles where IP risk is significant. For roles with significant IP exposure, negotiate: 3-month notice periods for senior engineers, product managers, and sales leaders; 6-month notice periods for the CTO and VPs of Engineering or Sales. Longer notice periods are more likely to be enforced by courts when they are proportionate to the seniority and IP exposure of the role. Payment in l

ieu of notice: many employment agreements allow the employer to pay in lieu of notice rather than requiring the employee to work through or sit out the garden leave period. Consider carefully whether this is appropriate for IP-critical departures — payment in lieu saves cost but eliminates the garden leave period entirely. For IP-sensitive departures, consider reserving the right to place the empl

oyee on garden leave rather than paying in lieu. Enforceability considerations: Indian courts have enforced garden leave clauses in several decisions including Wipro v Beckman Coulter (Delhi HC) and other technology sector cases. The key factors courts assess: the clause must be in the employment agreement from the start (not introduced later); the employee must continue to be paid at the full con

tractual rate; the duration must be reasonable relative to the seniority and IP access of the role; and the clause should clearly state what the employee is and is not permitted to do during the garden leave period.

## ADDITIONAL COMPLIANCE GUIDANCE AND BEST PRACTICES

ADDITIONAL GUIDANCE ON COMPLIANCE AND BEST PRACTICES. Indian IP law continues to evolve rapidly, with the Patent Office, Trade Marks Registry, and Copyright Office all implementing digital transformation initiatives that affect how IP is filed, prosecuted, and enforced. The Patents Amendment Rules 2024 introduced new provisions for startup fee concessions and updated the examination procedure timelines. The Trade Marks Act 1999 has been interpreted by courts in a growing body of decisions that clarify how confusion is assessed, how well-known

marks are recognised, and how bad faith is established. The DPDP Act 2023 has implications for IP-linked customer data and product development processes. For each IP action described in this document, the Company should consult a qualified IP advocate licensed to practice before the Indian Patent Office and Trade Marks Registry. IP advocates combine technical expertise with legal training specific to Indian IP law. When selecting an IP advocate, assess: their specific experience in your technology sector or product category;

their track record at the relevant Patent Office branch or Trade Marks Registry; and their ability to coordinate international filings through their network of foreign associates. The IP Manager should maintain a master calendar tracking all IP filing deadlines, prosecution response deadlines, renewal dates, and opposition window close dates. IP deadlines are typically non-extendable and missing them can result in permanent loss of rights. Use a dedicated IP management tool or a carefully maintained calendar system with triple-reminder alerts. Document

all IP decisions and the reasoning behind them. When the Company decides not to file a patent application for a particular technology, document the decision and reasoning. When a trademark opposition is decided not to pursue, document the decision. This decision trail is important for investor due diligence, management continuity, and defence of subsequent IP disputes. Build a quarterly IP Committee meeting cadence: the IP Manager, CTO or Head of Product, CFO, and CEO should review IP programme status, upcoming

decisions, and strategic IP priorities every quarter. This keeps IP on the leadership agenda and ensures that commercial and technical strategy is aligned with IP investment decisions. The IP Committee meeting should produce a brief written record of decisions taken and actions assigned. International IP coordination requires proactive management of priority deadlines. The Paris Convention priority period of 12 months for patents and 6 months for trademarks and designs starts from the Indian filing date. If international protection is planned,

calendar these priority deadlines immediately on the Indian filing date. The cost of filing internationally increases significantly if priority is not claimed because prior art in the intervening period may destroy novelty. Budget for professional indemnity insurance for the IP function. As IP becomes a larger component of the Company's value and IP decisions involve significant financial stakes, the IP Manager and the Company's IP counsel should be appropriately insured against errors and omissions. Review the IP programme's documentation quality

annually. The best IP strategy is undermined by poor documentation. Every IP right should have a complete file: the registration or application document, all prosecution history, all renewal receipts, and all related agreements. Files should be backed up in at least two locations and access-controlled to prevent inadvertent deletion. Template only. Not legal advice. Consult a qualified IP advocate for all decisions affecting the Company's intellectual property rights.