

Enforcing Non-Compete Restrictions against Former Employees in the UAE

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Employees are often privy to a wide range of their employer's confidential and commercially sensitive information.

To safeguard their business interests and protect the integrity of their confidential information, it is understandable that many companies seek to prevent their employees from leaving the company and immediately joining a competitor, given the risk of the company's commercial information being divulged to the new employer and undermining the former employer's competitive edge.

In light of this risk, Article 127 of UAE Federal Law 8 of 1980, as amended ("UAE Labour Law") allows UAE companies to impose [post-termination restrictions](#) on their employees to prohibit them from competing with the company for a period of time following termination of their employment. Article 127 requires that non-compete restrictions are imposed only to the extent necessary to protect the company's legitimate business interests, and accordingly the restrictions must be limited with respect to time, place and the nature of work.

However, even where non-compete restrictions are contractually agreed upon between an employer and an employee, it is very difficult for UAE companies to enforce the restrictions in practice once the individual leaves the company. This is primarily because injunctive relief is not an available remedy before the UAE Labour Court and accordingly, companies are unable to obtain a court order preventing their former employees from joining a competitor (the position is different within the Dubai International Financial Centre ("DIFC") and the Abu Dhabi Global Market ("ADGM"), both of which are separate legal jurisdictions whereby the respective courts do have the power to grant injunctive relief). Accordingly, if a former employee is in breach of their contractual non-compete obligations, in practice the company's recourse (outside the DIFC and ADGM) is typically limited to seeking monetary damages from the former employee or potentially filing a police complaint against them for breach of confidentiality, both of which give rise to their own challenges in practice.

Ministerial Resolution 297 of 2016 seeks to introduce a mechanism for Article 127 of the [UAE Labour Law](#) to be enforced in practice. In particular, the Resolution provides that the Ministry of Human Resources and Emiratisation (formerly known as the Ministry of Labour) may refrain from issuing a work permit (or withdraw a work permit that has already been issued) where a final court judgment finds that the individual is (or would be, if a new work permit is issued) in violation of the non-compete obligations owed by the individual to their former employer. This action can be taken by the Ministry in respect of the validity period of the non-compete restriction. For example, if the individual has a six month non-compete restriction, the Ministry may refrain from issuing them a new work permit (or withdraw a work permit that has already been issued) for a period of six months following termination. As a preliminary threshold issue, the contractual non-compete restriction would need to be limited in duration, geographical scope and business activities to the extent necessary to protect the former employer's legitimate business interests (in accordance with Article 127 of the Labour Law) and accordingly a company cannot rely on the Resolution to enforce an excessively broad or onerous non-compete restriction.

It is yet to be seen how the resolution will work in practice, including whether it can form the basis

of a claim in its own right (or whether it would need to form part of a civil claim for monetary damages, as mentioned above, or be raised as a counter-claim to a labour claim filed by the employee). In any event the company would need to incur the costs of filing (or defending) a court claim and await final judgment. Further, practically speaking the final court judgment would likely be obtained after the individual's contractual non-compete restrictions have expired (and therefore it remains to be seen whether, in the event of a successful claim and in order to give teeth to the Resolution, the employee's work permit with the new employer may be withdrawn). Further, the Resolution cannot be relied upon where the former employee wishes to join a competitor in a UAE free zone (or is otherwise not regulated by the Ministry), as they would not require a Ministry work permit to join the new company.

Notwithstanding the potential procedural and practical issues, however, the Resolution may assist UAE companies in enforcing non-compete restrictions against their former employees and help safeguard the company's sensitive information and commercial interests.

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