

**POST-CONTRACTUAL NON-COMPETITION CLAUSE
ACCORDING TO THE LAWS OF THE UNITED ARAB EMIRATES**

If a company grants an employee access to confidential information, know-how or its customer base, it is usually in the employer's interest to prevent the employee from taking advantage of such knowledge and seeking employment with a competitor. The employer can try to prevent this risk by agreeing on a non-competition clause which covers a period after the termination of the employment relationship (so-called post-contractual non-competition clause). Both the labour law and the civil law of the United Arab Emirates ("UAE") contain respective provisions.

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A post-contractual non-competition clause may stipulate the employee's obligation for a particular period of time after the termination of the employment relationship in an agreed territory not to work for a competitor, not to compete by offering own services, not to conduct business with (potential) customers of the previous employer and/or not to hire the former employer's staff.

2. PRECONDITIONS

A post-contractual non-competition clause can only be agreed upon in a legally effective way if the employee's work actually enables him to have access to company secrets or maintain relations with customers of the employer.

Furthermore, the employee, who shall be a party to a post-contractual non-competition agreement, must be at least 21 years of age. Such agreement has to be restricted with regard to the applicable time, geographical scope and type of work. Aforementioned criteria must be limited to the extent necessary to protect the employer's lawful interests.

A provision that leads to a factual employment ban of the employee or that covers a territory in which the employer has not conducted any business yet is likely to be considered invalid. In addition, a post-contractual non-competition clause, which was initially concluded in a legally effective manner, might later not be enforceable should the employer's termination lack a valid reason or should the employment relationship be terminated by the employee due to an act of the employer justifying such termination.

3. LEGAL EFFECT

A breach of a valid and enforceable post-contractual non-competition clause renders the employee liable to pay damages to the employer. The employer bears the burden of proof for the contractual breach as well as the actual damage sustained. Should the court deem a non-competition clause partially invalid, for instance because the court considers the agreed period of non-competition as too long, the court can reduce said obligation to a reasonable duration.

Besides the civil liability, a breach of a non-competition clause may under certain circumstances also entail a criminal liability of the employee.

It is not mandatory under UAE law that the employer pays an allowance to the employee for observing the post-contractual non-competition clause.

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Should the employer be located outside a free zone, a post-contractual non-competition clause can be agreed upon in the standard employment contract of the Ministry of Labour. The employment contracts of some free zones already contain respective provisions by default. Other free zones provide an additional template including a post-contractual non-competition clause that can be signed and registered along with the standard employment contract.

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