

 **Key Considerations for Non-Compete Clauses in Commercial Contracts**

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Table of contents

Overview	3
Definitions	3
Practical Guidance	3
Identify the legitimate commercial interest	3
Draft the clause with clarity and specificity	4
Ensure the duration is reasonable	4
Define a reasonable geographical scope	4
Maintain proportionality and fairness	5
Ensure compliance with applicable UAE legislation.....	5
Comparison with common law	5
Related Content	6
Author	7

Overview

Non-compete clauses in commercial contracts are widely recognised under United Arab Emirates (UAE) law as a legitimate mechanism for protecting commercial interests, confidential information, trade secrets, and client relationships. Such clauses are commonly used in employment agreements, consultancy arrangements, agency relationships, shareholder agreements, and commercial service contracts, particularly in competitive sectors such as technology, consulting, financial services, and sales.

Under UAE law, non-compete obligations must strike a balance between protecting the legitimate interests of the benefiting party and preserving the professional and commercial freedom of the restricted party. Excessive restrictions may be deemed unenforceable if they unfairly restrain trade or prevent a party from earning a livelihood.

The primary legislation governing non-compete obligations in commercial relationships includes Federal Decree-Law No. 50/2022 On the Promulgation of the Commercial Transactions Law and Federal Decree-Law No. 33/2021 On Regulation of Labour Relations. UAE courts generally assess the validity of non-compete clauses based on legitimate interest, clarity, proportionality, geographical scope, and reasonable duration.

This Practice Note discusses the practical considerations for drafting enforceable non-compete clauses in the UAE, including legal compliance requirements and key contractual protections.

Definitions

- *Non-compete clause*: A contractual provision restricting one party from engaging in activities that compete with the business interests of another party for a specified period, geographical area, or business sector.
- *Legitimate interest*: A genuine commercial interest requiring legal protection, including confidential information, trade secrets, client relationships, goodwill, or proprietary business information.
- *Confidential information*: Non-public commercial or technical information belonging to a business, including client databases, pricing structures, marketing strategies, contracts, and operational processes.
- *Restrictive covenant*: A contractual undertaking limiting a party's ability to perform certain commercial activities following termination of a contractual relationship.
- *Solicitation*: The act of approaching clients, customers, employees, or business partners for the purpose of transferring business relationships or employment opportunities.
- *Geographical scope*: The territorial scope within which the non-compete restriction applies, such as a city, Emirate, region, or country.
- *Reasonable duration*: The permissible timeframe during which a non-compete obligation remains enforceable following termination of the contractual relationship.
- *Proportionality*: The legal principle requiring contractual restrictions to be balanced and no broader than necessary to protect legitimate business interests.

Practical Guidance

Identify the legitimate commercial interest

Before drafting a non-compete clause, the benefiting party should identify the specific commercial interests requiring protection. UAE courts generally recognise the following as legitimate interests:

- Trade secrets and proprietary information.
- Confidential business data.
- Client and customer relationships.
- Commercial goodwill and reputation.
- Internal operational or strategic information.

For example, restrictions may be justified where an employee, consultant, or agent has access to:

- Sensitive client contracts.
- Pricing structures.
- Marketing strategies.
- Confidential commercial negotiations.
- Proprietary systems or databases.

The restriction should directly relate to protecting these interests rather than preventing ordinary competition.

(See Articles 61-66 of Federal Decree-Law No. 50/2022)

Draft the clause with clarity and specificity

Non-compete clauses should clearly define the prohibited activities and the scope of the restriction. Ambiguous drafting may reduce enforceability and increase the likelihood of disputes.

The clause should specify:

- The restricted activities.
- The relevant products or services.
- The targeted clients or customer categories.
- The restricted markets or sectors.

Practical examples include:

- Restricting a sales employee from contacting clients previously managed during employment.
- Preventing consultants from using confidential client information for competing businesses.
- Restricting solicitation through email, social media, or direct communication channels.

Clear drafting reduces uncertainty and demonstrates that the restriction is proportionate and commercially justified.

Ensure the duration is reasonable

The duration of the restriction must be proportionate to the legitimate interest being protected. Excessively long restrictions may be considered unenforceable under UAE law.

In practice, non-compete periods commonly range between:

- Six months; and
- Two years.

The reasonableness of the duration depends on factors such as:

- The nature of the business.
- The seniority of the individual.
- The sensitivity of the information involved.
- The nature of client relationships.

For example:

- A one-year restriction may be appropriate for sales or consultancy roles involving direct client access.
- A five-year restriction may be considered excessive and an unlawful restraint on trade.

(See Federal Decree-Law No. 33/2021)

Define a reasonable geographical scope

The geographical scope of a non-compete clause should be limited to areas where the benefiting party conducts business or has legitimate commercial interests.

Examples of reasonable territorial restrictions may include:

- Dubai.
- Specific Emirates.
- Particular Gulf Cooperation Council (GCC) jurisdictions.
- Defined business regions.

Broad restrictions covering territories where the benefiting party has no commercial activity may be considered disproportionate.

For example:

- Restricting competition within Dubai may be more enforceable than restricting activity throughout the entire UAE.
- A regional restriction may only be justified where the business operates across multiple jurisdictions.

The geographical limitation should correspond to the actual operational footprint of the business.

Maintain proportionality and fairness

UAE courts generally assess whether the clause is fair and proportionate in light of the circumstances of the contractual relationship.

Factors commonly considered include:

- The duration of the restriction.
- The geographical scope.
- The scope of prohibited activities.
- The commercial necessity of the restriction.
- The impact on the restricted party's ability to earn a livelihood.

To improve enforceability:

- Avoid blanket restrictions.
- Limit restrictions to genuinely competitive activities.
- Regularly review clauses to ensure continued commercial relevance.
- Ensure the clause is tailored to the role and industry concerned.

Fair and balanced clauses are more likely to withstand judicial scrutiny.

Ensure compliance with applicable UAE legislation

Both parties must ensure compliance with the applicable provisions of UAE law governing restrictive covenants and commercial obligations.

In particular, Articles 61-66 of Federal Decree-Law No. 50/2022 provide the legal framework governing commercial non-compete obligations and compensation claims arising from breaches.

Non-compete clauses should therefore:

- Be clearly drafted.
- Define the restricted activities precisely.
- Avoid excessive restrictions.
- Establish a legitimate commercial justification.
- Provide a basis for compensation where a breach occurs.

Failure to comply with these principles may render the clause partially or wholly unenforceable.

Comparison with common law

Although UAE law recognises non-compete clauses, the approach differs in certain respects from common law jurisdictions such as England and Wales.

UAE civil law approach

- UAE courts place strong emphasis on proportionality and fairness.
- Restrictions must be directly linked to legitimate commercial interests.
- Courts may reduce or disregard excessive restrictions.
- Contractual freedom is balanced against public policy considerations.

Common law approach

- Common law jurisdictions generally assess whether the restriction is reasonable between the parties and in the public interest.
- Courts often apply detailed judicial tests relating to restraint of trade.
- Greater emphasis may be placed on precedent and judicial interpretation.

Key differences

- UAE courts rely heavily on statutory principles and considerations of justice
- Common law jurisdictions may apply more extensive case law analysis.
- UAE law tends to focus on balancing commercial protection with economic freedom.

(See Federal Decree-Law No. 50/2022)

Related Content

Legislation

- Federal Decree-Law No. 50/2022 On the Promulgation of the Commercial Transactions Law
- Federal Decree-Law No. 33/2021 On Regulation of Labour Relations

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Biography

Emad Elhabbak is a Senior Legal Advisor at SAT & CO with more than 25 years of legal experience in the UAE, advising and representing clients in civil, commercial, and maritime matters. He previously practiced at one of the UAE's leading local law firms, where he gained extensive litigation and advisory expertise.

His practice includes full-cycle litigation management, including case assessment, legal strategy development, drafting pleadings and memoranda, oral submissions, and enforcement proceedings. Emad is also experienced in drafting and reviewing commercial and maritime contracts, with a strong focus on regulatory compliance and protection of commercial interests.

In addition to litigation and contractual work, Emad advises corporate leadership through legal opinions, policy support, and strategic guidance. He is also skilled in negotiation, arbitration, and alternative dispute resolution, delivering practical and effective legal solutions tailored to client needs.