

Client Alert- March 2020**Ministerial Decrees issued by the Ministry of Human Resources and Emiratisation of the UAE**

In light of the ongoing COVID-19 pandemic (the "Pandemic") and the lockdown measures imposed by the federal and local authorities, two ministerial decisions were issued by the Ministry of Human Resources and Emiratisation of the United Arab Emirates: Ministerial Decision No. 279 of 2020 issued on 26 March 2020 and Ministerial Decision No. 281 of 2020 dated 29 March 2020.

I. Ministerial Decision No. 279 of 2020 (the "MD No. 279")

While we will have to ultimately wait until there are decisions rendered by the labour courts to understand how the courts will interpret MD No. 279, we provide nonetheless the following brief on MD No. 279 in light of its content but also the legal precedents in the United Arab Emirates case law and international doctrine:

- 1. Purpose:** MD No. 279 aims to stabilize employment in the private sector during the period in which the UAE is imposing precautionary measures to limit the spread of the Pandemic (the "Precautionary Measures Period") and to find a solution for companies that wish to hire new employees but are faced with the complete freeze of new visas.
- 2. Scope:** MD No. 279 is only applicable to foreign employees and therefore does not apply to Emirati nationals (article 8 of MD No. 279).
- 3. Measures:** In accordance with Article 2 of MD No. 279, companies that are affected by the precautionary measures and that wish to reshape their organizational structure, may, by reaching an agreement with the targeted employees, take one of the following measures, **by order of listing:**

1. Implement a remote working policy;
2. Grant paid leaves to the employee;
3. Grant unpaid leaves to the employee;
4. Implement a temporary pay-cut during the Precautionary Measures Period (*this measure shall be taken in a temporary addendum to the employment contract*);
5. Implement a permanent pay-cut (*in such case the company must apply for the procedure to amend the employment contract terms*).

The most severe measure, being option five, may only be adopted if all previous measures are inefficient and would not result in pacifying the employer's financial distress. According to precedents, measures may only be justified by the severity of the difficulties an employer is facing.

4. **Layoffs:** Pursuant to Article 3 of MD No. 279, companies that are affected by the Precautionary Measures and that have an excess of employees may decide to discontinue the payment of the employee's salary and post information regarding such employee on the Virtual Labour Market in order to allow other companies that are interested in hiring to have access to his details (the Virtual Labour Market is an initiative by the Ministry of Human Resources and Emiratisation, a platform on their website where job opportunities are posted: <https://careers.mohre.gov.ae/>).

However, the company laying off the employee must continue to pay the housing and any other benefits provided for under the employment agreement (excluding the basic salary), until the employee has either found a new position or has left the United Arab Emirates.

5. **Observations:** In light of MD No. 279, we would like to make the following observations.
 - Priority order: In order to best preserve the interest of both the employer and the employee, the parties should agree on the aforementioned measures by order of priority. In other words, if remote working is

possible, the company shall do so and may not resort to the other measures. Eventually, the permanent pay-cut and finally the layoff must be the last resort.

- In case of dispute: Based on previous case law, should there be a dispute with the employee, the company can find itself liable for damages and for unlawful termination (i) if it did not respect the order of priority in the negotiations with the employee; or (ii) if the measures it has adopted were exaggerated compared to the effect that the Precautionary Measures has had on the business the company.

In other words, the labour courts will work on a case-by-case basis and the company can find itself in the position of having to prove the impossibility of remote working, or the severe reduction in demand and loss of business that would justify the measures taken.

The labour courts generally adopt an approach that protects the weaker party being the employee and the measures taken should therefore be decided very meticulously.

II. Ministerial Decision No. 281 of 2020 (the "MD No. 281")

- 1. Purpose:** MD No. 281 aims to organize remote work for private sector companies during the Precautionary Measures Period.
- 2. Scope:** MD No. 281 is applicable to all private sector companies.
- 3. Prioritised Employees:** In accordance with Article 4 of MD No. 281, some categories of employees have priority to work from home: pregnant individuals, employees aged 55 and above, physically challenged individuals, employees suffering from respiratory or chronic diseases and employees (female) with kids in the ninth grade or below.
- 4. Capacity Limitations:** Pursuant to Article 1 of MD No. 281, if employees are needed at the premises of the company, the latter shall ensure that there is no

more than 30% of the total number of employees present at all times. In addition, the clients allowed inside the premises shall also not exceed 30% of the normal capacity.

These limitation do not apply to companies working in infrastructure, catering, telecommunication, energy, health, education, banking, food manufacturing, hospitality, medical supply manufacturing and cleaning companies (Article 3 of MD No. 281).

- 5. Safety Measures:** MD No. 281 provides for a number of safety measures that should be taken by private sector companies such as:
 - Ensure there is proper social distancing between clients
 - Continuous sanitization
 - Temperature measurement
 - Provide transportation for employees (the occupancy of the vehicles shall not exceed 25% of their normal capacity).

- 6. Guidelines:** Attached to MD No. 281 are guidelines elaborated for the employer and the employee regarding the remote working.

We will naturally keep you informed should there be any further developments such as the issuance of additional decisions and guidelines organizing the employment in the private sector.