



# Intricacies of the Employment Contract

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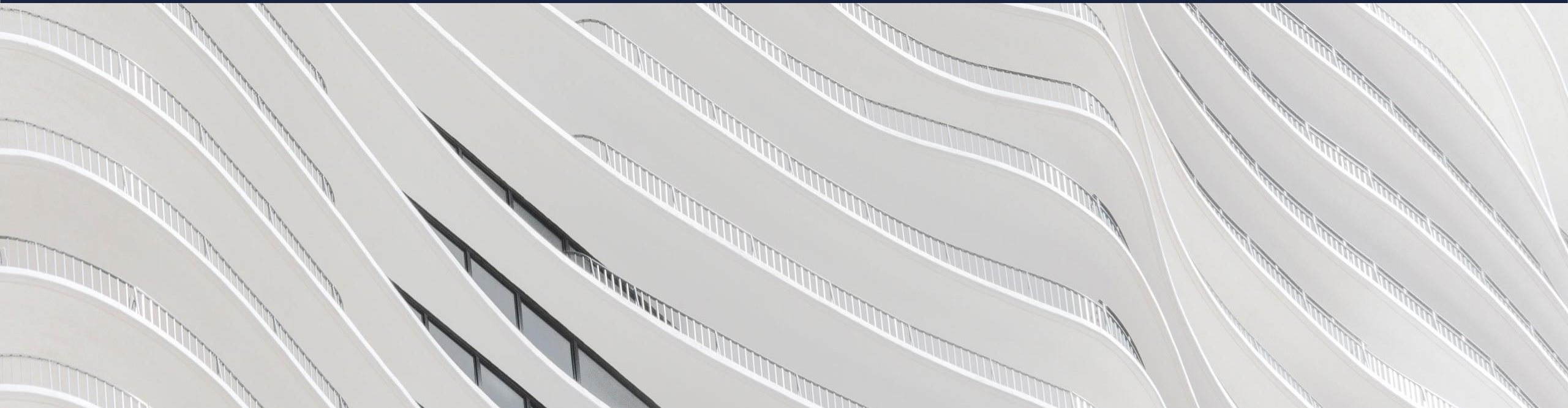

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# UAE labour law and employment landscape

- Federal law & various decrees (UAE Federal Law No. 8 of 1980, as amended)
- Onshore versus free zone:
- Additional considerations
- Local laws (of each Emirate)
- Free Zone Regulations
- Shari'ah (Islamic) Law
- Custom and practice
- Contracts and policies



# Recruitment and working permissions



# Recruitment & working pensions

## Expatriates:



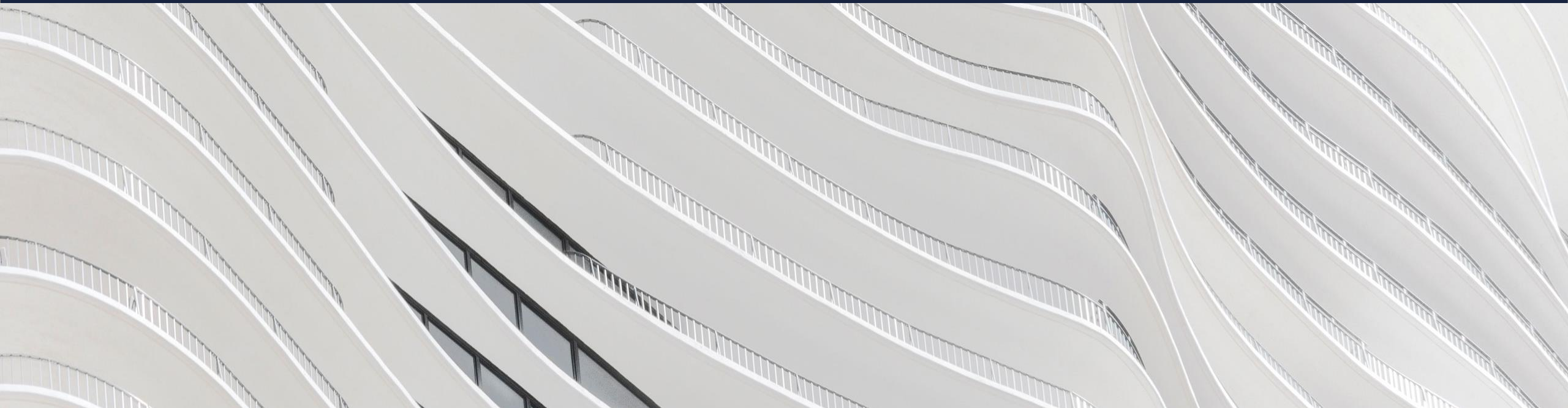
- non-national employees only permitted to work in UAE where (in theory)
- there is no registered unemployed national capable of performing the job ; and
- where s/he has requisite skills or educational qualifications.
- must be sponsored by an entity established in UAE

## UAE nationals:



- require a work permit
- pension contribution entitlement
- protected from termination
- Emiratization

# The employment contract



# Employment contracts

- Mandatory Details (articles 36 and 37 of labour law):
  - Date of contract
  - Start date of employment
  - Duration and end date (if limited term)
  - Nature of work
  - Location of work
  - Amount of remuneration
  - Probation: maximum 6 months

# Supplementary Contracts

- Many international employers require employees to enter into a supplementary contract of employment
- The supplementary contract is personal between the employer and the employee
- Not filed with the authorities
- More comprehensive in content
- Typically addresses confidentiality, intellectual property, post-termination restrictions
- Courts will look at the supplementary contract in the event of dispute



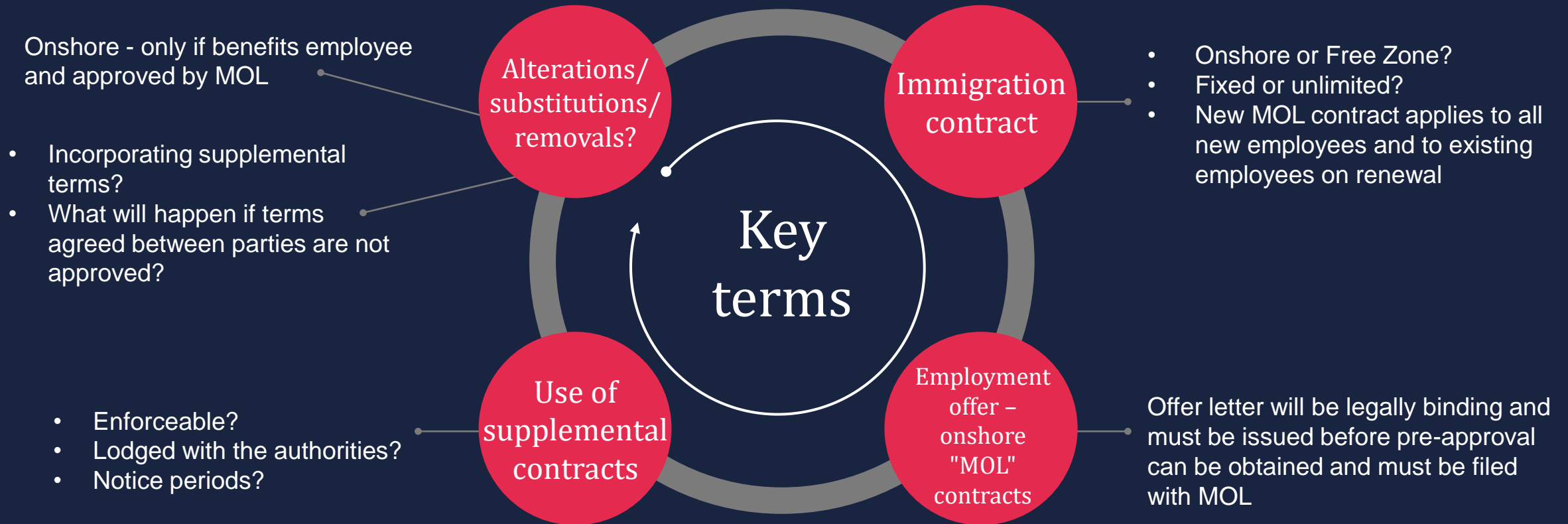
# Record Keeping

- Employer should keep a file on each employee recording:
  - Name
  - Occupation
  - Age
  - Nationality
  - Place of residence
  - Marital status
  - Date of recruitment
  - Remuneration
  - Any changes to contract
  - Any penalties imposed on him / her
- Additional requirements if 15 or more employees (Article 54 UAE Labour Law)

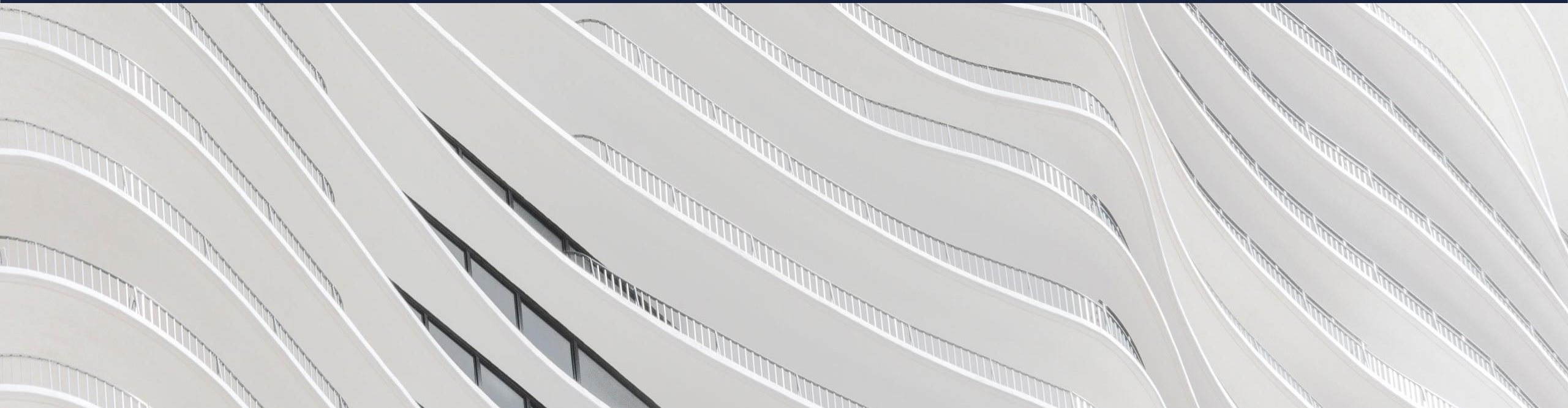
# Wage Protection System

- Effective as of 1 September 2009
- Onshore companies must register and pay salary through WPS
- Free-zone companies excluded, including DCCA (with limited exceptions e.g. JAFZA)
- Salary to be paid in UAE Dirhams
- Payment from and into local bank account
- Penalties for failure to comply

# Relationship between the different employment contracts



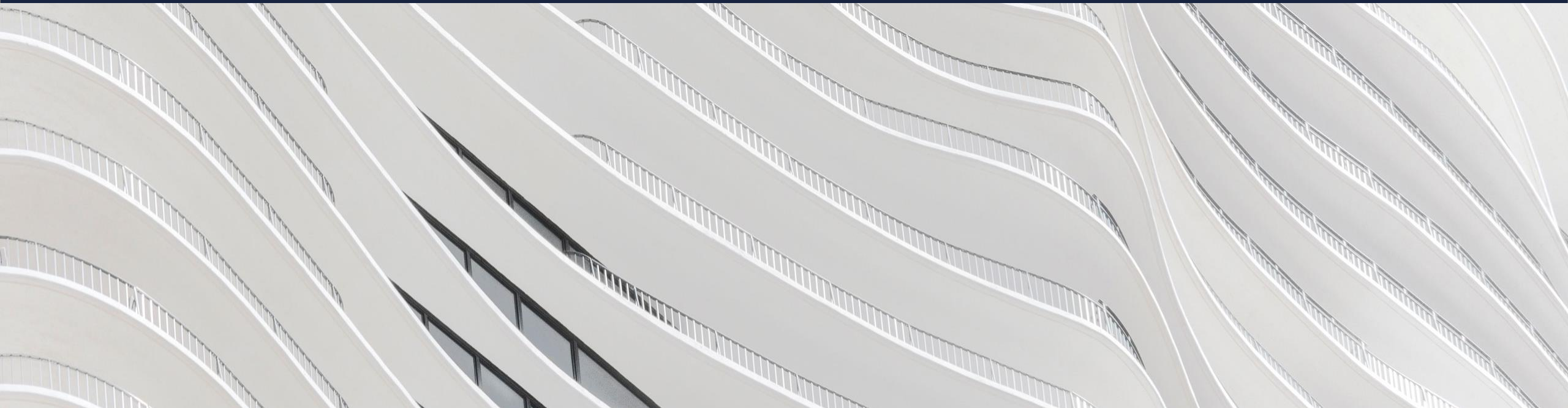
# Unlimited vs limited term contracts



# Unlimited vs limited term contracts

Fixed term contract	Unlimited term contract
Up to two years- can be renewed for equal or shorter term.	Minimum notice period 30 days.
Terminates on expiry date.	Must have a "valid" reason to terminate.
Will be deemed to have been renewed where the parties continue to perform contract.	
Requirement to give notice under new ministerial resolution 1-3 months plus indemnity.	Potential claim is termination is deemed to be arbitrary of up to three months salary.
EOSG not payable where employee resigns unless he/she has more than five years service.	EOSG payable if employee had more than a years service.

# Working time and leave requirements



# Working time and overtime

- Maximum of eight hours a day, 48 hours a week over a six day week (reduced by 2 hours during Ramadan)
- One hour break for rest, meal and prayer (for every five hours worked)
- Overtime compensation:
  - daytime working week: supplement of 25%
  - between 9pm - 4am: supplement of 50%
  - on Fridays (and / or other rest day): supplement of 50% or time in lieu
  - during holiday: supplement of 50% and time in lieu OR supplement of 150%
- Maximum overtime two hours a day
- Overtime does not apply to senior executive, managerial or supervisory positions having powers of employer over employees (except no carve out for holiday overtime)

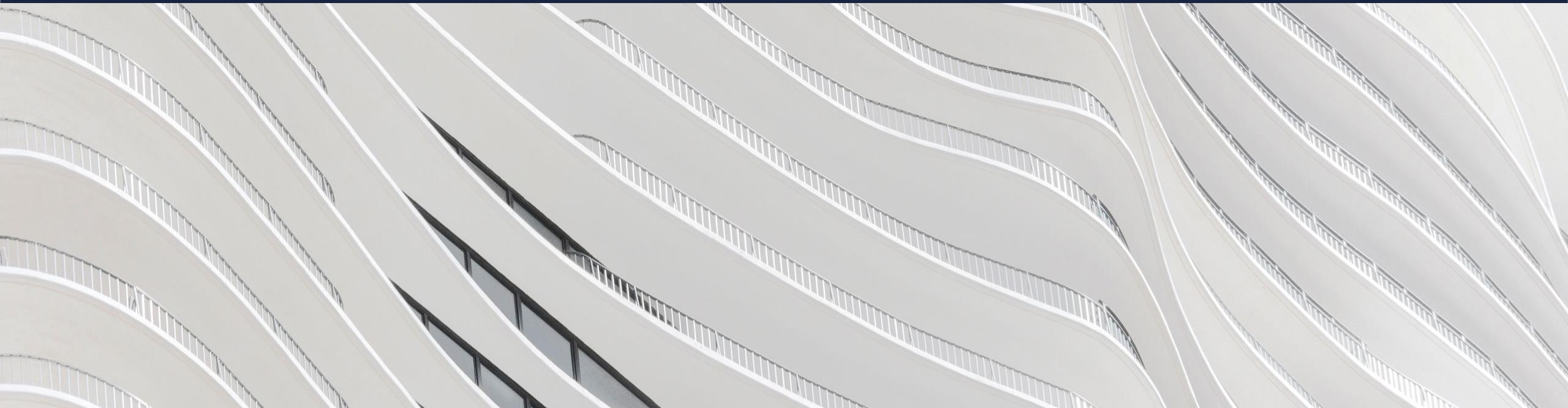


# Statutory leave entitlement

Type of leave	Length	Compensation
Annual leave	2 calendar days per month (service more than 6 months and less than 1 year) 30 calendar days – i.e. 22 working days (after 1 year's service)	Under the Labour Law, basic salary plus housing allowance. MOL advice indicates that all contractual allowances must be paid during annual leave.
Official leave	11 days over 8 holidays (including the new Martyrs' Day holiday) – majority are Muslim festivals, which are timed according to sightings of the moon	Paid
Sick leave	90 calendar days – after 3 months' service following completion of probation period	15 days full pay; 30 days half pay; 45 days without pay per year of service
Hajj leave	30 calendar days	Unpaid
Maternity leave	45 calendar days	If less than one year's service – half pay If more than one year's service – full pay
Maternity sick leave	100 calendar days after initial maternity leave period has been completed if employee is ill due to pregnancy or birth	Unpaid
Nursing breaks	2 half hour breaks per day	Paid



# Early termination of contract



# Termination of employment

## Fixed term contract

- Expires automatically (unless agree otherwise or continue to perform) (Article 36 UAE Labour Law)
- Requirement to give notice under new rules 1-3 months + indemnity

## Unlimited term contract

- Either party can terminate for a valid reason by giving minimum 30 days' notice (Article 117 UAE Labour Law)
- Parties can agree longer period, maximum 3 months (Ministerial Decree 765 of 2015)

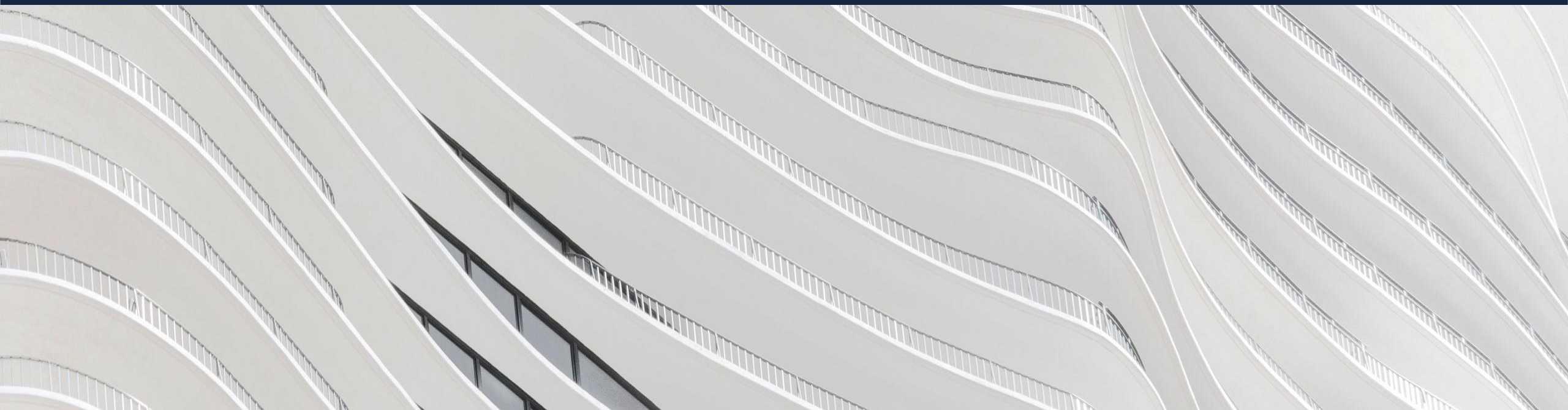
If either party defaults on notice period, must pay other compensation in lieu of notice, based on employee's current salary

Employer cancel / transfer sponsorship of employee's residence visa and labor card (and free zone ID card if applicable) within limited number days following termination.

Failure to cancel: potential sanctions for employer.

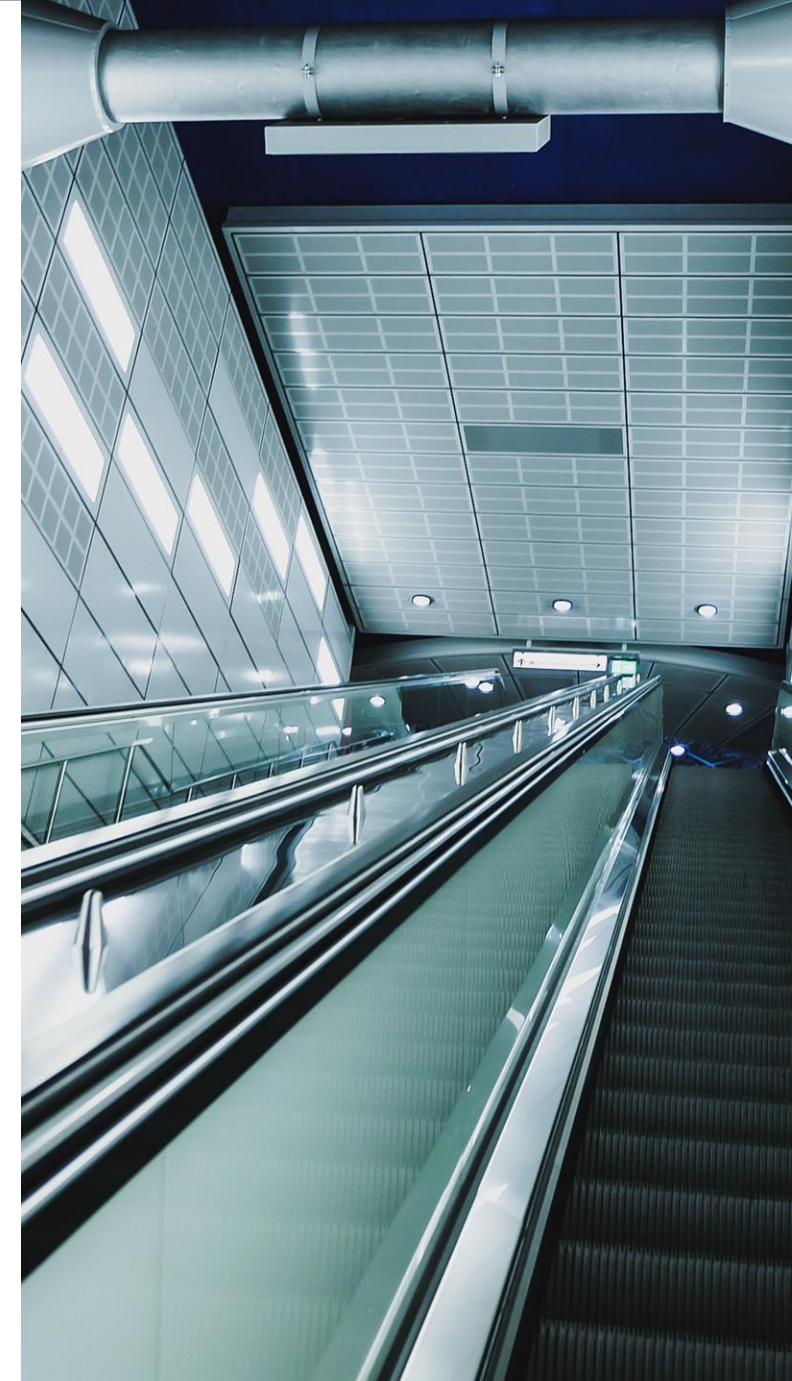
Employees should sign settlement form confirming receipt of legal entitlements.

# Termination for cause



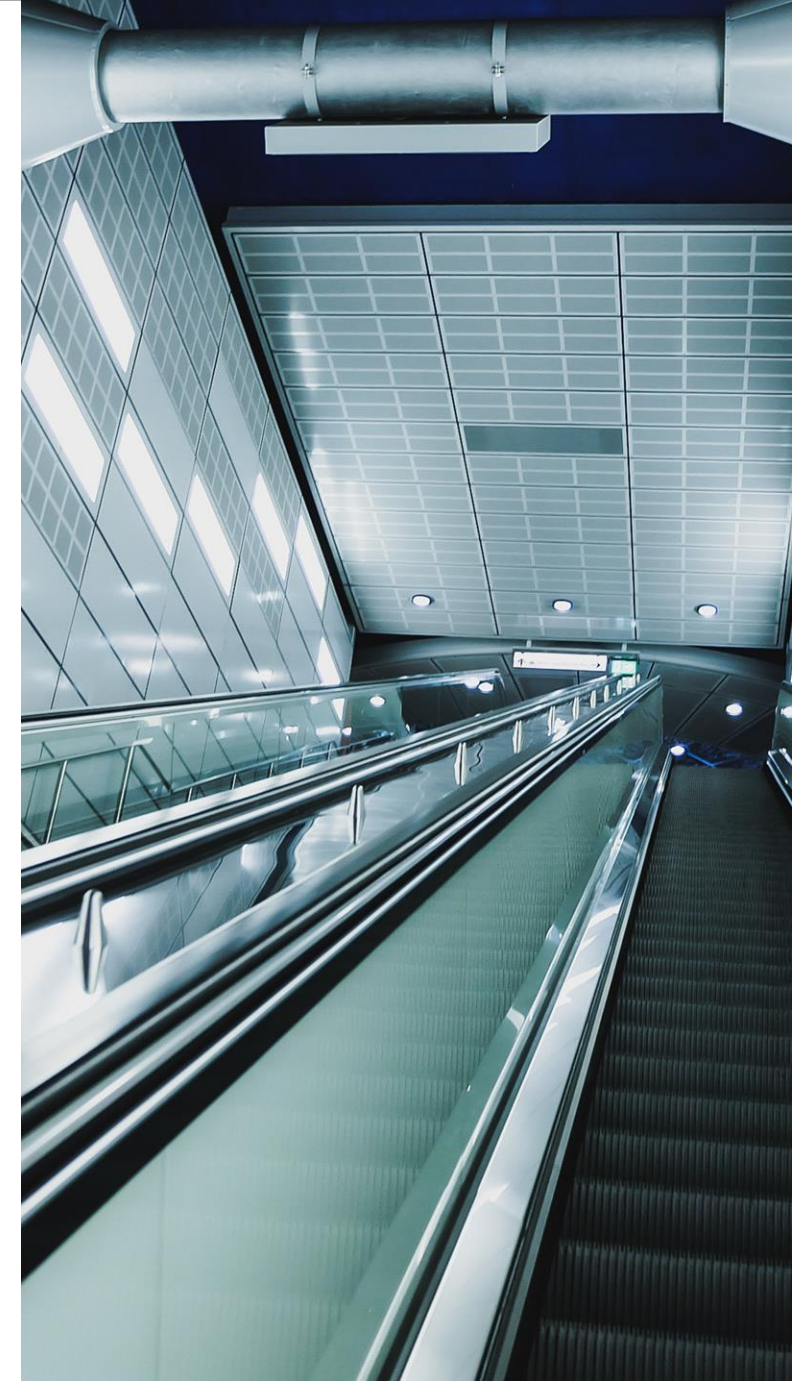
# Termination for cause

- Article 120 Labour Law
  - Where employment terminated for an Article 120 reason employee is not entitled to receive notice or end of service gratuity payment
  - Limited to the ten offences under Article 120
  - No general gross misconduct category
- Can dismiss without notice if employee commits gross misconduct or is on probation
- Risks
  - Arbitrary dismissal

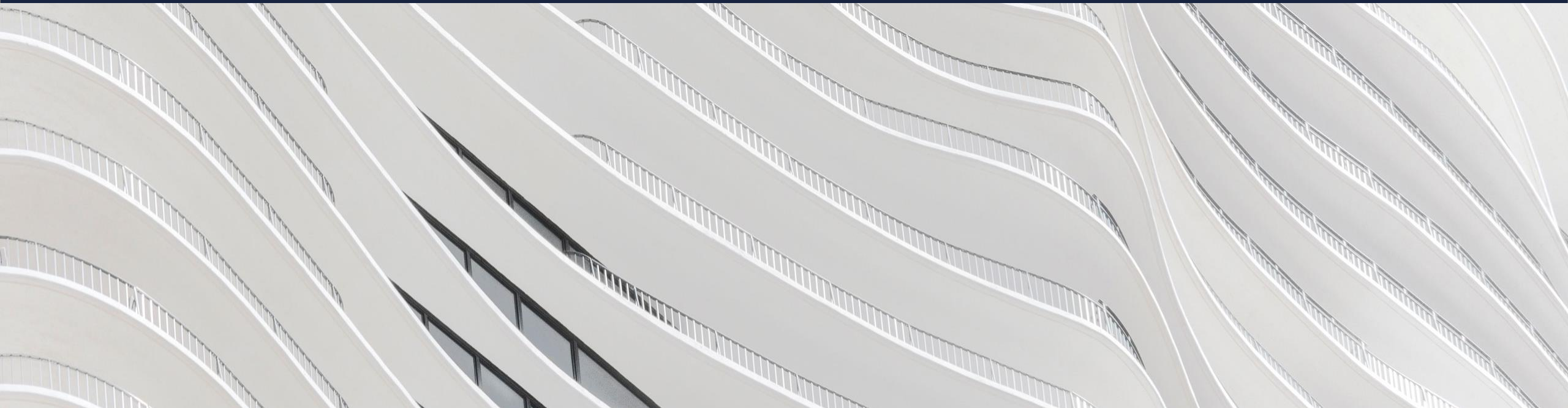


# Termination of employment- arbitrary dismissal

- Unlimited contract – dismissal deemed arbitrary if reason for termination of employment is irrelevant to employee's work
  - Up to 3 months' remuneration (salary, allowances and bonus)
  - Following disciplinary or best practice procedures will help defend claims
  - Written substantive evidence
- Limited contract
  - 1-3 month's notice and indemnity of 1-3 months



# Employer's liability for workplace accident and injury



# Employers liability to employees for accident and injury in the workplace

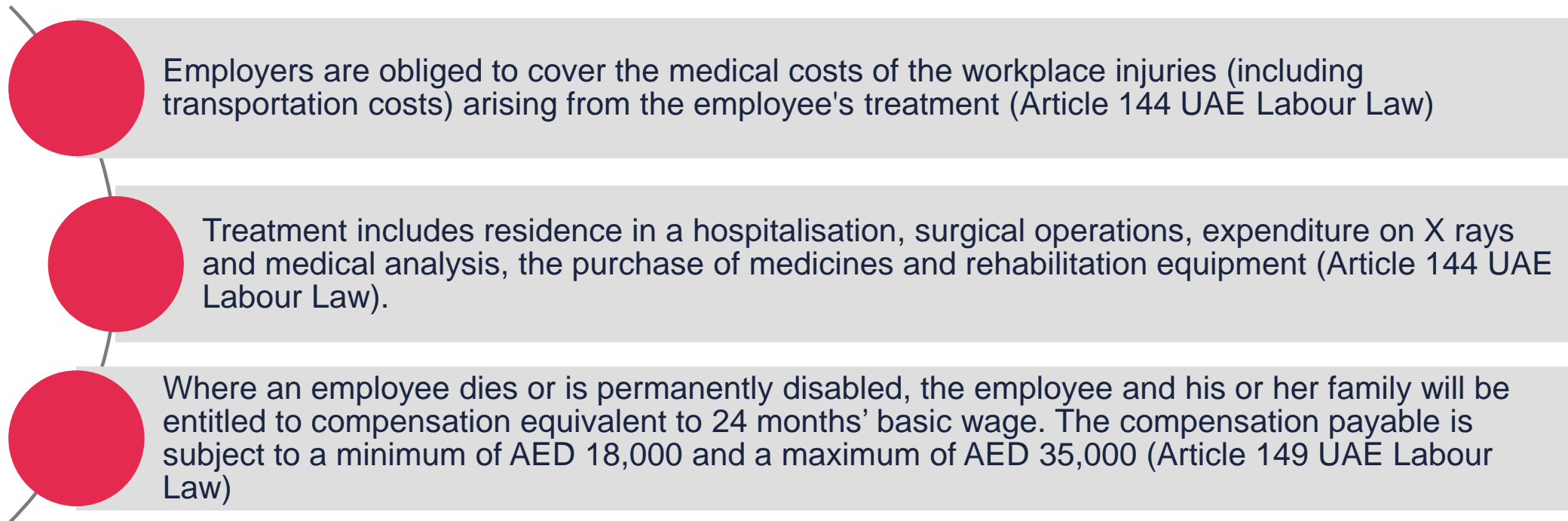
All parties (including employers, directors, managers, supervisors and the workers themselves) are responsible for ensuring health and safety in the workplace.

Health and safety of employees- provisions contained in the UAE Labour Law, Federal Law No. 5 of 1985 on civil transactions (the Civil Code) and Ministerial Resolution No. 32 of 1982 (Workers' Safety, Protection, Health and Social Care) issued by the Minister of Labour.

Certain provisions of the Federal Law No. 3 of 1987 may also mean that employers could be held criminally responsible for breaches of health and safety law.

# Liability for workplace accidents

- Under the UAE Labour Law, all workplace accidents and injuries must be reported to the Ministry of Labour and Police immediately (Article 142 UAE Labour Law).
- Where it is proven that a workplace injury was caused as a result of negligence the injured employee may only claim in respect of lost wages and any permanent or partial disability.





# Penalties for non-compliance

- Where an employer fails to comply with its obligations under the UAE Labour Law fines of up to AED 5,000,000 may be imposed.
- Additionally, the employer could be liable for the following crimes which may arise in the context of health and safety at work:

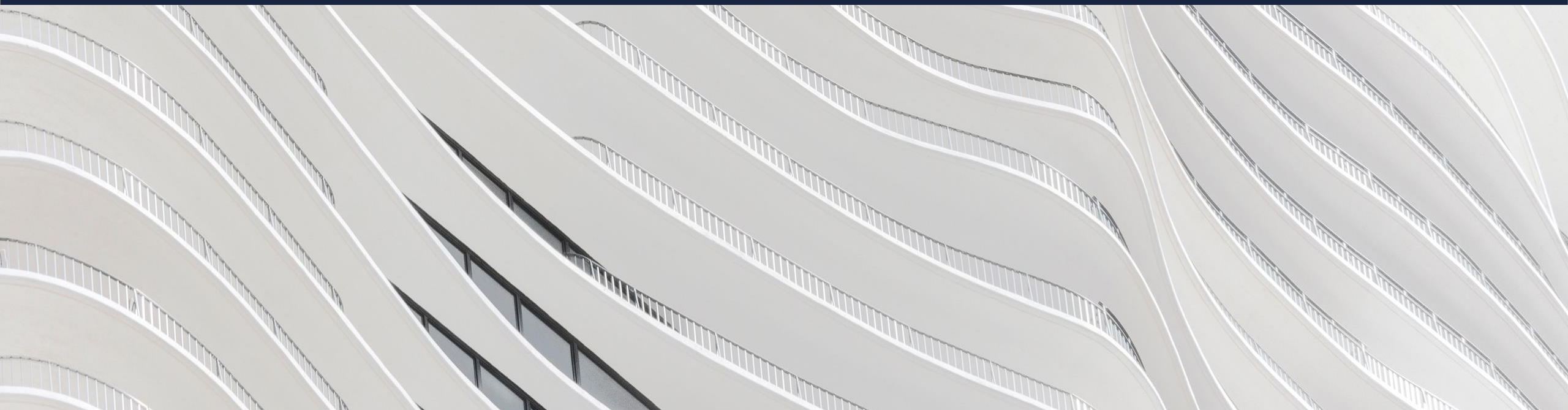
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Manslaughter which carries a minimum custodial sentence of one year in addition to an uncapped fine;

2

Personal injury which carries a maximum custodial sentence of one year and/or a fine not exceeding AED 10,000. Where personal injury leads to a permanent disability the penalties can be more onerous.

# Non-competition clauses



# Non-competition clauses

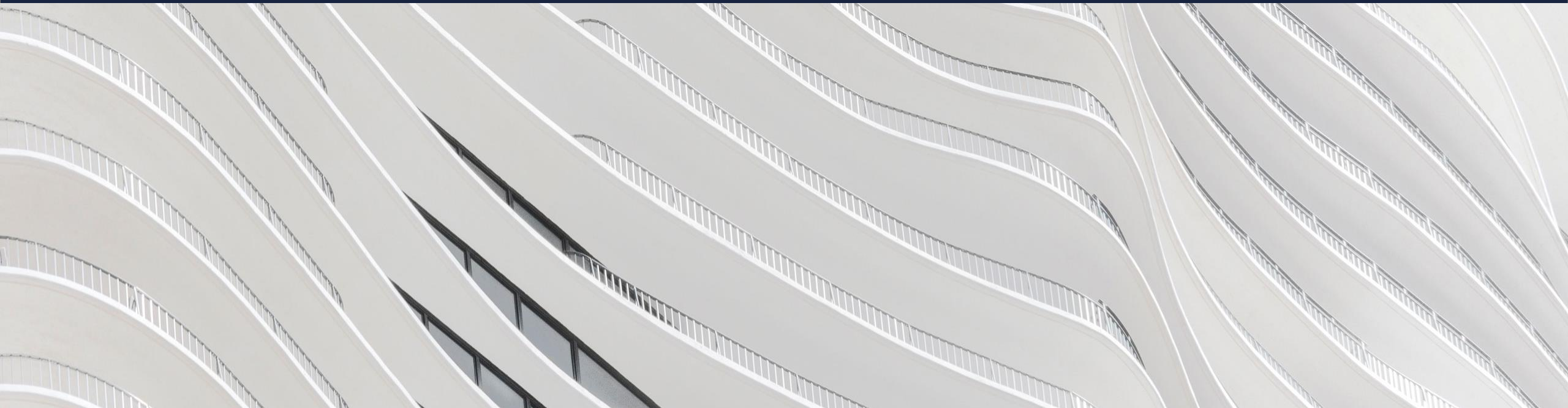
- Non competition clauses are permissible in the UAE provided that they fulfil 3 conditions (see Article 127 UAE Labour Law and 2016 Ministerial Resolution):
  - An employee must be at least 21 years of age when entering into the restrictive covenants;
  - The employee must have access to the employer's clients and/or access to trade secrets; and
  - The restraints must be limited in relation to duration, geographical scope and the nature of the business to be protected.
- To be included in employee's contract of employment and (potentially) repeated in mutual separation agreements.



# Remedies for employers

- No injunctive relief available in the UAE.
  - The UAE Courts can only order damages to be paid by the employee in the event of a breach – may also revoke or refuse the granting of new work permit – Ministerial Resolution 2016.
  - Parties are permitted to include a liquidated damages clause in the contract of employment which can operate to provide a specific amount for which the employee will be automatically liable if found in breach of the post-termination restrictions.
- Injunctive relief is potentially available in the DIFC and ADGM free zones to prohibit former employees acting in breach of restrictive covenants within those free zones.
  - Non competition clauses are normally only relevant to more senior roles or those with access to confidential information/capable of being a threat to genuine business interests – applicable “to the extent necessary to safeguard employer's lawful business”.

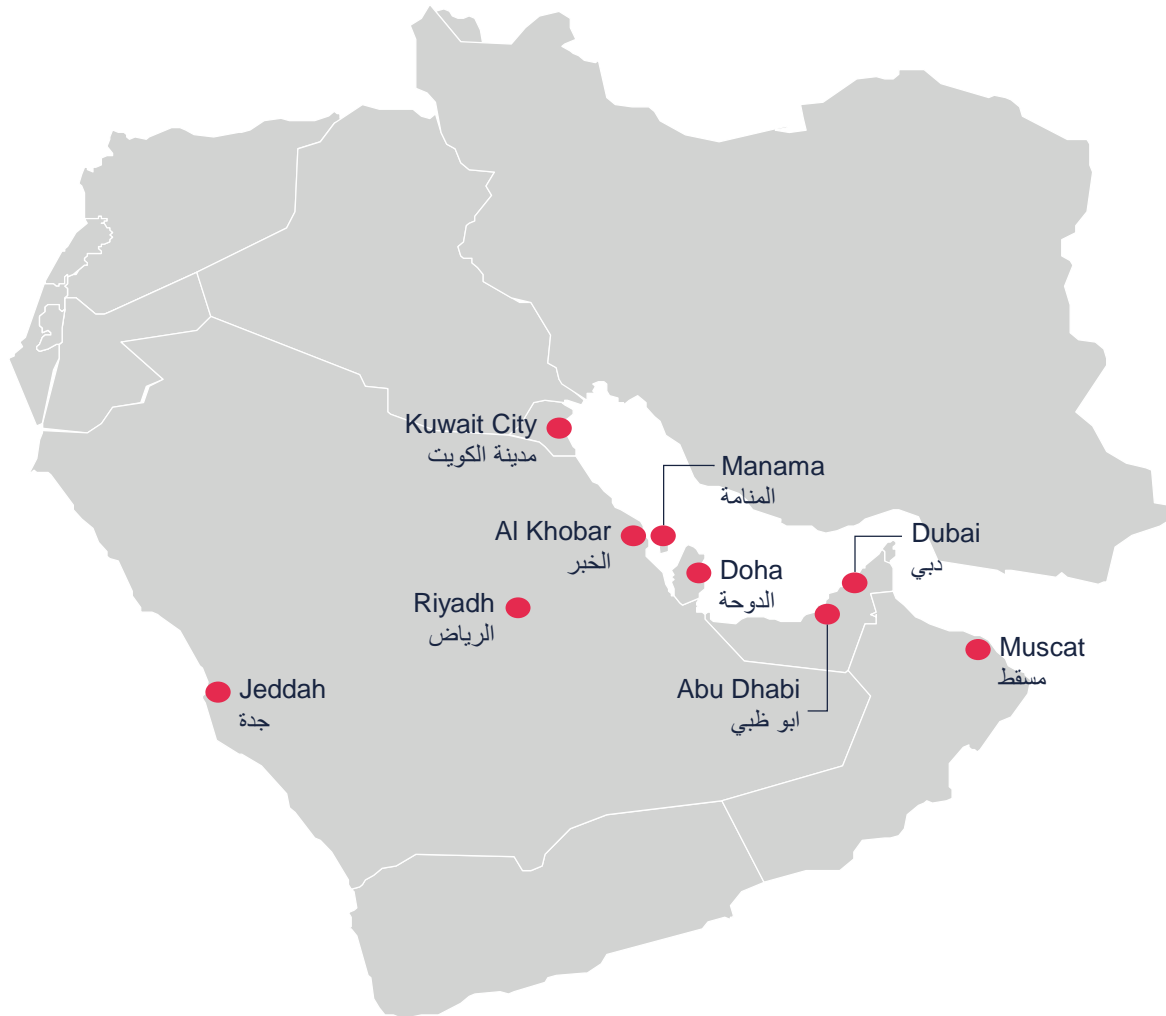
# Duties of Persons in Charge



# Duties of persons in charge

- Acting in a way which is compatible with the company's objectives
- Exercising a degree of care in the discharge of management responsibilities
- Acting within the powers granted
- Disclosing any conflicts of interest
- Employees must act in accordance with terms of their contract and job description
- Employees should not sign documents unless permitted to do so by contract or by PoA
- Company directors, authorised signatories and managers with authority should sign on behalf of company

# Unrivalled regional understanding and presence



9

Offices

12

Years in the UAE

20

Partners in the UAE  
(25 regionally)

70+

Lawyers in the UAE  
(100+ regionally)

“ International Law Firm of the Year  
2017 & 2018

Middle East Legal Awards



# Questions

