The Ministry of Human Resources and Emiratisation (MOHRE) has issued the Ministerial Resolution No. 279 of 2020 (Resolution) on 26 March 2020. The Resolution regulates cost saving-measures that the private sector may take concerning its expatriate workforce in light of the economic effects of the Covid-19 crisis. This article provides an analysis of the Resolution.

1. What has happened so far?

The United Arab Emirates’ (UAE) approach to contain the spread of Covid-19 has been progressive since the beginning of March 2020. Starting from the closure of schools and educational establishments to the shutting of malls, retail outlets and restaurants, the developments have been very rapid and continuously evolving. The closures were announced for a period of two weeks, subject to renewal depending on the governmental guidelines.

On 26 March 2020, the Ministry of Human Resources and Emiratisation (MOHRE) issued Ministerial Resolution No. 279 of 2020 regarding the stability of employment in private sector companies. The Resolution will be valid for the duration of applicable preventive measures taken by the government to contain the spread of the Covid-19 virus.

Ministerial Resolution No. 281 of 2020 regarding remote working in private sector companies was issued on 29 March 2020. Ministerial Resolution No. 281 of 2020 requires that only thirty percent (30%) of the workforce of private entities is allowed to be physically present in an office at any given time. Ministerial Resolution No. 281 of 2020 emphasises that a remote working system should be put in place, and the majority of employees whose presence is not physically required at the premises should be encouraged to work from home.

2. What are the typical rights of employers to react to the economic downturn caused by Covid-19?

Due to the introduction of preventive measures against the spread of Covid-19 and their impact on the economy, businesses have had to deal with a severe
impact on their cashflow. Since the workforce is typically the most significant cost factor in operations, companies usually cut down costs by executing downsizing measures. Generally speaking, employers can make use of the following cost-cutting measures:

- Putting employees on paid leave;
- Agreeing on unpaid leave;
- Agreeing on a temporary salary reduction;
- Agreeing on a permanent salary reduction; and
- Terminating employment for operational reasons.

3. What does the Ministerial Decision include in terms of cost-cutting measures?

The Resolution mentions in Art. 2 that employers should “progressively proceed” with the following measures.

- Implement a remote working system;
- Grant paid leave;
- Grant unpaid leave;
- Agree on temporary salary reductions; and
- Agree on permanent salary reductions.

Implementation of a Remote Working System

The implementation of a remote working system is laid out in Ministerial Resolution No. 281 of 2020.

Granting of paid and agreeing on unpaid leave (Art. 2 Ministerial Resolution No. 279 of 2020)

The Resolution mentions granting paid and unpaid leave as measures that should be taken before agreeing on salary deductions (Art. 2 – reference to the sequence of the options). The Resolution does not include any further requirements in this respect. Therefore, the general rules apply.

Under the UAE Labour Law, an employer may determine the date of the commencement of the employee’s annual leave and may divide it if necessary, to two or more periods (Art. 76 Federal Law No 8 of 1980). Therefore, on the presumption that the employee has adequate paid leave remaining, an employer may require the employee to take annual leave.

However, where the employee has exhausted his or her annual leave, the Resolution provides that the employer and employee must mutually agree that the employee is put on unpaid leave for a period of time until the preventive measures are in effect or as agreed by the parties.

Temporary salary reduction (Art. 5 Ministerial Resolution No. 279 of 2020)

The Resolution regulates that if an employer and an employee agree for a temporary salary reduction, such agreement must be recorded in an annex to the original employment contract in the prescribed form (template attached to the Resolution). The temporary salary reduction shall cease as agreed between the parties or at the expiry of the Resolution, whichever is earlier.

The period of salary reduction may be renewed if agreed between the parties. Furthermore, each party shall hold a copy of the addendum, and a copy must be provided to MOHRE if requested.

Permanent salary reduction (Art. 6 Ministerial Resolution No. 279 of 2020)

The Resolution also allows permanent salary reductions upon mutual agreement. In this case, the employer shall apply for employment contract details amendment
services to obtain the MOHRE’s approval according to the procedures in force.

4. What is the Virtual Labour Market and how does it work?

The Resolution has introduced a concept similar to redundancy, which is prevalent in western jurisdictions. However, there are preconditions, which must be met by employers. The Resolution allows employers to reduce their workforce if there is a surplus and, thereby, make their employees redundant. The redundant workforce, however, must be registered in the Virtual Labour Market, which can be accessed by MOHRE’s website, (https://mohre.hyrdd.com/).

The purpose of this registration is to enable rotation of workers depending on the needs of other businesses. Employers, however, must be cautious that they would still be liable to pay an employee’s accommodation and other entitlements (except basic salary) until an employee leaves the UAE or obtains a permit to work for another employer.

The Resolution further provides that employers looking to hire new employees shall post vacancies in the Virtual Labour Market, search the available database and select workers who meet the job requirements. Prospective employees could obtain different types of work permits offered by the MOHRE, such as part-time work permit, temporary work permit or apply for a transfer.

5. Conclusion

During these times of economic uncertainty, a much-needed guideline has been provided by MOHRE’s Resolution. Employers must keep in mind, however, that the Resolution only applies to their expatriate workforce. The Resolution mentions that employers should obey to the sequence of the measures stipulated in Art. 2. The Resolution remains silent of any legal consequences if employers opt for a more severe measure from the outset and fail to comply with the sequence. Regardless of this, employers that wish to carry out employment-related cost-cutting or downsizing measures should make themselves familiar with the Resolution’s sequence.

In any case, the formal requirements laid out for certain measures (e.g. permanent salary reductions) should be complied with. Most notably, the Resolution stipulates that employers must continue to pay employees’ allowances (expect basic salary) until they have exited the UAE, found another employment or the Resolution comes out of effect. The Resolution will be valid until the Covid-19 preventive measures are in force or until the expiry of the Resolution, as and when advised by MOHRE. Since the regulatory framework is changing rapidly, employers should monitor the situation closely.

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