

# Team Moves: Enforcing UAE Onshore Restrictive Covenants in the DIFC Courts

**Private and confidential**

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In a significant judgment handed down this Summer, the DIFC Court of First Instance in *AES Middle East Insurance Broker LLC v GSB Capital Ltd* decided that non-solicitation restrictive covenants in a UAE Federal Labour Law employment contract was, in principle, enforceable by the DIFC Courts.

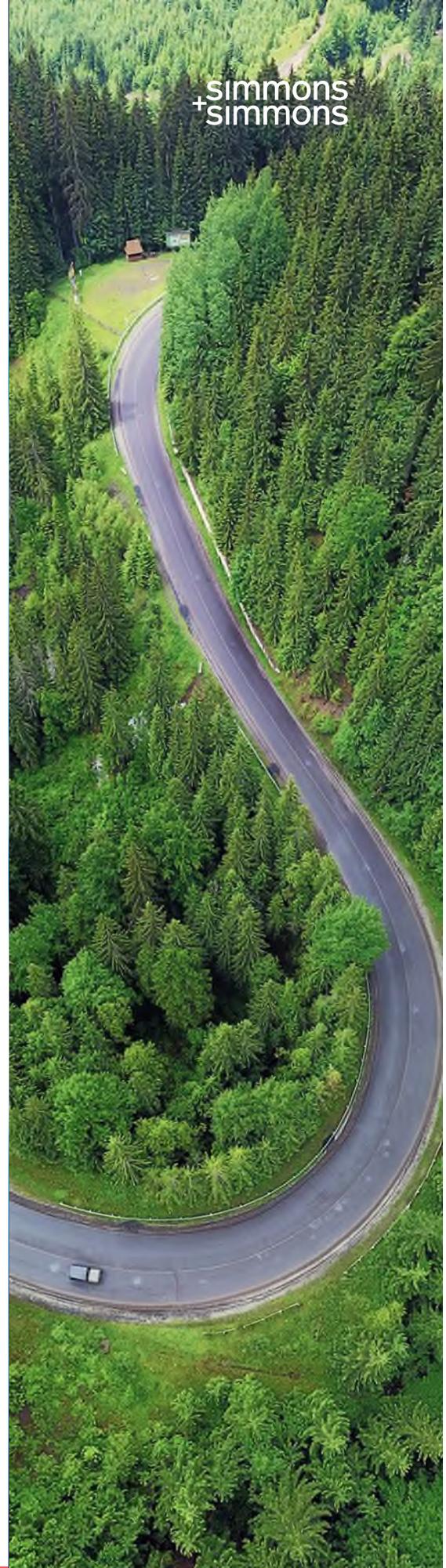
### Background

The case involved the move of four financial advisers (FEs) from AES, an onshore UAE entity, to GSB, a DIFC-registered entity, both operating in the wealth management sector. AES alleged significant financial losses due to client and asset transfers, claiming these were facilitated by the FEs' breaches of non-solicitation covenants and misuse of confidential information, allegedly induced by GSB.

The FEs' contracts were governed by the UAE Federal Labour Law, which applies to employers in free zones (excluding DIFC and ADGM) and "onshore" UAE. AES' claims against the FEs were dismissed in the Dubai Courts. However, it also pursued claims against GSB in the DIFC Courts, alleging:

1. inducement of breaches of non-solicitation covenants, confidentiality obligations, and directors' duties;
2. unlawful conspiracy to commit these breaches; and
3. misuse of confidential information.

AES sought £8 million in damages, accusing GSB of conspiring to poach clients and misuse confidential information. GSB denied the allegations, arguing that AES's claims were an attempt to stifle competition.



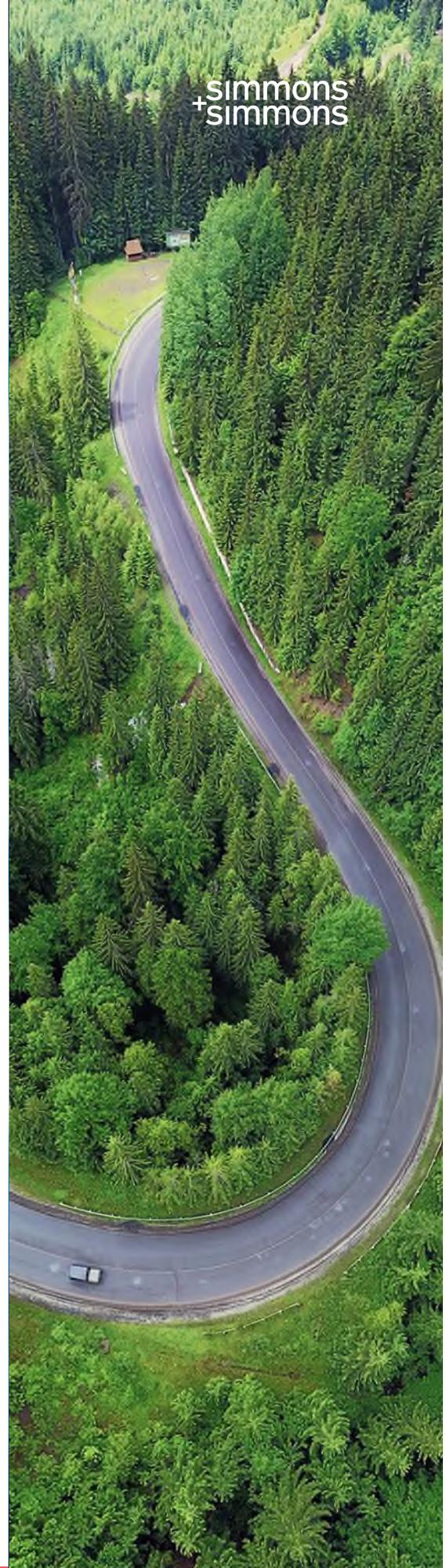
## Key Insights from the Judgement

### 1. Enforceability of Onshore Restrictive Covenants in the DIFC Courts

A pivotal aspect of the judgment is the DIFC Court's confirmation that restrictive covenants in onshore employment contracts governed by UAE Federal Labour Law can, in principle, be enforced in the DIFC Courts. The DIFC Court applied common law standards concerning restraints of trade.

While AES's claims ultimately failed due to a lack of evidence of inducement or conspiracy, the court upheld the enforceability of the non-solicitation covenants. This is a significant development for DIFC employers, particularly in the financial sector, where competition is strong, and employees often move between from the onshore and non-DIFC/ADGM freezones into DIFC and/or ADGM entities.

DIFC employers must take restrictive covenants in employment contracts governed by UAE Federal Labour Law seriously when hiring employees who may still be bound by ongoing obligations. Additionally, DIFC employers should be cautious of potential inducement to breach claims when recruiting staff from competitors, whether within or outside the DIFC, who are in breach of their restrictive covenants.



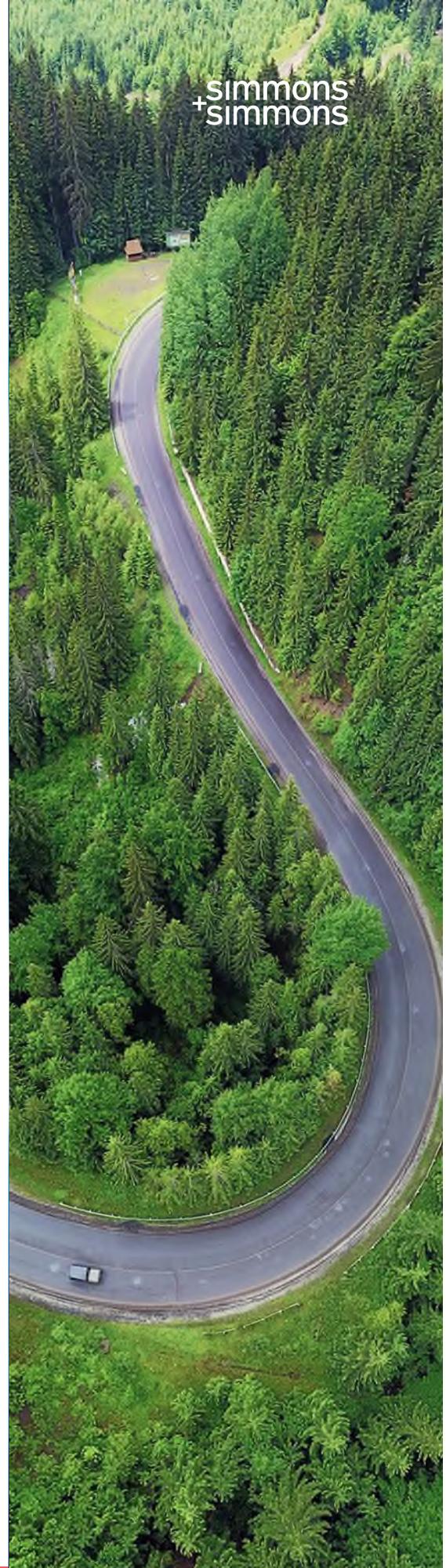
## 2. Remedies in the Dubai Courts and DIFC Courts

The remedies for breaches of restrictive covenants differ significantly between the Dubai Courts and DIFC Courts:

- **Dubai Courts:** Employers are typically limited to seeking damages as the remedy for breaches of enforceable covenants and injunctive relief is generally not an available remedy.
- **DIFC Courts:** Injunctive relief is available and is the primary remedy, if granted it provides immediate protection for employers, particularly in cases involving team moves or misuse of confidential information.

AES also initiated criminal proceedings against the FEs. The criminal allegations included claims that the FEs had stolen confidential company information and client data. As a result, the FEs were subjected to a travel ban for 18 months. Although the criminal proceedings ultimately concluded with the claims being found groundless, the process placed significant pressure on the FEs.

AES was granted an interim injunction from the DIFC Court against GSB, preventing the use of certain confidential information that AES alleged had been acquired from the FEs. For DIFC employers, this highlights the access of non DIFC-based employers to remedies available from the DIFC Court, even where similar claims failed in the Dubai Courts. The extensive court proceedings, along with the time and resources expended in pursuing different remedies and strategies, serve as a reminder of the significant costs associated with litigation in team move cases.



### 3. Confidentiality of Contact Details and Professional Networks

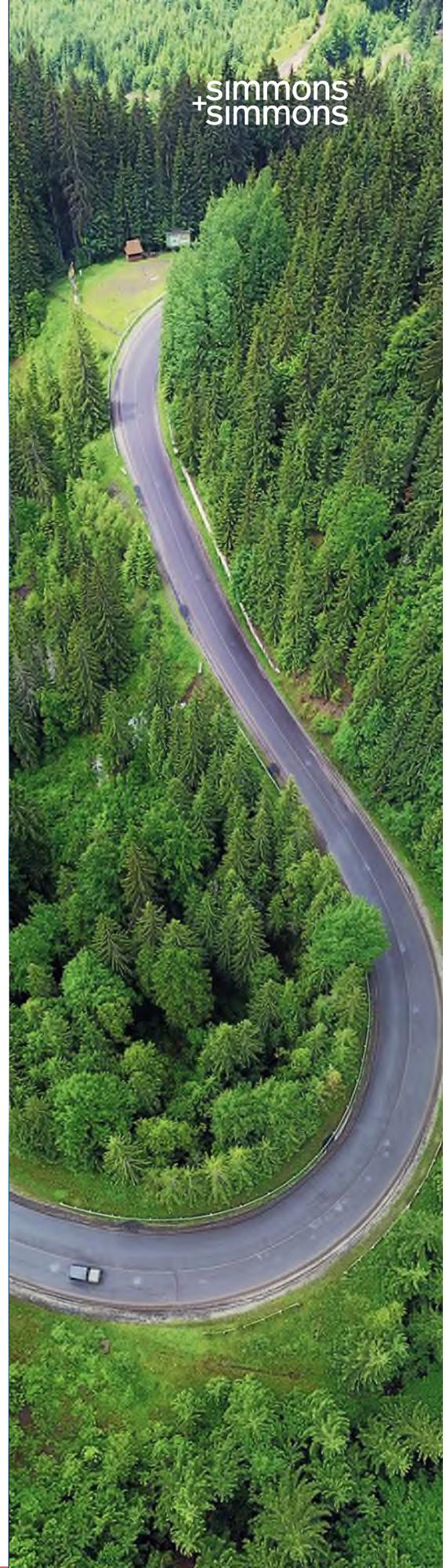
AES alleged that the FEs had retained client contact details on personal devices and LinkedIn, arguing that this constituted a breach of confidentiality. The DIFC Court rejected this claim, finding that:

- The confidentiality clauses in the FEs' contracts did not explicitly cover such contact details.
- LinkedIn connections are publicly visible and generally considered part of an individual's professional network.
- AES had not treated client contact details as confidential during the FEs' employment.

The judgment highlights the importance of explicitly defining what constitutes confidential information in employment contracts. Employers should also implement clear policies on the use of personal devices and professional networking platforms to protect sensitive information.

### 4. Evidence-Based Litigation

The case highlights the need for robust evidence in business protection claims. AES alleged that GSB induced breaches of restrictive covenants and conspired to poach clients, but the DIFC Court found no supporting evidence. It rejected AES's attempt to claim losses for 250 clients based on assumptions, emphasising that claims must be substantiated with credible and detailed proof.



## Implications for DIFC Employers

This judgment has significant implications for DIFC employers, particularly as it confirms that restrictive covenants in employment contracts governed by UAE Federal Labour Law cannot be ignored. It also highlights that employers outside the DIFC may deploy various tactics in response to a team move, including initiating criminal proceedings against individuals (causing disruption and pressure) and accessing remedies available from the DIFC Courts, which may not be obtainable through the Dubai Courts.

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