IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

TYSERS INSURANCE BROKERS LIMITED

Claimant

and

(1) ARDONAGH SPECIALTY (MENA) LIMITED T/A PRICE FORBES DIFC / PRICE FORBES & PARTNERS
(2) JAYEES IBRAHIM VELIKKALAGATH

Defendants

REASONS FOR THE ORDER OF H.E. DEPUTY CHIEF JUSTICE ALI AL MADHANI DATED 7 OCTOBER 2025

SCHEDULE OF REASONS

1. The Claimant's Urgent Application No. CFI-082-2025/1 dated 18 September 2025 seeking injunctive relief against the Defendants to prevent the First Defendant from directly or indirectly engage or knowingly permit the Second Defendant to carry out any work on behalf of itself or any member of the Ardonagh Group, and to prevent the Second Defendant from undertaking any work on behalf of the First Defendant or to endeavour to solicit or entice the business or custom of any Relevant Client or Relevant Prospective Client or have any dealings or transacting business the same or similar to the Restrictive Business with any Relevant Client or Relevant Prospective Client was granted by way of Order dated 7 October 2025.

2. This Order also obligated the Second Defendant to, within 48 working hours from the issue of the Order, provide a signed statement pursuant to clause 23.1(c) of the Employment Agreement confirming his compliance with the obligations in Clause 23 of the Employment Agreement, specifically to deliver all Company Property which is in the Second Defendant's possession or under his control, and delete all company-related information that does not belong to him after having first forwarded a copy of such to the Claimant.

3. The Second Defendant, on 13 October 2025, filed an Extension Application contesting the 48 working hour deadline under Rule 4.2 of the DIFC Court Rules ("RDC"), seeking an order to extend compliance to 7 days from the date of issue of written reasons for the Order as the Second Defendant does not understand the basis upon which the injunction has been granted. The Extension Application has since been withdrawn and replaced by an Appeal Notice. I note to the Defendants at this stage that the time that the appeal period runs is from the date of the Reasons, if issued separately from the Order. Therefore, the 21-day period runs from the date of issue of these Reasons. I urge the parties, particularly the Defendants, to inquire with the Registry if it is unclear on the Court rules. The Defendants retain their right to file an amended appeal notice if desired.

4. Remainder of the Reasons will be for the Order only.

Background and Procedural History

5. The Claimant is an insurance broker and the ex-employer of the Second Defendant.

6. The Second Defendant was employed as a Director on 27 November 2023. On 14 February 2025 the Second Defendant issued his resignation; his final working day was 12 May 2025.

7. The Second Defendant's Employment Agreement (the "Employment Agreement") contained a series of post-termination restrictive covenants, that included a 6 month non- compete clause that is active until 12 November 2025 (the "Restrictive Period").

8. The First Defendant is the Second Defendant's new employer. On 21 May 2025, the Defendants sought permission from the Claimant to vary the terms of the Second Defendant's post-termination restrictions so that the Second Defendant could transfer onto a new employment visa and continue his wife's medical care, without actually working in his new position during the Restrictive Period.

9. These varied terms were agreed in the Partial Waiver Agreement.

10. On 12 August 2025, during the Restrictive Period, the Claimant was alerted to the Second Defendant's Linkedin Post announcing his new employment.

11. On 14 August 2025 the Claimant attempted to contact the Second Defendant for clarification but was met with allegedly evasive and materially incomplete answers.

12. Between 9 and 16 September 2025, solicitors instructed for the Defendants maintained the defence that the Second Defendant had not actively started work with the First Defendant. No undertakings were offered.

13. On 18 September 2025 the Claimant filed its Part 8 Claim Form and Urgent Application seeking an interim injunction pursuant to RDC Part

25 to order the Defendants to comply with the restrictive covenants as per the Partial Waiver Agreement, with costs.

14. On 25 September 2025, a Hearing was held before H.E. Deputy Chief Justice Ali Al Madhani with the Claimant and Defendants' representatives in attendance.

15. On 7 October 2025, the Order granting the injunction was issued by H.E. Deputy Chief Justice Ali Al Madhani, with reasons to follow.

Jurisdiction, DIFC Law and Relevant Rules

16. While there is no DIFC statutory provision that explicitly permits the use of restrictive covenants generally, I accept that the general provisions in DIFC Contract Law allows for the inclusion and enforcement of all types of terms, including non-compete and non- solicitation clauses.

17. Article 8(1) of the DIFC Contract Law supports the doctrine of freedom of contract; "any [competent person] is free to enter into a contract and determine its content.". Except for what operates against public policy or is strictly prohibited, there are no statutory restrictions as to what terms can be agreed.

18. Article 10 states that a contract validly entered into is binding on the parties, unless modified pursuant to its own terms.

19. Article 89(3) states that termination of a contract does not affect a term of a contract which is to operate after termination. Therefore, surviving terms can enforce performance or restriction.

20. I note that UAE federal law explicitly permits non-competition clauses in Article 127 of Federal Law No. 8 of 1980 (UAE Labour Law) in circumstances where ex-employees have had access to confidential information or been acquainted with the ex-employer's clients. Therefore, I do not consider it contrary to public policy generally for non-competition and non-solicitation restrictive covenants in employment contracts to be valid and enforceable.

21. As admitted by the parties in this case, non-competition and non-solicitation clauses are common practice and industry standard in employment contracts. These clauses are unique as they are intended to survive the termination of the contract; this type of clause is permitted in DIFC Contract Law. If, therefore, a competent party who understands the scope and applicability of a surviving restrictive covenant freely binds himself to this term, I can accept that such terms are valid under DIFC Contract Law.

22. Next, in my judgment, the Court has full jurisdiction to grant an interim injunction for the enforcement of restrictive covenants using the well-established three stage test in American *Cyanamid Co v Ethicon Ltd* [1975] AC 396 at 406. This is a matter that both parties agree to and have prepared their submissions on the assumption that American Cyanamid applies; the dispute on granting an injunction lies in the Defendants' objection that the Application meets the threshold.

23. Replacing Article 32 of DIFC Law No. 10 of 2004, the power to grant an injunction is a discretionary one drawn from Article 24(D) of DIFC Law No. 2 of 2025, reading as relevant:

> "The DIFC Court has the power to make orders as to the conduct of any proceedings before the Court that it considers appropriate, including but not limited to:
>
> .
>
> 2. Injunctions, including orders to perform an act;
>
> 3. Interim or interlocutory orders as stipulated in the DIFC Laws"

24. The Claimant submits reliance on *Bocimar International NV v Emirates Trading Agency LLC* [2015] DIFC CFI 008 to show that the DIFC Courts have historically identified that s.37 of the Senior Courts Act 1981 is materially similar to Article 32 of DIFC Law No. 10 of 2004, which has since been replaced by Article 24 of the DIFC Law No. 2 of 2025 but still carries the same intention, relevant wording and effect. The associated clauses of section 37 read:

> "(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.
>
> (2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just."

25. In *Bocimar*, at paragraph 7 of Justice Chadwick's judgment, it is states that "whether it is appropriate to make [a freezing injunction] is the test under DIFC Law; in that "appropriate" rather than "just convenient" (the words used to describe the test under equivalent provisions in the law of England and Wales).I do not think that the test in this Court (at least in the circumstances of this case) differs in any material respect from the test that would be applied by a court in England and Wales."

26. Further, Justice Moran in *Roman Abramenko v Igor Chupin* [2025] DIFC CFI 095/2024 at [24] states that "when considering whether to grant an injunction the Court normally considers a three-stage test, based on that set out in American Cyanamid v Ethicon [1975] AC 396."

27. In light of the authorities relied on, it is appropriate, notwithstanding that the scope and operation of interim injunctions are expressly provided for under DIFC Law, and therefore it would be unnecessary to import English law to fill any perceived gap, to draw upon the *American Cyanamid* three-stage test as persuasive guidance in applying the DIFC principles. As recognised and upheld in prior authorities, the statutory frameworks of DIFC Law and English law are substantially aligned. Accordingly, the well-established guidance of Lord Diplock's test complements, rather than contradicts or displaces, the principles already embedded within the DIFC regime.

28. Lord Diplock's test is as follows:

(a) Is there a serious issue to be tried on the merits;

(b) The balance of convenience is in favour of the grant of an injunction; and

(c) It is just and convenient to grant the injunction.

29. The English and DIFC Courts have, in prior authorities, engaged in a thorough and considered analysis of how each stage of the test is to be applied.

30. A "serious issue to be tried" is a discretionary threshold that takes into consideration the context of the application and, to some extent as is appropriate, the substantive dispute between the parties. As submitted by the Claimant, Justice Moran in *Roman* refused to grant an injunction in matters that were beyond "trivial" but had failed to satisfy the Court on a determinative point of dispute that would have made the mandatory injunction necessary if proven. In his judgment, he evaluates the more "demanding" threshold for a "serious case" set in Australian precedent verses the English Law threshold of being a case that is beyond frivolous as "what constitutes a serious issue to be tried depends on the consequences of the order sought". Justice Moran rightly assesses that the applied approach depends on what better holds the interim position (the status quo) as justly as possible pending trial. Context and consequence are therefore key in this discretionary power. In this instance, and on the agreed factual history, the English approach is suitable; the Defendants are sought to act as if they would have had the restrictive covenants in the Second Defendant's Employment Agreement and the First Defendant's Partial Waiver Agreement been properly adhered; the Second Defendant, while on the First Defendant's employment visa and payroll, does not carry out any work in accordance with his job role, and the First Defendant refrains from soliciting him to do so. Therefore, the "serious issue to be tried" in these circumstances carries a lower threshold as to whether the Claimant can show that there is a more than frivolous chance that the Defendants acted in breach of their covenants.

31. The balance of convenience rests on a further consideration of the merits - i.e., if there is a more than 50% chance that a permanent injunction may be granted on the same evidence - and whether damages would be an appropriate remedy in the alternative. It is well considered in Roman and generally accepted therefore that this is an objective stage on the merits of the case as per *LXT Real Estate Broker LLC v SIR Real Estate LLC* [2023] DIFC CFI 050. Whether the injunction is "just and convenient" to grant rests on the same objectivity pursuant to RDC 25.1 in accordance with the overriding objective at RDC 1.6.

32. I am satisfied, therefore, that the *American Cyanamid* test applies conjunctively with Article 24 of the DIFC Law No. 2 of 2025 and RDC Part 25, and that the various English Law precedent has not only been repeatedly relied on in the DIFC Courts, but also safely applies in these circumstances.

The Employment Restrictive Covenants and Partial Waiver Agreement

33. The post-termination obligations of the Second Defendant are at clauses 23 and 24 of the Employment Agreement, and respectively read as relevant to the Claim:

"23. OBLIGATIONS ON TERMINATION

23.1 On termination of the Employment (howsoever rising) or earlier if requested by the Company to do so the Employee shall:

a. Immediately deliver to the Company all Company Property which is in the Employee's possession or under their control

b. Having first forwarded a copy to the Company, irretrievably delete from any computer or information system which does not belong to the Employee any information relating to the business of any Group Company which is in the Employee's possession or under their control; and

c. If requested by the Company, provide a signed statement that they have complied fully with their obligations under this clause 23.

24. RESTRICTIVE COVENANTS

24.1 The Employee acknowledges that during the Employment he will acquire Confidential Information and personal knowledge of and influence over suppliers, customers, clients and employees of Group Companies.

24.2 In order to protect the Group Companies' business interests, Confidential Information, customer connections and goodwill and the stability of their workforces, the Employee hereby undertakes and agrees that he will not without the prior written consent of the Chief Executive Officer of the Company whether alone or jointly with or on behalf of any other person, firm, company and whether as principal, partner, manager, employee, contractor, director, consultant, investor or otherwise during the Restricted Period:

a. compete with the business of any Group Company by being, directly or indirectly, employed or engaged in any capacity by any person, firm or company which engages in or provides services in the DIFC that are the same or similar to the Restricted Business;

b. compete with the business of any Group Company, directly or indirectly, in relation to the supply of services that are the same as or similar to the Restricted Business by soliciting or endeavouring to solicit or entice the business or custom of any Relevant Cline tor Relevant Prospective Client;

c. compete with the business of any Group Company, directly or indirectly, by having any dealings or transacting business which is the same as or similar to Restricted Business with any Relevant Client or Relevant Prospective Client

d. .

e. .

f. and at any time after the Termination Date falsely represent or otherwise indicated as being in any way connected with or interested in any business carried on by any Group Company.

24.3 The Employee agrees that updating their profile on a Networking Site amounts to solicitation of Relevant Clients and Relevant Prospective Clients that remain connected to the Employee. Immediately after the Termination Date the Employee undertakes to delete any connections to Relevant Clients and Relevant Prospective Clients from all Networking Sites. Once deleted, the Employee undertakes not to reconnect with any such person or contact any such person through a Networking Site during the Restricted Period."

34. "Restricted Business" is defined as all and any trades or other commercial activities of any Group Company with which the Employee was involved and/or possess any relevant Confidential Information at the Termination Date which any Group Company will continue from the Termination Date. "Relevant Period" is 12 months before the Termination Date.

35. By way of the Partial Waiver Agreement, the First Defendant consented to the following restrictive covenants (as addressed to the Second Defendant via email dated 4 June 2025):

"1. Non-Engagement During Restrictive Period
While ASML will sponsor your visa, you will not undertake any work for, or provide any services to Price Forbes, or any other company within the Ardonagh Group during the Restrictive Period. This includes any activities that are the same as or similar to those defined as "Restrictive Business" in your TIBL employment contract/

2. No Business or Client Involvement
You must not attend any internal meetings, visit offices, participate in any work-related activities or social events, or engage in any form of client interaction. Additionally, you are not permitted to seek or generate new business during this time or engage in any activity that would reasonably be seen as work-related.

3. Continuation of Employment Plans
Upon the conclusion of the Restrictive Period, ASML intends to formally commence your employment, subject to any further mutual agreement and standard onboarding processes at that time."

36. The Claimant submits that all covenants above are enforceable under DIFC Law.

37. As stated earlier in this Order, pursuant to Article 8(1) of the DIFC Contract Law, the DIFC Courts uphold the principle of freedom of contract. Given that the Second Defendant voluntarily consented to the terms, had capacity to do so, and agreed as per clause 24.2 of the Employment Contract that he had the opportunity to receive independent advice regarding the post-termination obligations, the Court has no reason to make invalid the covenants on the basis that they are unfair.

38. Second, it is submitted that while the DIFC Law is silent on the doctrine of restraint of trade, it has been assumed to apply per *Camellia v. Callister* [2012] DIFC SCT 005. For reasons explained in paragraphs 16-21 of this Order, I accept that restrictive covenants of this nature are recognized under DIFC Law, though the enforceability of such covenants depend on a case-by-case basis as will be assessed below.

Restriction Against the Second Defendant

39. The Claimant submits that employer/employee restrictive covenants are enforceable if it gives no more than adequate protection to the employer's legitimate interests, as per *Herbert Morris Ltd v Saxelby* [1916] 1 AC 688. Determination of legitimate interests is made of three parts; the construction of the covenant, the employer's business interests, and objective reasonableness.

40. It is the Claimant's position that the construction of clauses 23 and 24 are clear - they prevent competition and solicitation - in a narrow capacity, being only competition in relation to the Restricted Business.

41. The Second Defendant was repeatedly warned about his post-termination obligations by way of emails dated 19 February 2025 and 9 April 2025. The Second Defendant confirmed his awareness and understanding by email dated 26 February 2025.

42. The three "business interests" worth protection are confidential information, trade connections, and a stable workforce.

43. The Claimant submits that the success of its business materially depends on the protection of confidential information not in the public domain, which, if shared, could give a competitor an unfair advantage. The Second Defendant held a very senior position working in Facultative Reinsurance, which is a specialist market with limited scope. The Second Defendant admits in his first witness statement at paragraphs 6-8 that he has 17 years of experience in the field and was actively involved in the Claimant's business development across renewals and new clients, which, as the Claimant submits, exposed him to a significant amount of confidential information which he could use to the Claimant's detriment during his tenure with the First Defendant. This information is specifically protected by clauses 23 and 24.2(a-b).

44. In the second witness statement of Tim Stokes, it is stressed that the Second Defendant had access to confidential information up until his final working day as he was not placed on garden leave, including pricing, which Price Forbes could use to undercut business dealings, as well as the products recommended to clients which has "immeasurable value to a competitor." This information can be shared verbally and does not need to be shared from the PAS system, which holds and controls data. Due to the sensitive nature of the data, there is an increased and immediate imperative to ensure its protection, particularly as Mr. Stokes has understood the first witness statement of Mr. Macfarlane to suggest that the Second Defendant had another system for retaining information that cannot be tracked by the Claimant.

45. On trade connections, the Claimant submits that as a company it has built substantial goodwill and a strong network during the course of its business, of which these relationships are a core component of its commercial value. Such industry foundation has been acknowledged and protected by the English Courts who have recognised that this makes "the risk of solicitation clients by a former employee more serious" (*Stenhouse Australia Ltd v Phillips* (PC) [1974] AC 391). The Second Defendant admits to being actively involved in business development

with the Claimant, particularly 17 of the Claimant's clients as evidenced in the data filed within the last 12 months of the Second Defendant's tenure, which generated a value of GBP 632,558.65. As these connections are personal, not corporate, there is a severe risk that clients will follow the Second Defendant if he is not appropriately restrained, particularly as the Claimant and First Defendant already share many clients who have indicated they will move their accounts to the First Defendant only, as admitted in the first witness statement of Mr Macfarlane at paragraphs 15-17.

46. Finally, the Claimant advances that the clauses are reasonable. Not only are the restrictive covenants specific, clear, and not unduly burdensome as so to prevent the Second Defendant taking up employment at all, but they also last only for 6 months, which is below industry standard. The duration of a covenant in English Law is generally viewed as arbitrary, but 12 months as consistently been seen as reasonable where confidential information that will remain confidential for a long period after the Termination Date (*Littlewoods Organisation v Harris* [1977] 1 WLR 1472 (CA)). Further, the Second Defendant gained employment and was on the payroll within that time, without the expectation of actually working, and so in these circumstances no burden was put on the Second Defendant for adhering to the restrictive covenant.

Restriction Against the First Defendant

47. The restriction on the First Defendant is submitted to be enforceable by way of consent. These covenants put no prejudice or undue burden on the First Defendant, as they are intended to be flexible with the Second Defendant's personal circumstances while protecting the Claimant's business interests. The restriction on the First Defendant is clear; the Second Defendant is not to carry out any actual work. Whether the First Defendant elects to add the Second Defendant to its payroll and medical insurance during the Restrictive Period is a matter between the Defendants only.

48. Overall, the Claimant's position on all covenants sought to be enforced is that it presents a very strong case for the enforceability of the covenants, and the Defendants' reply lacks fundamental merit. The Second Defendant's conduct dangerously makes clear that he will maliciously comply only to the extent that he must as per the very limit of the wording used. The Defendants have no good case to argue.

49. In its defence, the Defendants collectively object to the enforceability of all covenants on the basis that they are contrary to public policy.

50. First, the Defendants reject enforcement of the Partial Waiver Agreement on the Second Defendant as the Second Defendant was not a party to it, and the Partial Waiver Agreement does not amount to a variation of the Employment Contract.

51. Second, the Second Defendant pleads that clause 24.2a is too ambiguous to be enforceable due to the terms used - "indirectly", "in any capacity", "similar to." It is submitted that these phrases make the clause too broad to be strictly reasonably necessary to protect the Claimant's legitimate business interests, as the clause prevents the Second Defendant from working as part of the insurance industry in the DIFC, which is not appropriate or fair.

52. The Defendants advance that the Second Defendant's notice period and Restrictive Period are suspiciously short, which damages the Claimant's position that there is confidential information to be protected, as the usual cycle is 12 months. Further, the definition of `confidential information' in the Employment Agreement is too wide to be understood, subjecting the Second Defendant to potential breach for any reason. Such clause was conceded to be unenforceable in *Marathon Asset Management LLP v Seddon ors* [2017] ICR 791 as it did not sufficiently specify the information entitled to protection.

53. It is further submitted that as the non-competition and non-solicitation clauses cannot be enforced against the Second Defendant, the Partial Waiver Agreement cannot be enforced against the First Defendant. This is an all-encompassing defence built on the submission that the restrictive covenants are wider than reasonably necessary to protect the Claimant's legitimate business interest and could be adequately remedied by damages in the event that the Claimant finds actual loss to be caused by the Defendants. Therefore, on the balance of convenience, the injunction should not be granted.

The Second Defendant's Breach

54. It is the Claimant's overarching position that the evidence filed shows that the Second Defendant has breached, and intends to continue to breach, his post-termination obligations and that the First Defendant has facilitated this.

55. The Second Defendant has repeated that he would only be bound "to the extent legally enforceable" and found the covenants "unreasonable". In his email to the Claimant dated 27 August 2025, he admitted he would start "actively working" for the First Defendant from that day, in breach of the Partial Waiver Agreement and his own covenants. He has consistently ignored or otherwise refused to sign undertakings confirming compliance.

56. The Claimant submits that contrary to the restrictive covenants, which only bar him from competing within the Restricted Business, the Second Defendant took employment as a broker with the First Defendant. This is the same position that he held with the Claimant, doing the same business. The Claimant rejects the Second Defendant's contention that he was unreasonably barred from "the insurance industry", and retorts that it is absurd to suggest that the covenant is invalidated because it would prevent the Second Defendant from taking up any role with the First Defendant as per the precedent set in *Dare International Ltd v Soliman & Anor* [2025] EWHC 227 (KB), which states that a clause valid in ordinary contemplated circumstances is valid even if it might cover extreme or improbable ones. The fact remains that the Second Defendant accepted employment and acted contrary to the restrictive covenants; he does not deny this, but instead his defence rests on an attempt to invalidate the covenants, when they are in fact valid and enforceable.

57. Further, the Second Defendant has failed to confirm whether he intends to comply with the non-solicitation covenant and instead takes issue with being restricted from entering the DIFC in general, which was not part of the terms. He does acknowledge that he is in breach of clause 24.3 by alerting his new position to his connections - which include the Claimant's clients - on Linkedin.

58. On the Second Defendant's obligations to confirm return of company property, the Claimant submits that the Second Defendant has failed to provide a signed statement that all company property in his possession or control is returned. The Claimant advances that it cannot trust the

Second Defendant's understanding of what should be returned in light of his conduct and so should be ordered to comply fully now.

59. The Second Defendant rejects all claims in this regard.

60. The Second Defendant submits that there is no reliable evidence that he has solicited or dealt with any client, or taken on any activities related to the Restrictive Business during the Restrictive Period in which he began his tenure with the First Defendant.

61. Further, it is advanced that the Claimant has failed to adduce evidence that the Second Defendant retains and has not delivered any particular item of Company Property in his possession or control. The application for such relief is therefore purely speculative and should not be made.

The First Defendant's Breach

62. The Claimants submits that the First Defendant has consistently ignored or otherwise refused to sign undertakings confirming compliance with the Partial Waiver Agreement sent on 19 February 2025, 1 September 2025, 9 September 2025 and 17 September 2025. The First Defendant contradicts its own evidence submitted by the Second Defendant by stating, through DLA Piper, that the Second Defendant had "not been actively working" and instead just been involved in "light duties" and socialising. What amounts to "light duties" has not been specified, nor has the Second Defendant's on-site physical presence from 12 August 2025 been justified. Hence, the First Defendant has acted in breach of the Partial Waiver Agreement, facilitated in the Second Defendant's breaches, and so must be restrained from further breach.

63. The First Defendant rejects this claim on the basis that it, if the Court accepts that the Partial Waiver Agreement is enforceable, did not permit the Second Defendant to actively work except to take part in "onboarding and induction formalities" which the Claimant has accepted is permissible in the letter dated 17 September 2025. This was explained by DLA Piper on 15 September 2025, and confirmed in the Second Defendant's first witness statement.

Interim Injunction Application Threshold

64. The Court is granted the power to make orders for interim injunction where "appropriate" pursuant to Article 24 of DIFC Law No. 2 of 2025, whereby "appropriate" is intended to mean "just and convenient".

65. The Claimant relies on the leading English case of *American Cyanamid* to show that the current Application meets the threshold to grant an interim injunction, as there is a serious issue to be tried that cannot adequately be remedied by damages, and the balance of convenience lies in favour of granting the injunction. I have already stated earlier in this Order that the *American Cyanamid* test can be used in conjunction with the RDC to determine whether it is appropriate to grant an injunction.

66. It is the Claimant's position that there is a serious issue to be tried due to the risk posed to the Claimant on the Defendants' breach of the covenants imposed and sought to be enforced. The Claimant could lose its business, therefore its revenue, as well as its reputation in a niche industry in which personal relationships form the foundation of a company's success. The Claimant submits that there is solid evidence, both documentary and by way of conduct, that the Defendants are actively in breach of their obligations which has already caused harm to the Claimant. Given that the covenants in issue are valid and enforceable, and the Defendants have all but admitted to a total breach, there is no question that the Claimant would have succeeded in establishing its right to an injunction if the action had already gone to trial. The consequences of the injunction do not materially or substantially prejudice the Defendants but instead protect the rights and interests of the Claimant.

67. Further, damages are not an adequate remedy as there are grave and evident difficulties in assessing the loss, real issues in assessing causation as to business loss, and said losses would likely be so substantial that they could not be realistically recoverable.

68. The Second Defendant would be adequately compensated by the cross-undertaking filed and was nonetheless being paid by the First Defendant and so has not suffered any financial loss in the interim, nor any legitimate prejudice.

69. Preservation of the intended status quo knocks the balance of convenience in favour of granting the interim injunction. In circumstances where the First Defendant, a sizeable and acquisitive business, has chosen not to honour its agreement, it is submitted to be entirely right that this Court should make an order preventing it from breaching that agreement further. it is simply not understood why the Second Defendant, who benefitted from a waiver granted for personal reasons and has moved straight into new employment with the First Defendant, now sees fit to portray himself as a victim of a covenant that would not have prejudiced him to follow.

70. The collective response of the Defendants is that there is no serious issue to be tried, as no serious issue has been shown. The Claimant has fallen flat in providing any evidence that the Defendants have, or are at risk to have, broken any enforceable restrictive covenant. The evidence is speculative and drawn from internal discussions that contradict the reality that the Second Defendant is only technically employed by the First Defendant by consent of the Claimant. If any breach is found, which is denied, damages would be an adequate remedy. It is the Defendants' position that it is not `more likely than not' that the First Defendant is in breach of the Partial Waiver Agreement and the Second Defendant is in breach of the Employment Contract as per the precedent set in *Lansing Linde Ltd v Kerr* [1991] 1 All ER 418. Therefore, the Claimant has unnecessarily involved the Defendants in Court proceedings.

Discussion and Conclusion

71. I concede with the Claimant on all issues and grant the Application in full, to the extent as dictated in the draft order.

72. It is clear from the Second Defendant's conduct that he has acted in breach of his post- termination obligations, and continues to do so, or is at least at very high risk of continuing to do so.

73. Clauses 23 and 24 of the Employment Agreement, in my view, are valid and enforceable. They are clear, concise, not overly burdensome, and very obviously intended to protect the Claimant's legitimate business interests for a restrictive period far below the industry standard of 12 months. I also find that the Second Defendant was well aware of his obligations, including the scope, extent and impact of the covenants, which the

Claimant endeavoured to ensure upon his termination. The "public policy" defence is, in my view, ridiculous. Imposing and enforcing non-competition and non-solicitation clauses in commercial employment agreements is common practice and industry standard. The public policy argument is not even engaged in these circumstances. Whether the Order was issued before or after the expiry of the restrictive covenants is immaterial - the issue to be tried is whether the Defendants are or were in breach of their obligations. On the evidence at hand filed to support the Application, I concede that this is likely enough to grant the injunction. What the intended order does not seek is also completely immaterial to the Application at hand.

74. I also find that the Defendants appear to have misunderstood the intention of the Application. The Claimant does not seek to cross-enforce the covenants. The Second Defendant is bound by the covenants in his Employment Agreement, and the First Defendant by the Partial Waiver Agreement. The defence that the Claimant attempts to enforce covenants against third parties therefore fails.

75. The Second Defendant was bound to not take employment with a competitor for 6 months after termination. The Second Defendant was permitted to have his visa transferred for personal reasons, and the Claimant has been overly accommodating to the Second Defendant as they had no obligation to amend, adjust or relax the restrictive covenants in place.

76. The Second Defendant admitted, by way of email, that he of his own volition decided to start "actively working" for the First Defendant, contrary to the non-compete clause. While I recognise that the Second Defendant laments that he was unable to conduct business while being paid for 6 months, fear of being "deskilled" in a management position is no valid reason to act blatantly in breach of his consented post-termination obligations.

77. I also find that it is highly likely that the actions of the clients, managed by the Second Defendant and shared by the Claimant and the First Defendant, in transferring their business to the First Defendant within the Restrictive Period is beyond coincidental. The Second Defendant has failed to explicitly state that he has not attempted to solicit his previous clients and instead remains evasive and married to the concept that he must first fully explore the "legality" of any direction or obligation put upon him before compliance, despite already consenting to and triggering the enforcement of the terms. Paragraph 12 of the first witness statement of Mr. Macfarlane heavily suggests that the "individuals" the Claimant's clients "knew and trusted" who had "left [the Claimant]" that they subsequently followed is likely to involve the Second Defendant. I cannot ignore this link in my consideration that there is a serious issue to be tried.

78. Given the context and actual circumstances, there should have been no concern for the Second Defendant to comply with the restrictive covenant. I find that he appears to want to be actively involved in his own downfall with no legitimate justification. His actions warrant the urgent response from the Claimant to prevent further breach.

79. I also find that the First Defendant assisted the Second Defendant in his breach by failing to discourage or actively prevent the Second Defendant from entering company premises and being involved, in any capacity, whether directly or indirectly, in day-to-day business practices. This additional covenant created in the alternative to a written variation of the Employment Agreement was discussed and agreed between the Claimant and the First Defendant to ensure that the post-termination obligations can be maintained by the Second Defendant, while allowing for flexibility and the continued protection of the Claimant's business interests. Given that the First Defendant has admitted to using non-compete and non-solicit clauses in its own employment arrangements, it is reasonable to assume that the First Defendant is well aware of the importance of adhering to these clauses. It is no secret that the Claimant and First Defendant are direct competitors. Allowing any level of flexibility for the Second Defendant in these circumstances required an unprecedented level of trust between the First Defendant and the Claimant. There is no reason why a sophisticated commercial firm with a thorough understanding of the intention and enforcement of the Second Defendant's restrictive covenants could not be held to the detail of its arrangement with the Claimant. In my view, the evidence indicates a real and significant possibility that the First Defendant has acted in breach of the Partial Waiver Agreement. Hence, I am satisfied that there is a serious issue to be tried, and the balance of convenience favours granting the injunction against the First Defendant.

80. The *American Cyanamid* threshold is met, and so this Order is issued pursuant to Article 24 of DIFC Law No. 2 of 2025.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 6 November 2025
At: 11am