

Boardroom Briefing – UAE

A brief monthly update on legal and regulatory developments in the UAE.

Abu Dhabi Global Market - The emergence of a new seat for arbitration in the UAE

The **Abu Dhabi Global Market** (the 'ADGM') is a separate financial and legal area in Abu Dhabi established pursuant to Federal Decree No (15) of 2013, Cabinet Resolution No (4) of 2013, and Abu Dhabi Law No (4) of 2013.

The ADGM represents a significant and recent development in the arbitration space. The ADGM issued the ADGM Arbitration Regulations in December last year which are modeled on the UNCITRAL Model Law and which reflect best practice internationally. Accordingly, now both the DIFC and ADGM offer options for contracting parties to arbitrate certain issues locally in the Middle East, in English and governed by progressive arbitration laws with an option to avail themselves of the assistance of an arbitration-friendly common law court where necessary.

The ADGM and the ADGM Arbitration Regulations are relatively new developments and only time will tell whether the ADGM will prove as effective and successful as the DIFC has to date.

UAE-UK double taxation treaty

The UAE has recently signed an agreement on the avoidance of double taxation with the UK, which will be of particular interest to regional investors looking to invest in the UK. The agreement aims to enhance the economic and trade relations between the two countries, and protect companies and individuals from direct or indirect double taxation. In particular the opportunity to reduce withholding taxes on interest to zero will support the debt financing of investments in the UK.

With its multitude of free zones, there was a view that the UAE would struggle to reach a tax agreement with the UK. However, this is a real achievement, and only emphasises the UAE's position as an important holding location for international investments.

Compulsory health insurance for Dubai-based employers

The phased implementation of the mandatory health insurance scheme ('Scheme') concluded on 30 June 2016. The Scheme, set out within the Dubai Health Insurance Law (Law No 11 of 2013), requires every company in Dubai to provide their employees with medical insurance. The Scheme has therefore had a significant impact on all Dubai-based employers who did not previously provide employees with medical insurance or who provided medical insurance with a provider which is not registered with the Dubai Health Authority.

Any employer who fails to comply with the Scheme will be issued with a fine, with repeat offenders facing maximum fines of up to AED 500,000. The Dubai Health Authority has, however, confirmed that a six-month grace period will be available to individual sponsors, who are exempt from fines until January 2017.

Click [here](#) for further information.

Pledge of shares in an LLC in the UAE

Where the old Companies Law was silent on the ability of shareholders to 'pledge' or 'mortgage' their shares, the 2015 Companies Law now specifically allows for this. While a welcome change, particularly for shareholders/LLCs looking to secure financing and banks looking to take security over such financing, the law remains silent on the process for registering a pledge of an LLC's shares.

Based on discussions with the Dubai Department of Economic Development (the 'DED'), the requirements for a pledge to be registered are as follows: the pledge must be in favour of a bank or financial institution; all shareholders of the LLC must consent to the pledge, even if they are not pledging their own shares; the pledge agreement must be in Arabic; the pledge agreement must state the amount (in AED) that is secured by the pledge and the duration of the pledge.

It remains to be seen how share pledges will be managed and enforced in practice; given that the UAE Commercial Code requires physical possession of the pledged asset in order for a pledge to be valid. At present, there is currently no concept of a share/stock certificate attributable to shares in an LLC that a lender is able to take possession of.

Update on the introduction of VAT in the UAE

We understand the GCC VAT Framework Document will be published in the last quarter of 2016. This will give businesses more details of where potential difficulties will arise. Any business that could be exempt, or be subject to a partial restriction on the recovery of input VAT should be reviewing all their commercial arrangements. This is particularly relevant for businesses involved in financial services, healthcare and education.

Recent changes in Abu Dhabi Property Law

Under the Abu Dhabi Property Law, all master developers and sub-developers, brokers and their employees, home association managers, appraisers and surveyors must obtain a licence from the Department of Municipal Affairs ('DMA') and Transport before engaging in real estate activities. The documentary requirements for the issue of a licence for a new development are fairly simple and consist of a business licence and a Chamber membership certificate.

There are clear penalties for developers who fail to comply with the provisions of this law. A licensing or registration breach by a developer could lead to a fine of between AED 50,000 and 2,000,000 and/or imprisonment. The severity of these potential consequences of failing to meet the licensing and registration deadlines makes it even more critical for developers to ensure they are fully aware of their new obligations and have implemented (or are in the process of implementing) the necessary procedures.

Click [here](#) for the full Pinsent Masons article.

Establishment of the new Judicial Tribunal in Dubai

A new 'Judicial Tribunal for the Dubai Courts and the DIFC Courts' has been established pursuant to a decree (Dubai Decree No. 19 of 2016), issued by HH Sheikh Mohammed Bin Rashid Al Maktoum, the Ruler of Dubai.

The Tribunal has the power to issue binding decisions on: (i) the competent court to hear a particular dispute in the event of a conflict between the jurisdiction of the Dubai Courts and the DIFC Courts (pending which the underlying proceedings are to be stayed); and (ii) the executable judgment where conflicting judgments have been handed down by both courts. Decisions will be issued within 30 days of application and will be final and without permission to appeal.

The Decree sets out a broad framework for the Tribunal's functioning but does not set out detailed procedural rules. It is assumed, due to the fact the Tribunal will make its decisions within 30 days, parties other than the applicant will have very limited, if any, opportunity to make representations. We anticipate that further rules and guidance will be published in due course which will provide clarification on the workings of the Tribunal.

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