

# Boardroom Briefing – UAE

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

## The new UAE Bankruptcy Law

A final draft of Federal Law No. 9 of 2016 (the new UAE 'Bankruptcy Law') has been adopted by the UAE Cabinet and will come into effect on 29 December 2016.

The Bankruptcy Law will apply to companies established under the Commercial Companies Law, certain freezone and government owned companies, certain sole and other civil companies. Notably it will not apply to companies in the Dubai International Financial Centre and the Abu Dhabi Global Market, which have separate bankruptcy and insolvency laws.

The Bankruptcy Law aims to enhance the attractiveness and competitiveness of the UAE economy for foreign investors, strengthen economic growth and provide for stability in the arena of financial transactions. It offers a more comprehensive level of protection for rights of investors and creditors than the previous regime and is focused on rescuing businesses which are in financial difficulty and resolving differences between stakeholders. Its provisions are broadly based on the Chapter 11 of the US Bankruptcy Code.

The Bankruptcy Law sets out three main procedures:

- **Preventive Composition:** This is a process by which the company can agree with its creditors a settlement or partial payment for debts owed to them. It is achieved by way of an application to the court. An official is appointed by the court to supervise the composition process. A scheme must be approved by the majority of a company's creditors in number and which hold two-thirds of the outstanding debts.
- **Restructuring:** Where a company is insolvent but the court believes that it is capable of being maintained as a going concern, then the court may approve a scheme of restructuring of the business. This is a longer term solution than the preventative composition process.
- **Insolvency:** If preventive composition or restructuring are not suitable solutions, the court may commence bankruptcy proceedings. The law sets out a waterfall for distributions, with secured creditors having priority.

The Bankruptcy Law also removes the criminal offence of 'bankruptcy by default', introduces provisions for the staying of cheques if a composition or restructuring scheme is in place and introduces provisions designed to facilitate companies obtaining new loans after the commencement of composition or restructuring.

## New UAE Tax Authority

It has recently been announced that under Federal Decree-law No. 13 of 2016 a Federal Tax Authority is to be established in the UAE. The law provides the legislative framework for this process to commence and sets out the duties and responsibilities of the Authority. It will be managed by a Director General, reporting to the Board of Directors, which will be chaired by the UAE Minister of Finance.

The Authority is responsible for taxes at a federal level, which is defined in the new law as including 'taxes imposed by virtue of a federal law'. It is to be expected that it will include VAT which is due to be implemented in January 2018. Recruitment is already taking place for qualified tax consultants and collectors for the Tax Authority.



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The establishment of a Tax Authority may suggest that the UAE is considering imposing further taxes, including a universal corporate income tax (or at least universal to all foreign owned businesses) given that the necessary administrative infrastructure is now in place. If this is developed to manage the introduction of VAT then the possibility of corporate tax in the UAE becomes that much more likely. However for now the focus is on VAT.

## Greater salary protection for UAE employees

The new Wage Protection Decree, announced in October 2016, has been introduced which supplements the existing Wage Protection System ('WPS') and applies penalties to employers who do not pay their employees on time.

The Wage Protection Decree has further incentivised compliance with the WPS by imposing a legal obligation on employers to pay on time and in full or face financial penalties. For WPS registered companies employing over 100 employees, failure to pay wages within 60 days of the registered payday, will attract penalties of AED 5,000 per employee, up to a maximum of AED 50,000 if multiple workers are affected. Companies employing less than 100 employees face similar penalties where the Decree is breached twice in one year.

The UAE government's focus on wage protection as a key area of labour management is a positive step in the development of business growth and commercial activity in the region.

## Change to Emiratisation requirements

The Ministry of Human Resources and Emiratisation has recently announced three new provisions to further encourage Emiratisation within the UAE private sector.

There are three key changes to the Emiratisation requirements:

- Requirement to register on the Ministry's Tasheel system and employ two UAE nationals in order to access and process data in relation to this system; for organisations with 1,000 or more employees
- Requirement to employ a UAE national in the role of occupational health and safety officer for companies operating in the construction or industrial sector with 500 or more employees
- Companies' Emiratisation classifications may be upgraded and companies will be entitled to a reduction in fees payable to the Ministry, if they meet certain reduced levels of Emiratisation.

## Jail time for biased Arbitrators in the UAE

Article 257 of the UAE Federal Penal Code has been amended by UAE Federal Decree Law no. 7 of 2016 to make it a criminal offence for experts and arbitrators to act in a biased manner or without integrity and impartiality.

This change has given cause to concern to experts and arbitrators active in the jurisdiction because the provision is broadly drafted and no supporting guidance has been issued. This may dissuade experts and arbitrators from taking appointments in the UAE.

Additionally, while the amendment is no doubt intended to protect parties involved in dispute resolution processes in the UAE, the offence creates another avenue for parties to bring about delays and disruptions to the arbitral process by making allegations of bias or partiality.

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