Know How

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1. Changes to UAE Company Law

In late 2020, the UAE Cabinet issued Federal Decree-Law No. 26/2020 amending the Commercial Companies Law Federal Law No. 2/2015.

The amendments include a substantial change to restrictions on foreign ownership in the UAE which have prevented foreign nationals or companies from owning more than 49% of an onshore business (mainland) operating in the UAE. This restriction consequentially resulted in 51% Emirati owned corporates with side agreements and arrangements with the registered 49% foreign partner, and often disproportionate profits normally around 80% for the 49% partner. The Federal Decree-Law No. 26/2020 amendments will potentially now allow foreign nationals or companies to own up to 100% of a business operating in the UAE, without having to operate in a free zone or with a local Emirati co-investor. However, the amendment does not automatically change any registered ownership of an existing UAE company.

2. UAE introduces the National Economic Register

The UAE has created a National Economic Register. This step has been driven by the transparency requirements of the FATF and has also been encouraged with the introduction of various new disclosure requirements such as the Economic Substance Regulations, CbC Reporting, UBO Register and so on. Previously unavailable, or with only limited or partial information, the Ministry of Economy (MOE) has now collected much more information, leading to a type of UAE Public Register.

3. Federal Law No. 15/2020 on Consumer Protection

The new Federal Law No. 15/2020 on Consumer Protection (the new Consumer Protection Law) issued on 10 November 2020 repeals the previous Federal Law No. 24/2006.

The new Consumer Protection Law covers all goods and services within the UAE, including in free zones, and all related operations carried out by suppliers, advertisers or trade agents, including electronic commerce transactions if the supplier is so registered in the UAE. The key provisions are summarised:

Consumer Privacy

The introduction of data privacy and data security for consumers and the prohibition of the unauthorised use of consumers' data (Article 4(5)) are key to the new law. Suppliers and businesses now have an obligation to safeguard their consumers' data, avoid using consumer data and information for marketing and promotion, and protect consumers' religious values, customs and traditions when providing a commodity or receiving any service.

E-Commerce

All e-commerce providers registered within the UAE shall be required to provide consumers and competent authorities with their names, legal status, address, licensing authorities and sufficient information in Arabic on the services they provide, specifications, terms of contracting, payment and warranty terms (Article 25). These obligations do not apply to e-commerce providers based outside the UAE. Information made available to consumers, data, advertisements, contracts and invoices must be in Arabic, and other languages may also be used alongside Arabic at the supplier's discretion (Article 8).

Penalties

The new Consumer Protection Law stipulates more robust penalties for suppliers. Suppliers who falsely advertise products or services can face imprisonment of up to two years and a fine not exceeding AED 2 million. This penalty will also apply to suppliers who do not remedy a defective product by repairing or replacing the products or services without charge. Penalties will be doubled in the event of recurrence.

Companies have a one-year transition period to comply the provisions of new law (Article 33) from the date it came into force. Such a period may be extended by a resolution from the Cabinet.

The Cabinet will issue the Executive Regulation of this law upon a proposal from the Minister within six months from the date the new law was published in the Gazette, on 15th November 2020. The Executive Regulation, therefore, is expected to come into force by 15th May 2021.

4. DIFC Case Law: Whistleblowing

In the case of Bassam Khalifa v S.W.I.F.T (Dubai) Limited (DIFC 029/2019), the DIFC Court of Appeal has issued a judgment which clarifies the application of the whistleblowing protections under the DIFC Operating Law, and the Court of First Instance's (CFI) power to grant relief for any breach of the whistleblowing protections.

The Law

"Whistleblowing" is essentially is a disclosure of (often confidential) information that exposes illegal or unethical practices within an organisation. The disclosure is usually made by an employee or an ex-employee of the entity itself, for example via a confidential whistleblowing hotline, or, an independent third party, such as a regulatory authority.

The DIFC Law No. 7/2018 (Operating Law) sets out whistleblowing protection that applies in the DIFC and it applies to any person operating or conducting business in or from the DIFC.

Article 64 of the Operating Law provides that a person who makes a disclosure of information (outlined below) to the DIFC Registrar of Companies or the relevant DIFC entity's auditors or to a Director/officer of the DIFC entity itself, is entitled to the protection set out under the Operating Law. The disclosure must include the identity of the person making the disclosure, related to a reasonable suspicion that the DIFC entity has contravened the Operating Law or other regulations/legislation and must be in good faith.

The Operating Law provides that those making good faith disclosures in accordance with the law shall not, as a result of making the disclosure, be:

- subject to any legal or contractual liability;
- subject to any other contractual, civil or other remedy or suffer any adverse consequence; and/or
- dismissed from employment or otherwise subject to a detriment by the employer or any related person.

Pursuant to Article 64 any act in contravention of the above may result in a fine of USD 30,000.

In addition, Article 40 provides that the DIFC Courts may make orders for the recovery of damages or compensation or such other orders as it sees fit where a "*person intentionally, recklessly or negligently commits a breach of any requirement, duty, prohibition, responsibility or obligation which is imposed by or under this Law or Legislation administered by the Registrar, the person is liable to compensate any other person for any loss or damage caused to that other person as a result of such conduct, and is otherwise liable to restore such other person to the position they were in prior to such conduct."*

Case summary

In April 2020, the CFI issued a judgment in the case of Bassam Khalifa v S.W.I.F.T (Dubai) Limited ruling that the Court had power to grant relief under Article 40 of the Operating Law for losses suffered as a result of breach of Article 64 of the Operating Law.

The Claimant, Mr Bassam Khalifa, was employed by the Defendant, S.W.I.F.T (Dubai) Limited as a commercial manager. During his employment, the Claimant alleges that he became aware of fraudulent activity as a result of which he made five disclosures to the Defendant between November 2017 and October 2018. An investigation was undertaken by the Defendant. On conclusion of the investigation, no further action was taken however, the Claimant's employment was later terminated. The Claimant's position was that he was terminated as a direct result of making the disclosures and as such, he should be afforded protection under Article 64 of the Operating Law and he sought relief under Article 40.

The Claimant's arguments rested on the fact that even though the Operating Law came into effect after the disclosures had been made (on 12 November 2018), an individual is entitled to the protections afforded under Article 64 where the termination occurred after the introduction of the law. Effectively arguing that the

Operating Law was to be applied retrospectively from its enactment. The CFI ruled in the Claimant's favour indicating that it has the power (under Article 40) to grant relief for loss suffered as a result of a breach of Article 64.

The Court of Appeal has since overturned the CFI's judgment and ruled that the Operating Law does not have retrospective effect and accordingly, dismissed the Claimant's submissions that he was entitled to relief under Article 40 of the Operating Law.

Notwithstanding, the Court of Appeal did affirm that where there has been a breach of the whistleblowing protections afforded under Article 64 of the Operating Law the CFI does have power to grant relief in accordance with Article 40, provided its terms are met.

Significance of the judgement

The judgement is significant as it affirms that the CFI has the power to grant relief under Article 40 of the Operating Law where there has been a breach of the whistleblowing protections. Employees and ex-employees have a means by which they can seek compensation before the courts in the event that the applicable whistleblowing provisions under the Operating Law are engaged. Given these risks and the potential exposure, it increases the focus upon good corporate governance to ensure transparency, particularly in relation to financial dealings, by taking steps such as creating and maintaining proper whistleblowing policies and procedures.

Accordingly, we would recommend a thorough review of your business's existing whistleblowing framework to ensure that it is robust. Please let us know if you require any assistance with implementing and/or updating internal policies and procedures.

5. UAE: Insurance Authority Merger with Central Bank Begins

The Central Bank has announced that the formal procedures for the merger of the Insurance Authority with the Bank have commenced. The Bank has established several committees and working groups to oversee the merger which is aimed at transferring the supervisory and regulatory responsibilities of the Authority to the Bank. The merger is being executed in line with Federal Decree-Law No. 25/2020 which states the Central Bank will assume the regulatory, supervisory, licensing and enforcement functions of the Authority. The Bank will be responsible for monitoring the financial solvency of insurance companies, ensure they carry out business ethically and the rights of those who are insured are protected. The rules, Decisions, Circulars and regulations issued by the Insurance Authority in line with Federal Law No. 6/2007 will continue to apply to all licensed institutions and activities until replaced by regulations issued by the Bank. This is a part of wider efforts to transform the Central Bank into one of the world's top 10 central banks.

6. Wills for Expatriate UAE Residents

You may be pleased to learn the distribution of an individual's estate will now take place according to the laws of the country of which the individual is a citizen, instead of the application of UAE law (which codifies Islamic Sharia principles on inheritance). An exception to this however would still remain with respect to UAE real estate, which shall continue to be subject to UAE laws, unless a Will has been registered in the UAE.

What Has Changed?

Lately, the Personal Status Law has undergone revisions, by way of Federal Decree-Law No. 29/2020. Additionally, the Civil Code has been revised, by way of Federal Decree-Law No. 30/2020.

These changes to the local regime allow the application of the local law of the home countries of UAE resident expatriates to inheritance of their UAE estate, in absence of a registered will in the UAE.

Assets and Home Country Law:

The following movable property is subject to the new laws, in particular:
- Money in bank accounts;
- Investments;
- End of Service and gratuity payments;
- Death in Service benefit;
- Company shares;
- Vehicles; and
- Personal possessions, such as jewellery.

Real Estate – Need for the UAE Registered Will

If you hold real estate assets in the UAE, then it is imperative that you register a UAE Will.

The options that are available to you are as follows:

1. **Abu Dhabi:**
   To register a will with the Abu Dhabi Judicial Department. The authorities fee is approximately AED 1,000 plus VAT; or

2. **Dubai (DIFC):**
   To register a will under the DIFC Wills and Probate Registry, the DIFC fee is AED 10,000 plus VAT.

3. **Dubai Court:**
   To register a will before the Dubai court, the fee is approximately AED2200 plus VAT.

Although the recent changes in local law are helpful, in order to truly protect your interests, it is crucial that you:
- understand the framework that would apply to your assets, in the unfortunate case of your passing;
- have a locally-registered will; and
- appoint a guardian(s) for your minor children, if you have any.

Our specialist team at Ansh Legal will be delighted to assist you in this regard.

7. Acquisition of UAE Nationality

The Government of the UAE made another milestone announcement on 30 January 2021, announcing a procedure for the granting of citizenship to foreign nationals in a bid to retain talent in critical sectors and to expand and diversify the economy.

Nationality and citizenship in the UAE are governed by Federal Law No. 17/1972 Concerning Nationality and Passports, as amended by Federal Law No. 10/1975 and Federal Decree-Law No. 16/2017 (the Nationality Law), pursuant to which UAE nationality may be obtained by law, citizenship or naturalisation.

The recent announcement, as reported, would amend the Nationality Law to make the following categories of individuals eligible for UAE nationality by naturalisation:

- Leading artists and intellectuals;
- Authors;
- Doctors and specialists in unique scientific fields with significant contributions and experience of at least 10 years;
- Engineers;

- Investors who own property in the UAE;
- Inventors who have been granted at least one patent approved by the UAE Ministry of Economy;
- Scientists with at least 10 years of experience who are active researchers and have made substantial progress in science as recognised by prestigious scientific awards or funding; and
- Members of the immediate family (i.e., spouse and children) of a person who is naturalised under one of the foregoing provisions.

The process of naturalisation would begin with a nomination by the Federal Cabinet or by the Ruler's Office or Executive Council in an Emirate. Letters of recommendation are also required for nominations in most categories. The detailed criteria for each category have yet to be announced. Reports indicate that a person who acquires nationality under the new rules will not be required to renounce his or her earlier citizenship, but instead may remain a dual national; this is a departure from the previous rules for acquiring nationality under the Nationality Law.

8. UAE: Draft Genetic Resources Law Approved

The UAE's Federal National Council has approved a draft law on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation.

The aim is to protect genetic resources, reduce waste and regulate the process of obtaining them, to protect the country's biodiversity.

Know How – GCC

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1. More Taxing Times Ahead - Oman

In 2020 there were a whole host of tax changes in Oman and this year there are more to come including the introduction of VAT.

VAT

Oman is the fourth GCC state to implement VAT in line with the 2016 Common VAT Agreement of the GCC. It will be levied at a standard rate of 5%, with limited scope zero ratings. However, it will have the highest number of exemptions seen so far in the GCC as a result of Oman Sultani Decree No. 121/2020."

Exempt activities in Oman will include financial services, provision of healthcare and associated goods and services, education and associated goods and services, supply of local passenger transport, and of bare land, resale and renting of residential real estate.

However, entities engaged in exempt activities will need to take particular care, as these exemptions will bring their own challenges in terms of purchases, VAT deductibility, requirements to apportion VAT on overheads, contract clauses and pricing.

It is expected that Oman's new VAT Registration Portal may come online around the end of January 2021, so that businesses exceeding the Mandatory Registration threshold of 38,500 Rials have sufficient time to register before the deadline. Businesses whose taxable supplies or associated expenses exceed 19,250 Rials will also be able to voluntarily register.

Tax Card

Another change is the new Tax Card system that was introduced by Oman Decision No. 27/2020 and came into effect in July 2020 replacing the old Tax certificates which were previously issued by the Omani Tax Authorities. The Tax card is valid for two years from the date of issuance and every taxpayer has to apply for one of these cards when initiating the incorporation or licensing procedures of a business or on registration in the commercial or industrial registry. Failure to obtain a tax card can lead to fines and all ministries, public authorities, institutions, and companies with more than a 40% holding by the state must request taxpayers submit a copy of their tax card when issuing any contracts or directly undertaking any transaction with them.

Excise Taxes

There have also been a number of excise tax changes which are already contributing to the Government budget. For example, the rate applicable to alcoholic beverages has been increased from 50% to 100%. In addition, sugar sweetened beverages are also now taxed at 50% under Oman Decision No. 34/2020. Other excisable products in Oman include carbonated drinks, energy drinks, tobacco products and pork products.

In addition to these rate and scope changes, excise tax procedures have been further explained with the issuing of the Implementing Regulations to the Excise Tax Law in Oman Decision No. 51/2020. These new Regulations cover areas including registration and deregistration, returns, filings and records, tax warehouse operating conditions and procedures, along with transitional rules in these areas.

Reporting Obligations

There has been increased alignment of Oman's tax practices with international standards in respect of reporting.

The Sultanate is showing willingness to engage in cross-border collaboration, is keen to see more tax transparency by businesses and to help support the identifying and eradicating of tax avoidance or evasion within its borders. An example of this has been the country's ratification of the Convention on Mutual Administrative Assistance in Tax Matters through Oman Sultani Decree No. 34/2020.

In addition, the Common Reporting Standards and Country-by-Country Reporting obligations have also been adopted as a result of Oman Ministerial Decision No. 78/2020.

Income Tax

Lastly, and perhaps the most intriguing tax news is that Oman has announced it intends to implement a personal income tax regime from 2022.It has been stated this will concentrate on high earners and will ensure low-income families are protected. There is no indication on when exactly this measure will be introduced or if the regime will differentiate between expatriates and Omani nationals.

2. Restructuring Your GCC Patent Filing Strategy in View of the Amendment to GCC Patent Law

The GCC Patent Office (GCCPO) ceased to accept new patent filings for GCC patent applications as of 6 January 2021.

Following the 41st GCC Supreme Council meeting, held on 5 January 2021, a decision was made by the GCC Council of Ministers to amend the existing GCC Patent Law and to require the GCC Patent Office to cease receiving new filings for GCC patent applications as of 6 January 2021. The decision was announced through a statement made on the GCCPO website. The GCC Patent Office is a regional GCC body which was established by the GCC Council in 1992 providing a unified patent registration system for the GCC region.

According to the communication, the GCCPO will continue to prosecute and grant patent applications filed prior to 6 January 2021, and it will continue to maintain any pending and granted applications. As a patent applicant, you are not required to take any action for the time being with respect to previously filed patent applications.

Restructuring GCC Patent Filing Strategy – What are the remaining routes for patent protection in the GCC countries?

Applicants currently seeking patent protection in any of the six GCC member states are now required to file their patent applications directly to the respective GCC state's Patent Offices. Each GCC country – UAE, KSA, Qatar, Bahrain, Oman and Kuwait – has its own national patent office.

All the GCC member states are member countries of the Paris Convention and the Patent Cooperation Treaty (PCT), so applications can be made through these routes. A national patent application under the Paris Convention in any one of the GCC countries of interest will need to be filed before the expiration of 12 months from the convention priority date. A national phase application in any one of the GCC countries under the PCT Convention will need to be filed before the expiration of 30 months of the priority date. Some challenges are expected to occur in Kuwait as the local patent regulations are yet to be issued. Applicants can file their patent applications for the time being before the KW Patent Office to preserve their rights, however without further prosecution or grant of the patent applications.

3. Oman's New Executive Regulations on Competition Law

*Oman's Ministry of Commerce, Industry and Investment Promotion has issued Oman Ministerial Decision No. 18/2021, the executive regulations of the Law on Protection of Competition and Prevention of Monopoly (**Regulations**) that supplement Oman Sultani Decree No. 67/2014 (Competition Law). The Regulations, which took effect on 25 January 2021, clarify the interpretation of the Competition Law of Oman.*

The Regulations will be of interest and importance to investors acquiring targets with a physical presence in Oman as well as large consumer orientated businesses selling products and services into the Omani market.

Economic Concentrations

When advising on the competition law aspects of large M&A transactions involving an Omani target, legal practitioners in Oman have become accustomed to the document requests that have been sought by the Competition Authority in Oman. The Regulations now clarify the data and materials that are required whenever a request has been made for the creation of an economic concentration under Article 11 of the Competition Law.

In addition to adducing general market share data, specific information will be requested including information concerning key competitors, the effect of the economic concentration on the concerned market and the justification for the economic concentration, for example whether the national workforce is likely to be affected by the transaction. Details of approvals or clearances obtained from competition regulators in other jurisdictions will also be requested. As part of its decision-making process the Ministry of Commerce, Industry and Investment Promotion will consider the following factors:

- the effect of the economic concentration on competition within the relevant market;
- actual or possible competitiveness in the relevant market;
- ease of access to the relevant market / specific barriers;
- effect on prices, innovation and technical competence in the relevant market;
- contribution to the promotion of investment, exports and domestic value add (including creation of employment); and
- interests of consumers.

The Regulations re-state the position under the Competition Law, namely that the decision-making process takes up to 90 days following filing of all requested documents and data. It is important to recognise that this 90-day period can be ‘frozen' if documents have been requested but not provided, meaning that the actual decision-making process is likely to exceed 90 days. Appeals against the decision taken under the Regulations and the Competition Law can be made within 60 days following issue of the decision.