

UAE

Dual Licence Regime in Abu Dhabi (Free Zone and On-shore)

In an effort to bringing new businesses to the UAE and attracting foreign investors; Masdar City (and other Free Zones in Abu Dhabi) are collaborating with the on-shore Authorities to permit companies registered in such Free Zones to operate onshore with a licence from the Department of Economic Development (DED).

Limited Liability Companies holding Masdar City licence may carry out their businesses on-shore through a branch duly licensed by the DED. Such branches will not be required to have an Emirati Sponsor (Service Agent) and Masdar, as a Free Zone Authority, will act in such capacity.

Moreover, Masdar will allow companies specialised in a specific sector for e.g. fashion to obtain a designing licence in Masdar with an on-shore branch specialised in general trading. However, the licence of the Branch must be coherent with the Free Zone one.

Bahrain

Protection of Personal Data

The Law on the Protection of Personal Data (the **LPPD**) of Bahrain came into effect on 1 August 2018 and makes a series of changes to the way businesses process personal data in Bahrain. Historically, data protection has not been a high priority for most businesses in Bahrain with the limited exception of international entities subject to data protection requirements in other jurisdictions in which they operate. While the publication of the new Law provides a period within which entities subject to the Law will need to comply, the fact that the Law creates criminal offences means that compliance should be treated as a priority.

Application

The LPPD provides that protection of personal privacy is among the main constitutional rights of a person and should be protected, particularly with the increasing use of electronic/digital means for processing information.

The LPPD applies to:

- Every individual residing normally in Bahrain or having a workplace in Bahrain, and every corporate entity having a place of business in the Kingdom of Bahrain; and
- Every individual not residing normally in Bahrain or having a workplace in Bahrain, and every corporate entity NOT having a place of business in the Kingdom of Bahrain, where such persons are processing data using means available in Bahrain, except where such processing means are solely for the purpose of passing data through Bahrain.

Criminal Provisions

The Law criminalises a variety of acts that would only be the subject of administrative penalties in data protection laws elsewhere. Penalties generally comprise up to one year in prison and/or a fine of between

BHD 1,000 and BHD 20,000 (between approx. USD 2,600 to USD 53,000) (or a fine only in the case of corporate entities).

The following are examples of activities that attract criminal penalties under the Law:

- Processing sensitive personal data in violation of the provision specifying requirements for processing sensitive personal data;
- Transferring personal data outside Bahrain contrary to the provisions specifying requirements for transfers to jurisdictions that provide an adequate level of data protection;
- Processing personal data without notifying the new Data Protection Authority in accordance with the provision that sets out the obligation to notify the Authority before commencing any data processing activities (except where certain exceptions apply), or failing to update such notification to the Authority;
- Providing false or misleading information to the Authority or to a data subject, or withholding relevant information from the Authority, or otherwise hindering the Authority's work; and
- Disclosing any data or information accessed due to work, or using the same for his own benefit or for the benefit of others unreasonably and in violation of the provisions of this law.

Security Considerations

Generally, the security of processing provisions, and the confidentiality provisions, appear to be fairly standard. Data controllers are required to apply technical and organisational measures capable of protecting personal data against unintentional or unauthorised destruction, accidental loss, unauthorised alteration, disclosure or access, or any other form of processing. The measures adopted need to be appropriate, bearing in mind the nature of the data in question and the risks associated with processing it.

Data controllers are required to engage only data processors who provide sufficient guarantees regarding the application of technical and organisational measures. Importantly, there is an obligation on data controllers to take steps to verify compliance with such measures, and to enter into a written agreement with the data processor requiring that the data processor shall only process data in accordance with the instructions of the data controller, and in accordance with the data controller's requirements with regard to security and confidentiality.

There does not appear to be any specific obligation to notify the Authority in the event of a data breach. It is possible that this level of detail may be addressed in the regulations, or that the Authority is expected to address breaches only in the event that they become aware of them.

Data Protection Supervisor

The Law contemplates a role of 'Data Protection Supervisor' (not a data protection officer type role) intended to act as an independent and impartial intermediary between the Data Controller and the Authority. The Data Protection Supervisor will help the Data Controller fulfil its obligations, and coordinate between the Data Controller and the Authority.

It will also be required to verify the Data Controller's processing in compliance with the LPDD), alert the Data Controller to any apparent non-compliance to enable the issue to be addressed, and alert the Authority where such non-compliance has not been addressed within a specified timeframe.

The regulations setting out the requirements for the registration of Data Protection Supervisors may shed greater light on what is anticipated, in terms of who may be able to fulfil such roles.

Kuwait

Public-Private Partnerships (PPP)

The Government of Kuwait has started a program to promote collaboration between the public and private sectors to develop the infrastructure of Kuwait and the services available to Kuwaitis.

In order to accommodate this initiative, Kuwait introduced Law No. 116 of 2014 (the **PPP Law**) to provide a regulatory framework for the implementation of public-private partnership projects (**PPP**) in Kuwait.

The PPP Law was designed to accommodate the ambitious PPP program and to codify some of the techniques applied in the Az-Zour North Independent Water and Power Project (Phase 1) which began in January 2014. As a result, a variety of new PPP projects are under consideration in Kuwait.

Kuwait Authority for Partnership Projects

The Kuwait Authority for Partnership Projects (the **KAPP**) is responsible for initiating and overseeing PPP projects in Kuwait.

Its governing board (the **Higher Committee**) has broad authority in the implementation of the PPP process, including:

- providing final approval to public entities to enter into PPP contracts
- approving project concepts and proposals before they are advertised and tendered
- selecting the relevant public entities that will partake in the tendering process
- selecting and supervising the public entities that participate in project implementation and operation

As KAPP has the responsibility of being Kuwait's primary facilitator and caretaker in bringing PPP projects to fruition, the participation of KAPP is instrumental in any successful implementation of PPP projects in Kuwait.

Project Company

Under the PPP Law, each project is to be implemented by establishing a project company in the form of a Kuwaiti public joint stock company pursuant to the Commercial Companies Law (a **Project Company**).

Each Project Company will be owned in part by KAPP and/or any public entities chosen by the Higher Committee as well as one or more consortium companies which are to be incorporated in Kuwait and owned by the relevant contractors, investors and sponsors that are chosen to undertake the project (the **Consortium Companies**).

Shareholding and Management

At the beginning of each PPP project, KAPP, the Consortium Companies and the relevant public authorities involved in the project will enter into a variety of agreements including a Shareholders' Agreement setting out the ownership, governance and operation of the Project Company pursuant to which managerial control of the Project Company may be granted to the Consortium Companies. These agreements will stipulate when and how the shares that are owned by KAPP will be transferred to public entities and the Kuwaiti citizens who are invited to invest in the project.

The PPP Law also contain provisions relating to the public offering of shares in Project Companies to Kuwaiti citizens once the relevant project achieves a commercially viable state of operations. During the developmental stages of each project, KAPP will own the shares reserved for a future public offering and

will exercise all of the rights and obligations attached to those shares in accordance with the Commercial Companies Law as well as in accordance with the relevant Shareholders Agreement.

Once the project reaches a commercially viable state of operations, KAPP will offer the so-called “warehoused shares” to Kuwaiti citizens. Any shares that are not subscribed to by Kuwaiti citizens may then be offered to the public entities or the Consortium Companies.

Financing

Prior to the PPP Law, Kuwait law was seen as too restrictive and uncertain because it prohibited the mortgage of project land as well as the buildings and the equipment on the land. The PPP Law has relaxed these restrictions and prohibitions and clarified what may be pledged as security.

In addition, the New PPP Law codifies some of the financing techniques applied in the Az-Zour North Project such as assignment of proceeds, pledge against shares in both the Project Company and the Consortium Company (even during the initial 2-year lock-out period) and mortgages over the assets comprising the project (other than the land). It also provides more clarity on the procedures to be undertaken in the event the project needs to be transferred to a new consortium.

This new Law should contribute to the development of infrastructure of Kuwait and the services available to Kuwaiti citizens and residents.

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