

UAE

Public and Private Partnerships in Abu Dhabi

The Abu Dhabi Government adopted a new Law on the establishment of the Abu Dhabi Investment Office (the “**ADIO**”) aimed at encouraging local investment and promoting direct foreign investment in real estate, renewable energy and infrastructure in Abu Dhabi as part of the three-year UAE Dirham 50 billion “Ghadan 21” (Tomorrow 21 in English) programme to boost the economy.

The Law formalises the creation of ADIO set up in 2018 to drive foreign direct investment and entrusted it with an additional mandate to lead the UAE public-private partnership (**PPP**) programme. The ADIO will work with Government departments to identify key projects that will benefit from a PPP model to bring them to completion. It will act as a permanent interface for the private sector to interact with Government for all of its needs and throughout the PPP tender process according to Ms Elham Alqasim, acting chief executive of ADIO.

The PPP framework will increase FDI inflows and enhance the private sector’s participation in key strategic sectors such as technology and the creation of urban infrastructure as well as the provision of services in education, healthcare, housing and transportation. ADIO will also support investors in making commitments in line with Abu Dhabi’s economic strategy and work with Government and private sector partners to use financial, technical, and regulatory criteria to screen proposed projects and assess their feasibility for PPP.

ADIO intends to launch at least three significant PPP projects for tender to the private sector by this summer. The exact value of the projects will be determined during the commercial bidding process. The Law on regulating Partnerships between the Public and Private Sectors sets out a general framework for PPPs but the terms of each deal will be worked out on a case-by-case basis such as whether there will be payment guarantees from the Government to reduce the financial risks of investors.

This PPP initiative is part of the Ghadan 21 programme, a series of reforms aimed at stimulating investment, creating jobs, encouraging innovation and improving the quality of life, as well as cementing the UAE as a growing world power.

The Ghadan Programme includes:

1. Commercial licences no longer subject to having local physical premises for the first two years of operations;
2. Instant licensing for most commercial licence types;
3. New faster payments for private sector contractors and a review of fines incurred by delays they cause;
4. A cost-cutting review of building regulations for infrastructure, residential properties as well as the commercial and industrial sectors;
5. The establishment of the Abu Dhabi Accelerators and Advanced Industries Council (called Ghadan) to identify new technologies and investments that will boost the future economy;
6. Developing eco-tourism, creating camping villages and areas for recreational sports;
7. Promoting partnerships between the public and private sectors and accelerating projects between the two;
8. Creating at least 10,000 jobs for Emiratis in the private and public sectors over the next five years;

9. Encouraging and organising local production and supporting SMEs to boost their competitiveness locally and regionally; and
10. Dual licences for companies in Abu Dhabi Free Zones to allow them to work outside the Free Zones and bid for government tenders.

New Central Bank Law

Role of Central Bank

A new Law on the Central Bank and the Organisation of Financial Institutions and Activities (the “**Central Bank Law**”) came into effect on 1 October 2018. The New Central Bank Law confirms the UAE Central Bank’s role in maintaining the stability of the UAE Dirham, promoting and protecting the stability of the banking system in the UAE, drawing and implementing monetary policies and adopting appropriate regulations and standards for the protection of customers of financial institutions.

The Central Bank will determine a transitional period for licenced financial institutions (“**LFIs**”) to comply with the provisions of the Central Bank Law which will not have a retroactive effect. (art.106) However, existing Central Bank regulations, decisions and circulars issued under the old Central Bank Law will remain in force until new ones are issued within a period of three years. (art. 152)

The Central Bank Law only applies in the UAE outside of the financial Free Zone areas (i.e. the Dubai International Financial Centre (“**DIFC**”) and the Abu Dhabi Global Market (“**ADGM**”). (art. 151) However, the Central Bank may extend its jurisdiction to LFIs operating within such Free Zones, subject to the cooperation of the Free Zone Authorities.

Under the previous Central Bank Law, licensing and regulation of financial institutions was based on the type of entity (commercial bank, investment bank, financial and monetary intermediary). The Central Bank Law adopts a system of licensing and regulation based on the type of financial services carried out similar to the regulatory frameworks in the DIFC and ADGM.

Licensed Financial Activities

There is a general prohibition on carrying on any regulated financial activity in or from the UAE without a Central Bank licence. The categories of financial activities (“**Licensed Financial Activities**”) falling within the jurisdiction of the UAE Central Bank are:

- taking deposits of all types, including Shari’a compliant deposits;
- providing credit facilities of all types;
- providing funding facilities of all types, including Shari’a compliant funding facilities;
- providing currency exchange and money transfer services;
- providing monetary intermediating services;
- providing stored values services, electronic retail payments and digital money services;
- providing virtual banking services;
- arranging and/or marketing Licensed Financial Activities; and
- acting as a principle in financial products that affect the financial position of the LFI, including but not limited to foreign exchange, financial derivatives, bonds and sukuk, equities, commodities, and any other financial products approved by the Central Bank.

(art. 65)

The Central Bank Law does not contain definitions of each activity but the Board of Directors of the Central Bank will classify and define the Licensed Financial Activities as well as issuing rules, regulations and standards and determine the conditions for granting licences for such Licensed Financial Activities.

Register of Licensed Financial Institutions

The Central Bank will establish an electronic Register of Licensed Financial Institutions that will include the names and details of all LFIs which will be published on the Central Bank's website. LFIs may not commence any Licensed Financial Activity until their name is entered on such Register. (art. 73)

Higher Shari'a Authority

The Central Bank Law sets up an authority named the Higher Shari'a Authority to determine the rules, standards and general principles applicable to Shari'a-compliant businesses and Licensed Financial Activities and to supervise the internal Shari'a supervisory committees of LFIs.

Reporting Violations

To encourage a compliance culture, LFIs (and their legal representatives, compliance officers and auditors) are responsible for reporting to the Central Bank immediately any material developments which may impact the LFI's activities, structure or overall position and any violations of the Central Bank Law. Any person making a report to the Central Bank in good faith will not be considered to have breached any of their obligations and may not be dismissed by the relevant LFI without the Central Bank's approval. (art. 98)

Customers' Protection

The Central Bank Law ensures the confidential nature of all data relating to customers' accounts of LFIs and their transactions with them. Such information may not be disclosed to any third party except with the written consent of the owner of the account (or legal representative or agent) or pursuant to a court order. (art. 120)

Any person found to have disclosed this information faces imprisonment as well as a fine. (art. 139) The Central Bank will be publishing further rules and policies on confidential information relating to banking activities to be adopted by banks and LFIs conducting business in the UAE.

Administrative & Financial Sanctions/Imprisonment

Any LFI or any Authorised Individual in breach of the Central Bank Law may be subject to administrative and financial sanctions as well as imprisonment. (art. 137 et seq.)

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