

UNITED ARAB EMIRATES

DIFC

New Qualifying Scheme Workplace Savings Scheme

The Dubai International Financial Centre (the **DIFC**) has enacted amendments to the DIFC Employment Law (Law No. 2/2019) (the **Employment Law**) and new Employment Regulations which introduce a new Employee Workplace Savings Scheme for purposes of pension benefits, retirement contributions or savings (a **Qualifying Scheme**) and replace the current end-of-service gratuity payment regime in the DIFC.

The Employment Law and the new Employment Regulations come into force on 1 February 2020 and from that date, employers will have to make mandatory monthly contributions to a professionally managed and regulated savings plan. The mandatory contributions to be made by employers are set at 5.83% of monthly basic wage for employees who have less than five years of service and 8.33% of monthly basic wage for employees who have worked longer.

The Employment Regulations set out the requirements for Qualifying Schemes. Employers have until 31 March 2020 to enroll into a Qualifying Scheme. Alternatively, employers may seek a Certificate of Compliance from the DIFC Authority for an alternative Qualifying Scheme under the Regulations.

Employees will be allowed to make voluntary contributions into a Qualifying Scheme on top of the mandatory monthly contributions by employers under the Employment Law. The new regime also ensures that any accrued end-of-service benefits remain in place. Employers will have the option to pay these accrued benefits into a Qualifying Scheme.

The Operator of a Qualifying Scheme (who must be regulated by the Dubai Financial Services Authority (the **DFSA**) or a Recognised Jurisdiction) will be responsible for the overall management and operation of the Qualifying Scheme. And the Administrator of the Scheme will be responsible for, *inter alia*, the technical, operational and administrative functions of a Qualifying Scheme.

There will also be a new Supervisory Body which will have the right to appoint and remove the Scheme Operator, to oversee the fees and charges incurred by the Operator and ensure that the Operator applies high standards of integrity and fair dealing, due skill, care and diligence, and high standards of corporate governance.

OMAN

New Foreign Capital Investment Law

The new Oman Foreign Capital Investment Law (Royal Decree No. 50/2019) (the **FCIL**) came into force on 2 January 2020. The FCIL streamlines procedures and permits necessary to start foreign investment within the Sultanate through the Investment Services Centre of the Ministry of Commerce and Industry (the **MOCI**). It expands the sectors open to foreign investors to include strategic projects that contribute to the development of the national economy. It offers advantages, guarantees and incentives to attract foreign investment and grants foreign investors the necessary guarantees for their investment projects.

The new FCIL does not stipulate a minimum for foreign capital investment in a project, provided that it abides by the proposed time frame for its implementation in accordance with its economic feasibility study. Therefore, a foreign investor may establish a company to carry on one of the permitted activities and own

all of the capital. However, foreign investors are restricted from making substantial amendments to the project without the approval of the MOCI.

The FCIL also gives the foreign investment project the right to avail all of the advantages, incentives and guarantees enjoyed by national projects in accordance with the laws of the Sultanate. Additional benefits may also be given to foreign investment projects established in less developed regions of the Sultanate. But the FCIL provides for a negative list of activities that are not open to foreign investment.

In addition, the FCIL stipulates that projects cannot be seized and investment cannot be frozen except by a Court ruling. It also guarantees that the investment project cannot be expropriated, except in accordance with the provisions of the Expropriation Law and in such case, fair compensation has to be provided without delay.

Under the new FCIL, all benefits, incentives and guarantees granted to foreign investment projects under the old Foreign Capital Investment Law will continue until such time as those benefits expire. The FCIL is promulgated without prejudice to the existing regimes pertaining to GCC investment, the Special Economic Zone at Duqm, the Public Establishment for Industrial Estates and the Free Zones.

The FCIL also provides for the establishment of an Investment Service Centre (the **Centre**) at the MOCI. The Centre will be responsible for licensing and easing the procedures relating to the issuance of licences, permits and other consents required for an investment project. The Cabinet may grant a single approval based on a recommendation of the MOCI to establish, operate and manage strategic projects. This approval will be effective on its own without the need for further procedures. It seems that once the Cabinet's single approval is granted, then the other approvals from the different governmental authorities will not be required. How this will work in practice remains to be seen.

KINGDOM OF SAUDI ARABIA

New Competition Law

A new Competition Law (the **Competition Law**) was issued in Saudi Arabia by Royal Decree (M/75) and went into effect on 25 September 2019. The Implementing Regulations of the Competition Law were also issued by the General Authority for Competition (**GAC**) on 25 September 2019.

Application

The Competition Law applies broadly to any "activity involving production, distribution, purchase, or sale of commodities" as well as "any commercial, agricultural, industrial, service, or professional activity" in the Kingdom.

The Competition Law also apply to foreign "[p]ractices occurring outside the Kingdom that have an adverse effect on fair competition within the Kingdom." The Implementing Regulations further provide that digital applications and electronic platforms fall within the jurisdiction of the Competition Law if their conduct has an impact inside Saudi Arabia whether or not they are licensed to operate in the Kingdom.

The Competition Law entrusts the GAC with enforcement and gives it jurisdiction over any potential "inconsistencies or overlap with the jurisdictions of other governmental bodies" that may arise from the application of the new Competition Law. In order to detect anti-competitive conduct, the GAC has the power to enter business premises to investigate activities and seize company files, documents, data, computers and other equipment including confidential materials.

Anti-competitive Agreements and Conduct

The Competition Law prohibits any agreement, whether horizontal or vertical, among any entities "if the purpose or effect of which undermines competition" and includes a list of examples such as:

- fixing or suggesting prices or terms of sale,
- setting production volumes, sizes or weights,
- limiting the free flow of goods or services by refusal to deal in a particular market,
- allocation of markets based on geography, customer, distribution centre or timing,
- freezing or limiting manufacturing, development, marketing and other forms of investments, and
- coordinating or colluding on bid submissions.

The Implementing Regulations further identify specific prohibited conduct that would be deemed an automatic violation of the Competition Law if undertaken by agreement among actual or potential competitors, including:

- fixing product prices or terms of sale,
- denying particular entity(ies) access to goods and services available in the market,
- allocating markets based on geography, distribution centres, type of customers or time periods, or
- coordinating on bids or proposals except for joint bids that are disclosed in advance.

In addition, the Competition Law prohibits entities with a "Dominant Position" from engaging in certain activities to restrict competition. "Dominant Position" is defined as any entity (or group of entities) acting with a common will in committing the violation or causing its effect which have:

- a combined market share of 40% or more, or
- the ability to influence the market, such as controlling prices, production or demand.

The Implementing Regulations consider certain activities by entities with a Dominant Position as automatic violations including:

- imposing a condition on one entity not to deal with another, or
- conditioning the sale of one product on accepting the sale of another unrelated product.

Merger Control

The Implementing Regulations also provide that entities intending to participate in an Economic Concentration transaction such as a merger, acquisition, takeover or joint venture, must notify the GAC and obtain clearance *prior* to completing the transaction, if the total combined turnover of the participating entities exceeds 100 million Saudi Riyals (approx. Euro 24 million). The Implementing Regulations do not explicitly limit the threshold calculation to turnover generated inside Saudi Arabia. In practice, however, it may be difficult for the GAC to demonstrate the domestic effect of a transaction if the relevant turnover amount is not tied to activity in the Kingdom.

Also, the Implementing Regulations do not specify separate minimum thresholds for each of the parties to a transaction. Therefore, the Implementing Regulations appear to require notification if only one of the parties meets the turnover threshold in the Kingdom even if all other parties have no turnover in Saudi Arabia.

Furthermore, parties are not permitted to close a transaction for 90 days after filing their notification and the GAC confirms it has received all necessary documents and information. Even after such confirmation, the GAC has the right to request additional information suspending the 90-day period until the additional information is provided.

Potential Criminal Liability and Fines

Failure to comply with the provisions of the new Competition Law exposes individuals to criminal liability and corporations to potentially large fines. Engaging in prohibited anti-competitive conduct or closing a transaction without obtaining the requisite clearance of the GAC could subject an entity to fines of up to 10% of the value of the sales at issue. In addition, the GAC may impose fines on individuals for up to 2 million Saudi Riyals (approx. Euro 480,000).

However, the GAC may grant amnesty to entities or persons that participate in prohibited conduct if they voluntarily provide the Authority with evidence against other participants in the violation.

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