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Newsletter 2/2019 – An Overview of Recent Legislation in the UAE

(9 July 2019)

The United Arab Emirates (UAE)government passed some ground-breaking legislation in the past months that will change the way investors operate their business. Among other things, the UAE Cabinet passed new economic substance requirements and the long-awaited Positive List. The Dubai Free Zone Council has announced that it will issue its One Free Zone Passport, allowing free zone entities to operate throughout all of Dubai's free zones. The Jebel Ali Free Zone Authority has announced the implementation of an insurance system for employees as well as of long-term visas for employees of JAFZA companies. The DIFC Wills Service Centre, in turn, recently enacted new Registry Rules, allowing testators to, among other things, include moveable and immovable assets outside of Dubai and Ras Al Khaimah into a DIFC Will. This newsletter will provide an overview of the aforementioned reforms.

1. *Economic Substance Requirements*

On 30 April 2019, the Cabinet of the United Arab Emirates (UAE) issued a Resolution regarding the economic substance requirements for mainland and free zone entities in the UAE (Resolution No. 31 of 2019). The UAE was (re)added to the EU's tax haven blacklist in March 2019 after missing the deadline of 31 December 2018 to pass economic substance requirements.

Companies active in the following businesses will need to show a certain degree of economic substance in the UAE:

- Banking business;
- Insurance business;
- Fund management business;
- Finance and leasing business;
- Intellectual property business;
- Holding company business;
- Distribution and service centres; and
- Shipping.

In general, the economic substance test requires companies active in the aforementioned sectors to

- Retrieve income from so-called Core Income Generating Activities (CIGA) in the UAE;
- Be directed and managed in the UAE;
- Have an adequate number of qualified full-time employees in the UAE;
- Have an adequate operating expenditure incurred in the UAE; and
- Have adequate physical assets in the UAE.

Non-compliance with Resolution No. 31 of 2019 may lead to following penalties:

- Failing to meet the economic substance test (AED 10,000-50,000);
- Failing to meet the economic substance test in a consecutive year (AED 50,000-300,000); and
- Continuing to fail meeting the criteria will lead to alternative sanctions such as suspension, revocation or non-renewal of the license.

The full legal briefing can be retrieved here.

2. *Positive List - Foreign Direct Investment Law*

The Foreign Direct Investment Law (Federal Decree Law No. 19 of 2018) introduced the regulatory framework allowing investors to have up to 100% foreign shareholding in the UAE. Less than one year after its introduction, the UAE Cabinet agreed on the highly anticipated "Positive List", summing up all relevant economic activities and sectors in which foreign investors will be able to invest up to 100% in UAE mainland companies. This incentive is expected to trigger a whole new range of foreign investments in the UAE, eventually leading towards more diversification of the national economy.

The Positive List contains 122 economic activities across three sectors in which a foreign investor will be allowed up to 100% ownership:

- Agriculture (19 activities);
- Industry (51 activities); and
- Services (52 activities).

Some activities are subject to

- Share capital requirements;
- Joining the Emiratisation Partners Club; and
- Using modern technology in the production process is mandatory.

As for now, the level of ownership that will be allowed for each activity is not fully clear. The Positive List does not mention a limitation on shareholding. Regardless of this, it is expected that some activities will still require a minimum Emirati shareholding (e.g. 30%). Moreover, for some activities, the level of foreign ownership will depend on the respective Emirate and its policy towards foreign direct investment.

The full legal briefing can be retrieved here.

3. *One Free Zone Passport*

The Dubai Free Zones Council (DFZC) has recently adopted a preliminary agreement on an initiative allowing companies licensed in one of Dubai's free zones to also operate in other free zones in Dubai without the need for a second commercial license.

The One Free Zone Passport Initiative must be seen in the light of the following recent relaxations in foreign direct investment:

- Dual License Initiative in Dubai;
- Dual License Initiative in Abu Dhabi (Administrative Resolution No. 219 of 2018 on the Dual Licensing of Free Zone Companies in the Emirate of Abu Dhabi); and
- Foreign Direct Investment Law (Federal Decree Law No. 19 of 2018).

At this stage, the requirements (if any) to obtain a One Free Zone Passport are not known. Regardless of that, it is expected that the commercial activities will be limited to the respective commercial activities as shown in the original license.

The DFZC's One Free Zone Passport Initiative should be seen as another step towards increasing the ease of doing business in the Emirate of Dubai and as a reaction to the liberalization of the foreign direct investment regulatory framework in the UAE.

The full legal briefing can be retrieved here.

4. *JAFZA Initiatives*

The Jebel Ali Free Zone (JAFZ) – the largest and oldest free zone in the UAE – has implemented two initiatives that were previously already introduced in the mainland of the Emirate of Dubai in 2018:

- The replacement of bank guarantees for employees by an insurance scheme; and
- The issuance of long-term residence visas. In doing so, JAFZ is the first free zone to introduce these initiatives.

Currently, JAFZ-registered entities wishing to employ a person, have to deposit a bank guarantee with the Jebel Ali Free Zone Authority (JAFZA). The bank guarantee can be used by JAFZA as a security measure for cases where customers would not pay the employee’s entitlements during employment or upon termination.

On 20 May 2019, JAFZA announced that it will replace the bank guarantee scheme and implement the insurance system starting in September 2019. In its statement, JAFZA pointed out, that due to this change bank guarantees equivalent to ca. AED 1.3 billion will be released to its customers.

This was followed by an announcement in June 2019 that JAFZA would introduce long-term visas for JAFZA-registered employees (previously introduced in May 2019 by the UAE Federal Authority for Identity and Citizenship for certain categories of expatriates as so-called Golden Cards).

The full legal briefing can be retrieved here.

5. DIFC Wills Service Center

The DIFC Wills Service Center (DIFC Registry), based in the Dubai International Financial Center (DIFC), has been operating since 2014 and was established as a mechanism for non-Muslims to register wills for their estate in Dubai. In February 2017, the territory has been extended to the Emirate of Ras Al Khaimah. The DIFC Wills Service Centre recently issued new Registry Rules (New Rules) which came into effect on 30 June 2019.

The New Rules allow testators to include movable and immovable assets located outside of Dubai and Ras Al Khaimah into a DIFC Will. Furthermore, the Authorized Officer/Probate Director can no longer serve as a second Witness to DIFC Wills signed after 30 June 2019. Testators are now required to bring two witnesses whilst signing their DIFC Will.

The full legal briefing can be retrieved here.

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