

The biggest Legal Reforms in the 50-year History of the United Arab Emirates

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The United Arab Emirates, consisting of seven emirates, gained its independence in 1971. Since then, the Emirates have modernised rapidly and offer good framework conditions for foreign investors. On the occasion of the country's 50th anniversary, a reform programme unprecedented in the history of the UAE has been initiated, which is based on numerous new and modernised laws.

I. Introduction

For Germany and the EU, the United Arab Emirates remain a very important trading partner in the region. In 2019, German exports to the UAE amounted to 8.7 billion euros, in 2020 still 6.2 billion euros despite the Covid 19 pandemic. GDP in the UAE grew by 3.4% in 2019 according to the World Bank, then slumped by 6.1% year-on-year in 2020 in the wake of the pandemic. However, GDP grew again by 2.3% as early as 2021 and is expected to grow by 4.2% in 2022.

On the occasion of the UAE's 50th anniversary, the largest legal reform in the country was launched. Over 40 laws were newly enacted or significantly amended. The most important changes include the protection of personal data, strengthening of online security, the enactment of a new labour law as well as the possibility for foreign investors to fully hold their own companies in the national territory. In addition, rights for persons in the private sphere were strengthened, such as the decriminalisation of extramarital relations and the recognition of illegitimate children and their rights to health and education.

In the following, we present a selection of the most important legal innovations at the federal level.

II. Selection of Important New Law and Legislative Changes

1) Investment and Corporate Law

a) Investment Law

Unlike Qatar and Saudi Arabia, for example, the UAE does not have an independent investment law to create uniform conditions for foreign investors. Instead, the framework conditions for foreign investors can be found in the federal law on commercial companies on the one hand, and on the other hand, framework conditions are regulated at emirate level, in some cases in a strongly divergent manner. There are also considerable differences between the different emirates with regard to participation in public tenders, especially between Abu Dhabi and Dubai.

b) New Commercial Companies Law

As part of the comprehensive legislative reform of the UAE, a new Federal Companies Law (Federal Decree-Law No. 32/2021 On Commercial Companies) was enacted, which came into force on 2 February 2022 and replaced the previous Companies Law of 2015 (Federal Law No.

2/2015). Probably the most interesting adjustment for foreign investors, although already introduced in theory by an amendment to the previous law, is the abolition of the local majority requirement in relation to shares in Emirati corporations resident in the territory of the UAE. Thus, it was previously required that a majority of the shares in the company were to be owned by an Emirati citizen or a wholly Emirati owned company. Article 10 of the new law no longer provides for this requirement but allows for exceptions regarding activities with a special strategic impact. Such exceptions would have to be regulated separately by the cabinet. Instead, the licensing authorities of some emirates, including Dubai and Abu Dhabi, have published lists of activities that are permitted for wholly foreign-owned corporations. The central criterion is thus the activities that the respective company is allowed to carry out under its licence.

In the emirate of Dubai, almost all activities, with a few exceptions, are unrestricted for foreign investors. In Abu Dhabi, this is restricted in practice by the Abu Dhabi National Oil Company (ADNOC). ADNOC only allows participation in public tenders for companies in the field of "onshore/offshore oil & gas services" if the respective company is based in Abu Dhabi and an Emirati citizen or an Emirati company from Abu Dhabi is a majority shareholder in the company. For dependent branches of foreign companies, ADNOC requires the presence of a so-called National Service Agent (NSA) who provides administrative support to the branch. This criterion, which was previously mandatory for branches of foreign companies, has also been abolished in the course of the legal innovations. Nevertheless, ADNOC continues to insist on this (legally abolished) requirement when participating in its public tenders.

2) Data Protection Law

A new federal data protection law (Federal Decree-Law No. 45/2021 On the Protection of Personal Data) was also introduced in the course of the reforms. Like the data protection laws of most other Gulf states, the new data protection law is closely modelled on the European General Data Protection Regulation. The new law came into force on 2 January 2022. The implementing regulations provided for in the law were supposed to be issued by 20 March 2022, but this did not happen. No implementing regulations had been issued by the editorial deadline for this article. The law will only become binding for affected companies six months after these implementing regulations have been issued.

The competent data protection authority within the meaning of the law is the UAE Data Office, which is established on the basis of Federal Decree-Law No. 44/2021 On the Establishment of the Emirates Data Office.

The default position under the Data Protection Law for the collection of personal data is the unambiguous consent of the data subject. A so-called "legitimate interest" of the data processor is not provided for by law. As in the European General Data Protection Regulation, the rights of data subjects to information, correction of incorrect or incomplete data, the right to erasure, to restriction of processing and to object to processing etc. are protected by the new law. In addition, the law is designed to have extraterritorial reach. It applies to any organisation established in the UAE that processes personal data of data subjects inside or outside the UAE, as well as any organisation established outside the UAE that processes personal data of data subjects inside the UAE. The law also applies in the various free trade zones of

the UAE, with the exception of those free trade zones that have adopted their own data protection regulations, i.e., the Dubai International Financial Centre (DIFC), Abu Dhabi Global Market (ADGM) and, in relation to health data, Dubai Healthcare City.

3) Labour and Residence Law

a) New Labour Code

The previous UAE Labour Code (Federal Law No. 8/1980) was replaced by a new Labour Code (Federal Decree-Law No. 33/2021 On Regulation of Labour Relations), which came into force on 2 February 2022. Implementing regulations to the law (Cabinet Resolution No. 1/2022) also came into force on 2 February 2022.

According to the new law, only fixed-term employment contracts are now permitted for a maximum period of three years. Existing unlimited contracts must be changed to fixed-term contracts within one year, i.e., by 1 February 2023. The Ministry of Labour has already published new model employment contracts, which must be used for new employment relationships. Despite the use of the term "fixed-term", the new Labour Code provides that these contracts can be terminated during their term for a "legitimate reason", provided that the notice period stipulated in the employment contract is respected (minimum 30 days, maximum 90 days).

The term "legitimate reason" is not defined by law, so this must be interpreted by the labour courts, as has been the case in the past. In addition, dismissal is now also permitted if there are economic or exceptional reasons leading to the loss of the job, or if the company is closed or the employer is insolvent or bankrupt. It remains the case that in the event of termination with a shortened notice

period, the terminating party must pay the remaining term as damages.

The statutory grounds for termination of the employment relationship without notice by the respective party to the employment contract have not changed fundamentally. However, two additional extraordinary grounds for termination have been added for the employer. Thus, he can now terminate without notice if the employee abuses his position for profit or personal gain or if the employee takes up a job for another employer without complying with the applicable rules and procedures. Unlike the previous law, an employee who has been summarily dismissed no longer loses his or her statutory entitlement to gratuity at the end of service (so-called "end of service gratuity").

In addition to the previous working time model of full-time work, the new law also provides for various other working time models, such as temporary work for a specific project, part-time work and work on a self-employed basis. Furthermore, work permits are provided for interns and for holders of so-called "golden visas".

The previous Labour Code provided for Friday as the weekly day of rest. The new law no longer specifies a specific day of rest, but also grants the right to at least one day of rest per week. Just in time for the entry into force of the new law and as the first country in the Arabian Gulf, the UAE government changed the working week from Sunday to Thursday to Monday to Friday, so that the working week correlates with most other countries worldwide. Muslims are exempted from work for Friday prayers, with local government employees working only half days on Fridays.

b) Right of residence

The previous Residence Act of 1973 was replaced by Federal Law No. 21/2021 On

the Entry and Residence of Foreigners. Implementing regulations for this law were approved by the Cabinet in April 2022.

This introduces a variety of new visa types that offer advantages and more flexibility for foreigners residing in the UAE. The conditions for issuing a 10-year "Golden Visa" have been relaxed so that a wider range of people are entitled to it. In addition, a "Green Visa" has been introduced, which is valid for 5 years and does not require an employer or sponsor. The new regulations come into force in September 2022 and are designed to attract skilled workers and their families to the country.

4) New Penal Code

On 2 January 2022, a new penal code came into force (Federal Decree-Law No. 31/2021), which replaced the previous law from 1987. Major innovations include the decriminalisation of bad cheques and extramarital affairs. In return, the rights of children born out of wedlock were strengthened. Alcohol consumption is now permitted within limits from the age of 21 (without an alcohol licence).

5) Trademark law

In addition, the new UAE Trademark Law (Federal Decree-Law No. 36/2021), which replaces the previous Trademark Law of 1992, came into force on 2 January 2022. Based on the GCC Unified Trademarks Law, the new law also protects three-dimensional trademarks and holograms as well as sound and olfactory marks. In future, it will also be possible to apply for a trademark in several classes at the same time. The Cabinet is expected to adopt the implementing regulations for the new law in the near future.

6) Cybercrimes Law

The Cybercrimes law (Federal Decree-Law No. 34/2021), which is intended to increase protection against online crime,

also came into force on 2 January 2022. It is intended to provide protection against false advertising on the internet and fake offers, as well as to criminalise the unlicensed trade in cryptocurrencies, medical products and food supplements. In addition, the dissemination of fake news and misleading information on the internet is to be better prosecuted.

III. Further Announced Legislative Changes

1) Tax law

On 31 January 2022, the UAE Ministry of Finance announced that corporate income tax will be introduced in the UAE. However, the corresponding law has not yet been enacted. The Ministry of Finance has since announced further details regarding corporate income tax. Corporate income tax is to be applicable for the first time for financial years beginning on or after 1 June 2023. For most companies whose financial year corresponds to the calendar year, the tax will thus be payable for the first time for the financial year beginning on 1 January 2024.

The amount of tax is to be 9% from a taxable income of over AED 375,000. Up to this threshold, the tax rate is 0%.

Individuals and legal entities that are resident in the UAE and operate a business there are likely to be liable to pay corporate income tax. This includes both corporations (e.g., limited liability companies, joint stock companies, etc.) and partnerships (civil partnerships, sole establishments, limited liability partnerships, etc.). Dependent branches of foreign companies are also covered by the tax. Companies located in free trade zones are in principle also subject to corporate income tax. However, they benefit from a 0% tax rate provided that only transactions with business partners outside the UAE

take place, with business partners in the same or another free trade zone and/or with own group companies in the UAE territory. Passive income from the UAE territory (e.g., interest and dividends) is also expected to be taxed at 0% for companies in free zones. Whether companies in free trade zones will be subject to corporate income tax on their entire profits if they also conduct business with business partners in the UAE mainland remains to be seen but seems likely.

Permanent establishments in the UAE are also taxed, although the assessment of whether a permanent establishment exists is likely to be measured according to the internationally accepted principles expressed in Article 5 of the OECD Model Tax Convention. A permanent establishment may be established either by a fixed place of business (e.g., a branch, office, factory, workshop or property from which commercial activities are carried on for more than six months) or a dependent agent who enters into contracts on behalf of the foreign company.

2) Commercial Agency Law

Furthermore, a new Commercial Agents Act has been announced to replace the existing 1981 Act. The current law grants registered commercial agents and distributors a high degree of protection against foreign principals. Currently, termination of the contract by the principal is only legal in the rarest of cases, so the commercial agent is usually awarded a high compensation payment by the local courts. In the future, it will probably be possible to set a time limit for the contract between principal and commercial agent as well as to make contractual termination agreements. It should also be possible to contractually exclude a claim for compensation. Up to now, it has not been possible for the principal to request the

deregistration of the commercial agent from the register kept by the Ministry of Economy. This is also likely to be possible in the future. It remains to be seen which terms will ultimately be decided.

IV. Summary

The UAE's reform course is clearly aimed at further opening the country to foreign investors and making life in the UAE even more desirable for foreign workers and their families. The fact that the UAE is already a very popular country for foreigners can be seen in the number of visitors to Expo 2020. The first World Expo in the Arab world was originally scheduled to begin in October 2020 but was postponed by a year due to the pandemic and finally began on 1 October 2021. Shortly before its end on 31 March 2022, the 20 millionth visitor was welcomed. For the first time in the history of the World Expo, every participating country had its own pavilion, 192 country pavilions in total. After the end of the Expo, the approx. 4 km² site will be converted into a district of its own, the "District 2020".

Shortly after the end of Expo, on 13 May 2022, the long-time President of the UAE, Sheikh Khalifa bin Zayed Al-Nahyan, who had been in office as the 2nd President of the UAE since 2004, passed away. He was succeeded by his younger brother Mohammed bin Zayed Al-Nahyan, who has been in charge of state affairs since 2014. Like his predecessor, the new ruler of the UAE supports the country's reform course.

In addition to the opportunities that these innovations offer both investors and private individuals in the UAE, there is an urgent need for adjustments, for example with regard to existing company and employment contracts. Preparations should be made to meet the requirements in the area of data protection and corporate income tax.

The multitude of new legal requirements makes it essential to deal with various legal

topics in detail. We will be happy to support you in this regard if required.

As a leading commercial law firm, SCHLÜTER GRAF has been active in the Middle East since 1995 and has offices in the UAE, Egypt, Pakistan and Saudi Arabia. Through our offices in Dortmund and Hamburg, we can also assist you in Germany with experienced Middle East advisors.

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