NEWSLETTER 7/2016 (October 2016)

In this Newsletter we would like to inform you about recent developments and provide you with an overview of legal changes introduced in the United Arab Emirates (UAE), Kingdom of Saudi Arabia (KSA), and Bahrain.

United Arab Emirates

I. JAFZA and DIFC MOU

The Jebel Ali Free Zone (JAFZA) has signed a Memorandum of Understanding (MOU) on September 20th 2016 with the Dispute Resolution Authority (DRA) for the purposes of encouraging cooperation between the dispute resolution and mediation services provided by JAFZA and the DRA. The DRA is an authority situated with the DIFC which is currently responsible for the DIFC courts, the Dubai Arbitration Institute, the DIFC Wills and Probate Registry, and the Academy of Law. The purpose of the MOU will further allow and encourage JAFZA and its member companies to elect to use and promote the use of DIFC laws, as well as the services of the DIFC courts, and the DIFC-LCIA as an arbitration centre. Other joint initiatives include allowing JAFZA member companies to access the knowledge series seminars, discussions, workshops, events and products of the DRA. The DRA and JAFZA are also focusing on the development of objectives in order to streamline the delivery of the services, which may include a joint mobile application allowing for JAFZA and its member companies to obtain the range of services offered by the DRA.

II. New DIFC-LCIA Arbitration Rules

The DIFC-LCIA Arbitration Rules 2008 have now been amended and the new 2016 Rules will apply for any arbitrations commencing on or after 1st of October 2016. Parties must agree in writing that their disputes shall be governed by the DIFC-LCIA Arbitration Centre and in accordance with its Rules. The new 2016 Rules mirror the 2014 LCIA Rules and help make the arbitral process more efficient and less costly. Some of the key changes include:

a) An Emergency Arbitrator (Article 9B of the Rules): any time prior to the formation of the tribunal, any party may apply to the LCIA court for the immediate appointment of a temporary sole arbitrator to conduct emergency proceedings pending the formation of the tribunal.

b) Multi-Party Disputes (Articles 1.5 and 2.5): this allows for the consolidation of multiple arbitrations subject to a few conditions
c) Avoidance of Delays (Articles 9c, 10, 11): Parties may apply for an expedited appointment of a replacement arbitrator in the event the LCIA court determines that justifiable doubt exists as to the arbitrator's suitability, independence or impartiality. Arbitrator's appointment can be revoked if they fail to conduct the proceedings in a reasonably diligent manner.
d) Online filing (Articles 1.3 and 2.3): claimants and respondents may use the standard electronic form available on the website in order to file online and to commence proceedings.

Kingdom of Saudi Arabia (KSA)

I. The New Saudi Companies Law

In reference to our June 2016 newsletter, we have previously informed you about the new Saudi Companies Law which came into effect on May 2nd 2016 ("Effective Date"). Companies in Saudi Arabia have a 12 month grace period starting from the Effective Date to bring their affairs into compliance with the new law according to Article 224 of the new Saudi Companies Law. The Ministry of Commerce and Investment (MoCI) has published template articles of association and bylaws for the different forms of entities including LLCs and joint stock companies. Although the templates are not mandatory to use, the new templates reflect some of the changes under the law such as the financial statements are to be prepared within 3 months of the year end and filed within a further 1 month (previously 4 months and 2 months), suspension of set aside of statutory reserve when it reaches 30% of the capital (previously 50%), changes to statutory pre-emption process including added flexibility on valuation, and new procedures and effects where losses reach 50% of the capital. Some of the main changes regarding LLC companies include the following:

a) A LLC company may now be established by only one person (there was a minimum requirement of two previously)
b) A shareholder is now personally liable for LLC liabilities to third parties if in bad faith he liquidates the LLC or suspends its business before the expiry of the term, of if he fails to

separate his own business from that of the LLC's, or if he conducts business in the LLC's name before it is established (there were no provisions in the old law to this effect)

c) There is no minimum capital requirement, however the capital must be sufficient to achieve the LLC's purpose (there was no such requirement previously)
d) The LLC shareholders are subject to a duty of confidentiality (no such duty previously)

Other particular changes include the formal recognition of a holding company, where the old law had no provisions relating to holding companies. With regards to Joint Stock Companies (JSC), the capital under the old law used to be 2 million SAR for closed JSC, and 10 million SAR for public JSCs with a paid up capital of minimum one half. The new Saudi Companies Law now stipulates that the capital should be sufficient to achieve the JSC's purpose, with a minimum of 500,000 SAR, with the paid up capital being less than a quarter. With regards to ownership of JSCs, entities wholly owned by the Saudi government may own the JSC, or any company with a minimum capital of 5 million SAR.

Bahrain

I. New Amendments to the Companies Law

Bahrain has been undertaking changes within the last 12 months in relation to its companies law in order to encourage foreign investment. The Commercial Register Law, Decree no. 27 of 2015 is the applicable law governing businesses carrying out commercial activities in Bahrain. It has been amended by Law no. 50 of 2014 and Law no. 28 of 2015 ("New Law") A few key changes include the following:

a) Article 18 of the New Law stipulates that partners and shareholders may be held liable for the full capital of the company under certain circumstances such as using the company for fraudulent purposes or illegal acts.
b) The minimum share capital has been reduced depending on the form of the company
c) Article 345 states that it is permissible to license companies which are owned in whole or in part by non-Bahraini partners in order to practice activities that are licensed exclusively for Bahraini nationals or that are not allowed to be practiced without a majority Bahraini partner. The Council of Ministers is to decide those activities to be carried out by the companies with foreign ownership by way of a resolution. This Article vests special powers

to the Minister concerned to issue decisions to license foreign companies if he deems the establishment of such a company may have an economic significance to Bahrain.

In addition, it is now a criminal offence if a business carries out a commercial activity without obtaining a license. Furthermore, according to Article 13, the Ministry of Industry and Commerce (MOIC) can also cancel the registration of a business from the commercial register if the registration is not renewed or if the business suspends its activities for more than a year. The authorities are now being more stringent and wider powers have been provided to the MOIC to govern businesses.

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