

NEWSLETTER 8/2016 (November 2016)

With this newsletter we would like to inform you about recent legal developments in the United Arab Emirates (UAE), the Kingdom of Saudi Arabia (KSA) and Kuwait.

United Arab Emirates

I. Bankruptcy Law

The new Bankruptcy Law (Federal Decree-Law No. 9 of 2016) issued on 20.09.2016 will come into force on 31.12.2016. So far insolvency regulations could be found in several laws, inter alia the UAE Commercial Transaction Code (Federal Law No. 18 of 1993). The new Bankruptcy Law will have a wider scope of application than the existing regulations and will be applicable to all companies which are subject to the UAE Commercial Companies Law (CCL), as well as most of the free zone companies (with the exception of the financial free zones such as DIFC and Abu Dhabi Global Market).

The new Bankruptcy Law regulates new preliminary procedures for companies wishing to save their operations by way of financial reorganization. The new law provides the following procedures for reorganization:

- Preventive Composition: This debt adjustment/settlement procedure will take place under judicial supervision and shall precede the actual bankruptcy procedure. The debtor has to offer a payment schedule with a repayment rate of at least 50% to the creditors. This procedure can only be requested by the debtor and has to be approved by 2/3 of the creditors (by number of creditors and amount of claims). The preventive composition shall not take longer than three years.
- Restructuring: This procedure shall apply to debtors who are already insolvent but of

whom the competent court is confident that they can carry out a successful reorganization. The above mentioned conditions apply to the restructuring procedure. However, the restructuring may continue for up to 5 years.

Only after the aforementioned procedures fail, the competent court can open a liquidation proceeding. All proceedings will take place under direct supervision of the competent court. To which extent the specially created commission (similar to the German insolvency administrator) – Committee of Financial Restructuring – will be involved practically, remains to be seen.

In order to allow a creditor to file for bankruptcy against a debtor, the debtor must have debts of at least AED 100,000 and be delayed with the payment for more than 30 days.

It should also be noted that a late filing for bankruptcy is not a criminal offence anymore. This decriminalization was explicitly undertaken by the government in order to encourage debtors to take action in case of financial difficulties.

II. Wages Protection System

The Ministry of Human Resources and Emiratization (MOHRE), formerly Ministry of Labor, has underlined with Ministerial Decision No. 739 of 2016 the already existing obligation for all companies registered with MOHRE to pay wages through the Wages Protection System (WPS). The new decision is applicable to companies with 100 or more employees and stipulates further sanctions for companies in case of delayed or non-payment of wages.

Furthermore, the new Ministerial Decision explicitly states payment terms for wages. The salary payment is considered delayed if the employer has not transferred the salaries within 10 days after their due date (as defined in the respective employment contract). Moreover, the employer is considered unwilling to pay if the salaries have not been transferred within 1 month after their due date (as defined in the respective employment contract).

If an employer delays the payment of salaries, the MOHRE will issue a warning notice and inform him about a possible work permit suspension (i.e. not allowing the employer to apply for new

work permits). If the employer refuses to pay the salaries or is not paying the salaries for a period of one month (which will be considered as payment refusal), further penalties may be imposed (e.g. extending the work permit suspension to other entities of the employer, drawing the deposited bank guarantees and downgrading the entity within the ministry internal classification of entities).

After payment of the outstanding wages, the work permit suspension will only be withdrawn immediately if the delay did not last longer than one month. In case the delay lasted longer than one month, the work permit suspension will remain in force for further two months after payment has been made.

III. Extension of Adjustment Period for MoAs

The new UAE Commercial Companies Law (Federal Law No. 2 of 2015) introduced various changes which have to be implemented by companies by amending their Memorandum and Articles of Association (MoA). The UAE Ministerial Council has extended the deadline for companies to amend their MoAs until 01.07.2017 (see our Newsletter Nr. 5 July 2016). If the amendments are not implemented in time, not only penalties may be imposed by the concerned authorities but also the company's commercial license could be withdrawn. We recommend seeking legal advice for amending the respective agreements as soon as possible. SCHLÜTER GRAF would be glad to assist you in this matter.

Saudi Arabia

Labour Law

The Saudi Labour Law, initially introduced in 2005, has been essentially amended with effect from 24.10.2015. By mid 2016 the Saudi Ministry of Labour issued Ministerial Decision No. 1982 of 1437 which contains implementing regulations to the amended Saudi Labour Law.

The Ministerial Decision contains, inter alia, rules and regulations for the following areas of labour law:

a) Employment Handbook

Every employer is obliged to provide an employment handbook with procedures and rules. The Ministerial Decision sets out in Annex 1 to the Ministerial Decision the mandatory content for such handbooks. However, the employers are allowed to add additional clauses to the handbook if they do not contradict the Labour Law and subject to the ministry's approval.

b) Standard Employment Contract

Besides the employment handbook, the new Labour Law also introduced a standard employment contract, the relevant mandatory clauses of which can be found in Annex 5 to the Ministerial Decision. The parties are allowed to add further clauses to the employment contract as far as the legally required minimum content has been observed.

c) Saudization

The new Labour Law has introduced several initiatives for the employment of Saudi nationals in the private sector. The personnel of a company – irrespective of the company's size or activity – must consist of at least 75% Saudi nationals. Furthermore, companies are legally required to train Saudi employees so they would be able to take over the work from expatriates (Articles 9 and 16 of the Ministerial Decision).

Moreover, the Ministerial Decision lists in Art. 12 certain job positions which can only be staffed with Saudi nationals. These job positions are mainly in the HR and administration department as well as private security.

Lastly, employment contracts with expatriates can only be concluded for a limited period. Irrespective of a renewal option and/or a side agreement according to which the employment shall be considered as unlimited, the employment contract of an expatriate will remain limited (Art. 13 Ministerial Decision).

d) Employment of Disabled Persons

Every company with 25 or more employees and the actual opportunity to employ disabled persons has to prove that its personnel consist of at least 4% disabled persons. What is considered as a disability and how it can be proven is now stipulated in Art. 10 Ministerial Decision. Additionally, the Ministerial Decision explicitly forbids to discriminate disabled persons before (contract conclusion) or during their employment (promotions, salary increases etc.).

e) Health and Safety Regulations

Every employer has to provide one or more first aid kits, depending on the size of the company. The products and their amounts are now stipulated in Art. 30 Ministerial Decision.

Kuwait

New Copyright Law

A new Copyright Law (Law No. 22 of 2016; Law on Copyrights and Related Rights) has been introduced in the Emirate of Kuwait. Its scope of application covers works of literature, fine art and scientific work. For the first time, the creator of a work has the right to prohibit an unauthorized copying and/or usage of his/her work. The protection period covers the duration of the creator's life as well as a period of 50 years after his/her death.

The National Library of Kuwait has been given the authority to enforce and implement the new Copyright Law by granting its personnel the right to inspect publishing houses, media houses and alike. In case of an infringement, penalties up to KWD 100,000 can be imposed on the violator.

This newsletter only constitutes a simplified and shortened description of some legal developments and in no way replaces legal consultation. The team at SCHLÜTER GRAF will gladly support you in case of any questions.

CONTACT:

SCHLÜTER GRAF

The Citadel Tower, Offices 2001-2005

Business Bay, P.O. Box 29337

Dubai/United Arab Emirates

Tel.: +971 / 4 / 431 3060

Fax: +971 / 4 / 431 3050

RA Andrés Ring (andres.ring@schlueter-graf.com)