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Legal Developments in the UAE Corporate Sector in 2018

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In 2018, the corporate laws of the UAE have seen a few significant changes. Especially, in the last 6 months, the UAE government has announced and introduced several initiatives to improve the attractiveness of the UAE for foreign investment as well as to provide foreign investors with a more comprehensive and extended possibility to conduct commercial activities in the UAE.

A. Legal Developments in the UAE Corporate Sector

In this newsletter we will provide an overview of the most important legal developments for corporate matters in the UAE:

I. An overview of the amendment of the Commercial Companies Law

II. An overview of Dual Licenses Initiatives in the UAE

III. An overview the new offshore regulations in the Jebel Ali Free Zone

IV. An overview of the Foreign Direct Investment Law

I. Amendment of the Commercial Companies Law

With Federal Decree Law No. 7 of 2018 ("Law") the UAE government has amended article 14 of the Commercial Companies Law ("CCL"). Article 14 CCL is important for any corporate entity in the UAE as it sets out the formal requirements for the Memorandum and Articles of Association ("MoA").

The previous article 14 CCL required an attestation of the MoA and any amendments thereto by the notary public in order to be valid. The new article 14 CCL – as amended by the Law – provides for an attestation of the MoA and any amendments thereto by the competent authority. The competent authority is defined by the CCL as the local authority having competence with regards to the affairs of the companies in the respective Emirate. As the Department of Economic Development ("DED") is regulating the companies` affairs, all new or restated MoA as well as any amendments would have to be attested by the DED.

We have inquired with the DED in Dubai how this new procedure will look like. However, as of now the DED is not aware of any procedures already in place for the new administrative practice. The DED is expecting the changes to be implemented during the first quarter of 2019. SCHLÜTER GRAF will monitor the further developments and inform about relevant changes as soon as the new procedures will be known.

II. Dual Licenses Initiative

The concept of a dual license provides the investors with the possibility to hold two licenses for the same company for different geographical areas. Primarily, this initiative is developed for and aimed at free zone companies allowing them to conduct business inside and outside the free zone.

The opportunity to establish a branch of a free zone company in the mainland, already exists for years. However, such a set-up means that not only a local service agent would have to be appointed but also rent for a separate office in the mainland would to be paid for. Moreover, this set up is not allowing a branch of a free zone company to conduct trading activities in the mainland.

The new initiative generally promises to grant free zone companies the same license they have within their respective free zones, which would also include trading licenses. Another potential advantage is that with a dual license no separate office has to be rented in the mainland. This means, that the free zone company can manage and administer all commercial and company related transactions from within the free zone office.

It should be noted, however, that the dual license will only eliminate the requirement of leasing an additional office space in the mainland. However, all other legal requirements as per the applicable laws will remain and have to be observed.

Another aspect that still remains to be seen is whether free zone employees (under the sponsorship of the free zone companies) can legally work in the UAE mainland without any further permits.

Below you will find a short summary of the dual license initiatives currently in place.

1. Dubai International Financial Centre (DIFC)

The Dubai International Financial Centre ("DIFC") was the first free zone to introduce the dual license in May 2017. The DIFC signed a Memorandum of Understanding with the Department of Economic Development in Dubai ("DED"), allowing companies to obtain a DED license in addition to their DIFC license and therefore enabling them to legally operate in the mainland of Dubai.

Only companies with a separate legal identity can apply for a dual license. Furthermore, only DIFC-Companies that are licensed for non-regulated activities are entitled to apply for a dual license. All regulated companies are not entitled to apply for a dual license as financial activities in the UAE mainland are reserved for companies wholly owned by Emiratis.

2. Dubai Airport Free Zone (DAFZ)

In September 2017, the Dubai Airport Free Zone ("DAFZ") signed a Memorandum of Understanding with the Department of Economic Development in Dubai ("DED"), allowing companies to obtain a DED license in addition to their DAFZ license and therefore enabling them to legally operate in the mainland of Dubai.

As this initiative was quite new for both DAFZ and DED, a few details about the requirements were known. However, as time passed more information has been published and became known through practical experiences.

Only free zone companies can apply for a dual license with the DED. This means in particular, that a branch is not entitled to apply for a dual license as it is not possible to establish a branch of a branch.

Furthermore, the DED will only license service activities. Hence, no trading licenses will be issued with this dual license initiative. In order to get a trading license as a dual license, the free zone company would have to set up a limited liability company.

Even with this restriction, DAFZ-companies should consider the dual license in order to enhance their market reach and customer service by providing services in Dubai mainland for their products.

3. Abu Dhabi

Finally, in September 2018 the government of Abu Dhabi launched the dual license initiative for all free zones of the Emirate by issuing the Administrative Resolution No. 219 of 2018 on the Dual Licensing of Free Zone Companies in the Emirate of Abu Dhabi ("Resolution").

The Resolution is very general and does not provide details with regard to the terms and conditions of issuing a dual license.

Article 1 of the Resolution includes all free zones of Abu Dhabi to the regulation`s scope which means that any company established in a free zone in Abu Dhabi (i.e. Masdar City, twofour54, ADAFZ and ADMG) is able to apply for a dual license with the DED in Abu Dhabi. Furthermore, Article 2 of the Resolution states that all requirements for licensing branches of free zone companies have to be observed. Hence, the conditions of the Abu Dhabi Law No. (5) of 1998 on Issuing Licenses in Abu Dhabi with regard to establishing a branch of the free zone company in the mainland need to be met. Among other things, a national service agent is required.

Although the Resolution does not mention the non-requirement of leasing an office in the mainland, the same can be assumed as Article 3 of the Resolution mentions that the company should have a headquarter within the respective free zone.

It remains to be seen whether the DED in Abu Dhabi will also issue trading licenses and whether further requirements would have to be fulfilled in order to qualify for a dual license.

III. New Offshore Regulation in Jebel Ali Free Zone

In September 2018 the Jebel Ali Free Zone Authority has published its new Offshore Companies Regulations ("Regulation") which will abrogate the existing regulations from 2003. However, it is still unclear when this Regulation will come into effect as they do not include an effective date.

The new Regulation provides foreign investors with new possibilities to structure their business and incorporates international best practices.

The main new amendments/introductions:

- new classes of shares
- a list of allowed and not allowed activities
- reduction of number of directors (minimum of 1 director) and introduction of corporate director
- possibility to lease an office in a freehold area or within Jebel Ali Free Zone
- investor visa (if offshore company owns property in freehold area)
- conversion of offshore company into a free zone company.

Although the Regulation contains a lot of interesting novelties, it remains to be seen how and under which conditions this will be implemented.

IV. Foreign Direct Investment Law

The possibility for foreign investors to own more than 49% of the shares in limited liability companies has been long awaited for and was first expected with the introduction of the new Commercial Companies Law ("CCL") in 2015. However, the CCL did not provide this opportunity but rather included a clause which would make it possible for the Cabinet to change this situation.

In December 2017, the CCL - in particular only Article 10 - was amended for the first time and included the possibility for the Cabinet to issue a list of activities that could be licensed for companies wholly owned by foreigners.

On 23rd September 2018 the long awaited Foreign Direct Investment Law ("FDI Law"; Federal Decree Law No. 19 of 2018) has been issued and came into effect on 1st October 2018.

The FDI Law is not applicable with regard to companies established in any free zones. Hence, those companies cannot participate in the program and receive the benefits and guarantees provided by the FDI Law.

The most important part of the FDI Law is the positive and negative list of activities for foreign direct investment companies ("FDIC"). The negative list of activities includes:

- exploration and production of petroleum products
- security and military related activities
- banking, financing and insurance
- Hajj and Umrah services
- water and electricity services
- postal services
- land and air transportation
- printing and publishing
- commercia agents
- retail medicines
- blood bank and poison centers.

For any of the above listed activities, an ownership of more than 49% of the shares will not be allowed. It should be noted that this negative list can be amended, and further activities can be added subject to a decision of the Cabinet.

The positive list as well as the requirements for FDICs to be established pursuant to the FDI Law (legal form, maximum ownership percentage, minimum capital and percentage of Emirati cadres) still have to be issued by the Cabinet.

The registration and licensing process for a new FDIC will be divided into two stages:

- The initial stage with the licensing authority on the Emirate level – i.e. the competent Department of Economic Development.
- The second stage on a federal level with the Foreign Direct Investment Unit (to be established at the Ministry of Economy).

It can be expected that the registration and licensing procedure will be similar to the one of a branch of a foreign company. This would also mean that two registrations and licenses/certificates would have to be maintained.

In accordance with Article 10 para. 1 lit d of the FDI Law, a FDIC shall always be visible to the public as such by carrying the expression "Foreign Direct Investment" after its trade name.

In return for the higher percentage of foreign ownership, the Ministry of Economy expects the FDIC to comply with the following obligations:

- complying with all applicable laws
- complying with the licensed activities
- employing and training Emirati cadres
- keeping regular accounts
- mandating an accredited auditor (for up to 6 years)

- providing statistical information and data as well as any documents requested by the Foreign Direct Investment Committee (to be established at the Ministry of Economy).

The compliance with above mentioned obligations will be monitored by judicial officers who will have the right to enter the business site of the FDIC and check all documents. Any violation can be punished with a fine of up to AED 1 Mio. and the suspension and/or revocation of the license.

B. New Business Guide for Saudi Arabia

We are pleased to announce that SCHLÜTER GRAF's Senior Partner Christoph Keimer co-authored the new edition of the AHK – Business & Legal Guide Saudi Arabia together with Oliver Oehms (GESALO), Jochen Hundt (Hundt Legal) and Franz-Josef Epping (EY). The guide covers economic and legal topics necessary for successfully entering the Saudi market.

The guide costs AED 150 (plus VAT) and can be ordered by email to dubai@schlueter-graf.com.

C. Upcoming SCHLÜTER GRAF Events

SCHLÜTER GRAF will host the following upcoming events:

20 January 2019
Alternative Forms of Dispute Resolution: DIFC's Small Claims Tribunal (DIFC Courts and SCHLÜTER GRAF)

7 February 2019
Retaining Talent (Propel International and SCHLÜTER GRAF)

21 February 2019
HR / Employment (SCHLÜTER GRAF)

25 April 2019
One-year ICV (SCHLÜTER GRAF)

21 May 2019
IHK Bielefeld: UAE / KSA session (SCHLÜTER GRAF)

SCHLÜTER GRAF wishes you a happy festive season and a Happy New Year.

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