

UAE enacts Bankruptcy Law: The United Arab Emirates new Bankruptcy Law (Federal Decree Law No. 9 of 2016) came into force on 29 December 2016. It repealed and replaced the protective composition and bankruptcy procedures in Chapter 5 of the Commercial Transactions Law (Federal Law No. 18 of 1993) and various provisions of the Penal Code (Federal Law No. 3 of 1987). There are two procedures: a pre-insolvency, “debtor in possession” rescue regime for debtors facing financial difficulty and a bankruptcy regime for debtors who are cash flow or balance sheet insolvent, which is a gateway to restructuring or liquidation. Many predict that the new law will boost entrepreneurship and promote bank lending, particularly in the SME sector, and encourage foreign investment in the UAE. *Read more...*

Secondary markets to attract SMEs in the GCC: In line with a GCC-wide trend to develop the small- and medium-sized enterprises (SMEs) sector, the Bahrain Bourse published the Bahrain Investment Market (BIM) Rules in October. The Bahrain Investment Market is the Bahrain Bourse’s international market for companies seeking growth capital. It is expected to attract SMEs with reduced listing requirements, as compared with the main bourse. Saudi Arabia is also proposing to launch a separate equity market to attract SMEs in early 2017, as a secondary market to the Tadawul. The Saudi Arabian Capital Market Authority consulted on draft Second Market Listing Rules to regulate the offering, registration and admission to Listing of shares in the Second Market (the consultation closed in November). The draft Rules indicate that the new market may have reduced listing and disclosure requirements and restrict access to Qualified Investors, including the Saudi Arabian Government and related entities, and professional investors. Press reports indicate Kuwait and Oman are also planning to establish similar secondary markets for SMEs.

Islamic Financial Services Board (IFSB) consults on disclosure requirements for Islamic Capital Markets products: In October, the IFSB issued Guiding Principles on Disclosure Requirements for Islamic Capital Market Products (Sukuk and Islamic Collective Investment Schemes) (the “Standard”) for comment by 31 December 2016. Key objectives of the Standard relate to regulating the disclosure framework for sukuk, which in a number of respects differs from that applicable to similar conventional products. The Standard contains principles which are intended to complement existing international standards for conventional products, for example, those published by the International Organization of Securities Commission (IOSCO) and the regulatory requirements of the European Union (some of which are also applicable to Islamic Capital Markets). There may be further changes in the regulation of Sukuk arising from the Accounting and Auditing Organisation for Islamic Financial Institutions’ (AAOIFI’s) ongoing review (and revision) of Shariah Standard No. 17 on Investment Sukuk.

While the IFSB’s recommendations are instructive rather than binding on its members, the Committee that is responsible for the Standard includes capital markets and/or listing/exchange regulators from the UAE, Oman, Qatar, Kuwait and other countries in the Middle East and Asia and is therefore likely to represent “current thinking” in the region’s sukuk markets. The Standard sets out principles and guidelines with respect to the disclosure of rights to the underlying assets, the Shariah review process, use of proceeds and asset valuations, among other matters.

Draft public M&A regulations in the UAE: The UAE Securities and Commodities Authority (SCA) has published a draft Resolution Concerning Joint Stock Companies Merger and Acquisition Rules for consultation. The draft resolution addresses the rules applicable to takeovers and mergers of public joint stock companies in the UAE, subject to certain exceptions (such as acquisitions by the Government or a strategic partner). Takeovers and mergers will continue to be regulated by the SCA, on a more formal footing (current takeovers are regulated on a case-by-case basis) and will be subject to a strict timetable. The draft rules regarding mandatory offers include a requirement for an offeror to make a mandatory bid to acquire control of the company where the offeror acquires more 30% of shares carrying voting rights in the company, and the bid can only proceed if the shares offered for sale equal 51% or more of shares carrying voting rights. The price must be at least equal to the highest price paid for shares in the company by the offeror in the 12 months prior to the offer being made. Consideration must be paid in cash (unless minority shareholders agree otherwise). The draft rules permit the squeeze-out of minority shareholders with SCA approval, as well as a sell-out procedure allowing a shareholder holding at least 3% of shares carrying voting rights to request the offeror to acquire its shares. Also regulated are optional offers and increases in the stake held by a shareholders holding either more than 30% or more than 50% of shares carrying voting rights (overlapping with the SCA Disclosure and Transparency Rules (SCA Decision No. (3) of 2000, amended in April 2015 by SCA Decision No. (18) of 2015)). The draft rules will not apply in certain situations, including acquisitions of shares by the Government or a “strategic partner” (a concept introduced by the Commercial Companies Law) or on conversion of a convertible bond into shares. The rules will represent a significant increase in

regulation in this area as there is no formal public takeover code in the UAE. The rules are not yet in force and the timetable for implementation is not known.

Saudi listed companies adopt IFRS: Companies listed on the Saudi Arabian stock exchange, the Tadawul, are required to use International Financial Reporting Standards (IFRS) as their financial reporting framework from 1 January 2017. Some IFRS Standards are modified for use by Saudi companies, mainly to reflect Shariah or local law. Other companies will be required to report using IFRS Standards from 2018, using IFRS for SMEs. Previously, companies were required to report using accounting standards set by the Saudi Organization for Certified Public Accountants (SOCPA). Only banks and insurance companies in Saudi Arabia (both listed and unlisted) were required (by the Saudi Arabian Monetary Authority) to report using IFRS Standards. SOCPA approved the transition to IFRS in 2012.

Revisions to the law on security in the UAE: The law on taking security over moveable assets in the UAE has been revised by Federal Law No. 20 for 2016. Key changes to the current regime (set out in the Commercial Transactions Law and the Civil Code) include that possession of the moveable assets is not required to be transferred to a mortgagee, and a new register is to be established which will enable a creditor to register a pledge over moveable property. If the register is publicly searchable, it will also enable a creditor to establish whether moveable assets have already been pledged and put third parties on notice that the assets are already subject to a pledge. In Dubai, granted land may now be mortgaged as security for a debt obligation, following the enactment of Dubai Decree No.31 of 2016. The owner of land granted by the Ruler of Dubai may mortgage the land to a bank or financial institution licensed in the UAE, subject to conditions, including as to the investment of funds arising from the secured financing in the development of the land. Land granted to entities majority-owned by the Government of Dubai or to real estate developers may be mortgaged unconditionally. In the event of enforcement proceedings, mortgaged granted land may be sold at public auction (save in the case of granted residential land, the sale of which is subject to additional approvals).

New data protection law for Qatar: Law No. 13 of 2016 Concerning Personal Data Protection is the first stand-alone data protection law for Qatar. Issued in November 2016, the new law is due to come into force in 6 months later in April 2017. Secondary regulations are expected. Companies will now need to plan to ensure day-to-day compliance with the new law.

Improving transparency in Dubai free zones: Free zone laws and regulations (including decisions, instructions, manuals) must now be published by the relevant authority in each Dubai free zone on its website, according to Dubai Law No.15 of 2016 published in November. Laws and regulations must be published in English (or other foreign language) and will come into force 30 days from the date of publication, unless otherwise stated. The law applies to all free zones in Dubai, including the self-legislating Dubai International Financial Centre. The new law will bring about greater transparency and consistency of approach to the publication of rules applicable in the growing number of free zones in Dubai. This may facilitate further investment in the free zones.

Important note: The Gulf Cooperation Council (GCC) region comprises Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. This briefing highlights certain key developments in laws and regulations of the GCC countries. The legislative process in the GCC can be opaque. Draft legislation is generally not made publicly available nor the subject of official consultations. Timescales for enactment of legislation are not typically published. In practice, laws and regulations may come into effect without being published. Accordingly, there may be laws that are in effect of which we are not aware and it is difficult to anticipate the pace and scope of legislative change. Please note that Linklaters is not licensed to practice law in Bahrain, Kuwait, Oman, Qatar or Saudi Arabia.

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