GCC Quarterly Review – Q2 2019

Sectors open to greater foreign investment in the UAE: More than 100 commercial activities across a range of sectors will be eligible for up to 100 per cent. foreign ownership, according to a new resolution issued by the Cabinet of the United Arab Emirates (UAE) in July. The market has been anticipating the resolution since the new foreign investment regime was introduced in the UAE in November 2018 by Federal Law No.19 of 2018 (read more). The resolution has not yet been officially published, but the Government has released a summary of the relevant affected sectors.

The framework allows greater investment by foreigners in local companies incorporated “onshore” in the UAE (i.e. outside the free zones) operating in certain sectors on the “Positive List”, subject to licensing requirements. Until now, the Government had not yet specified the relevant sectors on the Positive List and so the law has not been fully operational. There are 122 economic activities on the Positive List, grouped into 3 broad sectors: agriculture, manufacturing and services. Many of the UAE’s most important and successful service industries are on the Positive List, including professional services in the fields of law, accounting, management consultancy, construction, hospitality and healthcare. A range of mainstream manufacturing and agricultural activities are on the Positive List, such as food cultivation and plastics manufacturing, as well as activities in newer and greener industries (read more).

UAE Central Bank enhances reporting of non-performing loans: The Central Bank of the UAE has announced that it is enhancing its reporting of non-performing loans (NPLs) for UAE banks and branches of foreign banks operating in the UAE. Regulations to address NPLs will follow later in the year and will bring in changes to how banks assess their risks. NPLs are one of the big issues affecting the banking sector following the financial crisis. Banks with NPLs on their balance sheets have difficulty collecting interest and principal on their credits and so high levels of NPLs could pose a systemic risk to the banking sector.

The reforms are expected to align the UAE regulation of NPLs more closely with international best practices, in consultation with the International Monetary Fund. Under its previous reporting methodology, the UAE banking sector’s NPL ratio was overstated compared to other jurisdictions. This latest initiative forms part of a wider push to reform the regulatory capital and supervisory framework for banks in the UAE. The UAE Central Bank has, in the last few years, issued a package of circulars to regulate the capital adequacy of banks operating in the UAE in line with revised rules outlined by the Basel Committee on Banking Supervision in Basel III.

DIFC enacts new insolvency regime: A new insolvency regime for the Dubai International Financial Centre (DIFC) was enacted in June. The procedures will be available for use by public and private companies incorporated in the DIFC in August. The Insolvency Law 2019 (DIFC Law No.1 of 2019) and Insolvency Regulations replace the previous Insolvency Law (DIFC Law No.3 of 2009) and Insolvency Regulations. The new law and regulations modernise the restructuring and insolvency regime and incorporate aspects of the UNCITRAL 1997 Model Law on Cross-Border Insolvency. The Insolvency Law has two new procedures – rehabilitation and administration – and retains the existing voluntary arrangement, receivership and winding-up procedures with minimal changes. Now, for the first time, there is an effective framework to facilitate the rescue of a financially troubled business. Rehabilitation is a pre-insolvency, “debtor in possession” rescue regime for debtors, with the benefit of a standstill on the enforcement of claims, the ability to obtain “debtor in possession” finance on a priority basis and a way to cram-down dissenting minority creditors.

DIFC employment law reform: The DIFC’s new Employment Law (DIFC Law No.2 of 2019) will come into force in August, replacing the previous DIFC Employment Law (Law No.4 of 2005). Some of the key issues which are addressed in the new law include part-time employees, parental leave, sick leave payments, discrimination, limitation period for claims, gratuity payments, sponsorship costs, notice periods and settlement agreements.

Abu Dhabi legislates to promote investment: Two new Abu Dhabi laws designed to increase the flow of foreign direct investment into the Emirate have been issued:

- Abu Dhabi Law No.1 of 2019 establishes the Abu Dhabi Investment Office (ADIO) which will have responsibility for overseeing the implementation and execution strategy for increasing foreign investment in the Emirate. This forms part of the Abu Dhabi Development Accelerator Programme "Ghadan 21", a three year economic development strategy which aims to stimulate investment and promote economic development.

- Abu Dhabi Law No.2 of 2019 regulates Public Private Partnerships (PPP) in Abu Dhabi. This provides a framework for regulating partnerships between the public and private sector in Abu Dhabi, supporting private sector participation in strategic sectors including technology, urban infrastructure, education, healthcare, housing and transportation.

Saudi Arabia enhances expatriate residency permits: The Saudi Arabian Government's new Privileged Iqama Law, enacted by Royal Decree No. M/106 dated 10/9/1440H, allows a non-Saudi national to apply for a residency permit which gives the holder enhanced rights and benefits either on a permanent basis or for a one-year renewable period.

Oman introduces new excise tax: Oman implemented an excise tax in June in accordance with the Unified GCC Excise Tax Agreement and Royal Decree No.23 of 2019. The excise tax applies to products including tobacco and tobacco derivatives, energy drinks and carbonated drinks, alcohol and pork products.

The future of global interest rate reform: Interest rate benchmarks play a key role in global financial markets. The global reform of interest rates is one of the most challenging financial reform initiatives ever undertaken. In the markets which rely on interbank offered rates (IBORs), such as LIBOR, there needs to be a transition to new reference rates when support for these benchmarks is withdrawn. Regulators are emphasising the need for market participants to take the lead.

The development and adoption of alternative risk-free rates (RFRs) was a central recommendation of the United Kingdom's Financial Stability Board (FSB) interest rate reform initiative, begun in 2014. Since then significant progress has been made in identifying RFRs. RFRs are based on deep, liquid and active overnight markets. This addresses the concern relating to many IBORs, that insufficient underlying transaction data and reliance on expert judgment reduce robustness. The structural differences between RFRs, which lack a built-in credit premium and term element, and IBORs do, however, create significant challenges for market participants in transitioning to RFRs. Some jurisdictions are adopting a dual rate approach where the RFR can sit alongside an existing IBOR, whereas others are seeking transition to the RFR.

There are some key steps to consider in navigating the transition away from IBORs. You can find our more in Linklaters updated Global Interest Rate Reform Guide that summaries the key elements of these critically important reform initiatives and outlines key action points. Further insights on this topic can also be found here on our website.

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.