

GCC Quarterly Review.

Linklaters

GCC Quarterly Review – Q2 2016

UK votes to leave European Union - The United Kingdom (UK) has voted to leave the European Union (EU) in its referendum on 23 June 2016. Our lawyers have been considering the implications of this decision, and are available to assist you in dealing with this new development, should the decision affect your business operations and investments in the UK or the EU. For further assistance, please get in touch with your usual Linklaters contact, David Martin or any of the lawyers [listed here](#). [Read more](#) in our risk assessment overview on the EU referendum. Further materials are available on The Knowledge Portal. If you are a client of Linklaters and have not yet signed up to our Knowledge Portal, you can register [here](#).

UAE Commercial Companies Law 2015 developments - The last quarter has seen a range of developments that should assist companies in the United Arab Emirates in understanding the scope of, and complying with, the requirements of the Commercial Companies Law 2015 (Federal Law No.2 of 2015), including:

Compliance deadline extended: The UAE Cabinet has announced that it has extended the one year transitional period for companies governed by the Commercial Companies Law 1984 to comply with the Commercial Companies Law 2015. The original transitional period was due to end on 30 June 2016 and the Cabinet reserved the right to extend this deadline in Article 374 of the Commercial Companies Law 2015. Following the extension, companies now have until 30 June 2017 to adjust their position in compliance with the law, otherwise they are deemed dissolved. The Cabinet resolution has not yet been published in the Official Gazette.

Application to LLCs: Ministry of Economy Decree No. 272/2016 clarifies the extent to which Commercial Companies Law 2015 rules applicable to PJSCs also apply to limited liability companies (LLCs). Since the law came into force in July 2015, there was uncertainty in the market as to whether LLCs were required to comply with some provisions applicable to public joint stock companies (PJSCs). The question arose due to the generic provision at Article 104 which provides that provisions of the law applicable to joint stock companies also apply to LLCs unless otherwise provided. The Decree clarifies the specific rules applicable to PJSCs that do not apply to LLCs, including the restrictions relating to financial assistance and authority to agree loans for periods in excess of three years, to sell or mortgage property or to agree to arbitration, provisions relating to related party transactions and a range of provisions relating to the Board of Directors (including the nationality of the Chairman). The Decree also sets out additional rules regarding the management of LLCs. This follows the publication of instruments clarifying the regulation of PJSCs in February ([read more...](#)).

Template constitutional documents: The Securities and Commodities Authority (SCA) has published template Articles of Association published by the SCA. The Dubai Department for Economic Development has issued template Memorandum of Association for Limited LLCs. These templates should assist companies in understanding how they need to change their constitutional documents to ensure compliance with the Commercial Companies Law.

Saudi Arabian companies law in force - The new Companies Law (1437H/2015G) came into force in Saudi Arabia on 2 May 2016, repealing Royal Decree for the Regulation of Companies No. M6 of 1965 ([read more \[here\]\(#\) and \[here\]\(#\)...](#)). Existing companies have a 12 month grace period to adjust their constitutional documents to comply with the relevant provisions. The Ministry of Commerce

and Industry (MoCI) has issued templates for constitutional documents for new companies. The MoCI and the Capital Market Authority (CMA) issued a joint statement clarifying the application of provisions to joint stock and holding companies. Implementing regulations on further issues may be issued going forwards.

ISDA and IIFM publish Master Terms and Conditions for Islamic Foreign Exchange Forwards (*Wiqayah Min Taqallub As'aar Assarf*) - On 6 June 2016, the International Swaps and Derivatives Association (ISDA) and the International Islamic Financial Market (IIFM) published template documentation for Islamic Foreign Exchange Forwards (*Wiqayah Min Taqallub As'aar Assarf*) (IFX).

The template documentation comprises:

- a set of Master Terms and Conditions for IFX using two unilateral and independent undertakings (the Two Wa'ad Structure); and
- a set of Master Terms and Conditions for IFX using a single unilateral undertaking (the Single Wa'ad Structure)

[Read more](#) in our note in which we provide an overview of the new IFX template documentation.

Saudi Arabia approves changes in equity markets regulation - On 3 May 2016 the Saudi Arabian Capital Market Authority (CMA) announced that it had approved the following initiatives with a view to incentivising further foreign investment in the Saudi Arabian economy:

- liberalisation of certain aspects of the Rules for Qualified Foreign Financial Institutions Investment in Listed Shares (the “**Rules**”). The Rules permitted for the first time direct offshore foreign investment in the Saudi stock market (the Tadawul) by Qualified Foreign Investors (QFIs) ([Read more...](#)). The announced amendments to the Rules include:
 - reducing the minimum assets under management of a QFI from SAR18.75bn (US\$5bn) to SAR3.75bn (US\$1bn);
 - permitting new foreign financial institutions, including sovereign wealth funds and university endowments, to be QFIs and thus directly hold Saudi listed shares; and
 - removing a number of existing limits on foreign investment, such as the limit of 10% on the maximum proportion of the total market value of Saudi listed shares that may be owned by QFIs and their approved clients, including interests under swaps. In addition, the announcement refers to foreign investors being permitted to own up to 10% of the shares of any Saudi listed company (this limit is currently 5%). The overall restriction of 49% on investments by all foreign investors (whether resident or non-resident) in any such listed company remains.
- amendments to the settlement cycle for securities transactions for Saudi listed shares from T+0 to T+2. This will bring the Tadawul's regulations further into line with international best practice; and
- the introduction of securities lending and covered short-selling transactions, which will be permitted on Saudi listed shares.

Regulations implementing these initiatives have not yet been published by the CMA. The Regulations are expected, along with their effective dates, to be published in the first half of 2017.

ADGM Courts sign Memoranda of Understanding on enforcement with Abu Dhabi and Federal courts - The Abu Dhabi Global Market (ADGM) Courts have signed 2 memoranda of understanding to facilitate the enforcement of ADGM Court judgments and arbitral awards within the UAE with:

- the Abu Dhabi Judicial Department, on 19 April 2016, to facilitate judicial cooperation on the reciprocal recognition and enforcement of judgments, decisions, orders and arbitration awards. Abu Dhabi has its own judicial system, the Abu Dhabi Courts, which is independent of the Federal judicial system; and
- the United Arab Emirates Ministry of Justice, on 16 May 2016, to facilitate the enforcement of ADGM Courts' judgments and ADGM arbitral awards before the Federal Courts in the UAE. The Federal judicial system comprises courts of first instance in Ajman, Fujairah, Sharjah and Umm Al Quwain and the Federal Supreme Court in Abu Dhabi.

In theory, it should be possible to refer ADGM Court judgments to courts outside the ADGM in Abu Dhabi and the other emirates. It remains to be seen how this will work in practice. There has to date been no referral of judgments from the ADGM Courts to other courts, as the ADGM Courts are not yet operational.

DIFC Court of Appeal clarifies scope and impact of DFSA regulatory regime in *Bank Sarasin* case - In March 2016, the DIFC Court of Appeal in *Rafed Al Khorafi v Bank Sarasin-Alpen (ME) Ltd* (CA 003/2015) dismissed appeals by Bank Sarasin and Sarasin-Alpen against the DIFC Court of First Instance judgment that the banks were liable for mis-selling investments (CFI-026-2009).

In August 2014, the DIFC Court of First Instance found Bank Sarasin (a Swiss entity) had mis-sold structured financial products to the claimants, on the introduction of its joint venture vehicle Bank Sarasin-Alpen (a DIFC entity regulated by the DFSA). The claimants brought an action to recover substantial losses made under the products. The contracts were determined to be unenforceable and the compensation was awarded to the claimants. The DIFC Court of Appeal judgment upheld nearly all the findings of the DIFC Court of First Instance against Bank Sarasin and Sarasin-Alpen. Key findings are that:

- *Breach of Rules by the DFSA regulated entity (mis-selling of products):* Bank Sarasin-Alpen (DFSA regulated) mis-sold financial products as it failed to carry out sufficient investigations to satisfy itself that investors met the necessary client classification criteria for acceptance as a client under the Rulebook - Conduct of Business Rules; and
- *Breach of Regulatory Law financial services prohibition by the non-DFSA regulated entity:* Bank Sarasin (non-DFSA regulated) carried out financial services in or from the DIFC without DFSA authorisation in breach of Regulatory Law.

DFSA regulated firms and international non-regulated entities need to address the review their business models, regulatory and compliance policies. DFSA regulated entities must ensure their client on-boarding, advisory and relationships management are compliant and carefully followed by employees. International regulated financial services providers who are not regulated in the DFSA need to understand how they may come within the scope of the DFSA regulatory framework, considering the substance and not the form of how they operate in the DIFC.

New Dubai law to regulate public debt - Dubai Law No. 1 of 2016 on the Financial System of Dubai Government, published late March, regulates the financial governance, policies and procedures of Dubai "Government Agencies", which includes Government departments public authorities and institutions and Government councils listed in the public budget or with independent budgets or

that receive financial support from the government. It also addresses the authorities and responsibilities of the Department of Finance and the Dubai Supreme Fiscal Committee (SFC), including reiterating the existing position on SFC approvals required for companies wholly owned by the Government of Dubai to incur debt (including loan financing or issuing bonds/securities) or issue guarantees, unless exempted. The law confirms that net profits of Government-owned companies form part of the public revenue. This is the latest in a series of measures that have been taken at a Federal and Emirate level that seek to regulate public debt and minimise risk in this sector in recent years.

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.

This publication, and any other publications referred to in it, are intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts or Caroline Cheney (Tel: +971 4 369 5830, Email: caroline.cheney@linklaters.com). © Linklaters LLP. All Rights reserved 2015

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP together with a list of those non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ or on www.linklaters.com and such persons are either solicitors, registered foreign lawyers or European lawyers.

A32081233