

Changes to IPO regulations in the UAE – The Securities and Commodities Authority (SCA) Decision No. 11/2016 Concerning the Regulation of offering and issuing shares in Public Joint Stock Companies sets out revised rules for public joint stock companies and foreign public joint stock companies wishing to list shares in the United Arab Emirates (UAE). The rules set out the conditions to offer shares on establishment, conversion and capital increase. New provisions regulate the sale of pre-emption rights by existing shareholders, the subscription for shares by a “strategic partner” and employees under employee share schemes and bookbuilding processes, concepts which were addressed in the Commercial Companies Law 2015 and left open to further regulation by the SCA. While the regulations provide clarity for issuers and their advisers on many aspects of the IPO process, some questions remain over how the SCA will address some more nuanced scenarios, such as whether requirements will differ where an existing trading group wishes to establish a new holding company to serve as the vehicle for IPO’ing the group vs. a “greenfield” IPO, pre-funding and pro-rata allocation in the bookbuilding process for institutional investors.

Competition regime enhanced in the UAE - Two recent regulations set out the market share thresholds at which restrictions on anti-competitive agreements, abuse of a dominant position and economic concentrations are triggered, and a standard definition of small and medium-size enterprises (SMEs). Cabinet Decisions No. 13 and 22 of 2016 were issued by the UAE Cabinet of Ministers under the UAE Competition Law (Federal Law No. 4 of 2012) ([read more...](#)) and came into force in August 2016. The impact of the new regulations is that the competition regime can now effectively be applied in the UAE, together with Cabinet Decision No.37 of 2014 (on the notification and approval regime). Those doing business in the UAE are now able to analyse whether the regime applies to a transaction or activity.

Anti-competitive agreements between establishments are prohibited if the total share of the establishments involved exceeds 10% of the overall transactions in the relevant market. Abusive practices by dominant companies are restricted (market share in excess of 40% of the total transactions in the relevant market is deemed dominant), including price fixing and limiting or controlling production. Where a proposed “economic concentration” (for example, a merger or acquisition) may affect competition in a relevant market, pre-approval from the Ministry of Economy is required where the market share of the relevant establishments exceeds 40% of the total transactions undertaken in the relevant market. There are now clearer rules as to when an establishment may qualify for the SME exemption, which depends on the number of employees or annual revenues and differs across sectors.

Saudi Arabia amends rules on foreign investment in listed securities - New rules issued by the Saudi Capital Market Authority (CMA) Board allow foreign investors to own larger stakes in companies listed on the Kingdom of Saudi Arabia’s stock market, the Tadawul, lower the minimum value of assets foreign institutions are required to manage in order to qualify to invest and permit broader access to securities (not just listed shares), with effect from 4 September. The new rules came into effect by way of an amendment to the Rules for Qualified Foreign Financial Institutions Investment in Listed Securities, which sets out the framework for direct investment by qualified foreign investors (QFIs) in listed shares ([read more...](#)). Increasing foreign direct investment in Saudi Arabia is a key aspect of the Saudi Vision 2030 and National Transformation Plan 2020. This

development follows amendments to the listing rules earlier this year and further changes are expected to the bookbuilding and allocation procedures in early 2017.

Bahrain relaxes foreign ownership rules - Bahrain has further relaxed restrictions on foreign investment in local businesses. Foreign investors will be permitted to own up to 100 per cent in some sectors, and up to 49% in other sectors, once Edicts 49 and 50 of 2016 come into force (following publication in the Official Gazette). Sectors opening up to foreign investment include real estate, information and communications, manufacturing and other technical activities. This is the latest in a series of measures to liberalise restrictions that protect strategic sectors from foreign investment, which include enhanced Government discretion to license foreign-owned companies to conduct activities in previously restricted sectors, and measures to facilitate business registration and licensing. The development will be welcome to foreign investors looking to do business in Bahrain, for whom the restrictions posed challenges, for example, in the context of acquiring a controlling stake in a local company and structuring local acquisitions and exit strategies.

UAE consults on changes to promotion and arranging activities - The SCA is proposing a new regime for the promotion of financial products and the arranging of financial services in the UAE. In a departure from the current light regulation in this area, the draft regulation restricts promotion and arranging activities in relation to domestic and foreign securities (and foreign investment fund units) without SCA approval, unless an exemption applies. The promotion and arranging activities may only be carried out by a restricted category of entities (including UAE entities licensed by the SCA), who would be subject to greater regulatory requirements as regards licensing, approvals and continuing obligations. There are a number of open questions around the scope of the restriction, exemptions, approval requirements and the interplay between SCA requirements and those of other regulators (including UAE Central Bank and regulators in the financial free zones, DIFC and ADGM). This follows the recent changes to the regime for investment funds in the UAE, which address the licensing, regulation and management of funds, and the marketing and issuing of fund units.

New Tribunal to resolve jurisdictional conflict between Dubai Courts and DIFC Courts - A new Judicial Tribunal for the Dubai Courts and the DIFC Courts was established by Dubai Decree No 19/2016 issued in June. In the event that there is a dispute as to jurisdiction between the Dubai Courts and the DIFC Courts either where both Courts had claimed or disclaimed jurisdiction or where the two Courts have issued inconsistent decisions on jurisdiction, any of the parties or the Dubai Attorney General can apply to the Tribunal for the determination of the competent Court or the judgment to be enforced. This is a new initiative and there remain some issues to be clarified around the operation of the Tribunal, including procedural rules and language and also the interplay with the UAE Supreme Court, which has authority to resolve the jurisdictional conflicts under the Constitution. Recent cases before the DIFC Court have illustrated a degree of overlap in the jurisdiction of the two courts as regards the ratification of foreign court judgments and arbitral awards (read more [here](#) and [here...](#)).

DIFC Court judgment enforced in Australia - The Supreme Court of New South Wales has issued an order recognising and enforcing the DIFC Court judgment in *Legatum Limited v Arif Salim* (CFI 027/2014) in March 2016. This is the first time a DIFC Court judgment has been enforced outside the Middle East region and demonstrates that DIFC Court judgments should be enforceable in the courts of a foreign jurisdiction in the same way as would a judgment of any other UAE court. In making its decision to enforce, the Supreme Court of New South Wales referred to The Memorandum of Guidance on Enforcement between the DIFC Courts and the Supreme Court of New South Wales which describes the arrangements for the enforcement each other's money judgments in the other party's courts, in the absence of a relevant treaty.

UAE anticipates new bankruptcy and restructuring law - The UAE Cabinet is reported to have approved a draft of the Federal law on bankruptcy and restructuring in September. The law is expected to come into force following approval by the Federal National Council, the Supreme Council and the President of the UAE. It is unclear how long this process may take. The draft law is set to replace the existing court-led bankruptcy and corporate rescue procedures set out in Chapter 5 of the Commercial Transactions Law (Federal Law No. (18) of 1993). It is anticipated that the new law (which is yet to be made publically available) will have a greater focus on rescuing companies in financial difficulty, than the existing regime and may introduce regimes providing for a moratorium on enforcement and provision of new money on a priority basis. It would be beneficial if the new law were to address some of the challenges for companies and their creditors in the existing regime, and to be clear as to how it interacts with other legislation such as the Commercial Companies Law 2015, especially in the areas of directors' duties and liquidation of companies and which companies may use the procedures.

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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