

Yesterday. Today. Tomorrow.

Linklaters

Year in review,
Year to come

United Arab Emirates Law

December 2018



Year in review

United Arab Emirates Law in 2018

Year in Review 2018 and Year to Come 2019 summarises some of the major developments across the UAE last year, and a selection of key changes that we anticipate over the coming year.

There has been a wide range of changes to legislation and regulation across the UAE, both onshore and in the financial free zones - the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM). We have seen important developments in areas including foreign direct investment, companies law, financial regulation, security, dispute resolution, tax and Fintech.



UAE eases foreign investment restrictions:

The United Arab Emirates (UAE) has introduced long-anticipated legislation which liberalises restrictions on foreign ownership of companies incorporated “onshore” in the UAE (i.e. outside the free zones). Federal Law No.19 of 2018 regarding foreign direct investment establishes a new framework for foreign ownership. Moving away from the long-standing general restriction (known as the “51/49 rule”) which requires a UAE company to have not less than 51 per cent. of its share capital owned by UAE nationals, the new regime allows foreigners to own up to 100 per cent. of the share capital in UAE companies operating in certain sectors, subject to licensing requirements. The sectors covered by the new regime will be set out in secondary legislation which is yet to be issued. Looking ahead, this reform may make doing business in the UAE easier for international investors operating in some sectors and it is likely to increase confidence in the UAE’s business environment.

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New financial services law:

A new law, Federal Law No.14 of 2018, regulates financial services within the UAE and the operations of the UAE Central Bank. In terms of scope, the regime now extends to activities conducted “in or from” the UAE. Some of the key features of the new law include a new prohibition at a federal level against the marketing of financial services without first obtaining a licence, a revised list of regulated financial activities for which UAE Central Bank approval is required, recognition of foreign judgment and regulatory enforcement overseas in respect of a UAE licensed financial institution or a branch of a foreign bank in the UAE and a more expansive list of penalties for breaching the new Central Bank rules (including imprisonment). The law envisages that in the future, the UAE Central Bank will issue rules and standards of conduct electronically on its website through a UAE Central Bank Rulebook.

VAT regime:

Value Added Tax (VAT) is now levied in the UAE, following the new regime coming into force in January 2018. Federal Decree Law No.8 of 2017 and the implementing regulations in Cabinet Decision

No.52 of 2017 set out the domestic regime. This forms part of a regional introduction of VAT across the GCC Member States (the UAE, Saudi Arabia, Bahrain, Kuwait, Qatar and Oman), based on the principles agreed in the Unified GCC Agreement for Value Added Tax.

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New stand-alone netting law:

Introducing a modernised framework for the netting of payment and other obligations in the UAE, Federal Decree Law No.10 of 2018 regarding Netting confirms the effectiveness of netting provisions under specified contracts in accordance with the terms of the parties’ contract, both prior to and following the commencement of insolvency proceedings in the UAE. This is the first time that netting has been regulated on a stand-alone basis in the UAE (outside of the financial free zones). The new permissive netting regime addresses the interplay with potentially conflicting provisions of UAE law, including the Bankruptcy Law 2016 and the Civil Code. It incorporates aspects of international best practice, drawing on the International Swaps and Derivatives Association (ISDA) Model Netting Act 2006. The reform will be of interest to those involved in the financial and commodity markets in the UAE and internationally.

New Federal public debt law:

A new Federal Public Debt Law (Federal Law No.9 of 2018) establishes for the first time frameworks for public debt management at a Federal level and for the issuance of a Federal sovereign bond. A new supervisory office, the Public Debt Management Office, is to be established within the Ministry of Finance which will manage Federal public debt, in co-ordination with the UAE Central Bank. The new regime provides for a ceiling on the amount of public debt which may be outstanding at any time at a Federal level and attaches conditions to debt instruments issued by the Federal Government. The law also regulates guarantees by the Federal Government of the obligations of public authorities, institutions and wholly-owned corporations. This forms part of a package of measures taken at a Federal and Emirate level in recent years that

2018 highlights

The UAE has introduced long-anticipated legislation which liberalises restrictions on foreign ownership of companies incorporated “onshore” in the UAE

2018 highlights

Across the UAE, we have seen a focus on financial legislation and regulation, including in the areas of financial services, netting, derivatives and fintech.

2018 highlights

The DIFC has enacted a new Companies Law and Companies Regulations, which bring in significant changes to the companies’ regime.

seek to safeguard the financial system by regulating Government and Government-related entity debt incurrence.

Securing movable assets:

Lenders can now take non-possessory security over a range of present and future moveable assets (including receivables, bank accounts, bearer instruments, equipment, fixtures and other goods) in accordance with Federal Law No.20 of 2016 on the Mortgage of Movable Assets to Secure a Debt, and the implementing regulations which were issued in March 2018. Lenders can also register the security (which ensures priority) and may be able to enforce using self-help remedies. Cabinet Decree No.5 of 2018 clarifies further details of the form and content of the security agreement, together with the information, procedure and fees to register the security at the Emirates Movable Collateral Registry and to search the register.

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Modernised arbitration law:

The UAE has a new stand-alone arbitration law, Federal Law No.6 of 2018 on Arbitration repealing the arbitration provisions set out in Federal Law No.11 of 1992. Incorporating aspects of international best practice in commercial arbitration, the UAE's new arbitration law draws on the UNCITRAL Model Law on International Commercial Arbitration 1985. It applies onshore in the UAE, but not in the UAE's self-legislating financial free zones, the Dubai International Financial Centre (DIFC) or the Abu Dhabi Global Market (ADGM), which have their own arbitration regimes.

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Regulation of derivative contracts:

The UAE has introduced new regulations on derivatives (including over the counter (OTC) derivatives), which modernise the existing regulatory landscape. The UAE Securities and Commodities Authority Directors' Decision No.(22/R.M) of 2018 Concerning the Regulation of Derivatives Contracts introduces mandatory reporting of derivatives contracts and a requirement for market participants to clear derivatives through a central counterparty licensed by the Securities and Commodities Authority (SCA).

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SCA to regulate ICO Tokens as Securities:

The SCA has approved a plan to recognise digital tokens as securities and introduce a framework to regulate cryptoasset activities, including initial coin offerings (ICOs), exchanges and other intermediaries. This will affect entities seeking to issue, promote or market ICOs or token offerings in onshore UAE. This appears to signal a change in the SCA's position. Earlier this year, the SCA cautioned investors against the risks associated with investments in digital, token-based fundraising activities, including ICOs, flagging the highly speculative nature of ICOs and the price volatility of tokens.

Basel III implementation in the UAE and financial free zones:

The financial services regulators in the UAE, DIFC and ADGM introduced revised prudential regimes for banks regulated in their jurisdictions in line with revised rules outlined by the Basel Committee on Banking Supervision in Basel III in January 2018.

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DIFC enacts new companies law regime:

The DIFC has enacted significant changes to the DIFC companies law regime in November 2018, following a consultation in 2017. A new Companies Law, DIFC Law No.5 of 2018, repeals and replaces the previous Companies Law (DIFC Law No.2 of 2009). There are also new Companies Regulations. Key differences between the new regime and the old regime include:

- Different company classification: Companies limited by shares are now classified as either public or private. A public company is that which has more 50 or more shareholders or is publicly listed. They are subject to stricter regulatory requirements. Private companies may not offer their shares to the public. There is no longer a concept of a limited liability company. The regimes for foreign companies to register as "Recognised Companies" if they meet the

requirements, the continuation of companies and the re-registration of companies are broadly unchanged.

- Enhanced directors duties: There is an expanded set of codified duties based on directors' duties under English law, including a duty to promote the success of the company.
- New merger and compromise regimes: A new merger regime is available to companies in the DIFC wishing to merge with other companies, including those established in jurisdictions outside the DIFC. Companies may also make use of a new compromise or arrangement process to agree solvent or insolvent restructurings with creditors or shareholders. This is similar to an English scheme of arrangement.

Other aspects of the new Companies Law 2018 broadly follow the position under the previous Companies Law 2009. The transitional provisions are set out in the Companies Regulations. Existing companies registered in the DIFC should have automatically converted by law into one of the new company classifications on 12 November 2018. While companies are not required to take any specific action to convert their company classification status, companies should consider other actions that may be necessary or prudent to comply with the law and to reflect their adjusted status. For example, newly converted public and private companies must amend their Articles of Association, if required, within 12 months of the date the law came into force (i.e. by 12 November 2019), otherwise they may be subject to a fine.

DIFC Courts and Smart Dubai to launch world's first "Court of the Blockchain":

The Dubai Government intends to run 100 per cent of applicable government transactions on blockchain by 2020. As part of this strategy, the DIFC Courts and Smart Dubai, a government initiative, are working together on a new "Court of the Blockchain". This taskforce is intended to be the first step in "creating a blockchain-powered future for the judiciary" of the DIFC.

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You can also read about developments in the fintech sector in our blog, [Linklaters FintechLinks](#).

ADGM launches crypto asset regulatory framework:

The ADGM has launched its framework to regulate crypto asset activities conducted in or from the ADGM, following a public consultation in May 2018. This regime is the first of its kind from a regulator in the MENA region. The crypto asset regulatory framework supplements the ADGM Financial Services Regulatory Authority's Guidance on Initial Coin/Token Offerings and Crypto Assets released in October 2017, in which the ADGM clarified its regulatory treatment of initial coin offerings in respect of coins or tokens that have the characteristics of a Security, the treatment of crypto assets as commodities and its regulation of derivatives of crypto assets within the ADGM. [Read more...](#) You can also read about developments in the fintech sector in our blog, [Linklaters FintechLinks](#).

Reciprocal enforcement of judgments in Abu Dhabi and ADGM:

A Memorandum of Understanding sets out the framework for the reciprocal enforcement of judgments, decisions and orders and the arbitral awards ratified or recognised by the onshore civil law courts in Abu Dhabi and the common law courts in Abu Dhabi's financial free zone, ADGM. A key advantage for parties who choose to litigate or arbitrate their disputes in ADGM will be the ease of enforcement onshore in Abu Dhabi any resulting judgment, decision, order or ratified arbitral award may be referred in the prescribed manner for enforcement against assets onshore in Abu Dhabi and should be enforced without review of the merits (and vice versa).

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New arbitration centre opens in ADGM:

The ADGM Arbitration Centre opened in October 2018. It may be used by parties as a venue to resolve their disputes through arbitration or mediation in ADGM. Parties do not require a connection to the ADGM in order to choose the ADGM as the seat of arbitration and may choose the institution that they wish to administer the arbitration. The ICC opened a representative office in the ADGM earlier in 2018.

Year to come

United Arab Emirates Law in 2019

2019 may see further significant changes in law and regulation in the UAE, the DIFC and ADGM, if reform proposals take more solid form.



Foreign Direct Investment Law implementing regulations:

The Cabinet is expected to issue a resolution determining the sectors and activities which are open to higher levels of foreign investment in accordance with the new Federal Law No.19 of 2018 regarding foreign direct investment. This will be known as the Positive List. These sectors will be exempt from the usual restrictions on foreign investment set out in the Commercial Companies Law 2015. The Cabinet resolution will stipulate other matters, including the permitted legal form of the entity in which the foreign investment is to be made (e.g. limited liability company, joint stock company, etc.), the percentage of foreign ownership permitted and the minimum capital of the entity. The Federal government has stated that it aims to publish the Positive List in early 2019.

PJSCs may be allowed to issue preference shares for the first time:

The SCA is consulting on a draft Cabinet resolution which would allow public joint stock companies (PJSCs) to issue preference shares. The Commercial Companies Law 2015 currently does not allow a company to issue shares of different classes. Instead, share capital must be divided into equal and negotiable shares. However, the Commercial Companies Law grants the Cabinet discretion to issue a resolution to permit other classes of shares. The draft resolution anticipates a range of preference shares with different characteristics and sets out a detailed approval process (which involves shareholder approval and a study setting out the justifications and benefits of issuing preferred shares). It also imposes limits on the percentage of issued share capital which may be preferred and the timescale for issuance.

Revisions to the DIFC insolvency regime:

The DIFC may revise its insolvency regime. In 2018, the DIFC consulted on a draft law to replace the current Insolvency Law No.3 of 2009 and the Insolvency Regulations. The reform is intended to modernise and streamline procedures. The current regime is largely based on the insolvency regime in the United Kingdom. It comprises company voluntary arrangements, receivership and winding up procedures. Currently, there are no formal restructuring procedures.

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Recovery and resolution framework for financial institutions in the DIFC:

Financial institutions in the DIFC may be subject to a new recovery and resolution framework for financial institutions, if proposals by the Dubai Financial Services Authority come into force.

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ADGM bank recovery and resolution regime:

The ADGM may introduce a new regime for ADGM financial institutions experiencing financial difficulty, as an alternative to winding up pursuant to ADGM's Insolvency Regulations 2015, following a consultation in 2018. The draft ADGM Bank Recovery and Resolution (BRR) Regulations (and amendments to other existing ADGM regulations) are set out in Consultation Paper No.5 of 2018. The draft BRR Regulations draw on the Financial Stability Board's (a body created and mandated by the G-20) "Key Attributes on Effective Resolution Regimes for Financial Institutions" and related guidelines, together with the European Union's Bank Recovery and Resolution Directive.

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2019 highlights

The UAE FDI Law implementing regulations will be eagerly anticipated in 2019.

2019 highlights

The DIFC may introduce new restructuring and insolvency regimes for companies and financial institutions in 2019.

2019 highlights

Public joint stock companies may be permitted to issue preference shares for the first time.

What now?

Your contacts

We hope that you have found this guide useful.
Please contact your usual Linklaters contact, if you would like to discuss any of these matters further.



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Important note: This publication highlights certain key developments in the laws and regulations in the UAE. The legislative process in the UAE 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, it is difficult to anticipate the pace and scope of legislative change.

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