

THE MERGERS &
ACQUISITIONS
REVIEW

FOURTEENTH EDITION

Editor
Mark Zerdin

THE LAWREVIEWS

THE
Mergers &
Acquisitions
Review

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PREFACE

While the previous edition of *The Mergers & Acquisitions Review* highlighted some causes for optimism for growth in the M&A market, the resilience of companies has been severely tested in 2020 in light of the covid-19 pandemic. Political uncertainty and economic shifts have taken a back seat to the wide-reaching global effects of the pandemic, which are leaving many jurisdictions and sectors in dire straits.

The figures for the first half of 2020 reflect this, as global deal value fell by 53 per cent and deal volume by 32 per cent (compared with the first half of 2019), while megadeals (over US\$10 billion) were down by 48 per cent.¹ The global deal value figure is the lowest half-yearly total since the first half of 2010. The priority for many businesses in the wake of the crisis has been to conserve cash and protect their revenue streams rather than seeking to invest in M&A.

The Americas saw the largest fall in share of global M&A, as its value fell to 33.4 per cent from 52.8 per cent in 2019.² The US is facing not only political uncertainty with the upcoming presidential election and protests across the country, but also a sharp decline in economic productivity due to the lockdown enforced by the covid-19 crisis. M&A deal activity in the US fell to lower levels than the 2008 global financial crisis, with higher value deals particularly affected. Despite the bleak figures for the first half of 2020, though, there are signs that some sectors, notably the technology sector, are rebounding. This is perhaps unsurprising as the future of many industries will depend on technology services.

European M&A saw its lowest quarterly value since 2009 in the second quarter of 2020 of just US\$83.6 billion. There was also a drop of 30.6 per cent in the value of European M&A in the first half of 2020 when compared with the figures in the first half of 2019. With economies beginning to open up towards the end of the first half of 2020, there are early signs as to where the focus of M&A activity will likely be in the aftermath of the crisis. Private equity buyouts have accounted for almost 20 per cent of deals targeting Europe, up from 18.9 per cent in 2019.³ In Europe, as in the Americas, the tech sector is continuing to attract interest and reached a total of US\$27.8 billion across 477 deals in the first half of 2020. By contrast, the consumer sector has been severely impacted and has fallen to its lowest value since 2009.

Looking forward to the remainder of 2020 and beyond, there are some reasons to be optimistic that the global M&A market will show some signs of recovery. There has already

1 Mergermarket, 'Global & Regional M&A Report 1H20'.

2 *ibid.*

3 *ibid.*

been a resurgence since the first half of 2020, with the third quarter seeing 36 deals worth US\$5 billion-plus, making it the busiest third quarter on record.⁴ The challenges caused by restricted international travel, less physical diligence and almost no face-to-face meetings are, for the most part, being surmounted. It is also anticipated that private equity funds will begin to put their dry powder to use as further clarity emerges on the duration and effects of the pandemic.

I would like to thank the contributors for their support in producing the 14th edition of *The Mergers & Acquisitions Review*. I hope the commentary in the following 42 chapters will provide a richer understanding of the shape of the global markets, and the challenges and opportunities facing market participants.

Mark Zerdin

Slaughter and May

London

December 2020

⁴ *Financial Times*, 'Dealmaking rebound drives busiest summer for M&A on record'.

UNITED ARAB EMIRATES

*Danielle Lobo and Abdus Samad*¹

I OVERVIEW OF M&A ACTIVITY

As with other with other areas of activity, M&A remained largely flat during the year in review. Despite this, there have been a number of noteworthy transactions both in the UAE and broader region. However, these transactions continue to be driven by government and public sector entities, and by strategic objectives such as food security and supply chain integrity, which also become significantly more expensive.

A substantial and noteworthy transaction (in particular in an era of depressed oil prices) was the US\$10 billion investment agreed by the Abu Dhabi National Oil Company (ADNOC) with a consortium of global investors. It is understood that the consortium will acquire a minority interest in a newly created subsidiary to hold certain of ADNOC's pipeline assets.² Equally notable was the transaction undertaken by the Abu Dhabi National Energy Company (TAQA) with Abu Dhabi Power Corporation, pursuant to which Abu Dhabi Power Corporation's energy and transmission assets were contributed to TAQA in exchange for shares in TAQA. The transaction has created a utility company with an asset base exceeding 200 billion dirhams.³ The foregoing transactions demonstrate the continued presence of public sector entities in driving M&A activity.

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The UAE is a federation of seven emirates that was formed on 2 December 1971 by Abu Dhabi, Ajman, Dubai, Fujairah, Sharjah and Umm Al Qaiwain following the end of the British protectorate over the 'Trucial States'. The Emirate of Ras Al Khaimah joined the federation the following year.

The UAE's currency is the UAE dirham. The exchange rate has been pegged at approximately 3.67 dirhams per US dollar since 1997. There are no currency import or export controls.

The UAE Federal Constitution apportions powers between the federal government (based in Abu Dhabi) and the governments of the constituent emirates. Some fields are regulated only at the federal level (e.g., immigration and labour relations) although local

1 Danielle Lobo is a partner and Abdus Samad is a senior associate at Afridi & Angell.

2 <https://www.worldoil.com/news/2020/6/24/adnoc-announces-207-billion-energy-infrastructure-deal>.

3 [https://www.thenational.ae/business/taqa-completes-deal-with-adpower-to-create-one-of-the-largest-utility-companies-in-the-region-1.1042401#:~:text=Abu%20Dhabi%20National%20Energy%20Company%20\(Taqa\)%20completed%20its%20transaction%20with,assets%20worth%20about%20Dh200%20billion](https://www.thenational.ae/business/taqa-completes-deal-with-adpower-to-create-one-of-the-largest-utility-companies-in-the-region-1.1042401#:~:text=Abu%20Dhabi%20National%20Energy%20Company%20(Taqa)%20completed%20its%20transaction%20with,assets%20worth%20about%20Dh200%20billion).

interpretations and practices sometimes differ from one emirate to another. Other matters are regulated only at the emirate level (e.g., each emirate retains sovereignty over its own natural resources, including its crude oil and natural gas reserves). Other matters are regulated at both the emirate and federal levels (e.g., company formation and registration).

Any business operating in the UAE must hold a licence authorising its business activity in the UAE. These licences are issued by the concerned authorities in each emirate. A licence allows the licensed entity to carry on the business it is licensed to conduct within the emirate that issues the licence from the business premises identified in the licence. For example, a Dubai business licence authorises the conduct of business in the Emirate of Dubai. If the licence holder wishes to conduct business in the Emirate of Abu Dhabi (for example), then it must apply for and obtain a business licence in Abu Dhabi.

In addition to the licensing rules that are imposed in each emirate, there is a separate layer of federal regulation that a business must comply with. Business licences are available to foreign and local businesses, although there are restrictions that vary from emirate to emirate on the types of business activities that are available to foreign businesses and to local businesses with partial foreign ownership. A foreign business is required to appoint a UAE national shareholder as part of its application for a licence. Companies that are incorporated in the UAE (outside a free zone) must be at least majority-owned (51 per cent) by a UAE national or wholly Gulf Cooperation Council (GCC)-owned. Companies established in any of the UAE's many free zones may be wholly foreign-owned. No corporate or personal income tax is currently imposed anywhere in the UAE, except for the income taxes that are paid by foreign banks and foreign petroleum companies.

A business that wishes to operate in a free zone must obtain a licence from the authority for that free zone. The resulting licence authorises the conduct of the licensed activity within the geographical limits of the free zone. For example, a company licensed to trade certain goods in the free zone can import its goods into the free zone and re-export to destinations outside the free zone (and the wider UAE). However, the free zone licence does not authorise it to engage in any of these commercial activities in the UAE (outside the geographical limits of the free zone). No local ownership requirements are imposed in the free zones. An additional feature of most of the free zones is that they are not part of the customs territory of the UAE. The import of goods into a free zone from overseas does not attract customs duty. Instead, customs duty (5 per cent on most items) is paid when goods move from the free zone into the UAE proper. The free zones also observe a simplified process for hiring personnel. Shares in onshore and free zone entities can be freely transferred (subject to statutory pre-emption rights applicable in many instances), but it is important to note that any transfers are subject to background and know-your-client checks undertaken by the relevant free zone authority in relation to the incoming shareholder.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

The government has recently introduced changes to the foreign ownership requirements under UAE law for companies that are registered outside a free zone.

Federal Decree-Law 19 of 2018 (FDI Law) was issued on 23 September 2018. The FDI Law adopts a similar approach to majority foreign ownership as the UAE Commercial

Companies Law.⁴ An amendment to Article 10 of the UAE Commercial Companies Law adopted in September 2017 (pursuant to Federal Decree-Law 18 of 2017) stipulated that the Federal Cabinet may adopt resolutions permitting foreign nationals to hold in excess of 49 per cent of the share capital of UAE companies. The Federal Cabinet remains responsible for making key decisions with respect to the administration of the FDI Law. In addition to the Federal Cabinet, the Foreign Direct Investment Committee (to be presided over by the Ministry of Economy and appointed by the Federal Cabinet) has been made responsible for reviewing and making recommendations to the Federal Cabinet in respect of matters concerning foreign direct investment. Any recommendations made by the Foreign Direct Investment Committee shall continue to be subject to the approval of the Federal Cabinet. The FDI Law contains a negative list of 13 sectors that will not be subject to the proposed relaxation of the current foreign ownership restrictions. These sectors are the following:

- a* exploration and production of petroleum products;
- b* investigations, security, military sectors and manufacturing of weapons, explosives as well as military hardware, equipment and clothing;
- c* banking and financial activities and payment and cash handling systems;
- d* insurance services;
- e* *hajj* and *umrah* services⁵ and labour supply and recruitment services;
- f* water and electricity services;
- g* services related to fisheries;
- h* postal, communication and audiovisual services;
- i* land and air transport services;
- j* printing and publishing services;
- k* commercial agents services;
- l* retail medicine (such as private pharmacies); and
- m* poison centres, blood banks and quarantines.

The Federal Cabinet is empowered to add to or remove activities from the foregoing list. The FDI Law stipulates that the Federal Cabinet shall, in consultation with the Foreign Direct Investment Committee, propose a positive list of sectors in which foreign nationals shall be permitted an ownership interest of up to 100 per cent. On 2 July 2019, the Prime Minister issued a statement announcing the Federal Cabinet's approval of this positive list of 122 economic activities divided into 51 industrial activities, 52 services activities and 19 agricultural activities. The positive list was promulgated pursuant to Cabinet Decision 16 of 2020 (Resolution). The Resolution was published in the Official Gazette dated 31 March 2020 and came into effect on the day following its publication. Pursuant to the Resolution, a positive list of activities has been approved. The positive list contains 122 activities in the agricultural, manufacturing and services sectors. The Resolution also stipulates the following:

- a* that an FDI company may be a limited liability company or a private joint-stock company (including a single shareholder limited liability company or private joint-stock company);

4 UAE Commercial Companies Law (Federal Law 2 of 2015, as amended).

5 *Hajj* and *umrah* are forms of pilgrimage that Muslims undertake and that comprise visits to Mecca in the Kingdom of Saudi Arabia. While *hajj* is considered obligatory to perform at least once in a lifetime of an adult and physically able Muslim, and must be performed at a prescribed time every year, *umrah* is optional and can be performed at any time of the year.

- b* the minimum share capital of an FDI company (which is linked to the activity that it will conduct);
- c* the restrictions and conditions attached to certain activities (such as the obligation to utilise modern technology); and
- d* that the minimum level of emiratization of the workforce of an FDI company will be determined by the Ministry of Human Resources and Emiratization. For many business and service activities, existing restrictions and qualifications are expressly retained. Despite these requirements, this relaxation of the foreign ownership restrictions could act as trigger for a fresh wave of inbound M&A activity into, and also assist in the development of homegrown businesses in, the UAE. It is expected that the licensing authorities in each emirate will ultimately determine the permitted foreign ownership percentages for specific projects.

The UAE Federal Ministry of Economy has also published detailed guidance in the form of a Foreign Investor Guide that, among other things, sets out the step-by-step process for the incorporation of an FDI company in the UAE. The guide also specifies that it is possible for an existing company to apply to be converted into an FDI company.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

As already noted, M&A activity in the UAE continues to be driven by government and public sector entities in strategic industries. Given the nature of the transactions that have taken place, the key trend has seen UAE-based investors acquire strategic interests in foreign businesses.

A notable transaction in the education sector was the agreement by Amanat Holdings PJSC to sell Middlesex University's Dubai campus to Study World Education Group (an international operator of education facilities with operations in Dubai, Sri Lanka, India and Malta) for an undisclosed sum. The deal is reported to be subject to certain regulatory approvals.

As noted earlier, also noteworthy is the transaction undertaken by ADNOC for the sale of a minority interest in its pipeline assets.⁶ This transaction is particularly noteworthy as it demonstrates the continued interest of foreign investors in high quality assets in the oil and gas industries notwithstanding the continued depressed demand for petroleum. We expect this to be a continuing trend for the near future.

In terms of outbound investments undertaken by UAE investors, a noteworthy transaction is the agreement by Mubadala Investment Company (being an investment vehicle of the government of the Emirate of Abu Dhabi⁷) with Kohlberg & Company, LLC to acquire a majority interest in PCI Pharma Services, a leading pharmaceutical and biopharmaceutical global supply chain solutions provider, and a portfolio company of Partners Group.⁸ Once again, we see this as further evidence of the desire of UAE-based investors to acquire strategic positions in businesses that further the stated aim of the government to bolster the health and security of the people of the UAE. The transaction is also further evidence of the involvement of public sector investors in headline M&A activity.

6 [https://www.gulfoday.ae/business/2020/06/23/adnoc-announces-\\$20-7-billion-energy-infrastructure-deal](https://www.gulfoday.ae/business/2020/06/23/adnoc-announces-$20-7-billion-energy-infrastructure-deal).

7 <https://www.mubadala.com/>.

8 <https://www.mubadala.com/en/news/mubadala-and-kohlberg-sign-joint-agreement>.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

As discussed further in Section VIII, the UAE, Saudi Arabia and Bahrain have introduced value added tax (VAT) to their respective local markets. In a first (at least for the UAE), vendors and purchasers must consider, seek advice on and address tax matters in their transaction documentation. Furthermore, the advent of VAT will no doubt put pressure on the cashflows of many small and medium-sized businesses, and it remains to be seen whether this will in turn have an effect on distressed M&A activity. The year in review has witnessed the Federal Tax Authority (being the authority in charge of administering the UAE tax regime) actively enforcing the collection and payment of VAT and in particular has seen a growing level of tax litigation brought by the Federal Tax Authority. Parties to M&A transactions should take note of this trend to ensure that they agree appropriate provisions in transaction documentation to ensure an appropriate allocation of risk between parties with respect to tax matters. This not only means that tax warranties have assumed a more important position in UAE M&A, but also that parties must pay careful attention to the negotiation of an appropriate tax covenant.

As in previous years, we continue to see the Federal Ministry of Economy (the regulator in charge of administering the competition regime) become active in accepting and reviewing merger control notifications filed in connection with UAE transactions. Although still a developing area of law, the very fact that merger control notifications are now regularly being submitted and reviewed indicates that the relevant authorities are serious about ensuring that those who are party to transactions concerning the UAE market consider and, where required, notify their transactions. It is also of note that the lack of publicly available decisions concerning such notifications creates a degree of uncertainty for transactions that are caught by the relevant filing requirements.

In terms of key trends and active industries, we continue to see transactions take place in the financial services sector, with the ongoing consolidation in the banking industry continuing to be a driver of M&A activity. The insurance industry also remains an industry of interest insofar as M&A transactions are concerned, with consolidation being a continuing trend.

In the technology sector, a number of UAE free zones (in particular the Dubai International Financial Centre (DIFC) in the Emirate of Dubai and the Abu Dhabi Global Market (ADGM)) have made an effort to attract, support and grow technology-related business. The government of Dubai has also launched the Dubai future accelerators programme⁹ aimed at encouraging young entrepreneurs to address everyday challenges they currently face (for example, the need to allow businesses to operate while adhering to social distancing requirements). Similarly, the DIFC has introduced a fintech accelerator programme¹⁰ aimed at providing startups access to leading accelerator programmes and mentorship from leading financial institutions and insurance partners, along with a dedicated space to work alongside a community of like-minded individuals. More recently, the DIFC introduced an innovation licence, which is available to technology and innovation startups for a select number of activities including technology, research and development and software houses. Applicants for a DIFC innovation licence will need to ensure compliance with all the laws of the DIFC as applicable to any other entity established in the DIFC, but will be

9 <https://dubaifutureaccelerators.com/en/>.

10 <https://fintechhive.difc.ae/programmes/2019-fintech-accelerator-programme>.

eligible for substantially reduced licensing fees. The licensing fee for an innovation licence has been significantly subsidised to US\$1,500 per annum. As per the DIFC's current policy, this subsidy in the licensing fee is available for the first four years, and the standard licensing fee of US\$12,000 per annum shall apply thereafter.

In Abu Dhabi, the ADGM has introduced a licensing regime specifically catered towards tech startups that allows entrepreneurs to obtain an operational licence in the ADGM and that gives them access to a professional services support programme aimed at allowing entrepreneurs' entry to a community of businesses, financial services and professional advisers.¹¹ Given these developments and the stated aim of the UAE government to encourage and support hi-tech businesses and startups, technology businesses will likely also continue to be a source of M&A activity in the UAE.

Of particular interest during the covid-19 pandemic have been industries and businesses that are involved in advanced health and therapeutic processes and businesses that assist the government in its aim to improve food security and supply chain integrity for key supplies required by the UAE population. During the period under review, a number of noteworthy transactions were undertaken by Group 42 (an Abu Dhabi-based cloud computing and artificial intelligence company¹²). These transactions include:

- a* a joint venture with ADNOC to create AI-enabled solutions for the oil and gas industry;¹³
- b* a partnership with Abu Dhabi's Department of Health to deliver the first genome data programme in the UAE;
- c* the acquisition of Bayanat for Mapping and Surveying Services LLC (an end-to-end, customised geospatial data products and services provider);¹⁴ and
- d* a partnership with the UAE Ministry of Health and Prevention and Sinopharm to operate the Phase 3 trials for Sinopharm's covid-19 vaccine in the UAE.¹⁵

Following a similar trend, Abu Dhabi Development Holding Company PJSC (ADQ) announced the acquisition of a 22.25 per cent interest in Aramex¹⁶ (a global courier and logistics business¹⁷), thereby further consolidating its portfolio of investments in the logistics and transportation businesses.

It is expected that those industries that can contribute to the UAE's vision of enhancing food security and supply chain integrity will continue to see heightened interest from both foreign and domestic investors in the coming months and years.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

External financing for acquisitions continues to be less prevalent in the UAE in comparison to other jurisdictions, and a large majority of acquisitions continue to be financed in cash.

11 <https://www.adgm.com/mediacentre/press-releases/adgm-launches-new-commercial-license-for-tech-start-ups-and-professional-services-support-programme-to-transform-abu-dhabi-s-start-up-sectors/>.

12 <https://g42.ai/>.

13 <https://www.wam.ae/en/details/1395302802084>.

14 <https://wam.ae/en/details/1395302815790>.

15 <https://g42.ai/news/healthcare/g42-sinopharm-phase-3-clinical-trial-vaccine/>.

16 <https://www.nasdaq.com/articles/abu-dhabi-backed-adq-acquires-22-of-courier-aramex-2020-09-17>.

17 <https://www.aramex.com/us/en/about/about-aramex>.

Where acquisition financing is made available on a transaction, it is usually structured as a long-term loan, which is almost always secured by personal or corporate guarantees, including securities over target assets. In addition to the primary facility documentation, borrowers may also issue a promissory note, a subordination agreement for any remaining debt and an assignment of certain identified assets depending on the nature of an acquisition.

Although most acquisitions that are financed are funded through conventional finance, various other Islamic finance structures are used as well, particularly the *murabahah*,¹⁸ *musharakah*,¹⁹ *mudarabah*²⁰ and *ijarah*²¹ structures. However, note that the financial covenants of these Islamic structures are often more onerous than those found in conventional facilities.

In terms of the availability of private equity investment, the private equity market continues to feel the effects of global financial uncertainty arising out of the covid-19 pandemic and the resulting turmoil in the financial markets. In the UAE, we anticipate that there will be continued public sector activity in areas of strategic interest (for example, businesses involved in advanced agricultural processes and those that enable the government to protect food security and supply chain integrity for vital products). We also anticipate that private equity investment will continue to be directed at sectors such as food and beverages and healthcare, with a renewed focus on those businesses pursuing hi-tech advancements in these sectors.

VII EMPLOYMENT LAW

The UAE Labour Law²² regulates most employment relationships in the UAE. The Labour Law imposes minimum standards on termination of employment, working hours, annual leave and safety standards, among other things, which cannot be contracted out of. In addition to the Labour Law, certain UAE free zones have implemented their own employment regulations, which apply to all companies licensed to operate in that free zone. In general, these employment regulations act as a supplement to the Labour Law, with the exception of the DIFC free zone, where DIFC Law 2 of 2019 applies, and the Abu Dhabi Global Market, where the ADGM Employment Regulations 2015 apply.

On the sale of a business, there is nothing in the UAE that is akin to the Transfer of Undertakings (Protection of Employment) Regulations 2006 of the United Kingdom. Consequently, for employees to be transferred to a purchasing entity, the employees' employment contracts with the selling entity must be terminated and new employment contracts entered into with the purchasing entity.

On the termination of employment, transferring employees must be paid their share of service gratuity in accordance with the Labour Law, their salary for any accrued but unused annual leave, and any other entitlements as set out in their employment contracts.

18 A shariah-compliant form of financing that involves a sale contract in which the seller includes a profit margin in the sale price along with the actual cost of the subject matter of the contract.

19 A shariah-compliant joint venture or partnership.

20 A shariah-compliant form of financing in which two or more investors collaborate and pool their capital and appoint an agent to manage their investment in return for the payment of a fee.

21 A shariah-compliant lease, most commonly used to finance the acquisition of assets, for example in the context of a sale and leaseback arrangement.

22 The UAE Labour Law (Federal Law No. 8 of 1980 on Regulating Labour Relations (as amended)).

End-of-service gratuity payments must be paid to any employee who completes one year or more in continuous service. If an employer has terminated his or her employment contract, the gratuity is 21 days' basic salary for each of the first five years of employment and 30 days' basic salary for each additional year over five years. The Labour Law caps the end-of-service gratuity to an amount equal to an employee's basic salary for two years. An employee will also be entitled to a gratuity payment for fractions of the year worked provided that the employee has completed one year in continuous service. The selling entity would therefore be required to make payment of the end-of-service gratuity and all other contractual payments to employees when they are transferred to the purchasing entity. Alternatively, the end-of-service gratuity and all other contractual payments due to employees could be paid by the purchasing entity and then deducted from the consideration payable for the business. However, one practical matter to consider with the latter approach is that the transferring employees will, on termination of their employment with the selling entity, be required to sign an undertaking confirming receipt of all amounts due by the employer. An employee will be reluctant to do so unless this is in fact the case, and it is unlikely that a prospective purchaser will want to make any payments in connection with the transferring employees until after the completion of the transfer of the business.

Transferring employees may also raise concerns about the termination of their current employment contracts and the payment of their end-of-service gratuity, as this will result in the end of their period of continuous service, and they will therefore be required to work for the purchasing entity for a year before being entitled to an end-of-service gratuity payment. Generally, there is no procedure for the transfer of the continuous service period from one employer to another. However, depending on where within the UAE an employee is employed, it may be possible for a period of continuous service to be acknowledged by the new employer and thereby preserve valuable end-of-service benefits for the employee.

As part of the sale of a business in the UAE and the transfer of employees, the amendment or cancellation and reissuance of UAE residence visas for each transferring employee will also need to be considered. As the number of employees that a company can sponsor for visa purposes is dependent on the space that it leases or owns, a purchasing entity will also need to ensure that it occupies sufficient space to sponsor all transferring employees.

In addition, the applicability of the Pensions Law²³ (as amended) will also need to be considered in any transfer of a business in the UAE. The Pensions Law will have implications for any company that employs UAE or GCC nationals.

On 14 January 2020, the Employment Law Amendment Law²⁴ and the Employment Regulations (Amendment) were enacted in the DIFC. The Amendment introduces a new mandatory workplace savings scheme, which replaces the current end-of-service gratuity regime. The new scheme commenced on 1 February 2020.

The main consequences of the Amendment are as follows:

- a* end-of-service gratuity benefits of employees will accrue until 31 January 2020, then stop accruing thereafter;
- b* from 1 February 2020, employers must make monthly mandatory contributions into a professionally managed and regulated savings plan (qualifying scheme) for the benefit of their employees; and

23 The Pensions Law (Federal Law No. 7 of 1999 concerning Pensions and Social Securities) (as amended).

24 The Employment Law Amendment Law (DIFC Law 4 of 2020).

- c the monthly mandatory contributions into the qualifying scheme must be at least 5.83 per cent of the employee's basic salary for the first five years of service and 8.33 per cent of the employee's basic salary for each additional year of service, provided that the basic salary is not less than 50 per cent of the employee's total monthly compensation.

As previously noted, changes to DIFC employment law will not have an effect on employers operating outside the DIFC (e.g., in other free zones or onshore in the UAE). It remains to be seen whether the UAE federal government will follow the DIFC in introducing similar reforms.

It is also noteworthy that the federal government recently promulgated Federal Decree Law 6 of 2020 (which in turn amended the UAE Labour Law), requiring men and women in the same roles to be paid the same level of compensation. The effects of this very recent change (the legislation is stated to take effect as of 25 September 2020) on private sector employment remain to be seen. Equally noteworthy is the introduction of parental leave (it was previously the case that only maternity leave was contemplated by the Labour Law). It is now the case that employees are able to take five working days of parental leave within six months of the birth of a child (the Law does not expressly cover instances of adoption). Since the promulgation of the new legislation, it has been clarified that this additional leave allowance can be taken by either the mother or father of the child (i.e., it is not the case that this leave allowance is only available to fathers).

VIII TAX LAW

The UAE issued a substantive law on VAT in 2017. Pursuant to the VAT Law,²⁵ the imposition of VAT in the UAE commenced on 1 January 2018 at a rate of 5 per cent.

Registration for VAT is mandatory for any taxable person or business if the total value of its taxable supplies made within the UAE exceeds the mandatory registration threshold of 375,000 dirhams during the previous 12 months, or if it is anticipated that the taxable supplies will exceed the threshold in the next 30 days.

A taxable supply refers to a supply of goods or services made by a business in the UAE that may be taxed at a rate of either 5 or zero per cent. Reversed charge supplies and imports are also taken into consideration for this purpose if a supply of such imported goods and services would be taxable if it were made in the UAE.

Entities that are not based in the UAE but that provide goods or services in the UAE are also required to apply for registration if they meet the threshold requirements.

The supply by a taxpayer of either exempt or zero-rated goods or services will not attract VAT; however, a supplier of zero-rated goods or services will be able to claim a refund on any VAT paid on their purchases, unlike a supplier of exempt goods or services who will be unable to recover any VAT paid on their purchases. The VAT Law sets out a list of zero-rated and exempt supplies.

The VAT Law also permits tax grouping, which allows group companies to be treated as one entity for the purposes of VAT. Each group company will be jointly and severally responsible for each other group company's VAT liabilities, and no VAT will be payable on transactions between entities within the group.

25 The VAT Law (Federal Decree Law No. 8 of 2017).

Generally, a VAT-registered customer must account for VAT paid in respect of purchases; however, certain transactions between entities within the GCC will be subject to VAT by reverse charge. The concept of reverse-charging VAT allows the simplification of transactions within a single market (i.e., the GCC states). The reverse charge removes the obligation to account for VAT on a sale from a supplier and places it on the customer. It should be noted that for the purposes of a single market VAT treatment, only those countries that have implemented VAT at the relevant time will be taken into account; non-implementing countries would be treated like any foreign country.

Cabinet Decision No. 59 of 2017 specifies all designated zones for the purposes of implementing the designated zone provisions in the VAT Law. A designated zone is required to be a specific fenced area with security measures and customs controls in place to monitor the entry and exit of individuals and the movement of goods to and from the area. Concessional VAT treatment may be available for transactions involving the supply of physical goods within designated zones. No VAT concessions are available for transactions involving the supply of services within designated zones. The Cabinet has the authority to amend the list of designated zones as required.

With respect to the applicability of the VAT Law to M&A transactions, it provides that 'the transfer of the whole or independent part of a Business from a Person to a Taxable Person for the purposes of continuing the Business that was transferred'²⁶ shall not be considered a supply, and therefore will not be subject to VAT. Consequently, in common with some European jurisdictions, the sale and purchase of a business in the UAE should not attract VAT. Note, however, that there is no clear guidance in the law as to what continuing a business involves; nor is there any detail on what constitutes the whole or independent part of a business. Tax advice must therefore be sought in each case to assess whether VAT may be applicable in the context of a particular transaction.

Note also that pursuant to Article 42 of Cabinet Decision No. 52 of 2017, a transfer of title to equity securities is exempt from VAT.

It is noteworthy that in May 2019, the Minister for Justice issued a number of executive resolutions concerning the establishment of the requisite government machinery for the consideration and resolution of tax disputes. This includes the establishment of a specialised tax department in the Abu Dhabi Federal Court of First Instance and one in the Abu Dhabi Federal Court of Appeal. At present, these resolutions are limited to the Emirate of Abu Dhabi; accordingly, it is expected that similar specialised departments will be established in other emirates (the courts of the Emirates of Dubai and Ras al Khaimah are not a part of the UAE federal court system) to consider tax disputes. As noted above, the Federal Tax Authority is now also actively pursuing litigation in respect of alleged violations of UAE tax legislation, and the negotiation of appropriate tax warranties and covenants in M&A transactions is now an essential part of a UAE M&A transaction.

26 Article 7 of Federal Decree Law No. 8 of 2017.

IX COMPETITION LAW

The Competition Law²⁷ was introduced into the UAE as a means of regulating anticompetitive practices. The Competition Law deals with three key areas: a restriction on anticompetitive agreements, the regulation of dominant market positions and a requirement that acquisitions over a threshold combined market share obtain merger clearance from the UAE Ministry of Economy.

Although the Competition Law was introduced in 23 February 2013, it initially had minimal impact as a result of it failing to establish the market share thresholds at which its restrictions became applicable. It also failed to define the small and medium-sized establishments that were stated to be outside the purview of the Law.

In 2016, two Cabinet decisions were introduced that supplemented the Competition Law and provided guidance on these outstanding aspects: Cabinet Decision No. 13/2016 (Ratios Decision) in respect of market share thresholds and Cabinet Decision No. 22 of 2016 (SME Decision) in respect of small and medium-sized establishments.

As a result of the Competition Law and the two Cabinet Decisions, merger clearance will be required in advance of any proposed merger, acquisition or other consolidation of two or more entities that would result in a market share of 40 per cent or more. The concerned market is broadly defined in the Competition Law to comprise markets in which commodities or services are replaceable or may be substituted to meet specific needs according to price, properties and use. Although it is difficult to define the relevant market in legislation, and more often than not markets are only identifiable on a case-by-case basis, on a practical level the application of the Ratios Decision is somewhat difficult because the concerned market is not clearly defined.

In addition, as a result of the SME Decision, the Competition Law does not apply to certain small and medium-sized establishments as detailed in the SME Decision. The definition of small and medium-sized establishments varies according to whether the relevant entity operates in the trade, industry or services sector. Small and medium-sized establishments are also identified in the Ratios Decision according to turnover and number of employees.

Finally, note that the Ministry also has the power to investigate a potential violation of the Competition Law on its own initiative or following a complaint brought before it. Failure to notify a reportable economic concentration may result in a fine of between 2 and 5 per cent of turnover generated by the relevant undertaking in the UAE in the last financial year or, if data is not available, a fine of between 50,000 and 5 million dirhams.

X OUTLOOK

The outlook for M&A in the UAE remains at best uncertain both due to the prevailing covid-19 pandemic and the resulting financial turmoil and uncertainty. However, we have seen and expect to continue to see heightened public sector investment and activity in M&A concerning strategic sectors. We anticipate that businesses offering access to sectors of interest (for example, logistics, agricultural and advanced therapeutics) will receive special interest and may also be able to obtain better valuations.

27 The Competition Law (Federal Law No. 4 of 2012 on the regulation of competition).

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