

THE MERGERS &  
ACQUISITIONS  
REVIEW

FIFTEENTH EDITION

Editor  
Mark Zerdin

THE LAWREVIEWS

# THE MERGERS & ACQUISITIONS REVIEW

FIFTEENTH EDITION

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**Editor**  
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# PREFACE

As highlighted by the previous edition of *The Mergers & Acquisitions Review*, the resilience of companies was severely tested in 2020 by the covid-19 pandemic. However, the second half of 2020 saw a rebound in M&A activity, with deal totals 122 per cent higher in value (US\$2.5 trillion) and 5 per cent higher in volume (16,700 deals) compared to the first half of the year.<sup>1</sup>

The figures for the first half of 2021 tell a similar, and equally promising, story – deal value has almost tripled from €849.8 billion in the first half of 2020 to €2.4 trillion in the first half of 2021.<sup>2</sup> This strong rebound has taken place in tandem with the broader recovery of the global economy, and the re-surfacing of countries from national lockdowns.

Leading the charge were the North American M&A markets, which saw deal value almost quadruple from €285.6 billion in the first half of 2020 to €1.2 trillion in the first half of 2021.<sup>3</sup> US dealmaking, in particular, has benefited from a substantial injection of capital into the economy by the Biden administration, most notably the US\$1.9 trillion coronavirus relief bill approved by Congress in March, as well as a proliferation in the number of special purpose acquisition companies (SPACs) and the unprecedented levels of funds raised thereby. In the Americas more broadly, the leading sectors for the first quarter of 2021 were technology, media and telecoms (548 deals totalling US\$206.1 billion), industrial and chemicals (300 deals totalling US\$100.8 billion) and financial services (170 deals totalling US\$99.5 billion).<sup>4</sup>

The buoyancy of M&A activity in North America has meant that Europe's share of global M&A value has decreased from 28 per cent in 2020 to 21 per cent in the first half of 2021.<sup>5</sup> Notwithstanding this proportionate decline, European dealmaking has also enjoyed a prosperous first half of 2021, with volume up 44 per cent and value rising 89 per cent year-on-year.<sup>6</sup> Private equity was particularly active in this period, with private equity firms investing €193.2 billion in buyouts during the first half of 2021, almost equalling the €194.5 billion of buyout activity recorded across the whole of 2020, and exceeding the

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1 Mergermarket, 'Global dealmakers: Cross-border M&A in 2021'.

2 CMS, 'Road to recovery: European M&A Outlook 2022'.

3 *ibid.*

4 Mergermarket, 'Deal Drivers: Americas Q1 2021'.

5 CMS, 'Road to recovery: European M&A Outlook 2022'.

6 *ibid.*

€168.8 billion and €174.7 billion recorded in 2019 and 2018, respectively.<sup>7</sup> In the first half of this year, private equity firms substantially reconfigured their portfolios, with 614 exits worth a total of €101.4 billion (in excess of pre-pandemic levels) taking place.<sup>8</sup>

Looking forward to the remainder of 2021 and beyond, there is plenty of cause for optimism. The unique challenges posed by the pandemic appear, at least for now, to be behind us, and the restoration of normality (or at least a new normal), in global M&A and in the broader sense, is taking shape.

I would like to thank the contributors for their support in producing the 15th edition of *The Mergers & Acquisitions Review*. I hope the commentary in the following 36 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

November 2021

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<sup>7</sup> Mergermarket, 'Deal Drivers: EMEA HY 2021'.

<sup>8</sup> *ibid.*

# UNITED ARAB EMIRATES

*Danielle Lobo and Abdus Samad<sup>1</sup>*

## I OVERVIEW OF M&A ACTIVITY

The year in review has seen M&A activity make a significant recovery in the UAE and in the broader region. The resilience of the UAE's infrastructure and policy response has resulted in a strong rebound from the tumultuous restrictions imposed early on in the covid-19 pandemic.

M&A activity in the year in review has centred around startups in key industries such as payments processing, digital banking and digital services more generally. This is unsurprising given the stated focus of the UAE government to promote and support digital services and digital government.<sup>2</sup> In addition, strategic industries such as healthcare have remained in focus and have attracted investment from foreign and domestic investors alike.

## 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 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

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

2 <https://u.ae/en/about-the-uae/digital-uae>.

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, 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. Companies that are incorporated in the UAE (outside a free zone) in certain industry sectors classified by law as those having ‘strategic impact’ must be at least majority-owned (51 per cent) by a UAE national or wholly Gulf Cooperation Council (GCC)-owned (and in at least one instance must be wholly UAE national 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 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 once again overhauled the foreign ownership requirements under UAE law for companies that are registered outside a free zone and has introduced a substantially liberalised framework, allowing majority (or greater) foreign ownership in a very broad range of companies incorporated onshore in the UAE. 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 UAE Cabinet has now issued Cabinet Decision 55 of 2021 (the Cabinet Decision) which includes a list of activities that are considered to have ‘strategic impact’. The following activities were included in the Cabinet Decision:

- a* security and defence activities and activities of a military nature;
- b* banks, money exchange, finance companies and insurance activities;
- c* printing currencies;
- d* telecommunications;

- e* hajj and umrah services; and
- f* fisheries-related services.

For each activity, a specific UAE authority has been identified as the regulatory authority in charge of taking decisions with respect to foreign ownership of companies engaged in such activity. For example, the Ministry of Defence and the Ministry of Interior are the relevant regulatory authorities for the activities in the security and defence sector. Each regulatory authority has been provided with a broad range of powers to determine the percentage of permitted foreign direct investment (FDI) and enact rules and conditions applicable to 'strategic impact activities'. This is with the exception of fisheries-related services, which is the only activity listed in the Cabinet Decision that requires 100 per cent UAE national ownership. The Cabinet Decision provides that an investor must submit an application to the local licensing authority (in most cases, this would be the Economic Department in the relevant Emirate but in certain instances will be the municipality) of the Emirate in which that investor wishes to conduct the desired activity. The local licensing authority will then submit an application to the designated regulatory authority (as specified in the Cabinet Decision). The regulatory authority will consider the application and will then issue a decision either (1) approving the application and determining the percentage of UAE national contribution required, together with any conditions attached to such approval or; (2) reject the application.

For activities that are not listed in the Cabinet Decision, the licensing authority of each Emirate has been empowered to decide the level of foreign ownership permitted. The licensing authorities in the Emirates of Abu Dhabi, Dubai and Sharjah have issued guidance to investors on which activities they will permit for 100 per cent foreign ownership. Generally, it appears that at present the Emirate of Abu Dhabi has adopted the most liberal regime. Specifically, the Abu Dhabi Department of Economic Development (being the licensing authority in the Emirate of Abu Dhabi) has issued Administrative Decision 320 of 2021 (the Administrative Decision) which specifically identifies those specific activity descriptions that are designated to have 'strategic impact' and that are therefore subject to the restrictions contained in the Cabinet Decision. The Administrative Decision also states that save for the strategic impact activities identified, investors are permitted to fully own or to own any percentage of companies to practice all commercial and industrial activities except for the strategic impact activities.<sup>3</sup> The licensing authorities in Dubai and Sharjah have at present taken a different approach from that of the Abu Dhabi Department of Economic Development in that they have published a list of specific activities in which 100 per cent foreign ownership is permitted.

While the full impact of these changes is yet to be felt, it is evident that the liberalisation of the previously restrictive foreign ownership regime has provided a much-needed boost to the UAE economy. Foreign investors can now invest with the confidence that they will be able to hold all of the capital of companies they incorporate onshore in the UAE (subject of course to the restrictions identified above). There have also been a number of corporate reorganisations taking place as group structures are simplified to remove UAE national ownership. In addition (and as discussed in Section IV), we have observed a strong rebound in M&A activity driven by foreign investors, primarily in relation to established startups, with the fintech space being an important highlight.

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3 Unofficial English translation of Arabic text.

#### IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

The year in review has seen a substantial increase in inbound M&A driven by foreign investors looking to take advantage of the UAE's new and substantially liberalised foreign investment regime in addition to the UAE government's programmes to attract foreign talent by offering a variety of new options for skilled professionals and entrepreneurs (especially in high-tech industries) to reside and work in the UAE. It also appears that foreign investors are increasingly growing confident of the value proposition offered by UAE businesses. In particular, this approach has made itself evident in investments by leading foreign investors in UAE-based technology startups.

A notable transaction with a substantial foreign element is the US\$415 million Series C funding round announced by Kitopi,<sup>4</sup> a leading managed cloud kitchen platform founded in January 2018 and that currently operates 60+ kitchens in the UAE, Saudi Arabia, Kuwait and Bahrain. The Series C round was led by SoftBank's 'Vision Fund 2' with additional participation from Chimera, DisruptAD, B.Riley, Dogus Group, Next Play Capital and Nordstar.<sup>5</sup> The year in review also saw the sale of Jawaker, a UAE-based leading social card gaming network hosting a number of popular card games.<sup>6</sup> Jawaker was acquired by Stillfront Group AB, a Swedish-listed global group of gaming studios and a proclaimed market leader in the free-to-play online strategy games genre.<sup>7</sup> The sale was reported to have taken place for a total upfront consideration of US\$205 million on a cash and debt-free basis.<sup>8</sup>

A further example of the continuing strength of the UAE startup space is the strategic partnership announced between UAE-based (and foreign-owned)<sup>9</sup> fintech startup Jingle Pay<sup>10</sup> and leading foreign exchange service provider Al Fardan Exchange<sup>11</sup> to combine Al Fardan Exchange's global processing and clearing capabilities with Jingle Pay's digital technology to better serve the needs of migrant workers in need of no-fee accounts and low- or no-cost cross-border remittances.<sup>12</sup> Similarly, Dubai-based fintech startup Sarwa<sup>13</sup> recently announced a successful Series B funding of US\$15 million led by Mubadala Investment Company with 500 Startups, Kuwait Projects Company, Shorooq Partners, Middle East Venture Partners, the Dubai International Financial Centre (DIFC) (through its venture capital investment arm), Hambro Parks, Oryx Fund, HALA ventures, and Vision Ventures also participating.<sup>14</sup>

As such, we consider the foregoing transactions to be indicative of the resilience of UAE startups (particularly in the fintech space) and the appetite of leading investors to invest in growing UAE-based startups. We anticipate this to be a continuing trend going forward as the UAE makes a strong recovery from the covid-19 pandemic.

4 <https://www.kitopi.com/our-story>.

5 <https://www.kitopi.com/post/kitopi-announces-415-million-series-c-funding-round>.

6 <https://www.jawaker.com/en/about>.

7 <https://www.stillfront.com/en/>.

8 <https://www.lw.com/news/latham-advises-jawaker-on-sale-to-stillfront>.

9 <https://thefintechtimes.com/dubai-startup-jingle-pay-targets-the-middle-east-with-digital-neobanking-services/>.

10 <https://jinglepay.com>.

11 <https://alfardanexchange.com/>.

12 <https://ibsintelligence.com/ibsi-news/jingle-pay-al-fardan-exchange-bring-global-remittances-to-migrants/>.

13 <https://www.sarwa.co/>.

14 <https://www.sarwa.co/blog/sarwa-series-b-round>.

## V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

As noted, the fintech sector (along more generally with technology focused businesses) remains in focus for both foreign and domestic investors and entrepreneurs and indeed has demonstrated resilience during the covid-19 pandemic.

An example of a significant transaction (in particular for the UAE, where equity capital markets continue to be dominated by public sector entities) is the merger between Abu Dhabi-based Anghami<sup>15</sup> (a service provider for music streaming) with Vistas Media Acquisition Company, a special purpose acquisition company (SPAC) listed on NASDAQ (New York), for an implied initial pro-forma enterprise valuation of approximately US\$220 million.<sup>16</sup> We anticipate this transaction to be a harbinger for further transactions between SPACs and UAE-based ventures.

In addition, and as noted earlier, payments processing will remain a key industry and we anticipate continued investment and growth in the payments processing space, including with UAE-based ventures. A notable development in this space includes the launch of the UAE's first UAE Central Bank licensed and independent digital bank Zand.<sup>17</sup> This has been followed closely by the ADGM Financial Services Authority issuing its framework for 'Third Party Financial Technology Services',<sup>18</sup> thereby laying the regulatory groundwork for further development in the open banking space in the UAE.

Unsurprisingly, healthcare continues to be an industry of focus for foreign and domestic investors alike. The year in review saw substantial investments into United Eastern Medical Services (UEMedical), an operator of medical facilities in the UAE and Saudi Arabia. In separate transactions, Mubadala Health acquired a 60 per cent stake in UEMedical for an undisclosed price<sup>19</sup> following closely in the footsteps of Cerberus Capital Management-backed and Abu Dhabi-based<sup>20</sup> private equity firm Olive Rock Partners.<sup>21,22</sup> We anticipate healthcare to remain a key industry in the coming period.

## 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.

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,

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15 <https://www.anghami.com/>.

16 <https://talks.anghami.com/anghami-merges-with-vistas-media-acquisition-company-inc-to-become-first-arab-technology-company-to-list-on-nasdaq-new-york/>.

17 <https://www.cnn.com/2021/06/24/finance/competition-as-uae-digital-bank-zand-prepares-for-launch.html>.

18 <https://www.adgm.com/media/announcements/adgm-fsra-introduces-a-new-regulatory-framework-for-third-party-financial-technology-services>.

19 <https://www.bloomberg.com/news/articles/2021-06-16/mubadala-buys-60-in-uemedical-after-olive-rock-cerberus-entry>.

20 <https://www.arabianbusiness.com/healthcare/464582-olive-rock-cerberus-buy-stake-in-uae-healthcare-provider>.

21 <https://www.oliverrockpartners.com/>.

22 <https://www.thenationalnews.com/business/olive-rock-partners-takes-stake-in-uemedical-in-debut-deal-1.1237447>.



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*,<sup>23</sup> *musharakah*,<sup>24</sup> *mudarabah*<sup>25</sup> and *ijarah*<sup>26</sup> structures. However, 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 Law<sup>27</sup> 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 2019 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 end-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.

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

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23 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.

24 A shariah-compliant joint venture or partnership.

25 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.

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

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

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 to 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 Law<sup>28</sup> (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 GCC nationals.

In the DIFC, the following applies with regard to end of service benefits:

- 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
- 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.

The DIFC has recently enacted changes to its employment legislation. The effect of the promulgation of the Employment Law Amendment Law<sup>29</sup> can be summarised as follows:

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

29 DIFC Law 4 of 2021 which amends DIFC Law 2 of 2019.

- a* claims concerning employment matters can now be brought during the term of the employee's employment (or a maximum of six months from the date on which the employment relationship is terminated);
- b* the upper limit of six months in respect of probation periods does not apply in relation to a fixed-term contract of employment which is for six months or less, in which case the applicable probation period may not exceed more than half the period of the fixed-term contract;
- c* there are now detailed rules concerning the calculation of limitation periods for particular types of claims (for example, a claim concerning maternity pay is treated differently to a claim concerning an unlawful deduction from the employee's remuneration);
- d* the Employment Law Amendment Law has clarified that vacation leave continues to accrue during any period of paternity leave; and
- e* the Employment Law Amendment Law has included additional provisions that apply to employees that are on secondment.

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.

## VIII TAX LAW

The UAE issued a substantive law on VAT in 2017. Pursuant to the VAT Law,<sup>30</sup> 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.

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

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

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. 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’<sup>31</sup> 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.

## IX COMPETITION LAW

The Competition Law<sup>32</sup> 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.

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

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

Although the Competition Law was introduced on 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, 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 particular, those transactions that involve a foreign investor) is bright for the UAE. As a result of the substantial overhaul and liberalisation of the foreign ownership regime, and the liberalisation of the visa and long-term residency programmes available to foreign investors and entrepreneurs, the UAE economy is seeing a broad-based recovery and a wave of inbound investment and M&A activity. In addition, the significant steps that have been taken by the UAE government to make it easier to establish and operate businesses (including to reduce costs) will in our view provide further impetus to business and investor confidence. We expect this trend to continue in the short term.

## ABOUT THE AUTHORS

### **DANIELLE LOBO**

*Afridi & Angell*

Danielle Lobo specialises in M&A, private equity and general corporate matters. She has considerable experience in, and has advised vendors, trade purchasers and management on, both the acquisition and disposal of companies, as well as on private equity investments, including the funding of startup companies and a number of oil and gas technology companies.

Ms Lobo is qualified as a solicitor in Scotland. She obtained a Bachelor of Laws degree from the University of Aberdeen.

### **ABDUS SAMAD**

*Afridi & Angell*

Abdus Samad specialises in M&A and general corporate and commercial matters. He has extensive knowledge and experience in cross-border transactional and corporate advisory matters, including complex acquisitions and divestitures, for a broad range of public and private clients.

Mr Samad is a member of the Punjab Bar Council. He holds a Bachelor of Laws degree from King's College London.

### **AFRIDI & ANGELL**

Jumeirah Emirates Towers  
Office Tower, Level 35  
Sheikh Zayed Road  
Dubai  
United Arab Emirates  
Tel: +971 4 330 3900  
Fax: +971 4 330 3800  
dlobo@afриди-angell.com  
asamad@afриди-angell.com  
www.afриди-angell.com

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