

THE MERGERS &
ACQUISITIONS
REVIEW

SIXTEENTH EDITION

Editor
Mark Zerdin

THE LAWREVIEWS

THE
Mergers &
Acquisitions
Review

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PREFACE

As highlighted by the previous edition of *The Mergers & Acquisitions Review*, following the height of the covid-19 pandemic that tested the resilience of companies, the first half of 2021 had begun to tell a promising story for the M&A markets. This promise was realised with 2021 becoming a year for the record books with US\$5.9 trillion in deals, a 62 per cent lift from 2020 and the highest value amount in more than a decade. Deal total also rose 0.4 per cent to 34,128.¹

The figures for the first half of 2022 predictably dropped from 2021's record levels but the overall picture still remains a positive one. The value of global M&A transactions has dropped 21 per cent when compared to the record high of the first half of 2021, but deal values still broke US\$2 trillion.² The decrease is understandable given macro events such as inflation, interest rates and the Ukraine war, which have created a more challenging market.³

Again, the Americas were the leading market for deal value in the first half of 2022 with a total of US\$1.1 trillion from 4,771 deals. While these figures represent a 30.7 per cent and 18 per cent decrease, respectively, year-on-year, these figures should be put into the context, whereby not only was 2021 a record-breaking year, but by the fourth quarter activity was already beginning to normalise. In this respect, what has been witnessed to date in 2022 is a correction to more sustainable levels.⁴ Across the Americas, the leading sectors for the first half of 2022 were technology, media and telecoms (1,712 deals totalling US\$471 billion), energy, mining and utilities (316 deals totalling US\$102.6 billion) and real estate (58 deals totalling US\$96.6 billion).⁵

European dealmaking has experienced a similar decline in deal count with figures falling 19.7 per cent from 6,182 in the first half of 2021 to 4,963 in the first half of 2022. However, this decline was most prominent in the second quarter, following the invasion of Ukraine and as companies began to take a more risk off approach.⁶ Interestingly, deal value has barely slipped at all and, in fact, rose quarter-on-quarter in the second quarter. Over the first half of 2022, there was €579 billion worth of transactions, down by only 6.5 per cent on last year. Private equity again played a large part in maintaining these values, with Blackstone Group

1 Bakertilly, 'Global dealmakers 2022: M&A market update'.

2 AllenOvery, 'M&A Insights H1 2022'.

3 *ibid.*

4 Mergermarket, 'Deal Drivers: Americas HY 2022'.

5 *ibid.*

6 *ibid.*

being particularly active in the megadeal for Atlantia (€42.7 billion) and the recapitalisation of logistics business Mileway (€21 billion).⁷ Of the 10 largest deals across the EMEA, private equity accounted for no fewer than half.⁸

The year 2022 has been challenging and will likely continue to be so, with the Ukraine conflict showing no signs of end, inflation biting across the continent and cost of the living crisis drawing major attention. However, the M&A markets have thus far withstood these challenges, with dealmaking and value returning to a 'normal' level, following the heights of 2021. Should the M&A markets continue to remain resilient, the remainder of 2022 may follow the positive outlook displayed in the first half of 2022.

I would like to thank the contributors for their support in producing the 16th edition of *The Mergers & Acquisitions Review*. I hope the commentary in the following 35 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 2022

7 ibid.

8 ibid.

UNITED ARAB EMIRATES

Danielle Lobo and Abdus Samad¹

I OVERVIEW OF M&A ACTIVITY

The year in review has seen strong M&A activity in the United Arab Emirates (UAE). The resilience of the UAE's infrastructure and policy response has resulted in a positive rebound from the tumultuous restrictions imposed early on in the covid-19 pandemic. Furthermore, the UAE appears to be resilient to the financial and economic turmoil being experienced across a number of leading financial centres.

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.² In addition, strategic industries such as healthcare have remained in focus and have attracted investment from foreign and domestic investors alike. The UAE has also embarked on a drive to enhance the liquidity and standing of its capital markets. A key part of this project is the offering of substantial minority interests in key government-owned companies through public offerings.

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 apports 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).

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>.

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 that 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, 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 with which a business must comply. 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). 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

Since the most recent foreign direct investment reforms undertaken by the UAE federal government in 2020 and 2021, the majority of private companies in the UAE (including those incorporated outside a free zone) are capable of being wholly owned (or at least majority owned) by a foreign (i.e., non-UAE) national (or a body corporate wholly owned by foreign nationals). These reforms were brought about through Article 10 of the UAE Commercial Companies Law adopted in September 2017 (pursuant to Federal Decree-Law 18 of 2017), which 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:

- a* approving the application and determining the percentage of UAE national contribution required, together with any conditions attached to such approval; or
- b* 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 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 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.³ 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. At present, implementation of the new foreign ownership regime in the other Northern Emirates (i.e., the Emirates of Fujairah, Ras Al Khaimah, Umm Al Quwain and Ajman) is sporadic and inquiries are required to be made on a case-by-case basis to establish whether a particular business can be undertaken through a wholly foreign-owned entity.

³ Unofficial English translation of Arabic text.

The liberalisation of the previously restrictive foreign ownership regime has clearly 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.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

The year in review has seen very strong M&A activity continuing to be 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.

As such, we consider this 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.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

As noted above, the year in review has seen a number of key government-owned businesses being listed on UAE public markets and substantial minority interests being offered for sale through initial public offerings. These include:

- a* the offering of a stake in the Dubai Electricity and Water Authority PJSC through a listing on the Dubai Financial Market. The Dubai Electricity and Water Authority PJSC is the sole provider of electricity and water in the Emirate of Dubai;⁴
- b* the offering of a stake in TECOM Group PJSC through a listing on the Dubai Financial Market. TECOM Group PJSC is an operator of free trade zones and substantial real estate assets in the Emirate of Dubai;⁵ and
- c* the listing of shares in SALIK Company PJSC on the Dubai Financial Market. At the time of writing, subscription to shares of SALIK Company PJSC had commenced and the listing is expected to take place imminently. SALIK Company PJSC has an exclusive concession to operate road toll gates in the Emirate of Dubai.⁶

In addition, substantive interest has been shown in advance blockchain and crypto-businesses, in particular in the Emirate of Dubai. The Dubai government has shown an interest in promoting and developing an ecosystem to cater to blockchain businesses. This initiative has

4 https://www.dewa.gov.ae/-/media/Files/IPO/FinalPriceAnnouncement_EN.ashx.

5 <https://tecomgroup.ae/investor-relations/>.

6 <https://www.mediaoffice.ae/en/news/2022/September/05-09/Salik>.

seen a number of well-known blockchain and cryptocurrency businesses establish a presence in Dubai and to seek a licence from the newly established Dubai Virtual Assets Regulatory Authority⁷ through its Selective MVP Phase. In addition, the Dubai government, through the Dubai Future Foundation, will shortly be hosting the Dubai Metaverse Assembly, an event aimed at bringing together leading blockchain businesses to discuss advancements and applications of the metaverse.⁸

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, including securities over target assets. In addition to the primary facility documentation, borrowers may 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 also used, particularly the *murabahah*,⁹ *musharakah*,¹⁰ *mudarabah*¹¹ and *ijarah*¹² 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, the increased costs of financing as a result of the broad rise in interest rates 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

There has been much discussion about the UAE possibly moving to a Western working week, Monday to Friday, with eight working hours per day, and 40 working hours per week. This change has now been implemented. While only the public sector was formally directed to adopt the new working week, most if not all private businesses have followed suit and now operate in line with a Monday to Friday working week.

7 <https://www.vara.ae/en/>.

8 <https://www.dubaifuture.ae/dubai-metaverse-assembly/>.

9 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.

10 A shariah-compliant joint venture or partnership.

11 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.

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

The UAE has also recently repealed and replaced its primary legislation regulating employment matters in the UAE (being UAE Federal Law 8 of 1980). The new legislation was promulgated as UAE Federal-Decree Law 32 of 2021 (the New Labour Law). The New 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. Certain material changes to UAE employment law brought about by the new Labour Law are as follows.

- a* Under the New Labour Law, an employment contract must be for a specified period of time not in excess of three years. Such a contract may be renewed. Employers are directed to replace existing unspecified term employment contracts with specified term employment contracts during a transition period of one year from the effective date of the new statute; this period may be extended by the Minister of Human Resources and Emiratisation. Even though unspecified term contracts are no longer acknowledged, there is no effective distinction between specified and unspecified term contracts as regards termination of services or end-of-service gratuity. This is a significant change from previous law.
- b* Unspecified term contracts concluded under the old law may be terminated with at least 30 days' written notice by either party, if the employee has served less than five years; 60 days' written notice if the period of service is more than five years; and 90 days' written notice if the period of service is more than 10 years.
- c* Employers are required to adjust their positions within one year of the 2 February 2022 effective date of the new Labour Law, including the replacement of unspecified term employment contracts with specified term employment contracts.
- d* The new Labour Law contains a number of provisions prohibiting discrimination. There is a general prohibition on discrimination on the grounds of race, colour, sex, religion, ethnic origin or disability. The New Labour Law also maintains a requirement that was introduced in 2019 that women shall receive the same salary as men for the same work or for work of equal value.
- e* As before, it is still prohibited for an employer to charge an employee, directly or indirectly, any costs related to the employee's recruitment or employment.
- f* The New Labour Law contains an express recognition that employees may be hired on a full-time basis, on a part-time basis, or based on temporary or flexible working hours. There are provisions on the assignment of jobs between employers and on the assignment of additional duties to employees, with detail to appear in Executive Regulations. These provisions appear to acknowledge developments in the field since the 1980 legislation was enacted.

In addition to the New Labour Law, certain UAE free zones have 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 New 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 New 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 and 30 days' basic salary for each additional year over five years. The New 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 Law¹³ (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

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

- 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.

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).

VIII TAX LAW

Although substantive UAE law in relation to tax remained unchanged during the year in review, of note is the announcement by the UAE federal government concerning the introduction of corporate tax, anticipated to take effect from June 2023 at a rate of 9 per cent. As of now, no legislation has been promulgated and very limited information is available as to how the UAE corporate tax regime is to operate.

The UAE issued a substantive law on VAT in 2017. Pursuant to the VAT Law,¹⁴ 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 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.

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

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'¹⁵ 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. Tax advice must 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.

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 Law¹⁶ was introduced into the UAE as a means of regulating anticompetitive practices. The Competition Law deals with three key areas:

- a* a restriction on anticompetitive agreements;
- b* the regulation of dominant market positions; and
- c* 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 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

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

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

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.

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