

Middle East Recovery Changes Legal Landscape

Dubai's economy has been regaining momentum after the financial crisis of 2008, and continues to be a politically safe haven, and an important business/trade hub and financial centre for the region. We have seen a growing legal and financial maturity developing alongside Dubai's economic recovery, bringing it closer in line with other longer established business centres of the world. Some of the key developments in the UAE's business law environment that have occurred in the post-crisis era are highlighted in this article. We have focused on a few developments because this is not a long article, but they are by no means the only important changes that have occurred since the crisis of 2008. The changes show a trend towards market maturity, using a responsibly cautious approach. While there are still more changes that the legal and business communities would like to see, the developments so far are all positive and they are sending the right message.

CORPORATE DEVELOPMENTS

Every year for the last 10 years lawyers in the UAE have heard that a new commercial companies law was imminent, which would replace the existing one (Federal Law 8 of 1984). It was eagerly anticipated that the new law would provide a much-needed overhaul to some of the outdated and unclear features of the current law, and most of all that it would permit foreign majority or whole ownership of UAE companies. There was excitement when the new law was published earlier this year in what is likely to be the final or near final form, subject now only to approval by the UAE Supreme Council (having already been approved by the UAE Federal National Council and the UAE Federal Cabinet). Commentators eagerly set to work analyzing the new law, extolling the changes as signs of a new and progressive era. While the new law does contain some welcome improvements over the existing law (which need not be highlighted in this article), the fact is that the changes are not significant enough to affect the attractiveness of the UAE as a business destination. At the risk of oversimplifying, the two most significant impediments to investment in the UAE are and have long been: (i) the restriction on foreign majority ownership of UAE incorporated entities; and (ii) the UAE's licensing regime, which imposes sometimes onerous, and always time consuming, conditions on obtaining a license to carry on business. With neither of these issues addressed, we see the new companies law as a welcome, but small, change in the legal landscape. A new Foreign Investment Law which is rumoured to be released in draft form soon may address the majority foreign ownership issue.

Insolvency became a more important issue in the aftermath of the financial crisis. Like the new companies law, much has been made of a new law on insolvency that has been in draft form for years. It is expected to overhaul the current cumbersome regime found mostly in the UAE Commercial Code (Federal Law 18 of 1993) by making it more modern and efficient, with creditor protection mechanisms and a specialized insolvency tribunal to incent failing companies to make use of the regime. While this law will undoubtedly bring many welcome improvements and is an important step in terms of market maturity, we expect that it is probably still 1-2 years away from coming into force.

BANKING AND INVESTMENT

In response to the crisis, the UAE Central Bank tightened some important banking regulations which require banks in the UAE to maintain improved

prudential and liquidity standards in line with Basel III and other major economies of the world, and setting limits on lending to government entities. These are certainly signs of a maturing economy that will benefit the UAE in the long run by making its banks stronger and less vulnerable in difficult times, but there have also been developments with immediate interest to investors. In December 2012, the UAE Central Bank issued a circular restricting mortgage lending to foreign nationals to a maximum of 50 percent of the value of the first home (and 40 percent of the second home). Previously, banks would typically lend up to 90 percent of the property value, and more in some cases. We see such an aggressive dampener on speculation as a significant indication of confidence in the UAE's economy, sending the message that this is a market that need not rely on short term, speculation-driven property sales to support its real estate market. The enforcement of this circular has been suspended to permit banks and the market to prepare, so the impact on the real estate market remains to be seen (if in fact the circular is ever enforced, about which there remains speculation).

Investment managers have historically struggled to (legally) market and sell foreign investments in the UAE, as it has always been prohibited unless the product was approved by the UAE Central Bank and the marketing was done through a locally registered broker, even for the sale of such products to sophisticated investors. This changed somewhat in July 2012 when the much anticipated UAE investment fund regulations were issued by the Securities and Commodities Authority (SCA) (and in March 2013 the SCA published an amendment to the regulations). Essentially, the new regulations created a class of sophisticated investor that foreign investment funds are permitted to market and sell to without having to register the fund with the SCA (no longer the Central Bank – another change brought in by the new regulations), and without having to use a locally registered broker as intermediary (i.e., direct selling to sophisticated investors was made possible). So far, the investors that qualify as sophisticated are UAE government entities, and investment companies investing on their own account (and not on behalf of their clients). This is a welcome change and perhaps overdue, as the effect is to legitimize the practice of discrete marketing to select investors which has been occurring for years in the UAE even though technically contrary to the law. A further amendment expanding the definition of a sophisticated investor to include high net worth individuals would be welcome.

REAL ESTATE

In the addition to the mortgage lending cap mentioned above, there has been the recent (July 2013) introduction of the Special Judicial Committee for Cancelled Real Estate Projects in the Emirate of Dubai. The function of the Special Committee is to consolidate the process for investors to seek compensation against developers for cancelled real estate projects. It aims to further facilitate quicker proceedings, since court and arbitration proceedings have been lengthy and expensive. The introduction of the Special Committee is a clear signal to international property investors that Dubai's property regulator, the Real Estate Regulatory Agency, is taking steps to clear out the rogue developers of days gone by, introduce transparency and protection for investors, helping to move Dubai towards its status as an established global real estate player. ■



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