Jurisdiction: United Arab Emirates

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1. What are the key laws and regulations that govern mergers and acquisitions in your jurisdiction?

The keys laws and regulations that govern mergers and acquisitions ("**M&A**") taking place in the United Arab Emirates ("**UAE**") are dependent on whether the target company in question is an onshore ***or*** offshore company.

Onshore:

UAE companies incorporated outside a free zone (referred to as 'onshore UAE companies') are subject to the Federal Law concerning Commercial Companies (2/2015) (the "**Federal Law**"). The Federal Law is the main piece of legislation applicable to all companies onshore (whether listed or not listed).

In addition, the Federal Law is further supplemented by a host of other laws, regulations and ancillary decisions that would be applicable to public and/or private M&A deals being conducted onshore, which include the:

(a) UAE Labor Law No. 8 of 1980;

(b) UAE Federal Law No. 5 of 1985;

(c) UAE Federal Law No. 4 of 2000 Concerning The Emirates Securities and Commodities Authority;

(d) Securities and Commodities Authority Disclosure and Transparency Regulations 2000;

(e) Regulations for Trading, Clearing, Settlement, Transfer of Ownership and Safekeeping of Securities (SCA Board of Directors' Decision No. 2 of 2001);

(f) Federal Law No. 4 of 2012 on the Regulation of Competition;

(g) Cabinet Decision No. 13 of 2016 Concerning Application of Competition Law; and

(h) Abu Dhabi Securities Exchange ("**ADX**") Rules (this is only applicable to companies listed on the ADX).

The Federal Law permits M&A activity in three forms of onshore companies, which include:

(a) a **limited liability company** – a company most widely used onshore by local and foreign investors. This company is a private company and its shares cannot be offered to members of the public and is subject to the 49/51 Rule, as discussed in paragraph 3 and 15 below;

(b) a **public joint-stock company** – a onshore public company, whose shares must be listed on the securities market in the UAE; and

(c) a **private joint-stock company** – a onshore private company whose shares cannot be offered to the public.

Offshore:

Companies operating in one of the many free zones in the UAE (referred to as 'offshore UAE companies') are subject to their own separate legal framework; the relevant laws of the specific free zone will apply to the company established within it. However, in the event that that an offshore company undertakes activity onshore (outside the legal remit of the relevant free zone), then the onshore laws, rules and regulations will apply regardless of the fact that the company is based in the free zone. For example: if an offshore company is raising financing for an acquisition and it is providing security over its real property that is based onshore, then the relevant laws, rules and regulations onshore

would need to be complied with to ensure the successful registration of the charge onshore.

There are a host of different forms of offshore companies which can be subject to public or private M&A activity in the UAE; these include:

(a) a limited liability company;

(b) a free zone company established in one of the many free zones, for example companies limited by shares, known as 'LTDs' in the DIFC. A free zone company provides for the possibility of ownership of 100 per cent in the company by foreign subscribers to the capital; and

(c) a free zone establishment – which in essence is a free zone company but with one shareholder.

Arguably one of the major free zones in the UAE is the Dubai International Financial Centre ("**DIFC**"). This guide will also explore the relevant laws, rules and related provisions in respect of M&A activity taking place in the DIFC. The main piece of legislation applicable to companies in the DIFC (whether listed or not listed) is the DIFC Companies Law 2009 (DIFC Law No. 2 of 2009) and the DIFC Companies Regulations. In addition, listed DIFC companies are subject to a host other laws, rules and regulations, which include the:

(a) DIFC Regulatory Law (DIFC Law No. 1 of 2004);

(b) DIFC Markets Law 2012 (DIFC Law No. 1 of 2012);

(c) DIFC Takeover Regulations 2015;

(d) DIFC Takeover Regulations Rules 2015 (The Takeover Code);

(e) DFSA Market Rules Module of DFSA Rulebook;

(f) DFSA Takeover Rules Module of DFSA Rulebook; and

(g) NASDAQ Dubai Business Rules.

As a final point to this section, it is also worth noting that the Federal Law applicable to onshore companies will also apply to offshore companies in the event that it has not been varied by the relevant free zone.

2. What are the government regulators and agencies that play key roles in mergers and acquisitions?

The regulators for M&A activity being conducted onshore are the:

(a) Securities & Commodities Authority (the "**SCA**") for listed entities; which is the regulator of the Abu Dhabi Securities Exchange and the Dubai Financial market;

(b) Competition Regulation Committee of the UAE Ministry of Economy;

(c) UAE Central Bank for banks and licensed financial companies; and

(d) departments of economic development in each of the emirates, such as the UAE Insurance Authority.

The regulator for M&A activity being conducted in the DIFC is the:

Dubai Financial Services Authority, an independent regulator of financial services conducted in or from the DIFC. The DFSA also regulates NASDAQ Dubai, the international stock exchange located in the DIFC.

3. Are hostile bids permitted? If so, are they common in your jurisdiction?

Onshore:

To the extent of our knowledge, due to the lack of precedent for, and, legal hurdles to a hostile takeover in the UAE, hostile takeovers in the UAE are essentially rare. The 49/51 ownership restrictions imposed on foreign investors rules out the prospect of a foreign bidder willing to acquire the control of a UAE onshore company. This 49/51 rule stipulates that foreign investors may not own more than 49 per cent of the share capital of an onshore UAE company (whether public or private) (the "**49/51 Rule**").

Many listed companies onshore are therefore often significantly owned and run by

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governmental bodies, prominent local establishments and/or well-known family offices who often hold a considerable amount of influence and control in the UAE. This influence and control coupled with the 49/51 Rule onshore makes the possibility of a hostile takeover very slim, if not impossible. It is however worth noting that the SCA regulates takeover offers, and will review the potential tender on its own merits and facts. However, to date there is no precedent or guidance as to how such a hostile bid will be viewed.

DIFC:

To the extent of our knowledge, to date we are not aware of any hostile bids to have taken place in the DIFC; however, it is worth noting that the legal framework of the DIFC does not differentiate between a hostile and friendly bid. This coupled with the fact that the DIFC legal framework is modelled on English Law where hostile bids, albeit rare, have been permitted, means that there is a possibility of hostile bids taking place in the DIFC at some point in the future.

4. What laws may restrict or regulate certain takeovers and mergers, if any? (For example, anti-monopoly or national security legislation).

Acquisitions are generally not subject to national security legislation or reviews. Acquisitions in certain sectors, will however require certain approvals and/or consents from government entities, including but not limited to the Ministry of Interior, UAE Central Bank, Insurance Authority and the General Headquarters of the Armed Forces.

The UAE has also recently brought into force the Federal Law No. 4 of 2012 on the Regulation of Competition which regulates anti-competitive behaviour and monopoly practices in the UAE. Premerger approval is required from the Competition Regulatory Committee of the Ministry of Economy for any proposed economic concentration, which includes a merger or acquisition, and which would result in a market share in excess of 40 per cent of the relevant market. This applies to both domestic and cross-border M&A transactions.

5. What documentation is required to implement these transactions?

The parties to a transaction may wish to record the main points on which they have agreed and the basis on which they are prepared to proceed with the relevant transaction. The principal terms of the proposed transaction may therefore be set out in the heads of terms, or letter of intent. The heads of terms may also provide for an agreed period of exclusive negotiations. The heads of terms are not intended to be legally binding, but will serve and exercise the minds of the parties' intentions and is a starting point for negotiation of the sale and purchase agreement. Transacting parties should carefully consider whether they wish to be legally bound by any of the terms of the agreement, and clearly set out what provisions, if any, they wish to be legally bound by.

The other preliminary and principal documents required to implement a transaction onshore or in the DIFC includes:

(a) an information memorandum;

(b) a non-disclosure agreement;

(c) corporate authorisations, including the board minutes and relevant power of attorneys;

(d) a heads of terms agreement;

(e) a lock-out agreement;

(f) a process letter;

(g) an offer letter;

(h) an acquisition agreement;

(i) all ancillary documents: such as requests for the change of control, transitional services agreement, key employee agreements, intellectual property licences and other material documents;

(j) a disclosure letter with the bundle of disclosed documents;

(k) filings; and

(l) a standard share transfer form in Arabic or English and Arabic before a UAE notary if the transaction is related to a merger or acquisition of an onshore company.

In respect of an offshore transaction (a transaction conducted in any of the free zones), the documents are generally the same and the documents required depends on the requirements of the relevant free zone. Often a shareholders' resolution approving the transaction is required and a new share certificate will also be issued to the purchaser on a share sale. The relevant governing body or free zone authority will also issue an amended licence for the company registering the change in ownership.

6. What government charges or fees apply to these transactions?

Apart from the obvious fees of lawyers (including local counsel), commercial, and financial advisors, the transacting parties can also expect

to pay notary fees which are payable in relation to the execution of agreements to transfer shares, and other assets. Various other filings are also likely to incur a charge, for example: where the acquiring company has sought acquisition finance and has provided a security package to the relevant banks; the various filings at the relevant authorities in respect of the secured assets are also likely to result in fees or charges.

The size, complexity and timeframe of the deal will impact the charges and fees that apply to the transaction in question. The transaction may also involve the appointment of various external consultants who may perform a variety of highly specialised services such as risk management review, post-acquisition integration, due-diligence and public relations services.

7. Do shareholders have consent or approval rights in connection with a deal?

Under the Federal Law and the DIFC laws, a director must act in accordance with the company's objectives and the powers granted to him or her by the shareholders of the company. Therefore, a director must ensure that he or she has obtained the necessary internal approvals before entering into any arrangement to bind the company. It is often the case that conditions are also attached requiring shareholder approval of the transaction.

8. Do directors and controlling shareholders owe a duty to the stakeholders in connection with a deal?

Onshore:

Corporate governance in the UAE is primarily focused on listed companies. Under Article 22 of the Federal Law the directors of a company must "do all acts in agreement with the objective of the company and powers granted" to them by the company.

In addition, as set out under Article 14 of the SCA's Corporate Governance Code, a director of a public shareholding company listed on the securities market must avoid actual or potential conflicts of interest and may not participate in the voting on the decision relating to the deal or transaction. If these duties have been breached, then under Article 162 of the Federal Law, the directors of a company will be "liable towards the company, the shareholders and the third parties for all acts of fraud, misuse of power, and violation" of the provisions of the Federal Law or the articles of association of the company or an error in management.

A director must declare to the other directors any conflict of interest with the company in respect of a proposed transaction with the company, and is not permitted to vote on a resolution concerning the relevant transaction.

Duties to third parties:

On an acquisition, a purchaser of shares faces a danger in respect of long term contracts entered into by the relevant target company. Such contracts often include a term which entitles the other third party to terminate the contract if the control of the target changes hands. These 'change of control' clauses would obviously be more of a concern for the purchasing entity, but the company divesting its interest should be aware that they may also have a duty to obtain such consents for the change of control from the relevant third parties under existing arrangements.

Duties to employees:

To the extent of our knowledge, there are no obligations under statute in the UAE whereby a seller needs to consult with its employees before terminating their employment contracts. However, it is advisable that the sellers take into account any internal company policies and processes when considering making employees redundant or when terminating their contracts.

DIFC:

The laws of the DIFC contains a duty to act in the best interests of the company. The directors are required to exercise their duties in accordance

with the standard of care and skill expected of a prudent person.

Schedule 3 of the Law of Obligations of the DIFC also imposes onto the directors of a company the fiduciary duty of loyalty, confidentiality, care, skill and diligence, and duties to avoid a conflict of interest and to avoid secret profits. In respect of employees, the statutory provisions included in the Employment Law DIFC Law No.4 of 2005 and any amendments thereof should also be observed.

9. In what circumstances are break-up fees payable by the target company?

To the extent of our knowledge, break fee arrangements are not as common in private transactions in the UAE as they are in the UK.

Onshore:

To the extent of our knowledge, there are no regulations in respect of break fee arrangements. However, under the current regulatory regime, the transacting parties can agree to break fees unless the SCA provides otherwise. The directors should also be advised to take into account their general duties as directors of the onshore company.

DIFC:

Similarly, there are no prohibitions on break fees under the DIFC regime. However, such arrangements are required to be disclosed through an announcement of the company intending to make an offer. The scope for the directors of the target agreeing break fees is principally based on their duties.

10. Can conditions be attached to an offer in connection with a deal?

Many acquisitions onshore are carried out on a split exchange and completion basis because of the various approvals and consents required from external bodies. Naturally, the purchaser will want to ensure as a prerequisite, that certain conditions are included as conditions precedent or subsequent to the deal. This would include the necessary waivers, approvals and consents, and a condition that the Department of Economic Development or relevant free zone authority will approve and authorise the share transfer and issue an amended licence reflecting the change in ownership because without it, the target will not be permitted to operate.

There will also be conditions attached in respect of specific sectors that the target company operates within. In respect of a banking or financial services business for example, the approval of the UAE Central Bank is required. Other sectors that are subject to certain approval requirements include education, healthcare and telecommunications. The conditions attached to the offer would be purely dependent on the sector, and the diligent purchaser should seek to include the ones necessary for the target company.

Please also see Question 11 below.

11. How is financing dealt with in the transaction document? Are there regulations that require a minimum level of financing?

Onshore:

To the extent of our knowledge, there are currently no laws or regulations which require a minimum level financing from a potential bidder or purchaser. A condition may however be imposed in the sale and purchase agreement in respect of the purchaser's ability to finance the transaction in question. This will depend however on the bargaining strengths of the parties involved.

DIFC:

Under the DIFC regime, in particular under the DFSA Takeover Rulebook, Rule 2.4.4, a bidder must not make an announcement of a firm intending to make a bid unless the bidder and its financial advisors have proper grounds for believing that the bidder is and will continue to be able to implement the bid. In addition, the announcement of a firm's intention to make a

bid must include a confirmation by the financial advisors or any other appropriate third party that the resources available to the bidder are sufficient to satisfy full acceptance of the bid.

12. Can minority shareholders be squeezed out? If so, what procedures must be observed?

Onshore:

To the extent of our knowledge, there is no customary or compulsory 'squeeze-out' rules or procedures in the UAE. This means that the bidder has no assurance they will be able to acquire 100 per cent of the share in the target company unless all the shareholders accept the offer.

DIFC:

There is a 'squeeze out' procedure under the DIFC Companies Law in which an offeror can rely on a right to buy-out minority shareholders. However, this would only be available where the offeror has received acceptances in relation to 90 per cent of the issued share capital of a company.

13. What is the waiting or notification period that must be observed before completing a business combination?

Onshore:

When there is a public takeover, the parties to the transaction will make a joint public announcement to the market place. There is no specific timeframe set by the SCA, but the SCA and the relevant stock exchange will assist the transacting parties by setting out a suitable timetable. The SCA and relevant stock exchange will propose a timetable for the tender offer to allow the shareholders a reasonable timeframe in order to make an informed decision as to the offer.

DIFC:

Under the DIFC regime, the offer document in a public takeover must be sent to the shareholders of the target company within 21 days of the announcement of the firm's intention to make an offer. The offer must also be filed with the DFSA at least 24 hours before despatch. The timetable is triggered when an announcement of a firm's intention to make a bid is made namely:

(a) the offer must remain open for at least 35 days after the offer document was sent;

(b) once the offer has been declared unconditional in respect of the acceptances, it is required to remain open for acceptance for not less than 14 days after the date on which it would otherwise have expired;

(c) within 21 days after the dispatch date, the board of directors of the target are required to issue a target circular to its shareholders with its views on the relevant bid; and

(d) once a bid has declared unconditional as to the acceptances, a further 21 days is permitted within which all the remaining conditions must be fulfilled or waived. If such conditions are not fulfilled in that period the bid will lapse.

14. Are there any industry-specific rules that apply to the company being acquired?

As mentioned Question 10 above, acquisitions in a number of industries are subject to the prior approval of the relevant governmental bodies. This would depend on the relevant industry of the target company. Common industries that have their own specific set of rules and restrictions include:

(a) financial services;

(b) telecommunications;

(c) healthcare;

(d) education; and

(e) the utilities sector.

15. Are cross-border transactions subject to certain special legal requirements?

As discussed earlier in this guidance note, the 49/51 Rule has long imposed significant restrictions on foreign investors onshore. The 49/51 Rule favours state nationals, and requires every company incorporated under the Federal Law onshore to have not less than 51 per cent of its share capital owned by UAE nationals. Thus foreign investors acquiring a company are prevented from owning more than 49 per cent of the onshore UAE company that they are proposing to acquire. There are however certain ways to get around this rule; some of these methods include:

(a) tailored constitutional documents to provide the foreign investor with more control and rights in the onshore company; and

(b) a shareholders' agreement, which can set out the rights of the shareholders, providing the foreign investor with more control over the onshore UAE company.

Certain regulated industry sectors including real estate outside defined zones remain off-limits to foreign investment and/or require approvals which can be time consuming and often difficult to obtain.

To the extent of our knowledge, there are no restrictions on foreign investors owning shares in the DIFC, however, acquisitions taking place onshore or offshore in specific sectors such as airlines, utility companies and banks will be subject to additional ownership restrictions and thus appropriate consents and/or licences should be obtained from the relevant authorities.

16. How will the labour regulations in your jurisdiction affect the new employment relationships?

The UAE Labor Law (No 8 of 1980) is the applicable employment legislation in the UAE. The prospective acquirer should be aware of the following:

(a) All onshore employees that are not Emiratis are required to enter into an employment contract in the form required to do so by the Federal Ministry of Labour (the "Ministry"). The contract of employment will need to be registered with the Ministry in order to obtain a labour card and residency visa for the new employee. The employment contract can be supplemented with additional terms and conditions provided that it does not conflict with the law;

(b) The Arabic language is the official language to be used in all contracts of employment onshore (the English Language is sufficient for employment contracts in the numerous free zones including the DIFC);

(c) Contracts of employment in the UAE may be for either:

 (i) a limited period (a fixed term not to exceed two years) and the employment contract must also include a notice for termination; or

 (ii) an unlimited period, whereby the employer can terminate the employment under an unlimited term contract by giving 1 to 3 months' notice.

(d) As there are no pension schemes for expatriates, upon the termination of the employment contract, an employee is entitled to an end-of-service gratuity. The end of service gratuity is calculated on the final basic salary taking into account the length of service of the employee;

(e) Medical health insurance is now mandatory for the employer to provide to its employees; and

(f) There is no social security or income tax payable on the employees' wages.

17. Have there been any recent proposals for reforms or regulatory changes that will impact M&A activity?

Onshore:

There have been recent discussions in respect of relaxing the 49/51 Rule and to encourage foreign direct investment into the UAE, onshore. In 2016, the Ministry of Economy in the UAE published a draft foreign investment law; under this law the authorities encouraged foreign direct investments into various sectors. It is unclear how this will impact public M&A or what sectors foreign investors can invest in with 100 per cent participation.

DIFC:

To the extent of our knowledge no proposals or reform is currently proposed.

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