

Banking Sector MENA

Legal Update Q3/2019



In Saudi Arabia we have seen legislative initiatives such as new merger control regulations and transfer pricing provisions that will impact banking business in the Kingdom. The Central Bank of the UAE has expanded the scope of the country's corporate governance regulations to apply globally to all banks with a representation in the country – as a result, UAE regulations reach out to govern foreign financial institutions as well as local institutions. Following an announcement of the Central Bank of Qatar, we are expecting long-awaited amendments to the Qatari Banking Law to pick up pace.

SAUDI ARABIA

Merger control

After the passing Royal Decree M/75 of 29/6/1440H on the Regulation of Competition by the Saudi legislature in spring of this year, the executive regulations to the decree were issued in September and the new competition regime entered into force at the end of the third quarter. The new competition regime

expands merger control measures considerably.

The executive regulations include more detailed provisions for notification and merger control procedures. Furthermore, they introduce a turnover based notification threshold that requires notification when the combined turnover of the parties seeking to merge is greater than SR 100mn. This turnover threshold applies in addition to the existing market share based threshold.

However, the Saudi Arabian merger control regime remains rather rudimentary. In particular, the much-criticized lack of guidelines to determine the relevant market to calculate market shares was not addressed. It remains to be seen whether the authorities will provide further clarifications.



Transfer pricing bylaws

The General Authority for Tax and Zakat released the final version of the Transfer Pricing Bylaws, which for the first time provide comprehensive regulations for transfer pricing practices in the Kingdom. Prior to the bylaws' entry into force, transfer pricing was largely unregulated in Saudi Arabia with only a few vague practices governing the matter. The bylaws now provide certainty on permissible practices and regulatory oversight. Most importantly, the bylaws include a definition of related entities as well as effective control.

The bylaws establish the General Authority for Tax and Zakat as the competent regulatory authority in this matter. The authority may request persons and entities to provide transfer pricing documentation. The required form and content of such documentation is generally in line with the requirements of the OECD's Base Erosion and Profit Shifting Action 13 for Country-by-Country Reporting. Persons and entities who are subject to the bylaws may also be compelled to provide documentation on previous tax years.

The bylaws apply to persons who are tax subjects in Saudi Arabia. As a result, they also apply to foreign persons and entities that maintain permanent establishments or branches in the country.

UNITED ARAB EMIRATES*New corporate governance regulations for banks*

In mid July, the Central Bank of the UAE issued Circular 83/2019 introducing new Corporate Governance Regulations for banks. These revised regulations were issued as part of a comprehensive effort by the Central Bank to crisis-proof the country's banking sector by boosting the resilience and financial stability

of banks operating in the UAE. The regulations follow the introduction of new requirements on capital adequacy that were issued by Central Bank at the end of June ('Standards re Capital Adequacy in the UAE'), and the entry into force of a new Banking Law earlier this year.

The new corporate governance regulations further align corporate governance standards in the UAE banking sector with international best practices. They expand the existing regime to establish an overarching prudential framework. The standards set by the regulations are to be understood as the minimum acceptable standards. Ultimate responsibility and accountability for implementing the corporate governance standards lies with a bank's board. However, banks are free to decide how to structure and organize internal governance standards and processes required under the regulations. The Central Bank retains the authority to expand on the standards set out in the new regulations by issuing notices to that effect.



It is notable that the regulation's scope of application is not restricted to entities licensed by the Central Bank. It also applies to all international banks or groups of banks that maintain a representation in the UAE. Thus, international banks or group of banks maintaining branches or subsidiaries in the UAE will have to ensure that their global corporate governance standards comply with the minimum standards set out in Circular 83/2019 and any future decisions

issued by the Central Bank under these regulations.

With 'Standards re Capital Adequacy in the UAE' the Central Bank is seeking to enhance stability in the banking sector by ensuring that banks' risk exposures are backed by adequate capital. To this end, the standards reaffirm the application of the Basel II Standards, which the UAE implemented in 2009, and they implement the Basel III Standards, thereby ensuring that the UAE banking regulations remain in line with international standards.

With the introduction of the new Corporate Governance Regulations for Banks and the new Standards re Capital Adequacy, the Central Bank is continuing the UAE's efforts to stabilize the country's banking sector and to raise trust in the industry. With rising tensions in the region, the UAE is trying to solidify its position as a banking hub in the Middle East and beyond. Recent figures from the industry suggest that this strategy, thus far, is working.



QATAR

Amendments of the Banking Law

Despite announcements that the Central Bank of Qatar would overhaul the country's banking regulations, there has been little progress in recent years. Still, over the last quarter we have seen some promising developments. Interestingly, despite the ongoing diplomatic crisis in the Gulf some key elements of the regulatory reform proposed by the central

bank mirror those implemented in the UAE earlier this year.

Similar to the most recent amendments to the UAE Banking Law, the Central Bank of Qatar announced the establishment of a Sharia supervisory body that will oversee Sharia-compliant products and institutions and issue Sharia standards for the industry. These steps reflect a general trend in Muslim-majority jurisdictions to further supervise and standardize the Islamic finance industry.

The announcements of the Central Bank have been rather vague. It is, therefore, difficult to assess what powers and authorities the new supervisory body will exercise. Currently, the Qatari Islamic finance and banking industry generally abides by the standards set by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). We expect that this practice will be formalized in pending regulations. This approach also was taken by the UAE Central Bank when it picked up on the industry practice of observing AAOIFI standards and obliged Islamic finance institutions to comply with them.

It should be remembered that there are two distinct jurisdictions with separate banking and finance regulations within the State of Qatar: the onshore territory of Qatar and the Qatar Financial Centre (QFC). QFC-based businesses are currently not subject to regulations of the Central Bank. It remains to be seen whether the new regulations will also apply to the QFC. Such a uniform approach would, however, go against the purpose of the QFC, which is to establish a financial center with procedures and regulations distinct from those applicable onshore. Still, it is to be expected that even if the new regulations are not binding for QFC-based entities, many of them would comply with the standards implemented by the Central Bank on a

voluntary basis in the same way that the inter-

bank market in Qatar operates today.

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