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Banking Sector
Middle East and North Africa
Legal Update

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BAHRAIN

Open banking approach

The Central Bank of Bahrain (CBB) issued regulations on what it calls "open banking," compelling retail banks operating in Bahrain to allow third party payment initiation service providers and account information service providers to gain free and efficient access to bank customer accounts. According to the CBB this step was taken to pave the way for new financial services such as online payments without relying on credit or debit cards, to aggregate of account information from different providers and to implement active financial management tools for customers.

The new CBB regulations are inspired the by EU's second Payment Services Directive and adopt (some of) the standards for strong customer authentication and common secure open standards of communication introduced by the EU directive. As under the EU directive, retail banks must ensure that they only grant access to accounts of customers who give their consent.

To date the specific scope of products caught by the CBB's regulations remains unclear. Thus, retail banks should analyze which of their operations in Bahrain may be caught by the requirements of the regulations an coordinate with the CBB to which extend their services are subject to the new regulations. This will affect in particular products available online. Banks will need to ascertain how these products function as well as which and how may customers have access to these products.

The new open banking framework, similar to that of the EU, is drafted technologically neutral. Still, banks must enable relevant service providers to test their integration with the bank interface. Banks operating in Bahrain also have to maintain redundancies to enable

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third party access where the dedicated interface fails. However, thus far no information has been provided as to when testing and final interfaces have to be rolled out. In contrast to this uncertainty banks failing to comply with the requirements of the regulations risk action under the terms of the CBB's enforcement and redress rulebook.

UNITED ARAB EMIRATES

New economic substance regulations

At the end of April of this year the UAE Cabinet of Ministers issued regulations on economic substance requirements for businesses licensed in the UAE. These regulations require UAE-based businesses that carry on certain activities – including banking and fund management – to maintain demonstrable economic substance in the UAE. The resolution aims to establish compliance with EU legislations and standards to address the UAE being blacklisted as a non-co-operative tax jurisdiction again in March after having been removed from the blacklist in 2018.

The regulations apply to all UAE businesses regardless of their legal form and whether they are registered onshore or in one of the UAE free zones, provided that these businesses are engaged in one of the relevant activities. Thus, foreign banks and fund managers operating through a branch or subsidiary in the UAE – including those registered in one of the financial free zones DIFC and ADGM – must meet the UAE economic substance requirements.

To satisfy these the branch or subsidiary must conduct relevant income generating activities and maintain a place of management in the UAE. Compliance will be supervised by the relevant licensing authorities. Licensed businesses will have to annually report to their licensing authority on their activities and corporate setup in the UAE. Entities that do not meet the economic substance requirements and those failing to comply with the reporting duties may be subject to legal action and fines.

Banks and fund managers licensed – onshore or in a free zone – in the UAE need to assess their local operations to determine whether they comply with the new economic substance requirements. If they do not meet these, they will have to determine whether their UAE operations justify establishing relevant local structures or shut down their UAE-based operations.

SAUDI ARABIA

Licensing of foreign bank branches

The Saudi Arabia Monetary Authority (SAMA), the financial regulatory authority of the Kingdom, has updated its guidelines for banking licenses. The amendment was introduced as part of the ongoing efforts of the country to increase foreign investment in line with Saudi Arabia's Vision 2030. The new guidelines seek to increase transparency and ease registration of foreign financial institutions and thereby boost Saudi Arabia as a financial center in the region.

The revised guidelines set out SAMA's minimum licensing criteria for applicants seeking to carry out banking activities in Saudi Arabia. They also explicitly permit foreign banks to establish branches in the Kingdom. In principle, these branches of foreign bank will be subject to the same legislative and prudential requirements as locally-incorporated banks. However, the SAMA's prudential standards provide for some exceptions. Most notably, branches of foreign banks are not required to maintain capital in Saudi Arabia. Yet, SAMA reserves the right to impose capital requirements on a case by case basis. Such requirements may for instance be set where the branch plans to conduct high-risk business or wishes to focus on activities that require high levels of capacity or competence. While the new SAMA guidelines do not specify which specific activities would fall within the scope of this definition, we expect that branches engaged with large number of customers or conducting business that may affect the financial stability of the wider Saudi Arabian market will likely trigger capital requirements.

Branches are required to comply with all relevant provisions of Saudi Arabian law. Furthermore, prior to establishing a branch in the Kingdom the foreign bank will have to procure consent for setting up the branch from the competent regulatory authorities for the banking sector in their home jurisdiction. Proof of such consent will have to be provided to the SAMA when applying for the branch license.

The management of foreign bank branches is vested in the branch's local management. However, local management shall be supervised by the branch’s parent organization – thus the foreign bank.

While it was generally accepted practice prior to the issuance of the new SAMA regulations that foreign banks could open branches in the Kingdom – 11 foreign banks were licensed to operate branches in Saudi Arabia prior to the new guidelines coming into effect – the fact that the new guidelines now expressly address the issue is a welcome improvement. The new guidelines provide increased regulatory certainty for foreign banks seeking to enter the Saudi Arabian market. It stands to reason that this will make decisions to do so easier. Furthermore, SAMA has announced that it will take steps to update other rules and regulations such as those for opening bank accounts and the operation of commercial banks in the Kingdom to further stimulate the finance sector of the country. It is to be hoped that these reforms are diligently and consistently implemented.