

Overview of Law No.1 of 2017 on the Financial System of Abu Dhabi Government

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This law defines the bodies and entities which are subject to the law (and in fact provides for a list of such entities to be issued by the Chairman of the Department of Finance after the Executive Council's approval). It also sets out limitation periods in relation to recovery of debts due from such entities. It is therefore important for anyone dealing with such bodies and entities to be familiar with the approval process in relation to the commitments of the relevant bodies and entities.

Who does the law apply to?

The law applies to:

- the Government of Abu Dhabi;
- Government Agencies, comprising local departments and corporate bodies affiliated to the Government of Abu Dhabi, which have full legal capacity and which either manage a public facility or provide a public service;
- Government Institutions, which are public corporate bodies, owned entirely by either the Government of Abu Dhabi or a Government Agency, whose principal activity is commercial in nature;
- Government Companies, which are companies owned entirely and directly by either the Government of Abu Dhabi or a Government Agency; and
- Companies in which a Government Institution or Government Company holds directly or indirectly, jointly or severally, more than 50% of the capital.

What is the aim of the law?

The intention behind the law is to set out the budget and approvals process in respect of the incurrence and payment of expenses in relation to the Government of Abu Dhabi and related entities.

Budgets and Approvals

The law provides for the Abu Dhabi Department of Finance to, amongst other responsibilities, prepare the public budget, oversee compliance with the budget, and manage public debt and government guarantees. This Department will also be empowered to lend in the name of the Government of Abu Dhabi, where it has the consent of the Executive Council of Abu Dhabi.

The public budget will include spending by the Government of Abu Dhabi and Government Agencies, but will not include budgets for Government Institutions and Government Companies (each of which should maintain independent budgets).

Any borrowing by the Government of Abu Dhabi will be entered into by the Chairman of the Department of Finance, provided that the consent of the Executive Council has been obtained. The law provides a list of

the purposes for which the Government is permitted to borrow and this includes a general limb applicable to 'other borrowing approved by the Executive Council'.

Government Agencies cannot borrow and no person or party is permitted to lend money to Government Agencies, save as expressly provided in the law. Under the law, a Government Agency can only incur or pay a liability where it has an applicable Financial Credit (which is essentially an authorisation under the law that permits the incurrence and payment of an expense from the Treasury of Abu Dhabi). Government Agencies are not permitted to enter into commercial sponsorship agreements to finance events or activities unless those activities or events are specified in the annual budget. Government Agencies can, however, enter into commercial sponsorship agreements which are financed by the private sector.

Government Institutions and Government Companies are, however, obliged to comply with the Ownership Policy and Financial Performance Intent Statement (the former of which will be prepared by the Department of Finance and approved by the Executive Council, and the latter of which will follow a form prescribed by the Department of Finance). Their budgets will need to be approved by the respective board of directors and a copy submitted to the Department of Finance. Importantly, there is a wide ranging provision of the law which prohibits Government Institutions, Government Companies and Subsidiaries from increasing their capital, borrowing or giving guarantees, or lending, save in accordance with rules to be issued by the Department of Finance and approved by the Executive Council. The law clearly states that the Government of Abu Dhabi is not responsible for the liabilities of Government Institutions, Government Companies and Subsidiaries and goes on to exclude any responsibility for liabilities of a company or other party which the Government contributes to, controls, or has an interest in.

Government Agencies, Government Institutions and Government Companies are prevented from providing or receiving grants, subsidies, donations, or aid, unless these are within their approved budgets.

Government Guarantees

Importantly, the definitions of Public Debt and Government Guarantees require that the relevant loans and guarantees are approved in writing by the Government and, in the case of guarantees, include the Government committing itself explicitly to pay a loan in the case of the borrower's failure to pay. This makes clear that any informal agreement is unlikely to be accepted and parties believing they have this type of loan or guarantee would be well advised to review their arrangements to ensure they meet the relevant requirements.

The law makes clear that no person is permitted to give a guarantee or indemnity on behalf of the Government unless the law is complied with. The process under the law for the giving of such guarantees is as follows:

- the Executive Council provides its consent;
- the Chairman of the Department of Finance provides the Government Guarantee; and
- the beneficiary of the relevant guarantee must periodically notify the Department of Finance about paying the guaranteed debt. The law is unclear as regards the meaning of beneficiary, but we believe this is a reference to the borrower whose debt is guaranteed, rather than the recipient of the guarantee (i.e. the lender).

The law requires that Government Institutions, Government Companies and Subsidiaries who 'issue a debt' must explicitly state that the debt is not guaranteed by the Government (save where a Government Guarantee is approved and provided in accordance with the law).

Although the law does not have retrospective effect, it provides that the Chairman of the Department of Finance shall, within 3 months of the issuance of the law, reissue any government guarantee submitted prior to the issuance of this law. Therefore, parties benefitting from an existing government guarantee

would be well advised to request its reissuance or otherwise confirm its validity and continuation.

Government Fees and Services

The law provides for the Department of Finance to issue a Government Services Pricing Guide, which is expected to be the basis on which services provided by Government Agencies will be priced. There is also an anticipated review of existing fees and tariffs imposed by Government Agencies to measure such fees against the new pricing guide. This may lead to changes in Government Agency fees.

There are also provisions providing that money held by the Government of Abu Dhabi or Government Agencies which is not claimed within one year from maturity will become public money and be transferred to the Government of Abu Dhabi. There is a saving provision which allows a person to come forward in respect of any such money within a period of ten years. If that person can prove their claim to the original monies, then the relevant amount will be paid to them.

Government Procurement

The Department of Finance is given responsibility for government procurement and bidding, including developing the legal framework and IT platform applicable to bids, and signing contracts with suppliers.

Limitation Period

The law includes the following limitation periods applicable to debt claims against:

- the Government of Abu Dhabi, Government Agencies, Government Institutions and Government Companies – the limitation period being the end of the fifth year that follows the fiscal year in which the debt became due; and
- natural persons or corporate bodies in respect of debts due from Government Agencies, Government Institutions and Government Companies – the limitation period being the end of the tenth year that follows the fiscal year in which the debt became due.

Conclusion

We hope that this law will give greater clarity around dealing with certain government related entities and the way in which their activities are approved. In particular, the issuance of a list of entities covered by the law, as contemplated, would be a welcome development, providing certainty to parties transacting with companies with some government involvement as to capacity and authority. Historically, this area has been quite difficult to navigate, given the variety of legal structures involved.

Al Tamimi & Company's banking and finance team regularly advises on capacity and authority in respect of financing transactions. For further information please contact Renata Rai (r.raai@tamimi.com).