

New Banking Law: Federal Law No 14 of 2018

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After nearly 40 years, the law which underpins the UAE Central Bank ('UAECB') and the banking industry in the UAE has been amended. Federal Law No 14 of 2018 regarding the Central Bank and Organization of Financial Institutions and Activities ('Law') has repealed and replaced the 1980 Union Law and is now effective following its publication in the Official Gazette on 30 September 2018.

Scope and Application of the Law

Notwithstanding that the 1980 Union Law has been repealed and replaced by the Law, all current Central Bank regulations and circulars shall remain in full force and effect until replaced with equivalent regulations and circulars under the Law. The issuance of any such new regulations, decision or circulars by the UAECB shall not have any retroactive effect.

The Law does not apply to the financial free zones (i.e. the Dubai International Financial Centre and the Abu Dhabi Global Market) and the financial institutions regulated by the authorities of those free zones (i.e. the Dubai Financial Services Authority and the Financial Services Regulatory Authority).

Key provisions of the Law

We have highlighted below the key provisions of the Law which are relevant to financial institutions in the UAE.

Higher Shari'a Authority

This refers to the establishment of a Higher Shari'a Authority ('Authority') to replace the authority contemplated by the 2016 Cabinet Resolution. The Authority will, amongst others, impose regulations on Islamic financial institutions and perform a supervisory role over the internal Shari'a's supervisory committees of such institutions. Islamic financial institutions will be responsible for the costs of the Authority.

Issuance of Securities

Securities issued by the UAECB or the Government shall be subject to rules issued by the UAECB, including issues such as issuance, custody and trading, together with the appointment of primary dealers for such securities including those issued in the public sector.

Currency

Reconfirmation that the UAECB is solely responsible for the issuance of currency in the UAE, which also includes any token.

Undertaking Financial Activities in UAE

The Law expands on previous provisions and confirms that no financial activities may be carried out in or from the UAE without a licence. In this respect, the UAECB has been given new powers to inspect the premises of any person suspected of carrying out financial activities in the UAE, as well as the ability to require any related information from that person. A new addition is that any promotion of financial activities or products may not be carried out in or from the UAE unless it is subject to the Law. The Law clarifies that promotion includes any communication aimed at inviting or offering a transaction or offering to conclude any agreement. The Law indicates that rules and regulations would be issued which will clarify applicability, prohibitions and exemptions. Such provisions arguably change the position of cross-border activities by non-UAE licenced institutions in the UAE, which may need to be reassessed.

Financial Activities

Helpfully, the financial activities subject to the Law and UAECB supervision have been listed, and range from the taking of deposits, provision of credit, currency exchange, payment services and other financial products. Interestingly, financial products includes financial derivatives, bonds, sukuk and equities. The inclusion of digital and virtual banking licences is a positive move, and the arrangement and/or promotion of financial services is now an independent licenced activity.

Licencing

The Law sets out in greater detail the licencing requirements and processes, while granting the UAECB broad discretion to control such licencing. It also states in detail the ability of the UAECB to impose conditions on any new or existing licences, and the circumstances in which licences may be suspended, withdrawn or revoked. While such circumstances are far reaching and contain events that could be seen as minor, the historical approach of the UAECB should give financial institutions comfort that such powers would be exercised fairly and reasonably.

Register

The Law confirms the electronic register for all financial institutions to be maintained by the UAECB ('Register'). Any amendment to the articles of a financial institution shall require the consent of the UAECB, and only take effect once entered into the Register.

Legal Form and Ownership

Banks (excluding branches of foreign banks) must take the form of public joint stock companies, while other financial institutions must take the form of private joint stock companies or limited liability companies (as applicable). The minimum UAE ownership in banks has been increased to 60 percent.

Shari'a compliance

Islamic financial institutions have been addressed in more detail, including:

- continuation of the exception for Islamic financial institutions to trade in goods and own property for their financing purposes;
- confirmation that an internal Shari'a supervisory committee is required, made up of experienced specialists, to be appointed by the general assembly;
- members of the internal Shari'a supervisory committee must be approved by the Authority (previously such members were approved by the UAECB); and
- requirements for internal Shari'a audits and monitoring, together with annual reports to be presented to the general assembly in the form dictated by the Authority. The report is also to be provided to the Authority.

Authorised Individuals

The Law introduces the concept of authorised individuals performing designated functions, and imposing fit and proper conditions on all such individuals. While the UAECB may set rules and conditions in this regard, and must approve all such individuals, the Law confirms that they include chief executive officers, senior managers, executives and anyone else carrying out a designated function (as defined by the UAECB).

Related Parties

Related party transactions are dealt with in the Law, with quarterly reports required by the UAECB of all credit transactions with related parties. The UAECB has wide powers to act on such reports, including requiring provisioning against such facilities or prohibiting further facilities.

Non-banking Activities and Assets

Subject to the exclusion granted to Islamic financial institutions, the prohibition on carrying out non-banking activities continues including in relation to the trading of goods, or owning of property or shares. Exceptions continue to apply where they are received in settlement of a debt, however, interestingly the previous exception of owning property for the bank's operations has been removed. Instead, it appears to have been replaced with a ratio to be stipulated by the UAECB.

Bank Failure

The Law introduces a framework for deposit taking financial institutions to be developed by the UAECB, including triggers signalling financial difficulties of such institutions. Under such a framework, the UAECB will have wide discretion to impose conditions, require additional capital,

force or permit mergers, freeze assets, liquidate the institution or, effectively take over management of the institution (whether itself or through a committee).

Lending to the Board

The Law reconfirms the previous clarification which was issued in 2015 by the UAECB, noting that the Commercial Companies Law does not apply, and financial institutions may lend to their board in accordance with directives issued by the UAECB.

Change of Control

Controlling interests in any financial institution remain subject to the approval of the UAECB, as does the establishment of any additional branch or subsidiary inside or outside the UAE.

Governance

The UAECB will establish a general framework for governance of financial institutions. In a welcome development, an electronic rulebook is contemplated which will include all regulations, instructions and circulars.

Consumer Protection

There is an increased impetus on consumer protection with several sections of the Law focusing on the protection of depositor interests, and to expand the remit of accessibility of financial services across all strata of society. The UAECB has been mandated to work with the Ministry of Finance to develop a deposit guarantee scheme.

Lawsuits

The UAECB is given the right to intervene in any lawsuit filed involving a financial institution, with the UAECB to be notified of all such cases.

Confidentiality

The Law reconfirms the confidentiality of all customer information, only to be disclosed with the prior written consent of the customer. The issuance of specific banking secrecy regulations is contemplated.

Grievances

An independent Grievances and Appeals Committee is to be established, consisting of judges and experts. Such committee shall be responsible for any appeals against decisions or actions by the

UAECB.

Licensing Fees

The UAECB has been newly vested with a discretion to charge for issuing licences and authorisations.

Period to comply

Financial institutions are required, as necessary, to reconcile their positions to comply with the Law within the period stipulated by the UAECB.

Foreign Judgments

One area which has caused issues for a number of financial institutions is the applicability of foreign judgments. In this respect the Law confirms that foreign judgments shall apply in accordance with the applicable legal proceedings of effective laws in the UAE. This would appear to confirm the position commonly held that foreign judgments are not binding on UAE financial institutions until they are recognised in the UAE through the relevant legal process.

Conclusion

The introduction of the Law is a welcomed legislative development in the UAE as the Law further bolsters the UAE Central Bank's ability to exercise effective regulatory control over the financial sector in line with international best practices and standards.

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