ReedSmith

Middle East Newsletter

Issue 2 December 2010

Welcome to our Newsletter

Welcome to this latest edition of Reed Smith LLP's Middle East Newsletter brought to you from our offices in Abu Dhabi and Dubai. We are coming to the end of an exciting year for the UAE and for the firm and next year promises to be one of further growth in our region.

This year Dubai has taken stock and moved on, as is evident not only from its skyline and the reappearance of its traffic, but from the growth in our own local and regional business for existing clients and the large number of new inward investing corporates for whom we are acting.

That is a story repeated in Abu Dhabi where investment in growth continues apace and infrastructure develops in support both of its position as a regional hub and its steadfast pursuit of its framework Plan 2030. We see that overseas investors, from Britain and the United States in particular, are increasingly looking at the attraction of assets here in the context of mergers and acquisitions. The legislative infrastructure does not always make that simple, but there are great opportunities to buy into and partner in the development of the region.

Changes in laws to simplify investment, including changes long foreshadowed to the Companies Law which are widely expected to permit majority foreign ownership of companies, at least in certain circumstances, may now be introduced in the coming months. In addition to keeping you up-to-date with legal developments, members of our Middle East team are always delighted to discuss with clients and others the business environment and the commercial opportunities for business in the UAE and the wider region of which we are at the hub.

We British in the UAE have been delighted by the active support which the British government is now giving to promoting the mutually beneficial opportunities for engagement between the UK and the UAE. This has included many and senior ministerial visits, including one by the Prime Minister, David Cameron, shortly after he took office. This culminated at the end of November in the State Visit by Her Majesty the Queen and HRH The Duke of Edinburgh, the first for over 30 years. Coincidentally, I was here for both visits and on this occasion was honoured to have been a guest at the State Banquet for Her Majesty hosted by H.H. Sheikh Khalifa Bin Zayed Al Nahyan, the President of the United Arab Emirates.

I am sure that you will find something in this Newsletter to interest you and hope that you will all have a thoroughly relaxing and enjoyable holiday season.

Peter Michelmore
Senior Partner-Middle East
pmichelmore@reedsmith.com

End of Service Gratuity in the UAE

Working in the UAE has many benefits that make it appealing for Emiratis and non-Emiratis alike. One of these benefits is the end of service gratuity ("EOSG"), which allows an employee to receive a gratuity if they have been working with an employer for more than a year. This benefit is considered almost sacrosanct in the market, especially with the lack of official and government mandated pension plans for many employees, particularly expatriates.

By way of a brief overview, Federal Law No. 8 of 1980 (the "Labour Law") - the best selling book in the UAE, as we are told - provides a specific calculation which factors in how long an employee has been with an employer, the reasons for ending the employment relationship, the type of employment contract and other factors. Generally, employers specifically delineate a base salary (separate from allowances for housing, travel and other allowances and increments), since according to the Labour Law it is the last base salary received on which the EOSG is calculated, excluding such allowances.

Calculation of EOSG using the "base" salary appears to be clear from the outset in the Labour Law; however a recent Dubai court case provides an interesting twist when commission is added to the formula. The Dubai court ruled that any percentage based salary or commission is to be included as part of the base salary. What is not included is a bonus, and this shows the significance of clearly delineating whether an employee will be entitled to receive a commission as distinct from a bonus or vice versa. Specifying that an employee is entitled to a commission in the employment contract makes it much more likely that it will be included as part of the base salary if considered by a Dubai court or the Ministry of Labour.

The EOSG provides a form of protection for a long serving employee that may not necessarily have another form of pension plan or other protection once that employee leaves his or her place of employment. The time when an individual's tenure with an employer ends can be somewhat charged, and arguments over the calculation of EOSG do not help if certain terms are not agreed upon immediately or clearly drafted in the employment contract. Employers should be careful when a commission is included in a working relationship; if they want to choose to treat it as a bonus then they must be careful not to label it as a commission or to include it as part of the salary. Employees who wish to consider a commission to be part of their base salary should negotiate to include this in the employment contract so as to avoid confusion further down the line.

Yasmin Khayal
Associate
ykhayal@reedsmith.com

My experience so far working in the UAE

Having completed my first six months as a trainee solicitor in London, my second six months took me to Dubai, UAE. I have been working mainly on contentious legal matters, which offer a good opportunity to experience legal proceedings within a civil law jurisdiction. This challenge of moving from a common law system to working within a codified system of law has allowed me to appreciate the practical differences, particularly in the context of arbitration.

In the UAE, currently there is no formal legislation regarding the use of arbitration except for what is found in the UAE Civil Procedure Code, Federal Law No. (11) of 1992. This creates a sense that, certainly with regard to arbitration, working with arbitral proceedings in the UAE is exciting and, to an extent, creative. Moreover, 2010 has seen development in the form of a further Draft UAE Federal Arbitration Law which was released for consultation.

At present, Reed Smith is assisting with a number of arbitrations and as a result, I have been exposed to an excellent range of substantial disputes work. I have also assisted clients within the Dubai International Financial Centre, a free zone heralded as providing ‘a new global jurisdiction’ and a ‘fully fledged ‘onshore’ capital market’. Again, it has been interesting to overcome challenges that perhaps would not be as visible within a more established framework.

The opportunity to live in Dubai for six months is one I am grateful for. Not only is it refreshing to experience life without an umbrella but, as one of 60 trainees here from a variety of law firms, there is plenty of scope to embrace Dubai’s invitations of excess. In my spare time, I have joined a Women’s Rugby team and am lucky enough to be playing in the International Dubai Rugby 7’s tournament in early December.

So far I have had a very positive secondment experience and look forward to getting the most out of my remaining time here.

Maria Wall
Trainee Solicitor
mwall@reedsmith.com

The New DIFC Funds Regime

In response to an intensive industry-led review of the collective investment and funds regime of the Dubai International Financial Centre (DIFC), instigated by the Dubai Financial Services Authority (DFSA), the DIFC recently promulgated DIFC Law No. 2 of 2010 (the Collective Investment Law 2010).

Under this law, and pursuant to new Collective Investment Rules published by the DFSA to support it (the Rules), the principles of fund establishment, fund operation and management have been made significantly more amenable and user-friendly to the international market, without compromising any of the International Organisation of Securities Commissions (IOSCO) principles for the regulating of collective investment schemes.

At a recent Knowledge Seminar held by the DFSA, the new Rules and their likely effect on the growth of the DIFC’s funds regime were explained to, and discussed with, industry professionals in detail.

In general, the changes serve to expand the number of Fund types that it is now possible to establish in the DIFC, and to facilitate greater fund management activity by and between the DIFC and the global market by making it possible now to have DIFC-based funds managed by non-DIFC fund managers, as well as DIFC fund managers managing non-DIFC funds.

Fund Types

There are now principally two types of Funds that can be established in the DIFC: Public Funds and Exempt Funds.

Public Funds are open to retail investors (which necessarily brings into play an extensive level of regulation in order to ensure continuing compliance with IOSCO principles for the protection of such investors) and can be marketed by way of a public offering.

Exempt Funds are a new category of fund (introduced to replace Private Funds) and are open only to professional investors with a minimum subscription of US$ 50,000 each. They are also subject to a maximum of 100 unit-holders, and distribution is to be only by way of private placement.

Supplementing these two categories, there are certain specialist funds that can be established in the DIFC (for example, islamic funds, private equity funds, closed-ended property funds and Real Estate Investment Trust (REIT) funds), each with their own specifically defined characteristics.

Fund Management

Managers (note the change from the previously used term “Operators”) of DIFC Funds must either be DFSA licensed or “External”.

DFSA licensing requirements are clearly set out in the Rules, and may vary depending upon the type of Fund being managed.

The new category of External Fund Managers, introduced in July 2010, permits for the first time fund managers from other reputable jurisdictions to establish and manage domestic funds without having to obtain a DFSA licence. External fund managers must however (i) be a body corporate, (ii) be domiciled in a jurisdiction recognised by the DFSA as adequately regulated, (iii) subject themselves to DIFC laws and DIFC court jurisdiction, and (iv) appoint a DFSA licensed fund administrator or trustee.

It is worth noting also that the fees payable for licensing funds and fund mangers have, as a result of the recent changes, been lowered. For example, the annual fee for licensing a fund manager is now US$ 10,000 (whereas previously it was US$ 40,000).

Tim Watkins
Senior Associate
twatkins@reedsmith.com

Oman is selling the message (and it is a good message too)

I recently attended a Middle East Association conference at the Mansion House in London on Doing Business in Oman. I have lived and worked in and with Oman for the best part of the last 20 years and can honestly say that this was the best attended and supported conference on the Sultanate of Oman that I have ever been at. There were 60 delegates from Oman alone and well over 200 people in the room.

Focus areas were on the power and water sector, education and training, tourism, and the financial services sector. The event was focused primarily on enhancing business relations between Oman and Britain. The Oman-British Friendship Association was one of the co-sponsors of the event along with the British Embassy and a number of other corporate sponsors.

It is difficult to fully report on everything that was discussed in a short article but some of the headlines were:

- The financial services and banking sector is one of the most viable in the region. Banks are being well run, are healthy and exceptionally well regulated by a sophisticated banking legislative regime ably led by the President of the Central Bank, His Excellency Hamood Sangour Al Zadjali. Two new banking licences for new banks are about to be issued.
- Banks have liquidity to lend these days and the country as a whole was relatively unaffected by the recent financial crisis. It did not have as much exposure to debt as some of its neighbours.
- One of the key policy drivers of the Government at the moment is the training and education and employment of a large and ever increasing youthful population. Over 50% of Oman's population are under the age of 21. They need to be trained and employed and there is a huge focus on trying to achieve this over the coming years. Opportunities abound for educational institutions wanting to set up in Oman. There are several joint venturing possibilities in this area.
- The regulatory regime for education is ever improving. Accreditation processes, whilst relatively simple, are strict and have high standards.
- The power and water privatisation drive continues at pace. Oman was one of the region's leaders in this sector starting with the Manah Power Project in the early 1990s. It has an excellent regulatory regime that is well run by sophisticated and knowledgeable regulators. There are a number of projects yet to come on line. Opportunities exist for companies looking to bid in this sector in years to come.
- The tourism sector is another important policy driver for the Government. Oman has seen the benefits to be derived from a healthy tourism industry. It has spent the last few years working out how it wants to do it, but there are a number of exciting large scale projects moving forward currently. These are often combined with a real estate development component. The Government have devised a concept of Integrated Tourism Complexes under specific legislation that allows for developers to take well defined rights to land, develop and sub-divide it and sell portions of it to foreigners who can obtain freehold title along with accompanying visas. The concept is evolving all the time and the details have not as yet been fully worked out but the desire is there to attract even more inward investment.
- The regime for foreign investment is one of the best in the region. Foreign companies can almost automatically get 70% ownership of locally registered companies and the ability to get 100% foreign ownership has existed for a number of years. Oman has entered into a Free Trade Agreement with the United States that allows for US companies to automatically get 100% foreign ownership with minimum capital of only R.O. 20,000 (as reported in our previous newsletter). Whilst the same does not exist for British and other foreign companies, the regime is very investor friendly. Tax rates are at a flat 12% for both Omani and foreign majority owned companies pursuant to the WTO agreements that Oman signed up to recently.

The mood in the room at the conference was very positive indeed. Oman is increasingly being seen as one of the good news stories of the region. It has quietly moved forward with its sensible foreign investor friendly policies for many years and is well worth a look as a possible hub for regional operations. You will certainly be met with a positive attitude and a welcoming approach from the Government.

Sean Angle
Partner, Head of Middle East Corporate & Commercial
sangle@reedsmith.com

Our Middle East Team

Adam Morgan
Regional Managing Partner
Financial Industry Group
T: +971 4 709 6344
E: amorgan@reedsmith.com

Tarek Abdalla
Deputy Managing Partner
Head of Real Estate & Construction
T: +971 2 418 5733
E: tabdalla@reedsmith.com

Arash Amai
Partner
Corporate & Commercial
T: +971 2 418 5725
E: aamai@reedsmith.com

Sean Angle
Partner
Head of Middle East Corporate & Commercial
T: +971 4 709 6333
E: sangle@reedsmith.com

Vincent R. Gordon
Partner
Head of Middle East Financial Industry Group
T: +971 2 418 5777
E: vgordon@reedsmith.com

Peter G. Michelmore
Senior Partner
Corporate & Commercial
T: +971 2 418 5757
E: pmichelmore@reedsmith.com

Chau Ee Lee
Counsel
Real Estate & Construction
T: +971 4 709 6316
E: celee@reedsmith.com

Raya Abu Gulal
Associate
Corporate & Commercial
T: +971 2 418 5761
E: rabugulal@reedsmith.com

Diwakar Agarwal
Senior Associate
Corporate & Commercial
T: +971 4 709 6351
E: dagarwal@reedsmith.com

Najla Baccouche
Associate
Corporate & Commercial
T: +971 2 418 5778
E: nbaccouche@reedsmith.com

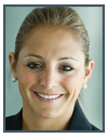
Rabia Choudri
Associate
Business & Finance - Real Estate
T: +971 2 418 5714
E: rchoudri@reedsmith.com

Nigel Duffield
Senior Associate
Real Estate & Construction
T: +971 2 418 5711
E: nduffield@reedsmith.com

Tim Gordon
Senior Associate
Financial Industry Group
T: +971 2 418 5787
E: tgordon@reedsmith.com

Jenny Grainger
Associate
Business & Finance - EME Corporate
T: +971 2 418 5755
E: jgrainger@reedsmith.com

Yasmin Khayal
Associate
Corporate & Commercial
T: +971 4 709 6342
E: ykhayal@reedsmith.com



Lena Naris
Associate
Business & Finance - Real Estate
T: +971 4 709 6350
E: lnaris@reedsmith.com

Tania de Swart
Senior Associate
Corporate & Commercial
T: +971 2 418 5786
E: tdeswart@reedsmith.com

Tim Watkins
Senior Associate
Corporate & Commercial
T: +971 4 709 6319
E: twatkins@reedsmith.com

Amy Cairns
Trainee
E: acairns@reedsmith.com

Maria Wall
Trainee
E: mwall@reedsmith.com

The information contained in this Newsletter was compiled for its clients by Reed Smith as a summary of the subject matter covered and is intended to be a general guide only and not to be comprehensive, nor to provide legal advice. Reed Smith LLP accepts no responsibility whatsoever for loss which may arise on information contained in this Newsletter. This Newsletter was compiled up to and including September 2010.

Reed Smith is a global relationship law firm with nearly 1,600 lawyers in 22 offices throughout the United States, Europe, Asia and the Middle East. Founded in 1877, the firm represents leading international businesses, from Fortune 100 corporations to mid-market and emerging enterprises. Its lawyers provide litigation services in multi-jurisdictional matters and other high-stakes disputes; deliver regulatory counsel; and execute the full range of strategic domestic and cross-border transactions. Reed Smith is a preeminent advisor to industries including financial services, life sciences, health care, advertising, technology, media, shipping, energy trade and commodities, real estate, manufacturing, and education.

ReedSmith
The business of relationships.

NEW YORK
LONDON
HONG KONG
CHICAGO
WASHINGTON, D.C.
BEIJING
PARIS
LOS ANGELES
SAN FRANCISCO
PHILADELPHIA
PITTSBURGH
OAKLAND
MUNICH
ABU DHABI
PRINCETON
N. VIRGINIA
WILMINGTON
SILICON VALLEY
DUBAI
CENTURY CITY
RICHMOND
GREECE