



CORPORATE GOVERNANCE

Powered by ICSI Overseas Centre UAE

International Newsletter for Governance Professionals

Volume 1, October 2022

----- DUBAI -----

FOUNDING MEMBERS

CS R. Lakshmanan



Lakshmanan is a Senior Partner at MCA and has over 28 years of experience. A proven results-oriented leader with holistic experience in Financial Services, Real Estate, Hospitality, Manufacturing and Consulting sectors. He has held a number of "C" Level roles across Public listed and Private companies and Board level roles for Not for Profit entities. He has strong ethical values and consistently delivers value to clients.

He is a Chartered Accountant, Cost & Management Accountant, Company Secretary and Post Graduate in Commerce from India and did Global CEO program by Wharton - USA, IESE - Spain and CEIBS - China.

Narasimha Das

Narasimha Das is a lawyer by profession and brings over 40+ years of diversified experience in Legal, Compliance, Corporate Governance, Risk Management and Business Advisory. He has expertise in handling a wide variety of legal matters such as M&A, legal structuring, due diligence, joint ventures, arbitrations besides civil & criminal litigations.

He has authored a book titled "Effective Compliance" aimed at adding business value to organization's by building compliance culture, operational decision making and strategic planning post-financial crisis scenario. He has also developed compliance manuals, anti-money laundering procedures, risk management, and compliance monitoring programs.



CS Vijay Ojha



Vijay Ojha is a seasoned Company Secretary, Corporate governance, legal and compliance professional with more than 20 years of hands on experience in handling matters related with company secretary, Corporate governance, legal, compliance, administration, HR , restructuring of group companies, development of systems and processes for good governance, drafting & vetting of legal agreements and contracts, overlooking statutory, legal & regulatory compliances, advising on merger and acquisition, managing board, shareholders and committees meetings.

He is a Fellow member of the Institute of Company Secretaries of India (ICSI), and graduated in Law and Business Administration.



FOUNDING MEMBERS



CS Raghvendra Verma

Raghvendra Verma has over 25 years of experience as a legal leader expert in Private equity/M&A/Strategy/compliance/Licensing/Contract Negotiations/ Cybersecurity/Privacy/Legal Operations/Litigation/Risk/Regulatory matter/ Board and Shareholder relations/Corporate Governance. He is focused on entire North Africa , East Africa, West Africa, South Africa, UAE, India and Asia Pacific markets.

He is Law graduate, Company Secretary, Diploma in Cyber Security , CIPP/E and member of IAPP.

CS Hukam Rawat

Hukam Rawat is an experienced Governance, Risk and Compliance (GRC) professional with 18 plus years working with large international corporates. He has been in leadership roles in corporate governance, M&A transactions, managing regulatory and operational compliance and possesses in-depth knowledge of capital market regulations.

Hukam is a Commerce graduate, Associate member of ICSI India and MBA in Finance from Middlesex University, UK.



CS Kavita Gujarathi

Kavita is having an experience of 18 years in Secretarial Functions, Corporate Affairs, Compliance, Accounts, Taxation and Audit. She has extensive experience in Accounting, taxation and Corporate Governance & Compliance particularly with respect to UAE Labour Law, Corporate LAW, AML law, ESR and other applicable local laws to the organization in UAE.

She is Law graduate, Company Secretary, Chartered Secretary (Institute of Chartered Secretaries and Administrators, London, UK) and CAMS (ACAMS).

CHAIRMAN'S MESSAGE



R Lakshmanan
Chairman

Happy Diwali

It gives me great pleasure to connect through our 1st magazine “Corporate Governance” dedicated for the CS professionals based in the UAE and members of the ICSI Middle East (DIFC) NPIO (ICSI Overseas Centre UAE). It is a momentous occasion to launch the 1st magazine and my hearty congratulations to the publishing team.

Dear Fellow Professionals,

The Corporate Governance magazine would be electronically published on a quarterly basis covering articles of relevant to the profession such as regulatory changes in UAE and India, legal amendments, compliance requirements, case studies, events update, showcasing professional achievements and artistic talent of members. We would be eagerly looking forward to your comments and suggestions – we believe feedback is the best way to improve ourselves!

I take this opportunity to give you a bit of history on the formation of ICSI Overseas Centre UAE. Though it was officially born during September 2019, the seeds were sown during 1990s by fellow CS professionals in the UAE with overwhelming support of the ICSI Committee from India. While navigating the regulatory landscape for formation, we went through several starts and stops and finally the dream became true with the registration process at DIFC as NPIO. The pivotal moment came when Crowe Mak Ltd a leading professional services firm decided to become a Founding Member of the NPIO and offered its offices as the registered address of the NPIO which enabled to get DIFC license. On behalf of the CS professionals in UAE and ICSI India team, I thank Crowe Mak for their continued support. It is important for the CS professionals to remember the history of formation and provide utmost support to the Overseas Centre UAE for furthering the profession.

The last 3 years have gone so quickly with almost 2 years of subdued activity during the pandemic. Despite this, we have managed to stay afloat and relevant by conducting several virtual and physical programs relevant for the CS profession. Our stellar achievement was hosting the 1st International conference of ICSI Overseas Centre UAE on 23rd March 2022 in Dubai on the theme “Redefining Good Governance: Innovation, Compliance, Sustainability, Inclusion” which was well received by the attendees. The CS profession made history by hosting a special panel discussion on “Company Secretary – Fostering Innovation for Sustainable Growth” with the current and past Chairmen of the ICSI at the India Pavilion at the EXPO 2020 event site. We continue to host variety of events on a periodic basis including study circle meetings whilst providing opportunities for the members to receive continuing professional education and network.

Over the last few years, the regulatory landscape has considerably changed with the introduction of VAT, ESR, UBO, Data Protection and overhauling of the Companies Law, Labour Law and other laws and regulations. Further, the UAE economy has had a strong rebound on the back of EXPO 2020 and increase in Oil prices has significantly improved the overall economic outlook for the UAE and wider GCC. Higher economic growth has resulted in increasing employment and business opportunities and this should further benefit our members associated in the areas of company secretarial, corporate governance, legal and compliance. With proposed introduction of Corporate Tax from June 2023, businesses would be increasing their compliance multi-fold resulting in more opportunities for CS professionals who willing to expand their knowledge base.

My sincere thanks to my fellow founding members who have supported growing the ICSI Overseas Center UAE this far, and I continue to seek their support and guidance. I also thank Ms. Bhawna Srivastava, First Chairperson for her huge contribution in the formation and running of the ICSI Overseas Centre UAE.

My special thanks to the Institute of Company Secretaries of India - current and past Chairmen, Committee members and management team for their encouragement, support and trust. I also take this opportunity to thank our regulators Dubai International Financial Centre (DIFC) and Community Development Authority (CDA) for their constant support.

We seek the support and guidance of the UAE Government in furthering the profession and thank for the opportunities provided to our members and families in this beautiful country.

I take this opportunity to wish the members a happy and prosperous Diwali.

Warmest regards,
R Lakshmanan
Chairman



“ If you think
compliance is
expensive -
try non-compliance. ”

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Recent Regulatory Development In UAE



ADGM Issues 2022 Circular Removing Data Protection Fee Exemption

The Abu Dhabi Global Market ('ADGM') published, on 8 September 2022, Circular No (1) of 2022 Regarding The Data Protection Fee for Certain Entities Following the Removal of the Exemption by the ADGM Board of Directors. In particular, the ADGM stated that the purpose of the circular is to inform the public that, following the enactment of the ADGM Data Protection Regulations (Amendment No. 1) 2022 ('the Amendments') by the ADGM Board of Directors, on 26 July 2022, changes to the data protection fees for certain types of entities will be made. More specifically, the ADGM noted that, from 26 July 2022, ADGM Special Purpose Vehicles ('SPVs') are no longer exempt from the \$300 data protection registration fee, noting that the Office of Data Protection is required by law to collect the registration fee from all entity types.

In this regard, the ADGM highlighted that, from 1 October 2022, the Office of Data Protection will begin to manually invoice the abovementioned entities incorporated on or after 26 July 2022, and further noted that non-payment may result in formal regulatory action as per the Data Protection Regulations (Fines) Rules 2021 (fines of up to a maximum of \$750).

For more information, please visit below website:

<https://www.adgm.com/operating-in-adgm/office-of-data-protection/overview>



DIFC: DIFC Publishes Guidance on Controller/Processor Obligations and Data Retention Published

The Dubai International Financial Centre ('DIFC') published, on 8 July 2022, a guidance on controller/processor obligations and agreements ('the Controller/Processor Guidance') and a guidance on retention and storage of personal data ('the Retention Guidance'). In particular, the Controller/Processor Guidance states that the DIFC Commissioner of Data Protection ('the Commissioner'), in producing the guidance, aims to assist controllers and processors subject to the Data Protection Law, DIFC Law No. 5 of 2020 ('the Law') and the Data Protection Regulations ('the Regulations') in complying with the obligations and contractual requirements required by Articles 23 to 25 of the Law. In this regard, the Controller/Processor Guidance covers the following:

- Contractual requirements between controllers and processors, assisting both in understanding what needs to be included in their written agreements and why;
- Controllers' liability when engaging processors; and
- Processor and sub-processor autonomy and responsibilities.

Moreover, the Retention Guidance notes that it aims to assist organisations in the tasks of proper records management, data governance, and data security required to comply with the Law, and particularly, in complying with Articles 9 and 14 of the Law on data minimisation and data security. Furthermore, the Retention Guidance covers, among other things, the following topics:

- Documentation of data and records filing;
- Data security;
- Quality assurance;
- Data retention and destruction; and
- Mobile devices, remote working, and removable media.



CEPA: India - UAE New Era of Partnership and Growth

Compiled By **CS Ramchander Tumuluru**, Business Advisor, Dubai, Member of Research & Publications Committee of ICSI ME and ex group CFO of an European company based in Brussels.

Introduction

On February 18, 2022 a historic Comprehensive Economic Partnership Agreement (CEPA) was signed between UAE and India. CEPA is expected to significantly increase trade and partnerships between the two countries and officially came to force on 1 May 2022. This far reaching arrangement concluded in below 90 days. Its origins are in the India-GCC Framework Agreement on Economic Cooperation signed in 2004.

According to the UAE Ministry of Economy (MOEC), portal which has a page on CEPA 's benefits include enhancing market access lower tariffs, simpler customs processes. transparent rules and rule- based competition. CEPA's 18 chapters cover searchable tariffs database for specific goods and services sectors, including tariff structures, introduction timetables, differential treatments, rules of origin, customs procedures, issues impacting small and medium-size enterprises, and available digital trade options, concessional rate of goods on cross-border trade, value addition requirement, product specific rules, trade-in service, trade remedies, Technical Barriers to Trade(TBT),economic cooperation, intellectual property and government procurement, investment and trade .Governments of both countries will issue relevant notifications and rules under the Framework agreement.

CEPA is different from a PTA(preferential trade agreement), FTA (Free Trade Agreement, CECA (Comprehensive Economic Cooperation Agreement),BIT (Bilateral Investment Treaty) and Trade and Investment Framework Agreement(TIFA). CEPA reduces but doesn't eliminate trade barriers and is more comprehensive than CECA.

UAE currently has 3 CEPA agreements with India, Israel and Indonesia all expected to give an USD 16bn GDP boost ` . The CEPA with India is a part of the UAE's strategy to boost trade, is expected to add 1.7 per cent, or \$8.9bn, to the country's gross domestic product and boost exports by 1.5 per cent, or \$7.6bn, by 2030. India has CEPA with South Korea, Japan and UAE.



CEPA: India - UAE New Era of Partnership and Growth

UAE and India trade

UAE is India's third largest trading partner (after the USA and China) and second largest export destination at USD 28 bn (after USA)

Bilateral trade is expected to increase from a current USD 60 bn to USD 100 bn in just 5 years. This from a humble USD 180 m in the 1970s.

With Indian population in UAE forming over 30% at 3.4 m – and Indian businesses having significant presence – there is great potential to drive the trade to much higher levels. UAE also have investments in India through FDI(Foreign Direct Investment)

Notable among sectors to benefit India are gems and jewelry, agriculture products, pharmaceuticals, automobiles, leather, plastic products and medical devices while major UAE exports are petroleum and related products, precious metals, gems and jewelry

Access to Markets

Dubai is a gateway to Africa, GCC and Eastern Europe and has significant non-oil trade with import export and reexports and with warehousing, a world class port and airport and simplicity of trade and payments offers a great mechanism. India of course has extremely diversified products, skilled services and is also a huge market. Clearly this opens a huge market.

Besides there is a comfort in food security and energy security between both partners.

Key Highlights of CEPA

Apart from benefitting 90% of import export trade by zero or reduced tariffs and enhanced access and provides a permanent safeguard mechanism of any unwarranted surge in any particular product and also in services. Essential that imports and origins are closely monitored.

Key highlights:

1. Trade in goods: India- UAE CEPA cover almost all the tariff lines dealt in by India (11,908 tariff lines) and UAE (7,581 tariff lines) respectively and ten years has been proposed in CEPA for gradually phasing out the tariff duties.

2. Tariff Elimination Annexure 2A of CEPA- Exemption/Concession of duty on goods to be imported into India from UAE: on Petroleum oils and oils obtained from bituminous, minerals or crude Glass , Digital cameras , Mobile phones etc.,



CEPA: India - UAE New Era of Partnership and Growth

3. Tariff Reduction will be done in a planned manner over three, five, seven, or ten years. The products covered under this category for imports into UAE amongst others include certain types of footwear, Crushed industrial diamonds, specific articles of Jewellery & Natural pearls, portable automatic data-processing machines Telephones for cellular networks or other wireless networks (85171200), Motor Vehicles .Articles of iron and steel and Aluminum etc tariff reduction will be done in a phased manner over the span of 10 years.

4. Trade in Services: CEPA will help the growth of India's services sector.UAE has provided access to 11 broad categories of services such as telecommunication services, energy services, computer-related services, audio visual services, educational services, health services, tourism, travel-related services, and professional services.

Rules of Origin (RoO):

The criteria to be met for availing duty benefits based on origin covers:

- Being wholly obtained in the territory of the contracting party (For example- live animals, plant based products grown and harvested in the respective country)
- sufficient working or production as per the Product specific Rules ('PSR'), in Annexure 3B to CEPA.

For the purpose of determining the origin, the CEPA also contains provisions regarding:

- de- minimis criteria;
- minimal or insufficient operations or processes;
- non-qualifying operations and bilateral cumulation;
- packages and packing materials and containers;
- Accessories, spare tool parts, and tools;
- accounting treatment, and so on

Value addition in terms of PSR may be computed using either of two methods specified:

- (Free-on-board value or the ex-works price) – (value of non-originating materials) / (Free on board value or ex-works price) Or
- Cost of originating material + direct labor cost + direct overhead cost/ (Free-on-board value or ex-work price)

Compliance with the RoOs needs to be supported by a proof of origin, which can be provided by any of these means: paper certificate of origin, fully digitalized certificate of origin, or an origin declaration made by an approved exporter. CEPA follows the invoice declaration of origin for approved exporters.

The Rules also cover certification procedures, issuance, presentation and verification of CoO, maintenance and preservation of records, consultation and data interchange by the notified authorities and restoration or suspension of benefits and penal implications on non-compliance.

Opportunities

CEPA in particular is expected to benefit.

- Services sector segments that will benefit include computer-related services, audio-visual, education, health, tourism, travel, nursing, engineering, and accountancy.
- Industries, such as textiles, leather, footwear, sports goods, plastics, furniture, agricultural, wood products, engineering goods, etc. which are labour intensive.
- UAE and India to cooperate in the facilitation of access to finished pharmaceutical products by accepting pharmaceutical products manufactured on the other party's territory without the need of previous inspection and with a fast-track approval of product registration, provided that those products have been already approved by the Regulatory Authorities of Australia, Canada, the United Kingdom, Japan, the United States or the European Union. This would be of particular interest to India
- CEPA strengthens established strategic relations between the two countries and will create new employment opportunities and improve the general welfare of the people. The India-UAE CEPA is likely to open doors to new / wider geographies

Growing Demand for AML Compliance Professionals

Compiled By **CS Narasimha Das**, Associate Partner, Crowe Mak

Money Laundering is the process that turns proceeds of criminal origin into assets that appear lawful and can therefore be used as if they were from legal sources. Terrorist Financing is the financing of terrorist acts or terrorism organisations. Proliferation Financing is providing funds for the manufacture, acquisition, possession, development, export, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery. Money Laundering, Terrorist Financing and Proliferation Financing usually follow a similar pattern such as using legal persons, legal arrangements and/or cross border movement of funds.



Broadly Money Laundering involves three stages-

- 1. Placement** - perpetrators introduce funds of criminal origin into legitimate financial system using a variety of methods. They may break the large amounts of cash into lesser conspicuous amounts which can be deposited in bank accounts, changing currency & denomination, transporting cash to another country or using straw-men.
- 2. Layering** - perpetrators engage in a series of transactions and conversions to distance the funds placed in the legitimate financial system from their source. They may purchase and sell assets or transfer money into bank accounts in different countries across the globe.
- 3. Integration** - the funds enter the financial system as if they are of legitimate origin.

It is not easy to identify a particular money laundering stage on account of diversity and complexity of these transactions. In addition, professional money launderers provide specialist services as a business. The professional money launderers may operate as individuals, network or organizations across the globe. These professional money launderers may co-mingle illegal funds with legitimate cash generated from cash intensive businesses or use apparently legitimate trade related transactions to avoid detection.



Growing Demand for AML Compliance Professionals

There are several crimes- drugs, bribery & corruption, human trafficking, environmental crime, illegal wildlife trade, cyber-crime, fraud and forgery that generate criminal funds. It is estimated that money laundering across the globe exceeds \$ 1 trillion annually. Perpetrators are intelligent, creative and keep changing their modus operandi for money laundering or financing terrorism. Money laundering has now become a major threat to the global economy. Investigations by journalists- including “Panama” papers, “Paradise” papers and “FinCEN Files” – have drawn widespread attention to the size & complexity of international money laundering. Typology studies by Financial Action Task Force (FATF), Egmont Group of Financial Intelligence Units, Asia/Pacific Group on Money Laundering, and FATF-styled Regional Bodies have resulted in a deeper understanding of several red flag indicators.

Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) is a set of laws, regulations, and procedures designed to prevent these crimes. Closely related subjects and topics that are often grouped with AML/CFT include legislations relating to prevention of financial crime, fraud management and cyber crime. Several countries including the UAE have initiated major steps to curb money laundering and terrorism financing. The regulators are enforcing AML/CFT legislation with hefty fines and remedial actions to ensure full compliance with the legislation.

AML/CFT legislations are based on standards set by FATF i.e. FATF Recommendations. FATF is an intergovernmental organization founded with the objective of setting standards and promote implementation of effective legal & operational measures to prevent money laundering and terrorism financing. FATF is also known by its French name Groupe d'action financière (GAFI). FATF conducts evaluation of member countries technical compliance and effectiveness of implementation of its standards, and publishes mutual evaluation reports. FATF also maintains a list of countries formally known as “Call for Action” (“Black-list”) and a list of countries formally known as “Other monitored jurisdictions” (“Grey-list”). These jurisdictions are required to remedy the deficiencies in their legal and enforcement measures in accordance with FATF Recommendations.

AML/CFT legislation compliance requires dedicated staff. Licensing Authorities, Regulators, Banks, insurance, asset managers, virtual assets service providers, real estate businesses, currency exchanges, gold and precious metal industries, law firms and accounting firms are now required to comply with AML/CFT legislation. These businesses are recruiting at different levels and building their AML compliance teams.

Entry-level roles include working in operational teams that screen customer names; checking & monitoring transactions for suspicious activity. Staff at this level compile information requested by law enforcement agencies, regulators, or auditors. foreseeable future.



Growing Demand for AML Compliance Professionals

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Entry-level roles include working in operational teams that screen customer names; checking & monitoring transactions for suspicious activity. Staff at this level compile information requested by law enforcement agencies, regulators, or auditors.

Managing compliance teams is one of the higher-level positions for those with more experience. Responsibilities at this level may include writing policies and procedures. An important role at this level is the money-laundering reporting officer, or MLRO. The MLRO provides oversight of internal controls related to anti-money laundering (AML) and also communicates with the regulators.



It takes a few years of dedicated efforts to become a subject matter expert in AML/CFT compliance. Several entities are now hiring such experts who can build a solid AML team capable of implementing adequate measures complying with regulatory obligations and best practices.

The prevailing market conditions are presenting a plethora of opportunities for AML compliance professionals. The market demand for AML-KYC Compliance Officers is high and is likely to rise higher in the foreseeable future.

Corporate Tax in UAE - Brief Snapshot of a New Framework

Compiled By **CS Ramchander Tumuluru**, Business Advisor, Dubai, Member of Research & Publications Committee of ICSI ME and ex group CFO of an European company based in Brussels.



Introduction

In Jun 2021 a global minimum tax of atleast 15% to end tax competition between countries as well as allowing MNE (Multinational Enterprises) take advantage of jurisdictions and avoid paying tax.

This was part of the Pillar 2 of OECD (Organization of Economic Cooperation and Development) Base Erosion and Profit Sharing (BEPS) which covered around 141 countries. As an inclusive member of the OECD framework, the UAE, announced the corporate tax (CT) framework on 31 January 2022. It is a federal tax across all Emirates. A consultative paper was made available and comments sought until 31 May 2022. Detailed guidelines and rules are expected in course of time for the implementation from financial year beginning 1 June 2023.

UAE has currently no Corporate Tax (also called Corporate Income tax / Business Profits tax) except for corporate tax on natural resources - oil and gas (55% max tax rate) which is subject to Emirate level taxation on them and branches of foreign banks (flat rate 20%) . CT is intended cover individuals and business under a commercial license in UAE.

The UAE which has emerged as a forefront of economic growth and development with Dubai as a major international business hub, thanks to the visionary approach of its Rulers. This follows the advent of taxation with VAT (Value Added Tax) introduced on 1 January 2018. Notable amongst the objectives of the authorities are meeting international standards on tax transparency and prevent harmful practices, cementing UAE's position as a hub for investment and business and accelerating development. The Federal Tax Authority (FTA) oversees its implementation – administration, collection and enforcement. UAE clearly aims at global best practices supporting business trade financing and services and with minimum compliance.

Foreign entities and individuals are covered under CT only if they conduct activity in an ongoing regular manner. UAE it may be noted has around 92 Double Tax Avoidance Treaties (DTAT)with various countries.AE has in its 50th year brought significant changes to Commercial Companies Law, Labour Law, Copyright and Trademark law, Data Protection Law, E commerce law Penal Code and now the introduction of corporate tax law.

Meanwhile, the Financial Times reported on 6 September 22 that Germany plans to push the OECD deal at the EU despite resistance from Hungary . The next vote is on October 4, 2022. “Progress at the EU level is viewed as key to making the global minimum tax work owing to the number of large multinationals headquartered in the region. The position of the leading European economies became even more important last month after the US abandoned one of the tenets of the deal — to clamp down on tax havens — when it introduced a minimum tax of 15 per cent that would not apply on a country-by-country basis”.

Corporate Tax in UAE - Brief Snapshot of a New Framework

Effective Date

From the financial year 1 June 2023 which means the first assessment will be in 2024.

Tax Rates

0% for taxable income upto Aed 375k

9% for taxable income > Aed 375k

A different tax rate (to be decided) for MNE meeting criteria of Pillar 2 . Large MNE are these with consolidated global revenue > Eur 750m

Accounting/Basis

Basis on Financial accounts prepared in accordance with globally accepted principles (IFRS) and worked on adjusted accounting net profit.

Residence

A legal person that is incorporated in the UAE will automatically be considered a 'resident' person for UAE CT purposes. So will a natural person who is engaged in a business or commercial activity in the UAE, either in their own name or through an unincorporated partnership. UAE resident legal persons will be taxed in the UAE on their worldwide income. Natural persons will only be taxed on income earned from their business activities carried out in the UAE.

Non-residents will be subject to UAE CT on taxable income (1) from a Permanent Establishment (PE) in the UAE, and income sourced in the UAE. The Consultation Document indicates that the law is to refer to the definition of PE outlined in Article 5 of the OECD Model Tax Convention.



Corporate Tax in UAE - Brief Snapshot of a New Framework

Exempted Entities

The following list of entities will be exempt from CT

1. The federal UAE Government and Emirate Governments and their departments, authorities and other public institutions;
2. Wholly Government-owned UAE companies that carry out a sovereign or mandated activity, and that are listed in a cabinet decision;
3. Businesses engaged in the extraction and exploitation of UAE natural resources that are subject to Emirate-level taxation
4. Charities and other public benefit organisations that are listed in a Cabinet Decision issued at the request of the Ministry of Finance, upon application of the relevant entity;
5. Public and regulated private social security and retirement pension funds; and
6. Investment funds



Corporate Tax in UAE - Brief Snapshot of a New Framework

Exemptions

- Dividends from UAE companies (including free zone entities) with qualifying shareholdings
- Dividends from foreign companies and capital gains where at least 5% of shares are held and investee company is subject to tax of at least 9%
- Capital gains on FZE provided it earns substantially all income from holding in subsidiaries
- Profit from intra group transactions and structuring
- Foreign branch profits could be exempted on ground of sufficient tax in that jurisdiction or claim foreign tax credit paid.

Individuals continue to be exempt from salary and employment income, income from bank deposits or scheme, investment in real estate in personal capacity, dividends capital gains and other income in a personal capacity as well as a foreigner investor's income from dividend capital gains investment and royalties

Free Zones

Free Zone Entities (FZE of which there are more than 40) that meet requirements can continue to avail tax incentives assuming substance and regulatory compliance. Commitment made to FZE will be honoured but transactions between branches and mainland need to be reviewed to see implications of tax if any .The Consultation Paper notes that to prevent free zone businesses from gaining an unfair competitive advantage compared to businesses established in mainland UAE, any other mainland sourced income will disqualify a free zone person from the 0% CT regime in respect of all their income.

Transfer Pricing

Transfer pricing rules seek to ensure that transactions between related parties are carried out on arm's length terms ie as though they are carried out between independent parties.

Businesses will need to comply with transfer pricing rules and documentation requirements set in line with the OECD Transfer Pricing Guidelines



Corporate Tax in UAE - Brief Snapshot of a New Framework

Interest Cap

While Interest and other financing costs will be deductible for CT purposes. it will be capped at 30% of a business' earnings before interest, tax, depreciation, and amortisation (EBITDA), in line with Action 4 of the OECD BEPS project, in order to disincentivise businesses from using excessive levels of debt financing (as opposed to equity financing) in pursuance of a tax benefit and thin capitalization rules.

- nterest capping rules will not apply to banks, insurance business and other financial services entities.

Losses

Businesses will be able to offset a loss incurred in one period against the taxable income of future periods, up to a maximum of 75% of the taxable income in each of those future periods. Tax losses will be able to be carried forward indefinitely provided the same shareholders hold at least 50% of the share capital from the start of the period when a loss is incurred to the end of the period in which a loss is offset against the taxable income.

Connected Persons

These could be linked to individuals with ownership interest or related upto fourth degree to owner, Directors or Officers and individuals upto 4th degree related to them as well as Partners. Since there is no individual taxation, payments to/transactions with such parties need to be seen as not excessive beyond usual arms-length commercial terms.

Tax Group (TG)

A tax group may be formed by UAE resident companies that have 95% shareholding and voting rights in its subsidiaries and the same Financial year (FY).FZ entities cannot obviously be part of a TG in case of those with 0% CT rate .Tax relief on intra group asset /liability available provided these remain in the group for 3 years and are at a minimum 75% commonly owned. A notice/request is to be filed with FTA requesting permission to file as a TG

Filing and Payments

Filing to be annual and electronic. Fiscal Unity is a possibility and needs to be evaluated/elected.

Penalties for non-compliances and these are not deductible. No provisional or advance tax payments are envisaged. No withholding tax on cross border or domestic payments. Business need to register with FTA and obtain a tax registration number



Corporate Tax in UAE - Brief Snapshot of a New Framework

What Next – planning, preparation, and overcoming pain points

- Document, Review and Assess: Current legal structure, related parties, ensure uniform reporting to all agencies, assess impact on transactions, tax impact on profitability, losses and carry forward setoffs possible, assess provisions made, etc.
- Transfer Pricing and Documentation in line with OECD TP guidelines
- Plan and Gear especially IT Systems and Processes to capture information required
- Be Data ready with supporting and documentation for understanding and filings
- Await Monitor Review and Consult on tax updates, rules and notifications
- Gear up for registration and Audit where required and also to claim 0% CT rate
- Study risks, set up controls and audit and compliance checks
- Tax planning and structuring
- Ensure substance and functions especially cross border corporate functions taking a holistic view as well as effective management and control
- Team tax skills and training and keep stakeholders updated

Opportunities for professionals

The CT introduction is a new beginning and offers opportunities for qualified professionals employed and in practice - accountants lawyers company secretaries in advising management, Boards and businesses in regulatory updates, implications, impact and assessment to facilitate planning and implementation. Also being custodians in the field of governance, there is a role in the implementation of such initiatives with both opportunity for growth and responsibility to all stakeholders.

Summary

UAE CT policy maintains simplicity and ease of implementation as well as the competitiveness of Dubai with a 9% CT rate as an important global investment and business hub. As regulation and rules emerge businesses need to review structures to see how best to holistic optimize tax benefits while being compliant. Enhances avenues in international taxation and cross border work from UAE

Note: CT is a nascent subject in the region and is based on current pronouncements and notifications close watch and monitoring of official rules, regulations and legal promulgations (to be announced from time to time) is required for a detailed understanding of this hot topic.

Labour Law

- Few Important Provisions

UAE

New Federal Labour Law 2022

Compiled By **CS Raghendra Verma**, He is Law graduate, Company Secretary, Diploma in Cyber Security, CIPP/E and member of IAPP.

The United Arab Emirates published its new Federal Labour Law No.33 of 2022. It is effective from 2nd February 2022. On 3rd of February 2022, **as per Article 72 of the New Federal law (The Decree Law), the Executive Regulations of Federal Decree-Law No: (33) of 2021, regarding the regulation of labor relations was published.**

Accordingly, through Article 73 of the decree law, Federal Law No. (8) of 1980 on the Regulation of Labor Relations shall be repealed and as per this Article Any provision contrary to, or in conflict with the provisions of this Decree-Law shall be repealed.

Through this Article, we will discuss few new changes which is brought by this new Act.

A. RECRUITMENT AND EMPLOYMENT OF WORKERS

Article 6 of Decree Law deals with recruitment and employment of workers in UAE. As per this Article,

- a.** No Work may be performed in the UAE, without obtaining the Work Permit from the Ministry, in accordance with the provisions of this Decree-Law and its Executive Regulations; and
- b.** No Worker may be recruited or employed by any Employer without obtaining the Work Permit from the Ministry, in accordance with the provisions of this Decree-Law and its Executive Regulations.

So, neither an employee can work without obtaining work permit and not the employer may employed any employee without getting work permit.

Labour Law - Few Important Provisions

Article (6) of Executive regulation specifies Types of work permit that can be issued. The following Work permit can only be issued to facilities registered in the Ministry.

S. No.	Type of Work Permit	Purpose of Work Permit
1	Work Permit (recruiting a worker from outside the country):	To bring in workers from outside the country.
2	Transfer Work Permit	To transfer non-national worker to and from a facility.
3	Permit for those who are registered under the residency of their relatives:	It is the permit under which those who are registered under the residency of their relatives are employed to work in a facility.
4	Temporary Work Permit:	For a job whose nature of execution or completion requires a specified period in one of the facilities.
5	Task Work Permit:	To recruit a worker from abroad to complete a temporary work or a specific project with a fixed term.
6	Partial Work Permit:	<ul style="list-style-type: none"> - To employ a worker under a part-time contract so that his working hours are less than his full-time counterparts, - The worker can work for more than one employer after obtaining a permit from the Ministry.
7	Juvenile Work Permit:	It is the permit under which To employ a person who has reached the age of 15 years and has not exceeded 18 years of age.
8	Student Training and Employment Permit:	To train or employ a student in the country who has reached the age of 15 years, in accordance with specific controls and conditions that include a commensurate training and work environment.
9	Work Permit for a citizen/ person from the Cooperation Council Countries:	To employ citizens or the citizen of the Cooperation Council for the Arab States of the Gulf.
10	Work Permit for Golden Residency Holders:	To employ a worker within the country who is a holder of golden residency.
11	Work Permit for a Trainee Citizen:	To train a citizen pursuant to his approved scientific qualification.
12	Self Employment Permit	<p>There is one work Permit which shall be issued to Individual. It is called Self Employment Permit. This permit is granted to individuals wishing to engage in self-employment independently (on their self-residency for foreign individuals). By getting this Permit, The Individual can earn direct income, through</p> <ul style="list-style-type: none"> - Providing services for a specific period of time or - Performing a task or - Providing a specific service, <p>Aforementioned services and/or task may be provided to individuals or facilities.</p>

Labour law - Few Important Provisions

Article (7) of Executive Regulation provides for Conditions, controls, and procedures for issuing, renewing and canceling work permits which is outside the scope of this Article.

B. EMPLOYMENT, WORK MODEL AND TYPE OF CONTRACT

Under this new labour law, a major change from old law has been introduced with respect to model of work. Model of work shall determine the type of contract supposed to be issued to employees.

Model of Work :

Article 7 has dealt with model of work in details. As per this Article, following are main new work model in UAE .

S. No.	Model of Work	Description
1	Full-time employment	Employee shall be working for one Employer for the full hours of work throughout the Working Days. Employee cannot work for any other employer under this work model.
2	Part- time Work	Employees shall be allowed to work for one or more Employers for a specific number of working hours or Working Days. He shall be entitle for prorata Annual leave.
3	Temporary Work	Employee may be hired under this model for a work which is carried out within a specific period of time, or which involves a specific task and ends with its completion.
4	Flexible Work	a work which involves a changing working hours or Working Days, depending on the workflow and economic and operational changes of the Employer. The Worker may work for an Employer at flexible working hours, depending on the circumstances and requirements of Work.



Labour law - Few Important Provisions

Article (5) of the executive regulation further mentioned below labour pattern in addition to above mentioned labor patterns.

S. No.	Model of Work	Description
1	Remote work	All or part of the work is performed outside the workplace, and the communication between the worker and the employer shall be electronic instead of being physically present, whether the work is part-time or full-time.
2	Job sharing	Whereby tasks and duties are divided between more than one worker to perform the tasks agreed upon in advance, and it is reflected in the value of the wage due to each of them so that it is pro-rata. They shall be dealt with pursuant to part-time controls.

The Ministry may create other work patterns as required by the requirements of the labor market. Subject to what is stipulated in the Decree-Law and executive Resolution, both the worker and the employer shall abide by the terms stipulated in the employment contract in accordance with each pattern of work mentioned in this Article.

C. TYPE OF CONTRACT

The contract between the worker and the employer shall be on the agreed-upon pattern of work in accordance with the contract forms in the Ministry's system, which are:

- Full-time employment contract.
- Part-time employment contract.
- Temporary employment contract.
- Flexible employment contract.
- Remote employment contract.
- Job sharing contract.
- Any other employment contract forms issued by a decision of the Minister in accordance with the labor classification approved by the Cabinet and work patterns.

The Type of contract depends upon the type of Model of Work. Contract shall be issued in the forms as described by Ministry.



Labour law - Few Important Provisions

D. COMPENSATION

1. WORKING HOUR

The maximum ordinary working hours shall be **(8) eight working hours a day or (48) forty-eight working hours a week.**

As per the executive regulation of this decree law, The employer may employ the worker for additional working hours over the normal working hours. Such addition hours shall not exceed two hours per day.

If the work is necessary to prevent the occurrence of a serious loss or a serious accident or to eliminate or mitigate its effects then additional working hours may exceed 2 hours per day.

In all cases, the total working hours must not exceed (144) one hundred and forty-four hours every (3) three weeks. For the holy month of Ramadan, as per the Executive regulations of this Decree law The normal working hours will be reduced by two hours.

2. OVERTIME COMPENSATION

An employer is required to pay **at least 125% of the basic wage** if overtime work is performed during normal working hours.

If the employee is employed for overtime/extra hours during Night time (from 10 PM to 4 AM) then he shall be paid **at least 150% of the basic wages.** This is not applicable on the employees who work in shifts.

Workers who work on weekly rest days or official shall be compensated with a **substitute rest day** or shall be paid **at least 150% of the basic wages.**

As per Article 22, wages shall be paid in **UAE Dirhams** to the employee. However it is can be paid **on another currency** if the parties agrees in the employment contract. Amount or type of Wage shall be determined in the Employment Contract.

3. LEAVES

ANNUAL LEAVES

Annual leave is 30 days during which the employee is entitled to full pay. If the worker has not completed one year but has completed 6 months then he is entitled to avail paid annual leave 2 days per month.

CARRY FORWARD THE UNUTILIZED LEAVE

A Worker may carry over his annual leave balance or days thereof to the next year. However, this can only be done as per Establishment bylaws and with the consent of the Employer.

The Employer may not prevent the Worker from using his accrued annual leave for more than (2) two years, unless the Worker wants to carry it over or be paid in lieu of leave.

The worker may carry over maximum of half of the annual leave for the following year or he may agree with the employer to grant him a cash alternative in accordance with the wages he receives at the time of his entitlement to the leave.

Labour Law - Few Important Provisions

Maternity Leave

Article 30 deals with Maternity leave. A female worker shall be entitled to a maternity leave of (60) sixty days. Out of 60 days, first 45 days of maternity leave shall with full pay and next 15 days of maternity leave shall be with half pay.

A further 45 days leave can be taken in case of illness occurring to her or her child due to pregnancy or delivery. This extra 45 days leave shall be without pay.

Sick Leave

A worker can take sick leave after completion of Probation period. The total sick leave shall not exceed 90 days in total in respect of each year of service. First 15 days of sick leave shall be fully paid. Next 30 Days of sick leave shall be half paid and subsequent sick days shall be without pay.

Bereavement Leave

A Worker shall be entitled to paid bereavement leave of (5) five days for death of the spouse, and (3) three days bereavement leave for death of a parent, child , sibling, grandchild or grandparent, commencing from the date of death.

Paternal Leave

A Worker shall be entitled to paid Paternal leave of (5) five Working Days for the Worker (father or mother) who got a child, in order to take care of his child. Such leave shall be taken successively or otherwise during the period of (6) six months following the date of birth of the child.

Study Leave

If a worker has completed 2 years of service with his employer then a study leave for 10 days per year may be given for sit in examinations, if worker is affiliated with educational institution.

Sabbatical Leave

An Emirati Worker shall be entitled to be paid sabbatical leave for national or reserve service, pursuant to the legislation in force in the UAE.

The citizen worker is entitled to a full-time leave to perform the national and reserve service, pursuant to the laws and regulations in force in the country.

Mourning Leave

The worker is entitled to a mourning leave starting from the day of death, provided that he submits proof of the death case after returning to work.



Company Secretary: Compliance to Vishwaguru in Governance

Compiled By **CS Ramchander Tumuluru**, Business Advisor, Dubai, Member of Research & Publications Committee of ICSI ME and ex group CFO of an European company based in Brussels.

India's first company law was the Joint Stock Companies Act 1850 which was based on the English Companies Act of 1844. The concept of Limited Liability were incorporated in the act of 1857 which was subsequently issued again in 1860 A comprehensive Act was issued in 1866 for incorporation regulation and winding up . This was recast as the companies Act 1882 and finally reenacted in 1913.

On 18 January 1956 Companies Act enacted was replaced by Companies Act of 2013 (enacted on 27 March 2013). There were "only 40 odd qualified company secretaries then" from UK with exams in India.



(<https://sharadasc.com/100-year-young-company-secretary-mr-v-k-murti>).

The role of the Company Secretary or Secretaries as part of Key Management Personnel /Officer has always been there under these laws for ensuring compliance of various laws and assisting the Board of Directors in ensuring its decisions are implemented.

On October 4, 1968 , the Institute of Company Secretaries (ICSI) was formed as a company limited by guarantee and this we celebrate this year 55 years of formation. The Chartered Accountants Act was enacted in 1949 and the Cost Accountants Act in 1959.

On January 1, 1981 it became an institution under the Company Secretaries Act , 1980.

Although the term 'Secretary' is still misunderstood in some communities and regions as though it were an Administrative Assistant , the Company Secretary / Secretaries has/have always held from the very beginning in mid 1800s the important professional roles of compliance and governance in roles closely associated with Directors and the Board.

A detailed review of the evolution of ICSI and the secretary has been released officially <https://www.icsi.edu/-media/webmodules/ICSI-JOURNEY.pdf>

With such a key role in corporate management, the Company Secretaryship profession has moved from compliance roles to those of Chief Governance Officers globally. Several inflection points in industry and worldwide events have only emphasized the need for strong corporate governance and compliance. This is moreso as we progress in a digital era , technology, cryptocurrencies ,the metaverse , AML law and the importance of Board Management and responsibilities in a complex world . Just as Indian professionals increasingly head global organisations- the CS professionals (now 65000 members strong and an estimated 400000 students) continue to foray into various geographies . ICSI has already several overseas chapters including Dubai where it held its first international conference in 2022

GDPR Applicability to UAE Companies

Compiled By **CS Raghendra Verma**, He is Law graduate, Company Secretary, Diploma in Cyber Security, CIPP/E and member of IAPP.

UAE is host of the many businesses. UAE based companies are regularly dealing with companies based out of Europe/European Union (EU). Since GDPR is applicable to all the companies based in EU and/or dealing with companies based in EU, it is important for UAE based companies to understand in which conditions GDPR would be applicable to it. This Article is an effort to demystify this to UAE based companies through few examples

- If UAE based companies are processing personal data on behalf an EU client of European national then it will have to comply with GDPR regulations. As per GDPR, organizations which are not based in EU but having access to EU personal data because of working with EU based organizations must comply with provisions of GDPR. IT is obligatory for EU based company to impose contractual obligations on non-EU companies to comply with certain GDPR provisions, without which the EU company may be in breach of the GDPR.
- UAE based organisations that work with counterparts established in the EU to process EU personal data on their behalf has to company with GDPR regulation. It should be any regular and systematic exercise of commercial activity through a stable arrangement(s) in the EU.
- If UAE based organization are actively doing advertisement for customers in the EU, GDPR may become applicable to UAE based organization. Advertisement may include attending trade shows, running online ads, email campaigns, working with European PR agencies to publish articles, or being part of an affiliate network that targets European audiences.
- If a UAE based organisation delivers goods to Europe or allows EU customers to purchase its goods/ services or have website which markets its product in EU market, then GDPR may apply. If UAE based organisation through cookies tracks users on the websites in order to create profiles, used to take decisions to analyse/predict preferences, behaviours or attitudes may trigger applicability of GDPR.

GDPR Applicability to UAE Companies

Case Studies

Example 1

A Technology company in Dubai has a fully-owned branch and office located in Romanian which oversee all EU operations, including marketing and advertising. The Romanian branch could be considered to be a stable relationship with the Dubai headquarters, which exercises regular and systematic business activities on behalf of the Dubai based technology company.



The Romanian branch could be considered to be an establishment in the EU. Therefore the GDPR would apply to the Both Dubai based and Romanian based companies.

Example 2

A Italy based company transfer all its personal data processing activities to its branch based in Sharjah.

the Italian company decides what, why and how personal data will be collected and used by the Sharjah branch on its behalf.

Even though the data processing activities are happening in Sharjah, but it is being carried out for and on behalf of Italy based company and therefor GDPR therefore applies to the Sharjah based company.

Example 3

An Ajman based company contracts a Luxembourg company to process personal data on its behalf, which is sent to Luxembourg from Ajman. The Ajman based company offers and directs its services exclusively at the UAE market. Ajman based company was not providing any services to the people in the EU, nor it does track people online (via cookies etc.).

The processing by the Ajman based company is not subject to the GDPR. However, Luxembourg based company, is subject to the GDPR.



News ICSINPIO activities

Study Circle Meeting | UAE Labour Law | *25 February 2022*



Study Circle Meeting | UAE Commercial Law | *22 April 2022*



Study Circle Meeting | UAE Data Protection Law | *1 July 2022*



Study Circle Meeting | UAE Corporate Law | 29 July 2022



Study Circle Meeting | UAE Labour Law | 13 September 2022



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Quiz

Mr Vijay, a former employee of the Tea & Biscuits Corporation (a UAE based multi-national), has hand-delivered a letter to the Reception of the Irish Subsidiary on May 1. Vija asked for a copy of all data that Tea & Biscuits Corporation holds about him from the start of his employment with them over 18 years ago, including all email correspondence about him from his past three managers, and anyone from the HR Department. Vijay has included a copy of his passport, his old employee identification number, and his current address.

One of Vijay's previous managers was made redundant at the same time as Vijay; another has relocated to Tea & Biscuits' Singapore office. The receptionist was not sure what to do with the letter, so she sent it via internal mail to the facilities manager who was out of the office on holiday until May 5. The facilities manager sent it to the HR manager who is very busy on a new redundancy program. The HR manager emailed the legal team to ask what he should do with the letter on May 21. The local Irish lawyers got back to the HR manager on May 25 and suggested that the HR manager get in touch with Vijay immediately and tell him that his issue has been looked into.



1. What should Tea & Biscuits do before responding to Vijay with the information he has requested?

- A. Meet with the legal department to ensure that no UAE data protection laws will be violated before sending any information.
- B. After accounting for GDPR compliance, contact Vijay 'without undue delay' to clarify any questions about his request.
- C. Consult with a security lawyer before sending any information to determine the most secure way to fulfil the request.
- D. Wait for advice from the Irish Data Protection Authority before sending any information.

2. What is the time period within which Tea & Biscuits Corporation needs to respond to the data subject?

- A. Within a month of having received the request.
- B. Within six months of having received the request.
- C. Without undue delay or within a month of receiving the request.
- D. Three months after they authenticate the identity of the requestor.

3. What should Tea & Biscuits do next to respond to Vijay's request for email?

- A. Nothing. Email does not need to be provided in response to a subject access request under the local Irish Data Protection law.
- B. The HR manager should ask employees who still work at Tea & Biscuits if they have any email correspondence with Vijay in their possession.
- C. Conduct an email search in accordance with its monitoring policy and inform affected employees before any disclosures to Vijay.
- D. HR should provide Vijay the information he requested. There is no need to get other employees' consent because the emails are all work related.

Note: Answer to this query with the reasoning should be sent before 15th November to the below email address, and the winner will receive a surprise gift.

middleeast.difc@icsi.edu



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