

CORPORATE GOVERNANCE

POWERED BY ICSI OVERSEAS CENTRE UAE

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INTERNATIONAL
NEWSLETTER
FOR GOVERNANCE
PROFESSIONALS

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

Dear Fellow Professionals,

At the outset, let me wish you
and your family a very

**Happy and
Prosperous New Year**

I am delighted to share the second edition (1st for 2023) of "Corporate Governance" dedicated for the CS professionals based in the UAE and members of the ICSI Middle East (DIFC) NPIO (UAE CS Chapter). We have had positive feedback on the first edition and that has inspired us to continue the journey of publishing on a quarterly basis in electronic form.

The UAE economy is projected to grow over 6.5 per cent this year driven by the new economy sectors as well as new socio-economic initiatives taken by the Government. The UAE has signed CEPA with India, Indonesia and Israel while negotiations are underway or in the planning phase with other countries as part of the UAE strategy to double the size of its economy from Dh1.4 trillion to Dh3 trillion by 2030.



The new year has brought several changes to the legal landscape in the UAE which brings new compliance requirements including:

- Introduction of Corporate Tax Law
- Regulation of Virtual Assets through a Federal Law
- Mandatory subscription to the involuntary loss of employment scheme
- Fines for breaching Emiratization rates
- New guidelines to enforce AML/CFT (anti-money laundering and countering the financing of terrorism)

As the UAE economy continues to expand and the legal landscape changes, more employment opportunities for CS professionals particularly in the area of Compliance. We will continue to work closely with the Institute of Company Secretaries of India and regulators in the UAE and develop the CS profession here.

Your constant support and contribution have energized us to do more for the profession and we have planned to host a variety of events on a monthly basis with eminent local and global speakers.

Warmest regards,
R Lakshmanan
Chairman

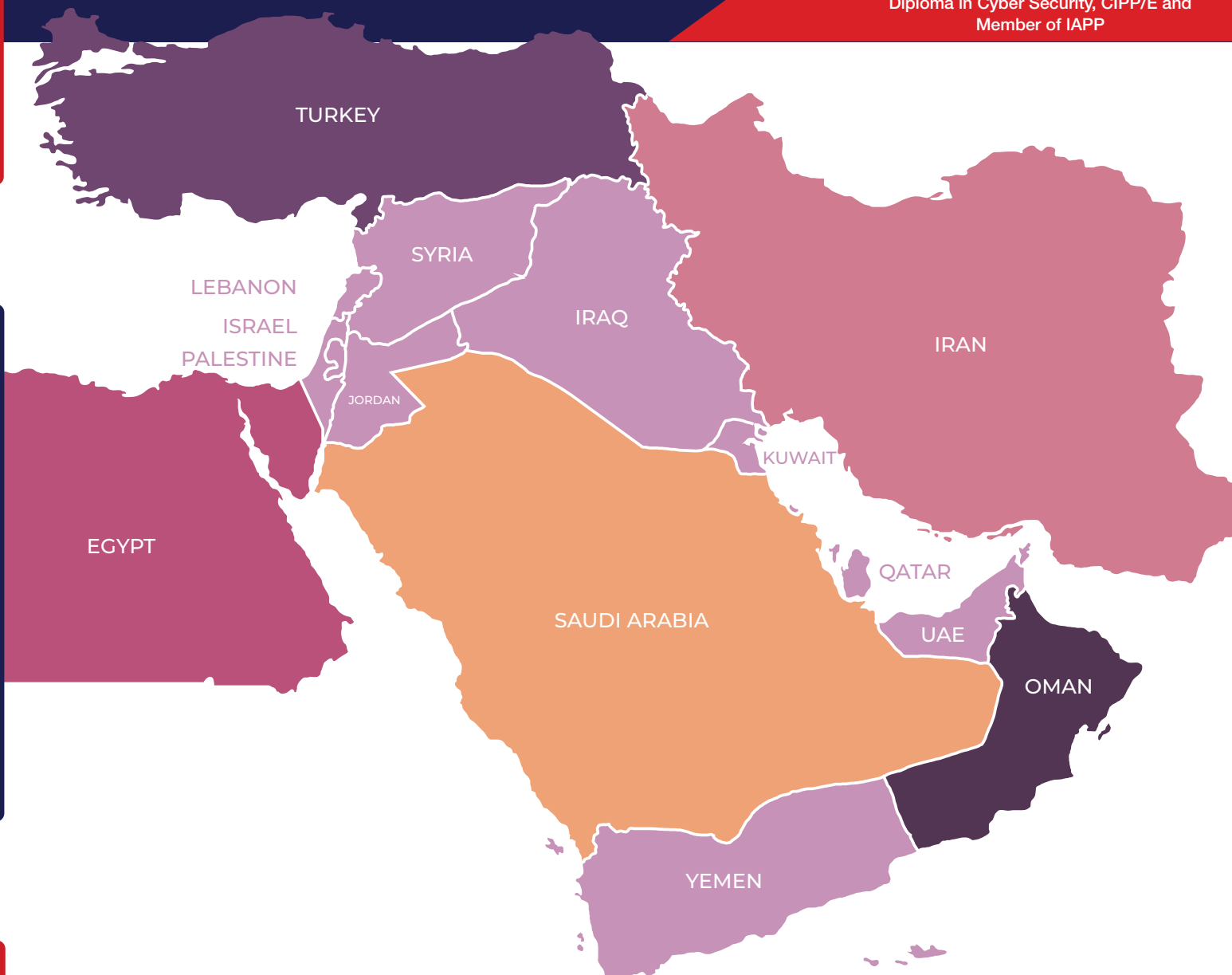
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GCC Regulatory Update



By **CS Raghwendra kumar verma**
A Law graduate, Company Secretary,
Diploma in Cyber Security, CIPP/E and
Member of IAPP



On 12 December 2022, the UAE Government issued Cabinet Resolution No.111 of 2022 on the regulation of Virtual Assets and Service Providers (the **VA Resolution**, published in issue no.741 of the UAE Federal Gazette dated 15 December 2022) which comes into force on 14 January 2023 (30 days after publication). The main aim of the VA Resolution is to protect consumers, enhance the UAE regulatory framework applicable to the virtual asset sector, to regulate virtual asset activities and related service providers, and to ensure that virtual asset service providers (**VASPs**) are within the scope of the UAE AML legislation.

We set out below some of the main highlights of the VA Resolution, pending the publication of the English version.

Scope of application

The VA Resolution applies throughout the UAE, with the exception of the financial free zones (**FFZs**). It applies to companies operating in free zones, thereby bringing companies regulated by the Virtual Asset Regulatory Authority (**VARA**) in Dubai within the remit of the VA Resolution.

Certain activities which are regulated by the Central Bank of the UAE (including dealing with crypto payment tokens and stored value tokens) and the Securities and Commodities Authority (**SCA**) (including dealing with crypto securities and commodities contracts) are also excluded from scope of the VA Resolution.



What are the activities which can be licensed under the VA Resolution?

The **VA** Resolution sets out a number of activities which fall within its regulatory scope and would require licensing. These include (among others):

- Operating a crypto exchange;
- Operating a crypto brokerage; and
- Holding and controlling crypto tokens.

Carrying on any of the specified regulated activities in the UAE (excluding in the FFZs) as provided for under the **VA** Resolution would require the necessary license from the SCA or from a “local licensing authority”. A “local licensing authority” is broadly defined as the “local authority competent to regulate virtual assets in an Emirate”. We read this to include the **VARA**.

Interestingly, the VA Resolution includes an express prohibition preventing any person from dealing with a **VASP** that is not duly licensed by the competent UAE regulator. It is not clear at this point how this prohibition might be enforced, and what the sanctions for breach may be.

Who will administer the VA Resolution?

The **SCA** is designated as the administering authority under the VA Resolution. As such, the **SCA** has broad supervisory and enforcement powers to ensure compliance with the VA Resolution, and to help further the **VA** Resolution’s aim of protecting consumers.

The VA Resolution grants the **SCA** express powers to supervise and monitor **VASPs** that are licensed by the local licensing authorities. Under the **VA** Resolution, the **SCA** may delegate any of its regulatory powers to a local licensing authority such as the **VARA**, and to **VASPs** themselves. However, it is unclear at this stage exactly how this would work in practice.

Is there a timeframe for compliance with the VA Resolution?


VASPs which fall within the scope of the VA Resolution have three months from its entry into force to comply. We expect the SCA to issue implementing regulations in coordination with the local licensing authorities in due course. These additional regulations should help to provide further clarity on aspects of the VA Resolution that are currently not spelled out.

For more information, please refer to our website:

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

Unemployment Insurance scheme

The Unemployment Insurance scheme is a form of insurance/social security that provides Emiratis and residents working in the federal and private sectors, financial support if they lose their jobs, as a result of termination by their employers. It aims to ensure continued decent living for the unemployed and achieve a competitive knowledge economy by attracting and retaining best international talent.



What is the 'Unemployment Insurance scheme'?

The Unemployment Insurance scheme is a form of insurance/social security that provides Emiratis and residents working in the federal and private sectors, financial support if they lose their jobs, as a result of termination by their employers.

The financial support will be given in exchange of a monthly insurance premium paid by the worker during his employment.

Scope of the scheme

The scheme applies to all workers in the private and federal sector except:

- Investors, business owners who own and manage their business themselves domestic workers.
- Employees on a temporary basis.
- Juveniles under the age of 18.
- Retirees who receive pension and have joined a new employer.

Cost of subscription

- 1 Workers with a basic salary of **AED 16,000 or less will need to pay a monthly insurance premium of AED 5, i.e. AED 60 annually.** The compensation for this category must not exceed a monthly amount of AED 10,000.
- 2 Those with a basic salary exceeding **AED 16,000 will need to pay AED 10 per month, i.e. AED 120 annually.** The compensation for this category must not exceed AED 20,000 monthly.


The worker may choose to pay the premium on a monthly, quarterly, half-yearly or on an annual basis.

The insured worker may, in coordination with the insurance company, subscribe to additional benefits in addition to the above basic package.

The value of the insurance policy is subject to VAT.

Channels for subscribing

Workers may subscribe to the scheme via ILOE Insurance Pool website and its app and any other channel which MoHRE may announce.

- 
- Insurance Pool's website (www.iloe.ae) & its smart application
 - Bank ATM's & Kiosk machines
 - Business service centres
 - Money exchange companies
 - Du and Etisalat
 - SMS
 - Other channels that MoHRE specifies with the service provider (insurance company)

Entities that provide insurance policy

Dubai Insurance Company is the representative of the insurance pool, which consists of 9 national insurance companies:

- Dubai Insurance Company
- Abu Dhabi National Insurance Company
- Al Ain Ahlia Insurance Company
- Emirates Insurance Company
- National General Insurance Company
- Orient Insurance
- Abu Dhabi National Takaful Company
- Oman Insurance Company
- Orient UNB Takaful Company

Federal government and private sector employees must subscribe to the scheme from 1 January 2023.

Related links:

- How to subscribe to Unemployment Insurance scheme (PDF).

Source: [file:///C:/Users/marketingcoordinator/Downloads/How%20to%20subscribe%20to%20Unemployment%20Insurance%20Scheme%20\(1\).pdf](file:///C:/Users/marketingcoordinator/Downloads/How%20to%20subscribe%20to%20Unemployment%20Insurance%20Scheme%20(1).pdf)

Filing for a compensation claim

The worker must submit the claim within 30 days from the date of his/her unemployment. The insurance company has two weeks, from receiving the claim, to transfer the compensation to the insured's account.

The insurance providers must process the insurance claims in accordance with the terms and conditions of the insurance policy and the applicable legislations of the **Central Bank of the UAE**.

Compensation will be paid from the date he/she loses the job and will be paid for 3 months or until he/she finds a job, whichever is earlier.

MoHRE will report any breach to the terms and conditions of the insurance policy by the insurance companies.

With respect to the employees of the federal government, **Federal Authority for Government Human Resources** will implement the mechanism of the 'Unemployment Insurance Scheme' in coordination with **Ministry of Finance**.



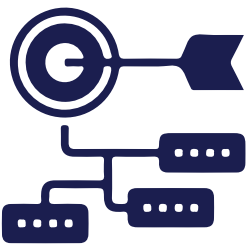
Eligibility

To be eligible for the compensation, the worker must have been paying the monthly premium for at least 12 consecutive months.

Suspension of the compensation

The insured worker will lose his/her eligibility for compensation if any of the following situations occur:

- He/she was dismissed from work for disciplinary reasons under the UAE's Labour Law in the private sector (Federal Decree Law No. 33 of 2021 Regarding the Regulation of Employment Relationship and its amendments) and the Human Resources Law in the federal government, in addition to any applicable legislations.
- There has been fraud or deceit involved in his/her claim.
- The establishment where he/she works is fictitious.



Objectives of the scheme

The insurance scheme aims to:

- Provide the insured with income for a limited period of time during his/her unemployment.
- Enhance the competitiveness of Emiratis in the labour market.
- Provide social protection to ensure continued decent living for the unemployed.
- Achieve a competitive knowledge economy by attracting and retaining best international talent.

Regulations governing the ‘Unemployment Insurance Scheme’

- Federal Decree Law No. 13 of 2022 Concerning Unemployment Insurance Scheme.

Source: <file:///C:/Users/marketingcoordinator/Downloads/Federal%20DecreeLaw%20No%2013%20of%202022%20Concerning%20Unemployment%20Insurance%20Scheme.pdf>

- Cabinet Resolution No. 97 of 2022 Concerning the Procedures and Controls for Implementing Unemployment Insurance Scheme.

<file:///C:/Users/marketingcoordinator/Downloads/Cabinet%20Resolution%20No97%20of%202022%20Concerning%20the%20Procedures%20and%20Controls%20for%20Implementing%20Unemployment.pdf>

Source: <https://u.ae/en/information-and-services/jobs/unemployment-insurance-scheme>



MINISTERIAL RESOLUTION NO.(279) OF 2022

MONITORING MECHANISMS OF EMIRATISATION RATES IN THE PRIVATE SECTOR & CONTRIBUTIONS IMPOSED ON NON-COMPLIANT ESTABLISHMENTS

The Minister of Human Resources & Emiratisation

Having perused:

- Federal Law No.(1) of 1972 on the competencies of the Ministries and Powers of the Ministers and amendments thereof,
- Federal Decree-Law No. (33) of 2021 concerning Regulation of Labor Relations and its Executive Regulations
- Cabinet Resolution No. (21) of 2020 regarding Service Fees & Fines in the Ministry of Human Resources and Emiratisation
- Cabinet Resolution No. (1/7m) of 2021 concerning initiatives and programs for Emirati Cadres Competitiveness Council “Nafis”
- Cabinet Resolution No. (19/5m) of 2022 amending some provisions of Cabinet Resolution No. (1/7m) of 2021 concerning initiatives and programs for Emirati Cadres Competitiveness Council “Nafis”
- Cabinet Resolution No. (18) of 2022 concerning the Classification Of Private Sector Establishments and the amendment of the service fees of the Ministry of Human Resources and Emiratisation,
- Cabinet Resolution No. (37) of 2022 amending some provisions of Cabinet Resolution No. (21) of 2020 concerning Service Fees & Fines in the Ministry of Human Resources
- Ministerial Resolution No. (45) of 2022 concerning the formation of the Grievance Committee against decisions issued by the Ministry of Human Resources and Emiratisation



Has Resolved:**Article (1): Implementation of Cabinet Resolution No.(19/5m) of 2022**

In implementation of the provisions of Cabinet Resolution No.(19/ 5m) of 2022 referred to, the following controls and procedures shall be implemented in respect of increasing the Emiratisation rate in private sector establishments, and contributions imposed on non-compliant establishments.

Article (2): Current Emiratisation Rates & Calculation Mechanisms

1. Establishments registered with the Ministry employing more than 50 workers, shall increase their current Emiratisation rate from high-skilled jobs by 2 percent annually gradually raising the said rate to 10 percent by 2026.
2. The prescribed Emiratisation percentage shall be calculated based on the total number of UAE nationals working in the establishment in relation to the total number of skilled workers, provided that at least one citizen shall be employed against every 50 skilled workers or part whereof, for each year of implementation, as follows:

Number of Skilled Workers in Establishments Employing More Than 50 Workers	Minimum Employment Rate of UAE Nationals
0 to 50 skilled workers	One Citizen
51 to 100 skilled workers	Two Citizens
101 to 150 skilled workers	Three Citizens
More than 151 skilled workers	One citizen for every 50 skilled workers or part whereof

3. The targeted percentage of Emiratisation in establishments shall increase gradually by 2 percent as of 2023 until achieving the desired rate of 10 percent by 2026 in accordance with Clause (2) of this Article.
4. Emiratisation percentage shall be calculated in accordance with the provisions of this resolution based on the number of work permits registered in the Ministry's approved systems issued for UAE nationals, as per the following requirements:
 - a. The UAE national must possess a valid work permit.
 - b. The UAE national wage shall be paid through the Wages Protection System or any other system approved by the competent authorities in the country to ensure compliance with the payment of wages.
 - c. The UAE national must be registered with one of the approved pension funds in the country.
 - d. The relationship between the UAE national and the establishment shall be a contractual relationship, satisfying all the terms and conditions of Labor Relations Regulation Law, its executive regulations and all decisions and orders issued in implementation thereof.

Article (3): Collection Mechanisms of Assessed Contribution from Non-Compliant Establishments

1. Non-compliant establishments with the stipulated Emiratisation rates contained in Article (2) hereinabove shall pay Dh6,000 monthly starting January 2023, for every citizen who has not been employed in accordance with Cabinet Resolution No.(19/ 5m) of 2022 referred to. The amount of the monthly contribution shall increase progressively by Dh1,000 each year.
2. The establishment shall be considered non-compliant if the required number of employed citizens is not maintained until the following year. The establishment shall be under obligation to pay the assessed contribution unless the Emiratisation percentage and the required numbers of employed citizens are re-achieved within two months from the date of its decline.
3. The contribution shall be due at the beginning of the following year for the number of citizens required to be employed to achieve the required Emiratisation rates in accordance with the above-mentioned criteria. The total amount of the contribution for the year in which the required Emiratisation percentage was not achieved shall be paid annually and in one payment.
4. If the establishment fails to pay the assessed contribution referred to in this Article, the following actions shall be taken:

	Deadline	Action
1.	On the due date	The establishment shall be placed under e-follow-up to ensure its compliance with the payment of assessed contributions.
2.	The day following the due date	MOHRE may suspend the issuance and renewal of work permits for the establishment, and the employer will be advised of the reason for the suspension.
3.	The third, tenth, and the seventeenth day after due date	MOHRE shall send notices and reminders to the non-compliant establishment prompting it to recruit citizens and pay the assessed contributions.
4.	Two months after the due date	While continuing to suspend the issuance and renewal of work permits for the violating establishment, MOHRE shall suspend issuing and renewing work permits for all sole establishments or companies owned exclusively by the owner of the violating establishment, taking into consideration the unity of partners.
5.	If the establishment fails to abide by the required Emiratisation rates for two consecutive years	The establishment shall be reclassified and downgraded to Category (3) according to the applicable criteria of classification approved by the Ministry.
6.	If the establishment commits any fraud or provides incorrect data, documents or information	Fines stipulated in Cabinet Resolution No. (21) of 2020 and its amendments shall be imposed.

Article (4): Grievances

The establishment may submit an appeal to the Grievance Committee in the Ministry against any issued decisions, penalties or measures in respect of implementation of this decision in accordance with Ministerial Resolution No. (45) of 2022 referred to.

Article (4): Follow-Up & Periodic Evaluation

The establishment may submit an appeal to the Grievance Committee in the Ministry against any issued decisions, penalties or measures in respect of implementation of this decision in accordance with Ministerial Resolution No. (45) of 2022 referred to.

Source: <https://www.mohre.gov.ae/en/laws-and-regulations/resolutions-and-circulars.aspx>



TAX RESIDENCE

– a snapshot



By **CS Ramchander Tumuluru**, Business Advisor, Dubai, Member of Research & Publications Committee of ICSI ME, ex CFO of a European Company in Brussels

Introduction

On 9 September 2022, the UAE Cabinet of Ministers issued Decision No. 85 of for 2022, defining and laying out a criteria as to when an individual or a legal entity shall be considered a Tax Resident of the UAE for the purposes of any UAE tax law or Double Tax Treaty. The effective date of the new rules is 1 March 2023.

The new Tax Resident definition now is in line with internationally recognized standards and provides clarity to individuals and legal entities in respect of their UAE tax residency position. This will facilitate the application of these treaties and the issuance of tax residence certificates under bilateral tax agreements the UAE has entered into with other territories which make reference to the domestic laws of the UAE for determining whether a person is a resident of the UAE for purposes of the respective treaty.



**TAX
LAW**

Tax Resident Defined

A natural person will be UAE Tax Resident if the individual

- has his usual or primary place of residence and his centre of financial and personal interests in the UAE
- was physically present in the UAE for a period of 183 days or more during a consecutive 12-month period;
- was physically present in the UAE for a period of 90 days or more in a consecutive 12-month period and the individual is a UAE national, holds a valid residence permit in the UAE or holds the nationality of any GCC Member State, where:

- he or she has a permanent place of residence in the UAE; or
- he or she carries on an employment or a business in the UAE.

A. juridical person is considered to be a Tax Resident of the UAE if:

- it is incorporated or otherwise formed or recognised in the UAE; or
- it is otherwise considered a Tax Resident of the UAE under the applicable legislation in the UAE.

Juridical person generally refers to an entity established or otherwise recognised under the laws and regulations of the UAE, or under the laws of a foreign jurisdiction, that has a legal personality separate from its founders, owners and directors. Examples of UAE juridical persons include a limited liability company, a foundation, a public or private joint stock company, and other entity forms that have separate legal personality under the applicable UAE mainland legislation or the regulations of a free zone.

UAE branches of a domestic or a foreign juridical person are an extension of their “parent” or “head office” and are not considered separate juridical persons. A branch of a foreign juridical person registered in the UAE would therefore generally not be considered a Tax Resident of the UAE.

Implications of Tax Residence

Since there is no personal income tax on employment or on other individual income - introduction of the new UAE tax residency criteria for individuals does not mean individuals will be subject to personal income tax.

UAE branches of a domestic or a foreign juridical person are an extension of their “parent” or “head office” and are not considered separate juridical persons. A branch of a foreign juridical person registered in the UAE would therefore generally not be considered a Tax Resident of the UAE.

Juridical persons which are considered to be UAE Tax Resident may be liable to Corporate Tax in the UAE under the Corporate Tax Law.

The Cabinet Decision refers to the “applicable Tax Law” (the Corporate Tax Law) to determine whether a foreign juridical person is Tax Resident. For any other person, the UAE tax residency requirements are set out in Cabinet of Ministers Decision No. 85 for 2022.

The United Arab Emirates does not provide for a minimum stay per year in the country in order to maintain Tax Residency. It provides for not leaving the country for more than 180 days.

Tax Residency Certificate

In order to benefit from the double taxation agreements in the UAE, companies or individuals must have a Tax Domicile Certificate (TDC), also known as a Tax Residency Certificate (TRC). The TRC is a certificate issued for eligible government entities, companies and individuals to take advantage of agreements of double taxation avoidance on income to which the UAE is a signatory.

In the United Arab Emirates, the Tax Residency Certificates are issued by the Ministry of Finance and are valid for one year.

Public and private companies, investment firms, air transport firms and other companies operating in the UAE, as well as other types of UAE residents, may benefit from Avoidance of Double Taxation Agreements (“DTA”). An updated list of DTAs can be found on the Ministry of Finance’s website . In order to benefit from a DTA, a person generally requires to provide a TRC to prove that the person is resident in another country and subject to tax in that country.

<https://www.mof.gov.ae/en/strategicpartnerships/doubletaxationagreements/pages/doubletaxation.aspx>

Eligibility Criteria

(i) Individuals: must have been a resident of the UAE for at least 180 days. Also an annual lease agreement officially documented by the competent authorities, such as EJARI in Dubai, municipalities in other Emirates and free zone authorities must be attached to the application.

(ii) Legal persons must have been established for a period of at least one year. Financial accounts must be audited or prepared by an accredited audit firm and attached with other required documents to the application. The report must be certified and stamped by the audit firm. The audited financial report to be attached to the application must cover the year for which the certificate is requested. If the certificate is requested for the present year, the audit report must be covering the past year.

Offshore companies are not allowed to apply for the service because they are not listed in the Double Taxation Avoidance agreements.

Dual residence

In general, It is possible to be tax resident in more than one country / two countries at the same time. The respective DTA may provide guidance e.g. based on permanent home, nationality etc. on which is the country taking precedence as else a person may be taxed in both, With no personal income tax in UAE, this could have huge benefits. And needs to be studied with professional advice by those seeking to benefit by it.

E- residency

it is interesting to know the concept of e-residence. Estonia is the first country to offer e-Residency (virtual residency) since 2014 , a government-issued digital identity and status that provides access to Estonia’s transparent business environment: a new digital nation for the world. E-resident entrepreneurs from all over the world can start an EU-based company and manage business from anywhere, entirely online. E-residency itself does not have an effect on income taxation — neither does it establish an income tax liability in Estonia nor does it relieve from income taxation in the resident's home country. Nor does it confer citizenship.

- E-residency is not a visa giving physical rights to live which may differ.
- Estonia has more than 90000 e residents and it is for 5 years.
- Dubai has a virtual commercial city.

Banks and tax – residency

In general, regulation requires financial institutions including banks to **establish the tax residency of all account holders**. Identify any possible connections for tax purposes with any other countries and report the financial account information of customers to the relevant tax authorities.

Tax Identification Numbers (TIN)

UAE does not issue Tax Identification Numbers (“TINs”). Therefore, TINs are not automatically issued for Individuals and Entities.

TINs are sometimes the same as National ID numbers or in India for instance the PAN numbers (Permanent Account Numbers which are also required to be linked to Aadhar the national ID number).

The United Arab Emirates issues Tax Residency Certificates (“TRCs”) (also known as Tax Domicile Certificates) upon application of an eligible individual or entity based on the applicable Double Taxation Treaty. The TRCs are valid for one year and do not carry a TIN. A VAT number is not a TIN.

CRS Reporting

UAE does apply CRS (Common Reporting Standard) and (AEOI) Automated Exchange of Information implying:

(1) Passive income on bank accounts of tax residents is not reported to any other country, as UAE Banks in the United Arab Emirates do not report bank accounts of UAE Tax Residents to their own Ministry of Finance, which consequently does not exchange any data related to bank accounts of foreign UAE Tax Residents and their UAE companies to the home country of which a foreign UAE Tax Resident is a permanent resident.

(2) means that passive income on bank accounts of non-tax residents are reported to the fiscal authorities of the country of tax residence of the non-tax resident bank account holder or of the non-tax resident beneficial owner in case where companies are bank account holders.



UAE Tax Residency – Substance etc.

The UAE does not require a foreign UAE Tax Resident to maintain owned or rented residential property for living ('dwelling house' as used in Indian tax law) in order to maintain Tax Residency. Instead, foreign UAE Tax Residents may stay in hotels; or service apartments for long-term guests. But one should note:

Tax authorities of the home country (country of permanent residence, if not UAE) of a foreign UAE Tax Resident may require the proof of owned or rented residential property. Maintaining a residential property in the UAE, either owned or rented, is preferred.

(a) When a foreign UAE Tax Resident does not permanently (mainly) live in the UAE, it is important that the UAE Company maintains a proper permanent establishment (office) with resident director(s) and management. Substance requirements is to be met. The UAE issued economic substance regulations) in April 2019, amended by Cabinet Resolution No.57 of 2020 in August 2020, which introduced a requirement for UAE entities to maintain an adequate "economic presence" in the UAE.

(b) Passive income on bank accounts of tax residents is not reported to any other country, as UAE Banks in the United Arab Emirates do not report bank accounts of UAE Tax Residents to their own Ministry of Finance, which consequently does not exchange any data related to bank accounts of foreign UAE Tax Residents and their UAE companies to the home country of which a foreign UAE Tax Resident is a permanent resident.

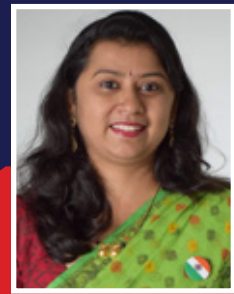
With suitable professional advice, the above can be carefully planned as Dubai and UAE are great destination for business and commercial purposes even considering the advent of corporate taxation.

Role of Company Secretaries

Being professionals and experts in legal compliance, governance and company formation, members can advise their clients after taking the inputs of Chartered Accountants on the tax implications in structuring the business.



INHERITANCE LAW & WILLS



By **CS Shwetha Nadig** Founder Director
Raksh Management Consultancies, Dubai

As we are welcoming 2023 with new hopes and opportunities, the UAE government also aims to modernize its legal system and develop its legislative eco system by implementing significant amendments to the family legislations this year. The amendments will definitely help in achieving, strengthening the country's position as a destination for easy & happy living, family stability and demographic diversity.

The amendments to inheritance law will be effective from 1st February 2023, Federal Decree Law No. 41 of 2022, on Civil Personal Status for non-Muslims ("Civil Family Law").

The provisions of the Decree-Law is applicable only to non-Muslim foreigners residing in the country unless he/she adheres to the application of his/her country's law.

INHERITANCE LAW

However, for Muslim nationals, foreigners and expats, Sharia Law shall apply. The Sharia Law will have its jurisprudence over the sharing on any Muslim's property. It is pertinent to note here that even the Muslims can make a WILL under Sharia Law called "Wasiyat".

The New Federal – Decree Law provisions regulate;

- Marriage conditions and the procedures of contracting and documenting the marriage before the competent courts.
- The Decree-Law specifies the procedures of divorce that can be initiated jointly or unilaterally. It organises the procedures for settling the financial claims after divorce.
- The law also addresses the arrangement of shared child custody of children under the age of 18.
- Moreover, the Decree-Law organises the procedures for inheritance and testaments (WILLS) and proofs of paternity.

Now, let us try to understand why registering a WILL is recommended and considered crucial for Non-Muslim expats in UAE through the following Q&A:



What happens if a Non-Muslim expats die Intestate (without making a WILL) in UAE?

Currently, the Federal Personal Status Law No. 28 of 2005 determines the rights of all parties. It promulgates the personal status law and its amendment and the federal law number 5 of 1985 concerning the civil transaction law and its amendments apply.

As per new law No. 41 to be implemented from February 2023, the provisions related to inheritance for Non-Muslims, changes the traditional distribution method. Now, there will be equal distribution of estate between male and female. That means, the surviving spouse is automatically entitled to half of the deceased's estate. The other half of the deceased's estate shall be passed on to surviving children equally regardless of their gender.

What happens if a Non-Muslim expats die intestate in UAE and have no children?

In case of no children to the deceased person, half of such inheritance shall be transferred to one the parents in case the other one is not present and the other half shall be granted to the siblings.

What happens if a Non-Muslim expats die intestate in UAE and have no surviving spouse?

In such case, children, parents and siblings shall inherit equally without gender discrimination.

What happens if a Non-Muslim expats die intestate in UAE and have no surviving children, spouse and parents?

In case of absence of spouse, children and parents, then the inheritance shall be equally distributed between the siblings without distinction between males and females.

Does this new distribution of estate applicable to real – estate property too?

The answer to this question is still in doubt as there is no clarification from the government on this yet. If there are no changes made in this regard, then the current inheritance law from principal source states as follows:

The properties will still be managed and divided according to UAE laws. Thus it is important to have a good planned WILL if you own a property in Dubai.

What are the other effects or adverse position can the survivors of a deceased intestate can undergo in UAE?

- A. The bank accounts will get frozen immediately, both in case of individual account or joint account.
- B. The investments in any form shall be frozen immediately upon the death of the deceased intestate.
- C. If any of your assets are under legal dispute or disputed among family members, you may have to face prolonged litigation process.
- D. And it costs your time, money and patience.

What are the ways of registering a WILL in UAE?

There are mainly 4 ways to register a WILL in UAE:

- a. Dubai International Financial Centre (DIFC) Wills Service
- b. Dubai Courts (Notary Public Service)
- c. Abu Dhabi Judicial Department (Notary Public Service)
- d. Abu Dhabi Global Market (ADGM Courts' Notary Public and WILLS Office)

I am a business owner and looking for WILL registration in DIFC? Is there any option for writing WILL for a business man?

Of course, DIFC offers 5 types of WILL option to the testator. And the WILL shall be in English and assets of other countries can be included in it.

There are different types of WILL available through the DIFC Courts WILLS Service:

1. A Full WILL, which encompasses all assets and guardianship provisions.
2. A Property WILL, which can apply for up to five properties in the UAE.
3. A Guardianship WILL, which appoints both interim and permanent guardians for children.
4. A Financial Assets WILL, which applies specifically to bank and brokerage accounts; and
5. A Business Owners WILL, which applies to free zone or UAE onshore companies.

Who can use ADGM Courts' WILLS service?

The wills service is available to non-Muslim employees of ADGM and ADGM registered entities, aged 21 years or more.

Can I make WILL only in English in ADJD (Abu Dhabi Judicial Department) or Dubai Courts as well?

No. ADJD and Dubai courts requires the document to be translated to Arabic, translated by a legal translation office certified by the Ministry of Justice. Thus it can be bilingual or only in Arabic.

I have registered WILL in the year before the new law of 2023 comes into effect? Is my WILL still valid according to the new law?

It is reassured for those who have registered Will before, that the terms of the WILL shall be upheld in relation to all UAE- based assets. However, the implementing regulations are yet to be released.

How the WILLS are implemented in UAE?

A WILL shall be implemented pursuant to:

A written order issued by the Competent Court, where the WILL is registered on the Register.

Can you include assets or bank accounts owned in countries other than UAE?

Yes, previously only DIFC WILL had this advantage now you can cover assets all over the world in you WILL registered in Dubai Court or ADJD too. But, you need to provide all the necessary document of the property or bank accounts, and sometimes the Court may ask you all the documents to be officially translated to Arabic and notarized, to attach with the registered WILL.

Should the WILL be specific WILL only?

No, it is completely the choice of the Testator. The WILL can be general or specific WILL. But remember, anything you mention specific you need to submit proper title deeds or any other kind of relevant document and sometimes the Court may ask you all the documents to be officially translated to Arabic and notarized, to attach with the registered WILL.

INHERITANCE LAW & WILLS

What is Single WILL and mirror WILL?

A single WILL is one WILL meaning one Testator writes the WILL. This is suitable for a person who is not married or married but no assets in the name of the spouse.

A mirror WILL is two single WILLS, written by married couple. This is used in case of joint property holding or joint accounts or any joint benefits expected. In this type of WILL you can also cover, anything under individual names too.

For the purpose of cost of registration, Mirror Wills are counted as two different single Wills.



BOARD COMPOSITION

Diversity and Inclusion



By **CS Raghendra Kumar Verma**
A Law graduate, Company Secretary,
Diploma in Cyber Security, CIPP/E and
Member of IAPP



Board composition refers to the makeup of the members of a board of directors for a corporation or organization. This includes factors such as the number of members, their backgrounds, and their areas of expertise.

Diversity in board composition refers to having a variety of perspectives and experiences represented on the board. This can include diversity in terms of race, gender, age, sexual orientation, and other factors. A diverse board can bring different ideas and approaches to decision making and can also help a company to better understand and connect with its diverse customer base.

Board composition and diversity are critical elements in the overall success and effectiveness of a company. The composition of a company's board of directors is crucial in setting the direction and making important strategic decisions for the organization. Furthermore, diversity in board composition has been shown to bring a wide range of perspectives and experiences, leading to better decision-making and improved reputation and relationships with stakeholders.

Board composition refers to the make-up of a company's board of directors, including the number of members, their qualifications, and the balance of power among them. The board of directors is responsible for overseeing the management of the company, making important strategic decisions, and ensuring that the company is being run in the best interests of its shareholders. Therefore, it is essential that the board of directors is composed of individuals who have the necessary skills, experience, and expertise to effectively discharge their duties and responsibilities. This includes individuals with a diverse set of backgrounds, such as different industries, functional areas, and cultures. Additionally, a balance of power among board members is also important, as it ensures that all voices are heard and that no one individual or group has too much control over the decision-making process.

BOARD COMPOSITION - Diversity and inclusion

The optimal size and composition of a board of directors is determined by a company's individual needs. Given the uniqueness of each board, board structures can be defined on the various parameter such as complexity of the issues faced by the board, independence of Board, effectiveness of decision making process, strong committee structure etc.

While deciding Optimal Board Composition, following factor must be considered

- Board Size
- Board Structure
- Board Skill Mix
- Board Independence
- Board Diversity

For supporting Board in discharging its duty effectively and efficiently. There should be committee of Board. Board committees are groups of directors who oversee specific board functions.

The majority of boards have

- Audit Committee
- Compensation Committee

Additional committees within a board may be

- Finance Committee
- Risk Management Committee
- Governance Committee
- Special purpose committees (cybersecurity, crisis management, etc.)

Diversity in board composition refers to the inclusion of individuals from different backgrounds, such as gender, race, ethnicity, and age, as well as different perspectives and experiences. A diverse board can bring a wider range of ideas and perspectives to decision making, which can lead to better decision making, and can also help to improve a company's reputation and relationship with stakeholders. Furthermore, a diverse board can help to ensure that the company is making decisions that are in the best interests of all of its stakeholders, including customers, employees, and shareholders.

Having a diverse board can also help to improve a company's reputation and relationship with stakeholders. For example, if a company has a diverse board of directors, it can help to demonstrate that the company values diversity and inclusion. This can be important for building trust and credibility with customers, employees, and shareholders, as well as with other stakeholders, such as the media and the broader public. Furthermore, a diverse board can also help to ensure that the company is responsive to the needs and concerns of a diverse customer base, which can be particularly important in today's globalized business environment.

Moreover, a diverse board can lead to a more effective communication, as members from different background can help to bridge language and cultural differences. This can be especially important for companies that operate in multiple countries or regions, where cultural differences can create barriers to effective communication and decision-making.

However, despite the many benefits of having a diverse board of directors, there are still many companies that lack diversity on their boards. According to a 2020 report by McKinsey & Company, women hold only 15% of board seats globally, and ethnic and racial minorities are underrepresented in most countries. This lack of diversity is not only a missed opportunity for companies, but it also has negative implications for society as a whole.

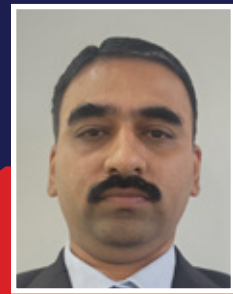
BOARD COMPOSITION - Diversity and inclusion

Research has found that diversity on boards can lead to improved financial performance. For example, a study by McKinsey & Company found that companies with the most diverse boards had a 35% higher return on equity and 34% higher return on invested capital compared to companies with the least diverse boards. Another study by Credit Suisse found that companies with at least one woman on their board outperformed those with no women on their board by 26% over a six-year period. Furthermore, a study by Peterson Institute for International Economics found that companies with more women on their boards had higher operating margins and return on assets.

Improving diversity can enhance board performance therefore it is need of our that companies should improve gender, racial, and ethnic diversity on their corporate boards. Board should be comprised of demographically diverse members as well as cognitively diverse members who have unique views and perspectives as well as professional backgrounds, skills, and experiences in areas that are needed to meet the company's strategic and operating needs. Culture is most important aspect as to allow free and fearless discussion so that diverse perspectives are welcomed in the boardroom, drawn out during deliberations, and incorporated into the decision-making process.



M&A AND IMPORTANCE OF CS



By CS **Anand Date**
Company Secretary

The glitz and glam of M&A is always fascinating and exciting with the complexities and the media publicity it gets. The M&A headlines are dominated by role played by the Investment Bankers, Lawyers, Big4 and the consulting firms.

As only large groups have the luxury of having an in-house M&A teams, most of the times, this work is done by finance & tax (for simplicity I've clubbed both functions as one team) and legal teams in correlation with the business.



The business teams always celebrate such deals and even the finance & tax and legal team get their share of praise (and raise). What is largely ignored is the role of an important professional – the company secretary (be it in-house or external).

What's M&A?

1. An M&A – mergers and acquisition, is much more than merger or acquisition. It could take any or any combination of the following corporate restructuring:
2. Acquiring strategic, controlling or entire stake in an entity (such target entity continues to exist and operate independently).
3. Acquiring entire or controlling stake in an entity and merger / full integration of such entity.
4. Divesting or sale of shares in an existing venture (partial or complete) involving demerger or asset transfer or sale of shares.
5. Onboarding a private equity or strategic investor.
6. Corporate restructuring.

Stages of an M&A

By and large any M&A process has 5 key phases and some of the phases could be repeated depending on deal complexity:

1. Identification and initial approach
2. Approvals and disclosures (non-regulatory)
3. Due diligence / detailed analysis
4. Discussions and finalisation
5. Transaction execution
6. Regulatory approvals and filings
7. Post transaction alignment / integration

The role of a CS in M&A can be categorised based on where the CS is placed – in-house CS (acquirer and target) or external CS.

I'm presenting role of each CS in a tabular form for easy understanding and comparison.

	In-house CS (Acquirer)	In-house CS (Target)	External CS
A. Identification and initial approach At this stage, the role of CS is generally limited.	Work with the business, finance & tax, M&A teams to prepare a good business proposal for the board agenda. The CS' understanding of the business, and financial matters and expertise in drafting aids in detailed and convincing proposal to the Board. After board approval: a. Record the exact decision in the minutes and also unambiguously communicate it to the relevant internal stakeholders. b. Evaluate and complete the regulatory disclosures mainly stock exchange filings.	The Target CS may have a reporting obligation to the Board and other stakeholders clarifying the target's position and/or involvement in the possible deal. This is to ensure that insider trading does not take place and adequate information as per listing regulation is put out in public.	If the acquirer or target does not have in-house CS, the external CS will perform this activity to extent formal board meetings are held.
B. Approvals and disclosures (non-regulatory) At this stage after the initial board approval, the CS identifies any non-regulatory approvals that may be required such as approval of JV partner or other shareholders (under the JV / shareholders' agreements), banks and financial institutions (loan documents).			
	The CS helps in identifying such approvals and also preparing required documents for this purpose.		The external CS may perform this function to the extent required by the entity.

M&A AND IMPORTANCE OF CS

	In-house CS (Acquirer)	In-house CS (Target)	External CS
C.	<p>Due diligence / detailed evaluation</p> <p>In this phase, the efficiency and performance of CS and years of carrying out unceremonious record keeping are tested where the entire corporate records are evaluated to determine completeness and correctness. The CS having kept all records, recorded all minutes in details, completed timely filings would help by clean report. Any shortcomings could highlight potential red flags and future penalties or additional expenses for corrections.</p>		
	<p>A CS is a custodian of corporate documents and a master of corporate and securities laws which give him/her an advantage to partake in the DD process. The areas for CS to contribute in DD are:</p> <p>i. Corporate records DD – checking legal existence with corporate regulators, statutory filings, appointment of directors, evolution of share capital and current shareholders, checking board and shareholders approvals for various corporate actions and relevant compliance with corporate laws, filings related to borrowing, encumbrances, appointment and remuneration of board members and CEOs.</p> <p>ii. Identifying corporate powers to perform the current transaction – this is an important aspect which a CS can determine by checking the constitution documents and regulatory approvals if the entity is authorised to sign-up for and fulfil its potential obligations.</p> <p>iii. Regulatory compliance DD – filings with stock exchanges, proper, fair and adequate disclosures of corporate events.</p> <p>iv. Regulatory actions – any actions taken by regulators, notices, penalties for non-compliances including identifying any potential liabilities for non-compliances.</p> <p>v. Corrections – identifying any non-compliances or irregularities which need to be rectified either pre or post acquisition</p>		<p>If the acquirer or target does not have in-house CS, the external CS will perform this activity in respect of the documents are maintained by him/her.</p> <p>The external CS can perform corporate DD in respect of corporate organisation and powers, constitution documents, board and shareholders approvals, regulatory filings, encumbrances, existence of regulatory proceedings.</p> <p>External CS can also supplement by pre-structuring health-check to ensure that there are no major non-compliances.</p>
D.	<p>Structuring, discussions and finalisation</p> <p>This is an important phase which involves structuring of the transaction, discussion with parties concerned and finalisation. The CS has important role to play in structuring.</p>		
	<p>The in-house CS of acquirer has important role in structuring discussions using his/her expertise by identifying simple and efficient options, advising on various corporate structures, required regulatory approvals like competition, foreign exchange, securities laws and costs and timelines.</p> <p>The post-transaction implications also need to be factored into to be prepared for in advance.</p>	<p>The target's CS may play a role in pre-deal restructuring.</p> <p>In case of competing offers or public offer for takeover, the CS has key role to play in advising the board and shareholders on such public / competing offers.</p>	<p>An External CS can perform same role as internal CS and with added advantage of having advised different clients on similar matters.</p>

M&A AND IMPORTANCE OF CS

	In-house CS (Acquirer)	In-house CS (Target)	External CS
E. Approvals and disclosures	After structuring and finalisation, the final approval is critical. At this stage the board/shareholders approval and timely regulatory disclosures are important.		
	<p>The in-house CS plays important role in compiling and preparing the detailed proposal for committee / board and shareholders approvals (notices, explanatory statements).</p> <p>Timely disclosures to stock exchanges, other regulators are important covering the requisite details to avoid regulatory actions.</p>		External CS advises on important aspects of regulatory approvals and disclosures.
F. Transaction execution	In this stage the definitive documents are prepared, executed and submitted for approvals.		
	<p>The in-house CS has a role in this stage. S/he coordinates with external advisors, law firms in preparing, reviewing and finalising the transaction documents (share purchase agreement, business purchase agreement, merger/demerger petitions, JV/shareholders agreements).</p> <p>In this phase, the CS helps in identifying correct disclosures, representations and warranties, drafting the board and committee structures, reserve matters, preparing shareholders' / creditors' consents.</p>		External CS can bring in the expertise by advising on critical pitfalls, nuances, views taken by regulators on particular clauses, expectations of regulators to facilitate smooth execution of the transactions
G. Disclosures and post transaction reporting	Post complete disclosures and filings with regulators are critical to avoid any possible fines and regulatory actions.		
	The CS prepares and files the required disclosures with stock exchange, forex laws, competition laws and other regulators.		<p>External CS advises on the required reporting and filings and also assists in liaison with regulators to timely complete them.</p> <p>The CS also helps with required certifications.</p>
H. Post transaction alignment / integration	This is the last but crucial stage which determines the success is the alignment and integration where the transaction is put to desired objective.		
	<p>The CS helps to take control of the transaction documents, regulatory approvals and filings to prepare the master records.</p> <p>In case of acquisition of shares, s/he works with the acquired entity to align the policies, processes of the CS team. S/he also takes board approvals for integration.</p> <p>The CS prepares the acquired entity to adopt the policies and processes of the acquiring entity.</p>		External CS facilitates the transition by supporting the transition.

Importance / repercussions:

The CS as a custodian of records, controller of regulatory approvals and disclosures and board's advisor on decision making has important functions to play.

If there are any lapses, non-disclosures / wrong disclosures, missed timelines, failure to obtain regulatory approvals, the consequences could be severe ranging from fines and penalties to whole transaction falling apart or long-winding disputes.

Let us look at few examples of such lapses and their outcome (please note that below are mere examples and not directly attributable to CS of these entities):

1. **May 2021 European Commission** imposed a fine of €7.5m on Sigma-Aldrich for providing misleading information during an acquisition notification process
2. **Canon Inc.** lost a court challenge against a 28 million-euro (\$29.4 million) European Union fine for taking over Toshiba Corp.'s medical systems unit before seeking merger approval.
3. **In July 2021, SEC** levied penalties of \$8 million on special purpose acquisition corporation Stable Road Acquisition Company, its sponsor SRC-NI, its CEO Brian Kabot, the SPAC's proposed merger target Momentus Inc., and Momentus's founder and former CEO Mikhail Kokorich for misleading claims about Momentus's technology and about national security risks associated with Kokorich.
4. **2017, Allergan** pays \$15 million penalty to SEC for disclosure failures during merger talks.
5. **In June 2022, Sebi** imposed a penalty of Rs 1 lakh on Bharti Infratel, now known as Indus Towers, for flouting rules pertaining to employee stock option schemes. Bharti Infratel's name was changed to Indus Towers in December 2020, following the merger of Bharti Infratel and Indus Towers.
6. **In 2013 the Competition Commission of India ("CCI")** imposed a penalty of INR 10 million (approximately USD 182,000) on Titan International, Inc., a tyre manufacturing company in the USA, for belatedly notifying its acquisition of the entire share capital of Titan Europe plc, based in the UK. The acquisition resulted in Titan International also indirectly acquiring Titan Europe's shareholding of 35.91% in Wheels India Limited, thereby triggering the merger control requirement under the Competition Act, 2002 ("Act") in India.

These could result in unexpected costs (legal and fines), bad publicity and reputation damage, impacting the outcome of the M&A process.

Summary:

The CS equipped with knowledge and expertise and compliance and corporate governance specialisation is in an excellent position to be an advisor of the board and torch bearer in compliance and avoiding regulatory punitive actions.

Disclaimer:

The views expressed are from personal experience and knowledge. The above views may be incomplete or lack few details or contain inaccuracies.



EXCISE TAX IN UAE

- a brief overview



By **CS Ramchander Tumuluru**, Business Advisor, Dubai, Member of Research & Publications Committee of ICSI ME, ex CFO of a European Company in Brussels

Introduction

Excise is a tax made by a government on some types of goods produced and used within their own country (Cambridge Dictionary). Excise is understood to be derived from the Dutch accijns, possibly originating from the Latin accensare, meaning "to tax".

An excise, or excise tax, is any duty on manufactured goods that is levied at the moment of manufacture rather than at sale. An excise is considered an indirect or hidden tax and the producer is expected to recover it from the end user and is typically a per unit tax, costing a specific amount for a volume or unit of the item whereas VAT is always an ad valorem tax and proportional to the price of the goods.

Excise Tax

Excise in UAE

Excise Tax was introduced in UAE on 1 October 2017 (Federal Law No 7) and is currently applied on:

- Tobacco and tobacco products
- Liquids used in electronic smoking devices and tools.
- Electronic smoking devices and tools.
- Carbonated drinks (note that this excludes sparkling water).
- Energy drinks.

EXCISE TAX IN UAE - a brief overview

Tobacco would include Chewing tobacco, Cigars, Cigarettes, Cigarette rag, Cigarillo, Expanded tobacco, Hand rolling tobacco, Herbal smoking products, Reconstituted tobacco sheets, Snuff and electrically heated cigarettes.

Excise Tax intends to reduce consumption of these commodities while also raising revenues for the government that can be spent on public services.

Excise Tax is currently applicable across the UAE on goods referred to as 'excise goods' at the following rates:

- 50% for carbonated drinks
- 100% for tobacco products
- 100% for energy drinks

As of 1 December 2019, the scope of Excise Goods was expanded to include sweetened drinks, which became subject to a rate of 50%, and electronic smoking devices and tools along with the liquids used within at a rate of 100%, as per Cabinet Decision No. 52 of 2019 on Excise Goods, Excise Tax Rates, and the Methods of Calculating the Excise Price.

Impact on Economy

In 5 years of implementation a quick snapshot of its impact (as at Sept 22) is :

- 375% growth in the number of registrants to 1,469 registrants.
- 901.75% in registered Excise Goods to 30,834 products registered

Apart from Government revenues, excise also has a positive impact on public health and environment due to the specific products it is applied on.



Registration

All businesses that import, produce or release excise goods from a designated zone must consider their registration requirements and compliance responsibilities related to filing and paying Excise Tax.

The Federal Decree-Law No. 7 of 2017 on Excise Tax stipulates that businesses/ persons that are engaged in any of the below activities must register for tax:

- Importing of excise goods;
- Production of excise goods;
- Releasing goods from an excise tax designated zone;
- Stockpilers *of excise goods, in certain cases; and
- Warehouse keepers, in certain cases.

* Stockpiler is a person or business that holds a stock of excise goods for business purposes and cannot prove that Excise Tax has been previously paid on these goods.

It is important to understand any potential obligations you or your business may have in respect of the UAE Excise Tax.

Excise Tax has no registration threshold , thus any person who is involved in any of the activities listed below must register and account for Excise Tax.

Registration is required by

- Manufacturers

Any UAE-based or overseas/international cigarette manufacturer that sells its products via importation into the UAE for either domestic sales or sales via UAE duty free outlets (airports and ports).

- Importers

Any officially licensed importer of record who purchases cigarettes in bulk from domestic or international manufacturers and undertakes to on-sell and distribute within the UAE mainland or UAE duty free markets

- Distributors / Supply Chain Agents/ Warehouse keepers

Any official distributor that will be the recipient of formally imported goods for sales in domestic market or sales via UAE duty free outlets (airports and ports).



Calculation of Excise Tax

UAE's Federal Tax Authority (FTA) has issued Federal Tax Authority Decision No. 1 of 2021 which highlights the Mechanism for Calculating the Average Retail Selling Price of Excise Goods in the Market. The following major points are covered :

- **Article 1** - Calculation of the Average Retail Selling Price in the Market
- **Article 2** - Excise Goods Not Intended for Retail Sale in the State

Deficient or Missing Goods in a Designated Zone

Quantitative reconciliations are key. In some products there may be waste or dust or natural loss such as evaporation- these need to be within established and aligned tolerance levels.

The UAE Federal Tax Authority (FTA) published a new Public Clarification (Ref. EXTP007) on June 20, 2022, outlining the procedures for notifying the FTA in the event that excisable goods are missing or destroyed inside a Designated Zone (DZ) and for applying for Excise Tax Relief, subject to satisfying certain requirements.

In relation to excisable commodities, The Public Clarification specifically addresses two categories of waste:

1. Wastage of excisable products that have previously been made available for consumption in the UAE (i.e. outside a DZ).

Products that were previously taxed but were later deemed to be waste will not be eligible for Excise Tax Relief. Examples comprise:

- * Goods that can't be sold or used for commercial purposes;
- * Products that must be repaired or expired before they can be sold legally;
- * Waste that occurs during production; or
- * Products that cannot be sold because there is not enough consumer demand.

2. Excessive use of excisable items inside the DZ.

When there is a quantity shortfall or deficit within the DZ, when goods are being transferred between DZs, or when the goods are being held in a suspension arrangement in accordance with GCC Common Customs Laws, excisable goods are considered to have left the DZ and are made available for free circulation.

A deficiency or shortage in quantity of excisable products will be an exception to the rule and not be regarded as being made available for consumption if the following criteria are met:

- * Within 30 days of realizing the shortage or deficiency in the stock, the warehouse manager notifies the FTA; the FTA accepts the reasonable reason for the shortage or deficiency.
- * When a production process has numerous steps and marketable goods are created at each one, each stage's deficit or shortage needs to be declared separately.

Reporting/ Returns

Excise Tax return has to be filed by the 15th of the end of the tax period and also Excise Tax liability paid: Form to be filed include :

- Excise Tax import declaration forms.
- Excise Tax production declaration forms.
- Excise Tax release from designated zone not requiring customs clearance declaration forms.
- Deductible Excise Tax declaration forms.

DigitaStamps

This was introduced as a control scheme requiring tobacco manufacturers and stakeholders to comply with enhanced standards for the importation and trading of tobacco in the UAE. DTS delivers unique pack marking and encoding to allow product trace-ability from the point of manufacturing through to the final Emirate of distribution, and to support enforcement activity targeting the reduction in illicit tobacco trading. The DTS scheme requires manufacturers to apply specific high security control markers (stamps) and codes to all packs, with the principle aim of the DTS scheme being:

-To enhance the FTA's ability to control and collect taxes on tobacco products sold in the UAE, following importation or local manufacture.

-To give the relevant authorities the ability to analyze and audit the supply chain in order to better identify the trade in illicit tobacco products.

-To meet the compliance standards laid down by the World Health Organization's Framework Convention on Tobacco Control (FCTC) through the enabling of tracking and traceability of compliant tobacco products.

Control Mechanism

The FTA has the power to conduct audits and impose penalties on those who are not compliant with their Excise Tax obligations.

FTA, a recent press statement (19 Oct 2022) reported, relies on contributed towards increasing tax compliance and raising the efficiency of inspections, using the most advanced digital technologies in monitoring and inspection processes to track smuggled products that have not met their tax requirements. The most prominent of these tools are the Digital Tax Stamps on tobacco and tobacco products.

Field visits (numbering as much as 45000 in 2022 H1 itself) and inspections have also helped strict implementation as well as penalties

Recent updates

The Federal Decree-Law No. 19 of 2022 on the Amendment of Some Provisions of the Federal Decree-Law No. 7 of 2017 on Excise Tax includes the following new amendments:

1. Persons importing excise goods for purposes other than conducting business will be excepted from tax registration, while remaining liable to pay the relevant excise tax on the import. Additional amendment to the same Article requires that application for exemption from tax registration shall be submitted prior to the import activity and not when the tax is due.
2. A new clause has been added confirming that any person who receives an amount as tax or issues an invoice reflecting tax, must settle such amount to the Federal Tax Authority (FTA), and the amount be treated with the same treatment determined for due tax. Therefore, a person subject to tax shall pay the amounts he receives as tax to the FTA, even in cases where the tax was applied by mistake or evasion.
3. Provisions for the statute of limitation relating to tax audits, tax assessments and permissible time-frames to submit a voluntary disclosure have been added. The Statute of Limitation Article sets the maximum time-frame in which the FTA – which is responsible for the enforcement of Excise Tax – can act. Once this period expires, the FTA is generally precluded from taking actions.

Role and Opportunities for Company Secretaries

UAE and Dubai in particular continues to boom and have an increased importance in the global economy with the visionary policies of its Rulers. Since last year, new legislations and taxes are coming through – it is important professionals are aware of these laws and amendments to see applicability in their businesses. Being the guardians of compliance, they together with the business and finance – need to ensure these are well understood, documented, complied and implemented and this results in learning and advising opportunities.

The FTA portal is an excellent source to understand excise tax basics.



Note: Excise Tax Law been in UAE since 2017. Above writeup is based on published information including from the FTA portal, current pronouncements and notifications close watch and monitoring of official rules, regulations and legal promulgations (announced from time to time) is required for a detailed understanding of this topic

PS: wef 1 Jan 2023 Dubai abolished 30% tax on alcohol

TERMINATION OF EMPLOYMENT CONTRACT



By **CS Raghendra Kumar Verma**
A Law graduate, Company Secretary,
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For an employer and employee, termination of employment contract is one of the major pain areas. It involves legal as well as procedural aspect and company must take care of both aspect before terminating any employee. Similarly, if an employee wants to resign the company, he also needs to ensure that he is following the procedure defined in law as well as terms & conditions of the employment contract.

Termination means removal of employees from the services it can be voluntary or from the side of employer such as lay off, retrenchment. Dismissal is the act done by employer which results into termination dismissal usually occurs when there is wrongful act done from the side of employees.



Termination of Employment Contract

Article 42 of Decree Law describes conditions under which an employment contract can be terminated. Under following events an agreement can be terminated.

1. An agreement can be terminated by mutual written agreement of the employer and worker.
2. An agreement can be terminated by the efflux of time that means on expiration of the term of contract, unless it is extended or renewed
3. Upon the will of either party after giving due notice as agreed in the employment contract. Such termination shall be as per the provisions of this Decree-Law in relation to termination of Employment Contract.
4. In the event of death of Employer, the agreement stands terminated .
5. An agreement is also terminated in the event of Worker's death or permanent total disability. There should be certificate from the Medical Institution to be provided to employer;
6. If the Worker is convicted by a final order to a custodial penalty for a term of not less than (3) three months.
7. The permanent closure of the Establishment, pursuant to the legislation in force in the UAE.
8. If the Employer becomes bankrupt, insolvent or unable to continue in business for any economical or exceptional reasons, in accordance with the conditions, controls and procedures set by the Executive Regulations and the legislation in force in the UAE.
9. If the Worker does not meet the conditions for renewal of the Work Permit for any reason outside the control of the employer.

NOTICE OF TERMINATION OF EMPLOYMENT CONTRACT

Article 43 further elaborates the termination of the contract by giving notice to other party. Each party has an option to terminate contract for “good cause” by giving other party a notice of termination.

Notice Period

- Notice period shall be decided by contract.
- Notice period shall be equal for both parties. However, in the interest of worker it may be different also.
- There is no minimum and maximum notice period is defined under the Act as it leave to parties to decide through contract. However, it says that Worker shall continue to perform his work during notice period if Notice period is not less than 30 days and not in excess of 90 days.
- Employment contract shall remain in force till the expiry of the notice period.
- Wages shall be paid to worker for notice period. Both parties may agree to waive the notice period or shorten the notice period. worker shall be entitled to receive his wages for complete notice period irrespective of the shorten notice period.

Breach of Notice Period

- If any Party breaches the notice period, then it shall pay the other party a compensation called pay in lieu of notice period.
- This compensation shall be equal to the wages of **the worker for the entire notice period or any remainder thereof.**
- Notice pay shall be calculated based on the last Wage received by the Worker, for monthly, weekly, daily or hourly paid Workers, and on the basis of the average daily Wage referred to herein for piecemeal paid Workers.

ABSENCE FROM WORK DURING NOTICE PERIOD

If the Employment Contract is terminated by the Employer, the Worker shall be entitled to absence from Work during the Notice Period for one working Day “without pay” per week, to search for another job.

The Worker may designate the day of absence. He needs to notify the employer at least (3) three days before such planned absence.

If any party terminates the Employment Contract without complying with the provisions of this Article, he shall pay to the other party a compensation equal to the Worker’s Wage due for the Notice Period, or the remainder thereof.

A foreign worker who leaves UAE without complying with the provisions shall not be granted a work permit to work in UAE for the period of one year from the date of his departure.

The Ministry may exempt certain job categories, skills, manpower from non grant of work permit stipulated above in accordance with the control and procedure set by executive regulation of this Decree law.

TERMINATION OF CONTRACT DURING PROBATION

A. By Employer:-

The Employer may terminate the Worker during Probation period by giving the Worker (14) fourteen days' prior written notice.

B: By Worker: -

1. For change of Employer

A Worker may change employer and may move on to another Employer in the UAE during the Probationary Period.

He must notify his current Employer in writing at least (1) one month before the date on which he intends to terminate the Contract.

In this case, new Employer shall compensate the first Employer for recruitment or contract costs unless both employers agree otherwise.

2. For Leaving UAE

A foreign Worker wishing to terminate the Employment Contract during the Probationary Period in order to leave the UAE shall notify his Employer in writing at least (14) fourteen days prior to date determined for termination of the Contract.

If the Worker wants to return to the UAE and obtains a new Work Permit within (3) three months from the date of his departure, the new Employer shall pay the compensation for recruitment or contract costs to original employer, unless agreed otherwise by the Worker and the original Employer.



CONSEQUENCES OF NON COMPLIANCE OF THIS ARTICLE

- If either party terminates the Employment Contract without complying with the provisions of this Article, he shall pay the other a compensation equal to the Worker's Wage due for the Notice Period, or the remainder thereof
- A foreign Worker who leaves the UAE without complying with the provisions of this Article shall not be granted a Work Permit to work in the UAE for a period of one year from the date of his departure.

The Ministry may exempt certain job categories, skill levels, or manpower from the non-grant of Work Permit stipulated in paragraph above, in accordance with the controls and procedures set by the Executive Regulations of this Decree Law. **Article (11) of the Executive Regulation deals with Granting a new work permit after the termination of the employment contract during the probationary period.**

TERMINATION OF EMPLOYMENT FOR MEDICAL UNFITNESS (Article-46)

The Employer may not terminate the Worker for medical unfitness, before the Worker exhausts all his legal leaves, and any agreement contrary to this shall be void, even if it preceded the entry into force of the provisions of this Decree-Law.

UNAUTHORIZED ABSENCE FROM WORK (Article-50)

There are provisions in the law to punish worker in case he absents from work without due authorization.

A foreign worker shall not be granted work permit to join any employer in the UAE in below circumstances.

1. A foreign worker is absent from work illegally.
2. The period of absence is more than 7 consecutive days.
3. This illegal absence is before the expiration of the Employment contract.
4. Such illegal absence is without the employer's knowledge of the worker's location or the possibility of communicating with him.

In above mentioned circumstance, A foreign Worker shall not be granted another **Work Permit to join another Employer in the UAE, for a term of (1) one year** from the date of absence from work.

There is an Obligation on employer also that if Employer who is aware of such absence shall not employ him or keep him in his service within such period.

The Employer shall report to the Ministry the absence from work according to the procedures set by the Article 28 Executive Regulations of this Decree-Law

Exemption from this Article

As per Article (28) of the Executive Regulations there are few exemptions given for not granting work permit for the period of one year from the date of discontinuation of work.



ARBITRARY DISMISSAL (ARTICLE-47)

Article 47 prohibits employer from terminating a worker if

1. If the Worker submits a serious complaint to the Ministry or
2. Files an action proven to be valid against the Employer.

Employer should not dismiss worker only because of reason that worker submits complaints against Employer.

A dismissal of a Worker by his Employer in the situation of above-mentioned condition shall be arbitrary.

The Employer shall pay the worker a fair compensation estimated by competent court, if it is found that dismissal is arbitrary.

The amount of compensation shall be determined based on the type of work, the extent of harm sustained by the Worker and the length of his service.

Cap on maximum compensation

In any case, the amount of compensation shall not exceed (3) three months 's Wage of the Worker calculated based on the last wage received by him.

In addition to compensation, the worker shall be eligible to receive pay in lieu of notice and severance pay due to him under the provisions hereof.

DISMISSAL OF WORKER BY EMPLOYER WITHOUT NOTICE

Article 44 gives right to employer to dismiss the worker without prior notice under certain circumstances.

Dismissal decision shall be

- In writing and
- With reason of dismissal and
- Must be given to the worker.

Following are the events for which Employer may terminate worker without notice.

1. If the Worker assume

- a. False identity or
- b. Submits false certificates or documents.

2. If the worker commits an error resulting in

- a. gross material losses to the Employer, or
- b. deliberately cause harm to the property of the Employer and admits the same.

In this case, Employer must notify the Ministry of the incident within (7) seven working days of being aware of the occurrence thereof.

3. If the Worker violates the bylaws of the Establishment in relation to Work and Workers Safety or the Workplace. One condition before taking any action under this clause is that Employer should ensure that below 2 conditions for such instructions are complied with.

- a. In writing and posted in a visible place, and
- b. The Worker has been advised thereof.

4. If the Worker fails to perform his main duties in accordance with the Employment Contract and a proper investigation has been carried out and at least 2 warning has been given to remedy such failure. But worker has failed to remedy such failure then employer can dismiss the worker.
5. If the Worker divulges the business secrets in relation to industrial or intellectual property, which results in losses to the Employer or loss of opportunity or a personal benefit for the worker.
6. If the Worker is found during the working hours in a state of drunkenness or under the influence of a narcotic or psychotic substance or commits any act against morals at the Workplace.
7. If the Worker commits a verbal, physical or other form of assault punishable by legislation in force in the UAE against the Employer, the responsible manager, his supervisor or co-worker.
8. If the Worker absents from Work without cause or justification acceptable to the Employer for more than (20) twenty interrupted days in a year, or more than (7) seven consecutive days.
9. If the Worker abuses his position with the aim to obtain personal gains and profits.
10. If the Worker joins another Establishment without complying with the controls and procedures prescribed in this regard.

WORKER MAY QUIT WITHOUT NOTICE

Article 45 describes the events where The Worker may quit Work without notice and reserve all his entitlements at the end of service

Following are the events for which worker may quit without notice.

- A. If the Employer commits a breach of his obligations to the Worker stated in the Employment Contract or this Decree-Law or its implementing resolutions. Worker must notify the Ministry at least (14) fourteen working days before the date of leaving the Work. If the Employer is not able to remedy the breach despite being notified by the Ministry, then worker may quit the job
- B. If the Worker is subject to assault, violence or harassment at the Workplace by the Employer, or his legal representative then the worker must report such act to the concerned authorities and the Ministry within (5) five Working Days from the date on which he is able to report.
- C. If the Workplace poses a serious threat to the safety or health of the Worker, then worker may quit the job. However, there are conditions which are as below
 - 1. The Employer must be aware of such Serious threat and
 - 2. Has not taken the actions necessary to eliminate such threat.

Article 26 of The Executive Regulations determine the requirements for serious threats which are as below which allows worker to leave work without warning.

- D. If the Employer entrusts the Worker with a Work that is substantially different from the Work agreed upon in the Employment Contract, without the written consent of the Worker, except in cases stated in Article (12) hereof.



NEWS ICSINPIO ACTIVITIES

Study Circle Meeting | UAE Labour Laws | *13 September 2022*



NEWS ICSINPIO ACTIVITIES

Wellness to Illness of Corporations & Delivering Sustainable Value | UAE Labour Laws | *13 November 2022*



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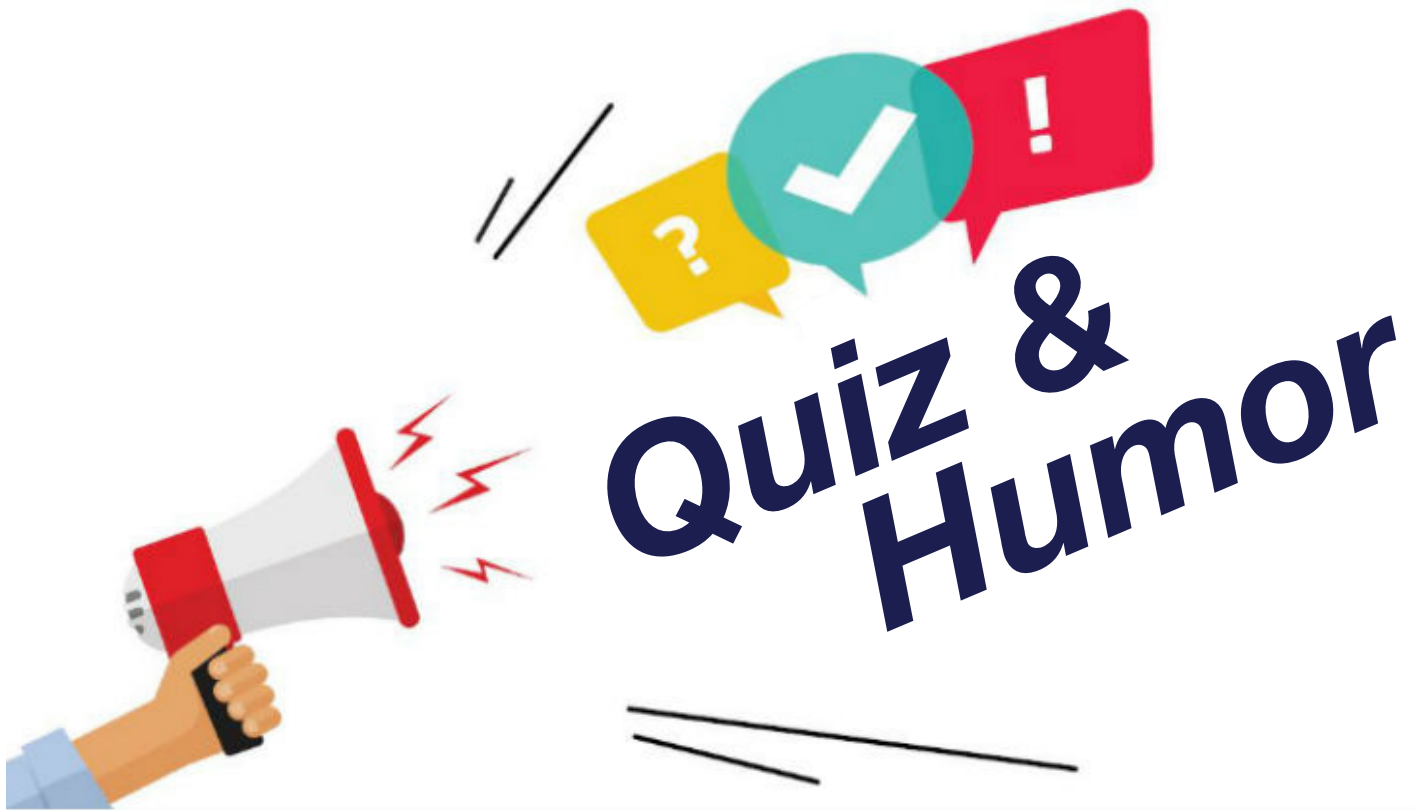
Dinner | *16 December 2022*



NEWS ICSINPIO ACTIVITIES

Study Circle Meeting | Sanctions Compliance in UAE *20 January 2023*





Mr Mohan is HR head on an ABC Limited. ABC limited is based in Dubai mainland and deals in IT product. Sales team is working extremely well and business is growing on faster pace. Company need more people in production team to meet the targets. Mohan hired an employee Named “ **Ronald**” for production team on 1st March, 2021. Mr Ronald was on probation for 6 month. He successfully completed probation period. In the month of August, 2022, Production head raised non performance issue of Mr Roland with Mr Mohan. Mr Mohan issue warning to Ronald and put him on performance improvement plan for 2 month. Despite that Roland performance was not improving and he was not able to meet target. In the meantime, Ronald requested HR head to carry forward his not utilized annual leave of 2021 to current year in 2022. MR Ronald was also wanted to take his Annual leave in 2022 as per his own wish as he was supposed to attend his sister marriage in Kenya.

At the same time, Ronald performance was not improving and he was again put of performance improvement plan for second time. Production Head was absolutely not happy with the performance of Mr Roland and wanted to terminate him. He requested HR head to terminate Mr Ronald employment immediately and cancel his work permit.

Please help Mr Mohan to solve above issues as per Labour law of UAE.

Note: Answer to this query with the reasoning should be sent before 28th February to the below email address, and the winner will receive a surprise gift. middleeast.difc@icsi.edu



Answer to Previous edition quiz:-

1. B
2. A
3. A



Get In Touch

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