

# New amendments to UAE labour law regime to be considered in M&A transactions

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## Overview

Investors seeking to acquire an enterprise with operational business will have to consider liability arising from a multitude of legal engagements. While the nature and complexity of existing contracts that should be reviewed in legal due diligence may differ considerably depending on the area of business in which the target is engaged, employment relationships will be a significant factor in most corporate transactions. When acquiring companies or shares therein, investors will assume the targets' liabilities (eg, obligations towards employees and pending penalties from regulatory authorities).

Recent amendments to the UAE employment regime comprise substantial changes that will be relevant in M&A transactions. In late 2015 the Federal Ministry of Labour (now the Federal Ministry of Human Resources and Emiratisation) issued three decrees amending certain provisions of the Federal Labour Law (8/1980):

- Ministerial Decree 764/2015 introduced a compulsory standard employment agreement;(1)
- Ministerial Decree 765/2015 amended the provisions of the UAE Labour Law concerning termination of employment;(2) and
- Ministerial Decree 766/2015 introduced new conditions for obtaining work permits.(3)

All three decrees came into effect in January 2016. Further, the ministry amended some provisions of the Wage Protection System with Ministerial Decree 739/2016 in Autumn 2016.(4)

Non-compliance with the new standards introduced by these decrees may result in considerable penalties, including fines and other detriments (eg, restrictions on work permit procurement). Thus, where a target does not comply with the newly amended provisions of the UAE labour regime, an investment may inherit substantial liability exposure with the target.

## Standard employment contract

Ministerial Decree 764/2015 introduced a standard employment agreement which will form the basis of all employment relationships established after the decree entered into force on January 1 2016 (Article 1 of Ministerial Decree 764/2015). However, employment contracts concluded before January 1 2016 need not be amended (Article 3 of Ministerial Decree 764/2015). The standard employment agreement may not be amended without the approval of both the ministry and the employee.

Whether a side agreement that comprises amendments to the standard employment agreement will

hold up to judicial review has not yet been tested. This ambiguity poses some difficulties in M&A transactions. To date, it is unclear whether a side agreement which is beneficial to an employee but not approved by the ministry and the employee is valid under the newly amended labour regulations. Thus, until the legislature or UAE courts clarify this issue, it may be difficult to determine the obligations of an employer towards its employees. The resulting uncertainty will have to be consolidated in transactions either in the purchase price or in the sale and purchase agreement (ie, through guarantees or price adjustment clauses).

### **Termination of employment**

Ministerial Decree 765/2015 amended the provisions of the Labour Law concerning the termination of employment with effect from January 1 2016. Pursuant to the amendments, fixed-term employment contracts concluded for a term of no more than two years may now be terminated before their expiry for convenience, provided that the party terminating the agreement observes the contractual notice period, which must be at least one month but no more than three months. Where the relevant employment contract was concluded before Ministerial Decree 765/2015 entered into force and does not provide for a notice period, the notice period will be three months.

Thus, where the target's employees are a decisive reason for the acquisition, the new amendments to the UAE labour regime may be problematic. Under the new regulations, the investor will have limited means to ensure that the target's employees will remain with the company.

### **New requirements for obtaining work permits**

Ministerial Decree 766/2015 introduced a number of new conditions for obtaining work permits for foreign employees previously employed by a different UAE employer. Pursuant to Article 1 of Ministerial Decree 766/2015, a new work permit for an employee already employed in the United Arab Emirates may be granted only if the existing employment agreement:

- was concluded for a fixed term and was not renewed on its expiry;
- was concluded for a fixed term and was terminated after its term was renewed, in compliance with the statutory and contractual requirements for termination;
- was concluded for an unlimited term and terminated in accordance with the relevant statutory and contractual provision;
- was terminated by mutual agreement, provided that the employee was employed for at least six months (this minimum period does not apply where the relevant employee is a higher qualified employee);
- was terminated by the employer, provided that the employee was employed for at least six months (this minimum period does not apply where the relevant employee is a higher qualified employee); or
- was terminated due to the employer violating contractual or statutory regulations.

Where a work permit was procured in violation of the aforementioned conditions (eg, by making false statements in the applications), the permit will be considered void (Article 4 of Ministerial Decree 766/2015). Employers employing staff without the necessary work permits may be penalised by fines, license suspension or, as a last resort, closure of the business. Considering the consequences of non-compliance, acquirers should ensure that all work permits for existing foreign staff are valid before acquiring a UAE company.

### **Amendments to Wage Protection System**

In October 2016, the ministry issued Ministerial Decree 739/2016, which amended the regulations governing the Wage Protection System. In particular, the new amendments extended the scope of penalties that the ministry may impose on employers that fail to comply with the Wage Protection System regulations. Penalties may include, among other things, restrictions on the number of visas and work permits that the employer may procure, loss of specific classification and fines.

While it was necessary to ensure that targetshad complied with the Wage Protection System regulations before Ministerial Decree 739/2016 came into force, this matter is now particularly relevant for investors that already maintain companies in the United Arab Emirates. Where an

investor with an existing business in the United Arab Emirates acquires another UAE company or shares therein, Wage Protection System-related penalties imposed against the target may be extended to the investor's existing UAE enterprise. Hence, under the newly amended Wage Protection System regulations, a target's failure to comply with the Wage Protection System requirements poses a substantial risk in M&A transactions.

## Comment

Recent amendments to the UAE labour regime have, among other things, increased the penalties for non-compliance with labour regulations. These new liabilities must be considered by investors when acquiring UAE companies or parts thereof – in particular, the extent to which Wage Protection System-related penalties may be extended to related companies. Further, new regulations on the termination of employment contracts and the new standard employment contract introduced in early 2016 will have to be deliberated before making an acquisition.

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## Endnotes

(1) Unofficial English translation available at [www.ilo.org/dyn/natlex/docs/ELECTRONIC/101785/122814/F2100407659/Ministerial%20Decree%20\(764\)%20on%20Standard%20Employment%20.pdf](http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101785/122814/F2100407659/Ministerial%20Decree%20(764)%20on%20Standard%20Employment%20.pdf).

(2) Unofficial English translation available at [www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwjn7cOC8YfQAhXDtxQKHUOrCFcQFggcMAA&url=https%3A%2F%2Fwww.mol.gov.ae%2FMOLWebsite%2Fhandlers%2Fdownload.ashx%3FYXNzZXQ9ODgw&usg=AFQjCNElUNZmLcxl4GZbNStA\\_ORoePO41A&bvm=bv.137132246,d.d2s](http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwjn7cOC8YfQAhXDtxQKHUOrCFcQFggcMAA&url=https%3A%2F%2Fwww.mol.gov.ae%2FMOLWebsite%2Fhandlers%2Fdownload.ashx%3FYXNzZXQ9ODgw&usg=AFQjCNElUNZmLcxl4GZbNStA_ORoePO41A&bvm=bv.137132246,d.d2s).

(3) Unofficial English translation available at [http://gulfmigration.eu/database/legal\\_module/United%20Arab%20Emirates/National%20Legal%20Framework/Labour%20Migration/48.1%20MD%20766%20of%202015\\_EN.pdf](http://gulfmigration.eu/database/legal_module/United%20Arab%20Emirates/National%20Legal%20Framework/Labour%20Migration/48.1%20MD%20766%20of%202015_EN.pdf).

(4) Unofficial English translation available at [www.mohre.gov.ae/MOLWebsite/en/labour-law/announcements.aspx](http://www.mohre.gov.ae/MOLWebsite/en/labour-law/announcements.aspx).

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