



## Client Alert

March 2019

### The UAE issues the new Financial Leasing Law

*New law regulates leasing activities, facilitates ease of doing business for SMEs*

The small to medium enterprises sector (SME) plays a critical role in achieving the UAE government's developmental goals, as SMEs constitute the backbone of its economy. In Dubai in particular, SMEs represent 95% of all establishments that are registered in the Emirate. Thus, the government has taken steps to strengthen the performance of SMEs over the last few years, equipping them with the right tools and financing mechanisms.

Accordingly, the issuance of UAE Federal Law No. 8 of 2018 on Financial Leasing (the **Law**) aims to facilitate the ease of availing financing and conducting business for SMEs. The new Law has been in effect since 1 January 2019.

#### What is the Financial Leasing Law?

Effectively, the Law regulates finance leasing in the UAE and specifies the commercial arrangements between parties to a leasing contract. Some of the key principles and enhancements introduced by the Law include:

- 1. Registration with the UAE Central Bank:** all entities facilitating financial leasing activities in the UAE (**Leasing Company**) are required to secure a license to operate from the UAE Central Bank. Non-compliance will be subject to imprisonment or fines.
- 2. Contractual arrangements:** financial leasing is governed by:
  - a supply contract between the Leasing Company and a supplier for the purchase of certain equipment, movable assets (such as heavy machinery) or off-plan real estate property (collectively, the **Leased Assets**). Although the borrower (the **Lessee**) might not be a party to the supply contract, it has the right to choose



the specifications of the Leased Assets (which will in turn be reflected in the supply contract) and has direct recourse against the supplier and can enforce the terms of the supply contract (except for the right to rescind the supply contract).

- a leasing contract between the Lessee and the Leasing Company for the use of the Leased Assets for a specified duration and purpose in exchange for payment of the lease amount (plus interest) to the Leasing Company. While the legal title to the Leased Assets remains with the Leasing Company, the Lessee can opt to purchase them by paying the premiums and relevant fees throughout the leasing period to the Leasing Company, subject to its approval.

**3. Registration of leasing contract:** the leasing contract must be registered at the relevant register in the Emirate where the Leased Assets are located (with the exception of real estate which must be registered at each Emirate's property register). The details of such register will be provided in a subsequent cabinet resolution.

**4. Enforcement on the Leased Assets:** any third party that is due any amount by the Lessee may not enforce against the Leased Assets. However, in the event of bankruptcy or liquidation of the Leasing Company, the Lessee is entitled to either:

- continue the leasing contract in accordance with the terms (with whomever the assets have been transferred to as a result of the liquidation or bankruptcy); or
- hand over the Leased Assets to the liquidator and collect any potential amounts payable to it as an unsecured creditor.

### **What do you need to do?**

The Financial Leasing Law sets out the obligations of the Leasing Company and the Lessee under the leasing contract in the absence of an express agreement between the parties.

1. If you are a Leasing Company, you are required to:
  - deliver the Leased Assets in the condition agreed upon with the Lessee;
  - maintain adequate insurance to cover the Leased Assets;
  - carry out material maintenance of the Leased Assets; and
  - transfer the title to the Lessee in case it opts to purchase the Leased Assets.



It must be noted in this respect that a Leasing Company is usually not responsible for either insuring or maintaining the Leased Assets. This should be the sole responsibility of the Lessee and such requirements are akin to an operating lease rather than a financial leasing transaction.

This could be a benefit provided by the Law to Islamic financial institutions that are typically responsible for insuring and maintaining any asset and can discharge such responsibility to the Lessee through an agency agreement against a nominal fee.

Existing Leasing Companies have been granted a period of one year starting from 1 January 2019 to ensure that they have registered with the UAE Central Bank and are compliant with the provisions of the Law.

2. If you are a Lessee, your obligations include:
  - to maintain and carry out routine servicing of the Leased Assets, ensuring that they are of the same state as when received;
  - to pay the premiums on time and all governmental fees relating to the use of the Leased Assets;
  - to use the Leased Assets for the specified purpose and inform the Leasing Company of any impediments to fully utilizing the Leased Assets; and
  - to maintain all relevant registrations for the Leased Assets (where applicable).

### **What's next?**

The Financial Leasing Law provides a clear regulatory framework for conducting financial leasing activities in the UAE. Ultimately, it enhances the ability of businesses, SMEs in particular, to raise funding for their operations and achieve business growth and sustainability.

Further details about the law, including the details of the relevant registers in each Emirate, will be clarified in subsequent resolutions. We will continue to monitor and update on any further developments as and when they arise.

***To speak to us in relation to any financial regulatory issues in the UAE, please feel free to contact one of the lawyers below, or your usual Baker McKenzie contact.***



## Contacts



**Mazen Boustany**  
Head, Financial Regulatory,  
Policy & Legislative, UAE  
Mazen.Boustany@  
bakermckenzie.com



**Sandeep Puri**  
Head of Banking, UAE  
Sandeep.Puri@  
bakermckenzie.com



**Hazem Hebaishi**  
Associate, Corporate &  
Commercial, UAE  
hazem.hebasihi@  
bakermckenzie.com

[www.bakermckenzie.com](http://www.bakermckenzie.com)

Abu Dhabi  
Level 8, Al Sila Tower  
Abu Dhabi Global Market Square  
Al Maryah Island  
P.O. Box 44980  
Abu Dhabi, UAE

T: +9712 6123700  
F: +9712 6581811

Dubai - Business Bay  
Level 14, O14 Tower  
Al Abraj Street  
Business Bay  
P.O. Box 2268  
Dubai, UAE

T: +9714 4230000  
F: +9714 4479777

Dubai - DIFC  
Level 3, Tower 1  
Al Fattan Currency House  
DIFC  
P.O. Box 2268  
Dubai, UAE

T: +9714 4230005  
F: +9714 4479777

Baker & McKenzie Habib Al Mulla is a member firm of Baker & McKenzie International, a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

© 2019 Baker & McKenzie Habib Al Mulla