

# The UAE's Federal Government and its free zones make moves to relieve pressures on onshore and offshore businesses during the COVID-19 pandemic

April 2020

This alert focuses on the position for onshore businesses in the UAE as well as in the Dubai International Financial Centre (the “**DIFC**”) and the Abu Dhabi Global Market (the “**ADGM**”) free zones. It sets out the measures being taken by the Federal Government, each Emirate and each free zone. Although each are implementing slightly different measures, the common themes are: (a) reduced licensing fees, (b) rent reductions and (c) increased flexibility with employees as regards the free zones in which individuals are permitted to work.

This alert will also provide a high-level overview of directors' duties regime and the onshore insolvency process in the UAE, each of which applies to non-Government-owned entities. As at the date of this note, neither of these regimes have been adjusted in response to the COVID-19 pandemic.

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## Overview

The UAE Federal Government is incentivising banks to moderate any potential enforcement actions that they might be considering against SME borrowers in particular, but currently the only direct state aid that is being publicly discussed is in relation to Dubai's flag-carrier, Emirates (which is wholly owned by the Government of Dubai through the Investment Corporation of Dubai).

With the exception of corporate tax on oil and gas companies and branches of foreign banks, the UAE does not impose corporate tax on businesses registered onshore. Businesses registered in free zones are exempt from corporate tax for certain specified time periods which vary between free zones. VAT of 5% was introduced in the UAE a few years ago, but we are not aware of any proposals to make changes in relation to the rate charged as a result of the impact and consequences of the COVID-19 global pandemic.

The Federal Government and free zones have, however, introduced measures to relieve the pressures facing businesses. These measures include lowering or suspending fees for licence renewals and reforming employment regulations in order to give employers greater flexibility. These changes are discussed in greater detail below. It is important that companies are aware of the various fee reductions being offered so as to be able to factor these in to short-term budgets and utilise them to the fullest extent.

## The “Targeted Economic Support Scheme”

The primary measure taken by the UAE Federal Government which benefits corporates has been the “Targeted Economic Support Scheme”, (a scheme introduced on 15 March 2020). This scheme aims to provide temporary relief from the payments of principal and interest in respect of outstanding loans for all private sector companies affected by COVID-19, and includes an AED 50 billion fund distributed through 0% interest collateralised loans for banks operating in the UAE. It is envisaged that this will encourage banks to lend more freely to corporate customers. In addition, AED 50 billion has been freed up from banks' capital buffers to encourage further lending to private sector businesses in need of credit during this time.

It is not yet clear how the practical application of this scheme will benefit the companies which most urgently require liquidity. However, the Central Bank of the UAE announced on 20 April 2020 that 30% of the AED 50 billion fund has already been deployed, suggesting that relatively rapid use is being made of the credit, and hopefully alleviating liquidity issues faced by businesses.

In addition, Abu Dhabi has allocated AED 3 billion to the SME credit guarantee scheme managed by the Abu Dhabi Investment Office in order to stimulate financing by local banks and enable SMEs to navigate the current market environment. Bid bonds have been suspended and an exemption introduced for start-ups from performance guarantees for projects up to AED 50 million. Finally, Abu Dhabi has allocated AED 1 billion to establish a market maker fund. The fund is charged with enhancing liquidity and maintaining the balance between supply and demand for stocks.

## Other Federal Government Measures

Whilst the UAE Federal Government has focused on supporting banks in order to encourage lending to businesses, it has introduced additional measures aimed at directly relieving business costs. A non-exhaustive list of the most relevant measures applicable to onshore companies in both Dubai and Abu Dhabi are set out in the table below:

Rate Reliefs	
Dubai	Freezing the 2.5% market fees for all facilities operating in Dubai for three months.
	Cancellation of the 25% down payment required for requesting instalment-based payment of government fees for obtaining or renewing licences.
	Permission to renew commercial licences without mandatory renewal of lease contracts.
	Exemption of companies from permits for new sales and offers.
	10% reduction of water and electricity bills, including residential and commercial bills, for 3 months.

	A refund of 20% of the customs fee imposed on imported products sold in Dubai.
	A 90% reduction of fees imposed on submission of customs documents.
	Reduction of “municipality fees” imposed on sales at hotels from 7% to 3.5%.
	A freeze on “fees” charged for the sale of tickets, issuance of permits and other government fees related to entertainment and business events.
	Refund of bank guarantees or cash required to be paid by existing customs clearance companies.
	Cancellation of the AED 50,000 bank guarantee or cash requirement in order to undertake customs clearance activities.
	Cancellation of bank guarantees required to be submitted before resolution of customs-related grievances.
	Exemptions from fees charged to companies for postponement and cancellation of tourism and sports events scheduled for 2020.
	Freeze on the fees for classification/rating of hotels.
Abu Dhabi	Suspension of individual or commercial real estate registration fees.
	The Abu Dhabi Commercial Bank is offering to defer loan instalments and waive interest for up to 6 months for individuals or business owners, subject to approval.
	Reduction of industrial land leasing fees by 25% on new contracts.
	Waiver of certain commercial and industrial penalties.
	Suspension of tourism and municipality fees for the tourism and entertainment sectors until the end of 2020.
	Rebate of up to 20% on rental values for restaurants, tourism and entertainment sectors
	Exemption for commercial vehicles from annual registration fees until the end of 2020.
	Exemption for all vehicles from road toll tariffs until the end of 2020.
	Exempting all commercial and industrial activities from Tawtheeq fees during 2020.
Property Costs	
Dubai and Abu Dhabi	Tenants struggling to pay their rent during the COVID-19 pandemic are exempt from eviction.  There is also a temporary suspension of all eviction judgments related to residential and commercial facilities during March and April. All “imprisonment judgments” linked to rental disputes have been suspended, save in the case of abandoned homes.

Abu Dhabi	Allocation of AED 5 billion in water and electricity subsidies.
	Reduction in electricity connection fees for start-ups until the end of 2020.
Dubai	A reduction in water and electricity bills by 10%. Reduction in deposits paid for water and electricity connections by 10%.

## Free Zone Measures

In the UAE's offshore "free zones", fee reductions have been implemented which provide the closest equivalent to tax reductions for companies incorporated in these jurisdictions. These, and other measures, are set out in the table below.

Rate Reliefs and Other Measures	
ADGM	100% waiver on Commercial Licence renewal fees (with the exception of SPVs and foundations licences) until 25 March 2021.
	100% waiver on Business Activity renewal fees until 25 March 2021.
	100% waiver on Data Protection renewal fees until 25 March 2021.
	100% waiver on new Temporary Work Permit issuances, renewal and late application fees until 25 March 2021.
	100% waiver on annual Funds fees until 31 December 2020.
	100% refund of annual Funds fees already paid by FSRA-regulated entities for 2020.
	50% refund of Supervision fees already paid by FSRA-regulated entities for 2020.
	50% waiver on any new FSRA Supervision fees to be collected until 31 December 2020.
	Deferral of rental payments and service charges for office tenants at ADGM Square on Al Maryah Island for 2020.
	Amendment to Commercial Licensing Regulations to add the schedule of fees to the regulations and cover the possible reduction or waiver of fees by the Registrar as deemed necessary due to exceptional circumstances.
	Amendment to Data Protection Regulations to cover the reduction or waiver of fees by the Registrar wherever deemed necessary as a result of exceptional circumstances.
DIFC	The DIFC has waived annual licence fees for new companies until the end of Q2 2020, and given a 10% discount on renewal fees for existing licences during the same period. Furthermore, companies will enjoy the postponement of payment plans for all commercial properties owned by DIFC Investments for a period of 6 months. DIFC will reduce its ownership transfer fees from 5% to 4% for any property sale that occurs within a 3-month period, if ownership transfers are registered at the DIFC within 30 days after the end of the 3-month period.
DMCC	The DMCC has reduced its registration fees by 50% for new companies, while current companies will receive 30% discounts on renewal and amendment fees.
JAFZA	JAFZA has announced it will waive fines on expired trade licences, and waive the first year licence fees for any new companies.

All Dubai Free Zones	The Dubai Free Zones Council has launched an economic stimulus package which includes five key elements: (a) postponement of rent payments for a period of 6 months; (b) facilitating installments for payments; (c) refunding security deposits and guarantees; and (d) cancellation of fines for both companies and individuals. Each free zone has participated, in accordance to their own specific policies.
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## Employment

### The Dubai Free Zones

The Dubai free zones have relaxed regulations regarding the transfer of employees between different free zone-registered entities, giving employers an alternative to a temporary lay-off whilst maintaining the worker's employment. This represents a material change to longstanding UAE employment rules and gives employers additional flexibility when looking to better distribute resources within their businesses.

In addition, a directive published by the DIFC has amended certain employment regulations for an "Emergency Period" (extending until 31 July 2020). These are detailed in the table below.

Employment	
DIFC	<p>During this time, an employer may lawfully implement the following "Emergency Measures":</p> <ul style="list-style-type: none"> <li>• impose reduced working hours;</li> <li>• impose vacation leave;</li> <li>• impose unpaid leave;</li> <li>• reduce remuneration on a temporary basis;</li> <li>• restrict workplace access; and</li> <li>• impose remote working conditions and requirements including imposing means of measuring an employee's engagement and productivity during remote working, without the consent of the employee. An employer is required to notify any affected employees in writing at least 5 days in advance of imposing any of the above.</li> </ul> <p>During the Emergency Period, employers will be required to maintain a list of (i) any employee terminations during the period from 1 March 2020 to the end of the Emergency Period; and (ii) any employees that are surplus to its current requirements. This information will be provided to the Government Services Office who (with the employee's consent) will create and maintain a virtual labour market during the Emergency Period known as the "DIFC Available Employee Database".</p> <p>Any sick leave taken by an employee during the Emergency Period as a consequence of either (i) having contracted COVID-19; or (ii) being placed in quarantine, shall not count towards any sick leave entitlement that an employee is entitled to under the DIFC Employment Law.</p> <p>Employees will be entitled to full pay during any COVID-19 sick leave period and may not be subjected to any Emergency Measure provided for under this directive (such as a pay reduction) that did not apply to them prior to any such sick leave period.</p> <p>The Directive further provides that it will not be permissible to terminate the services of an employee who has taken more than the maximum aggregate 60 working days of annual sick leave entitlement under the DIFC Employment Law due to COVID-19 related sick leave.</p> <p>The Directive ensures that any end of service gratuity payments will not be effected by the implementation of any Emergency Measures as follows where the employee's basic salary has been reduced after 1 March 2020.</p> <p>Employers are not permitted to reference a salary which has been reduced after 1 March 2020 when looking to transfer any end of service gratuity which an employee has accrued prior to 1 February 2020 into a DIFC employee workplace savings scheme.</p>

	Under the Directive it will be permissible for employers to defer the cancellation of any terminated employees' residency visas and/or sponsorship beyond the 30 days' statutory limitation period.
	Employers in the retail, service or hospitality industry who provide employees with accommodation as part of their employment contract are required to continue to provide accommodation to those employees until the cancellation of their residency visa.

### **Onshore Sick Pay Requirements**

Employees who are sick are entitled to maximum sick leave of 90 days in any 12-month period. During this period, the first 15 days are paid at full pay, the next 30 days at half pay, and the final 45 days are unpaid. There is currently no Government support for businesses seeking to recover the cost of sick pay.

### **Onshore Temporary Lay-off Restrictions**

An employer cannot force an employee to take unpaid leave, unless they enter into a written agreement with the employee consenting to such. Similarly, any temporary lay-off would need to be agreed in writing with the employee.

Certain enhanced employment protections have been introduced for Emirati nationals.

### **Onshore Pay Cut Restrictions**

The UAE Federal Government has introduced formal measures for non-Emirati employees to agree to pay reductions, following the submission of a written request from their employer to the Ministry of Human Resources and Emiratization ("MOHRE"). Employers intending to temporarily reduce the salary of non-Emirati employees may make a "temporary supplement" to their current employment contract, and for permanent reductions to salaries may make an "employment contract details amendments service". Both options are subject to MOHRE's approval and agreement by the employee.

## **Force Majeure**

A party to a contract may wish to seek to rescind it by arguing that the circumstances of COVID-19 amount to a force majeure event. In order to succeed, under UAE law, the party making such a claim would need to demonstrate that the COVID-19 pandemic qualifies as an event that is "exterior, unpredictable and irresistible" to the parties to such contract (and that such agreement was concluded before national and international authorities started to warn about the threat of the virus). It must be proven that COVID-19 has rendered execution of the obligations under the agreement objectively impossible. This will be determined by courts on a case-by-case basis, but it should be borne in mind that the UAE courts have historically interpreted this condition narrowly.

## **Insolvency**

There has been no adjustment to the UAE's Bankruptcy Law, which has not been tested to the extent that insolvency regimes have in most European jurisdictions. It is important to note that this legislation applies only to onshore companies that are not Government-owned (unless they have otherwise opted in). Different regimes apply in the DIFC and ADGM.

A company will be insolvent under the UAE's Bankruptcy Law if it ceases to make payments of due debts for a consecutive 30-business day period, or has assets insufficient to cover its "payable obligations" (current liabilities).

An important point to note is that directors of companies which fall under the jurisdiction of the UAE's Bankruptcy Law are under an obligation to file for bankruptcy within 30 business days of suspending a payment. Transactions may be declared voidable in certain circumstances and civil and criminal liability exists for directors.

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## Directors' Duties

In the UAE, directors have a number of administrative and other duties with respect to the responsible running of their business, which either formally or practically include preparing accounts and regularly monitoring liquidity. More fundamental duties include: (a) the obligation to minimise losses to creditors as a result of ongoing trading; (b) to not enter into high risk transactions; and (c) to not declare dividends other than where attributable to realised profit. Duties such as these should be at the forefront of directors' minds when considering any actions during a period of financial difficulty. For example, the threshold at which a transaction is considered "high risk" may be relatively low if set against a backdrop of falling revenues, and insolvency being a realistic prospect in the near future.

Whilst, as with English law, there is no clearly identifiable point at which these different interests become priorities, directors must exercise their discretion prudently to balance the interests of creditors as a company's financial integrity deteriorates.

Civil liability for a company's debts can be imposed on individual directors if they are found to be responsible for a company's losses, or to have committed certain offences, within two years prior to the insolvency. Unlawful distributions and preferential treatment of creditors are just two examples of actions which give rise to criminal liability, and carry a sentence of up to five years in prison or an AED 1 million fine. Also comparable to English law, transactions at an undervalue can give rise to criminal liability of the director who sanctioned them. Therefore, whilst the principles of directors' duties in the UAE may be less well tested, there are obvious considerations for directors who lead companies through periods of financial distress.

Unlike in other jurisdictions, as at the date of this alert, no new measures have been introduced in the UAE to vary or soften directors' duties, which means directors must now be even more conscientious and aware of their duties than ever before to ensure that they are acting in the best interests of the company and its stakeholders; they stay abreast of the changing financial status of the company; and they consider any new transactions with increased scrutiny, in order to avoid personal liability during this time.

## Conclusions

The Targeted Economic Support Scheme, various fee reduction measures and attempts to relax employment measures (whilst protecting employees by providing formal means of agreeing pay reductions), provide a series of reliefs that are intended to support private companies registered in the UAE and its free zones during COVID-19.

When assessing the UAE's COVID-19 response measures (particularly against the measures that have been introduced in other jurisdictions), it must be kept in mind that the UAE already has a favourable tax regime in place for businesses, and has for many years attracted and sustained companies registered onshore and in various free zones. It remains to be seen what further actions will be taken and whether changes will be made to the UAE's Bankruptcy Law in particular.

In addition, White & Case has carried out an analysis of global governmental responses to the COVID-19 crisis. These vary considerably from country to country and are being updated and amended regularly.

We have prepared an in-depth and nuanced analysis for various major jurisdictions and pulled together a global response team.

For useful information on COVID-19, please consult the Coronavirus section of [www.whitecase.com](http://www.whitecase.com).

# Annex 1

## Summary of Measures (Onshore UAE)

State Support	
UAE	The UAE Federal Government's "Targeted Economic Support Scheme" aims to provide temporary relief from the payments of principal and interest in respect of outstanding loans for all private sector companies, and includes an AED 50 billion fund distributed through 0% interest collateralised loans for banks operating in the UAE. In addition, AED 50 billion has been freed up from banks' capital buffers to encourage further lending to private sector businesses in need of credit during this time.
Abu Dhabi	An AED 3 billion to the SME credit guarantee scheme managed by the Abu Dhabi Investment Office in order is designed to stimulate financing by local banks. Bid bonds have been suspended and an exemption introduced for start-ups from performance guarantees for projects of up to AED 50 million.
	Allocation of an AED 1 billion to establish a market maker fund to enhance liquidity and maintain the balance between supply and demand for stocks.
Rate Reliefs	
Dubai	Freezing the 2.5% market fees for all facilities operating in Dubai for three months.
	Cancellation of the 25% down payment required for requesting instalment-based payment of government fees for obtaining or renewing licences.
	Permission to renew commercial licences without mandatory renewal of lease contracts.
	Exemption of companies from permits for new sales and offers.
	10% reduction of water and electricity bills, including residential and commercial bills, for 3 months.
	A refund of 20% of the customs fee imposed on imported products sold in Dubai.
	A 90% reduction of fees imposed on submission of customs documents.
	Reduction of "municipality fees" imposed on sales at hotels from 7% to 3.5%.
	A freeze on "fees" charged for the sale of tickets, issuance of permits and other government fees related to entertainment and business events.
	Refund of bank guarantees or cash required to be paid by existing customs clearance companies.
Cancellation of the AED 50,000 bank guarantee or cash requirement in order to undertake customs clearance activities.	



	<p>Cancellation of bank guarantees required to be submitted before resolution of customs-related grievances.</p> <p>Exemptions from fees charged to companies for postponement and cancellation of tourism and sports events scheduled for 2020.</p> <p>Freeze on the fees for classification/rating of hotels.</p>
Abu Dhabi	<p>Suspension of individual or commercial real estate registration fees.</p> <p>Abu Dhabi Commercial Bank is offering to defer loan instalments and waive interest for up to 6 months for individuals or business owners, subject to approval.</p> <p>Reduction of industrial land leasing fees by 25% on new contracts.</p> <p>Waiver of certain commercial and industrial penalties.</p> <p>Suspension of tourism and municipality fees for the tourism and entertainment sectors until the end of 2020.</p> <p>Rebate of up to 20% on rental values for restaurants, tourism and entertainment sectors.</p> <p>Exemption for commercial vehicles from annual registration fees until the end of 2020.</p> <p>Exemption for all vehicles from road toll tariffs until the end of 2020.</p> <p>Exempting all commercial and industrial activities from Tawtheeq fees during 2020.</p>
Property Costs	
Dubai and Abu Dhabi	<p>Tenants struggling to pay their rent during the COVID-19 pandemic are exempt from eviction.</p> <p>There is also a temporary suspension of all eviction judgments related to residential and commercial facilities during March and April. All "imprisonment judgments" linked to rental disputes have been suspended, save in the case of abandoned homes.</p>
Abu Dhabi	<p>Allocation of AED 5 billion in water and electricity subsidies.</p> <p>Reduction in electricity connection fees for start-ups until the end of 2020.</p>
Dubai	A reduction in water and electricity bills by 10%. Reduction in deposits paid for water and electricity connections by 10%.
Employment	
UAE	No enhanced rights for employers to lay off, suspend payment to or force leave on employees although note that MOHRE has introduced formal measures for agreeing pay

	<p>reductions with non-Emirati employees. Similarly, no additional support for employee costs, such as recovering for sick pay or salaries.</p> <p>There have been some protections introduced for Emirati nationals.</p>
Directors' Duties	
UAE	No change as at the date of this alert.
Insolvency	
UAE	No change as at the date of this alert.

### Summary of Measures (Offshore – Free Zones)

Rate Reliefs and Other Measures	
ADGM	100% waiver on Commercial Licence renewal fees (with the exception of SPVs and foundations licences) until 25 March 2021.
	100% waiver on Business Activity renewal fees until 25 March 2021.
	100% waiver on Data Protection renewal fees until 25 March 2021.
	100% waiver on new Temporary Work Permit issuances, renewal and late application fees until 25 March 2021.
	100% waiver on annual Funds fees until 31 December 2020.
	100% refund of annual Funds fees already paid by FSRA-regulated entities for 2020.
	50% refund of Supervision fees already paid by FSRA-regulated entities for 2020.
	50% waiver on any new FSRA Supervision fees to be collected until 31 December 2020.
	Deferral of rental payments and service charges for office tenants at ADGM Square on Al Maryah Island for 2020.
	Amendment to Commercial Licensing Regulations to add the schedule of fees to the regulations and cover the possible reduction or waiver of fees by the Registrar as deemed necessary due to exceptional circumstances.
Amendment to Data Protection Regulations to cover the reduction or waiver of fees by the Registrar wherever deemed necessary as a result of exceptional circumstances.	
DIFC	<p>The DIFC has waived annual licence fees for new companies until the end of Q2 2020, and given a 10% discount on renewal fees for existing licences during the same period. Furthermore, companies will enjoy the postponement of payment plans for all commercial properties owned by DIFC Investments for a period of 6 months. DIFC will reduce its</p>

	ownership transfer fees from 5% to 4% for any property sale that occurs within a 3-month period, if ownership transfers are registered at the DIFC within 30 days after the end of the 3-month period.
DMCC	The DMCC has reduced its registration fees by 50% for new companies, while current companies will receive 30% discounts on renewal and amendment fees.
JAFZA	JAFZA has announced it will waive fines on expired trade licences, and waive the first year licence fees for any new companies.
All Dubai Free Zones	The Dubai Free Zones Council has launched an economic stimulus package which includes five key elements: (a) postponement of rent payments for a period of 6 months; (b) facilitating installments for payments; (c) refunding security deposits and guarantees; (d) cancellation of fines for both companies and individuals; and (e) permitting temporary contracts that allow the free movement of labour between companies operating in the free zones for the rest of the year. Each free zone has participated, in accordance to their own specific policies.
Employment	
DIFC	<p>During the “Emergency Period” (which extends until 31 July 2020), an employer may lawfully implement the following “Emergency Measures”:</p> <ul style="list-style-type: none"> <li>• impose reduced working hours;</li> <li>• impose vacation leave;</li> <li>• impose unpaid leave;</li> <li>• reduce remuneration on a temporary basis;</li> <li>• restrict workplace access; and</li> <li>• impose remote working conditions and requirements including imposing means of measuring an employee’s engagement and productivity during remote working,</li> </ul> <p>without the consent of the employee. An employer is required to notify any affected employees in writing at least 5 days in advance of imposing any of the above; and</p>
	<p>During the Emergency Period, employers will be required to maintain a list of (i) any employee terminating during the period from 1 March 2020 to the end of the Emergency Period; and (ii) any employees that are surplus to its current requirements. This information will be provided to the Government Services Office who (with the employee’s consent) shall create and maintain a virtual labour market during the Emergency Period known as the “DIFC Available Employee Database”.</p>
	<p>Any sick leave taken by an employee during the Emergency Period as a consequence of either (i) having contracted COVID-19; or (ii) being placed in quarantine, shall not count towards any sick leave entitlement that an employee is entitled to under the DIFC Employment Law.</p>
	<p>Employees will be entitled to full pay during any COVID-19 sick leave period and may not be subjected to any Emergency Measure provided for under this directive (such as a pay reduction) that did not apply to them prior to any such sick leave period.</p>

	The Directive further provides that it will not be permissible to terminate the services of an employee who has taken more than the maximum aggregate 60 working days of annual sick leave entitlement under the DIFC Employment Law due to COVID-19 related sick leave.
	The Directive ensures that any end of service gratuity payments will not be effected by the implementation of any Emergency Measures where the employee's basic salary has been reduced after 1 March 2020.
	Employers are not permitted reference a salary which has been reduced after 1 March 2020 when looking to transfer any end of service gratuity which an employee has accrued prior to 1 February 2020 into a DIFC employee workplace savings scheme.
	Under the Directive it will be permissible for employers to defer the cancellation of any terminated employees' residency visas and/or sponsorship beyond the 30 days' statutory limitation period.
	Employers in the retail, service or hospitality industry who provide employees with accommodation as part of their employment contract are required to continue to provide accommodation to those employees until the cancellation of their residency visa.

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