

BAKER & MCKENZIE

Doing Business in the UNITED ARAB EMIRATES

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Glossary

ADGM	the Abu Dhabi Global Market
ADX	the Abu Dhabi Stock Exchange
Commercial Agency Law	the Federal Commercial Agency Law No. 18 of 1981, as amended
Companies Law	the Federal Commercial Companies Law No. 2 of 2015
Competition Law	the Federal Law No. 4 of 2012 regulating competition
DED	the Department of Economic Development
DFM	the Dubai Financial Market
DFSA	the Dubai Financial Services Authority
DIFC	the Dubai International Finance Centre
DMCC	the Dubai Multi Commodities Centre
ESCA	the Emirates Securities and Commodity Authority
GCC	the Gulf Cooperation Council
FACTA	Foreign Account Tax Compliant Act of the United States
FZE	a Free Zone Establishment
FZCO	a Free Zone Company
JAFZA	the Jebel Ali Free Zone
Labour Law	the Federal Labour Law No. 8 of 1980, as amended
LLC	a limited liability company
MOEC	the Ministry of Economy and Commerce
PJSC	a public joint stock company
Private Company	a private joint stock company

Procurement Law	the Decree of the Minister of Finance No. 20 of 2000 concerning government procurement
RERA	the Real Estate Regulatory Agency
UAE	the United Arab Emirates
WIPO	the World Intellectual Property Organisation
Penal Code	the Federal Penal Law No. 3 of 1987, as amended

Introduction

Baker & McKenzie Habib Al Mulla is pleased to introduce our 2016 edition of “*Guide to Doing Business in the United Arab Emirates*”. Drawing on our unparalleled experience in the Middle East, this guide is intended to offer a simple but comprehensive guide to understanding the legal framework and environment for doing business in the UAE.

This guide does not attempt to provide an exhaustive analysis of every aspect of doing business in the UAE. Rather it has been compiled to assist those seeking an up-to-date overview of the current investment climate and the most important laws regulating foreign direct investment and commercial activities in the UAE.

This guide is organised in chapters addressing various important topics, including the history, geography and economy of the UAE, the legal landscape, foreign investment models, real estate ownership and leasehold and employment, along with tables which assist users to evaluate the available legal vehicles that may potentially be used to enter the UAE market.

Our lawyers, who are experts in each of these topics, have contributed their skills and experience in the preparation of this guide so that investors can take full advantage of the business opportunities available to them in the UAE.

Baker & McKenzie Habib Al Mulla, a member firm of Baker & McKenzie International, has a significant and long-standing presence in the UAE market, and has the largest litigation team in the UAE, offering a comprehensive range of legal services to companies and foreign investors. We look forward to assisting you.

History, Geography and Economy

The UAE is a constitutional federation formed on 2 December 1971 between the seven emirates of Abu Dhabi, Dubai, Sharjah, Ajman, Fujairah, Umm Al-Quwain and Ras Al-Khaimah. Formerly a part of the British protectorate known as the “Trucial States” or “Trucial Oman”, the emirates gained autonomy when the British withdrew from the Gulf Region in 1971.

The UAE is strategically located in the Arabian Peninsula and covers an area of approximately 82,880 square kilometres. It shares borders with Saudi Arabia, lying at the southwest of the country, and Oman, situated at the north and southeast of the UAE. The country also lies between the Arabian Gulf and the Gulf of Oman.

Arabic culture is part of everyday life in the UAE and it influences the country’s business norms. The country is largely open to foreigners and strives to create an environment which is favourable to foreign investment and economic growth, and which promotes tolerance, diversity and multiculturalism.

The population of the UAE is estimated to be 9.4 million.¹ Approximately 80% of the population is composed of expatriates, with a large percentage residing in Dubai. Arabic is the country’s official language however English is generally used in business and everyday life. Hindu, Urdu and Persian are also widely spoken. The majority of the population is composed of Muslims.²

The UAE is a dynamic hub for global commerce and has won the right to host the World Expo in Dubai in 2020. This will be the first time that the World Expo is staged in the Middle East, North Africa or South Asia.

The UAE has a petroleum-reliant economy with roughly a third of the country’s gross domestic product (GDP) being derived from its output of oil and gas.³ The oil wealth accumulated by the country over the past 25 years has helped fund and stimulate much of its current social and economic development. However, in recent years the UAE has embarked on a largely successful effort to diversify into other economic sectors, with tourism being one of its primary focuses. The UAE attracts millions of tourists every year with a variety of attractions, such as the Dubai Shopping Festival and the annual Omega Dubai Desert Classic golf tournament. The UAE is also quickly becoming a worldwide commercial hub, as indicated by numerous multinational companies relocating their regional headquarters to the country. The main driving force for this economic and commercial expansion is the UAE’s shift towards increasingly liberal economic policies, particularly the creation of economic and financial free zones.

The UAE has no foreign exchange controls and the currency of the UAE, the dirham, is pegged to the US dollar at a rate of AED 3.67 to USD 1. There are no restrictions or levies on the repatriation of capital and profits by foreign investors outside the UAE. At the present time, the UAE does not impose corporate or personal income tax, except on oil concessions and branches of foreign banks. The decline of oil prices in 2015-2016 is expected to have a moderating impact on the UAE’s ambitious development plans and GDP growth although, according to the International Monetary Fund, the GDP growth is expected to be at the rate of 2.5 % in 2016.

At a regional level, the GCC countries have been embarking on fiscal reforms in response to recent low oil price developments. Hence, the UAE is in the process of introducing, initially a value added tax, and potentially a corporate income tax. It was announced in February 2016 that the rate of the value added tax will be 5% and that the UAE will implement it by 1 January 2018. However, there are no clear guidelines on how and when corporate income tax would be implemented.

¹ Source: [World Bank Doing Business Report- Economy Profile 2016](#)

² Source: [CIA World Factbook](#)

³ Source: [CIA World Factbook](#)

Legal Landscape

1. Legal System

As a federation, the UAE is governed by a Constitution which regulates, among other things, the distribution of legislative powers between the federation (the federal capital is Abu Dhabi) and the individual emirates.

Under the UAE Constitution, federal laws have supremacy over the laws of individual emirates. However, individual emirates are permitted to enact their own legislation in areas other than those exclusively reserved to the federation. Individual emirates can also legislate on matters where the federation has not yet exercised its legislative powers. Federal laws, with the exception of property law, generally govern civil and commercial transactions.

The UAE's legal system is founded upon: (i) civil law principles, most of which are heavily influenced by Egyptian law (which in turn is influenced by French law); and (ii) Islamic *Shari'a*.

Legislation is divided into a number of major codes that provide the general principles of law including, among other things, civil, commercial, civil procedure, companies, intellectual property, immigration, maritime, industrial, banking and employment law.

There is no system of precedent in the UAE. However, judgments of higher courts are binding on lower courts and provide useful guidance of future judicial interpretation.

2. Judicial System

There is a combination of federal and Emirate level courts with parallel local jurisdictions, depending on which system the emirate has opted for.

Each emirate is entitled to either establish its own judiciary or merge with the federal court system. The judicial systems of Sharjah, Ajman, Fujairah and Umm Al-Quwain have merged into the UAE Federal Judicial Authority, while Dubai, Ras Al-Khaimah and Abu Dhabi, have retained their own distinct and autonomous local judicial systems.

In terms of judicial hierarchy, both the UAE federal and local judicial systems are divided into courts of first instance, courts of appeal and courts of cassation.

The UAE Federal Supreme Court, which has its seat in Abu Dhabi, is the highest court in the federal judicial system. This court is also commonly referred to as the (UAE) Supreme Court of Cassation, and acts as, among other things, a constitutional court and the court of cassation for those emirates which have merged into the federal system, in addition to settling disputes between the different emirates.

On the other hand, the local judicial systems of the emirates of Dubai, Abu Dhabi and Ras Al-Khaimah have their own courts of cassation, entirely separate and distinct from the Supreme Court of Cassation.

In addition to the federal and local courts, the DIFC (the financial free zone based in Dubai) has its own courts, which are known as the DIFC courts.

DIFC courts have jurisdiction over civil and commercial matters concerning contracts that were concluded or performed within the DIFC, the insolvency of DIFC corporate entities, and over civil or commercial disputes between parties who have opted to submit to these courts.

More recently, the ADGM court has been set up and is modelled on the English judicial system.

3. Restrictions on Foreign Investment

One of the key aspects of the restrictions on foreign investments in the UAE is illustrated in the Companies Law mandating that corporate entities must be at least 51% owned by a UAE national or by an entity that is wholly owned by UAE nationals.

Also, certain types of commercial activities can be carried out exclusively by UAE nationals or entities wholly owned by UAE nationals, such as the activity of commercial agency and the supply of labour.

However, GCC nationals and entities wholly owned by GCC nationals are not subject to the foreign investment restrictions applied in the UAE and are permitted to carry out most of the activities outlawed by the policies, except for a very short list of prohibited activities, exclusively reserved to UAE nationals.

A draft foreign investment law is under discussion to decrease the restrictions on foreign investment and permit foreign ownership of companies operating in certain strategic sectors outside of the free zone with an aim to encourage innovation and the transfer of technology in the industrial sector. The exact scope of the law, as well as the timeframe for its introduction, are not yet clear.

At the present time, the UAE implements a legal framework of free zones which foster an attractive environment for businesses by offering companies, primarily 100% foreign-owned companies, among other things, zero tax rates on their income and exemption from foreign exchange controls. However, free zone companies are subject to a number of restrictions and are only permitted to conduct their activities within the vicinity of the respective free zone. Such free zones include economic free zones, such as the JAFZA, and financial free zones such as the DIFC and, more recently, the ADGM. These restrictions should be carefully considered by investors when evaluating whether incorporating a company in a free zone is consistent with their objectives.

4. Choice of law and dispute resolution

Generally, parties entering into contracts in the UAE are entitled to opt for a foreign law, commonly English law, to govern the relationship, except for certain types of matters such as real rights (i.e., matters pertaining to a property located in the UAE), employment contracts, or registered commercial agency, and contracts concluded with UAE government entities, for public order considerations.

This choice will be upheld by local courts and to the extent the foreign law provisions do not contradict Islamic *Shari'a*, public order or morals of the UAE. However, the party invoking the foreign law before a UAE court has the burden of proving such foreign law to the court and, the court, at its discretion, may decide to apply UAE law if the party invoking the application of the foreign law fails to prove it and determine its effects.

Moreover, parties in the UAE can generally agree to submit disputes to a court in the UAE, DIFC, (potentially ADGM) to a foreign court or to arbitration.

In principle, foreign law judgments are enforceable in the UAE, but in practice proven to be cumbersome and complex to achieve. In an effort to facilitate the enforcement of foreign judgments, the UAE has entered into numerous treaties with other countries which govern the reciprocal enforcement of foreign judgments including the Riyadh Arab Agreement for Judicial Cooperation Convention of 1983, the GCC Convention of 1996 and other similar bilateral treaties with France, China, India and Egypt.

With regard to the enforcement of foreign arbitral awards, the UAE is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the “New York Convention”, which provides for the enforcement of foreign arbitral awards in the UAE. There are a number of domestic arbitration forums in the UAE, notably the Dubai International Arbitration

Centre, the Abu Dhabi Commercial Conciliation Arbitration Centre and the arbitration center founded by the DIFC and the London College of International Arbitration, known as DIFC-LCIA Arbitration Centre. Parties may also select a foreign arbitration centre such as the International Court of Arbitration of the International Chamber of Commerce or the United Nations Commission on International Trade Law.

The majority of disputes are arbitrable in the UAE, subject to limited exceptions such as registered commercial agency disputes, labor disputes, family and inheritance matters. Also, disputes under contracts with UAE government are normally referred to a UAE court, except in certain emirates, e.g. Dubai where parties may opt for arbitration.

There is a controversy around the arbitrability of real estate related disputes, as real estate is an area that has been regarded by UAE courts as a public order matter since it relates to wealth and individual ownership, while in other occasions, it was ruled that disputes related to the non-performance of contractual obligations under a real estate sale and purchase agreement may be subject to arbitration and disputes related to the registration or non-registration of real estate property may not be resolved through arbitration.

5. Taxation

The UAE does not currently have a federal tax system. Individual emirates have passed their own tax decrees dealing with corporate income tax but to date the relevant tax legislation has not been enforced and corporate income tax is only imposed on oil companies and branches of foreign banks.

There is no currently sales tax or value added tax in the UAE. However, the GCC countries announced in February 2016 that a unified value added tax at the rate of 5% will be imposed by 1 January 2018 or 1 January 2019 depending on the readiness of the respective GCC country. Legislation to support the introduction of VAT is currently being drafted.

There are also plans to impose a federal corporate income tax. However, the scope of this tax and the timeframe for its implementation are not yet clear.

Dubai and certain other emirates impose taxes on certain goods and services, including alcoholic beverages and hotel and restaurant services. For instance, all sales of food and beverages as well as the provision of any services at hotels, including accommodation in Dubai are subject to a municipality fee of 10%.

There are no taxes personal income taxes in the UAE. Social insurance contributions are only required to be paid by government employees. However, it is worth noting that individuals may be subject to other fees or levies. For instance, the Dubai Municipality applies a housing fee amounting to 5% of the annual rental value of property leased by Dubai residents, payable alongside the water and electricity bill.

There are no capital gains taxes levied on the sale of shares. Real estate transfer tax, referred to as registration fees, is levied on the transfer of the ownership of real estate in the UAE (including where there is an indirect transfer in a company holding real estate in the UAE). The amount varies depending on the Emirate and the location of the real estate. In Dubai, the transfer tax is currently 4%, although the DIFC charges 5%.

The UAE has entered into an extensive network of treaties to ensure the avoidance of double taxation.

Moreover, the UAE became a FACTA partner in 2015 and signed an Intergovernmental Agreement with the United States setting out guidelines for the application of FACTA by financial institutions regulated by the UAE Central Bank, the Insurance Authority, ESCA and DIFC.

6. Customs duties

The UAE applies customs duty at a flat rate of 5% of the total value of the cost, insurance and freight. Tobacco and alcohol are subject to higher customs duty.

The UAE has ratified the GCC unified customs duty law under which all imports within a GCC country, including imports from a free zone into the mainland, are subject to a customs duty at a flat rate of 5%.

Certain imports are not subject to customs duty, such as goods in transit, goods imported by foreigners or by UAE nationals residing abroad for personal and household use, goods imported for military and internal security use, goods imported for the purposes of diplomatic missions and goods imported by charity associations. In each such case, imports have to fulfil a number of conditions to qualify for the exemption.

With an aim to reduce and/or remove of tariffs, the UAE through the GCC has signed numerous free trade agreements including the Greater Arab Free Trade Area Agreement (GAFTA).

7. Import/Export Controls

The Commodities Import and Export Federal Law No. 13 of 2007 permits the UAE authorities to ban or restrict the exporting, importing, re-exporting, transiting or transshipping of commodities in the event that such commodities pose a threat to public safety or hygiene, environment, natural resources or national security, or if the foreign policy of the UAE requires any such restrictions. In addition, importing goods into the UAE depends upon: (i) the licensed activity of the importer; (ii) the nature of goods to be imported; and (iii) the purpose of importing them.

It is worth noting that, without a special licence, there is a ban on the exportation or re-exportation of strategic goods, including arms and military hardware, chemical and biological materials and dual-use items.

Moreover, there is a general restriction on parallel imports of products if these products are exclusively imported through a registered commercial agent. Parallel imports by a third party can only be made with written permission of the registered commercial agent or in very specific cases, provided permission is obtained from the authorities.

The UAE, being a member of the Arab League and the GCC, has a boycotting policy towards Israel. In 1995, the UAE has renounced the “secondary boycott “ and the “tertiary boycott “ and currently only applies “ the primary boycott”. Under the “primary boycott,” the UAE refuses to deal with or in goods or services from Israel or of Israeli origin or with the State of Israel and its citizens.

8. Anti-Bribery and Corruption

The UAE does not have a comprehensive anti-bribery or corruption law. However, different legislations contain several provisions dealing with anti-bribery/corruption in the public and private sectors. Most of these provisions are found in the Penal Code.

The Penal Code incriminates a public official who solicits or accepts a donation or advantage of any kind, or a promise of anything of value, which incites him to be negligent in the proper carrying out of his function or to commit an act in violation of his function or an act that is not part of his function.

Likewise, it is a crime for an individual to offer a public official a donation or advantage of any kind, or a promise of anything of value, in order to incite the official to commit an act in violation of his duties, regardless of whether the public official declines or accepts the bribe.

However, a person who bribes a public official may be cleared of liability if he reveals the crime to a judicial or administrative authority before it is discovered.

The anti-bribery provisions of the Penal Code encompass non-public officials, including members of the board of directors of a company or private institution, or any manager or employee in any such entities.

9. Competition Law

To date, the Competition Law has had very little impact on the conduct of business activities in the UAE due to the absence of its operational implementing regulations. The Competition Law came into effect on 23 February 2013 and establishes a framework regime in the UAE that controls mergers and prohibits anti-competitive agreements and abuses of dominant market position. Its implementing regulations were issued on 27 October 2014, however, many key areas remain uncertain. Therefore, businesses thinking that their contemplated agreement or practice may potentially have an impact on competition in the UAE must consider submitting an application to MOEC disclosing the contemplated practice, transaction or agreement and officially enquire as to whether there are any restrictions or required approvals required in connection with the particular arrangement, pending the adoption of further implementing regulations.

10. Data Protection and Privacy

Unlike other jurisdictions, the UAE has no comprehensive data protection or privacy laws. However, data protection and privacy are addressed in a number of legislations. Primarily, the UAE Constitution guarantees both the freedom and the secrecy of communication.

The Penal Code also includes a number of provisions that deal with privacy and secrecy. For instance, the Penal Code prohibits individuals who are entrusted with confidential information in the context of their profession, craft, circumstance or art from disclosing such confidential information or from using it for personal benefit or for a third party's benefit, unless the disclosure or use of such confidential information is required or permitted by law or has the consent of the owner of such confidential information. Moreover, the Penal Code generally prohibits the violation of the privacy of individuals.

Federal Law No. 1 of 2006 on Electronic Commerce and Transactions imposes criminal sanctions on the disclosure of any information included in electronic files, documents or communications that a person has obtained pursuant to the powers conferred under the said law.

The DIFC and the ADGM have issued their own data protection laws, being financial free zones benefiting from a certain level of autonomy in commercial and civil legislations. In addition, the Dubai Healthcare City, another free zone, has adopted special regulations on data protection addressing the collection, use, disclosure and transfer of healthcare data.

In 2012, the UAE adopted a federal Electronic Crimes Law No. 5 of 2012 which protects the privacy of online information including, amongst other things, data, details of electronic payments and bank account and electronic cards data.

Another aspect of the privacy protection afforded in the UAE is the recent Anti-discrimination and Anti-hatred Federal Decree by Law No. 2 of 2015, which incriminates any form of discrimination on the basis of religion, caste, creed, doctrine, race, colour or ethnic origin in addition to any acts that stoke religious hatred or offends religion through any form of expression, through speech or the written word, or online media. Corporate entities and individuals are both addressed by this law and sanctions, ranging from imprisonment to significant fines, may be imposed.

In December 2015, Dubai published a new data sharing law, No. 26 of 2015, allowing the exchange of data, open data and shared data between Dubai government authorities and data providers, which potentially includes private sector businesses working towards achieving the Dubai plan of becoming

a smart city by 2021 and encouraging innovation with an objective to positively impacting the economy. The definition of “data provider” is very broad and encompasses persons who produce, own, publish or exchange any data related to Dubai. However, there is no clarity as to which entities or persons will be required to share data with the Dubai government. In accordance with this law, data providers are required to take all necessary measures for preserving the privacy and confidentiality of any such data they manage. Implementing regulations which define the complete scope of this recently issued law are yet to be issued.

Given that violations of privacy and disclosure of personal or family information are criminally punishable in the UAE, it is recommended to seek the explicit consent of the concerned persons for the use of any of their personal information or data.

11. Intellectual Property Rights

There are five distinct intellectual property rights that are recognised in the UAE: (i) trademarks; (ii) copyrights; (iii) patents; (iv) protection of industrial designs; and (v) confidential information. The MOEC is the competent authority in charge of regulating and supervising all matters relating to intellectual property rights.

The UAE does not have a comprehensive intellectual property law, but a number of laws are in place governing the different types of intellectual property rights: the Trademark Federal Law No. 37 of 1992, as amended, which regulates the protection of trademarks and trade names, the Federal Law No. 7 of 2002 on Author’s Rights and Neighbouring Rights, and the Federal Industrial Property Law No. 17 of 2002, as amended.

The UAE is also a member of the GCC and, therefore, applies the GCC unified patent law. There is a new unified draft GCC trademark law in the pipeline. Moreover, the UAE is a party to a number of international treaties, including the following:

- The Convention Establishing the WIPO 1967.
- WIPO Berne Convention for the Protection of Literary and Artistic Works 1971 (Berne Convention).
- WIPO Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations 1961 (Rome Convention).
- WIPO Copyright Treaty 1996.
- Paris Convention.
- World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS).

Therefore, intellectual property rights can have a national, GCC-wide or global application, depending on the extent of the protections pursued.

12. Government Procurement

Foreign companies considering submitting bids for tenders issued by public authorities in the UAE ought to seek proper legal advice prior to submitting their proposals and agreeing to assume binding commitments.

At the federal level, the Procurement Law and the Cabinet Resolution No. 32 of 2014 set out requirements for contracts to be executed with the UAE federal government, ministries and federal agencies.

At the local level, Abu Dhabi, Dubai and Sharjah have enacted stand-alone procurement laws applicable to the tenders issued by local public authorities. Generally speaking, local procurement laws are substantially similar to the overall Procurement Law, although some matters are addressed differently in each of the legislations.

In addition, certain public authorities have specific legislation governing their procurement and tendering activities. For instance, procurements for the UAE Armed Forces are governed by a special procurement rules.

A foreign entity must identify whether the applicable public authority will accept bids submitted by companies not wholly owned by UAE nationals or by companies having a minimum of only 51% of their share capital owned by UAE nationals.

Most public authorities have a set of standard procurement documentation for the provision of contracting work, services and supplies, among others. Providing bid bonds, performance bonds and other guarantees issued by a bank operating in the UAE is typical in government procurements.

In procurement contracts with governmental and/or quasi-governmental entities, UAE law applies if parties do not agree otherwise. Referring the disputes to an arbitration seated in the relevant emirate may persuade the governmental and or quasi-governmental entity to agree on the insertion of an arbitration clause in the agreement. More recently, an opinion issued by the Dubai Supreme Legislative Committee, published on the official website of DIFC, adopted the view that DIFC is part of the Dubai courts, and hence, government entities may agree on the submission of disputes to DIFC courts is. This opinion is very recent and there is no clarity on the potential challenges to this opinion or to the position of the Dubai courts in this respect.

Dubai has recently issued Law No. 22 of 2015 regulating partnership between the public and the private sector in the emirate of Dubai. Although a number of projects in the UAE, and more specifically in Dubai, have already been either designed or completed using this investment model, there was no legal framework in place regulating this model. This step aims to raise the confidence of investors and financing institutions in Dubai's legal system and confirm that public private partnership model will be used more frequently in Dubai. A number of secondary legislations or regulations are yet to be issued.

13. Money Laundering

The UAE has a wide range of regulations in place to combat money laundering. Provisions in this regard are included in the Penal Code, Federal Law No. 4 of 2002 Concerning the Incrimination of Money Laundering, as amended, its executive regulations issued by the Cabinet of Ministers Resolution No. 38 of 2014 and various directives of the UAE Central Bank. The anti-money laundering measures adopted by the UAE comply with the standards of the Global Financial Task Force, the inter-governmental policy making body established in 1989 responsible for promoting and implementing the international standards and measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

The DIFC and the ADGM are subject to all provisions of the UAE's anti-money laundering legislation. In addition, the DFSA issued the Anti-Money Laundering, Counter Terrorist Financing and Sanctions Module in 2013, applicable in DIFC, which requires its member firms to establish and maintain effective policies, procedures, systems and controls to prevent opportunities for money laundering in the firms' activities. It also contains certain requirements regarding the appointment of a money laundering reporting officer and the establishment of 'know-your-customer' requirements, as well as systems for detecting and reporting suspicious transactions.

The ADGM Financial Services Regulatory Authority has also issued a module in 2015 applicable in ADGM. ADGM Financial Services Regulatory Authority (FSRA) has jurisdiction for the detection,

prevention and avoidance of these activities within the ADGM. The Anti-Money Laundering and Sanctions Rulebook sets out the anti-money laundering requirements

14. Capital Markets

Financial markets in the UAE are relatively young and are constantly developing their infrastructure. Securities may be traded and listed in the UAE either in DFM, ADX, or NASDAQ Dubai. DFM and ADX are regulated by the ESCA, while NASDAQ Dubai is an international exchange located in the DIFC and regulated by the DFSA. Companies listed on any of the above markets must comply with the rules of the relevant market, in addition to the rules of the regulator.

The regulations of ESCA regulate the listing requirements and implements customary disclosure and transparency requirements such as reporting material incidents, in to certain notifications and disclosures are required if the ownership of a shareholder will reach 5% or more of the securities of a listed company on DFM/ADX and each 1% increment after the 5% or 10% of the securities of a parent, subsidiary or affiliate of a listed company on DFM/ADX. Takeover rules and approvals apply if a shareholder's ownership, together with any of its related parties, exceeds 50% or more of a listed company's share capital.

Any shareholder, together with any of its related parties, holding 30% or more of the share capital of a listed company that wishes to acquire any additional shares must submit a tender offer to ESCA. In turn, ESCA has the right to reject the tender offer if it is deemed to affect the interest of the market or the national economy.

ESCA is also in the process of issuing new initial public offering rules in line with the best international market practices.

On the other hand, the Markets Law 2004 and the DFSA Rulebook govern transactions and listing conducted in NASDAQ Dubai and prescribes a number of disclosure requirements and takeover rules.

By way of example, directors and other connected persons are required to file regular reports to the DFSA and to the company on the occurrence of certain events, including, among other things: (i) the appointment or removal of directors; (ii) any increments in the voting rights by 1% or more; and (iii) any transaction with a party holding 5% or more of the voting rights of the company.

The Takeover Rules Module of the DFSA Rulebook requires a person who acquires 30% or more of a listed company's voting rights to make a mandatory takeover bid for the whole company. This provision is largely based on its UK equivalent.

Foreign Investment Models

1. Restrictions on Foreign Investments and Anti-Fronting Regulations

At a very general level, foreign investors intending to commence business activities in the UAE have the option of setting up a presence either “onshore” or in one of the available “free zones” that have been established throughout the UAE.

For an onshore (also termed as “mainland”) presence, i.e. outside of a free zone, foreign parties must partner with a UAE national (either an individual or a company fully owned by UAE nationals) who must hold at least 51% of the shares in the onshore company. Although the liberalisation of foreign ownership restrictions was anticipated by many commentators, the Companies Law (replacing a former commercial companies law No. 8 of 1984) which came into effect in July 2015 maintained this requirement for onshore companies.

As a result of this restriction on foreign ownership, it is customary to include protections for the minority party within the registered constitutive documents of the onshore company. Such protections can include, among others: (i) supermajority voting; (ii) a reservation of management control; and (iii) a disproportionate allocation of profits. In addition, shareholder agreements and other arrangements that supplement the registered constitutive documents may offer additional protection to the minority shareholder.

Civil companies, which undertake “professional” or “consultancy” activities, such as law firms or architecture, engineering and accounting firms, can be 100% foreign-owned. However, shareholding in such companies is normally limited to individuals and is, therefore, of limited interest for large-scale capital-intensive operations.

By contrast, setting up a presence in a free zone does not require partnering with a national shareholder: 100% foreign ownership is permitted. However, there are restrictions on what a free zone company can do outside of the free zone where it is established.

Certain investors may also enter the market through a distributorship or commercial agency, depending on the nature of the contemplated activity, rather than through a direct investment. Commercial agencies, if registered, are heavily regulated and may only be conducted by UAE nationals or companies that are 100% owned by UAE nationals/entities.

Furthermore, the national ownership requirement was strengthened through the issuance of the Anti-Fronting Law in November 2004. The Anti-Fronting Law states that a foreign shareholder may not “undertake any economic or professional activity which it is not permitted to carry out under the effective laws and decrees of the UAE, whether undertaken on its own account or in venture with others; or enabling it to evade obligations applicable to it”. The enforcement of this law was deferred until 31 December 2009, after which no further clarifications on the implementation or further deferral of the Anti-Fronting Law have been provided. Therefore, and despite the market practice of entering into side agreements to mitigate the business risk associated to the local ownership requirements, investors are advised to affiliate with a genuine partner in the UAE, when possible.

2. Overview on Foreign Investment Models

2.1 Onshore Corporate Structures

“Onshore” entities refer to those entities set up on the mainland of the UAE, i.e. not in a free zone, and are permitted to carry out business in the respective emirate in which they are registered. As described above, the participation of UAE nationals (or entities which are 100% owned by UAE nationals) is required to establish a business with an onshore corporate structure. LLCs, PJSCs and branch or representative offices are examples of onshore corporate structures. Onshore corporate structures are governed by the Companies Law.

Form/type	<p>The most widely used vehicle is the LLC. Branches and representative offices may also be set up in the UAE.</p> <p>Choosing the most appropriate form of company depends on the purpose of the company and on the contemplated business activities. Set out in <u>Annex (1)</u> are the most common types of corporate structures used to set up business operations “onshore” in the UAE and their salient features. There are subtle differences regarding the incorporation process of legal vehicles in the different emirates.</p>
Local Participation	<p>The level of UAE participation required for “onshore” business structures in the UAE varies. It can either be a local service agent for a branch office or representative office of a foreign company, or a local shareholder holding a minimum of 51% national ownership of companies such as an LLC. However, nationals of any GCC State and GCC entities can own 100% of the share capital of a UAE company provided that such company, having a GCC ownership, does not engage in certain activities that may be undertaken only by companies 100% owned by UAE nationals such as commercial agencies, labour supply, services for elderly or disabled persons, cultural activities and print and publishing houses.</p>
Objects	<p>The activities that businesses can carry out in the UAE are restricted to those listed on the local entity’s licence issued by the DED in the relevant emirate. For instance, the government of Dubai adopts a standard classification guide in which all permitted economic activities are listed. If the required activity is not included in the guide, it is possible in some instances to apply for a new purpose-defined activity. However, such an application will be subject to the consent of DED and can be time-consuming. In addition, there are certain types of activities that require additional special licences from a particular licensing authority (such as medical services, telecommunication and education).</p>
Incorporation Documents	<p>The following documents are required to set up a new legal entity in the UAE:</p> <ul style="list-style-type: none"> - In the case of a corporate founding shareholder, articles of association and certificate of incorporation, notarised and legalised by the UAE consulate or embassy in the country where it was issued - In the case of a corporate founding shareholder, a board or shareholder resolution approving the establishment of a new company and appointing a signatory to represent it, notarised and legalised by the UAE consulate or embassy in the country where it was issued - In the case of an individual founding shareholder, a copy of his/her passport for expatriates or a copy of the family card for UAE nationals - Copy of the passport of the appointed general manager(s)/directors of the company to be incorporated

- Memorandum and Articles of Associations of the new company
- Lease agreement for premises.

Additional incorporation documents may be required depending on the type of legal entity or the contemplated activity.

Incorporation Process

Procedures to incorporate an entity in the UAE differ slightly, depending on the nature of the entity to be incorporated and the emirate in which the entity will be based. The DED of the relevant emirate is the authority responsible for the incorporation of legal entities in the UAE. The initial approval process would typically involve the following:

- Approval and reservation of the proposed company name
- Initial approval of the proposed business activities for which the company is to be licensed; and
- Security clearance of the individual shareholders and general manager(s)/director to be appointed.

The process of registering a branch/representative office is similar to the process of incorporating an entity, except for the following two elements:

- The parent/owning entity must enter into a local service agency agreement
- Constitutional documents are not required since the branch is not a separate legal entity.

Moreover, additional incorporation approvals are sought from MOEC for the registration of branch/representative offices.

2.2 Free Zone Corporate Structures

Free zones foster an attractive environment for businesses as they offer foreign investors, among others, the following:

- 100% foreign ownership;
- Zero tax rates on corporate income for up to 50 years (the tax exemption may vary slightly between the different free zones);
- No foreign exchange controls;
- No restriction on capital repatriation;
- No currency restrictions; and
- No import or re-export duties (except for products entering the UAE or GCC).

There are two types of free zones in the UAE- financial free zones and economic free zones. Currently, the only two financial free zones are the DIFC and the ADGM. The table below outlines the differences between the DIFC, as the most established financial free zone to date, and economic free zones. There are a large number of free zones located in each emirate out of which fourteen economic free zones are in Dubai, including JAFZA, Dubai Airport Free Zone, Dubai Creative Clusters, DMCC and Dubai South.

(a) Economic Free Zones

Economic free zones are industry specific. Below is a brief overview of some of the special economic free zones in Dubai.

JAFZA is one of the fastest growing free zones in the region focused on light manufacturing, warehousing and logistics. It has access to well-developed port facilities and is frequently used as a base for regional operators throughout the GCC and the broader MENA region. The licences available in the JAFZA are categorised as follows: trading activities, services activities, e-commerce licence, industrial activities, and national industrial activities (designed for manufacturing companies in which GCC nationals must own no less than 50% of the share capital).

Dubai Creative Clusters were formed to foster Dubai’s creative and innovative industries including Dubai Design District, Dubai Science Park, Dubai Knowledge Village, Dubai Academic City, Dubai Media City, Dubai Studio City, Dubai Internet City, International Media Production Zone and Dubai Outsource Zone.

DMCC is another free zone specialising in the trade of a wide range of commodities focused around the gold, diamond, agro, pearl, precious metals and tea industries.

Dubai South (previously known as Dubai World Central) is a relatively new economic free zone established in 2014 and is mandated to embody the vision of Dubai Plan of 2021. Al Maktoum International Airport and the World Expo 2020 site are located in Dubai South.

Free zone companies are not allowed to carry out business outside the particular free zone. If a free zone company wishes to perform activities outside the particular free zone, or maintain a separate presence onshore in the UAE, it will need to set up either a branch office (which cannot carry out any trading activities) or a new company onshore (in which a free zone company can only own 49% of its share capital), and is subject to obtaining the necessary licences from the relevant federal or emirate authorities.

Free zones are entitled to adopt their own regulations to govern a number of very limited areas. In practice, most free zones adopt special company regulations. However, the Companies Law will apply to entities registered in the free zones, but only with respect to matters that are not specifically governed by regulations adopted by the free zone. Another area where free zone regulations may adopt special regulations is employment and labour matter, which often apply in conjunction with, and sometimes subordinate to, the Labour Law.

By way of illustration, Annex (2) outlines the common types of corporate vehicles available to set up business operations in JAFZA, being one of the first and most established free zones in the UAE.

(b) DIFC

The DIFC was established in 2004 as a global financial centre within Dubai with the aim of attracting global and regional financial institutions, companies and service providers. The main sectors of focus in the DIFC are the following:

- Regulated services such as:

- Banking and brokerage services
- Insurance and reinsurance
- Islamic finance
- Wealth management
- Non-regulated services being the ancillary services such as:
 - professional services (e.g. legal and auditing firms)
 - global corporates,
 - retailers (business and lifestyle facilities)

Any entity in the DIFC wishing to offer regulated services must obtain the relevant licence from the DFSA, which is the sole independent regulatory authority for financial services in the DIFC. A regulated entity in the DIFC (referred to as an “Authorised Firm” by the DFSA) must comply with certain regulations applicable to its prudential category in relation to paid up capital, authorised personnel, conduct of business and annual reporting.

DIFC companies are not allowed to carry out business outside the DIFC. If a DIFC company wishes to perform activities outside the DIFC or maintain a separate presence onshore in the UAE, it will need to set up either a branch office or a new company onshore and obtain the necessary licences from the relevant federal or emirate authorities

The DIFC is exempt from the civil and commercial laws of the UAE and operates largely as a self-regulated common law jurisdiction. However, UAE criminal laws and specific federal regulation, including the regulations on anti-money laundering, apply in the DIFC.

The DIFC Courts have jurisdiction over civil and commercial matters relating to contracts concluded or performed within the DIFC, unless the parties select a different jurisdiction. Matters relating to the insolvency of DIFC corporate entities are also subject to the jurisdiction of the DIFC Courts. Criminal matters in relation to the DIFC are governed by federal laws and fall within the exclusive competence of the UAE courts.

The Ruler of Dubai amended the DIFC Judicial Authority Law in 2011, allowing parties without any nexus to the DIFC to opt for the submission of their dispute to the DIFC Courts. Moreover, this amendment has incorporated the terms of the protocol signed between the DIFC Courts and the Dubai Courts, by which judgments of either of the two jurisdictions are recognized and automatically enforced in the other jurisdiction.

The most common types of corporate vehicles available to set up business operations in the DIFC are described in [Annex \(3\)](#).

2.3 Commercial Agency, Distribution and Franchise

The Commercial Agency Law defines a commercial agency as any arrangement whereby the principal (commonly the foreign investor) is represented by an agent to “distribute, sell, offer or provide goods or services within the UAE for a commission or profit”.

The MOEC is the authority empowered to regulate commercial agencies and it has taken the position that franchise agreements are also subject to the Commercial Agency Law.

The UAE laws do not distinguish between distribution arrangements and commercial agencies.

(a) Registration and Exclusivity

The Commercial Agency Law requires all commercial agencies to be registered with the MOEC. To be registered as a commercial agency with the MOEC, commercial agents must be UAE nationals, or companies incorporated in the UAE, and must be owned entirely by UAE nationals. The Commercial Agency Law provides that a commercial agent must be exclusive for the applicable territory and product line(s) covered by the agency agreement. Consistent with this rule, a principal could appoint a separate agent for each emirate or combination of emirates, or for different product lines, or for both different emirates and product lines.

To bolster this exclusivity requirement, the Commercial Agency Law entitles a commercial agent to receive a commission for sales made by the Principal or a third party within the agent's specified territory of the product line(s) covered under the agency agreement, even if such sales are not resulting from the efforts exerted by the commercial agent.

In principle, exclusivity (either for the UAE as a whole or for individual emirates) is a pre-requisite to register a commercial agency agreement. with MOEC

(b) Legal Protection – Registered Agents

The Commercial Agency Law provides a certain level of protection for commercial agents that hold a registered commercial agency agreement demonstrated in the following aspects:

- Registration enables the agent to block parallel imports, including imports from free trade zones, into the UAE. However, the scope of blocked parallel imports is reduced in relation to certain categories of goods (e.g. certain food products) if the categories of products are identified in UAE cabinet decisions.
- The rules governing the termination of a registered commercial agency for convenience, i.e. without cause, and the non-renewal of an expired definite term registered commercial agency are very stringent. As a matter of public policy, it is not possible to contract out of the provisions of the Commercial Agency Law governing the termination and non-renewal of registered commercial agencies, and any agreement to the contrary is unenforceable.

Having said that, termination and non-renewal of a registered commercial agency may only occur in the following events:

- (i) the termination of a commercial agency agreement of an indefinite term has been mutually and amicably agreed between the parties;
- (ii) the non-renewal of an expired term commercial agency or the early termination of a definite term commercial agency has been mutually and amicably agreed between the parties;
- (iii) the special committee within the MOEC deems that the reasons for the termination request or the non-renewal request are justified; or
- (iv) the decision of the special committee within the MOEC has been appealed before a UAE court within 30 days from its notification to the parties and a final court judgment has been issued which rules that the commercial agency must be deregistered based on evidenced reasons justifying such termination or non-renewal.

If the termination or the non-renewal is not justified, the registered commercial agent will be entitled to receive a compensation which is based on a number of considerations, including the duration of the commercial agency relationship, the capital investment (the personnel recruitment and salaries, lease of office and warehouse space, advertising, purchase of

inventory, etc.) as well as the commercial agent's reasonable expectation of future profits from the commercial agency.

- The Commercial Agency Law gives exclusive jurisdiction to the UAE courts to hear any dispute which might arise between the principal and the commercial agent relating to a registered commercial agency agreement and any agreement to the contrary is not enforceable.

Given that registration provides commercial agents with significant protections against principals, it is common that foreign investors refrain, where possible, from registering commercial agency arrangements in the UAE. However, it is also common for government agencies to include a requirement in their respective procurement policies to only purchase products from a registered agent whenever possible. This policy puts an unregistered agent at a potential disadvantage when competing for government contracts with a registered agent.

Real Estate

Ownership/Leasehold

Real estate ownership and leasehold rights are regulated at the level of each emirate. In particular, the DIFC and the ADGM each have a special real property legislation governing real estate located in their proximity.

Freehold ownership by foreign investors is restricted and restrictions vary depending on the emirate. It is more common to grant foreign investors with “usufruct rights”⁴ and “musataha rights”,⁵ which are *in rem* rights.

The salient features of ownership and leasing rights in Dubai and Abu Dhabi are addressed hereinafter.

1. Freehold Ownership by Foreigners

1.1 Dubai

The Dubai Real Estate Registration Law No. 7 of 2006 stipulates that the right to own a “Real Property Right” in Dubai is limited to UAE citizens and nationals of GCC countries. In addition, companies wholly owned by qualified nationals, as well as PJSCs, also have the right to own a “Real Property Right” in Dubai.

Non-UAE/GCC persons may be granted the right to freehold ownership without restrictions, or to usufruct, musataha or long leasehold rights over real property for a period not exceeding 99 years in “designated areas” of Dubai.

“Real Property Rights” are defined as *in rem* rights over real property, as opposed to being purely contractual rights, and include musataha and usufruct rights. All “Real Property Rights” are required to be registered, regardless of the term length.

1.2 Abu Dhabi

The Abu Dhabi Real Estate Ownership Law No. 19 of 2005, as amended in 2007, stipulates that only UAE nationals or companies wholly owned by UAE nationals are entitled to own real estate property in Abu Dhabi. On the other hand, GCC nationals and companies wholly owned by GCC nationals are permitted to own real property located in “Investment Areas”.

Non-UAE/GCC nationals may: (i) own improvements constructed on the land, excluding the land in the Investment Areas; (ii) be granted long-term usufruct rights for a period not exceeding 99 years, or long-term musataha rights for a period not exceeding 50 years, over real property in the Investment Areas; and (iii) be granted long-term leases (i.e. exceeding 25 years) in the Investment Areas.

All real rights, including rights of usufruct and musataha, are required to be registered, regardless of the term length.

⁴ Usufruct is a real right attached to the land which gives its holder usufructuary rights similar to those of an absolute owner (e.g. the right to sell, the right to mortgage, etc.), except that it resembles a lease tenure as it is held for a limited term (i.e. 99 years).

⁵ Musataha is similar to an outright ownership right except that it is only for a limited period, particularly 50 years according to the UAE Civil Code. Commonly known as a development lease, musataha gives the holder surface or supports rights over the land allowing the holder to be the outright owner of the buildings constructed on the land during the period of the musataha. It also enables the holder to mortgage their interest in the musataha right.

2. Leasehold Rights

2.1 Dubai

(a) Termination

The Dubai Landlords and Tenants Law No. 26 of 2007, as amended by virtue of Law No. 33 of 2008, allows the parties to agree the terms of their lease in a contract, other than in relation to certain rights prescribed by the law. However, as leases are still generally for short periods (e.g. one year) to protect the tenant, a rent cap applies as well as a statutory right so that a tenant may renew a lease if they elect to, except in certain (limited) circumstances.

Specifically, landlords can give tenants notice not to renew leases in the following instances:

- (i) If the landlord wishes to demolish the property for reconstruction, as long as the necessary licences for such reconstruction have been obtained.
- (ii) If the landlord wishes to renovate the property, but only if such renovations cannot be completed while the tenant is occupying the property and this fact has been certified by the Dubai Municipality.
- (iii) If the landlord wishes to recover the property so that its next of kin of first degree can use it personally, as long as the landlord can prove that it does not have an equivalent property suitable for residency. Once proven, the property cannot be offered for lease for two years if it is a residential property or for three years if it is a non-residential property, unless RERA reduces this period. If the landlord does not observe this restriction, the tenant may claim damages.
- (iv) If the landlord wishes to sell the property.

The landlord must give the tenant at least 12 months' notice not to renew, stating the applicable reason. Such notice must be sent through a notary public or by registered mail.

(b) Increase in rent

If there is an increase in rent for the renewal period, the landlord must give the tenant at least 90 days' notice before the expiry of the lease, unless the parties agreed otherwise. Additionally, a statutory rent cap is in place. The rent cap is calculated based on the difference between the property rental value and the average market rental rate for properties in the applicable area of Dubai. The average market rental rate is set according to the rent index produced and regularly updated by RERA. At present, the various thresholds for the rent cap are as follows:

- (i) Less than 10% below the average market rental rate – No rent increase is permitted.
- (ii) Between 11% and 20% below the average market rental rate – A maximum of 5% increase in rent is permitted.
- (iii) Between 21% and 30% below the average market rental rate – A maximum of 10% increase in rent is permitted.
- (iv) Between 31% and 40% below the average market rental rate – A maximum of 15% increase in rent is permitted.
- (v) More than 40% below the average market rental rate – A maximum of 20% increase in rent is permitted.

(c) Registration

(i) Long-term Lease

The Dubai Land Department has adopted the view that leases with a term of 10 years or more, known as long-term lease contracts, amount to Real Property Rights (similar to rights of *musataha* and usufruct, which are *in rem* rights). Therefore, in addition to being subject to the foreign ownership restrictions mentioned above, long-term lease contracts require registration with the Dubai Land Department.

At present, the registration fee for registering a long-term lease contract is 4% of the contract value. This amount will be the aggregate of the rental value charged to the tenant for the term of the lease. Not registering a long-term lease contract makes it invalid.

(ii) Short-term lease

Leases with a term of less than 10 years, known as short-term lease contracts, do not require registration with the Dubai Land Department. However, short-term lease contracts must be registered with RERA. To facilitate this, RERA has an online registration portal, Ejari. The cost to register a short-term lease contract on the Ejari system is approximately AED 200.

Unlike leasehold interests, rights of usufruct and *musataha* are required to be registered, regardless of the length of the term. This means that there is no “exemption” from registration at the Dubai Land Department if a short-term right of usufruct or *musataha* is granted.

2.2 Abu Dhabi

(a) Termination

In Abu Dhabi, leasing is regulated by the Abu Dhabi Leasing Law No. 20 of 2006, as amended by Law No. 4 of 2010. This law applies to properties being leased for residential, commercial or industrial purposes or for freelance business, but not agricultural or undeveloped land.

Until 2013, the law protected tenants from rent increases beyond a defined rent cap and only allowed landlords to oppose lease renewals in a limited range of circumstances. Landlords and tenants were allowed to fix the rent payable under a lease. If the rent was not fixed, landlords had the right to an annual increment, which had been capped in recent years at 5% per annum.

However, in November 2013, a change to these tenant protections came into effect which has allowed landlords to refuse lease renewals by giving: (i) two months’ notice prior to the end of the lease period for residential premises; or (ii) three months’ notice in the case of commercial premises. It has effectively allowed landlords to refuse lease renewals if the parties do not agree on the amount of the rent upon renewal. There are no longer any rent caps or other restrictions on landlords ability to increase the rent.

(b) Registration

(i) Long-term lease

Non-UAE or GCC nationals can be granted leases for a term of over 25 years in Investment Areas only. Any lease with a term of over four years must be registered. In case of non-registration, the long-term lease is still binding between the parties, but not *vis-à-vis* third parties.

(ii) Short-term lease

A short-term lease of less than four years can be registered on the Tawtheeq system. The present requirements are that the lease needs to: (i) be on the standard Abu Dhabi Municipality form; (ii) be in Arabic (or dual language); and (iii) have the key information in respect of the lease (e.g. property details, parties, term and rent).

Employment

The Labour Law is a federal and, to a certain extent, employee-biased law whose provisions are considered of public order. However, economic free zones are empowered to set their own employment regulations. Any agreement or any free zone regulation contrary to the imperative provisions of the Labour Law will be deemed invalid, except in the case that the agreement or free zone regulation is more favourable to the employee. This does not apply to the DIFC and the ADGM, given that they have autonomy with regard to civil and commercial legislation, including labour laws.

The competent UAE courts are the only dispute forums empowered to look into any employment disputes (excluding DIFC-based employers, which are governed by an ad-hoc DIFC labour law not dealt with under this guide).

Below are some of the key features of the Labour Law (please note that this does not cover any specific free zone regulations).

1. Emiratisation

For economic, social and political considerations, the UAE adopts an Emiratisation policy whereby private sector is mandated to integrate and employ a number of UAE nationals. This policy is demonstrated in a number of ministerial decrees requiring private sector establishments to employ UAE nationals at the following annual rates:

- (i) 2% of the workforce of the entities operating in the trading activities, if the total workforce exceeds 50 employees;
- (ii) 4% of the workforce of banks; and
- (iii) 5% of the workforce of insurance companies, if the total workforce exceeds 50 employees); and
- (iv) one public relation officer if the total workforce exceeds 100 employees.

Those rates are, in practice, flat rates.

2. Pre-Hire Background/Reference Checks Permitted or Required

No specific pre-hire background or reference checks are required under the Labour Law. However, only individuals who hold certain levels of education can be appointed to hold certain job classifications and all relevant education and training certificates have to be provided to the Ministry of Labour or to free zone authorities.

A pre-hire medical check is a prerequisite by the government for employment in the UAE and all expatriates must undergo a medical test, which typically includes a blood test and an x-ray. It is recommended that offers for employment are conditional upon the individual passing the medical test.

Residency visas and work permits must be periodically renewed.

3. Employment Contract

The submission of an employment offer letter to the Ministry of Labour, signed by both the employer and the employee, has become a prerequisite for the issuance of the preliminary approval to sponsor a foreign employee in the UAE.

Hence, the hiring of any new employee, whether from within the UAE or abroad, requires executing an offer letter and submitting it to the authorities in order to obtain the necessary governmental approvals for hiring such an employee. The terms of the offer letter must reflect the terms of the final employment contract that will be executed at a later stage.

The template employment contract issued by the Ministry of Labour must be signed in two copies, with one copy given to the employee and the other one kept by the employer. However, it is common practice to execute an addendum or an additional separate employment contract which includes additional terms that are not reflected in the basic template of the Ministry of the Labour. In a very recent development, a new decree No. 764 of 2015 came into force in January 2016 which prohibits amending the template of the Ministry of Labour without obtaining the approval of the Ministry.

Employment agreements must be bilingual, prepared both in Arabic and in English.

4. Term and Termination/Gratuity

4.1 Probationary Period

Probationary periods are common in the UAE. The maximum period of probation is six months. During this time, the employer may terminate the employee's employment without notice or severance pay. The probationary period is included in the calculation of the employee's total period of service.

4.2 Term

Employment contracts may be either for a fixed (limited) time or for an unlimited period of time. The difference is detailed below:

- (i) Fixed-term contracts – In principle, a fixed-term contract cannot exceed four years. However, a recently issued regulation of the Ministry of Labour requires that fixed-term contracts do not exceed a two-year term. The contract can be renewed by mutual agreement at the end of the fixed term for equal or shorter periods. Any extensions will be considered part of the original term and, therefore, should be included in calculating the employee's total period of service.
- (ii) Unlimited term contract – An unlimited term contract is for an indefinite period and is effective from the date of commencing employment. It can be terminated by either party for a valid reason at any time by giving the other party a notice in writing, subject to the provisions of the Labour Law.

4.3 Legitimate Causes for Dismissal by the Employer under Article 120

Subject to complying with the process stipulated under Section 4.5, an employer is permitted to legitimately terminate the employment contract of an employee without notice and without any end of service gratuity or severance pay for reasons tied to the employee's conduct, as stipulated under Article 120. Conducts that justify this type of termination are as follows:

- (i) Adopting a false identity or nationality or submission of forged documents or certificates.
- (ii) Dismissal occurring during, or at the end of, the probation period.
- (iii) Committing a fault that causes substantial material loss to the employer, as long as the employer notifies the labour department of the incident within 48 hours of learning of such fault.
- (iv) Breach of the workplace safety instructions, as long as the instructions are clearly displayed in writing in the workplace or are verbally communicated to illiterate employees.
- (v) Non-performance of material duties stipulated in the employment contract, and the continuance of this failure despite formal investigation and the issuance of a dismissal warning if the non-performance subsists.
- (vi) Divulging secrets of the workplace.

- (vii) Conviction of the employee because of a final judgment for an offence involving honour, honesty or public morals.
- (viii) Drunkenness or operating under the influence of drugs during the employee's working hours.
- (ix) Assaulting the employer, the manager of the employer or any of the employee's colleagues.
- (x) Unjustified absence for more than 20 intermittent days or for more than seven successive days in one year.

4.4 Legitimate Causes for Termination by Employee under Article 121

An employee is also entitled to terminate the employment contract without notice if any of the grounds related to the employer's conduct stipulated in Article 121 of the Labour Law are present. These grounds are as follows:

- (i) The employer breaches its obligations prescribed in the employment contract or under the applicable laws.
- (ii) The employer or the employer's representative assaults the employee.

4.5 Process for Dismissal/Termination/Disciplinary Measures

In order to avoid being regarded as arbitrary, the following procedures must be conducted before imposing any disciplinary sanction, including dismissal, upon an employee:

- (i) The employee must be notified in writing of the charge or allegation.
- (ii) The employee must be invited to a meeting and such employee's representations must be listened to.
- (iii) The matter must be adequately investigated and the employee must be provided with written reasons for any penalty being imposed, which should also be recorded in the employee's personnel file.

An allegation cannot be made raised after the lapse of 30 days from the date of discovery of the violation and a penalty cannot be imposed after the lapse of 60 days from the date on which the violation was established.

4.6 Redundancies

Redundancies are not recognised under the Labour Law. As such, there are no specific economic reasons that would justify a termination. Instead, a redundancy process must fall within the existing termination provisions of the Labour Law.

4.7 Notice/Payment in Lieu of Notice

In accordance with the Labour Law, the minimum notice period for an unlimited contract is 30 days, with a maximum of three months. In a recent amendment to the labour regulations, limited contracts are now subject to an identical notice period requirement. The contract can also be terminated by the employer without notice if the employee is terminated for cause on the grounds outlined under Article 120, as stated in Section 4.3.

Notice cannot be waived or reduced. This means that an employer should pay in lieu of notice if it does not require employees to work their notice period.

4.8 End-of-Service Gratuity

An employee whose contract is terminated or expires and who has completed at least one year of service is generally entitled to an end-of-service gratuity. In the absence of any higher rate agreed by the parties, the end-of-service gratuity is equivalent to 21 days' worth of basic wage for each of the employee's first five years of service and 30 days' worth of basic wage for each year after the fifth year.

If the employee resigns and the employment contract is for an indefinite period, the gratuity entitlement is reduced in the following manner:

- (i) If the employee has more than one year but less than three years of service, the employee will be entitled to one-third of the gratuity.
- (ii) If the employee has more than three years but less than five years of service, the employee will be entitled to two-thirds of the gratuity.
- (iii) If the employee has more than five years of service, the employee will be entitled to the full gratuity payment.

If the employee resigned from an employment contract for a fixed period and has less than five years of service, they will not be entitled to any gratuity.

End-of-service gratuities are capped at an amount equivalent to two years' worth of an employee's basic wage and are proportionately calculated for any partial year of employment based on the employee's last wage. An employee is not entitled to an end-of-service gratuity if they are dismissed for cause or do not observe the notice period.

5. Working Days/Working Hours

5.1 Overtime

The maximum working hours per day are set at eight hours or 48 hours per week. Working hours may differ, depending on the relevant industry, by a special ministerial decree. Working hours are reduced by two hours during the holy month of Ramadan.

If the employer requires employees to work overtime during the working week, such employees are entitled to be paid 125% of their salary for the overtime worked. If, however, the employee's overtime falls between 9:00 p.m. and 4:00 a.m., they are entitled to a higher rate of 150% of their salary.

The maximum amount of overtime allowed per day is two hours, unless the work is necessary to "prevent substantial loss or serious accident" or to eliminate or alleviate its effects. Overtime wages should not be included in employees' regular compensation, which means that any overtime must be compensated separately.

These working hours and overtime regulations do not apply to senior management categories.

5.2 Weekend

Friday is a specified rest day under the Labour Law, which means that an employee cannot be required to work more than two consecutive Fridays. Moreover, employees are entitled to receive either a one-day holiday in lieu or 150% of their one-day salary as compensation for work they carried out on a Friday.

6. Compensation/Benefits

6.1 Minimum Wages, Mandatory Increases

There is generally no statutory or minimum wage requirement in relation to wages in the UAE. Moreover, there are no mandatory annual salary increases under the Labour Law.

6.2 Bonuses, Benefits in Kind

The UAE applies a Wage Protection Scheme, which aims to protect employees via an electronic salary transfer scheme that ensures employers' timely payment of the agreed wage amount to the employee. According to the Wage Protection Scheme guidelines, payments of employee remuneration must be made via banks, exchange offices and financial institutions which have been approved and authorised to provide the service.

There are no mandatory legal requirements for bonus payments in the UAE.

6.3 Taxes, Social Security, Medical Insurance

There are no tax or social security payments for private sector employees. Most of the employees in the UAE are expatriates, who are not entitled to any state pension. However, UAE nationals who have a "family book", as well as nationals of GCC countries, are entitled to a pension.

Both Abu Dhabi and Dubai have a compulsory health insurance scheme, which obliges employers to provide private health insurance to their employees. The health insurance law in Dubai is being implemented in phases and is to be completed by end of 2016 for a certain category of companies and for dependants of sponsored employees, including domestic workers.

7. Leaves

7.1 Sick Leave

Employees are entitled to a maximum of 90 days sick leave, out of which only the first 45 days are paid. The first 15 days are fully paid while the next 30 days are subject to half-pay. Any absences due to sickness beyond 45 days will no longer be paid. An employee on probation is not entitled to any paid sick leave.

7.2 Maternity Leave

A female employee is entitled to 45 days of fully paid maternity leave. However, she must have rendered at least one year's service. If she has not rendered at least one year of service, she will be entitled to only half-pay during her 45 days of maternity leave. There is no paternity or parental leave under the Labour Law.

7.3 Special Leave

An employee is entitled to a special period of leave not exceeding 30 days in order to practise "Hajj" pilgrimage. However, this special leave is without pay and may only be used on one occasion throughout the employee's employment.

7.4 Annual Leave

Excluding the first year of employment, an employee is entitled to 30 calendar days of paid vacation per year, which is equivalent to 23 working days. In the first year of employment, an employee accrues two paid days of leave per month, but only after the first six months of employment. The employer is entitled to determine the dates of its employees' annual leave and may only divide the annual holidays over a maximum of two periods.

7.5 Official Holidays

Employees are entitled to paid leave on the following occasions:

- (i) Islamic New Year
- (ii) Gregorian New Year's Day
- (iii) Birth of the Prophet
- (iv) Ascension of the Prophet
- (v) Eid al-Fitr (two days)
- (vi) Eid al-Adha (three days)
- (vii) Martyr's Day
- (viii) National Day

Except for the Gregorian New Year's Day on 1 January, Martyrs' Day on 30 November and National Day on 2 December, all other holidays are Islamic holidays and vary depending on the lunar calendar. The actual dates are declared each year and holidays are declared separately for the public and private sectors.

Annex (1) – Common Onshore Legal Vehicles

	Limited Liability Company (LLC)	Private Stock Company (Private Company)	Public Joint Stock Company (PJSC)	Branch/Representative Office
Number of shareholders, nationality and liability	<p>It is a separate legal entity from its partners.</p> <p>The liability of its shareholders is limited to their capital contributions.</p> <p>A UAE national, or a company wholly owned by UAE nationals, must hold at least 51% of the shares. Alternatively, it can be 100% owned by GCC nationals (except for certain activities).</p> <p>It must have at least two partners and a maximum of 50 partners. However, a single partner LLC may be formed for UAE nationals only.</p>	<p>It is a separate legal entity from its shareholders.</p> <p>The liability of its shareholders is limited to their capital contributions.</p> <p>It can be converted into a PJSC.</p> <p>A UAE national, or a company wholly owned by UAE nationals, must hold at least 51% of the shares. Alternatively, it can be 100% owned by GCC nationals (except for certain activities).</p> <p>It must have at least two shareholders and a maximum of 200 shareholders. However, a single shareholder Private Company may be formed by UAE nationals only.</p>	<p>It is a separate legal entity from its shareholders.</p> <p>The liability of its shareholders is limited to their capital contributions.</p> <p>It can offer shares to the public.</p> <p>A UAE national, or a company wholly owned by UAE nationals, must hold at least 51% of the shares. Alternatively, it can be 100% owned by GCC nationals (except for certain activities).</p> <p>It must have at least five shareholders.</p>	<p>It is not a separate legal entity from the parent company and the parent company will be liable for the activities of the branch or representative office.</p> <p>It is wholly owned by its parent company.</p>
Minimum capital	<p>Currently, there is no minimum share capital required for an LLC. An LLC must have a share capital sufficient for the realisation of the objectives of the company. The relevant authorities may, in certain instances, require a minimum capital depending on the contemplated activity. The capital shall be composed of equal shares. The capital is</p>	<p>It must have a minimum share capital of AED 5 million.</p> <p>It cannot offer shares to the public. Its shares must be of equal value (i.e. no less than AED 1 and no more than AED 100).</p>	<p>It must have a minimum issued share capital of AED 30 million. The articles of association of the PJSC may determine as authorised capital an amount not in excess of two times the issued share capital. Its negotiable shares must be of equal value (i.e. no less than AED 1 and no more than AED 100).</p>	<p>Not applicable. A bank guarantee issue of AED 50,000 must be issued by a UAE licensed bank and submitted MOEC.</p>

	Limited Liability Company (LLC)	Private Stock Company (Private Company)	Public Joint Stock Company (PJSC)	Branch/Representative Office
	<p>required to be paid in full at the time of incorporation and deposited in a bank in the UAE. An LLC does not issue share certificates, but may be converted into a joint stock company subject to fulfilling a number of conditions.</p> <p>It cannot offer shares to the public.</p>			
Permitted activities	<p>It is permitted to undertake a broad range of commercial activities (subject to any licensing restrictions) except, for insurance, banking activities or investing funds on the account of third parties.</p> <p>An LLC with GCC shareholding cannot carry out the activities set out in a negative list.</p>	<p>It is permitted to undertake a broad range of commercial activities (subject to any licensing restrictions). If commercial activities, such as insurance, banking activities or investing funds on the account of third parties, are to be performed, special authorisations must be obtained from the relevant federal and local authorities.</p> <p>A Private Company with GCC shareholding cannot carry out the activities set out in a negative list.</p>	<p>It is permitted to undertake a broad range of commercial activities (subject to any licensing restrictions). If commercial activities, such as insurance, banking activities or investing funds on the account of third parties, are to be performed, special authorisations must be obtained from the relevant federal and local authorities.</p> <p>A PJSC with GCC shareholding cannot carry out the activities set out in a negative list.</p>	<p>Branch offices operating onshore are licensed to conduct activities that are conducted by the parent or controlling company in its jurisdiction of incorporation, except for a limited number of activities such as trading and any ancillary activities representing in general the sale and purchase of products or commodities, restaurants, coffee shops and food catering services, the establishment of print and publishing houses, newspapers and magazines.</p> <p>Representative offices are limited to marketing, promotion and liaison activities only.</p>

	Limited Liability Company (LLC)	Private Stock Company (Private Company)	Public Joint Stock Company (PJSC)	Branch/Representative Office
Physical offices	Physical office space is required and must be suitable to host all the employees of the LLC. The annual rent of an office depends on the size and location of the office in Dubai.	Physical office space is required and must be suitable to host the employees of the Private Company. The annual rent of an office depends on the size and location of the office in Dubai.	Physical office space is required and must be suitable to host all the employees of the PJSC. The annual rent of an office depends on the size and location of the office in Dubai.	Physical office space is required and must be suitable to host all the employees of the branch/representative office. The annual rent of an office depends on the size and location of the office in Dubai.
Management	<p>Day-to-day management may be vested in one or more managers (i.e. directors) as determined by the partners, who are not required to be UAE nationals.</p> <p>It must have a general manager who is resident in the UAE.</p> <p>If it has seven or more partners, it must appoint a Control Council comprising of at least three partners.</p> <p>Management and control are subject to mandatory requirements of the Companies Law, under which certain matters are reserved to the general assembly (i.e. a meeting of the partners) and some matters require a special resolution.</p>	<p>It is managed by a board of directors elected by the general assembly (i.e. shareholders). The majority of the board of directors must be UAE nationals. The number of the directors shall not be less than three and not exceed 11.</p> <p>It must have a chairman and a vice-chairman, who are elected through secret ballots and who must be UAE nationals. Two thirds of the board members must own shares in the Private Company.</p> <p>A Private Company must have a managing director, who is not an executive officer or a general manager of another company.</p> <p>Management and control are subject to mandatory requirements of the Companies Law, under which certain matters are reserved to the general assembly (i.e. a meeting of the shareholders).</p>	<p>It is managed by a board of directors elected by the general assembly (i.e. a meeting of shareholders). The majority of the board of directors must be UAE nationals. The number of the directors shall not be less than three and not exceed 11.</p> <p>It must have a chairman and a vice-chairman who are elected through secret ballots and who must be UAE nationals. Two thirds of the board members must own shares in the PJSC.</p> <p>A PJSC must have a managing director, who is not an executive officer or a general manager of another company.</p> <p>Management and control are subject to mandatory requirements of the Companies Law, under which certain matters are reserved to the general assembly (i.e. a meeting of the shareholders).</p>	<p>It must have a general manager who is resident in the UAE. The general manager does not need to be a UAE national.</p>

	Limited Liability Company (LLC)	Private Stock Company (Private Company)	Public Joint Stock Company (PJSC)	Branch/Representative Office
Transfer of shares	It has statutory right of first refusal.	It has no statutory right of first refusal. Restrictions apply on carrying out any transfers to third parties until the company publishes the financial statements of one financial year from the date of registration at the Commercial Register. This restriction also applies for each capital increase. Transfers are permissible among other founding shareholders or legal heirs.	It has no statutory right of first refusal. Restrictions apply on carrying out any transfers to third parties until the company publishes the financial statements of two financial years from the date of the listing or from the date of registration at the Commercial Register (if it is exempted from the listing requirement). Transfers are permissible among other founding shareholders or legal heirs.	Not applicable.

Annex (2) – Types of Legal Vehicles in JAFZA

	JAFZA Branch	FZCO and FZE	JAFZA Offshore company
Number of shareholders and liability	It does not have a separate legal personality and is deemed as an extension of the controlling or parent company. Hence, the controlling or parent company will be liable for the acts and liabilities of a free zone branch.	It is an independent legal entity with limited liability. The liability of the partners or shareholders is limited to their capital contribution. An FZCO must have at least two shareholders or partners and a maximum of 25 shareholders or partners, while an FZE is incorporated by a single shareholder or partner, which can be either an individual or a corporate entity.	It is an independent legal entity with limited liability. The liability of the partners or shareholders is limited to their capital contribution and must have at least one shareholder.
Minimum capital	There are no minimum capital requirements since a JAFZA branch is an extension of the controlling or parent company.	An FZE and FZCO must have a share capital sufficient for the realisation of the objectives of the entity.	The share capital requirements are minimal. The minimum share capital is AED 1.
Permitted activities	The activities of a JAFZA branch must be the same as the activities of the controlling or parent company. It will only be permitted to conduct certain types of business activities within the confines of the free zone that are reflected on its licence.	It can carry out any of the permitted activities within the confines of JAFZA without restrictions that are reflected on its licence.	Typically used as investment vehicles or holding companies, are not permitted to conduct business operations onshore in the UAE or within the relevant free zone and cannot obtain employee visas. However, it can conduct business outside the UAE. It can freely enter into contracts with legal consultants, lawyers, accountants and auditors. It is permitted to lease property and use it as its registered office or to own real property in certain limited areas, such as the Palm Islands or Jumeirah Islands, any property owned by Nakheel Company LLC or any other real property approved by the relevant authority.

	JAFZA Branch	FZCO and FZE	JAFZA Offshore company
Physical offices	Must maintain a physical office in the free zone. The availability of space must be verified with the JAFZA.	Must maintain a physical office in the free zone. The availability of space must be verified with the JAFZA.	Not required to maintain a physical presence in the free zone but required to have a registered agent, whose address must be listed as the registered address for the offshore company in the place of its incorporation.
Management	A JAFZA branch must have a general manager. The board of directors of the controlling or parent entity is entitled to freely determine the powers delegated to the general manager of the branch. However, from a practical perspective, the general manager should have sufficient powers in order to handle day-to-day operational issues, such as bank account transactions, signing documents before the authorities and employment of staff, among others. The general manager must hold a valid UAE residency or work visa.	An FZE must have a minimum of one director and a company secretary. The offices of the director and company secretary may be held by a single person. An FZCO must have a minimum of two directors and one company secretary. The offices of the directors and company secretary may be held by a single person. The constitutional documents must determine the voting mechanics and duties of the board of directors. At least the director/manager or secretary must hold a valid UAE visa. If an FZCO/FZE has both a board of directors and a general manager, the board would typically delegate the day-to-day powers to the general manager, who may also further delegate powers to other employees and representatives of the FZCO/FZE by a power of attorney.	General managers are not typically appointed. Therefore, all powers of the management rest with the board of directors. A JAFZA Offshore Company must have at least two directors and one secretary (who may be one of the directors). The board may delegate certain powers as it sees fit under a power of attorney.
Transfer of shares	Not applicable to the JAFZA branch.	There are no restrictions on share transfer. Certain formalities with the JAFZA are carried out to give effect to any share transfer. Share certificates must be issued to each shareholder in an FZE, FZCO.	There are no restrictions on share transfer. Certain formalities with the JAFZA are carried out to give effect to any share transfer.

Annex (3) – Common Legal Vehicles in the DIFC

	Company Limited by Shares (CLS)	Limited Liability Company (DIFC LLC)	Special Purpose Company (SPC)	Limited Liability Partnership (LLP)
Permitted activities	A CLS is the most common entity used for carrying out regulated financial services, consultancy services and investment holding.	A DIFC LLC is usually established to carry out retail commercial businesses such as restaurants, stationery shops, cafes and grocery stores. It should be noted that a DIFC LLC is not allowed to perform financial services.	It is a specific-purpose corporate vehicle used for financing or investment structures. An SPC is limited in the activities it may carry out, which are referred to as “Exempt Activities” in the SPC regulations. An SPC may perform financial services if licensed by the DFSA. However, it cannot carry out trading business or act as a general holding company.	An LLP is a partnership entity typically used by lawyers, auditors, accountants, architects and consultants in the DIFC. To carry out financial services under an LLP, an application for a licence must be submitted to the DFSA
Number of shareholders and liability	There must be at least one shareholder and the liability of its shareholder(s) is limited to their capital contribution. There are no restrictions on the nationality of the shareholders.	It must have at least two members (shareholders) and can contain up to 50 members. Its shareholders are called “members” who own “membership interests” in the DIFC LLC. This membership interest is equivalent to shares. The liability of its shareholders is limited by their capital contribution.	An SPC cannot have more than three shareholders and is a limited liability company.	The liability of partners or members in an LLP is limited by their capital contribution and the rights and duties of the partners are governed by the limited liability partnership agreement, a copy of which must be submitted to the DIFC Authority (which is separate from the DFSA).
Minimum capital	The CLS has no minimum capital requirement, unless it becomes a regulated entity whereby its minimum capital requirement would depend on its prudential category as licensed by the DFSA. In addition, it may offer shares to the public and issue securities.	There is no minimum capital required. It cannot raise capital by offering membership interests through a public offer. It also cannot issue securities.	A minimum capital of US\$ 100 is required.	There is no minimum capital requirement, unless it becomes a regulated entity whereby its minimum capital required would depend on its prudential category as licensed by the DFSA.

	Company Limited by Shares (CLS)	Limited Liability Company (DIFC LLC)	Special Purpose Company (SPC)	Limited Liability Partnership (LLP)
Physical offices	There is a requirement to lease office space in the DIFC.	There is a requirement to lease office space in the DIFC.	There is no requirement to lease office space in the DIFC, but there is a requirement to have a registered address for delivery of communication.	There is a requirement to lease office space in the DIFC.
Management	There must be at least two directors, who do not have to be UAE residents, and a company secretary must be appointed.	Management of the DIFC LLC is through either an executive manager or a board of managers.	It is not required to hold annual general meetings of its shareholders. It is also not required to maintain, file or audit its accounts. However, it is mandatory for an SPC to hire a corporate service provider in the DIFC whose role would be similar to a company secretary.	Every member may take part in the management of the LLP.
Transfer of shares	There are no restrictions on transfer of shares. Shares are transferred through the execution of the proper transfer instruments.	The transfer of a membership interest (in whole or in part) is valid if authorised by a special resolution. Existing members have the right of first refusal to acquire the membership interest to be transferred	Transfers must be made to the same category of shareholders listed in the SPC regulations.	No person may be introduced as a member or voluntarily assign an interest in an LLP without the consent of all existing members. The LLP shall file a notice of change of member with the DIFC Companies Registrar within 14 days.

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