

Practitioner's perspective

A tale of two countries

Jayshree Gupta at Baker & McKenzie Habib Al Mulla contrasts the UAE and Indian legal systems

The ties between the UAE and India, which have existed from ancient times, are stronger than ever. India's new prime minister, Narendra Modi, is prioritizing investor sentiment in the Gulf Cooperation Council (GCC) countries and the UAE has once again become an interesting proposition for Indian investment.

The UAE – with its political stability, internal security, investment-friendly policies, advanced infrastructure, and a dynamic open market approach – fits the bill perfectly for Indian investors and companies expanding into the region. All of these advantages are complemented by a zero per cent tax regime and possibility of full repatriation of capital.

But doing business in the UAE is not without its challenges, and having local help is crucial.

Common law v civil law

While India follows a common law system, the UAE is a civil law jurisdiction and its legislative framework is based on Egyptian laws.

The difference between the two systems lies in the main source of law. In addition, while precedent has great importance in common law systems, it is used only as guidance in civil law systems. As such, two cases with the same issues may have different outcomes in a civil law system as the interpretation of the judge handling the matter is all important and an earlier judgment is not binding.

In the UAE, this difference can be mitigated as parties can choose to litigate commercial disputes in the courts of the Dubai International Financial Centre (DIFC), even when the businesses are based outside the DIFC. The DIFC courts are an independent, common law judicial system that use English as the main language. Other UAE courts use Arabic.

The DIFC courts form part of the Dubai legal system. Its judgments are enforceable in Dubai and in the six

other emirates of the UAE. DIFC judgments may be enforced in the Dubai courts if the judgment is final, translated to Arabic and certified by the DIFC courts for execution.

Principle of good faith

In the UAE civil law there is an overriding principle that parties must act in good faith in the performance of contractual obligations. However, the Indian legal system does not recognize this principle of good faith, with the exception of in "relational contracts" where there is a fiduciary relationship. This inconsistency, if not considered, may create additional obligations for contracting parties in the UAE.

Ownership in a company

The UAE Commercial Companies Law No. 8 of 1984 requires that UAE nationals, or companies wholly owned by UAE nationals, must own at least 51% of the capital of any company formed in the UAE. As such, the normal maximum permitted foreign ownership in a company formed under the Companies Law is 49%, and pursuant to other applicable laws, regulations and policies, the permitted foreign ownership threshold may be lower for companies engaged in certain types of activities. Investors may find it more appealing to establish a presence in the free zones, where they are not subject to such restrictions.

There are a number of methods to minimize the risks associated with minority ownership and to channel benefits to the minority shareholder (e.g. entry into shareholder's agreements, management contracts, supply contracts, etc.).

Real property ownership

Except in certain designated areas or certain free zones, real property may only be owned only by UAE nationals (or nationals of other GCC countries) or

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entities that are wholly owned by such persons.

Corporate governance

The UAE has seen advances in corporate governance over the past few years. However, there is no binding comprehensive corporate governance code and this area of law, unlike in India, is unsophisticated and evolving.

It is also worth noting that rules and regulations in the UAE can change without prior public proclamation, and that the intricacies of procedure may vary in practice. Investors will benefit greatly from having a trusted local partner that can help navigate the business and legal environment.

Outlook

In 2013-14, investment to the UAE accounted for 4.9% of outward investment from India, making it one of India's largest trading partners. The strong cultural, political and trading ties between the two countries, the UAE's favourable investment environment, and the significant economic benefits that Dubai is expected to realize from hosting Expo 2020, makes investing in the UAE a good choice for Indian investors with the right local knowledge.

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