Baker McKenzie Habib Al Mulla.

Doing Business in the United Arab Emirates

2017

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Glossary

ADGM	the Abu Dhabi Global Market
ADX	the Abu Dhabi Stock Exchange
Commercial Agency Law	Federal Commercial Agency Law No. 18 of 1981, as amended
Companies Law	Federal Commercial Companies Law No. 2 of 2015
Competition Law	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
FATCA	Foreign Account Tax Compliant Act of the United States
FZCO	a Free Zone Company
FZE	a Free Zone Establishment
GCC	the Gulf Cooperation Council
JAFZA	the Jebel Ali Free Zone
Labor Law	Federal Labour Law No. 8 of 1980, as amended
LLC	a limited liability company
MHRE	Ministry of Human Resources and Emiratisation
MOC	the Ministry of Economy
Penal Code	Federal Penal Law No. 3 of 1987, as amended
PJSC	a public joint stock company
Private Company	a private joint stock company
Procurement Law	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 Organization

Introduction

Baker McKenzie Habib Al Mulla is pleased to introduce the 2017 edition of "Guide to Doing Business in the United Arab Emirates." Drawing on our unparalleled experience in the Middle East, this manual 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 organized 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 that help users 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 kilometers. 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 that is favorable 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. 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 Muslim.[1]

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.[2] 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 behind 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.

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: CIA World Factbook.
[2] Source: CIA World Factbook.

Legal Landscape

1. Legal System

As a federation, the UAE is governed by a constitution that 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 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 that 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 Courts have been set up and 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.

In addition, 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 agencies and the supply of labor.

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 both 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—incentives such as 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 (ie, 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 to the extent that the foreign law provisions do not contradict Islamic *Shari'a*, public order or the 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. 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, to the DIFC, potentially to the ADGM, to a foreign court or to arbitration.

In principle, foreign law judgments are enforceable in the UAE, but in practice, enforcement has 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 the DIFC-LCIA Arbitration Centre. Parties may also select a foreign arbitration center 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, and family and inheritance matters. In addition, disputes under contracts with UAE government are normally referred to a UAE court, except in certain emirates, eg, Dubai, where parties may opt for arbitration.

There is controversy surrounding the arbitrability of real estate-related disputes. 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. However, on other occasions, the courts have ruled that disputes related to the non-performance of contractual obligations under a real estate sale and purchase agreement may be subject to arbitration, while disputes related to the registration or non-registration of real estate property may not be resolved through arbitration.

5. Taxation and VAT

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 currently no 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, and draft legislation is underway. The Federal Tax Authority was established in October 2016, which is a new government body responsible for the implementation of value added tax across the UAE.

Dubai and certain other emirates impose taxes on certain goods and services, including alcoholic beverages and hotel and restaurant bills. For instance, all sales of hotels are subject to a municipality fee of 10%.

There are no personal income taxes in the UAE. Only government employees are required to pay social insurance contributions. 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 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 FATCA partner in 2015 and signed an intergovernmental agreement with the United States setting out guidelines for the application of FATCA by financial institutions regulated by the UAE Central Bank, the Insurance Authority, the ESCA and the 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 a 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 duties, 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 remove 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 UAE authorities to ban or restrict the exporting, importing, re-exporting, transiting or transhipping of commodities in the event that (i) such commodities pose a threat to public safety or hygiene, the environment, natural resources or national security, or (ii) 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 the goods.

There are also specific restrictions and licensing requirements that apply to the import and sale of certain types of goods.

One example is the ban on the exportation or re-exportation of strategic goods, including arms and military hardware, chemical and biological materials, and dual-use items.

Many wireless or electronic devices must be “type approved” by the Telecommunications Regulatory Authority before they can be imported and sold in the UAE, and importers are required to register as “approved dealers” with the TRA in order to import these types of devices. Likewise, all books, magazines, printed publications, DVDs and other media items must first be submitted to the National Media Council for prior content approval, and a license is required from the NMC to import and distribute such types of media in the UAE. However, the extent to which these same rules apply to digital content and media delivered over the internet is unclear.

Another example of restrictions is the list of “banned” items published on the official website of the Emirate of Dubai:

- All kinds of narcotic drugs (hashish, cocaine, heroin, poppy seeds, hallucination pills, etc.)
- Goods intended to be imported from boycotted countries
- Goods of Israeli origin or bearing Israeli trademarks or logos
- Crude ivory and rhinoceros horn
- Gambling tools and machineries
- Three layers fishing nets
- Original engravings, prints, lithographs, sculptures and statues in any material

- Used, reconditioned and inlaid tires
- Radiation-polluted substances
- Printed publications, oil paintings, photographs, pictures, cards, books, magazines, stony sculptures and mannequins which contradict Islamic teachings or decency, or which deliberately imply immorality or turmoil
- Any other goods, the importation of which is prohibited under the authority of UAE customs laws or any other laws in the country
- Forged and duplicate currency
- Cooked and home-made foods

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 the written permission of the registered commercial agent or, in very specific cases, provided that permission is obtained from the authorities.

As indicated by the official list of banned items above, the UAE, being a member of the Arab League and the GCC, has a boycotting policy toward Israel. In 1995, the UAE renounced both the “secondary boycott” and the “tertiary boycott” and currently only applies the “primary boycott.” Under the “primary boycott,” the UAE refuses to deal (i) with or in goods or services from Israel or of Israeli origin, and (ii) with the State of Israel and its citizens.

This is a complex and evolving regulatory area which should be discussed in greater detail with one of our legal experts.

8. Anti-Bribery and Corruption

The UAE does not have a standalone anti-bribery or corruption law. However, different laws 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 them to be negligent in the proper carrying out of their function or to commit an act in violation of their function or to perform an act that is not part of their 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 their 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 they reveal the crime to a judicial or administrative authority before it is discovered.

The Penal Code was significantly amended by virtue of Law No. 7 of 2016, which brought the UAE’s anti-bribery regime in line with international practices. Although the legislation remains less detailed than that of many other jurisdictions, a number of important changes were introduced:

- Foreign public officials and officials of international organizations are now caught by the anti-bribery provisions of the Penal Code.
- The scope of a bribe has been expanded to capture both “direct” and “indirect” bribes. The new amendments expressly stipulate (in relation to public and private bribes) that a bribe-related crime is committed if a person requests, accepts or has been given a promise, directly

or indirectly, to receive a gift, benefit, or unmerited gratuity to influence that person to act in a way or refrain from acting in a certain way in relation to their function/duties.

- Provisions relating to commercial private bribes have been clarified. The receiver of a private bribe is broadly defined as any person entrusted with the management of a private establishment or vehicle, as well as any employee (in any capacity) of any such private establishment or vehicle. Formerly, the provisions only applied to members of the board of directors of a private company, institution, cooperative association or public benefit association, as well as managers and employees of such entities.
- The definition of “public officials” has been amended to encompass members of the judicial authority, members of security authorities, chairs, directors, managers and all employees of public authorities, public corporations, as well as totally or partially owned federal or local state entities.

9. Competition Law

In a significant development for the UAE’s competition regime, the Cabinet in Resolution No. 13 of 2016 the “Resolution”) defined relevant market share thresholds which will enable implementation of the Competition Law.

Prior to the issuance of the Resolution, the Competition Law had very little impact on the conduct of business activities and transactions in the UAE due to the absence of any operational implementing regulations.

The key areas covered by the Resolution are:

- A “dominant position” is created if the market share of the respective establishments exceeds 40% of the “transactions in the relevant market.” The Competition Law prohibits the abuse of a dominant position that prejudices, limits or prevents competition.
- An “economic concentration” is created if the market share of the combined establishments exceeds 40% of total “transactions in the relevant market.” The Competition Law provides that a notification must be made to the MOE in writing at least 30 days prior to completion of an economic concentration. Clearance will be deemed granted after the expiry of 90 days from the date of submission of a complete application. This 90-day period may be extended by an additional 45 days at the discretion of the MOE.
- “Weak-impact agreements” are now defined as agreements where the combined market share of the parties subject to the agreement does not exceed 10% of the total transactions of the relevant market. Weak-impact agreements are not considered restrictive and are permitted under the Competition Law.
- The Resolution does not indicate how “transactions in the relevant market” will be assessed, although based on the application of the European regulations on which much of the Competition Law is based, we expect it will be a combination of both sales volume and value in the relevant market.

The Competition Law stipulates that federal and local government entities or government-controlled entities (which the Resolution has defined as government ownership of 50% or more) as well as small and medium-sized enterprises (SMEs) are exempt from its application. SMEs have recently been defined in Cabinet Resolution No. 22 of 2016 as enterprises having up to 200 employees (in the trading and services sectors) or 250 employees (in the industrial sector), and annual turnover not exceeding AED 250 million (in the industrial and trading sectors) and AED 200 million (in the services sector). Turnover is calculated on the basis of the group of companies, not just the establishment that is party to the transaction.

Additionally, establishments operating in the following sectors are exempt from the provisions of the Competition Law: telecommunications, financial services, cultural activities (readable, audio and visual), pharmaceutical, utilities, waste disposal, transportation, oil and gas, and postal services.

The Resolution came into force on 1 August 2016.

10. Data Protection and Privacy

Unlike other jurisdictions, the UAE has no comprehensive data protection or privacy legislation. However, data protection and privacy are addressed in a number of laws. Primarily, the UAE Constitution guarantees both freedom and 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 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 legislation. 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 the federal Electronic Crimes Law No. 5 of 2012, which protects the privacy of online information, including 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, color or ethnic origin in addition to any acts that stoke religious hatred or offend religion through any form of expression, including speech, the written word and 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 data sharing law, 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. The Law's intentions include helping Dubai work toward achieving its plan of becoming a smart city by 2021 and encouraging innovation, with the objective of 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 to preserve the privacy and confidentiality of any such data they manage. Implementing regulations that 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 recognized in the UAE: (i) trademarks; (ii) copyrights; (iii) patents; (iv) protection of industrial designs; and (v) confidential information. The MOE 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 Neighboring 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 Organizations 1961 (Rome Convention)
- WIPO Copyright Treaty 1996
- Paris Convention
- World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (RIPS)

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

A new Commercial Fraud Law aimed at combating counterfeit goods and other commercial fraud was issued in December 2016, replacing the previous commercial fraud legislation. The new law is intended to enhance the enforcement mechanisms of existing intellectual property rights.

The law imposes tougher penalties on counterfeiters (the maximum penalty under the new law is a jail term of up to two years and a fine of as much as AED 1 million) and further enhances brand owners' rights (it is now an offense to possess counterfeits, even where the intellectual property holder is unable to prove that the counterfeiter intends to sell them). The Commercial Fraud Law reserves the maximum penalties for pharmaceutical and food products, but even those who deal in counterfeit goods outside of these categories may be fined up to AED 250,000. The authorities are also empowered to close stores that sell counterfeit goods, and repeat offenders may have their trade licenses cancelled.

The law covers fraud in goods, contractual jobs and services offered by businesses across the UAE, including free zone companies.

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 standalone 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 law.

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 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 in which UAE nationals own a minimum of only 51% of the share capital.

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 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 the DIFC, adopted the view that the DIFC is part of the Dubai courts, and hence government entities may agree on the submission of disputes to DIFC courts. 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 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 the public private partnership model will be used more frequently in Dubai. A number of secondary laws 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 intergovernmental 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 the 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 the ADGM. The ADGM Financial Services Regulatory Authority 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. Bankruptcy

The UAE has adopted Federal Bankruptcy Law No. 8 of 2016 (Bankruptcy Law), which came into force at the end of December 2016. While the Bankruptcy Law is the first stand-alone bankruptcy legislation, the UAE has in fact operated a (rarely used) bankruptcy regime since 1993, laid down by the Commercial Transactions Code (CTC).

During the drafting process, the Bankruptcy Law was publicized as a law drawing on the best bankruptcy protection laws around the globe, with the aim of facilitating doing business in the UAE and boosting credit markets. Such an impact is yet to be seen, and a thorough assessment will largely depend on how local courts apply the legislation and the infrastructure necessary for efficient and effective implementation.

The Bankruptcy Law introduced the following key changes to the existing regime:

- The Bankruptcy Law introduced a framework for an out-of-court financial reorganization process. A "financial reorganization committee" will be established by the Council of Ministers entrusted with supervising the reorganization of regulated financial institutions in distress.
- Preventive composition (which predated the Bankruptcy Law) remains a possible pathway for businesses in distress. However, the conditions to opt for preventive composition have been relaxed. The ability to settle 50% of the debt is no longer a condition for the composition plan to be approved. Any debtor that is not in default for more than 30 business days or is not in a "debited financial position" may initiate a composition.
- A creditor whose receivables amount to AED 100,000 or more may commence bankruptcy proceedings against the debtor. The CTC, on the other hand, did not include a threshold for commencing bankruptcy proceedings.
- If bankruptcy proceedings are initiated, debt restructuring is considered and may be opted for. While this is also a court-supervised process, debt restructuring may be initiated with the debtor's consent if the bankruptcy trustee deems that the debt restructuring will enable a higher recovery compared to the recovery under a normal bankruptcy process entailing the sale of business.
- Crimes of dishonored cheques are suspended if a preventive composition plan or a debt-restructuring plan is approved. In this case, the cheque holder becomes one of the unsecured creditors.
- The ability to seek new financings is reinforced. The provisions adopted in the Bankruptcy Law are more flexible compared to those of the CTC. The trustee may request the court to approve seeking new financings, secured or unsecured, necessary for the continuance of the

debtor's business. Additionally, any approved new financings will rank above the debts of unsecured creditors.

- Trustees are nominated by debtors and have been significantly empowered under the Bankruptcy Law. This may potentially reduce the courts' involvement and lead to a smoother and more efficient process. A trustee may also be a corporate entity.
- The scope of application of the Bankruptcy Law is broader than the CTC. All commercial companies (except for financial free zones that are subject to special bankruptcy regulations, such as the DIFC and ADGM), traders/merchants and civil partnerships (set up pursuant to the Civil Transactions Code) are subject to the Bankruptcy Law. Individuals remain out of the scope of the Bankruptcy Law, and the Civil Transactions Code continues to govern individuals unable to repay their debts.
- Directors' liability remains as is, meaning directors whose actions have caused losses continue to be jointly liable for the debts of the company if the assets of the debtor are not sufficient to cover 20% of its debts. Likewise, the suspect period remains unchanged, meaning any transaction entered into within two years before the issuance of bankruptcy proceedings (the suspect period) is void or voidable.

15. 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 in the DFM, ADX or NASDAQ Dubai. The 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 the ESCA regulate listing requirements and implement customary disclosure and transparency requirements, such as reporting material incidents. In addition, 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 the DFM/ADX and upon each 1% increment after the 5% or 10% of the securities of a parent, subsidiary or affiliate of a listed company on the 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 the ESCA. In turn, the ESCA has the right to reject the tender offer if it is deemed to affect the interest of the market or the national economy.

The ESCA has issued a number of significant regulations including new corporate governance rules, Private Equity Funds Regulations, Real Estate Funds Regulations, Venture Capital Fund Regulations, and Marketing and Promotion Regulations.

On the other hand, the Markets Law 2004 and the DFSA Rulebook govern transactions and listings conducted in NASDAQ Dubai and prescribe 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 (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 a "mainland") presence, ie, 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 liberalization 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 (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, ie, 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

The most widely used vehicle is the LLC. Branches and representative offices may also be set up in the UAE.

Choosing the most appropriate form of company depends on the purpose of the company and on the contemplated business activities. Set out in Annex (1) 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.

Local Participation

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 entity can own 100% of the share capital of a UAE company provided that such company, having GCC ownership, does not engage in certain activities that may be undertaken only by companies 100% owned by UAE nationals such as commercial agencies, labor supply, services for elderly or disabled persons, cultural activities and print and publishing houses.

Objects

The activities that businesses can carry out in the UAE are restricted to those listed on the local entity's license 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 licenses from a particular licensing authority, such as medical services, telecommunication and education.

Incorporation Documents

The following documents are required to set up a new legal entity in the UAE:

- In the case of a corporate founding shareholder, articles of association and certificate of incorporation, notarized and legalized 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, notarized and legalized 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 association 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
- 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 MOE 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
- 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 the 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.

The 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 Middle East and North Africa region. The licenses available in the JAFZA are categorized as follows: trading activities; services activities; e-commerce license; industrial activities; and national industrial activities (designed for manufacturing companies in which GCC nationals must own no less than 50% of the share capital). In 2017, a new set of JAFZA companies regulations and rules have introduced for the first time the option of listing shares on the stock exchange by setting up (or converting an existing presence into) a public listing company.

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. In February 2017, a new set of rules and companies regulations have come into force with respect to Dubai Creative Clusters, whereby all existing companies must adjust their legal positions within one year.

DMCC is another free zone specializing 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 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 it is subject to obtaining the necessary licenses 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. Free zone regulations may also adopt special regulations in respect of employment and labor matters, which often apply in conjunction with, and are sometimes subordinate to, the Labor Law.

By way of illustration, Annex (2) outlines the common types of corporate vehicles available to set up business operations in the 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 center 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, ancillary services such as:
  - Professional services (eg, 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 license 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 "Authorized Firm" by the DFSA) must comply with certain regulations applicable to its prudential category in relation to paid-up capital, authorized 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 licenses 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 MOE 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 MOE. To be registered as a commercial agency with the MOE, commercial agents must be UAE nationals or companies incorporated in the UAE 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 prerequisite to register a commercial agency agreement with MOE.

(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 (eg, 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, ie, 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 MOE deems that the reasons for the termination request or the non-renewal request are justified

  (iv) The decision of the special committee within the MOE has been appealed before a UAE court within 30 days of 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 compensation. The calculation of the compensation is based on a number of considerations, including the duration of the commercial agency relationship, the capital investment (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 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"[3] and "musataha rights,"[4] 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 (ie, 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.

[3] Usufruct is a real right attached to the land which gives its holder usufructuary rights similar to those of an absolute owner (eg, the right to sell and the right to mortgage), except that it resembles a lease tenure as it is held for a limited term (ie, 99 years).
[4] Musataha is similar to an outright ownership right except that it is only for a limited period, 50 years in particular, 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 (eg, 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 licenses 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 the 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 increase in rent of 5% is permitted

(iii) Between 21% and 30% below the average market rental rate — a maximum increase in rent of 10% is permitted

(iv) Between 31% and 40% below the average market rental rate — a maximum increase in rent of 15% is permitted

(v) More than 40% below the average market rental rate — a maximum increase in rent of 20% 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.

The law protects tenants from rent increases beyond a defined rent cap. Landlords and tenants are allowed to fix the rent payable under a lease. If the rent is not fixed, landlords have the right to an annual increment, which is capped 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 either (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.

(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 the 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 (eg, property details, parties, term and rent).

Employment

Employment relationships in the UAE are governed primarily by the Labor Law. Some of the economic free zones have their own employment regulations in place, which must also be taken into account.

The Labor Law does not apply in DIFC or the ADGM. The DIFC and ADGM have autonomy with regard to civil and commercial legislation, including labor laws. The employment laws of the DIFC and ADGM are beyond the scope of this publication.

The competent UAE courts are the only dispute forums empowered to look into any employment disputes (excluding DIFC and ADGM-based employers, as the DIFC and ADGM have their own court systems in place).

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

1. Emiratisation

For economic, social and political considerations, the UAE adopts an Emiratisation policy whereby the 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

(iii) 5% of the workforce of insurance companies, if the total workforce exceeds 50 employees

(iv) One public relation officer if the total workforce exceeds 100 employees

(v) Establishments operating in the construction and industrial sector with 500 employees or more are required to appoint an Emirati Health and Safety officer.

(vi) Establishments employing 1,000 employees or more are required to register with the system of the MHRE online system in order to obtain work permits for employees. This online system is only accessible by UAE national employees. Pursuant to the resolution, the employer must designate at least two Emirati employees in these data entry positions.

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

In order for a non-UAE national to legally work for a particular entity and reside in the UAE, they must obtain a work permit and residence visa. These permissions are obtained through the employer, which must have an entity established in the UAE. It is recommended that offers of employment are conditional upon the individual obtaining the residence visa and work permit.

No specific pre-hire background or reference checks are required under the Labor Law. However, only individuals who hold certain levels of education can be appointed to hold certain job classifications. All relevant education certificates (which must be attested to the Ministry of Foreign Affairs in the UAE) have to be provided to the MHRE or to the relevant free zone authority as part of the process to obtain the requisite work permit on behalf of the employee.

Further, a pre-hire medical check is a government prerequisite for residency in the UAE and all expatriates must undergo a medical test, which typically includes a blood test and an X-ray.

Residency visas and work permits must be periodically renewed.

3. Employment Contract

The submission of an employment offer letter to the MHRE, 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 for onshore employers.

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.

As part of the process of obtaining the work permit, a template employment contract issued by the MHRE (or relevant free zone authority if the employer is established in a free zone) must be signed by the parties and submitted to the MHRE (or free zone authority). The template employment contract includes basic employment terms and is drafted in English and Arabic.

Due to the basic nature of the MHRE (or free zone authority) template employment contract, 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 MHRE or free zone employment contract template. Accordingly, it is common for employees in the UAE to hold two employment contracts: (a) a MHRE (or free zone) employment contract; and (b) a private employment contract which describes the employment relationship in more detail.

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 or at the end of the probationary period, 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.

(i) Fixed-term contracts — A recently issued regulation of the MHRE requires that fixed-term contracts do not exceed a two-year term. In the free zones, terms of three years are permitted. 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.

Within the first term of the contract if either party wishes to terminate before the expiry date, compensation must be paid to the non-terminating party. In this regard the employer is obliged to pay the employee compensation of three months' salary (or the salary due for the remainder of the contract if less). The employee is obliged to pay the company compensation of 1.5 month's salary (or the salary due for the remainder of the contract if less).

After renewal of the fixed-term contract, either party may terminate the employment on notice. The notice clause can be for a minimum of one month and a maximum of three months. If the contract does not contain a notice provision, three months will be automatically applied. The terminating party must also compensate the other party to the agreement. Compensation can be for a minimum of one month and a maximum of three months. If the contract does not contain a compensation provision, three months will be automatically applied.

(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 Labor 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 for the reasons stipulated under Article 120 of the Labor Law 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 labor 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 offense involving honor, 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 Labor 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

The following procedure 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 given an opportunity to defend himself/herself against the allegations. In practice, employees will attend a meeting in this regard.

(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 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 investigation ended and the employee's guilt was established.

4.6 Redundancies

Redundancies are not recognized under the Labor 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 Labor Law.

4.7 Notice/Payment in Lieu of Notice

In accordance with the Labor Law, the minimum notice period for an unlimited contract is 30 days, with a maximum of three months. In a recent amendment to the labor 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 basic wage for each of the employee's first five years of service and 30 days' basic wage for each year thereafter.

If the employee resigns and the employment contract is for an indefinite period,[5] 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 wages and are proportionately calculated for any partial year worked. An employee is not entitled to an end-of-service gratuity if they are dismissed for a reason falling within Article 120 of the Labor Law or do not observe the notice period.[6] Employees employed on fixed-term contracts will also forfeit their end-of-service gratuity if they resign before the expiry of the term and have less than five years of service.

[5] Please note that the reduction does not apply in some of the free zones.
[6] Where an employee has five years or more service and is employed on a fixed-term contract end-of-service will be still be payable even if the employee does not provide notice of termination.

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 pm and 4:00 am, 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.

The working time provisions do not apply to employees holding senior and/or managerial roles. More specifically, this includes the Chairman of the Board of Directors, the Managing Director, Departmental Heads and Supervisory staff, provided that such individuals have authority to act on behalf of the company.

5.2 Weekend

Friday is a specified rest day under the Labor Law. An employee cannot be required to work more than two consecutive Fridays. Moreover, in the event that an employee is required to work on a Friday, that employee is entitled to receive either time off in lieu **or** basic salary for the hours worked plus a supplement equal to 50% of the employee's full salary.

6. Compensation/Benefits

6.1 Minimum Wages, Mandatory Increases

There is generally no statutory or minimum wage requirement or mandatory annual salary increase required in the UAE pursuant to the Labor Law.

6.2 Bonuses, Benefits in Kind

Employers located onshore are subject to the Wage Protection Scheme, which aims to protect employees via an electronic salary transfer scheme that ensures timely payment of the agreed wage amount to the employee. According to the WPS guidelines, payments of employee remuneration must be made via banks, exchange offices and financial institutions which have been approved and authorized 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. Employers must therefore register their UAE and GCC national employees with the General Pension and Social Security Authority. Failure to do so will give rise to fines.

Both Abu Dhabi and Dubai have a compulsory health insurance scheme, which obliges employers to provide private health insurance to their employees through approved health insurance companies.

7. Leave

7.1 Sick Leave

Employees are entitled to a maximum of 90 calendar days of sick leave. The first 15 days are fully paid while the next 30 days are subject to half pay. The remaining 45 days are unpaid. An employee on probation (and for three months thereafter) is not entitled to paid sick leave.

7.2 Maternity Leave

A female employee is entitled to 45 calendar 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 only to half pay during her 45 days of maternity leave. There is no paternity or parental leave provided for under the Labor Law.

7.3 Special Leave

An employee is entitled to a special period of leave not exceeding 30 days in order to perform the Hajj. 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 approximately 22 working days (based on a five-day working week). 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. However, in practice many employers do not put a different system in place for new recruits and provide all employees with the same holiday entitlement.

The employer is entitled to determine the dates of its employees' annual leave provided that the days are not divided into more than 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) Martyrs' 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	It is a separate legal entity from its partners. The liability of its shareholders is limited to their capital contributions. 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). 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.	It is a separate legal entity from its shareholders. The liability of its shareholders is limited to their capital contributions. It can be converted into a PJSC. 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). 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.	It is a separate legal entity from its shareholders. The liability of its shareholders is limited to their capital contributions. It can offer shares to the public. 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). It must have at least five shareholders.	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. It is wholly owned by its parent company.
Minimum capital	Currently, there is no minimum share capital required for an LLC. An LLC must have share capital sufficient for the realization of the objectives of the company. The relevant authorities may, in certain instances, require a minimum capital depending on	It must have a minimum share capital of AED 5 million. It cannot offer shares to the public. Its shares must be of equal value (ie, no less than AED 1 and no more than AED 100).	It must have a minimum issued share capital of AED 30 million. The articles of association of the PJSC may determine as authorized capital an amount not in excess of two times the issued share capital. Its negotiable shares must be of equal value (ie,	There is no capital required for setting up a branch or a representative office. A bank guarantee issue of AED 50,000 must be issued by a UAE licensed bank and submitted to the MOE.

	Limited Liability Company (LLC)	Private Stock Company (Private Company)	Public Joint Stock Company (PJSC)	Branch/Representative Office
	the contemplated activity. The capital shall be composed of equal shares. The capital is 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. It cannot offer shares to the public.		no less than AED 1 and no more than AED 100).	
Permitted activities	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. An LLC with GCC shareholding cannot carry out the activities set out in a negative list.	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 authorizations must be obtained from the relevant federal and local authorities. A Private Company with GCC shareholding cannot carry out the activities set out in a negative list.	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 authorizations must be obtained from the relevant federal and local authorities. A PJSC with GCC shareholding cannot carry out the activities set out in a negative list.	**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, and the establishment of print and publishing houses, newspapers and magazines.

	Limited Liability Company (LLC)	Private Stock Company (Private Company)	Public Joint Stock Company (PJSC)	Branch/Representative Office
				Representative offices are limited to marketing, promotion and liaison activities only.
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	Day-to-day management may be vested in one or more managers (ie, directors) as determined by the partners, who are not required to be UAE nationals. It must have a general manager who is resident in the UAE. If it has seven or more partners, it must appoint a Control Council comprising at least three partners. Management and control are subject to mandatory requirements of the Companies Law, under which certain matters are reserved to the general assembly (ie, a meeting of the partners) and some matters	It is managed by a board of directors elected by the general assembly (ie, shareholders). The majority of the board of directors must be UAE nationals. The number of the directors shall not be less than three and shall not exceed 11. 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. A Private Company must have a managing director, who is not an executive officer or a general	It is managed by a board of directors elected by the general assembly (ie, 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 shall not exceed 11. 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. A PJSC must have a managing director who is not an executive officer or a general manager of another company.	It must have a general manager who is resident in the UAE. The general manager does not need to be a UAE national.

	Limited Liability Company (LLC)	Private Stock Company (Private Company)	Public Joint Stock Company (PJSC)	Branch/Representative Office
	require a special resolution.	manager of another company. Management and control are subject to mandatory requirements of the Companies Law, under which certain matters are reserved to the general assembly (ie, a meeting of the shareholders).	Management and control are subject to mandatory requirements of the Companies Law, under which certain matters are reserved to the general assembly (ie, a meeting of the shareholders).	
Transfer of shares	It has a 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 the JAFZA

	JAFZA Branch	FZCO and FZE	JAFZA offshore company	JAFZA Public Listed Company (PLC)
Number of shareholders and liability	It does not have a separate legal personality and is deemed 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 shareholders is limited to their capital contribution. An FZCO must have at least two shareholders and a maximum of 50 shareholders or partners, while an FZE is incorporated by a single shareholder, who can be either an individual or a corporate entity.	It is an independent legal entity with limited liability. The liability of the shareholders is limited to their capital contribution and there must be at least one shareholder.	It is an independent legal entity with limited liability. The liability of the shareholders is limited to their capital contribution and there must be at least two shareholders.
Minimum capital	There is no specified minimum share capital requirement since a JAFZA branch is an extension of the controlling or parent company.	An FZE and FZCO must have share capital sufficient for the realization of the objectives of the entity.	There is no specified minimum share capital requirement. However, in practice the JAFZA requires offshore companies to have a minimum share capital of AED 10,000.	There is no specified minimum share capital requirement. However, it must be higher than the amount sufficient for the activities permitted under its license or higher than the amount of capital required under the laws of the jurisdiction of the relevant stock market where the PLC's shares are listed.
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	It can carry out any of the permitted activities within the confines of the JAFZA without restrictions that are reflected on its license.	Typically used as an investment vehicle or holding company. It is not permitted to conduct business operations onshore in the UAE or within the relevant free zone and	It can carry out any of the permitted activities reflected on its license within the confines of the JAFZA. It may also conduct business outside the UAE subject

	JAFZA Branch	FZCO and FZE	JAFZA offshore company	JAFZA Public Listed Company (PLC)
	of business activities within the confines of the free zone that are reflected on its license.		cannot obtain employee or other types of visas. However, it can conduct business outside the UAE subject to the approval and licensing requirements of the relevant jurisdiction. 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. It can 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.	to the approval and licensing requirements of the relevant jurisdiction.
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.	Must maintain a physical office in the free zone. The availability of space must be verified with the JAFZA.
Management	A JAFZA branch must have a general manager. The board of directors or shareholders of the controlling or parent entity may	An FZCO and an FZE must have a manager, a director and a company secretary. The offices of the director, the manager and	General managers are not typically appointed. Therefore, all powers of the management rest with the board of directors. A	A PLC must have a minimum of two directors, a manager and a company secretary. The office of manager may be held by a

	JAFZA Branch	FZCO and FZE	JAFZA offshore company	JAFZA Public Listed Company (PLC)
	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 operations, such as bank account transactions, entering into agreements, signing documents before the authorities and employment of staff, among others. The general manager must hold a valid UAE residency and work visa under the sponsorship of the branch.	company secretary may be held by a single person. The constitutional documents must determine the voting mechanics and duties of the director(s). The manager must hold a valid UAE residency and work visa under the sponsorship of the FZCO/FZE. 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.	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.	director or the company secretary. The office of director cannot be held by a secretary.
Transfer of shares	Not applicable to the JAFZA branch.	All shareholders of the FZCO or FZE must consent to the share transfer for it to be effective. 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 or FZCO.	All shareholders of the offshore company must consent to the share transfer for it to be effective. Certain formalities with the JAFZA are carried out to give effect to any share transfer.	Transfer of shares must be carried out in accordance with the laws of the jurisdiction of the relevant stock market where the PLC's shares are listed.

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 license 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 its/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 it 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	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 USD 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

	Company Limited by Shares (CLS)	Limited Liability Company (DIFC LLC)	Special Purpose Company (SPC)	Limited Liability Partnership (LLP)
	category as licensed by the DFSA. In addition, it may offer shares to the public and issue securities.			as licensed by the DFSA.
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 the 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 authorized 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 nor may 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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