

Contents

“Doing Business in the United Arab Emirates” has been prepared by Squire Patton Boggs (MEA) LLP as a general introduction for those interested in business activities in the United Arab Emirates (UAE) and is not intended to provide comprehensive advice.

The information in this guide addresses only some of the principal elements of doing business in the UAE and we advise anyone who intends to establish a corporate presence in the UAE to obtain advice specific to their business. Also, it is worth noting that the UAE market is dynamic, and the rules and procedures for doing business in the Emirates are constantly evolving. Due to the changing landscape, it is essential to seek professional advice when evaluating the market.

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Introduction	3	Insolvency Regime	7
Overview of the Economic Environment in the UAE	3	Public Markets in the UAE	7
Overview of the UAE Legal System	3	Dubai Financial Market (DFM)	7
Legal System	3	Abu Dhabi Securities Exchange (ADX).....	7
Federal Law	4	NASDAQ Dubai	8
The Judiciary	4	Abu Dhabi Global Market (ADGM)	8
Enforcement of Foreign Arbitration	4	Employment Law.....	8
Awards and Judgments		Overview	8
Court Proceedings	5	Termination for Cause.....	8
Experts.....	5	Other Methods of Termination – By Agreement and On Notice	9
Court Fees and Other Costs	5	Severance and Repatriation.....	9
International Agreements	5	Other Termination Costs	9
Choice of Law	5	Labour Disputes	9
Incorporating a Company/Establishing a	5	Other Legal Considerations	9
Legal Presence “Onshore”		Taxation.....	9
Limited Liability Company	5	Value Added Tax (VAT)	9
Branch Office	6	UAE Economic Substance Regulations.....	10
Representative Office	6	Immigration Law	10
Commercial Agencies	6	Emiratisation	10
Distributorships.....	7	Intellectual Property.....	10
Incorporating a Company/Establishing a Legal Presence	7		
– Free Zones			

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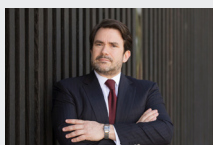
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Introduction

Overview of the Economic Environment in the UAE

The United Arab Emirates (UAE or Emirates) has come a very long way from its beginnings as a regional trading hub with an economy dominated by pearl harvesting, fishing and local agricultural products. It is now the second largest of the Arab economies after Saudi Arabia, with a projected gross domestic product for 2019 of approximately US\$427.88 billion (AED1.57 trillion), an increase of 2.8% over the preceding year. The UAE Ministry of Foreign Trade reported in early 2019 that the contribution of the non-oil sector to the UAE's gross domestic product has increased to almost 71% through the country's deliberate economic diversification strategy.

In the 2019 Index of Economic Freedom, published by the Heritage Foundation in partnership with the *Wall Street Journal*, the UAE's economic freedom score is 77.6 out of a possible score of 100, ranking the country 9th globally. Its score has increased year on year, driven by improvements in investment freedom, the management of government spending and freedom from corruption that outweigh a small combined decline in monetary freedom, trade freedom and fiscal freedom. The UAE is ranked 1st out of all countries in the Middle East/North Africa region, and its overall score is significantly higher than the world and regional averages.

The year 2019 saw something of a legislative sea change in terms of the UAE opening its doors to foreign investment. On 2 July 2019, the Federal UAE Cabinet issued a decision (the "Foreign Ownership Decision") permitting up to 100% foreign ownership for 122 economic activities across 13 industry sectors in the UAE. Included was a broad range of sectors: transport and storage, agriculture, space, manufacturing, healthcare and educational activities, and others. Prior to this time, foreign investors in all of those named sectors were limited, by law, to a 49% ownership interest.

Some impediments to a more open economy remain. Currently, full foreign ownership of companies is only allowed in designated areas, known as free zones (discussed in detail below), designed to encourage foreign investment in designated industries. The names of the free zones – e.g. Healthcare City, Media City and Dubai Airport Free Zone – often tell the story of the activity encouraged, although there are many others. Free zone companies cannot, however, directly trade with the "mainland UAE". Outside these designated areas all locally formed limited liability companies must, to the extent that they do not fall into one of the sectors stipulated in the Foreign Ownership Decision, be at least 51% owned by one or more UAE nationals or a company entirely owned by UAE nationals.

Foreign investors in the UAE have sometimes endeavoured to circumvent the effects of the ownership requirements by entering into "side agreements" with local sponsors, which have the effect of systematically limiting or removing the powers and rights of the majority shareholders, leaving the foreign party as the "real" owner of the business. By some estimates, up to 85% of limited liability companies in the UAE with foreign participants may be presently operating on the basis of such agreements.

In 2004, the Federal Council of the UAE acted to curtail these types of arrangements by passing Federal Law No 17 of 2004 Concerning Anti-Concealment (Fronting) Law. This law would have had the effect of rendering all such sponsorship arrangements void upon it taking effect in November 2007. Promulgation of the Anti-Fronting Law has, however, been put off by the government indefinitely pending the advent of other required legislative changes. It has, though, left something of a feeling of discomfort among many foreign investors about their current arrangements. The Foreign Ownership Decision should work to alleviate some of those concerns, at least in the commercial sectors outlined in the decision.

On 1 April 2015, the UAE enacted a new Federal Commercial Companies Law (Federal Law No. 2 of 2015), designed to modernize existing laws and to boost the public markets.

There are factors at play here other than simple economics. While the UAE is as concerned as any country in the region with economic growth, it is clearly not in favour of growth at any cost. The legislative changes that will come will be balanced with national and cultural concerns for an increased role for Emirati nationals in the economy of their own country (a nation in which they currently comprise approximately only 10% of the population), for recognition of the unique history and culture of the UAE and for a continuing regard for the Emirates' Arab-Islamic roots. These principles have been spelled out in detail in the UAE's Vision 2021 mission statement.

Overview of the UAE Legal System

The UAE legal system is a federal, code-based system strongly influenced by French, Roman, Egyptian and Islamic law. The federation consists of the seven emirates of Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwain, Fujairah and Ras Al Khaimah. The Emirates are joined in this federation under the 1971 UAE constitution (UAE Constitution), which guides the development of all federal laws and the creation of local laws.

Legal System

The UAE has a civil law system with codified federal and local laws. In the case of any ambiguities in these codified laws, the courts can interpret the laws based on principles identified within the laws themselves.

Local courts are not bound to follow decisions of the higher courts but are often influenced by them.

Note that the laws and judicial process applicable in the Dubai International Financial Centre (DIFC) and the newly created Abu Dhabi Global Market (ADGM) are decidedly different and operate independently of the UAE laws as a whole. These distinctions are discussed in more detail throughout the course of this guide.

Federal Law

The UAE President, the Federal National Council and the Council of Ministers have exclusive legislative power in areas such as civil and commercial transactions, banking, labour and intellectual property. While each Emirate has significant autonomy, the individual Emirates can only legislate on those matters not subject to this exclusive federal legislative authority.

Commercial and contractual relationships in the UAE are principally governed by the Commercial Companies Law, the Commercial Transactions Law and the Civil Transactions Law. The Commercial Companies Law sets forth the forms that a corporate legal presence can take in the UAE (i.e. limited liability company, branch office, etc.) and addresses matters such as the minimum capital requirements, the appointment of directors and the rights of shareholders. The Commercial Transactions Law applies to transactions made “in the course of business” and allows parties to enter into a contract containing any terms and conditions, provided the terms and conditions are not illegal and do not conflict with public policy. The Civil Transactions Law provides general rules of contractual interpretation.

The Judiciary

The federal judicial system has three main branches: civil, criminal and Shari’a. Shari’a courts have exclusive jurisdiction to hear personal matters for Muslims such as family and inheritance disputes. The Shari’a courts at the federal level also have appellate jurisdiction for certain criminal cases, such as those involving rape and driving while intoxicated.

The federal system is composed of federal courts of first instance, which are entrusted with matters within their territorial jurisdiction or reserved for them by the UAE Constitution. The decisions of these courts can be appealed to the federal appellate courts and from the federal appellate courts to the Federal Supreme Court in Abu Dhabi.

Three Emirates – Abu Dhabi, Dubai and Ras Al Khaimah – have their own court systems. Of these three, Abu Dhabi and Dubai have their own supreme courts. As a result, federal appellate courts do not have appellate jurisdiction over the judgments rendered in these two Emirates. The court structure in Abu Dhabi and Dubai has three tiers: the Court of First Instance, the Court of Appeal and the Court of Cassation.

The DIFC has its own internal independent court system, the DIFC Judicial Authority (DIFC Courts), including a Court of First Instance and Court of Appeal. The courts’ proceedings are in the English language and the principles of common law are applied. Originally, the DIFC Courts were designed to hear only matters arising within the DIFC, but now may also adjudicate disputes where the parties to the dispute clearly and specifically agree to its jurisdiction, whether by contract or otherwise, even where the subject of the dispute is outside the DIFC.

Enforcement of Foreign Arbitration Awards and Judgments

Alternative dispute resolution by arbitration and mediation is available in numerous forums in the UAE including the Dubai International Arbitration Centre (DIAC), the Abu Dhabi Commercial Conciliation & Arbitration Centre (ADCCAC), the Ajman Centre for Arbitration and Commercial Conciliation (AJCACC), the Gulf Co-Operation Council Commercial Arbitration Centre (GCCAC), the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the DIFC-LCIA Arbitration Centre and the American Arbitration Association (AAA and ICDR).

The UAE ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) in August of 2006. Consequently, the UAE courts enforce foreign arbitral awards concluded in states that are party to the New York Convention, in accordance with the terms of the Convention.

It is extremely difficult to enforce the judgments of foreign courts in the UAE, other than those from those few nations which are parties to bilateral reciprocal enforcement of judgments treaties with the UAE. The conditions for the enforcement of foreign judgments are set out in the UAE Civil Procedure Law:

Judgments and orders issued in a foreign country may be ordered to be enforced in the UAE on the same conditions as prescribed in the laws of that country for the enforcement of similar judgments and orders issued in the UAE. An enforcement order shall be applied for in the court of first instance within which jurisdiction the enforcement is required.

Enforcement may not be ordered until the following has been verified:

- That the UAE courts do not have jurisdiction in the dispute in which the judgment has been given or the order made, and that the foreign court which issued it has jurisdiction under the international rules for legal jurisdiction prescribed under its laws.
- That the judgment or order has been issued by a court having jurisdiction under the law of the country in which it was issued.
- That the opposing parties in the case in which the judgment was given were summoned to appear and duly appeared.
- That the judgment or order has acquired the force of a *fait accompli* under the law of the court which issued it.
- That it does not conflict with a judgment or order previously issued by a court in the UAE and does not breach public morals or order in the UAE.

DIFC law permits the enforcement of foreign judgments in accordance with the Rules of the DIFC Courts. Under Article 7(6) of the Judicial Authority Law and Article 24(1)(a) of the DIFC Court Law (DIFC Law No. 10 of 2004), the DIFC Courts have jurisdiction to ratify any judgment of a recognised foreign court for the purposes of any subsequent application for enforcement in the courts of Dubai.

The UAE has entered into a number of reciprocal enforcement of judgments treaties with other nations, including the Gulf Co-Operation Council Treaty (which affects judgments from Kuwait, Bahrain, Saudi Arabia, Oman and Qatar), the Bilateral Treaty for Enforcement of Judgments with France and the Agreement between the UAE and India on Juridical and Judicial Co-Operation in Civil and Commercial matters.

Court Proceedings

Court proceedings in the UAE, outside of the jurisdiction of the DIFC Courts and the courts of the Abu Dhabi Global Market (described in detail below), are markedly different than proceedings in Western legal systems. By way of example, there is no “day in court” as such, with witnesses and advocates present. Proceedings where oral evidence is taken are extremely rare in the UAE and courts make their adjudications based upon written submissions of the parties and reports prepared by certified court experts.

Experts

Judges in UAE proceedings have the discretion to appoint an expert to assist them in the review of the subject matter of the trial, including revision of documentation, and meeting of the parties to establish the background facts. The court expert will be directed by the court to produce a report on such matters as the court may deem relevant, including liability and quantum of damages.

Court Fees and Other Costs

Court fees vary from Emirate to Emirate and are generally based on a percentage of the value claimed.

Court fees paid by a successful litigant may be recoverable from the losing party as part of the judgment. However, lawyers’ fees are not recoverable, save to an entirely nominal extent. There is no concept of “loser pays” for such legal costs, unlike in common law systems.

International Agreements

The UAE has been a member of the World Trade Organization since 2006. It has been a member of the United Nations since 7 December 1971. In addition to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the UAE has implemented provisions of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce. However, the UAE is not a party to the UNCITRAL Convention on Contracts for the International Sale of Goods or the Hague Convention Abolishing the Requirement of Legalization of Foreign Public Documents.

Choice of Law

There is general freedom of contract in the UAE, including the freedom of the contracting parties to choose the governing law of their contracts. However, for matters involving real and personal property in the UAE, security over assets located in the UAE, labour matters or the structuring of UAE entities, the application of UAE law is often mandatory, regardless of what law has been agreed to by the parties.

Incorporating a Company/ Establishing a Legal Presence – “Onshore” UAE

The vehicles most commonly used by foreigners in setting up in the “onshore” UAE (i.e. outside of a free zone), are, (i) a limited liability company, (ii) a branch office or (iii) a representative office. Foreigners can also enter into commercial agency or distributorship relationships that do not require them to establish a separate legal presence in the UAE.

Limited Liability Company

Foreigners may set up a limited liability company (LLC) in the UAE. The general characteristics of an LLC are:

- An LLC is permitted to carry on its activities in the Emirate in which it is incorporated. If the LLC wishes to establish a physical presence in another Emirate, it will require a separate trade licence from the second Emirate or it can establish a branch in such Emirate.
- There has been a recent significant relaxation of the foreign investment market in the UAE and foreign-owned LLCs are permitted to carry on business without restriction in a wide range of industries. On 2 July 2019, the Federal UAE Cabinet issued a decision (the “Foreign Ownership Decision”) pursuant to the provisions of Federal Decree Law No. 19 of 2018 (the “Foreign Investment Law”) which came into force in November of last year. The Foreign Ownership Decision will permit up to 100% foreign ownership for 122 economic activities across 13 industry sectors in the UAE. The affected sectors (the “Positive List”) include:
 - Transport and storage
 - Agriculture
 - Space
 - Manufacturing
 - Renewable energy
 - Hospitality and food services
 - Information and communication
 - Professional, scientific and technical activities
 - Administrative and support services
 - Educational activities
 - Healthcare
 - Art and entertainment
 - Construction
- Among other things, the Foreign Investment Law also established a Negative List, outlining those areas in which increased foreign investment would not be permitted. Those areas include petroleum exploration and production; fisheries; investigation, security and military sectors; banking and financing activities, payments and funds management systems; land and air transport services; insurance services; commercial agencies services; and a handful of other designated sectors.

- The current Companies Law requires onshore LLCs carrying on business in an area which is not on the Positive List to have at least 51% UAE ownership. Profits and losses may be distributed among shareholders in proportions different from ownership percentages. Note that while there is no legal basis for so doing, the authorities in various Emirates may impose their own rules regarding the minimum percentage of the profits to be allocated to the UAE national shareholder or shareholders.
- There is no minimum share capital for an LLC in the UAE, but the capital should be sufficient for the purposes of the business of the company in the view of the Department of Economic Development in the Emirate in which it is formed.
- It typically takes approximately eight to 10 weeks to establish an LLC, depending on the readiness of the documentation needed to incorporate the company. Note that the supporting documentation relating to a foreign shareholder must be notarised, legalised and attested in the country of domicile of that shareholder and attested in the UAE before the Ministry of Foreign Affairs.
- The management of an LLC is entrusted to one or more managers, each of whom has authority to operate independently within their designated areas. The managers may, if desired, be formed into a board which takes management decisions collectively. Authority is given to the managers by a shareholders resolution or in the articles of association of the company; certain important matters are reserved, as a matter of law, to the shareholders. In practice, many LLCs have a single manager appointed by one of the shareholders.
- In seeking to incorporate an LLC, the incorporators must designate a particular activity, which must be acceptable to the relevant authorities.

Upon issuance of a trade licence, the LLC must register with the UAE Ministry of Labour and the UAE Department of Immigration in order to be able to sponsor resident work permits for its own employees, their dependents and invitees. It may also open local bank accounts and post office boxes.

Branch Office

Foreign companies may set up a branch office in an Emirate. The general characteristics of a branch office are as follows:

- A non-UAE company may establish a branch office with 100% non-UAE national ownership. There is, however, a requirement that a UAE national party is appointed to act as the branch's local service agent.
- The local service agent must be a UAE national or a company wholly owned by UAE nationals. The arrangement between the company wishing to set up a branch and the local service agent will be set out in an agency agreement prepared in English and Arabic and signed before a local notary public.
- A branch office does not have limited liability. Its exposure to liability extends generally to the company that established it.
- There are no minimum capital requirements for a branch, although the foreign company is required to provide a standard form bank guarantee from a local bank in the amount of AED50,000 and to provide details of its own capitalisation and good standing, together with its two most recent sets of annual audited accounts.

- It typically takes approximately six to eight weeks to set up a branch office.
- The branch must carry on business activities which the parent company is authorised to undertake and which must be approved in advance by the relevant authorities. It is important to note that approval for the issuance of a licence for a branch depends on the type of activity the branch is proposing to conduct. Typically service rather than trading activities are more likely to be candidates for licensing.
- Since 2011, free zone companies have been permitted to set up branches in the UAE on essentially the same terms and under the same procedures as apply to foreign companies.
- The branch must be under the control of a manager, who need not be a UAE national. In the case of some free zones however, the manager may be required to be a local resident.
- A branch must obtain a certificate of registration from the UAE Ministry of Economy and a licence from the Department of Economic Development.
- Upon issuance of its licence, the branch must register with the UAE Ministry of Labour and the UAE Department of Immigration to be able to sponsor residents work permits for its own employees, their dependents and invitees. The branch may also open local bank accounts and post office boxes.

Representative Office

A representative office has the same general characteristics as a branch office, except that a representative office is only permitted to carry out marketing and promotional activities on behalf of the foreign company establishing it. As with branch offices, representative offices require the appointment of a service agent who is a UAE national and who would provide the parent with services such as obtaining permits and licences. Also like branch offices, representative offices are required to submit a bank guarantee of AED50,000 in favour of the Ministry of Economy as part of the registration process. It typically takes approximately four to six weeks to set up a representative office.

Commercial Agencies

Foreign investors intending to supply goods and services from abroad may appoint a commercial agent to represent their interests in the UAE instead of establishing a permanent presence. The Commercial Agencies Law imposes certain requirements as to who can serve as a commercial agent. For example, commercial agents must be UAE nationals or companies incorporated in the UAE and owned entirely by UAE nationals. Commercial agents must also be registered in the Commercial Agencies Registry maintained by the UAE Ministry of Economy in order to engage in commercial agency activities. The Commercial Agencies Law also provides commercial agents with certain protections. For example, the minimum territory of exclusivity allowed for commercial agents is an entire Emirate. Commercial agents are entitled to receive commissions on the sale of the specified products in the designated territory regardless of whether such sales are made by or through the agent. Commercial agents are also entitled to compensation if the agency is terminated without substantial justification, in which case the agent may be able to prevent the foreign principal from appointing a different agent for the same territory.

Distributorships

Foreigners can appoint local distributors to distribute products to the UAE market. The distributor can be any local, registered company, including companies with foreign ownership.

Incorporating a Company/ Establishing a Legal Presence – Free Zones

Foreign investors may also consider setting up in one of the various free zones in the UAE. A free zone is a geographical area within the UAE governed by rules and regulations that are generally different from those governing onshore UAE. More precisely, federal criminal law applies to the free zones while federal civil law (such as the Commercial Companies Law and the Commercial Transactions Law) applies only to the extent the free zone has not developed its own laws or regulations on the matter.

There are many different free zones in the UAE, governed by broadly similar registration requirements, with the main differences being the industry or activity the relevant free zone specialises in and the costs of establishing and maintaining entities within the free zones. Some of the more notable free zones include:

- Dubai International Financial Centre (DIFC)
- Abu Dhabi Global Market (ADGM)
- Dubai Multi-Commodities Centre (DMCC)
- Kizad or the Khalifa Industrial Zone (Abu Dhabi)
- Dubai World Central Free Zone
- Dubai Media City
- Abu Dhabi Technology and Media Free Zone (TwoFour54)
- Mazdar City Free Zone
- Dubai Outsourcing Free Zone
- Jebel Ali Free Zone (JAFZA)
- Dubai Airport Free Zone
- Sharjah International Airport Free Zone
- Fujairah Free Zone
- Ras Al Khaimah Free Zone
- Ajman Free Zone

Although there are differences between free zones, the principal advantages of setting up in a free zone are usually as follows:

- There are generally no foreign ownership restrictions when it comes to setting up in one of the free zones. Therefore a foreign national or a foreign company may own 100% of a free zone company or enterprise and a branch office is not required to have a local service agent.
- There are generally no limitations on the nationality of directors, management or shareholders.

- The incorporation or establishment process is generally quicker and less burdensome than for companies or branches in the onshore UAE. The free zone registration process generally takes eight to ten weeks.
- Most free zones have a guaranteed tax holiday and unrestricted repatriation of funds for renewable periods of 15 to 20 years.

The principal disadvantage of setting up in a free zone is that the free zone entity is only licenced to carry on activities in the relevant free zone or outside the UAE (i.e. not in onshore UAE). In addition, with respect to the transfer of goods, a free zone entity is only permitted to trade goods within the free zone or outside the UAE. A free zone entity may trade directly into onshore UAE through a licenced agent or it may establish a separate legal presence licenced to trade in the mainland UAE. Transfers of goods into onshore UAE are subject to customs duties as if they are being imported from a foreign country.

Insolvency Regime

The long-anticipated UAE Bankruptcy Law (Federal Law by Decree No 9 of 2016) came into force from 29 December 2016. This law was designed to rationalise the rather vague and court-driven system of dealing with insolvent businesses under UAE law. In addition to repealing existing and outdated law (notably Part V of the UAE Commercial Transactions Law), the law created a number of more modern remedies for creditors, including protective composition: a debtor-led, court-sponsored process, designed to facilitate the rescue of a business which is in financial difficulty but not yet insolvent; and insolvency with restructuring: where a court determines that a company is worth saving as a going concern or provides a right for creditors to initiate liquidation where it is not. While its implementation is continuing, the new law introduces some certainty to the processes for dealing with bankruptcy issues in the UAE, which amounts to an extremely positive advance in the commercial and legal landscape.

Public Markets in the UAE

Despite the fact that the UAE is new to the public trading of securities, the country has three stock exchanges and two separate securities regulators. The two federal bodies that regulate the offer and sale of securities in the UAE outside of the free zones are the UAE Central Bank and the Emirates Securities and Commodities Authority (ESCA). Within the Dubai International Financial Centre the Dubai Financial Services Authority regulates trading activities.

There are three separate principal exchanges in the UAE and one new financial free zone as detailed below.

Dubai Financial Market (DFM)

The DFM was initially created by the Government of Dubai in 2000 with the vision of being “a world class regional market place”, operating as a secondary market for trading securities issued by public joint-stock companies, bonds issued by local and federal governments and also other local or foreign financial instruments.

In 2006, it was determined that 20% of the DFM's shares would be offered for public subscription, meaning that the majority would be owned by Borse Dubai, a government body that holds 79.63% of the shares in DFM. Trading on the DFM is overseen and regulated by the federal regulator, ESCA.

Abu Dhabi Securities Exchange (ADX)

The ADX (formerly the Abu Dhabi Securities market) was established on 15 November 2000 in the Emirate of Abu Dhabi, but currently has trading locations in Al Ain and in the Emirates of Fujairah, Sharjah, and Ras Al Khaimah. As with the DFM, trading on the ADX is regulated by ESCA.

NASDAQ Dubai

NASDAQ Dubai, based in the DIFC, was created in 2005 to provide a financial platform through which companies are able to focus more generally on regional markets rather than the domestic market. Unlike the more domestic focus of the DFM, which owns a two-third stake in the NASDAQ Dubai, and the ADX, the law of the NASDAQ Dubai is based on modern (primarily European) securities law and regulation and places a greater emphasis on a global role for the exchange.

Abu Dhabi Global Market (ADGM)

In 2013, the Government of Abu Dhabi enacted a law (Abu Dhabi Law No (4) of 2013) to create a further free zone in the UAE, the ADGM, with physical premises located in Al Maryah Island in Abu Dhabi. The ADGM is an international financial centre similar in many respects to the DIFC. It has its own civil and commercial legal regime, based on and incorporating aspects of English law, overseen by a regulator, the Financial Services Regulations Bureau. As with the DIFC, the ADGM will have its own internal court system, the Global Market Courts, consisting of a Court of First Instance and a Court of Appeal.

The ADGM commenced operation in the second half of 2015. In its first phase, it will focus on asset management, private banking and wealth management businesses, but it has the flexibility to expand its service offerings over time to accommodate market demand.

Commercial regulations for the market were issued in mid-June 2015 and the window for non-financial licensing applications from companies located in Al Maryah Island in Abu Dhabi opened at the same time. Financial services regulations were enacted and financial services and licensing for non-Al Maryah Island companies commenced in October 2015.

Employment Law

Overview

The employment of persons in the UAE is governed for the most part outside of the free zones and government by Federal Law No. 8 of 1980 Regulating Labour Relations as amended by Federal Laws No. 24 of 1981, No.15 of 1985 and No.12 of 1986 (collectively, the Labour Law).

As in most civil law systems, in the UAE employment law is a combination of contract and statute. Where there is a conflict between contract and statute, the statute prevails. Contractual provisions contrary to the Labour Law are void.

Other than in the express circumstances described below, the Labour Law applies to all employees working in the UAE, including foreign employees. Every expatriate who enters into an employment contract with his or her employer must subsequently register himself or herself with the Ministry of Labour and Social Affairs. The Labour Law does not apply to UAE national employees who are employed abroad, employees of UAE companies working abroad, government employees, domestic servants and agricultural workers.

Certain of the free zones have their own employment laws and employee grievance procedures. In such free zones, for example the Dubai International Financial Centre and the Abu Dhabi Global Market, the free zone's laws will take precedence over the federal employment laws.

Termination for Cause

It is relatively difficult to terminate the services of an employee in the UAE for cause. The Labour Law sets out 10 circumstances in which a contract of employment can be terminated summarily and without notice or pay in lieu of notice:

1. "If the employee assumes a personality or a nationality other than his own, or has submitted fake documents or certificates.
2. If the employee was appointed under probation and the termination happened during that period or at its end.
3. If the employee commits a mistake causing the employer a substantial financial loss, provided the employer informs the Ministry of Labour of the incident within 48 hours of its occurrence.
4. If the employee violates instructions relating to safety in the place of work, provided those instructions were written and displayed in a permanent place, and the employee has been informed of these instructions orally if he is illiterate.
5. If the employee fails to carry out his basic duties as stated in the contract and continues to do so in spite of a written warning that his service will be terminated if he repeats his misconduct.
6. If the employee discloses a secret of the establishment for whom he is working.
7. If the employee is conclusively convicted by a court of a crime involving honour, honesty or public morals.
8. If the employee is found drunk or intoxicated by drugs during working hours.
9. If the employee commits a physical assault on the employer or manager or one of his colleagues during work.
10. If the employee becomes absent without a legitimate reason for more than 20 intermittent days or more than seven continuous days within one year."

Other Methods of Termination – By Agreement and On Notice

A contract of employment can also be terminated by the following means:

1. By mutual agreement of the parties; or
2. On 30 days prior written notice or such longer period of notice as the contract may stipulate or pay in lieu of notice given by the company to the employee, together with a “valid reason” for the termination.

Severance and Repatriation

The reason for termination is important to the issue of severance and repatriation. If a person is properly dismissed for permitted cause, no severance or repatriation costs are payable. Different severance amounts may be payable if an employee resigns as opposed to being terminated.

Severance, which is also referred to as an “end of service gratuity”, begins to accrue once an employee has been in continuous employment with the same employer for a term of greater than one year. It is payable on termination (other than in cases of termination for cause) and calculated as follows:

1. 21 days’ wages (calculated on current wages) for each of the first five years of service; and
2. 30 days’ wages for each additional year of service provided that the aggregate amount of severance pay should not exceed two years’ wages.

Severance is calculated on a fractional basis where an employee is terminated part-way through a year.

Repatriation expenses are also payable in some circumstances. These expenses could include the cost of airfare to his or her home country.

Other Termination Costs

On termination, whether or not for cause, an employee is also entitled to the following:

1. Payment equivalent to the balance of unutilised leave; and
2. Payment for overtime or any balance of wages due and not yet paid.

Labour Disputes

Where there is a dispute between the employer and the employee concerning any amount payable on termination, the Ministry of Labour must make a recommendation within two weeks from the date a complaint is filed, and inform the employee of the amount recommended as payable. This is without prejudice to the employee’s right to challenge the amount recommended by the Ministry in court. The Ministry’s decisions can be appealed to the courts by either party.

Other Legal Considerations

Taxation

There are currently no income or profits taxes of general application levied on individuals or companies in the UAE. The Emirates of Abu Dhabi and Dubai have enacted legislation establishing a general corporate taxation regime (the Abu Dhabi Income Tax Decree 1965 (as amended) and the Dubai Income Tax Decree 1969 (as amended)). The regime is, however, not enforced save in respect of companies active in the hydrocarbon industry, some related service industries and branches of foreign banks operating in the UAE. In addition, foreign banks operating outside of the DIFC or ADGM are subject to a 20% profits tax.

Under current legislation, there is no requirement for withholding or deduction for or on account of UAE, Abu Dhabi or Dubai taxation in respect of payments of profit, by way of dividend or otherwise, to any holder of shares listed in the UAE. Capital gains realised on the sale of listed shares are similarly not subject to tax in the UAE.

The UAE Constitution does, however, specifically reserve to the federal government the right to raise taxes on a federal basis for purposes of funding its budget. It is unknown whether this right will be exercised in the future.

A tariff of 5% is levied on all imports into the UAE, inclusive of imports from the free zones to the “mainland” UAE.

Value Added Tax (VAT)

VAT was introduced by the UAE and the Kingdom of Saudi Arabia effective 1 January 2018 and will shortly be introduced by the other member states of the Gulf Cooperation Council (GCC).

Only companies with annual revenues in excess of AED375,000 per annum currently need to register for VAT. VAT is applied at a uniform rate of 5% on taxable supplies, with a number of goods and services either zero rated or in an exempt category in the UAE.

A supplier making exempt supplies is generally not permitted to recover input VAT in relation to such supplies. This makes the VAT they incur on supplies a real cost of doing business. In addition, GCC member states are granted a degree of flexibility in determining other types of goods or services that should be zero-rated or exempt. It is in this respect that domestic regimes across the GCC will likely diverge most markedly.

VAT will have a wide application and is bound to have significant impact in the region – it affects most commercial transactions and is something that will be necessary to consider in most transactions and in any structuring or restructuring. The impact of its introduction has just begun to be felt in the UAE.

UAE Economic Substance Regulations

In March 2019, the EU published an updated blacklist of non-cooperative tax jurisdictions, which included the UAE. Largely in response, on 30 April 2019, the UAE Cabinet issued Resolution No.31 of 2019, concerning economic substance regulations in the UAE (the “Substance Regulations”), requiring all UAE entities that carry on certain commercial activities (“Relevant Activities”) to have demonstrable economic substance in the UAE from 30 April 2019.

Under the Substance Regulations, the economic substance requirements apply to companies that generate income, whether onshore or in the Free Zones, including the Financial Free Zones, by carrying out the following Relevant Activities in the UAE:

- Banking
- Insurance services
- Investment fund management
- Finance leasing
- Acting as a group headquarters or holding company
- Shipping
- Intellectual property services
- Distribution and service centre activities

The Substance Regulations contain specific requirements on how a company has to be “directed and managed” in the UAE. For example, these concern the number of meetings of the board of directors to be held in the country, the composition and competence of the board and the records of the minutes of all board meetings, as well as similar requirements. Other provisions stipulate matters such as the number of employees a company must have and how it generates its income.

The requirement for substance is directly linked to a company’s ability to obtain a commercial or trade licence, and strict penalties are imposed for non-compliance. Any party establishing a business in the UAE needs to take steps that ensure that the local entities’ annual corporate governance and compliance requirements are in place.

Immigration Law

The UAE’s workforce is largely composed of expatriates. All expatriate employees must be sponsored by their employers, who are responsible for them during the term of their employment relationship. The residence visas of an expatriate’s family members are linked to and dependent on the expatriate’s resident work permit and, except in rare circumstances, are subject to cancellation on cancellation of the expatriate’s work permit.

The DIFC, the ADGM and certain of the other free zones have their own immigration rules and regulations providing more benefits to expatriates employed by entities established under those regimes.

Emiratisation

The Emiratisation initiative is a part of the country’s vision for 2021, undertaken in an effort to increase the number of UAE nationals in the public workforce. While the programme has been in place for more than a decade and some success can be seen in the public sector, the private sector is still lagging with citizens representing less than 3.8% of the private sector workforce as of December 2018.

The Labour Law stipulates that employers who recruit unemployed UAE nationals must notify the Labour Department (branches of the Ministry of Labour) in writing within 15 days from the date of employment. Since 1999, UAE nationals working for private companies are entitled to the same social security and pension benefits as UAE nationals working for the Government.

Under Administrative Circular No. 26 of 2005, all companies with more than 100 employees are required to appoint a UAE national to the post of government relation officer (GRO). A GRO liaises between the company and the Ministry of Labour. Various federal ministerial decisions in the banking, insurance and other business sectors stipulate required percentage thresholds for local hiring, generally in the range of 3 – 5% of the total workforce.

Intellectual Property

Intellectual property rights are protected in UAE through federal legislation and international conventions.

Federal laws such as the Trade Marks Law, the Patents Law and the Copyright Law afford protection to intellectual property owners through a registry system and through the imposition of sanctions and penalties for breach.

**LOCAL CONNECTIONS
GLOBAL INFLUENCE**