



## MENA COMMERCIAL LAW STRENGTHENING PROJECT

### MENA – CLS Project

## National Commercial Law Assessment Report of UAE



With the support of the Middle East Partnership Initiative

المركز العربي لتطوير حكم القانون والنزاهة

Arab Center for the Development of the Rule of Law and Integrity – ACRLI





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## II. Preface

This National Commercial Law Assessment Report of the UAE (the "**Report**") falls under the project "MENA Commercial Law Supply Side Strengthening" (the "**Project**") which is implemented by the Arab Centre for the Development of the Rule of Law and Integrity (ACRLI) in cooperation with Middle East Partnership Initiative (MEPI), in each of the 4 countries: United Arab Emirates, Tunisia, Lebanon and Yemen.

The overall goal of the Project, which extends over a period of two years, is to strengthen demand-side commercial law reform in the MENA region with a view to promoting a legal environment that is business enabling and conducive to short-term local or sectoral economic growth in selected MENA countries.

More specifically, the Project aims to improve the capacity to understand complex commercial law and regulations within the business and legal communities in the MENA region and to increase private sector participation in commercial law policymaking.

The Project primarily targets lawyers and businesspersons and seeks to actively involve them together with policymakers and concerned government practitioners in a results-oriented policy dialogue and peer-learning process with a view to enhancing the business legal environment in their respective countries. Consequently, the Project will rely on a network of partners at the national level in Dubai, including the government authorities as main partners, and the chamber of commerce and industry, and other professional associations.



In addition to these national partners, the Project will be supported by an International Advisory Group that comprises regional and international advisors in addition to representatives of regional and international organizations and partners such as the League of Arab States, UNDP, OECD, ESCWA, the World Bank, the ICC, Union of Arab Chambers of Commerce, and others.

In this context, this Report on the state of commercial and economic laws in the UAE was developed to provide an in-depth study that presents a clear and focused picture on the development of commercial and business laws in the project countries, including the examination of relevant laws in texts and practice, as well as the analysis of the legal and economic system, with a view towards assessing the contribution of these frameworks in achieving economic growth and creating a business-enabling environment.

The current Report shall be integrated, at a later stage, with the reports developed by the rest of the project countries; into one comparative regional report which provides a forum for regional policy dialogue and peer-learning for stakeholders in the MENA region.

The Report was drafted following an extensive research on official texts such as laws, decrees, ministerial and administrative decisions, and official reports issued by the government and the administration. The research also encompassed studies, books and reports issued by the universities, experts, international bodies, NGOs, research centers, and economic and statistical companies.



The Report is also based on a series of individual interviews and focus groups<sup>1</sup> conducted with dignitaries representing various government authorities and organizations, as well as officers from private businesses within the legal profession as well as the investment profession.

The author of the Report is Dr. Habib Al Mulla; the UAE national team also included Dania Mchaourab and Carine Suaibi.

Aside from the Public Authority for Information, there is no governmental entity in the UAE which collects and stores data on the various econometrics; in fact, there is a law project on establishing a national centre for statistics. Meanwhile, data is quite segregated with different government agencies, both at the federal level and at the emirate level. Moreover, the available data tend to be outdated. Private sector companies tend to build their own databank, based on their own research as well as data produced by the government. Whilst data is readily available upon request, discrepancies are almost always found between the different sources. For example, there is a big debate on the actual size of the population in the UAE, and in particular the emirate of Dubai. Whilst numbers are available from the ministry of interior through immigration, there is a debate on whether one can simply count the number of residencies issued, or one should account for the residencies which are issued for people actually residing outside the UAE, but who keep the residency for ease of access to the country to visit a branch or subsidiary or even a

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<sup>1</sup> Minutes included in Annex 5



family member. Moreover, the debate extends to whether one should account for the GCC nationals and other nationals who come to the country with visit visas, but who eventually reside in the country, and thus have homes.

With regards to sources on laws and official texts, where Official gazettes are published both on the Federal and Emirate level, there are no specialized books or texts which investigate particular laws, and the application in the different courts. Also, there are limited discussion publications within the legal profession. It is also interesting to mention that several circulars and decisions are rendered by the different public authorities and communicated to the public administration for immediate implementation without being published.

With regards to the interviews, we have sensed a reticence from the government officials to talk about the shortfalls or restrictions of the different laws and policies. We have found that private sector interviewees tend to be more open and more critical to the status of the laws; they also voiced their suggestions on areas of improvements or changes to the laws to ensure a more open commercial and investment environment.





### **III. Economic, social and political country background**

It is important to note that the report drafting started whilst the Global Crisis unfolded in September 2008, and thus some of the number do not yet reflect the impact of the Crisis on the UAE economy.

The UAE is comprised of 7 Emirates: Abu Dhabi; Dubai; Sharjah; Ajman; Umm Al Quwain; Ras Al Khaimah and Fujaira. The UAE is one of the world's primary oil producers and has thus benefited accordingly from recent increases in world oil prices.

#### **1. General economic data**

##### **a. Population and Labor Force**

Historically, UAE had one of the highest population growth rates in the world. The Ministry of Economy (MOE) estimated population growth at 3.0% in 2006 to reach 4.23 million. The MOE bases its growth figures on population censuses it carries out every decade. The last one, conducted in 2005, had estimated a total population of 4.1 million including 336 thousand non-nationals who were not present in the UAE or who had an invalid residency permit at the time of the census fieldwork period. Many believe that because of the way census is done, the official numbers may have been understated with the population figure higher than what has been stated. This was mainly due to the continuous influx of expatriates especially in the first three quarters of 2008 scenario of an economic boom, and mostly



because of the construction boom, with higher employment opportunities. Historically women's contribution to the labor force has been minor. In 1995 (the latest year available by the UAE Ministry of Economy) women comprised only 11.7% of the labor force, a substantial increase from the 1975 levels where women's participation was at a negligible 3.3%. Given this observed rising trend it can be assumed that women's participation has and will continue to increase.

**b. Balance of Payments and Trade Surplus**

Over the past decade the UAE balance of trade, including oil, has been in trade surplus with the rest of the world, with the exception of the year 2000. Since 2000, the UAE recorded surpluses in its BOP except in the year 2002 where a deficit was recorded at US\$ 410.1 million. This deficit was a natural result of the high decline in the current account caused mainly by a high negative balance on services and income. Despite the fact that the balance on services and income kept falling in later years, the UAE BOP recorded a surplus due to the substantial increase in the current account. Since 2000, the GCC has been recording a BOP surplus while the EU has been showing deficit (except for year 2002 where a surplus of US\$ 2.6 billion was registered). Finally, all GCC countries seem not only to have surplus in their BOPs but also they have in general similar structures of BOP. All that had led to an aggregated GCC BOP that is consistent and comparable to each individual BOP of GCC countries.



### c. **Government Expenditure**

Government revenue surpassed expenditure significantly between 2004 and 2005 thus aiding the government to convert a budget deficit, witnessed between 2001 and 2003, into a surplus. This trend has continued till 2007, and the UAE is expected to have a budget surplus in 2008 as well.

### d. **Foreign Direct Investment**

In 2005, the UAE attracted AED 68 billion of FDI, a substantial improvement on previous years. The UAE has predominantly been a net receiver of FDI inflows over the past decade; the main investors into the UAE being the USA and the UK. Business and financial services are currently receiving the highest concentration of projects, receiving 22% of all UAE FDI projects, thus indicating the future expansion of this sector.

## 2. **Economic growth and development**

### a. **GDP**

On the back of the surge in oil prices in the past few years and strong regional liquidity, the UAE economy continued to perform well with the economy recording high double digit nominal growth rates since 2003. The Ministry of Economy (MOE) indicates that the nominal GDP increased by 16.5% to reach AED698.1bn in 2007. In terms of real GDP, the MOE indicate that the UAE economy grew by 7.4% in 2007 to reach AED420.2bn. This has come on the back of a 9.4% growth achieved in



2006 when the real GDP touched AED391.2bn. The real GDP growth has been somewhat moderated in 2007 on account of the capacity constraints and high base.

**b. Inflation rate**

For the past five years the UAE has been experiencing creeping inflation. In some sectors, such as the housing sector, inflation is becoming more of a problem and may start to impede on economic growth if the creeping persists. However, given the global slowdown due to the Credit Crunch, and the correction on the price of oil, the UAE has witnessed a slow-down on the growth rate of the rents in Q3 2008. Accordingly it is expected that inflation will decline slightly in 2008.

**c. Interest rate and credit availability**

UAE is comprised of 46 banks (21 local banks and 25 foreign banks). The total assets of UAE banks account for almost \$100 billion. Committed to the dollar peg, the UAE central bank is forced to ease monetary policy at a time when the economy is growing at full throttle, well above trend, and generating considerable inflation pressure. Excluding lending to high net-worth individuals, Goldman Sachs calculates consumer loan penetration to be around 5% of GDP as of the end of 2007. The high inflation and low interest rate environment resulted in increasingly negative real interest rates. This coupled with expansionary fiscal stance have added to the upsurge in



credit growth and increased development activity leading to high inflationary pressure. The healthy credit growth contributed to the expansionary trend in the market.

### 3. State policies and actions

#### a. Budget and public expenditure

Private and government consumption increased by 18.4% and 22.0% respectively in 2007 compared with a growth of 17.9% and 12.4% respectively in 2006. This is mainly due to the increase in income levels, rising population and higher prices with their share in total GDP increasing to 46.7% and 10.6% respectively in 2007 from 45.9% and 10.1% recorded in 2006. What is noteworthy is that the gross capital formation, which is mainly the capital spending by the government and the private sector, increased by an impressive 19.4% which in turn has come on the back of 29.0% growth achieved in 2006 and stood at 20.7% of GDP in 2007 as compared to 20.2% in 2006.

#### b. Monetary situation:

As mentioned above, UAE's currency continues to remain pegged to the US\$. The UAE Central Bank (the "CB") manages money supply growth by aligning interest rates with that in the US, and by issuing certificates of deposit (CDs) to commercial banks in addition to other tools. With the US\$ peg and complete capital mobility, nominal interest rates in the domestic



market have tracked corresponding US rates closely. However, the CB did not follow the all of the Federal Reserve's interest rate cuts in 2008, and by this the discount rate in the UAE stands slightly above the discount rate in the US. The broad money supply, as measured by M2, has exhibited consistent positive trend during the past few years. The broad money supply (M2) increased from AED399.3bn at the end of 2006 to AED507.0bn at the end of Q3-2007, an increase of 27.0%.

**c. Tax level (VAT, income tax) and corporate tax**

Although income tax decrees were enacted over thirty years ago, in practice this law is not enforced or levied on UAE companies except on foreign banks and oil companies. In Dubai, a decree dated January 1<sup>st</sup>, 1969 has been issued in this respect by the ruler of the emirate and has been amended several times. In Abu Dhabi, a decree of 1965 has been issued in this respect by the ruler of the emirate and has been amended several times as well. There is no personal income tax. A VAT system is expected to be introduced in the whole of the UAE by 2009 to replace the customs fees; however there has been reports that this will be delayed till earliest 2010.

**d. Customs Duty:**

Effective January 1<sup>st</sup>, 2003, the UAE acceded to the GCC Customs Union that equalizes the duties paid upon entry of an item to any member state,



regardless of the country of destination within the GCC. For example, an item imported into the UAE destined for the Saudi market is subject to the five percent duty once it enters the UAE properly. In theory, the trader need not pay customs duties again to take the item across the border into Saudi Arabia.

The Customs duty for most items is calculated on CIF value at the rate of five percent. Imports of liquor are subject to a 70 percent customs duty on their CIF value while imports of tobacco products face a 100 percent duty on their CIF value. Many essential items, including staple foodstuffs and pharmaceuticals are given duty free status. CIF value will normally be calculated by reference to the commercial invoices covering the related shipment, but Customs is not bound to accept the figures shown therein and may set an estimated value on the goods, which shall be final, as far as duty is concerned.

#### e. Financial indicators

As per the Dubai Chamber of Commerce and Industry <sup>٤</sup> the UAE's foreign debt has almost tripled in the last two years, as a result of heavy borrowings by financial institutions and corporations to finance investments. The DCCI estimated that the share of UAE's external debt in the gross domestic



product (GDP) will grow from 58.4% in 2008 to 62.5% in 2010 and will drop to 61.6% by 2012, averaging 61% in the medium term.

#### 4. Main economic sectors at a glance

Oil prices continued to surge in 2007 with average oil prices increasing to US\$69.1/b from US\$63.5/b recorded in 2006. However, there were production cuts from OPEC and heavy maintenance work at the end of the year because of which oil production had come down in 2007. As a result of the above, the total value contribution in absolute terms from this sector is expected to have increased marginally by 9.4% to reach AED244.3bn in 2007 over AED223.4bn recorded in 2006. However, non-oil sector recorded a higher growth and as such the share of crude petroleum and natural gas in GDP came down to 35.0% in 2007 against 37.3% in 2006. The non-oil sector continued with its impressive performance and recorded double digit growth rate. The 2006 and 2007 GDP structure, by sector, reflects the notable development achieved in the various non-oil sectors, mainly as a result of appropriate economic policies, increasing domestic demand and increasing inflow of FDI. The construction sector continued to grow and recorded a growth of 23.8% in 2007 on the back of 29.0% growth achieved in 2006. The value-added of this sector is estimated to have increased to AED55.8bn in 2007 from AED45.1bn in 2006 with its contribution to GDP increasing to 8.0% in 2007. The real estate and business also continued to grow with a y-o-y increase of 23.6% in 2007. The output of the sector is expected to have reached





AED55.8bn in 2007 from AED46.1bn in 2006. The construction and the real estate sector, collectively contributed 16.0% to the GDP, becoming the second largest component of the country's economy collectively

#### **5. Government international relations, types of commercial contracts and the government role, privatization potential and horizons**

The Ministry of Economy has intensified its efforts to set up economic and trade partnerships with several countries, and to enter into free trade deals with strategic partners and large economic blocs of the world. This will help boost foreign trade and further inflow of FDI in the country. UAE has signed several free trade agreements (FTA) and embarked on negotiations for others, either individually or through the GCC. Bilateral preferential agreements signed with Syria, Jordan, Lebanon, Morocco and Iraq accord both the UAE and its cosignatories preferential access for certain specified goods. The FTA between the GCC and the EU covers market access for industrial and agricultural products, trade in services, intellectual property, rules of origin, government procurement, investment and legal and institutional arrangements. It is expected to boost trade between the two regions from its current level of Euro40.0bn to at least twice that figure. Currently there is no Free Trade Agreement (FTA) between the UAE and the USA. A trade and investment framework agreement (TIFA) was signed in April 2004 with the USA. Negotiations are still going on for an FTA with the USA and expected to reach a consensus soon. Once signed, UAE will become the fourth Arab country to sign such an agreement following Jordan, Morocco, and Bahrain which in turn



would boost the level of trade and business partnerships between the two countries.



#### **IV. The General Investment climate**

##### **1. The business climate**

Business disclosure index, cost and time of business start-up procedures, intellectual protection, intensity of local competition, procedures to enforce contract, procedures to register property, rigidity of employment index, soundness of the banking system, procedures to getting credit, time to resolve insolvency (in years), income tax for local and foreign corporations, procedures and time for closing a business, quality of infrastructure, (roads, ports and telecom), investment guarantees and incentives, social security contributions, water, fuel and gasoline cost, cost of buying and renting premises for housing and for businesses, customs duties, laws for transferring capital, anti-trust laws, health care and price controls, dealing with licenses, existence or non existence of exclusive agencies, education level, income distribution.

##### **2. The business potential**

Income distribution and discretionary income productivity, unit labor costs and labor compensation costs compared to other regions, public sectors deemed for privatization, underdeveloped sectors of the economy, reforms and opportunities expected in the short and medium term



## V. Legal and judicial situation- an economic approach

### 1. Speed and efficiency of commercial and civil procedures time and cost (particularly regarding execution of verdicts)

- a) Under article 121 and 122 of the UAE Constitution, each emirate is authorized to have its own laws and judicial authority when not conflicting with the federal laws. Hence, the UAE has federal and local courts. Local and federal courts apply UAE federal laws and the laws, regulations and decisions passed by the local rulers of each emirate. The UAE follows a civil law system with statutes being the primary source of law heavily influenced by French, Roman, and Egyptian law.
- b) There is no doctrine of binding precedents or *stare decisis* "to stand by things decided", although the decisions rendered by the Supreme Court may be a useful guide as to how a court may pass its judgment and construe provisions of laws in cases confronted with similar issues. The practice in both federal and local courts is the referral of matters to court-appointed experts for findings of facts involving various issues such as financial, accounting and technical matters. While expert's reports are not binding and may be challenged by the parties before courts, nevertheless, they are given persuasive weight by the courts. The Court procedure in civil and commercial matters is governed by UAE Federal Law no (11) of 1992 in respect of Civil Procedures which regulates both federal and local emirate courts.
- c) All commercial disputes are heard by the civil, criminal and labour courts (Court of First Instance, Court of Appeal and Court of Cassation). Shari'a or Islamic courts are part of the civil and criminal courts in the UAE. They are first and foremost



responsible for family matters between Muslims and have the exclusive jurisdiction to hear family disputes, including matters involving divorce, inheritances, child custody, and guardianship of minors. Besides, in the nonexistence of any particular provision in the UAE codified laws, the Islamic principles of Shari'a as found in the Islamic Shari'a textbooks are applied.

- d) Court proceedings are public in nature and judgments of the Court of Cassation, namely the ones passed by Dubai Court of Cassation and the Federal Supreme Court are published. Obtaining final judgments on cases involving commercial disputes may take between one and three years in Dubai, and slightly more in the other emirates, before being finally adjudged, if it is contested up to the highest Court of Appeal. Of course, the pace of course shall vary from case to case depending on the nature and complexity of the matter at hand and the stated timeframe may differ accordingly. Fees are payable for bringing action before the courts known as court fees. In Dubai, fees are calculated at a rate of 7.5% of the amount claimed up to a maximum of AED 30,000.00 (\$8,219.00). Additional court fees are payable if provisional relief is sought, such as attachment of assets 0.5% of the fee payable for the substantive suit up to a maximum of AED 15,000.00 (\$ 4,087)]. In Abu Dhabi (and other emirates) fees are 5% of the amount claimed up to a maximum of AED 30,000.00 (\$ 8,219). In Abu Dhabi as well, additional court fees are payable if provisional relief is sought, such as attachment of assets 0.5% of the fee payable for the substantive suit up to a maximum of AED 15,000.00 (\$ 4,087)]. If the case is appealed, further fees will be paid. Court fees may be recovered by the



winning party. Nonetheless, the UAE courts will only award a nominal amount for the winner's advocate fee regardless of the fees actually incurred.

- e) The judicial independence is recognized in the Constitution as a foundation for the rule of law.

## **2. Alternative dispute resolution, eligibility of state to resort to Arbitration, joining international arbitration conventions**

- a) Although the UAE civil courts are the main forum for recourse in commercial disputes, arbitration is becoming progressively more popular. Started under a different form in the 1990's, The Dubai International Arbitration Center (DIAC) was established by Decree no (10) of 2004. The DIAC has issued Rules of Commercial Conciliation and Arbitration “Arbitration Rules of the Dubai International Arbitration Centre” and maintain a list of national and international arbitrators. The Chamber of Commerce and Industry in the emirate of Abu Dhabi has also established an arbitration center in 1993 with its own set of procedural rules, the Abu Dhabi Commercial Conciliation and Arbitration Center.
- b) In both domestic and international cases, the UAE courts will give effect to a valid arbitration agreement. To be binding, an arbitration agreement must be in writing and signed by the parties or its duly authorized representative.



- c) The application of arbitration is governed vide provisions of the UAE Federal Law no (11) of 1992 in respect of the Civil Procedures Law. A draft for a new arbitration law is under discussion in the ministries.
- d) Following Federal Decree no (43) of 2006 issued by His Highness the President Sheikh Khalifa Bin Zayed Al Nahyan; the United Arab Emirates has become a member of the New York Convention in respect of the recognition and enforcement of foreign awards and agreed to implement its terms. The advantages to everyone doing business in and with the UAE will be considerable since the New York Convention lays down conditions for the recognition and enforcement of foreign arbitration awards in the territories of its member states. Thus an arbitration Award issued in the United Arab Emirates will become directly enforceable in the territory of another state member and an Award from any other state member will become directly enforceable in the UAE. . It is learnt that a new Federal Arbitration Law is currently under process and shall be passed shortly.
- e) Recently, a lot of hype has surrounded the launch of the Dubai International Financial Centre (DIFC) Arbitration Centre in a joint venture with the London Court of International Arbitration (LCIA). The launch was described as “historic”, “revolutionary” and “exciting”. The idea of having an arbitration centre within the DIFC is not at all new but has existed since the inception of the DIFC as a concept. It was correctly thought that entities that will be established in the DIFC will need to have dispute resolution mechanisms based



on world class standards to resort to. The DIFC Courts were one mechanism but not every one would want to resort to formal channels of a court system. Therefore, the provision of arbitration service within the DIFC to its entities was deemed a must. The idea, however, did not take off at the time because the DIFC became busy pursuing the federal decree allowing it to commence its operations which took much more time and effort than expected and thereafter building its legal and regulatory structure. The recent launch of the DIFC Arbitration Centre is just the last link in a long chain. What is new with this recently launched Centre though is that, unlike all other DIFC bodies including the DIFC Courts, the services it offers are not confined to the DIFC entities or activities. The new Arbitration Centre is proclaimed to be open to all parties even those who are not DIFC entities and even if the dispute in question does not arise out of DIFC activities. Exciting this may be, it raises serious concerns as to the enforceability of the awards that will be rendered by the Centre. At the end of the day, what matters is the enforcement of the award. If the award is not enforceable then it is of little importance to the clients if the award is rendered by a reputable centre or under world class laws. The position that is being taken that enforcement is straight forward is misleading. In fact, the issue of enforcement is far from being clear.

In order to understand the scale of this issue one has to look into the history behind the establishment of the DIFC. The DIFC in its current form is the outcome of a unique arrangement between the federal UAE authorities and the





local authorities of the emirate of Dubai. According to this arrangement, the federal authorities consented to exempt the DIFC, as a financial free zone, from being subject to the federal civil and commercial laws in lieu of the DIFC agreeing to adhere to certain requirements and restrictions. This arrangement was not easy to reach and took a year and half of difficult negotiations and the involvement of various federal authorities before the concept was developed and agreed to. It merited an amendment to the constitution of the federation, a step which is not taken regularly or lightly. Any deviation from this carefully shaped balance between federal and local interests will result in far reaching legal complications.

The DIFC has two main characteristics. The first is that it is a geographical zone; i.e. it has to exist in a particular area and its activities are to be conducted within that area. This limitation is clear from the wording of Article 2(2) of the Federal Law no (8) of 2004 in respect of Financial Free Zones wherein it is stated that the location and area of a financial free zone shall be described by a resolution of the Cabinet of the federation. In fact, the federal authorities were keen to keep the determination of the boundaries of financial free zones within their powers and not to leave this to the individual emirates as an indication of the limited scope that these zones should have. The concept of a virtual zone whereby the financial free zones authorities license entities to exist anywhere in an emirate, similar to the situation in the Qatar Financial Centre, was discussed but was specifically rejected. Article 4(5) of the law no. 8 that requires financial



free zones entities to physically exist within the boundaries of these zones is yet another example of this geocentric emphasis. The second feature of the DIFC is that the activities that may be carried out of the DIFC are exclusively the financial and ancillary activities as defined in the preamble of the Law no (8). According to Article 7(3) of law no (8) financial free zones ability to issue its own regulations is restricted. Financial free zones can issue regulations solely “*within the limits of the purpose of their establishment*” and only those “*regulations necessary for carrying out their activities*”. The permissible activities that a financial free zone can license are exhaustively listed in the preamble of the law. These basic principles have been embodied in the local laws which were issued pursuant to the federal law. For example, Article 8(2) of Dubai Law no. 9 of 2004 establishing the DIFC provides that “... *the Centre’s Courts shall have exclusive jurisdiction to hear and determine any claims in which the Centre, the Centre Establishments or any of the Centre’s Bodies is party to and also to hear and determine any dispute, arising out of any transaction carried out in the Centre or an incident which took place therein.*”. This confirms the fact that the jurisdiction of the DIFC Courts is limited to disputes in which one of the DIFC entities is a party to or to disputes arising out of a transaction which was carried out in the DIFC. This rule is reconfirmed in Article 5(A)(1)(a) of Law no (12) of 2004 in respect of The Judicial Authority at Dubai International Financial Centre which provides that the DIFC Courts shall have jurisdiction over “*civil or commercial cases and disputes involving the Centre or any of the Centre’s Bodies or any of the Centre’s Establishments*”.



Thus, the DIFC Courts have no jurisdiction to entertain neither claims not involving DIFC entities nor claims that are not financial within the definition of Federal Law no (8). The fact that the new arbitration center is offering its services to non DIFC entities and is covering activities that are not financial and ancillary services as defined in the Federal Law no (8), such as constructions cases, is a serious deviation of the arrangement reached between the federal and local authorities and disrupts the fundamentals of the federal laws establishing financial free zones. Awards issued in such violation will certainly face enforcement challenges when enforcement is sought outside the DIFC. It is true that Dubai Courts are not permitted to review the merits of the DIFC Courts' judgments but challenging the grounds upon which the Courts and the Arbitration Centre assumed jurisdiction will be wide open as this will not be deemed a challenge to the merits of the award. The situation will be more challenging when the award is sought enforcement outside Dubai and even outside the UAE as issues of legal and even constitutional complications will be raised. When an arbitration award has to deal with issues of this nature at enforcement stage, then the whole appeal of resorting to arbitration is lost. Protecting the credibility of the DIFC and the reputation it has built so far is more important than venturing into areas of risk and uncertainty.

**VI. Legal Business environment (various commercial legislations, an introduction and assessment)**



- a) The UAE government policy identifies the private sector as a major key player in the drive for varied economic expansion. The creation of a facilitative business environment, which encourages local investors to put their wealth to productive use, as well as attracting foreign investment, has been an important aspect of this policy. The fundamentals in the UAE's incentive strategy have been the provision of first-class industrial facilities in specialized economic zones and business support services, the reduction of formalities and reorganization of administrative procedures through the establishment of several one stop shop authorities. Furthermore, the favorable tax laws and political stability support as well in making the UAE a prime business location to foreign investors seeking a safe commercial hub in the MENA region.
- b) Conversely, the legislative reform required in the Companies Law and other commercial related laws and regulations such as the Commercial Code and the Agencies Law in addition to several vital sectors is not keeping abreast with the economic growth and the escalation of foreign investments. For example, the financial laws of the Central Bank have not been updated since 1980. The reform of the Companies Law is taking a long time to resolve, while a change in the main hurdle to foreign investment, i.e. the requirement of a UAE national for establishing a company or the restriction of several main activities to UAE nationals (recruitment, rent a car, commercial agencies, etc.) is likely to drain enormous foreign investments. Hence, a prospective reform of UAE Federal Law no (8) of 1984 in respect of the commercial companies law



(“**Companies Law**”) as amended by Federal Law no (13) of 1988 is expected to push through major changes, including an abolition of the 49% ceiling on foreign ownership (this does not apply in the UAE's many free and special zones). However, the new law has still not seen the light of day, despite frequent announcements from the Minister of Economy that its passage was imminent. *It is widely assumed that the delays stem from the concerns of some of the UAE's traditional business groups to preserve their privileges.*<sup>2</sup> In fact, there is no vision of the importance of setting up modern laws to facilitate and regulate business in the UAE. The DIFC stands as the sole instance where laws have been enacted to promote a state of the art business environment.

- c) As a general overview to the legislative environment, a tremendous difference is noted between the seven emirates.
- d) Hence, Dubai has led the way and prevailed over the other emirates by providing the most striking case of a government carefully and successfully structured to serve development. Lacking significant energy reserves compared to Abu Dhabi, Dubai has chosen to diversify its GDP, becoming a regional center for tourism, finance and business services. The government of Dubai continually strives to be the driving force behind development in the emirate, despite efforts to establish a more traditional private sector removed from government financing. The “free zone” strategy, offering full foreign

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<sup>2</sup> The Economist, Dimmer prospects for reform in the UAE, Pushed aside, February 20<sup>th</sup>, 2008:  
[http://www.economist.com/displaystory.cfm?story\\_id=10717040](http://www.economist.com/displaystory.cfm?story_id=10717040)



ownership of businesses in a tax-free environment, continues to attract multinationals to establish regional offices there. The government operates these free zones as businesses, with management teams accountable to growth targets and the bottom line. Each free zone operates under the federal laws, except for the company law, which is enacted by each free zone according to laws and regulations tailored to the businesses operating there. The only exception is DIFC, which has its own labor, civil and commercial laws. The largest development projects in Dubai remain however in the real estate sector and also fall under a government umbrella. Hence, Dubai has fused most of its local and foreign projects in two holding companies, Dubai World (owned directly by the Government of Dubai), and Dubai Holding (owned by HH Sheikh Mohamad Bin Rashid). These holding companies finance and implement major development projects, such as Dubailand, the offshore Jumeirah Palm and the World. Emaar, a publicly-traded real estate company building the Burj Dubai, at one time contributed by itself to the largest share volume to the limited Dubai stock market.

- e) Comparing to the vibrant emirate of Dubai, Abu Dhabi the capital of the UAE has trailed on a discreet, less speedy growth pathway. However, this status is currently varying and increasingly evolving. Indeed, the scale and ambition of the emirate progressive developments in tourism, culture and renewable energy highlight a fundamental change in the approach of Abu Dhabi. In fact, *“progress on its governmental reform agenda has been nothing short of spectacular. In less than three*



years, the number of employees in the civil service has dropped from 64,000 to 11,000 and municipal staff numbers have fallen from 45,000 to 4,300. Essential services have been outsourced to the private sector and cost savings are already being recorded.”<sup>3</sup>. Abu Dhabi is pursuing ambitious targets to encourage business and reduce its economic reliance on the hydrocarbons sector. As part of its diversification strategy, the government of Abu Dhabi is making massive investments in a bid to expand and encourage the tourism industry. *The Abu Dhabi Tourism Authority (ADTA) is targeting a total of 2.7m leisure tourists annually by 2012 compared to 1.45m in 2007. Abu Dhabi's policy agenda, “Realising our potential”, is unequivocally aiming to build the emirate's reputation as a high-end cultural destination so as to develop a unique brand. Some key luxury hotel developments have been announced in 2008 and, along with the Abu Dhabi National Exhibition Centre (ADNEC), will provide the necessary infrastructure for the rapidly growing meetings, incentives, conferences and exhibitions (MICE) and business tourism market.*<sup>4</sup>. These initiatives are regarded as one of the means to expanding the tourism industry as a whole, as the authorities endeavor to support holidays and vacation trips in addition to business trips. The emirate is also working on promoting itself as a cultural attraction, although at a high cost, namely with the launching of the Louvre Abu Dhabi and Guggenheim Abu Dhabi galleries in the Cultural District, to be developed on Saadiyat Island. Moreover, prestigious sports events, such as the Formula 1 Grand Prix, will increase the emirate's profile. On the level of the commercial related laws, the emirate has recently

<sup>3</sup>. [http://www.meed.com/uae/specialcover/2008/06/special\\_report\\_abu\\_dhabi\\_reforms\\_deliver\\_strong\\_growth.html](http://www.meed.com/uae/specialcover/2008/06/special_report_abu_dhabi_reforms_deliver_strong_growth.html).

<sup>4</sup> <http://www.oxfordbusinessgroup.com/publication.asp?country=36>



passed a new law, which has removed the restrictions imposed on foreigners with regard to conducting the activity of general trade<sup>5</sup>.

- f) Following the same trend, though in much slower steps, Sharjah the third-largest emirate has started embracing liberalization reforms, offering incentives for both investment and residence. The emirate's economic development has been evolving in parallel with a number of cultural, social and political reforms that have enabled a rapid progression while at the same time maintaining its traditional principles. Thus, Sharjah is in the final stages of drawing up a law to allow Arab nationals from non-GCC countries to own property in the emirate. Current laws allow only UAE nationals and citizens of other GCC countries to own property in Sharjah, while other Arab nationals need to get clearance from the emirate's authorities. The new legislation, which seeks to tackle this issue, will be issued soon.
- g) In order to better understand the legal environment laying the grounds for investment opportunities in the UAE and have a thorough knowledge of the economic prospects for foreign investors seeking to set their businesses therein, an introduction to the various means of doing business shall be delineated hereunder at a first stage (I) before shedding light on other pertinent laws and regulations affecting in a way or another investments in the UAE and revealing the major undertakings that the governments of the several emirates

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<sup>5</sup> Administrative decision no (25) of 2008 in respect of organizing the economic activities and issuance of licenses issued in compliance with Article (18) of Law no (5) of 1998 concerning the issuance of licenses in the emirate of Abu Dhabi.





doing to entice investment (e.g. the issuance of consumer protection law, the passing of laws capping rent ceilings on the Emirate's level to deal with the rent increases in the short to medium run, etc.)

## 1. Introduction to the various means of doing business in the UAE

Prior to 1984, each of the seven emirates of the UAE followed its own procedures pertaining to the provisions governing the operations of foreign business interest. In 1984, the Companies Law has been issued. The said law lays down the requirements in terms of shareholders, directors, minimum capital levels and incorporation procedures. It further sets forth provisions governing conversion, merger and dissolution of companies. However, its most relevant provisions pertains to the condition stating that a total local (whether UAE individual or UAE entity wholly owned by UAE nationals) equity of not less than (51%) must be complied with in any commercial company, while remaining 49% may belong to foreigners.

An exception to this mandatory rule is granted to nationals of the states of the Gulf Cooperation Council "**GCC**" (the UAE, Saudi Arabia, Sultanate of Oman, Qatar, Kuwait and Bahrain) which signed the United Economic Agreement in Riyadh on 7<sup>th</sup> June 1981(endorsed by the UAE in 1982), with a view to coordinate and unify economic, financial, monetary, commercial and industrial legislations. Hence, pursuant to provisions of Federal Law no (2) of 1989 concerning permitting citizens of the GCC countries to conduct business operation in the UAE, an investor wishing to conduct retail or wholesale trade business operations, or industrial operations in the



UAE should be a natural person residing in UAE and practice the required activity by himself and have a license to practice the activity in his country of origin. In case the investor is a juridical person wishing to conduct retail or wholesale trade then the investor must be in the form of a company of which the share owned by UAE nationals in not less than 51% of the capital. As for the ratio of legal shares concerning the activities for which no executive decisions have been issued in the country, the provisions of Article (22) of the Companies Law shall apply "*Observing that certain commercial activities are confined to nationals as provided in this law or in any other Law, every company incorporated in the state must have one or more nationals whose share in the company capital must not be less than (51%) of the company capital*". Cabinet Decree no (4) of 2007 with concerning permitting citizens of the GCC countries to conduct business operations and professions in the UAE gave GCC nationals the right to conduct any economic activity or profession in the UAE save for specific mentioned activities (el hajj and umra, procurement of manpower, commercial agencies, crippled care centers, crippled rehabilitation centers, elderly care centers, society service centers, press and publication, newspapers and magazines.)

Various legal structures are available for foreign investors seeking to establish a business in the UAE. Such business organizations are collectively addressed by several laws. Yet, the most prominent and the one which may be of high interest to foreign investors are defined under Companies Law. We shall delineate hereunder at a first stage the legal entities defined under the Companies Laws before pointing out to other relevant legal structures provided for under other laws.



a. **Legal entities provided for under Companies Law**

1- **General partnership company**

It is a firm that consists of two or more partners who are jointly and severally responsible for all the firm's liabilities to the extent of all their assets with no prescribed minimum capital requirement and non negotiable shares. Partnership companies are confined to UAE nationals **only**. (Article 25 of the Companies Law)

2- **Simple limited partnership company**

It is a company formed of general partners who shall be liable to the extent of all their assets for the company liabilities and participating partners who are only liable to the extent of their shares in the capital, whereas **all** general partners should be holder of the UAE nationality and the limited partners may not interfere in management functions involving third parties even with the authorization to do so (Articles 48 & 53 of the Companies Law).

3- **Limited liability company (most common form)**

- It is a company established by a minimum of two (2) and a maximum of fifty (50) partners whose liability is limited to their shares in the company's capital.



The minimum equity participation by the UAE national is (51%). The minimum capital required to form a limited liability company in Dubai is AED. 300.000 (82,191 USD) and AED 150.000 (41.095 USD )in Abu Dhabi. The minimum capital required for registering a limited liability company with an industrial license is AED 250,000 (US\$ 68,493).

- The shares shall not be divisible, whereas the cash and kind shares should be distributed among all partners, and the value of each share should be fully paid up at the time of incorporation. The shares of such company are not open for subscription by the public and it does not issue negotiable shares.
- The shareholders could be either individuals or legal entities. The liability of the partners shall be limited to their respective share in the company's capital. (Article 218 of the Companies Law). The objects of the limited liability company should be specified in the Memorandum of Association. Subject to any special enactment, rules and regulations passed from time to time, it may engage in any form of legitimate business, with the exception of insurance, banking and investment of funds belonging to others. (Article 220 of the Companies Law). It is mandatory to allocate each year 10% of the net profits to create a statutory reserve and when the reserve reaches 50% of the capital the partners may suspend such allocation. (Article 255 of the Companies Law). The limited liability company should have at least one auditor appointed annually by the General Assembly of partners. (Article 253 of the Companies Law).



- The limited liability company shall be managed by one or more managers or corporation to be appointed by the partners from amongst themselves or others provided that the number of managers does not exceed five. The manager shall have full authority to manage the Company and his actions shall be binding on the Company unless specific limitations are imposed. (Article 235 of the Companies Law). Notwithstanding the fact that the majority shares are held by the local partner, a foreign partner can exercise absolute control over the management of the limited liability company either by itself or through its authorized representatives being appointed as the manager under the provisions of the Memorandum of Association, thus making the limited liability company the preferred choice of foreign investors. In addition to the foregoing, the profits and losses ratios can be shared in the ratio agreed between the partners without the need to be in proportion to the contribution towards the capital (up to 80% to the foreign investor holding 49% of the shares).
- A foreign investor may equally choose to enter into Management, Finance, Technical Assistance and Services agreements with the limited liability company against the payment of separate fees by the company under each contract, thus reducing the distributable profits of the company.
- Furthermore and if the UAE national shareholder is not an effective partner to the company, maximum benefits of ownership can be circumvented through various side agreements which may be prepared to reflect such actual



ownership of the company by the foreign shareholder. The shareholders side agreements may provide for the loan afforded by the foreign shareholder to the UAE shareholder for the subscription for 51% of the shares, the fee payable to the UAE shareholder against his services as well as other restrictions such as the restrictions on the sale of the shares and the use of the trade name and intellectual properties of the company. The side agreements which are identified as a declaration of trust generally stipulate that the UAE shareholder is not in fact the real owner of the 51% share capital but rather the trustee holding the same for the benefit of the foreign shareholder. Such side agreements, although not registered with any authority, are yet binding upon the parties thereto and may be enforceable before UAE courts. Recently, the Dubai Court of Cassation, in its judgment petition number (137) of 2006, has confirmed its position and held that only written documents can be introduced into evidence in order to ascertain the real ownership status where the incorporation documents such as the memorandum of association of the company show 51% of the share capital registered in the name of a UAE shareholder. In fact, in the event a dispute arises and either the UAE or the foreign shareholder claims his rights or seeks to terminate their partnership relationship, the UAE court will not register the 51% of the share capital in the name of the foreign shareholder, rather than that it is commonly believed although not widely and properly tested that the UAE Court will then upon request liquidate the company, satisfy third party creditors first (or as otherwise



applicable in terms of debts and charges privileges hierarchy) and then give right to the foreign shareholder to the remainder of the proceeds in its capacity as the real owner of the company.

- This situation reflects best the position of the most accredited incorporation practice in the UAE in light of the openness to foreign investment policy promoted by Dubai in particular. However, in such case and in counterpart, the UAE national who will eventually be acting as the 51% shareholder will be expecting to receive an annual sponsorship fee against his sponsorship to be agreed with the foreigners on a case by case basis.
- Nevertheless, on the scale of the legal issue in this regard, it must be pointed out to provisions of Federal Law no (17) of 2004 concerning the Combating of Commercial Concealment (the "**Anti-Fronting Law**"). Such law is aimed at fighting concealment or screening i.e. *"enabling a foreigner, whether natural or artificial, to carry on any economic or professional activity not allowed to be carried on by him, whether for his own account or with the participation of a third party, in accordance with the law and decisions in force in the UAE, or to enable the foreigner to evade his obligations"*. Indeed, the Anti-Fronting Law forbids the quasi established practice of “front names” in commercial activities (in other terms it is aimed at fighting the practice of having a UAE sleeping partner and serving only as a sponsor to non UAE nationals) and sets forth sanctions upon the UAE national acting as a front name for the non UAE national and upon this latter as well. Fines that may be inflicted to the UAE national involved in such practice may go up to



AED 100.000 (27.397 USD) for each activity. In the event of reiteration of the infringement jail may be the sanction. Same shall apply to the non UAE national which further may be subject to revocation of license, imprisonment (two years maximum) and deportation.

- Nonetheless, this Anti-Fronting Law which was supposed to come into effect in November 2007 shall not be enforced before March 2009 further to another postponement to its application. It is believed that this Law shall not enter into force until the Companies Law restriction on foreign equity ownership beyond the 51% and other similar restrictions are amended. Still and save the many critics addressed to such law, it can be said that unless such law comes into effect and is clearly tested before courts, the consequences of its implementation may not be predicted nor anticipated. In the meantime, the practice of front names reflected through side agreements remains a common practice applied all over the UAE.

#### **4- Joint Participation (Joint Venture)**

It is a company confined to the relationship between the partners and will not be effective vis-à-vis any third party. The contract of joint participation regulates the rights and obligations of the partners and the distribution of profits/losses between them with respect to commercial enterprises, which will be carried on in the name of one of the partners. This contract will neither be registered in the commercial register





nor is to be declared (Articles 56 & 57 of the Companies Law). However, should the Joint Venture be disclosed to third parties, all the partners shall be liable to such third parties. Existence of joint venture may be proved by any method of proof.

#### **5- Private Joint Stock Company**

It is a company with minimum capital required not less than AED 2.000.000 (547.945 USD) and a number not less than three founder members. Shares may not be floated to public subscription. Founder members are to fully subscribe the capital (Article 215 of the Companies Law). Except those provisions concerning public subscription, all provisions stipulated in the Companies Law concerning public joint stock companies shall apply to private joint stock companies (Article 216 of the Companies Law). However, the Companies Law permitted a joint stock company to be converted to a public joint stock company provided specific conditions stated for under Article 217 of the Companies law.

#### **6- Public Joint Stock Company**

It is a company with minimum capital required not less than AED 10.000.000 (2.739.726 USD) (Article 67 of the Companies Law). There should be at least ten founder members, who should sign the initial memorandum and articles of association with the intent of assuming the liability arising there from (Article 70 of



the Companies Law). The Memorandum of the public joint stock company should be identical with the form prepared by the Ministry of Economy and Commerce, whereas the share value should not be less than one dirham and not more than (100) dirhams. The Public Joint Stock Company shall be managed by a Board of Directors (Article 95 of the Companies Law). The chairman and majority of the members of the Board of Directors must be U.A.E. nationals (Articles 99 and 100 of the Companies Law).

#### 7- **Partnership limited with shares**

It is a company formed of general partners who are jointly liable to the extent of all their assets for the company liabilities and participating partners who are only liable to the extent of their shares in the capital, whereas all general partners should be holders of the UAE nationality (Article 256 of the Companies Law) The capital of the partnership limited with shares should not be less than AED 500.000 (136.986 USD) divided into equal value negotiable shares.

#### 8- **Branch or representative office of a foreign company**

- Article (314) of Companies Law allows foreign companies seeking to exercise their main activities in the UAE to establish a branch or a representative office. The difference between the two legal structures is that the foreign company



that opens a branch in the UAE may exercise freely the activities for which it is licensed whereas a representative office may practice only promotional business for the products and services provided by the parent company. However, it is not easy to get an approval for a branch or representative office.

- Unlike the foreign branch office, a representative office is not allowed to conduct business operation or market directly its product. Hence, its activities shall be restricted to gathering information and soliciting orders and projects to be performed by the parent company. In this respect, representative offices also are limited in the number of employees they may sponsor (typically three or four). Essentially, a representative office serves as an administrative and marketing center for the foreign company.
- On the contrary, a branch office is qualified to conduct business and thus permitted to perform contracts or any other activities as specified in its license.
- Still, in order to engage a foreign branch to conduct its operation in the UAE; a license must be applied for and obtained from the Ministry of Economy & Commerce prior to obtaining the license from the concerned authority in the respective Emirate, provided that the required conditions are fulfilled by the applicant according to its scope of activities. Hence, and as primary condition to be eligible for establishing a branch office, the foreign company should have been incorporated and doing business abroad for more than two (2) years (additional years may be required for specific activities e.g. consultancy



services). The name of the Branch Office should be the same as that of the foreign company.

- Besides, all foreign companies licensed to operate in the UAE may not start their activities before being inscribed in the Ministry's Register of Foreign Companies.
- The main stipulation for opening a representative office or a branch of a foreign company in the UAE is to appoint a service agent who should be a UAE national or a company fully owned by UAE nationals. A service agent is not an empowered agent who can bind his principal as explained in the definition of the terms "agent" in the Companies Law. Moreover, a service agent shall not be responsible to undertake any financial obligations concerning the activities of the company's branch or office within the UAE or abroad. He should not interfere in the matters related to the company's management or activities. His duties towards the company and others are restricted to providing such services as required by the principal with no right to interfere in the management of the branch office. These services usually include the obtaining of entry or residence permits, acquiring of the necessary licenses or facilitating the processing of its transactions with the government authorities. The fees payable to the service agent could be a fixed percentage of the total turnover generated by the branch office in a financial year. It is also quite common in UAE that the foreign company agrees with the service agent on



fixed lump sum amount payable annually towards the fees, which shall not in any manner be related to the turnover generated by the branch office.

- Subject to any special enactment, rules and regulations passed from time to time, the branch office may practice and pursue the activities of the parent company (except for the trading activity) in the emirate wherein it is licensed to carry on its activities.

In addition to the foregoing legal entities provided for under the Companies Law, investment in the UAE may be done through one the following legal structures:

**b. Investment means provided for under other laws**

**1- Professional Firms**

- A foreign investor is permitted to practice certain types of business activities allowed for non-nationals without having a national partner. This may be done by setting up a professional firm, 100% foreign owned sole proprietorships or civil companies (The establishment of professional civil companies is governed by provisions of Federal Law no (5) of 1985 concerning the UAE civil transactions law ("**Civil Code**").
- Such firms may engage in professional or artisan activities but the main hurdle remains is that the number of staff members that they may employ shall be limited. Such activities are medical services, engineering consultancies, legal



practice and consultancies, computer consultancies and similar services. Such license is granted provided however that the investor holds a valid and legal UAE residence permit.

- For the purpose of such activity, a professional is a person who independently practices a profession based on investing his intellectual powers and acquired information, which generates an income. In such work, he either depends on his own physical effort or uses the help of some tools and equipments, whether solely or with a maximum number of five workers.
- Professional firms should have a local service agent according to service agency contract authenticated by a Notary Public.
- The setting up of professional firms is regulated vide local regulations specific to each emirate. In Dubai, Local Order no (63) of 1991 on licensing professionals and tradesmen in the Emirate of Dubai sets the rules for establishing a business which practices a service or professional activity. In Abu Dhabi, Article (11) of Law no (5) of 1998 concerning the issuance of licenses in Abu Dhabi provides that "*Exceptionally, non-UAE nationals may be licensed to practice simple professional and vocational activities which shall be determined by the concerned authority under the following terms...*".

## **2- Appointing a Commercial Agent (Exclusive Distributor)**



- Foreign investors may also choose to conduct business activities in the UAE by appointing a commercial agent to represent their interest in U.A.E instead of establishing a permanent presence therein. The U.A.E Commercial Agencies Law, Federal Law no (18) of 1981 and its amendments ("**Agencies Law**"), regulates and governs the appointment of commercial agents, sales representatives, and distributors in the U.A.E. This law defines a commercial agency as any arrangement whereby a foreign company is represented by an agent to *“distribute, sell, offer, or provide goods or services within the UAE for a commission or profit”*. (Article 1 of the Agencies Law).
- In the UAE, the terms agency and distribution are used interchangeably and for the purpose of regulation distribution agreement, the law does not differentiate between the two types of contracts. Therefore, the Agencies Law regulates all aspects of commercial agents and distribution in the UAE.
- The primary requirements and characteristics of commercial agencies are:
  - a) Commercial agents must be U.A.E nationals or companies incorporated in the U.A.E and wholly owned by U.A.E nationals.
  - b) Commercial agents must be registered with the U.A.E. Ministry of Economy and Commerce to engage in commercial agency activities. (Article 4 of the Agencies Law).
  - c) The agency agreement must be registered in order for the agent to avail himself of the protections afforded under the law and to have the agency



relationship recognized under U.A.E law. The main advantage of registration of an agreement for an agent is the protection against unfair termination. The Agencies Law protects the agent in the event that a principal seeks to terminate the agency unless the agent agrees or has been fairly compensated. If the agency is not registered, the Agent cannot avail of such protection and the principal is able to terminate in accordance with the Agreement. Any attempt to claim compensation for wrongful termination by the agent is restricted to the terms of the agreement and the Civil Code.

- d) In order to qualify for registration, the following requirements need to be satisfied:
- The agent/distributor must be a UAE national or a company 100% owned by UAE nationals (Article 2 of the Agencies Law);
  - The agency/distributorship must be exclusive (Article 5 of the Agencies Law); and
  - The agreement must be in writing and notarized (Article 4 of the Agencies Law).
- e) Commercial agents are entitled to have an exclusive territory encompassing at least one of the seven Emirates for the specified products falling within the exclusive agency (Article 5 (1) of the Agencies Law).





- f) Unless otherwise agreed, commercial agents are entitled to receive commissions on sales of the products in their designated territory irrespective of whether such sales are made by or through the agent (Article 7 of the Agencies Law).
- g) Commercial agents are entitled to prevent products subject to their agency from being imported into the U.A.E, if the agent is not the consignee.
- h) Commercial agents are entitled to receive compensation from the principal if the agency is terminated without substantial justification or if the agency is not renewed by the foreign principal, and the agent may be able to preclude the foreign party from appointing a replacement agent in such circumstance.
- i) Provisions of Federal Law no (18) of 1993 concerning the commercial transactions law ("**Commercial Code**") supplement those of the Agencies Law and establish the regulatory framework for the various types of commercial agencies permitted under the law. The most common type of agency is the contracts of agency, whereby the agent undertakes 'on a permanent basis and in a specific area of activity, the instigation and negotiation of the conclusion of deals, to the advantage of the principal and in return for payment. (Article 217 of the Commercial Code). Distributor contracts are treated like contracts



agencies when they involve one agent as the sole distributor. (Article 227 of the Commercial Code).

- j) Unregistered commercial agencies not governed by the Agency Law are subject to the Commercial Code and Civil Code. The fact that an agreement is not registered does not mean that the commercial transaction and rights of the distributor are not protected in relation to the agreement. Thus, the general principals in the Civil Code and the Civil Procedures Law may also be applicable. The Civil Law regulates contracts, the parties' rights and obligations and all other related factors. These codes do not require agents to be UAE national or commercial entities wholly owned by UAE nationals; however such agencies are not common.

### **3- Setting up in a free zone**

- Investors may also take into consideration the opportunity of establishing their legal presence in the UAE through one of the free zones such as the Dubai Airport Free Zone or the Jebel Ali Free Zone. The major advantages of setting up in a free zone are as follows:
  - 100% foreign ownership without the involvement of any local partner/agent.
  - 100% import and export tax exemptions.



- 100% repatriation of capital and profits.
  - No corporate taxes for 15 years, renewable for an additional 15 years (may vary depending on the free zone)
  - No personal income taxes.
  - Assistance with labor recruitment and additional support services, such as sponsorship and housing.
  - No administration problems and easy, efficient services.
  - No currency convertibility restrictions.
  - Efficient communication infrastructure.
  - Option to lease land and develop it according to one's needs.
  - A modern road network providing easy access to all the Emirates and other ports.
- In 1998 UAE Federal Law no (15) of 1998 amended the Companies Law stating that with respect to companies established in UAE free zones, the UAE Free Zone Regulations may have their own Companies Law. For this purpose, it is worth mentioning that Companies Law and Free Zone Regulations contain conflicting provisions on several issues, one of the most prominent examples being reflected in Article 22 of the Companies Law, which provides that at least 51% of UAE companies must be owned by UAE nationals; whilst, free zone entities are permitted to be 100% non-UAE owned.
  - However, the main hurdle facing a free zone entity is that it is prohibited from conducting business or any form of trade in the U.A.E. market



- An independent Free Zone Authority governs each free zone, and is the agency responsible for issuing the free zone operating licenses and assisting companies with establishing their business in the FTZ.
- Different types of companies can be established within the free zones, namely:
  - Free Zone Company (FZCO/FZC).
  - Free Zone Establishment (FZE)
  - Free Zone Branch
- Different types of licenses can be issued, namely:
  - Trading License
  - Industrial License
  - Service License
  - National Industrial License
- Most of the free zones are tailored to meet the needs of industrial, shipping and manufacturing enterprises. As such, the free zones are in great part located near major ports and have large warehousing and storage facilities available. The exception is Dubai Internet City (“DIC”), which is a unique free zone dedicated to IT and e-business companies wishing to set up bases in the Middle East. Dubai Media City (“DMC”) is a FTZ based on the same concept as DIC, but with a focus on media rather than IT.
- The major free zones are:



- Dubai International Financial Center (DIFC) : the only free zone in the UAE with its own civil, labor and commercial laws, as mentioned earlier
- Dubai Media City (DMC)
- Jebel Ali Free Zone (JAFZ)
- The Dubai Airport Free Zone (DAFZ)
- The Dubai Textile City (DTC)
- Dubai Customs Automobile Zone (DCAZ)
- Dubai Metal & Commodity Centre
- Dubai Flower Center
- Dubai Palm Island Development
- Dubai Gold and Diamond Park
- Customs & Free Zone Corp
- Dubai Healthcare City
- Dubai Silicone Oasis
- Dubai Sports City
- Dubai Internet City
- Knowledge Village
- Dubai Logistics City
- Dubai Aid City
- Sharjah Airport International Free Zone (SAIF-Zone)
- Hamriyah Free Zone (HFZ)



- Ajman Free Zone (AFZ)
- Ras Al Khaimah Free Trade Zone (RAKFTZ)
- Fujairah Free Zone (FFZ)
- Saadiyat Free Zone Authority (Abu-Dhabi)
- Ahmed Bin Rashid Free Zone (Umm Al Quiwain)

## 2. Overview of pertinent laws and regulations

### a. Intellectual Property laws

- The major IP related laws in the UAE are the following:
  1. Decree of the Federal Law no (17) for the year 2002, amending the Federal Law no (44) for the year 1992 pertaining to the Industrial Regulation and Protection of Patents, Industrial Drawings, and Designs (the "**Patents Law**").
  2. Federal Law no (8) for the year 2002 amending articles of the Federal Law no (37) for the year 1992 for Trademarks (the "**Trademarks Law**").



3. Federal Law no (7) of 2002

Pertaining to Copyrights and Neighboring Rights (the "**Copyrights Law**").

- For a long period, the UAE had the reputation of being a safe harbor for IP infringers. IP legislation merely existed prior to 1990. In 1992, the first copyright, patents, and trade marks laws were introduced. In 1996 the UAE became a member of the World Trade Organization and a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). In 2002, all Patents, Trademarks and Copyrights Laws were updated to meet up with the realistic and fundamental requirements.
- The UAE is party to a number of international IP related agreements, namely the Berne Convention (for the Protection of Literary and Artistic Works (1971), the Paris convention for the Protection Industrial Property, the Rome Convention on Neighboring Rights, the World Copyright Treaty, the WIPO Performances and Phonograms Treaty and the Patent Cooperation Treaty. In terms of classification the UAE follows the Nice Classification Agreement for trademarks (The International Classification of Goods and Services for the Purpose of the Registration of Marks under the Nice Agreement, 9th edition) and Locarno Agreement for industrial designs.
- The United Arab Emirates is yet to be a member of the Madrid System. However, the UAE has been deploying unremitting efforts for the sake of



modernizing its IP legislations and bringing it in line with internationally recognized standards, namely after it joined the WTO. Consequently, the UAE started amending all its existing IP laws to ensure their conformity with TRIPS Agreement. Hence, the Trademarks Law came into effect within this context, to amend the Trademarks Law no (37) of 1992. The Trademarks Law deals with internationally “famous marks”, preventing their registration except upon the consent of the original owner.

- The UAE has also ratified the Unified Unified Gulf Cooperation Council (GCC) Trademark Law vide Federal Decree no (52) of 2007 in respect of approving the Unified Gulf Cooperation Council (GCC) Trademark Law that was enacted on December 10<sup>th</sup>, 2006. The decree aims at unifying economic and trading policies and systems in the GCC and defines the process of protecting and registering trademarks. However, the decree does not provide for unified filing nor authority for handling trademarks matters. In fact, the decree states that it is necessary to file individual applications in each member state of the GCC in order to gain protection and refers to Implementations Regulations for governing the registration procedure. It is worth noting that the enforcement of trademarks is relatively strong.

## **b. Consumer protection law**





- The UAE has ushered a new era of consumer protection with the issuance of Federal Law no (24) of 2006 (the "**Consumer Protection Law**"). The said law provides for the setting up of a special committee known as the "Higher Committee for Consumer Protection" under the chairmanship of the Minister of Economy. The Department's mission is to ensure fair competition on the market and to team up with other concerned bodies to create consumer awareness among the general public. The Department of Consumer Protection will do this by educating consumers about their rights and how to get those rights. It will also set up a hotline in the ministry to receive complaints from consumers for rapid action.
- Based on Article (4) of the Consumer Protection Law, the Department of Consumer Protection covers the following domains:
  - 1- Overseeing the implementation of the General Policy to protect the consumer in cooperation with the concerned parties in the Country.
  - 2- Coordination with the concerned authorities in UAE to confront the unfair trade practices which harm the consumer
  - 3- Coordination and cooperation with the concerned parties in UAE to disseminate consumption awareness on goods & services in the UAE, as well as making consumers aware of their rights and ways to claim them.
  - 4- Monitoring price movements and alleviating their increase
  - 5- Ensuring the achievement of fair competition principles and taking monopoly counter measures.



6- Receiving consumer complaints, taking actions in this regard, or referring them to the concerned authorities. Complaints could be submitted directly by consumers or through Emirates Society for Consumer Protection as a representative of the complainant

7- Dissemination of the resolutions and recommendations that contribute to raising awareness among consumers

- The main provisions of the Consumer Protection Law are as follows:
  1. The law aims at protecting the rights of consumers on the market by giving them full freedom in making a choice and returning or substituting faulty items. It also states that commodities put on shelves for sale must have price tags clearly displaying the price of the commodity.
  2. The law requires all suppliers of imported goods to label their products with information such as what the product is, where it is from, and whether there are any risks associated with its use. If a publication contains an advertisement for a dangerous product, both the advertiser and publisher could face penalties under the law. Thus, companies which fail to adhere to its provisions could face penalties, although the effect of those fines is hard to gauge. In fact, the fines set forth pursuant to provisions of the law range from AED1,000 (273 USD) to AED10,000 (2739 USD) according to the offence. Such fines if imposed on companies may not have the dissuasive impact for it may be cheaper to pay fines than to implement provisions of the law.



3. The law focuses on "illegitimate commercial practices" that can harm consumers, monitor and control prices, promote fair competition and combat monopoly, and even make it easier for consumers to return products.
- Nonetheless, the major concern regarding this law remains that in order for the consumers to actually apply the Consumer Protection Law, additional details must be implemented. Hence, the law will not have much of the expected and required impact, unless executive orders specified in the law are passed as well. Indeed, the orders are expected to enclose specific details on how the law shall be enforced. Still, the timeline for the executive orders to be issued remains unknown at this point.

### c. Labor law

- Labor matters in the UAE are governed by provisions of Federal Law no (8) of 1980 Regulating Labor Relations as amended by Federal Laws no (24) of 1981, no (15) of 1985 and no (12) of 1986 (the “**Labor Law**”). However, specific regulations apply in DIFC.
- Article (3) of the Labor Law provides that it applies to all staff and employees working in the UAE, whether UAE nationals or expatriates, save for certain categories of individuals who are exempted from the Labor Law as governmental officers, domestic servants, etc. Article (13) of the Labor Law stipulates that no non-national may be recruited for work in the UAE without



the prior approval of the Labor Department and obtaining a work permit in accordance with the procedures and regulations of the Ministry of Labor and Social Affairs. In order to comply with the principles of Article (13) of the Labor Law, all the workers have to execute employment contracts in a standard format provided by the Labor Department with the employer in the UAE. Consequently, work permits and residence visas have to be obtained in accordance with the procedures and regulations of the concerned competent authorities following the fulfillment of several requirements as stated vide Cabinet Decree no (52) of 1989 concerning the rules and procedures to be adopted at the work permit sections with respect to the recruitment of non-national laborers in the United Arab Emirates, namely effecting medical tests proving that the employee is medically fit and free from diseases.

- A partner in a business shall not be considered as an employee and is therefore not required to obtain a labor card. For immigration purposes however, a foreign partner will be sponsored by the entity he is a partner in, as an investor rather than as an employee and will deal with the immigration authorities directly rather than through the Labor Department, provided that his name is on the business entity's license and subject to a minimum investment requirement in the entity. However, if the partner holds an employee position additional to his partner status, he will be considered as an employee for the work he is doing in the company.



- 100% repatriation of the salary is permitted in the UAE for an expatriate employee.

#### d. Rental laws

- In Abu Dhabi Law no. (20) of 2006 concerning Tenancy and Organization of Landlord-Tenant Relation in the Emirate of Abu Dhabi ("**AUH Tenancy Law**") regulates the contractual relationship between landlords and tenants. In accordance with Article (2) of the Tenancy Law as well as Executive Council Decision no (41) of 2006 and the Executive Council's announcement to that effect, the Tenancy Law governs all current, renewing and new tenancy agreements. Pursuant to provisions of AUH Tenancy Law, the increase by Landlords of the rent, whenever the tenancy agreement period is three years or less, is prohibited as per provisions of Paragraph (2) of Article (16) of thereof *"But in case the contract period is three years or less, the landlord may neither increase the rent amount specified in the contract more than once a year no more than 7% each time. However, the said percentage may go up or down upon a decree by the Chairman of the Executive Council as he deems it appropriate. For contracts of more than three years, the percentage of annual rent amount increase shall be fixed upon a decree issued by the Executive Council."* The Decision of the Executive Council which came into effect from January 13<sup>th</sup>, 2008 has reduced the annual rent cap to 5%.



- In Dubai, Law no (26) for the year 2007 dated November 26, 2007 related to the regulation of the relationship between Landlords and Tenants in the Emirate of Dubai (“**Dubai Tenancy Law**”). Article 9 of said law provides explicitly that the landlord and tenant shall specify the amount of the rent in the Lease Contract, and in all events the rent may not be increased or any provision of the Lease Contract revised unless after the lapse of complete two years from the commencement of the lease relationship for the first time.
- In Sharjah, Law no (2) of 2007 regulating the relationship between the landlord and tenant (the "**Sharjah Tenancy Law**") stipulates that a landlord shall not increase the rent until three years after signing the lease, and every two years thereafter. Under the said law, rent increases are limited to the rent of property of similar value, and a dispute committee is authorized to determine the rent increase, if there is disagreement between landlord and tenant. Myriad factors should be taken into consideration when deciding the rent increase which would include location of the property, quality, number of storeys, level of services, age of the building, space of property etc. A landlord shall not evict a tenant till the lapse of three years from the date of execution of the contract unless the tenant fails to pay the rent within (15) days of the due date for residential property and 30 days for commercial property.
- In Ajman, It is learnt that the tenancy law in Ajman is being amended, allowing landlords to increase rent only by (7) per cent a year, rather than 20 per cent every three years.



- In Fujairah, It is learnt that a new law regulating the relationship between landlords and tenants is being enacted in Fujairah.
- In Ras Al Khaimah, the amended Law no (8) of 2008 on the Regulation of the Landlord - Tenant Relationship in Ras Al Khaimah (the "**RAK Tenancy Law**") stipulates that rent increases have been capped at (5) per cent for residential properties and (7) per cent for commercial properties.
- In Umm Al Quwain, the amended new law regulating the relationship of the tenants and landlords states that the rent cap for Umm Al Quwain has been fixed at (7) percent a year, as against (10) percent earlier.

#### e. Competition Law

The law expected to be issued is modeled keeping in mind the anti-trust laws in the US and other developed countries, will legislate against companies engaging in monopolistic and anti-competitive practices thereby affording greater business opportunities to small and medium sized enterprises (SMEs). As is the norm in other parts of the world, small and medium sized enterprises will be excluded from the pending law, as their size means they would be unlikely to be able to carry out monopolistic practices.

#### f. Foreign Investment Law



- The Investment Fund Regulations (the "Regulations") is a comprehensive and effective piece of legislation aimed at providing a definite structure, distinct frontier and effectual management to the domain of Funds in the UAE applicable to all persons who carry on or seek to carry on any of the activities related to operation, management, administration, promotion and/or offering of units in a Fund that may be operated, offered or promoted within the UAE. The Regulations squarely apply to Domestic Funds and Foreign Funds.
- The Securities and Commodities Authority is expected to exercise absolute control over the Funds in the UAE and has wide powers in the management of the arena. Any person who promotes or offers a Fund in the UAE or establishes a Public Fund in the UAE is required to submit a copy of the offering document drafted in compliance with Part (11) of the Regulations to the Securities and Commodities Authority, and obtain its consent in writing. It is also mandatory for the said persons to comply with the requirements specified under Part (05) of the Regulations. The Securities and Commodities Authority is empowered to withdraw its consent on the occurrence of certain contingencies including a violation of the Regulations.
- In order to avoid any intricacies related to the Funds, the Regulations cast myriad duties upon the operators which inter alia would include the follows: to ensure that the Fund complies with the Regulations and any other laws applicable to Funds in the UAE; to ensure that all transactions of the Fund





are properly executed and evidenced in accordance with all the applicable laws; to establish and maintain risk management systems and controls to enable it to identify and manage risks in relation to any Fund that it operates etc.

- The obligation of the Operator to ensure that any transactions to be entered into by or on behalf of the Fund are entered into as soon as reasonably practicable after the decision to enter into the transaction has been made may rule out any delays. The responsibility of the Operator to ensure fair and accurate valuations of the Fund's assets and the frequency at which they are to be done are also stipulated in the Regulations.
- The Regulations also foresee the scope of potential conflict of interests between the parties involved in the transaction and consequently contemplate necessary actions in the event of such a conflict in order to avoid an impasse.
- In order to ensure transparency, the Operator is bound to provide periodic reports to the Unit holders, which would inter alia include - a review of the Fund's investment activities over the Half-yearly Accounting Period, the details of matters requiring the approval of the Unit holders etc. The said periodic reports should also comprise of an Auditor's Report and the Shari'ah Supervisory Board's Report.
- A Domestic Fund which is a Property Fund must ensure that the Fund is Closed-Ended, and it holds good marketable title in all Real Estate held in



its portfolio, whether directly or through other companies or vehicles controlled by the Fund. In order to be listed in a market in the UAE, a Domestic or a Foreign Fund should comply with the requirements specified under the Regulations, which inter alia stipulates that the Fund must be a company or a partnership; the Fund must be a Public Fund etc.

- The Regulation clearly provides for the legal structures using which a Domestic Fund may be constituted, which could be a Company incorporated in the State; a Partnership created in the State; a contractual arrangement between the Unit holders and the Operator of the Fund; or any other form as the Authority may permit.
- The Regulations have not been passed yet but are expected to be so shortly. It is learnt that implementation regulations shall be issued thereafter and shall clearly determine the specific activities to be governed by the Regulations.

#### **g. Anti-Money Laundering Law**

- UAE is one of those countries in the world which has enacted a very stringent anti-money laundering law, and implements the provisions of the said law in a rigorous manner. Moreover, the UAE was one of the first countries that adopted anti-money laundering articles in its Federal Law no (3) of 1987 concerning promulgating Penal Code (the "**Penal Code**"),



which was in line with the then discussions, to prepare for the 1988 Vienna Convention.

- The anti-money laundering law has been passed by the Cabinet of Ministers in October 2001 and the Federal National Council on 25<sup>th</sup> December 2001 than approved by the Supreme Council Members Rulers of the Emirates and thereafter was signed by H.H. the President of the UAE on 22<sup>nd</sup> January 2002 as Federal Law no (4) of 2002 regarding criminalization of money laundering (the "**Anti-Money Laundering Law**").
- Pursuant to provisions of the Anti-Money Laundering Law, any person who, inter alia, intentionally attempts to disguise or conceal the illicit origin of the property he received [from a variety of activities which would include narcotic and psychotropic substances, piracy and terrorism, illicit dealings in fire arms and ammunition, fraud, breach of trust and related offences etc.] by conversion or transference of the proceeds; concealment or disguise of the true nature, source, location etc. and rights with respect to ownership of the proceeds, or the acquisition, possession or use of such proceeds shall be considered as a perpetrator of the offence of money laundering.
- In the recent global stand taken against terrorism, one of the main components is tracking funds that bolster terrorist activities. The adoption of this component in the Anti-Money Laundering Law which includes proceeds to fund terrorist activities sets the stage for UAE to assist in the global fight against terrorism. The Anti-Money Laundering Law envisages



harsh punishment for its violations. It is very much pertinent to note that whoever commits the offences mentioned in the Anti-Money Laundering Law shall be punished by imprisonment [not exceeding seven years] and/or fine [up to AED One Million]. Further, the Central Bank of the UAE is empowered to freeze the property suspected to be involved in money laundering with the financial institutions. All the financial institutions and other financial, commercial and economic establishments are bound to send reports of suspicious transactions to the “Financial Information Unit” [constituted within the Central Bank to deal with money laundering and suspicious cases].

#### **h. Banking Laws**

- The banking law number 10 dates from 1980.
- UAE Central Bank Circular No. 14/93 on Returned Unpaid Cheques, Current accounts, Savings and Call accounts (the "**Circular**") stipulates that a bank in the UAE shall not be permitted to open an account in the name of any individual, company or association unless certain conditions are complied with.
- Article (1) of the Circular prohibits opening of current accounts to non-residents (except non-resident banks), and the term “non-resident” would include both individuals and legal entities.



- In order for an individual or legal entity to open a current account with any of the banks in the UAE, they must come under the ambit of “resident” as stipulated by Article (1) of the Circular. A “resident” is defined as “any natural person who holds the UAE nationality including those residing outside the UAE, any expatriate who holds a valid UAE residence permit, any diplomat, any formal consular employee of any foreign government, any employee of an international authority/organization, in addition to any company or sole proprietorship licensed to operate in any part of the UAE, a ministry, a department, a public authority/institution, an embassy, a consulate and an international authority/organization.”
- Nevertheless, Article (2) of the Circular contemplates certain exceptions, and provides that banks may open savings and call/time deposit accounts for residents and non-residents. In this case, counter-cheques and ATM cards, as applicable, may be made available to account holders, whereas the issuance of cheque books is prohibited for such accounts.
- Article (5) of the Circular further stipulates that in the event of an opening of an account as stated under Article (2), the banks must obtain all necessary information and documents on juridical persons especially the trade license and must diarize for renewals in order to keep a copy of the valid license on banks’ files at all times.

#### **i. Real estate laws**



a- Abu Dhabi real estate laws

- The ownership of real estate in Abu Dhabi is regulated by the following laws:
  - Law no (3) of 2005 in respect of the Registration of Real Property Rights in the Emirate of Abu Dhabi ("**Law no (3)**").
  - Law no (19) of 2005 in respect of the Real Estate Ownership in Abu Dhabi ("**Law no (19)**").
  - Law no (2) of 2007 in respect of the amendments of certain provisions of Law no (19) of 2005 ("**Law no (2)**").
  - The Civil Code which provides general guidance on concepts of land ownership. This Code left it to each Emirate to regulate its own local decisions as regards the foregoing issues
- Law no (3) established the Land Department which serves the function of registering real property rights, issuing certificates and title deeds. This law specifically deals with the registration procedures for lands in the name of UAE nationals and includes a table of fees for registration of title, mortgages, leases and other dispositions of land.
- Law no (19) in respect of the Real Estate ownership in Abu Dhabi provides that UAE nationals/legal entities wholly owned by them have the right to own real estate properties anywhere in the Emirate of Abu Dhabi. And as an exception, this Law granted GCC nationals the right to own freehold land



within designated areas known as "Investment Zones". Non-GCC foreign nationals have been granted the right to own apartment units or entire floors in buildings in the Investment Zones but not the rights to the underlying land upon which the building is located. Both GCC nationals and non-GCC, foreign nationals have also been given the right to acquire a right of usufruct (for a maximum term of 99 years which is similar to a lease and being the right to use, enjoy and occupy property belonging to another person) and the right of *musataba* (for a maximum term of 50 years which is a right to build and develop on the land belonging to another person) in respect of land or units, both being renewable for similar periods by mutual consent. These ownership rights were recognized vide this Law as rights *deriving from ownership* and capable of being sold, mortgaged, pledged, assigned and registered.

- Law no (2) was issued to amend Law no (19). However, Law no (2) law does not provide for material amendments to Law no (19) although it does clarify certain aspects of said law and confirms the previous position with regards to property ownership. However, there are unclear issues in Law no (19) which have not been addressed by Law no (2) such as the Implementation Regulations, which are expected to provide rules and procedures for the transfer and registration of real property rights including mortgages and such Implementation Regulations have not been issued to date.
- There are currently eight (8) Investment Zones in the Emirate of Abu Dhabi which have been determined by (i) Decision no (23) of 2005 of the President



of the Executive Council in respect of the determination of some Investment Zones, which determined Al Raha Beach and Al Reem Island as Investment Zones and (ii) Decision no (24) of 2005 of the President of the Executive Council in respect of the determination of a third Investment Zone in the Emirate of Abu Dhabi, which determined Al Reef Villa as an Investment Zone) (iii) Decision no (38) of 2008 of the President of the Executive Council in respect of the determination of a fourth Investment Zone in the Emirate of Abu Dhabi, which determined Lulu Island as an Investment Zone (iv) Decision no (14) of 2008 of the President of the Executive Council in respect of the determination of a fifth Investment Zone in the Emirate of Abu Dhabi, which determined Al Saadiyat Island as an Investment Zone (v) Decision no (15) of 2008 of the President of the Executive Council in respect of the determination of a sixth Investment Zone in the Emirate of Abu Dhabi, which determined Yas Island as an Investment Zone (vi) Decision no (49) of 2008 of the President of the Executive Council in respect of the determination of a seventh Investment Zone in the Emirate of Abu Dhabi, which determined Saih Al Sadirah spot owned by Sourouh Real Estate Company as an Investment Zone (vii) Decision no (50) of 2005 of the President of the Executive Council in respect of the determination of an eighth Investment Zone in the Emirate of Abu Dhabi, which determined Al Masdar City as an Investment Zone)

b- Dubai real estate laws





To be developed as part of the in depth study.

## VII. The major reform activities and programs in the country

- In line with its economic openness, the UAE is pursuing the issuance of new legislations and the amendment of existing laws and regulations covering all political, economic, and social domains with the aim of enhancing the economic development, encouraging investment, defining rights of expatriates, protecting consumers and taking care of the investment related issues. However, the laws at their current status are dragging behind the economic progress of the country. As each ministry champions its own laws, there is a loss of ownership and no holistic approach to updating and modernizing the laws.
- Major reforms include principally further improvement of the UAE multilateral commitments, with a view to enhancing the transparency and predictability of its trade regime, and its adherence to WTO principles. Still, the legislative reforms remain very slow due to several reasons.
- Hence, the process of lawmaking in Abu Dhabi has eight stages, and a proposed law would need to proceed successfully through each stage in order for a proposal to become a law. The eight stages are (i) Initiation: the legislative process commences with the identification of a need for the making



of a new law. The need for a law can be initiated by the President of Abu Dhabi Executive Council, or an individual Government Department. **(ii)** Initial Drafting: the entity responsible for initiating a new law is required to undertake two initial processes. The first is to draft a case for the law, addressing the subject matter of the proposed law in addition to the rationale and reasoning as to why the proposed law is required. Then the entity initiating a law must draft the proposed law to be considered Legal Review. **(iii)** The drafts are reviewed by the Legal Counsel to the Executive Council to assess the political, social, legal and economic impacts of the proposed law, and discuss these aspects with the initiator of the law. **(iv)** Second Draft: The Legal Counsel to the Executive Council revises the initial draft rationale and draft law, if revisions are considered necessary. The initiating entity reviews and endorses the amendments if any are made. **(v)** Recommendation of the Secretary General of the Executive Council: A review is conducted by the Secretary General of the Executive Council to ensure the proposed law is consistent with the policy of the Government. If revisions are required, Legal Counsel drafts them. **(vi)** Recommendation of the Executive Council: The Secretary provides the draft law and the written business case to the Executive Council for debate at one of its regular twice-weekly meetings. The Executive Council can dismiss, amend or recommend the proposed law as it sees fit **(vii)** Assent of the Ruler of Abu Dhabi. His Highness Sheikh Khalifa is supreme in the lawmaking process and it is ultimately the decision of His Highness to give



his approval to the proposed law. (viii) Promulgation. If a draft law has succeeded through each stage and has the approval of His Highness, the law in the form of a decree comes into effect. Each decree is published in the Gazette of Abu Dhabi, which is circulated once a month to government and legal officials. The time required for a law to evolve from a proposal to a decree varies from case to case.

- Amongst laws currently under reform, the Companies Law is undeniably the most awaited one by the business and economic community. The reform draft aims at providing for several principles of the common law system in a civil system and it is the complexity of having principles of both systems implemented in a proper manner that is causing, amid other reasons, the delay in finalizing the Companies Law reform. It is learnt that the reform will abolish the requirement of UAE nationals/entities holding 51% shares of companies for certain activities and will address several crucial issues, namely the declared and paid up capital in Public Joint Stock Companies, the abuse of position by minority or majority of shareholders, the holding companies, the non-profitable companies. The choice of the said activities shall be determined by Cabinet decision. It is also learnt that the Companies Law has been conveyed at the Federal level for final review and issuance.
- Hence, the draft federal law on arbitration and the implementation of arbitral awards has reached the end of its final stage. The draft law, prepared in cooperation with the Ministry of Justice, is expected to be ratified and issued



within the next few months. The draft law is aligned with the ministry's efforts to modernize economic and trade laws and legislation to keep pace with current and future national economic growth. The law would establish provisions for domestic and international arbitration in the U.A.E. and will implement arbitral awards consistent with international obligations. These include the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (ratified), the New York Convention. Upon ratification and issuance of the draft law, the laws' provisions would apply to all cases of domestic and international arbitration between natural and juridical personalities, regardless of the nature of the legal relationship around which the dispute revolves, whether it be trade, civil or administrative. The draft law creates a modern framework to address the issue of arbitration. It is also learnt that the Ministry of Justice and the Ministry of Economy will play crucial roles in supervising the implementation of the new law's provisions, ensuring their effectiveness and enhancement in accordance with the country's best interests and keeping in mind international developments in arbitration. Yet, more legislative reforms are equally undertaken under Real Estate Laws in both Dubai and Abu Dhabi.

- The major legislations which are currently under reform process are outlined as follows:
  - Companies Law
  - Maritime Law



- Arbitration Law
- Electronic signature Law
- Capital Provision Law
- VAT Law
- Amendments to ESCA rules



## VIII. Conclusion

- The UAE has in the first stage of economic reforms succeeded to overhaul the country's financial and investment sector, revamp the real estate sector (namely in Dubai) and bring about a qualitative change that paved the way for the launching of a second stage of reforms. Yet, despite the vast array of integrated initiatives that are currently being implemented, and that will be implemented in the future in order to achieve sustainable development, there are still several hurdles that deter investors from considering the UAE as their ultimate business hub.
- The lack of governing regulations in certain crucial fields is considered as a significant issue to be tackled on both the Federal and the Emirates level. Moreover, the unpredictability of legislative provisions interpretations and the non publication of several regulations and decrees as well as the expanded court decisions generate a climate of uncertainty in a field where feasibility and predictability is a must for risk assessment. Moreover, several regulations are passed in the form of decrees or instructions (issued by the different emirates) without being published but are generally applicable.
- Though several legislations are currently under process of issuance or amendment, few are expected to be passed in the near future.
- It is learnt that a greater emphasis is being placed on improving the awareness and understanding held by Government Departments in the UAE of the broader Federal legal context, specifically in relation to the development and



proposal of new laws for each emirate. The efficient use of the lawmaking process remains central to the success of the restructure of the government of each emirate.

- The prominent field wherein international standards of democratic governance and modern laws are sought for the sake of undertaking a quantum leap from
  
- an exclusive limited market with low valuations to an inclusive international market with much higher valuations remains indisputably the real estate sector in the emirate of Dubai. Indeed, being an issue not be ignored when addressing a study of the legal and economic status in the UAE, the real estate sector in Dubai, which was one of the fastest growing property market, will be the topic of the in depth study for the United Arab Emirates.



## IX. Annexes

1. List of references of the laws and economic regulations

Please refer to the Research List sent separately





List of partners and concerned government parties:

- Ministry of Justice
- Ministry of Economy
- Ministry of Foreign Trade
- Dubai Chamber of Commerce and Industries
- Dubai Economic Council
- Dubai Executive Council



## 2. Background papers

Please refer to the Background Paper sent separately



3. Minutes of the meetings of the Focus Groups and individual interviews

Please refer to the documents sent separately