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**DOING BUSINESS IN THE  
UNITED ARAB EMIRATES**





# Doing Business in the United Arab Emirates

2023

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# Introduction

We are pleased to present the 2023 edition of the “Guide to Doing Business in the United Arab Emirates.”

This publication is intended to offer a simple but comprehensive guide to understanding the current investment climate and the most important laws regulating investments and commercial activities in the UAE.

This guide addresses various topics, including the history, geography and economy of the UAE, the legal landscape, foreign investment models, real estate ownership and leasehold, and employment. It also provides a comparison of the available legal investment vehicles that may potentially be used to enter the UAE market.

As one of the world’s most open and swiftly growing economies, the UAE continues to be a strategic business, trade and financial hub. The country has diversified beyond oil and gas exports, cultivating its construction and infrastructure, tourism, financial services and technology sectors.

For over a decade, Baker McKenzie has helped businesses optimize opportunities and mitigate risk in the UAE and wider Middle East.

Our lawyers have contributed their skills and experience in the preparation of this publication and are happy to assist you should you require more information about any of the topics covered in this guide.





# History, Geography and Economy







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

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

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

The population of the UAE is estimated to be 10.2 million. Approximately 88.5% of the population is composed of expatriates, with a large percentage residing in Dubai. Arabic is the country’s official language, however, English is generally used in business and everyday life. Hindu, Urdu and Persian are also widely spoken. The majority of the population is Muslim.<sup>1</sup>

The UAE has a petroleum-reliant economy. However, successful efforts at economic diversification have reduced the portion of gross domestic products (GDP) from the oil and gas sector to 30%.<sup>2</sup> The UAE has made the energy transition a priority and it is the first Gulf state to set a “net-zero” emissions target. The oil wealth accumulated by the country over the past years has also helped fund and stimulate much of its current social and economic development.

In recent years, the UAE has become a major tourist destination, attracting millions of tourists every year with a variety of attractions, such as the Dubai Shopping Festival.

The UAE is also quickly becoming a worldwide commercial hub, as indicated by numerous multinational companies relocating their regional headquarters to the country.

The main driving force behind this economic and commercial expansion is the UAE’s shift towards digital transformation and increasingly liberal economic policies, particularly increasing foreign direct investment and promoting free zones.<sup>3</sup> The UAE has no foreign exchange controls and the currency of the UAE, the dirham, is pegged to the US dollar at a rate of AED 3.67 to USD 1. There are no restrictions or levies on the repatriation of capital and profits by foreign investors outside the UAE. At present, the UAE does not impose personal income tax, except on oil concessions and branches of foreign banks.

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<sup>1</sup> Source: United Arab Emirates - The World Factbook (cia.gov)

<sup>2</sup> Source: United Arab Emirates - The World Factbook (cia.gov)

<sup>3</sup> The UAE's economy - The Official Portal of the UAE Government



# Legal Landscape





## 1. Legal System

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

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

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

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

There is no system of precedent in the UAE, however judgments of higher courts are of persuasive impact and are often upheld by the lower courts.

## 2. Judicial System

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

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

In terms of judicial hierarchy, both the UAE federal and local judicial systems are divided into Courts of First Instance, Courts of Appeal and Courts of Cassation (local) or the Federal Supreme Court (federal).

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

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

In addition to the federal and local courts, the Dubai International Financial Centre (DIFC), the financial free zone based in Dubai, has its own courts, which are known as the DIFC Courts and which are modelled on the English judicial system

DIFC Courts have jurisdiction over all civil and commercial disputes arising out of the DIFC, as well as any civil and commercial claims in respect of which parties have opted into the DIFC Court, the Court's jurisdiction having been explicitly extended by way of Dubai Law No. 16 of 2011.

Similarly, the Abu Dhabi Global Market (ADGM), the financial free zone in Abu Dhabi, has its own courts, which are also set up and modelled on the English judicial system.

### 3. Restrictions on Foreign Investment

Each corporate entity in the UAE requires a business license to conduct business in that jurisdiction (for example in the relevant Emirate or within a specific free zone). Such business license will reflect the business activities that the corporate entity is permitted to conduct. The corporate entity will need to select the activities which it wishes to conduct from a list of activities available in each jurisdiction, and the entity may not conduct the business activities other than the ones it has been licensed for.

Corporate entities can either be established in the mainland/onshore or in one of the free zones.

Each Emirate has its onshore licensing authority (the Department of Economic Development in each Emirate (the Department of Economy and Tourism in Dubai)) which licenses and regulates companies incorporated in that Emirate.

There are over 40 free zones in the UAE and each Emirate in the UAE has one or more free zones, which are regulated by a separate free zone authority and governed by different sets of companies' regulations and rules of such free zones. Some free zones are economic (such as the Jebel Ali Free Zone) or financial zones (DIFC and ADGM) while some are dedicated to a certain sector/industry or are general free zones.

The general position under the previous Commercial Companies Law No. 2 of 2015 was that any foreign investor wanting to do business in the UAE mainland and set up a company, would need to partner with a local UAE national or UAE owned entity which would own 51% of the share capital of the mainland company.

The new Federal Commercial Companies Law No. 32 of 2021 ("**CCL**") now governs the incorporation of companies and other legal forms onshore in the UAE and prescribes the foreign investment restrictions that apply to such incorporations.

The CCL replaces the general investment restriction which was prescribed under the old law by placing the responsibility of determining the required percentages of UAE ownership on the Department of Economic Development in each Emirate (the Department of Economy and Tourism in Dubai) in certain strategic sectors.

The Department of Economic Development in Abu Dhabi and the Department of Economy and Tourism in Dubai have each issued a list of activities in which 100% foreign investment would be permissible.

It is worth noting that the positive list issued by the Department of Economy and Tourism in Dubai contains industrial, agriculture, contracting and some services activities in addition to the majority of trading activities, representing a substantial step forward for foreign direct investment in the retail/trading sector in Dubai.

The Department of Economic Development in Abu Dhabi has also issued its own list of activities that includes activities permitted to foreign investors such as trading, agriculture, industrial, services, contracting, transportation and others.

In practice, the majority of activities can be carried out by 100% foreign owned entities except for those determined as activities with 'Strategic Impact' as further detailed below.

The other emirates in the UAE have started to follow suit and to implement the provisions of the CCL concerning the foreign ownership relaxation.

The UAE has issued Cabinet Resolution No. 55 of 2021 (on Determining the List of Activities with a Strategic Impact) setting out the activities which grants third party regulatory authorities the power to determine the following:

- The percentage of national participation and/or percentage of the foreign investor's participation in the share capital
- The percentage of national participation and/or percentage of the foreign investor's participation in membership of board of directors (if applicable)
- Any other conditions or controls deemed appropriate by the relevant authority

The activities set out under the List of Activities with Strategic Impact include:

- Security and Defense Activities and Activities of Military nature (regulated by the Ministry of Defense and Ministry of Interior)
- Banks, Exchange Houses, Finance Companies and Insurance Activities (regulated by the Central Bank)
- Money Printing (regulated by the Central Bank)
- Telecoms (regulated by the Public Authority for the Regulation of the Telecommunications Sector and the Digital Government)
- Pilgrimage (Hajj) and Umra Activities (regulated by the Public Authority for Islamic Affairs and Endowments)
- Quran Memorization Centers (regulated by the Public Authority for Islamic Affairs and Endowments)

Gulf Cooperation Council (GCC) nationals and entities wholly owned by GCC nationals are not subject to the foreign investment restrictions applied in the UAE.

Given the lifting of the general foreign investment restrictions in the UAE, many companies have been converted to single person limited liability companies wholly owned by foreign entities. The UAE has, therefore, issued Cabinet Decision No. 77 of 2022 (Concerning Limited Liability Companies) which regulates the procedures for establishing and managing single shareholder companies.

As discussed above, the UAE also has a large number of free zones which foster an attractive environment for businesses by offering companies—primarily 100% foreign-owned companies— incentives such as zero tax rates on their income (if the free zone entity does not have a branch in the mainland or is not engaging in activities in the mainland) and exemption from foreign exchange controls.

Free zone companies are, in principle, only permitted to conduct their activities within the vicinity of the respective free zone, nevertheless, a number of free zones have introduced a dual licensing regime which enables a free zone company to establish a presence (mainly a branch of the free zone company) and operate in the mainland under a license that the Department of Economic Development issues in certain circumstances.

## 4. Choice of Law and Dispute Resolution

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

This choice will be upheld by local courts to the extent that the foreign law provisions do not contradict Islamic Shari'a, public order or the morals of the UAE. However, the party invoking the foreign law before a UAE court has the burden of proving such foreign law to the court. The court, at its

discretion, may decide to apply UAE law if the party invoking the application of the foreign law fails to prove it and determine its effects.

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

In an effort to facilitate the enforcement of foreign judgments, the UAE has entered into numerous treaties with other countries which govern the reciprocal enforcement of foreign judgments, including the Riyadh Arab Agreement for Judicial Cooperation Convention of 1983, the GCC Convention of 1996 and other similar bilateral treaties with France, China, India and Egypt.

The UAE has enacted the new Arbitration Law under Federal Law No. 6 of 2018 (“**UAE Arbitration Law**”), which provides a modern framework in line with the United Nations Commission on International Trade Law (UNCITRAL) Model Arbitration Law in the context of domestic arbitrations conducted in the UAE. There are a number of domestic arbitration forums in the UAE, notably the Dubai International Arbitration Centre (DIAC) and the Abu Dhabi Commercial Conciliation Arbitration Centre (ADCCAC). Orders or awards of an interim nature have not been readily enforceable before the UAE courts until recently after the promulgation of the UAE Arbitration Law, in which it has recognized interim awards as a type of award enforceable before the local courts.

Parties may also select a foreign arbitration center such as the London Court of International Arbitration (LCIA), International Court of Arbitration of the International Chamber of Commerce or the United Nations Commission on International Trade Law.

In September 2021, the Dubai Government issued Decree No. 34 of 2021, abolishing the Dubai International Financial Centre Arbitration Institute (which administered DIFC-LCIA Arbitrations), as well as the Emirates Maritime Arbitration Centre (EMAC). All assets, liabilities, rights and obligations of the DIFC-LCIA and EMAC were transferred to DIAC.

The DIAC and the LCIA subsequently agreed that:

- LCIA will administer all cases duly registered and assigned a case number by the DIFC-LCIA on or before 20 March 2022.
- DIAC will register and administer all arbitrations, mediations and other ADR proceedings referring to the DIFC-LCIA rules which were commenced on or after 21 March 2022 (unless the parties agree otherwise).
- DIFC-LCIA arbitration agreements entered into before the effective date of the Decree (20 September 2021) are deemed valid, however after 21 March 2022, if a party wants to commence proceedings pursuant to a DIFC-LCIA dispute resolution agreement, such proceedings must be commenced with DIAC, unless the parties amend the existing arbitration agreement or enter into a new arbitration agreement. DIAC will accept such cases and administer them under the 2022 DIAC Rules (“**new DIAC Rules**”).

Furthermore, the new DIAC Rules confirms the DIFC as the default seat of arbitration in the absence of choice by the parties, which means that arbitrations will be governed by the DIFC Arbitration Law and DIFC Courts will have the supervisory jurisdiction over the relevant arbitrations. To enforce an award, an application can be made to the DIFC Courts, and any awards recognized by the DIFC may be enforced within the DIFC as well as onshore Dubai, pursuant to the Judicial Authority Law No. 12 of 2004.

The enforcement of foreign arbitral awards (such as awards issued by the LCIA with a London seat) are governed by the Executive Regulations set out in the Civil Procedure Code. These Executive Regulations expressly state that enforcement of foreign orders or awards would be permissible before the local courts insofar as they are final and binding. The UAE is a signatory to the Convention on the

Recognition and Enforcement of Foreign Arbitral Awards, also known as the “New York Convention,” which further provides for the enforcement of foreign arbitral awards in the UAE.

The majority of disputes are arbitrable in the UAE, subject to limited exceptions such as *inter alia* registered commercial agency disputes, registration of off-plan real estate units, labor disputes, long term rental disputes, and disputes related to public policy matters (which is defined under Article 3 of the UAE Civil Code to include provisions relating to personal status such as marriage, inheritance, lineage, provisions relating to systems of governance, freedom of trade, circulation of wealth, private ownership and other rules and foundations on which the society is based, provided that these provisions are not inconsistent with the imperative provisions and principles of the Islamic Shari’a). In addition, disputes under contracts with the UAE government are normally referred to a UAE court, except in certain emirates, e.g., Dubai, where parties may opt for arbitration subject to the approval of the Ruler of Dubai.

There is controversy surrounding the arbitrability of real estate-related disputes. Real estate is an area that has been regarded by UAE courts as a public order matter since it relates to wealth and individual ownership. However, on other occasions, the courts have ruled that disputes related to the non-performance of contractual obligations under a real estate sale and purchase agreement may be subject to arbitration, while disputes related to the registration or non-registration of real estate property may not be resolved through arbitration as it involves rules of individual ownership and the circulation of wealth (which UAE courts have regarded as matters of public policy and therefore subject to the exclusive jurisdiction of the courts).

Finally, in a recent development in November 2022, the Saudi Center for Commercial Arbitration (SCCA) established a branch based in the DIFC, which is its first office outside the Kingdom of Saudi Arabia. The SCCA branch started operating on 2 February 2023 and offers a comprehensive suite of alternative dispute resolution (ADR) services to local and international companies operating in the UAE, and wider Middle East.

## 5. Taxation and VAT

### Corporate tax

On 9 December 2022, the UAE Ministry of Finance issued Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (“**UAE CT Law**”). The UAE CT Law applies to accounting periods starting on or after 1 June 2023.

The UAE CT Law outlines the tax treatment for business operating in the UAE as follows:

- UAE free zone entities (referenced as “Qualifying Free Zone Persons” in the UAE CT Law) are subject to 0% corporate tax on their Qualifying Income and 9% on non-Qualifying Income. As of the date of this guide, Qualifying Income has not been defined. A number of conditions, as outlined in the UAE CT Law, are required to be satisfied in order to be considered a Qualifying Free Zone Person.
- Other businesses operating in the UAE are subject to 9% corporate tax on their taxable income exceeding a threshold to be announced by the UAE Ministry of Finance. Taxable income below this threshold would be subject to tax at 0%. This threshold has not been announced as of the date of this guide, although this is expected to be AED 375,000.

A number of exemptions have been announced in the UAE CT Law which can result in an entity being treated as an exempt person. These exemptions are available for (amongst other businesses) government entities, extractive businesses, qualifying public benefit entities and qualifying investment funds.

The receipt of UAE sourced dividend income is not taxable under the UAE CT Law. Capital gains derived by entities (other than UAE free zone entities) are subject to tax unless the participation exemption can be availed (which broadly requires a 5% ownership, for 12 months and the subsidiary has been taxed at a rate of at least 9%).

All businesses that are viewed as a Taxable Person (which includes UAE free zone entities) are required to register for UAE CT and to make a corporate tax filing, which is due nine months after the end of their accounting periods.

Prior to the effective date of the UAE CT Law, it is expected that the UAE Ministry of Finance will issue a number of cabinet decisions and ministerial decrees that will supplement (and therefore provide additional guidance) on the UAE CT Law.

No withholding taxes should apply on payments made to non-resident entities. In addition, the UAE has entered into an extensive network of treaties to ensure the avoidance of double taxation (if any).

## Emirate level tax decrees

As of the date of this guide, it is expected that the existing Emirate level tax decrees, focusing on upstream oil and gas activities and branches of foreign banks, will remain in place. Entities that are subject to tax under an Emirate level tax decree would also be subject to tax under the UAE CT regime (as outlined above).

## Transfer pricing

The UAE CT Law will also introduce the need for taxpayers to adhere to the arm's length principle for all transactions and arrangements with related parties, meaning that appropriate transfer prices must be charged between related parties for all arrangements. The transfer pricing methods that are specified in the UAE CT Law are generally consistent with the Organization for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines.

Taxpayers will also need to document and report how the arm's length principle is applied to related-party transactions. The reporting will be done in two ways: through a disclosure form that should be filed together with the tax return, and for certain taxpayers, through transfer pricing documentation in the form of a master file and a local file, which should be submitted upon request. The (financial) threshold for preparing documentation in the form of the master file and local file is not specified in the publication of the UAE CT Law, and neither are the requirements for the contents of the transfer pricing documentation. It is likely that this will be consistent with the OECD Transfer Pricing Guidelines. The detailed requirements for the transfer pricing documentation will likely be established through subsequent cabinet decisions.

## VAT

The UAE Federal Tax Authority (FTA) was established in October 2016 to implement and administer taxes in the UAE. At the time of its establishment, only Value Added Tax (VAT) and excise tax were envisioned to be implemented in the immediate future.

In anticipation of the implementation of VAT, the Ministry of the Finance issued the Federal Law No. 8 of 2017 ("**Value Added Tax Law**") and the Cabinet Decision No. 46 of 2017 ("VAT Executive Regulations") on 23 August 2017 and 26 November 2017, respectively. These two documents together form the VAT legislation enacted in the UAE. Since its first issuance, the Value Added Tax Law underwent a single amendment on 26 September 2022 (effective from 1 January 2023) while the VAT Executive Regulations underwent multiple amendments on 4 June 2020, 11 March 2021 and 28 September 2021.

On 1 January 2018, VAT became effective at the standard rate of 5%.

VAT is a tax on consumption and will be chargeable on the supply of goods and services at 5% unless an exemption or zero rating provision applies. Where taxpayers only make supplies subject to VAT at 5%, they will be entitled to full input tax recovery on any VAT incurred on expenses.

There are a number of exemptions contained in the VAT legislation, including the supplies of life insurance, financial services that are not provided for an explicit fee, residential buildings, bare land and local passenger transport. Taxpayers that make exempt supplies do not have a right to input tax recovery and any VAT incurred on expenses will become a VAT cost to them.

There are a number of supplies which are subject to the zero rate of VAT, including the export of services and goods, preventive and basic healthcare services and educational services. Taxpayers that make zero rated supplies are eligible to an input tax recovery and the VAT incurred on expenses will not become a VAT cost to them.

Where taxpayers make both exempt and taxable supplies, being supplies subject to VAT at 0% or 5% respectively, the taxpayer is entitled to a partial input tax recovery.

The supply of goods within a number of free zones (which qualify as Designated Zones for VAT purposes) are outside the scope of VAT if certain conditions are met. However, the supply of services within a Designated Zone will still be subject to VAT in the UAE.

Any person who carries on a business activity in the UAE and makes taxable supplies and other qualifying supplies in excess of AED 375,000 (c. USD 100,000) within a 12 month period is required to register for VAT in the UAE within 30 business days of exceeding the mandatory registration threshold.

## Excise tax

Excise tax was introduced at a federal level on 1 October 2017. Excise tax is levied on carbonated drinks (at a rate of 50%), tobacco products and energy drinks (both at a rate of 100%).

The Emirate of Dubai and certain other emirates impose taxes on certain goods and services, including alcoholic beverages and hotel and restaurant bills. For instance, all sales of hotels are subject to a municipality fee. The municipality fee in Dubai was reduced from 10% to 7% as of 1 July 2018.

## Other taxes

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

Real estate transfer tax, referred to as "registration fees," is levied on the transfer of ownership of real estate in the UAE (including where there is an indirect transfer in a company holding real estate in the UAE). The amount varies depending on the emirate and the location of the real estate. In Dubai, the transfer tax is currently 4%, although the DIFC charges 5%.

## FATCA & CRS

Moreover, the UAE became a US Foreign Account Tax Compliance Act (FATCA) partner in 2015 and signed an intergovernmental agreement with the United States setting out guidelines for the application of FATCA by financial institutions regulated by the UAE Central Bank, the UAE Insurance Authority, the Emirates Securities and Commodities Authority (SCA) and the DIFC.

The UAE has also commenced the reporting of information for tax purposes, pursuant to the Common Reporting Standards (CRS) of the OECD.

## Economic Substance Regulations

In 2019 the UAE introduced Economic Substance Regulations. Licensees that carry out 'Relevant Activity' from which they derive income are required to demonstrate that they have sufficient substance in the UAE to carry out that activity.

There are two annual filing requirements: (i) notification within six months after the end of the financial year and (ii) report within 12 months after the end of the financial year.

## 6. Customs Duties

Customs duty is imposed on the import of goods into the UAE in accordance with Federal Decree-Law No. 15 of 2022 (on the Ratification of the Common Customs Law of the Cooperation Council for the Arab States of the Gulf and Its Implementing Regulation). The customs duty payable is computed based on a tariff structure that is regularly updated. The general customs duty is at a flat rate of 5% (a zero tariff is applied to some goods) and this is mainly based on the transaction value (the price paid or payable for the imported goods). Other methods apply where the transaction value method is not feasible. Tobacco and alcohol are subject to a higher customs duty.

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

As a GCC member state the UAE is party to free trade agreements with the European Free Trade Association (EFTA) and Singapore. The UAE on its own has a free trade agreement with Israel and is party to the Greater Arab Free Trade Area Agreement (GAFTA), a regional free trade agreement covering 17 Arab countries.

Imports into UAE free zones are not subject to customs duties and free zone companies are required to maintain proper inventory management systems for imports, exports and other entries or exits of goods.

There are no customs duties on exports.

## 7. Import/Export Controls

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

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

One example is the ban on the exportation or re-exportation of strategic goods, including arms and military hardware, chemical and biological materials, and dual-use items without a specific license and approvals of the competent authorities.

Many wireless or electronic devices must be "type approved" by the Telecommunications Regulatory Authority (TRA) before they can be imported and sold in the UAE, and importers are required to



register as “approved dealers” with the TRA in order to import these types of devices. Likewise, all books, magazines, printed publications, DVDs and other media items must first be submitted to the National Media Council (NMC) for prior content approval, and a license is required from the NMC to import and distribute such types of media in the UAE. The same rules apply to digital content and media delivered over local domains.

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

- All kinds of narcotic drugs (hashish, cocaine, heroin, poppy seeds, hallucination pills, etc.)
- Goods intended to be imported from boycotted countries
- Crude ivory and rhinoceros horn
- Gambling tools and machineries
- Three layers fishing nets
- Original engravings, prints, lithographs, sculptures and statues in any material
- Used, reconditioned and inlaid tires
- Radiation-polluted substances
- Printed publications, oil paintings, photographs, pictures, cards, books, magazines, stony sculptures and mannequins which contradict Islamic teachings or decency, or which deliberately imply immorality or turmoil
- Any other goods, the importation of which is prohibited under the authority of UAE customs laws or any other laws in the country
- Forged and duplicate currency
- Cooked and home-made foods

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

Following the signing of the Abraham Accords - Treaty of Peace, Diplomatic Relations and Full Normalization on 15 September 2020 with effective date on 16 August 2020, the UAE also issued the Israeli Boycott Repeal Law (Federal Decree Law No. 4 of 2020) to abolish the Federal Law No. 15 of 1972 on the Boycott of the State of Israel (“**Boycott Law**”).

The Israeli Boycott Repeal Law repealed all the restrictions previously imposed under the Boycott Law and under any other UAE law and allowed among other things to enter or possess Israeli goods of all kinds and trade in them in the UAE, which was previously prohibited under the Boycott Law.

In relation to the import/export restrictions against Qatar, on 5 January 2021, following the signing of the “Al-Ula Declaration” which ended a three-and-a-half-year period of restrictions against the State of Qatar, which was put in place in June 2017, the UAE have taken steps to reopen all land, sea and air corridors for inbound and outbound movement to and from Qatar, and the relevant authorities in the UAE have issued directives and circulars to this effect.

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

## 8. Anti-Bribery and Corruption

The UAE does not have a stand-alone anti-bribery or corruption law. However, different laws contain provisions dealing with anti-bribery and corruption in the public and private sectors. Most of these provisions are found in the Federal Law on Crimes and Penalties No. 31 of 2021 (“**Penal Code**”) to bring the anti-corruption regulations in line with international practices. The Penal Code contains anti-bribery provisions which apply to both public officials, and managers and employees of private companies. The following are the categories of individuals that are subject to the anti-bribery provisions of the Penal Code:

- Public officials (the definition of which includes directors, managers and all employees of public authorities, public corporations, partially owned federal or local state entities, arbitrators, court appointed experts and investigators)
- Persons assigned to public service
- Foreign public officials and officials of international organizations
- Private companies or establishments and employees of such entities

The scope of a bribe captures both “direct” and “indirect” bribes. A bribe-related crime is committed if a person requests, accepts or has been given a promise, directly or indirectly, to receive a gift, benefit, or unmerited gratuity to influence that person to act in a way or refrain from acting in a certain way in relation to their function/duties.

Moreover, the crime of bribery occurs even if the person receiving the bribe does not intend on executing the act for which he was offered the bribe, or if the demand or acceptance or promise of the bribe occurs subsequent to the performance of the act.

Likewise, it is a crime for an individual to offer to any of the abovementioned categories of individuals a donation or advantage of any kind, or a promise of anything of value, in order to incite the official to commit an act in violation of their duties, regardless of whether the bribe was declined or accepted.

## 9. Competition Law

The competition laws and regulations in the UAE aim to promote and safeguard competition and anti-competitive behavior by restraining restrictive business practices as well as ensuring fair and competitive prices in the UAE market.

The UAE competition regime is regulated by:

- Federal Law No. 4 of 2012 (“**Competition Law**”) which is the principal legislation regarding the regulation of competition in the UAE;
- Executive Regulation No. 37 of 2014 which is classified as the implementing regulations of the Competition Law; and
- Cabinet Resolutions No. 13 of 2016 and No. 22 of 2016 which have both clarified essential areas of the Competition Law, such as the relevant market share thresholds.

The Department of Competition at the Ministry of Economy (MOE) and the Competition Regulation Committee, which is chaired by the Deputy Minister of Economy, are the principal regulators tasked with the implementation of the Competition Law.

### Scope of the Competition Law

Businesses which have a physical presence and/ or are operating in the UAE fall within the scope of application of the Competition Law, including any foreign entities which, by directly or indirectly

conducting business in the UAE, may affect the competition environment in the country. The Competition Law stipulates that federal and local government entities or government-controlled entities (defined as government ownership of 50% or more) as well as small and medium-sized enterprises (SMEs) are outside the scope of its application.

SMEs have been defined in Cabinet Resolution No. 22 of 2016 as enterprises having up to 200 employees (in the trading and services sectors) and 250 employees (in the industrial sector) and annual turnover not exceeding AED 250 million (in the industrial and trading sectors) and AED 200 million (in the services sector). Turnover is calculated on the basis of the group of companies, not just the establishment that is party to the transaction.

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

The Competition Law regulates three key areas of economic activity: transactions leading to concentrations between businesses, restrictive agreements and actions that constitute an abuse of a dominant position.

## Merger Control

Pre-notification and prior approval are required for commercial transactions (including joint ventures, mergers, or acquisitions) that may lead to an economic concentration.

The concept of an economic concentration is defined in the Competition Law as: *“any act resulting in a total or partial transfer (merger or acquisition) of property, usufruct rights, rights, stocks, shares or obligations from one establishment to another, empowering the establishment or a group of establishments to directly or indirectly control another establishment or another group of establishments”*. Cabinet Resolution No. 13 of 2016 provides that an economic concentration is notifiable if the market share of the combined establishments exceeds 40% of total transactions in the relevant market of goods or services that are interchangeable based on their price, characteristics and usage, in a particular geographic area. The term “total transactions” might arguably be interpreted as the combined annual turnover of all parties to the transaction. However, the precise meaning of total transactions is not clearly defined in the Competition Law.

The Competition Law provides that a notification must be made to the MOE in writing at least 30 days from the date of “concluding a draft agreement” contemplating the economic concentration. The notification must be jointly submitted by the establishments engaged in the economic concentration.

Penalties for failure to file the notification can be:

- Fines amounting to 2% to 5% of the merging entities’ annual total turnover of goods or services (subject to the relevant market) realized within the last financial year
- Where it is impossible to determine the total turnover of the merging entities goods or services, a fine ranging from AED 500,000 to AED 5 million

The obligation to apply for and obtain clearance lies with both entities, and the penalty applies to both merging entities. It is not yet clear how the authority will calculate this penalty in practice. There have not been any published precedents on this matter to date.

The penalty for implementing the relevant transaction prior to the grant of approval issued by the Minister is a fine ranging from AED 50,000 to AED 500,000. Clearance will be revoked if the applicant fails to implement its remedial undertakings. Furthermore, the Competition Law provides an umbrella penalty of a fine of AED 10,000 to AED 100,000, which is applicable in the event that any of its provisions are breached.

The fines set out above will be doubled in case of repetition.

Additionally, the court could order the closing down of the violator's business for a period between three to six months and/or order the publication of the verdict in two local newspapers.

## Restrictive agreements

The Competition Law does not draw a distinction between vertical and horizontal agreements, i.e., a general prohibition is provided for, and therefore encompasses both types of arrangements. The Competition Law prohibits restrictive agreements between establishments (which could be a legal entity or an individual) whose "subject" or "objective" is to "prejudice, limit or prevent competition".

All agreements or arrangements which may restrict or prevent competition are prohibited. This includes arrangements and agreements that are written and/or oral agreements, arrangements, alliances and practices, whether they are implied or expressed, formal or informal. The Competition Law sets out the following, non-exhaustive list of agreements which are considered to restrict competition:

- Agreements which entail direct or indirect price fixing
- Agreements which entail fixing the conditions of buying, selling or performing of services
- Colluding in tenders or offers
- Agreements to suspend or limit the production, development, distribution or marketing or any other aspects of investment
- Colluding to refuse to deal with a certain entity or stopping or impeding a certain entity from carrying out its activity
- Agreements to limit the supply or withdrawal of goods or services from the relevant market, including the unlawful concealment or storage, or creating a sudden over supply that may lead to unreal prices
- Agreements to divide markets or assign clients based on geographic areas, distribution centers, quality of clients, seasons and periods or any other basis that may negatively affect competition
- Taking any measure to limit market entrance or exclude an entity from the market, or to hinder joining existing agreements or coalitions

Prior notification to the Department of Competition is mandatory in order to obtain an exemption for concluding a restrictive agreement that would otherwise be prohibited. There is no applicable time limit. However, the application must be submitted by both parties to the agreement prior to concluding the restrictive agreement.

The penalty for concluding a restrictive agreement in breach of the provisions of the Competition Law is a fine ranging from AED 500,000 to AED 5 million. In addition, personal criminal liability for violations of the Competition Law can be attached to a director or manager in the event they had criminal intent. From a civil perspective, a director or manager could be liable towards the company, the shareholders and third parties for damages or costs that arise from acts of fraud, gross error, abuse of power, mismanagement, violation of any of the applicable laws, violation of the company's memorandum of association or the terms of his/her appointment.

The offending entity may also be liable towards third parties for damages they may have suffered as a result of the anti-competition behavior that is prohibited under the Competition Law.

Lastly, the court could order the closing down of the violator's business for a period between three to six months and/or order the publication of the verdict in two local newspapers.

## Abuse of a dominant position

Market dominance is defined under Cabinet Resolution No. 13 of 2016 as having a market share that exceeds 40% of the total transactions in a relevant market of goods or services that are interchangeable based on their price, characteristics and usage, in a particular geographic area. Establishing a dominant position would therefore involve defining the relevant market and then measuring the market share in terms of value of sales (essentially turnover).

Any behavior that prejudices, limits or prevents competition is considered abusive conduct under the Competition Law. This includes but is not limited to:

- Imposing, directly or indirectly, prices or conditions for the reselling of goods or services
- Selling a commodity or performing a service with a price that is less than the actual cost, with the aim of hindering competitive establishments from entering the relevant market, excluding them from such market, or causing them losses that prevents them from continuing their activities
- Discriminating among clients in identical contracts in relation to the prices or terms of contract
- Obliging a client to not deal with a competitive party
- The total or partial rejection of carrying out a transaction in accordance with standard market practices
- The unjustified refusal to deal in goods or services in a manner that leads to imposing unreal prices
- Making the conclusion of an agreement conditional on the other party accepting an obligation to deal in other goods or services that are, by their nature or by commercial use, unrelated to the original agreement
- Intentionally publishing incorrect information
- Altering the supply of goods in order to create artificial scarcity or abundance of supply
- The penalties for abusing a dominant position without having obtained an exemption from the MOE are the same fines and sanctions as those noted for restrictive agreements above.

## 10. Data Protection and Privacy

On 27 November 2021, the UAE government published Federal Law No. 45 of 2021 on Personal Data Protection ("**PDPL**"). The PDPL came into effect on 2 January 2022. However, a grace period during which the PDPL will not be enforced is currently in effect and will continue until a period of six months has elapsed from the date of publication of the PDPL's executive regulations ("**PDPL Executive Regulations**"). The PDPL Executive Regulations were expected to be published by 28 May 2022, however as of the date of this guide they are yet to be published. While a separate law published alongside the PDPL anticipates the establishment of a new data regulator, the Emirates Data Office, the new regulator is not yet operational. Once the grace period expires the UAE's information technology and communications regulator, the Telecommunications and Digital Government Regulatory Authority (TDRA), will be responsible for enforcing the PDPL in the interim. Once the Emirates Data Office is operational, it will be responsible for enforcing the PDPL and issuing all associated explanatory guidance.

The PDPL has extra-territorial effect and regulates UAE entities operating in, or which conduct data processing in the UAE (not including the DIFC and ADGM). The PDPL equally regulates all foreign entities that collect or otherwise process the personal data of UAE data subjects.

While the PDPL enshrines many of the core principles and concepts found in the European General Data Protection Regulation (GDPR), including in many of its core definitions, it also differs from it in many critical respects, such as the fact that the default position under the PDPL is that the consent of the data subject must be provided in order to process personal data unless an alternative legal basis applies. Alternative grounds include where the processing is necessary to perform a contract with the data subject (such as a contract for purchase and delivery of products) or for compliance with a law which the controller is subject to. Importantly, the PDPL lacks an equivalent to the “legitimate interests” ground (Article 6(1)(e) of the GDPR) to legitimize the processing of personal data.

Under the PDPL, cross-border transfers of personal data are deemed legitimate where they are made to a jurisdiction that has adopted personal data protection legislation, provided the legislation in question reflects the most important provisions, measures, controls, conditions and rules for protecting the privacy and confidentiality of personal data, as well as honoring the rights afforded to data subjects by the PDPL and provisions relating to the enforcement of the relevant requirements by a regulatory or judicial authority. The transfers will also be lawful where they are made to a country with whom the UAE has signed a multi-lateral or bilateral agreement for the protection of personal data.

Transfers to countries that do not satisfy either of these requirements (referred to as “non-adequate” jurisdictions under the GDPR) will still be permitted in a range of circumstances, including where:

- A contract is put in place that obliges the data importer to implement the provisions, measures, controls and requirements contained in the PDPL.
- The express consent of the data subject is obtained provided this does not conflict with the UAE’s public interests or security interests.
- The transfer is necessary to exercise or defend rights before judicial authorities.
- The transfer is essential for the performance of a contract between the data subject and the controller, or between the controller and a third party in the data subject’s interests.
- The transfer is necessary in connection with international judicial cooperation.
- The transfer is necessary for the protection of public interest.

The PDPL Executive Regulations are likely to introduce further requirements that will apply when making cross-border personal data transfers.

In addition to the PDPL, data protection and privacy provisions are contained in a number of other UAE laws, regulations and policies, some of which relate exclusively to certain sectors or technologies. The most notable legislation applies to data that is process in the healthcare and banking sectors. The processing of personal data related to health and banking/credit personal data, which is subject to separate legislation are expressly excluded from the scope of the PDPL’s application. Significantly, the responsibility for the enforcement of these requirements is shared among a number of different regulators rather than one authority. The default regulator is the TDRA, until the Emirates Data Office is operational, but certain sectoral regulation is enforced by sectoral regulators, notably the Central Bank for the financial services industry and the Ministry of Health and Prevention and the Emirate level health authorities in the health sector.

Federal Law No. 34 of 2021 (“**Cybercrime Law**”) also include a number of provisions that creates an offence for breach of privacy in a digital context and criminalizes certain other activities relating to

personal data such as unauthorized access to an individual's personal data using information technology.

In December 2015, the Government of Dubai implemented a data sharing law, requiring the exchange of data “relating” to Dubai between Dubai government entities and data providers. Data providers may include private sector businesses, including those based in Dubai free zones, as determined by the regulator, the Dubai Data Establishment. The underlying purpose of the law is to gather greater volumes of data from stakeholders across the Emirate, which can be made available openly or shared on a more limited basis between participants, to improve analytics and in turn to support economic growth in the Emirate. In 2019, Federal Law No. 2 of 2019 (“**Health Data Law**”) was enacted which regulates the use of information technology and communications in the healthcare sector. Importantly, the Health Data Law restricts the transfer of health data as well as its processing outside of the geographic boundaries of the UAE, where that data relates to patients or the delivery of healthcare services in the UAE. The only exception to the general restriction is where a resolution is issued by the relevant emirate-level health authority in coordination with the Ministry of Health and Prevention. The sole resolution that has been issued in this regard to date is Ministerial Resolution No. 51 of 2021 (“Data Export Resolution”), which provides a number of legal bases that can be relied on to legitimize the export of health data. It was initially understood that the Data Export Resolution would apply to organisations operating throughout the UAE. However, it has since become apparent that the health sector regulators in the Emirate of Dubai and Abu Dhabi intend to follow their own, independent, supplementary processes when assessing whether or not a cross-border transfer of health data (or any processing of health data on a cross-border basis), is indeed permitted. This is detailed in Emirate level circulars and/or standards published by the Emirate’s health sector regulators. In the case of the Abu Dhabi regulator, the supplementary requirements are more stringent than those detailed in the Data Export Resolution.

Meanwhile, the TDRA has introduced a policy regulating the provision of Internet of Things (IoT) solutions. The Central Bank replaced the historic legislation regulating e-payment services with a new, more comprehensive, Stored Value Facilities Regulation in 2020 as well as a new Outsourcing Law and associated Standards in 2021. Both legislation contain data regulatory requirements.

The DIFC and the ADGM, which benefit from autonomy in implementing commercial and civil legislation, have issued their own data protection laws which apply within their geographic boundaries and to companies operating from the free zones. The laws in both the DIFC and ADGM were overhauled in 2022 and 2021 respectively to bring them more closely into line with the GDPR. Projects to further refine these frameworks are ongoing. In addition, the Dubai Healthcare City, another free zone, has adopted specific regulations on data protection addressing the collection, use, disclosure and transfer of patient health data. The Dubai Healthcare City requirements should be read together with the onshore legislation regulating the processing of health data.

## 11. Intellectual Property

Intellectual property (IP) is a critical aspect of doing business in the UAE. As a rapidly developing country with a strong focus on innovation and entrepreneurship, the UAE recognizes the importance of protecting the rights of creators and inventors. It has enacted several laws and regulations to govern IP rights (IPRs) and ensure that businesses operating in the country have the necessary legal protections for their IP.

The main IPRs recognized in the UAE are patents, trademarks, copyrights, geographical indications, industrial designs, trade names, trade secrets, domain names and plant variety rights. Some of these IPRs are protected through registration with the competent authorities in the UAE.

The primary legislation that governs IPRs in the UAE is comprised of the following laws:

- Federal Decree-Law No. 36 of 2021 on Trademarks: The law governs the registration and protection of trademarks and geographic indications in the UAE. Trademarks can include logos, slogans, sounds, smells, holograms, 3-dimension trademarks, and brand names used in commercial activities. The law sets out the requirements for trademark registration and the procedures for enforcing trademark rights in the country.
- Federal Decree-Law No. 38 of 2021 on Copyrights and Neighbouring Rights: The law provides protection for literary and artistic works, such as books, music, and software. It sets out the conditions under which these works can be protected, the rights of authors and owners, and the penalties for infringement.
- Federal Law No. 11 of 2021 on the Regulation and Protection of Industrial Property Rights: The law provides protection for the ornamental or aesthetic aspects of products, such as their shape and appearance. It sets out the conditions under which industrial designs and models can be protected and the rights of owners.
- DIFC Intellectual Property Law No. 4 of 2019 (“**DIFC IP Law**”): The law recognizes IPRs registered in the UAE under the relevant federal laws, and provides regulations for the full spectrum of IPRs, including patents, utility certificates, industrial designs, copyright, trademarks, trade names and trade secrets. The DIFC IP Law introduces concepts such as IP ownership in employment relationships, well-known trademarks, trademark licensing, conflicts between trademarks and trade names, trademark fair use, and copyright ownership.

Domain names (.ae) are protected in the UAE by the modified Uniform Domain-Name Dispute-Resolution Policy.

Moreover, the Commercial Transactions Code, Penal Code, Civil Code, and, with respect to employees, the Labor Law, contain provisions relating to the protection of knowhow and trade names. In addition, the Commercial Fraud Law enhances brand owners’ rights by imposing strict penalties on those in possession of counterfeits for the purpose of sale.

IPRs in the UAE are protected on a federal level. However, the enforcement of these rights is carried out on a local level and therefore separately handled by the respective authorities in each Emirate.

The UAE has federal courts, local courts (Abu Dhabi, Dubai and Ras Al Khaimah) and specialized courts in the DIFC and the ADGM that have jurisdiction over IP disputes. Federal and local courts hear cases arising from federal IP laws, while DIFC and ADGM courts hear cases arising from IP rights registered in their respective free zones. DIFC and ADGM courts systems follow common law principles and have the power to enforce their decisions within the UAE and internationally. The decisions of DIFC and ADGM courts can be appealed to the federal courts.

The Madrid System offers a streamlined approach for trademark owners to secure protection for their marks across multiple countries. In 2021, the UAE joined the Madrid System making it possible for trademark owners in the UAE to file a single application and pay a single set of fees to gain protection in other member countries. Similarly, trademark owners in other member countries can use the Madrid System to obtain protection in the UAE. The Madrid System provides an efficient way for trademark owners to expand their protection and the adoption of the system by the UAE has led to a growing number of international registrations. When deciding on the best approach for securing trademark protection, it is important to take into account factors such as cost and strategic considerations, in addition to the benefits offered by the Madrid System.

The concept of the metaverse has garnered significant attention and this virtual universe is estimated to reach a market value of USD 5 trillion by 2030, attracting businesses and entrepreneurs from around the world. In an effort to establish itself as a leading hub in the metaverse economy, the Emirate of Dubai has taken proactive measures by setting up the Virtual Assets Regulatory Authority (VARA) and announcing its Metaverse Strategy. Companies interested in the metaverse should be



mindful of protecting their IPRs. This can be achieved by registering trademarks and logos, conducting clearance searches, and even registering Arabic versions of their marks. The UAE Trademark Office has recognized the significance of metaverse-related goods and services, accepting terms in Classes 9, 35, 41 and 42 for trademark registration. Having a trademark registration in place is crucial for companies to defend against potential infringers. Copyright protection should also be taken into consideration, especially when it comes to territorial issues and the risk of infringement. By taking these steps, companies can ensure that their IPRs are protected and secure in the fast-growing metaverse economy.

In the context of AI, IP laws in the UAE apply to AI systems and their outputs in the same manner as they apply to other forms of IP. For example, if an AI system is developed and owned by a company, the company may seek to protect its rights in the AI system through patents, copyrights or trade secrets. Moreover, the outputs generated by AI systems, such as music compositions, photographs or written works, may also be protected by copyright laws in the UAE if they meet the requirements for originality and creativity. The UAE is rapidly adopting AI technology, and the government is actively working on establishing the legal and regulatory framework for AI.

## 12. Government Procurement

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

At the federal level, Cabinet Resolution No. 4 of 2019 sets out the requirements for contracts to be executed with the UAE Federal Government, ministries and federal agencies. In relation to public private partnerships carried out by the federal entities, the UAE Cabinet has issued Resolution 1/1 of 2017 on the procedures manual for partnership between federal entities and the private sector.

At the local level, the Emirates of Abu Dhabi, Dubai and Sharjah have enacted stand-alone procurement laws applicable to the tenders issued by local public authorities. Generally speaking, local procurement laws are substantially similar to the overall federal procurement regulations, although some matters are addressed differently in each regulation. Moreover, Dubai and Abu Dhabi have their own public private partnership laws No. 22 of 2015 and No. 2 of 2019, respectively, regulating the partnership between the public and the private sector in each of the respective emirates.

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

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

In procurement contracts with governmental or quasi-governmental entities, UAE law applies if parties do not agree otherwise. Referring the disputes to an arbitration seated in the relevant emirate may persuade the governmental and or quasi-governmental entity to agree on the insertion of an arbitration clause in the agreement.

## 13. Money Laundering

The UAE has a comprehensive framework in place for combating money laundering and terrorist financing which is now more closely in line with the Financial Action Task Force (FATF) Recommendations.<sup>4</sup>

### The UAE Anti-Money Laundering (AML) Framework

The UAE AML framework consists of the following key legislation (“**AML Legislation**”):

- Federal Law No. 20 of 2018 on Anti-Money Laundering, Combating the Financing of Terrorism and the Financing of Illegal Organizations (“**AML Law**”)
- Federal Law No. 7 of 2014 on Combating Terrorism Crimes (“**CT Law**”)
- Cabinet Resolution No. 10 of 2019 (“**AML Resolution**”) which sets out the measures and requirements for implementing the AML Law
- Decree No. 74 of 2020 in relation to Targeted Financial Sanctions and putting in place the Executive Office for Control and Non-Proliferation (EOCN)
- A range of regulations made by the relevant UAE authorities and regulators including the UAE Central Bank, the Securities and Commodities Authority (SCA) and the UAE Insurance Authority, which implement the AML Law and the AML Resolution.

The AML Legislation applies to all financial institutions in the UAE, as well as certain “Designated Non-Financial Business and Professions” (DNFBPs) (e.g., dealers in precious metals, accountants, lawyers, real estate brokers). The AML Law and AML Resolution follow the “Risk-Based Approach” (RBA) (as opposed to a prescriptive and blanket “one-size fits all” approach) which is provided for under the FATF Recommendations. Under the RBA, each client is classified in accordance with the level of money laundering risk the client presents. The degree of scrutiny to be applied during the mandatory customer due diligence process, both at the start of every new client relationship and on an ongoing basis, will depend on the client’s assessed money laundering risk, with higher risk clients being subject to a more onerous level of scrutiny. The AML Resolution recognizes the status of foreign and domestic “Politically Exposed Persons” (PEPs). Foreign PEPs are deemed to present a high money laundering risk, while the level of risk for domestic PEPs would need to be assessed on a case-by-case basis.

There is a requirement under the AML Law to submit a Suspicious Activity Report (SAR) to the Financial Intelligence Unit (FIU) at the UAE Central Bank whenever a person suspects money laundering activity. Financial institutions and DNFBPs are required under the AML Legislation to keep confidential all SAR and money laundering related information. The tipping-off of any information in relation to the filing of an SAR or an ongoing AML investigation, to any person, is a crime punishable by imprisonment and/or a fine.

Finally, the AML Law and CT Law and regulations also require any person to comply with the regulations made by the relevant UAE authorities in relation to the United Nations Security Council resolutions on sanctions.

The EOCN website (<https://www.uaieic.gov.ae/en-us/un-page>) lists the domestic and UN designated persons which financial institutions and DNFBPs are mandated to consult on a regular basis before onboarding any client.

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<sup>4</sup> The Financial Action Task Force Recommendations set out a comprehensive framework of standards which countries should implement in order to effectively combat money laundering. Source: <https://www.dfm.ae/>

There is also a possibility to present a grievance if a person believes that it is wrongfully listed.

## The Financial Free Zones' AML Frameworks

The AML Legislation also applies in the UAE financial free zones where UAE commercial and civil laws are not applicable. The financial regulators at the financial free zones have established their own very detailed and sophisticated AML regimes which are in line with the FATF Recommendations, the AML Legislation and international standards and best practice:

- In the DIFC, the financial regulator, namely the Dubai Financial Services Authority (DFSA), administers the Anti-Money Laundering, Counter Terrorist Financing and Sanctions Module of the DFSA Rulebook.
- In the ADGM, the Financial Services Regulatory Authority (FSRA) administers the Anti-Money Laundering and Sanctions Rules and Guidance.

Although the DFSA and the FSRA do not have criminal jurisdiction, they can implement enforcement action in relation to breaches of their AML rules, and impose severe administrative sanctions. Sanctions include fines in an unlimited amount, the withdrawal of a regulatory license, as well as banning an individual from carrying out activities in the relevant financial free zones.

## 14. Bankruptcy

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

The Bankruptcy Law has introduced the following key concepts:

- A framework for an out-of-court financial reorganization process has been established and a "financial reorganization committee" which has been set up in 2018 by the UAE Council of Ministers and comprises the Central Bank, ESCA and representatives of the Emirates of Abu-Dhabi, Dubai and Sharjah, chaired by the Deputy Minister of Finance entrusted with supervising the reorganization of regulated institutions and too big to fail companies in distress but not yet insolvent or undergoing a court process.
- Preventive composition (which predated the Bankruptcy Law) will remain a possible pathway for businesses in distress. However, the conditions to opt for preventive composition have been relaxed. The ability to settle 50% of the debt is no longer a condition for the composition plan to be approved. Any debtor that is not in default for more than 30 business days or is not in a "debited financial position" may initiate a composition.
- A creditor whose receivables amount to AED 100,000 or more may commence bankruptcy proceedings against the debtor.
- If bankruptcy proceedings are initiated, debt restructuring may be opted for. While this is also a court-supervised process, debt restructuring may be initiated with the debtor's consent if the bankruptcy trustee deems that the debt restructuring will enable a higher recovery compared to the recovery under a normal bankruptcy process entailing the sale of business.
- Crimes of dishonored checks will be suspended if a preventive composition plan or a debt-restructuring plan is approved. In this case, the check holder becomes one of the unsecured creditors.

- The ability to seek new financings is reinforced. The provisions adopted in the Bankruptcy Law are more flexible compared to those of the CTC. The trustee may request the court to approve seeking new financings, secured or unsecured, necessary for the continuance of the debtor's business. Additionally, any approved new financings will rank above the debts of unsecured creditors.
- Trustees will be nominated by debtors and have been significantly empowered under the Bankruptcy Law. This may potentially reduce the courts' involvement and lead to a smoother and more efficient process. A trustee may also be a corporate entity.
- The scope of application of the Bankruptcy Law is broader than the CTC. All commercial companies (except for financial free zones that are subject to special bankruptcy regulations, such as the DIFC and ADGM), traders/merchants and civil partnerships (set up pursuant to the Civil Transactions Code) are subject to the Bankruptcy Law. Individuals remain out of the scope of the Bankruptcy Law, as there has been a law issued in 2019 governing the insolvency of individual consumers.
- Directors' liability will remain as is, meaning directors whose actions have caused losses continue to be jointly liable for the debts of the company if the assets of the debtor are not sufficient to cover 20% of its debts, provided they have been found liable under the provisions of the commercial companies law. Likewise, the suspect period will remain unchanged, meaning any transaction entered into within two years before the issuance of bankruptcy proceedings (the suspect period) is void or voidable.
- The UAE has also, during 2020, amended the Bankruptcy Law to introduce the concept of exceptional circumstances such as pandemics and other natural disasters, giving distressed persons a relief from filing for insolvency during this period and allowing such debtors to reach out-of-court settlements with their creditors.

We understand that the UAE Ministry of Finance is working together with World Bank experts on a new Bankruptcy Law that simplifies and streamlines the existing law.

It is expected that the draft law will be issued for public consultation in March 2023 and the law is expected to be issued in late 2023.

## 15. Exchanges

The UAE is home to the following exchanges which are located:

- In the UAE, outside the financial free zones, and are licensed and regulated by the SCA:
  - the Dubai Financial Market<sup>5</sup> (DFM), a securities exchange located in the Emirate of Dubai
  - the Abu Dhabi Exchange<sup>6</sup> (ADX), a securities exchange located in the Emirate of Abu Dhabi
  - the Dubai Global Commodities Exchange<sup>7</sup> (DGCX), a commodities exchange located in the Dubai Multi Commodity Centre (DMCC) free zone in the Emirate of Dubai

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<sup>5</sup> <https://www.dfm.ae/>

<sup>6</sup> <https://www.adx.ae/English/Pages/default.aspx>

<sup>7</sup> <https://www.dgcx.ae/>

- In the DIFC and are licensed and regulated by the DFSA:
  - the Dubai Mercantile Exchange<sup>8</sup> (DME), an energy-focused commodities exchange
  - Nasdaq Dubai,<sup>9</sup> a securities exchange
- In the ADGM:
  - ICE Murban Futures for crude oil trading
  - AirCarbon Exchange for the trading of carbon credits
  - A number of licensed crypto-exchanges

The exchanges have their own bespoke member rules which are in line with the requirements of their relevant regulator. Members of the exchanges are subject to the rules of the exchange, as well as those of the regulator in relation to the offering of securities, the listing of securities, market disclosures, regulatory notifications, takeovers, and insider dealing and market abuse.

The UAE Cabinet has in 2020 decided to grant the UAE Exchanges Self-Regulated Organizations status, meaning that these exchanges will act as listing authorities under the ultimate supervision of the SCA.

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<sup>8</sup> <https://www.dubaimerc.com/>

<sup>9</sup> <http://www.nasdaqdubai.com/>



# Foreign Investment Models





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

For an onshore (also termed as a “mainland”) presence, i.e., outside a free zone, foreign parties can either establish a company which will be governed by the CCL. The most common vehicles used by investors are a single person limited liability company (where the company carries out activities which fall under the positive list of activities in the said Emirate) or a limited liability company that will have two or more shareholders (normally used when a UAE partner is required to hold a certain percentage of the shareholding in the company).

Corporate entities incorporated in free zones are governed by the free zone companies regulations and other rules and regulations of such free zones. To the extent such companies regulations are silent, the CCL may apply in limited circumstances provided that the regulations of the free zone does not prohibit the application of the CCL. There are no foreign investment restrictions in free zones. However, there are restrictions on what a free zone company can do outside of the free zone where it is established.

Certain investors may also enter the market through a distributorship or commercial agency, depending on the nature of the contemplated activity, rather than through a direct investment. Commercial agencies, if registered with the MOE, are heavily regulated and may only be conducted by Emirati natural persons, public legal persons, private legal persons owned by public legal persons, private legal persons fully owned by Emirati natural persons, or public joint-stock companies incorporated in the UAE with at least 51% of Emirati capital contribution. In addition, the new Commercial Agencies Law, Federal Law No. 3 of 2022 allows for the first time, international companies that are not owned by Emirati nationals to act as commercial agents for their products provided that such products are not the subject of a commercial agency.

## Overview of Foreign Investment Models

### 1. Onshore Corporate Structures

#### Foreign direct investment

As indicated on page 17 under “Restrictions on Foreign Investment”, the business activity licensing system supplements the foreign investment rules, as certain types of business activities are governed by third party regulators. In addition to the activities set out under the List of Activities with Strategic Impact, there are also certain activities which are governed by sector specific legislation (for example the sale and distribution of pharmaceuticals and medical devices are heavily regulated by the Ministry of Health and Prevention) and which, in practice, also require a percentage of UAE national ownership). Although trading in medical devices and wholesale trading in medicines (drugstore) are included in the list of activities in Dubai and Abu Dhabi approved for 100% ownership by foreign investors. However, this practice may be relaxed soon with the promulgation of Federal Law No. 4 of 2022 which amended some provisions of Federal Law No. 8 of 2019 related to Medical Products, Pharmacy Profession and Pharmaceutical Establishments, and granted the right to local authorities that regulate companies to determine the percentage of Emirati ownership in the share capital or board of directors/ managers of companies.

While the aforementioned rules relate to companies, foreign investors may also consider incorporating a branch onshore in the UAE. The branch is considered an extension of the parent company and does not have a separate legal identity distinct from its parent company. A branch of a foreign company cannot, however, carry out trading activities in the UAE mainland and can only provide services or professional activities.

## Onshore company under the CCL

As a result of the restriction on foreign ownership in certain activities that do not fall under the lists of activities which fully grant ownership to foreign investors in onshore companies, it is customary to include protections for the minority party within the registered constitutive documents of the onshore company.

As can be seen from the analysis in the section above, the structuring of companies onshore in the UAE is largely related to the sector/ activities which the company will be undertaking in the UAE. The structuring options will also vary depending on whether the company wishes to do business in several Emirates or just one Emirate (such as Dubai).

In the event that UAE national ownership is required in the structure, the foreign investor may protect its interest in the company within the registered constitutive documents of the onshore company. Such protections can include (i) supermajority voting, (ii) a reservation of management control, and (iii) a disproportionate allocation of profits. In addition, shareholder agreements and other arrangements that supplement the registered constitutive documents may offer additional protection to the foreign shareholder.

Limited liability companies (LLCs), single shareholder limited liability companies, private joint stock companies (PJSCs) and branch or representative offices are examples of onshore corporate structures.

### **Form/type**

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

Choosing the most appropriate form of company depends on the purpose of the company and on the contemplated business activities. Set out in **Annex (1)** are the most common types of corporate structures used to set up business operations “onshore” in the UAE and their salient features. There are subtle differences regarding the incorporation process of legal vehicles in the different emirates.

### **Local Participation**

The level of UAE participation required for “onshore” business structures in the UAE varies depending on the activity and sector in which the company will operate. Branches of foreign company existing or that will be incorporated onshore the UAE do not need any longer to appoint a local service agent except in limited instances where activities are professional.

### **Objects**

The activities that businesses can carry out in the UAE are restricted to those listed on the local entity’s license issued by the Department of Economic Development (DED) in the relevant emirate. For instance, the Government of Dubai adopts a standard classification guide in which all permitted economic activities are listed. If the required activity is not included in the guide, it is possible in some instances to apply for a new purpose-defined activity. However, such an application will be subject to the consent of DED and can be time-consuming, however the DED is lenient to include additional new activities on its list to support foreign investment that intend to engage in new businesses in the UAE. In addition, there are certain types of activities that require additional special licenses from a particular

licensing authority, such as medical services, telecommunication and education.

### **Incorporation Documents**

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

- In the case of a corporate founding shareholder, articles of association, a certificate of incorporation and a board or shareholder resolution approving the establishment of a new company and appointing a signatory to represent it. All those documents must be notarized and legalized by the UAE consulate or embassy in the country where it was issued.
- In the case of an individual founding shareholder, a copy of his/her passport for expatriates or a copy of the passport, Emirates ID and family card for UAE nationals
- Copy of the passport of the appointed general manager(s)/directors of the company to be incorporated
- Memorandum and articles of association of the new company
- Lease agreement for premises registered with the land department/municipality in the relevant emirate and an Ejari Certificate or its equivalent in the emirate where the company will be registered

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

### **Incorporation Process**

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

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

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

- The notarized and legalized constitutional documents of the parent company and a resolution to approve the registration of the branch should be provided.
- The branch must appoint an auditor licensed to operate in the UAE.

- A bank account should be opened in the UAE during the registration process of the branch and a bank guarantee of AED 50,000 must be issued in favor of the MOE.
- Appointment of a local service agent, where applicable, based on the activity of the branch

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

## 2. Free Zone Corporate Structures

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

- 100% foreign ownership of the entity incorporated in the free zone
- subject to further clarifications on the application of the UAE CT Law to free zone entities, zero tax rates on corporate income for up to 50 years (the tax exemption may vary slightly between the different free zones and is generally calculated from the date of setting up the free zone authority)
- no foreign exchange controls
- no restriction on capital repatriation
- no currency restrictions
- no import or re-export duties (except for products entering the UAE or GCC)

There are two types of free zones in the UAE: financial free zones and economic free zones. Currently, the only two financial free zones are the DIFC and the ADGM. The tables set out in the Annex outline the differences between the DIFC, as the most established financial free zone to date, and several economic free zones. There are a large number of free zones located in each emirate, with the majority of economic free zones located in Dubai, including JAFZ, Dubai Integrated Economic Zones Authority (DIEZ) (established in 2021, consolidates and integrates the products and services of Dubai Airport Free Zone (DAFZA), Dubai Silicon Oasis (DSO), and Dubai CommerCity (DCC)), various clusters regulated under the Dubai Development Authority (DDA, previously known as TECOM), DMCC and Dubai South.

Free zone companies are only permitted to conduct business with companies incorporated in the same free zone or with companies incorporated outside the UAE. If a free zone company wishes to perform activities within mainland UAE it will need to establish an onshore presence in the UAE by either setting up a branch office (which cannot carry out any trading activities) or a new company (subject to any applicable foreign ownership restrictions), subject to obtaining the necessary licenses from the relevant federal and/or emirate authorities.

Free zones are entitled to adopt their own regulations to govern a number of very limited areas. In practice, most free zones adopt special company regulations. However, the CCL will apply to entities registered in the free zones with respect to matters that are not specifically governed by regulations adopted by the free zone and on condition that the free zone regulations allow the application of the CCL. The financial free zones have their own employment laws that apply to employees sponsored by companies incorporated in the financial free zones. For other economic free zones the UAE Labor Law is applicable to the employees.

Several free zones in the UAE have adopted the dual licensing concept, whereby a company registered in a free zone can set up a branch (or a subsidiary in limited free zones) onshore but

occupy the same office of the free zone entity. There is no need for entities in the same activity group to lease two offices for their operations (one in the free zone and one onshore); instead, one office in the free zone is acceptable to enable them to render their services. However, it is required to apply for a license from the DED for an onshore branch/subsidiary and to secure an approval from the relevant free zone to accept the dual licensing scheme.

## Economic Free Zones

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

The JAFZ, regulated by JAFZA, is one of the fastest-growing free zones in the region focused on light manufacturing, warehousing and logistics. It has access to well-developed port facilities and is frequently used as a base for regional operators throughout the GCC and the broader Middle East and North Africa region. The licenses offered by JAFZA are categorized as follows: trading activities; services activities; e-commerce activities; industrial activities; and national industrial activities (designed for manufacturing companies in which GCC nationals must own no less than 50% of the share capital). In 2017, a new set of JAFZA companies regulations and rules introduced the option of listing shares on the stock exchange by setting up (or converting an existing presence into) a public listing company. By way of illustration, Annex (2) outlines the common types of corporate vehicles available to set up business operations in the JAFZA, being one of the first and most established free zones in the UAE.

The DDA was formed to foster Dubai's creative and innovative industries by regulating various clusters including Dubai Design District, Dubai Science Park, Dubai Knowledge Park, Dubai Academic City, Dubai Media City, Dubai Studio City, Dubai Internet City, International Media Production Zone and Dubai Outsource Zone. In 2016, a new set of rules and companies regulations have come into force with respect to the DDA, whereby all existing companies were required to adjust their legal positions within one year.

The DMCC is another free zone specializing in the trade of a wide range of commodities focused around the gold, diamond, agro-commodities, pearl, precious metals and tea industries. To allow ease and flexibility to companies currently carrying out, or intending to carry out, business from the DMCC, the DMCC introduced the new DMCCA Company Regulations 2020 together with a set of new Employment Rules, Licensing Rules and Officers Rules which were made effective on 2 January 2021. The DMCCA also introduced new Community Regulations as well as Health, Safety and Environment Regulations.

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

## DIFC

The DIFC was established in 2004 as a global financial center within Dubai with the aim of attracting global and regional financial institutions, companies and service providers. The most recently issued Dubai Law No. (5) of 2021 Concerning the Dubai International Financial Centre replaces, in its entirety, the original founding DIFC law issued in 2004 and is essentially aimed at broadening the scope of responsibilities for the DIFC and ensuring the DIFC's operational, financial and administrative independence. The DIFC has also proposed the enactment of amendments to the Employment Law, Data Protection Law and Insolvency Regulations in March 2021 to enhance the regulatory framework in DIFC and keep it in line with international best practices.

The main sectors of focus in the DIFC are the following:

- Regulated services such as:
  - Banking and brokerage services
  - Insurance and reinsurance
  - Islamic finance
  - Wealth management
- Non-regulated, ancillary services such as:
  - Professional services (e.g., legal and auditing firms)
  - Global corporates
  - Retailers (business and lifestyle facilities)

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

If a DIFC company wishes to perform activities outside the DIFC or maintain a separate presence onshore in the UAE, it will need to set up either a branch office or a new company onshore and obtain the necessary licenses from the relevant federal or emirate authorities.

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

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

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

The DIFC has reinforced its position as one of the world’s top financial and business centers, introducing changes to its companies regime and enhancing the ease of doing business in the center.

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

### 3. Commercial Agency and Distribution

The Federal Commercial Agency Law No. 3 of 2022 (“**Commercial Agency Law**”) defines a commercial agency as any arrangement whereby the principal (commonly the foreign investor) is represented by an agent to “distribute, sell, offer or provide goods or services within the UAE for a commission or profit.”

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

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

## Registration and Exclusivity

The Commercial Agency Law requires all commercial agencies to be registered with the MOE.

A registered commercial agent must be exclusive for the applicable territory and product line(s) covered by the agency agreement. Consistent with this rule, a principal could appoint a separate agent for each emirate or combination of emirates, or for different product lines, or for both different emirates and product lines.

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

Registration enables the agent to block parallel imports, including imports from free trade zones, into the UAE. However, the scope of blocked parallel imports is reduced in relation to certain categories of goods (e.g., certain food products) if the categories of products are identified in UAE cabinet decisions.

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

## Who can act as an Agent

Commercial agency activities can be carried out by national natural persons, public legal persons, private legal persons owned by public legal persons, private legal persons fully owned by national natural persons, public joint-stock companies incorporated in the United Arab Emirates with at least 51% of national capital contribution, or international companies that are not owned by UAE nationals for their products provided that such products are not the subject of a commercial agency.

## Contract term, Expiration and Early termination

In the event that the agent is required in the contract to establish display buildings, commodity stores or maintenance or repair facilities, the statutory minimum contract term is five years, unless the parties agree otherwise.

While it is possible for a commercial agency agreement to expire at the end of its term, the agent may claim from the principal a compensation for the damage it has incurred as a result of the expiration of the agency agreement, unless the agreement expressly stipulates otherwise.

Either the agent or the principal may terminate the commercial agency agreement prior to its term provided a termination notice is served by the terminating party at least one year prior to the termination date or prior to the lapse of half of the agreement term, whichever is first. Early termination can still be challenged before the Commercial Agency Committee and an agent can claim a compensation for the damage suffered. In this case the agent is required to prove that its efforts have contributed to the success of the products and led to the increase of customers for such products.

Given that registration provides commercial agents with significant protections against principals, it is common that foreign investors refrain, where possible, from registering commercial agency arrangements in the UAE. However, in some cases, government agencies may include a requirement

in their respective procurement policies to only purchase products from a registered agent. Some local distributors may use (or rather abuse) this government requirement to impose a registration on their principal and with that, secure additional rights such as the ones described above. We strongly advise principals to obtain legal advice to ascertain the seriousness of such requests.



# Real Estate



## Ownership/Leasehold

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

Freehold ownership by foreign investors is restricted and restrictions vary depending on the emirate. It is more common to grant foreign investors with “usufruct rights”<sup>10</sup> and “musataha rights,”<sup>11</sup> which are in rem rights.

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

### 1. Freehold Ownership by Foreigners

#### Dubai

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

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

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

#### Abu Dhabi

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

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

### 2. Leasehold Rights

#### Dubai

##### (a) Termination

The Dubai Landlords and Tenants Law No. 26 of 2007, as amended by virtue of Law No. 33 of 2008, allows the parties to agree the terms of their lease in a contract, other than in relation to certain rights

<sup>10</sup> Usufruct is a real right attached to the land which gives its holder usufructuary rights similar to those of an absolute owner (e.g., the right to sell and the right to mortgage), except that it resembles a lease tenure as it is held for a limited term (i.e., 99 years).

<sup>11</sup> Musataha is similar to an outright ownership right except that it is only for a limited period, 50 years in particular, according to the UAE Civil Code. Commonly known as a development lease, musataha gives the holder surface or supports rights over the land allowing the holder to be the outright owner of the buildings constructed on the land during the period of the musataha. It also enables the holder to mortgage their interest in the musataha right.

prescribed by the law. However, as leases are still generally for short periods (e.g., one year) to protect the tenant, a rent cap applies as well as a statutory right so that a tenant may renew a lease if they elect to, except in certain (limited) circumstances.

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

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

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

#### **(b) Increase in rent**

If there is an increase in rent for the renewal period, the landlord must give the tenant at least 90 days' notice before the expiry of the lease, unless the parties agreed otherwise. Additionally, a statutory rent cap is in place. The rent cap is calculated based on the difference between the property rental value and the average market rental rate for properties in the applicable area of Dubai. The average market rental rate is set according to the rental index produced and regularly updated by RERA. The RERA rental increase calculator (<https://dubailand.gov.ae/en/eservices/rental-index/rental-index/#/>) provides tenants with a clear insight into the rent rise they may anticipate for lease renewal. At present, the various thresholds for the rent cap are as follows:

- Less than 10% below the average market rental rate — no rent increase is permitted
- Between 11% and 20% below the average market rental rate — a maximum increase in rent of 5% is permitted
- Between 21% and 30% below the average market rental rate — a maximum increase in rent of 10% is permitted
- Between 31% and 40% below the average market rental rate — a maximum increase in rent of 15% is permitted
- More than 40% below the average market rental rate — a maximum increase in rent of 20% is permitted

#### **(c) Registration**

##### **(i) Long-term Lease**

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

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

(ii) Short-term lease

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

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

## Abu Dhabi

### (a) Termination

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

### (b) Registration

(i) Long-term lease

Non-UAE or GCC nationals can be granted leases for a term of over 25 years in Investment Areas only. Any lease with a term of over four years must be registered with the Tamleeq system and the registration fees are typically 1% of the first year’s rent if the lease is over 4 years but less than 25 years, and 4% of the value of consideration for leases over 25 years. In the case of non-registration, the long-term lease is still binding between the parties, but not vis-à-vis third parties.

Any leasehold interest located within the Abu Dhabi Global Market must be registered with the Abu Dhabi Global Market Land Registrar. The registration fees for a lease with a term of less than 10 years (including any renewals) is AED 100 per year. A lease term of 10 years or more (including any renewals) shall impose a registration fee of 2% of the total value of contract (subject to no maximum).

(ii) Short-term lease

A short-term lease of less than four years can be registered on the Tawtheeq system. The present requirements are that the lease needs to (i) be on the standard Abu Dhabi Municipality form, (ii) be in Arabic (or dual language), and (iii) have the key information in respect of the lease (e.g., property details, parties, term and rent) The cost to register a short-term lease contract on the Tawtheeq system is AED 100 per registration of each new lease or renewal of a lease.



# Employment





Employment relationships in the UAE private sector are governed primarily by the Federal Labor Law No. 33 of 2021 and its implementing regulations (Cabinet Decision No. 1 of 2022), as amended ("**Labor Law**") together with its accompanying resolutions and decrees. Some of the economic free zones have their own employment regulations in place, which must also be taken into account.

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

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

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

## 1. Emiratisation

In keeping with the UAE's Emiratisation initiative, various ministerial decrees have been published setting out requirements for private companies in respect of the recruitment, employment and termination of UAE nationals. The drive to increase the number of UAE nationals working in the private sector is high on the government's agenda and a number of resolutions have been introduced over the years to support this initiative.

Most recently, a Ministerial Decision was implemented effective June 2022 which requires all companies with 50 or more employees to increase the number of UAE nationals in the workforce by 2% each year until a target Emiratisation of 10% has been reached by 2026. Failure to meet the Emiratisation quotas will result in fines and penalties being imposed and potential blocks on the employer's account with the Ministry of Human Resources and Emiratisation (MOHRE). Extended periods of failing to meet the Emiratisation requirements could also result in the company being reclassified at MOHRE into a lower level resulting in higher work permit application costs.

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

In order for a non-UAE national to legally work for a particular entity and reside in the UAE, they must obtain a work permit and residence visa. These permissions are generally obtained through the employer, which must have an entity established in the UAE (although there are some exceptions in terms of residence visas — for example, GCC nationals do not require residence visas, employees may be sponsored for residency purposes by a spouse and there are a number of employees who are now eligible to be self sponsored by means of golden visa). It is recommended that offers of employment are conditional upon the individual obtaining the residence visa (if required) and work permit.

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

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

Residency visas and work permits must be periodically renewed, with the standard term being two years.

### 3. Employment Contract

For those companies governed by the MOHRE, the hiring of any new employee, whether from within the UAE or abroad, requires executing and submitting a standard form offer letter in order to obtain the necessary governmental approvals. The terms of the offer letter must reflect the terms of the final employment contract that will be executed at a later stage.

As part of the process of obtaining the work permit, a template employment contract issued by the MOHRE (or relevant free zone authority if the employer is established in a free zone)<sup>12</sup> must be signed by the parties and submitted to the MOHRE (or free zone authority). The template employment contract includes basic employment terms and is drafted in English and Arabic.

Due to the basic nature of the MOHRE (or free zone authority) template employment contract, it is common practice to execute a supplementary employment contract which includes additional terms that are not reflected in the basic MOHRE or free zone employment contract template. Accordingly, it is common for employees in the UAE to hold two employment contracts: (a) a MOHRE (or free zone) employment contract; and (b) a private employment contract which describes the employment relationship in more detail.

### 4. Term and Termination/Gratuity

#### Probationary Period

Probationary periods are common in the UAE. The maximum period of probation is six months. During the probationary period, either party may terminate the employee's employment, upon 14 days notice. However, if the employee is resigning in order to join another UAE employer he/she is obliged to provide the employer with 30 days notice (and the new employer is obliged to repay the current employer the recruitment costs incurred in onboarding the employee).

#### Term

All employment contracts must be fixed term. There is no limit on the length of the term and the contract may be renewed for equal or shorter periods an unlimited number of times.

Any extensions will be considered part of the original term and, therefore, should be included in calculating the employee's total period of service.

#### Summary Causes for Dismissal by the Employer under Article 44

Subject to complying with the process stipulated under Section 4(e) below, (and after having conducted a written investigation with the employee) an employer is permitted to legitimately terminate the employment contract of an employee without notice for the reasons stipulated under Article 44 of the Labor Law as follows:

- If the employee adopts a false identity or nationality, or submits forged documents or certificates
- If the employee commits an error causing substantial material loss to the employer - provided that the employer advises the labour department of the incident within 7 working days from having knowledge of the same
- If the employee violates instructions concerning safety of the place of business - provided that such instructions are displayed in writing in conspicuous places

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<sup>12</sup> Some free zones permit the employer to submit its own form of employment contract.

- If the employee fails to perform his/her basic duties under the contract of employment, and persists in violating them despite having undergone formal investigation, and having been warned twice that s/he is at risk of dismissal if the same is repeated
- If the employee divulges any company secret related to industry or intellectual property, which resulted in losses to the Company
- If the Employee starts working for another company without complying with the rules and procedures in the law
- If the employee exploits his/her job position to obtain results and personal gains
- If, during working hours, the employee is found drunk or under the influence of drugs or committing an act against public morals in the work place
- If, in the course of work, the employee commits an assault on the employer, the manager or any of his/her colleagues
- If the employee is absent without lawful excuse for more than twenty intermittent days or for more than seven successive day during one year

## Legitimate Causes for Termination by Employee under Article 45

An employee is also entitled to terminate the employment contract without notice if any of the grounds related to the employer's conduct stipulated in Article 45 of the Labor Law are present. These grounds are as follows:

- Where the employer is in breach of its obligations prescribed in the employment contract or under the applicable laws, provided the employee has notified MOHRE within 14 working days prior to the date of leaving work and the employer has not rectified the breach despite being told to do so.
- Where the employer or the employer's representative assaults or subjects the employee to harrasment, provided that the employee informs the authorities and MOHRE within five working days from the date they are able to do so.
- If there is a serious danger in the workplace that threatens the safety or health of the worker provided that the employer is aware of its existence and no measures were taken to indicate its removal.
- The employer assigns the employee to carry out work that is fundamentally different from the work agreed upon in the employment contract without the employee's written consent (except for in cases of necessity).

## Process for Dismissal/Termination/Disciplinary Measures

Disciplinary penalties expressly permitted by the Labor Law include a warning, suspension, fine, forfeiture of promotion, termination with notice and termination without notice.

The following procedure must be conducted before imposing any disciplinary sanction, including dismissal, upon an employee:

- The employee must be notified in writing of the charge or allegation.
- The employee must be given an opportunity to defend himself/herself against the allegations. In practice, employees will attend a meeting in this regard.

- The matter must be adequately investigated and the employee must be provided with written reasons for any penalty being imposed, which should also be recorded in the employee's personnel file.

An allegation cannot be raised after the lapse of 30 days from the date of discovery of the violation and a penalty cannot be imposed after the lapse of 60 days from the date on which the disciplinary investigation ended.

## Redundancies

The Labor Law recognizes redundancy only in narrow circumstances, namely: (i) permanent closure of the company; (ii) bankruptcy or insolvency of the company; (iii) any economic or exceptional reasons that prevent the continuation of the project. In order for to rely on (ii) and (iii) a court order confirming the bankruptcy or insolvency or an official decision from the concerned authorities confirming that the employer cannot continue operations for exceptional economic reasons, respectively, is required.

Any reduction in force not falling within (i) - (iii) above should be treated in accordance with the normal termination framework.

## Notice/Payment in Lieu of Notice

In accordance with the Labor Law, the minimum notice period for an fixed term contract is 30 days, with a maximum of three months. The contract can also be terminated by the employer without notice if the employee is terminated for cause on the grounds outlined under Article 44, as stated in Section 4(c).

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

## End-of-Service Gratuity

An employee whose contract is terminated or expires and who has completed at least one year of service is entitled to an end-of-service gratuity. In the absence of any higher rate agreed by the parties, the end-of-service gratuity is equivalent to 21 days wage<sup>13</sup> for each of the employee's first five years of service and 30 days' wage for each year thereafter.

If the employee resigns and the employment contract is for an indefinite period that has not yet been converted to a fixed term contract by 31 December 2023, the gratuity entitlement may be reduced in the following manner:

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

End-of-service gratuities are capped at an amount equivalent to two years wages and are proportionately calculated for any partial year worked.

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<sup>13</sup> Wage for end-of-service gratuity purposes is exclusive of allowances and benefits in kind.

## 5. Working Days/Working Hours

### Overtime

The maximum working hours per day are set at eight hours per day, 48 hours per week. Working hours may differ, depending on the relevant industry, by a special ministerial decree. No worker may work for more than five hours without a break for work, rest and prayer. Working hours are reduced by two hours per day during the holy month of Ramadan.

If the employer requires employees to work overtime, during the working week, such employees are entitled to be paid 125% of their basic salary for the overtime worked. If, however, the employee's overtime falls between 10:00 pm and 4:00 am, they are entitled to a higher rate of 150% of their basic salary.<sup>14</sup>

The maximum amount of overtime allowed per day is two hours. Overtime wages should not be included in employees' regular compensation, which means that any overtime must be compensated separately.

The working time provisions do not apply to certain categories of employees. This includes (but is not limited to) employees occupying supervisory positions provided that such individuals have authority to act on behalf of the company.

### Weekend

Employees are entitled to at least one rest day per week (although in practice most companies close over Saturday and Sunday). An employee cannot be required to work more than two consecutive rest days. Moreover, in the event that an employee is required to work on a rest day, that employee is entitled to receive either time off in lieu or normal salary for the hours worked plus a supplement equal to 50% of the employee's basic salary for that day.

## 6. Compensation/Benefits

### Minimum Wages, Mandatory Increases

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

### Bonuses, Benefits in Kind

Employers located onshore, Jebel Ali Free Zone and the Dubai Multi Commodities Centre are subject to the Wage Protection Scheme, which aims to protect employees via an electronic salary transfer scheme that ensures timely payment of the agreed wage amount to the employee. According to the WPS guidelines, payments of employee remuneration must be made via banks, exchange offices and financial institutions which have been approved and authorized to provide the service.

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

### Taxes, Social Security, Medical Insurance

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

<sup>14</sup> Overtime rates may vary slightly in some of the free zones.

therefore register their UAE and GCC national employees with the relevant pension authority. Failure to do so will give rise to fines.

Both Abu Dhabi and Dubai have a compulsory health insurance scheme, which obliges employers to provide private health insurance to their employees through approved health insurance companies. The Abu Dhabi Health Insurance Law further obligates an employer to provide health insurance to the employee's spouse and up to three dependent children.

## 7. Leave

### Sick Leave

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

### Maternity Leave

A female employee is entitled to 45 calendar days of fully paid maternity leave with an additional 15 days of half-pay. In the event that a female employee suffers from a medical condition as a result of birth or pregnancy, she may take an additional 45 days of unpaid "maternity sick" leave, as long as the condition is supported by a physician's note. If the employee gives birth to a disabled child requiring permanent care the employee will be entitled to an additional 30 days of maternity leave with full pay and then a subsequent 30 days without pay.

Upon resuming work, a female may take two additional breaks per day (together not exceeding one hour) for the purpose of nursing the child, up until the child is 6 months old.

### Parental Leave

Both male and female employees are entitled to five working days of parental leave upon the birth of a child, which may be taken consecutively or inconsecutively within six months of the child's birth. For female employees, this leave is in addition to statutory maternity leave.

### Special Leave

Employees are entitled to bereavement leave of 5 fully paid days in the case of the death of a spouse, and 3 fully paid days in the case of the death of a parent, child, grandparent, grandchild, or sibling.

Employees that are enrolled in an accredited educational institution in the UAE and have been employed by the employer for at least two years are entitled to 10 fully paid working days per year to sit for exams.

UAE national employees are entitled to sabbatical leave to perform national military / armed forces service, or reserve forces refresher trainings when called upon by the armed forces. Employees are to receive their normal salary during their sabbatical leave.

### Annual Leave

Excluding the first year of employment, an employee is entitled to 30 calendar days of paid vacation per year, which is equivalent to approximately 22 working days (based on a five-day working week). In the first year of employment, an employee accrues two paid days of leave per month, if they have been employed for more than six months but less than 12 months. However, in practice many employers do not put a different system in place for new recruits and provide all employees with the same holiday entitlement.

## Official Holidays

Employees are entitled to holidays for the private sector as are officially announced by the UAE Government. Generally speaking, these will include:

- Islamic New Year
- Gregorian New Year's Day
- Eid al-Fitr
- Eid al-Adha
- Martyrs' Day
- National Day

However, holidays may be added/removed at the discretion of UAE Government. Except for the Gregorian New Year's Day on 1 January, Martyrs' Day on 30 November and National Day on 2 December, all other holidays are Islamic holidays and vary depending on the lunar calendar. The actual dates are declared each year and holidays are declared separately for the public and private sectors.





# Key Contacts



# Contact us

To speak to us in relation to any of the topics or areas of law covered by the guide or how we can support you in the region more generally, please feel free to contact one of our lawyers below.



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**Annex (1) — Common Onshore Legal Vehicles**

	Limited Liability Company (LLC)	Private Stock Company (Private Company)	Public Joint Stock Company (PJSC)	Branch/Representative Office
<b>Number of shareholders, nationality and liability</b>	<p>It is a separate legal entity from its partners.</p> <p>The liability of its shareholders is limited to their capital contributions.</p> <p>Currently, the CCL allows for the incorporation of a single shareholder LLC or an LLC owned by two partners and a maximum of 50 partners.</p>	<p>It is a separate legal entity from its shareholders.</p> <p>The liability of its shareholders is limited to their capital contributions.</p> <p>It can be converted into a PJSC.</p> <p>Currently, the CCL allows for the incorporation of a single shareholder private joint stock company and a private joint stock company with two shareholders and a maximum of 200 shareholders.</p>	<p>It is a separate legal entity from its shareholders.</p> <p>The liability of its shareholders is limited to their capital contributions.</p> <p>It can offer shares to the public.</p> <p>It must have at least five shareholders.</p>	<p>It is not a separate legal entity from the parent company and the parent company will be liable for the activities of the branch or representative office.</p> <p>It is wholly owned by its parent company.</p>
<b>Minimum capital</b>	<p>Currently, there is no minimum share capital required for an LLC. An LLC must have share capital sufficient for the realization of the objectives of the company. The relevant authorities may, in certain instances, require a minimum capital depending on the contemplated activity.</p>	<p>It must have a minimum share capital of AED 5 million.</p> <p>It cannot offer shares to the public. Its shares must be of equal value (i.e., no less than AED 1 and no more than AED 100).</p>	<p>It must have a minimum issued share capital of AED 30 million. The articles of association of the PJSC may determine as authorized capital an amount not in excess of two times the issued share capital. Its negotiable shares must be of equal value (i.e., no less than</p>	<p>There is no capital required for setting up a branch or a representative office. A bank guarantee of AED 50,000 must be issued by a UAE licensed bank and submitted to the MOE.</p>

	Limited Liability Company (LLC)	Private Stock Company (Private Company)	Public Joint Stock Company (PJSC)	Branch/Representative Office
	<p>The capital shall be composed of equal shares. The capital is required to be paid in full at the time of incorporation and deposited in a bank in the UAE. An LLC does not issue share certificates, but may be converted into a joint stock company subject to fulfilling a number of conditions.</p> <p>It cannot offer shares to the public.</p>		AED 1 and no more than AED 100).	
<b>Permitted activities</b>	<p>It is permitted to undertake a broad range of commercial activities (subject to any licensing restrictions) except for insurance and banking activities.</p>	<p>It is permitted to undertake a broad range of commercial activities (subject to any licensing restrictions). If commercial activities, such as insurance, banking activities or investing funds on the account of third parties, are to be performed, special authorizations must be obtained from the relevant federal and local authorities.</p>	<p>It is permitted to undertake a broad range of commercial activities (subject to any licensing restrictions). If commercial activities, such as insurance, banking activities or investing funds on the account of third parties, are to be performed, special authorizations must be obtained from the relevant federal and local authorities.</p>	<p><b>Branch offices</b> operating onshore are licensed to conduct activities that are conducted by the parent or controlling company in its jurisdiction of incorporation. The branch will only be able to provide certain services and professional activities and may not conduct activities such as trading and any ancillary activities representing, in general, the sale and purchase of products or commodities, restaurants, coffee shops and food catering services, and</p>

	Limited Liability Company (LLC)	Private Stock Company (Private Company)	Public Joint Stock Company (PJSC)	Branch/Representative Office
				the establishment of print and publishing houses, newspapers and magazines.  <b>Representative offices</b> are limited to marketing, promotion and liaison office activities only.
<b>Physical offices</b>	While taking into account the dual licensing concept mentioned above for companies in the same group that also have presence in a free zone in the UAE, physical office space is required and must be suitable to host all the employees of the LLC. The annual rent of an office depends on the size and location of the office in Dubai.	Physical office space is required and must be suitable to host the employees of the Private Company. The annual rent of an office depends on the size and location of the office in Dubai.	Physical office space is required and must be suitable to host all the employees of the PJSC. The annual rent of an office depends on the size and location of the office in Dubai.	While taking into account the dual licensing concept mentioned above for companies in the same group that also have presence in a free zone in the UAE, physical office space is required and must be suitable to host all the employees of the branch/representative office. The annual rent of an office depends on the size and location of the office in Dubai.
<b>Management</b>	Day-to-day management may be vested in one or more managers (i.e., directors) as determined by the partners, who are not required to be UAE nationals.	It is managed by a board of directors elected by the general assembly (i.e., shareholders). The majority of the board of directors must be UAE nationals. The number of the directors shall	It is managed by a board of directors elected by the general assembly (i.e., a meeting of shareholders). The majority of the board of directors must be UAE nationals. The number of the directors shall not be	It must have a general manager who is resident in the UAE. The general manager does not need to be a UAE national.

Limited Liability Company (LLC)	Private Stock Company (Private Company)	Public Joint Stock Company (PJSC)	Branch/Representative Office
<p>It must have a general manager who is resident in the UAE.</p> <p>If it has more than fifteen partners, it must appoint a Supervisory Board comprising at least three partners with a three year term starting as of the date of issuance of the appointment decision. The general assembly may re-elect such partners upon the expiry of such period or elect other partners. Also, the members of the Supervisory Board may be dismissed at any time for an acceptable reason.</p> <p>Management and control are subject to mandatory requirements of the Companies Law, under which certain matters are reserved to the general assembly (i.e., a meeting of the partners) and some matters require a special resolution.</p>	<p>not be less than three and shall not exceed 11.</p> <p>It must have a chairman and a vice-chairman, who are elected through secret ballots and who must be UAE nationals. Two-thirds of the board members must own shares in the Private Company.</p> <p>A Private Company must have a managing director, who is not an executive officer or a general manager of another company.</p> <p>Management and control are subject to mandatory requirements of the Companies Law, under which certain matters are reserved to the general assembly (i.e., a meeting of the shareholders).</p>	<p>less than three and shall not exceed 11.</p> <p>It must have a chairman and a vice-chairman who are elected through secret ballots and who must be UAE nationals. Two-thirds of the board members must own shares in the PJSC.</p> <p>A PJSC must have a managing director who is not an executive officer or a general manager of another company.</p> <p>Management and control are subject to mandatory requirements of the Companies Law, under which certain matters are reserved to the general assembly (i.e., a meeting of the shareholders).</p>	



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

## Annex (2) — Types of Legal Vehicles in the JAFZA

	JAFZA Branch	Free Zone Company (FZCO) and Free Zone Establishment (FZE)	JAFZA offshore company	JAFZA Public Listed Company (PLC)
<b>Number of shareholders and liability</b>	It does not have a separate legal personality and is deemed an extension of the controlling or parent company. Hence, the controlling or parent company will be liable for the acts and liabilities of a free zone branch.	It is an independent legal entity with limited liability. The liability of the shareholders is limited to their capital contribution.  An FZCO must have at least two shareholders and a maximum of 50 shareholders or partners, while an FZE is incorporated by a single shareholder, who can be either an individual or a corporate entity.	It is an independent legal entity with limited liability. The liability of the shareholders is limited to their capital contribution and there must be at least one shareholder.	It is an independent legal entity with limited liability. The liability of the shareholders is limited to their capital contribution and there must be at least two shareholders.
<b>Minimum capital</b>	There is no specified minimum share capital requirement since a JAFZA branch is an extension of the controlling or parent company.	An FZE and FZCO must have share capital sufficient for the realization of the objectives of the entity.	There is no specified minimum share capital requirement. However, in practice the JAFZA requires offshore companies to have a minimum share capital of AED 10,000.	There is no specified minimum share capital requirement. However, it must be higher than the amount sufficient for the activities permitted under its license or higher than the amount of capital required under the laws of the jurisdiction of the relevant stock market where the PLC's shares are listed.

	JAFZA Branch	Free Zone Company (FZCO) and Free Zone Establishment (FZE)	JAFZA offshore company	JAFZA Public Listed Company (PLC)
<b>Permitted activities</b>	The activities of a JAFZA branch must be the same as the activities of the controlling or parent company. It will only be permitted to conduct certain types of business activities within the confines of the free zone that are reflected on its license.	It can carry out any of the permitted activities within the confines of the JAFZA without restrictions that are reflected on its license.	Typically used as an investment vehicle or holding company. It is not permitted to conduct business operations onshore in the UAE or within the relevant free zone and cannot obtain employee or other types of visas. However, it can conduct business outside the UAE subject to the approval and licensing requirements of the relevant jurisdiction. It can freely enter into contracts with legal consultants, lawyers, accountants and auditors. It is permitted to lease property and use it as its registered office. It can own real property in certain limited areas (such as the Palm Islands or Jumeirah Islands), any property owned by Nakheel Company LLC or any other real property approved by the relevant authority.	It can carry out any of the permitted activities reflected on its license within the confines of the JAFZA. It may also conduct business outside the UAE subject to the approval and licensing requirements of the relevant jurisdiction.

	JAFZA Branch	Free Zone Company (FZCO) and Free Zone Establishment (FZE)	JAFZA offshore company	JAFZA Public Listed Company (PLC)
<b>Physical offices</b>	Must maintain a physical office in the free zone. The availability of space must be verified with the JAFZA.	Must maintain a physical office in the free zone. The availability of space must be verified with the JAFZA.	Not required to maintain a physical presence in the free zone but required to have a registered agent, whose address must be listed as the registered address for the offshore company in the place of its incorporation.	Must maintain a physical office in the free zone. The availability of space must be verified with the JAFZA.
<b>Management</b>	A JAFZA branch must have a general manager. The board of directors or shareholders of the controlling or parent entity may freely determine the powers delegated to the general manager of the branch. However, from a practical perspective, the general manager should have sufficient powers in order to handle day-to-day operations, such as bank account transactions, entering into agreements, signing documents before the authorities and employment of staff, among others. The general manager must hold a valid UAE	An FZCO and an FZE must have a manager, a director and a company secretary. The offices of the director, the manager and company secretary may be held by a single person.  The constitutional documents must determine the voting mechanics and duties of the director(s). The manager must hold a valid UAE residency and work visa under the sponsorship of the FZCO/FZE.  If an FZCO/FZE has both a board of directors and a general manager, the board would typically delegate the	General managers are not typically appointed. Therefore, all powers of the management rest with the board of directors. A JAFZA offshore company must have at least one director (who may be a natural person or corporate entity) and one secretary (who may be one of the directors). The board may delegate certain powers as it sees fit under a power of attorney.	A PLC must have a minimum of two directors, a manager and a company secretary. The office of manager may be held by a director or the company secretary. The office of director cannot be held by a secretary.

	JAFZA Branch	Free Zone Company (FZCO) and Free Zone Establishment (FZE)	JAFZA offshore company	JAFZA Public Listed Company (PLC)
	residency and work visa under the sponsorship of the branch.	day-to-day powers to the general manager, who may also further delegate powers to other employees and representatives of the FZCO/FZE by a power of attorney.		
<b>Transfer of shares</b>	Not applicable to the JAFZA branch.	All shareholders of the FZCO or FZE must consent to the share transfer for it to be effective. Certain formalities with the JAFZA are carried out to give effect to any share transfer. Share certificates must be issued to each shareholder in an FZE or FZCO.	All shareholders of the offshore company must consent to the share transfer for it to be effective. Certain formalities with the JAFZA are carried out to give effect to any share transfer.	Transfer of shares must be carried out in accordance with the laws of the jurisdiction of the relevant stock market where the PLC's shares are listed.

### Annex (3) — Common Legal Vehicles in the DIFC

	Company Limited by Shares (CLS)	Recognized Company (branch of a company)	Prescribed Companies	Limited Liability Partnership (LLP)
<b>Permitted activities</b>	A CLS is the most common entity used for carrying out retail commercial businesses such as restaurants, stationery shops, cafes and grocery stores, regulated financial services, consultancy services and investment holding. It can be a private or a public company. The name of a private company should be followed by “Limited” or “Ltd” and for public companies, the name must be followed with “Public Limited Company” or “PLC.”	A Recognized Company is usually established to carry out retail commercial businesses such as restaurants, stationery shops, cafes and grocery stores and it can engage regulated financial services, consultancy services.	<p>Prescribed Companies are private companies limited by shares (includes the Special Purpose Company established under the Special Purpose Company Regulations issued by the Board of Directors of the DIFCA on 25 November 2008 (as repealed and replaced by the Prescribed Company Regulations 2022). A Prescribed Company may be used by a Fund Manager, a Trustee or a General Partner as a Special Purpose Vehicle to hold property on behalf of a Fund, but may not be used to be the Fund Manager, the Trustee or the General Partner of a Fund or as the Fund itself.</p> <p>Prescribed Companies must not provide financial services unless it is authorized by the DFSA to do so.</p>	An LLP is a partnership entity typically used by lawyers, auditors, accountants, architects and consultants in the DIFC. To carry out financial services under an LLP, an application for a license must be submitted to the DFSA

	Company Limited by Shares (CLS)	Recognized Company (branch of a company)	Prescribed Companies	Limited Liability Partnership (LLP)
			<p>The name of a Prescribed Company must end with “Limited” or “Ltd.”</p> <p>As per the DIFC Prescribed Company Regulations 2022, a Prescribed Company must:</p> <p>(i) be controlled by one or more Qualifying Applicants (including an affiliate of a DIFC Registered Entity, an Authorized Firm, a Family Operated Business, a Fund, a Government Entity, a shareholder or an Ultimate Beneficial Owner that controls a DIFC Registered Entity, a person wholly owned by one or more of the foregoing Qualifying Applicants) and which satisfies the Registrar that it or they will control the Prescribed Company</p> <p>(ii) be established or continued in the DIFC for a Qualifying Purpose (considered to be an Aviation Structure, a</p>	

	Company Limited by Shares (CLS)	Recognized Company (branch of a company)	Prescribed Companies	Limited Liability Partnership (LLP)
			Crowdfunding Structure, a DIFC Holding Structure, an Innovation Holding Structure, an Intellectual Property Structure, a Maritime Structure, or a Structured Financing)	
<b>Number of shareholders and liability</b>	For CLS that is a private company, there must be at least one shareholder and a maximum of 50 shareholders. A CLS that is a public company may have an unlimited number of shareholders. The liability of the shareholder(s) of a CLS (whether private or public) is limited to its/their capital contribution. There are no restrictions on the nationality of the shareholders.	Not applicable. The parent company is the owner of the Recognized Company.	A Prescribed Company must have at least one shareholder and a maximum of 50 shareholders.  A Prescribed Company whose Qualifying Purpose is a Crowdfunding Structure or a Structured Financing that is making an offer of its Securities to the public to facilitate a bond or sukuk issuance, shall, where applicable, be exempted from the provisions of the DIFC Companies Law on the requirement to have no more than 50 shareholders.	The liability of partners or members in an LLP is limited by their capital contribution and the rights and duties of the partners are governed by the limited liability partnership agreement, a copy of which must be submitted to the DIFC Authority (which is separate from the DFSA).
<b>Minimum capital</b>	A CLS (private company) has no minimum capital requirement and shares do not need to be fully paid up, unless it becomes a	Not applicable.	Not applicable.	There is no minimum capital requirement, unless it becomes a regulated entity whereby its minimum capital required would



	<b>Company Limited by Shares (CLS)</b>	<b>Recognized Company (branch of a company)</b>	<b>Prescribed Companies</b>	<b>Limited Liability Partnership (LLP)</b>
	regulated entity whereby its minimum capital requirement would depend on its prudential category as licensed by the DFSA. In addition, it cannot offer shares to the public and issue securities (however private placements are acceptable). A CLS (public company) should hold a minimum share capital of USD 100,000. The shares must be paid up 1/4 in value. A CLS (public company) can also offer its shares to the public.			depend on its prudential category as licensed by the DFSA.
<b>Physical offices</b>	There is a requirement to lease office space in the DIFC.		There is a requirement that the registered office of the Prescribed Company shall be at: <ul style="list-style-type: none"> <li>(i) the registered office of its Qualifying Applicant</li> <li>(ii) the registered office in the DIFC of the Registered Person establishing the</li> </ul>	There is a requirement to lease office space in the DIFC.

	Company Limited by Shares (CLS)	Recognized Company (branch of a company)	Prescribed Companies	Limited Liability Partnership (LLP)
			<p>Prescribed Company for a Qualifying Purpose</p> <p>(iii) the registered office in the DIFC of the Registered Person that is an Affiliate of the Prescribed Company</p> <p>(iv) the registered office of a Corporate Service Provider</p> <p>A Prescribed Company whose Qualifying Applicant is a Retail Entity shall not use the registered address of its Qualifying Applicant's retail premises.</p>	
<b>Management</b>	<p>A CLS (private company) is managed by at least one director of any nationality and may or may not have a secretary. A CLS (public company) must have at least two directors, who do not have to be UAE residents, and a company secretary must be appointed.</p>	<p>The Recognized Company must have at least one manager/ director of any nationality and does not require a company secretary.</p>	<p>At least one director should be appointed for a Prescribed Company.</p> <p>A Prescribed Company shall maintain accounting records and prepare accounts as required under the DIFC Companies Law. A Prescribed Company that has a Qualifying Purpose of a Structured Financing shall be exempt from any</p>	<p>Every member may take part in the management of the LLP.</p>

	Company Limited by Shares (CLS)	Recognized Company (branch of a company)	Prescribed Companies	Limited Liability Partnership (LLP)
			<p>requirement to file its accounts with the Registrar or have them audited.</p> <p>It is mandatory for a Prescribed Company to hire a Corporate Service Provider in the DIFC whose role would be similar to a company secretary.</p>	
<b>Transfer of shares</b>	<p>There are no restrictions on the transfer of shares for a CLS (both private and public companies). Shares are transferred through the execution of the proper transfer instruments. After the introduction of the DIFC Companies Law 2018, shareholders of private companies benefit from pre-emption rights on the allotment of new shares. That is a new statutory right which is not provided in the old regime. Private companies can waive or vary preemption rights in their articles of association.</p>	Not applicable.	<p>There are no restrictions on the transfer of shares of a Prescribed Company, but the Prescribed Company must be Controlled by one or more Qualifying Applicants.</p>	<p>No person may be introduced as a member nor may voluntarily assign an interest in an LLP without the consent of all existing members. The LLP shall file a notice of change of member with the DIFC Companies Registrar within 14 days.</p>



## **Baker McKenzie delivers integrated solutions to complex challenges.**

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