Doing Business in the United Arab Emirates: overview

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A Q&A guide to doing business in the United Arab Emirates.

This Q&A gives an overview of the legal system; foreign investment, including restrictions, currency regulations and incentives; and business vehicles and their relevant restrictions and liabilities. The article also summarises the laws regulating employment relationships, including redundancies and mass layoffs, and provides short overviews on competition law; data protection; and product liability and safety. In addition, there are comprehensive summaries on taxation and tax residency; and intellectual property rights over patents, trade marks, registered and unregistered designs.

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Overview

1. What are the key recent developments affecting doing business in your jurisdiction?

DMCC company regulations

The Dubai Multi Commodities Centre (DMCC) has recently issued new company regulations (DMCC Company Regulations 2020) applicable to entities (companies or branches of foreign companies) incorporated/established in DMCC. The DMCC Company Regulations 2020 came into effect on 2 January 2020 and replaced the previous DMCC Company Regulations 2003 (as amended).

A DMCC company can now:

- Adopt its own version of articles of association.
- Issue different classes of shares.
- Transfer its domicile/jurisdiction of incorporation from and into DMCC.

(*DMCC Company Regulations 2020*.)

A foreign company (that is, a non-DMCC company) can now transfer its domicile/jurisdiction of incorporation into DMCC. The DMCC Company Regulations 2020 have introduced detailed provisions on corporate governance and winding-up of DMCC companies.

Foreign direct investment

The enactment of Federal Law by Decree No. 19 of 2018 (FDI Law) on 23 September 2018 introduced the possibility of a majority foreign ownership of shares/interest in United Arab Emirates (UAE) mainland companies (outside the free zones

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areas). The FDI Law set out a "negative list" of 13 sectors (including insurance, water and electricity, land and airport services, and retail medicine) where existing foreign ownership restrictions would continue to apply. It also set out a "positive list" that the UAE Cabinet would promulgate to identify economic sectors and activities where up to 100% foreign ownership would be allowed.

On 2 July 2019, the Cabinet announced the approval of a positive list of 122 economic activities in sectors such as agriculture, manufacturing, transportation, construction and entertainment. The Cabinet's decision (*Cabinet Resolution No. 16 of 2020 concerning the Determination of the Positive List of Economic Sectors and Activities Eligible for Foreign Direct Investment and Percentage of their Ownership*) was issued on 17 March 2020. The Cabinet's decision must be published in the Official Gazette and will come into force the day after the date of its publication. The list of 122 economic activities is divided into 51 industrial activities, 52 service activities and 19 agricultural activities. The positive list allows up to 100% foreign ownership, but it imposes additional requirements such as:

- Minimum capital requirements on some activities.
- Obligations to employ advanced technology on other activities.
- Requirements to contribute to the Emiratisation of workforce on others (Emiratisation is an initiative by the UAE Government to employ its citizens in the public and private sectors).

Recent practice of the Dubai Department of Economic Development (DDED) (the local licensing authority) has shown that, in exceptional cases, majority foreign investment is permissible in Dubai in certain businesses. There are no written rules or guidelines regarding this. However, a DDED committee reviews applications and grants approvals at its discretion. An application can be submitted to the DDED together with a comprehensive business plan covering the:

- Business plan.
- Nature and type of business investments.
- Way in which the business will benefit Dubai.

There are no timelines within which the DDED must respond to an application and it can take between one and two months. Depending on the nature of activities, the DDED may require approval from other authorities.

Obtaining a licence to conduct business

The UAE has taken various steps to simplify the process and requirements for obtaining a licence to conduct business in and from the UAE.

The DDED, in conjunction with other UAE authorities and departments, has introduced a virtual commercial licence which is being offered by the Dubai Virtual Commercial City. A virtual commercial licence can be obtained by an individual (a foreign national who is a tax resident of a jurisdiction other than the UAE) by registering a virtual company. The legal form of the virtual company must be a sole establishment/proprietorship. A virtual company can obtain a virtual commercial licence to conduct business in limited sectors, such as:

- Computer programming and consultancy.
- Design activities (for example, fashion and jewellery design).
- Service activities related to printing and advertising (for example, book binding and design, and artwork services).

BASHR services has been launched, an integrated e-service connected with the local licensing authorities in the UAE, which allows an investor to establish a business in the UAE and obtain a licence in a short period of time. However, this service can only be used by UAE residents, as a UAE ID card is one of the mandatory requirements. After the issuance of a licence, the

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company must lease an office space (in the relevant emirate) within one year from the date of issuance of the licence and submit a copy to the relevant licensing authority.

Anti-money laundering regulations

New Anti-Money Laundering Regulations were issued on 29 January 2019 pursuant to Cabinet Resolution No. 10 of 2019 (AML Regulations). The AML Regulations provide guidance on the operation of UAE Federal Law by Decree No. 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organisations (AML Law). The AML Regulations specify that only those entities which qualify as financial institutions or designated non-financial businesses and professions (DFNBP) will be subject to the obligations of the AML Law. Therefore, businesses operating in the UAE which fall within the above categories must consider the application of the AML Law and AML Regulations to their business and ensure that they have internal processes in place to identify, manage and mitigate high risk customers and activities.

Health data protection

A new sectoral data protection law, Federal Law No. 2 of 2019 on the Use of Information and Communication Technology in Healthcare (Health Data Law), came into force in May 2019. The Health Data Law is aimed at regulating the collection, processing and transfer of electronic health data that originates in the UAE and will apply to all information and communication technology methods and uses in the healthcare sector in the UAE, either onshore or in any of the free zones (including the Dubai Healthcare City). The Health Data Law will apply to all businesses that handle health data and information, such as:

- Healthcare facilities and providers.
- Pharmacies.
- Medical insurance providers and intermediaries.
- Service providers assisting with medical claims management.
- Technology service providers servicing the healthcare industry.

Economic substance regulations

The UAE Cabinet issued the Cabinet of Ministers Resolution No. 31 of 2019 concerning Economic Substance Regulations in the UAE (ES Regulations) in April 2019. The ES Regulations apply to all UAE onshore and free zone companies (Relevant Entities) that carry on and generate income from one of the Relevant Activities, namely:

- Banking.
- Distribution and Services Centres.
- Investment Fund Management.
- Headquarters.
- Holding Company.
- Insurance.
- Intellectual Property.
- Lease Financing.
- Shipping.

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Relevant Entities must satisfy an economic substance test in relation to each Relevant Activity carried out. This includes, but is not limited to, demonstrating that it conducts core income-generating activities in the UAE. Each Relevant Entity must annually report specified information on its Relevant Activities to the authority which has issued the Relevant Entity's trade licence to demonstrate that it satisfies the economic substance requirements. Failure to meet the economic substance test and/or to provide information (or providing inaccurate information) results in significant penalties (financial or, ultimately, deregistration).

Employment law

The Federal Law by Decree No. 6 of 2019 (Labour Law Amendment) has amended certain provisions of the Federal Law No. 8 of 1980 concerning the Regulation of Labour Relations, as amended (Labour Law). The Labour Law Amendment came into effect in September 2019 and it affects the labour market in three key ways:

- It introduces general anti-discrimination provisions into the regulation of employment.
- It amends several provisions in the Labour Law that previously accorded differential treatment to male and female employees.
- It enables the further promotion of employment of UAE nationals in the private sector.

Dubai International Financial Centre (DIFC)

The DIFC, a free zone in the UAE, has recently enacted new laws, including the following:

- New DIFC Employment Law. On 12 June 2019, the DIFC announced the enactment of DIFC Law No. 2 of 2019 (New DIFC Employment Law), which came into force on 28 August 2019, to replace and repeal the DIFC Law No. 4 of 2005. However, the transitional provisions (that is, provisions which clarify the effect of the new law on any rights accrued under the old law) have ensured that any right, remedy, debt or obligation which has accrued under the previous law would not be prejudiced by the enactment of the new law, subject to a few exceptions (*Article 1, New DIFC Employment Law*). The New DIFC Employment Law has no retrospective effect and proceedings already before the DIFC courts (including appeals) would continue to be based on the provisions of the old law.
- The changes introduced by the New DIFC Employment Law have enhanced the balance between a DIFC employer's legitimate requirements and the need to ensure global employment standards for DIFC employees. Changes to conditions of employment include:
  - the expansion of maternity leave benefits for female employees who adopt a child less than five years old;
  - the introduction of up to five days of paternity leave for male employees to be taken within a month of the child being born; and
  - a reduction of sick pay.
- DIFC workplace savings scheme. On 14 January 2020, the Employment Law Amendment Law (*DIFC Law No. 4 of 2020*) and the new Employment Regulations (Amendment) were enacted. The Amendment introduces a new mandatory workplace savings scheme (qualifying scheme) which replaced the end of service gratuity regime. The new scheme commenced on 1 February 2020. It applies to DIFC-based employers and employees (subject to certain exceptions). The main effect of the Amendment is that:
  - end of service gratuity benefits of employees stopped accruing on 31 January 2020; and
  - from 1 February 2020, employers must make monthly mandatory contributions into a professionally managed and regulated savings plan (qualifying scheme) for the benefit of their employees. Employers wishing to enrol to an alternative qualifying scheme must obtain approval from the DIFC Authority.

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- DIFC Insolvency Law. The DIFC Insolvency Law (*DIFC Law No. 1 of 2019*) came into force on 28 August 2019. It replaces and repeals the previous DIFC Insolvency Law. The DIFC Insolvency Law applies to all DIFC incorporated entities. Along with the Insolvency Regulations, it aims to encourage trade and investment in the UAE by bringing the DIFC in line with international best practice in cases of insolvency. The DIFC Insolvency Law provides significant additional restructuring options to debtors and creditors. This Law offers additional protection and tools to debtors willing to rescue their businesses by way of restructuring and ensures that these protections and tools are balanced with the rights offered to creditors to recover their debts.

COVID-19 Pandemic

At the time of writing, it is unclear what the long-term implications of the COVID-19 pandemic will be. The UAE government departments and various licensing authorities have announced various schemes to support the UAE economy.

Legal system

2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

The UAE is a civil law jurisdiction. The Federal Constitution apportions powers between the federal government (based in Abu Dhabi) and the seven constituent emirates. Certain areas are regulated federally (such as immigration and labour), some at the emirate level (such as natural resources within each emirate, including petroleum), and some are regulated at both the federal and emirate levels (such as company formation and registration).

However, the two financial free zones (the DIFC and Abu Dhabi Global Market) have their own legal system and body of courts, which are based on a common law system.

Foreign investment

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

A foreign company can establish a presence in the UAE by setting up a branch or forming a company.

A branch of a foreign company must have a sponsor (called a national agent). Branch sponsors have no ownership rights in the branch. The sponsor must be a UAE national or a company wholly owned by UAE nationals. A UAE company must be at least 51% owned by UAE nationals, with the following general exceptions:

- Certain sole proprietorships and professional partnerships can be wholly foreign-owned.
- A UAE company can be 100% owned by nationals of the Gulf Co-operation Council (GCC) nations and the other GCC members being Bahrain, Kuwait, Oman, Qatar and Saudi Arabia.

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- In exceptional cases, special permission can be obtained from the local licensing authority (such as the DDED) for majority foreign ownership in a UAE company.
- The UAE company is incorporated pursuant to the FDI Law (once fully implemented).

In each case, the branch or company must obtain a licence from the federal and/or municipal authorities to carry on its proposed activities. In addition, certain industries are subject to additional regulation, such as banking, insurance and investment.

The UAE has more than 40 free zones, including the:

- Jebel Ali Free Zone.
- DMCC.
- Dubai Airport Free Zone.
- Dubai South.
- DIFC.

In general, the free zones focus on different business areas, including shipping, commodities, media, financial services and telecommunication, and have their own regulator. Operations within a free zone can be 100% foreign owned and no UAE national agent or UAE partner or shareholder is required (*see Question 1, Foreign direct investment*).

4. Are there any restrictions on doing business with certain countries or jurisdictions?

The Federal Law No. 15 of 1972 concerns the Arab League Boycott of Israel (Israel Boycott) and provides for primary, secondary and tertiary boycott of Israel. The terms primary, secondary and tertiary boycott were not used in the law itself but were subsequently clarified by the Israeli Boycott office as follows:

- Primary boycott: prohibits dealing with Israel or any Israeli citizen, company, corporation or institution.
- Secondary boycott: prohibits dealing with any party dealing with Israel, which includes companies and corporations dealing with Israel or having branches or agencies in Israel.
- Tertiary boycott: prohibits dealing with any company dealing with Israel or providing Israel with spare parts or services.

The policy of the UAE regarding the Israel Boycott was formally revised by Cabinet Resolution 462/17M of 1995 dated 20 November 1995 (Cabinet Resolution). In this resolution, the UAE Federal Cabinet approved the decision to take steps to lift the secondary and tertiary aspects of the Arab League Boycott of Israel, in accordance with GCC initiatives. Although Federal Law No. 15 of 1972 has not been formally repealed or amended, the Cabinet Resolution constitutes a formal declaration of UAE policy that the secondary and tertiary aspects of the Boycott of Israel will no longer be observed in the UAE. The primary boycott of Israel is still in place.

In 2017, the UAE (along with Saudi Arabia and Bahrain) imposed restrictions on certain dealings with Qatar.

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In addition, the UAE does not have any unilateral sanctions. However, in principle, the UAE observes UN imposed sanctions.

5. Are there any exchange control or currency regulations?

There are no currency exchange controls and no restrictions on the remittance of funds, except for restrictions on transactions involving Israeli parties or currency.

6. What grants or incentives are available to investors?

The UAE has established various free zones, each of which is regulated by the relevant free zone authority. Free zones are generally subject to their own respective company laws, independent of the company law of the UAE. Foreign companies are permitted to establish branches or incorporate wholly owned subsidiaries in each of the free zones, without the need to appoint a UAE national sponsor or have any UAE national ownership (*see Question 3*).

Free zones attempt to distinguish themselves by appealing to a particular type of business and offering an environment attractive to those businesses in terms of infrastructure, location and other factors, such as guaranteed tax holidays. Even outside the free zones, there is no corporate or personal income tax (except on foreign banks and courier companies operating in the UAE) (*see Question 19*).

The FDI Law introduced the possibility of majority foreign ownership in UAE mainland companies (outside the free zones areas) (*see Question 1*, *Foreign direct investment*).

Business vehicles

7. What are the most common forms of business vehicle used in your jurisdiction?

The most common form of business vehicle used by foreign companies is the onshore limited liability company (LLC). Other common forms of business vehicles include establishing branches of a foreign company and the incorporation of companies in free zones.

LLCs provide for limited liability of their shareholders and the ability to trade from the UAE (outside the free zone areas). An entity established in one of the free zones of the UAE cannot carry on business from outside the free zone area in the UAE.

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8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

The most common form of business vehicle used by foreign companies is an LLC.

Registration and formation

An LLC is formed by a memorandum of association (memorandum) entered into by the shareholders of the LLC. Each emirate of the UAE has its own licensing authority. An LLC must be licensed by the relevant emirate level authority. Once all necessary documentation is in order, the registration and licensing process takes approximately ten working days. However, it can take longer if the subject licence requires the approval of an additional regulatory body (for example, additional approvals from the Dubai Municipality are required to license a contracting company).

Some licensing authorities provide for naming requirements (for example, the name must not include the name of a country or government and the name must strictly reflect the business activity).

Reporting requirements

An LLC must keep a record of the names, nationalities, date of birth and domiciles of all shareholders and their respective share values, at the LLC's headquarters. An LLC must also maintain financial records that must be audited by a licensed auditor. The audited financial statements are not currently required to be filed with any authority.

An LLC is required to annually renew its licence and registration with the local authorities.

Share capital

The law provides that an LLC must have capital that is sufficient to achieve its purpose of incorporation. In practice the level of the capital will need to be approved by the appropriate emirate authority.

Non-cash consideration

In-kind contributions are accepted as payment for shares in an LLC, but are subject to certain requirements concerning certification of the value of such contributions.

Rights attaching to shares

An LLC cannot issue transferable shares or bonds, or resort to public subscriptions (these activities are reserved for public joint stock companies). Federal Law No. 2 of 2015 on Commercial Companies, as amended (Companies Law) sets out the rights and restrictions on shares of an LLC.

9.In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

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Management structure

An LLC must be managed by one or more managers as determined by the shareholders in the memorandum of association. A manager can be one of the shareholders or any other person. Where an LLC has more than one manager, its meetings are regulated by the LLC's memorandum, subject to which the manager(s) have full power to manage the LLC and make binding decisions on its behalf. If the LLC has more than seven shareholders, the memorandum must provide for a supervisory board of at least three shareholders. The supervisory board:

- Can examine the LLC's books and documents.
- Can require the managers to submit reports on their management.
- Supervises the LLC's balance sheet, its annual reports and the distribution of profits.
- Submits its own reports to the general assembly of shareholders.

An LLC must hold a general assembly of the shareholders at least once a year, during the four months following the end of the LLC's financial year, and at any other time if requested by the manager(s) or by shareholders holding at least 20% of the LLC's capital (the limit was reduced from 25% to 20% under Ministerial Decision No. 272 of 2016). Resolutions of the general assembly must be adopted by shareholders representing at least 51% of the LLC's capital, unless the memorandum provides for a greater majority.

Management restrictions

Unless indicated otherwise, the provisions of the Companies Law applicable to the directors of a joint stock company are applicable to the managers of LLCs. The restrictions on the management can be mentioned in the memorandum of association of an LLC.

Directors' and officers' liability

The managers of an LLC are liable to the LLC, the shareholders and third parties for:

- All acts of fraud.
- Abuse of power.
- Violations of the Companies Law (or regulations provided by the law).
- Errors in management.
- Gross error.

Parent company liability

The liability of a shareholder in an LLC is generally limited to the value of its shareholding.

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Employment

Laws, contracts and permits

10. What are the main laws regulating employment relationships?

The Labour Law (*see Question 1*, *Employment law*) regulates most employment relationships in the UAE.

The Labour Law applies to all employees working in the UAE, including foreign employees working in the UAE. However, it does not apply to:

- UAE national employees who are employed abroad.
- Employees of UAE companies working abroad.
- Government sector.
- Domestic servants.
- Agricultural workers.

The Labour Law imposes minimum standards on the termination of employment, working hours, vacation time and safety standards, among other things, which cannot be contracted out of. All employers in the UAE (other than those in exempt categories or in free zones) must register with the Ministry of Human Resources and Emiratisation (MOHRE).

Trade unions and collective bargaining are not currently permitted, and for both UAE nationals and non-nationals, employee grievances are handled through a conciliation process administered by the MOHRE.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

A written standard employment contract by the MOHRE is required and the minimum standards provided in the Labour Law apply regardless of contrary contractual provisions or choice of law clause in the contract.

12. Do foreign employees require work permits and/or residency permits?

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Employment visas are required for foreign nationals to work in the UAE. The entire process costs about AED7,500 and takes four to five weeks.

For a foreign national to obtain residency in the UAE:

- The foreign national must enter into an employment contract with an employer that is duly licensed in the UAE.
- Employment contracts with MOHRE-registered employers must be on the form prescribed by the MOHRE and registered with it.

Termination and redundancy

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees are not entitled to management representation or to be consulted in relation to corporate transactions.

14. How is the termination of individual employment contracts regulated?

The Labour Law provides for a 30-day minimum notice period for dismissal for legitimate reasons and pay in lieu of notice is an acceptable alternative. What constitutes a legitimate reason is not defined, but generally the reason for termination must relate to the employee's work.

The statutory minimum notice period and severance payment is required in the case of justified dismissals. This is unless the termination of employment is due to misconduct (*Article 120, Labour Law*). Misconduct includes the violation of safety rules, non-performance of main duties and intoxication (during working hours).

In a wrongful dismissal, the employer can be ordered by the court to pay compensation of up to three months' salary to the employee. Employee grievances are handled through a conciliation process administered by the MOHRE.

15. Are redundancies and mass layoffs regulated?

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There are no specific regulations regarding redundancies and mass layoffs.

Tax

Taxes on employment

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

There are no personal taxes in the UAE.

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Tax resident employees

The UAE does not impose any personal income taxes on either UAE national or non-UAE national employees.

A statutory pension contribution of 5% of the salary is payable by UAE national employees. Non-UAE national employees do not make any social security contributions. However, certain pension deductions are applicable to GCC nationals employed in the UAE.

Non-tax resident employees

The UAE does not impose personal income tax.

Employers

A statutory pension contribution of 12.5% of the salary is payable by the employer in relation to employees who are UAE nationals.

Business vehicles

18. When is a business vehicle subject to tax in your jurisdiction?

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Tax residency is not clearly defined under UAE law, as there is no corporate income tax legislation.

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

No corporate income tax is imposed at the federal or emirate level, except in relation to branches of foreign banks (at the emirate level) and courier companies (at the federal level). Emirate-level taxes are imposed on the petroleum concession holders at rates specifically negotiated in the relevant concession agreements.

Dubai, and certain other emirates, impose taxes on some goods and services (including sales of alcoholic beverages, hotel and restaurant bills, and residential leases). The UAE has established a Federal Tax Authority, which has imposed excise duty on certain products and oversees the implementation of VAT (at a rate of 5%).

Dividends, interest and IP royalties

20.How are the following taxed:

- Dividends paid to foreign corporate shareholders?
- Dividends received from foreign companies?
- Interest paid to foreign corporate shareholders?
- Intellectual property (IP) royalties paid to foreign corporate shareholders?

Dividends paid

The UAE does not impose taxes on dividends (paid or received).

Dividends received

The UAE does not impose taxes on dividends (paid or received).

Interest paid

The UAE does not impose taxes on interest payments.

IP royalties paid

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The UAE does not impose taxes on royalty payments.

Groups, affiliates and related parties

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

No thin capitalisation rules apply in the UAE.

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

No controlled foreign company rules apply in the UAE.

23. Are there any transfer pricing rules?

No transfer pricing rules apply in the UAE.

Customs duties

24. How are imports and exports taxed?

Under the GCC's agreement to impose uniform rates for customs duties, the UAE imposes a uniform 5% customs duty on the import of goods from outside the GCC. Limited exemptions apply to military and security purchases and some food items.

Double tax treaties

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25. Is there a wide network of double tax treaties?

The UAE is party to more than 100 international tax treaties.

Competition

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

The Federal Law No. 4 of 2012 (Competition Law), which came into force on 23 February 2013, applies to all entities in relation to:

- Economic activities carried out within the UAE.
- The utilisation of IP rights within and outside the UAE.
- Any economic activity outside of the UAE and having an effect on competition inside the UAE.

The following entities and sectors have been expressly exempted from the application of the Competition Law:

- Federal and local government entities and entities owned or controlled by federal and local government entities.
- Small and medium size entities (*see below*).
- Entities operating in the following sectors:
  - telecommunications;
  - financial;
  - media (prints, audio and visual);
  - oil and gas sector;
  - production and distribution of pharmaceutical products;
  - postal services (including express mail, electricity and water production and distribution);
  - sewage and waste disposal; and
  - land, sea and maritime transportation (including transportation by rail and related services).

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The Competition Law prohibits restrictive agreements between entities that may contravene, limit or prevent competition. In addition, an entity with a dominant position in the local market or a significant part of that is prohibited from any acts or dealings by abusing its dominant position in order to prevent, limit or weaken competition. The Competition Law requires that entities seek merger clearance from the UAE Ministry of Economy where there is an economic concentration. The concept of economic concentration relates to a transaction that:

- Will result in the acquisition of a direct or indirect, total or partial interest or benefit in assets, equity, and/or obligations of another entity to which the Competition Law applies.
- Will create or promote a dominant position.
- May affect the level of competition in the relevant market.

The requirement to submit a merger clearance request is accordingly triggered in all cases where there is an economic concentration, irrespective of whether the parties to the concentration have a formal, licensed presence in the UAE. The test is an effect-based test. Foreign-to-foreign transactions must also be notified if they otherwise qualify for a filing.

The Competition Law allows for entities to seek an exemption to the Competition Law from the UAE Ministry of Economy. The procedure for seeking an exemption is set out in the regulations (*Cabinet Decision No. 37 of 2014*) (Cabinet Decision) to the Competition Law. The Cabinet Decision also provides for issuance of implementing regulations by the Ministry of Economy that have not yet been declared.

The Competition Law provides for the following penalties in the event of violation:

- Fines between AED500,000 and AED5 million for entering into restrictive agreements or abusing market dominance.
- Fines between 2% and 5% of the infringing entity's annual revenue derived from the sale of the relevant goods and services in the UAE for a failure to notify a transaction that must be notified under the Competition Law.

In addition, an entity violating the provisions of the Competition Law can be subject to possible criminal sanctions.

Other Cabinet decisions have been issued, which provide guidance for the implementation of the Competition Law. The Competition Law states that it will not apply to small and medium establishments. The definition of a small and medium establishment is set out in Cabinet Resolution No. 22 of 2016 and can be divided into three categories: the trade sector, the industry sector and the service sector, and can be identified by the number of employees and annual turnover. Cabinet Resolution No. 13 of 2016 provides for the rates and rules which are relevant to the application of the Competition Law. Restrictive agreements will be deemed to have a weak impact if the overall share of contracting establishments does not exceed 10% of the total transactions in the relevant market. An establishment will be considered to be in a dominant position if such establishment's total transactions in the market exceed 40%, in which case merger clearance must be sought. The regulation does not set out any conditions for how the threshold must be met. Essentially, it does not specify whether the parties to an economic concentration should meet the threshold together or separately, provided that together (after the concentration is complete) they have a market share of at least 40% in the relevant market.

27. Are mergers and acquisitions subject to merger control?

See *Question 26*.

Intellectual property

28. Outline the main IP rights in your jurisdiction.

The UAE is a member of the General Agreement on Tariffs and Trade, and accordingly all provisions relating to IP, including reciprocity, apply in the UAE. The UAE also has its own legislation regulating IP.

Patents

Nature of right. To be patentable, an invention must be:

- Novel. Novelty is not described except using the word "new". The Ministry of Finance and Industry examine the application for novelty.
- Inventive. The patent must be non-obvious, as judged by the Ministry.
- Capable of industrial application. The invention must be practically useful in industry.

Protection. Protection is achieved by registration under Federal Law No. 44 of 1992 regarding the Regulation and Protection of the Industrial Property of Patents, Designs and Industrial Prototypes (as amended by Federal Law No. 17 of 2002) (Patent Law), which regulates the protection of patents, designs, industrial models and know-how, and is administered by the Ministry of Finance and Industry.

Enforcement. A petition can be made to the Administration of the Industrial Property, a statutory administrative body, for the enforcement of provisions of the Patent Law, appeals from which must be made within 30 days of a decision.

Length of protection. A patent is valid for 20 years. The patent owner must use it or license it within four years from the date of application.

Trade marks

Nature of right. To be registrable in the UAE, a trade mark must be distinguishable and not yet registered by another person. Registrability is at the Ministry of Economy's discretion.

Protection. Protection is achieved by registration under Federal Law No. 37 of 1992 Regarding Trademarks (as amended) and is administered by the Ministry of Economy. Applications are submitted to the Trade Control section of the Ministry of Economy. The process takes approximately four to six months and costs about AED10,000.

Enforcement. Unauthorised use of a registered trade mark and other related offences are punishable under UAE law. An aggrieved trade mark owner (or licensee) can also bring a civil action for damages. No injunctive relief is available in the UAE courts.

Length of protection. A trade mark registration is valid for ten years from the date of registration and can be renewed.

Registered designs

Nature of right. Industrial designs are defined as any innovative three-dimensional shape that can be used in industry or craft.

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To be registrable, a design must be:

- New.
- Innovative.
- Usable as an industrial product.

Protection. Protection is achieved by registration under the Patent Law and is administered by the Ministry of Finance and Industry. An application is made to the Administration of Industrial Property for a deed of protection in relation to an industrial design.

Enforcement. Unauthorised use of a registered industrial design, to manufacture or import goods relating to the industrial design, with the intention of selling those goods is punishable under UAE law. The aggrieved industrial design owner (or licensee) can also bring a civil action for damages. No injunctive relief is available in the UAE courts.

Length of protection. The protection term for a registered design is ten years from the date of filing the application for registration.

Unregistered designs

Unregistered designs are protected as an unregistered copyright (*see below, Copyright*).

Copyright

Nature of right. Copyright can subsist in a wide variety of media, including:

- Written.
- Verbal.
- Musical.
- Photographic.
- Drawings.

Protection. Copyrights in the UAE are protected under Federal Law No. 7 of 2002 regarding Copyrights and Neighbouring Rights, which is administered by the Ministry of Information and Culture. Protection arises automatically on the author's creation of the work and registration is not required. However, a copyright can be registered with the Ministry of Information and Culture to provide public notice of the copyright or to establish priority in time. No greater substantive protection is afforded to a registered copyright compared to an unregistered copyright.

Enforcement. Unauthorised publication of a copyrighted work in the UAE is a criminal offence punishable by imprisonment and/or fines.

Length of protection. A copyright is protected for the duration of the author's life plus 50 years.

Confidential information

Confidential information is not specifically regulated. However, a person is liable for acts causing harm generally (*UAE Federal Law No. 5 of 1985 regarding Civil Transactions (Civil Code)*), which would include harm caused by unauthorised use or publication of the personal or private information of another.

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Marketing agreements

29. Are marketing agreements regulated?

The UAE Commercial Agencies Law (*Federal Law No. 18 of 1981*, as amended) regulates the appointment of commercial agents, sales representatives and distributors. A commercial agency is defined as any arrangement whereby a foreign company is represented by an agent to distribute, sell, offer, or provide goods or services within the UAE for a commission or profit.

The Commercial Code (*Federal Law No. 18 of 1993*) augments the Commercial Agencies Law and establishes the regulatory framework for the various types of permitted commercial agencies. The most common type of agency is the contractual agency, whereby the agent undertakes, on a permanent basis and in a specific area of activity, to instigate and negotiate deals for the principal in return for payment. Distributor contracts are treated as contractual agencies when they involve one agent as the sole distributor.

The primary requirements and characteristics of commercial agencies are as follows:

- Commercial agents must be UAE nationals or companies incorporated in the UAE and owned entirely by UAE nationals.
- Commercial agents must be registered with the Ministry of Economy to engage in commercial agency activities. In practice, there are many unregistered commercial agencies held by companies with some foreign ownership.
- The agency agreement must be registered for the agent to be protected under the law and to have the agency relationship recognised.
- Commercial agents are entitled to an exclusive territory encompassing at least one emirate for the specified products.
- Unless otherwise agreed, commercial agents are entitled to receive commissions on sales of the products in their designated territory irrespective of whether these sales are made by or through the agent.
- Commercial agents are entitled to prevent products subject to their agency from being imported into the UAE.

E-commerce

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

Federal Law No. 1 of 2006 regarding Electronic Transactions and Commerce regulates electronic records, documents and signatures relating to electronic transactions, but does not apply to wills, immovable property, negotiable instruments, personal law issues such as marriage or divorce, or documents that must be attested before the notary public. Generally, contracts can be formed by any means of electronic communication. A person can rely on an electronic signature to the extent

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such reliance is reasonable in the circumstances.

Advertising

31. Outline the regulation of advertising in your jurisdiction.

The National Media Council (Council) is a federal government body and is the main regulator for advertising in the UAE. The Council's Chairman's Decision No. 35 of 2012 concerning the Standards of Advertisement Content in Media applies to all advertisements that are produced, distributed or broadcast in the UAE and the free zones. The regulations determine the standard and control of the advertisement content published in various printed, audio and visual media.

Data protection

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

The UAE (other than some of the free zones) does not have a specific law (other than the Health Data Law) on privacy, data protection, security, access or interception of information. However, there are certain laws that address data protection issues relating to the confidentiality of information, including:

- Article 31 of the Constitution, which provides for a general right of "freedom of communication by post, telegraph or other means of communication and the secrecy thereof shall be guaranteed in accordance with the law".
- Article 379 of the Penal Code (*Federal Law No. 3 of 1987*), which prohibits any person entrusted with a secret due to their profession, trade, position or art, who is found to have disclosed it in cases other than those lawfully permitted, or if found to have used such a secret for their own private benefit or for the benefit of another person, without the consent of the individual.
- Article 21 of the Federal Law No. 5 of 2012 on Combatting Cybercrimes (Cybercrime Law), which prohibits the invasion of privacy of an individual, by means of a computer network and/or electronic information system and/or information technology, without the individual's consent and unless otherwise authorised by law.

The Health Data Law is aimed at regulating the collection, processing and transfer of electronic health data that originates in the UAE (whether onshore or in any of the free zones). The Health Data Law will apply to all businesses that handle health data and information (*see Question 1, Health data protection*).

The DIFC and the Dubai Healthcare City Authority have passed comprehensive laws and regulations regarding data protection laws. Entities established in free zones are required to follow the laws and regulations of their respective free zones and other federal laws as applicable to the free zone entities.

In addition, the Central Bank of the UAE has discretion regarding whether to permit banks registered in the UAE to store

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customer information outside of the UAE.

Product liability

33. How is product liability and product safety regulated?

The Civil Code contains general provisions imposing liability for harm done to another. These provisions could apply to product liability claims. The Civil Code provides for a distinction between direct and indirect (or consequential) harm but does not define these terms. It is not possible to contract out of liability for causing direct harm, whereas liability for indirect harm can be limited by contract. In all cases, liability is assessed on the basis of the amount of harm suffered (including loss of profit if it was a natural result of the harmful act).

The UAE Consumer Protection Law (the Federal Law No. 24 of 2006 on Consumer Protection and the Cabinet Resolution No. 12 of 2007 on the Implementation of Federal Law No. 24 of 2006 on Consumer Protection) provides protection to the consumer and holds a supplier liable for damages.

On 1 July 2019, the Federal Law No. 10 of 2018 on the Safety of Products (Product Safety Law) came into effect. The Product Safety Law aims to ensure safety of products which are offered in the UAE and requires a supplier to ensure that:

- The supplier does not offer unsafe products in the UAE.
- A product remains safe after it is sold/rented and during normal and frequent use of the said product.
- The supplier takes the necessary preventive and corrective measures determined by regulations in case of a change in the properties of a product or conversion of a product into an unsafe product due to normal use.

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Publications

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- Banking Regulation, Law Business Research (co-author of the UAE chapter).
- Acquisition Finance, Law Business Research (co-author of the UAE chapter).
- The Restructuring Review, Law Business Research (co-author of the UAE chapter).
- Arrest of Vessels, Maritime Law Handbook, Kluwer Law International (co-author).
- Litigation and enforcement in the United Arab Emirates, Practical Law Global Guides (co-author).

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