

# United Arab Emirates

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## **Introduction**

The United Arab Emirates was established in 1971 under a written Constitution as a Federation of the seven Emirates of Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah, and Umm Al Quwain. It is situated on the eastern flank of the Arabian Peninsula facing Iran across the Arabian Gulf just inside the Straits of Hormuz. Its closest neighbors are Bahrain, Qatar, Oman, and Saudi Arabia.

The significance of the UAE economy is based on the discovery, in the 1950s in Abu Dhabi and the 1960s in Dubai, of major quantities of crude oil and the subsequent generation of very substantial revenues from its export, especially following the price increases in 1973.

## **Political, Social, and Economic Climate for Foreign Business**

### **Political**

Under the Constitution of the United Arab Emirates, each of the seven Emirates retains a very substantial measure of control over the conduct of governmental affairs within the Emirate. The important subjects over which the Federation exercises control are defense, foreign affairs, communications, education, and health. In addition, the Federation has legislative authority with regard to a number of matters, including commercial and corporate law. The individual Emirates retain control over all matters not specifically stated in the Constitution to be under Federal authority.

Each Emirate has its own Ruler. The Ruler of Abu Dhabi is the President of the Federation, and the Ruler of Dubai is the Vice President. The Federal cabinet consists of nominees of the various Emirates. The Federal National Council is a consultative body of 40 members, 20 of whom are selected by the individual Rulers and 20 of whom are elected by a limited electorate of approximately 200,000 voters.

Perhaps the most important aspect of the independence of the individual Emirates is the fact that each of the individual Emirate Governments continues to exercise control over petroleum exploration, development, and exploitation and to be the sole governmental body which imposes and collects taxes and royalties in the

particular Emirate. The Federation thus relies on the individual Emirates (principally Abu Dhabi) to fund Federal expenses and programs.

### **Social**

The United Arab Emirates (UAE) is a small country. It has a population of approximately 9.7 million people. Of this number are only about one-fifth citizens of the UAE, and the remaining are expatriates. The expatriate working population consists of laborers, technicians, professionals, government employees, and businessmen. The expatriates come from all over the world. However, a majority consists of persons from the Indo-Pakistan subcontinent. A large number come from other non-Gulf Arab countries.

From the point of view of an expatriate, the UAE is a pleasant country to live in. The facilities are modern and generally excellent, including communications, air transport, and education. There are relatively few restrictions, allowing expatriates to generally lead a lifestyle substantially of their own choice.

### **Economic**

Current oil production of the UAE is in the region of 2.9-million barrels per day. Until the recent drop in price, oil production was generating annual revenue in excess of US \$150 billion. The Emirate of Abu Dhabi accounts for more than 90 per cent of current UAE oil production. Dubai, Sharjah, and Ras Al Khaimah are the other oil producers.

The UAE has one of the highest incomes per capita in the world. The UAE has in excess of 98 billion barrels of proven reserves or about eight per cent of the world's proven reserves. This should cause the UAE to continue to have an income per capita in the foreseeable future that is among the highest in the world.

### **Legal System**

#### **In General**

The Constitution of the UAE, on which its legal system is based, was not a hastily drafted document and, in fact, took some three years in preparation. Unlike the constitutions of some newly formed countries, the UAE Constitution is a practical document reflecting the numerous compromises required to attract and retain the support of the member Emirates.

The Constitution establishes the principal instruments of Federal authority, as follows:

- The Supreme Council of the Federation, composed of the seven Rulers of the seven Emirates, has the power to enact legislation, establish policy, appoint persons to office and, generally, has supreme supervision of the Federation's affairs (each Ruler has one vote and the approval of a matter requires a majority of five, which must include the votes of the Rulers of Abu Dhabi and Dubai);

- The President and Vice President of the Federation, who are elected by the Supreme Council from among its members and who have overall responsibility for the administration of Federal laws and affairs;
- A Council of Ministers, which performs the functions of a cabinet and administers the executive Ministries under the supervision of the President of the Federation;
- The Federal National Council, which has advisory and not legislative authority and is composed of 40 members from the seven Emirates, weighted somewhat in accordance with population;
- The Federal Judiciary; and
- The Constitution, which provides a rather detailed list of citizens' liberties and rights comparable to the Bill of Rights of the United States Constitution.

The Constitution deals repeatedly with the issue of the respective sovereign powers of the member Emirates and the Federation, reflecting the fundamental issue involved in creating the Federation, and repeatedly establishes the principle that the powers of the Federation are limited by the Constitution and unlimited residual powers are to be left in the hands of the Emirates.

The Constitution also lays down the rules of priority between Federal and Emirate legislation. Article 148 provides that laws in force in the Emirates at the time the Constitution took effect shall remain valid unless amended or annulled in accordance with the Constitution. Under article 151, Federal laws have precedence over legislation of the Emirates and, in case of conflict, Emirate legislation shall be annulled to the extent necessary to cure the conflict.

A system of Federal courts with Shariah, civil, and criminal jurisdiction has been established consisting of Federal Courts of First Instance, Federal Courts of Appeal, and a Federal Supreme Court in Abu Dhabi. The Supreme Court has both appellate and original jurisdiction in certain limited situations (such as disputes between Emirates and with regard to Constitutional issues). The court systems of five of the seven individual Emirates have been merged into the Federal courts; however, the Emirates of Dubai and Ras Al Khaimah have retained their own court systems entirely and have not joined the Federal system. In addition, Abu Dhabi has created its own parallel court system.

Although the administration of the Federal courts has been provided for in considerable detail by various Federal laws implementing the provisions of the Constitution, the effectiveness of the system is hampered by the absence of a program for indexing and publishing court decisions in a comprehensive and timely manner.

The Constitution provides that the UAE must be an Islamic state and that Islamic jurisprudence shall be a major source of legislation, and subsequent Federal legislation declares that the primary sources of law shall be the Shariah and Federal and Emirate laws not opposed to the Shariah. In practice, the Shariah departments of the Federal courts give priority to the Shariah. Although the other departments of the Federal courts also apply the principles of Shariah, they tend to restrict such

application and give greater weight, particularly in commercial matters, to Federal and Emirate law, as well as accepted custom and usage, applicable principles established under other legal systems, and general equitable considerations.

### **Regulation of Business**

Regulation of the conduct of business in the UAE is shared at the Federal and Emirate levels. Until 1979, Federal legislative authority relating to the conduct of business remained largely unexercised and, until that time, regulation of business was primarily conducted independently and rather liberally by each Emirate Government.

Much of such regulation was not based on codified law and therefore was quite informal and discretionary. Since then, the legal environment has undergone a very dramatic change and development. The basic trend in the regulation of business has been strongly in the direction of codification, more regulation, and regulation at the Federal level. Since 1979, the following major Federal statutes have been enacted that affect domestic and foreign business activity:

- Federal Law Number 1 of 1979 on Industrial Affairs (the ‘Industries Law’);
- Federal Law Number 8 of 1980 on Labor Relations (the ‘Labor Law’);
- Federal Law Number 10 of 1980 on the Central Bank, the Currency System, and the Banking Profession (the ‘Banking Law’);
- Federal Law Number 18 of 1981 on Commercial Agencies (the ‘Commercial Agencies Law’);
- Federal Law Number 26 of 1981, promulgating the Commercial Maritime Law (the ‘Maritime Law’);
- Federal Law Number 5 of 1985, promulgating the Civil Code (the ‘Civil Code’);
- Federal Law Number 3 of 1987, promulgating the Penal Code (the ‘Penal Code’);
- Federal Law Number 11 of 1992, promulgating the Code of Civil Procedure (the ‘Code of Civil Procedure’);
- Federal Law Number 35 of 1992, promulgating the Code of Criminal Procedure (the ‘Code of Criminal Procedure’);
- Federal Law Number 37 of 1992, promulgating the Trademarks Law (the ‘Trademarks Law’) (amended by Federal Law Number 8 of 2002);
- Federal Law Number 7 of 2002, promulgating the Copyright Law (the ‘Copyright Law’);
- Federal Law Number 17 of 2002, promulgating the Patent Law (the ‘Patent Law’);
- Federal Law Number 7 of 1993 on the Federal Environmental Authority (the ‘Environment Law’);
- Federal Law Number 18 of 1993, promulgating the Commercial Code (the ‘Commercial Code’);

- Federal Law Number 24 of 1999 concerning Protection & Development of the Environment (the ‘Protection and Development of Environment Law’);
- Federal Law Number 4 of 2000 concerning the Emirates Securities and Commodities Authority and the Emirates Securities and Commodities Exchanges;
- Federal Law Number 4 of 2002 on Prohibition of Money Laundering;
- Federal Law Number 24 of 2006 on Consumer Protection;
- Federal Law Number 6 of 2007 on the Establishment of the Insurance Authority and Regulation of Insurance Operations (the ‘Insurance Law’);
- Federal Law Number 4 of 2012 Organizing Competition (the ‘Competition Law’);
- Federal Decree-Law Number 5 of 2012 on Combating Cyber Crimes;
- Federal Law Number 2 of 2015 on Commercial Companies (the ‘Commercial Companies Law’);
- Federal Decree-Law Number 9 of 2016 on Bankruptcy (the ‘Bankruptcy Law’);
- Federal Decree-Law Number 7 of 2017 on Excise Tax (the ‘Excise Tax Law’);
- Federal Decree-Law Number 8 of 2017 on Ratification of Unified Value Added Tax Agreement for GCC (the ‘VAT Law’); and
- Federal Decree-Law Number 19 of 2018 on Foreign Direct Investment (the ‘FDI Law’).

Prior to 1979, the most important regulation of business activity in the UAE was conducted by the individual Emirates through their respective business licensing requirements and procedures. Since 1979, the individual Emirates have continued their administration of these licensing requirements, although it is increasingly influenced by Federal policies and legislation. However, important elements of the overall regulation of business are still exercised by the Emirate administrations, at least informally and at the practical level.

It is of particular importance in respect of foreign investment and business activity in the UAE that there are no laws directly regulating foreign investments.

Another important legal trend was commenced in May 1981 with the agreement of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE to form the Arab Gulf Cooperation Council (AGCC) with the objectives of integrating their legal systems and economic activities. A number of steps have been taken, including unification of the customs laws of the six nations.

### **Forms of Doing Business**

The first commercial companies law of the UAE was enacted in 1984. Previously, there was no statutory corporate law either at the Emirate or Federal levels. Limited liability companies in the UAE were therefore established only through special Federal legislation or more usually by the decree of the Ruler of an

Emirate. The memorandum and articles of association of the company were normally incorporated by reference in the Ruler's decree and, therefore, on an individual basis formed a partial substitute for a general statutory corporate law.

The Commercial Companies Law in its present form applies to all companies established in the UAE and to foreign companies that have their headquarters or major activities in the UAE. It regulates existing branch offices of foreign companies and contains regulations for the establishment of new branch offices of foreign companies. It does not apply to unincorporated sole proprietorships or to non-commercial entities. The following provisions of the Commercial Companies Law are of particular importance:

- All companies organized in the UAE are required to have a minimum of 51 per cent UAE national ownership and take one of the seven forms discussed below;
- All branch offices of foreign companies are required to have a national agent unless the foreign company has established its offices pursuant to an agreement with the Federal or an Emirate Government;
- All general partnership interests must be owned by UAE nationals; and
- Foreign shareholders may hold up to a 49 per cent interest in limited liability companies, and the founders of such companies may provide for perpetual management by a foreign shareholder. However, the recently-enacted Federal Decree-Law 18 of 2017 ('Decree-Law 18') has amended Article 10 of the Commercial Companies Law, which sets out the circumstances for 51 per cent UAE national ownership of companies organized in the UAE. Previously, Article 10(2) of the Commercial Companies Law stated that as an exception to the 51 per cent UAE national ownership requirement, the Cabinet is empowered to issue resolution prescribing activities which are to be exclusively exercised by UAE nationals. Decree-Law 18 expanded the scope of this exception; Article 10(2) now states that the Cabinet may, in addition to prescribing activities which are to be exclusively exercised by UAE nationals, also issue a resolution to determine the 'activities and companies' in which one or more natural or corporate persons who are not UAE nationals may own 'all or most' of the shares.

This amendment suggests that it may now be possible for foreign investors to own up to 100 per cent of shares in UAE companies. However, pending a Cabinet resolution providing further clarity on the subject, it remains to be seen how readily consent for the same will be available.

The five types of local companies that may be organized in the UAE under the Commercial Companies Law are:

- General partnership — a partnership of UAE nationals where the liability of each partner is unlimited.
- Limited partnership — a partnership with one or more general and one or more limited partners where the liability of the limited partners is limited and the liability of the general partners (UAE nationals) is unlimited.

- Limited-liability company — a company with not less than one and not more than 50 shareholders whose liability is limited to the shares of the company held by them. Limited liability companies have no minimum share capital — share capital must simply be adequate for the needs of the relevant company.
- Public shareholding company — a joint stock or publicly held company with a minimum capital of Dirhams 30 million.
- Private shareholding company — a company with a minimum paid-up capital of Dirhams 5 million with not less than two shareholders whose liability is limited to the shares of the company held by them. It is possible in some circumstances to form a private shareholding company with only a single juristic person as shareholder.

The implementing authority of the Commercial Companies Law is the Federal Ministry of Economy. The Federal Minister of Economy has issued several Ministerial Resolutions to implement the Commercial Companies Law. These Ministerial Resolutions relate to the licensing and registration of foreign companies; the registration of general, limited, and share partnerships, limited liability companies, and publicly held companies; and to the standard form of memorandum and articles of association, incorporation, and public subscription of shares of publicly held companies. Further regulations contain standards on corporate governance.

All foreign companies, public and private shareholding companies, and limited liability companies are required to have their annual financial statements audited by accountants registered in the UAE and to submit such audited statements to the Federal Ministry. Branch offices of foreign companies are required to prepare their annual accounts on an independent basis for operations in the UAE and to maintain the necessary books and documents of account within the UAE.

### **Free Zones**

The licensing requirements of the various Free Zones of the UAE represent an exception to the local participation requirement. The UAE has more than 35 Free Zones, and the number continues to grow. The first Free Zone was the Jebel Ali Free Zone, designed to encourage the establishment of new manufacturing entities by foreign companies. Among the benefits and facilities for companies operating within Free Zones are:

- Exemption from the requirement of majority local ownership applicable to UAE industrial facilities outside the Free Zone;
- Exemption from import duties on raw materials and equipment used in products manufactured within the Free Zone;
- No restriction on repatriation of capital;
- Exemption from income tax; and

- Exemption from many of the customary administrative requirements for visas and labor permits for personnel employed in the Free Zone; for example, personnel employed in Free Zone companies are formally sponsored and employed by the Free Zone Authority and are seconded to Free Zone companies.

Conceptually, companies operating in a Free Zone are treated as offshore or foreign companies for non-export purposes and are not permitted to conduct business activities within the rest of the UAE without complying with the rules generally applicable to the establishment of a foreign business presence. Normal import duties are payable on sales by Free Zone companies to customers within the UAE.

As stated above, Free Zone companies do not have to comply with the provisions of the Commercial Companies Law applicable to foreign companies and are also exempt from the registration requirement applicable to other foreign companies.

### **Licensing of Businesses by the Emirates**

The fundamental instrument by which all of the Emirates regulate both foreign and domestic business activity is the requirement that any office for the conduct of business in an Emirate must be properly licensed by the municipal authorities of each such Emirate.

Under the licensing framework of the Emirates, the following kinds of business activity are generally regulated differently and generally involve different kinds of licenses:

- Representative office license: A representative office is restricted to business or sales promotion activities and may be used as a regional headquarters or liaison facility, but it is precluded from importing goods, effecting sales, or making contractual commitments.
- Trade license: A trade license allows the conduct of a specific type of commercial activity, such as import, sale, export, or general conduct of business in certain identified goods or product lines. General trade licenses allow the import and export of all types of products and unrestricted engagement in a general trading business.
- Industry license: An industry license is issued for the establishment and conduct of a specific kind of manufacturing, processing, or other industrial activity.
- Service license: This authorizes various specified forms of service activity.
- Professional license: Architects, engineers, business consultants, doctors, legal and accounting firms, and other professionals and consultants require professional licenses.
- Construction license: There are several kinds of construction licenses relating to different fields of construction activity.

The requirements for each of the above licenses differ, with requirements for the same license differing somewhat from Emirate to Emirate. Generally, a license is not required unless conduct of business in the UAE requires a permanent presence in the UAE. Thus, foreign businesses exclusively engaged in the supply of goods to purchasers in the UAE either directly to the customer or through a local commercial agent involving no regular or continuing business presence in the UAE would not require a license.

The licensing requirements reflect regulatory objectives relating to the name, description, and registration of the business activity; identification of the owners or partners and managers of the business and assurance that any such persons who are not UAE nationals are in compliance with Federal labor and immigration laws; assurance that the business will be conducted in a form that is locally acceptable; identification and summary review of the organizational documents of the business entity and, if a partnership, of each of the partners; and perhaps the extent and nature of required ownership and management participation in the business by UAE nationals. A license for the conduct of business in one Emirate is not valid for conducting business in another Emirate, and the individual Emirates continue to have significantly different requirements for local participation. Licenses may be issued to sole proprietorships, partnerships, corporations, or branch offices of any of the foregoing, including branch offices of corporations organized outside the UAE. Licenses are generally valid for one year and must be renewed.

### **Labor and Immigration Regulations**

After a business is licensed, and assuming that non-UAE nationals are required to operate the office, the newly licensed entity is required to register with the Federal Ministry of Labor and Social Affairs so that applications for employment of expatriates may be made to the Ministry on behalf of the newly registered entity.

It is sometimes the case that non-UAE nationals in the UAE may not change employment within the UAE without first spending six months outside the UAE. This makes it difficult to hire additional or replace existing personnel from expatriates within the UAE. However, the direct transfer of an employee is possible in most circumstances when both of the employers consent to the transfer.

### **Regulation of Certain Business Activities**

#### **Regulation of Agencies**

The Commercial Agencies Law applies to commercial agencies, a relationship that is broadly defined so as to include any representation by a local party of a foreign product or service, thereby extending to commission agencies, distributorships, and a wide range of other relationships. The Commercial Agencies Law provides for registration of commercial agency agreements, and accords agents exclusivity within the territory and protection from termination. The Law provides for the

registration of commercial agency agreements with the Federal Ministry of Economy, which administers the Law.

The foreign principal can appoint one agent for the entire UAE or for a particular Emirate or group of Emirates. Different agents can be appointed for significantly different product lines of the same manufacturer. An agent should be trade licensed in the Emirate or Emirates for which he is appointed and where he is to have an outlet or other permanent establishment.

Major causes for concern to foreign principals are the clauses in the Commercial Agencies Law relating to the termination and de-registration of the agency. The Law provides that an agent may be terminated only by mutual agreement of the foreign principal and the local agent notwithstanding the expiration of the term of the agency agreement. A foreign principal may terminate an agency without mutual consent provided that the Commercial Agencies Committee established under the Law agrees that the foreign principal has justifiable reasons for doing so.

Should an agency agreement be terminated for reasons not accepted by the Committee, or even if it is not renewed on the expiration of the agreed term, a local agent may be entitled to damages. The exclusive agency requirement together with the fact that the foreign principal cannot register a new agency without the consent of the previously registered agent or unless the Committee approves termination of the prior agency relationship gives the agent a very strong bargaining position.

Many foreign principals conduct marketing in the UAE through commercial agents that are not registered pursuant to the terms of the Commercial Agencies Law. The registration of commercial agencies is mandatory only in respect of a limited number of government procurements, and is not required generally. The Commercial Agencies Law provides that no claims may be heard in respect of unregistered commercial agencies.

### **Regulation of Government Tenders and Contracts**

There are laws at the Federal and Emirate levels dealing in considerable detail with the requirements and procedures for tenders for government contracts.

Under Cabinet Resolution Number 32 of 2014, a supplier, contractor, or tenderer with respect to Federal projects must be either a UAE national or a company that is registered in the UAE in accordance with the Commercial Companies Law.

The Emirate of Abu Dhabi has corresponding requirements with respect to projects of the Government of Abu Dhabi. Nevertheless, foreign contractors may be eligible to bid on major projects that are designated as requiring 'international' tenders. Eligibility for many tenders requires compliance with detailed regulations on contractor classification.

In general, the terms and conditions set forth in the tender documents are non-negotiable. Federal and Abu Dhabi tenders are required to be accompanied by a bid bond, in the form of an unconditional bank guarantee for five per cent of the value

of the bid. Successful tenderers are required to put up a performance bond equal to 10 per cent of the total contract price.

### **Regulation of Oil and Gas Business**

The UAE is a member of OPEC. The Rulers of the individual Emirates, as provided in the UAE Constitution, retain sovereignty over their oil and gas resources and operations and pursue independent policies in respect of these matters.

The normal practice, outside of Abu Dhabi, is for the Ruler and his advisors to deal directly with oil companies in the negotiation and administration of oil and gas concessions. In Abu Dhabi, the oil and gas business is administered by the Supreme Petroleum Council.

### **Regulation of Labor Relations**

The Labor Law governs employer-employee relations. The Labor Law is applicable to all foreign and national employees who are resident in the UAE notwithstanding the existence of contractual agreements to the contrary.

All foreign employees are required to execute an employment contract in the form or substantially in the form required by the Federal Ministry of Human Resources and Emiratization. This employment contract is registered with the Federal Ministry and constitutes the governing contract between the parties in any dispute in the UAE. The employment contract required to be registered states the salary of the employee, his position, the date of employment, and whether the contract is of a specified or unspecified duration, and requires a statement as to payment of housing, food, and transport allowances. To retain flexibility to terminate the contract, employers usually require the contract to be for an unspecified duration.

The Federal Ministry provides non-binding conciliation facilities. The majority of labor disputes are resolved through such conciliation procedures. An aggrieved party may not proceed directly to the civil courts for redress without first attempting to seek a satisfactory settlement through the Ministry.

The Labor Law is fairly extensive and specifies working hours and conditions, conditions for payment of overtime, holiday and vacation entitlement, sick leave, conditions and consequences of termination, payment of gratuity, and compensation for industrial accidents. Under the Ministry's Wage Protection System, all private-sector employers must pay the salaries of their employees in Dirhams through the local banking system, in a manner that enables the Ministry to monitor compliance. An employer that fails to comply could be subject to penalties, including denial of the ability to hire new staff.

### **Regulation of Banking**

The Banking Law established the Central Bank of the UAE in 1980 as the successor to the Currency Board, which had been established in 1973 under legislation of a more limited scope. The Banking Law also provides for the regulation of the monetary system and commercial banks and other financial institutions.

Under the Banking Law, all local commercial banks must be incorporated as shareholding companies and must be licensed by the Central Bank. Branches of foreign banks may engage in commercial banking in the UAE but must be licensed by the Central Bank and must maintain separate accounts for their UAE operations. The Law also provides for the establishment and regulation of investment banks, financial institutions, financial and monetary intermediaries (ie, foreign exchange dealers and securities broker-dealers), and representative offices of foreign banks. The license issued to a bank or other institution specifies the particular types of banking business it is licensed to do. Foreign banks operating in the UAE may have no more than eight branches.

Regulation of commercial banks under the Banking Law is extensive and includes, for example, required Central Bank approval for such actions as closing a bank, merging with another bank, and opening or closing branches; minimum requirements for paid-up capital and reserve funds; standardized accounting and independent audits by approved auditors; reporting requirements; and restrictions on lending to shareholders and directors.

The large number of foreign and local banks caused the Central Bank of the UAE more than 25 years ago to establish a virtually complete moratorium on new banks, both foreign and local, although the moratorium has been relaxed slightly in recent years.

### **Regulation of Bankruptcy**

The Bankruptcy Law, enacted in September 2016, replaces the seldom used bankruptcy provisions of the Commercial Code. It also repeals provisions in the Penal Code on non-fraudulent bankruptcy, and provides for the suspension of criminal proceedings relating to bounced cheques for the duration of the debtor's bankruptcy proceedings.

Should a company face problems repaying its debts, it may enter 'preventive composition' proceedings. This provides the debtor, as long as it is not insolvent, with the opportunity to reach an agreement with its creditors as to repayments, and protection by the courts from individual creditors whilst it does so.

Preventive composition proceedings may be converted to bankruptcy proceedings, should it become apparent that no effective agreement with creditors is likely.

### **Intellectual Property**

The UAE first enacted a Trademarks Law, a Copyright Law, and a Patent Law in 1992. Enactment of these Federal statutes was accompanied by a strong regulatory effort at the Federal and Emirate levels to put an end to the unauthorized use of intellectual property, which had earlier been rampant. The statutory and enforcement initiatives combined to give the UAE a modern intellectual property regime.

Trademarks and copyrights may be registered locally. After a long initial delay, the system for registering patents was made effective in the late 1990's after conclusion of an agreement with the Austrian patent office to assist in review of

UAE patent applications. The intellectual property regime of the UAE is now widely viewed to be consistent with the obligations imposed by the World Trade Organization.

### **Regulation of Competition**

The Competition Law, enacted in 2014, introduced the means by which the UAE could regulate anti-competitive practices. It comprises three key elements: a restriction on anti-competitive agreements, restrictions as to the behaviors of entities holding dominant market positions, and a requirement that mergers between entities with a sufficiently large combined market share obtain clearance in advance from the Ministry of Economy.

Cabinet Resolutions published in 2016 (Resolution Number 13 of 2016 and Resolution Number 22 of 2016) confirmed that, in terms of enforcing the Competition Law, the Ministry of Economy shall only concern itself with entities of a sufficient size — entities holding more than a combined 10 per cent share of the concerned market in respect of anti-competitive agreements, and entities holding more than 40 per cent of the concerned market in respect of merger clearance and dominant positions.

The Ministry of Economy may grant exemptions from the Competition Law on application. As the Competition Law and subsequent decisions are relatively new, the impact on UAE businesses remains to be seen.

### **Securities Trading**

The original Commercial Companies Law, enacted in 1984, contemplated that some forms of corporations could issue negotiable securities, including both stocks and bonds. However, the UAE remained without a formal securities market for 16 years, during which time a very low volume of securities trading was done over the counter.

This changed in 2000, with the creation of the Federal Securities and Commodities Authority, followed closely by the establishment of formal securities markets in Abu Dhabi and Dubai. A total of 68 issuers are listed on the Abu Dhabi Securities Market, and a total of 59 issuers are listed on the Dubai Financial Market. The Abu Dhabi and Dubai markets are now among the leading exchanges of the Middle East in market capitalization.

The year 2004 saw the creation of the Dubai International Financial Center, established as a financial free zone in which banks and other financial entities could operate subject to a detailed system of regulation based on Western models in lieu of the Federal legislation that applies elsewhere in the UAE. Located in the DIFC, the stock market, known as NASDAQ Dubai, aims to develop into a major securities market for international clients, as opposed to the regional and local focus of the existing securities markets in Dubai and Abu Dhabi.

**Commercial Code**

The year 1993 saw the enactment of the UAE Commercial Code, which addressed for the first time a number of subjects of critical importance to business that had not been addressed by statute before.

Among the subjects addressed by the Commercial Code are the status of negotiable commercial paper (notes, bills, and checks) and the rules on bankruptcy of commercial businesses. The Commercial Code also contains general provisions on commercial obligations and on various kinds of commercial contracts.

**Environmental Regulation**

The Federal Environmental Authority was created in 1993, and given a leading role in formulating policies and enforcing statutes designed to protect the environment of the UAE. Environmental compliance is an increasingly important part of any industrial enterprise. This was followed in 1999 with the enactment of the Protection and Development of the Environment Law.

In addition to regulations promulgated by the Federal Environmental Authority, a large body of environmental regulation exists pursuant to Emirate initiatives. The Abu Dhabi and Dubai Municipalities have long been attentive to environmental concerns. Since 1996, the leading role in Abu Dhabi has been assumed by the Environment Agency-Abu Dhabi.

**Other Federal Regulation**

Other significant Federal laws that regulate or affect business include the Federal Law relating to the Boycott of Israel (Federal Law Number 15 of 1972), the Maritime Law, the Insurance Law, the Industries Law and the FDI Law.

The UAE Boycott of Israel Law essentially implements the general principles of the boycott of Israel promulgated by the Council of the Arab League (of which the UAE is a member) established under the Arab League Pact, which provides for the so-called 'blacklisting' and intended boycotting of companies and individuals doing business in Israel or with Israelis. Although the statute has not been formally repealed or amended, a resolution of the Council of Ministers adopted in 1995 ended observance by the UAE of the secondary and tertiary aspects of the boycott.

The Maritime Law is an elaborate code comprising 422 articles dealing with most aspects of shipping law including, among other matters, ownership, registration and mortgage of vessels, privileged debts, arrest of vessels, carriage of goods by sea, salvage, general average, collisions at sea, compulsory pilotage, and marine insurance. With respect to carriage of goods, many of the provisions of the Hague rules are broadly incorporated into the statute. However, in practice, actions instituted for damage to cargo have more often than not been successful.

The Insurance Law requires all national and foreign insurance companies and insurance agents to be registered and licensed by the Federal Ministry of Economy, in addition to the licensing requirements of the Emirates. A new federal authority

called the Insurance Authority now assumes the regulatory and supervisory role formerly performed by the Ministry of Economy. Every insurance company organized under the laws of the UAE must be 100 per cent owned by UAE nationals and must be a publicly held shareholding company with a minimum authorized capital of Dirhams 30 million (US \$8.2 million). Every foreign insurance company and agency branch office is required to have a UAE national agent. The Law imposes various requirements on insurance companies and insurance agents, including compulsory deposits to guarantee fulfillment of their obligations; retention of reserve funds; record keeping; accounting and reporting formalities; prescribed time limits for compliance with various requirements for purposes of regularization under the Law; and specified penal consequences for non-compliance or breach of the Law.

The Industries Law provides for the regulation of industrial businesses in the UAE by the Federal Ministry of Finance and Industry. This Law provides for a registration and licensing procedure for all industrial businesses and stipulates that only projects whose capital is to be owned at least 51 per cent by UAE nationals will be approved. The Law also requires projects either to be managed by a UAE national or to have a board of directors with a majority of UAE nationals. The Law also includes substantial reporting requirements, which are partly aimed at providing the Federal Government with information so that industrial development of the country can be planned more rationally.

The FDI Law introduced the possibility of majority foreign ownership in UAE companies. The FDI Law sets 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; and
- A “positive list” of 122 economic activities (which include sectors such as agriculture, manufacturing, renewable energy, electronic commerce, transportation, arts, construction, and entertainment) where up to 100 per cent foreign ownership would be allowed. While allowing up to 100 per cent foreign ownership, the positive list does not do this unconditionally.

On the contrary, the positive list imposes additional requirements such as minimum capital requirements on some activities, obligations to employ advanced technology on other activities, and requirements to contribute to the Emiratisation of the workforce on others. For many business and service activities, existing restrictions and qualifications are expressly retained. Removal of ownership restrictions is not an end in itself, but is a means to attract FDI that will support the nation’s overall development objectives.

## **Taxation**

There is no Federal income tax law in the UAE. Although all but one of the Emirates have statutory income tax laws providing for tax on corporate bodies

which are still technically effective, a foreign business currently can be safe in concluding that its activity will not be subject to taxation, with certain exceptions (principally the oil-producing businesses and banks). The tax paid by banks varies from Emirate to Emirate and also within each Emirate.

The revenue of oil-producing companies is subject to the payment of both a royalty and an income tax. Royalties are calculated as a percentage of total revenue derived from production, while the income tax is on net profit after depreciation.

Pursuant to the VAT Law, value added tax ('VAT') is now imposed in the UAE at the rate of five per cent. Registration is mandatory for a taxpayer if the total value of its taxable supplies made within the UAE exceeds the mandatory registration threshold of AED 375,000 over the previous 12-month period or if it is anticipated that the taxable supplies will exceed the threshold in the next 30 days.

Voluntary registration is available for taxpayers that do not meet the mandatory registration threshold, but exceed the voluntary registration threshold of AED 187,500 subject to the same taxable supply tests above.

A taxable supply refers to a supply of goods or services made by a business in the UAE. Entities which are not based in the UAE but provide goods or services in the UAE are also required to apply for registration if they meet the threshold requirements.

Although five per cent is the rate of VAT that is generally applicable, some supplies are zero rated and some supplies are exempt. VAT applies throughout the UAE, including the many free zones of the UAE, with the exception of a limited number of free zones that are Designated Zones.

The Excise Tax Law became effective in the UAE as of 1 October 2017. A reasonably high rate of tax on a limited number of goods is imposed by way of an excise tax. This includes a 50 per cent excise on carbonated drinks and a 100 per cent excise on energy drinks and tobacco products.

## **Customs, Foreign Trade, and Currency Exchange**

### **Customs Duties**

In furtherance of the agreement of the member states of the Arab Gulf Cooperation Council to impose uniform rates for customs duties, the UAE imposes a uniform five per cent customs duty on the import of goods from outside the AGCC. Limited exemptions apply to military and security purchases and some foodstuff items.

### **Currency Exchange**

There are no exchange controls in the UAE. The UAE Dirham is linked with the dollar, and the exchange rate has remained unchanged for more than 25 years.

## **Real Estate**

The new millennium has seen rapid growth in real estate development in the UAE. This unprecedented area of business activity, focused largely on the Emirate of Dubai, has been fueled by a Dubai decision to allow foreign ownership of real estate. A lessening of restrictions on the transfer of real estate has also accompanied the real estate boom.

Paradoxically, the real estate boom occurred initially in the absence of statutory regulation. For decades, only Abu Dhabi and Sharjah had real estate statutes, which contained significant restrictions on the ownership and transferability of real estate. Abu Dhabi enacted two statutes in 2005 that significantly facilitated the transfer of real estate ownership and also allowed for the first time, in specifically designated areas, nationals of AGCC countries to own real estate and nationals of non-AGCC countries to own interests in real estate of up to 99 years' duration.

Also in 2005, the Emirate of Ras Al Khaimah enacted a statute allowing foreign ownership of real estate. Dubai, the center of the real estate boom, followed suit with Dubai Law Number 7 of 2006. Since then, Dubai has enacted a substantial volume of real estate legislation. Foreign ownership real estate legislation has also been promulgated in the Emirates of Ajman and Umm Al Quwain.

## **Arab Gulf Cooperation Council**

Established in 1981 with a six-nation membership consisting of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE, the objective of the Arab Gulf Cooperation Council is to develop a common market for the member states with integrated and coordinated policies on industry, agriculture, trade, and other matters under unified laws, regulations, and procedures.

The Unified Economic Agreement adopted by the member states at the time of the organization of the AGCC established the initial priorities with respect to unification and integration of legal and economic matters, which were stated to be exemptions for member states' products from customs duties, unified customs duties with respect to imports from other countries, and freedom of movement, work, and residence of citizens of the member states in all member states.

The AGCC is gradually moving toward the elimination of barriers to the internal movement of goods and the extension of national treatment for AGCC nationals throughout the AGCC in respect of ever more areas of business activity. However, on 5 June 2017, the UAE, along with Saudi Arabia, Bahrain, Egypt, Yemen, and Libya, cut diplomatic ties with Qatar. Since then, the UAE has implemented a political and economic boycott of Qatar, and has imposed a number of legal and administrative sanctions, including:

- Prohibiting the direct shipment of goods to and from Qatar by air, land, and sea (*e.g.*, goods loaded in the UAE cannot be shipped to Qatar and goods of Qatari origin cannot be offloaded in the ports of UAE); and

- Prohibiting the entry or travel through the UAE by Qatar nationals and, in some instances, Qatar residence holders.

In addition, a number of Qatar-based individuals and organizations have been identified by the UAE as being involved in terrorism-financing activities, and financial sanctions on these parties has resulted. The Qatari currency is not accepted in the UAE, and UAE-based entities having Qatari ownership or management have experienced administrative difficulties with continuing business operations. Despite these measures, the UAE has not imposed a general prohibition on doing business with Qatar, Qatari entities, or their affiliates.

### **Conclusion**

Forty-eight years have passed since formation of the Federation, during which time the UAE has followed a firmly held policy to develop a reliable legal framework and environment for the conduct of domestic and international business in which uniformly administered, published rules increasingly substitute for discretionary, traditional authority in regulating affairs. At the same time, despite the increased degree of statutory and administrative regulation of business resulting from the new laws, there continues to exist a policy to maintain a liberal free market economy.

More generally, it is expected that the framework for the further development of the legal system of the UAE will continue to be established at the Federal and not the Emirate level. However, the Emirate Governments (Dubai in particular) continue to exercise substantial influence and sovereignty, allowing ample scope for Emirate initiatives.