The Asset Management Review

Editor

Paul Dickson

Law Business Research

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Paul Dickson

Law Business Research Ltd

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EDITOR'S PREFACE

2012 is an auspicious year for the first edition of *The Asset Management Review*, coming as it does in the wake of the global financial crisis and in the midst of a continuing period of economic uncertainty in the eurozone, both of which have had a significant impact on asset management activity around the globe. Many governments have spent the past few years reflecting upon the existing frameworks for regulation of their financial services industries with a view to avoiding a repetition of past regulatory failings and encouraging a more appropriate risk appetite among investors and investment managers. The products of that reflection are beginning to emerge in 2012 and it appears that in many cases, large-scale overhaul of asset management regulation and greater intervention in previously lightly regulated industry sectors are likely to be the end result.

In some countries, and particularly at the supranational level in the European Union, it appears that a greater appreciation of the systemic importance of asset management entities in the broader financial system has been another product of the financial crisis, with a corresponding increased focus on transparency and disclosure to permit national regulators to monitor their activities. As a result, the debate about the type and extent of information that funds and their managers may be required to divulge publicly looks set to be another recurring theme throughout the coming year and beyond.

While there has certainly been a rebound in asset management operations since the lows of 2008, it would be fair to say that the outlook for investment fund activity over the next year remains uncertain. The continuing volatility of equities on global stock exchanges and the ongoing turbulence in bond markets, particularly in relation to concerns about the quality of some sovereign debt, have led to changes in investment behaviour and have done little to dispel any nervousness among investors. Nonetheless, there are some bright spots in an otherwise clouded investment landscape, with new prospects opening up in emerging markets, particularly in parts of Asia and Latin America. Perhaps the best that one can say from the present vantage point is that the next 12 months look likely to feature a combination that will be familiar to any seasoned investor – that of risk and opportunity.

The publication of the first edition of *The Asset Management Review* is a significant achievement that would not have been possible without the support of the many lawyers and law firms who have contributed so much of their valuable time, knowledge and experience to this edition. I am grateful to them all. I would also like to thank Gideon Roberton and his team at Law Business Research for all their efforts to bring this book into being.

It is hoped that *The Asset Management Review* will prove to be a useful and practical companion in the increasingly complex, globalised and regulated world of asset management as we face the impending challenges of the coming year.

Paul Dickson
Slaughter and May
London
September 2012

Chapter 30

UNITED ARAB EMIRATES

Stuart Walker and Ronnie Dabbasi[1]

I OVERVIEW OF RECENT ACTIVITY

As asset management in the UAE is still in its early growth phase, its development has necessarily been tied to the health of the financial services market as a whole. The past four years have been very challenging for financial service providers in the UAE. Prior to the global crisis, the UAE saw a great number of banking and finance transactions, including jumbo-syndications, bond and *sukuk* issues, and IPOs. In addition, speculation relating to the possible appreciation of the dirham and its delinking from the US dollar resulted in the investment of billions of US dollars of capital into the UAE. As a result of the increased liquidity in the market, dirham deposits with banks grew to record amounts, banks reacted with generous credit lines to corporate clients, and consumer assets grew at annual rates in excess of 25 per cent for several years. Foreign banks also substantially increased their exposure to the UAE private and public sector.

However, the UAE government's decision in 2008 not to unpeg the dirham from the US dollar resulted in the speculative deposits being withdrawn from the UAE, and the resulting decrease in liquidity greatly constricted fund formation and management. Simultaneously, the international financial crisis began to impair the portfolios of several large UAE banks, and it became apparent that the large investment in real estate would result in an equally large oversupply. The UAE construction and real estate sectors fared well until late-2008 when real estate prices plummeted, the economy shrank, and there were substantial lay-offs and a noticeable reduction in the population due to the departure of large numbers of expatriates.

The sectors in the UAE that have suffered the most during the crisis are real estate, construction and banking. Real estate activity has fallen to a fraction of previous levels, and construction of a number of potential projects has been cancelled, while several existing projects have been suspended or abandoned. Banks have had to take substantial

1 Stuart Walker is a partner and Ronnie Dabbasi is an associate at Afridi & Angell.

write-offs in their real estate, construction and consumer loan portfolios, and have greatly limited loan origination.

In response to the crisis, the Central Bank of the UAE ('the Central Bank'), the federal government and the emirate governments have responded with a variety of measures, including further regulation of foreign securities, an overhaul of the collective investment funds regime and an increase in bank reserves. These measures are discussed in detail in Section V, *infra*.

II GENERAL INTRODUCTION TO THE REGULATORY FRAMEWORK

The Central Bank and the Emirates Securities and Commodities Authority ('ESCA') are generally responsible for the regulatory oversight of financial activities in the UAE, with the exception of the Dubai International Financial Centre ('the DIFC'), where the Dubai Financial Services Authority ('the DFSA') carries out such functions. When examining the regulation of asset management in the UAE, one must consider the laws and regulations applicable to both the UAE and the DIFC.

i UAE regulatory framework

The UAE is a federation of seven emirates, all of which (with the exception of Dubai and Ras Al Khaimah) are part of the federal judicial system; the Emirates of Dubai and Ras Al Khaimah have separate judicial systems. References herein to the 'UAE' shall mean the UAE outside the DIFC.

The principal financial services regulator in the UAE is the Central Bank. ESCA also has some oversight functions in certain specific areas, particularly in relation to listed securities, and ESCA's role with regard to fund regulation is expanding (as discussed in Section VIII, *infra*).

Federal Law 10 of 1980 ('the Banking Law') is the primary legislation giving the Central Bank the authority to regulate financial services in the country. Subsequent key legislation includes the following:

a Central Bank Resolution 164/8/94 regarding the regulation for investment companies and banking, financial and investment consultation establishment and companies;
b Central Bank Resolution 89/3/2000 amending Central Bank Resolution 164/8/94;
c Central Bank Resolution 58/3/96 regarding the regulation of finance companies;
d Central Bank Resolution 21/2/88 regarding the system of investment banks in the UAE;
e Federal Law 6 of 1985 regarding Islamic banks, financial institutions and investment companies;
f Securities and Commodities Authority Resolution 3 of 2000 concerning regulations on disclosure and transparency;
g Securities and Commodities Authority Resolution 4 of 2000 concerning the Emirates Securities and Commodities Authority and Market; and

h Securities and Commodities Authority Resolution 48 of 2008 concerning financial advice and analysis.

The Banking Law, along with the various circulars and notices issued from time to time by the Central Bank, govern the conduct of business by financial institutions and financial service providers in the UAE. Any violations of the Banking Law or the Central Bank's circulars or notices can attract fines, warnings, reduction or suspension of credit facilities, prohibition on carrying on certain activities or licence revocation. A regulated entity may be subject to civil liability under the Banking Law, as well as criminal liability under the UAE Federal Penal Code.

ii DIFC regulatory framework

The DIFC is a financial free zone located within the Emirate of Dubai. It has its own body of laws that are completely separate from the laws applicable within the UAE, operates its own court system, and is supervised and regulated by an independent regulator, the DFSA. There are approximately 1,200 entities either incorporated or registered within the DIFC. Of these, approximately 500 are regulated as financial service providers by the DFSA.

The DIFC laws administered by the DFSA that are relevant to asset management regulation include DIFC Law 12 of 2004 ('the Markets Law'), DIFC Law 1 of 2004 ('the Regulatory Law') and DIFC Law 2 of 2010 ('the Collective Investment Law'). In addition to the laws administered by the DFSA, various modules of the DFSA Rulebook are significant, including the Collective Investment Rules and the Offered Securities Rules.

The DFSA Rulebook is essentially a principle-based system with 11 principles. For example, principle 1 (integrity) states that an authorised firm must observe high standards of integrity and fair dealing, and principle 5 (marketing conduct) states that an authorised firm must observe proper standards of conduct in financial markets. A regulated entity operating in the DIFC will be subject to civil and regulatory liability under the DIFC laws (such as the Markets Law and the Regulatory Law) and the relevant provisions of the DFSA Rulebook.

III COMMON ASSET MANAGEMENT STRUCTURES

i UAE asset management structures

The Banking Law provides for the licensing and regulation by the Central Bank of the following financial institutions, each of which may seek a licence to conduct asset management activities in the UAE:

a commercial banks, which include institutions that customarily receive funds from the public for granting loans, and which issue and collect cheques, place bonds, trade in foreign exchange and precious metals, and carry on other operations allowed by law or by customary banking practice;

b investment banks, which include institutions conducting similar activities to commercial banks, with the notable exception that they do not accept deposits with maturities of less than two years;

c investment companies, which manage portfolios on behalf of individuals or companies, subscribe to equity and debt instruments, prepare feasibility studies for projects, market shares and debt instruments, and establish and manage funds;

d finance companies, which provide corporate and consumer credit facilities, but may not accept deposits from individuals;

e financial intermediaries, which broker the purchase and sale of domestic and foreign shares and instruments;

f monetary intermediaries, which include foreign exchange dealers who purchase and sell currency;

g representative offices, which include regional and liaison offices of foreign banks and financial institutions;

h Islamic banks, which undertake all activities of a commercial bank and can also own the assets they finance;

i Islamic finance companies, which may provide personal, consumer, property, vehicle and trade financing, issue guarantees, enter into foreign exchange contracts with corporate entities, subscribe to shares, bonds and certificates of deposits, accept deposits from corporate entities, and manage investment vehicles; and

j real estate finance companies, which are finance companies that specialise in funding real estate projects on a conventional or shariah-compliant basis.

Each of the entity structures listed above requires a UAE national to hold at least 51 per cent of its shares; however, for finance companies, commercial banks and investment banks, the minimum UAE national shareholding is 60 per cent. In addition, although branches of foreign companies established in the UAE are required to appoint a UAE national as a national agent, foreign banks are not required to have an agent.

Any application for a Central Bank licence requires the submission of a letter of application, various constitutional documents of the applicant and a business plan. The Central Bank does not prescribe the exact documents required; rather, the normal practice is for the Central Bank to notify the applicant of such additional documents as it might require on an *ad hoc* basis.

Once an entity becomes licensed, it is eligible to market investment funds in the UAE. The Central Bank requires that investment funds have a prospectus, which must include the objective of the fund, its investment policies, the means by which its assets will be valued, and the manner in which the fund will be managed.

Funds marketed in the UAE have no general restrictions on investments or leverage; however, the Central Bank may impose conditions at the time of registration or authorisation. In addition, foreign funds must be marketed by a locally licensed entity if any products are to be offered onshore in the UAE.

Finally, investment companies, which are the principal type of corporate entity licensed by the Central Bank to establish and market investment funds in the UAE, must file their audited annual accounts with the Central Bank, and any changes to their corporate form or ownership require the Central Bank's prior approval.

ii DIFC asset management structures

There are a variety of corporate structures familiar to the international investment community that are available in the DIFC. These include the following:

a limited liability companies;
b companies limited by shares;
c limited liability partnerships;
d protected cell companies;
e investment companies;
f branches of foreign companies or partnerships; and
g special purpose companies.

Unlike the rest of the UAE, the DIFC imposes no requirement for majority ownership by a UAE national; accordingly, 100 per cent foreign ownership is permitted. Nonetheless, the DIFC has had limited success in attracting fund managers to its jurisdiction. As a result, the DFSA initiated a consultation process in late-2009 and changes to the DIFC's funds regime in 2010 in order to promote asset management in the DIFC.

As with the entities incorporated in the UAE, each of the DIFC vehicles listed above must appoint directors for that entity. Also, DFSA-authorised firms are required to make quarterly filings regarding, among other things, their capital adequacy. The disclosure regime within the DIFC is significantly heavier than that in the UAE.

Applications for DFSA authorisations require the submission of a regulatory business plan and the completion of multiple application forms. Applications must be made for the specific financial services to be conducted (including asset management) and also in respect of the individuals who will occupy the mandatory positions of the entity. Authorised individuals must meet particular standards relating to their experience, knowledge and qualifications, and the DFSA will only authorise applicants when it is satisfied that they are fit and proper, and that the functions will be conducted prudently.

Domestic funds (which are public funds) attract a more extensive regulatory regime when compared to exempt funds. A public fund requires a full prospectus, which must include information related to liability for the fund, fund-specific disclosures (e.g., if the fund is a trust), the investment objectives, the fund's units and limitations (e.g., redemption restrictions), the proposed income distribution, the base currency, termination and suspension, and any other relevant matters related to the fund. A public fund is also required to have an independent oversight committee, and is subject to certain borrowing and investment restrictions. Finally, all public funds must be registered with the DFSA prior to any public offering.

Conversely, an exempt fund requires only a short-form prospectus containing far less prescribed information. In addition, the DFSA does not require that exempt funds have an oversight committee or limit the amounts that they may borrow or invest. Finally, an exempt fund must only notify the DFSA prior to making a private placement of its units.

As noted above, managers of exempt funds in the DIFC must still provide an 'information memorandum' (i.e., short-form prospectus) for the fund. Although the relevant legislation does not prescribe detailed disclosure content for the information memorandum, this document is subject to the disclosure obligation of the Collective

Investment Law. Consequently, the fund manager must include all information that professional clients to whom it intends to offer the units would reasonably require in such a prospectus.

The Collective Investment Law establishes certain principles that are designed to provide investor protection. Accordingly, each investment fund in the DIFC must:

a be managed by a DFSA licensed fund manager or a qualifying external funds manager;

b comply with certain fund administration standards regarding anti-money laundering rules, holding of client money and assets, and delegation, outsourcing and record-keeping requirements;

c have constituent documents that meet prescribed standards;

d comply with valuation, pricing and other related requirements;

e be subject to accounting and audit requirements, including compliance with relevant audit standards, and be subject to both internal and external audit requirements, with the latter to be conducted by a registered auditor;

f provide certain periodic reports, including annual and interim reports; and

g in the case of certain funds (e.g., property funds, private equity funds, Islamic funds and hedge funds), be subject to additional fund-specific requirements.

IV MAIN SOURCES OF INVESTMENT

i Investment in the UAE

The vast majority of funds marketed in the UAE (whether to retail customers, high-net-worth individuals or institutional investors) are organised as offshore products, and the number of onshore funds is extremely modest. As onshore marketing of any investment product must be licensed and is highly regulated; the marketing of offshore products is typically conducted in a low-profile manner. Unfortunately, neither the Central Bank nor ESCA publishes statistics on the number of funds established in the UAE; the Central Bank also does not distinguish between retail and professional investors.

ii Investment in the DIFC

As is the case in the UAE, the number of funds established within the DIFC is extremely low. In total, 14 funds are currently domiciled in the DIFC, of which two are public funds and four are private funds. The existing private funds predate the 2010 changes, which introduced the concept of 'exempt' funds as a replacement for the private fund regime. The remaining seven funds that have been established in the DIFC are exempt funds.

V KEY TRENDS

The financial crisis has encouraged the federal government and the DIFC to employ three important measures that should have a noticeable impact on the asset management industry.

First, there is limited guidance on the procedures and requirements of how to sell foreign securities in the UAE outside the DIFC. In an effort to remedy this problem, the Central Bank recently entered into a memorandum of understanding with ESCA ('the

MOU'), pursuant to which the Central Bank transferred certain authority to regulate the offer and sale of foreign securities in the UAE to ESCA. The MOU is designed to be a precursor to the enactment of a new federal securities and commodities law. Although the practical improvements in the licensing and registration process remain to be seen, this initiative has the potential to address a number of concerns that investors have and promote the UAE's budding asset management industry.

Second, UAE banks have continued to take substantial reserves for non-performing loans. Consequently, capital adequacy of UAE banks was at 20.9 per cent at the end of March 2012, which is one of the highest levels in the world.

Third, the DFSA has undergone a substantial overhaul of its collective investment funds regime in recent years. The intention of the overhaul is to attract additional asset managers and fund managers to the DIFC. Although only a small number of funds are actually domiciled in the DIFC, the DIFC is hopeful that these changes will produce a noticeable increase in fund formation and management. A growth in funds and asset managers present in the DIFC will likely encourage international banks to establish a presence in the free zone. However, one factor that has discouraged investors from applying to the DIFC is the relatively high rent charged within the Centre.

VI SECTORAL REGULATION

i Insurance

Federal Law 6 of 2007 ('the Insurance Law') was enacted in February 2007 in order to establish the autonomous Insurance Authority to regulate the insurance industry in the UAE. The Insurance Authority regulates life, capital, property, and liability insurance and reinsurance.

The following structures can be used to conduct insurance or reinsurance activities in the UAE:

a public joint-stock company ('PJSC');
b branch of a foreign insurance company; or
c insurance agent.

A supermajority of the shares of a PJSC, as well as ownership of an insurance agency, must be held by a UAE national. In the case of a branch, the Insurance Authority has issued regulations that outline a series of additional conditions that must be satisfied, including, for example, the provision of new insurance products that are not currently being offered in the UAE. It is worth noting that the regulations also provide for the establishment of a representative office, but the scope of its activities is very limited.

According to Insurance Authority's most recent annual report (2009), the funds invested in the insurance market amounted to 23.7 billion dirhams and underwritten premiums were 20 billion dirhams. Fifty-eight insurance companies (32 local and 26 foreign) operate under the purview of the Insurance Authority.

With few exceptions, the Insurance Law generally does not apply in the DIFC; accordingly, the DFSA regulates insurance activities in the Centre. As noted above, each applicant to the DIFC that wishes to perform financial services, including those related to insurance, must secure a licence for such activities from the DFSA.

ii Pensions

Federal Law 7 of 1999 ('the Pensions Law') promulgating the law of pension and social security is the sole legislation governing pensions in the UAE. The Pensions Law entitles UAE and Gulf Cooperation Council ('GCC') nationals who hold a UAE family book (i.e., a book documenting the lineage of a family in the region) to a monthly pension contribution from their employers. These contributions are payable to the General Pension and Social Security Authority, and for UAE nationals, the employer's contribution is 12.5 per cent of the total monthly salary, while the employee's contribution is 5 per cent. Pension contributions for GCC nationals vary depending on the requirements of the relevant GCC country.

Although pension funds are rare in the UAE, the Emirate of Abu Dhabi passed Law 2 of 2000 regarding civil pensions and benefits in the Emirate of Abu Dhabi in order to create a public fund known as the Abu Dhabi Retirement Pensions and Benefit Fund ('the ADRPBF'). The ADRPBF was founded in 2000 to manage contributions, pensions and end-of-service benefits for UAE nationals working in or retired from government, semi-government and private sectors in the Emirate of Abu Dhabi, as well as such employees' beneficiaries. In particular, the ADRPBF collects pension contributions from eligible persons, employers and the Abu Dhabi government, manages the resulting financial assets through long-term investment strategies, and advises the Abu Dhabi government on strategy and policies for social insurance.

Notwithstanding the Pensions Law, it is neither common nor compulsory for employers to provide supplementary pension schemes, and there is no regulatory body that oversees the operation of supplementary pension schemes. Accordingly, the Banking Law does not apply to development funds, private savings funds and pension funds.

It is worth noting, however, that the Department of Economic Development in Dubai has been developing a public and private sector pension scheme for foreign employees and, if approved, hopes to implement this scheme by the end of 2012.

As with the provision of insurance noted in Section VI.i, *supra*, the DFSA regulates pension funds in the DIFC. Accordingly, each applicant to the DIFC that wishes to establish or manage a pension fund must secure a licence from the DFSA to engage in such activities.

iii Real property

Real property investment in the UAE

The general principles of real estate and contract law applicable in the UAE are contained in Federal Law 5 of 1985 (known as the Civil Code) and Federal Law 18 of 1993 (known as the Commercial Transactions Law). In the Emirate of Dubai, the main sources of real estate law are as follows:

a Real Property Registration Law 7 of 2006;
b Guarantee Accounts of Real Estate Developments Law 8 of 2007;
c Landlords and Tenants Relationship Law 26 of 2007 (as amended by Law 33 of 2008);
d Ownership of Jointly Owned Properties Law 27 of 2007;
e Mortgages Law 14 of 2008;

f Regulation 1 of 2010 amending certain provisions of Regulation 3 of 2006 regarding real estate ownership areas in Dubai for non-nationals;
g Direction for Association Constitution issued in accordance with Law 27 of 2007 concerning ownership of jointly owned properties in the Emirate of Dubai (2010);
h Direction for General Regulation Concerning Jointly Owned Properties (2010);
i Direction for Jointly Owned Property Declarations (2010); and
j Direction Concerning Preparation of Survey Plans in the Emirate of Dubai (2010).

Investment in real property in the UAE is subject to governmental restrictions on foreign investment, areas where investment is allowed, permissible corporate structures and licensing requirements.

For example, only UAE and GCC nationals and their companies can own property in the UAE. However, a non-UAE or non-GCC national (or company owned by the same) can own freehold, leasehold (up to 99 years) or usufruct (up to 99 years) in certain designated areas in Dubai, including Burj Khalifa and Palm Jumeirah.

As a result of the various restrictions, investment in real estate is often done through a special purpose vehicle ('SPV') that will own each developed plot, as this permits ownership while limiting the investors' liability. It is also possible to divide the rights to the property through the licences of multiple SPVs. For example, one entity can own the plot and also hold the development licence, which is deemed to include leasing rights; alternatively, one entity can be the owner of the plot while another entity holds the licence.

Real estate in the UAE cannot be mortgaged to any person or entity other than a bank licensed and operating in the UAE; consequently, mortgage financing is limited. Although financing can also be obtained from real estate investment companies in certain circumstances, this type of financing is uncommon, as the lender is unable to register its security over the borrower's property. Accordingly, real estate securitisation is rare, although there have been a few instances to date, most notably the US$350 million asset-backed securitisation of mortgages acquired for the purchase of properties on the Palm Jumeirah in 2005.

Real property investment in the DIFC

The main sources of real estate law in the DIFC are DIFC Law 4 of 2007 (known as the Real Property Law) and DIFC Law 5 of 2007 (known as the Strata Title Law).

As noted above, the DIFC permits full foreign ownership of any vehicle incorporated therein. In addition, investors are permitted to establish real estate investment trusts to purchase property, provided that such investors apply for the relevant licence as discussed above.

iv Hedge funds

Hedge funds are not specifically regulated in the UAE; the Central Bank and ESCA approach them in the same manner as any other fund.

Within the DIFC, a hedge fund is defined by the DFSA as being an arrangement with some or all of the following characteristics:

a a broad mandate giving its operator flexibility to shift strategy;

b an aim to achieve absolute returns rather than returns relative to the market;

c employing some or all of the following techniques:
- the pursuit of absolute returns rather than measuring investment performance relative to the market;
- short selling;
- the use of derivatives;
- the use of leverage as well as leverage embedded in financial instruments such as derivatives;
- the acquisition of distressed debt with a view to its realisation at a profit; or
- the acquisition of high-yield debt securities; or

d Charging performance-based fees in addition to a management fee based on the volume of assets under management.

Hedge funds established in the DIFC are subject to the regulations previously discussed, as well as the DFSA's Hedge Fund Code of Practice ('the Code'). The Code sets out what constitutes the best practices for managing a hedge fund, particularly relating to monitoring, assessing and quickly modifying the level of the fund's leverage; however, compliance with the Code does not in itself constitute compliance with the other aspects of the DFSA funds regime. Operators and sponsors of hedge funds (i.e., managers of both public and private domestic hedge funds) need to be aware of the full range of obligations applicable to them.

v Private equity

Private equity funds are not specifically regulated in the UAE; the Central Bank and ESCA approach them in the same manner as any other fund. In addition, such funds established in the DIFC are subject to the regulations previously discussed.

The average life of a fund in the UAE is between three and five years, and the average rate of return sought is usually over 20 per cent. Private equity funds commonly take equity in a portfolio company and also provide debt funding. However, while Islamic banks commonly invest through equity and financing, conventional banks are not permitted to take equity.

vi Other sectors

Sovereign wealth fund

In 1976, the Emirate of Abu Dhabi created the Abu Dhabi Investment Authority ('ADIA'), a sovereign wealth fund that was founded for the purpose of managing and investing funds derived from the Abu Dhabi government's surplus assets (particularly petroleum). ADIA's portfolio covers a broad range of investments that include equities, fixed income and treasury, infrastructure, real estate, private equity, hedge funds and commodities.

Although ADIA has never published the value of its assets, it is estimated to currently be valued between US$300 billion and US$875 billion, making it the largest sovereign wealth fund in the world. As at the end of 2010, the 20-year and 30-year annualised rates of return for the ADIA portfolio were 7.6 per cent and 8.1 per cent, respectively.

VII TAX LAW

There is currently in force in the Emirates of Abu Dhabi and Dubai legislation establishing a general corporate regime (the Abu Dhabi Income Tax Decree 1965 (as amended) and the Dubai Income Tax Decree 1969 (as amended), respectively). However, the regime is currently not enforced, except in respect of companies active in the hydrocarbon industry and branches of foreign banks operating in the UAE (outside the DIFC). It is unknown whether the legislation will be enforced more generally or within other industry sectors in the future. Under current legislation, there is no requirement for withholding or deduction for UAE taxation in respect of payments of return or principal on investments.

The Constitution of the UAE specifically reserves to the UAE federal government the right to raise taxes on a federal level for the purpose of funding its budget; however, it is as yet unknown whether this right will be exercised in the future. Currently, the UAE has entered into double taxation arrangements with 61 countries.

Dubai Law 9 of 2004 guarantees that there will be no personal and corporate taxation within the DIFC for a period of 50 years from the date of the establishment of the DIFC, and Law 9 of 2004 allows for the 50-year guaranteed tax holiday to be extended for an additional period of 50 years.

The principal difference in the treatment of local and foreign commercial banks is that local banks are not subject to any taxation on their income, whereas foreign banks are subject to taxation at the emirate level, which is generally 20 per cent of net income.

VIII OUTLOOK

i Investment Fund Regulation

In 2011, ESCA published a draft Investment Fund Regulation ('the Regulation') on its website and invited comments from the investment community. The Regulation, which is due to be finalised in 2012, is expected to significantly change the asset management regime in the UAE.

Based on the initial draft, investors are likely to have the following concerns:

a Part Five of the draft Regulation sets forth the requirements applicable to the promotion of foreign investment funds in the UAE, and many funds (particularly private equity funds) would find compliance with a number of the requirements to be difficult or impossible. The Regulation requires a foreign investment fund to be established and licensed in a foreign state and to be subject to supervision of an authority similar to ESCA. As many foreign private equity funds are incorporated in jurisdictions that do not have such an authority (e.g., BVI), such funds would be precluded from marketing to investors in the UAE.

b The Regulation requires all foreign investment funds to retain an ESCA-licensed local promoter and distributor to conduct marketing and distribution activities in the UAE. While these parties are potentially helpful in protecting retail investors, the use of these intermediaries for placements to sophisticated investors is at odds with market practice in other jurisdictions.

c The Regulation also requires that a foreign investment fund obtain prior approval of the Central Bank in addition to ESCA. Therefore, firms based in the DIFC would be subject to assessment audits by both the DFSA and ESCA, and would need to commit prudential capital with both the DFSA and the Central Bank.

d The Regulation's reporting requirements are inconsistent with some fund reporting practices and, in particular, require funds to make certain pricing data available that is generally incompatible with a foreign investment fund holding illiquid investments. The Regulation appears to be aimed at funds investing in publicly traded securities that are offered to retail investors. Conversely, private equity funds with illiquid holdings are unable to provide daily net asset value or pricing figures. The Regulation also requires that each fund provide quarterly audited reports to its UAE investors within 30 days of the end of each quarter and yearly audited reports to ESCA within three months of the end of each fiscal year (together with any other reports that may be required by ESCA).

ii Real estate market

The UAE real estate market will continue be affected by regional and global events during 2012, as there will be an ongoing impact of the Arab Spring and the economic troubles and debt crises of the eurozone. Furthermore, there is a risk that the UAE economy as a whole, as well as the real estate sector in particular, will be susceptible to any potential political changes within the region, particularly involving Iran and its relations with western nations.

There has been a noticeable flight to quality in the UAE real estate market, and as that trend continues, there will be an emphasis on better quality projects across all sectors. Accordingly, the quality of asset management will be one of the factors determining the viability of investments in the future.

Appendix 1

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Mr Walker is a partner at Afridi & Angell. He regularly advises on financial services regulation, corporate finance, mergers and acquisitions, and employment matters. Stuart leads the field in advising parties during Dubai Financial Services Authority ('DFSA') investigations and, where necessary, negotiating settlements on their behalf. He was instructed by the first authorised firm to be fined by the DFSA and has since gone on to advise in connection with the majority of all DFSA investigations resulting in a public outcome.

Stuart is a regular contributor to Euromoney's *Global Banking & Financial Policy Review*. His other recent contributions include the following:

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