
CHAMBERS GLOBAL PRACTICE GUIDES

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UAE: Law and Practice

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Law and Practice

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Contents

1. Loan Market Overview p.5

- 1.1 The Regulatory Environment and Economic Background p.5
- 1.2 Impact of Global Conflicts p.5
- 1.3 The High-Yield Market p.5
- 1.4 Alternative Credit Providers p.5
- 1.5 Banking and Finance Techniques p.5
- 1.6 ESG/Sustainability-Linked Lending p.6

2. Authorisation p.6

- 2.1 Providing Financing to a Company p.6

3. Structuring and Documentation p.6

- 3.1 Restrictions on Foreign Lenders Providing Loans p.6
- 3.2 Restrictions on Foreign Lenders Receiving Security p.7
- 3.3 Restrictions and Controls on Foreign Currency Exchange p.7
- 3.4 Restrictions on the Borrower's Use of Proceeds p.7
- 3.5 Agent and Trust Concepts p.7
- 3.6 Loan Transfer Mechanisms p.7
- 3.7 Debt Buyback p.7
- 3.8 Public Acquisition Finance p.7
- 3.9 Recent Legal and Commercial Developments p.7
- 3.10 Usury Laws p.7
- 3.11 Disclosure Requirements p.8

4. Tax p.8

- 4.1 Withholding Tax p.8
- 4.2 Other Taxes, Duties, Charges or Tax Considerations p.8
- 4.3 Foreign Lenders or Non-money Centre Bank Lenders p.8

5. Guaranties and Security p.8

- 5.1 Assets and Forms of Security p.8
- 5.2 Floating Charges and/or Similar Security Interests p.14
- 5.3 Downstream, Upstream and Cross-Stream Guaranties p.14
- 5.4 Restrictions on the Target p.14
- 5.5 Other Restrictions p.14
- 5.6 Release of Typical Forms of Security p.14
- 5.7 Rules Governing the Priority of Competing Security Interests p.15
- 5.8 Priming Liens p.15

6. Enforcement p.15

- 6.1 Enforcement of Collateral by Secured Lenders p.15
- 6.2 Foreign Law and Jurisdiction p.16
- 6.3 Foreign Court Judgments p.16
- 6.4 A Foreign Lender's Ability to Enforce Its Rights p.18

7. Bankruptcy and Insolvency p.18

- 7.1 Impact of Insolvency Processes p.18
- 7.2 Waterfall of Payments p.19
- 7.3 Length of Insolvency Process and Recoveries p.19
- 7.4 Rescue or Reorganisation Procedures Other Than Insolvency p.20
- 7.5 Risk Areas for Lenders p.21

8. Project Finance p.21

- 8.1 Recent Project Finance Activity p.21
- 8.2 Public-Private Partnership Transactions p.22
- 8.3 Governing Law p.22
- 8.4 Foreign Ownership p.22
- 8.5 Structuring Deals p.23
- 8.6 Common Financing Sources and Typical Structures p.24
- 8.7 Natural Resources p.24
- 8.8 Environmental, Health and Safety Laws p.25

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domestic and international banks, financial institutions, borrowers (from various industries) and investors. The banking and finance team consists of four partners, one senior consultant, three senior associates and three associates. Afridi & Angell has offices in Dubai, Abu Dhabi, Sharjah and the Dubai International Financial Centre, and is the exclusive UAE member of a number of the world's top legal networks and associations, including Lex Mundi and World Services Group.

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1. Loan Market Overview

1.1 The Regulatory Environment and Economic Background

Despite the ongoing economic downturn over the past few years and an expectation for a global recession, the banking sector in the United Arab Emirates (UAE) saw a modest growth in assets, improved profitability and asset quality in 2023. At the end of the fourth quarter of 2023, total assets of banks operating in the UAE increased by 3.1% (q-o-q), reaching AED4.075 trillion. Between December 2022 and December 2023, the total assets of banks operating in the UAE increased by 11.1% (y-o-y) (see the Fourth Quarter Report of 2023 issued by the UAE Central Bank on Monetary Banking & Financial Markets Developments).

The UAE's economic growth was expected to slow modestly in 2023 and 2024 owing to OPEC-agreed oil production cuts and deceleration in other sectors following higher interest rates. This will lead to lower credit demand and growth for banks. There continues to be a surge in governmental investment in infrastructure projects (particularly in the renewable energies and recycling sectors) and the real estate sector has seen a moderate rise in residential real estate prices, which is expected to provide a modest boost for the mortgage sector.

1.2 Impact of Global Conflicts

The Ukraine-Russia dispute and the resulting Russian sanctions regime has led to an influx of Russian people and companies looking to relocate from Europe to the UAE. The authors have seen a considerable amount of activity in the UAE free zones, where many European companies (with ownership or other links to Russia) have redomiciled. A number of existing financings to Russian entities have been restructured

such that new UAE entities assume the role of the existing borrowers and obligors.

With new Russian companies being established in the UAE, there is also a growing market (for Russian and local banks) to lend to these entities. However, owing to the Russian sanctions, few local banks choose to provide loans or general banking services to Russian affiliated entities, and in some cases are even withdrawing services to existing Russian customers who were customers long before the implementation of the current Russian sanctions.

1.3 The High-Yield Market

While there has been an increase in sukuk issuances in the Gulf Cooperation Council (GCC) in recent years, conventional loans continue to form the lion's share of the financing market in the UAE.

1.4 Alternative Credit Providers

Alternative credit is not a prominent feature of the local financial landscape.

1.5 Banking and Finance Techniques

Fintech has had a significant impact on retail banking practices, largely accelerated by the COVID-19 pandemic, with banks developing their online services to reflect the investor base and needs of borrowers. Recent years have seen the growth of neobanks and the growth of traditional banks' digital offerings in the UAE. Neobanks seek to attract traditional bank customers by offering products and services typically offered at a lower price point.

The fintech regulatory environment in the UAE has also played a role in the growth of neobanks, and government initiatives such as fintech clusters and funding programmes are also promoting greater co-operation and entrepreneurship in

the industry. For example, Pine Labs, one of the world's leading merchant commerce omnichannel platforms, recently announced that it would partner with UAE banks and other financial institutions to help them better serve merchant partners.

1.6 ESG/Sustainability-Linked Lending

Environmental, social and governance (ESG) is starting to see some significant growth in the UAE. The UAE's financial sector has pledged to mobilise AED1 trillion in sustainable finance by 2030; as announced by the UAE Banks Federation on Finance Day at COP28. This is aligned with the UAE Central Bank's strategic goal of leading sustainable finance efforts to combat climate change. Some UAE banks are reaffirming their commitment to sustainability through investment strategies, incorporating environmental criteria into their lending policies, as well as ensuring detailed and comprehensive ESG reporting. Multiple banks have been preparing ESG reports and are now in the process of issuing their Taskforce on Climate-Related Financial Disclosures. These reports will help public companies and other organisations disclose climate-related risks and opportunities more effectively through their existing reporting processes. Majid Al Futtaim (a major retail chain in the UAE) secured its first sustainability-linked loan, with a value of USD1.5 billion.

While the UAE and MENA region are lagging in terms of global sustainability reporting, sustainable reporting is now starting to emerge within the UAE. In 2020, the UAE Securities and Commodities Authority released a circular indicating that all listed companies must submit a standalone sustainability report for the financial year 2020 no later than six months following the end of the financial year. Since 2022, these reports will need to be submitted 90 days after the end

of the financial calendar or by the time of the company's annual general meeting, whichever is earlier.

2. Authorisation

2.1 Providing Financing to a Company Licensing Requirements in the UAE

The Banking Law is the primary legislation giving the Central Bank the authority to regulate financial services in the UAE (including Islamic financial services). According to the Banking Law, the Central Bank has the power to license and regulate a wide variety of financial institutions operating in the banking and financial sector in the UAE, including the following.

- Banks, including institutions licensed to primarily carry on the activity of accepting deposits and other licensed financial activities, such as:
 - (a) granting loans;
 - (b) issuing and collecting cheques;
 - (c) placing bonds;
 - (d) trading in foreign exchange and precious metals; or
 - (e) carrying on other operations allowed by law or by customary banking practice.
- Exchange houses and money intermediaries (ie, foreign exchange dealers who purchase and sell currencies).
- Islamic financial institutions.
- Other financial institutions.

3. Structuring and Documentation

3.1 Restrictions on Foreign Lenders Providing Loans

There are no restrictions on cross-border lending.

3.2 Restrictions on Foreign Lenders Receiving Security

There are no restrictions on domestic and foreign-registered companies granting guarantees. Guarantees must be in writing and must specify the amount they secure. Security over movable property can be granted to non-resident foreign banks, except in the following cases.

A business mortgage, whether under the Commercial Code or in relation to assets in certain free zones (including the Jebel Ali Free Zone – JAFZ), can only be granted to banks or financial institutions with a commercial banking licence. However, UAE Federal Law No 4 of 2020 on Guaranteeing Rights Related to Movables, UAE Cabinet Decision No 29 of 2021 on the Implementing Regulations for UAE Federal Law No 4 of 2020 on the Guaranteeing of Rights Related to Movables, and all related decrees, decisions and regulations (as issued from time to time) (together, the “Pledge Law”) should allow foreign lenders to register a pledge over movable assets (including assets owned by businesses) without the need to either take possession of such assets or appoint a locally licensed security agent.

Foreign lenders can hold securities in the Dubai International Financial Centre (DIFC), and can be mortgagees on vessel mortgages.

3.3 Restrictions and Controls on Foreign Currency Exchange

There are no exchange controls restricting payments to foreign lenders. The UAE dirham (AED) is fully convertible and there are no restrictions on the movement of funds (denominated in dirhams, US dollars or otherwise) into or out of the UAE.

3.4 Restrictions on the Borrower’s Use of Proceeds

There are no restrictions on the use of proceeds from conventional loans and/or debt securities, except as contractually agreed. However, in relation to Islamic facilities and/or the proceeds from the issuance of sukuk, such proceeds must be used in accordance with the principles of Sharia.

3.5 Agent and Trust Concepts

The concepts of facility and security agents are recognised in the UAE. The UAE does not provide for the creation of trusts.

3.6 Loan Transfer Mechanisms

Debt can be transferred through participation agreements.

3.7 Debt Buyback

There is no restriction against conducting a debt buyback.

3.8 Public Acquisition Finance

Neither the Companies Law (Federal Decree-Law No 32 of 2021, as amended) nor the rules and regulations applicable in the UAE’s exchanges (the Abu Dhabi Stock Exchange, the Dubai Financial Market and NASDAQ Dubai) provide a separate set of rules governing the acquisition of public companies in the UAE. Accordingly, there is no express requirement that certain funds be used in acquisitions.

3.9 Recent Legal and Commercial Developments

Changes in the language of documents have occurred following the transition from LIBOR to SOFR, SONIA and other rates setting language.

3.10 Usury Laws

Interest in excess of 12% per annum, compound interest and interest in excess of principal are not

enforced. However, unlike other emirates, these limitations are not usually followed by the Dubai courts.

3.11 Disclosure Requirements

There are no rules or laws regarding disclosure of certain financial contracts.

4. Tax

4.1 Withholding Tax

There is no withholding tax in the UAE.

4.2 Other Taxes, Duties, Charges or Tax Considerations

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 with branches in the UAE are subject to tax at the emirate level. Additionally, a foreign bank may not establish more than eight branches in the UAE. The tax paid by banks varies from emirate to emirate; it also varies within each emirate, where certain banks are allowed to make annual payments of an agreed sum without reference to the level of profits or losses. Generally, foreign banks are required to pay a tax of 20% on net profits arising in the particular emirate.

Branches must file an annual tax declaration together with audited financial statements. The financial year for foreign banks operating in Dubai is January 1st to December 31st. Taxes are due and payable to the Dubai Department of Finance no later than March 31st of the following year. The penalty for late payment has been fixed at 1% for each 30-day period that such payment is in arrears.

Value-Added Tax (VAT)

VAT was introduced in the UAE on 1 January 2018. All fee-based (but not margin-based) services offered by banks in the UAE are subject to VAT at 5%. Subject to certain conditions, non-resident banks offering services in the UAE are also required to apply VAT.

Fees

Registration fees (to register a security) are payable to the local emirate authority. Fees vary depending on the authority and form a percentage of the secured amount (for example, 0.25% of the value of the loan for a real estate mortgage). These fees can be costly.

Enforcement of a security interest triggers court fees, as prescribed by the relevant courts. If a secured asset is sold by public auction, a public auction fee is also payable.

4.3 Foreign Lenders or Non-money Centre Bank Lenders

See 4.2 Other Taxes, Duties, Charges or Tax Considerations.

5. Guaranties and Security

5.1 Assets and Forms of Security

The creation of security interests in the UAE (outside the free zones) is principally governed by:

- UAE Federal Law No 5 of 1995 relating to the Law of Civil Transactions, as amended (the “Civil Code”);
- the Pledge Law; and
- the Commercial Code.

There are several free zones in the UAE, each of which has its own regulations for creating security interests by entities licensed within that zone

and/or over property located within it. However, in relation to free zones, this review is restricted to the creation and enforcement of security interests in the Jebel Ali Free Zone (JAFZ), the first free zone in the UAE, around which the laws and procedures of most other free zones are modelled.

The general forms of security over assets include:

- real estate;
- tangible movable property;
- bank accounts;
- financial instruments;
- claims and receivables;
- cash deposits; and
- intellectual property.

These forms of security and related formalities are outlined below.

Real Estate

Real estate constitutes land and permanent structures on land that cannot be moved without suffering damage or alteration. The most common categories of real estate and real estate interests over which security can be granted include:

- freehold land;
- buildings and constructions on freehold land;
- leasehold interests in land;
- buildings and constructions on leasehold land; and
- usufruct – ie, the right to use/develop, enjoy and occupy land or property belonging to another person for a fixed term.

Mortgages over freehold land are generally registered with the land department in the relevant emirate; for example, in Dubai this would be the

Dubai Land Department. In addition, some free zones provide their own mechanism for registering a mortgage over a freehold/leasehold interest relating to property located within that free zone.

There are three types of mortgage over real estate in the UAE:

- a mortgage over land and buildings;
- a mortgage over a leasehold interest in real property; and
- a mortgage over a building constructed on leased land.

A mortgage is defined in the Civil Code as a contract by which a creditor acquires the right to be satisfied from the proceeds of the sale of the mortgaged real estate in priority to unsecured creditors and other secured creditors of the debtor. A mortgage must be registered in order to have effect. The time of registration of the mortgage determines priority among mortgages over the same real estate.

The mortgagor must be the owner of the mortgaged property. It is not essential for the mortgagor to be the principal obligor of the debt that is secured by the mortgage; the mortgagor can be a guarantor of the debt.

Legislation now exists in Dubai that, among other things, governs the registration of property and security interests by expatriates in certain demarcated zones. The Dubai Land Department has exclusive jurisdiction to register the following three types of title in the name of foreign nationals and foreign-owned companies in certain demarcated areas:

- freeholds;
- long-term leases (99 years); and

- usufruct (musataha), to receive the benefit from the property (up to 50 years).

The developer must register any disposition of an off-plan property in the Interim Register, which is maintained by the Dubai Land Department. The disposition of a completed property must be registered in the Real Property Register, which is also maintained by the Dubai Land Department. A disposition that is not registered in the Interim Register or the Real Property Register is invalid. Each unit owner (defined as a person who is registered with the Dubai Land Department as the owner – including the tenant under a long-term lease – of a flat, villa, house or other real estate) can create a mortgage over that unit in favour of a bank or financial institution (Law No 27 of 2007 concerning the Ownership of Joint Properties (Condominiums) in the Emirate of Dubai).

In Abu Dhabi, security interests relating to real estate in demarcated zones in Abu Dhabi can also be registered. The following are permitted:

- for UAE nationals – to own the freehold title to land anywhere in Abu Dhabi; and
- for GCC nationals – to own the freehold title to land in certain demarcated areas.

See Law No 19 of 2005 concerning Property Ownership in the Emirate of Abu Dhabi, which was amended in February 2007 to permit the following for non-UAE nationals.

- To own buildings in certain demarcated areas (but not the underlying land).
- To enter into a long-term lease agreement (of up to 99 years) for real property in those demarcated areas.
- To enjoy usufruct rights over real property under agreements of up to 50 years. Holders

of usufruct rights in excess of ten years can sell or mortgage their interests without seeking the permission of the landowner.

In the JAFZ, a mortgage can be created over a building constructed on leased land.

Formalities – real estate

Mortgages over real property must be both in writing and registered with the appropriate real estate authority in each emirate. The registered mortgage deeds are generally pre-printed documents prescribed by the relevant authorities.

In the JAFZ, all land is owned by the government of Dubai. The JAFZ Authority (JAFZA) leases land for the construction of office premises and warehouses. Under the provisions of the standard lease agreement between the JAFZA and a lessee, the lessee can assign its rights under the lease in favour of a lender. All assignments of lease rights must be registered with the JAFZA (using prescribed forms).

The following applies in relation to real property located in the financial free zones.

- The DIFC is governed by Real Property Law DIFC Law No 10 of 2018, which provides that land transactions must be registered in a central register administered by the DIFC and must include:
 - (a) a description to identify the real property;
 - (b) a description to identify the interest to be mortgaged; and
 - (c) a description of the secured debt or liability.
- The ADGM is governed by the ADGM Property Regulations, which provide that the Registrar (as defined in the ADGM Property Regulations) shall maintain a real property register that shall record all documents relating to the

creation or transfer of real property rights in the ADGM.

Tangible Movable Property

Tangible movable property includes:

- machinery;
- trading stock (inventory); and
- aircraft and ships.

Under the Commercial Code, all property that is not classified as immovable is considered to be movable property. Tangible property includes goods, inventory, stores and machinery. As with the Commercial Code, most types of immovable assets located onshore in the UAE are classified as movable assets under the Pledge Law (which repealed Federal Law No 20 of 2016 concerning the pledge of movables as security for a debt (the “Old Mortgage Law”)).

Business/commercial mortgage

A business/commercial mortgage is a mortgage of movable assets of an entity. It can only be created in favour of banks or other financial institutions.

The mortgaged assets must be described in as much detail as possible. If they are not, only the following intangible property is deemed mortgaged (Commercial Code):

- the trade name;
- contract rights; and
- goodwill.

Chattel mortgage

Unlike the business/commercial mortgage, the chattel mortgage (also known as a commercial pledge) cannot be perfected through registration or a mortgage of intangible assets of a company.

A chattel mortgage is a pledge over movable property, and can be created over the following:

- stock in trade or inventory;
- movable plant and machinery;
- receivables; and
- negotiable instruments.

Security over movables under the Pledge Law

The Pledge Law contemplates a purely online registration process, where the lenders can establish a security interest in a specific register, which will be established at a future date (the “Security Register”). Once the Security Register has been incorporated, it will be possible to register a mortgage in accordance with the requirements under the Pledge Law. Until the Security Register and Security Registry are established, it is possible to register the security interest (as permitted under the Pledge Law) in the online security register (the Emirates Integrated Registries Company (EIRC) Register) established under the Old Mortgage Law, which is currently operated by the Emirates Movable Collateral Registry. There are significant benefits to registering a security interest under the Pledge Law, including:

- the perfection of the security interest and giving priority over any unregistered competing security interests (including any that were executed before the date of the registration);
- preventing any third party from registering their security interest and securing a superior security interest; and
- in the event of the bankruptcy of the company owning or holding (as applicable) the pledged assets, the registration may (at the discretion of the bankruptcy court) prove helpful in establishing the secured party’s security interest in the relevant pledged

assets owned or held (as applicable) by the bankruptcy company.

Registration would also provide remedies akin to the common law “self-help” remedies, which are otherwise not available under UAE law. The registered pledge/mortgage has effectively replaced the use of business/commercial mortgages. The following assets can be registered in the Security Register:

- receivables, including cash amounts due currently or in the future to the mortgagor resulting from carrying out its business;
- receivables and deposits with UAE-licensed banks and financial institutions, including current and deposit accounts;
- written bonds, negotiable certificates and title deeds (including commercial paper, bank deposit certificates and shipping documents);
- work equipment and tools;
- inventory ready for sale or lease, raw materials and commodities;
- agricultural crops and animals, and their products, including fish or bees;
- fixtures, provided they can be separated from the real estate without being damaged;
- tangible and intangible elements of a commercial business; and
- any other movable property considered by applicable laws in the UAE as being validly subject to a mortgage according to the provisions of the Pledge Law.

Security over movables in the JAFZ

A business/commercial mortgage can be created by a JAFZA-licensed entity over its business, and/or specific assets can be registered with the JAFZA.

Business/commercial mortgage

In order to be valid and effective, a business mortgage must be registered in the Commercial Register maintained at the relevant emirate’s Department of Economic Development. Once registered, the mortgage is valid for five years.

Chattel mortgage

To create a chattel mortgage, possession of the pledged asset must be transferred to the pledgee or a third party (ie, the bailee).

Formalities – registered asset pledge/mortgage

The formalities and procedure for registering a security interest in the Security Register are outlined in the Implementing Regulations. However, until the Security Register has been established, it is possible to register security interests in the EIRC Register, in accordance with the requirements under the Pledge Law, including the submission of an application form via an online account with the EIRC, which would include details of:

- the security agreements (along with a copy thereof);
- security interests;
- secured party/parties;
- security provider;
- any other parties with an interest in the pledged asset (eg, any third party in possession of the pledged assets); and
- certain statistical information (which will be used for internal purposes by the EIRC).

Financial Instruments

Shares are the most common financial instruments that may be pledged as security. It is now possible to mortgage shares in a UAE limited liability company.

Commercial pledge

A commercial pledge can be granted over both negotiable instruments and nominative instruments (ie, documents with specified obligees).

Security over shares under the Companies Law

The Companies Law regulates the creation of mortgages and pledges over shares of public shareholdings and private shareholding companies.

Under the Companies Law, the shares of a private shareholding company may be pledged and perfected through registration. However, at the time of writing, the UAE governmental authorities have not yet created a register for such share pledges.

Pledge over shares in the JAFZ

Under the laws and regulations of the JAFZA, the shares of a JAFZ company can be pledged and perfected through registration with the JAFZA.

Formalities – financial instruments

A commercial pledge is created by endorsing the relevant instrument indicating that the instrument has been pledged and perfected by delivery of the relevant instrument to the pledgee.

Claims and Receivables

The most common types of claims and receivables over which security is granted are receivables, income and insurances.

Formalities – claims and receivables

Under UAE law, an assignment of rights only requires notification from the assignor to the third party confirming the assignment to the assignee. Where this is not possible, the banks may require such income to be deposited into

a collection account that will be covered by a pledge of the account.

Once the Security Register has been established, it will be possible to perfect the security created under an assignment of income and receivables under the Pledge Law. However, until the Security Register has been established, it is possible to register security interests in the EIRC Register, in accordance with the requirements under the Pledge Law.

Cash Deposits

The most common form of security over cash deposits is a pledge. Once the Security Register has been established, it will be possible to perfect the security created under an accounts pledge under the Pledge Law.

Formalities – cash deposits

Once the Security Register has been established, it will be possible to perfect the security created under an accounts pledge. However, until the Security Register is established, it is possible to register security interest under an accounts pledge in the EIRC Register, in accordance with the requirements under the Pledge Law.

The UAE does not recognise the concept of a floating charge; therefore, an accounts pledge that cannot be registered under the Pledge Law will only cover the sums standing in the pledged account on the date of the pledge agreement. Consequently, banks usually require unregistered account pledges to be amended on a periodic basis or at the request of the bank, so as to pledge the new sums standing in credit in the pledged account.

Intellectual Property

It is not common to grant security over intellectual property (IP) in the UAE. IP rights are generally only pledged by a commercial mortgage.

Once the Security Register has been established, it will be possible to register a mortgage over a commercial store's tangible and intangible assets. However, until the Security Register is established, it is possible to register security interest over IP rights in the EIRC Register, in accordance with the requirements under the Pledge Law.

5.2 Floating Charges and/or Similar Security Interests

The concept of security over future assets does not exist in the UAE. However, an interest similar to a floating charge can be created over movable assets under the Pledge Law.

5.3 Downstream, Upstream and Cross-Stream Guaranties

A parent company can guarantee – or grant a security in respect of – a loan given to a related company (ie, a company in the same corporate group), subject to two conditions:

- that the parent company's constitutional documents contemplate the granting of this type of security; and
- that the necessary corporate approvals are obtained (ie, a board resolution and, where necessary, a shareholders' resolution).

A subsidiary can also guarantee or grant a security in respect of a loan to its parent company, subject to the conditions above and the provisions outlined in **5.4 Restrictions on Target**.

5.4 Restrictions on the Target

Under the Companies Law, it is not possible for a public joint stock company target or any of its subsidiaries (including any limited liability companies) to provide any financial aid (such as loans and guarantees) to assist a purchaser in acquiring its shares. However, limited liability companies are exempt from such restrictions under Ministerial Resolution No 272 of 2016 on the Implementation of Certain Provisions of the Public Joint Stock Companies to Limited Liability Companies (issued by the UAE Ministry of Economy).

5.5 Other Restrictions

The Companies Law prohibits a company from making a loan of any kind to a director of the company and from guaranteeing the payment to a director of a loan made by any other person to that director (including their spouse, children or relatives up to the second degree). It also prohibits a company from making a loan to another company if a director of the lending company holds more than 20% of the share capital of the borrowing company (including any shares held by their spouse, children or relatives up to the second degree).

5.6 Release of Typical Forms of Security

Most unregistered securities, particularly movable assets, are generally released by passing possession of the security asset back to the security provider, but they can also be released with a release and discharge letter from the secured party. For registered securities (such as a land mortgage or vehicle charge), it may be necessary to follow the procedure of the relevant regulatory authority. There may also be additional requirements for securities registered with free zones.

5.7 Rules Governing the Priority of Competing Security Interests

Generally, a lender that perfects its security – either through physical possession (in the case of movable assets) or registration – shall have priority over other creditors in an insolvency.

The two common methods of subordination are contractual subordination and intercreditor arrangements.

Please see **7.5 Risk Areas for Lenders** regarding the survivorship of subordination agreements following insolvency.

Registering a mortgage over movable assets under the Pledge Law would make the security effective against third parties, and priority would be determined from the date of registration, unless the parties agree otherwise.

5.8 Priming Liens

There are various types of liens that operate under UAE laws, including for:

- contractors;
- mechanics;
- landlords; and
- maritime liens over vessels.

Such liens are rarely invoked; consequently, there are no market workarounds for them.

6. Enforcement

6.1 Enforcement of Collateral by Secured Lenders

The creation, registration and enforcement of various types of securities (such as pledges, mortgages over real estate and chattels, assignments and guarantees) are determined by provi-

sions contained both in federal (UAE) and in local emirate laws.

At the federal level, the creation and enforcement of various types of securities is contained in the Civil Code, the Commercial Code and other security-specific laws of the UAE – for example:

- the UAE Companies Law (Federal Decree-Law No 32 of 2021) contains provisions relating to pledges over shares; and
- the UAE Federal Maritime Law (Decree-Law No 43 of 2023) contains provisions relating to mortgages over vessels, etc.

At the emirate level, each emirate has its own practices and procedures, the most developed of which are in the emirate of Dubai. The various free zones in the UAE, including the DIFC and the Abu Dhabi Global Market (ADGM), have specific laws, rules and practices that apply in the relative free zone.

Each emirate has its own laws in relation to real property. In Dubai, a freehold interest can be mortgaged and the security registered with the Dubai Land Department. However, the mortgagee can only be a bank or a finance company licensed with the Central Bank. Dubai also has special laws allowing the enforcement of land mortgages. The UAE has a number of commercial registers where security interests may be recorded, depending on the type of asset or entity against which the charge is recorded.

With regard to enforcement, there are no self-help remedies in the UAE. For enforcement, a suit in the relevant court in the UAE has to be filed and a UAE court order obtained. The court must be satisfied that all relevant requirements contained in the security document and/or the

relevant laws have been complied with by the party seeking enforcement. Although remedies are available in principle, in practice enforcement can sometimes take a long time and court decisions can be unpredictable, especially since the UAE does not adhere to the concept of binding precedent. Furthermore, all proceedings before UAE courts are conducted in Arabic, and all evidence must be translated into Arabic. There is also no oral advocacy in civil or commercial matters, and all submissions are made in writing.

6.2 Foreign Law and Jurisdiction

UAE law recognises the principle that the parties to a contract may choose the governing law of said contract.

In practice, however, if an agreement with a foreign governing legal provision is presented to a court in the UAE for interpretation or enforcement, the court may well apply UAE law regardless of any contrary choice of law by the parties. In circumstances where the court agrees to apply the foreign governing law, the applicable provisions of the foreign governing law will have to be established as a matter of fact.

Regarding a choice-of-jurisdiction provision in a contract, with the exception of arbitration or where the DIFC courts and the ADGM courts are the choice of jurisdiction, UAE courts may assume jurisdiction as a matter of law (notwithstanding a foreign jurisdiction clause) if the defendant is a UAE national or a resident of the UAE.

The UAE courts may also assume jurisdiction as a matter of law, even if the defendant is not resident/domiciled in the UAE, and in specific circumstances if the dispute has certain minimum ties to the UAE, such as:

- actions involving real estate in the UAE;
- actions related to an obligation that was made, performed or supposed to be performed in the UAE or related to a contract to be attested in the UAE; and
- actions where one of the defendants has a residence or domicile in the UAE.

These provisions supersede any agreement between the parties. Real estate actions, labour disputes and any disputes between a principal and an agent regarding a commercial agency agreement are reserved exclusively for the jurisdiction of the UAE courts.

Although UAE law does not expressly provide for the immunity of UAE government entities, there may be preconditions that must be satisfied prior to filing a lawsuit against a government entity. At the federal level, the ability of government departments to sue and be sued is recognised.

It should be noted, however, that recovery against UAE government-owned assets is prohibited under UAE law.

6.3 Foreign Court Judgments Reciprocity

The enforcement of foreign judgments in the UAE is governed by the Civil Procedure Code, Federal Decree-Law 42 of 2022 (CPC). The CPC provides that a foreign judgment or order will be enforced in the UAE only if the country issuing such a judgment or order will enforce a judgment or order delivered by the courts of the UAE. In practice, this requirement for reciprocity is interpreted by the courts of the UAE as requiring a treaty for such enforcement.

The UAE Federal Supreme Court has also held that a foreign judgment or order can be enforced in the UAE even without a treaty if it can be

established that UAE court judgments have or can be enforced in the state in which the foreign judgment was issued. The law also provides for some prerequisites for the enforcement of a foreign judgment. Such conditions include that:

- the UAE courts did not have jurisdiction to deal with the matter;
- the foreign court that delivered the decision was authorised to do so and did so in accordance with the law;
- the litigating parties were summoned to attend and were properly represented; and
- the judgment of the foreign court does not conflict with a decision of the state courts nor breaches morals or public order.

DIFC Law

The enforcement of foreign judgments under DIFC law is made possible under Article 7(4) of Dubai Law No 12 of 2004, as amended (the “Judicial Authority Law”), which provides that judgments from jurisdictions other than the DIFC may be enforced by the DIFC courts in a manner prescribed by DIFC laws if the subject matter for enforcement is within the DIFC.

Article 24(1)(a) of DIFC Law No 10 of 2004 (the “DIFC Court Law”) adds that DIFC courts have jurisdiction to ratify the judgments of recognised foreign courts. Furthermore, Article 24(2) of the DIFC Court Law states that, if the UAE has a treaty agreement involving the mutual enforcement of judgments, the DIFC Court of First Instance shall comply with the terms of the treaty. Article 7(2) of the Judicial Authority Law provides that judgments of DIFC courts are to be enforced through the Dubai courts. Therefore, and subject to the above requirements, the DIFC courts can ratify a foreign judgment, which can then be enforced through the Dubai courts.

However, there have been instances where the DIFC courts have permitted the enforcement of a foreign judgment despite the absence of a treaty and the subject matter being outside the DIFC. Therefore, one cannot rule out the possibility of a DIFC court acting as a conduit jurisdiction for the enforcement of a foreign judgment. Whether or not there will be a retrial on the merits would depend on several factors, including:

- whether there is a treaty agreement with the country in which the foreign court sits;
- whether it provides for the mutual enforcement of judgments; and
- the exact wording of the treaty.

Dubai

By Decree 19 of 2016, the Ruler of Dubai established the Joint Judicial Tribunal (the “Judicial Tribunal”) to resolve conflicts of jurisdiction that may arise between the Dubai courts and the DIFC courts. The ability to use the DIFC courts to enforce a foreign judgment where the subject matter for enforcement is outside the DIFC is an issue that has been considered by the Judicial Tribunal. In determining this issue, the Judicial Tribunal has effectively held that the Dubai courts have general jurisdiction to enforce foreign judgments in the UAE (where the subject matter is outside the DIFC) and that the DIFC courts must only exercise this power in exceptional circumstances (eg, where a defendant has assets within the DIFC). Therefore, it is still unclear whether the DIFC court can be used as a conduit jurisdiction to enforce a foreign judgment.

International Treaties and Conventions

The UAE is a party to several international treaties and conventions regarding the recognition and enforcement of arbitral awards, including:

- the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the “New York Convention”);
- the Riyadh Convention on Judicial Co-operation Between States of the Arab League;
- the GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications; and
- the ICSID Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, 1965.

The UAE ratified the New York Convention in 2006 without making any declarations or reservations. The New York Convention provides a mechanism that allows state parties to enforce arbitration awards made in one country in another country that is also a signatory to the Convention. Accordingly, under Article III of the Convention, UAE courts are required to “recognise” foreign arbitral awards (if issued in another country that is also a signatory to the Convention) “as binding and enforce them”, unless the limited grounds for resisting enforcement provided under Article V(1) can be proven by the party against whom enforcement is sought.

Non-arbitrable Subjects

However, UAE law provides for certain subjects that are reserved exclusively for the UAE courts and that are therefore non-arbitrable. For example, labour disputes must be referred to the UAE courts. Therefore, any foreign arbitral award rendered on such subjects is unlikely to be enforceable in the UAE.

With respect to the enforcement of foreign arbitral awards through the DIFC, Article 24(1)(c) of the DIFC Court Law provides that DIFC courts may ratify a recognised arbitral award. This is confirmed in Article 42(1) of the DIFC Arbitration Law of 2008 regarding the recognition and

enforcement of awards, which provides that an arbitral award shall be binding on DIFC courts regardless of the jurisdiction in which it was made. However, Article 44 provides various “grounds for refusing recognition or enforcement” of an arbitral award. These include, for instance, that:

- the decision was not valid under the law governing the arbitration;
- one of the parties was not given proper notice;
- the arbitral procedure was not in accordance with the agreement of the parties; or
- enforcement of the award would be contrary to the public policy of the UAE.

6.4 A Foreign Lender’s Ability to Enforce Its Rights

There is no distinction between a local lender and a foreign lender with regard to their ability to enforce their rights under a loan or security agreement (save for security agreements that are entered into by their local security agent). See **3.2 Restrictions on Foreign Lenders Receiving Security**.

7. Bankruptcy and Insolvency

7.1 Impact of Insolvency Processes

If the court accepts an application for a preventative settlement procedure (PSP), a moratorium on creditor actions (including enforcement of security or attachment orders by creditors) is implemented. This period is for an initial period of three months, but can be extended by additional one-month periods, provided that the total moratorium period does not exceed six months. While the moratorium binds both secured and unsecured creditors, a secured creditor can still

enforce its security interest against the debtor with the approval of the court.

During the implementation of a PSP, all agreements (including loans) remain valid and binding, including payments under loan agreements and the enforcement of any security in the event of a breach (subject to the approval of the court). In bankruptcy, all debts become due and payable when the bankruptcy judgment is given. The court will order the sale of secured assets, and the sale proceeds are applied towards the repayment of the relevant secured debt(s). If the proceeds from the sale of the secured assets are insufficient to repay the debt, the bank is treated as an unsecured creditor for the outstanding debt.

After the court has accepted an application for a restructuring scheme (RS), it appoints a trustee to administer the RS. The trustee must publish a notice of the court's approval in two local newspapers (one in English and one in Arabic) giving the creditors 15 business days to submit their claims with supporting documentation. Creditors who fail to submit their claims within this time period cannot participate in any distribution (unless they make an application to the court requesting their inclusion in the list of creditors). The trustee reviews the claims and provides a list of the creditors to the court, together with its recommendation on which claims should be accepted or rejected (in part or in their entirety).

A final list of creditors and their respective claims is prepared by the court. A dissatisfied creditor can appeal the court decision, but their appeal will not stop the implementation of the PSP or RS. As the Bankruptcy Law is relatively new, it remains to be seen how this law (particularly the tight timeframes) will be applied in practice.

7.2 Waterfall of Payments

Proceeds from the sale of the debtor's assets shall be distributed among the preferred creditors as follows.

- Any judicial fees or charges (eg, fees of trustees and experts, and expenses paid for the benefit of the common interest of the creditors to maintain or liquidate the debtor's assets).
- Debts of maintenance paid by the debtor under a judgment delivered by a competent court.
- Any amounts payable to governmental bodies.
- End-of-service benefits, wages, salaries and other amounts due to employees, limited to three months of salary. The court may permit the trustee to pay workers and staff for the period of 30 days from the debtors' assets being available to the trustee.
- Fees and charges of any expert or other professionals appointed by the debtor following the initiation of proceedings.
- Any fees, costs or expenses incurred:
 - (a) after the date of decision of initiating the bankruptcy procedure to procure commodities or services to the debtor, or to continue the performance of any other contract that fulfils the benefit of business or property of the debtor; or
 - (b) to continue the course of the business of the debtor after the date of initiating procedures.

7.3 Length of Insolvency Process and Recoveries

This can vary depending on the complexity of the issues involved (eg, if there are various disputes regarding the debts) and on whether the management of the debtor company is available to assist with the provision of key information

regarding the assets, liabilities and financial condition and in responding to various queries from the courts and its advisers, throughout the bankruptcy proceedings. As the Bankruptcy Law is relatively new and untested, in practice bankruptcy proceedings could take between two and four years to complete.

7.4 Rescue or Reorganisation Procedures Other Than Insolvency

No company rescue or reorganisation procedures are available in the UAE outside the insolvency regime under the Bankruptcy Law. The new insolvency regime under the Bankruptcy Law provides for a PSP, an RS and bankruptcy. The Bankruptcy Law provides a rescue or restructuring procedure as follows.

PSP

This can only be initiated by a debtor in financial distress. A debtor can apply for preventative settlement in order to reach a settlement of its debts with creditors (albeit with a restructuring of the debt terms, often involving a haircut), in accordance with an approved PSP. The debtor must still have a viable business (eg, this option is not available to an insolvent company with no prospects of recovery). To initiate preventative settlement, the debtor must make an application to the court that includes:

- evidence of the circumstances resulting in the application;
- a description of its economic and financial position;
- a summary of agreements to which it is a party;
- details of its movable and immovable properties; and
- details of employees and creditors.

The debtor must prepare a PSP, including:

- the debtor's plan for conducting its business;
- a list of known creditors and debtors, and their details;
- details of the creditors' committee; and
- terms and conditions for the settlement of any obligations.

The PSP will be approved by the court and then by the creditors, and finally return to the court for ratification. Once ratified, the PSP will be implemented in accordance with its terms.

RS

A debtor, creditor or supervisory entity of the debtor (to be identified under the implementing regulations referenced under the Bankruptcy Law) may initiate an RS. A debtor may initiate proceedings if it has ceased payment of debts and is suffering from financial difficulties (ie, this option cannot be used merely to restructure debts that can otherwise be paid by the debtor).

The application should include the documents required for a preventative settlement application, plus a brief explanation of the RS. As under the PSP, the debtor must submit a restructuring plan within three months of the decision to initiate the restructuring process. The restructuring plan should contain information generally provided under a PSP.

The creditors will then review and vote on the restructuring plan and, if approved, it shall be sent to the court for ratification (which will be based on the court's assessment standards, including the fairness standard). Once ratified by the court, the trustee should supervise the implementation of the agreed restructuring plan in accordance with its terms (which may include a sale of part or all of the business of the debtor).

A debtor, creditor or supervising authority can file an application to place a company into restructuring. The court will determine (based on its expert's report) whether the debtor's business can be rescued via a restructuring, and can order the debtor to be placed into a restructuring process.

If the court decides to proceed with a PSP or RS, a draft PSP or RS must be submitted to the court (as applicable). The draft scheme must contain details regarding (among other things):

- the debtor's business' potential to generate profits; and
- the terms and conditions relating to any settlement of the debtor's liabilities.

Once the draft scheme is approved by the court, it must be submitted to the creditors. At least two thirds of the unsecured creditors must approve the scheme. If approved, the scheme is resubmitted to the court for final approval.

7.5 Risk Areas for Lenders

Once a PSP or RS has been approved by the court, it is sent for the creditors' approval (majority approval is required). Only unsecured creditors can vote on whether to adopt a PSP or RS. If the PSP or RS is approved, the court can (at any stage of the PSP or RS):

- terminate any agreement between the debtor and a third party (including loan agreements); and/or
- substitute an existing security interest (including any security for a loan) with an alternative security interest of equal value (as determined by the court).

In the event of a declaration of bankruptcy, the trustee must sell the secured asset within one

month of the date of the bankruptcy declaration, unless the trustee believes that the costs related to the enforcement of a security interest will exceed the enforcement proceeds from the sale of the secured asset.

8. Project Finance

8.1 Recent Project Finance Activity

Large-scale projects in the UAE still tend to be financed by syndicates of regional and international financiers, using a combination of sophisticated instruments including:

- bonds;
- Islamic bonds (sukuk);
- loans;
- syndicated loans;
- Islamic loans; and
- initial public offerings.

Sponsors such as ACWA Power, Mubadala and Masdar remain active, with many of the government-related entities (including Abu Dhabi National Oil Company, the Abu Dhabi Water and Electricity Authority, and the Dubai Electricity and Water Authority) being the leading local sponsors.

As might be expected, construction, energy, infrastructure and renewables projects have continued to see the most activity in the past few years, with heavy investment from the public and private sectors. Key sectors, such as aviation, tourism and real estate have shown signs of recovery following the COVID-19 pandemic, despite signs of a global economic downturn.

There has been a significant increase in renewables and clean energy projects, with the UAE targeting a 50% increase of clean energy con-

tribution by 2050, and an overall reduction of its carbon footprint of power generation by 70% through its Energy Strategy 2050. Having launched USD43 billion of clean energy projects in 2022, Dubai continues to lead in the construction and infrastructure sectors for renewables – including the UAE’s Masdar project, which is expected to expand to at least 100 GW of renewable energy capacity (comprising wind and solar) by 2030. In January 2023, the Abu Dhabi National Oil Company also announced plans for a joint venture with an international consortium to develop a low-carbon ammonia production facility.

8.2 Public-Private Partnership Transactions

Public-private partnerships (PPPs) and independent power projects (IPPs) are common structures in the UAE; while there is no applicable federal legislation, there are emirate-level laws in Abu Dhabi and Dubai. In 2017, the UAE Cabinet issued a procedures manual for partnerships between federal entities and the private sector. Among other matters, the manual provides a general framework for the project life cycle of partnerships with private-sector entities.

In Abu Dhabi, the law regulating PPPs was enacted in 2019 (Abu Dhabi Law No 2 of 2019).

Dubai’s Law No 6 of 2011 regulating Participation of the Private Sector in Electricity and Water Production in Dubai (the “Dubai Electricity Privatisation Law”) was enacted in 2011 to allow the private sector to participate in energy generation. The law authorises the Dubai Electricity and Water Authority to establish project companies, by itself or with third parties, in order to generate electricity.

Dubai also passed a law pertaining to PPPs (the “Dubai PPP Law”) in November 2015, regulating partnerships between government agencies and private entities to develop projects in Dubai. This law does not apply to water- and electricity-related projects, which come within the purview of the Dubai Electricity Privatisation Law. The Dubai PPP Law permits various structures, such as:

- concession agreements;
- build-operate-transfer;
- build-transfer-operate;
- build-own-operate-transfer; and
- operating agreements.

The authority granting approval for the projects varies depending on the project cost. Interested private entities can bid for projects either individually or as a consortium, and the selected private partner must establish a project company in the form of a limited liability company to implement the partnership contract. The Dubai PPP Law also contains provisions pertaining to (among others):

- the bidding process;
- the general and specific conditions of contracts; and
- the obligations of the project company.

8.3 Governing Law

It is possible for English or New York law to apply for international arbitration used to settle disputes.

8.4 Foreign Ownership

Under most governmental projects in the UAE (particularly those modelled on a PPP type structure), the right to develop and utilise the land will generally be provided under a concession/usufruct agreement, wherein the land (on

which the project is built) will always be under the ownership of the government or a joint venture co-owned by a government entity and a foreign investor. In such cases, the rights to the land and all related resources (including access to water for the project) may be covered under the concession/usufruct agreement.

8.5 Structuring Deals

Privately funded projects with foreign sponsors (other than PPPs, whose structure will be as per the relevant government policy) require a structure that complies with local majority ownership requirements.

Under the old law regarding commercial companies (Federal Law No 2 of 2015), foreigners (natural and legal persons) were permitted to own up to 49% of a UAE company (other than in the free zones); a majority of 51% is required to be owned by UAE nationals. Although this restriction was a deterrent to foreign investment, it was not an insurmountable hurdle, as informal arrangements exist to enable foreign investors to transfer 100% beneficial interest in local companies to themselves. The enforceability of these side agreements is questionable and untested in the local courts. Although the local partner could, in theory, take over the business by revoking the side agreements, the arrangement works well in the vast majority of cases and offers a practical way forward for foreign investors wishing to do business in the UAE.

Federal Law No 19 of 2018 on Foreign Direct Investment (the “FDI Law”) was promulgated to allow 100% foreign ownership of companies in certain sectors in the UAE, subject to approval of the UAE Cabinet; however, it also sets out a “negative list” of 13 sectors where existing laws and restrictions will continue to apply and

majority foreign ownership will not be permitted. These include:

- insurance;
- water and electricity;
- land and airport services; and
- retail infrastructure.

Federal Decree-Law No 26 of 2020 also introduced significant changes to the foreign ownership restrictions, removing the long-standing requirement for 51% of the shares in a mainland or onshore company to be held by one or more UAE nationals (natural or legal persons). The Companies Law states that the threshold required for ownership of UAE limited liability companies (if any) should be determined by the UAE Cabinet upon the recommendation of a committee, which is required to determine activities considered to have a “strategic impact” in order for foreign investors to be entitled to hold up to 100% of the legal interest in such companies.

A list of activities permitted for the purpose of 100% foreign ownership has recently been published by each of the relevant Economic Departments in Abu Dhabi and Dubai. The UAE Cabinet is yet to issue a Resolution regarding the list of activities that would be considered to have a “strategic impact”. However, the new ownership rules provide exceptions for the following two specific economic activities.

- Economic activities that possess a strategic impact, which are limited to seven sectors (these sectors are considered strategically important and are thus excluded from the ownership reform):
 - (a) security, defence and military activities;
 - (b) banks, exchange houses and finance companies;

- (c) insurance;
 - (d) currency printing;
 - (e) communications;
 - (f) Haj and Omra services; and
 - (g) Quran centres.
- Business activities that remain unaffected by the reform as professional activities. In these cases, foreign investors are still required to collaborate with a UAE national to fulfil the necessary judicial formalities for starting a business. This exemption is primarily owing to legal considerations, as professional licences fall under the purview of the Civil Code, while commercial and industrial licences are governed by the Companies Law.

Foreign sponsors have different options for structuring their investment in a project, such as becoming a direct shareholder in the project company or creating a holding company to serve as the shareholder in the project company. The latter is advantageous in that the holding company can be incorporated in a foreign jurisdiction such as the British Virgin Islands, where certain shareholder rights (such as drag and tag) can be enforced as a matter of right, unlike in the UAE.

Foreign contractors can partner with local contractors, either by setting up an offshore holding company to hold their interests in a UAE company that will be licensed to carry out the construction work, or by entering into contractual arrangements outside the UAE company. The former is advantageous in that it allows the foreign contractor to have a direct interest in the local company. Smaller projects can also be carried out by a single established local entity, where a foreign contractor is the sole shareholder.

8.6 Common Financing Sources and Typical Structures

Typically, project financings in the UAE are in the form of long-term loans granted by large international and domestic banks, with tenure of 20 to 25 years being common. Banks finance up to 75% of the project cost, and the remaining funds are contributed by the sponsors of the project, by way of either equity contributions or shareholder loans. Sponsors may also be required to provide undertakings, sometimes supplemented by collateral security such as letters of credit, towards funding any cost overruns that the project may encounter and to ensure completion of the project.

The usual security package taken by lenders in the UAE is similar to other jurisdictions and includes the following:

- an asset pledge over plant, machinery and other company assets;
- a legal mortgage over the land or site, which may take the form of a mortgage over sub-usufruct, and which is the right to use, enjoy and occupy land or property belonging to another entity for a fixed term;
- a pledge over the shares of the project company; and
- an account pledge over the bank accounts of the project company.

8.7 Natural Resources

According to the Constitution, the acquisition and exportation of natural resources in the UAE is governed at an emirate level, not a federal level. Therefore, individual emirates have the authority to determine how to exploit their natural resources.

Oil and gas affairs are governed by the Supreme Petroleum Council in Abu Dhabi, and by the indi-

vidual Ruler's Office in each of the other six emirates. Oil production in the UAE today is a public sector activity engaged in by government-owned entities and holders of government concessions, which include the traditional oil majors (BP, ExxonMobil, ConocoPhillips, etc).

The regulation of oil in the UAE is largely addressed by the individual concession agreements and other agreements with the major oil companies, not by general laws and regulations. Some of these agreements date back to the 1930s.

8.8 Environmental, Health and Safety Laws

As with other laws and regulations in the UAE, health, safety and environmental laws exist at a federal and emirate level. Federal laws are meant to prevail over emirate laws in the event of conflict, but this is not always observed in practice. Most health and safety laws are found in the UAE Labour Law, and some are also criminal offences under the UAE Penal Code. Local authorities in the UAE also have their own rules and regulations, such as:

- the Dubai Municipality;
- Trakhees (part of the Dubai Department of Planning and Development);
- the Abu Dhabi Department of Urban Planning and Municipalities; and
- the Environment Agency – Abu Dhabi.

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