

## 1. INTRODUCTION

### 1.1 Please give a brief outline of the legal system in the UAE. Is it based on common-law, civil-law, or some other system?

The United Arab Emirates (the “**UAE**”) is a federation of seven Emirates; Abu Dhabi, Dubai, Sharjah, Ras Al Khaimah, Umm Al Quwain, Ajman, and Fujairah. The UAE is a Civil Law Jurisdiction whose primary source of law is a statutory code. It has been heavily influenced by the Egyptian legal system which has its own roots in French and Roman Law.

Islamic law codified in the Shari’ah is applied in family courts but is very much less evident in the commercial sphere. The increasing presence in the local market of international contracts governed by the laws of a variety of common law countries (particularly the United Kingdom and United States) has led to a greater familiarity with common law principles and practices on the part of the commercial judiciary. Thus, there is, for example, an increasing preparedness on the part of judges to consider legal precedents as persuasive, notwithstanding they may not be bound by them.

The receptivity of the judiciary to legal innovation is partly a reflection of global trends in the law generally and partly a consequence of the multi-national composition of the Bench. In order to keep pace with the rapid rate of commercial development, particularly in Abu Dhabi and Dubai, a large number of judges have been recruited or seconded from across the Middle East and North Africa. The appointment of a significant number from Egypt has led to increasing note being taken of that country’s highly developed jurisprudence. Sudanese judges with common law backgrounds and civil law trained Syrian and Lebanese judges also add to the creative mix.

### 1.2 How are the courts organized in the UAE?

The UAE Constitution permits each Emirate to have its own legislature, judges and Courts. However, all Emirates other than Dubai and Ras Al Khaimah have chosen to operate their Courts according to a uniform federal model – thus they are referred to as Federal Courts. Whilst the rules and procedure of

the Dubai and Ras Al Khaimah courts are slightly different, all Courts in the UAE fall into the civil law hierarchy of First Instance, Appeal and Cassation. All three Courts have civil, criminal and family/sharia divisions. Lawyers authorised to practice in the Federal Courts require separate licenses to practice in the Local Courts. Only UAE Nationals may have audience and appear before all UAE courts.

As in most jurisdictions, the general Civil and Criminal Courts are augmented by a range of specialist tribunals. From a commercial point of view the most important of these are the Dubai International Financial Centre Courts ('DIFC'). The DIFC Courts have jurisdiction over entities registered in the DIFC.

In addition, the Rent Committee Tribunal which exercises jurisdiction over all rental disputes (residential and commercial) plays a central role in the day to day business of UAE companies and residents, whilst the Ministry of Labour is competent to deal with all manner of issues and disputes arising under the enforcement of UAE Labour Law.

### **1.3 How are lawyers organized in the UAE?**

Lawyers in the UAE do not currently operate under a law society or regulatory body as lawyers in other jurisdictions (e.g. UK) do. When foreign or expatriate lawyers wish to practice in the UAE they must apply for a working permit with the Ministry of Labour. The ministry sets out its own criteria for lawyers to enter and practice in the UAE. Expatriate lawyers do not enjoy audience in the UAE courts.

### **1.4 What type of legal fee arrangements are common in the UAE?**

Lawyers based in the UAE generally keep in line with the international standard practice of charging fees on an hourly time-spent basis. It is not uncommon for a fee cap or fixed fee to be utilized in the alternative. Hourly rates are applied incrementally in accordance with experience and the level of qualification of the particular lawyer working on that matter.

## **2. STRUCTURES FOR DOING BUSINESS**

### **2.1 Is it necessary to set up a business organization in the UAE to provide services or sell goods in the UAE?**

Yes, it is necessary to establish a business presence in order to provide or sell goods or services in

the UAE. Regardless of the type of business to be set up (the structures available are set out below in 2.2) it is necessary to obtain a license. The three types of licenses are as follows. (Please refer to 2.4 below regarding the licenses required in freezones.)

1. Commercial license (all kinds of trading)
2. Industrial license (manufacturing or industrial)
3. Professional license (professions, services and craftsmen)

Additionally, rather than setting up a business organization to provide services or sell goods, it is possible to appoint a local commercial agent for the purpose of selling directly to importers and traders in the UAE, which is very commonly used by foreign companies to offer their goods and services to consumers in the UAE. UAE Federal Law No. 18 of 1981 Concerning Commercial Agencies, as amended, governs the relationship between foreign manufacturers and local agents and distributors and grants protections to the local party subject to the registration of the agency with the Ministry of Economy. Agency Agreements need to be registered pursuant to the Commercial Agencies Law, while there exist unregistered agents, which are subject to the Civil Law and the Commercial Law instead of the Commercial Agencies Law. In order to register, the agent/distributor must be a UAE national or a company wholly-owned by UAE nationals. The statutory protections afforded by registration include, inter alia, restrictions on the foreign party's right to terminate or withhold renewal of the relationship, exclusivity and the right to receive compensation on termination or non-renewal of the relationship.

## **2.2 What forms of business organizations can be set up in the UAE?**

There are various legal structures available for the establishment of a business in the UAE. These are collectively addressed in the following main laws:

Federal Law No. 8 of 1984 concerning Commercial Companies as amended (the “CCL”)

The UAE Civil Transactions Law, Federal Law No. 5 of 1985 (the “Civil Code”)

Local Order No. 63 of 1991 on Licensing Professionals and Tradesmen in the Emirate of Dubai

Legally permitted forms of businesses in the UAE:

Commercial Companies (provided in the CCL)

Among the following, limited liability companies are the most popular form for foreign companies to operate businesses in the UAE.

- General partnerships
- Simple limited partnerships
- Joint participations
- Public joint stock companies (“**PJSCs**”)
- Private joint stock companies
- Limited liability companies (“**LLCs**”)
- Partnerships limited with shares
- Foreign companies (branches or representative offices outside the Free Zones)

Civil Companies (provided in the Civil Code)

- Service companies (work company/company to perform work)
- Speculative venture partnerships
- Mudaraba companies

Free Zone Entities

There are a great range of Free Zones in the UAE, the majority of which are in the Emirate of Dubai. Foreign companies are permitted to establish wholly-owned branches in each of these Free Zones, and such branches are exempt from the requirement to appoint a local sponsor. Each of the Free Zones has its own set of laws, rules, regulations and requirements which do not fall within the ambit of the Federal Companies Law and which do not require the involvement of a UAE national shareholder. However, a company set up in a Free Zone can only trade within the Free Zone or internationally.

The establishment of a Free Zone branch or a corporate entity is dealt with by the relevant Free Zone Authority and each Free Zone prescribes its own minimum share capital requirements.

Free Zone entities can usually take one of three forms:

- (i) a branch office of a foreign principal company;
- (ii) a Free Zone Establishment (a separate corporate legal entity with the foreign principal company or individual being the sole shareholder); or
- (iii) a Free Zone Company (similar to a Free Zone Establishment but with multiple shareholding).

Offshore companies – e.g. Jebel Ali Offshore Company

Compared to the other structures set forth above, setting up an offshore company does not require a

foreign company to establish any physical presence (i.e. no office is required).

- 100% foreign ownership;
- Exemption from corporate and income taxes for a period of 50 years from establishment (renewable);
- Duty free import of goods;
- No foreign currency restrictions;
- Full repatriation of profits and capital;
- Costs are cheaper than free zone onshore companies;
- No paid up capital requirement

### **2.3 What is the process, time required and cost for setting up each?**

The major procedures to set up each are outlined below. Please note however, it is advisable to consult with relevant authorities and legal advisors with respect to up-to-date information in this regard.

Commercial Companies (provided in the CCL)

#### Process for PJSCs

Outlined below are the basic procedures necessary to establish a PJSC in the UAE. The required minimum share capital is AED 10 million, and ten founding members are necessary to establish a PJSC.

1. Draw up a founders' agreement which should be supported by a business plan/feasibility study.
2. Draw up the company's constituent documents such as the memorandum and articles of association as per the Ministry of Economy approved formats, subject to approved changes.
3. Present the company's constituent documents for approval to a committee jointly formed between the Ministry of Economy and the concerned government authority.
4. Once the above approval has been obtained, the prospectuses are published. A summary prospectus (which includes a brief summary of information about the company and the offer and invites the public to subscribe to the offered shares) is published in two local Arabic language newspapers to offer the shares. If a member of the public decides to review the whole prospectus rather than just the invitation, that person can go to the company office or to designated financial institutions to obtain

copies of the prospectus.

5. A minimum of 10 days and a maximum of 90 days is kept open for subscription with a provision for an extension of this period.
6. Convene the company's first general assembly of shareholders in order to ratify the issuance of any shares for assets in contribution, elect the first board of directors and declare the establishment of the company.
7. A decision announcing the establishment of the company issued by the Minister of Economy.
8. Register the company with the Department of Economic Development Commercial Register, obtain a trade license from the department and obtain membership of the Chamber of Commerce and Industry of the particular Emirate.
9. When the registration is completed, a receipt is presented to the bank and it releases the subscribed funds to the company and reimburses the founders for any expenses of incorporation.

#### Process for Private Joint Stock Companies

The procedures to set up a private joint stock company are the same as for a PJSC as covered above. A private joint stock company may be converted into a PJSC in accordance with Article 217 of CCL. The main difference between the two is the minimum share capital of AED 2 million. The shares of a private joint stock company may not be offered to the public. Only three founding members are required for a private joint stock company.

#### Process for LLCs

Application for approval to establish an LLC must be sought from the relevant government department upon submission of the Memorandum of Association, and once approval has been granted the LLC can be entered in the Commercial Register and the appropriate license will be issued.

#### Process for Branches of Foreign Companies

An application to establish a branch must be made to the relevant government department, supported by various documents including the applicant's constitutive documents (Certificate of Incorporation and Memorandum and Articles of Association), appropriately worded Board Resolutions, a Power of Attorney in favour of the General Manager to be appointed, and a completed national service agency agreement (agreement between the applicant company and the national service agent (the so-called local sponsor)). The foreign company must also

provide a bank guarantee (which must be renewed every year) in the amount of AED 50,000 along with its application for registration in the Register of Foreign Companies. The premises proposed to be used by the branch must be approved and license fees paid before the license will be issued.

#### Process for Representative office of Foreign Companies

The procedures and requirements to establish the representative office of a foreign business are the same as those needed for a branch office with the following exceptions:

1. Representative offices do not have to be registered with the Ministry of Economy and thus do not have to pay the registration fees
2. A certificate from the competent authority in the company's home country stating that the company has been registered for not less than two years, and its official translation by a certified legal translator need to be submitted when applying for a trade license at the Department of Economic Development along with the documents required for branch office license applications.

#### Civil Companies (provided in the Civil Code)

#### Process for Service Companies

Service companies wholly owned by foreign persons must appoint a local service agent in relation to the Emirate in which their business is operated.

#### Free Zone Entities

#### Process for Free Zone Entities (Branch office)

The foreign company's application to form a branch office in a Free Zone must be supported by copies of its constitutive documentation, appropriately worded board resolutions and a statement regarding the amount of capital set aside for the promotion and support of the branch office operation.

#### Process for Free Zone Entities (Free Zone Establishment or Company)

The foreign entity's application to form a Free Zone Establishment or Company must be supported by copies of its constitutive documents and appropriately worded board resolutions.

As the Free Zone Establishment will be a separate corporate legal entity, further information is also required concerning the proposed share capital, the number of shares, the identity of local bankers and licensed chartered accountants and the appointment of directors and secretaries. In the case of a Free Zone Company the required documentation will depend upon the nature of the shareholders.

Offshore Companies – e.g. Jebel Ali Offshore Company

This is a very simple process. A registered agent for the process before the Free Zone Authority is appointed and authorized, and registered with the Authority. Local law firms and accounting firms provide a registered agent usually for a fixed fee.

## **2.4 Are there any fetters on the business activities that can be carried on by business organizations in the UAE?**

The basic requirement for all business activity in the UAE is one of three categories of license, commercial, professional or Industrial. These licenses are issued by the Department of Economic Development of each Emirate (this may vary from Emirate to Emirate). However, licenses for some categories of business require approval from certain ministries and other authorities. For example, banks and financial institutions require special approval from the Central Bank, media companies require special approval from the National Media Council, and manufacturing companies require special approval from the Ministry of Finance.

However, in the free zones different types of licenses are obtainable and available and these vary from free zone to free zone. Below are the different types of licenses available at, for example, the Jebel Ali Free Zone, which is based in Dubai. As long as a company conducts its business within the Jebel Ali Free Zone, the company is not required to obtain a license from the Department of Economic Development.

- **General Trading License**  
This type of license allows the holder to import, export, distribute and store all items as per Jafza rules and regulations.  
This company license enables the holder to trade within the free zone and not outside it; for that it would need to appoint distributors on the main land.
- **Trading License**  
This type of license allows the holder to import, export, distribute and store the particular items specified in the license.  
This company license enables the holder to trade within the free zone and not outside it; for

that it would need to appoint distributors on the main land.

- **Industrial License**  
An Industrial allows the holder to import raw materials, manufacture specified products and export the finished products to any country.
- **Service License**  
This type of license allows the holder to carry out services specified in the license within the Free Zone. The type of service must conform to the parent company's license, issued by the Economic Department or Municipality of the relevant Emirate in the UAE.
- **National Industrial License**  
This license is designed for manufacturing companies with an ownership or shareholding of at least 51% with AGCC (Arabian Gulf Co-operation Council) nationals/citizens. The value added to the product in the Free Zone must amount to a minimum of 40%. This company license allows the holder the same status as a local or GCC inside the UAE.

## 2.5 What are the ongoing obligations in relation to each of the forms of business organizations?

In general the companies in the UAE are required by law to maintain accounts and are obliged to file these when renewing the license. For example, Limited Liability Companies are obliged to keep a record of the names, nationalities and domiciles of its shareholders and their respective share values, at the registered office of the company. An LLC is required to maintain financial records, which must be audited by a licensed chartered accountant.

# 3. CORPORATIONS

## 3.1 What are the different types of companies recognized in the UAE?

Please refer to 2.2 above. The comparison table below shows the major differences between the companies available to set up in the UAE based upon the provisions of the CCL. Please note however, it is advisable to consult with relevant authorities and legal advisors with respect to up-to-date information in this regard.

Forms of Commercial Companies	Structure of partners / shareholders	UAE Nationality Requirements	Minimum Capital Requirement
General partnership	Two or more partners who owe joint and unlimited liabilities.	All the partners.	None
Simple limited partnership	One or more general partners who owe joint and unlimited liabilities & one or more limited partners who owe limited liabilities.	All the general partners.	None

Forms of Commercial Companies	Structure of partners / shareholders	UAE Nationality Requirements	Minimum Capital Requirement
Joint venture company / joint participation	Two or more partners among whom, in principle, only a trading partner owes unlimited liability in relation to the counterparty and the other partners owe no liabilities, however, if the existence of the partnership is disclosed to a third party, all partners owe joint and unlimited liability in relation to the third party.	UAE Nationals should constitute at least 51% of the capital.	None
Public joint stock company	Ten or more shareholders who owe limited liabilities.	Shareholders having a 51% or more share in the capital; the majority of the members in the board of the directors and the Chairman of the board of directors.	AED 10,000,000
Private joint stock company	Three or more shareholders who owe limited liabilities.	Shareholders having a 51% or more share in the capital; majority of the members in the board of directors and the Chairman of the board of directors.	AED 2,000,000
Limited liability company	Two to fifty partners who owe limited liabilities.	Partners having a 51% or more share in the capital. A foreigner can be the manager of the company.	None
Partnership limited by shares	General partners who owe joint and unlimited liabilities & limited partners who owe limited liabilities to the extent of their share in the partnership.	All the general partners.	AED 500,000

### 3.2 What is the process for incorporation of a company?

Please see answers in section 2.3 above.

### 3.3 How can a minority shareholder protect its interests?

Although the CCL prescribes that a UAE national must hold at least 51% of the registered shareholding of an LLC, currently it is common practice for foreign shareholders to beneficially hold a higher percentage of the shares than those that are actually registered in their name. This is achieved through various side agreements with the UAE national shareholder who is represented as a registered shareholder but through the side agreement he grants all beneficial interest in the said shares to the foreign shareholder. The said side agreements provide protection to the foreign shareholder through profit adjustment agreements, powers of attorney in respect of transfer of shares and pre-emption rights and in respect of voting and management rights. The methods below are the means by which a minority shareholder may protect his or her rights:

#### 1. Shareholder Litigation

The key provision of the UAE law in this context is Article 111 of the CLL which makes

directors liable to be sued by both the company and the shareholders and it is open to any minority shareholder to sue the Board for 'mismanagement'.

## 2. Access to Confidential Corporate Information

This is as yet untested in the courts, however, Article 170 of the CCL provides that a shareholder (who does not have a board seat) 'may review company books by permission of the Board of Director's or the general assembly...the court may oblige the company to provide the shareholder with particular information that does not conflict with the company's interests'.

## 3. The Board Seat

The statute provisions in relation to the same vary between LLCs and PJSC, however, the theory behind the concept remains the same in that given that all major corporate transactions and access rights to records and information is afforded to the board or the managers it is vital for a minority shareholder to have representation on the board or in the managers.

## 4. Control over corporate actions

This control can either take the form of a shareholders agreement or more effectively be embedded in the constitutive documents of the company itself. Essentially the minority shareholders seek to restrict the capacity of the majority shareholders to engage in designated 'corporate actions' without their prior consent and agreement. Usually the agreements set out that a variety of reserved decisions should only be taken where there is unanimous or 75% approval of the Board or shareholders. Article 10 of the CCL sets out that any inconsistencies with the Memorandum and Articles of Association of an LLC will not be upheld in court.

## 5. Channeling of benefits to the minority shareholder

Again the statute provisions in relation to the same vary between LLCs and PJSCs but generally speaking there are a number of methods for controlling the channeling of benefits to the minority shareholder e.g. entry into management contracts, entry into important agreements (such as supply contracts) with the company or other shareholders to obtain bargaining power, etc.

## 6. Agreement for Cash Exit

Common cash exits include the sale of all the shares in the company to a third party, the sale of business assets to a third party followed by voluntary liquidation of the company, sale of minority shareholder's own shareholding in the company or the exercise of a put option under which the minority shareholder can require the majority to purchase its shares. However, achieving this will be difficult for a minority shareholder unless the same is set out specifically in the shareholders agreement or the constitutive documents.

### 3.4 Are there any corporate governance norms?

Corporate governance is relevant to all forms of companies. There are no specific rules governing the disclosure of board practices for all companies operating within the UAE. However, the CCL requires joint stock companies to provide the Ministry of Economy and the competent authority with an annual list setting out the names, capacities and nationalities of board members. The CCL also requires minutes to be kept of all board meetings and these (together with all company books and documents) may be reviewed by shareholders with the permission of the board or the general assembly subject to any specific provisions in the articles of association of the company. The board of directors is generally assumed to be responsible for following up on the proper application of corporate governance practices and reporting any irregularities. Article 111 of the CCL provides that board members will be held responsible for acts of fraud, abuse of power, violation of the law or the company's by-laws, and wrongful management. The company or the shareholders, if the company does not bring an action, may bring an action against defaulting directors.

With respect to public joint stock companies whose shares are eligible for listing on either of the UAE exchanges, such as the Dubai Financial Market (the "DFM") and the Abu Dhabi Securities Market Exchange ("ADX"), the primary sources of law relating to corporate governance in the UAE are the CCL and Federal Law No. 4 of 2000 concerning the Emirates Securities and Commodities Authority and the Market (the "SCA"). In addition, there are certain rules and regulations including, but not limited to: Council of Ministers Resolution No. 12 of 2000 concerning the Regulations for the Listing Securities and Commodities as amended, the SCA's Board of Directors Resolution No. 3 of 2000 concerning the Regulations as to Disclosure and Transparency, the SCA's Board of Directors Resolution No. 7 of 2002 concerning the listing of Foreign Companies as well as the listing rules of the DFM and the ADX.

The Minister of Economy promulgated a ministerial decision No. 518 of 2009 on Corporate Governance Code for Joint Stock Companies and Institutional Discipline Criteria (the "Decision") which provides, for example, the duties of directors, the chairman of the board and non-executive

directors. This Decision is applied by the SCA as a binding regulation in respect of listed and public joint stock companies but not in respect of private joint stock companies.

There are other regulations relevant to corporate governance in the DIFC, which will not form part of this review. The SCA recently adopted disclosure guidelines requiring the disclosure of numerous events which are considered to be material and which might have an impact on the price of the shares.

See also Question 3.10.

### **3.5 Are there any restrictions on a foreign-owned UAE company from raising capital/debt from UAE markets?**

SCA's Board of Directors Resolution No. 7 of 2002 applies to public joint stock companies and sets out the requirements and procedures to register for the same.

### **3.6 Can a UAE company have foreign directors?**

#### Limited Liability Company

Managers of LLCs correspond to directors of joint stock companies. An LLC must be managed by a minimum of one and a maximum of five managers. A manager can be one of the shareholders or any other person. It is possible for these managers to be foreign nationals..

Notwithstanding the fact that the majority shares are held by the local partner, a foreign partner can exercise absolute control over the management of the limited liability company either by itself or through its authorized representatives being appointed as the manager under the provisions of the Memorandum of Association, thus making the limited liability company the preferred choice of foreign investors.

#### Public Joint Stock Company

The management of the PJSC vests in the Board of Directors of the company comprising of at least three directors up to a maximum of 15 directors. The chairman of the board must be a UAE national. The majority of the board must also comprise UAE nationals.

Although the following entities are not 'companies' and as such do not have directors or managers, we have set out for information purposes the foreign/local dynamics within these structures below:

### General and Limited Partnerships

In these structures only UAE nationals may be the active partners

### Partnership Limited by shares

In this particular structure all general partners must be UAE nationals while participating partners can be foreign.

### Branch Office and Representative Offices

These structures as set out above can be 100% foreign owned provided a local service agent is appointed. Only UAE nationals or companies 100% owned by UAE nationals can be appointed as local service agents.

## **3.7 Are there any norms for the sharing of profits?**

The CCL allows for the profit and loss of an LLC to be distributed in any proportion the owners of the company wish. However, in the past the Department of Economic Development of each Emirate issued a resolution which requires that at least 20% of the profits go to the UAE national shareholder. The percentage set out in the Memorandum of Association that each department will accept varies from Emirate to Emirate. In practice the profit and loss allocations are agreed between the foreign investor and the UAE national shareholder with the UAE national shareholder instead receiving an annual fee.

## **3.8 What type of shares can a company issue?**

Under the CCL LLCs may only offer one class of shares. This is not ideal for venture capital companies who normally require additional classes of shares than just ordinary shares, for example preference shares. Therefore, LLCs are not an optimal structure for primary investment vehicles. Therefore, it is common practice for investors to establish tax effective offshore holding companies, for example the Jebel Ali Free Zone.

## **3.9 Are there any requirements in relation to the frequency and mode of holding board meetings?**

The CCL does not require a specific number of board meetings to be convened. The board or the

chairman decides, at their discretion, to convene meetings, depending on the needs of the company.

### Limited Liability Companies

In terms of 'General Assemblies' an LLC must hold a General Assembly of the shareholders at least annually, or at any other time demanded by the supervisory board or by shareholders holding at least 25% of the LLC's capital.

### Joint Stock Companies

However, the Securities & Commodities Authority has issued a decision that provides that board meetings for public joint stock companies whose shares are eligible for listing on one of the UAE exchanges are to be convened at least once every two months upon written convocation of the chairman or upon a request submitted by at least two thirds of the directors.

In terms of JSCs and general assemblies, within thirty days after the closure of subscription, the founding members should call the subscribers to a first general assembly meeting. A copy of the invitation should be sent to both the esteemed Executive Council and the ministry of Economy. The quorum for the first 'General assembly' meeting will not be achieved unless the holders of three quarters of the paid up shares or their representatives attend.

## **3.10 What responsibilities and liabilities do company directors have?**

Under Article 111 of the CCL each member of the board of directors of a joint stock company shall be liable to the company, its shareholders and to third parties for any violation of the statutory law, by-laws of the company and most importantly "mismanagement". Additionally directors are liable for all acts of fraud, abuses of power, violations of the CCL (or regulations issued under its ambit). By virtue of Article 237 of the CCL, managers of an LLC shall have the same responsibility as that of the member of the board of directors of a joint stock company.

This provision is statutory and cannot be altered or removed by the by-laws of the company or otherwise and any provision to the contrary is considered void and unenforceable. The principal exception to liability for a board member is in a situation where a director dissents from the offending board resolution and requires his dissent to be noted in the minutes of the board meeting. An absentee board member may also avoid liability if he had no knowledge of the offending resolution or, if he did have knowledge, he was unable to attend the meeting to record his objection.

## 4. LIQUIDATION

### 4.1 Please give a brief outline of the procedure involved in the winding up or liquidation of a company in the UAE. Are there any requirements specific to the UAE?

The process of winding up and liquidation applies only to companies. A company may be liquidated if the partners or shareholders elect to liquidate the company. If a company becomes unable to pay its debts or commits an act of bankruptcy, it may be adjudicated as bankrupt, irrespective of whether the partners have agreed to the liquidation of the company.

Under the CCL, a company will be dissolved on the basis of the following reasons:

- Expiry of the period specified in its Memorandum and Articles of Association.
- Exhaustion of the objects of its incorporation.
- Depletion of all or most of its assets.
- Amalgamation (Merger).
- The unanimous approval of the partners to terminate its duration unless the Memorandum of the company provides that a specific majority shall suffice.

Additionally the courts may order the company to be liquidated by decision of the court. In relation to a JSC or an LLC, if the losses amount to half the capital, then the Companies Law provides for the dissolution of the company either through a resolution of the general assembly or through proceedings filed by any interested party.

The Liquidator must notify the company's creditors of the commencement of the liquidation of the company. He must notify them to submit their claims within a period of not less than 45 days from the date of notice.

Following this step, the Liquidator commences the settlement of the company's debts. If the company's assets are not sufficient to meet the debts then he shall settle them proportionally without prejudice to the right of priority of secured creditors.

Finally the Liquidator will distribute any remaining funds or assets amongst the partners of the company proportionate to their shares. If the assets fall short or are insufficient to cover payment to all partners, then the losses are also distributed amongst them. This distribution of losses of course only applies to "unlimited" companies that take the form of a partnership. Shareholders in either a JSC or an LLC have their losses statutorily limited to the paid-up value of their shareholdings.

## 4.2 Please give a brief outline of the bankruptcy proceedings in the UAE.

The rules and procedures governing bankruptcy are set out in Book Five of the Commercial Transaction Law, Federal Law No. 18 of 1993 (the “CTL”). The Law covers the rules and procedures in relation to the bankruptcy of individuals as well as the insolvency of commercial entities. It should be noted that although the CCL, regulates commercial entities in the UAE, the provisions regulating the bankruptcy of companies and other businesses are provided for under the CTL, which does not differentiate between individual and corporate bankruptcy.

The CTL does not have a specific definition of “bankruptcy”, but merely highlights the situations in which a trader will be regarded as bankrupt. The meaning may be inferred from Article 645 of the CTL which provides that, “a trader who ceases to pay his debts can apply to the court for his adjudication as bankrupt”.

A trader is not regarded as bankrupt unless he is declared bankrupt by a competent Civil Court.

Article 645 of the CTL states that:

- Any trader who is not able to pay his commercial debts on the due dates by reason of his financial instability may be declared bankrupt.
- Any trader who uses illegal means to pay his debts shall be regarded as unable to pay those debts.
- A trader shall be declared bankrupt only after adjudication by the competent court.

In order to distinguish between bankruptcy and civil insolvency, it is important to understand that bankruptcy applies only to “traders” (being those covered by the CTL) and not to civil debtors<sup>1</sup>.

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<sup>1</sup> A civil debtor who ceases to pay his debts (or where his debts exceed his assets) is only subject to certain administrative restrictions whose effects are as follows. These restrictions are called “Hajr” in Arabic (the “Restriction”), a concept from Islamic jurisprudence which is set out in the Civil Code. The Restriction is usually placed over the civil debtor’s property and assets by a court of competent jurisdiction upon a petition either by the debtor himself or one of his creditors. A court may then pass an injunctive order which will prevent the debtor from dealing with his property.

The effects of the Restriction:

- All deferred debts immediately fall due for payment;
- All of the debtor’s dispositions over existing or future property become ineffective; and
- Any debt acknowledgement made by the debtor to the parties becomes ineffective.

Following the issue of the Restriction, the property of the debtor is sold and the value realized divided among the creditors on a pro-rata basis, in accordance with the procedures set out in the Civil Code.

Pursuant to Article 4 of the CTL a “trader” is defined as being “an individual or company that carries out commercial activities”. It is important to understand the Civil Law distinction between commercial and civil activities. Professional consultancy-type activities practiced by individuals (such as doctors, lawyers, consulting engineers, etc.) are not considered commercial activities. Rather, these activities will be considered “civil” if they are carried out by an individual. However, should a business adopt a commercial form as set out under the CCL, then that business will be regarded as a commercial trader, even if its activities are essentially civil in nature. Accordingly, a trader who ceases to pay his debts may be declared bankrupt according to the CTL.

The CTL gives jurisdiction to the UAE Court to hear bankruptcy cases for or against foreign traders who have branches, local agencies or any other establishment in the country irrespective of whether or not they are also declared bankrupt abroad. The CPL also gives the UAE courts jurisdiction in respect of actions against foreigners relating to bankruptcy proceedings in the UAE.

#### *BANKRUPTCY PROCEDURES - APPLICATION for BANKRUPTCY JUDGMENT*

1. A trader can apply to a competent court for a declaration of bankruptcy if he is not able to pay his debts. It should be noted that this is not initially obligatory on the trader, but if thirty (30) days lapse from the date when he ceased paying his debts, then he is obliged to apply for a declaration of bankruptcy, otherwise he commits an act of bankruptcy by default which is a criminal offence under the UAE Penal Code, Federal Law 3 of 1987 (the “**Penal Code**”). The creditors of the trader, the public prosecutor and the court on its own initiative can also apply for the bankruptcy of the debtor.
  
2. Article 649 of the CTL sets out the procedure to be followed by a trader when applying for a declaration of bankruptcy. A petition must be presented to the court containing a statement that he is unable to pay his debts along with the following documents:
  - (a) book of accounts;
  - (b) copy of the last balance sheet duly audited;
  - (c) complete details of personal expenditure of the trader for the two years preceding the application;
  - (d) the amount and particulars of all moveable and immovable property of the trader and estimations of its value;
  - (e) declaration of names and addresses of creditors and debtors and statements of the amount of debt and receivables; and
  - (f) specification of acts of protest during the last two years preceding the application.

3. As stated above, the creditors of the trader may also apply if they satisfy the court that the debtor has ceased to pay his debts; or that he has closed his place of business; or that he has absented himself with intent to defeat or delay his creditors. The debtor can always appear at any subsequent time to defend himself and prove that he is able to pay his debts.
4. After the bankruptcy application is submitted, the court must take all necessary steps to preserve and protect the debtor's assets.
5. The court will make all necessary investigations with the assistance of experts, if so required, to report to the court on the financial affairs of the debtor and the reasons for non payment of his debts.
6. After satisfying all the necessary procedures and resolving all disputes and applications concerning the case, the court would then pass a judgment declaring the debtor bankrupt.

#### WHAT FOLLOWS THE JUDGMENT OF BANKRUPTCY?

The court in its ruling usually specifies a temporary date for the trader to stop payment of his debts and, when delivering its judgment, usually appoints a trustee or receiver (the “**Receiver**”) to take charge of the bankruptcy property. A copy of the bankruptcy judgment is sent to the Public Prosecutor, the Ministry of Economy & Commerce, the receiver, the Central Bank and the competent Commercial Registrar. As a next step, the bankruptcy judgment is affixed at the offices or place of business of the trader and the receiver must publish a summary of the judgment in a local newspaper. The summary must include the name of the trader, his residence, his business registration number, the temporary date for the trader to stop payment of his debts, the court and the judge who issued the judgment and the name of the official receiver. The notice also invites creditors to apply to register their debts.

The powers and duties of the Receiver are to:

- (a) Manage and preserve the debtor's property and money;
- (b) Keep a record of the daily administration of the bankruptcy. All outgoing and incoming monies must be recorded and submitted to the court. The bankrupt has a right to examine this register; and
- (c) Institute, defend and represent the bankrupt in all claims brought for or against him, employ advocates, pay their professional fees, court fees and other expenses related to the claims.

Once a trader is declared bankrupt then all his ordinary creditors are treated as one body by the Receiver. All legal claims and proceedings initiated by ordinary creditors before the bankruptcy judgment are stayed. This includes proceedings or executions against the bankrupt in his personal capacity or against the Receiver without prior permission of the bankruptcy judge. An exception to this rule are creditors who have secured their debts by mortgages or liens who may file or continue their actions against the Receiver and they may execute their securities over the property which has been mortgaged or is subject to a lien.

Prior to commencing the distribution of assets, the Receiver must redeem moveable properties, stocks, or money held in trust by the bankrupt for third parties after receiving a statement of proof of the particulars of these items. The Receiver must also redeem on behalf of the bankrupt any property or money payable to him by any other party.

The Receiver prepares a list that details the bankrupt's assets and liabilities and publishes a public notice inviting all creditors to come forward with proof of their debts. The next step is for the Receiver to conduct an investigation to verify and prove or disprove the debts claimed. The Receiver then prepares a list of the debts and grounds of objections against any debts and also a list of the secured and unsecured creditors, the value of the debts and the securities maintained and enforceable. The Receiver submits the list to the court and publishes a notice in a local newspaper, with copies to the debtor and all creditors, advising them of the list which has been submitted to the court and that all interested parties have the right to receive this list. After a certain notice period expires, the judge approves the final list.

Once the Receiver files the final report and the court orders the termination of the bankruptcy, the bankrupt redeems all his personal and financial rights. Upon the expiry of 3 years from the date of adjudication, the bankrupt also redeems all the rights which he has been divested of. A bankrupt may redeem these rights prior to the expiration of this 3-year period if he has entered into a composition scheme with his creditors.

## **5. FOREIGN INVESTMENT REGULATIONS**

### **5.1 What are the sources of law regulating foreign investment in the UAE?**

The CCL as set out in section 3 above governs foreign investment law in the UAE. Foreign companies looking to invest in the UAE find that the LLC structure is the most popular vehicle. The CCL does not apply to Free Zones as per Article 2 of the CCL.

## **5.2 What are the various methods in which foreign investment in the UAE is possible?**

Please refer to Sections 2.2 and 3.1.

## **5.3 What is the current foreign direct investment policy?**

Foreign investment is very welcome in the UAE. A main indication of this being that currently there are no personal or corporate taxes applicable in the UAE. As an incentive to foreign investment the UAE has established Free Zones (as explained in Sections 2.2 to 2.4). Free Zones offer an environment that is attractive to Foreign investors by each free zone focusing on different business sectors and industries (media, telecommunications, healthcare, financial to name but a few). Additionally other incentives include infrastructure, location and tax exemptions for up to 50 years.

## **5.4 What are the circumstances under which regulatory approval is required?**

To register a branch or an LLC the entity must obtain a license from the federal and/or municipal authorities to carry on the proposed activities. As mentioned above in section 2.4.

## **5.5 Can a foreign company set up a wholly owned subsidiary in the UAE?**

Foreign investors are permitted to establish wholly owned branches or incorporate wholly owned subsidiaries in each of the free zones. This circumvents the need to appoint a local sponsor as required for the LLC structure.

## **5.6 How long do regulatory approvals take?**

Generally, it is said that the registration and licensing process itself takes approximately ten working days. Please note however, it is advisable to consult with relevant authorities and legal advisors with respect to up-to-date information in this regard.

## **5.7 Are there any restrictions on foreign ownership of land?**

### DUBAI

According to Article 4 of the Title Registration Law, UAE and other GCC nationals and companies

wholly owned by such nationals have the right to own any property interest in the Emirate of Dubai, and to have such rights registered at the Dubai Land Department. This includes limited liability companies in which all the shareholders are UAE or GCC nationals and public joint stock companies.

If a company is incorporated in the UAE or in any of the other GCC countries and has foreign shareholders, it will not be considered a UAE or GCC national for the purpose of owning property. The only exception to this is the PJSC, companies such as Emaar and Union Properties, which are listed on the Dubai Financial Market. These companies allow their shares to be bought by foreigners but are still considered to be UAE nationals and can own property anywhere in Dubai.

According to Article 4 of the Title Registration Law, all nationalities other than UAE or GCC nationals are granted the right to own a freehold interest, a right of usufruct or a long lease of up to 99 years in “designated areas” of Dubai as approved by the Ruler.

Regulation No. (3) of 2006 was signed by the Ruler and published in the government’s official gazette on 3 July, 2006. This Regulation provides at Article 3 that *“non-locals may own properties as freehold not limited by time, or may have the usufruct right or hire right for a period not exceeding (99) years in the plot or plots shown opposite each of the undermentioned areas according to the maps issued by the Department and attached with this Regulation”*.

Article 3 lists 23 designated areas and specifies the applicable plots by their plot numbers. Further areas in Dubai have since been designated for foreign ownership.

Foreign companies, as well as individuals, can own a freehold title, long lease or a usufruct right of up to 99 years in the designated areas. It is understood that the Dubai Land Department will impose few restrictions on this and it will therefore make no difference whether the company is registered in England, Hong Kong or any other foreign jurisdiction, provided that evidence of lawful existence in the country of incorporation is given. Certain restrictions may be applied in relation to offshore companies such as British Virgin Islands and Cayman Islands companies.

Long leases sold in areas which are not designated areas fall outside the ambit of the Title Registration Law, and have an uncertain status. It is the Land Department of Dubai’s position that these must be registered where the term is over 10 years which is not possible when the tenant is a foreigner. Unregistered leases are treated as personal rights, not rights in *rem* or property rights.

Article 26 (1) of the Title Registration Law provides that, *“Any agreement or disposal made in violation to the provisions of this Law or with the intent to circumvent its provisions shall be null and void”*. Article 26 (2) gives any interested third party, the Dubai Land Department and the Public Prosecutor

the right to request that the court declare such a transaction void. This is directed at so called '*sham arrangements*' designed to circumvent the foreign owner restrictions.

A clear example of such an arrangement would be a sale & purchase agreement for the sale of a freehold right in favour of a foreigner in respect of a property in Deira, as foreigners do not have the right to own freehold property in Deira. That is an obvious example. A more subtle example might be the '*nominee ownership*' type arrangements that we sometimes see, where a foreigner who wishes to own property will reach an arrangement with a UAE national wherein the UAE national will hold title to the property at the Dubai Land Department, but for all intents and purposes the foreigner considers himself to be the property owner.

Dubai also has a Strata Law No. 27 of 2007 which creates a Strata ownership regime. Comprehensive regulations to the Strata Law are set to be passed shortly which will complete a modern and transparent ownership regime for towers and gated communities.

#### ABU DHABI

Law No. (19) of 2005 concerning real estate property ("**Law No. 19/2005**") applies locally within the Emirate of Abu Dhabi (including Al Ain). It contains provisions for ownership, development, leasing and mortgaging of land and property and *differentiates between the rights* of UAE nationals, GCC nationals and non-UAE nationals.

In terms of this Law No. 19/2005, UAE nationals and legal entities wholly owned by them have the right to freehold ownership to property anywhere in the Emirate of Abu Dhabi. As an exception to the above, the Law No. 19/2005 grants GCC nationals the right to own freehold land within designated areas known as *Investment Zones*.

The Law No. 19/2005 also grants non-UAE and GCC nationals the right to own apartment units or entire floors in buildings in the *Investment Zones*. However, rights of ownership in an apartment unit or floor in a building does not include by association a right to a share in ownership of the underlying land on which the building is situated. Such rights are also known as "Surface Rights" or "Airspace". Non-UAE and GCC nationals may within the free zones also acquire a right of usufruct (the right to use and exploit property belonging to another person) for a period of up to 99 years and a right of musataha (the right to build and develop on the land belonging to another person) for a period of up to 50 years, both being renewable by mutual consent for a further period of 50 years. So long as these rights are registered (and there is a requirement for registration of such rights), these 'ownership' rights are principal rights in rem and the Law recognises that they are capable of being sold, mortgaged, pledged or assigned.

Law No. (2) of 2007 ("**Law no. 2/2007**"): Amending Law No. 19/ 2005 was issued in order to specifically amend the Law No. 19/2005. In summary, the main amendments to the Law effected by Law No. 2/2007, are as follows:

- The definition of a UAE national has been extended to cover companies and establishments wholly owned by them. This was not clear in Law No. 19/2005.
- GCC nationals and companies and establishments wholly owned by them can own property located in the Investment Zones on a Freehold basis in accordance with the rules issued by the Executive Council. The Law further clarifies that companies which are 100% owned by GCC nationals have the right to own property in the Investment Zones. The Executive Council will issue specific regulations regarding the ownership rights of GCC nationals.
- The Executive Council, by exemption can grant any person or company including GCC/foreign nationals, the right to own property anywhere in the Emirate of Abu Dhabi regardless of the location or nationality of such party.

Generally, Law No. 2/2007 does not make material amendments to the Law, although it does clarify certain aspects of the Law No. 19/2005 and confirms the previous position with regards to property ownership in the Emirate of Abu Dhabi. However, there are still issues that remain unclear from the Law No. 19/2005 which have not yet been addressed.

#### SUMMARY OF OWNERSHIP RIGHTS IN ABU DHABI

- *UAE nationals.* In terms of the Law, UAE nationals and legal entities wholly owned by them have the right to freehold ownership to property anywhere in the Emirate of Abu Dhabi. Freehold ownership is the most absolute form of ownership and consequently UAE nationals are also entitled to the lesser ownership rights such as Usufruct and Musataha rights relating to land anywhere within the Emirate of Abu Dhabi. UAE nationals may also own villas and apartments. It must be pointed out that a Strata Law has not yet been issued or implemented in Abu Dhabi although Article 29 of the Law and Article 12 of Resolution 52/1 of 2008 require that all entries and dispositions relating to apartments must be registered.
- *GCC nationals or companies owned by GCC nationals.* GCC nationals are entitled to freehold ownership of land within investment zones and consequently leasehold and Musataha rights as well.
- *Expatriates / foreigners / non-UAE nationals or companies partly owned by non UAE*

*nationals*. Non-UAE nationals are restricted in their ownership rights and cannot own freehold title to land. Non-UAE nationals can acquire Usufruct or Musataha rights in respect of land situated within the investment zones and surface rights or airspace in regard to units and floors situated with the investment zones.

- *Surface Rights*: Surface Right ownership means that non-UAE nationals can own a unit but have no ownership in the underlying land upon which the building has been constructed. This is an unusual land ownership concept and presents difficulties with regard to the implementation of a Strata Title Law within investment zones as it precludes ownership in the underlying land upon which the building has been created.

## 6. LABOUR

### 6.1 What are the principal regulations governing rights and obligations of employees?

Labour matters in the UAE are governed by Federal Law No. 8 of 1980 Regulating Labour Relations as amended by Federal Laws No. 24 of 1981, No.15 of 1985 and No.12 of 1986 (the “**Labour Law**”). There are special labour related regulations applicable in some of the free zones in the UAE, such as the Jebel Ali Free Zone.

According to Article 3 of the Labour Law, the Labour Law applies to all staff and employees working in the UAE, whether UAE nationals or expatriates. However, there are certain categories of individuals who are exempted from the Labour Law as listed below:

1. Staff and workers employed by the federal government, government departments of the member Emirates, the municipalities, public bodies, federal and local public institutions and those staff and workers employed in federal and local governmental projects.
2. Members of the armed forces, police and security units.
3. Domestic servants.
4. Agricultural workers and persons engaged in grazing (this exemption does not include persons who are employed in corporations which process agricultural products and/or those who are permanently engaged in the operation or repair of machines required for agriculture).

Although the Labour Law stipulates that all employees other than the ones listed above are subject to it, in practice employees in the free zones, such as the Jebel Ali Free Zone and the Dubai Airport Free

Zone, are subject to the rules and regulations of the free zone concerned and maintain their own employment contracts. However, as mentioned above, the Labour Law will still apply and the provisions in the employment contract must be in accordance with the Labour Law. The exception is the DIFC, which is deemed to be a separate jurisdiction with its own laws and courts.

Moreover, it should be noted that free zone employees are sponsored by the relevant free zones and not by their employers. Such employees are seconded by the free zones to companies established in the free zones in return for, amongst other things, a bank guarantee which is required to secure the employees' dues and any end of service benefits which may be payable on termination of their employment contracts. However, although the free zones are technically the employees' sponsor, the employees do maintain their right of action against their employers before the courts.

In addition, when a new business is established it has to be registered with the Ministry of Labour prior to the employment of staff. The free zones authority sponsoring the employees, refer directly to the immigration authorities and not to the Ministry of Labour. In the event of a dispute, the parties will make their claims at the Ministry of Labour prior to taking the matter to court. Where an employment dispute exists between the employee and the employer in a free zone, the free zone authority (in some instances) would hear the dispute in the first instance and try to mediate an amicable outcome. If the dispute cannot be resolved by the free zone authority, they may refer the matter to the courts. Other free zones do not wish to involve themselves with such issues and directly refer the matter to the courts.

The Labour Law covers all aspects of the employer-employee relationship, including matters related to employment contracts, restrictions on the employment of juveniles and women, maintenance of records and files, wages, working hours, leave, safety and protection of employees, medical and social care, codes of discipline, termination of employment contracts, end of service benefits, compensation for occupational diseases, labour inspections, penalties and employment related accidents, injuries and death.

The UAE does not allow the formation of trade unions.

## **6.2 Are there any maximum working hours prescribed for employees?**

The maximum prescribed working hours for an adult employee under the Labour Law is eight hours per day or forty-eight hours per week. However, the working hours may be increased, as determined by the Ministry of Labour, to nine hours per day in the case of persons employed in trades, hotels, cafeterias, and as guards. The time traveling to and from work is not included in the calculation of working hours.

During the Holy month of Ramadan, all employees' working hours are reduced by two hours and the working day will therefore only be six hours.

Employees may not work for more than five consecutive hours per day without breaks for rest, meals and prayer. However, the resting and the meal breaks are not included in calculating working hours. In factories, where people work day and night shifts or jobs where, for technical and economical reasons, continued attendance is required, the Ministry of Labour specifies the manner in which employees may take intervals for rest, prayer and meals.

If the nature of the job requires an employee to work overtime, the employee is entitled to overtime pay which is equivalent to the wage paid during ordinary working hours plus an additional amount of not less than 25% of the wage for the over time period. However, if the employee's overtime falls between the hours of 9.00pm and 4.00am, he will be entitled to overtime pay which is equivalent to the salary payable during normal working hours plus an increase of not less than 50% of his wage for the overtime period worked. In any case, overtime should not exceed two hours per day, unless it is necessary to prevent substantial loss, a serious accident or to remove traces of such an accident or reduce its effect.

If circumstances require the employee to work on a Friday, he is entitled to receive a rest day in lieu to be taken at a later date or be paid his basic wage plus an additional 50% (minimum) of that wage. However, employees cannot be asked to work two consecutive Fridays unless they are employed on, and their wages are calculated on, a daily basis.

However, the above provisions are not applicable to the following persons:

- (1) Persons in senior positions, or in administrative supervisory roles, if such persons have similar authority over employees as the employer.
- (2) Crews of naval ships and marine employees who enjoy special privileges because of the nature of their work. This does not include port employees engaged in loading and unloading and other related work.

### **6.3 How can the services of an employee be terminated?**

An employment contract can be terminated in any of the following circumstances:

1. If the two parties agree to cancel the contract, provided that the employee consents to this in writing.

2. If the contract term has come to an end, unless the contract has been explicitly or implicitly extended according to the rules of the Law.
3. By one of the parties where the contract has an unspecified term, provided that the parties observe the provisions of the Law referred to previously regarding notice and the acceptable reasons to cancel the contract without prejudice.

An employer may dismiss an employee without notice (and payment of end of service gratuity) in any of the following cases (as per Article 120 of the Labour Law):

1. If the employee assumes a personality or a nationality other than his own, or has submitted fake documents or certificates.
2. If the employee was appointed under probation and the termination happened during that period or at its end.
3. If the employee commits a mistake causing the employer a substantial financial loss, provided the employer informs the Ministry of the incident within 48 hours.
4. If the employee violates instructions relating to safety in the place of work, provided those instructions were written and displayed in a permanent place, and the employee has been informed of these instructions orally if he is illiterate.
5. If the employee fails to carry out his basic duties as stated in the contract and continues to do so in spite of a written interrogation and a warning that his service will be terminated if he repeats his misconduct.
6. If he discloses a secret of the establishment for whom he is working.
7. If he is conclusively convicted by the concerned court of a crime involving honour, honesty and public morals.
8. If he is found drunk or intoxicated by drugs during working hours.
9. If he commits a physical assault on the employer or manager or one of his colleagues during work.
10. If he becomes absent without a legitimate reason for more than 20 intermittent days or more than seven continuous days within one year.

An employee would be entitled to an arbitrary dismissal compensation payment of up to a maximum of three months' salary where their employment is terminated for a reason not connected to their performance or for gross misconduct in accordance with Article 120 of the Labour Law (as detailed above).

On termination of employment (in addition to any accrued and/or contractual benefits), an employee is entitled to an end of service gratuity payment, provided that they have worked for their employer for at least one year. This is calculated with reference to the length of service and an employee receives

21 days' pay (based on the last basic salary payment the employee receives prior to termination of employment) for each year of service for the first five years of service, and 30 days' pay for each year of service thereafter. Any incomplete year is calculated on a pro-rated basis. The maximum payment an employee can receive is a payment equivalent to two years' salary. In addition, in the event that the employee resigns and has not worked for more than three years, he is entitled to a reduced gratuity of 1/3 of the total value; if he has worked for more than three years but less than five, he is entitled to a reduced gratuity of 2/3; and if he has worked for more than five years, he is entitled to the full value of the gratuity.

It is also worth noting that upon termination of employment, an employer must pay for the employees to be repatriated to their home country (air fare only, unless the terms of the employment contract provide otherwise). This would not be payable in the event that the employee wishes to take up alternative employment in the UAE. Furthermore, if the employee is dismissed for cause, or resigns, their repatriation is at their own expense.

If there is a change in the structure of a business or its ownership, any contract valid during the time the change is made will remain valid and the service considered continuous. Both the previous and the new employer are jointly responsible for six months from the date of the alteration in executing the obligations relating to the contract of the employee in the period prior to the change. After the end of this six-month period, the new employer is solely responsible for the employees of the business.

#### **6.4 Are there mandatory requirements for grant of leave or public holidays?**

For every year of service, an employee is entitled to annual leave of not less than the following:

1. Two calendar days leave for every month if his service is more than six months and less than one year.
2. A minimum of thirty calendar days annually, if his service exceeds one year. At the end of his service the employee is entitled to annual leave for the fraction of the last year he spent in service.

Annual leave is usually calculated on the basis of a calendar month rather than by working days, unless otherwise agreed in the employment contract. During the leave period, an employee is entitled to his basic wage plus the housing allowance.

The employer has the discretion to determine when an employee is allowed to take his annual leave and is entitled to divide the leave into two parts. If however, work circumstances require keeping the employee at work during the whole or part of his annual leave and the leave has not been carried over

for the following year, the employer should pay the employee his wage in addition to an additional amount (which is calculated on his basic wage) for the days he worked in lieu of his leave.

The employer may grant the employee once during his employment special leave without pay to attend the Haj (pilgrimage) which should not exceed 30 calendar days. This period is not part of the employee's annual leave or any other leave which he is entitled to.

An employee is entitled to an official holiday with full wages on the following occasions:

1. Hijri New Year's Day - one day
2. Gregorian New Year's Day - one day
3. Eid Al Fitr (end of Ramadan) - two days
4. Eid Al Adha and Waqf - three days
5. Prophet Mohammed's Birthday - one day
6. Isra and Al Miraj - one day
7. National Day - one day

The holidays listed above are applicable to all employees whether they are working in the public or private sectors. The date(s) on which the above official holidays fall depend on the Ministry's announcements, which are published in the local newspapers shortly before they occur and the days off may differ in respect of the public sector and the private sector.

In terms of sick leave, the sickness absence entitlement under the Labour Law is as follows: full pay for the first 15 days, half pay for the next 30 days, and no pay for a further 45 days. An employee on probation is not entitled to any paid sick leave. Under the Labour Law, an employer may not dismiss an employee, or give notice of dismissal, during the employee's sick leave (of 90 days). If the employee fails to return to work after the 90 days, it is possible to dismiss.

## **6.5 Can employment contracts contain restrictive covenants such as non-compete clauses?**

It is possible for employers to impose non-compete and other post termination restrictions on their employees in the employment contracts (including the Ministry of Labour contract). This will be recognized by the Labour Law, provided that such restrictions are limited in respect of the geographical scope, time and nature of the work restricted, to the extent necessary to safeguard the lawful interest of the business. The employer must consider whether its requirements are reasonable in respect of the length of restricted period, the seniority of the employee, their skills etc. However, it is not possible to obtain injunctive relief for breach of these restrictions. This means that the only

recourse that the employer will have for breach of the contract is a damages claim, provided of course that a genuine loss can be established.

## **6.6 Can the employment contract compel employees to work for an establishment for a minimum period of time?**

The Labour Law provides for two types of contracts, limited and unlimited term contracts. Limited term contracts are for a fixed period and cannot be terminated on notice. Early termination of a limited term contract, i.e. before the expiry of the term, will lead to payment of early termination compensation of three months (or less where there is less than three months to run on the fixed term) by the terminating party. If the employee terminates a limited term contract prior to the expiry of the fixed term, they would not be entitled to end of service gratuity unless they had worked for the employer for more than five years.

## **6.7 Are women employees entitled to maternity leave?**

A working woman is entitled to 45 calendar days maternity leave with full pay which includes the period before and after the delivery, provided she has served continuously for not less than one year. The maternity leave is granted with half pay if the woman has not completed one year of service.

At the end of the maternity leave, a working woman has the right to extend her maternity leave for a maximum period of 100 calendar days without pay. This unpaid leave can be continuous or intermittent provided that such absence is caused by illness which prevents her from coming to work. The illness must be confirmed by a certified physician endorsed by the competent health authority to the effect that the illness resulted from pregnancy or delivery.

Maternity leave in either of the above cases is not deducted from any other leave that a female employee is entitled to. During the 18 months following delivery, a female employee who nurses her child has the right to have two daily intervals which do not exceed half an hour each for the purpose of nursing her child. These additional intervals are considered part of her working hours and no deduction in wages can be made.

## **6.8 Are male employees entitled to paternity leave?**

Paternity leave is not provided for under the Labour Law.

## **6.9 What are the requirements for the issuance of shares by a UAE company to its employees/directors?**

Generally, due to the restrictions of foreign ownership of companies in the UAE, employers rarely issue shares to its employees/directors. However, the concept of *Employee Share Ownership Plans* (also referred to as ESOP's to add to the confusion) does exist. ESOPs are employee share ownership plans which are essentially the same as employee share option plans. They grant to employees the right to receive an ownership interest in shares in a company (often held by an "employee benefit trust" where employees own a beneficial interest in a proportion of the trust's shareholding).

We do not see these types of schemes being implemented in the UAE in the near future for various reasons including the restrictions on foreign ownership of shares in UAE entities (generally, foreign ownership is limited to 49%), the fact that there are no tax incentives to implement such schemes (as there is no income tax and, generally speaking, corporation tax, currently imposed in the UAE). In the UAE there are statutory end of service gratuity rights which tend to take the place of other retirement benefit arrangements.

Generally, ESOPs are only appropriate for listed entities as shares of listed entities are freely transferable (subject to foreign ownership restrictions imposed by the CCL and hence they are seen as liquid assets that the employee can easily convert to cash if desired after an option has been exercised). There are a number of legal difficulties in applying ESOPs to LLCs established in the UAE, including:

- the limit of 50 shareholders in an LLC;
- all existing shareholders have preemption rights over the transfer and issue of any shares (so, technically, all shareholders' need to agree to each separate transfer of shares upon the exercise of an option); and
- the process of transferring shares in an LLC is a cumbersome process as it involves all shareholders' signing a share transfer document and an amendment to the memorandum of association of the company in the presence of a notary public. Consequently, we recommend the use of other forms of long term incentive plans for plans adopted by LLC entities.

## **6.10 Can employees of a UAE company be granted employee stock options in a foreign company?**

Please refer to Section 6.9.

## 6.11 Are employee stock options eligible for favorable tax treatment?

As indicated, there is no personal income tax applicable in the UAE.

# 7. INTELLECTUAL PROPERTY

## 7.1 What types of intellectual property rights are protected in the UAE?

The intellectual property regime in the UAE began with the enactment of its first IP laws on a federal level in 1992. The UAE is a member of the World Trade Organization (“WTO”). As a result of its membership in the WTO, the UAE is obliged to comply with the Agreement on Trade - Related Aspects of Intellectual Property Rights (“TRIPS”), which sets out minimum standards for the protection of intellectual property that must be adhered to by all WTO signatories. The UAE is also a party to a number of international treaties such as the Paris Convention for the Protection of Industrial Property, amongst others.

### Patents

The applicable law Federal Law No. 17 of 2002 (“**Law No. 17/2002**”) protects inventions through patents or utility certificates. It lists the conditions for granting a patent and utility certificate.

### Patentability

To be eligible for a patent, an invention shall be new, involve an inventive step, and be industrially applicable. Further:

Novelty is absolute;

An inventive step is assessed with regard to whether or not, having regard to what was known at the priority date, the claimed invention would have been obvious to a person having ordinary skill in the art to which the invention relates;

Scientific theories and mathematical methods, computer programs, methods of doing business, plant varieties, methods of medical treatment, and so on, are not considered to be inventions;

The description shall disclose the invention in a manner sufficiently clear to enable the invention to be carried out by a person having ordinary skill in the art;

The claims shall be clear, concise and fully supported by the description; and

The invention shall not conflict with morality (being laws of Islamic Shariah, or public rules of conduct observed).

### Application

An application for a patent must be made in the Arabic language and accompanied by an English translation of the specification, claims, drawings and abstract. Within three months of the filing of the application, a power of attorney, a deed of assignment, a certificate of incorporation of the applicant (if relevant) and a certified copy of any priority document(s) must be filed in support of the application.

The application is then examined for formalities and if in order, the specification is sent to one of the search authorities of the Patent Cooperation Treaty (“**PCT**”), which the UAE joined as of 10th of March 1999.

The applicant will be given an opportunity to amend his application to avoid prior art uncovered by the examiner and a patent will be granted by the UAE Ministry of Economy once the examiner is satisfied that the invention is new and inventive and the Ministry cannot find any other reason in the Law No. 7/2002 to reject the application.

A patent will remain valid for a period of 20 years, provided that annuities are paid on time. It is important to note that currently there are no provisions for the restoration of lapsed patents in the UAE, even if the lapsing of the patent or application was due to no fault of the applicant/proprietor. The life of a Utility Certificate on the other hand is 10 years from the date of grant of such Utility Certificate.

### GCC Patent

In addition to this, there is a GCC Patent Registration System. The Cooperation Council for the Arab States of the Gulf is an association comprising Bahrain, Kuwait, Oman, Saudi Arabia, Qatar and the United Arab Emirates.

The GCC Patent Office (“**GCCPO**”) was established in Riyadh, Kingdom of Saudi Arabia, in 1998. The GCC Patent Regulations were issued shortly after, and the GCCPO then started accepting patent applications.

The GCC Patent Registration System provides a convenient way for applicants to secure patent rights effective in each of the GCC member states.

A patent granted by the GCCPO provides protection in all member countries of the GCC (namely, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates).

The GCC Patent Registration System does not form part of the PCT nor is it a signatory to the Paris Convention. However, the GCCPO honours the Paris Convention priority rules and a GCC application can claim priority from a prior convention application as if the GCC were a signatory to the Paris Convention.

### **Designs**

Industrial Designs and Models are covered in Chapter 3 of the Law No. 17/2002 and priority claims in terms of the Paris Convention, within 6 months of the priority date, are allowed.

### **Registrability**

Designs and models must be innovative or novel – absolute novelty is also a requirement – and must serve as a pattern for an industrial product or handicraft and must not be contrary to the public order or morality.

### **Application**

An application for a design or model must be made in the Arabic language and accompanied by an English translation of the description (novelty statement) and representations. Within three months of the filing of the application, a Power of Attorney, a deed of assignment, a certificate of incorporation of the applicant (if relevant) and a certified copy of any priority document(s) must be filed in support of the application.

The application is then examined for formalities only and if in order, the design or model will be granted.

A design or model will remain valid for a period of 10 years, provided that annuities are paid on time. It is important to note that currently there are no provisions for the restoration of lapsed designs or models in the UAE, even if the lapsing of the design or model (or application) was due to no fault of the applicant/proprietor.

### **Trademarks**

In late 1992, the Federal Government of the UAE issued a Trademark Law, No. 37 of 1992 (“**IP Law**”) which came into force on January 12, 1993, with its Implementing Regulations coming into force on February 2, 1993. The IP Law was amended by Law No. 8 of 2002 published in the UAE Official Gazette No. 384 of 31st of July 2002 and came into effect immediately on publication. This

amending law repealed 21 articles of the IP Law and added one new article. All other articles of IP Law remained unchanged.

### Registrability

According to the IP Law, Inter alia, the following shall be considered as trademarks:

Language terms that have no meaning in relation to the goods or services with which they are associated and which are meant to distinguish the goods/services in question from others;

Language terms which have by virtue of their use over time attained distinctiveness and distinguishability in connection with the goods or services with which they are associated;

- Names;
- Signatures;
- Letters;
- Numbers;
- Drawings;
- Symbols;
- Addresses;
- Hallmarks;
- Stamps;
- Pictures;
- Vignettes;
- Notices;
- Packages;
- Colours;
- Combinations of any of the above items;
- A sound accompanying mark.

The following may not be the subject of a trademark registration or any element thereof:

- (a) A mark that is similar or identical to a trademark previously registered with respect to the same class of products or services.
- (b) A foreign trademark having international repute that extends beyond the borders of the country of origin, except pursuant to a request by the original owner.
- (c) A mark which is not distinctive in character or property or a mark consisting of generic names used in relation to goods, products or services, or familiar drawings and ordinary pictures of goods or products.

- (d) A mark which is contrary to morality or public order.
- (e) The insignia of the Government, flags and other symbols pertaining to the UAE, Arab or international organisations or any agencies thereof, or any foreign country except with the authorisation of those parties as well as any imitation of such insignia, flags or symbols.
- (f) Symbols of the Red Crescent or the Red Cross and other similar symbols as well as marks which are imitations of the same.
- (g) Marks which are identical or similar to symbols of a purely religious nature.
- (h) Geographical names where the use thereof may cause confusion as to the origin or source of the goods, products or services.
- (i) Name, surname, photograph or emblem of a third party, unless he or his heirs' prior consent to use has been obtained.
- (j) Marks containing titles of honor which the person applying for registration cannot prove that he is lawfully entitled to.
- (k) Marks which may mislead the public or which contain false information as to the origin or the source of products or services, or about their other characteristics, as well as marks containing an imaginary, imitated or forged trade name.
- (l) Marks owned by natural persons or corporate entities with whom or which it is illegal to deal with.
- (m) A mark which if registered for certain classes of products or services would diminish the value of other products or services distinguished by such mark.
- (n) Marks containing the following words or expressions: "Patent", "Patented", "Registered", "Registered Design", "Copyright" or "Imitation is forgery" or similar words and expressions.
- (o) National and foreign decorations, coins and paper currency.
- (p) A mark that constitutes a translation of a well-known mark or other previously registered mark, where the registration would confuse the consumer public as to the identity of the products that are distinguished by the mark or similar products.

The UAE uses the International Classification of Goods and Services under the Nice Agreement.

Separate applications must be filed with respect to each class when marks are to be registered in multiple classes. It is possible to register a series of marks in a single application, if the essential elements of the marks are similar and the differences among them are restricted to matters which do not materially affect their identity or similarity, such as the colour of the marks or statements of the products or services related thereto, as long as the products or services belong to a single class. The series of marks must also be registered within the same international class of goods or services.

Preliminary searches for potential conflicts may be conducted at the Ministry of Economy on the payment of search fees of 250 AED per mark per class.

The period of protection granted as a result of registration of a trademark is ten years from filing date. Registrations may be renewed indefinitely for subsequent ten year periods.

### Application

Registration of trademarks in the UAE is accomplished by means of an application to the Trade Mark Section of the Ministry of Economy. Trademark applications must be filed by way of a pre-printed form in Arabic, together with 500 AED application fees. Other documents listed in Annex 1 of this catalogue must also be filed. Trademark applications may be filed by the trademark owner directly (provided that he has a UAE address) or by his authorised agent in the UAE (such as a lawyer or an agent).

After examining a trademark application, the Ministry of Economy issues an examination report which states whether further information must be provided or whether there are any requirements, conditions or limitations in connection with the prospective registration. The Ministry of Economy normally calls upon the applicant to reply to such reports within a specified time period, normally 30 or 100 days depending on the type of report. Any requirements listed in the Ministry of Economy report must either be accepted by the applicant or appealed to the Trademarks Committee of the Ministry of Economy. Fees of 250 AED are payable for each objection to an examination report or for a hearing before the Trademarks Committee. The Committee's decision is further appealable to the civil court.

Upon resolution of all outstanding issues, trademark applications which have been preliminarily approved for registration by the Ministry of Economy are published in the UAE Trade marks Bulletin at a further cost of 500 AED. The trademark must also be published in two Arabic newspapers circulated in the UAE at a cost approx. 540 AED.

After publication, any interested third party is allowed 30 days within which to submit a written opposition to the Ministry of Economy concerning the registration of a mark. Any objections submitted are forwarded to the applicant within 15 days of the opposition being filed, who then has 30 days within which to respond. The Ministry of Economy then decides whether to accept or reject the application. This decision may be appealed to the Trademarks Committee of the Ministry of Economy, and then to the competent courts.

If the trademark is published for the requisite 30 days without opposition by 3rd parties, then an amount of 5,000AED will need to be paid as official registration fees. A trademark registration

certificate is then issued to the applicant.

In view of all the statutory time periods required for completing each procedural step, the entire registration process may take approximately 12 months from filing to completion if the application faces no obstacles. However occasional backlogs for objections and oppositions can result in time delays for registration.

### **Copyrights**

The first ever UAE Copyright Law and its Implementing Regulations came into force on 12 April, 1993 and 1 September, 1994, respectively. This law was repealed on 14 July, 2002 by publication in the Official Gazette of UAE Federal Law No. 7 of 2002 regarding Copyright and Related Rights ("**Copyright Law**")

As provided in the UAE Printing and Publishing Law No. 15 of 1980 ("**Law No. 15/1980**"), authorisation for the publication, exhibition or circulation of any work will only be granted if the following documents are submitted:

- Certificate of origin showing the name of the author/assignee;
- Authorisation from the supplier/owner to exhibit or circulate the material in the specified territory;
- Certificate from the supplier confirming that all applicable royalties have been collected;
- Certificate of non-violation of restrictions on folklore from the Ministry's Department of Culture;

Only registered material can be printed, published or circulated on a commercial basis.

UAE Nationals and all other persons in the UAE are protected. In case of conflict of laws, nationals of countries affording reciprocal rights of protection to UAE nationals (irrespective of place of publication) will be protected and also depending on the terms of international conventions/treaties to which the UAE is a party. The protections afforded extend to Authors and Related Rights' holders.

The author enjoys both moral and economic rights.

- The author's moral rights are perpetual and inalienable and include the right to publish for the first time, the right of paternity, the right of integrity and the right to withdraw a work from circulation in certain circumstances.

- The author's economic rights include the exclusive right to license the use of the work, through any means, particularly reproduction including electronic loading and storage, any form of representation, broadcasting or rebroadcasting, public performance or broadcasting, translation, modification, alteration, leasing, rental, lending or any form of publication including access through computer or information network, communication network or other means. The author shall also have the right to assign all or part of his economic right.

Works entitled to receive protection are:

- Books, booklets, articles and other literature;
- Computer software and applications, databases and similar works defined in a decision to be issued by the Minister;
- Lectures, speeches, sermons and other works of similar nature;
- Plays, musicals and pantomimes;
- Musicals accompanied by dialogue and musicals which are not accompanied by dialogue;
- Audio and video work or audio visual work;
- Architectural work and architectural plans and drawings;
- Work involving drawing, painting, sculpturing, etching, lithography, screen printing, relief and intaglio prints and other similar works of fine art;
- Photographic work;
- Works of applied art and plastic art;
- Charts, maps, plans, 3-D modeling for geographical and topographical applications and architectural design etc;
- Derivative works, subject to the protection afforded to the work(s) upon which they are based. The protection shall extend to the title of the work if created as well as the creative concept devised for broadcast material;
- Translations, summaries, editorials, modifications and commentaries which have been carried out with the consent of the author;
- Any other works whose means of expression are writing, sound, drawing, photography or movement.

Terms of protection vary depending on the nature of the work. They are as follows:

- For the lifetime of the author and for 50 years thereafter.
- 50 years from the date of publication for:
- Works of performing artists;

- (d) Works created by juridical persons such as corporations;
- (e) Works published under Pseudonyms or anonymous works (until the author is identified);
- (f) Works published posthumously;
- (g) Works of producers of phonograms;
- (h) 25 years from the date of publication for works of applied art.
- (i) 20 years from the date of broadcast for Broadcasting Authorities.

Copyright protection will not be granted for:

- (a) Legislation, judgments and decisions of administrative authorities.
- (b) International agreements.
- (c) Official documents and their translations.
- (d) News of current events and issues that are strictly media coverage.
- (e) Works which have become public property.

However, abstracts or arrangements of these works that show innovation may receive protection.

Use for certain restricted purposes is permitted even without the consent of the author.

These exemptions are for:

- (a) Making a single copy for non-commercial personal use;
- (b) Legal possession of computer software, applications or databases, making a single copy of an extract for personal use subject to this being carried out within the license limitations or for the purpose of storage or replacing a lost, damaged or worn original copy. This extra copy must be destroyed upon disposal of the original copy;
- (c) Reproduction of extract of copyrighted work for use in legal proceedings or the like. However, the author's name must be mentioned;
- (d) Single copies of works made by non-profit archiving centers, libraries or attestation centers provided the copy is made to preserve the original or to replace a lost, damaged or worn copy or at the request of a natural person for use in connection with studies or research;
- (e) Quoting short paragraphs, extracts or analysis for the context of critique, discussion or communication. The author's name should be mentioned;
- (f) Performances of works at family gatherings or students performing works in educational institutions;
- (g) Presenting works of fine, applied or plastic art or architecture through broadcasts if the

works are permanently in the public domain;

- (h) Copying short extracts of a work in written or recorded form for education and information purposes, religious purposes or occupational training, provided that the copying is within reasonable limits and is used solely for the intended purpose. The name of the author should be mentioned.

Unlike the requirements for Trade Marks & Patents, depositing the works is not necessary for the protection of copyright. According to the Copyright Law, failure to deposit such material or any assignment or License thereof, does not prejudice the author's rights.

A registration of deposit would facilitate the burden of proof in legal proceedings. The registered works would be 'public documents' in terms of evidence and would therefore simplify matters. This is also in line with the UAE's obligations under the TRIPS which encompasses the provisions of the Berne Convention. The Berne Convention provides that protection be granted without any need for formality (e.g. registration).

The application will be assigned a number upon its deposit with the Ministry of Economy. If necessary, further documentation must be supplied within a specified time. It would then be examined when complete. The application would be further verified for conflict, eligibility for protection, violation of restrictions on folklore, validity and the applicant's or the agent's right to file the same. The application may then be accepted or rejected on a reasoned decision. This decision should be made within 60 days of the completion of the application requirements. A certificate of registration will be then issued for all accepted applications.

Copyrights may be assigned in favour of a third party. Assignments must be made in writing and show details of the applicable period, purpose and territory. Copyright assignees, the author's representatives and his successors are the persons who may also exercise rights under the Copyright Law.

## **7.2 Are there any international treaties regarding intellectual property that the UAE is not a party?**

The Hague Agreement

### **7.3 Are there any regulations or guidelines by public institutions, such as the Fair Trade Commission or some other competition authority, in regard to intellectual property licenses?**

There is no anti competition legislation in the UAE

## **8. EXCHANGE CONTROL**

### **8.1 Are there any restrictions on the amount of local currency that may be brought into or taken out of the UAE?**

There are no restrictions or regulations on foreign exchange and capital (subject to the minimum capital requirements to be maintained by UAE entities in the UAE), profits and royalty payments may be repatriated freely. Note that transactions with Israel are prohibited. Also, we understand that the local currency has been tied to the US dollar since 1980 at the rate of US\$ 1 to DH 3.67.

### **8.2 Are there any restrictions on the amount of foreign currency that may be brought into or taken out of the UAE?**

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

### **8.3 Are there any restrictions on the inflow or outflow of foreign exchange?**

There are no restrictions on the inflow or outflow of foreign currency to or from the UAE except with respect to Israel. Also, note that the Central Bank has set out anti money laundering guidelines to monitor money laundering through the UAE with which every entity in the UAE is required to comply. This, however, does not restrict the amount of foreign currency flowing into or outside the country.

## **9. M&A**

Please appreciate that the UAE and the Dubai International Financial Centre (“DIFC”) are two different jurisdictions from the civil and commercial laws point of view. Each of them has its own independent legal regime that applies to entities registered and/or operating either in the UAE or in the DIFC, respectively. For this reason, we have provided our advice separately in respect of the UAE and the DIFC.

Finally, please note that the advice concerning the UAE does not apply to the DIFC and vice versa. Our advice should be read subject to this reservation.

## 9.1 What are the various methods of mergers and acquisitions available to UAE companies?

### UAE

Under the CCL, there are two methods by which amalgamation of UAE companies may be effected, i.e.:

- (a) By merger, i.e., by the dissolution of two or more companies and the transfer of their assets and liabilities to an existing company; or
- (b) By consolidation (fusion), i.e., by the dissolution of two or more companies and the incorporation of a new company to which all the assets and liabilities of the dissolved companies are transferred.

Apart from the two amalgamation methods referred to above, a party willing to invest in a UAE entity may purchase some or all of its shares/assets, subject to relevant share transfer and foreign ownership restrictions.

### DIFC

Mergers and acquisitions of DIFC companies, i.e., companies limited by shares and limited liability companies (“**DIFC Company(ies)**”), are generally governed by Companies Law DIFC Law No. 2 of 2009 (“**DIFCCL**”) and Companies Regulations (“**COR**”).

In addition to the DIFCCL, in certain circumstances, the legal framework for takeovers concerning DIFC Companies has been set out under the Takeover Rules Module (TKO) Ver4/01-09 (“**TKO**”) that forms part of the Rulebook administered by the Dubai Financial Services Authority (“**DFSA**”), a regulatory body for entities providing financial securities in the DIFC, and those whose securities are listed on NASDAQ Dubai.

In particular, the TKO applies to:

- (a) Reporting Entities<sup>2</sup> as targets or potential targets under the TKO;
- (b) Bidders or potential bidders and any person acting in concert with them;
- (c) Directors and officers of targets and bidders; and
- (d) Professional advisers in relation to a takeover transaction.

(“TKO Entity”).

For the purpose of the TKO, “*control*” means a holding, or aggregate holdings, of shares carrying **30%** or more of the voting rights of a person, irrespective of whether the holding or holdings give de facto control, and includes control arising from acting in concert with another person or other persons.

Neither the DIFCCL nor the TKO explicitly prescribes methods by which mergers or acquisitions concerning DIFC Companies can happen. Also, there are no merger or acquisition methods that would be prohibited.

However, since the DIFC is a common law jurisdiction and consequently based on common law principles, it seems that merger and acquisition methods that are applied in other common law jurisdictions could, in general terms, be followed in the DIFC.

Finally, should a TKO Entity be concerned, the merger or acquisition procedure should be carried out by way of a bid. Detailed procedures for the said bid have been provided for under the TKO.

## **9.2 What is the process and timing for each method?**

### UAE

The CCL provides that an amalgamation resolution shall be adopted by mutual agreement between parties interested in the same in accordance with the CCL and the Memorandum or Articles of Association of the companies concerned.

Should any public authorities regulate business operations of the entities involved in the amalgamation, the resolution on the amalgamation will become effective provided that relevant regulatory approvals are obtained, if required. Amalgamation by merger is likely to include:

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<sup>2</sup> Under the TKO, a person is a Reporting Entity if: (a) the person has or had securities admitted to an official list of securities of NASDAQ Dubai at any time;(b) the person has filed a prospectus with the DFSA;(c) the person merges with or acquires a Reporting Entity; or (d) the person is declared in writing to be a Reporting Entity by the DFSA.

- (i) Passing of a resolution by the shareholders of the company that is contemplating its dissolution;
- (ii) Evaluation of the net assets of the amalgamated company; and
- (iii) A resolution may need to be passed by the shareholders of the parent company to increase its capital in accordance with the outcome of the evaluation of the amalgamated company (which shall result in a pro rata distribution of the shares in the increased capital).

With respect to the necessary time for the processes set forth above, it is difficult to estimate the time frame.

First of all, there have been a limited number of amalgamations in the UAE. Second of all, timing for each amalgamation may significantly differ depending upon the entities involved, their legal forms, seats of incorporation and operation, sections of the economy they operate in, location of assets, whether they are private or public entities, and what public authorities they are regulated by.

#### DIFC

The detailed process for a takeover has been referred to under the DIFCCL and the TKO.

Although we do not have record of any such transactions being finalised to date, we believe the process would take between 4 and 6 months.

### **9.3 What are the criteria for determining which method is most suited to a particular case?**

#### UAE/DIFC

There are a number of factors that need to be taken into account when deciding on the method of amalgamation.

In particular, the following should be taken into consideration:

- (a) Seats of incorporation and legal forms of the entities involved;
- (b) Number of shareholders of the entities involved;
- (c) Notifications of the shareholders of the entities involved and the number/percentage of shares they add in the entities concerned;
- (d) Economic, legal and financial reasons for and objections to amalgamation;

- (e) Sectors of the economy in which the entities concerned operate;
- (f) Location of assets of the concerned entities;
- (g) Whether the entities concerned are private or public;
- (h) Whether, and if so, which public authorities regulate the business operations of the entities concerned; and
- (i) Any other matters specific to the amalgamation in question.

#### **9.4 What are the additional requirements, if any, if one of the companies involved in the restructuring is listed on one or more of the stock exchanges in the UAE?**

##### UAE

Should a company involved in a restructuring be listed on a financial market in the UAE, namely the Abu Dhabi Securities Exchange or the Dubai Financial Markets, there may be some notification/approval requirements that will need to be complied with. In particular: Decision No. 3/R of 2000 Concerning the Regulations as to Disclosure and Transparency issued by the Board of Directors of the Securities and Commodities Authority of the UAE on 5 November, 2000 the Disclosure and Transparency Regulation requires that:

- (a) every natural person who owns, or who together with their minor children owns, a percentage equivalent to 5% or more of the shares of an issuer immediately notifies the market thereof;
- (b) every legal person which owns what amounts to 5% of the shares of an issuer immediately notifies the market thereof;
- (c) every natural person who owns, or who together with their minor children own, and every legal person which owns, a percentage equivalent to, or in excess of, 10% of the shares of a parent, subsidiary, affiliate or allied company of an issuer immediately notifies the market thereof;
- (d) every natural or legal person which owns a percentage equivalent to 10% or more of the shares of an issuer and desires to purchase 20% or more of its shares, notifies the market before it places the purchase order for execution on the floor; and
- (e) a bank or financial institution carrying on banking business obtains the approval of the Central Bank of the UAE before entering upon any transaction leading to acquisition of 5% or more of the shares of an issuer.

## DIFC

As far as the acquisition of shares of a company regulated by the DFSA is concerned, an entity subject to the restructuring may be required to notify the DFSA or seek its approval with regard to sale of its shares, pursuant to Authorisation Module of the Rulebook administered by the DFSA and relevant “*change in control*” provisions set out thereunder.

What is more, an entity the securities of which are listed on NASDAQ Dubai may be subject to public disclosure requirements that arise out of and/or in connection with NASDAQ Dubai listing Rules and Offered Securities Rules Rulebook Module administered by the DFSA.

Finally, a DIFC Company the shares of which are listed on NASDAQ Dubai is believed to be a Reporting Entity (as defined above) and therefore, required to comply with the bid process set out under the TKO.

### **9.5 What are the regulations restricting the acquisition of a certain percentage of shares in a company and when do compulsory takeover regulations apply?**

Please note that in the UAE, minimum national ownership requirements are imposed on entities carrying on business and asset holding activities. Please refer to the column titled the “*UAE Nationality Requirements*” in the chart in Section 3.1. The CCL regulates the affairs of “*onshore*” UAE companies established and operating outside the UAE’s free zones and requires that all “*onshore*” companies (as distinct from free zone entities) are incorporated and remain with at least 51% of the issued shares owned by UAE nationals. There is a limited exception applying to public joint stock companies listed on financial markets, which may operate without the normal 51% UAE majority required, provided they are owned 51% by GCC nationals.

A broad exception to the above rules applies to entities owned 100% by GCC nationals. This exception arises out of the GCC Economic Agreement, which facilitates investment by GCC companies and nationals in other GCC member states. Therefore, the UAE and other GCC countries (specifically Saudi Arabia, Kuwait and Bahrain) allow the incorporation of companies with 100% GCC individuals or “upstream” holding companies which are in turn wholly owned by GCC nationals (“**GCC Ownership Restriction**”).

With regard to the compulsory takeover regulations, please note that no such regulation exists for the time being. However, several market and regulator discussions are in process, which may lead to the adoption of a takeover code.

## DIFC

DIFC Companies can be owned up to 100% by non-UAE/GCC nationals.

As referred to above, the mandatory bid procedure (as per the TKO) applies when:

- (a) any person acquires, whether by a series of transactions over a period of time or not, shares which carry 30% or more of the voting rights of a Reporting Entity;
- (b) two or more persons are acting in concert, and they collectively hold shares which carry less than 30% of the voting rights of a Reporting Entity, and any one or more of them acquires shares and such acquisition has the effect of increasing to 30% or more their collective holding of shares carrying voting rights of the Reporting Entity;
- (c) any Person holds not less than 30% of Shares carrying voting rights of a Reporting Entity and such person acquires additional shares and such acquisition has the effect of increasing that person's holding of shares carrying voting rights by more than 3% from the lowest percentage holding of that person in the 12 month period ending on and inclusive of the date of the relevant acquisition; or
- (d) two or more persons are acting in concert, and they collectively hold not less than 30% of shares carrying voting rights of a Reporting Entity, and any one or more of them acquires additional shares and such acquisition has the effect of increasing their collective holding of shares carrying voting rights by more than 3% from the lowest percentage holding of such persons in the 12 month period ending on and including the date of the relevant acquisition.

## **9.6 Would the above forms of restructuring also be available to foreign companies?**

### UAE

Provided that the GCC Ownership Restrictions are complied with, the restructuring forms referred to above would also be available to non-UAE companies. Please refer to Section 9.5 above.

### DIFC

The DIFC is an economic free zone and the GCC Ownership Restriction does not apply. Therefore, the above referred to forms of restructuring would also be available to non-DIFC entities.

## **9.7 Is there any legislation or other form of regulation which applies to restrict the potential anti-competitive results of a sale or acquisition of a business or company within the UAE?**

### UAE/DIFC

There are no antitrust laws, rules or regulations in the UAE or the DIFC.

Therefore, should a UAE or a DIFC entity contemplate a restructuring and should it have subsidiaries, branches or affiliates in any other jurisdictions, it should ensure it complies with relevant trust regulations in those other jurisdictions, if relevant.

## **10. TAX**

### **10.1 What determines the extent of a company's liability to pay UAE income tax?**

There is no federal tax legislation on the taxation of corporations in the UAE; instead each Emirate has its own tax. Where applicable, it is possible for companies or their branches carrying on a trade or business in the UAE to enter into an agreement with the ruler of a particular Emirate whereby it will be exempt from any liability to taxation on its income.

There is currently legislation in force in the Emirates of Abu Dhabi, Dubai and Sharjah establishing a general corporate taxation regime - the Abu Dhabi income tax decree of 1965 (and its amendments), Sharjah Income Tax Decree of 1968 (and amendments) and Dubai income tax decree of 1969 (and amendments). In practice however, only oil, gas and petrochemical companies and branch offices of foreign banks, etc. are required to pay taxes.

Please refer to the overview regarding Abu Dhabi, Dubai and the [Jebel Ali Free Zone](#) set out below.

#### **Abu Dhabi**

There are no corporate, income, withholding, sales or value added taxes currently imposed in Abu Dhabi other than:

- (a) taxes on oil and gas companies at rates specified in the relevant concession agreement;
- (b) flat rate on annual profits of branches of foreign banks; and

- (c) flat rate service tax on hotel services and entertainment.

However, according to the Abu Dhabi Income Tax Decree of 1965 (as amended by Abu Dhabi Income Tax Decree Number (4) of 1972) every chargeable person who conducts trade or business, including the rendering of any services in Abu Dhabi shall be subject to a sliding scale up to a maximum of 55% as follows:

Income less than Dhs.1, 000,000	0%
Income equal to or more than Dhs.1, 000,000 but less than Dhs.2, 000,000	10%
Income equal to or more than Dhs.2, 000,000 but less than Dhs.3, 000,000	20%
Income equal to or more than Dhs.3, 000,000 but less than Dhs.4, 000,000	30%
Income equal to or more than Dhs.4, 000,000 but less than Dhs.5, 000,000	40%
Income more than Dhs.5, 000,000	55%

A “chargeable person” means a body corporate wherever incorporated, or each and every branch thereof, carrying on trade or business at any type during an income tax year through a permanent establishment situated in the Emirate whether directly or through the agency of another body corporate, (and not entitled under an agreement with the Ruler to an exemption from liability to income tax).

Two or more such branches of a body corporate so carrying on trade shall each be treated as separate chargeable persons. The fact that a body corporate has a secondary body corporate carrying on trade or business through a permanent establishment in the Emirate shall not in itself constitute that parent body corporate as a chargeable person.

“Carrying on trade or business” means:

- (a) selling goods or rights in such goods in the Emirate;
- (b) operating any manufacturing, industrial or commercial enterprise in the Emirate;
- (c) letting any property located in the Emirate; or
- (d) rendering services in the Emirate, (excluding the mere purchasing of goods, or rights in such goods in the Emirate.)

A chargeable person in Abu Dhabi shall be charged taxes on a sliding scale as described above except that the tax so charged shall be reduced by the credit aggregate of oil dealt in for that fiscal year so long as the total of all reductions granted to all chargeable persons in that fiscal year shall not exceed the credit aggregate of oil dealt in for that fiscal year.

Taxable income is computed after the deduction of all costs and expenses incurred by a chargeable person earning such income. Deductible costs and expenses include acquisition cost of goods, the expenses of operating the business, allowances for depreciation, obsolescence and exhaustion of both tangible or intangible assets and losses sustained by the chargeable person in connection with the business.

### **Dubai**

The Dubai Income Ordinance of 1969 and Dubai income tax decree (and its amendment 1970) specifies that an organization that conducts trade or business in Dubai shall be subject to taxation on a sliding scale up to a maximum of 55 per cent, which is the same ratio chart as set forth above regarding Abu Dhabi. The interpretation of the “chargeable person” and computation of the taxable income also apply *mutatis mutandis* to Dubai.

In practice, however, with the exception of banks and oil companies no corporate income tax is payable by businesses in Dubai. Oil companies pay up to 55% tax on UAE sourced taxable income and banks pay 20% tax on taxable income (Income tax on branch offices of foreign banks ordinance (No. 2) of 1997). The taxable income of banks is calculated by reference to their audited financial statements whereas that of oil companies is calculated by reference to their concession agreements. Oil companies also pay royalties on production.

Customs duties are very low and there are many exemptions. Goods imported and intended for re-export often benefit from customs duty as do manufacturers on the import of their machinery, raw materials and spare parts used for industrial purposes.

### **Jebel Ali Free Zone (“JAFZ”)**

The UAE has enjoyed substantial economic benefits and significant industrial growth as a result of its flourishing free zones. Financial incentives to establish manufacturing industries in the UAE are primarily focused on exemption from all taxes and duties levied on profits or production, with the exception of licensing fees. Furthermore, there are no restrictions on profit transfer or capital repatriation. Customs duties may also be exempted for qualifying projects established in the special industrial zones. In addition, nationally produced products are accorded a 10 per cent price advantage in government purchases over imported goods. As an example, please refer to the overview regarding Jebel Ali Free Zone set out below.

The JAFZ was founded in 1985 with the intention that international companies enjoy the benefits and opportunities of free trade.

JAFZ is located 40 kms from Dubai International Airport. It offers 100% foreign ownership. The company formation period is 5-20 days subject to availability to the facility requested and submission of necessary legal documents.

Financial Incentives:

- No corporate taxes for at least 50 years from the company's incorporation, renewable for a similar period of time.
- No restrictions on the repatriation of capital and profits
- No personal income taxes
- No currency restrictions

## **10.2 How is residence treated for tax purposes?**

The UAE has signed double taxation treaties with a number of countries. Double taxation agreements prevent those individuals and corporations from being susceptible to tax on the same item and in the same time period. These agreements, determine which of the two states concerned should levy tax in a particular case.

Generally, the agreement will provide that the income will either be taxed solely in one country or, if it remains taxable in both, that the tax-payer's country of residence will grant a credit for the tax paid in the other country. The agreement usually provide for lower withholding taxes in both countries and for the exchange of relevant information between the authorities of each country. These agreements are intended to prevent discrimination between tax-payers in different countries and provide an element of legal and fiscal certainty within a legal framework.

## **10.3 What is the corporate tax rate and how is it applied?**

Please refer to Section 10.1.

## **10.4 What is the tax rate applicable to foreign companies on their income earned in the UAE?**

Please refer to Sections 10.1.

### **10.5 What other taxes are payable in the UAE?**

No.

### **10.6 Is there a tax on dividends?**

No.

### **10.7 Are payments subject to withholding tax?**

No.

### **10.8 Is capital gains tax payable in the UAE?**

No.

## **11. DISPUTE RESOLUTION**

### **11.1 Please give a brief outline of the civil procedure in the UAE.**

The UAE legal system is based on the civil law system, meaning the primary source of law is a statutory code. The UAE's legal system has been influenced by the Egyptian legal system, which, in turn, draws inspiration from French and Roman law and some Common Law in Admiralty practice. Islamic Law also plays a large part in the UAE's legal system. Islamic Law is codified in the Sharia and its principles are reflected throughout the UAE's civil law.

The UAE being a civil law system means that the operation of the judicial system is vastly different to that which is experienced in common law countries. For example, judges do not normally hear oral argument in Court. Most importantly, there is no system of binding precedent. Although precedents can be used in an attempt to persuade the Court, the fact that there is no official system of binding precedent means that two judges, who are presented with identical sets of facts, may decide the case very differently and produce two different outcomes.

### **11.2 How are foreign judgments enforced in the UAE?**

The enforcement of foreign judgments is primarily dealt with in Article 235 of the UAE Civil Procedure Law. Enforcement of foreign judgments in the UAE can be problematic; for example, Judgments and

orders issued in a foreign country may be ordered to be enforced in the State on the same conditions as prescribed in the laws of that country for the enforcement of similar judgments and orders issued in the State.

Several criteria must be met. The enforcement must be applied for under the normal litigation procedures to the competent Court of First Instance. Further, the UAE Court will first need to confirm that it did not originally have jurisdiction in the dispute, and that the foreign Court that issued the judgment had the requisite jurisdiction to do so.

The UAE Court will also need to verify that the parties in the case were summoned to appear, and have duly appeared. Service is also an important requirement – the UAE Courts will need to be satisfied that the service of the summons was properly conducted.

Furthermore, the UAE Court will need to verify that the judgment or order has acquired the force of a *fait accompli* under the law of the court which issued it.

Finally, the UAE Court will need to verify that that the foreign judgment does not conflict with the UAE's public policy and a judgment or order previously issued by a court in the State.

### **11.3 What are the alternative methods of dispute resolution available in the UAE?**

Arbitration is very much a recognized and valued method of dispute resolution in the UAE.

The UAE is home to a number of arbitral institutions, such as the Dubai International Arbitration Centre, the Dubai International Financial Centre-London Court of International Arbitration Centre, and the Abu Dhabi and Sharjah Chambers of Commerce. The UAE is also in the process of developing and implementing a specific arbitration law, the motivation behind which is to improve and enhance the existing provisions dealing with arbitration in the UAE Civil Code.

The Dubai International Financial Centre has its own modern and effective Arbitration Law.

### **11.4 How are arbitral awards enforced in the UAE?**

If parties to arbitration proceedings do not voluntarily enforce the award, an application must be made to the court for enforcement. Currently, the position is that a successful application for enforcement will not result unless ratification by the local courts is first obtained.

It is important to note that in the UAE, the Court will not review the merits of the arbitration award. Put simply a party cannot appeal an award on the basis that the arbitrators misunderstood the facts or merits of a case. Appeals will only be considered on the basis of formal and procedural issues.

Foreign arbitral awards are, in theory, subject to enforcement pursuant to the New York Convention on the Recognition of Foreign Arbitral Awards. The UAE acceded to this Convention in 2006. However, at this point in time, no party has attempted to enforce a foreign arbitral award in the UAE under the New York Convention. It therefore remains unclear as to what approach the UAE Courts will take.

## **11.5 What are the grounds on which an arbitration award can be challenged in the courts in the UAE?**

A party can raise a challenge to stop the ratification (and following on, the enforcement) of an arbitral award when an action to ratify the award by the successful party is filed, or by filing an action requesting that the arbitral award be set aside before any ratification action is filed.

Article 216 of the CPL contains the grounds under which a party can challenge an arbitration award. Such ground include if the award was issued by arbitrators who were not properly appointed, if the award was issued without terms of reference or if the arbitrator exceeded his limits under the terms of reference.

(END)

Note: Please note that (a) regulations in the UAE can be amended with no prior public proclamation, and (b) the intricacies of procedure may vary in practice, as procedure is a realm subject to administrative discretion; therefore, sole reliance on the report is not advisable when making important decisions. We would advise that interested clients should, through your good offices, contact us before choosing any particular course of action.

(As of 31 March, 2011)