

Market Entry

United Arab Emirates (Dubai and Abu Dhabi)

OVERVIEW

The United Arab Emirates (UAE) is a federation of seven Emirates established by a constitution that was promulgated in 1971. Abu Dhabi is the largest of the seven Emirates by geographic size and holds most of the hydrocarbon resources of the country. The city of **Abu Dhabi** is the capital of the nation. **Dubai**, the second largest Emirate in geography and population, has grown to become the commercial hub for the region, and many multinationals base operations in Dubai to cover the entire Middle East region and beyond. The other Emirates of the UAE are Sharjah, Ajman, Umm Al-Quwain, Ras Al Khaimah, and Fujairah.

Up until the discovery of oil in the mid-20th century, the Emirates of the UAE were small societies with a subsistence economy based on agriculture, fishing, and the pearling trade. There was essentially no written law. The head of a tribal royal family of each Emirate held and exercised power in accordance with *Shari'ah* (Islamic law). The Emirates were protectorates of Great Britain from the early 19th century until independence in 1971.

The revenues from oil exports launched the development of these societies and the modernization of the nation, and the seven Emirates came together in a federal union with the ratification of the UAE Constitution.

Today, more than 90 percent of the urban population of Dubai and more than 75 percent of the urban population of Abu Dhabi are foreign nationals, the majority of which are from South Asia. English is widely used for business and is the *lingua franca* of the cities, but there is nevertheless a deep awareness within Emirati society of the country's heritage in the face of rapid modernization.

This Market Entry addresses some critical considerations issues and questions confronting companies as they establish, operate and grow a business in the Middle East from a base in the UAE. More detail is available at any time from our Middle East Team. Your attention is called to the disclaimer at the foot of this brief.



SYSTEM OF GOVERNMENT

Under the federal government established by the UAE Constitution, the President of the UAE is the head of state. Sheikh Khalifa bin Zayed Al Nahyan, Ruler of Abu Dhabi, was elected as President following the death of his father Sheikh Zayed Al Nahyan. This position has historically been filled by the Ruler of Abu Dhabi.

The seven rulers of the Emirates together make up the Supreme Council of the UAE, which is the top policy-making body in the state and which elects the President and Vice President every five years.

The Cabinet is headed by the Prime Minister, who is currently Sheikh Mohammed bin Rashid Al Maktoum, the Ruler of Dubai. The members of the Cabinet are appointed by the Prime Minister in consultation with the Supreme Council.

The Federal National Council (FNC) reviews and supervises the drafting of legislation. Since 2006, the FNC has been partially made up of members selected through local Emirate-level elections.

OVERVIEW OF THE LEGAL SYSTEM

Federal laws and decrees apply to all seven Emirates within the UAE. Emirate laws and decrees apply within the relevant Emirate and allow each Emirate certain levels of autonomy with regard to the application and implementation of laws.

Each Emirate has “free zones,” which are established by the Emirate to allow for certain exemptions on foreign investment and customs duties. Financial free zones, of which there is currently one operating in Dubai, are independent of UAE civil and commercial law. Federal law applies to all other free zones, although they are administered by independent authorities to the exclusion of other federal and public authorities.

The legal system is developing. The following core legislation has been passed in the past four decades:

- Labor Law (1980)
- Central Bank Law (1980)
- Organization of Commercial Agencies Law (1981)
- Commercial Companies Law (1984)
- Civil Transactions Law (1985)
- Civil Procedures Law (1992)
- Commercial Transactions Law (1993)
- Securities Exchange Law (2000)

Shari’ah is “a principle source of legislation” and its influence can be seen in the structure of commercial transactions, and the banking and insurance industry. However, many of the laws are secular, and *Shari’ah* is generally not applied to the family law of non-Muslims, or to their inheritance.

The UAE is notable in that it does not have a bankruptcy code, an arbitration law, or a law limiting the power of administrative bodies in the exercise of power and authority. An overhaul of the corporate law framework has been discussed and anticipated for many years.

The Gulf Cooperation Council (GCC)

The UAE is a founding member of the Gulf Cooperation Council, a political and economic union of the Arab monarchies of the Arabian Peninsula; namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and UAE.

Over time, the GCC states have developed unified rules regarding patent registration (1992), customs (2003), and a common market that grants national treatment to all GCC citizens and their businesses in any other GCC country, removing barriers to cross country investment, services and trade (2008).

FOREIGN INVESTMENT AND BUSINESS ESTABLISHMENT

The UAE does not have a foreign investment law, and the foreign ownership restrictions are contained in the Commercial Companies Law (“**Companies Law**”), which requires that UAE nationals or their wholly-owned companies hold a minimum of 51% of the shares of all companies established in the UAE.

In the past, foreign investors avoided the foreign ownership restrictions on UAE companies by entering into “side agreements” with UAE shareholders pursuant to which the UAE shareholder granted the rights in their shares to the foreign investor. In 2004, the UAE published the Commercial Concealment Law to prohibit and criminalize these types of nominee shareholder arrangements.

The Companies Law provides for the establishment of the following business entities for foreign investors: joint stock companies, limited liability companies, unincorporated joint ventures, and branch offices of foreign companies. The Companies Law does not apply to companies that are established in the free zones, which are discussed below.

Limited Liability Company (LLC)

A LLC must have a minimum of two and a maximum of fifty shareholders. It is managed by at least one manager, or a board that can constitute up to five managers. Shares are not freely transferable, and all transfers must be registered with the Department of Economic Development. There are currently no specific minimum capital requirements.

Subject to obtaining a commercial license, a LLC is authorized to carry out all activities except for banking, insurance, and investment on behalf of third parties. Most businesses except for such companies are established as LLCs.

Joint Stock Company (JSC)

A JSC must have a minimum of three shareholders. It is managed by a chairman, who must be a UAE national, and a board of directors, and the majority of the directors must be UAE nationals. The Companies Law contains some basic provisions regarding governance of a JSC, and companies that are publicly traded are subject to additional requirements, including public disclosures. Shares are generally transferable as negotiable instruments. Capital requirements for establishment differ by sector but can be substantial.

Unincorporated Joint Venture

The Companies Law also recognizes contractual unincorporated joint ventures. Such joint ventures are common in the construction sector.

Branch Office

A foreign company can also register a branch office in the UAE. A branch does not require UAE national ownership of share capital but requires a UAE citizen to act as the national agent (often referred to as a “sponsor”) of the branch and to conduct certain regular activities, on behalf of the branch, towards the UAE public authorities.

Free Zones

In 1979, Dubai completed the construction of Jebel Ali Port, the largest port in the Middle East and the largest man-made port in the World. Dubai established the Jebel Ali Free Zone (JAFZ) as a duty free trading zone in 1980 that allowed trade free of local customs duties. In 1992, the JAFZ authority permitted businesses to be registered free of the foreign investment restrictions of UAE Law.

In 1996, the **Dubai Airport Free Zone (DAFZ)** was established to allow for duty free trading for airport cargo. Both JAFZ and DAFZ allow for “Free Zone Establishments” (FZEs) and “Free Zone Companies” (FZCOs) and branches of foreign companies.

In 2000, the **Technology, E-Commerce and Media (TECOM) Free Zone** was established to apply the free zone model to the service sector. Additional free zones, including **Dubai Internet City (DIC)**, **Dubai Media City (DMC)**, and **Knowledge Village** have been established to create the infrastructure for the technology sector and zones that are free of foreign investment restrictions. These free zones allow for the incorporation of a “Free Zone Limited Liability Company” (FZ-LLC) and branches of foreign companies.

Dubai has established more than thirty free zones. Other notable free zones include **Dubai Healthcare City (DHCC)** and **Dubai Silicon Oasis**.

In 2005, Dubai established the **Dubai International Financial Centre (DIFC)** as a financial free zone. The DIFC is independent of the civil and commercial laws of the UAE and has its own independent laws based on the common law. The DIFC also has its own courts and its own arbitration forum.

In Abu Dhabi, the key free zones are **twofour54**, a media free zone; **Masdar City** for clean energy businesses; **Abu Dhabi Airport Free Zone**, a new free zone similar to DAFZ; and **Khalifa Industrial Zone Abu Dhabi (KIZAD)** as a unique industrial cluster integrated with the new Khalifa Port,

which opened in December 2012. In May 2013, Abu Dhabi announced plans to establish **Global Marketplace Abu Dhabi (GMAD)** as a financial free zone in Abu Dhabi.

Other Emirates have established free zones around seaports, airports, and other industrial and technology sectors.

STOCK EXCHANGE AND CAPITAL MARKETS

The UAE does not have detailed legislation regarding capital markets or publicly traded securities. The Emirates Security and Commodities Authority (ESCA) acts as the primary regulator with oversight over publicly-traded companies on the three exchanges, and its decisions form the body of law regarding publicly traded securities:

- The **Dubai Financial Markets (DFM)** is the primary securities exchange in the Emirate of Dubai.
- The **Abu Dhabi Securities Exchange (ADZ)** is the securities exchange for the Emirate of Abu Dhabi.
- **NASDAQ Dubai** is the securities exchange of the DIFC.

The shares of a LLC and of free zone companies cannot be listed on any exchange.

TAXATION

Each Emirate of the UAE has promulgated its own laws regarding taxation of income. However, presently, no corporate taxes are collected except from companies licensed in the banking industry and carrying out oil exploration and production in the Emirates. There is presently no individual income tax in the UAE.

REAL PROPERTY

Laws and regulations regarding property ownership differ from Emirate to Emirate. Abu Dhabi restricts property ownership to UAE nationals, except in certain investment zones where foreign nationals are permitted long-term leaseholds. Dubai permits nationals of any GCC state to enjoy freehold ownership in land, and a number of designated investment zones permit nationals of any state to own property.

FOREIGN EXCHANGE AND REPATRIATION OF PROFITS

There are no restrictions on profit transfer or capital repatriation in the UAE. Most free zones pledge to maintain this for a substantial term, such as 50 years from the time of business establishment. The UAE's currency, the dirham (AED), is freely convertible. It is pegged to the US Dollar, currently at a rate of AED3.67 = US\$1.

LABOR AND EMPLOYMENT

The Labour Law is the legislation that covers employment. The law is generally employer-friendly. The vast majority of the private sector workforce is made up of foreign nationals, who require work visa and residence permit sponsorship from their employer. It is relatively simple to terminate foreign national employees, but the approval of the public authorities may be required to terminate UAE national employees. An "End of Service Gratuity" payment must be paid for employees who work for more than one year.

CONTRACTING WITH AGENTS AND DISTRIBUTORS

It is common to sell products and services through agents or distributors. This is the case not just for foreign companies but also for companies established in the free zones that are not permitted to carry out commercial activity.

Distributors and agents that are registered as commercial agents of a foreign principal are granted substantial rights, such as automatic rights of exclusivity, automatic renewal of fixed-term agreements, and protection from termination.

As such, all distributor agreements, dealer agreements, agency agreements, franchise agreements, and similar agreements must be drafted with extreme caution. Companies selling their products and services in the Middle East need to understand local law protections held by local distributors, the agent registration system and registration mechanics, and plan ahead about what to do with respect to relationships that are not successful. If a formal dispute arises, a terminated agent may be able to block imports of the foreign principal's products into the UAE, either through a complaint to the courts or the customs authorities. This legal framework for the protection of local agents is prevalent across the GCC and in many other countries in the Middle East.

INTELLECTUAL PROPERTY

The UAE passed a suite of laws in 2002 that granted legislative protection to patents, registered designs, trademarks, and copyrights. The GCC Patent Office, based in Riyadh, Saudi Arabia, has been operational since 1998 and grants patents that are valid in all six GCC member states. The UAE is also a member of the General Agreement on Tariffs and Trade (GATT), and all provisions in GATT relating to intellectual property are applicable in the UAE.

The public authorities, in particular the Ministry of Economy, are increasingly recognizing the importance of protecting intellectual property. Direct appeals to the public authorities may be the most effective measure in combating unauthorized use of intellectual property, such as the sale of counterfeit goods. Generally, UAE courts will not grant injunctive relief.

DOING BUSINESS IN ISRAEL

The Arab League has imposed a boycott on Israel throughout the existence of the Jewish state. The boycott has three prongs:

- Primary boycott: products and services that originate in Israel
- Secondary boycott: businesses that do business with Israel
- Tertiary Boycott: businesses that do business with boycott violators

Through the Cold War, many multinationals had to choose between doing business with either Israel or the Arab World, but following the Oslo I Accords in 1994, Jordan established relations with Israel and the GCC announced it would only enforce the primary boycott. Today, it is common for multinationals to conduct business in both Israel and the Arab World, and Arab League coordination on the boycott has effectively ended.

Even so, multinationals should be aware that it remains a criminal offense to import Israeli products in the UAE and most other member states of the Arab League, and the "primary boycott" is still actively enforced in most countries, with many countries maintaining a "blacklist" of alleged boycott violators.

The United States implemented an "anti-boycott" law in 1977 to encourage non-compliance with the Arab League boycott of Israel. US persons and businesses are required to report any demand to comply with the boycott, whether it be a request or a contractual provision (which are still found in tenders and contracts issued by government entities).

DOCUMENT NOTARIZATION AND AUTHENTICATION

Document authentication is a key administrative requirement for completing transactions across the Middle East.

Documents that originate from outside the UAE must typically be (1) notarized by a public notary in the jurisdiction of origination; (2) attested by the relevant government ministry of the country where the document originated (in the United States, both the Secretary of State of the relevant state, and the U.S. Secretary of State must authenticate documents); (3) certified by the UAE embassy or consulate (in the United States, located in Washington, DC and New York); and then (4) once delivered to the UAE, translated into Arabic by a legal translator; and (5) certified by the UAE Ministry of Foreign Affairs (MOFA).

Many documents that are executed within the UAE must be notarized by a public notary. Public notaries in the UAE are officers of the courts of first instance and are supervised by the court in that Emirate. Only Arabic documents may be notarized, but dual-language copies containing English

are common. The requirements of public notaries are not consistent, often necessitating repeated visits to the public notary office. Consequently, companies should consider confirming documents through counsel for any transaction where time is of the essence. The approach of the public notaries also differs by Emirate.

LITIGATION

The UAE has a federal court system, while recognizing the right of each constituent Emirate to maintain an independent court system. Currently, the Emirates of Dubai and Ras Al Khaimah maintain separate court systems, while the other Emirates have opted into the federal court system. The rules of evidence and civil procedure are governed by federal laws that apply to all Emirates. There is no system of binding precedent.

The federal court system begins with Courts of First Instance, which are located in each major city in the UAE, and which are broken up into three principal divisions: civil, criminal and *Shari'ah* (Islamic). The *Shari'ah* division has jurisdiction over family and some criminal matters. Decisions may be appealed to the Court of Appeals in Sharjah and Abu Dhabi, and to the Supreme Court in Abu Dhabi. The scope of review of the higher courts is not limited, and the court may try a case again, repeating a trial of a lower court.

The structure of the Dubai and Ras Al Khaimah courts are similar to the federal system, except that cases are appealed within the Emirate, and cannot be appealed to the higher courts in other Emirates.

Court proceedings are heard by a single judge or a three-judge panel. Litigation is based on written pleadings submitted by advocates, and oral hearings are typically brief. All evidence submitted to the court must be in Arabic or be translated into Arabic and all hearings are in Arabic.

Separately, Dubai has a common law court system in the DIFC, the DIFC Court of First Instance and the DIFC Court of Appeal. The DIFC does not have a Supreme Court, and unlike the greater UAE, decisions of the court do form binding precedent. Only disputes that involve a party based within the DIFC freezone or governed by DIFC law by contract may be heard at the DIFC Courts.

ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION

The UAE Civil Procedure Law recognizes arbitration as a form of dispute resolution, but there is no arbitration law, and domestic arbitration must be carried out in accordance with the requirements of the Civil Procedures Law.

Other forms of alternative dispute resolution, such as mediation and conciliation are permissible, and negotiated settlements to disputes between parties are common.

Since 2006, the UAE has been a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly referred to as the New York Convention. Under the New York Convention, UAE courts will enforce foreign arbitration awards that are issued through arbitration that takes place in other member states. Recently, UAE courts have enforced foreign arbitration awards.

The UAE has three arbitration centers:

- **DIFC-LCIA Arbitration Center**, a joint venture between the DIFC and the London Court of International Arbitration, is an arbitration forum supervised by the DIFC Courts. All proceedings are conducted in English.
- **Dubai International Arbitration Center (DIAC)**, established within the Dubai Chamber of Commerce, is a common forum for local construction disputes. All proceedings are conducted in Arabic.
- **Abu Dhabi Commercial Conciliation & Arbitration Center (ADCCAC)** is established within the Abu Dhabi Chamber of Commerce and is used to resolve some disputes within Abu Dhabi. All proceedings are conducted in Arabic.

To learn more, visit our Middle East Practice page at www.pillsburylaw.com/middle-east.

This outline does not constitute legal advice. The legal consequences of any given transaction or situation must be examined on its individual facts. You should consult counsel before engaging in any transaction of a type contemplated in this outline.

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