Commercial law in UAE

Commercial law in U.A.E and doing business

Legal System

As a federation, the UAE is governed by a constitution that regulates, among other things, the distribution of legislative powers between the federation (the federal capital is Abu Dhabi) and the individual emirates. Under the UAE Constitution, federal laws have supremacy over the laws of individual emirates. However, individual emirates are permitted to enact their own legislation in areas other than those exclusively reserved to the federation. Individual emirates can also legislate on matters where the federation has not yet exercised its legislative powers. Federal laws, with the exception of property law, generally govern civil and commercial transactions.

The UAE's legal system is founded upon (i) civil law principles, most of which are heavily influenced by Egyptian law (which in turn is influenced by French law) and (ii) Islamic Sharia. Legislation is divided into a number of major codes that provide the general principles of law, including civil, commercial, civil procedure, companies, intellectual property, immigration, maritime, industrial, banking and employment law. There is no system of precedent in the UAE. However, judgments of higher courts are binding on lower courts and provide useful guidance of future judicial interpretation.

Judicial System

There is a combination of federal and emirate-level courts with parallel local jurisdictions, depending on which system the emirate has opted for. Each emirate is entitled to either establish its own judiciary or merge with the federal court system. The judicial systems of Sharjah, Ajman, Fujairah and Umm al-Quwain have merged into the UAE Federal Judicial Authority, while Dubai, Ras al-Khaimah and Abu Dhabi, have retained their own distinct and autonomous local judicial systems. In terms of judicial hierarchy, both the UAE federal and local judicial systems are divided into courts of first instance, courts of appeal and courts of cassation. The UAE Federal Supreme Court, which has its seat in Abu Dhabi, is the highest court in the federal judicial system.

This court is also commonly referred to as the (UAE) Supreme Court of Cassation, and acts as, among other things, a constitutional court and the court of cassation for those emirates that have merged into the federal system, in addition to settling disputes between the different emirates. On the other hand, the local judicial systems of the emirates of Dubai, Abu Dhabi and Ras al-Khaimah have their own courts of cassation, entirely separate and distinct from the Supreme Court of Cassation.

In addition to the federal and local courts, the DIFC (the financial free zone based in Dubai) has its own courts, which are known as the DIFC Courts. DIFC Courts have jurisdiction over civil and commercial matters concerning contracts that were concluded or performed within the DIFC, the insolvency of DIFC corporate entities, and over civil or commercial disputes between parties who have opted to submit to these courts. More recently, the ADGM Courts have been set up and modelled on the English judicial system.

Restrictions on Foreign Investment

One of the key aspects of the restrictions on foreign investments in the UAE is illustrated in the Companies Law, mandating that corporate entities must be at least 51% owned by a UAE national or by an entity that is wholly owned by UAE nationals. In addition, certain types of commercial activities can be carried out exclusively by UAE nationals or entities wholly owned by UAE nationals, such as the activity of commercial agencies and the supply of labor. However, GCC nationals and entities wholly owned by GCC nationals are not subject to the foreign investment restrictions applied in the UAE and are permitted to carry out most of the activities outlawed by the policies, except for a very short list of prohibited activities exclusively reserved to UAE nationals. A draft foreign investment law is under discussion to decrease the restrictions on foreign investment and permit foreign ownership of companies operating in certain strategic sectors outside of the free zone, with an aim to encourage both innovation and the transfer of technology in the industrial sector.

The exact scope of the law, as well as the timeframe for its introduction, are not yet clear. At the present time, the UAE implements a legal framework of free zones which foster an attractive environment for businesses by offering companies—primarily 100% foreign-owned companies— incentives such as zero tax rates on their income and exemption from foreign exchange controls. However, free zone companies are subject to a number of restrictions and are only permitted to conduct their activities within the vicinity of the respective free zone. Such free zones include economic free zones, such as the JAFZA, and financial free zones, such as the DIFC and, more recently, the ADGM. These restrictions should be carefully considered by investors when evaluating whether incorporating a company in a free zone is consistent with their objectives.

Taxation and VAT

The UAE does not currently have a federal tax system. Individual emirates have passed their own tax decrees dealing with corporate income tax but to date the relevant tax legislation has not been enforced and corporate income tax is only imposed on oil companies and branches of foreign banks. There is currently no sales tax or value added tax in the UAE. However, the GCC countries announced in February 2016 that a unified value added tax at the rate of 5% will be imposed by 1 January 2018 or 1 January 2019, depending on the readiness of the respective GCC country, and draft legislation is underway. The Federal Tax Authority was established in October 2016, which is a new government body responsible for the implementation of value added tax across the UAE.

Dubai and certain other emirates impose taxes on certain goods and services, including alcoholic beverages and hotel and restaurant bills. For instance, all sales of hotels are subject to a municipality fee of 10%. There are no personal income taxes in the UAE. Only government employees are required to pay social insurance contributions. However, it is worth noting that individuals may be subject to other fees or levies. For instance, the Dubai Municipality applies a housing fee amounting to 5% of the annual rental value of property leased by Dubai residents, payable alongside the water and electricity bill. There are no capital gains taxes levied on the sale of shares. Real estate transfer tax, referred to as "registration fees," is levied on the transfer of ownership of real estate in the UAE (including where there is an indirect transfer in a company holding real estate in the UAE). The amount varies depending on the emirate and the location of the real estate. In Dubai, the transfer tax is currently 4%, although the DIFC charges 5%. The UAE has entered into an extensive network of treaties to ensure the avoidance of double taxation. Moreover, the UAE became a FATCA partner in 2015 and signed an intergovernmental agreement with the United States setting out guidelines for the application of FATCA by financial institutions regulated by the UAE Central Bank, the Insurance Authority, the ESCA and the DIFC.

Customs duties

The UAE applies customs duty at a flat rate of 5% of the total value of the cost, insurance and freight. Tobacco and alcohol are subject to a higher customs duty. The UAE has ratified the GCC unified customs duty law under which all imports within a GCC country, including imports from a free zone into the mainland, are subject to a customs duty at a flat rate of 5%. Certain imports are not subject to customs duties, such as goods in transit, goods imported by foreigners or by UAE nationals residing abroad for personal and household use, goods imported for military and internal security use, goods imported for the purposes of diplomatic missions and goods imported by charity associations. In each such case, imports have to fulfil a number of conditions to qualify for the exemption. With an aim to reduce and remove tariffs, the UAE through the GCC has signed numerous free trade agreements, including the Greater Arab Free Trade Area Agreement (GAFTA).

Import/Export Controls

The Commodities Import and Export Federal Law No. 13 of 2007 permits UAE authorities to ban or restrict the exporting, importing, re-exporting, transiting or transshipping of commodities in the event that (i) such commodities pose a threat to public safety or hygiene, the environment, natural resources or national security, or (ii) the foreign policy of the UAE requires any such restrictions. In addition, importing goods into the UAE depends upon (i) the licensed activity of the importer, (ii) the nature of goods to be imported, and (iii) the purpose of importing the goods. There are also specific restrictions and licensing requirements that apply to the import and sale of certain types of goods.

One example is the ban on the exportation or re-exportation of strategic goods, including arms and military hardware, chemical and biological materials, and dual-use items. Many wireless or electronic devices must be "type approved" by the Telecommunications Regulatory Authority before they can be imported and sold in the UAE, and importers are required to register as "approved dealers" with the TRA in order to import these types of devices. Likewise, all books, magazines, printed publications, DVDs and other media items must first be submitted to the National Media Council for prior content approval, and a license is required from the NMC to import and distribute such types of media in the UAE. However, the extent to which these same rules apply to digital content and media delivered over the internet is unclear. Another example of restrictions is the list of "banned" items published on the official website of the Emirate of Dubai:

- All kinds of narcotic drugs (hashish, cocaine, heroin, poppy seeds, hallucination pills, etc.)
- Goods intended to be imported from boycotted countries
- Goods of Israeli origin or bearing Israeli trademarks or logos
- Crude ivory and rhinoceros horn
- Gambling tools and machineries
- Three layers fishing nets
- Original engravings, prints, lithographs, sculptures and statues in any material 10 | Baker McKenzie Habib Al Mullah
- Used, reconditioned and inlaid tires
- Radiation-polluted substances
- Printed publications, oil paintings, photographs, pictures, cards, books, magazines, stony sculptures and mannequins that contradict Islamic teachings or decency, or which deliberately imply immorality or turmoil

- Any other goods, the importation of which is prohibited under the authority of UAE customs laws or any other laws in the country
- Forged and duplicate currency
- Cooked and home-made foods Moreover, there is a general restriction on parallel imports of products if these products are exclusively imported through a registered commercial agent. Parallel imports by a third party can only be made with the written permission of the registered commercial agent or, in very specific cases, provided that permission is obtained from the authorities. As indicated by the official list of banned items above, the UAE, being a member of the Arab League and the GCC, has a boycotting policy toward Israel. In 1995, the UAE renounced both the "secondary boycott" and the "tertiary boycott" and currently only applies the "primary boycott." Under the "primary boycott," the UAE refuses to deal (i) with or in goods or services from Israel or of Israeli origin, and (ii) with the State of Israel and its citizens. This is a complex and evolving regulatory area which should be discussed in greater detail with one of our legal experts.

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