

DOING BUSINESS IN THE UAE

The UAE welcomes foreign direct investment by American businesses. However, the rules and requirements for doing business in the UAE are complex and often misunderstood. This overview identifies the different ways to do business in the UAE and points out important considerations, including some important US laws and regulations that apply to operations here.

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This overview is prepared and updated annually by the international law firm of Norton Rose Fulbright US LLP (formerly Fulbright & Jaworski LLP), a President’s Club member, whose lawyers in the UAE and Saudi Arabia have decades of resident experience advising clients on conducting business in the region. The firm’s profile is at page 45.

I. INTRODUCTION

A foreign company may conduct business in the UAE by operating from “off-shore” (via an agent or directly with customers), by operating in a “free zone” and by operating directly in one or more of the seven Emirates (but outside of a free zone). There are both federal and Emirate-specific laws and regulations, and there can be multiple regulatory authorities at the federal and Emirate levels. Also, the discretionary policies, practices and procedures of these authorities supplement the official laws and regulations and can affect business to a great extent. Determining the most appropriate alternative depends on many factors, including the targeted customer base and the nature of the products or services to be offered. Set forth below is an overview of the primary methods for foreign businesses to conduct business in the UAE, as well as a summary of several other key considerations for doing business in the UAE.

II. INDIRECT OPERATIONS – DEALING WITH AGENTS

Foreign entities generally may make private sector product sales from off-shore directly into the UAE without participation by an intermediary UAE party. In addition, UAE companies with foreign ownership may import and resell goods upon obtaining the appropriate licenses. However, only UAE nationals (or entities wholly-owned by UAE nationals) may conduct certain “commercial agency activities” as a registered commercial agent, with its associated rights and privileges.

The UAE Commercial Agencies Law, Federal Law No. 18 of 1981, as amended (the “**Commercial Agency Law**”), regulates and governs the appointment of registered commercial agents, sales representatives and distributors in the UAE. The Commercial Agency Law is supplemented by, *inter alia*, the UAE Commercial Transactions Law, Federal Law No. 18 of 1993 (the “**Commercial Code**”), implementing regulations, custom and practice. Together, the Commercial Agency Law and the Commercial Code provide the primary regulatory framework for agency relationships through which foreign businesses provide products and services in the UAE.

The Commercial Agency Law is a federal law that applies throughout the UAE and grants registered commercial agents formidable statutory rights as detailed below. Certain customers and certain products require the involvement of a registered commercial agent. Otherwise, a foreign company can choose alternative means of selling into the UAE that do not involve a registered commercial agent.

A. Registered commercial agents are entitled to an exclusive territory covering at least one Emirate for the specified products or services.

B. Registered commercial agents are entitled to receive commissions on sales in their designated territory irrespective of whether such sales are made by or through the commercial agent.

C. Registered commercial agents are entitled to prevent products subject to their agency from being imported into their designated territory if the commercial agent is not the consignee, unless the UAE Council of Ministers has exempted the subject products from application of the Commercial Agency Law.

D. A principal may not terminate or fail to renew the agency agreement unless there is a fundamental reason justifying such termination or non-renewal. Either party is entitled to claim compensation for damages suffered and losses incurred due to termination or non-renewal of a registered commercial agency. In practice, this is a benefit to the commercial agent only.

Furthermore, commercial agents are not limited to seeking remedies under the Commercial Agency Law. For example, a commercial agent might also claim damages for improper

termination or non-renewal pursuant to the Commercial Code. E. A registered commercial agent can preclude the foreign principal from appointing a replacement registered agent even if the registered agency was for a fixed term that has expired, unless the former agent consents or the principal obtains a favorable decision from the specialized agency disputes committee or a court in the UAE.

The statutory protections for commercial agents under the Commercial Agency Law create an obvious disincentive to foreign entities to do business through registered commercial agencies if alternative means are available. The three most common alternative means are: (i) to sell directly from overseas (*i.e.*, “off-shore”) to the end-user customer; (ii) to sell through an agent other than a registered commercial agent; and (iii) to establish a direct legal presence in the UAE.

III. DIRECT OPERATIONS

There are several alternatives by which a foreign entity may be licensed to undertake specified activities as a foreign direct investment in the UAE. It is worth emphasizing that licenses are issued for specific activities, not generally to conduct “all lawful business”. The first step in planning a potential foreign direct investment is to determine whether a license can be obtained for the desired activities.

The UAE Commercial Companies Law, Federal Law No. 2 of 2015 (the “**Companies Law**”) has now been published, and replaces the previous Law No. 8 of 1984, as amended. This new Companies Law will come into effect on July 1, 2015, and all existing companies will be required to comply with it within one year from the date of it coming into force, unless such period is extended by a decision of the UAE Federal Cabinet. Certain entities may enjoy exemption from the application of the Companies Law, which is not described in detail herein.

The Companies Law provides for a number of different corporate structures. The primary alternatives for foreign entities to establish direct business operations in the UAE outside the free zones are (i) registration of a branch office of the foreign entity and (ii) incorporation of a limited liability company with one or more UAE national “partners”. Certain sectors and activities traditionally have been, and in the future may be, limited solely to UAE nationals.

Except for certain “free zone” operations discussed below, entities engaging in commercial activities in the UAE must be separately registered and licensed at the federal UAE level, as well as in each Emirate where they wish to operate. Commercial entities must also be registered with, *inter alia*, the Immigration Department of the UAE Ministry of Interior (the “**Immigration Department**”) and the UAE Ministry of Labor and Social Affairs (the “**Ministry of Labor**”) to secure employment/residency visas (if necessary) and work permits for their personnel. Each branch and company must have premises approved by the authorities as adequate for its licensed activities. As a practical matter this means at a minimum leasing office space. Changing location involves obtaining governmental approvals.

The Companies Law will apply to a free zone company if the laws of the relevant free zone permit the company to operate outside the free zone. The UAE Federal Cabinet is to issue a resolution determining the conditions to register free zone companies to operate outside the free zone in the UAE. As a general rule, setting up in a free zone does not allow operations outside the free zone without obtaining the necessary licenses for such other operations. What licenses are needed would depend on the operations to be conducted and the location of such operations (*i.e.*, in which Emirate they will be conducted).

A. Branch Office

To perform services, a foreign entity may be able to establish a wholly owned branch office. A branch office generally may not engage in “trading” activities, *i.e.*, buying and/or importing for resale in the UAE. No UAE participation is required other than utilizing the services of a UAE national “local service agent” as described below. A branch office

is not a separate and distinct legal entity from the foreign company. Rather, the foreign company itself is licensed locally to undertake specified activities in the relevant Emirate through its branch office. The foreign company is fully responsible for the liabilities of the branch office.

Some foreign entities establish representative offices to support their distribution chains in the UAE. A representative office is a type of branch office that may not engage in sales, services or any other type of commercial activity. A representative office may act only as a liaison or administrative office to promote the company's products and services and facilitate business between the foreign principal and its customers (or intermediaries).

Foreign branch offices are required to register in the Foreign Companies Register with the UAE Ministry of Economy (the "**Ministry of Economy**"), as well as to obtain appropriate licenses from the relevant Emirate.

According to the Companies Law, a foreign entity is required to appoint a UAE national "local service agent" for its branch office. In the case of branches providing services to the military or financial services, the relevant special purpose regulatory authority may choose to serve as a nominal local agent. This determination is made by the relevant regulatory authority on a case-by-case basis. The local service agent is not permitted to own equity in the branch office and it is not necessary to involve the local agent in the management of the branch office. The local service agent's role is to provide administrative services such as communicating with government departments to process the registration and licensing renewals for the foreign company, and processing visas and work permits for its personnel. The level and form of compensation paid to the local agent varies widely in practice and is a contractual matter to be agreed between the local service agent and the foreign entity. There is no specific level or form of compensation stated under UAE law. Some local service agents charge a fixed annual fee, while others charge a percentage of revenue, in which case a cap on compensation is advisable. As for all foreign intermediaries, companies subject to the US Foreign Corrupt Practices Act (the "**FCPA**") should perform FCPA due diligence on the local service agent candidate.

B. Limited Liability Company

UAE limited liability companies ("**LLCs**") must have a minimum of two and can have a maximum of 50 equity owners. At least 51% of the capital of an LLC must be owned by UAE nationals (or entities wholly-owned by UAE nationals). The Companies Law also now provides that a company with limited liability may be established by a single natural or juridical person. However, this should not be interpreted as overriding requirements for equity participation by UAE nationals.

In this summary, we refer to owners of LLCs as "partners", but it is also common to refer to them as "shareholders".

There is no statutory minimum capital stated in the Companies Law. The requirement is to have sufficient capital for the business to meet its goals. However, the UAE Federal Cabinet may issue a decision setting minimum capital requirements. Also, in practice, it is not unusual for licensing authorities to impose minimum capital requirements based on the activities to be conducted.

LLCs may be licensed to engage in a wide range of commercial activities, except for banking, insurance and the investment of money for third parties. An LLC may engage in trading. An LLC usually is the preferred vehicle for a joint venture between a foreign party and a UAE party.

The creation, capitalization, and governance of an LLC is governed by the Companies Law and by its charter document (e.g., Articles/Memorandum of Association), an Arabic language contract among the LLC partners that is registered with the local authorities. This charter document usually is supplemented by other agreements, such as a joint venture agreement or a shareholders agreement. The Companies Law gives the partners some latitude to negotiate the terms for governance

and management of their LLC. But, in the event of a conflict between any such supplemental agreements and either the registered charter document or the Companies Law, the latter likely will control.

The Companies Law permits profits and losses to be split by the LLC partners disproportionately to their ownership of capital, which provision is to be stated in the Articles/Memorandum of Association. The licensing authorities in each Emirate will limit the maximum share of profits that can be distributed to the foreign partners in respect of their ownership in the LLC.

Some foreign parties and UAE nationals have limited the role of the UAE national to be a mere "sponsor" or "nominee" (often referred to colloquially as "silent" or "sleeping" partners) solely for the sake of appearing to satisfy the UAE national ownership requirements imposed by the Companies Law. Certain limitations on the role to be played by the UAE national partner in governance and management of the LLC are permitted.

However, it is possible that parties go too far, as would be the case if the parties entered into a "side agreement" for the UAE national to relinquish all profits, voting rights and other rights of ownership to the foreign party. Such arrangements are not legal under the Companies Law, and are criminal violations under Federal Law No. 17 of 2004 on Combating of Commercial Concealment (the "**Commercial Concealment Law**"), which proscribes such arrangements and imposes stringent penalties on the UAE national "concealing party" as well as the foreign "concealed party". Enforcement of the Commercial Concealment Law, which originally was to be effective in November 2007, was deferred until December 31, 2009 by UAE Cabinet Resolution No. 229/12 of 2007. We are not aware of any subsequent law or resolution deferring the implementation of the Commercial Concealment Law or issuance of any implementing regulations. Thus, it would be advisable to assume that the Commercial Concealment Law took effect as of January 1, 2010, although there have not been reports of active public enforcement of that law.

The Companies Law has parallel provisions, such as invalidating any transfer of shares that would violate the mandatory minimum national ownership percentage or any agreement that one of the partners is to be deprived of profits or is to receive a fixed profit for his shareholding. Even if the authorities choose not to prosecute violators under the Commercial Concealment Law, foreign parties need to understand that reliance on the types of excessive arrangements described above may be misplaced due to serious questions about their legality and enforceability. The legally permitted means of allocating roles, responsibilities and profits should be sufficient for the business to be conducted in a manner consistent with the foreign partner's objectives.

The Companies Law now expressly permits the pledging of shares. The Companies Law also introduces the concept of holding companies which may take the form of, *inter alia*, an LLC.

IV. OPERATION IN A UAE "FREE ZONE"

UAE free zones present a means to conduct business within the territory of the UAE, but not within its import and customs boundaries. Such free zones tend to be more "user-friendly" and conducive to foreign investment than in the UAE proper. For example, the relevant documents to establish and conduct business in a free zone are in English. Early free zones included the Jebel Ali Free Zone ("**JAFZ**"), which is a seaport and industrial facility, and the Dubai Airport Free Zone ("**DAFZ**") at the Dubai airport. UAE free zones account for a significant portion of foreign commercial activity in the UAE.

Each free zone has its own special purpose business regulatory schemes, but the rules and practices for business activities are typically broadly similar from zone to zone. Among the investment incentives generally available in the free zones are 100% foreign ownership, guaranteed Emirate-level income tax holidays and no restrictions on repatriation of capital and profits. Generally, there are no customs or other import duties or taxes with respect to imports into or exports out

of the various free zones, provided that goods are not then imported into the UAE proper.

Free zones generally permit: (i) the registration of wholly-owned branch offices of foreign companies; or (ii) the incorporation of single or multiple shareholder corporate entities with 100% foreign ownership. The types of activities usually permitted in the various free zones are trading, industrial, and service activities, although there are some exceptions.

Some free zones follow the economic cluster model focusing on particular types of industries or services, such as: (i) the logistics oriented zones of JAFZ and DAFZ; (ii) Dubai Technology and Media Free Zone ("TECOM," which includes Dubai Internet City, Dubai Media City, Dubai Knowledge Village, Dubai International Academic City and others); (iii) Dubai International Financial Centre (the "DIFC"); and (iv) Dubai Healthcare City. It is important to note that free zone registrants are not permitted to engage in business in the UAE proper absent independent licensing or some other legal arrangement permitting the specific business activities outside the free zone. However, employees working for a free zone branch or company may live anywhere in the UAE.

Other Emirates also have established free zones. Sharjah has a seaport free zone (Hamriyah Free Zone) and an airport free zone (Sharjah Airport International Free Zone). Ras Al Khaimah, Fujairah, Ajman and Umm Al Quwain also have free zones. Abu Dhabi has twofour54, a media free zone launched in 2008, the Abu Dhabi Airport Free Zone, which was launched in 2013, and Kizad, which became operational in mid-2014, and is projected to launch in the near future Abu Dhabi Global Market (the "ADGM"), a financial free zone in the vein of the DIFC.

V. OTHER KEY CONSIDERATIONS

A. Repatriation of Funds

There are currently no foreign exchange control laws or other legal restrictions on the repatriation of capital and earnings. Currently, the UAE Dirham is pegged to the US Dollar and the exchange rate has been approximately US Dollars 1 = UAE Dirhams 3.67 for many years.

B. Taxes

There are no special purpose income tax laws or regulations, corporate or individual, issued at the UAE federal level. At the local Emirate level, most of the Emirates have issued corporate income tax decrees in some form. However, to date such tax decrees have not been enforced and income taxes generally have not been imposed by any of the Emirates except with respect to: (i) certain companies engaged in oil and gas exploration and production activities; (ii) foreign bank branches; and (iii) certain petrochemical companies under specific government concession agreements. Also, currently there are no personal income tax laws enacted in any of the Emirates.

There are also no withholding taxes, no payroll taxes, and no value-added taxes or sales taxes, except with respect to certain items such as alcohol and tobacco. There are taxes on items such as services at hotels, as well as residential and commercial premises leases (e.g., annual "fees" collected based on the value of a lease).

Persons subject to tax in other jurisdictions, such as persons subject to US tax on worldwide income, should consult their tax advisors regarding the application of such taxes to their activities in the UAE. The UAE has entered into double taxation treaties with a number of countries, but currently does not have one with the US.

C. Competition Law

Federal Law No. 4 of 2012 Regarding the Regulation of Competition (the "Competition Law"), was recently passed in a stated effort to

protect and enhance competition in the UAE. The Competition Law generally prohibits restrictive agreements relating to products and services, including those that limit sales prices, impose limitations on sale conditions, and limit supply, and abuse of a dominant market position where such dominant position might lead to reductions in or prevention of competition regarding products and services, including imposition of fixed prices, restrictions on resale, dumping, and price discrimination. Further, mergers or acquisitions which might lead to "economic concentration" in a particular market segment require the express pre-approval of the Ministry of Economy. The Competition Law has numerous exceptions, including with respect to federal and Emirate level governmental actions and entities, small and medium establishments, and registered commercial agencies (in respect of the prohibition regarding restrictive agreements). In late 2014, the implementing regulations to the Competition Law were issued. However, while the implementing regulations filled in some gaps in the Competition Law (e.g., setting forth the process to request exemptions from prohibitions regarding restrictive agreements, abuse of dominance market positions, etc.), certain information necessary to fully clarify the law, remains outstanding, including a definition as to what percentage of market share is considered dominant and what constitutes a small or medium establishment.

D. Intellectual Property

There are three primary federal laws related to the protection of intellectual property rights in the UAE, namely: (i) the UAE Trademark Law, Federal Law No. 37 of 1992, as amended; (ii) the UAE Copyright Law, Federal Law No. 7 of 2002, as amended; and (iii) the UAE Patent Law, Federal Law No. 17 of 2002, as amended. These primary intellectual property laws are supplemented by other legislation, including Federal Law No. 4 of 1979 Regarding the Prevention of Fraud and Deception in Commercial Transactions, the Commercial Code, and various ministerial resolutions. In addition, it is important to note that the UAE is a member of many international treaties, including treaties related to intellectual property such as the Berne Convention. Various e-commerce related laws have also been implemented at the federal level as well as within individual Emirates. Further, the recent issuance of Federal Law No. 5 of 2012 Regarding Combating Cyber Crimes introduced various offences regarding activities conducted online.

E. Real Estate

Although the UAE Constitution vests legislative authority over real estate ownership with the UAE federal government, to date no UAE federal real estate law has been passed. Federal Law No. 5 of 1985 Regarding the Civil Transactions Law, as amended (the "Civil Code") includes provisions relating to real estate, but not with respect to ownership. Thus, land ownership restrictions in the UAE are generally established by rules and practices on an Emirate-by-Emirate basis. In particular, each Emirate maintains its own policies and practices with respect to land ownership by non-UAE nationals. The following provides a brief overview of the landscape in Dubai and Abu Dhabi.

1. Dubai Freehold Property

Dubai Law No. 7 of 2006 (the "Dubai Real Estate Law") is the primary law regulating real estate in Dubai. The Dubai Real Estate Law provides that UAE and other GCC nationals, including companies wholly-owned by them and public joint stock companies, have the right to own freehold title to land throughout Dubai and requires registration of real estate titles.

The Dubai Real Estate Law provides that, only in specific areas designated by approval of the Ruler of Dubai, non-GCC foreign nationals have: (i) the right to own real estate on a freehold basis for an unlimited period; or (ii) the right to usufruct or the right to lease real estate for not more than 99 years. In this regard, the Dubai Real Estate Law designates certain areas for such freehold ownership and long term leasing by non-GCC foreign nationals. Freehold ownership may also be permitted in certain free zones. Development, marketing, sale

and financing of real estate projects in Dubai are subject to a number of other laws, regulations and policies that are beyond the scope of this summary.

2. Abu Dhabi Freehold Property

In 2005, Abu Dhabi issued a pair of laws, Abu Dhabi Law No. 19 of 2005 on Ownership of Real Estate, as amended, and Abu Dhabi Law No. 3 of 2005 on Registration of Real Estate, as amended. The Abu Dhabi real estate ownership law grants only UAE nationals the right to own land anywhere in Abu Dhabi and requires registration of titles. GCC nationals are granted limited rights to own land in Abu Dhabi, but only in designated areas. Other foreign nationals are granted more limited real estate ownership rights in designated areas in Abu Dhabi, basically permitting them to own only surface rights.

3. Other Considerations

One should not assume that all rights customarily available to a homeowner in, say, the US are available to the purchaser of a villa or apartment in a freehold area in the UAE. For example, business licensing requirements may limit the ability of an investor to put property on the market for short term "holiday" rentals. Investors should bear in mind that they must determine carefully what immigration requirements must be met for investors and their families to enter and reside in the UAE in order to enjoy the property in which they are investing. Individuals also should be cautious concerning the application of UAE Islamic Shari'ah law to ownership and transfer of their UAE property in the event of divorce, bankruptcy, death and the like. The inheritance rules of a person's home country jurisdiction may not necessarily apply to real property in the UAE. Thus, careful planning is advisable when investing in real estate in the UAE.

4. Tenancy Issues

There is no special purpose federal landlord/tenant law currently applicable in the UAE. Leases are governed by specific provisions in the Civil Code, as well as special purpose regulations, policies and practices of the various individual Emirates. As a general rule, branches and LLCs are not permitted to sublease their premises. The licensing authorities require that the licensed location for operation of the business be a lease directly with the owner of the property.

The Abu Dhabi government enacted Abu Dhabi Law No. 20 of 2006 Regulating the Landlord and Tenant, as amended. Likewise, the Dubai government enacted Dubai Law No. 26 of 2007 Regulating the Relationship Between Landlords and Tenants, as amended (the "**Dubai Tenancy Law**"), which is applicable to residential and commercial leases in Dubai. In Dubai, the Real Estate Regulatory Agency ("**RERA**") has regulations and policies regarding leases, and has suggested it will implement standard lease forms. RERA currently processes the registration of leases as required per the Dubai Tenancy Law.

There are special purpose dispute resolution tribunals for lease disputes in Dubai and Abu Dhabi. For example, in most cases, the Rental Dispute Settlement Centre in the Emirate of Dubai, which is presided over by an appellate judge from the Dubai courts has original jurisdiction over lease disputes in Dubai. The Rental Disputes Settlement Committee is similarly charged with hearing lease disputes in Abu Dhabi and is presided over by a judge.

F. Labor and Employment

Federal Law No. 8 of 1980 concerning Labor in the Private Sector, as amended (the "**Labor Law**"), governs the employment of workers by most private enterprises in the UAE. The Labor Law is a federal law that applies in each of the Emirates, including the free zones therein (other than the financial free zones).

Employment is the right of UAE nationals under the Labor Law. Non-UAE nationals may be employed only after the approval of the Ministry of Labor is obtained, generally in the form of a work permit or "labor card" issued by the Ministry of Labor. Ministry of Labor approval of the employment of non-UAE national employees generally is conditioned on the unavailability of qualified UAE nationals. These provisions are an extension of the UAE Constitution which states that the UAE must endeavor to ensure that employment, and related vocational training, is available for all UAE citizens.

The Labor Law requires that all employees be employed pursuant to labor contracts reflecting the wage, term (fixed or indefinite) and nature of their employment. Outside the free zones it is usually necessary to register the labor contract with the Ministry of Labor to secure a work permit for an employee.

The Labor Law regulates many features of the employment relationship, including matters such as work hours, overtime, holidays, annual leave, maternity and sick leave, labor accidents, disciplinary actions, termination and resignation. The Labor Law also provides that employees who have been employed for at least one year, and who are not terminated "for cause" as defined by Article 120 of the Labor Law, are generally entitled upon termination to receive an end of service gratuity payment based on length of service as specified in the Labor Law.

Generally, "freelancing" and "moonlighting" are not permitted. Expatriates working in the UAE are required to work only for one employer – the company under whose auspices their work permit has been issued.

Labor disputes are initially heard by the Ministry of Labor in a non-binding mediation process. In the absence of a resolution to the dispute there, the employer or the employee are then permitted to approach the local courts with their claims.

Multinational companies often transfer to the UAE employees hired in other jurisdictions, under arrangements by which the transferred employee retains an employment relationship with the company in a jurisdiction outside the UAE. Such arrangements are legal and common in the UAE. Some care is needed, however, as employees may acquire overlapping or unexpected rights under the original employment arrangements and under the provisions of the local employment contract and under UAE law.

Two issues are noteworthy with regard to the employment of UAE nationals. First, they are entitled to privileges under UAE pension legislation (Federal Law No. 7 of 1999 Regarding the Formation of the Public Authority for Pensions and Social Security). Second, the Ministry of Labor has policies restricting the ability to terminate UAE national employees without cause, pursuant to Ministerial Resolution No. 176 of 2009 on the Restriction of Terminating Service of UAE National Employees Working for the Private Sector. Termination of a UAE national employee will be deemed to be without a valid reason unless certain conditions are met and certain procedures are followed.

G. Immigration

In the UAE, employment law is closely linked to immigration law and procedures. Immigration matters in the UAE are governed primarily by Federal Law No. 6 of 1973 Regarding the Entry and Residence of Foreigners, as amended (the "**Immigration Law**").

Pursuant to the Immigration Law, non-GCC national employees may not reside and work in the UAE without an employment/residency visa, which is generally secured by their employer (except for dependents who are sponsored by a qualified family member).

Transfer of employment and recruiting employees who are already resident in the UAE under the sponsorship of another employer are constrained by the policies of the Immigration Department and the

Ministry of Labor, the primary relevant authorities with jurisdiction over immigration and employment matters in the UAE. These restrictions should be taken into account in planning the establishment or expansion of operations in the UAE.

H. US and Other Regulatory Issues

In addition to the federal and Emirate laws and regulations of the UAE, companies and individuals doing business in the UAE should be aware of laws and regulations of other countries that may impose prohibitions or restrictions on their business relating to the UAE. For US companies and individuals, foreign entities owned or controlled by US persons, as well as any company or individual transacting in US-origin goods, these issues may include various export control and sanctions laws and regulations, laws and regulations aimed at preventing corruption, US anti-boycott laws and regulations, and certain US anti-money laundering initiatives. In addition, other US legislation may have extraterritorial application, including certain employment discrimination legislation. An overview of some of these US regulatory issues is provided below.

1. Export Controls and Sanctions

Companies and individuals that export or re-export US-origin goods, software, or technology, including certain foreign items manufactured outside the US that contain more than *de minimis* US-origin content, should be aware that US export controls apply to such exports or re-exports. As a general matter, US-origin items are divided into two categories for purposes of export controls: (i) defense articles, defined as items on the United States Munitions List ("USML") and certain other related items and technology that are specially designed or modified for a military or aerospace use; and (ii) "dual-use" items, which are goods, technology, and software not specifically designed for a military or aerospace use but can have such use. The US also imposes specific export controls on certain other items, such as nuclear articles. These controls may be expected to evolve in the near future in response to the UAE's foray into civilian nuclear power and its 2009 ban on the enrichment of uranium.

The US State Department is responsible for administering controls on exports and re-exports of defense articles, related defense technical data, and defense services. With limited exceptions, any items (including foreign manufactured end products) that contain any US-origin defense articles are controlled for export to any destination. This includes re-exports – that is, an export from one non-US country to another – of such items, even if no US person is otherwise involved.

The US Commerce Department controls exports and re-exports of most other US-origin items, technology and software, many of which can be exported to the UAE (and can be re-exported from the UAE to most other destinations) without a license. Whether items are controlled by the US Commerce Department for export and re-export depends on various factors, including the type of item, its intended destination, end-use and other factors. US Commerce Department controls may also apply to the re-export from the UAE of certain non-US produced: (i) items incorporating more than *de minimis* US-origin parts, components or materials; (ii) software or technology "commingled" with US-origin software or technology; and (iii) items that are the direct product of certain US software or technology.

The US also restricts or prohibits exports or re-exports of US-origin items to certain individuals and entities for various reasons (e.g., because of past violations committed by such parties, the perceived risk such parties may divert the item to a prohibited end-use or end-user, or other policy reasons). In addition, the US prohibits most exports and re-exports of US-origin goods to certain countries, including Crimea, Cuba, Iran, North Korea, Sudan, and Syria. These controls apply to exports to and from the UAE by any person – not just US persons – if ultimately intended for delivery to such prohibited end-users or end-destinations.

US export laws also control exports of certain US-origin technology related to the development, production or use of a controlled product to certain countries and nationals of non-US countries. Technologies are treated as being exported both to the end country destination as well as to the home country of any employees who will have access to the technology. This principle is particularly notable in the UAE given the great number of technical and professional personnel working in the UAE who are nationals of other countries. For example, even if US-origin technical data is received at a company in the UAE pursuant to a specific authorization for the UAE, sharing that information with a national of a third country (*i.e.*, an individual who is a national of neither the US nor the UAE), even if that individual is an employee of the same company, may require additional authorization.

The US Commerce Department has identified the UAE as a transshipment hub that poses special risks for diversion of sensitive items to illicit end-uses or prohibited destinations including Iran. Although many US-origin items controlled by the US Commerce Department do not normally require a license for export to non-sanctioned destinations, if an exporter knows or has reason to know that such an item is intended for a sanctioned destination or a company or person that is on a denial list, or that the item will be used in connection with certain activities involving nuclear, chemical or biological weapons, or missiles, the export may be prohibited. Legal advice should be sought in any such situation. Companies should consider following the best practices of their industry in deciding when and how to screen transactions for the presence of parties on denial lists and pursue any "red flags" suggesting a questionable end-destination, end-use or end-user. It is also important to recognize that the denial lists, maintained both by the US and other governments, may change frequently.

The US also currently imposes comprehensive economic sanctions on various countries, including Cuba, Iran, Sudan and Syria and more limited primarily list based economic sanctions on a variety of other countries, including: (1) the Balkans; (2) Belarus; (3) Burma (Myanmar); (4) Central African Republic; (5) Democratic Republic of Congo; (6) Ivory Coast; (7) Iraq; (8) former Liberian regime of Charles Taylor; (9) Lebanon; (10) Libya; (11) North Korea; (12) Russia/Ukraine; (13) Somalia; (14) South Sudan; (15) Venezuela; (16) Yemen; and (17) Zimbabwe. In addition, the US imposes sanctions against various terrorists, designated narcotics traffickers and others, many of whom reside outside countries against which the US otherwise imposes sanctions. These sanctions affect or prohibit exports and re-exports of US-origin items, technology or software by any person, as well as exports of services (e.g., providing business or consulting advice to a sanctioned country or recipient) from the US, and often override normal export control rules.

US sanctions also prohibit most activities of US persons with respect to sanctioned countries and persons and go beyond activities relating to exports and re-exports. In this regard, US persons include branches of US companies (and, in the case of Cuba and Iran, foreign subsidiaries that are owned or controlled by US parent companies), and US citizens and "green card" holders wherever they are located. This specifically includes US citizens and green card holders employed by non-US companies, as well as any person, regardless of nationality, physically in the US.

In addition, under US law in place since the end of 2007, if the actions of a non-US person "cause" a US person to violate US sanctions laws, such as by intentionally removing references to sanctioned countries from export documentation or money transfer forms, the non-US person could itself be subject to liability under US law. In several recent settlements, the US government has charged non-US individuals and entities with "causing" US persons to unknowingly act in violation of US sanctions.

In July 2010, the US enacted the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (the "**CISADA**"), which amends the Iran Sanctions Act (the "**ISA**"). Under the CISADA, the US government is authorized to impose restrictions on non-US companies and individuals that engage in specified activities, including activities related to assisting Iran in developing its petroleum industry, and

acquiring refined petroleum products. The ISA also authorizes the imposition of restrictions against non-US companies that engage in conduct that furthers Iran's efforts to develop nuclear and other weapons of mass destruction.

The US continues to impose ever more stringent sanctions on Iran. In 2011, the President, by Executive Order, authorized the imposition of CISADA-type sanctions for a broader range of conduct. The President also signed into law the National Defense Authorization Act for Fiscal Year 2012 which, among other things, requires the President to impose sanctions on the financial sector in Iran as well as foreign financial institutions found to be engaging in significant transactions with Iran's Central Bank and other designated financial institutions in Iran. In addition, on February 5, 2012, the President signed an Executive Order that blocks the property and interests in property of the Government of Iran and Iranian financial institutions.

In 2012, the President signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012 ("ITRSA") which, among other things, imposes sanctions on entities owned or controlled by a US person if the entity engages in transactions with Iran that would be prohibited if engaged in by a US person or in the US and also expanded sanctions on transactions by foreign entities with Iran's petroleum sector.

In 2013, the President also signed into law the Iran Freedom and Counter Proliferation Act of 2012 (the "IFCA") which, among other things, imposes sanctions on foreign entities that are engaged in certain specified transactions with Iran including those involving (i) Iran's energy, shipping or shipbuilding sectors; (ii) sale, supply, or transfer of precious metals, graphite, raw materials or semi-finished metals to or from Iran; (iii) provision of underwriting services, insurance and reinsurance for sanctionable activities related to Iran; or (iv) transactions involving Iranian SDNs. Executive Order 13645 issued in June, 2013 expanded sanctions to foreign entities engaged in transactions with Iran's automotive industry or related to the purchase or sale of Iranian rials.

Foreign financial institutions are also subject to certain sanctions if they are found to have: (i) knowingly conducted or facilitated certain significant transactions with the National Iranian Oil Company ("NIOC"), Naftiran Intertrade Company ("NICO"), the Revolutionary Guard Corps (or any of its agents or affiliates whose property is blocked) or related to the purchase or acquisition of petroleum or petroleum products from Iran; (ii) facilitated the effort of the Government of Iran to acquire or develop weapons of mass destruction or related delivery systems or provided support for terrorist organizations or acts of international terrorism; (iii) facilitated the activities of a person subject to UN financial sanctions or any other UN Security Council resolution that imposes sanctions with respect to Iran; (iv) engaged in money laundering, or facilitating efforts by the Central Bank of Iran or any other Iranian financial institution to engage in sanctioned activities; or otherwise facilitated transactions in violation of the IFCA.

Under the Joint Plan of Action (the "JPOA"), reached November 24, 2013, between the P5+1 (US, UK, France, Russia, China, and Germany) and Iran, the US agreed to temporarily suspend or otherwise reduce certain sanctions on non-US persons (excluding foreign entities owned or controlled by US persons) engaging in transactions with Iran during the period beginning January 20, 2014 and ending, as extended, July 1, 2015 (the "JPOA Period") that involve Iran's (i) export of petrochemical products; (ii) automotive industry; (iii) purchase and sale of gold and other precious metals; (iv) civil aviation industry; (v) exports of crude oil; or (vi) humanitarian related transactions. The JPOA also authorizes certain "associated services" to these transactions defined to include "any necessary service" – including any insurance, transportation or financial service – ordinarily incident to the underlying activity for which sanctions relief has been provided (except in the case of Iran's exports of crude oil, for which only associated insurance and transportation services are authorized).

Significantly, however, the sanctions relief only pertains to conduct and transactions that are commenced and fully completed during the JPOA

Period and, with limited exceptions, only to the activities of non-US Persons not otherwise subject to the Iranian Transactions and Sanctions Regulations ("ITSR"). US persons and US-owned or controlled foreign entities, therefore, continue to be generally prohibited from conducting transactions with Iran, including any transactions or associated services of the type now permitted under the JPOA, unless licensed to do so by the US Office of Foreign Assets Control. Transactions with Specially Designated Nationals ("SDNs"), other than certain specified Iranian financial institutions and entities, also remain prohibited even if the activity would otherwise be authorized under the JPOA.

Violations of US export controls and sanctions regulations can result in serious criminal and civil penalties. In addition, those found to have violated US export controls can be denied export privileges, including the right to receive, distribute, or re-export US-origin items. Such a denial is a particularly potent sanction that can significantly disrupt trading activities. Furthermore, penalties typically are publicized by the relevant US government agency, which can lead to substantial reputation damage in addition to the penalties. Foreign entities that violate the various extraterritorial sanctions against Iran can find themselves cut off from the US financial system or market.

Although other countries, such as European Union (the "EU") member states, may not control the re-export of items originating in those countries, many countries participate in various multilateral sanctions programs. In this regard, individuals and entities have been included on sanctions lists published by the United Nations (the "UN"), the EU, and the UK relating to such sanctions, including sanctions against terrorists, Al-Qa'ida, the Taliban, Myanmar (Burma) and the former Yugoslavia. Nationals and companies organized under the laws of states imposing such sanctions may be subject to penalties for violations of such laws.

Also of interest, the UAE adopted Federal Law No. 13 of 2007, as amended (the "UAE Export Control Law"), concerning commodities subject to import and export control procedures. There has been little experience to date with interpretation and application of the UAE Export Control Law, but it needs to be considered in relation to any import and export activities into or from the UAE.

2. Anti-Corruption

The US Foreign Corrupt Practices Act (the "FCPA") prohibits bribery of non-US officials, political parties, party officials, or candidates for public office (collectively, "foreign officials") in order to obtain or retain business, direct business to any person, or to obtain an unfair advantage. The FCPA also imposes specific recordkeeping and accounting obligations on certain parties. While the specific FCPA obligations vary depending on whether the US party has listed securities in the US, every company in the US (including such companies' officers, directors, employees and agents – regardless of nationality), as well as all US citizens and "green card" holders wherever located, are covered by the FCPA. Every company that lists securities in the US, regardless of nationality, is subject to the FCPA.

The FCPA prohibits promises, offers, payments, or gifts of anything of value to a foreign official, or to any other individual or entity (such as a sales representative or agent) with knowledge or reason to know that all or a part of what is given will be offered, given or promised to a foreign official, for an improper purpose. It is important to recognize that the term foreign official is very broadly defined under the FCPA and includes government employees, regardless of title or rank. This specifically includes employees of government-owned companies, (e.g., a manager at a national oil company). Serious civil and criminal penalties, including imprisonment, may be imposed for violations of the FCPA. In recent years, US enforcement officials have targeted non-US companies listed in the US and individual violators (including non-US individuals) for significant penalties, frequently in collaboration with law enforcement counterparts in other countries in Europe and elsewhere. This trend is expected to continue.

Although for some time the US was alone in imposing criminal sanctions on persons who bribed officials of another country, countries

that are members of the Organization for Economic Co-Operation and Development (the “**OECD**”), including EU member states, have now implemented laws under the OECD Bribery Convention that impose serious criminal and civil penalties on companies and persons subject to the jurisdiction of those countries that bribe officials of other countries in connection with international business. In particular, the UK’s Bribery Act 2010 received Royal Assent in April 2010. Businesses must pay close attention to the offenses created by the UK Bribery Act, in particular the new corporate offense of failing to prevent bribery, and ensure that compliance programs are designed and implemented to reflect the new UK regime. Businesses operating in the international sphere should note that the UK Bribery Act is more stringent than the FCPA in a number of areas, and that they can no longer afford simply to look out for US legislation and US regulators in this area.

In addition, a number of high-profile investigations have been launched outside the US based on alleged corrupt activities during the UN Oil for Food Program and other instances of alleged improper payments.

Moreover, the UN Convention Against Corruption (the “**UN Convention**”) has now entered into force, with over 100 countries ratifying the UN Convention, including the UAE, which ratified the UN Convention in February 2006. The UN Convention requires parties to implement and enforce anti-corruption regulations in accordance with recognized best practices in anti-corruption compliance.

In addition, the UAE and many other countries in the Middle East have laws and regulations aimed at preventing bribery of government officials. In the UAE, these laws include various civil service and special purpose regulations, as well as certain provisions of the UAE Penal Code, UAE Federal Law No. 3 of 1987, as amended, which also may apply in the context of private sector (non-government official) bribery. There have been a number of recent high profile corruption enforcement actions in the UAE, particularly in the real estate context.

3. US Anti-Boycott Regulations

Companies and individuals doing business in the UAE also need to be aware of US laws that impose reporting obligations and criminal, civil or income tax penalties on individuals and companies that participate in, or cooperate with the Arab League Boycott of Israel in ways specified under the US law. These laws are administered by the US Commerce and Treasury Departments, although the legal requirements under each set of laws differ in important ways. These laws also impose certain obligations to report requests to comply or agree to comply with the boycott regardless of whether the receiving entity intends to comply with the requests. Requests to participate in the Arab League Boycott of Israel can include requests for certain types of information and are not always easy to recognize.

The UAE is a party to the Arab League Boycott of Israel pursuant to UAE Federal Law No. 15 of 1972. In addition to the UAE, as of the beginning of 2015, the US Treasury Department listed the following countries as participants in the boycott: Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria and Yemen.

Generally speaking, US anti-boycott laws apply not only to US companies and individuals but also to foreign affiliates of US companies as well as certain foreign companies that are part of a US income taxpayer’s group under the Internal Revenue Code of 1986, as amended (the “**US Tax Code**”). Those found to have violated US anti-boycott laws can be denied certain US federal income tax benefits as well as export privileges, including the right to receive, distribute, or re-export US-origin items. As in the case of export control violations, such a denial is a particularly potent sanction and can have a significant disruptive effect on trading activities.

Treasury Department: Pursuant to Section 999 of the US Tax Code, US persons with operations in or related to a boycotting country (such as the UAE), or with the government, a company, or a national of a boycotting country, must file IRS Form 5713 to report certain transactions with respect to such operations. In addition, if a US person

is (i) a partner in a partnership that has such operations, (ii) a member of a controlled group, a member of which has such operations, or (iii) a shareholder with at least 10% voting power in a foreign corporation with such operations, the US person must also file a Form 5713.

In addition to the reporting obligations under Section 999, Section 908(a) of the US Tax Code and related US Treasury Department guidance reduce the foreign tax credits otherwise available to a person if the person, a member of a controlled group which includes the person, a partnership in which the person is a partner, or a foreign corporation in which the person owns at least 10% voting power participates in or cooperates with an international boycott. Participation in or cooperation with an international boycott may result in other adverse tax consequences as well.

Commerce Department: The US Commerce Department prohibits US persons, including foreign subsidiaries that are “controlled in fact” by US persons, from participating, or agreeing to participate, in prohibited boycotts such as the secondary or tertiary aspects of the Arab League Boycott of Israel. Moreover, certain obligations are imposed on US persons in connection with the receipt of, and the response to, prohibited boycott requests. In particular, US persons are required to report receipt of boycott requests, subject to certain exceptions, to the US Commerce Department on a quarterly basis.

4. Reporting Financial Accounts

FBAR Filing: A US person who maintains any financial accounts outside the US should be aware of US reporting obligations with respect to such foreign financial accounts. Generally speaking, any US person with a financial interest in or signature authority over any financial account in one or more foreign countries must file the Report of Foreign Bank and Financial Accounts (“**FBAR**”), if the aggregate value of those accounts exceeds US\$10,000 at any time during the calendar year. A person has signature authority over an account if such person can control the disposition of money or other property in it by delivery of a document containing his or her signature to the bank or other person with whom the account is maintained. For example, if a US company has bank accounts outside the US and the aggregate value of these accounts exceed US\$10,000, both the US company and US persons who are signatories on the account would need to file an FBAR.

FATCA Reporting: The Foreign Account Tax Compliance Act (“**FATCA**”), including the enactment of Section 6038D of the US Tax Code, requires individual taxpayers holding “specified foreign financial assets” (including financial accounts, stock or securities issued by a non-US person, interests in a foreign entity and investment contracts with a non-US issuer or counterparty) during the taxable year to attach a Form 8938 with their income tax return for any year in which the total value of all such assets exceeds the threshold amount. For a married taxpayer filing a joint tax return and living in the US, the threshold amount is US\$100,000 on the last day of the tax year or US\$150,000 at any time during the tax year; for an unmarried taxpayer/married taxpayer filing separate tax returns and living in the US, the threshold amount is US\$50,000 on the last day of the tax year or US\$75,000 at any time during the tax year; for a married taxpayer filing a joint tax return and living abroad, the threshold amount is US\$400,000 on the last day of the tax year or US\$600,000 at any time during the tax year; and for other taxpayers living abroad, the threshold amount is US\$200,000 on the last day of the tax year or US\$300,000 at any time during the tax year. The FATCA reporting requirements are in addition to, and not in lieu of, the FBAR filing requirements.

Although FATCA currently applies only to individual taxpayers, the US Secretary of the Treasury has been given the authority to issue regulations requiring US entities formed or used for the purpose of holding, directly or indirectly, “specified foreign financial assets” to file disclosures as if they were individuals.

I. Dispute Resolution

There are several court systems in the UAE, including federal courts, courts of the Emirate of Abu Dhabi, and courts of the Emirate of Dubai. For purposes of this summary we use the term "UAE court" to refer to all of such courts, except the specialized, English language common law court system of the Emirate of Dubai established in the DIFC – the DIFC Courts. It is also expected that once launched, the ADGM will have an independent court system similar to that in the DIFC. The jurisdiction of each UAE court varies and must be analyzed on a case-by-case basis.

1. Choice of Foreign Law and Venue

While it is not illegal for a UAE based party to agree in a contract to the application of foreign law and for dispute resolution outside the UAE, such agreements can have limited value in practice.

Article 20 of Federal Law No. 11 of 1992 Regarding Civil Procedures, as amended (the "**Civil Procedures Law**") states that UAE courts shall have competence to hear any actions filed against UAE parties except for suits regarding real property located outside the UAE. Article 24 of the Civil Procedures Law states that any agreement contrary to the provisions of the Civil Procedures Law is invalid. A UAE court might consider an exclusive jurisdiction clause identifying foreign jurisdictional venue to be contrary to Article 24.

If a UAE court hears a dispute there is a reasonable chance it will apply UAE law to the dispute, even if the parties have chosen the laws of another jurisdiction.

2. Enforcement of Foreign Court Judgments

Pursuant to principles of reciprocity as codified in the Civil Procedures Law, primarily Article 235, foreign judgments are enforceable in the UAE, at least in theory. However, foreign court judgments have not often been enforced in practice as far as we are aware.

One difficulty with enforcing foreign judgments is the mandatory jurisdiction provision referred to above. One of the conditions to enforceability of foreign judgments is that the UAE courts have no jurisdiction over the matter at issue. Article 20 of the Civil Procedures Law, referenced above, states that UAE courts shall have competence to hear any actions filed against UAE parties except for suits regarding real property located abroad (*i.e.*, outside the UAE), and Article 24 of that law makes invalid any agreement to the contrary.

3. Enforcement of Domestic and Foreign Arbitration Awards

Pursuant to Federal Decree No. 43 of 2006, the UAE acceded to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) (the "New York Convention"). Nevertheless, there are not a sufficient number of successful enforcements of foreign arbitrations in the UAE to predict the outcome of any particular enforcement proceeding.

UAE law does recognize arbitration and provides that an arbitration award rendered in the UAE is generally enforceable. Arbitration in the UAE can be *ad hoc* or at one of the established centers, such as the Abu Dhabi Commercial Conciliation and Arbitration Centre sponsored by the Abu Dhabi Chamber of Commerce and Industry, the Dubai International Arbitration Centre, or the DIFC-LCIA (London Court of International Arbitration) Arbitration Centre, which is located in the DIFC.

4. DIFC Courts

Pursuant to Dubai Law No. 12 of 2004, as amended, parties to a contract may "opt in" to the DIFC Courts' jurisdiction even if neither party nor the contract has any connection with the DIFC. This law expands the choice

of forums for dispute resolution in Dubai, particularly in conjunction with the DIFC-LCIA Arbitration Centre. The extent to which the DIFC Courts' extended jurisdiction will be recognized outside of Dubai remains to be seen.

J. Personal Conduct

The UAE is an Islamic country and all residents and visitors are required to respect its laws, customs and traditions. Each year there are instances in which expatriate residents and visitors neglect to do so and face prosecution, imprisonment and deportation. Companies doing business in the UAE are well served by educating their employees, visitors and their families concerning these matters.

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