Country Focus

United Arab Emirates

The Legal Landscape

In association with
RIAA Barker Gillette (Middle East) LLP

GETTING THE DEAL THROUGH

Publisher: Tom Barnes

Senior business development manager:

Adam Sargent

adam.sargent@gettingthedealthrough.com

Readership Development Manager:

Product marketing manager: Kieran Hansen

subscriptions@gettingthedealthrough.com

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Law Business Research Ltd

87 Lancaster Road

London, W11 1QQ, UK

Tel: +44 20 3780 4104

Fax: +44 20 7229 6910

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This new *Getting The Deal Through* initiative is designed to offer in-house legal departments, as well as private practice lawyers with an international clientele, a concise 'helicopter view' of the legal environments in which they do business, or where they may be considering investment.

The Legal Landscape addresses the key factors that underpin civil and common law legal frameworks, policy, regulation and enforcement, taxation, organisational behaviour and investor strategies.

Getting the Deal Through has canvassed general counsel at more than 100 multinational corporations and financial institutions to focus on the first points of legal reference that in-house counsel need to know when assessing unfamiliar jurisdictions where they may seek opportunities or be exposed to risk. The following questions and answers cover the essential areas of consideration in their 'first step' analysis.

We would like to thank the team at RIAA Barket Gillette for their analysis of the legal system of the United Arab Emirates.

GETTING THE
DEAL THROUGH

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United Arab Emirates: The Legal Landscape

Hasan Anwar Rizvi

RIAA Barker Gillette (Middle East) LLP

Country overview

1 Give an overview of the country's economy, its structure and main characteristics, and prevailing government economic policy, particularly as regards foreign investment.

The United Arab Emirates (UAE) is a federation of seven emirates: Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain. It is strategically located between Asia, Europe and Africa, and it is considered a commercial and financial hub of the Middle East.

Unlike many countries in the region, the UAE has enjoyed a stable economy as a result of its location, consistent government spending, financial reserves, investment attractions and a progressive policy of diversification. The UAE has managed to diversify its economy so that more than two-thirds of the country's GDP is derived from the non-oil sector; the tourism, financial services, manufacturing and trade sectors have played a significant role in this process. Not surprisingly then, the UAE's diversification strategy has helped the country weather the storm during the global plummet in oil prices.

In respect of the UAE's future ambitions, the UAE government has set out an extensive list of goals that the government hopes to achieve. The government is guided by various plans, strategies and visions such the UAE Vision 2021, which aims to make the UAE 'one of the best countries in the world' by becoming the touristic, economic and commercial capital of the region. The objective is to create an economy that promotes innovation, research and development. Efforts to achieve the vision are evidenced in increased government expenditure on infrastructure and initiatives of hosting global events such as Expo 2020.

Finally, the UAE has also become an increasingly popular investment destination as a result of its investor-friendly policies; it provides exemptions from corporate taxation and 100 per cent profit repatriation, a large expatriate labour force, and it is led by a government driven by innovation and in pursuit of excellence.

Legal overview

2 Describe the legal framework and legal culture in your jurisdiction as regards business and commerce.

The UAE Constitution forms the foundation of the country's legal framework. The federation has jurisdiction over all matters allocated to it under the Constitution, whereas each emirate has independent jurisdiction in their territories over all other matters. The laws of each emirate are also extensively shaped by the emirate's hereditary ruler, and the seven rulers of the emirates collectively form the Supreme Council, which acts on behalf of the federation.

The UAE legal system is based on civil law and Islamic shariah law principles, and although there is a federal judicial system, Dubai and Ras Al Khaimah have their independent judiciaries.

With specific regards to business and commerce, the UAE has numerous free zones to create a business-friendly environment. These industry-specific districts have their own regulations and enforcement authorities, and encourage business activity by allowing 100 per cent foreign ownership, and permitting full repatriation of profits.

The Dubai International Financial Centre (DIFC) is the first financial free zone in the UAE. It has its own independent, English language common law judiciary, and has a financial services regulator, which is comparable to other international regulators. In addition to this, there is the Abu Dhabi Global Market (ADGM), which boasts similar facilities to the DIFC. Compared to the onshore legal environment, these financial free zones provide businesses with a more sophisticated legal framework.

Like the recent development of laws and regulations in free zones, the onshore laws are also being modernised to reflect changes in the commercial world, and to mirror the standard of developed international legal systems. Federal Law No. 2 of 2015 on Commercial Companies (CCL) and Federal Decree Law No. 9 of 2016 on Bankruptcy (Bankruptcy Law) are steps towards supporting the developing business community in the UAE.

3 What are the main sources of civil and administrative law applicable to companies?

The main sources of law for companies stem from the federal laws of the UAE such as the CCL, Federal Law No. 18 of 1993 issuing the Commercial Transactions Law, Federal Law No. 3 of 1987 on issuance of the Penal Code (Penal Code), and any relevant cabinet and ministerial decisions. For onshore companies and businesses, the Ministry of Economy and specifically the Department of Economic Development (DED) play a key role in the development of economic activity.

Since the UAE has a civil law system, the judgments of courts are not binding on lower courts and each case is judged on its own facts. Each emirate may also issue laws over its own territory, with which businesses located in that emirate will need to comply. Additionally, in specific industries, there are administrative laws that are issued by the relevant regulatory authority, and in the case of free zones, there are certain regulations and administrative requirements that are enforced by the free zone authority.

Dispute resolution

4 How does the court system operate with regards to large commercial disputes?

There are no specific courts for large commercial disputes, instead all commercial cases are heard by the civil courts, the structure of which includes:

- the Court of First Instance;
- the Court of Appeal; and
- the Court of Cassation.

Before the court hears a case, it is first referred to the Reconciliation and Settlement Committee, which assists the parties reach a settlement. If a settlement is reached, the parties write and sign its terms to form a binding and enforceable contract. Nevertheless, in the event that a settlement cannot be reached, the claimant can file a claim at the Court of First Instance.

This procedure does not apply in Dubai, where there is a separate Centre for Amicable Settlement of Disputes, which considers disputes before they are filed at the Dubai Courts. Dubai also has the DIFC Courts, which deal with all cases arising in the DIFC, and where parties agree in writing to use the DIFC Courts. In a move to expand their commercial dispute resolution services and to cater to two key sectors in local and regional economies, the DIFC Courts have recently introduced the Technology and Construction Division for complex commercial disputes.

In respect of smaller disputes, some of the emirates such as Abu Dhabi, Dubai and Ras Al Khaimah, have introduced the 'One Day Court' system to hear simple cases. The initiative reduces delays at the local courts in respect of other cases, and has proven to be more cost effective and time efficient for the local governments.

5 What legal recourse do consumers typically have against businesses?

Although class actions are not recognised in the UAE, the Ministry of Economy has set up a Consumer Protection Department (CPD) to deal with consumer complaints relating to any product or service that a consumer has purchased. The CPD has powers to investigate a complaint, and accordingly coordinates with relevant authorities to pass a decision on the matter.

Alternatively, consumers may also refer any complaint directly to the court without filing a complaint at the CPD. The case can be brought before the court on the basis of tortious or contractual liability, and for breach of Federal Law No. 24 of 2006 on Consumer Protection (Consumer Protection Law).

Under the Consumer Protection Law, the claim may be brought not only against the business or individual who directly dealt with the consumer, but also the manufacturer, who may be based in the UAE or abroad.

6 How significant is arbitration as a method of dispute resolution?

In recent times, arbitration has become an increasingly common method of dispute resolution in the UAE. This trend can be attributed to the growing familiarity of the process and consequently, the establishment of several arbitration institutions in the UAE such as:
- the Abu Dhabi Conciliation and Arbitration Centre;
- the Dubai International Arbitration Centre;
- the DIFC London Court of International Arbitration Centre (DIFC-LIAC); and
- Sharjah International Commercial Arbitration Centre.

Even though each arbitration centre has its own rules and regulations, the UAE courts have a supervisory role over disputes submitted to these institutions. On the contrary, the DIFC-LIAC, which is considered to be one of the most popular arbitration seats in the region, has disputes overseen by the DIFC courts.

Initially, many of the disputes dealt with at arbitration centres concerned either real estate or construction matters, however, the subject matter of disputes has now expanded to include more general commercial issues. Furthermore, arbitration has become popular because of the UAE's membership of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), which allows enforcement of foreign awards. In order to enforce an arbitral award, whether it is a domestic or foreign award, an application is required to be filed with the Court of First Instance of the emirate in which enforcement is sought.

7 What other methods of dispute resolution are commonly used?

Although there are other ways of resolving a dispute such as mediation, each emirate has its own rules and there is no legal framework that enforces the judgments and decisions reached through these alternative dispute resolution methods.

In Dubai, mediation services are provided by the Dubai Chamber of Commerce for businesses who are members of the Dubai Chamber. The DIFC-LIAC also provides mediation services under the rules of the LCIA mediation procedure.

In addition, there are conciliation and settlement committees such as those mentioned in question 4, which have disputes referred to them before claims are filed at courts. The agreements reached before the committees or through general mediation are enforceable and binding; however, in the absence of an agreement, an order is unenforceable, and the matter will be heard by the competent court.

There are also some special committees set up for specific disputes such as the Special Judicial Committee (SJC) for resolving landlord and tenant disputes in Dubai, and designated authorities such as the Ministry of Labour for labour disputes. However, not all orders of such committees are binding and enforceable; for instance, the SJC's order is final and enforceable, whereas the Ministry of Labour has to rely on mutual agreement of parties for settling a dispute.

8 How easy is it to have foreign court judgments and foreign arbitral awards recognised and enforced in your jurisdiction?

The UAE is a party to international treaties concerning the recognition and enforcement of judgments. These treaties include the Arab Convention on Judicial Co-operation (Riyadh Convention), the Agreement on Execution of Judgements, Delegations and Judicial Notifications in the Arab Gulf Cooperation Council Countries (GCC Treaty), and bilateral treaties with countries such as France and India.

In respect of judgments from countries that do not have bilateral treaties with the UAE, enforcement depends on whether it is possible for a UAE judgment to be enforced in that country. In addition to this, under Federal Law No. 10 of 2014 on UAE Civil Procedures Law other requirements need to be complied with as well. These conditions include:
- the judgment must be issued by a competent court in that country;
- the judgment must be final and binding;
- the defendant must have been represented in the proceedings;
- the judgment must not contravene UAE principles of morality and public policy; and
- the judgment must not be inconsistent with a judgment or order already issued by the UAE court.

The UAE courts will not enforce a foreign judgment if they have jurisdiction over the dispute, which will be the case if a judgment is being enforced against a defendant who resides in the UAE. In the event that a foreign judgment cannot be enforced, it may be submitted as evidence before the relevant UAE court.

With respect to foreign arbitral awards, the UAE is a party to international treaties regarding the enforcement of foreign awards such as the New York Convention, the Riyadh Convention and the GCC Treaty. The UAE has also signed bilateral treaties on the same subject. Since the enforcement of a foreign arbitral award is subject to the existence of a treaty, in the absence of one, the award may only be used as evidence. The enforcement of the award is also dependent on whether the award contradicts Islamic shariah law or the UAE Constitution, and on whether or not the defendant was present when the award was issued.

Foreign investment and trade

9 Outline any relevant treaty organisations, economic or monetary unions, or free trade agreements.

As a member of the GCC, the UAE is a party to the GCC common market, and GCC national investors enjoy a special status in the UAE. However, to protect and encourage further foreign investment, the UAE has signed at least, approximately, 50 bilateral investment treaties, although not all of them are currently in force.

Bilateral investment treaties that have come into force include treaties with:
- European states: Austria, the Belgium and Luxembourg Economic Union, Finland, France, Italy, Poland, Portugal, Romania, Serbia, Montenegro, Sweden, Switzerland, and Turkey;
- Asian states: Bangladesh, China, India, Republic of Korea, Malaysia and Tunisia;
- Middle East and African states: Algeria, Egypt, Jordan, Lebanon, Morocco, Syria, and Yemen; and
- Commonwealth Independent States: Azerbaijan, Belarus, Russian Federation, Turkmenistan,and Ukraine.

The UAE has also partnered with the United States to establish an economic policy dialogue to strengthen the economic, trade and commercial relationship between the two countries.

The UAE is a member of the International Centre for the Settlement of Investment Disputes, and the Multilateral Investment Guarantee Agency.

With regards to trade, the UAE is a member of the World Trade Organization and a contracting party to the General Agreement on Tariffs and Trade. Through the UAE's membership of the GCC, it is a party to a free trade agreement with the European Free Trade Association states of Iceland, Norway, Liechtenstein and Switzerland, and has a free trade agreement with Singapore. At the same time, the

GCC is working to agree on free trade agreements with the European Union, Japan, China, India, New Zealand and Australia among others.

Finally, the UAE is also a party to various multilateral agreements regarding investment, and these include the Agreement on Promotion, Protection, and Guarantee of Investments among Member States of the Organization of the Islamic Cooperation, and the Unified Agreement for the Investment of Arab Capital on the Arab States.

10 Are foreign exchange or currency controls in place?

Currently there are no foreign exchange or currency controls in place.

11 Are there restrictions on foreign investment?

Under the CCL, foreign ownership of a company is restricted to 49 per cent since there is a requirement that 51 per cent of the company needs to be owned by a UAE national or a company wholly owned by a UAE national. In the case of a branch office of a foreign company, a UAE agent needs to be appointed for sponsorship. Nonetheless, these restrictions do not apply to companies wholly owned by GCC nationals, or corporate shareholders that are wholly owned by a GCC national.

The aforementioned restrictions do not apply in the UAE free zones. However, businesses established in a free zone may not conduct their business outside the free zone area.

There are also restrictions regarding foreign ownership of real estate, which is only permissible for designated areas in each emirate.

In addition, foreign investors, who seek to distribute their products in the UAE must have an exclusive agent, who needs to be a UAE national or a company wholly owned by a UAE national.

Nevertheless, restrictions on foreign investment can be expected to become less stringent as a result of the proposed new UAE investment law.

12 Are there grants, incentives or tax reliefs for foreign investors or businesses?

One of the most attractive features of the UAE for foreign investment is that it is largely a tax-free jurisdiction. Currently, there are no federal laws on corporate income tax, however there are tax decrees in the separate emirates that limit tax imposition to certain entities such as branches of foreign banks, courier companies, insurance companies and oil companies. In addition, on 1 January 2018, the UAE government introduced value added tax (VAT) at a rate of 5 per cent under Federal Law No. 7 of 2017 on Tax Procedures.

In respect of onshore incentives, the Dubai Department of Economic Development has introduced an online service for 'instant licensing', which can issue an onshore commercial licence within five minutes. The aim of the service is to simplify a lengthy and sometimes cumbersome process and thereby incentivise individuals and corporations to conduct their business onshore. However, as this is a new development, the service is currently only available for 'General Trading' licences for limited liability companies; more business activities and corporate structures will be added over time.

Another new onshore offering is Dubai's Business Incubator Licence for small and medium-sized enterprises (SMES); this new type of licence allows 100 per cent onshore ownership of a business, which is based on a novel idea and has been approved as a feasible venture by a special committee of the Dubai DED. The initiative provides an exception to the foreign ownership restriction outlined in question 11.

The various free zones across the UAE are another feature that draws foreign investment. These free zones allow 100 per cent foreign ownership of a company, and full entitlement to company profits following the filing of VAT returns, if applicable. There are also no customs levied on imports in the free zone. However, businesses incorporated in the free zone cannot operate outside the free zone area, as foreign ownership restrictions, and different onshore laws apply.

13 What are the main taxes that apply to cross-border or foreign-owned business and investors?

There is no particular tax levied on solely foreign-owned businesses except for branches of foreign banks. The amount of tax depends on the emirate in which the bank is situated since there is no federal law on tax, and on the income of the foreign bank.

Oil companies must pay royalties on total revenues, and income tax on net profits after depreciation, as stipulated by the emirate's government. Nonetheless, oil companies are usually owned by state-owned entities and in the case of a consortium of companies, foreign companies will only constitute minority shareholders.

In relation to customs duties, the UAE levies a 5 per cent customs tariff on all goods imported from outside the GCC customs union.

As of 1 January 2018, UAE has implemented VAT at a rate of 5 per cent subject to certain exemptions. Businesses that have taxable supplies and imports that exceed 375,000 dirhams per annum are obliged to register and file their VAT returns with the Federal Tax Authority, whereas it is optional for businesses whose taxable supplies and imports exceed 187,500 dirhams to register. Under the law, a business has to pay the government the tax it collects from its customers and will receive a refund for the tax that it has paid to its suppliers.

Finally, although not taxes, there can be significant costs in registering a company, obtaining and renewing a business licence, and incurring fees for the local sponsorship agent of a branch office.

Regulation

14 Which industry sectors are regulated or controlled by the government?

Banking

As a result of the governance of the UAE Central Bank, the UAE banking sector has remained resilient when there were both regional and global challenges. The responsibilities of the Central Bank include issuing currency, advising the government on monetary issues, acting as a bank for other banks and the government, and formulating and overseeing the implementation of banking policies. The Central Bank ensures compliance with banking laws and supervises other banks by requiring periodic reports. It may also inspect records and accounts of banks at its discretion, and can appoint administrators or representatives to manage a bank.

Securities

The UAE has led the development of capital markets in the region owing to its lower systemic and regulatory risks. This is an industry that necessitates regulation to draw investments, and the Securities and Commodities Authority (SCA) plays a significant role in trying to create a regulatory framework equivalent to its international counterparts.

The SCA has wide powers to regulate the securities markets, which includes establishing controls and producing frameworks pertaining to licensing and membership of the market, listing of securities, disclosure and transparency requirements, and arbitration in respect of disputes resulting from negotiation of securities. Among other responsibilities, the SCA is also in charge of communication with international markets to exchange information and expertise, and join relevant organisations and associations.

Media

The UAE allows media outlets to establish themselves onshore or in the various media free zones across the emirates. Regardless of where media companies operate, the National Media Council (NMC) is the federal regulator responsible for publishing licences and issuing press credentials to editors; although, there may be additional regulatory authorities for free zones. The role of the NMC also includes ensuring the implementation of media laws, and compliance with regulations, including content regulations that prohibit content criticising the UAE government, its rulers and content that can damage the UAE economy among other prohibitions. Accordingly, the NMC may cancel licences for violations of the content regulations.

Petroleum

Under the UAE Constitution, each emirate has complete ownership and control of the natural resources in its territory. Consequently, each emirate has its own regulatory body and policies regarding the industry. In relation to oil, Abu Dhabi owns approximately 94 per cent of the national oil reserves, followed by Dubai with approximately 4 per cent and the remainder is split between the other emirates.

Ownership of the natural resources is either through state-owned companies, or a consortium of companies with foreign companies as minority shareholders and a state-owned company as the majority shareholder.

For Abu Dhabi, the Supreme Petroleum Council establishes policies and ensures that they are implemented. It also forms the board of directors of the Abu Dhabi National Oil Company, which is state-owned, and is the dominant company in the sector.

In Dubai, the Dubai Supreme Council of Energy develops policies, and coordinates with the Department of Petroleum Affairs to administer the exploration and production of oil and gas. The council also has representatives from the Emirates National Oil Company, which is owned by the Dubai government.

Water and electricity

Although there are federal laws governing electricity and water supply, they are limited. Each emirate therefore has the responsibility to regulate the industry based on its own economic agenda.

Private companies may only generate electricity since only state-owned authorities may transmit and distribute it. Therefore, the supply of electricity and water is carried out by state-owned entities such as Dubai Electricity and Water Authority, and the Abu Dhabi Electricity and Water Authority.

These two emirates also have Regulation and Supervision Bureaus, which issue licences and regulations, and monitor compliance with policies.

Telecommunication

The Telecommunications Regulatory Authority (TRA) is responsible for the oversight of all telecommunications and information technology industries. The telecommunications industry operates as a duopoly between Etisalat and Du as sole service providers in which the government is a majority shareholder.

The TRA has a detailed regulatory framework covering areas such as competition rules, price control, allocation of scarce resources, consumer protection requirements and reporting obligations.

Healthcare

The Ministry of Health, and the health authorities of each emirate administer the public healthcare services in the UAE. In general, these authorities are responsible for licensing companies and individuals providing healthcare services, improving healthcare information systems and standards, developing a comprehensive healthcare insurance and funding policy, building and managing healthcare facilities, and regulating areas of healthcare, including the practice of medicine, dentistry, nursing and pharmaceuticals.

The Ministry of Health along with the Medicines Pricing and Companies Committee regulate prices of imported and locally manufactured medicines, and they tend to favour lower prices to ensure affordability for patients.

Insurance

To develop insurance services and promote the insurance industry, the UAE established the Insurance Authority. The Authority grants licences and may issue regulations that facilitate insurance providers to comply with insurance laws such as Federal Law No. 6 of 2007 on the Establishment of the Insurance Authority and Regulation of Insurance Operations. It may also de-register companies for breaches of the regulations.

15 Who are the key industry regulators, and what are their powers?

Refer to question 14.

16 What are the other main enforcement authorities relevant to businesses?

- The Federal Tax Authority manages and collects federal taxes and any related fines. It is also responsible for distributing the tax-generated revenues and applying tax-related procedures.
- The Dubai Financial Services Authority (DFSA) is the financial services regulatory authority of the DIFC. It authorises and registers institutions, and individuals who wish to conduct financial services in or from the DIFC. It also supervises regulated parties to ensure compliance with DFSA laws, regulations and rules, and enforces DFSA administered legislation.
- The Financial Services Regulatory Authority has similar functions to the DFSA, though only in relation to the regulation of the ADGM.
- The DED makes economic policies and supports the growth of strategic sectors. The Dubai DED also has a Commercial Protection Division that deals with intellectual property matters including complaints of trademark infringement, checking violations of laws and executing administrative procedures of confiscation.
- The Competition Regulation Committee, or Competition Department of the Ministry of Economy, investigates breaches of the competition law, and is also in charge of granting approvals for deals that create or enhance dominant positions (see question 25).
- The Federal Customs Authority sets the policy for customs affairs, makes regulations and monitors its implementation. It also manages customs departments in ports across the UAE, and coordinates the necessary actions to monitor, ban and inspect goods being imported, exported or that are in transit.
- The different free zones have their own regulatory authorities that issue regulations and policy for businesses operating inside its area.

17 On which areas have regulators particularly focused their recent enforcement activities?

Although all regulated sectors are monitored by their respective regulatory authorities, and regulations and policies are updated, the most recent enforcement activities focus on matters relating to e-commerce and the rising use of social media influencers to promote brands and businesses.

The National Media Council, which is the federal regulator of the media industry, has launched an electronic media regulation system under which social media influencers need to register and obtain licences to continue their promotional and advertising activities. The new regulations also apply to websites and electronic publishing outlets, and require registration and licensing requirements to be completed by the end of June 2018 as penalties, which include fines and closure of websites or accounts, may be imposed.

There have also been recent enforcement activities by the DFSA as various decisions have been issued against senior officers of DFSA regulated firms for contravention of DFSA legislation. The recent penalties imposed by the DFSA include public censure of a finance officer for his contribution in the various breaches of DFSA laws and regulations by his regulated firm, and the imposition of a fine and a restriction on performing any function relating to the provision of financial services in or from the DIFC on a senior executive officer of another DFSA regulated firm. The DFSA is a regulatory authority that expects strict compliance with its regulations, and therefore, regularly exercises its enforcement powers.

Compliance

18 What are the principal bribery, corruption and money laundering concerns for businesses?

Under the Penal Code, bribery is a criminal offence that can be committed by public officials and private individuals.

In the public sector, the parties subject to the Penal Code are those who accept, offer or facilitate a bribe, irrespective of whether they have any direct gain from such an action.

The offence involves committing, or omitting to do, an act in violation of official duties in exchange for a benefit. The person who offers the bribe will also be committing a criminal offence, regardless of whether or not the intended recipient accepts the bribe. Furthermore, any person that facilitates the bribe will also be guilty.

Similarly in the private sector, any person that accepts the bribe for himself or on behalf of another person would be guilty. However, in this case, the recipient includes any member of the board of directors of a company, private institution, cooperative society or a society of a public utility, and any manager or employee in these entities. There is currently no provision in the Penal Code which makes it a criminal offence to act as a facilitator for bribes offered in the private sector.

The Penal Code applies to all crimes committed in the UAE, including the free zones.

In addition, other laws such as Dubai Law No. 37 of 2009 on the Procedures for the Recovery of Illegally Obtained Public and Private Funds (Financial Fraud Law) also directly govern bribery.

Contravention of these laws will lead to sanctions for individuals and companies, and therefore it should be ensured that businesses have effective internal policies in order to avoid breaching the law.

Anti-money laundering laws

The UAE has enacted various regulations to maintain a strong anti-money laundering system. Federal Law No. 4 of 2002 regarding Criminalisation of Money Laundering is applicable to a wide range of entities and individuals such as banks, finance companies, other financial institutions operating in the UAE, real estate brokers, lawyers, private and public notaries, and accountants.

Examples of precautionary measures provided by Regulation No. 24/2000 (issued by UAE Central Bank) include:

- maintaining proper systems to identify clients and their beneficial ownership;
- carrying out customer due diligence (CDD) in accordance with the minimum requirements applicable for individuals and corporate entities;
- keeping all CDD information up to date;
- keeping records for at least five years;
- reporting suspicious transactions;
- appointing a controller who is able to operate independently;
- running appropriate training programmes and workshops; and
- complying with confidentiality requirements, including the prohibition on tipping off the customer.

Non-compliance with this regime will result in businesses facing sanctions.

19 What are the main data protection and privacy risks for businesses?

There are no specific national laws governing data protection and privacy. However, the Federal Constitution recognises an individual's right to privacy, and sector-specific laws deal with data protection, for instance, banking, healthcare and telecommunication laws.

Nevertheless, there are free zones such as the DIFC and Dubai Healthcare City that have comprehensive data protection regimes modelled on the European Union Data Protection Directive (Directive 95/46/EC). These include restrictions on transferring personal data to recipients located in jurisdictions outside the free zone without the individual's consent.

20 What are the main anti-fraud and financial statements duties?

The Financial Fraud Law makes two acts punishable:

- receipt of illicit monies (monies that are earned directly or indirectly from commitment of a punishable crime); and
- receipt of public funds (funds that are owned by the government, government authorities, or companies owned by the government).

The penalty imposed for conviction of fraud is the imprisonment of the fraudster for up to 20 years depending on the amount of illegitimate funds obtained.

The CCL requires every company to keep accurate accounting records showing its transactions. The accounting books should be kept at the head office for at least five years from the end of the financial year of the company.

Every joint-stock company or limited liability company (LLC) must have one or more auditors to audit the accounts of the company every year.

Furthermore, the company should apply the accounting standard stipulated by the relevant regulatory authority when preparing its accounts.

21 What are the main competition rules companies must comply with?

The competition rules that companies need to comply with are set out in Federal Law No. 4 of 2012 on the Regulation of Competition (Competition Law). The law identifies anticompetitive practices through restrictive agreements and abuse of a dominant position.

Restrictive agreements are prohibited and the Competition Law includes a non-exhaustive list of examples; these agreements have the effect or aim of:

- price fixing;
- stipulating the conditions for sale of goods or supply of services;
- colluding in bids, supply offers and practices;
- market sharing or division, and allocation; and
- restricting the free flow of goods and services resulting in artificial prices.

With regards to abuse of a dominant position, the law states that a business that has a dominant position in a market sector is prohibited from carrying out actions that can be seen as abusing its position to prejudice, limit or prevent competition in the relevant market.

Some of the prohibited actions include:

- discriminating among clients who have entered into the same transaction in relation to the price or conditions of sale;
- selling goods at a price lower than its actual cost to prevent new market entrants from entering the market or forcing them to leave the market due to losses suffered;
- increasing or decreasing the supply of goods to set an artificial price;
- obliging a customer or client not to deal with a competitor;
- deliberately publishing incorrect information about prices or goods; or
- suspending the conclusion of a contract on the condition of accepting obligations relating to goods or services that are unrelated to the original proposed transaction.

Companies also need to be aware of proposed 'economic concentrations' that might enhance or create a dominant position in the relevant market. This refers to the merger control regime, which is outlined in question 25.

Companies should ensure compliance with the Competition Law as harsh penalties can be applied. The law allows for fines starting from 500,000 dirhams to 5 million dirhams. Upon conviction, a court may even order a business to be closed for at least three months but not exceeding six months. The penalties for non-compliance in relation to the regime regarding economic concentrations include a fine in the range of 2 per cent to 5 per cent of the offending party's total UAE revenue in the preceding financial year.

Companies exempt from the application of the Competition Law are set out in question 25.

22 Outline the corporate governance regime.

The applicable corporate governance regime depends on the corporate structure of a company and the nature of the business activity. Nevertheless, the basic rules of corporate governance, such as the powers and rights of the shareholders, the duties and liabilities of directors and managers, and the process of convening meetings for the management and the shareholders, are set out in the CCL.

The Minister of Economy is responsible for issuing the general framework for regulating governance in private joint stock companies where there are more than 75 shareholders. In contrast, companies listed either on the Dubai Financial Market or the Abu Dhabi Securities Exchange must comply with corporate governance regulations issued by the SCA. The SCA corporate governance code aims to enhance the way public companies are managed in order to provide investor confidence in the UAE capital markets. Features of the code include requirements to keep various registers including conflicts of interests and insiders, to have internal controls for risk management and compliance with laws and regulations, disclosure requirements and clear details regarding notice to call a general meeting.

Moreover, there are other specific corporate governance regimes in place such as the corporate governance regulations for companies listed on Nasdaq Dubai, which are issued by the DFSA, and the Central Bank issued guidelines and binding regulations for banks and regulated institutions.

The corporate governance rules are developed to reflect international standards, promote transparency and encourage investment in the UAE.

23 Can business entities incur criminal liability? What are the sanctions for businesses, related companies and their directors and officers for wrongdoing and compliance breaches?

Article 65 of the Penal Code states that juridical persons, with the exception of government departments and agencies, are responsible for any criminal acts committed on their behalf by their representative, director or agent. Where the penalty for the offence committed is non-financial, a maximum fine of 50,000 dirhams could be imposed on the corporate entity. Nevertheless, this does not represent the maximum fine that may be imposed where there is a financial penalty; the amount will vary depending on the criminal offence committed.

Corporate entities may incur criminal liability for a wide range of crimes including money laundering, forgery, bribery and corruption, cybercrimes, violation of safety regulations that causes death of an employee or a member of the public, and fraud.

In general, the sanctions that may be imposed on businesses, related companies and their directors and officers depend on the wrongdoing and breaches committed. For instance, the Bankruptcy Law prescribes imprisonment of up to two years for a director, manager or officer for offences of sales at an undervalue, conducting activities which are not core to the licensed activity of the company, and preferences towards certain creditors.

The CCL imposes a minimum fine of 50,000 dirhams, imprisonment of up six months, or both, for a director who uses and discloses company secrets. Imprisonment penalties are also imposed for providing misleading information to competent authorities, concealing the true financial position of the company and distributing profits in violation of the law. Sanctions may also be in the form of daily penalties, for example the failure to amend the memorandum and articles of association in compliance with the law could result in the daily fine of 2,000 dirhams. Finally, there are also offences under the CCL that can result in a maximum fine of 10 million dirhams.

Business operations

24 What types of business entity are most commonly used by foreign investors and why? What are the main requirements for their establishment and operation?

For a foreign investor to conduct business, they can establish a formal legal presence in the UAE through any of the following means:

- incorporating a local entity;
- registering a branch or representative office of a foreign company;
- establishing a free zone entity; or
- entering into a commercial agency relationship.

Incorporating a local entity

There are five forms of companies permitted by the CCL, but the most commonly used by foreign investors include the following.

LLC

This is the most widely used form of a company by foreign investors in the UAE. An LLC is a private company and its shares cannot be offered to the public. The number of shareholders can range from two to 50, and shareholders also have the benefit of limited liability. The number of directors of an LLC must be between one and five.

An LLC must have at least 51 per cent of its shares held by UAE nationals. However, an LLC may have 100 per cent of its share capital owned by GCC nationals, but if any non-GCC national becomes a shareholder in the LLC, the minimum 51 per cent UAE national ownership rule must be complied with.

Public joint-stock company

This type of company requires at least 10 founding members, unless founded by the UAE federal government or the government of one of the seven emirates in the UAE. It has a minimum capital requirement of 10 million dirhams. All of the company's shares must have equal rights and must be subject to equal obligations. Moreover, with the exception of shares in a public joint-stock company that are wholly owned by the UAE federal government or the government of one of the emirates, the shares must be listed on a securities market in the UAE.

There is a requirement to have between three and 15 directors that are elected for a term of three years. The chairman and majority of the board of directors must be UAE nationals.

Furthermore, like LLCs, 51 per cent of the share capital of public joint-stock companies must at all times be held by UAE nationals. GCC ownership has been recently treated to satisfy this UAE ownership requirement.

Private joint-stock company

This type of company requirements at least three founding members and a minimum initial capital of 2 million dirhams. Shares in a private joint-stock company cannot be offered to the public.

In all other respects, the provisions of the CCL that apply to public joint-stock company are also applicable to private joint-stock company. Also, it is possible for a private joint-stock company to be converted into a public joint stock company.

Registering a branch or representative office of a foreign company

The CCL allows foreign companies to establish wholly owned branches or representative offices. The scope of activities that may be carried out is limited to those activities permitted by the Ministry of Economy.

A branch or representative office does not have separate legal identity from its parent company. This means that the parent company will not be able to escape the liabilities of a branch or representative office.

To register a branch, it is still necessary to appoint a service agent, who would have to be a UAE national or a company that is wholly owned by a UAE national. The service agent's role is set out under a service agency agreement, and is usually limited to administrative matters such as obtaining employee visas, office space and permits for employees.

Establishing a free zone entity

Free zones allow up to 100 per cent foreign ownership, and companies are subject to the rules and regulations relevant to the particular free zone. Companies may only operate within the free zone boundaries and are generally limited to carrying out activities that are listed on their licence. If a free zone company chooses to operate outside the free zone, it must comply with the CCL.

Entering into a commercial agency relationship

Foreign companies can enter into an arrangement whereby the foreign company is represented by a UAE agent to distribute, sell, offer or provide goods or services within the UAE for a commission or profit.

The agent must either be a UAE national or a company that is wholly owned by UAE nationals.

The agreement must be registered with the Ministry of Economy. Importantly, the agent is entitled to a commission irrespective of whether any sales are made by or through the agent, unless it is agreed otherwise in writing.

25 Describe the M&A market and the merger control regime. How easy is it to complete deals in your jurisdiction?

The UAE is one of the leading M&A markets in the region because of its economic stability and strategic location. More specifically, in 2016, the UAE was one of the three leading markets for M&A in the Middle East and North Africa region and in the fourth quarter of 2017, the UAE was the top target country for inbound deals in the Middle East.

In relation to the merger control regime, the Competition Law mandates obtaining approval for a merger or acquisition, whether by means of shares or assets, which would result in a market share exceeding 40 per cent of the relevant market. Furthermore, there is a prerequisite that the resulting economic concentration has to affect the level of competition in the relevant market, or create or enhance a dominant market position. This threshold applies to domestic and international mergers and acquisitions in the UAE.

The application for approval needs to be submitted at least 30 days prior to completing the transaction. The Competition Committee has 90 days to review the deal and issue a decision, although the period can be extended by an additional 45 days. The Committee may:

- approve the transaction if the positive effects of the merger outweigh the negative or if competition is not adversely affected in the relevant market;

- approve the transaction subject to the fulfilment of certain conditions; or
- reject the proposed merger.

Exemptions from the merger control regime apply to SMEs, and entities owned or controlled by the government. In addition, certain regulated sectors such as the telecommunication, oil and gas, water and electricity, pharmaceuticals, postal services, financial services, transport, and waste disposal are also exempt.

Although the main Competition Law came into force in 2013 and the implementing regulations in 2014, the thresholds were only published in 2016. As a result of the piecemeal manner in which the law has come into force, the full effects of the merger control regime are not fully understood. Certainty of the law's application and effects will only emerge as practical and relevant cases emerge.

26 Outline the corporate insolvency regime. Is bankruptcy protection available for corporates?

A new Bankruptcy Law, which modernised and expanded the application of the previous regime, came into force in December 2016. Under the law, creditors or a group of creditors must hold debts of at least 100,000 dirhams and should notify the debtor in writing to discharge the debt. If the debt is not discharged within 30 consecutive business days, the creditors can proceed with filing insolvency proceedings against the debtor.

The law outlines two separate tests for insolvency:

- the cash flow test, where the business is in a state of 'cessation of payments' for 30 continuous days; and
- the balance sheet test, where the business is in a state of 'over-indebtedness' and where the business' assets do not cover its liabilities for a period of 30 continuous days.

Under the Bankruptcy Law, there will be a Financial Restructuring Committee, which will be responsible for maintaining a list of experts in financial reorganisation and bankruptcy, supervising the restructuring process, and finally maintaining a register of insolvencies.

Businesses have the following options.

- Protective composition procedure – This procedure is debtor-led and court-sponsored, and has the aim to help rescue a business in financial difficulty but that is not yet insolvent. It essentially involves the debtor and creditors entering into a voluntary agreement for the creditors to accept a settlement or part payment of the debts. To proceed with protective composition, an application needs to be submitted to the court, and approval from the majority of creditors representing two-thirds of the debt is required. The debtor has three years from the date of obtaining court approval to implement protective composition.
- Insolvency and restructuring – If the debtor becomes insolvent but the court thinks that the business can still be rescued, it may approve a restructuring scheme. This will be similar to the protective composition scheme, including the requirement of approval from creditors representing two-thirds of the debt; however, it will have an implementation period of five years.
- New financing – Following a protective composition or restructuring, the court may allow the debtor to obtain new funding subject to including safeguards for existing secured creditors.
- Insolvency and liquidation – In the event that the protective composition procedure or restructuring scheme is not appropriate, has not been approved or has been terminated, or the debtor is acting in bad faith to evade its financial obligations, the court will order the insolvent winding-up of the company. The claims of secured creditors will rank before ordinary creditors, but certain preferential claims such as judicial fees, unpaid salaries and wages, and amounts due to government bodies will be met first.

There is a wide range of penalties such as a sentence of five years and a fine of 1 million dirhams for a director of a company hiding part of the company's money, or obtaining a scheme of composition or restructuring through fraud. The court may also require the board of directors or managers to contribute payments towards the debt if the company cannot repay at least 20 per cent of its debts, and the responsibility of these individuals in the company's loss is evident.

The DIFC and the ADGM have their own insolvency laws.

Employment

27 How easy is it to enter into and terminate employment contracts?

An employment contract may be for a definite or indefinite term. A definite term cannot exceed four years, however, the contract may be renewed by mutual agreement for an equal or a shorter term. With an indefinite term, the employee will continue to work for the employer from a specific date until employment is terminated by either party after giving prior notice to the other party.

The employment contract should be in written form, and must specify the following:

- the date of its conclusion;
- the date on which the work is to begin;
- the type and place of the work;
- the duration of the contract (if definite); and
- the amount of the wage.

Terminating a contract

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

- by mutual agreement of the parties, provided that the employee's consent is given in writing;
- on expiry of its term, unless it has been expressly or implicitly extended by the provisions of Federal Law No. 8 of 1980 on Regulation of Labour Relations (Labour Law);
- for the convenience of either party to an indefinite term contract, provided that provisions of the Labour Law concerning notice and valid grounds of termination without arbitrariness are complied with.

Provisions relating to notice and valid grounds of termination

Either the employer or the employee may terminate an indefinite term contract for a valid reason by giving the other party a notice in writing at least 30 days prior to termination.

The employees' wages during the notice period should be paid in full for the entire notice period served. If no notice has been given, the person who was responsible to give the notice will have to compensate the other with payment equivalent to the employee's wage in relation to the notice period.

There are specific reasons outlined in article 120 of the Labour Law that allow the employer to terminate the contract without notice. If the employer terminates the contract for any reason other than those outlined in article 120, the employer will be liable to pay compensation to the employee for any damage the latter sustains.

Similarly, article 121 of the Labour Law outlines the reasons for which the employee is allowed to terminate the contract without notice. If the employee terminates the contract for reasons other than those specified in article 121, he or she will be liable to compensate the employer for any loss resulting from the termination.

Arbitrary termination

An employee is deemed to be arbitrarily terminated by the employer if the reason for termination is irrelevant to the work. If the employee is arbitrarily terminated, the competent court may order the employer to pay compensation, which would be assessed by the court.

In respect of the DIFC, employment relations are governed by the DIFC's own employment law and in case of ADGM, there are separate employment regulations to be followed.

28 What are the key rights of local employees?

In light of the UAE Labour Law and Federal Law No. 7 of 1999 Concerning the Issuance of the Law on Pensions and Social Security (as amended by Federal Law No. 7 of 2007), the key right of the local employees is their right to be registered for pension schemes irrespective of whether they are employed in the public sector or private sector. This pension requirement is not applicable to expatriate workers.

The UAE government has introduced the Emiratisation campaign which specifically seeks to increase the number of Emiratis working in the public and private sector. There is a quota system whereby companies with more than 100 employees are obliged to recruit a stipulated number of UAE nationals, or specific circumstances are set out where companies have to hire Emiratis for a certain job, for example, a construction facility that has 500 or more workers must appoint at least one Emirati occupational health and safety officer.

In contrast, foreign nationals can only be employed once approval from the Ministry of Labour is obtained (if applicable) and other necessary requirements, such as those highlighted in question 29, are fulfilled.

29 What are the main restrictions on engaging foreign employees?

As stated above, the Labour Law and certain ministerial decisions expressly stipulate that UAE nationals have priority to work in the UAE. If there is no local employee to fill a position, preference is then required to be given to nationals of Arab countries, and after that to nationals of other countries.

Foreigners can be employed in the private sector subject to obtaining approval from the Ministry of Labour, and obtaining a residence visa and labour card. In addition to this, foreign employees need to have the professional qualifications required by the state. Most employee sponsored residence visas are only valid for two years, after which they have to be renewed in order for the employee to stay in the country. There are also limits on the number of foreign employees that can be employed by a business, however the limit usually depends on the business activity and size of the business.

Lastly, it is important to know that deliberately employing a worker who is not permitted to work in the UAE is punishable by a fine or prison term.

30 What are the other key employment law factors that foreign counsel, investors and businesses should be aware of?

There are certain benefits that employees have and which cannot be waived by the employment contract. These include:

- protection from arbitrary dismissal;
- assurance that salary will be paid monthly;
- termination benefits;
- an administrative and judicial grievance procedure; and
- health insurance provided by employers in Dubai and Abu Dhabi.

An employer cannot dismiss a UAE national employee without the approval of the Minister of Labour.

Employees with a specified term contract may be dismissed for one of the acts of misconduct set out in the Labour Law, whereas employees with unspecified term contracts may be dismissed for a legitimate reason and with a minimum notice of 30 days.

Employment disputes cannot be settled through arbitration and need to be brought to the civil courts under the Labour Law. The limitation period for bringing employment claims is one year.

Employees are not automatically transferred when a business is transferred. There are no provisions that provide protection for dismissal for this reason, and the normal termination provisions under the Labour Law apply.

It is also crucial to note that the Labour Law states that the employer can be vicariously liable for the acts of its employees carried out in the course of their employment.

Intellectual property

31 Describe the intellectual property environment. How effective is enforcement and what are the key current issues?

The UAE recognises the importance of intellectual property rights in fostering innovation, research and development, while securing consumer confidence. The UAE has a range of laws providing protection for intellectual property, and remedies for infringement of relating rights.

Federal Law No. 17 of 2002, as amended by Federal Law No. 31 of 2006 (Patents Law), protects patents. In addition, as a result of the UAE's membership of the GCC, if an application for a GCC patent is made then protection can be granted in the six member countries. However, the effectiveness of enforcement of a GCC patent in the UAE is unclear.

Federal Law No. 7 of 2002 on Copyrights and Related Rights protects a range of works. In the case of infringement, it is possible to request the court for an injunction to stop the use of the work, seize copies or seize income generated from the use.

Federal Law No. 37, as amended by Federal Laws No. 19 of 2000 and No. 8 of 2002 (Trademarks Law) protects trademarks and trade names, however the trademark registration process can be quite lengthy. It is also important to note that although Dubai customs has an efficient system for seizing goods on the grounds of infringement, other emirates are not as proficient.

In the case of confidential information, there are a number of national laws that protect trade secrets and confidential information. These laws include the Patents Law, the Penal Code, Federal Law No. 5 of 1985 on the Civil Transactions Law and the CCL. In the absence of a uniform law on this area, there is uncertainty regarding protection of these rights. Nevertheless, protection provided by a contract can be effectively enforced.

In general, remedies for enforcement of the rights outlined above include damages, fines and imprisonment.

On an international front, the UAE is a member of international treaties and organisations such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property, and the Berne Convention for the Protection of Literary and Artistic Works, among others. Consequently, international intellectual property rights are also recognised and respected in the UAE.

In line with UAE's Vision 2021 to encourage innovation and create an attractive economic environment, the Ministry of Economy has signed a memorandum of understanding with the Korean Intellectual Property Office to establish the International Centre of Patent Registration in the UAE. This facility is expected to include an international team of patent experts for patent evaluation, conduct research studies on areas of intellectual property and train professionals in the field.

Legal reform and policy

32 What are the key issues in legal reform, government policy and the economy?

The UAE government has introduced VAT from 1 January 2018 at the rate of 5 per cent, however, there is currently no intention to impose corporate tax and income tax.

This decision is a result of recommendations from organisations and economists, such as the International Monetary Fund, to introduce tax in GCC countries as a means of increasing government revenues. Moreover, the drop in government revenues owing to the fall in oil prices from approximately US$115 per barrel in mid-2014 to under US$30 per barrel in January 2016 further supported this decision. The tax revenue in the first year is forecasted to be approximately 12 billion dirhams, which will rise to approximately between 18 billion and 20 billion dirhams in the second year.

Furthermore, Dubai has been voted to host the World Expo 2020. It has been predicted that the government will spend around US$7 billion on infrastructure, which will further boost tourism and other parts of the economy. The forecast is that Dubai will have almost 25 million visitors. It has also been predicted that the Expo will create approximately 277,000 jobs, which equates to around 20 per cent of the current workforce.

33 Are there any significant legal developments ongoing or pending? What are their effects on the business environment?

The most significant legal development at the moment seems to be the introduction of VAT in the UAE. This new source of income for the government will be used to maintain the provision of high-quality public services and assist the government in reducing its dependence on the oil and hydrocarbon industry.

In an environment, where many businesses have no previous experience with reporting and paying taxes, understanding the rules applicable to VAT and amending internal policies and systems to comply with the requirements are proving to be challenging for many companies in the UAE. However, in response to this struggle, the Federal Tax Authority has been showing leniency with waiving fines for late registration and has extended deadlines for filing tax returns.

Moreover, there has been increasing interest in the financial – technology (FinTech) industry as efforts are being made to promote the use of technology in providing financial services. Various regulators have been issuing new regulations and introducing initiatives to ensure consumer protection and financial stability.

The UAE Central Bank introduced the Regulatory Framework for Stored Values and Electronic Payment Systems in order to regulate digital payment mechanisms. Non-compliance with the requirements of the Regulation can result in the imposition of fines or the imposition of specific orders issued by the Central Bank.

The DFSA launched an Innovation Testing Licence for FinTech firms who are seeking to develop and test their concepts. Operating under the FinTech Licence, provides an exemption to FinTech firms from having to comply with all the applicable DFSA rules and regulations. In addition, the DFSA has also introduced new crowdfunding regulations owing to the growing significance of crowdfunding for SMEs and to drive growth in the FinTech industry. The FSRA, the regulatory authority of the ADGM has introduced regulations similar to those introduced by the DFSA.

Ultimately, the UAE is also constantly working on attracting foreign investment by changing and enacting new legislation and introducing new initiatives. The UAE is keen to increase its business competitiveness and is focused on creating a hub for businesses to start-up and expand. In addition to the FinTech developments, some examples of progress in this direction include the Bankruptcy Law, the CCL, the anticipated new investment law, the 'Instant Licensing' service and most recently, Dubai's Business Incubator Licence.

Resources and references

34 Please cite helpful references, for example sources of law, websites of major regulators and government agencies.

- http://government.ae/en/economy
- https://www.difc.ae/
- https://www.dfsa.ae/
- https://www.adgm.com/
- http://www.sca.gov.ae/english/Pages/Home.aspx
- http://www.elaws.gov.ae/DefaultEn.aspx
- http://www.economy.gov.ae/english/Pages/default.aspx.

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Author

Hasan Anwar Rizvi

Hasan Rizvi is the Middle East Managing Partner of RIAA Barker Gillette. He specialises in corporate, commercial and private equity. Hasan's areas of practice include corporate M&A, corporate finance and dispute resolution. He has acted on a number of high-profile transactions across the Middle East, Asia and Africa regions in diverse industries and sectors.

Hasan's corporate expertise includes working with multinational and domestic corporations, private equity firms and family business groups on their operations and management, corporate structures, mergers, acquisitions and investments. He frequently acts for fund sponsors, investors and asset management firms on fund formation, investment structuring and regulatory compliance.

Hasan has extensively worked on infrastructure and energy projects, equity and debt capital markets transactions, and corporate restructurings.

His private client expertise covers strategic advisory services to high net worth individuals and family groups in relation to family offices, private investments and holding structures.

Prior to establishing RIAA Barker Gillette (Middle East) LLP, Hasan achieved partner status at various other international law firms. He has been based in the Middle East for more than 15 years.

hasan.rizvi@riaabg.com

Firm

RIAA Barker Gillette

Dubai International Financial Centre
Gate Village Building 2
Level 3, Suite 301
PO Box 507014, Dubai
United Arab Emirates

Tel: +971 4 4019410
www.riaabarkergillette.com/uae/

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