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Legislative framework governing corporate finance

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Corporate finance and related activities have been limited in the UAE by foreign ownership restrictions, combined with a relatively under-developed corporate finance regime and infrastructure. Recent initiatives to encourage foreign investment, listing of public companies and capital market development, are designed to boost the UAE economy and may precipitate increased corporate finance activity.

Companies regime

Private transactions

A foreigner can purchase shares in a private limited liability company (LLC) incorporated under the UAE Commercial Companies Law 1984 (the CCL). However, at least 51% must remain UAE-owned.

Public transactions

Public joint-stock companies incorporated under the CCL (PJSCs) are the only UAE entities that may offer securities to the public and whose instruments are capable of being listed on an exchange in the UAE.

PJSCs are governed principally by the CCL. As with LLCs, at least 51% of a PJSC's shares must remain UAE-owned. Further restrictions on foreign ownership may be imposed by a PJSC's constitution. Only a very limited number of listed PJSCs permit share ownership and trading by foreigners from outside the Gulf Cooperation Council states.

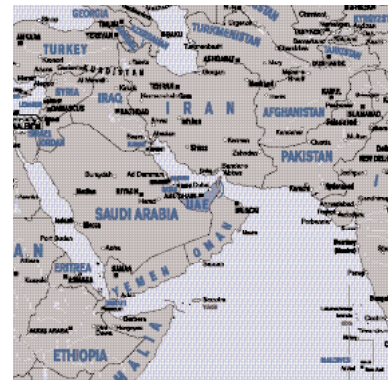
Holding companies

Under the CCL it has not generally been possible to establish non-trading holding companies in the UAE. Although it is understood that regulations are under consideration to enable the listing of certain Free Zone companies, there is no formal mechanism under UAE law by which securities may be held in a UAE non-trading holding company, which is itself capable of offering its shares to the public and listing in the UAE.

Lack of takeover code

To date there have been no significant takeovers, mergers or acquisitions of listed PJSCs in the UAE.

The UAE has no specific takeover code or antitrust law regulating takeovers by UAE nationals or foreigners acting in concert with nationals (within the 51% foreign ownership restriction imposed by the CCL).



However, under disclosure and transparency regulations issued pursuant to the Securities Exchange Law 2000, stock exchanges may block acquisitions of 20% or more of a listed PJSC's shares, if this is in the national interest.

The CCL also provides broad guidelines relating to amalgamations, whereby companies may be dissolved and merged into an existing or new entity.

While we have not commented generally on Free Zone entities in this article, it may be noted that regulations that apply to Free Zone companies also contain certain merger provisions. Specific takeover provisions also apply to offshore companies established in Jebel Ali Free Zone and are also contained in a draft companies law, intended to apply to companies established in the Dubai International Financial Centre.

Listing regime

The CCL (together with related resolutions) provides subscription and prospectus requirements in relation to the public offering of shares and debentures (that is, debt instruments), as well as certain ongoing requirements. The Federal Banking Law 1980 and the Federal Islamic Bank and Financial Institution Law 1985, together with related resolutions, govern banking and financial institutions and activities in the UAE.

Otherwise, the listing regime in the UAE is governed principally by the Securities Exchange Law 2000 together with related resolutions, and is regulated by the Emirates Securities and Commodities Authority (the ESCA), which imposes rules upon entities and securities that may be listed. Further rules are imposed by the individual exchanges upon which securities are listed.

Although the Securities Exchange Law 2000 envisages a number of interlinked stock exchanges, the Abu-Dhabi Securities Market and the Dubai Financial Market are the only such UAE exchanges. As with regulations imposed by the ESCA, exchanges have rules that differentiate between domestic and foreign issuers.

Recent developments

Dubai International Financial Centre

Dubai Law No 3 of 2002 has recently established the Dubai International Financial Centre (the DIFC). The DIFC is designed to attract financial institutions and related service providers to it, with the intention of establishing Dubai as a regional hub for capital, investment and financial services, together with the establishment of a proposed new regional stock exchange likely to be called the Dubai Regional Exchange.

DIFC entities are likely to enjoy tax relief guarantees and other benefits similar to those offered in other UAE Free Zones, once operating licences are issued. It is anticipated that DIFC companies may be 100% foreign owned and that DIFC entities will be licensed and regulated by the Dubai Financial Services Authority.

The DIFC has published draft laws relating not only to financial regulation but also to company, contract, security, insolvency, personal property and other areas. DIFC licensees will not generally be subject to local or federal law where DIFC has made its

own laws, although federal law will continue to limit some activities (for example, deposit-taking and insurance will remain subject to UAE Central Bank jurisdiction).

The DIFC's draft companies law provides for the establishment of: (i) a branch of a foreign company; (ii) single or multi-shareholder limited liability companies; and (iii) protected cell companies (PCCs). PCCs will have a single legal personality but will be comprised of one or more cells, segregated for the protection of individual cell assets, and with shares that may be issued in relation to any cell. PCCs are aimed particularly at the establishment of mutual funds and insurance companies.

Offshore companies

Recent (2003) Jebel Ali Free Zone regulations enable offshore companies to be established with at least two directors, one secretary and a single class of share.

All offshore companies are required to maintain a registered office in the Jebel Ali Free Zone (if maintained by the company itself) or at an office maintained by an approved agent (Registered Agent). Every offshore company must retain a Registered Agent.

An offshore company may in general conduct any lawful business (but not banking or insurance) other than with persons resident in the UAE. Certain property purchases and other activities are not regarded as prohibited onshore activities.

Money laundering

Federal Law No 4 of 2002 regarding the criminalization of money laundering has been enacted and is intended to send a clear signal to the international community that the UAE is determined, as a signatory of the 1988 UN Convention (the Vienna Convention), to uphold and comply with the Vienna Convention as well as other more recent international initiatives to combat the funding of terrorism.

Banking and finance

Recommended firms

Allen & Overy

Clifford Chance

Denton Wilde Sapte

Shearman & Sterling

Simmons & Simmons

Afridi & Angell

Al Tamimi & Company

Hadef Al Dhahiri & Associates

Allen & Overy

With three partners and five associates focused on finance work, Allen & Overy sits comfortably in the top tier. It is perceived by competitors to be extremely proactive about winning roles on the top-level transactions, and remains a real favourite with clients. Bimal Desai is considered a serious force in the market.

In the banking sector, the year's highlights include: advising SCB, Commerzbank, Citibank and Arab Banking Corp on \$275 million-worth of term loan facilities for Union National Bank; acting for Kreditanstalt fur Wiederaufbau as arrangers of the financing of a urea and ammonia fertilizer plant in Sohar, Oman; advising the National Central Cooling Company on a Dh700 million (\$190.6 million) term loan facility; and representing HSBC Bank and WestLB on a \$125 million term loan facility for Allana International.

Capital markets activity in the United Arab Emirates is, to quote one client, "dead," making it difficult to rank firms for work done in this area alone. However, A&O did advise HSBC and the other managers in relation to the Dubai government's Dh1.5 billion fixed-rate bond issue, as well as acting for Emirates on a \$400 million floating rate eurobond issue and representing the National Central Cooling Company on a \$100 million *sukuk* issue.

Two partners and five associates handle project finance work for A&O, and the firm remains a client favourite in this area. The team has had a busy year, acting for the Infrastructure Capital Group on a \$68 million waste water project in Fujairah, and advising Qalhat LNG (the project company) and Oman LNG on an LNG project in Oman.

Key contact partners

Bimal Desai

Duncan Macnab

Leading lawyer

Bimal Desai

Clifford Chance

Clifford Chance's team of six lawyers is renowned for having a quality finance practice, and one that is not considered as aggressive in the local market as some of its international competitors. Tim Soutar is a favourite with clients for his quality advice on complex financing matters. Although a substantial part of the practice is focussed on financing large projects, the team covers a spectrum of finance work from capital markets and derivatives through to Islamic and trade finance.

This year the firm advised the lenders in relation to the syndicated financing of banks and other large corporations in the region. For example, it acted for Dresdner Bank Luxembourg on a \$300 million facility granted to Emirates Bank International, and on another facility for Arab Banking Corporation. It continues to act as local counsel for Emirates Airlines and its financiers on most of its aircraft financings and leasings, and acted for a syndicate of regional banks on the financing of two new aircraft for Oman Aviation Services.

Clifford Chance comes highly recommended for its capital markets advice. There has hardly been any activity in the country over the past year, but the firm did work opposite Allen & Overy on the government of Dubai's Dh1.5 billion (\$410 million) five-year fixed rate note issue, advising the government. The notes will be listed on the Dubai Financial Market. Clifford Chance also advised Emirates Bank International on the update of its \$1 billion Luxembourg-listed medium-term note programme.

Clifford Chance remains at the top of the list this year for its continuing involvement in top-level projects both in the UAE and throughout the region. Past privatization experience spans the power, water, sewerage and telecoms industries, and the firm has advised on a range of energy, oil and gas and petrochemical projects, including cross-border work. Among the year's stand-out transactions, the firm advised the bidders for the development and financing of a new PFI-style tri-services military college in Oman, and acted for the project sponsors and company in connection with the \$1.5 billion green-field deep conversion project for the Sohar Refinery in Oman.

Other finance clients include Abu Dhabi Islamic Bank, Arab Bank, Bank Muscat, BNP Paribas, Citibank, Gulf Investment Company, HSBC, Shamil Bank, SIPC Methanol, Sohar and Standard Chartered Bank.

Key contact partner

Tim Soutar

Leading lawyer

Tim Soutar

Denton Wilde Sapte

Denton Wilde Sapte is seen as a committed player in the local marketplace and is regularly involved in the best transactions. Abu Dhabi partner Richard de Belder is considered to be a "really good lawyer" and specializes in international finance across the banking, projects and corporate sectors.

Recent banking deals include advising Standard Chartered Bank on a \$150 million political risk guarantee facility, advising Vertscape on a private placement to raise funds for an internet venture, and representing Union National Bank and Dubai Islamic Bank on conventional and Islamic financing aspects of the \$1.25 billion Shuweihat project in Abu Dhabi.

Denton Wilde Sapte's projects practice is viewed as one that is growing in strength in the region. Highlights of the past year include advising the project company on the financing of a \$447 million urea and ammonia fertilizer plant in Sohar, Oman, and advising the Fujairah government on a \$68 million waste water project in Fujairah.

Senior partner Neil Cuthbert is focussed on banking and projects and enjoys a good reputation among clients and his competitors. His previous highlights include advising Black & Veitch on the \$150 million Ajman waste water project.

Clients include Bank of America, Banque Banorabe, Citibank, CSFB, Dresdner Bank, ECGD, Emirates Bank International, HSBC, Merrill Lynch and WestLB.

Key contact partner

Neil Cuthbert

Shearman & Sterling

Shearman & Sterling has an excellent reputation for its involvement in oil and gas project financings. Recent transactions include acting for the Offsets Group on the Dolphin gas development and transportation project from Abu Dhabi to Qatar. The firm also acted as counsel to the conventional lenders on the innovative Shuweihat IWPP financing deal.

Clients include the National Bank of Kuwait, International Petroleum Investments Company, Public Warehousing Company and UAE Offsets Group. Competitors readily commend Philip Dundas for his skills and regional knowledge.

Leading lawyer

Philip Dundas

Simmons & Simmons

Simmons & Simmons' finance practice has acted on a number of large deals, and is particularly respected for its work on project financings. Past experience includes advising the National Bank of Abu Dhabi and a syndicate of banks on a bridge finance facility for the Fujairah power project in a deal worth \$950 million. The firm also acted for the Gulf International Bank, Bank Muscat and a syndicate of banks on a facility for Dalma Energy to finance its acquisition of Essar's oil energy division in a deal worth \$50 million.

Further clients include the Oasis International Leasing Company, the National Bank of Abu Dhabi, Barclays Capital, the Gulf International Bank and Credit Suisse First Boston.

Key contact partners

George Booth
Ibrahim Mubaydeen

Al Tamimi & Company

This well-regarded local firm acts for an impressive list of banks, including HSBC Bank Middle East, Standard Chartered Bank, Lloyds Bank, Crédit Agricole Indosuez, ICICI Bank, Arab Bank and National Bank of Fujairah.

Recent matters handled by the firm include advising HSBC on a series of factoring documentation, advising HSBC, National Bank of RasAL Khaimah and Dubai Islamic Bank on mortgage loan products, and advising HSBC and Dubai Islamic Bank on Islamic financing techniques.

Key contact partner

Husam Hourani

Corporate and commercial

Recommended firms

Allen & Overy

Clifford Chance

Denton Wilde Sapte

Al Sayegh Richards Butler

Al Tamimi & Company

Clyde & Co

Hadef Al Dhahiri & Associates

Shearman & Sterling

Simmons & Simmons

Allen & Overy

Allen & Overy's corporate and M&A team retains its status as a top-tier firm for corporate work in the United Arab Emirates and throughout the region. This year the firm promoted Khalid Garousha to partner in the Dubai office. Khalid has been with the team since October 2000. His experience covers general corporate and corporate finance work, in particular cross-border matters.

Highlights of the year include advising the Saudi regulator on the tender process for the issuance of a second GSM licence in Saudi, acting for Albert Abela Corporation on disposals of businesses in Sharjah and companies in Abu Dhabi and Qatar, representing Dubai International Finance Centre in connection with drafting most of its legislation, and advising the developers of the Palm Jumeriah and the Palm Jebel Ali on all aspects of those developments.

Clients of the practice include Standard Chartered, the International Investor, HSBC Private Equity, PricewaterhouseCoopers and Goldman Sachs.

Key contact partner

Simon Roderick

Clifford Chance

Clifford Chance maintains its high-profile role in the region's complex corporate and M&A work. This year the firm has advised MTC Vodafone of Bahrain on its successful bid for the second GSM mobile licence to be awarded in Bahrain, advised a potential bidder on the bid for one of the mobile licences being offered by the Coalition Provisional Authority in Iraq, and providing general advice to the Dubai 2003 Organizing Committee in relation to its arrangements regarding the World Bank and IMF meeting in Dubai in September 2003.

The team also advised MTC of Kuwait on its \$423 million acquisition of about 92% of Fastlink of Jordan, acted for the Dubai government on its \$250 million equity investment in Communicant Semiconductor Technologies, and represented HSBC (as financial advisors to the Lebanese government) on the sale by way of auction of two existing mobile telecommunications businesses, each with an associated 20-year licence.

Other clients include Compaq/Hewlett Packard, Ernst & Young, Malta Freeport, the National Bank of Dubai and Pakistan Telecom.

Key contact partner

Tim Soutar

Denton Wilde Sapte

Denton Wilde Sapte boasts a corporate team with a good reputation and a commitment to the region. The team's success is closely tied to the firm's strength in projects, recently advising a BAA International-led consortium in connection with its successful bid for the operations and management of the Seeb and Salalah airports in Oman after their privatization. The team also advised Occidental on the establishment of a branch office in Abu Dhabi, and its acquisition of a quarter of project Dolphin, following Enron's withdrawal from the undertaking.

Other clients include Colorado School of Mines, International Telecommunications Clearing Corporation, Mazrui Engineering Products and the World Wildlife Fund for Nature.

Al Sayegh Richards Butler

Richards Butler's long-standing Emirates operation is based in Abu Dhabi, an office that acts as the hub of the firm's regional practice. Recent highlights include advising Electricité de France on providing consultancy services to

the Ministry of Electricity and Water in connection with the UAE National Grid, acting for International Fish Farming Company on a number of acquisitions in Greece and Oman, and representing WorldCom, before its collapse, in connection with a joint-venture in Dubai.

Clients of the firm include multinational companies in all industry sectors, including manufacturing, services, utilities and defence and inward investors and trading houses and other local interests within the region.

Al Tamimi & Company

Local firm Al Tamimi & Company houses a well-regarded corporate practice, with a generously sized team of 11 lawyers working on corporate and M&A matters. Recent work includes working on projects totalling over \$500 million in the Emirates and Gulf Area. The team works with technical and financial consultants, structuring projects and advising clients on drafting and regulatory issues. Clients include Johnson & Johnson, Microsoft, IBM, Rolls-Royce Marine Singapore and Emirates Airlines.

Key contact partner

Essam Al Tamimi

Clyde & Co

Clyde & Co has offices in Dubai and Dubai Media City, has been advising clients throughout the region for 20 years, and has a network of correspondents in neighbouring countries.

The corporate team recently advised on structuring, preparing and negotiating a \$90 million disposal involving seven separate regional jurisdictions across the Middle East, and advised a multinational company on the sale and transfer of assets throughout the AGCC. The firm has also acted for a UK plc on the sale of its soil testing and preparation business, and advised a leading multinational company on the sale of its business in the Middle East.

Key contact partner

Jonathan Silver

Simmons & Simmons

Simmons & Simmons has worked in the region for over 30 years and is based in Abu Dhabi, offering international and local legal advice in both English and Arabic. Clients include governments, government departments and agencies, banks and financial institutions, and major domestic and multinational corporations operating in all main sectors of commerce and industry in the Middle East.