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## **Doing Business in the United Arab Emirates**

### **I. INTRODUCTION**

A foreign company may choose from alternative methods to conduct activities in the UAE, including conducting operations from "off-shore," conducting operations in a "free zone" and conducting operations 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. The discretionary policies, practices and procedures of these local 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 activities in the UAE.

### **II. INDIRECT OPERATIONS – DEALING WITH COMMERCIAL AGENTS**

Foreign entities generally may make private sector product sales from off-shore directly into the UAE without participation by a 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 by Federal Law No. 14 of 1988 and Federal Law No. 13 of 2006 (the "**2006 Amendments**") (collectively 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. Certain public sector sales require a

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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 encompassing at least one Emirate for the specified products or services.

B. 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, unless otherwise agreed.

C. Commercial agents are entitled to prevent products subject to their agency from being imported into the UAE 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. This potential exemption of designated products from application of the Commercial Agency Law was confirmed as part of the 2006 Amendments. Products currently excluded from the application of the Commercial Agency Law include the following foodstuffs and related products: dry and condensed milk, frozen and canned vegetables, children's foodstuffs, milk, poultry, cooking oil, rice, flour, fish products, meat and its products, tea, coffee, cheese, pasta (macaroni, vermicelli), sugar and diapers.

D. Either party is entitled to claim compensation for damages suffered and losses incurred due to termination of a registered commercial agency (at least absent proof of "justification"). Previously, the Commercial Agency Law was interpreted to grant relief not only in cases of early termination of a registered commercial agency, but also in cases of non-renewal upon expiration of a registered commercial agency. The 2006 Amendments may have changed that by preventing, or making more difficult, recovery of damages due to the expiration of a fixed term commercial agency agreement. However, practice and interpretation in the courts will be necessary to assess the practical impact of the 2006 Amendments. Furthermore, commercial agents are not limited to seeking remedies under the Commercial Agency Law. For example, a registered commercial agent might also claim damages for improper termination or for non-renewal pursuant to the Commercial Code.

E. A registered commercial agent can preclude the foreign principal from appointing a replacement registered agent in the event the registered agency is terminated prior to the end of its stated term unless the former agent consents or the foreign principal obtains a favorable court judgment awarding such deregistration.

In addition, the Commercial Agency Law provides that commercial agency agreements shall be governed exclusively by UAE law notwithstanding a provision to the contrary in the agency agreement. Before 2006, the Commercial Agency Law required the parties to submit their disputes to a specialized agency disputes committee. The 2006 Amendments eliminated this committee and now courts in the UAE have exclusive jurisdiction over disputes regarding registered commercial agency agreements.

Historically, a commercial agent had to register its agency agreement with the authorities to claim the benefits of the Commercial Agency Law. But we are aware that some courts (e.g., in Abu Dhabi) have begun to apply the Commercial Agency Law to both registered and

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unregistered commercial agency agreements in certain contexts. It is unclear whether and to what extent this local agency protectionism will be further extended in the future. But the 2006 Amendments and pronouncements and actions from certain authorities have led the international business community to expect a trend towards less protectionism.

These statutory protections of 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.

Statutory protections and other commercial and legal principles and practices are important not only in negotiating new arrangements with UAE distributors, representatives and agents, but also in ending any such relationships. Invariably, termination of agency relationships is contentious, time consuming and expensive, even if the agent is not a registered commercial agent.

### III. DIRECT OPERATIONS

In addition to a foreign entity establishing an "indirect" business presence in the UAE via an agency relationship, there are several alternatives by which a foreign entity may be licensed to undertake specified activities on a direct, permanent basis in the UAE. The UAE Commercial Companies Law, Federal Law No. 8 of 1984, as amended (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 or representative office or (ii) incorporation of a limited liability company with a UAE national "partner."

By establishing a direct business presence in the UAE, a foreign entity is permitted to engage in specified activities as licensed by the relevant UAE authorities. Except for certain "free zone" registrations and operations discussed below, entities engaging in commercial activities in the UAE are registered and licensed on a federal and Emirate basis, as well as by any applicable special purpose regulatory authorities. Thus, most entities must be separately registered and licensed in each Emirate, and for each place of business where they operate within an Emirate. 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 residency visas (if necessary) and work permits for their personnel.

#### A. Branch or Representative Office

Through registration of a branch or representative office, a foreign entity can establish a direct business presence in the UAE with no UAE participation other than acquiring the services of a UAE national "local agent" to handle certain administrative matters, as described below. Such a branch or representative 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 UAE through its branch or representative office. The foreign company will be fully

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responsible for the liabilities of the branch or representative office. Indeed, as part of the registration process the foreign company normally must submit an undertaking to be liable for the branch office's operations and to comply with applicable UAE federal and Emirate laws and regulations. UAE federal law includes UAE Federal Law No. 15 of 1972 Regarding the Boycott of Israel. Thus, such compliance with law undertakings can cause issues for some US persons and companies under the US antiboycott regulations as administered by the US Treasury Department. See Section V(H)(3) below for further explanation of US antiboycott regulations.

A branch or representative office may conduct only those activities specified in its license. The issuance of licenses to branch or representative offices involves discretion on the part of the governmental authorities, including with respect to whether they believe the foreign company is one they desire to have operating in the UAE and in the applicable Emirate, and the types and scope of activities they will allow.

The main difference between a representative office and a branch office is that a representative office is not supposed to engage in sales, services or any other type of commercial activity. Rather, a representative office is only supposed to act as a liaison or administrative office to promote the company's products and services and to facilitate business between the foreign principal and its customers. Some direct contact with customers is permitted, but employees at a representative office may not engage in sales or perform services.

Traditionally, branch offices could not engage in general "trading" activities (i.e., buying and/or importing for resale in the UAE), which are usually restricted to UAE nationals or companies at least 51% owned by UAE nationals. However, beginning in 2006, there was some liberalization in this regard. We have been able to obtain licenses for branch offices to sell (i.e., "trade") in goods manufactured by the foreign company that established the branch. There are also grandfathered exceptions for some 100% foreign owned trading operations whose UAE presence predated the Companies Law and the current regulatory scheme.

The procedures to establish a branch or a representative office are similar, although governmental approvals for representative offices generally can be obtained more quickly and with less governmental scrutiny than for branch offices. For example, the audit related requirements for registration and operation of a branch office are greater than for a representative office.

A foreign entity normally is required to appoint a UAE national "local agent" for its representative or branch office. However, for certain registrations such as foreign military or certain financial institution branches, the relevant special purpose government regulatory authority serves as the nominal local agent. The local agent is not permitted to own equity in the branch or representative office. Similarly, the local agent generally may not interfere in the substantive management of the representative or branch office. In practice, a foreign entity typically contracts with a local agent to provide specific services such as assisting in communications with government departments for processing the registration and licensing renewals for the foreign company, and processing visas and work permits for the foreign company personnel, or undertaking other administrative matters. The level and form of compensation paid to the local agent varies widely in practice and is a contractual matter to be agreed solely between the local agent and the foreign entity. There is no specific level or form of

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compensation stated or implied under UAE law. Some local agents charge a percentage of revenue, while others charge a fixed annual fee.

## **B. Limited Liability Company**

UAE limited liability companies ("**LLCs**") must have a minimum of two and a maximum of 50 equity owners and a minimum of 51% equity ownership by UAE nationals (or entities wholly-owned by UAE nationals). In this summary, we will refer to such equity owners as "partners," but parties commonly use "shareholder" and "partner" interchangeably. The minimum capitalization of a limited liability company pursuant to the Companies Law is Dhs. 150,000, although it is Dhs. 300,000 in Dubai. Such minimum capitalization requirements are even greater for certain types of activities, such as industrial and manufacturing operations. Pursuant to the Companies Law, 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. For example, 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 (articles 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 joint venture agreements. The Companies Law gives the partners a great degree of latitude to negotiate the terms for governance of their LLC. But, in the event of a conflict between any such supplemental agreements and either the registered charter document or the UAE Companies Law, the latter likely will control.

Parties have implemented a variety of measures (some lawful and some not) trying to ameliorate the limitations on foreign ownership of LLCs imposed by the Companies Law. Although the UAE Companies Law requires at least 51% of the capital of an LLC to be owned by UAE nationals, the Companies Law also permits profits and losses to be split by the LLC partners in any proportion they desire. However, the various Emirate licensing authorities tend to impose restrictions in practice, often limiting the profits foreign partners can enjoy, to the exclusion of the UAE partners, to no more than 80%. Some foreign parties have tried to engage UAE nationals to participate in LLCs as mere "sponsors" or "nominees" (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. Such arrangements typically commit the UAE national to relinquish all profits, voting rights and other rights of ownership to the foreign party often by a "side agreement" not reflected in the registered chartered document. Such arrangements are not legal under the Companies Law, and could be deemed criminal violations under Federal Law No. 17 of 2004 on Combating of Commercial Concealment, which proscribes such arrangements and imposes stringent penalties on the UAE national "concealing party" as well as the foreign "concealed party."

## **IV. OPERATION IN A UAE "FREE ZONE"**

UAE free zones present a means to conduct business within the territory, but not within the import and customs boundaries, of the UAE. Such free zones tend to be more "user-friendly" and conducive to foreign investment than the UAE proper. For example, the relevant documents

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to establish and conduct a business 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. These free zones have been instrumental in positioning the UAE as the commercial hub of the Arabian Gulf and as a leading international trans-shipment center.

Each free zone has its own special purpose business regulatory schemes, but the rules and practices for business activities are quite similar from zone to zone. Among the investment incentives generally available in the free zones are 100% foreign ownership, guaranteed income tax holidays and no restrictions on repatriation of capital and profits. The current practice in the UAE proper of not assessing income taxes and not restricting repatriation could, in theory, change. Moreover, as the names imply, there generally 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. For example, the policy of the JAFZ Authority currently is to require that service entities setting up in the free zone must have a "parent" that has a UAE license for the applicable service.

Some newer free zones follow the economic cluster model focusing on particular types of industries or services, such as: (i) Dubai Technology and Media Free Zone ("TECOM," which includes Dubai Internet City, Dubai Media City and Dubai Knowledge Village); (ii) Dubai International Financial Centre ("DIFC"); (iii) Dubai Healthcare City; (iv) Dubai Multi Commodities Centre; and (v) Dubai Silicon Oasis. It is important to note that free zone registrants may not engage in business in the UAE proper absent independent licensing or some other 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 zone (Hamriyah free zone) and an airport zone (Sharjah Airport International free zone). Ras Al Khaimah, Fujairah, Ajman and Umm Al Quwain also have free zones. Abu Dhabi recently opened a media free zone called Twofour54, and also is developing a business and logistics free zone. There is a wealth of information available on the Internet about the various free zones in the UAE, including a list of the various free zones at: <http://www.emiratesfreezone.com>.

## V. OTHER KEY CONSIDERATIONS

### A. Monetary Policies

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 \$1 = UAE Dirhams 3.67 for many years. There has been discussion by the UAE authorities about de-pegging the UAE Dirham from the US

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Dollar and pegging it to a basket of currencies, as the State of Kuwait did in mid-2007, but no changes have been implemented as of early 2009. Also, there have been discussions among the various Gulf Cooperation Council ("GCC") countries about adopting a uniform currency, but again no concrete developments in this regard have occurred as of early 2009.

The UAE Central Bank has adopted money laundering regulations that impose certain restrictions, including reporting obligations on certain cash transactions. In addition, the Dubai Financial Services Authority acts as an independent regulator for regulated entities that are registered in the DIFC.

## **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 the production of oil, gas and/or petrochemicals and (ii) foreign bank branches. Also, currently there are no personal income tax schemes enacted in any of the Emirates. Officials from each of Abu Dhabi and Dubai, the most influential Emirates of the UAE, have indicated that they do not expect to impose income taxes in the foreseeable future or otherwise alter the current policy of non-enforcement of the existing corporate income tax decrees, other than as noted above.

There are also no withholding taxes and no value-added taxes or sales taxes, except with respect to certain items such as alcohol and tobacco. It has been rumored that a VAT will be implemented in the future, but no developments in this regard have occurred as of early 2009. However, there are municipal taxes imposed 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 tax treaties with a number of countries.

## **C. 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. 8 of 2002, which amended Federal Law No. 37 of 1992; (ii) the UAE Copyright Law, Federal Law No. 7 of 2002; and (iii) the UAE Patent Law, Federal Law No. 17 of 2002. 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. Also of interest, the UAE has a federal consumer protection law, Federal Law No. 24 of 2006 Concerning the Protection of Consumers.

**D. Real Estate**

As is the case in many Middle East countries, real property is afforded special "guarded" status in the UAE. Although the UAE Constitution vests legislative authority over real estate ownership in the UAE 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 (the "**Civil Code**") includes provisions relating to real estate, but not governing fee 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. In this regard, there have been some fairly significant legislative developments recently in some Emirates such as Dubai, Abu Dhabi and Ras Al Khaimah, and further legislative developments are expected to continue for real estate matters throughout the UAE.

**1. Dubai Freehold Property**

Dubai Law No. 7 of 2006 (the "**Dubai Real Estate Law**") is the primary law regulating real estate in Dubai. This law is referred to by some as the "freehold law," but this label is ironic in that the Dubai Real Estate Law generally does not permit non-GCC foreign nationals to hold or register title to land in Dubai on a freehold basis, other than in specifically designated areas. Although the Dubai Real Estate Law was expected to liberalize the real estate market generally in Dubai, and to align the regulatory environment with the many local development projects being marketed to foreigners, it actually codified the special guarded status afforded to UAE and other GCC nationals for real estate. 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 will 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, Dubai Law No. 3 of 2006 designates certain areas for such fee ownership and long term leasing by non-GCC foreign nationals. These areas include Dubailand and several developments by Dubai Properties, Nakheel and Emaar. Fee ownership may also be permitted in certain free zones.

Further significant real estate legislative developments have occurred in Dubai since the enactment of the above laws, and are expected to continue. The Dubai Land Department enacted By-Law No. 85 of 2006 regarding the Regulation of the Real Estate Brokers Register in the Emirate of Dubai. Pursuant to these brokers regulations, every person carrying out real estate brokerage activities in Dubai is required to be licensed by the competent authorities and to be registered with the Dubai Land Department. These regulations also impose obligations on brokers, including the requirement that they must adhere to a code of ethical conduct in their dealings.

Dubai Law No. 8 of 2007 provides that developers are required to be licensed by the competent authorities and registered with the Real Estate Regulatory Authority ("**RERA**"). RERA is an

instrumentality of the Dubai Land Department and is the regulatory and governing authority for real estate matters in the Emirate of Dubai. Developers are required to set up escrow accounts with locally licensed and accredited banks or financial institutions to safeguard payments for off-plan projects, and the funds may be released to developers only upon completion of certain pre-determined construction milestones, with a 10% holdback for one year after handover. Also, any advertising, marketing and promotional activities associated with off-plan real estate developments in Dubai, whether undertaken locally in the UAE or abroad, require RERA's permission. Given the current state of the Dubai real estate market we expect RERA to continue to play an active role in regulating real estate activities in Dubai.

Dubai Law No. 27 of 2007 (the "**Dubai Condominium Law**" or "**Dubai Strata Title Law**") is based at least in part on the strata title system found in Australia and New Zealand. Under this law an owners' association is responsible for the management, operation, maintenance and repairs of common areas. The association must obtain a license from the Dubai Land Department. The Dubai Condominium Law imposes liability on developers for structural defects discovered within ten years after completion of the building. The Civil Code also imposes decennial liability for structural defects, but places that responsibility on the contractor and to some extent the engineer. The implementing regulations for the Dubai Condominium Law have not yet been issued.

More recently, Dubai Law No. 13 of 2008 Regulating the Interim Real Estate Register in the Emirate of Dubai was enacted. This law mandates pre-registration, in an interim real estate register at the Dubai Land Department, of all sales contracts for real estate that is sold "off-plan" (i.e., before construction begins or is completed). Any applicable sale or other disposition will be void unless recorded in this interim real estate register. Once the property is completed, and the purchaser has fulfilled the purchaser's contractual obligations, the registration information will be transferred to the existing permanent register at the Dubai Land Department. This law also provides that if a purchaser defaults, the developer can cancel the agreement and is allowed to retain a certain portion of the amounts paid by the purchaser. There is some uncertainty between this law and RERA practice with regard to the exact amount of the retention. The Dubai government has also recently launched an online property registration portal called "Oqood" to enable the implementation of the interim registration of any "off-plan" property sales.

Dubai Law No. 14 of 2008 Concerning Mortgages in the Emirate of Dubai (the "**Dubai Mortgage Law**") provides that a real estate mortgage is not valid unless it is registered with the Dubai Land Department in either the interim real estate register or the permanent register. The law also permits mortgages to be registered for rights in a real estate contract for property that is sold "off-plan." In addition, the Dubai Mortgage Law provides that only banks licensed by the UAE Central Bank can register a mortgage over property, and that the borrower must be the property owner.

## 2. Abu Dhabi Freehold Property

Legislation has also been enacted in Abu Dhabi that governs real estate ownership there. In 2005, Abu Dhabi issued Law No. 19 of 2005 on Ownership of Real Estate and Law No. 3 of 2005 on Registration of Real Estate. The Abu Dhabi real estate ownership law grants only UAE

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nationals the right to own land anywhere in Abu Dhabi and requires registration of titles. GCC nationals are granted more limited rights to own land in Abu Dhabi, but only in designated areas. Other foreign nationals are granted even more limited real estate ownership rights in such designated areas in Abu Dhabi, basically permitting them only to own surface rights and not the underlying land.

### **3. General Freehold Property Issues**

Further real estate legislative developments are expected, and the policies and procedures with respect to practice no doubt will continue to evolve. In this regard, even where freehold ownership is permitted, the registration requirements, processes and procedures still need to develop, at least before any orderly, well defined practice and predictability are established, and so real estate is an industry sector for which fairly substantial regulatory and practical developments are expected but still need to evolve. For example, title and lien information is not publicly available, and there is no title insurance. In any event, whether foreign ownership (including ownership by other non-UAE GCC nationals) is permitted with respect to real estate in the UAE must be investigated and determined on an Emirate-by-Emirate and parcel-by-parcel basis.

Also, one should not assume that all rights customarily available to a homeowner in, say, the United States are available to the purchaser of a villa or flat in a freehold area. For example, business licensing requirements limit the ability of an investor to put property on the market for short term "holiday" rentals. Individuals should also be cautious concerning the application of UAE Islamic Shari'ah law to ownership and transfer of their property in the UAE in the event of divorce, bankruptcy, death and the like. The inheritance rules of a person's home country jurisdiction may not necessarily apply in the UAE. Thus, careful asset protection planning is advisable.

### **4. Tenancy Issues**

There is no special purpose federal landlord/tenant law currently applicable in the UAE. Thus, leases are governed by specific provisions in the Civil Code, as well as special purpose regulations, policies and practices of the various individual Emirates with respect to leases. For example, in Dubai, RERA has regulations and policies regarding leases, and may begin to implement standard forms.

Supplementing the above, the Abu Dhabi government enacted Abu Dhabi Law No. 20 of 2006 regarding renting of places and regularizing the relationship of landlord and tenant. Likewise, the Dubai government enacted Dubai Law No. 26 of 2007 Regulating the Relationship Between Landlords and Tenants, as amended by Law No. 33 of 2008 (the "**Dubai Tenancy Law**"), which is applicable for residential and commercial leases in Dubai. Pursuant to the Dubai Tenancy Law, all tenancy contracts are required to be registered with RERA and, in this regard, RERA has recently launched an online portal for tenancy contract registration. The implementing regulations are to follow.

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There also are special purpose dispute resolution tribunals for lease disputes in various of the Emirates. For example, the Lease Committee of the Dubai Municipality has original jurisdiction over lease disputes in Dubai.

Also, there have been recent legislative efforts to control the spiraling rent in most of the Emirates. For example, Dubai previously set a ceiling of up to 5% increase on rentals in 2008 for commercial as well as residential leased properties. However, for 2009, Dubai has introduced Decree No. 1 of 2009 Regarding Rentals in the Emirate of Dubai, which establishes a rental index that sets maximum rent increases based on property location by specific neighborhood.

### **E. Financial Records and Accounting**

The Commercial Code requires that all commercial entities maintain commercial books to reflect the financial position of the business. LLCs, branch offices, and other corporate entities in the UAE are required to annually file financial statements audited by a UAE registered auditing firm. For LLCs, the audited financial statements must be filed within four months after the end of the financial year. For branch offices of foreign companies, the audited financials may be required to be filed in connection with the annual renewal of the license. Also, corporate entities registered in certain of the UAE free zones may also be required to file annual audited financial statements.

### **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. However, the Labor Law does not apply to government workers, members of the armed forces, police and security forces, and workers employed in certain agricultural fields and grazing. Civil service legislation, rather than the Labor Law, applies to most public sector employees. Some of the free trade zones have adopted their own regulations for certain labor and employment matters, although others have opted to simply follow the Labor Law.

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. An outgrowth of such legislation are the current "Emiratization" policies of the Ministry of Labor, which encourage or require the employment of UAE nationals in certain job sectors. Ministerial resolutions were passed in 2006 in relation to the Emiratization of certain categories of personnel, including secretaries and human resource managers. At this stage, there remains a lack of certainty and predictability in the market given that these Emiratization regulations and policies are relatively new and are subject to change. Also, the Ministry of Labor's enforcement practices change from time to time and are discretionary in any event. The Ministry of Labor may impose different levels of fees for certain companies for

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Ministry of Labor transactions depending on the level of compliance with applicable Emiratization and other cultural diversification regulations.

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. Normally it is 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 to receive an end of service gratuity payment upon termination as specified in the Labor Law based on length of service.

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 the work permit has been issued.

Employers are required to submit a bank guarantee as security for end of service benefits and repatriation costs for their employees. The amount of the bank guarantee depends on the number of employees. In 2006, the UAE announced that a new Labor Law was under consideration, and a draft of the new labor legislation was made available to the public by the Ministry of Labor in early January 2009. However, no changes to the Labor Law have occurred as of early 2009.

Labor disputes are initially heard by the UAE Ministry of Labor in a non-binding process. The employer or the employee can then appeal the Ministry of Labor's decision to the local courts.

US-based employers should bear in mind that certain provisions of US labor law can have extraterritorial effect.

Multinational companies need to exercise caution in transferring to the UAE employees hired in other jurisdictions. 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 (UAE Federal Law No. 7 of 1999 Regarding the Formation of the Public Authority for Pensions and Social Security). Second, the Ministry of Labor recently adopted policies restricting the ability to terminate UAE national employees without cause.

### **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 by Federal Law No. 13 of 1996 (the "**Immigration**

Law"). The majority of residents and labor personnel in the UAE are expatriates. As such, the Immigration Law directly affects the majority of residents in the UAE.

Pursuant to the Immigration Law, non-GCC national employees may not reside and work in the UAE without an employment/residency visa, which is secured by their employer (except for dependents who are sponsored by a qualified family member), and/or a labor card. In addition, expatriate employees generally are not permitted to work for persons other than their employment visa and/or labor card sponsor. Furthermore, pursuant to Ministerial Decision No. 322 of 2008 of the Minister of the Interior, several new visa rules have been issued, including with respect to visit visas, student visas and mission visas.

Transfer of employment (i.e. sponsorship) is also 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, as well the permission (i.e. no-objection) of the current employer. Employee transfers are generally reserved for certain designated categories of workers and the UAE authorities have broad discretion with regard to transfers. In addition, under current UAE regulations there is the possibility that an employee who resigns or is terminated could receive a ban on his ability to work in the UAE for several months. Although certain designated categories of workers (e.g., management employees) may be exempted from the imposition of the ban, each case is a fact specific matter. The policies and practices of the authorities regarding labor and immigration matters change quite frequently, and often without notice. These requirements that tie an expatriate's immigration/residency status to employment status are fundamental to the regulation of the expatriate labor force 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 concerns, including US companies and individuals, 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, certain 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 US-origin goods, software, or technology, including certain items made outside the United States but still containing US-origin content, should be aware that US export controls apply to such exports. As a general matter, US items are divided into two categories for purposes of export controls: (i) defense articles, defined as items and related technology 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. The United States also imposes specific export controls on certain other items, such as nuclear articles.

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The US State Department is responsible for administering controls on exports of defense articles, related defense technical data, and defense services. With limited exceptions, every defense or aerospace article containing any amount of US-origin content is 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 of most other US-origin items, 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 Commerce Department for export and re-export depends on various factors, including the destination of the item, its intended end-use, and other factors. Commerce Department controls may also apply to the re-export from the UAE of certain non-US produced: (i) items incorporating 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 United States 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. These controls apply to exports to and from the UAE of such items by any person – not just US persons.

The US also currently imposes comprehensive economic sanctions on various countries, including Iran and Sudan, and more limited economic sanctions on other countries, including Syria. 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 items by any person 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 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 United States.

The US Commerce Department has identified the UAE as a trans-shipment hub that poses special risks for diversion of sensitive items to illicit end-uses or prohibited destinations. 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 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-use or end-user. It is also important to recognize that these denial lists, maintained both by the US and other governments, may change frequently.

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Violations of US export controls and sanctions regulations can result in serious criminal and civil penalties. Already substantial penalties were increased by US legislation in October 2007. 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.

Although other countries, such as 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 EU, and the UK relating to such sanctions, including sanctions against terrorists, Al-Qa'ida, the Taliban, 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 (the "**UAE Export Control Law**") concerning commodities subject to import and export control procedures. There has been very little experience to date with interpretation and application of the UAE Export Control Law, which law should 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 United States, every company in the United States (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 United States, 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; during 2008, US enforcement officials have targeted individual violators and non-US companies listed in the US for significant penalties.

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 Organisation for Economic Co-

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Operation and Development ("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 addition, a number of high-profile investigations have recently been launched outside the United States based on alleged corrupt activities during the UN Oil for Food Program and other instances of alleged improper payments.

Moreover, the United Nations 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 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 criminal, civil or income tax penalties on individuals and companies that participate in or cooperate with the Arab boycott of Israel in ways specified under 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.

Requests to participate in the Arab 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 end of 2008 the US Treasury Department currently listed the following countries as participants in the boycott: Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, and Yemen.

US anti-boycott laws apply not only to US companies and individuals but also to foreign affiliates of US companies as well as foreign companies that are part of a US income taxpayer group under the US Internal Revenue Code. Those found to have violated US anti-boycott law can be denied 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.

#### **I. Dispute Resolution and the New York Convention**

Pursuant to UAE Federal Decree No. 43 for 2006 issued on June 13, 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**"). Historically it has been difficult to enforce a foreign arbitration award in the UAE. Although application of the New York

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Convention in the UAE should lead to easier enforcement of foreign arbitration awards in the UAE, this conclusion has not yet been tested to a significant extent in the UAE Courts. Legislation has not yet been promulgated in the UAE to clarify the implementation of the New York Convention by repealing or modifying UAE laws not conducive to enforcement under the New York Convention. Only such legislation and some positive judicial experiences enforcing foreign arbitration awards will remove the uncertainty that continues to cloud this issue. The UAE government, reportedly, is considering a draft federal law on arbitration and enforcement of arbitral awards, based on the United Nations Commission on International Trade Laws' Model Law on International Commercial Arbitration adopted on June 21, 1985. Such a federal arbitration law is needed to support the UAE's goal of becoming a regional arbitration center.

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. There is an Abu Dhabi Commercial Conciliation and Arbitration Centre sponsored by the Abu Dhabi Chamber of Commerce and Industry.

Furthermore, three fairly recent arbitration initiatives in Dubai are of particular interest: (i) the adoption in May 2007 of new rules for the Dubai International Arbitration Centre ("**DIAC**"); (ii) the establishment in 2006 of an independent common law English language court in the DIFC - the DIFC Court; and (iii) the launch in 2008 of the DIFC- London Court of International Arbitration ("**LCIA**") Arbitration Centre.

According to the Arbitration Rules of the DIAC, all awards rendered by the arbitral tribunal are final and binding on the parties, the parties must carry out the award immediately, and the parties waive their right to any form of appeal, review or recourse to any court or other judicial authority, insofar as such waiver may be validly made.

According to Dubai Law No. 12 of 2004 in respect of the Judicial Authority at the DIFC, should the subject of execution fall outside the DIFC, arbitral awards (recognized by the DIFC laws or foreign arbitral awards that satisfy the requirements of the DIFC laws) ratified by the DIFC Court are supposed to be enforceable in Dubai without review of their merits by the Dubai courts, provided that the award is final and is appropriate for enforcement and that the award has been translated into Arabic. The practical application and enforcement of the above rules is yet to be tested.

On February 17, 2008, the DIFC and the LCIA launched a new regional international arbitration centre within the DIFC and – the DIFC-LCIA Arbitration Centre. On September 1, 2008, the DIFC Arbitration Law of 2008 came into force. Based on the UNCITRAL Model Law, the DIFC Arbitration Law removed the requirement that parties to arbitration must have a "nexus" or connection with the DIFC in order to arbitrate in the DIFC.

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