

# DUBAI'S LEGAL SYSTEM

CREATING A LEGAL AND  
REGULATORY FRAMEWORK  
FOR A MODERN SOCIETY

Andrew Tarbuck & Chris Lester



Published by Motivate Publishing

Dubai: PO Box 2331, Dubai, UAE  
Tel: (+971 4) 282 4060, fax: (+971 4) 282 7898  
e-mail: books@motivate.ae www.booksarabia.com

Office 508, Building No 8, Dubai Media City, Dubai, UAE  
Tel: (+971 4) 390 3550, fax: (+971 4) 390 4845

Abu Dhabi: PO Box 43072, Abu Dhabi, UAE  
Tel: (+971 2) 677 2005, fax: (+971 2) 677 0124

London: Acre House, 11/15 William Road, London NW1 3ER  
e-mail: motivateuk@motivate.ae

Directors: Obaid Humaid Al Tayer  
Ian Fairservice

Editors: Moushumi Nandy

Simona Cassano

Senior Designer: Cithadel Francisco

Designer: Charlie Banalo

General Manager Books: Jonathan Griffiths

Publishing Coordinator: Zelda Pinto

Design by Pradnya Pandit-Aras

© Motivate Publishing and text © Andrew Tarbuck and Chris Lester 2009

*(Andrew Tarbuck is a partner and Chris Lester is  
counsel at international law firm Latham & Watkins LLP, www.lw.com)*

All rights reserved. No part of this publication may be reproduced in any material form (including photocopying or storing in any medium by electronic means) without the written permission of the copyright holders. Application for the copyright holders' written permission to reproduce any part of this publication should be addressed to the publishers. In accordance with the International Copyright Act 1956 and the UAE Federal Law No. (7) of 2002, Concerning Copyrights and Neighboring Rights, any person acting in contravention of this will be liable to criminal prosecution and civil claims for damages.

Printed by Emirates Printing Press, Dubai, UAE

## CONTENTS

Dubai's legal system	5
The UAE federal constitution	7
The foundations of the legal system	7
The court system	8
Free zones	9
The DIFC	11
Structuring and licensing for international businesses wishing to do business in Dubai	13
Tax	14
Corporate governance	15
Enforcement of laws	15
Legal representation	16
Concluding remarks	16



## DUBAI'S LEGAL SYSTEM

In this uncertain world of globalisation and emerging markets, Dubai's economic and cultural growth is underpinned by a legal and regulatory framework, which has developed sufficiently to encourage significant local and international enterprise in Dubai and is continuing to develop. A recurring theme when deciding where to do business is the suitability of the legal and regulatory framework in the particular local jurisdiction. The willingness of international businesses to set up and operate in Dubai, and the success of local Dubai businesses, is clear testament to Dubai's robust and dynamic legal and regulatory framework.



## ❖ The UAE federal constitution

The United Arab Emirates (the UAE) is a federation of seven emirates comprising Dubai, Abu Dhabi, Ajman, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain and was formed in 1971. The UAE federal constitution provides for an allocation of powers between the federal government and the government of each emirate. Dubai is subject to the federal law of the UAE but retains the right to administer its own internal affairs and enjoys certain other exclusive rights.

## ❖ The foundations of the legal system

Dubai's legal system is founded upon civil law principles (most heavily influenced by Egyptian law) and Islamic Shari'a law, the latter constituting the guiding principle and source of law. In Dubai and other civil law jurisdictions, legislation tends to be formulated into a number of major codes providing for general principles of law with a significant amount of subsidiary legislation. The influx of regional and international commercial enterprises to Dubai and the UAE over the last 30 years has resulted in an expanding and increasingly comprehensive body of federal legislation being established in the form of federal codes of law. There are federal codes of law which apply in Dubai and the other emirates dealing with the most important and fundamental principles of law, including civil, commercial, civil procedure, companies, intellectual property, immigration, maritime, industrial, banking and employment law. In contrast, many of the laws enacted by the Ruler of Dubai relate to matters which are more administrative in nature, such as the establishment and operation of government affiliated entities.

## ❖ The court system

Although the UAE federal constitution permits each emirate to have its own judicial authority, all emirates other than Dubai and Ras Al Khaimah have brought their judicial systems into the UAE Federal Judicial Authority. Dubai has retained its own independent courts (and judges), which are not a part of the UAE Federal Judicial Authority. Dubai's courts will first apply federal laws, such as the Companies Law or the Civil Code, as well as the laws and decrees enacted by the Ruler of Dubai, where federal law is absent or silent.

Dubai's courts comprise a Court of First Instance, a Court of Appeal and a Court of Cassation. Each of these courts has a civil division, a criminal division and a Shari'a division. The civil division hears most civil claims, the criminal division deals with most criminal cases arising in Dubai and the Shari'a division hears civil matters for Muslims, most of which relate to family matters such as divorce and inheritance. Non-Muslims are required to respect Shari'a law in Dubai and should conduct themselves accordingly. Dubai also has a Labour Court, which deals exclusively with disputes between employers and employees, and a Property Court which deals exclusively with real property disputes.

Matters coming before Dubai's courts are heard by one or more judges. Juries are not used. Further, unlike in some western jurisdictions, there is no system of precedent in Dubai or the UAE. However, judgements of some higher courts are published, not because they are binding on lower courts, but in order to provide useful evidence of future judicial interpretation and practice.

It should also be noted that the Dubai courts conduct themselves in the Arabic language and so legal representation

not only requires legal advocates who are properly licensed to appear before the courts, but also requires that they are conversant in Arabic.

## ❖ Free zones

Any legal or regulatory framework is only as good as its ability to adapt and develop as the world changes and the requirements of local and international businesses become more sophisticated. There have been some landmark developments in Dubai in terms of law and regulation, most notably, in the creation of the many free zones in Dubai which have, to varying degrees, different laws and regulations to non-free zone areas. Some of the more well known free zones in Dubai include the Dubai International Financial Centre (the DIFC), the Jebel Ali Free Zone and Dubai Media City.

Conditions for doing business in free zones are highly attractive with 100 per cent. foreign ownership of companies allowed (compared to 49 per cent. for most companies incorporated outside the free zones), tax concessions, no restrictions on the repatriation of capital and profits and freedom from currency restrictions and import duties. Free zones have been fundamental in developing Dubai's reputation as an attractive place to establish a business. Subject to certain exceptions, businesses wishing to set up in the free zones are required to establish places of business physically within the geographical boundaries of the particular free zone, which means international enterprises must put firm roots down in the region which, in turn, encourages sustainability and longevity in terms of commitment to the region. In terms of sophistication, the DIFC is probably the most advanced of the UAE's free zones.



## ❖ The DIFC

The DIFC is a world class “onshore” financial centre and was established with the aim of bridging the gap between the world’s major financial centres. It was established to be a recognized hub for institutional finance and to be a regional gateway for capital and investment. The DIFC came into existence in 2004 and has its own laws and regulations and even its own courts and facility for arbitration. It is independent of the civil and commercial laws of the UAE, but is still subject to UAE criminal law. Legislation has been enacted to govern the day-to-day requirements and operations of financial institutions, companies and individuals within the DIFC. The laws are modelled on the best practices of the world’s major financial jurisdictions and embody the best of international financial and commercial law. The laws are principle-based, allowing for the creation of subsidiary legislation such as regulations and rules. Laws have been enacted which in effect constitute a “commercial code”. These laws include the Companies Law, Contract Law, Arbitration Law and Insolvency Law, among others, administered by the DIFC Authority. Other laws deal with the application of civil commercial laws in the DIFC. The financial services legislation is made up of the Regulatory Law, the Markets Law, the Data Protection Law, and the Law Regulating Islamic Financial Business which are administered by the Dubai Financial Services Authority (the DFSA).

International financial institutions and businesses have flocked to the DIFC, attracted by the thorough and, importantly, familiar laws and regulations. The DFSA’s strict attitude to anti-money laundering is also a reassuring sign to the international community that Dubai takes its ethical, social and corporate responsibilities seriously.



The DIFC is also home to a leading international stock exchange which has grown significantly in a short period of time, being just over three years since trading on the market began. The exchange is now called NASDAQ Dubai and has developed from an equity-focused market to one which now offers a trading platform for structured financial products and, most recently, equity derivatives. Amendments to NASDAQ Dubai's listing rules are currently up for public consultation which demonstrates a mature willingness to address the issues of market participants. Given the short life of the exchange, there is a healthy number of issuers listed on NASDAQ Dubai who are experiencing sufficiently good liquidity and trading volumes. NASDAQ Dubai is also the number one exchange for Sukuk, or Islamic bonds.

❖ Structuring and licensing for international businesses wishing to do business in Dubai

In addition to the possibility of setting up in one of Dubai's numerous free zones, international businesses wishing to do business in Dubai may incorporate or register a local entity under the Companies Law or the Civil Code, register a branch or representative office of a foreign company or enter into a commercial agency relationship with a UAE national. Each of these business structures (other than setting up in a free zone) requires varying degrees of participation from UAE nationals - for example, 51 per cent of the share capital of a company incorporated under the Companies Law must be held by UAE nationals, and branch and representative offices must appoint a UAE national to sponsor the office for its licence application and for various other matters. Further, each of these structures has limitations on the scope of permitted activities. Most notably, a representative office may generally

only perform marketing and administrative functions on behalf of a foreign parent, and a branch office may generally only engage in activities which involve the promotion of the skills and expertise of the person conducting the business.

Business licensing is particularly important in the UAE and Dubai. Any person wishing to do business in Dubai (other than through a licensed agent) requires a licence and the licence impacts on the scope of the activities that the licensee may carry on. As with most other jurisdictions, certain sectors of the UAE and Dubai economy are subject to more stringent licensing requirements than others. As an example, international businesses wishing to carry on banking or most other financial services in Dubai and outside the DIFC require a licence from the UAE Central Bank and the granting of such licences is strictly regulated. In addition, a limited number of activities, such as real estate brokerage, are restricted to UAE nationals.

## ❖ Tax

There is no federal corporate or income tax levied in the UAE (except on oil companies and foreign banks). Dubai introduced a local income tax under the Dubai Income Tax Ordinance of 1969; however, the tax has not been implemented and it is understood that there are no plans to do so. In addition, free zone entities are subject to a number of tax concessions. There is no value added tax or sales tax in Dubai or the UAE. There are no exchange controls on the remittance of profits or repatriation of capital and there are virtually no restrictions on foreign trade.

## ❖ Corporate governance

Dubai has embraced the need to develop and encourage principles of good corporate governance in the Middle East which can only help to attract foreign direct investment. Hawkamah Corporate Governance Institute, the first institute of its kind in the UAE, has been established with the mission of assisting the countries and companies of the Middle East region to develop and implement sound and globally well-integrated corporate governance frameworks. Dubai's serious attitude to developing corporate transparency and principles of good corporate governance and anti-money laundering is a beacon for the Middle East region and is a significant attraction to the international investment and financial community.

## ❖ Enforcement of laws

Laws are strictly enforced in Dubai. Holding, consuming, buying or selling any drug (other than most prescription drugs - but visitors should verify that their prescription drugs are permitted in Dubai before arrival) is a serious crime in Dubai. The UAE also has a zero tolerance policy on driving under the influence of alcohol. A person caught driving with even a small quantity of alcohol in their bloodstream may be fined, incarcerated or deported. Although Dubai is an open and tolerant society, visitors to Dubai should also remain sensitive to Muslim standards of dress and behaviour, which are generally more conservative than those in the West. Visitors seeking further information on such matters should review The Dubai Code of Conduct which was released by the government of Dubai earlier this year.

## ❖ Legal representation

Legal representation in Dubai is easy to come by. The full spectrum of regional and international law firms operate in Dubai, with many of the larger international firms choosing to operate from the DIFC.

## ❖ Concluding remarks

Dubai has developed a robust and dynamic legal and regulatory framework over a relatively short period of time to give international businesses and investors significant comfort when deciding to invest or conduct business in Dubai. The framework also encourages local Dubai businesses to flourish in a well regulated environment. The Ruler and government of Dubai have recognized that in this rapidly-changing world a dynamic attitude to law and regulation is required. This has been a key factor in Dubai's continued success and development.