Reading, Writing, Arithmetic and Science have always been core subjects in school curriculum. The legal fraternity especially the law and judicial system however dictate that citizens and residents should always be aware of the local laws. To this effect, the legal maxim ‘Ignorance of Law is no excuse’ is drummed into students from their first civics class. Guided by our core principles, here we deliver you bespoke legal information that you should know. We have always been at the forefront of driving the conversation towards the issues. It is an indubitable conviction that we live in a time of information overload and it is Court Uncourt’s attempt to look for context and insight into subjects that pique your curiosity.

We are here to lay your curiosity to rest and share our competency and proficiency openly and seamlessly for your safety and knowledge. We wish you a pleasant and beneficial reading.
竞争力法律

“人们同种行业的人员很少聚在一起，即使是娱乐，但最终的对话是以对公众的共谋或以某种手段来提高价格。”

I. 引言

在商业语境中，没有一个词比“竞争”更被高度评价，更被谴责，更被渴望，同时又不被理解。这个简单词语也成为了本文章的基础。然而，“竞争”对律师、经济学家和商业社区有不同的含义。这些真实和理论性的差异阻碍了制定广泛和理性的竞争政策的发展。阿联酋已经认识到并采取了有效措施来合并这些差异，引入了新的竞争法律，即联邦法第4号法律于2012年2月23日生效。

随着竞争法的实施，阿联酋政府旨在为国际交易提供框架，涉及销售和转售、定价、共谋、市场优势的滥用、掠夺性定价和转售定价，有趣的是，还设定了最严厉的泄密惩罚。

2. The word ‘risk’ bears a broader connotation but interestingly however the word traces its origin to early Italian term ‘risicare’ which means ‘to dare’.
3. In Hoffmann-La Roche & Co AG v Commission, ‘abuse’ has been defined as; ‘The concept of abuse is an objective concept relating to the behaviour of an undertaking in a dominant position which is such as to influence the structure of the market where, as a result of the very presence of the undertaking in question, the degree of competition is weakened and which through recourse to methods different from those which condition normal commercial operations’ has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.” [76/442/EEC; Commission Decision of 9 June 1976 relating to a proceeding under Article 86 of the Treaty establishing the European Economic Community (IV/29.020 - Vitamins)] United Brands v Commission of the European Communities, Court of Justice of the European Communities, Case 27/76, [1978] ECR 207, judgment of 14 February 1978.

II. 增长的经济

阿联酋已经成长为一个重要的商业枢纽，并且是一个允许来自世界各地的人们进行贸易的适宜地点。阿联酋从依赖石油和天然气的国家转变为一个吸引大量外国投资者、促进多样化经济的国家。从加强房地产市场到增加国际品牌的出现，从高体积的石油和天然气贸易到住房，迪拜和阿联酋确实在提供无数机会。这种持续增长是由于精心规划和承诺提供最好的结果。随着增长而来的是风险。

III. 竞争——好的，坏的和丑的

尝试与他人平等或超过他人，或谁追求与他人相似的目标是一个古老的做法被商人和商业社区所采纳。一方面，“竞争”这个词具有积极的含义，因为它鼓励和激励人们做得更好。另一方面，竞争对一些人来说仅仅意味着主导地位。近年来，全球化的趋势和先进的技术已经对大多数公司产生了重大影响。公司正在采取全球战略，通过合资、并购等方式进入战略联盟，以加强其市场地位。这些趋势的一个重要后果是竞争的增加，这无疑增加了竞争政策的重要性，并且是影响市场主导地位的重要竞争问题。
IV. ILLUSTRATIVE CASE STUDY

Mr. Cee, the owner for ABC supermarkets decided to marry his only daughter to a rice baron in India, Mr. Mee. Besides other talks, Mr. Cee and Mr. Mee discussed their businesses and potential transactions they could generate between them. Mr. Mee as a heartfelt gesture decided to gift 5 containers of rice to Mr. Cee at a price 70% lower than the market price. Benefitting from the newly found relationship, Mr. Cee’s management in turn now decided to offer 1 kilo rice free to every customer making a purchase above AED 500/-. Whilst the merriment was ongoing, the management team of one JKL hypermarkets, a large chain of hypermarkets got concerned and felt that their business was in jeopardy.

After several internal consultations and brainstorming, JKL hypermarket’s marketing team proposed to its management that JKL could source a large quantity of rice from ABC supermarkets. Following the advice, JKL sourced twenty containers of rice from ABC supermarkets. Mr. Cee in turn requested his in-law, Mr. Mee to supply the rice. Excited that he had best of both the worlds and consistent to his promise, Mr. Cee supplied the rice to JKL hypermarkets. Immediately upon receiving the delivery of rice, JKL management decided to start a promotion inviting customers to get 1 kilo free rice for every purchase worth AED 500/-. Little did Mr. Cee realize that he had been tricked by a now healthier competitor who had a large stock of rice which unfortunately ABC did not! Mr. Cee felt JKL management had abused its dominant position causing losses in form of loss of business, loss of opportunity etc. In sum, the consumers benefitted from the competition whereas ABC got affected by ‘competition’.

Abuse of dominant position could also mean refusal by a party to provide goods, essential facilities or services to other. The European Court of Justice has defined ‘dominance’ as:

“Undertakings are in a dominant position when they `have the power to behave independently, which puts them in a position to act without taking into account their competitors, purchasers or suppliers…. they have the power to determine prices or to control production or distribution for a significant part of the products in question… “

V. DOMINANT POSITION UNDER UAE LAW

Federal Law Number (24) of 2006 relating to Consumer Protection was yet another legislation aimed at safeguarding rights and interests of consumers at large. The present Competition Law perhaps has the widest scope than any of its counterparts although it does not shed much light on the threshold of dominance within the relevant markets. Article 6 of the recently introduced Competition Law covers the concept of abuse of dominant position. Dominant position is defined as the position that enables any establishment, by itself or in participation with some other establishments, from dominating or affecting the relevant market. The law provides for a penalty of AED 500,000 to AED 5million or closing of the business for three to six months, for an action which is termed as the abuse of dominant position. The inclusion of the words ‘stimulating environment’ for establishments and keeping ‘competitive market’ in the introductory article of the Law indicates the message and ideology behind implementation of the law. The interpretation and application of the law by the courts and regulating bodies will remain a point yet to be speculated.
UAE LABOUR LAWS 2014
Employee Confidentiality FAQs

Introduction

Whether you have just recently joined or have been working for your employer for a while, it is important that you understand a few important matters relating to your work place, your rights and obligations to information you receive, use and share.

At your workplace, you tend to receive, use and share information on a day-to-day basis. This information maybe generic, a gossip over lunch, or overheard in elevator cabin. However when information that is private, and confidential and shared without permission, it may affect the person disclosing the information, person receiving the same and the person or entity to whom such information relates. Such private or confidential information may involve disclosure of financial, personal or general business information and records such as customer or client database.

Some may argue that signing confidentiality agreements does not prevent employees from doing anything the law does not already restrict them from doing. While this may be true to some extent, to ensure that confidential information does not get compromised confidentiality agreements play a major role in protecting proprietary and privileged information.

This FAQ has been written to serve as the guide for employers and employees to help them understand key issues surrounding confidentiality aspects they are bound by, legal terminologies, implications in the event of a breach, and the term for which such confidentiality applies.
FAQs

1. What is intellectual Property? What does it mean?

Simply put, intellectual property is imagination made real. Intellectual property (also generally referred as IP) allows people own the work they create. It is a work or invention that is the result of creativity, such as a manuscript or a design, to which one has rights and for which one may apply for patents, trademark, copyrights, trade secrets, etc. IP is an asset just like property, car, gold, etc.

2. Okay.. I get that, now what are patents, trademarks and copyrights?

A patent is a form of IP. It consists of a set of exclusive rights granted by a government to an inventor for a certain period of time, in exchange for the public disclosure of the invention. Patents are only issued for inventions where the inventor creates a unique or novel device, method composition or process.

A trademark is a brand name. It is the distinctive sign or indicator used by companies to help customers identify a product or service. A company’s logo for instance is a trademark.

Copyrights – In simplest terms, whenever you write a poem or story or even a paper for your class, or a drawing or other artwork, you automatically own the copyright to it.

Trade secrets – secrets or confidentiality aspects of any business are trade secrets.

3. Wait.. Why am I being made to read all this?

During your tenure with the company, you may have had the opportunity to gain access to material documents, software, brochures, databases, images, media, information relating to company’s customers, suppliers, service providers, ideas, technical information such as know-how, models, drawings, manuals, techniques and so on. These works were originated in and for the employer. Your employer is the owner of all IP and confidential information. These IP and confidential information is a valuable, special and unique asset of your employer and access to this information and knowledge thereof was shared with you so that you could perform your work. Just like you cannot use someone else’s asset, you cannot use employer’s asset upon termination.

4. Is it My Employer’s Policy or the UAE’s law that requires me to observe this confidentiality?

Every business makes investment in its IP and in gathering all the confidential information. Your employer may have a policy in place requiring every employee to observe the confidentiality provisions in strict conformity.

Speaking of the law of the United Arab Emirates please be advised that provision (v) to Article 905 of the UAE Civil Transactions Law sets out that every employee must “refrain from disclosing the industrial and trade secrets of the employer even after expiry of the contract as required by the agreement or custom.”

Article 379 of the UAE Penal Code applies to any one who is entrusted with a secret by virtue of his profession, trade, position, or art and who discloses it in cases other than those lawfully permitted, or if he uses such a secret for his own private benefit or for the benefit of another person, unless the person concerned permits the disclosure or use of such a secret.”

Article 120 of the UAE Labour Law (Part 6) allows employers to terminate services of employees if the employee reveals and secrets of the establishment in which he was employed.

5. Okay, so what’s best for me to do if I’m leaving my current employment?

To buy peace of mind, you should not disclose any information, secret, customer or supplier list, databases, know-how, models, drawings, techniques with any third party. You should not copy, disseminate, forward, store (physically or on any media) any information pertaining to company or any models, prototypes, patterns, samples, schematics, experimental or test data, reports, drawings, plans, specifications, photographs, collections of information, manuals and any other documents. You should sign a non-disclosure agreement to protect your interests.

6. Wait…What if I’m joining a competitor…?

If your employer has allowed you to work for a competitor, you carry a risk of divulging confidential information. You have to exercise a higher degree of care and caution and at all times ensure that you do not in any manner whatsoever disclose any information pertaining to your employer. This is important.

Your employer may (in its discretion and/or in interest of its management) refuse you to work for a competitor.
The malpractice is an error occurs due to the unfamiliarity of a practitioner with the technical aspects which each practitioner is assumed to be familiar with, due to negligence or paying insufficient efforts.  

On its way upward when the United Arab Emirates was being transformed into a country of ravishing skyscrapers, diverse business opportunities and world-class infrastructure facilities; the Government of the United Arab Emirates realized that its own elite class of local Arabs was turning to the West for medical treatments and therefore a business opportunity was being missed. For a country that has developed and transformed at a lightning fast speed, this was a wake-up call. Besides developing sophisticated medical infrastructure to advance medical tourism, the need for a conclusive legislation was felt.

In light of the aforesaid, the Federal Law 10 of 2008 (Medical Liability Law) was enacted in the UAE. This law governs the specific aspects of the medical profession and the relationship between doctors and patients. Before 2008, medical malpractice claims could be based on the provisions of the UAE Civil Code (Federal Law No. 5 of 1985) or on the Penal Code (Federal Law No. 3 of 1987). A request could be made before the Dubai Health Authority (DHA) to identify and appoint an expert medical practitioner to assess a case of medical negligence. In civil claims, reliance was placed on the UAE Civil Code and likewise a criminal claim would involve provisions of the UAE Penal Code to determine the performance of a duty. However, it was apparent that there were discrepancies and these were resulting in application of different principles by the Courts either on a civil or criminal level. Therefore, the implementation of the new law had become essential for the intended development of the medical sector and more so from a legal perspective. The law provides for imprisonment up to at least two years and not exceeding five years or a fine between AED 200,000 and AED 500,000.

The present Medical Liability Law does not intent that medical practitioners would provide some kind of panacea to their patients. What the law does provide is that they would observe care in treatment of patients and be professionals in their respective field. This law recognizes the existence of the duty to care for a patient by each physician and penalizing the latter when due to his negligence or lack of professionalism the patient suffers injury or damage. The Law clearly states that such lesions (for which claims are being made) must be derived solely and exclusively from medical negligence or in other words, determining whether any other doctor of same repute, similar degree of technical and scientific competence and with the same case study would have acted in a different manner.

Like many of its counterparts, the Medical Liability Law faces certain challenges. The law itself being federal in nature faces a major problem in that the medical malpractice complaint may be filed before different authorities depending on the local laws of the Emirate where a complaint is being filed. Within the Emirate of Dubai, for instance, a person can file a complaint before the DHA; register a criminal complaint in police station or prosecution; register a civil suit before Dubai Courts.

1 Article (14) of UAE Law number 10 of 2008
DHA is a regulatory and administrative entity regulating the healthcare practice in Dubai and has a established administrative system with sanctions to the physicians who are guilty of medical malpractice. For example, in July 2010 a doctor was sacked and also banned from practicing in the UAE after being proved that she was responsible for a death of a child. However, it needs to be noted that although registering a complaint with DHA is free of cost, yet DHA is only a regulatory body which is not empowered to sustain a legal proceeding. Therefore interpretation of the Medical Liability Law by DHA can differ from that of a court’s interpretation.

In essence, the numerous interpretations of the same law by different entities leave little room for the coherence and consistency of decisions – much needed when it comes to a matter so sensitive.

A major problem faced by patients is the lack of statutory provision for a medical practitioner to confirm that his patient was subject to a wrong treatment by the earlier doctor. Some people also argue that this law is too advanced, for the UAE culture. “Their system is very advanced and the society is very educated. Here, they have implemented all the rules and regulations without thinking of social changes. That is creating a lot of problems, especially for surgeons” a doctor whose name is not revealed quotes this in an interview to The National. In a recent Abu Dhabi case, a woman suffered second-degree burns on her thighs during laser hair-removal treatment and as the burn marks turned black, she decided to sue the hospital demanding AED 60,000 as compensation for physical and psychological harm and AED 25,000 as a refund the cost of the treatment. Despite the fact that the hospital argued that it wasn’t a medical error, defending itself explaining the court as such kind of damage can occur to people with sensitive skin and how they warned the claimant about that eventuality, the court refused all such arguments and condemned it to pay AED 100,000 to the claimant which was AED 30,000 more than the claim made.

Therefore, while applauding the initiative, the law must be carefully examined given the fact that the misuse of this law can bring serious implications from the reluctance of experts in medical field to choose UAE for practicing their profession, the abuse of rights, and even the ruin ab initio of the whole idea and investment made by the country in medical tourism.

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2 http://www.bi-me.com/main.php?id=47193&l=1
The UAE legislator identified Arbitration as a way to settle disagreements between the disputing parties, under the Federal Civil & Commercial Transactions Procedures Law, Articles 203 to 218. The Law did not stipulate any certain conditions precedent on the parties to resort to Arbitration. However, the legislator stipulated that there should be an express mutual agreement among them to resort to Arbitration. For instance, in case of a dispute between two parties to a sub-contract, in order for them to resort to Arbitration, the contract should expressly and specifically provide for the Arbitration or they may subsequently agree when the dispute arises to resort to the Arbitration as a way to settle the dispute. Article 203 of the aforesaid law stipulated that the agreement on the Arbitration should be reduced to writing. The Agreement on Arbitration shall be between those having the capacity to decide on the right, subject matter of dispute. The said law has excluded the matters in which no conciliation shall be reached, from the Arbitration and obviously in addition to the criminal cases. We would also add the matters related to the Public Order.

The aim of the Legislator from the Arbitration as a way for disputes settlement is that the people may find a quick way for settling their disputes to avoid the slow legal proceedings. This aim has a big note in identifying the jurisdiction of the National Judiciary as to the Arbitration rules. The U.A.E. national law allows the enforcement of the Arbitration award only after being certified. In this respect Article 215 of the aforesaid law stated as follows: “The Arbitrator’s award may only be enforced after being certified by the court where the award has been submitted to its clerical office, after seeing the award and the arbitration deed”.

The court may not examine the subject matter of dispute which has already been settled through arbitration, under any justification, when certifying the award. If the arbitration award omitted any requests by the arbitration parties, the court who examine the certification may return the same to the single arbitrator or to the arbitration panel, who issued the award, which Article
214 of the same law stipulated. Moreover, the last Article also stated that the court may return the award to the originator for explanation and interpretation, if it is not specific and unenforceable in its present form, without any interpretation. Obviously the Legislator has blocked any justifications for the court considering the certification, to interfere with the award to be certified.

When the arbitration award is rendered, it shall be certified by national courts, which should not interfere with such award. It is legally established that the court, examining the certification case, may not question the arbitrator judgment. All that is related to the arbitrator judgment in the dispute, whether factually or legally is beyond the court control. Dubai Court of Cassation, in this respect, stated as follows: “According to Articles 212 and 216 of the Civil Procedures Code, the court, while considering the certification case, may not address the merit aspect and the extend of consistency with the law or facts. So, any dispute raised by an opponent to challenge the award and related to the judgment of the arbitrator in the dispute or the invalidity or adequacy of the ground upon which he established his award, shall be unacceptable”. (Challenge No. 95/2008 Civil, Session of 25/05/2008).

Now the question to be raised is: If the national courts may not question the arbitrator’s awards even if they are not consistent with the law or facts, then what is their role in certifying the arbitration award?

The role of the national judiciary is limited to certifying the arbitrator’s award by merely examine the award and the arbitration deed and ensure that nothing prevents the enforcement of such award. They may correct any material errors in the arbitration award. The court examining the certification case may not consider any matters that question the arbitration award, unless such matters are related to the Public Order issues, such as the subject of dispute may not be examined through arbitration.

However, the court examining the certification of the arbitration award may consider its invalidity based on a petition of course submitted by the Respondent i.e. Defendant in the certification case. Nevertheless, the latter may not rely in case for the award invalidity, on the arbitrator judgment from the legal and merit viewpoint. We may address the reasons upon which the Respondent can rely upon when requesting to invalidate such award in the next article.
The old adage holds true when principles of corporate governance and their implementation in the GCC are discussed. Implementation of good corporate governance practice perhaps is essential when weighed against ownership disputes, succession issues and stakeholder disputes.

In a survey published by the DIFC, the Chairmen and CEOs of key institutions believed that the governance of their companies is well established. In the same survey however, the views from other family members of the same company who were involved at different positions, were divergent. Whilst many companies, particularly the listed ones claim to be part of the UAE Government’s initiative to streamline and strengthen internal corporate governance code, small and medium size enterprises (SMEs) and family owned enterprises (FOEs) are yet to follow the norm.

Corporate governance is defined as “a set of rules, standards and procedures that aim at achieving corporate discipline in the management of the company in accordance with international standards and approaches through determination of responsibilities and duties of members of boards of directors and the executive management of the company, taking into consideration protection of shareholders’ and stakeholder’ equity”

UAE has set out a positive notion for implementation of corporate governance policy as it introduced stringent legislation through the Securities and Commodities Authority (SCA) Decision No. R/32 of 2007 as amended by the Ministerial Resolution Number 518 of 2009 Concerning Governance Rules and Corporate Discipline Standards as further amended by the Ministerial Resolution Number 84 of 2010 (the Code) and Federal Resolution Number 17 of 2010 establishing the Abu Dhabi Centre for Corporate Governance. In this article we examine the existing corporate governance policies and the need for adopting such practices by unlisted firms.

GOVERNANCE NORMS ON FEDERAL LEVEL

Companies which are listed either on the NASDAQ in Dubai International Financial Centre, Abu Dhabi Exchange (ADX) and Dubai Financial Market (DFM) are required to compulsorily adhere to the regulations set forth by the regulating authority of the relevant exchange. While NASDAQ is regulated by the Dubai Financial Services Authority (DFSA) and is subject to the regulations of the DIFC, which will be discussed in a subsequent issue, ADX and DFM are regulated by the SCA and are governed by the Code.

As defined under SCA Decision No. R/32 of 2007 and amended by the Ministerial Resolution No. 518 of 2009
The industry players governed by the SCA corporate governance Code include non-financial institutions and public joint stock companies and are required under the code to adhere to the following standards:

a. Separation of authority and defining obligations- The Code provides a clear indication for separation of authority, differentiation between management and ownership issues. It states that each company listed on a market must be managed by a board which is to be elected by the shareholders. At least one third of the members of the board should be independent and non-executive members. The position of chairman and managing director must be held by different individuals. The Code states that board meeting must be held twice a month. The Code further provides for appointment of audit, remuneration and nomination committees as well as compliance officer.

a. Internal Control and disclosures- Provisions of the Code have received appreciation and slight criticism for the outlines pertaining to internal control and disclosure by the members of the board. The outlines for disclosure set out under the Code and the disclosure statements requested by SCA are often speculated to be dissenting. It is required by the listed companies to implement and exercise strict internal control policies and practice consulting and advisory within the board. In addition to this, members of the board have to make detailed disclosures to the SCA with relation to company’s activities, risks and steps taken by them.

a. Annual report- The SCA requires companies to submit an annual report which amongst other things also includes the disclosures required by Article 8 of the Code. The report also explains decisions of the board and compliance (as well as non-compliance issues with the Code).

CORPORATE GOVERNANCE FOR FINANCIAL INSTITUTIONS

Financial institutions regulated by the UAE Central Bank are governed by the Circular Number 23/00 of the Central Bank which provides mandatory recommendations for corporate governance structures. In addition to this, the Central Bank has issued guidelines which are not mandatory by law. The Chairman of UAE banks, Directors and CEOs have been provided with relevant formal guidelines in order to avoid misuse of authority and prevent embezzlement of monies.

WHY THE NEED FOR CORPORATE GOVERNANCE IN FAMILY OWNED ENTERPRISES (FOES) AND SMES

UAE houses several local family businesses which have branched out in multiple business dimensions. In a working paper by Dubai Chamber of Commerce and Industry published in 2005 a family business is defined as “a business which is fully owned by UAE nationals.” In practical terms this definition will include companies where 51 percent of the ownership is retained by the UAE national.

Small and Medium Size Enterprises on the other hand are defined as those companies which have an annual turnover of less than AED 250 million and less than 250 employees. Dubai SME published its report examining the need for corporate governance structures within the FOEs and SMEs which is elaborative and illustrative.

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2 Article 3 of the Code
3 Article 6 of the Code
4 Article 8 of the Code
5 As defined by H.E Sami Dhaen Al Qamzi, Director General, Dubai Economic Department in a report published by Dubai SME
Debating on the need for corporate governance, people in positions of authority often argue that family businesses and SMEs are smaller units and hence thorough corporate governance may not be the need of the hour. In response, lesson needs to be taken from software giant Intel, 90% of whose sale in January 2013 came from the products which had not even been finalized in December 2012. The example of Intel highlights one important facet of all economies and each business-change. Developing economies, revenue boosts mergers and amalgamation-all bring out ‘the change’in a business. As published in a DIFC survey referred in this article, the former director of DIFC has quoted that ‘nearly 95 percent of the family businesses do not survive the third generation of ownership due to lack of planning in successions’. In such a competitive and changing market, the cost of not working out corporate governance could mean risking more than loss of just a few stakeholders.

SMEs and FOEs each need to understand the process of corporate governance and the key issues it addresses which include but are not limited to:

1. Succession planning;
2. Separation of ownership and management roles;
3. Maintaining stakeholder relationships
4. Avoiding conflicts of interest;
5. Defining executive roles;
6. Encouraging non-executive participation to promote no-bias concept;
7. Increasing internal control; and
8. Harnessing positive work environment.

CONCLUSION

Regardless of being a listed company, a FOE or an SME-corporate governance policy needs to be embedded within the framework of a company in order to ensure sustainability in the long run. External regulations alone cannot help businesses maintain and flourish without the existence of internal control and governance. To conclude, the need of the hour is for companies to recognize that ‘management’ of a company differs in several aspects from the ‘governance’of a company.
AGENCY AGREEMENTS

“If you build every transaction and relationship in business and life with your behavior guided by the concepts of mutual benefit, fairness and truth, the profits will come.”

The above should be adopted as a mantra when signing an agency agreement. If all agents and principals would consider mutual benefit to be the highest incentive, each party would be able to reap unlimited rewards. An agency agreement is a legal contract which creates a fiduciary relationship between two parties, whereby the first party (the Principal) agrees that the actions of the second party (the Agent) binds the Principal to later agreements made by the Agent, as if the Principal himself, had personally created the agreements.

Federal Law Number 5 of 1985 of the United Arab Emirates (the Civil Code) and specifically Article 149 of the Civil Code determine part of the legislation in regards to agency contracts. Article 149 states that a contract may be made by a principal and it may also be made by an agent unless the law stipulates otherwise.

Foreign parties who wish to take part and conduct business within the UAE but want to do so with a minimal investment, often turn to commercial agents to sell their goods. The prominent and customary piece of legislation that governs agency agreements is Federal Law No.18 of 1981 commonly referred to as the Agency Law. Law No.13 of 2006 drastically amended the 1981 legislation but was repealed again in 2010 whereby the provisions in Law No.18 of 1981 were reinstated. Arguably, this legislation is generic and somewhat abstract in nature and whilst capturing all forms of agreements for sale through third parties, this law can be blurry and ambiguous in form. A commercial agency is defined as ‘representation of a principal by an agent for distribution, sale, display or provision of a commodity or service in the state in return of commission or profit.’ The Agency law tends to remain conserved and biased in some areas and therefore it is a prerequisite that any foreign principal looking to begin or expand in the UAE market, should obtain legal advice before making any concrete commitments regarding an arrangement with a prospective agent. A foreign individual should be made aware of certain important factors before entering into or terminating agency agreements and it is without confusion we note that, like the majority of countries, the UAE also has a protectionist approach towards its citizens. Federal Law No.2 of 2010 was introduced to make amendments to the provisions of Federal Law No.18 of 1998 and this serves an accurate example in respect of the rights of commercial agents.

continued on next page→
THE PRINCIPAL-AGENT RELATIONSHIP AND ITS TERMINATION

It must be understood that only UAE nationals or companies owned by UAE nationals are able to act as commercial agents within the UAE. This is an absolute provision of the UAE Agency Law. An agency agreement must be exclusive to a territory within the UAE, namely one of the Emirates, although exclusivity can apply to multiple Emirates or the UAE as a whole. The commercial agent must be registered in the Commercial Agencies Register which is to be maintained by the Ministry of Economy in the respective Emirate. If the agency agreement is registered, the agent is provided with protections and privileges such as to claim damages on behalf of the Principal.

Termination of an agency agreement can be extremely burdensome and once the agency agreement is granted and registered with the Ministry of Economy, the termination of an agency relationship by a Principal can be very difficult to effect. In most cases when a Principal attempts to terminate a relationship with an agent or to abandon an agency agreement, in most cases such terminations usually result in significant compensation being awarded to the local agent. Agents are entitled to statutory compensation as a result of termination of the agency agreement. Compensation considered by the courts will be substantial and furthermore, be in addition to any contractual rights. That said, the specific calculation of compensation has been set out in the Agency Law and several factors will be taken into consideration by the courts. The duration of the agency agreement and the efforts of the agent in the promotion of goods and net profit generated by the agent will be deliberated upon. For this reason, the law can be advantageous for the Principal and offer a degree of equality and fairness. If the agent has fulfilled his role as an agent acceptably and without amble, there would seemingly be no need for the Principal to initiate the termination of the agency agreement.

The law surrounding agency agreements has undergone several amendments in order to address particular issues and to prevent the swinging of a pendulum between the rights of the Principal and the Agent from time to time. Prior to the amendments made to the law in 2006, the termination of an agency agreement or the refusal to renew the agency agreement could only be successfully effectuated provided there was a ‘valid reason’ for the termination and what would amount to a ‘valid reason’ was for the Commercial Agencies Committee within the Ministry of Economy to decide. Following 2006, the law was amended and relaxed slightly, which no doubt made the prospect less unattractive for foreign Principals who wished to penetrate the UAE market without feeling exposed and unprotected. The advancement provided leeway for Principals in that they were able to terminate agency agreements on a fixed date indicated within the agency agreement. Furthermore, the law incorporated the legal right for either party to the agreement to seek compensation in the event of any breach and or default to the law.

In order to establish business within the UAE, the appointment of an agent remains an attractive way to enter the market, however it is paramount to conduct thorough due diligence on prospective commercial agents and to have your lawyer examine, review and draft agreements carefully. The use of a lawyer will also ensure that you have correctly complied with the provisions of the ‘Agency Law.’
The current global investment climate is a ‘mixed bag’ of healthy, stable and crippling economies. The dollar continued to be the global currency for millennia but with countries deciding to introduce their local currencies to mainstream – such news have led to a plethora of questions and debates. Introduction of Euro and announcement by State Council of China allowing free flow of Yuan in global markets had shaken the financial markets in their way and government policies such as recent announcement by Government of India preventing Indian citizens from investing abroad have had their fair share on international property markets. Amongst several other economies, the economy of United Arab Emirates has emerged and continues to be one of the healthiest economies in current times.
The International Monetary Fund has estimated that Dubai’s economic recovery is going from strength to strength and this is being reflected in the return of the Emirate’s real estate market. The number of transactions in real property by domestic as well as foreign investors including influx of foreign direct investments in the year 2013 continues to gain momentum. The political and financial turmoil in other nations such as Greece, Syria and Egypt emphasized by the Cyprus banking crisis has had investors turn their eyes towards other safer economies. Investors from Europe, the GCC, and Asia continue to invest sizably in the region as UAE continues to remain politically, economically and financially stable. This article overviews the recent regulatory developments in the real property sector within the Dubai International Financial Centre (the DIFC).

DIFC is an independent jurisdiction within Dubai, United Arab Emirates. Established in the year 2004, DIFC was built with the vision of promoting economic growth and development of Dubai. DIFC was built upon the premises of modern regulatory, legal and physical infrastructure imbibing the best from the most advanced systems in the world. This onshore free zone is a city within a city, has its own courts based on common law system where commercial and civil disputes are adjudicated and has its very own independent financial regulatory body, the Dubai Financial Services Authority, commonly known as DFSA. DFSA is empowered to grants licenses and regulate financial transactions that are conducted within the DIFC. It is no surprise that the DIFC is today, one of the most modern, efficient and systematic property registration systems in the world.

The year 2007 saw the implementation of DIFC Law number 4 (the Law) which governs the ownership of freehold land and buildings within the DIFC. The Law was enacted after careful contemplation and consultation with various interested parties. Members of the public were invited to provide their inputs and the initial consultation period was subsequently extended for an additional thirty day term. This new Law is a contemporary piece of legislation that derives its strength from the foundations of English Common Law and the more modern Torrens system. The Torrens system was formulated to make the process of land registration a simple affair and to certify to the ownership of an absolute title to property. The process being easy and clear-cut has become insidious around the world.

The Torrens system works on the doctrine of “title by registration” rather than “registration of title.” In essence, this means is that there is no need to trace the title through a long drawn out procedure through a series of documents. The authorities responsible for title registration guarantee its indefeasibility and have compensatory actions in place in case of there being an error. This Law is applicable exclusively in the DIFC and is unique compared to any other free zones within the United Arab Emirates or anywhere in the GCC.

1. Key Features of the Property Registration System in the DIFC

a) Indefeasibility of title- This is an important aspect of the new Law. In other words, once a property has been registered by the DIFC’s Registrar of Real Property, it is backed by security of ownership by the Law. Land parcels are registered and allotted a distinct number known as the folio and is noted in the central system with the name of the registered owner and its key features. A change of ownership in case of a sale or death of registered owner comes about by changing the record with the Registrar.
b) Caveats - This is one of the exclusive features of the Law. The Registration of Property or change of ownership requires the concerned parties to fill two forms, namely Caveat Form No.42 which is completed by the buyer; and Withdrawal of Caveat Form No. 43 which is completed by the seller. Filing of these forms warrants that the claimant’s right in a developer’s property is legally recognised. An important facet of this fact is that all parties that claim an interest in a land parcel must register a caveat and file the Freehold Transaction Return Form number 46 within 30 days of commencement of the transaction which is considered to be the day of signing the ‘Memorandum of Understanding.’ If the said Memorandum of Understanding is binding and not contentious, the commencement is said to have occurred by signing of this written agreement.

c) Guarantee - The DIFC Registrar guarantees the accuracy of the Central Register which has been defined as the central record of all property transactions within the DIFC. It is also empowered to order compensation to any party that is adversely affected by a clerical error. This enables a prospective buyer to rest assured that he/she does not need to verify information beyond the scope of the Central Registry. This has simplified the process of property ownership much to the relief of many.

d) Registration Fees - Also particular to the DIFC is the transfer fees at 3.5% of the market value of the property compared to the other Free Zones and mainland fees of 2%. The market value of the property is determined by DIFC approved surveyors. The higher fees have resulted in criticism from many concerned parties but the DIFC has maintained its stand on this issue by stating that the system enables a quick and effortless transfer which justifies the fees. The transfer fee needs to be paid within 30 days from the effective date of the transaction which is the date of signing the memorandum of understanding between the two parties; with an interest being payable at the rate of 5% per annum for any delay in payment. There are however certain circumstances which exempt a freehold transaction from payment of this fee. These are:

i) A party enters into an Islamic financing agreement

ii) A transfer is taking place to amend slight change in interest. For example, where a person is attempting to transfer his interest to or from a company where he is the sole shareholder

iii) In case the transfer is taking place due to buying or selling of shares of a publicly listed company through the stock markets

iv) A person comes into the estate by the terms of a will

v) A person comes into the estate of another by an order of law

Another exclusive feature of DIFC when it comes to property is the ability of real estate investment trusts (REITs) to purchase property within the DIFC. In contrast this is an exclusive system which is not observed elsewhere in Dubai. A REIT has been defined as an entity that invests in multiple real estate developments and projects such as shopping centers, hotels etc. What is interesting about a REIT is that it allows an individual to have a stake in profit making ventures that otherwise it may not have access to. The REIT legislation was introduced by DIFC to promote its functions by enacting the Investment Trust Law Number 5, 2006.

DIFC has taken the lead when it comes to property law in the UAE. The system of registration, the encouragement to REITS and the ease and transparency of transaction has made DIFC a favorite domicile for investment by domestic as well as foreign investors who have previously been hesitant to invest in the Emirate. Law number 4 is a thoroughly researched and scrutinized piece of legislation which has further established the DIFC’s leadership in encouraging investment into Dubai. With this advanced property registration system the DIFC has expanded the horizons of not only the property law within the free zone but also beyond.
From coding a logic bomb to malicious hacking and from formation of ransom ware gangs to spear phishing, no computer in the cyber world is today immune from an electronic misdeed that continues to grow and develop and at the same time survive criminal prosecution in many instances. The year 2013 witnessed a new trend of cyber-attacks ranging from blackhole web malware, TDOS (telephony denial of service) and bad DDOS (distributed denial of service) attacks, advanced banking Trojans, proliferation of PUAs (potentially unwanted applications), invention of Tor network designed to hide user identity, advanced botnets, exploit kits and crypters. Cyber criminals recently went as far as setting up open market-place to sell drugs, illegal goods and harmful substances misusing the Tor network.

Cyber threat laboratories around the world treat blackhole exploit kits (the Blackhole) amongst the top 50 malwares in the world. A Blackhole is a bundle of maliciously coded software that permits its creator to create security risks, manage networks, obtaining analytical information of victim such as victim’s location information, operating system, running applications and system related information. The creators of such malware generally use a polymorphic engine (or; mutation engine) that converts software in to various other versions with different code but are still capable of operating with the same functionality as original software. For this reason, anti-virus softwares generally cannot detect a Blackhole at early stage.
Banks are being targeted almost every minute of the day and it is anticipated that very soon, mobile services could be the next wave of cybercrimes. Cyber criminals resort to a range of cyber-attacks to target banks and financial institutions. One such attack is a denial of service (DOS) attack whereby overwhelming requests are made to bank’s server leading to temporary or indefinite interruption or suspension of services. Similarly, a bank’s security may be compromised by adopting telephone denial of service (TDOS) attacks. Scammers make use of caller ID spoofing whereby the number appearing on recipient’s caller id or phone screen is not the same as of the person making the call. For instance, scammer may contact a bank representing itself as bank’s customer and request for a wire transfer. In return, the bank attempts to reach its customer for verification purposes but fails to reach as customer’s lines are being flooded with fake calls. A recent trend of such frauds and bad practices is ransomware. Ransomware gangs work in union to create a ‘fix’ or malware that freezes victim’s computer making it impossible for victim to access any part of his computer. The victim is only displayed a message demanding ransom to be paid to ransomware gang to remove the restrictions placed on victim’s computer.

Growing use of interconnected network systems has heightened criminal opportunities and expert computer criminals pose a threat to law enforcement. Although new techniques and malwares are being developed rapidly, legal development has not been able to maintain the pace. Computer or internet crimes are generally very complex and it is difficult to prove and/or nab the criminals. Unless incriminating evidence exists, it is generally difficult to prove i) that the computer was in fact compromised or hacked; ii) difficult to prove the creator or the hacker; iii) issues such as access, intent and jurisdictional difficulties. For instance person possessing hacked information and person hacking the computer may be two different people. Document management in today’s global economy is much different than earlier when we had record trails. It is practically possible to commit a crime and destroy all the evidences.

Computer forensic experts however play a major role in technical matters involving cybercrime. Forensics is a scientific method of examining questions of interest to a judge. Computer forensic experts employ advanced scientific techniques and tools that detect steganography (steganography is science of encoding hidden messages), cryptographic messages, concealment, read slack area, detect encryption, remote attacks, and using advanced tools such as Nmap, Nessus, and computer online forensic evidence extractor.

The UAE Cyber Crimes Law addresses dominant areas of paramount concern. Any activity on the cyber space which poses a threat to the state security and political stability, disturbs the Islamic principles of social and moral behavior or is financial criminal activity is punishable under the said law. Persons so acquitted are liable to pay penalties as specified under the law. While acting in conformity with the law, a court can pass a custodial sentence or deportation of the accused. The authorities have been provided the right to seize and destroy the equipments used in the process of such crime.

With Saudi Arabian oil giant Aramco’s claim of cyber attack the UAE Government’s activity to combat cyber crimes has gained momentum. Experts argue that with the roll out of new projects and massive economic growth, the increase in sophisticated cyber crimes in the Middle East will be witnessed. In light of recent legislation in place and active involvement by authorities, UAE seems to be geared up for the challenge.
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