

NEW LAWS IN THE UAE

Foreigners allowed to buy properties in Abu Dhabi (page1)

Stricter provisions for the commercial and professional activities in the UAE. (page1)

INSIDE THIS ISSUE:

Court Decision	2
Legal structures of Businesses in the UAE	3
GCC Countries' membership of WTO and IP treaties	5
Legal dilemma of football players in the UAE	6
Hierarchy of Courts in the UAE	7

New Laws in the UAE

Law No. 19 of 2005 Regarding the Real Estate Property in Abu Dhabi

This new law relates to real estate in the emirate of Abu Dhabi. Among other things it allows foreign persons rights slightly short of freehold in real property in Investment Areas within the emirate of Abu Dhabi. It enables foreigners to own buildings and have long leases over land but no absolute ownership.

This new legislation, affords foreigners these property rights only in areas of Abu Dhabi, designated as Investment Areas. It provides for wider rights and longer duration than those addressed by the Code of Civil Transaction in its provisions regarding long term leases in realty. According to this new law the long lease rights which may extend to 99 years shall be inheritable and assignable after registration. Some aspects of this law and probably the process of implementation hold resemblance to the system already in place in the emirate of Dubai.



The scope and range of the new law shall take their final shape when the secondary instruments (such as by laws and regulations) are promulgated but those who are interested see in it a step that satisfies a heartfelt need from all the parties in real property arena within Abu Dhabi. The Investment Areas to which the law shall apply are yet to be defined and executive regulation for the implementation of the rules are expected soon.

Federal Law No. 17 of 2004 regarding the Control of Commercial Harboring

This law will come into force in November 2007. It prohibits the unlawful use of a third party's name to practice commercial and professional activities. It defines harboring as unlawfully enabling a foreigner, whether a natural or legal person, through name lending, fictitious shares in enterprises or etc by the UAE nationals, to practice any commercial or professional activity prohibited by the applicable law and regulations in the United Arab Emirates.

This new Law imposes the penalties on the violator whether he acts for his own interest or in association with a third party. It also prohibits the use of a third party's name, license, or commercial register or using the same by any other means.

Without prejudice to any other stiffer penalty provided by any other law, whoever harbors a third party shall be fined for up to Dhs.100, 000. The fine shall be multiplied in accordance with the activities concealed. In case of recidivism, the violator shall be imprisoned for a period not exceeding two years and fined for not less than Dhs. 100,000. The body or person who harbors such activities shall be liable to have its commercial register cancelled for a period up to 5 years regarding such activity. Furthermore, whoever uses the name of a third party shall be punished with the same penalty and shall be deported after executing the penalty and meeting his obligations.

This law will deter those persons which violate the Commercial Companies Law, with regards to the requirement of having a UAE National as a shareholder of minimum 51% in any business in the UAE and the practice of so called 'Side Agreements' in which parties agree to show/lend the name of a UAE national as a shareholder of 51%, to fulfill the requirement of the Commercial Companies Law, against some kind of consideration. This may be seen by many as a step forward to the correction of a long standing position regarding shady dealings in commercial licenses, and corporate entities.

Mere inscription of the name of a certain person in the commercial license as the holder is not by itself proof of the ownership of the business.

Federal Supreme Court Appeal No. 429-21 Dated 03 April 2001

In this case the Federal Supreme Court reaffirmed the principle that the mere inscription of the name of a certain person in the commercial license as the holder is not by itself proof of the ownership of the business.

Briefly the facts are that a claim was made against both the enterprise and its owner (a sole entrepreneur) for the recovery of advertisements expenses allegedly owed by the defendants to the claimant. The entrepreneur sought without success to have the active trader under the license joined to the suit as defendant.

Court of First Instance:

The court of first instance found against the entrepreneur and ordered him to pay the debt to the claimant.

Court of Appeal:

The Court of Appeal reversed the decision on the ground of the absence of the standing of the entrepreneur in the suit and accordingly dismissed the case.

Supreme Court:

The claimant applied to the Supreme Court against the decision of the court of appeal on the grounds that, inter alia, the law of commercial licenses provides that the license is personal and inalienable. Despite this well founded plea the Supreme Court affirmed the decision of the court of appeal. The grounds of the Supreme Court in the dismissal of the suit seem to rest on an issue of agency. No reference to the law of commercial licenses was attempted in this judgment.



This decision raises more questions than the answers provided. The introduction of the issue of agency might have distracted the attention from the primary issue of dealings in the commercial license. It seems that the matter tried by the Supreme Court was whether there was an apparent authority vested in the active trader that justifies obliging the principal who was the defendant in the suit. The exclusion of apparent authority does not suffice to relieve the liability of the license holder.

This decision appears to be in line with the principles laid down in previous decisions by the same court, such as Appeals No. 274-20, 306-20 and 308-20.

Dubai Court of Cassation:

However, the Dubai Court of Cassation has decided differently on the same issue although the practical outcome may be similar. In the Appeals No 291/280/238 of the year 2000 the Dubai Court of Cassation held that the holder of the commercial license is primarily liable for the obligation of the enterprise unless such a holder can disprove liability.

Furthermore, in a more recent decision (Appeal No. 194-2003) the same court held that the issuance of a commercial license to a sole entrepreneur raises a presumption of ownership. The same holding was repeated broadly in other decisions but with the burden of proof of ownership shifted to the creditor or claimant. It is not clear whether the liability of the license holder to the third parties depended on the ownership of the enterprise or on the concept of the apparent authority of the active trader to act on behalf of the licensee.



What may seem inconsistent in all these decisions is that they tend to offer recognition to the relationship of lessor and lessee of the commercial license created in contravention of the express prohibition

Legal Structures of Businesses in the UAE

In the UAE the main legal forms of businesses comprise of Sole Proprietorships, Commercial Companies, Branch Offices Of Foreign Companies, Companies Established in the Free Zones, Commercial Agencies and certain entities permitted under the Civil Code.

1. Sole Proprietorship

A sole proprietorship is a form of business in which a person may trade on its own account upon obtaining a trade license on its own name from the relevant department. Foreigners may establish sole proprietorships if they reside in the U.A.E, however this is restricted to certain fields such as for medical services, engineering consultancies and legal consultancies. However, a foreign sole proprietor is required to appoint a U.A.E. national as his local service agent.

2. Commercial Companies

These are the Companies, which are established under Federal Law No. 8 of 1984 concerning Commercial Companies. The main rule regarding the commercial companies is that they must have one or more national partners "whose share in the company capital must not be less than 51% of the company capital." Therefore, foreign investors who want to establish a commercial company in the U.A.E. must have a partnership with a U.A.E. national and the share of the UAE national should not be less than 51% of the company capital.

There are seven forms of companies that may be established in accordance with the Commercial Companies Law.

- i. **General Partnerships** - An arrangement between two or more partners whereby each of the partners is jointly and severally liable to the extent of all their assets for the company's liabilities. As per Commercial Companies Law only nationals of the UAE are allowed to be partners in a general partnership. Therefore, such company can not be established by any foreign investors.
- ii. **Simple Limited Partnership** - A company formed by one or more general partners liable for the company liabilities to the extent of all their assets, and one or more limited partners liable for the company liabilities to the extent of their respective shares in the capital only. In this type of the companies only the nationals of UAE may be general partners but the foreign investors may become sleeping partners. The foreign investors can not take part in the management of the company in relation to third parties and their liability is limited to the extent of their share capital in the partnership.
- iii. **Joint Participation** - A company established by two or more partners to share the profits or losses of one or more commercial businesses being performed by one of the partners in his own name whilst the other partner remain unidentified. The company shall be confined to the relationship between the partners and will not be effective towards third parties. The existence of a joint participation may be proven by all methods of proof. This form of company is popular with foreign investors who wish to set up a business in the U.A.E. for a particular project.
- iv. **Public Joint Stock Company** - It is a company whose capital is divided into equal value negotiable shares and a partner therein shall only be liable to the extent of his share in the capital. It is the only business structure in the UAE, which allows shares to be offered to the public. The law imposes certain restrictive rules for the establishment and management of this kind of company and it requires substantial capital, this type of company is not preferred by the foreign investor.
- v. **Private Joint Stock Companies** - A number of not less than three founder members may incorporate amongst them a private joint stock company whose shares are not offered for public subscription and they have to fully subscribe to the capital, which must not be less than two million Dirhams.
- vi. **Limited Liability Companies** - A company with limited liability is the company where the number of partners may not exceed fifty and should not be less than two. Each partner shall only be liable to the extent of his share in the capital, whereas negotiable instruments may not represent their shares. The minimum share capital required is AED 150,000 (in Dubai, the minimum share capital may not be less than AED



The commercial companies must have one or more national partners whose share in the company capital must not be less than 51% of the company capital.



Abu Dhabi Chamber of Commerce

300,000), divided into equal shares of AED 1000 per share. In this type of business U.A.E. nationals must hold at least 51% of the shares, however the day-to-day management of the company may be vested in a foreign manager. It is possible to provide in the memorandum of association that profit and losses will be shared in a ratio different to that of the share capital ratios. For these reasons, the LLC is often the preferred choice of foreign investors.

vii. Partnership Limited with Shares - A company formed by general partners who are jointly liable to the extent of all their assets for the company liabilities and participating partners who only participate in the capital and are liable only to the extent of their shares in the capital.

3. Branch Offices of Foreign Companies

A popular instrument for foreign companies to benefit from 100% foreign ownership is to open a branch office of the parent company in the UAE. Although a branch office is legally regarded as part of its parent company, it is necessary to have a UAE national agent. Such an agent does not hold any rights or interests in the business of the branch office but he provides services on matters, which concern federal or local government departments in return for which he is generally, paid a fixed fee. The branch office may only be engaged in activities similar to those of its parent company .

4. Civil Business Entities

There are three types of business entities, as per the Civil Code, viz:

- i. Professional/service companies** – these companies may be 100% foreign owned although it will depend upon the nature of the business. Nevertheless if such entity is wholly foreign owned, a U.A.E. national will need to be appointed as local service agent and the number of non-national employees is restricted.
- ii. Speculative venture partnerships** - are subject to a contract between two or more persons to purchase property on credit, to sell it at a profit and to share the profits.
- iii. Mudaraba companies** - are established by a contract where one of the parties to the contract contributes a certain amount of capital and in exchange the other party contributes his efforts or labour to make a profit.

The difference between the business entities under the Commercial Companies Law and those established under the Civil Code is that the activities practiced under the former are of a commercial nature, whereas those practiced under the latter involve the use of a skill or faculty, such as a trade or profession.



The difference is legally significant as civil entities are subject to the Civil Code and local laws and the commercial entities are subject to the Commercial Companies Law.

5. Companies established in the Free Zones

The companies established in a Free Zone are treated as being offshore to the U.A.E. and are subject to that particular Free Zone's own laws and regulations. The Free Zones generally share the following features:

- ◆ 100% foreign ownership is permitted
- ◆ Ability to lease land and to develop it according to personal requirements
- ◆ No local sponsor or partner is required
- ◆ No corporate taxes for varying renewable periods
- ◆ Export and import tax exemptions
- ◆ No personal income taxes
- ◆ No restrictions on repatriation of capital and profits
- ◆ Simple licensing and company or branch registration procedures
- ◆ Uncomplicated employee sponsorship system
- ◆ Resourceful and advanced communications infrastructure

6. Commercial Agencies

To avoid the hassle of establishing their own companies foreign businesses wishing to sell large volumes of merchandise in the United Arab Emirates can appoint a commercial agent in the UAE to act as distributors for their products.

GCC countries' membership of WTO and major Intellectual property treaties

By Mr. Atif Abdul Hameed Osman

This table highlights the GCC countries' membership of the WTO, TRIPs Agreement, and major intellectual property treaties. The importance of the data shown in the table stems from the fact that it explains how strong intellectual property is protected in the GCC countries. The broader the participation in IP treaties, the stronger the protection of IP rights.

The Gulf Cooperation Council (GCC) includes United Arab Emirates, Saudi Arabia, Kuwait, Sultanate of Oman, Qatar, and Kingdom of Bahrain

	U.A.E	Saudi Arabia	Kuwait	Qatar	Oman	Bahrain
WIPO Convention	Sept. 1974	May 1982	Jul 1998	Sept 1976	Feb 1997	Jun 1995
WTO	Apr. 1996	X	Jan. 1995	Jan. 1996	Nov. 2000	Jan. 1995
Paris Convention	Sept 1996	Mar. 2004	X	Jul. 2000	Jul. 1999	Oct. 1997
Berne Convention	Jul. 2004	Mar. 2004	X	Jul.2000	Jul.1999	Mar. 1997
Rome Convention	Jan 2005	X	X	X	X	X
PCT	Mar. 1999	X	X	X	Oct. 2001	X
Nairobi Treaty	X	X	X	Jul. 1983	March 1986	X
TRIPS Agreement	1996	X	Jan 1995	Jan 1995	Nov. 2000	Jan. 1995
Madrid Protocol	X	X	X	X	X	X
Madrid Agreement	X	X	X	X	X	X
TLT	X	X	X	X	X	X
PLT	X	X	X	X	X	X
WCT	Jul. 2004	X	X	Jul. 2005	Jun. 2005	X
WPPT	Jun. 2005	X	X	Jul. 2005	Jun. 2005	X

Key: "X" not signed or non-member

WIPO: World Intellectual Property Organization

WTO: World Trade Organization

PCT: Patent Cooperation Treaty

TRIPS: Trade Related Aspects of Intellectual Property Rights

TLT: Trademark Law Treaty

PLT: Patent Law Treaty

WCT: WIPO Copyright Treaty

WPPT: WIPO Performances and Phonograms Treaty

GCC: Gulf Cooperation Council

Legal dilemma of football players in the UAE

On 13 September 2005 Al Ain Sports & Cultural Club in a spectacular ceremony signed the professional contracts with its football team players. In this regard Emirates International Law Firm (EILF) conducted the legal research, by visiting the legal department of Fédération Internationale De Football Association (FIFA) in Zurich, Switzerland, thorough study of UAE Football Association (UAEFA) regulations and the football regulations of other countries. In light of this legal research and the laws of the UAE, EILF drafted the regulations and the professional contracts for the Al Ain Club.

It was a crucial event in the history of UAE football, as there was no concept of professional players in the UAE, until the day when Al Ain Club signed professional contracts with their players. Al Ain Club took the initiative to instigate the professionalism in the football game by providing career security to the players and encouraging them to freely develop their sporting skills.

The FIFA regulations provide that a player must be registered with a national Association to play for a club as either a Professional or an Amateur. FIFA Regulations define that a 'Professional' is a player who has a written contract with a club and is paid more than the expenses he effectively incurs in return for his football activity. All other players are considered as 'Amateurs'.



The footballs, used in the World Cup tournaments, at FIFA head office.

Generally, the situation in the UAE is that, there are no football players registered as 'Professionals' in the UAE, since there are no formal written contracts between the players and their clubs, or the contracts are not registered with the UAE FA. The players in the U.A.E are categorized only as "Amateur Players". Hence, the category of professional players is omitted by the practice of the clubs in the U.A.E.

The football players in the UAE face the legal dilemma that when they join a club, obtain training and subsequently get registered as Amateurs by their clubs to take part in the matches playing for that club, they find themselves bound with that club for their entire career and their clubs never permit them to move to another club of the UAE, no matter how hard they try, unless they obtain an approval from their club. Fulfillment of such a condition is virtually impossible, as their club has sole discretion to withhold the permission and bind the player for his whole life. Such sole discretion of the club, given by the UAE FA, cannot be challenged before FIFA authorities, as the players get registered as amateurs and FIFA does not have any jurisdiction over the amateur players. The UAE FA regulations provide this sole discretion to the clubs to withhold the transfer certificates of their players.

If the players attempt to ignore this rule they face sanctions and if they abide by it then they have to remain confined with their clubs for their whole career. The only way to bring the players out of this situation and to promote professionalism in football in the UAE is by amending the regulations of the UAE FA to bring them in conformity with the FIFA regulations and constitution of the UAE and recognizing the professional status of the players for the professional growth of football in the country.



Professional Contract signing ceremony at Al Ain Club. From right Sheikh Abdullah bin Mohammad bin Khalid, Subait Khater and Hazem Zaidan (EILF lawyer),

'Professional' is a player who has a written contract with a club and is paid more than the expenses he effectively incurs in return for his football activity. All other players are considered as 'Amateurs'.

FIFA



Bilal Khan (a lawyer of EILF) at the head office of FIFA in Zurich, Switzerland

Hierarchy of the Civil Courts in the UAE

(except the emirates of Dubai & Ras Al Khaima)

FEDERAL SUPREME COURT

*Decisions of the Court of Appeal can be appealed only on the point of law, not on factual grounds.
The value of the claim should not be less than AED 10,000.*



COURT OF APPEAL

Grounds of appeal to COA can be factual or legal, subject to two exceptions.

1. *The claimed amount should not be less than AED 3,000 (if less than 3000 then the First Instance Court's decision shall be final.)*
 2. *The First Instance Court's decision should not be based on the mutual settlement of the disputes by the parties.*
- Challenges to the decisions of the COA can be made in two ways (Extraordinary way).*
- 1 *To submit the petition to the same court which pass the judgment upon the availability of specific and exclusive reasons stipulated in Art 169-172 of the Civil Procedures Law.*
 - 2 *To challenge the judgment by lodging a petition with the Federal Supreme Court upon availability of specific reasons stipulated by Art 173 of the Civil Procedure, if the claimed value exceeds AED 10,000 otherwise the COA judgment shall be final and binding.*



COURT OF FIRST INSTANCE

This is the first stage for examining any civil case regardless of its value if it falls under its jurisdiction. The decision of the First Instance Court can be challenged in ordinary way by appealing to the Court of Appeal and in extraordinary way by submitting a petition to the same First Instance Court which passed the judgment and this can be done only upon the availability of specific reasons as stipulated by Article 169 to 172 of the Civil Procedure Law.



Labour/Employment dispute department at the Ministry of Labour

Labour cases should be lodged with this department and if not resolved within 2 weeks it should be transferred to First Instance Court.



The settlement and reconciliation committee

All the cases should be filed with this committee first, except cases related to the governmental departments, which should be directly filed to the First Instance Court



03 Floor, GIBCA Tower
Khalifa Street
Abu Dhabi, UAE
P.O.Box 469
Phone: +971-2-6265600
Fax: +971-2-6265123

Contributed by:

Mr. Bilal Ahmed Khan
Mr. Mustafa El Bashir
Mr. Atif Abdul Hameed Osman

www.eilf.com