



K&L GATES

# Doing business in the Middle East

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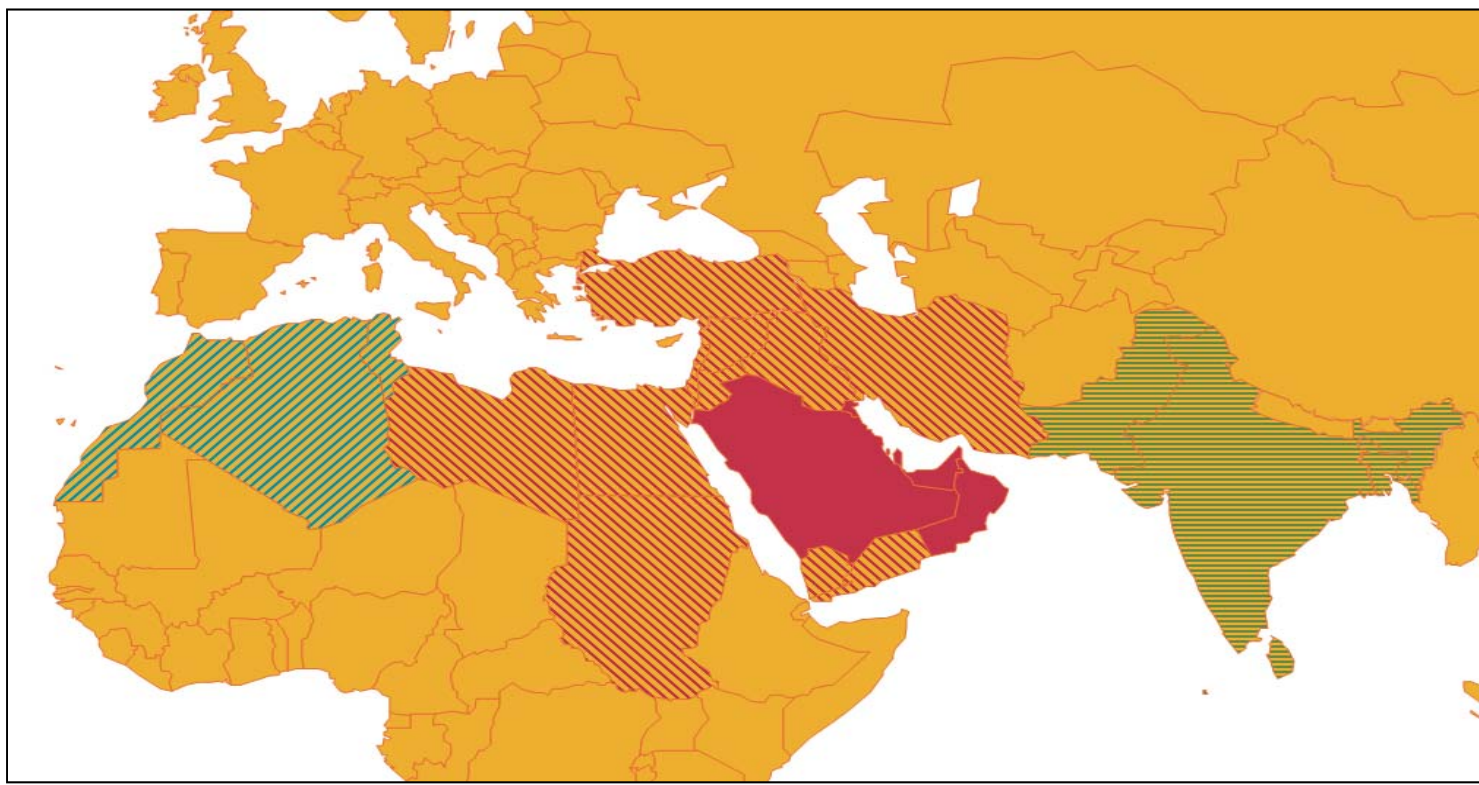
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# THE MIDDLE EAST IN THE WORLD



-  Gulf Cooperation Council (GCC)
-  North Africa
-  Wider Middle East region
-  South Asia

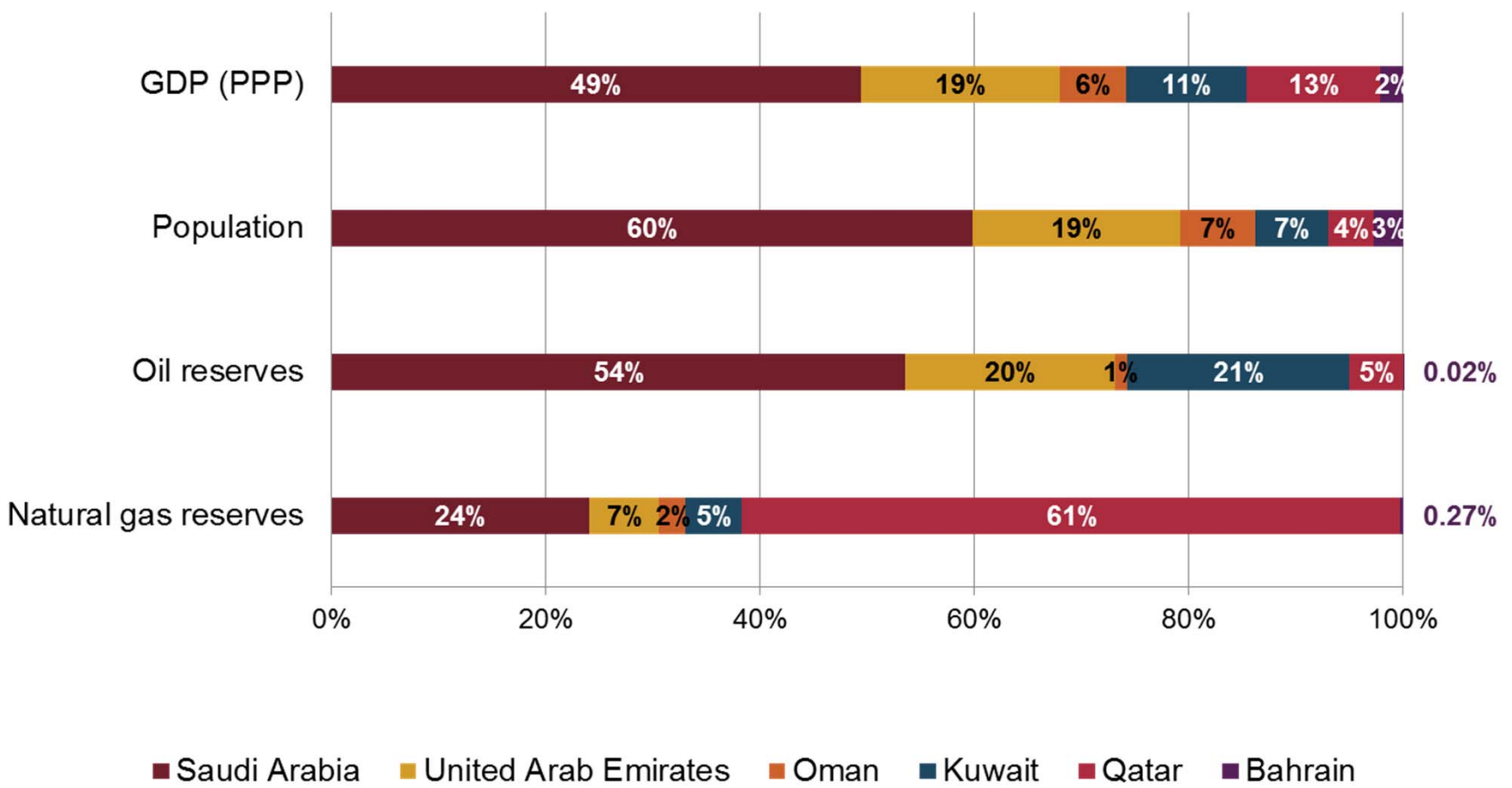
# THE GULF COOPERATION COUNCIL



- Created in 1981: 6 members with similar political (monarchies) and economic background
- Population: 42 million (est. 2012) – high proportion of non-nationals
- GCC countries possess almost half of the world's oil reserves
- GCC is home to some of the world's largest SWFs: 35.6% of world SWF allocation<sup>1</sup>
- Saudi Arabia is the largest GCC economy
- Arabic is the official language, and English is widely spoken
- Mainly economic cooperation; divergences around military cooperation, diplomacy and monetary union

<sup>1</sup> Based on Sovereign Wealth Fund Institute 2012 Allocation Report

# GCC: KEY INDICATORS (IN % OF REGION)



# THE UNITED ARAB EMIRATES: OVERVIEW

- Capital city: Abu Dhabi
- Largest city and main business hub: Dubai
- Population: 9.2 million (citizens: 1.2 million)
- GDP Growth: 4% (2012 – Ministry of Economy)
- Third economy in the MENA region after Saudi Arabia and Iran
- Location of the region's largest SWF: ADIA (\$627bn assets<sup>1</sup>)
- Economic recovery after financial crisis and Arab Springs
- Diversification of the economy (tourism, international finance, renewable energies, nuclear)
- Dubai to host World Expo 2020

<sup>1</sup> Based on Global Finance 2013



## QATAR: OVERVIEW

- Capital city: Doha
- Population: 2 million (citizens: 250,000)
- GDP Growth: 6.6% (2012 – CIA World Factbook)
- World's third largest natural gas reserves
- World's richest country per capita, ahead of Luxembourg and Singapore
- Hosting FIFA World Cup 2022
- Investing billions in building infrastructure (Lusail City, Qatar Integrated Rail Project, Hamad International Airport, Stadiums, Ras Laffan Industrial City)



## SAUDI ARABIA: OVERVIEW

- Capital city: Riyadh
- Population: 28 million, including 6 million foreigners
- 18% of the world's proven petroleum reserves, largest exporter of petroleum, and plays a leading role in OPEC
- 19th highest GDP in the world, after Australia (IMF, 2012)
- GDP Growth: 5.13% (2012 – Central Department of Statistics and Information)
- Heavily reliant on petroleum and petroleum products exports
- Ambitious petrochemicals projects
- Heavily investing in high speed rail projects and nuclear energy
- Economic Cities (e.g. King Abdullah Economic City): new industrialized cities intended to diversify the economy of Saudi Arabia



The image features a background of sand dunes with distinct ripples. A solid orange horizontal band is centered across the image, containing the text 'INVESTING IN THE MIDDLE EAST' in white, uppercase, sans-serif font. The dunes are shown in a warm, golden-brown light, suggesting a sunset or sunrise setting.

# INVESTING IN THE MIDDLE EAST

# UAE: THE LEGAL SYSTEM

- UAE Constitution and legal system
  - Federal Constitution
  - Federal laws (Civil Code, Penal Code, companies Law ..etc.)
  - Local Emirate laws and regulation (7 emirates)
  - Civil law system influenced by French, Egyptian and Islamic Laws – increasingly influenced of Common Law principles recently
  - Free Zones within the various emirates
    - financial free zones, exempt from Civil and Commercial laws (DIFC)
    - other free zones (subject to Federal and local laws)
  - Judicial System
    - Federal Courts
    - Local Courts
    - DIFC courts

## UAE: KEY REGULATORS

- Companies regulators - federal or local depending on company form
  - UAE Ministry of Economy / Emirates Securities and Commodities Authority
  - Departments of Economic Development (Abu Dhabi, Dubai, Sharjah ... etc.)
  - Free Zone Authorities
- Sector regulators – Critical and specific compliance is required; e.g.
  - Central Bank
    - regulating Banking, Brokerage, Financial Services and Institutions
    - authorities cuts across free zone authorities (except in DIFC)
  - Other sector regulator
    - Ministry of Health, Aviation authorities, Insurance Authority, Telecommunications Regulatory Authority ..etc.
    - Federal and Local

# UAE: FOREIGN INVESTMENT

- Setting up a local company
  - UAE Commercial Companies Law no. (8) of 1984 (CCL)
    - sets out various forms (LLC is the most common for foreign investors)
    - requires at least 51% of the share capital of a UAE company to be held by UAE nationals
    - foreign investors only be able to hold up to 49% of the share capital of a UAE company
  - Certain sectors and industries may be further restricted
    - completely restricted to UAE nationals (e.g. real estate, general transport and labor supply)
    - higher foreign ownership limit (e.g. financial brokerage, financing companies)
  - Proposed amendments to UAE Commercial Companies Law
  - Other key legislative reforms (Foreign Investment law, Competition Law)

## UAE: FOREIGN INVESTMENT

- Branch of a foreign company (or Representative Office)
  - No liability shield – part of its parent
  - Identical name and activities
  - Restrictions on activities such as trading, restaurants, commercial agencies and publishing
  - Mainly suitable for some service activities
  - Local services agent appointment – limited entitlements for LSA
  - Representative Office (Marketing and representation only, Limited employees and space)
- Free Zone establishment
  - Various free zones in different emirates (e.g. ADAFZ, DAFZA) and for designated activities (e.g. Trading –JAFZA, Logistics –DWC, Media and E-commerce – TECOM)
  - Generally – subject to federal and local laws AND specific free zone regulations
  - Exception - Financial Free Zones (DIFC, ADGM)
  - 100% foreign ownership is permitted
  - Scope of activities is limited geographically (within the relevant free zone).
  - Legal forms vary between free zones(include branches, LLCs, limited liability establishments)

# UAE: FOREIGN OWNERSHIP RESTRICTIONS

- Foreign ownership restrictions
  - UAE Companies Law requires at least 51 per cent. of the share capital of a UAE company to be held by UAE nationals – (i.e. foreign investors are only able to hold up to 49 per cent.)
  - Exception - GCC nationals generally satisfy requirements of UAE nationals:
    - Public companies – ownership and directors
    - LLCs – permitted to own 100% in companies with no foreign element
    - only GCC nationals and companies owned 100% by GCC nationals (natural persons) can benefit
    - Completely restricted activities remain outside the scope of exception
- Side agreements (nominee agreements)
  - Side arrangements kit commonly used for LLCs
  - A number of agreements aim at controlling the local shareholder and securing the interest of the foreign investor
  - Designed to work interchangeably and commonly include:
    - nominee agreements (or shareholders' agreements, trust agreements)
    - loan and pledge agreements
    - dividends assignment/waiver
    - proxies and powers of attorney

## UAE: FOREIGN OWNERSHIP RESTRICTIONS

- Anti-Fronting Law (UAE Federal Law No. (17) of 2004 in relation to Combating Commercial Fronting)
  - aims to prevent circumvention of foreign ownership restrictions
  - “it is prohibited to act as a front for any foreigner – whether a natural person or a body corporate – by using the name, license or commercial register of the front...”
  - Front defined as: “any natural or body corporate enabling a foreigner – whether a natural person or a body corporate – to practice any economic or professional activity he is prohibited to do inside the United Arab Emirates”
  - Parallel to a foreign investment law/amendments to the CCL
- Penalties:
  - imposed on both foreign investor and UAE national
  - includes fines and imprisonment
  - de-registration
- suspended until 31 December 2009
- no further statement on enforcement

*“I started to think outside the box.*

*- Then I started to think outside the law”*

## UAE: FOREIGN OWNERSHIP RESTRICTIONS

- Enforcement of side arrangements/case law
  - circumvention of ownership rules (public policy rules)
  - vis-à-vis shareholders/nominees
  - vis-à-vis third parties and successors
  - change of courts practice
- Is the Anti-Fronting Law going to be enforced?
  - legal considerations
  - commercial/economic consideration
- Minimizing the risk
  - Avoid – to the extent possible
  - Use of legitimate alternative methods of control
  - institutional nominees vs. individual nominees



## UAE: FOREIGN OWNERSHIP RESTRICTIONS

- Alternative methods of control – LLCs
  - Foreign investors implement alternatives to achieve control over LLCs
  - UAE national holds 51% while foreign investor holds 49% BUT
  - Foreign investor can have right to appoint majority of the board
  - Foreign investor may have “reserved matters” both at shareholder and board level (negative control)
  - Profit sharing disproportionate to equity holding
  - Value extraction - Management agreements
  - Powers of Attorney

## UAE: SOVEREIGN IMMUNITY

- Do you know your counterpart?
- Query what constitutes a “Dubai/Abu Dhabi Government entity”
- For Dubai Government entities, need a waiver from the Ruler for
  - choice of law other than Dubai/UAE law
  - dispute resolution in forum outside the UAE
  - agreement on arbitration
- Can you enforce against your counterpart?
- Art 247 of Federal Law No. 11 regarding the Law of Civil Procedures states that: “without prejudice to the provisions of any other law, the following may not be confiscated: (1) public assets owned by the State or any of the Emirates . . .”  
**including indirectly?**
- Dubai Law No. 10 of 2005 states that: “no debt or obligations owing from the Ruler or the Government may be recovered by laying hold, attachment, sale in auction or taking possession in any other legal action of the Ruler’s or the Government’s properties and assets whether or not a final judgment is issued in respect of such debt or obligation”
- Would a waiver of sovereign immunity work? Do I bother to ask for one?

## UAE: COMMERCIAL REPRESENTATION/ AGENCY

- Commercial representations (agency, dealership, distribution)
  - can be an alternative to the set-up of a permanent presence
  - designation of the agreement can have significant consequences
  - attention MUST be given to the designating of the agreement and whether it is considered a “registered agency agreement”
- Registered Agency Agreements subject to UAE Agency Law:
  - Must be:
    - entered into with UAE nationals
    - exclusive to the territory of the UAE, or part of it;
    - notarized and attested; and
    - Registered in the Commercial Agencies Register – Ministry of Economy
  - Benefit from certain statutory protections given to the local agent in respect of:
    - Termination : difficult to terminate
    - Commission on all sales in the territory
    - Exclusivity and block of parallel imports
    - Mandatory UAE governing law and courts jurisdiction

# QATAR: THE LEGAL SYSTEM

- Basis of Law:
  - Civil-law model;
  - Hierarchy: Qatar Constitution, Codes and then Laws are the primary source of law;
  - Official Gazette published monthly;
  - If silent, Shari'ah law and established commercial practices.
  
- Other sources of legal obligations:
  - Emiri Decree
  - Ministerial Decision
  - Circular issued by Authorities
  - Procedural guidance provided by Officials
  
- Importance of Arabic language:
  - Laws published in Arabic only;
  - Local authorities deal primarily in Arabic (some, exclusively in Arabic);
  - Court filings have to be made in Arabic.

## QATAR: FOREIGN INVESTMENT

- General Rule: cannot carry out business without being duly licensed by the Ministry of Business and Trade (“MBT”) (and any other relevant public bodies or Ministries responsible for particular industry sectors).
- **Foreign Investment Law** (Law No. (13) of 2000):
  - Applies to non-Qatari natural or legal persons.
  - Maximum percentage of foreign ownership permitted:
    - Private company: 49%
    - Listed company: 25%
  - Types of business in which foreign investors cannot invest (e.g. real estate, finance and insurance).
  - Exemption: if the entity operates in the certain industry sectors which contribute to Qatar’s development plan (e.g. agriculture, industry, healthcare, education, tourism, exploitation and development of natural resources, energy or mining, consultancy services, technical and information technology, cultural, sports and entertainment services or distribution services).

# QATAR: FOREIGN INVESTMENT

## Proxy Law - Law No. (25) of 2004:

- Ambiguously drafted law;
- Wide scope of application;
- Prevents foreign investors from using a Qatari natural person or entity to circumvent restrictions and requirements applicable to foreigners.

## Common modes of entry:

- **Limited Liability Company:**
  - Most commonly used (under the Commercial Companies Law No.5 of 2002);
  - Minimum initial share capital of QR200,000;
  - Liability of shareholders limited to the amount of share capital.
- **Branch Office:**
  - No need for a Qatari partner;
  - Licenses for branches are only provided to foreign companies that have been awarded government contracts;
  - Only given for the duration of these contracts.
- **Representative Trade Office:**
  - Maintain a presence in Qatar without the right to engage in any commercial activity.
  - Used for marketing and administrative purposes.

# QATAR: FOREIGN INVESTMENT – FREE ZONES

- Main Attraction: 100% foreign ownership.
- **QFC:**
  - Separate legal jurisdiction with its own laws and courts.
  - Qatari civil law applies except when it is explicitly excluded.
  - English is the operative language within QFC institutions.
  - Targets financial services, insurance reinsurance, asset management (“regulated activities”) or support services.
  - If carry out regulated activities need to be “authorized” by the QFC’s Regulatory Authority.
  - Note: there is 10% corporate tax
- **Qatar Science and Technology Park (“QSTP”):**
  - Aimed at hi-tech industries such as IT, renewables, energy and other R&D-intensive sectors.
  - Encouraged to collaborate with Qatari universities and research institutes;
  - Demonstrate majority of their activities will be dedicated to R&D.
- **Qatar Economic Zones:**
  - Plans for 2 new economic zones to support the technology, manufacturing and logistics industries.
  - Details not yet been made public.

# QATAR: INVESTMENT WITHOUT ESTABLISHMENT

- **Commercial Agency:**

- Contract must specify: (a) the products or services covered; (b) the territory; and (c) the duration.
- May be registered at the MBT if meets certain criteria in Law No. (8) of 2002 (Commercial Agency Law).
- On registration, agent receives statutory protections relating to exclusivity, commission and termination.
- Non-registered agent may also benefit from some protection under Commercial Companies Law.

- **Distributorship:**

- Must be agreed in writing and include specific details regarding the limit of the distributor's responsibilities, the fee, the territory, the term and use of intellectual property.
- Agreement must be for a term of no less than five years if distributor has to utilize showrooms, storerooms or to provide facilities for the maintenance of the products.
- No more than one distributor relating to the same product.
- Distributor has certain protections under the Commercial Companies Law.



# SAUDI ARABIA: OVERVIEW

- Basis of law: Shari'ah and Shari'ah courts have jurisdiction over criminal and most civil matters unless express transfer of jurisdiction to a different forum.
- Arabic is official language: laws are published in Arabic and courts will only enforce contracts that have been translated into Arabic.
- On-shore establishment: foreigners need to establish in KSA to do business with government sector.
- Foreign Investment Law:
  - All foreigners must be duly licensed under the Foreign Investment Law.
  - May establish branches or LLCs that are 100% foreign owned unless seek to establish a “wholesale or retail trading company” (market and sell products manufactured abroad within the KSA).
- Trading Company:
  - Minimum of SAR 20 million share capital
  - Foreign ownership capped at 75%.
  - Otherwise authorized agents and distributors for trading.
- LLCs:
  - Most common structure with a minimum share capital requirement of SAR 100,000
- SAGIA:
  - Meant to be a fast-track establishment system;
  - Recent change in focus and now more difficult to establish.



REGULATORY

# OPPORTUNITIES FOR FOREIGN FIRMS SEEKING TO INVEST IN THE GCC

- GCC is home to some of the world's largest SWFs: 35.6% of world SWF allocation<sup>1</sup>
  - ADIA: \$627bn<sup>2</sup>
  - SAMA Foreign Holdings; \$533bn
  - Kuwait Investment Authority: \$296bn
  - Qatar Investment Authority: \$100bn
  - Investment Corporation of Dubai: \$70bn
  - International Petroleum Investment Company: \$50bn
- Reduced business opportunities in the US and Europe are attracting firms to the GCC on a fly-in/fly-out (tolerated practice) model
- Regional wealth continues to rise despite global economic difficulties: 9.1% 2013<sup>3</sup>
- Funds sector is not as highly regulated in Europe, US, Asia

<sup>1</sup> Based on Sovereign Wealth Fund Institute 2012 Allocation Report

<sup>2</sup> Based on Global Finance 2012 figures

<sup>3</sup> Boston Consulting Group 2013

# CHALLENGES FOR FOREIGN FIRMS SEEKING TO INVEST IN THE GCC

- Disparity between regulatory and legal regimes across the GCC
- Perceived lack of transparency and clarity of regulations and laws; lack of passporting across the GCC
- Regional regulation of financial services activities is evolving in line with the tightening of US and European regulation resulting from the global economic crisis
- Tolerated practice model is being increasingly observed by GCC regulators and regulation is developing to restrict or prohibit it
- Non-licensed firms are not immune from sanction by GCC regulators

## WHAT IS “TOLERATED PRACTICE”?

- Informally accepted practice developed over time for foreign firms to market and offer products and services on a cross border basis without being licensed in the relevant GCC jurisdiction
- Generally accepted principles of tolerated practice:
  - contacting investors by telephone or email on a targeted basis;
  - limited, targeted meetings with sophisticated investors in the jurisdiction;
  - no discussion of specific products or services at meetings;
  - no distribution of specific marketing materials at meetings;
  - no roadshows, advertisement campaigns, seminars;
  - no execution of documentation or passing of funds in the jurisdiction
- Tolerated practice does not apply to marketing and offering of funds in the UAE
- Tolerated practice is not endorsed by regulators and firms are open to sanctions

# KEY CONSIDERATIONS FOR EACH GCC JURISDICTION

- **Dubai International Financial Centre (DIFC)**
  - Regulatory body : Dubai Financial Services Authority (DFSA)
  - Different types of activities require different categories of license
  - DFSA licenses are not valid in the UAE
  - Private placement exemptions for securities (offeror must be regulated outside DIFC; USD 50,000 minimum subscription; no more than 100 investors)
  - No fund registration requirements

# KEY CONSIDERATIONS FOR EACH GCC JURISDICTION

- **United Arab Emirates (UAE)**
  - Regulatory bodies: UAE Central Bank (banking regulation) and ESCA (funds and securities regulation)
  - UAE licenses are not valid in the DIFC
  - UAE Central Bank does not readily issue licenses to foreign firms; most firms look for licensing in the DIFC
  - No private placement exemption for securities offerings
  - Specific restrictions on marketing and offering of foreign funds in the UAE; requirement for UAE promoter and fund registration; does not apply to investment management or advisory activities
  - Relief has been provided for marketing and offering to specific categories of investors
  - Reverse solicitation generally accepted but not confirmed by ESCA

# KEY CONSIDERATIONS FOR EACH GCC JURISDICTION

## ▪ QFC

- Regulatory body: QCB (banking) and QFRCA (securities)
- QFRCA license is valid in Qatar outside the QFC and vice versa
- QFCRA is incentivizing foreign firms to set up in the QFC through seed capital
- Private placement exemption for securities offerings
- Fund registration requirements follow Qatar

## ▪ Qatar

- Regulatory bodies: Qatar Central Bank (banking) and Qatar Financial Markets Authority (securities)
- License is valid in QFC
- QCB does not readily issues licenses to foreign firms; QFC is more attractive to foreign firms
- Public offerings are limited to QCB licensed entities
- Fund registration requirements for Qatari company in existence for at least 3 years; should take 30 days
- Withholding tax considerations (also applicable in QFC)



# KEY CONSIDERATIONS FOR EACH GCC JURISDICTION

- **Saudi Arabia**
  - Regulatory bodies: SAMA (banking) and CMA (securities)
  - Requirement for an “authorized person”
  - Difficulty in obtaining a CMA license
  - No concept of tolerated practice or reverse solicitation
  - Exemptions for securities offerings to certain categories of investors
  - Fund distribution and registration requirements by an authorized person; should take 12 months
  - CMA has issued a warning to non-licensed foreign firms

# KEY CONSIDERATIONS FOR EACH GCC JURISDICTION

## ▪ **Kuwait/Oman**

- Regulatory bodies : Central Bank; CMA
- New foreign investment law in Kuwait is opening market for FDI
- Kuwaiti authorities require license for each offering of securities
- No registration requirements for cross-border offerings; local intermediary required to register funds offered in Kuwait; should take 30-45 days
- No private placement exemptions
- Tax implications
- Omani Rial currency restrictions to non-residents/offshore accounts

## ▪ **Bahrain:**

- Regulatory bodies: Central Bank
- Foreign funds characterized as Collective Investment Undertakings must be registered with and approved by the CBB; distributed by local intermediary
- Private placement regime: minimum subscription amount; must be approved by CBB; made only to Accredited Investors

The image shows a vast desert landscape with sand dunes. The dunes are characterized by rhythmic, wavy patterns of sand, creating a textured and undulating surface. The color of the sand is a warm, golden-brown. In the center of the image, there is a solid orange horizontal band. Overlaid on this band is the text "LABOUR AND EMPLOYMENT LAW" in a clean, white, sans-serif font. The text is centered and occupies a significant portion of the width of the orange band.

# LABOUR AND EMPLOYMENT LAW

## OVERVIEW / LEGAL LANDSCAPE

- The employment relationship of foreign workers in the private sector in the Middle East is governed and regulated pursuant to various labour codes:
  - **UAE:** *Federal Law 8 of 1980*
  - **Qatar:** *Law 14 of 2004*
  - **Saudi Arabia:** *Labor and Workmen Law of 1969*
  - **Kuwait:** *Law 6 of 2010: The Law of Labour in the Private Sector*
-

## EMPLOYMENT CONTRACTS

- The terms of employment must be agreed to in a written contract between the employer and the employee.
  - The contract must be in Arabic (English optional).
  - Contracts are required to be filed with the relevant government authorities.
  - Employers employing expats and/or high-level employees also opt for an additional long-form bespoke contract setting out other terms of employment not covered by the basic terms in the standard form contracts (i.e., bonus/commission structures, garden leave, restrictive covenants, confidentiality agreements etc.).
-

## EMPLOYMENT CONTRACTS *CONT.*

- Employment contracts can be for a fixed or unlimited term.
- Probationary Periods are permissible for periods of up to 3 months (Saudi Arabia & Kuwait (100 days)) and 6 months (UAE & Qatar).
- During such period, either party may terminate the employment without any notice (or in some cases very minimal notice).
- Generally, an employee is not entitled to any sick or vacation leave during the Probationary Period and will not be entitled to any termination entitlements (i.e., notice, vacation pay, gratuity payment, or any other type of compensation).

# EMPLOYER AND EMPLOYEE ENVIRONMENT

## *UAE & Qatar*

- Although the labour/immigration laws within the UAE and Qatar attempt to encourage employment of nationals in the private sector (i.e., **Emiratization, Qatarization**), only specific sectors in Qatar (i.e., banking) are subject to **quota requirements**.

## *Kuwait & Saudi Arabia*

- In Kuwait and Saudi Arabia there are specific quotas in place in order to ensure the hiring of nationals within these countries (i.e., **Saudization** and **Kuwaitization**).

# TERMINATION OF EMPLOYMENT

## Unlimited Term Contract

- Generally, a contract for an unlimited term may be terminated by mutual agreement or unilaterally by either party with at least 30 days' notice in writing (or payment in lieu of notice).
- Employer must also provide:
  - Gratuity Payment;
  - Accrued but unused vacation leave; and
  - Compensation for arbitrary dismissal of up to three months' salary (in the case of the UAE) in the event the termination is related to reasons not relating to the employee's work performance (i.e., a redundancy).



# TERMINATION OF EMPLOYMENT CONT.

## Specified Term Contract

- A contract for a specified term may be terminated by mutual agreement between the employer and the employee or at the expiry of the specified term.
- A specified term contract may only be terminated unilaterally prior to expiration of the specified term if (i) the contract provides either party with that right; or (ii) the party terminating the contract provides compensation equal to 3 months' salary (in case of the employer terminating) or 1.5 months' salary (in case of the employee terminating).
- Employer must also provide:
  - Gratuity Payment (if employee has served one year or more of continuous service);
  - Accrued but unused vacation leave; and
  - Compensation for arbitrary dismissal of up to three months' salary (in the case of the UAE) in the event the termination is related to reasons not relating to the employee's work performance (i.e., a redundancy).

## GRATUITY PAYMENT

- When employment is terminated (within the country of employment) and the employee has completed at least one year of continuous service, the employee is generally entitled to severance pay called end-of-service gratuity (“**Gratuity Payment**”). This Gratuity is payable even if the employee terminates the employment.
- The Gratuity Payment is calculated at 21 days of basic salary for each year of the first five years of continuous service; and 30 days of basic salary for each additional year of continuous service provided that the total gratuity payment does not exceed the basic salary of two years of service.

## GRATUITY PAYMENT *CONT.*

- Generally, an employee is entitled to a Gratuity Payment regardless of whether the employee or employer terminated the agreement subject, however, to the following conditions:
  - Contracts for Unlimited Terms: Prior to three years of continuous employment, the employee is entitled to one-third of the gratuity payment entitlement. Where termination occurs between three to five years of continuous employment, the employee will be entitled to two-thirds of the gratuity payment entitlement. Where the employment is terminated after five years of continuous employment, the Employee is entitled to the full gratuity payment entitlement.
  - Contracts for Specified Terms: Gratuity Payment entitlement only after five years of continuous service.

## DISMISSAL FOR CAUSE

- An employer may terminate the employment without providing any notice or any termination entitlement or compensation in the event of the following:
  - if the employee is convicted of a criminal offense during the term of employment (criminal conduct without a conviction will not warrant a dismissal without termination entitlements);
  - if the employee continuously fails to perform his/her basic duties under the employment contract and has been subject to written investigation as well as been warned that if his/her behavior continues he will be terminated;
  - if the employee adopts a false identity or nationality;
  - if the employee is dismissed during the Probationary Period; and
  - if the employee causes substantial material losses to the employer and the employer notifies the Ministry of Labour within 48 hours of becoming aware.

## RESTRICTIVE COVENANTS

- Non-competition clauses are only enforceable in the UAE if:
  - They are limited in jurisdiction;
  - They are in limited in scope of work; and
  - They are limited to a specified period.
- The courts do not have the power to grant injunctions so relief is only made in damages. However, certain free-zones can provide fines for employees in breach of their restrictive covenants and/or freeze their ability to acquire new residency/work permits within that free-zone.

## DISPUTE RESOLUTION

- The labour laws generally prohibit arbitration as a dispute resolution mechanism for labour contracts.
  - Most disputes must first be referred to the applicable ministry of labour and, if not resolved, to the local courts.
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The image features a background of sand dunes with distinct ripples. A solid orange horizontal band is centered across the image, containing the text 'RESOLVING DISPUTES' in white, uppercase, sans-serif font. The dunes are shown in a warm, golden-brown light, with the ripples creating a rhythmic pattern across the landscape.

# RESOLVING DISPUTES

# UAE COURT SYSTEM

- Federal and local courts
    - Federal
      - Civil and criminal division
        - Courts: Courts of First Instance, Courts of Appeal, Court of Cassation (highest court, hears matters of law only)
      - Shari'ah courts for Muslims (personal/family matters)
    - Local (Dubai and Ras Al Khaimah)
      - RAK: Courts of First Instance, Courts of Appeal
      - Dubai: Courts of First Instance, Courts of Appeal, Court of Cassation
  
  - Federal Court of Cassation empowered to hear disputes between courts in the individual Emirates (as well as appeals from the lower federal courts)
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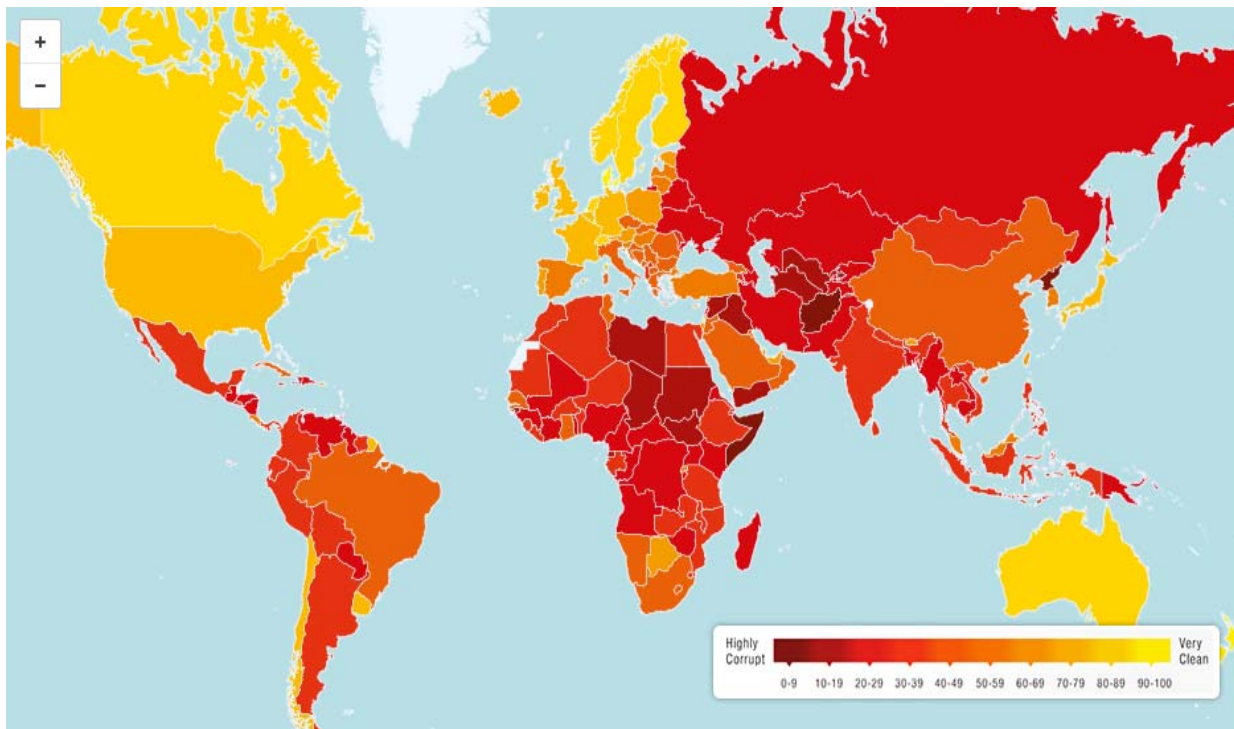


## UAE COURT SYSTEM

- Perceived limitations of the UAE courts
  - Civil law system with no binding precedent
  - No specialized courts or judges
  - All business conducted in Arabic
  - Restrictions on rights of audience
  - Limited scope to recover legal costs
  
- Potential advantages to the UAE courts
  - Lower filing costs
  - Court-appointed experts
  - Ease of enforceability/execution of judgment locally

# UAE COURT SYSTEM

- Perception: Less Transparency?
- Corruption Perception Index 2013 from Transparency International



## International comparison (/100):

- Denmark: 91
- Australia: 81
- UK: 76
- USA: 73
- **UAE: 69**
- **Qatar: 68**
- **Bahrain: 48**
- **Oman: 47**
- **Saudi Arabia: 46**
- **Kuwait: 43**
- Brazil: 42
- Mexico: 34
- Russia: 28

# UAE COURT SYSTEM

- Global Competitiveness Report 2012-2013

UAE: judicial independence: 5.4/7

## The Global Competitiveness Index in detail

INDICATOR	VALUE	RANK/144
<b>1st pillar: Institutions</b>		
1.01 Property rights .....	5.2	33
1.02 Intellectual property protection .....	5.2	<b>23</b>
1.03 Diversion of public funds .....	5.7	<b>11</b>
1.04 Public trust in politicians.....	5.8	<b>3</b>
1.05 Irregular payments and bribes .....	6.4	<b>6</b>
1.06 Judicial independence.....	5.4	<b>23</b>
1.07 Favoritism in decisions of government officials .....	5.0	<b>8</b>
1.08 Wastefulness of government spending.....	5.7	<b>2</b>
1.09 Burden of government regulation .....	4.8	<b>5</b>
1.10 Efficiency of legal framework in settling disputes .....	4.8	<b>22</b>
1.11 Efficiency of legal framework in challenging regs. ....	4.5	25
1.12 Transparency of government policymaking.....	5.1	<b>21</b>
1.13 Gov't services for improved business performance 5.7 .....		<b>3</b>
1.14 Business costs of terrorism .....	6.4	<b>14</b>
1.15 Business costs of crime and violence.....	6.5	<b>2</b>
1.16 Organized crime.....	6.8	<b>1</b>
1.17 Reliability of police services .....	6.1	<b>11</b>
1.18 Ethical behavior of firms .....	5.7	<b>16</b>
1.19 Strength of auditing and reporting standards .....	5.4	28
1.20 Efficacy of corporate boards .....	5.1	<b>22</b>
1.21 Protection of minority shareholders' interests .....	5.0	24
1.22 Strength of investor protection, 0-10 (best)* .....	4.3	101

USA: judicial independence: 4.9/7

## The Global Competitiveness Index in detail

INDICATOR	VALUE	RANK/144
<b>1st pillar: Institutions</b>		
1.01 Property rights .....	5.0	42
1.02 Intellectual property protection .....	5.0	29
1.03 Diversion of public funds .....	4.6	34
1.04 Public trust in politicians.....	3.1	54
1.05 Irregular payments and bribes .....	4.8	42
1.06 Judicial independence.....	4.9	38
1.07 Favoritism in decisions of government officials .....	3.2	59
1.08 Wastefulness of government spending.....	3.2	76
1.09 Burden of government regulation .....	3.3	76
1.10 Efficiency of legal framework in settling disputes .....	4.5	35
1.11 Efficiency of legal framework in challenging regs. ....	4.2	37
1.12 Transparency of government policymaking.....	4.4	56
1.13 Gov't services for improved business performance 4.2 .....		33
1.14 Business costs of terrorism .....	4.4	124
1.15 Business costs of crime and violence.....	4.5	86
1.16 Organized crime.....	4.9	87
1.17 Reliability of police services .....	5.5	30
1.18 Ethical behavior of firms .....	5.0	29
1.19 Strength of auditing and reporting standards .....	5.2	37
1.20 Efficacy of corporate boards .....	5.1	23
1.21 Protection of minority shareholders' interests .....	4.8	33
1.22 Strength of investor protection, 0-10 (best)* .....	8.3	<b>5</b>

## DIFC COURTS

- The Dubai International Financial Centre (“DIFC”) is a free zone exempt from UAE civil and commercial laws
  - Its own system of law
  - Independent court system
- DIFC Courts: Small Claims Tribunal, Court of First Instance, and Court of Appeal
  - Exclusive jurisdiction over civil and commercial disputes arising within the DIFC and/or related to registered entities within the DIFC
  - Federal Law No. 16 of 2011
    - Allows parties to opt-in

## DIFC COURTS

- Benefits of selecting the DIFC Courts
    - Expediency, transparency, and accessibility
    - Common Law system with binding precedent
    - Proceedings conduct in English
    - Quality and experience of judges from leading common law jurisdictions
    - Rights of appearance
    - Fee shifting available
    - Ease of enforcement in the UAE (especially Dubai)
  - Potential disadvantages of selecting DIFC Courts
    - Higher court fees
    - Developing jurisdiction (uncertainty)
    - Similar enforcement concerns as with other UAE courts
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# DOMESTIC ARBITRATION IN THE UAE

- Arbitration law comes from UAE Federal Law No. 11 of 1992 (“UAE Civil Procedure Code”)
- Not based on UNCITRAL model law
- Key arbitral institutions
  - Abu Dhabi Commercial Conciliation and Arbitration Centre (“ADCCAC”)
    - Unsophisticated arbitration rules
    - Limited roster of arbitrators; predominantly Arabic-speaking
  - Dubai International Arbitration Centre (“DIAC”)
    - Comprehensive arbitration rules
    - More sophisticated case managers
    - Selection of Western arbitrators
  - DIFC-LCIA
    - Partnership between DIFC and London Court of International Arbitration (“LCIA”)
    - Rules closely resemble LCIA rules
    - Parties have access to LCIA arbitrators
    - Sophisticated rules and proceedings

# INTERNATIONAL ARBITRATION

- Dubai is seat of choice for MENA region
  - Institutions
    - DIAC
    - DIFC-LCIA
    - International Chamber of Commerce (“ICC”)
      - International Court of Arbitration established in 1923
      - No restrictions on parties or arbitrators
      - Dubai and Cairo are the two leading MENA seats
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# ENFORCEMENT CONSIDERATIONS: LITIGATION V ARBITRATION

## Litigation

- Straightforward enforcement within the GCC:
  - GCC Convention (1996)
  - Riyadh Arab Agreement for Judicial Cooperation (1983)
- Few bilateral treaties outside the GCC
  - Convention of Judicial Assistance, Recognition and Enforcement of Judgments in Civil and Commercial Matters (1992), between France and the UAE
  - The Agreement on Judicial Cooperation, Execution of Judgments, and Extradition of Criminals between the UAE and the Tunisian Republic (1975)
  - The Convention of Judicial Assistance in Civil and Commercial Matters between the UAE and Republic of China (2004)
  - Agreement on Judicial Cooperation in Civil and Commercial Matters with India (2000)
  - Bilateral Investment Treaty between the Netherlands and the UAE (26 November, 2013)



# ENFORCEMENT CONSIDERATIONS: LITIGATION V ARBITRATION

## Litigation (continued)

- There is no treaty with the United States
  - Enforcing judgments in the US
    - State by state
    - Most states have adopted some form of the Uniform Law Commission's *Foreign-Country Money Judgments Recognition Act*
    - Reasons for refusing enforcement include: impartiality, lack of jurisdiction, lack of notice, judgment obtained by fraud, lack of due process, seriously inconvenient forum, lack of sufficient notice, judgment conflicts with another final judgment, proceedings contrary to agreement of the parties
  - Enforcing US judgments in the UAE
    - Biggest hurdle: UAE courts will generally not recognize and enforce foreign judgments if they would have had jurisdiction to preside over the matter

# ENFORCEMENT CONSIDERATIONS: LITIGATION V ARBITRATION

## Arbitration

- UAE a party to the New York Convention
  - Enforcement of UAE arbitral awards should be fairly straightforward overseas
- Enforcement of foreign arbitral awards in the UAE
  - Recent cases have shown an increase in local enforcement
    - London seated awards enforced in Dubai in September 2012 (*Airmech v. Macsteel International*); decision noted UAE obligations under New York Convention
    - Fujairah Court of First Instance ratified award rendered under the rules of the London Maritime Arbitration Association, noting New York Convention
    - *But see* Dubai Court of First Instance refused to recognize award from Singapore International Arbitration Centre because it had not been ratified by the home courts, making only fleeting reference to the UAE's ratification of the New York Convention (Case 531/2011, decision rendered May 18, 2011)
    - Enforcement of arbitration awards subject to public policy
  - Uncertainty persists, but there is a move toward more arbitration-friendly enforcement decisions

## KEY POINTS TO CONSIDER

- Who is the counterparty?
    - i.e., governmental authorities and sovereign immunity issues
  
  - Where are the assets?
  
  - Where does the award need to be enforced
    - Arbitration awards easier to enforce
  
  - Type of relief anticipated?
    - Injunctions generally not granted in the local courts
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A photograph of sand dunes with a central orange banner containing text. The dunes are shown in two sections: the top half and the bottom half, separated by the banner. The sand is a warm, golden-brown color, and the ripples are clearly visible, creating a rhythmic pattern across the landscape. The lighting is soft, highlighting the texture of the sand.

## Q&A

If you would like to send us questions separately,  
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