

ACC Houston Annual Symposium 2022

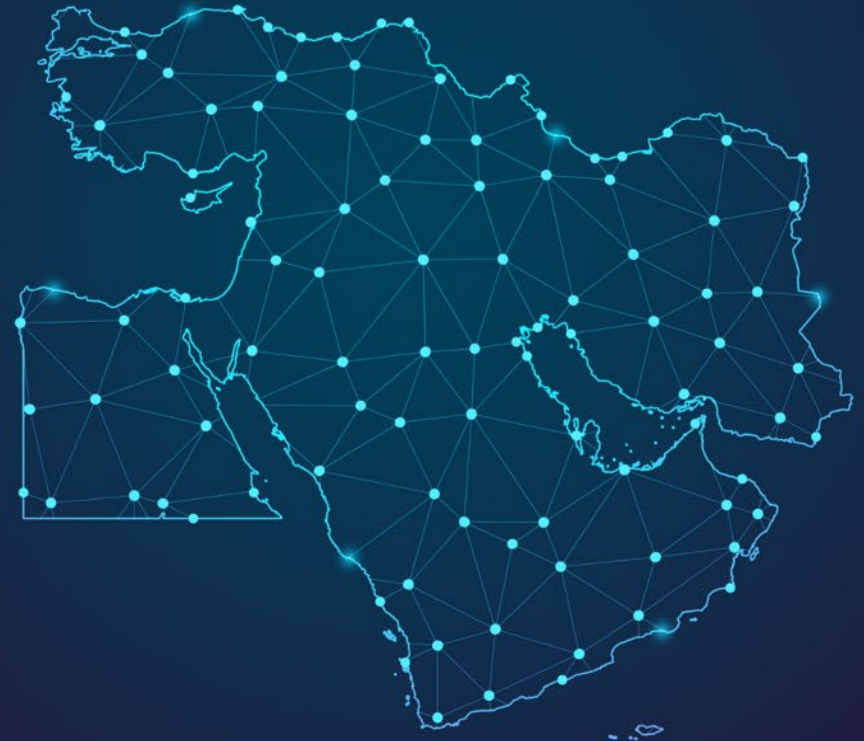
# Doing Business in Developing Markets Focus on the Middle East

 August 18, 2022



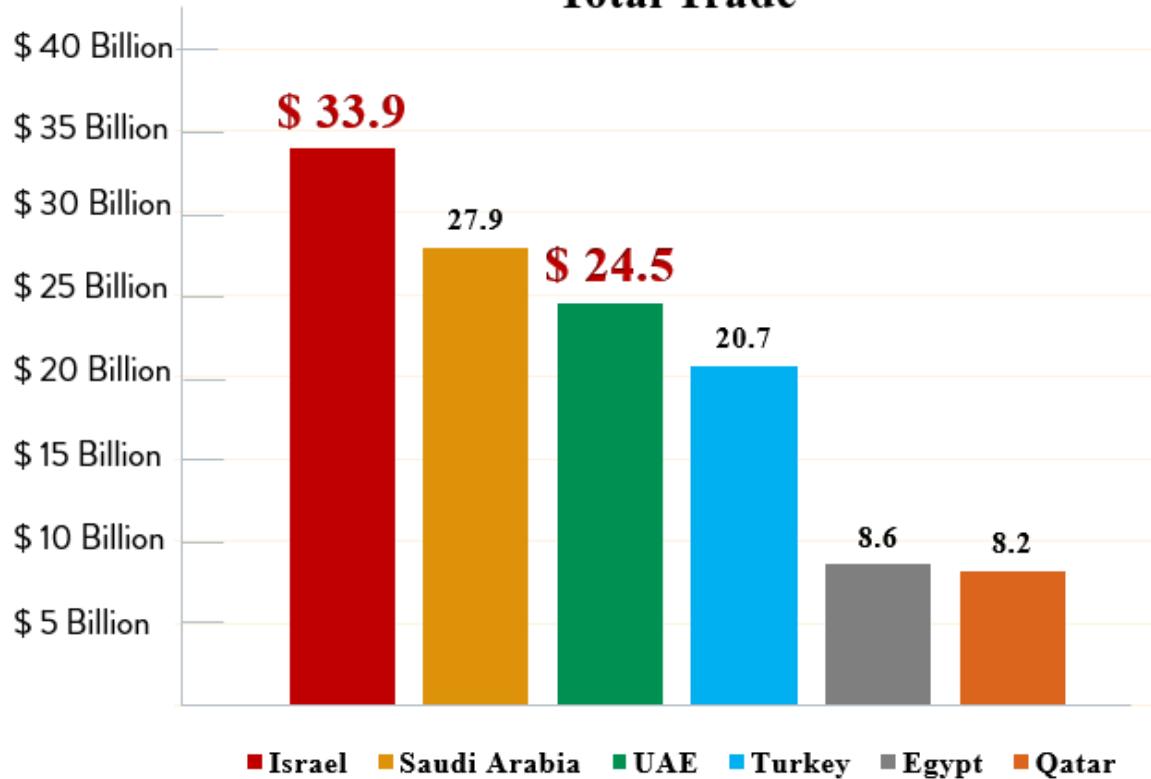
**Jonathan P. Noble**  
Partner

**AMERELLER**



# US - Middle East Connection

Total Trade



The **UAE** is the number one export market for **US goods** in the **MENA region**.







































The **UAE** trades with all **50 States**.

**UAE-USA** bilateral trade totaled **\$24.5 billion** in **2021**.

The **USA** has a **\$11.68 billion** trade surplus with the **UAE**, its sixth largest trade surplus globally.

Trade with the **UAE** supports **123,305** American jobs.

# Top 10 States Exporting to the UAE - 2020

STATE		TOTAL EXPORTS TO UAE (\$ MILLIONS)	SHARE OF 2020 TOTAL (PERCENTAGE)	TOP EXPORTS				
TOTAL US EXPORTS TO UAE		14,758						
1	TEXAS	2,889	19.57					
2	NEW YORK	1,458	9.87					
3	CALIFORNIA	1,392	9.43					
4	FLORIDA	914	6.19					
5	NEW JERSEY	752	5.09					
6	GEORGIA	650	4.40					
7	SOUTH CAROLINA	537	3.63					
8	MICHIGAN	494	3.34					
9	OHIO	464	3.14					
10	WASHINGTON	459	2.43					
								
AGRICULTURE PRODUCTS		AIRCRAFT & SPACECRAFT	DEFENSE EQUIPMENT	NUCLEAR EQUIPMENT	MACHINERY PRODUCTS	METALS & STONE	MINERAL PRODUCTS	MOTOR VEHICLES

# MENA Legal Systems

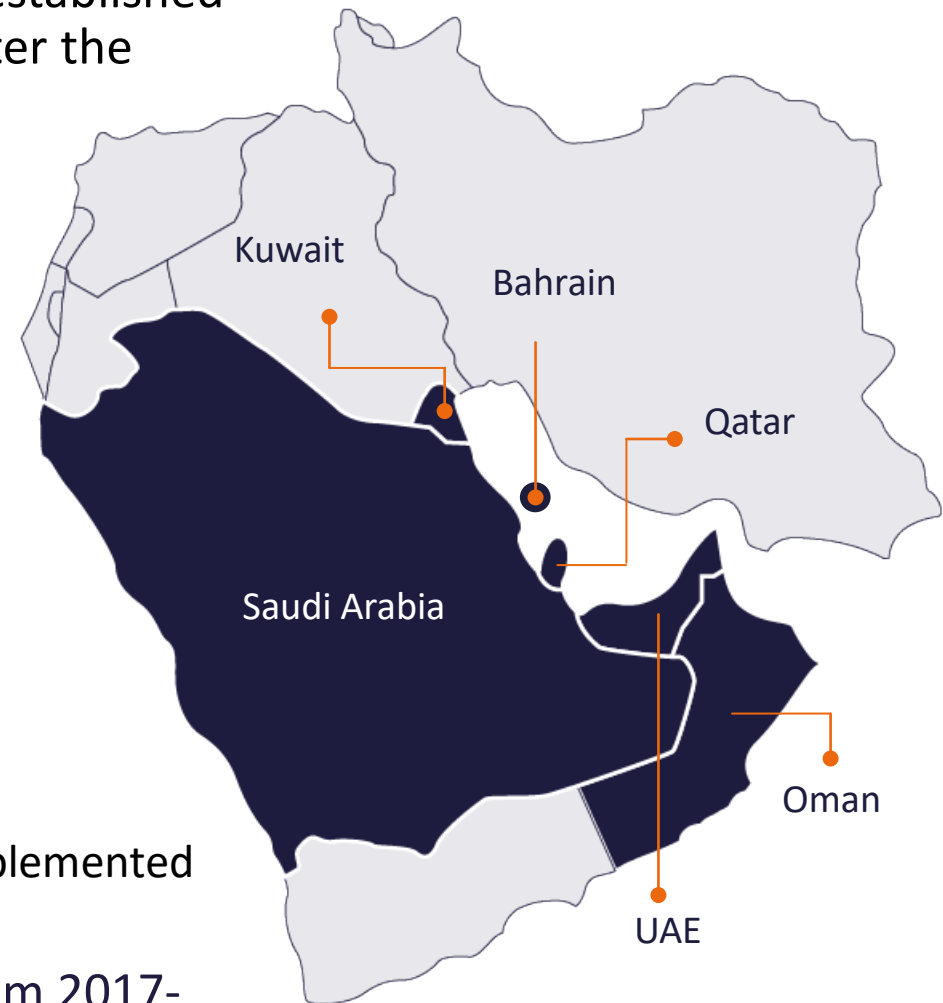
Many Arab countries base the legal system on a *Shariah*-influenced French Civil Law system that began in Egypt in 1949. The major exceptions are:

- ▲ *Shariah*-influenced French civil law: Morocco, Tunisia, Lebanon
- ▲ Unique *Shariah*-influenced system: Saudi Arabia
- ▲ Civil Law that expunged *Shariah* influence: Turkey



# The Gulf Cooperation Council (GCC)

- The Gulf Cooperation Council (GCC) was established in 1981 to protect national security after the Iranian Revolution and the Iran-Iraq War.
- It has evolved in recent years to cover **common legal systems**.
  - Communications (1983)
  - Road transport (1989)
  - Patent System (1992)
  - Judicial Cooperation (1996)
  - Economic Cooperation and Customs Union (2002)
  - Free investment and residence for GCC citizens in GCC countries (2008)
  - Value-Added Tax (2018, only partially implemented as of late 2019)
- With the break of relations with Qatar from 2017-2020, the GCC ceased to operate effectively.



# UAE Law: Before the age of written law

- **The Trucial States** came into being in the early 19<sup>th</sup> century when the region became a protectorate of Great Britain. At that time, local law consisted mainly on the oral orders of the Ruler, based in Islamic law principles.
- In the early 20<sup>th</sup> century, clerks from Sudan were brought in by the British to write down the decrees of the Sheikh, creating the first written record of law.
- In the 1950s, the British lead the creation of a police force and an independent court system, and in 1971, a federation of 6 Emirates created the United Arab Emirates (with Ras Al Khaimah joining several months later in 1972), a unique union of absolute monarchies.



Dubai in 1950



Dubai in 1960



Dubai in 1970



# UAE Law: Modern UAE Legislation

**Since the creation of the UAE, the following pieces of modern legislation have been passed.**

**1972:** Israel Boycott Law, Ministry Authority Law

**1980:** Labor Law, Central Bank Law

**1981:** Commercial Agency Law,  
Maritime Commercial Law

**1984:** (Former) Companies Law, Insurance Law

**1985:** Civil Code, Islamic Banking Law

**1987:** Penal Code

**1992:** Civil Procedures Law, Evidence Law,  
Criminal Procedures Law

**1993:** Commercial Code

**1999:** Environmental Protection Law

**2000:** Securities Exchange Law

**2002:** Anti-Money Laundering Law

The influence from Egyptian law is clear in core laws such as the Civil Code and the Commercial Companies Law.

Dubai in 1980



Dubai in 1996



# UAE Law: Modernization

In recent years, the legal system has rapidly modernized:

**2006:** E-Commerce Law, Consumer Protection Law

**2007:** (New) Customs Law,  
Insurance Authority Law

**2012:** Competition Law, Cyber Crimes Law

**2015:** (New) Companies Law,  
Anti-Discrimination Law

**2016:** Bankruptcy Law,  
Movable Property Collateral Law

**2017:** Tax Procedures Law, VAT Law, Excise Tax Law

**2018:** CSR Law, Arbitration Law, Islamic  
Trust Law, Netting Law, FDI Law,  
(New) Banking Law, Public, Finance Law

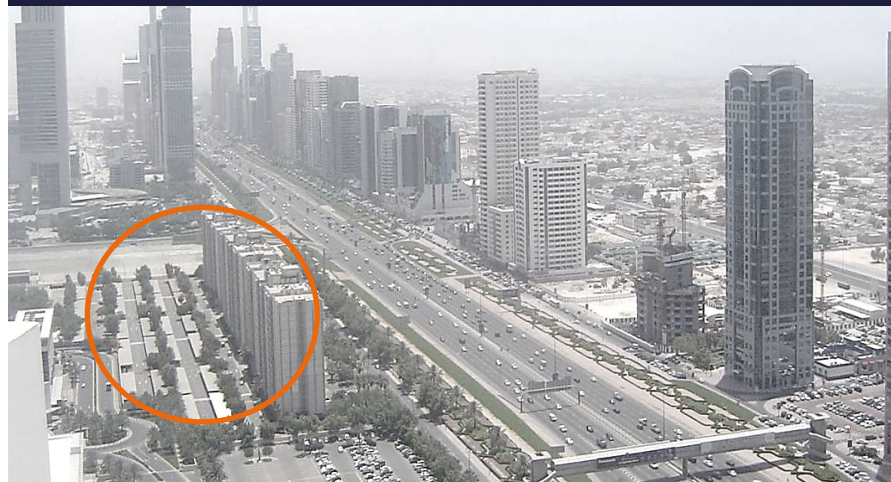
**2019:** Medial Sector Data Protection Law,  
Lease Finance Law

**2020:** (New) Movable Property Collateral Law,  
(New) Consumer Protection Law,  
(Amendment) Companies Law

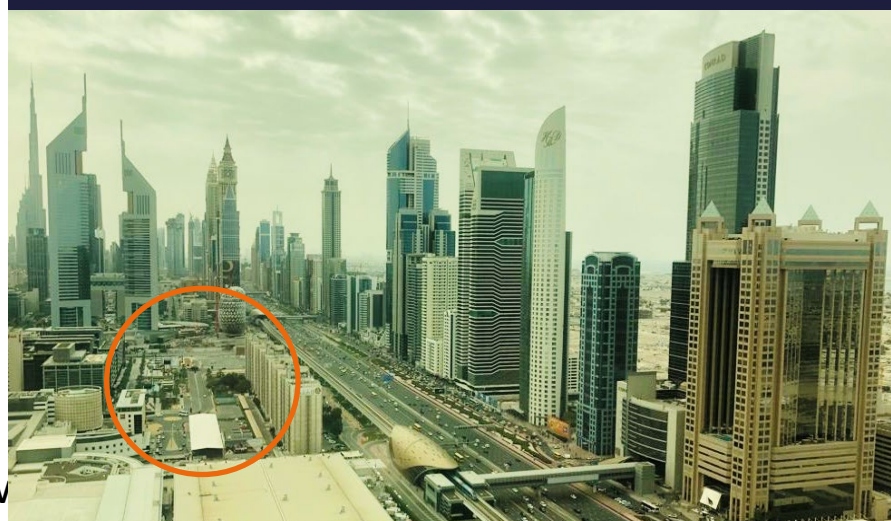
**2020:** Mediation Law, (New) IP Law

However, there remains no comprehensive banking law  
~~administrative procedures law, or data protection law.~~

Dubai in 2003



Dubai in 2019





# Compliance Developments

- 2018: Anti-Money Laundering (AML) - Financial Institutions and Designated Non-Financial Business Professions (including law firms, real estate agents, accountants) must perform risk assessments and due diligence on all clients.
- 2019: Economic Substance Regulations (ESR) - Companies performing specific “Relevant Activities” must demonstrate economic substance in the UAE.
- 2020: Ultimate Beneficial Ownership Regulations (UBO) - UAE companies must disclose ownership information particularly where an individual person owns 25% or more share capital in the company.
- 2020: Environment, Social & Governance (ESG) - Public joint stock companies listed on the UAE Stock Exchanges must publish an annual sustainability report.

# UAE Law: Differences Between Emirates

- Laws and decrees differ by Emirates, and there are also differences in practice of federal law by Emirate-level departments. Major differences are:
  - Oil and gas sector law
  - Land and real estate ownership
  - Government contracts and procurement
  - Free zones, Customs matters
  - Construction and architecture
  - Civil Service
  - Health and safety and food protection
- Other areas of law have the same federal law but different regulations or practices exist
  - Company administrative matters
  - Education
  - Consumer Protection
  - Environmental Protection
  - Local Transport
  - Legal System (Dubai, Abu Dhabi and Ras Al Khaimah have judiciary independent from the federal legal system, other Emirates have only the federal judiciary)



# *Shariah* (Islamic Law) Influence

- Many Arab countries including the UAE have *Shariah* as “a major source of law,” but the actual applicability is limited to family law and inheritance (for Muslims) and part of criminal law.
- *Shariah* is made up of principles contained in the Koran and other Islamic holy texts, and includes the following:
  - Prohibiting on Uncertainty (e.g. gambling)
  - Economic Equality
  - Prohibition on Interest
- The impact by *Shariah* on business includes the following:
  - Option contracts (may be unenforceable due to prohibition on uncertainty)
  - Default interest (prohibition on interest)
  - Succession of businesses (*Shariah* does not recognize wills)
  - Prohibition on preferred shares (economic equality)
  - Insurance (prohibits gambling/uncertainty)
- Islamic Finance is finance that complies with *Shariah* principles, these schemes are not required by law.
- Most countries have conventional banking systems that provide for interest on savings deposits and loans, Islamic banks carry out *Shariah*-compliant banking systems.

# MENA Legal System Common Problems

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## Uncertainty

- Broad administrative discretion.
- Vague provisions of law, gaps between law and practice, lack of binding precedent.
- Lack of transparency in information.
  - Rumors are common
  - Official announcements are rare, policy motivations are difficult to understand, and newspapers are often used to test public reaction to new laws and policies

## The Effect of Uncertainty

- The accuracy of information should always be confirmed.
- There is often room to negotiate and debate.

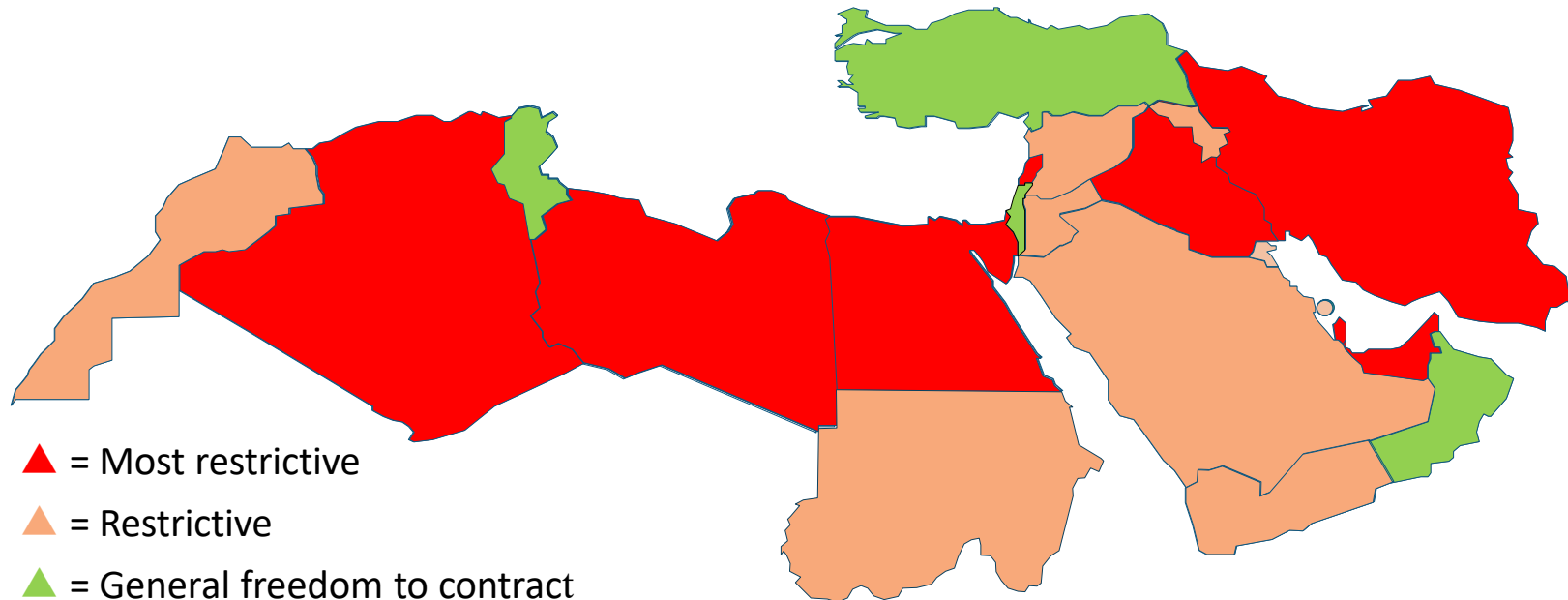




# Transactional Matters

# Commercial Agency Law (1) Overview

- Most Arab countries have a **Commercial Agency Law** that protects local companies that act as agents for sale of goods and services, and the typical characteristics are:
  1. Only local nationals can act as agents
  2. Agent registration system
  3. Registered agents are often granted automatic exclusivity
  4. Termination, including non-renewal, results in compensation
  5. Dispute Resolution must go through local institutions



# Commercial Agency Law (2) Recent Legislative Changes

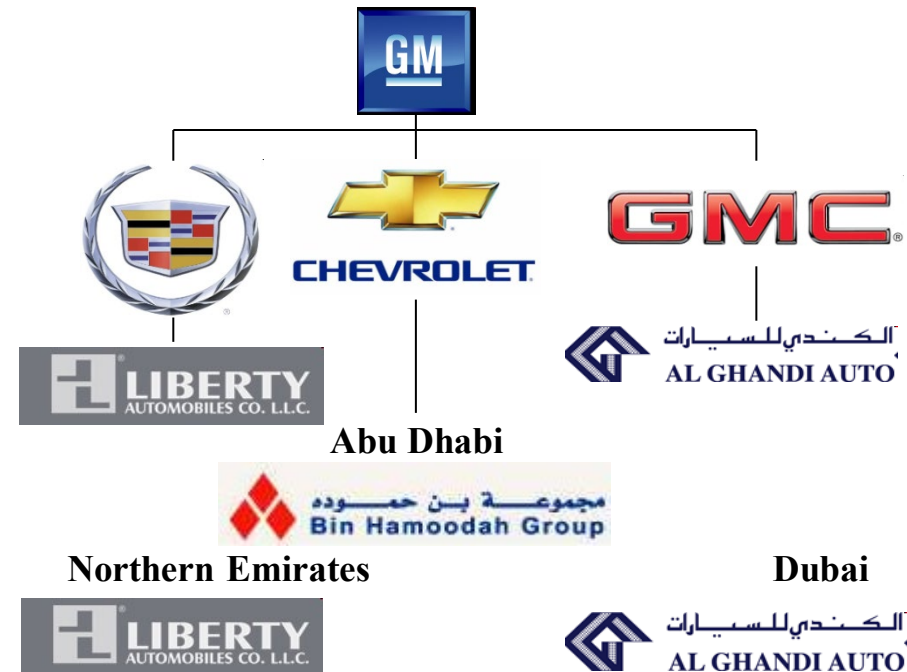
The following important changes took place in the last two years:

- **UAE:** In 2020, requirement of 100% UAE ownership for agency was lifted and any publicly traded listed UAE company can now register as an agent.
- **Egypt:** A Ministry ruling in January 2016 required registration of the manufacturer for certain types of products. In 2017, requirements for Importers Registration Law became strict, while the LC-related rules issued by the Central Bank were relaxed in 2018.
- **Iraq:** A new commercial agency law was issued in November 2017 that required only Iraqi companies to import products. Although effective as of November 2018, no major changes yet seen. The law in 2000 still applies in Kurdistan and the new 2017 law appears not to be applicable.
- **Saudi Arabia:** From 2017-2019, checks for registration could be done online with the Ministry of Commerce and Investment, but in 2019 this information was made secret and all issuance of public certificates was halted.

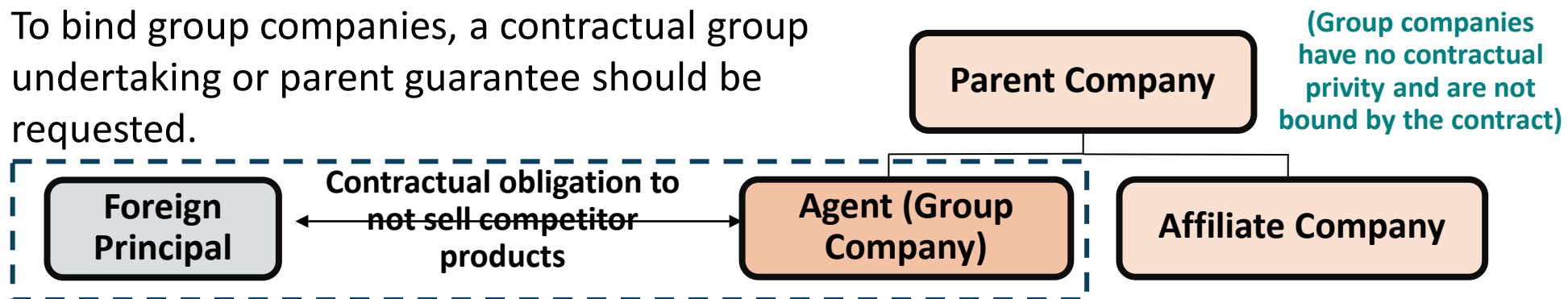
# Commercial Agency Law (3) Proactive Strategies

Even where exclusivity is required by law, it is still possible to break up the products or territories between different agents.

- Different agents for different products or brands (such as GM using different agents for Cadillac and GMC).
- Different agents for different territories (such as GM using three agents for the Chevrolet brand by territory).



To bind group companies, a contractual group undertaking or parent guarantee should be requested.



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# Foreign Investment

Country	Limitation	Registration	Regulation
UAE	Up to 49% Up to 100% for Free zone or some sectors that are allowed, as of 2021, 100% permitted for numerous sectors	Ministry of Economy / Department of Economic Development / Free zone Authority	
Kuwait	Up to 49% (with more permitted with an investment license)	Ministry of Economy, Trade and Industry	Kuwait Investment Authority
Qatar	Up to 49% (100% permitted in some sectors such as education and healthcare)	Ministry of Commerce, Industry and Economy	
Oman	Up to 70% (with total liberalization being discussed)	Ministry of Commerce, Industry and Economy	
Saudi Arabia	Up to 100% with MISA approval (with some sector restrictions)	Ministry of Commerce	Ministry of Investment (MISA, former SAGIA)
Bahrain	Up to 100% (with some sectoral restrictions)	Ministry of Industry, Commerce and Tourism	

# Dubai Free Zone History

Dubai in 1973



Dubai in 1990



- Jebel Ali Port was an ambitious infrastructure project built in the 1970s and is the largest manmade port in the world, and the largest port in the Middle East.
- It was completed in 1979, and in 1980 was created as a free zone (JAFZ), free of import customs duties until brought into the UAE mainland.
- In 1985, the Jebel Ali Free Zone Authority (JAFZA) was established, making JAFZ independent of Dubai Municipality rules.
- Today, there are more than thirty free zones in Dubai, with sector focuses on technology, healthcare, automotive, design, and other specific sectors.



# Dubai Free Zone Map



# Shortcomings of Free Zones

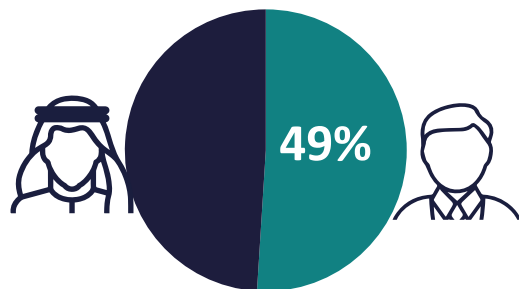
- In principle, **free zone businesses are prohibited from doing “commercial activity” outside the free zone** in which they are registered.
- “Commercial Activity” is not clearly defined, but it clearly includes (1) Retail sales, (2) Construction, (3) Installation and maintenance works, (4) Logistics and transport
- Free zone companies often do marketing or attend business forums, or join meetings, either by themselves or in the name of their agent, and so long as this does not breach the Labor Law, this does not carry risk of being engaged in authorized commercial activity.
- Free zone companies are not eligible to import goods “onshore” from the free zones, and only an onshore company can import into the UAE mainland.



	Foreign Investment	Customs	Jurisdiction
Free zones	Typically no restrictions	Treated as manufactured outside the GCC	Free zone authority acts as “One Stop Shop”
Industrial City	Based on the laws of the country	Treated as GCC-manufactured goods	Industrial City Authority acts as “One Stop Shop”
Onshore	Based on the laws of the country	Treated as GCC-manufactured goods	No “One Stop Shop”

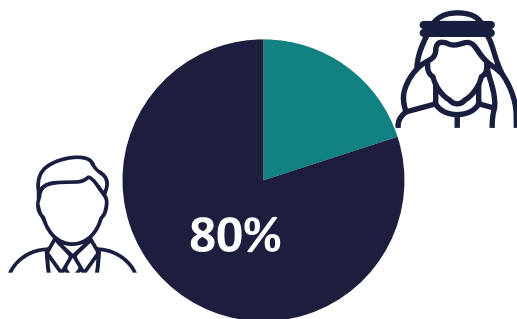


# Maximum Control of an LLC



Sole general  
manager

...or multiple managers,  
forming a board of managers



## 1. Share Ownership and Voting Rights

Subject to 100% FDI permitted in certain areas as of June 2021, FDI is strictly limited to no more than 49%, as the UAE shareholder must hold at least 51% of shares.

## 2. Company Management

Foreign investment can appoint all managers, whether one general manager or multiple managers.

## 3. Profit Distributions

Generally, the articles can be amended to permit higher profit distributions to the foreign shareholder (up to 80% in Dubai, 90% in Abu Dhabi, 97% in Qatar, and 99% in RAK).

# Share Transfers

If the buyer is an individual, only the passport and the attendance of the individual at the public notary is required.

If the buyer is a company, then:

- Company articles
- Certificate of registration
- Board Resolution approving share purchase
- PoA to legal representative
- PoA to manager of company

And if originating from overseas, then all documents must be notarized up to the respective Embassy, then further translated into Arabic in the country of use.

- Share transfer procedures in MENA country LLCs and Free Zone companies are very difficult.
- In principle for LLCs, the shareholder registry is contained within the shareholder registry.
- All documents must finally be submitted to the relevant corporate regulator (Ministry of Economy, Free Zone Authority, etc.) and a new commercial license must be issued.

## LLC / Free Zone Entity

**Share Purchase Agreement between Buyer and Seller, notarized at public notary**



**Buyer**



**Seller**



All shareholders must attend public notary to sign revised articles reflecting change of shareholder registry.

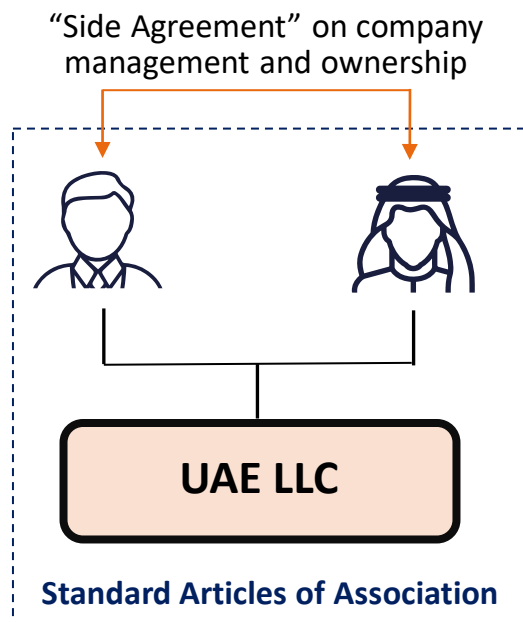
Even refusal by one shareholder is usually enough to prevent notarization.

Otherwise, signing of shareholders agreement or joint venture agreement between new partners also needed.

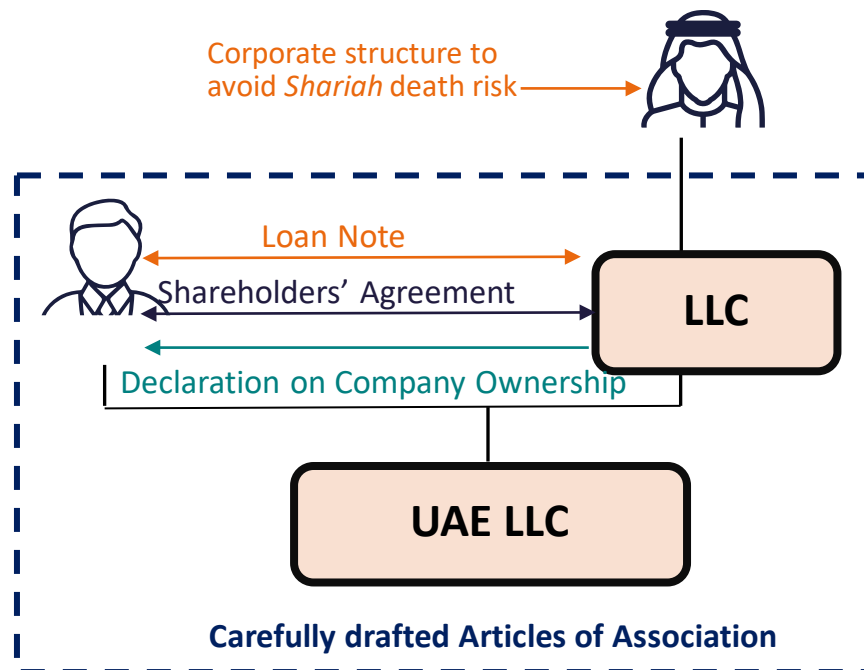
# Nominee Structures (“Silent Sponsors”)

- There are in fact many cases where UAE nationals receive no profits and only received a fixed fee for acting as the silent sponsor.
- Caution:** Mere side agreements are unenforceable, and in many countries such basic structures create criminal liability, so due care is needed for each structure.

## Basic Nominee Structure



## Robust Legal Structure



# GCC Tax Systems and Value-Added Tax (VAT)

- The GCC countries, as major oil exporters, have unique public finances and no country has income tax.
- Corporate taxes exist as per the chart.
- All countries have some sort of indirect taxes, such as customs duties, local tax, tourist tax, and service fees.
- However, only the UAE and Saudi Arabia introduced VAT as of 1 January 2018, and Bahrain followed later in 2019, with Oman following in 2021. Kuwait and Qatar have yet to implement VAT.
- May 2020, Saudi Arabia increased VAT to 15% from 5% having financial difficulties due to COVID-19 pandemic and low oil price.
- In October 2021, it was reported that Bahrain was considering raising its VAT from 5% to 10%.
- In 2022, the UAE announced that corporate tax would be implemented in 2023. Thus far, no law has been issued.

Country	Corporate Tax Rate
UAE	0%
Bahrain	0%
Qatar	10%
Oman	12%
Kuwait	15%
Saudi Arabia	20%





# Dispute Resolution

# Dispute Resolution: Court Litigation

- Most MENA Countries have a three-tiered system with first courts are broken into multiple departments, then the Court of Appeals and Court of Cassation or Supreme Court. (Saudi Arabia is notably different.)
- Court hearings are generally public, but court proceedings and rulings are not published, limiting the availability of public decisions.



- Dubai has not adopted the UAE federal court system, and has its own judiciary.

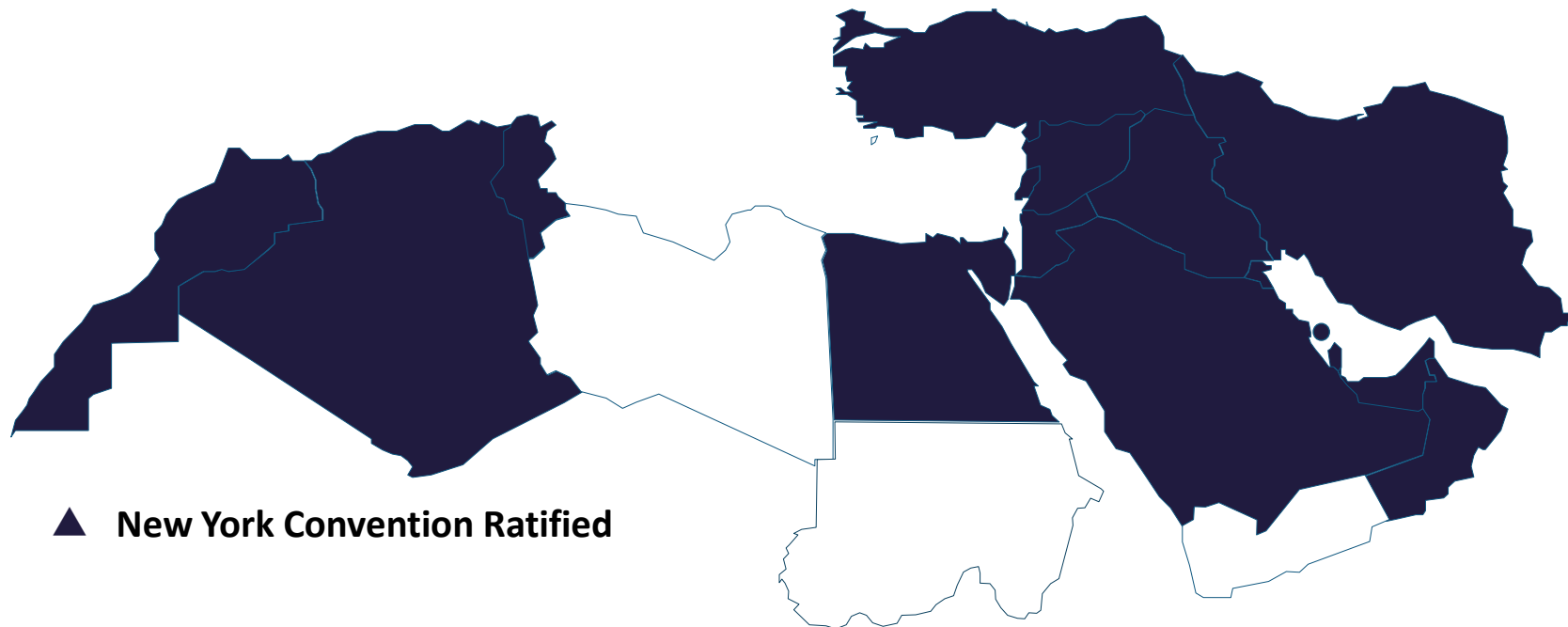
# DIFC and DIFC Courts

- The Dubai International Financial Centre (DIFC) is based on the UAE 2004 Federal Financial Free Zone Law, and is an independent jurisdiction based on English common law.
- DIFC has its own courts that are independent of Dubai Courts, with judges coming from England, Singapore, and other common law jurisdictions. It also has joint venture with LCIA on dispute.
- Recently, several free zones have signed MOUs with DIFC to give its courts jurisdiction over disputes arising in such free zone.
- The DIFC Dubai Judicial Committee that rules on disputes between the courts jurisdictions issued an order staying DIFC Court enforcement proceedings when Dubai Court litigation proceedings were underway. (✕): **Daman Real Capital Partners Company LLC v. Oger Dubai LLC**



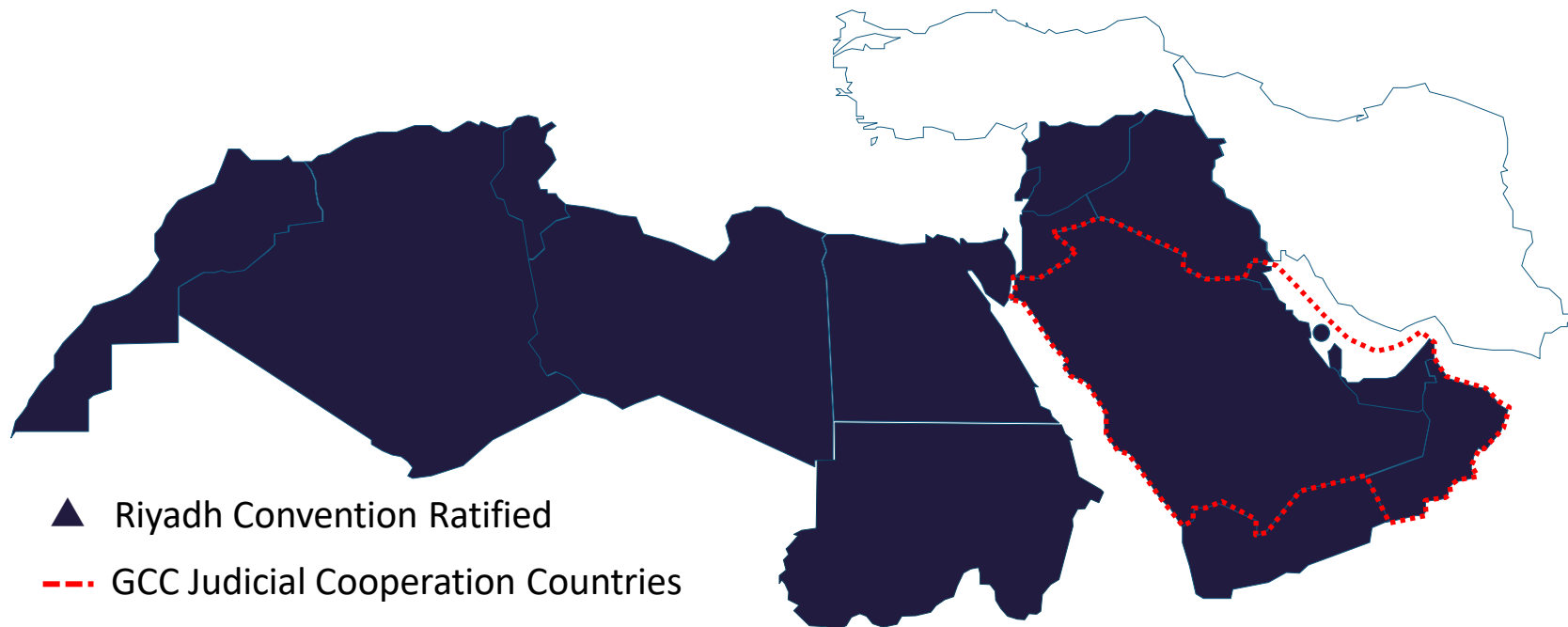
# New York Convention

- All MENA countries except for Yemen, Sudan and Libya have ratified the New York Convention regarding the recognition and enforcement of foreign arbitral awards. Iraq finalized its ratification in 2021.
- Pursuant to this, international arbitration awards from other ratified countries should be enforced in any MENA country that has ratified the New York Convention.



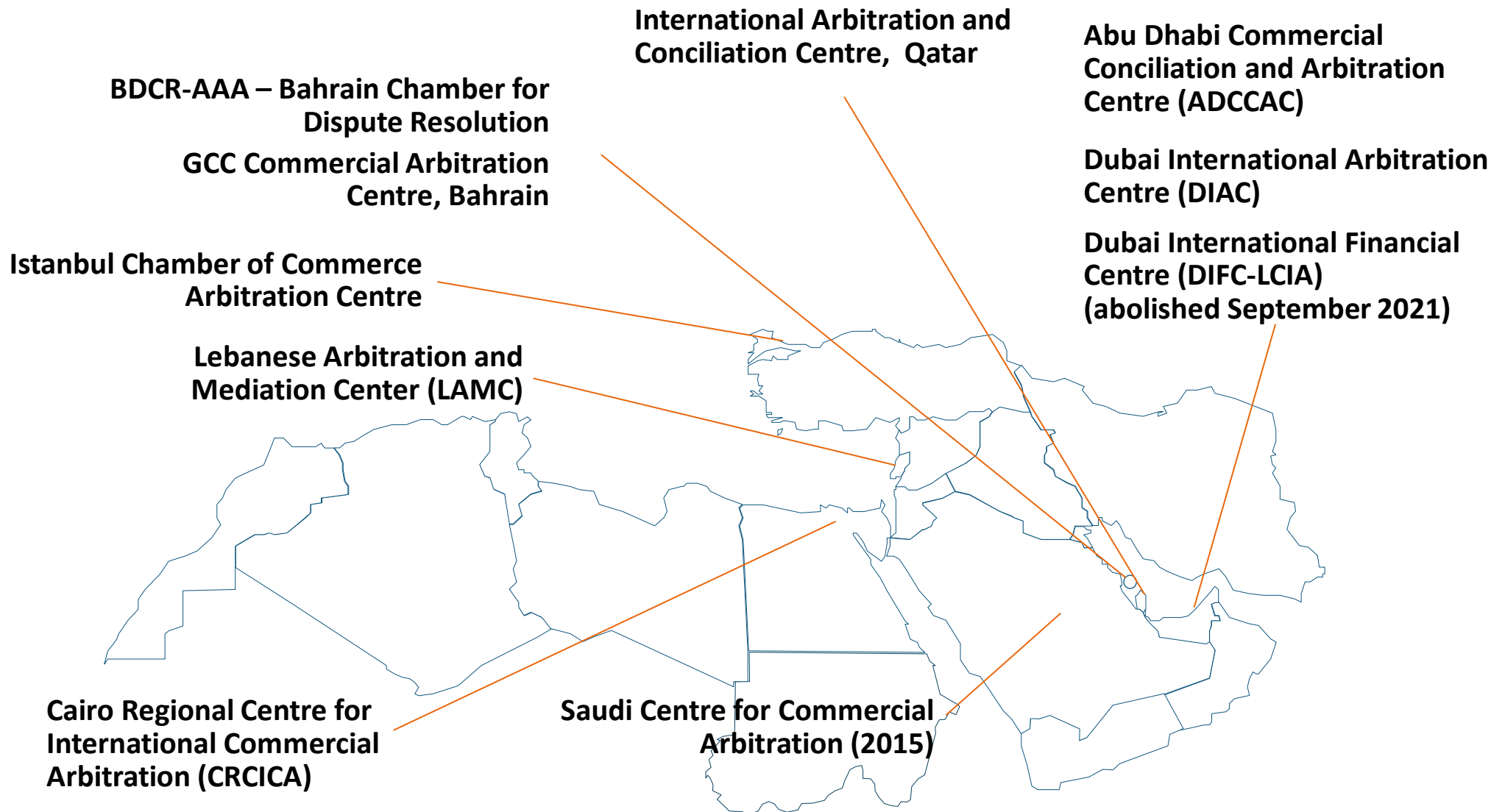
# Riyadh and GCC Conventions

- The “Riyadh Arab Agreement for Judicial Cooperation” is called Riyadh Convention.
- It is recommended to investigate whether the decision of the court or international arbitration can be executed as it is often unclear how to execute them. With the decision by the court or arbitrator of the member counties of Riyadh Convention, the decision can be executed in the other counties in the Riyadh Convention.
- Also, “The GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications” approves decision and execution within the GCC.





# MENA Arbitration Forums



# Litigation vs. Arbitration

	MENA Litigation	(International) Arbitration
<b>Confidentiality</b>	Courts are often public and judgments are given to all parties but judgments are not published	Generally, proceedings are confidential
<b>Appeal</b>	Three tier courts in most countries except Saudi Arabia	Generally not possible
<b>Lawyer Costs</b>	Generally not claimable	Generally claimable
<b>Execution</b>	Limited except in jurisdiction of the court	Possible anywhere in the world where legal basis exists by treaty
<b>Injunction</b>	Difficult to secure in many countries	Not available, but may be possible
<b>Outside Experts</b>	Common to appoint local auditors as third party experts	At the discretion of the arbitrator
<b>Fairness</b>	Generally fair, but possibility of corruption	Generally fair, but no appeal available

We often recommend international arbitration, although there are instances where foreign investors or businesses may wish to reserve the right to sue in local courts.

Current Name  
Street Name, 1  
70000 City Name  
Tel: 0000 5555555  
E-Mail: emailname@server

# DEBT COLLECTION

## Debt Recovery

**URGENT: PLEASE RECTIFY THE SITUATION IMMEDIATELY**

Despite numerous previous reminders, the below amount due remains unpaid. As such, we demand you making this payment in full by end of Business Monday.

**AMOUNT DUE: \$1204.53**

**PLEASE REMIT PAYMENT TO:** Company Name, 123 Street Name

We regret to advise that unless payment is received by Business Monday, the account will be passed over to our debt collection agency. This could negatively impact your credit rating, therefore we ask to contact us immediately to the mentioned date.

You have the right to dispute this debt amount by submitting written notice to us within the seven (7) day time-frame following this letter. If this letter is not disputed within the seven (7) day time-frame, the debt collection will be considered accepted by the debtor.

This letter is

# Post-Dated Checks (UAE)

- As taking security was limited under the UAE Civil Code, **Post-Dated Checks (or undated checks)** emerged as a commercial custom for granting security (especially in Dubai and the Northern Emirates).
- A bounced check resulted in criminal penalties but did not ensure repayment, which required a separate civil case.
- But a bounced check did not guarantee repayment! Police and prosecutor response varies and debtors could be imprisoned or released with mere fines.
- In March 2017, Dubai's new criminal procedures law reduced criminal penalties for bounced checks to mere fines. (The backlash from banks was such that, subsequent guidelines issued on 4 December 2017 by the Public Prosecutors of Dubai set out that the new criminal procedures law applies only to bounced checks under AED200,000.)
- An amendment to the UAE Federal Penal Code in 2020 eliminates criminal liability for bounced checks in January 2022, but it is still unclear in practice.
- Checks may no longer act as quasi-collateral in the UAE.

# Debt Recovery - Default Interest

- While Sharia may prohibit *riba* (interest), most countries permit default interest.

	If no agreement on interest	Maximum Interest	Law
<b>UAE</b>	9% in Dubai (custom), 12% in Abu Dhabi (civil procedure rules)	Not set, but limited to commercial transactions only	Civil Code 714, Commercial Code 80
<b>Saudi Arabia</b>	“Late penalties” may be set by courts	Not set	None
<b>Kuwait</b>	7%	Not set	Commercial Code 102
<b>Qatar</b>	“Late penalties” may be set by courts	Not set	Civil Code 372
<b>Oman</b>	Set by Ministry of Commerce and Industry, currently 6.5% since 2016	6.5%	Commercial Code 80
<b>Egypt</b>	5%	7%	Civil Code 227
<b>Iraq</b>	5%	7%	Civil Code 171-174

- Demanding interest can be a way to incentivize the debtor to pay, and can also be used to cover legal costs of recovery.
- Use the demand of interest strategically.** By issuing new invoices that show the late interest, the debtor is on notice that there are consequences to delay. (This can be waived in an ongoing commercial arrangement but it shows the debtor that the creditor is serious.)



# Debt Recovery - Settlement Agreements

- Many contracts are entered into sloppily, and it may be difficult to prove money owed with the evidence at hand. Typical problems are:
  - Contracts are not properly signed or agreement is not clearly evidenced
  - There are buyers/orders from parties that have not signed up to the agency agreement/master contract
  - Mistakes on governing law and dispute resolution clauses
- A settlement agreement with a repayment plan is often a simple way to remedy weaknesses of underlying contracts, increase recovery options, and create a strong position for the creditor.

	Common issues or mistakes	Resolution through Payment Plan / Settlement
<b>Documents and Claim</b>	Multiple documents, weak evidence	One contract confirms payment amount
Proof of Claim	Multiple orders from different sources and invoices/shipments documents	One contract confirms payment amount
<b>Statute of Limitations</b>	May be running	Begins anew with signing of a new contract
<b>Default Interest</b>	No provision	9-12% default interest recognized in the UAE
<b>Security</b>	None	Seek guarantees, post-dated checks from shareholder/management
<b>Dispute Resolution</b>	Foreign courts (enforcement may be costly/impossible)	Arbitration or courts at the option of the creditor

# Debt Recovery - Debt Collectors in the Middle East

- Many regions of the world have debt collector businesses that play an important role in the debt recovery sector, but the role of such businesses is highly limited in the region including the UAE and Saudi Arabia.
- To the extent that such businesses exist, their role is often limited to follow-up, not actual purchase of bad debt and real collection.
- The reason for this is:
  - Assignment of rights is not simple
  - The success rate of recovery is very low, so success fee business is uncommon
- Receivables collectors are working mainly for banks, and their ability to collect commercial receivables is low. In some cases, debtors will assume that creditors have given up once they are contacted by debt collector agencies.
- There are limited cases where investment funds will purchase judgments at a discount of 20-40%, and only bears the risk of executing the judgment.

The background of the slide features a low-angle, upward-looking view of several modern skyscrapers in a city skyline. In the foreground, the silhouettes of several business professionals are visible. Some are seated at a table, while others are standing, suggesting a collaborative meeting or discussion. The overall tone is professional and corporate.

# Executive Employment Issues

# Overview of GCC Labor Laws

GCC Countries have similar labor law systems.

Country	Probation	Working Hours	Overtime	Vacation	Gratuity	Termination Notice
UAE	6 mo.	48 hours per 6-day week, 8 hours per day	2 hours per day, 125% of salary, 150% for late night work	1 <sup>st</sup> Year: 24 days after 6 months After 2 <sup>nd</sup> year: 30 days per year	21 days basic wage per year for 1-5 years, 30 days basic wage beyond 5 years	30 days, compensation up to 3 mo.
Kuwait	100 days	48 hours per 6-day week, 8 hours per day	2 hours per day, 125% of salary	1 <sup>st</sup> Year: 24 days after 9 months From 3 <sup>rd</sup> year: 30 days per year	15 days wage per year for 1-5 years, 30 days wage beyond 5 years	1 mo or 3 mos
Qatar	6 mo.	44 hours per 6-day week, 8 hours per day	2 hours per day, 125% of salary, 150% for late night work	Under 5 years: 3 weeks Over 5 years: 4 weeks	Three weeks of wages per year	1 <sup>st</sup> year: 1 week 12-5 years: 2 weeks 5+ years: 1 mo.
Oman	3 mo.	48 hours per 6-day week, 8 hours per day	2 hours per day, 125% of salary, 150% for late night work	1 <sup>st</sup> Year: None 2 <sup>nd</sup> year: 15 days 3 <sup>rd</sup> year and beyond: 30 days	15 days basic wage per year for three years, beyond that 1 mo. basic wages per year	30 days notice, in principle
Saudi Arabia	180 days	48 hours per 6-day week, 8 hours per day	2 hours per day, 50% above basic hourly wage	Under 5 years: 21 days From 5 years: 30 days	15 days wage per year for 1-5 years, 30 days wage beyond 5 years	30 days notice, in principle
Bahrain	3 mo.	48 hours per 6-day week, 8 hours per day	125% of salary, 150% for late night work	1 <sup>st</sup> Year: 30 days on pro rata basis 2 <sup>nd</sup> year: 30 days	In principle 2 days salary per month	30 days notice, compensation required in some cases

# UAE Non-Competition

- Labor Law permits non-competes but has five requirements:
  - The employee is over the age of 21
  - The restriction is limited in time
  - The restriction is limited in geographic place
  - The restriction is limited in scope (i.e., the nature of the work)
  - The restriction is for the legitimate interests of the employer
- Courts are unlikely to redraft an unenforceable clause to make it enforceable—employers must get the clause right.
- Non-compete clauses can be drafted broadly and can include any or all of these elements:
  - Joining a competitor
  - Starting own competitive business
  - Approaching clients and contacts
  - Poaching employees (non-solicit)



# Confidentiality

- **Article 120(f) of the Labor Law** permits immediate termination without payment of gratuity if an employee reveals secrets of the employer.
- **Article 905 of the Civil Code** requires employees to keep “industrial and trade secrets” of the employer, even after termination.
- **Commercial Companies Law** also provides that no employee may utilize or disclose company secrets or deliberately attempt to damage company business, with penalties including imprisonment of up to six months and/or a fine of between AED 50,000 and 500,000.
- **Enforcement can also be through criminal complaints**—the **Penal Code** prohibits “disclosure of a secret,” for their or another’s advantage, where learned through being entrusted in the course of their professional duties. Penalties can include imprisonment for a minimum period of one year and a fine of at least AED 20,000.

# Use of the Internet Enhances Punishments

- **UAE Cybercrimes Law:**

- It is prohibited to: “access a website, electronic information system, computer network, or information technology means without authorization whether such access is intended to obtain government data, or **confidential information** relating to a financial, commercial or economical facility” (Article 4).
- It is prohibited to: “use, without authorization, any computer network, website or information technology means to **disclose confidential information** which he has obtained in the course of or because of his work” (Article 22).
- Penalties include fines of between AED 250,000 and AED 1.5 million and imprisonment.

# Enforcement is challenging!

- The **Ministry of Human Resources and Emiratization** and **free zone authorities** have the authority to block new visas, but are loathe to intervene in a “private dispute,” and this rarely occurs in practice.
- UAE Courts take a long time to render decisions and do not provide injunctive relief.
- One aggressive option—a criminal complaint.
- There is no legal “quick fix” to an employee who joins a competitor or breaches confidentiality requirements.

## **So draft carefully! “An ounce of prevention is worth a pound of cure”**

- Make sure non-competition provisions are properly tailored:
  - Duration: 12 months
  - Location: UAE only, or Emirate-specific
  - Scope: Name the sector, specific competitors, and specific product lines

# Structure Termination as Voluntary “Separation”

- An employee can be terminated, without cause by paying out:
  - End of Service Gratuity
  - Unused Vacation
  - Payroll to the final day
  - Additional compensation (capped at three months)
- Given the cost, hassle and time, it is common practice to offer a severance package offering most, or all, of the compensation that could be paid, in the interest of following HR best practices.
- Pride is important—when structured as a resignation, or voluntary “separation,” many employees feel they can accept and maintain their reputation.
- Voluntary separation agreements have a high rate of success—but there are cases of employees refusing a separation package and filing a legal claim.

# The Judicial Process

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- An employee must file a complaint and go through mediation with the **Ministry of Human Resources** or the **Free Zone Authority** prior to filing a formal claim with the courts.
- Mediation is **casual**, and if not successful, the employee can claim to the courts.
- There are no court fees for employees suing in court, however the losing party (usually the employer), will be forced to pay court costs and associated legal fees.
- Except in straightforward cases, courts typically appoint an “expert” accountant to review the evidence and issue a report on what the employee is owed.
- Time required – 3-6 months at the Court of First Instance, but in complicated cases with appeals, cases can run as long as 3 years.



# When to Settle?

- If faced with a formal court claim, quickly determine the potential costs for litigation, and consider next steps.
- If separation has not been proposed, consider if possible, even with full compensation.
- **Labor disputes are almost always a losing proposition for employers, considering time and cost of resources.**
- But sometimes, you have to fight the claim:
  - Outrageous requests
  - The employee is not reasonable
  - Setting an internal precedent (“we won't be blackmailed”)
- Once the employee files a formal case, the parties will have to pay court costs and other assorted fees even if there is a settlement.



A person wearing a white lab coat is seated at a desk, writing in a small, open notebook with a fountain pen. The scene is softly lit, with a blurred background showing a laboratory setting, including a microscope. The overall tone is professional and focused.

## **EXTERNAL COUNSEL: WHAT TO KNOW**

# The Legal Profession

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- The legal profession is regulated at an Emirate level.
- In Dubai, the Legal Affairs Department regulates the profession and licenses foreign lawyers and law firms:
  - 2015 Draft Ethics Charter is not yet formally adopted
  - CLE was instituted in 2016
- Foreign legal consultants can issue opinions, draft contracts, represent clients in arbitration, register and liquidate companies, and provide general advisory services.
- Only UAE Advocates can appear before courts, judicial authorities, the public prosecutor and police.

# Attorney – Client Privilege

- There is no codified legal principle of legal privilege or “without prejudice” communications in the UAE.
- Advocates and legal consultants owe clients a **professional duty of confidentiality** including all information which came to the attorney during the course of the representation.
- The concept of confidentiality is enshrined in the Penal Code.
- Disclosure is possible only with:
  - Written consent of the client;
  - Court order requiring disclosure;
  - If the attorney is accused of a crime or civil claim arising from the relationship;
  - If the client will engage in a crime (e.g., AML concerns).

# Success Fees

- Prohibited by Federal Law No. 23 of 1991 on the Regulation of the Legal Profession (as amended).
- Article 31: “The lawyer may not purchase all or some of the rights subject of the dispute, or agree to receive a part thereof as honoraria therefore.”
- A lawyer can agree on a fixed sum of fees, which is to be payable upfront, in installments or after the judgement.
- Important: the fee should be fixed and not dependent on the claim amount.
- Any signed engagement stipulating a success fee based on the claim amount is void.
- The client can raise a dispute before the Dubai Legal Affairs Department or Federal Legal Affairs Department.

# Thank You

/AMERELLER



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