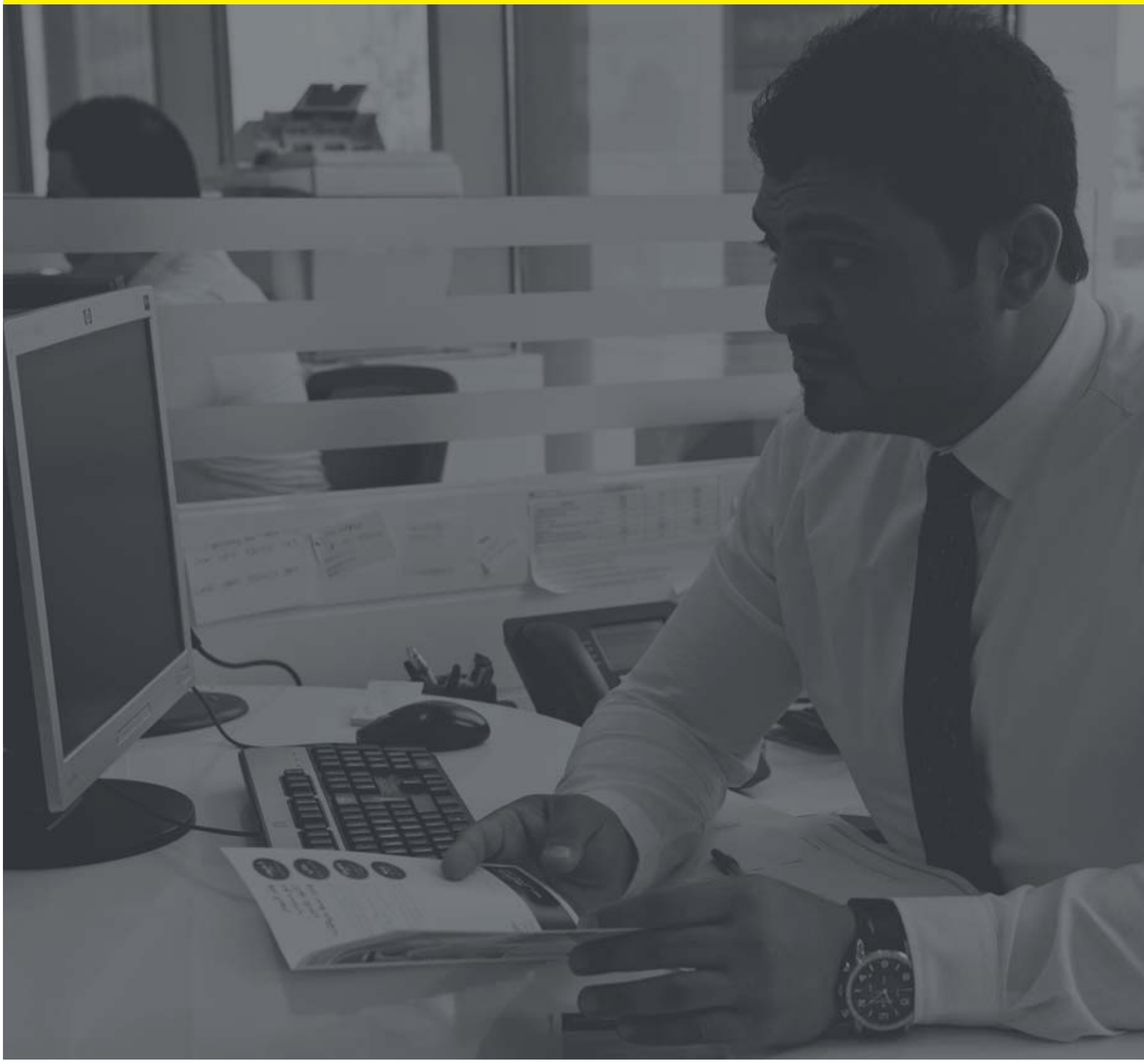
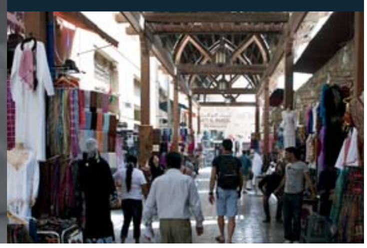
# Legal Framework

Positioned to be a world-leading Islamic finance centre
Loosening regulations for foreign investors in the UAE
Smart city initiatives put the emirate ahead of the game
Data protection laws may need more stringent language




The goal is to make Dubai the leading global Islamic finance centre

# Legacy in the making

## An evolving vision for Islamic finance

In January 2013, Sheikh Mohammed bin Rashid Al Maktoum unveiled his initiative for Dubai to become the global capital of the Islamic economy, a multi-trillion-dollar industry. Dubai is no stranger to setting high goals and delivering results.

The ruler's vision is underpinned by wide-ranging measures. These are aimed at gaining significant market share of several global halal industries including halal food, travel, education, pharmaceuticals and cosmetics. As part of the impressive strategy, Dubai intends to be at the very centre of global Islamic banking and finance. Indeed, prior to Sheikh Al Maktoum's announcement, Dubai had already established itself as a destination with a convincing and ever-growing reputation in Islamic finance.

Big things can happen in Dubai. In 1975 the emirate established the world's first Islamic bank, called the Dubai Islamic Bank, which is still the largest of its kind. Tackling complex structured financing arrangements with relative ease is one of Dubai's fortes.

Sheikh Al Maktoum's vision is backed by a three-year strategy. What is significant is the diversity of the steps that underlie this: The new Dubai Islamic Economy Development Centre (DIEDC) is at the heart of all of this. Its objectives are to promote Dubai regionally and globally as a main centre for sharia-compliant goods, and financial and non-financial services, build a database on Islamic economic activities and encourage recourse to arbitration in relation to Islamic economic activity disputes. In a recent report the DIEDC highlighted that the development of an Islamic economy has to yield to common standards and structures. For Islamic finance, this means common sharia interpretations and contract templates for banking, capital markets and asset management are essential to facilitate higher levels of cross-border flows.

In March 2014 the Dubai government announced its plan to set up a sharia-compliant export-import (EXIM) bank – the world's first. The bank is to provide a full range of products and services aimed to support flows in and out of the UAE. The bank will also assist businesses in the UAE to grow their trade flows by providing risk mitigation, financing and market access. It is to be mandated to deal directly with international organisations and other EXIM banks globally.

There is also the new Dubai Centre for Islamic Banking and Finance, established by the ruler's son, Crown Prince of Dubai Sheikh Hamdan. Its purpose is to offer academic programmes and training, including Islamic finance, in three core areas to develop the Islamic economy, namely human capital, research and community service. It has already set its sights globally and aims to build bridges with other overseas academic institutions such as the renowned Paris Dauphine University.

In April 2014 the Dubai Financial Market (DFM) published a standard for issuing, acquiring and trading sukuk. The DFM is an established secondary market trading several types of financial instruments. Sukuk of course is a runaway success story, perhaps being the Islamic financial instrument with the highest international profile. The purpose of the DFM standard is to consolidate and standardise the listing of sukuk on its exchange. At the same time, the standard aims to ensure that such sukuk meet a certain sharia-compliant threshold to achieve consistency and quality control.

In October 2014 Dubai hosted the 10th World Islamic Economic Forum, one the largest of its kind, held over three days and bringing together people, ideas and businesses across the breadth of Islamic economic activity. The forum acted as a great way for Dubai to engage with the global Islamic finance community.

What distinguishes Dubai from other financial centres striving to dominate in Islamic banking is that the breadth of its goals is greater. It understands that Islamic trade and finance are inextricably linked; strive to be at the centre of one and you will get the other.

The right components are there – clear vision, a wealth of experienced individuals and organisations, and a steely determination.

These are interesting times for Dubai's development.

Dubai Smart City focuses on mobility, governance and environment

# Investing in initiatives

## Revisions to the UAE Commercial Companies Law are approved, and the Smart Government initiative gathers steam

In line with its visions for an excellent infrastructure, progressive leadership, political stability and a world-leading business environment, the UAE government has announced new initiatives aimed at attracting foreign investors and enhancing existing foreign investments. One such initiative was the long-awaited revised UAE Commercial Companies Law (UCCL), which was approved by the UAE Federal National Council on May 28, 2013, but which, more than a year later, is still to be enacted. Until ratification by the Supreme Council, signing by the UAE president and publication in the UAE Federal Official Gazette, the law remains as set out in UAE Federal Law No 8 of 1984, as amended (CCL). The main proposed amendments to the CCL are outlined below. Another initiative that aligns closely with the Dubai government's overall plan to improve wider connectivity and encourage investment in the digital infrastructure in the emirate, as well as to prepare Dubai for hosting Expo 2020, is the "Dubai Smart City" initiative, which will be discussed in greater detail below.

**UCCL APPLICATION & EXEMPTIONS:** The UCCL remains applicable to UAE incorporated companies and certain foreign and free zone incorporated entities, five types of which are detailed below. The CCL exemptions have been retained and expanded, and when lost, the circumstances have been clarified.

In addition to free zone companies, the exemption from the provisions of the UCCL extends to other types of companies. The exemptions provided under the UCCL are broader than the ones in the CCL and include: (i) companies exempted by a resolution of the UAE Cabinet of Ministers to the extent such exemption is incorporated in such company's memorandum and articles of association; (ii) companies wholly owned by federal or local government and companies owned by other companies wholly owned by the government; (iii) companies in which the federal or local government or any of their departments owns, directly or indirectly, not less than 25% of their capital and operating in oil exploration, drilling, refining, manufacturing, marketing and transportation and companies operating in the power industry or in its generation, gas production, or water desalination, transportation and distribution; and (iv) companies exempted under the provisions of the CCL.

All the above categories of exempted companies are required to have relevant provisions in their memorandum and articles of association to that effect. Exempted companies are also required to amend their position in accordance with the UCCL if they are to sell or publicly offer any percentage of their share capital or list their shares on any financial market inside the UAE.

**FOREIGN OWNERSHIP:** Under the CCL, a UAE national or a company wholly owned by UAE nationals must hold at least 51% of the issued share capital of a limited liability company, private joint stock company or public joint stock company. These are the three most commonly used corporate structures. In certain cases, nationals of GCC countries may hold 100% of the issued share capital in these companies. Foreign companies often use joint ventures to invest in the UAE market in order to avoid breaching these restrictions. The UCCL provides for flexibility on the provisions on foreign ownership by giving authority to the Cabinet of Ministers to issue a resolution setting out, from time to time, exemptions to allow certain economic activities to exceed 49% in the ownership of UAE companies. There is no indication at this stage as to the sectors in which foreign investors will be permitted to own more than 49%. The Cabinet Resolution setting out such exemptions will be issued upon the recommendation of the Minister of Economy after consultation with the competent authority in the relevant emirate. Although this step does not open the UAE market for 100% foreign ownership in all sectors, it is a significant step towards attracting foreign investments and a major shift from the foreign ownership rules under the CCL. The final form of the

UCCL may not contain such flexibility on dealing with foreign ownership and this issue may be dealt with in the proposed foreign investments law, which is expected to be issued in the near future.

**SHARE PLEDGES:** Pledge of shares in the UAE is not covered by the CCL; however, in practice, parties to agreements for share pledges have been successful in registering such pledges in some of the emirates by relying on the provisions of the civil and commercial transactions laws. It is not possible under the current regime to register a partial pledge of shares unless such pledge covers all the shares in the company. Also, under the current practice, pledges can only be registered in favour of financial institutions licensed in the UAE. The UCCL recognises the right of the shareholders in a limited liability company to pledge or effect a lien over their shareholding to another shareholder in the company or to a third party. This provision will have an important impact on the security packages provided by limited liability companies to secure their debts and borrowings from financial institutions. It will also provide a level of comfort to shareholders in lending money to each other and secure such lending by way of pledge over their respective shareholding. The UCCL requires such pledges to be registered in the commercial register, and a pledge will not be valid against the company and third parties until it has been registered. It also requires that such pledge or lien be written through a notarised instrument. It is also an important requirement that the pledge or lien is permissible in the company's constitutional documents and carried out in accordance with its memorandum of association. However, while the UCCL provides a framework for the registration of pledges of shares, it remains unclear how the process of enforcing a pledge over shares in an LLC will operate in practice, due to the lack of share certificates, no numbered or registered shares, or identifiable part of the shares.

The UCCL still provides for pre-emptive rights; however, the valuation of shares in case of a dispute will now be assessed by one or more experts rather than the company's auditors.

**I. LIMITED LIABILITY COMPANIES:** While the framework relating to limited liability companies (LLCs) remains almost unchanged, the UCCL includes some significant amendments which aim at making LLCs more attractive to investors and simpler to manage.

The maximum number of shareholders has been increased from 50 to 75. The UCCL also provides for a single shareholder to own an LLC, which resembles the form of a free zone establishment under the regulations of the free zones in the UAE. The CCL requires a minimum of two shareholders for formation of a company in the UAE. This has been an obstacle to individual investors. Historically, many of the UAE individual investors have chosen to set up their businesses through sole proprietorship structures. A sole proprietorship is not a recognised form of company under the CCL and it does not constitute a separate legal person from its owner. In addition, it does not provide limits on the liability of the owner. It is merely a trading name for the owner.


New legal regulations will allow certain economic activities to exceed 49% foreign ownership

**MANAGERS:** The UCCL also provides for the change from a maximum of five managers for LLCs under the CCL to an unlimited number. The managers are to be appointed from amongst the shareholders and third parties as specified in the company's memorandum of association or a separate contract. In the absence of the two, the managers will be appointed by the general assembly of the shareholders.

This change will also provide for a great deal of flexibility to multi-party joint ventures to have a wider board of management in which all the shareholders can be adequately represented, especially where the UCCL lifts the ceiling on the number of total shareholders from 50 to 75, which will require a larger number of members of the board of management to represent such shareholders.

The UCCL provides that the rules governing private and public joint stock companies will also apply to LLCs, except where the UCCL explicitly mentions the distinction between such applicable rules. This uniformity in the legal framework of the two forms of companies does not currently exist under the CCL.

**II. PUBLIC JOINT STOCK COMPANIES:** The UCCL provides that the founding members of a public joint stock company shall subscribe an amount of 30-70% of the issued share capital of the company at an initial public offering (IPO). This is a significant increase from the 20-45% range stipulated in the CCL.

The higher range permitted by the UCCL is designed to encourage local companies and family businesses to go public. It allows founding members, especially in family businesses, to list their companies without the fear of losing control over their business. This is also helpful for companies that do not need to raise substantial funds in comparison to their existing issued capital. This proposed change will no doubt encourage IPOs in the UAE and will generally create movement and trust in the equity capital markets. The

The UCCL allows companies to offer shares to a "strategic partner" that is not an existing shareholder

number of founding members has also been changed from a minimum of 10 under the CCL to a minimum of five under the UCCL. The founding members may form a committee of not less than three members, whose primary role is to complete incorporation and registration with the competent authority. The founding committee, the consultants and any third party involved in the incorporation of the company (including their nominees) will be liable for the validity, accuracy and completeness of all documents related to the incorporation of the company.

The UCCL also gives the Emirates Investment Authority the right to subscribe for a maximum of 5% of the offered shares in any IPO in the UAE. This is another indication of the support and encouragement of IPOs by the federal government, which will also increase trust in and stability of the UAE equity capital markets. Another change that will help in developing equity capital markets is the recognition of the role of a certified underwriter for the first time under UAE law to underwrite "what has been left from shares of subscription". The recognition of underwriters will contribute to the success of IPOs in the UAE market. The UCCL also provides for a decree to be issued by the chairman of the Securities and Commodities Authority to regulate the activities of the underwriters.

**BOOK BUILDING:** The UCCL recognises the book-building process for share pricing for a public joint stock company. There is no explicit reference to book-building in the CCL. Furthermore, the UCCL states that the Securities and Commodities Authority will issue a resolution setting out the book building procedure.

**CAPITAL:** Under the CCL companies are not permitted to state the amount of their authorised capital, and generally the CCL requires payment of capital in full at the time of incorporation. This makes any subsequent capital increase a burdensome process. The UCCL now draws a distinction between paid up capital and authorised capital in respect of joint stock companies. Although the paid up share capital for a public joint stock company should not be less than Dh30m ($8.16m), the UCCL permits such companies to state the authorised capital in their articles of association, provided that the authorised capital shall not be more than double the issued capital.

The provisions of the CCL require that the majority of the Board of Directors of a public joint stock company must be comprised of UAE nationals. Under the UCCL, this requirement no longer applies to companies that are wholly owned by a foreign investor and where the percentage of ownership held by the foreign investor in the company exceeds 49%.

Furthermore, the CCL does not allow an LLC or other forms of companies to issue different classes of shares, convertible notes or other "synthetic" equity. Public joint stock companies may – subject to certain conditions – issue debentures. All shares are subject to equal rights, and transfer of such shares is subject to the approval of the relevant governmental authorities. Although the UCCL also requires that the shareholders in a company are equal in the rights attached to their shares and that a company may not issue a different class of shares, it also provides for an exception allowing a resolution by the Cabinet of Ministers to be issued to allow other classes of shares, the conditions of issuing them and the rights and obligations arising from such shares in addition to the rules and procedures regulating them. It seems that this will apply to public joint stock companies but not other types of companies.

The UCCL allows companies to offer shares to a "strategic partner" without offering them to the existing shareholders first. Strategic partner is defined as "such partner whose contribution to the company provides technical, operational or marketing support to the company, for the good of the company". The conditions for offering shares to a strategic partner are:

1. That the strategic partner carries out activities similar or supplementary to those of the company; and
2. That the strategic partner has issued balance sheets for at least two financial years (this condition shall not apply to government entities whether federal or local).

It also states that the chairman of the Securities and Commodities Authority will issue a resolution setting out further conditions and the procedure for the entry of a strategic partner as a shareholder in the company. This is an important step towards enabling public joint stock companies to attract technical and other expertise that may not be available to ordinary investors.

**SHARE PLANS:** It is uncommon for UAE public joint stock companies to adopt share plans or shares-based incentive schemes for their employees. This is due to the fact that the CCL is silent on the award of such plans or schemes to employees. That said, there are a few UAE public joint stock companies that have adopted such schemes or plans on the basis of best practices in other jurisdictions and subject to approval by the Securities and Commodities Authority and the relevant stock market. The approval of the Securities and Commodities Authority is usually given on a case-by-case basis and subject to review of the structure and the terms and conditions of the plan or the scheme to ensure that it is not in violation of the Securities and Commodities Authority regulations in relation to governance and other good practices.

The UCCL permits a joint stock company by way of special resolution to increase its share capital and to allocate such shares to employees of the company within an incentive scheme or plan provided that such scheme or plan is approved by the general assembly of the company. The directors of a UAE public joint stock company may not participate in such scheme or plan. The UCCL states that the Chairman of the Securities and Commodities Authority may issue a resolution stating the mechanism and the conditions of implementation of such incentive scheme or plan. This will give an opportunity for public joint stock companies to reward their high-performing employees, whether such award is given in addition to other statutory entitlements under the UAE labour law or in lieu of it.

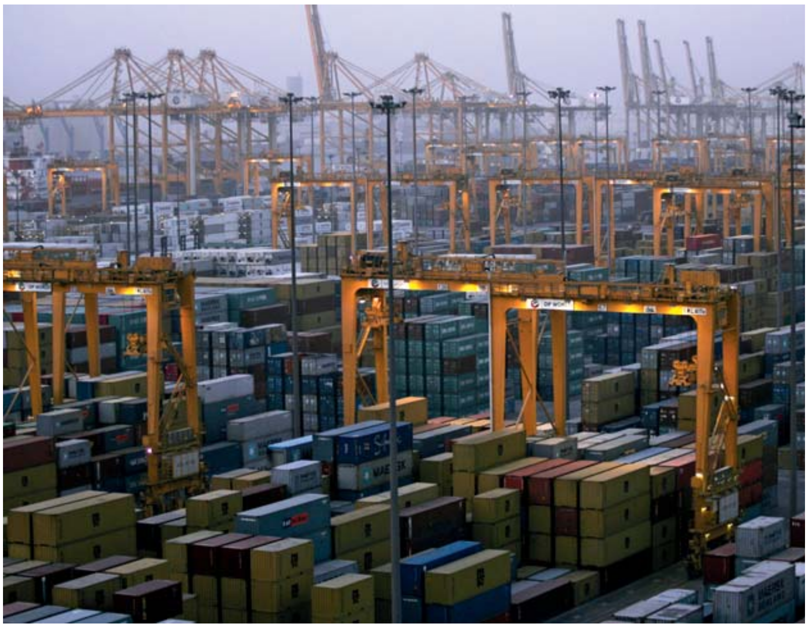
The UCCL introduces the option for a public joint stock company to convert its debt into equity via a special resolution by the company. This may only be done if the board of directors of the company successfully convinces the general assembly of the need to capitalise the debt. The chairman of the Securities and Commodities Authority is expected to pass a resolution outlining and streamlining criteria and the procedural requirements to capitalise the debt.

**III. PRIVATE JOINT STOCK COMPANIES:** Under the CCL, other than the provisions relating to the public subscription for shares and as expressly provided, the provisions of the UCCL relating to public joint stock companies also apply to private joint stock companies. In addition there are some amendments applying only to private stock joint companies.

Under the UCCL the minimum number of shareholders has been reduced to two and the maximum number is now 200. There are certain exceptions including existing companies, transfers by way of inheritance, a court order and one natural or corporate person may incorporate a private joint stock company. The minimum share capital has increased to Dh5m ($1.36m), to be paid up in full.

Under the UCCL, the lockup period for any transfer of shares following incorporation is one financial year, not two, as it was under the CCL.

**IV. FREE ZONE COMPANIES:** The UCCL exempts the free zone companies from falling under the umbrella of the commercial companies law where the laws or regulations of the specific free zone explicitly allow this. However, if a free zone company wishes to operate outside its geographical limits but within the UAE, its operations outside the free zone will be governed by the UCCL. The UCCL further provides for a resolution to be passed by the Cabinet of Ministers outlining the prerequisites and procedural registration requirements of free zone companies that wish to carry out business onshore or outside the free zone limits. At the moment, free zone companies may open a representative or branch office in Dubai, but the activity of such branch office remains subject to the approval of the licensing authority in the emirate. With the exception of the Dubai International Financial Centre (DIFC), other commercial and civil laws of the UAE will apply to free zone companies in addition to the free zone regulations. UAE criminal law applies in free zones as well as onshore.



Free zone companies are exempt from falling under the UCCL and instead abide by their own regulations

**V. HOLDING COMPANIES & INVESTMENT FUNDS:** The UCCL defines a holding company as "a joint stock company or LLC that establishes subsidiaries inside the state or abroad or has control of existing companies, by holding shares or stock enabling such company to control the management of the subsidiary and to have influence on the resolutions of the subsidiary". This is an important development in the companies legislation in the UAE as there has always been a need for groups of companies to have a holding structure in place.

The CCL does not recognise the holding company structure. Under the CCL, a series of corporate structures has to be created to put a group of companies together. Under the UCCL a holding company (which may also be owned by a single shareholder) may be established for the purpose of holding shares in group companies, providing loans and guarantees, acquiring movables and immovables, managing its subsidiaries and holding intellectual property rights.

Unlike the CCL, which requires companies to be operational, the UCCL prohibits holding companies from conducting business activities except through their subsidiaries. The recognition of the holding company structure will strengthen the legal ties between group companies and will lead local and regional groups based in the UAE to reorganise themselves through more efficient corporate structures. This will also have a positive effect on their asset val-

"Smart city" initiatives include Wi-Fi on buses, metro and taxis, and traffic sensors and control centres

uation and the bankability of their financial transactions with the banks. The UCCL also gives the right to public and private joint stock companies to be licensed as "common investment companies" and permitted to establish and manage investment funds. This is another development that will strengthen the position of the UAE in becoming an increasingly important regional financial centre.

**ACCOUNTING & BOOKKEEPING:** The CCL places strict requirements on companies as to how to maintain their books and accounts and for how long. Generally, small and medium-sized enterprises in the UAE do not always have reliable audit and accounting systems in place. This can make it challenging to value a target, produce accurate completion accounts and secure appropriate warranties in respect of accurate financial information.

Article 25 of the UCCL introduces, in line with the practice in other civil law jurisdictions, the obligation imposed on companies to maintain their accounting books for a period of a minimum of five years from the end of each financial year. This also conforms to the provisions of Articles 30 and 31 of the Commercial Transactions Code in terms of duration for bookkeeping, and Article 38 in terms of maintaining an electronic version of such books and accounts.

The adherence to unified accounting standards in the UAE will not only allow companies to precisely disclose their financial position at all times; it will also enhance their financial transparency. The disclosure and transparency of financial information will also aid healthy investment flow into the equity capital markets, which is very much dependent on the information provided by companies regarding their current financial positions and forecast of their future performance.

**SMART CITY INITIATIVE:** The government's strategic direction on the smart city focuses on six separate pillars, namely, life, society, mobility, economy, governance and environment. The Dubai Smart City initiatives focus, like many other existing smart city initiatives around the world, on interconnectedness between the private sector and the local government, authorities and individuals. Dubai's current priorities are: (i) Dubai Smart Government; (ii) the ease of data and information accessibility for residents of and visitors to Dubai through free public Wi-Fi connections; and (iii) the new Smart/Green City concept and development in Silicon Oasis focusing on environmentally smart performance. We will outline each of these Dubai Smart City initiatives below, as well as briefly consider the current data privacy legislative framework in the UAE.

**SMART GOVERNMENT:** Originally the Dubai eGovernment was established by Dubai Law No 7/2009 and later renamed Dubai Smart Government in the Amending Law Dubai Law No 5/2013. The Smart Government initiatives build upon the foundation established through previous works and initiatives under the eGovernment. Dubai Smart Government's mission is to formulate and implement policies and initiatives for modern, world-class government, as well as encourage smart ICT usage that aims at contributing to the economic welfare, social progress and global competitiveness of Dubai. Dubai Smart Government promotes eServices through its unified portal (www.dubai.ae), which aims at providing all residents and businesses of the emirate with more than 1500 electronic services.

Dubai Smart Government issued various Policies of Transition, which set out quite extensive efforts that the government entities will need to undertake in order to achieve eTransformation with the emphasis on mobile services. There are a number of Dubai Smart Government initiatives such as the MyID and mPay service aimed at unifying access with a single ID login to all mobile government services from traffic fines and utilities payments to land registry databases. Further, Dubai Smart Government mandated that all services of government entities be innovative and interactive and as such be provided over mobile channels, which is progressively being carried out by some of the government entities.

**OTHER SMART MOVES:** There are a number of other ongoing smart city initiatives, including Dubai taxis, buses and metro offering free Wi-Fi to customers, who now will be able to, for example, view the real-time schedules and timetables for public transport. This initiative directly flows from the earlier ones such as Wi-Fi services on internet connected buses and bus shelters to help the government to become a fully integrated, more accessible "smart city" ready for Expo 2020 and aimed at connecting the city's infrastructure to the internet. Sensors will also be installed throughout the city to provide live information and services relating, for example, to traffic in the emirate. This type of initiative in essence creates a central "command and control" centre for the entire city, preparing it for efficient and smooth traffic control, intelligent public transport and crowd management. It is understood that the day-to-day controls of different modes of transport will continue to be managed independently, but the main control centre will look at integrating everything to help to ease congestion, and provide reliable and up-to-date information to users, including coordination of traffic lights. Eventually this should evolve to the "internet of everything" concept, where for example traffic lights could communicate with each other, without human intervention, to manage traffic flow in real time. It is expected that the command and control centre will be up and running by 2017.

**SMART PAY:** The Roads and Transportation Authority (RTA) also plans to roll out credit and debit card payment for its taxi fleet to enable customers to pay with Nol cards, which are pre-paid smart cards already in use for the Dubai's metro and buses. The RTA also announced a new parking system, which will inform drivers as they enter a street if there are parking spaces available. The Dubai Electricity and Water Authority (Dewa) also plans to install smart meters for customers to monitor their power and water consumption in real time, as well as install solar panels in order to reduce consumption of electricity and make the city "greener".

**THE SILICON PARK PROJECT:** Another "green" smart city initiative is a Dh1.1bn ($299.42m) project launched in March 2014, the Silicon Park Project. This project is located at Dubai Silicon Oasis, a 150,000-sq-metre initiative that will comply with the UAE Green Building Regulations and Specifications as well as the international LEED standard. The project also seeks to enhance environmental sustainability. The project will be built with green material and focus on environmentally friendly solutions. Residents and visitors will have access to free Wi-Fi and a wide range of innovative and robotic technology solutions. The project will be served by electricity-powered vehicles as the primary form of transportation with many charging stations available in the area. This "smart city" project supports Dubai's vision of turning it into a smart city on a par with the latest global trends and technologies. When moving forward with these Dubai Smart City initiatives, end users will understandably question whether their personal data collected will be protected. The current UAE data protection and privacy laws are still nascent compared to many other countries.

**DATA PROTECTION:** There is currently no federal data protection law or data protection regulator in the UAE. However, general rights of privacy are enshrined in the UAE Federal Constitution and the UAE Penal Code (including the Federal Law No 3 of 1987 as amended). Article 31 of the Constitution, for example, provides for a general right of "freedom of corresponding through the post, telegraph and other means of communication" and confidentiality of correspondence is to be guaranteed by law. Further, under Article 378 of the Penal Code, it is an offence to publish news, pictures or comments relating to a person's private or family life or use another person's "secret" as your own without his consent. The circumstances under which electronic personal data may be accessed or disclosed are also regulated by a number of laws in the UAE. The key piece of federal legislation is the Federal Law Decree No 5 of 2012 on Combating Cybercrimes (Cybercrime Law). In addition there are relevant laws relating to specific sectors or free zones such as: (i) Federal Law by Decree No 3 of 2003 regarding the Organisation of Telecommunications Sector (Telecommunications Law) together with the Consumer Protection Regulations (issued on January 30, 2014) that deal with telecommunications service providers and extending to data that is obtained through means of telecommunication; (ii) Dubai Law No 23 of 2006 relating to the Formation of the Dubai Statistics Centre dealing with restriction on the disclosure of personal data obtained in the course of collection of statistics; (iii) the DIFC Protection Legislation (The Data Protection Law No.1 of 2007 (as amended by DIFC Law No 5 of 2012) and the Data Protection Regulations (Consolidated Version No 2 of 2012 in force since December 23, 2012) protecting all personal data in DIFC; and (iv) the Dubai Healthcare City Regulations No 7 of 2013 dealing with data protection in the Dubai Healthcare City and patients of these facilities.

Ongoing smart city initiatives will see Dubai taxis, buses and metro offering free Wi-Fi to customers

**PROTECTION NOT GUARANTEED:** Therefore, with the exception of the DIFC and the Dubai Healthcare City, there are currently no specific provisions under the UAE federal laws imposing obligations on data controllers to ensure that one's data are processed and protected adequately. From the UAE government's perspective, it is essential to have access to certain personal information to achieve the status of a smart city. These initiatives will, however, need a way to ensure that the issue of data protection and privacy in the UAE is properly addressed, which could require further revision of the current legislative framework.

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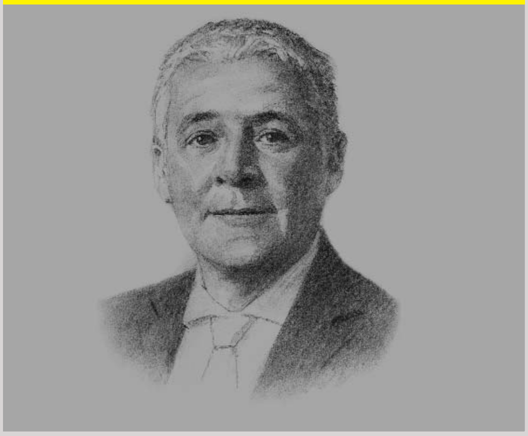

Michael Kerr

# A bright future

## Michael Kerr, Regional Managing Partner, Dentons, on moving forward and new opportunities

In 2011 the Dubai government released Dubai Urban Plan 2020, setting out its objectives for the emirate's urban environment. Key themes include sustainability, integrated land use planning, transport networks and affordable housing for all. Since this time, two important events have taken place: the announcement in 2013 that Dubai will host Expo 2020 and signs of a continued recovery in the local real estate market.

Expo 2020 will be the first World Expo staged in the Middle East, North Africa and South Asia (MENASA) region. Staged over a six-month period, an estimated 25m visitors will explore exhibits and events from hundreds of nations and businesses. The chosen theme is "Connecting Minds, Creating the Future", with the subthemes of mobility, sustainability and opportunity. The high level of interest it has already generated, coupled with the expectation of a significant injection of capital, has led to an immediate increase in confidence across all sectors of the economy. Master planning for the main site has commenced in conjunction with a consortium of global planning specialists, and infrastructure tenders are due to be awarded in early 2015.

Dubai has also been making news through announcements of its own mega-projects beyond Expo 2020. These include: Burj 2020, Dubai Parks and Resorts, and Mohammed Bin Rashid City, perhaps Dubai's most ambitious project to date. This will comprise a city within a city, including Mall of the World, the world's largest shopping mall, and 100 new hotels.

As Dubai delivers a second boom, it is also mitigating against a second bust. Dubai is a civil law jurisdiction, with legal relations governed by laws at federal and emirate levels. The federal framework for the UAE's civil and commercial codes does not contain the detail necessary to regulate a real estate economy as dynamic as Dubai's. Consequently, the Dubai government has introduced a series of measures at the local level to fill the void. The emirate is widely recognised as trailblazing the development of a comprehensive regulatory framework for the UAE and the wider MENASA region.

Since 2008, headlines have been dominated by stories of poorly managed developers and speculation by greedy property investors. These activities were, of course, symptoms of a market that saw various unhealthy practices proliferate. In recognition of this multifaceted issue the Dubai government is introducing regulatory measures for all participants in the market and aspects of transactions that are vulnerable to abuse. For example, brokers and developers must now be registered with the Real Estate Regulatory Agency.

In order to sell off-plan, developers must back their projects with deposits in escrow and unconditional bank guarantees, as well as deposit instalments from purchasers into project-specific escrow accounts. In order to deter flipping property, transfer fees have doubled to up to 4% of property value and are payable upon both asset and share sales.

As a consequence, a new type of market has emerged. Barriers to entry have reduced the involvement of small and mid-scale private developers and purchasers reliant on high loan-to-value mortgages. Established developers are taking the lead on future projects, with many imposing supplementary restrictions on transfers of off-plan properties. Coupled with a recovery in its infancy, the high-gain, short-term speculation witnessed prior to 2008 has not been repeated. An initial period of overheating after the award of Expo 2020 was followed by a prompt correction.

Despite these advances, some believe Dubai will still have its work cut out to manage demand and deliver sustainability as recovery continues. To deliver on Dubai Urban Plan 2020 and Expo 2020's themes the government will need to take an active role in ensuring that developers' projects better serve the emirate's broader vision, with an immense amount of coordination required. The government will need to guard against becoming over-stretched by the number of initiatives. Dubai is certainly up to the task, and this time around, it can afford to be confident in allying strong market fundamentals with the discipline to moderate excess.