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UAE: Law & Practice and Trends & Developments

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UAE

Law and Practice

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Cleary Gottlieb Steen & Hamilton LLP

Cleary Gottlieb Steen & Hamilton LLP is an international firm with more than 1,200 lawyers across 16 offices in major global financial centres. The Abu Dhabi office opened in 2012 and offers clients in MENA and those doing business in the region access to a full range of legal services, including leading M&A, capital markets, financing, energy and infrastructure practices. The Abu Dhabi office is fully integrated with Cleary's MENA practice, which comprises more than 30 partners based in Abu Dhabi, London, Paris and New York. It represents corporates, asset managers, financial institutions and sovereign clients (including major sovereign wealth funds and NOCs) operating or looking to invest in MENA in a variety of matters, from complex and transformational assignments to innovative middle-market transactions across a wide range of sectors. It has notably advised on the creation of various strategic UAE JVs, especially in the energy and hydrogen, fertilisers, consumer products and financial sectors.

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1. Market Trends

1.1 Recent Changes

The UAE has been actively promoting joint ventures (JVs) in various non-oil sectors, such as technology, renewable energy, infrastructure development, healthcare and tourism, as part of its economic diversification programme. Market activity has generally held up despite the dampened economic outlook caused by inflation, high interest rates and geopolitical tensions, although there have been some indications that the relevant decision-makers are proceeding cautiously given the uncertain market conditions.

Government-related entities such as the Abu Dhabi National Oil Company and the UAE's various sovereign wealth funds have continued to drive activity in furtherance of the UAE's diversification efforts. Participation by the private sector in JV activity has also continued to grow.

1.2 Key Industries

Artificial Intelligence (AI)

The UAE is establishing itself as a global leader in AI research and innovation. In 2017, it became the first nation to establish an AI ministry, and the government continues to actively promote and support enterprises involved in the development of AI, with a stated aim of leveraging generative AI in diverse fields such as education, healthcare, media and advanced sciences. Consistent with this objective, the UAE has invested resources in building G42, a national AI champion, and has developed its own open-source large language model ("Falcon") as well as a bilingual Arabic-English large language model ("Jais").

The UAE continues to attract global AI talent to relocate to and work in the UAE. These developments point to a strategic imperative of the UAE to own and control its own computational resources and talent, and to avoid dependence on other nations that have established their own advanced digital infrastructure.

Fintech

The UAE has emerged as a hub for fintech innovation, with the fintech sector experiencing rapid growth driven by an increasing demand for modern and easily accessible financial services among the relatively young and tech-savvy population. Fintech companies in the UAE continue to explore new and innovative ways to offer services such as online banking, mobile payments, insurance, wealth management, and online trading and brokerage services. New fintech service offerings also intersect with the UAE's booming e-commerce market, facilitated by the UAE's high rates of mobile and internet penetration. The government is actively supporting the UAE's fintech industry by providing support such as legal and regulatory assistance, fostering collaboration between banks, regulators and industry players, and investing in innovative fintech businesses.

Energy Transition

The UAE is making substantial progress in advancing its energy transition, and is moving away from its nearly exclusive use of fossil fuels and hydrocarbon-fired power generation to a diversified power generation strategy that includes renewable and nuclear energy. In a tangible indication of its progress, the UAE is now home to three of the world's largest and lowest-cost solar plants, leveraging its significant solar power potential. In April 2023, the UAE announced its national hydrogen strategy and, at the time, had 28 green and blue hydrogen projects in the pipeline (seven of which had already reached final investment decision). The focus on renewable energy will continue to grow as the UAE ramps up its preparations for the

COP28 climate conference, and will undoubtedly continue beyond that.

2. Types of Joint Venture (JV)

2.1 JV Vehicles

From a corporate and regulatory perspective, the UAE can be considered to have two separate categories of jurisdiction:

- the "onshore" or mainland jurisdiction, which is made up of all the territories of the UAE other than the offshore jurisdictions; and
- the "offshore" jurisdictions, which are made up of the UAE's multiple free zones, including the two most prominent financial free zones – the Abu Dhabi Global Market (ADGM) and the Dubai International Financial Centre (DIFC).

Both the ADGM and the DIFC are separate jurisdictions in their own right, applying their own law modelled on English common law (including its separate companies regulations) within their geographic boundaries, adjudicated upon by their own systems of courts. For the avoidance of doubt, other (non-financial) free zones in the UAE have their own regulations and administrative bodies but generally follow the UAE federal laws in most matters, except for those where they have specific regulations. For example, they may have their own regulations regarding business registration, licensing and customs duties, but UAE onshore federal laws would still apply in matters such as civil law, corporate law and criminal law.

Where appropriate throughout this article, the UAE federal onshore, ADGM and DIFC positions will be covered separately, in order to provide a broader contextual analysis of JVs in the UAE. See **2.2 Choice of JV Vehicle** for some considerations that apply in determining whether to opt for an onshore or offshore JV.

Onshore

A JV that is organised onshore may take various forms under the Commercial Companies Law (CCL), although the most commonly used form is the limited liability company (analogous to the private company limited by shares established in the UK).

A limited liability company is not required to maintain any specific level of minimum share capital, although the CCL specifies that the capital must be sufficient to achieve the objects of the incorporation of the company. Contributions to the capital of such a company must be paid in full at the time of its incorporation, and may take the form of either cash or contributions in-kind.

One disadvantage of a limited liability company, however, is that its shares may not be listed on a stock exchange; an IPO of such a company therefore requires the company to be converted to (or acquired by) a public joint stock company (another form of company that may be established under the CCL, analogous to a public company limited by shares established in the UK).

ADGM and DIFC

A JV that is organised in either the ADGM or the DIFC may take various forms under each free zone's respective regulations (including general partnership, limited partnership and limited liability partnership), although the most commonly used form in each is the private company limited by shares, established in the ADGM under the Companies Regulations 2020, or in the DIFC under the Companies Law 2018. In either case, this type of company is modelled closely on the private company limited by shares provided for under the UK's companies law.

In both the ADGM and the DIFC, a private company limited by shares is a corporate body with separate legal personality, and affords the benefit of limited liability to its shareholders. Moreover, there are no minimum share capital requirements for a private company limited by shares in either free zone.

As with an onshore limited liability company, however, the shares of an ADGM or DIFC private company limited by shares may not be listed on a stock exchange, unless the company is converted into a public limited company.

2.2 Choice of JV Vehicle

The primary drivers for choosing the appropriate JV vehicle are:

- the intended activities of the JV;
- entitlements to assets and revenues;
- tax treatment;
- requirements for formation; and
- management and governance structure.

In determining the optimal JV form in relation to these criteria, the choice often comes down to deciding between an onshore vehicle and a free zone vehicle, and then deciding on the specific type of onshore or free zone (as appropriate) vehicle.

Intended Activities of the JV

If it is intended for the JV to do business onshore in the UAE, one should bear in mind that an entity registered in a free zone is not permitted to conduct business outside the geographic boundaries of the relevant free zone without also being duly licensed to do so by the competent authority of the relevant Emirate. Therefore, unless there are specific reasons to set up a JV entity in a particular free zone, it is more common for JV entities (and a requirement for JV entities desiring to conduct operations mainland in the UAE) to be formed onshore, in order to avoid having to meet additional licensing requirements to register in the free zone as well.

If there is a specific reason to use either an ADGM or DIFC entity as the JV vehicle (such as to incorporate bespoke governance provisions in the vehicle's articles of association – see **6.1 Agreement Documentation** for more detail), the JV partners may instead elect to form a company limited by shares in either the ADGM or the DIFC, and for that company to then wholly own the onshore operating entity.

Entitlements to Assets and Revenues

Onshore companies are not permitted to maintain different classes of share. However, a company registered in either the ADGM or the DIFC may have different classes of share, giving the holders of different classes different entitlements to assets and revenues, as well as different voting rights.

Tax Treatment

Companies registered in the free zones continue to benefit from corporate income tax at the rate of 0%.

Requirements for Formation

The UAE's free zones also permit 100% foreign ownership of businesses registered in the free zones, so foreign investors have historically gravitated towards establishing JV vehicles in the free zones. However, the recent changes to the foreign ownership requirements pertaining to onshore companies (see **4. Legal Developments**) mean that this particular consideration no longer holds as much sway.

The choice of JV vehicle may also be influenced by the formalities involved in, and the time required for, incorporating the JV entity. While incorporating a free zone entity is typically relatively quick (for example, the ADGM's expected timeframe for incorporating a new entity is ten business days, provided that all requirements for incorporation have been met and the ADGM's registrar is satisfied that the requirements of the relevant regulations have been complied with), the process for incorporating an onshore limited liability company may be somewhat more prolonged. In particular, the registration process for a limited liability company is two-fold: a submission of documents to receive initial approval, followed by a subsequent submission of documents to receive final approval.

Moreover, certain approvals may need to be obtained from other UAE authorities, depending on the intended activities of the company. In addition, if one of the JV partners is a foreign entity, certain documents relating to that partner will need to be attested, legalised and translated into Arabic.

Management and Governance

Onshore companies are subject to the CCL and other laws applicable onshore, which, collectively, are based on a relatively rigid regime that international investors may find to be less flexible for the purposes of JV governance compared to common law regimes based on English or US law. For example, onshore law does not generally provide for specific performance as a remedy for breach, so contractual provisions requiring the transfer of shares (eg, put and call options, drag-along and tag-along rights, and compulsory share transfers on default) may not be enforceable before onshore courts.

The ADGM and DIFC regimes, however, are based on English law, and therefore provide for specific performance as an enforceable remedy. In consequence, cross-border JVs are often structured such that the JV partners hold their equity interests in a holding entity incorporated in the ADGM or the DIFC (and subject to a shareholders' agreement governed by ADGM or DIFC law, as appropriate), and this entity in turn wholly owns the operating entity (typically an onshore limited liability company). This way, contractual provisions requiring the transfer of shares will operate with respect to shares in the ADGM or DIFC holding entity, and thereby indirectly to the operating entity.

3. Regulation

3.1 Regulators

Onshore

The primary regulator for companies in the UAE is the Ministry of Economy, under powers allocated to it by the CCL. The CCL applies to any company that engages in any commercial activity onshore in the UAE (not including the UAE's various free zones).

The Ministry of Economy also exercises jurisdiction as the antitrust regulator under Federal Law No 4 of 2012 on the Regulation of Competition (see **3.4 Competition Considerations** for more detail).

On a local level, each Emirate has its own authority that is competent with respect to companies incorporated in such Emirate (eg, the Department of Economic Development in the Emirate of Abu Dhabi). Such "Competent Authority" also maintains the commercial registers for the relevant Emirate.

The Securities and Commodities Authority (SCA) is the federal regulator responsible for regulating public joint stock companies listed on onshore exchanges in the UAE, including the Abu Dhabi Securities Exchange and the Dubai Financial Market, as well as dealings in the securities of such companies. Listed companies are obliged to comply with various regulations promulgated by the SCA, including Decision No 3 of 2000 Concerning the Regulations as to Disclosure and Transparency and the Governance Guide for Public Joint Stock Companies.

The Central Bank of the UAE regulates and supervises financial services companies operating in the UAE, under Decretal Federal Law No 14 of 2018 Regarding the Central Bank & Organisation of Financial Institutions and Activities. This law requires all companies engaged in banking, insurance, finance, payments and stored value services and certain other services to be duly licensed for such activities by the Central Bank.

The Abu Dhabi Accountability Authority is an independent body that was established in 2008 to oversee the transparency and efficiency of the Abu Dhabi government's entities and their subsidiaries.

Specific regulators also exercise authority in certain other sectors, such as energy, education and healthcare. For example, the Supreme Council for Financial and Economic Affairs oversees matters relating to petroleum and natural resources.

ADGM

The Registrar of the ADGM is responsible for all matters relating to the incorporation and registration of all entities in the ADGM. The Registrar was established under Article 10 of Abu Dhabi Law No 4 of 2013 concerning Abu Dhabi Global Market (the "Founding Law"), and its responsibilities thereunder include the registration and licensing of entities operating in the ADGM in accordance with the Founding Law and the regulations of the ADGM.

The Financial Services Regulatory Authority (FSRA) is empowered under Abu Dhabi Law No 4 of 2013 concerning the ADGM and the Financial Services and Markets Regulations 2015 as the competent regulator of financial services conducted in or from the ADGM. The FSRA's mandate includes asset management, collective investment funds, securities, derivatives, banking and credit services, insurance, custody and trust services, virtual assets and others, and it is also responsible for supervising and enforcing AML and CFT requirements applicable in the ADGM.

DIFC

The DIFC's Registrar of Companies (ROC) is responsible for all matters relating to the incorporation and registration of all entities in the DIFC. The ROC was established under Article 6 of DIFC Law No 7 of 2018 (the "Operating Law"). The Operating Law also sets out the functions and powers of the ROC, which include receiving, reviewing, advising on and processing all applications submitted by prospective DIFC registrants seeking to establish a presence in the DIFC in accordance with the DIFC's companies and partnerships laws and the implementing regulations thereto.

The Dubai Financial Services Authority (the DFSA) is empowered under Dubai Law No 9 of 2004 as the competent regulator of financial services conducted in or from the DIFC. The DFSA's mandate includes asset management, banking and credit services, securities, collective investment funds, custody and trust services, commodities futures trading and others; the DFSA is also responsible for supervising and enforcing AML and CFT requirements applicable in the DIFC.

3.2 AML

Federal Decree No 20 of 2018 on Anti-Money Laundering and Countering the Financing of Terrorism (the "AML Law") sets out the UAE's legislative and legal structure to ensure compliance with international standards on anti-money laundering and countering the financing of terrorism. The AML Law aims to:

- combat money-laundering practices;
- establish a legal framework that supports the authorities concerned with anti-money laundering and offences related to money laundering; and
- counter the financing of terrorist operations and suspicious organisations.

The AML Law defines a perpetrator of a money laundering offence as any person who intentionally commits one of the following acts while aware that the monies in question are the proceeds of crime:

- transfers or transports the monies with intent to conceal or disguise their illicit origin;
- conceals or disguises the true nature, origin, location, way of disposition, movement or rights related to any proceeds of crime or the ownership thereof;
- acquires, possesses or uses any proceeds of crime; or
- assists the perpetrator of the predicate offence to escape punishment.

The AML Law further stipulates that money laundering is independent of the predicate offence, and that the punishment of a person who has committed a predicate offence shall not protect said person from being penalised for money laundering.

Cabinet Decision No 10 of 2019 Concerning the Implementing Regulation of Decree Law No 20 of 2018 sets out the requirements for identifying and mitigating money laundering risks, undertaking customer due diligence measures, and filing suspicious transaction reports.

The ADGM and the DIFC have their own anti-money laundering regulations.

3.3 Restrictions and National Security Considerations

Through Cabinet Resolution No 74 of 2020, the UAE implements UN Security Council Resolutions on the suppression and combating of terrorism, terrorist financing and countering the financing of proliferation of weapons of mass destruction, as well as targeted financial sanctions regimes as defined by the UN. The UAE thus prohibits making funds available for the benefit of designated individuals or entities (and entities owned by such designated individuals or entities). Furthermore, the Supreme Council for National Security maintains a local list of designated individuals and entities that pose threats to national security or that are designated as such based on the request of other states or intergovernmental organisations.

The UAE maintains a list of activities that are of strategic impact, and foreign participation in these activities within the UAE is restricted (whereas other activities that are not on this list may be performed by ventures that are 100% foreign-owned – see **4. Legal Developments** for more detail). Such strategic impact activities include:

- security, defence and military activities;
- upstream petroleum activities;
- banks, exchange houses and finance companies;
- insurance;
- currency printing;
- telecommunications;
- Hajj and Umrah services;
- Qur'an memorisation centres; and
- services related to fisheries.

Such activities, and controls for licensing any entities involved in such activities, are designated by the Council of Ministers based on the recommendation of a committee composed of the representatives of competent authorities within the UAE.

Furthermore, the Competent Authority in each Emirate may set minimum levels of ownership in and participation on the boards of companies incorporated in each Emirate by UAE nationals.

3.4 Competition Considerations

Federal Law No 4 of 2012 on the Regulation of Competition and its implementing regulations (together, the "Competition Law") address anti-competitive practices in line with standard international competition law principles, with a focus on:

- restrictive agreements between market participants that restrict or prevent competition, including in particular agreements that aim to fix the purchase or sale prices of goods or services, as well as collusion in bids or proposals in tenders, and other supply offers;
- abuse of a dominant position (ie, a position in which a market participant is, individually or in association with other participants, able to control or influence the market) in order to prejudice, restrict or prevent competition; and
- mergers or acquisitions.

The Competition Department within the Ministry of Economy is the responsible authority under the Competition Law. However, certain sectors are expressly exempted from the remit of the Competition Law and the Competition Department, unless the competent regulator for any such sector expressly refers a given matter to the Competition Department. Such sectors include telecommunications, financial, oil and gas, and land and sea transportation.

3.5 Listed Party Participants

There are no specific rules for listed party participants.

3.6 Control/Ownership Disclosure Requirements

Onshore

Cabinet Decision No 58 of 2020 Concerning Regulating the Beneficial Owner Procedures (the "UBO Decision") requires the disclosure of information pertaining to the ultimate beneficial owners (UBOs) of entities incorporated in the UAE (excluding entities incorporated in the ADGM or the DIFC – see further below).

The UBO Decision provides for UBOs to be identified using the following three-fold test:

- any person who owns or controls 25% or more of the relevant entity's shares;
- any person who has shares with the right to vote representing 25% or more of the relevant entity's shares; or
- any person who controls the relevant entity through any other means, such as by being able to appoint or dismiss the majority of the entity's directors.

In any case, the UBO Decision specifies that both direct and indirect ownership or control are to be considered for the purposes of these tests.

The UBO Decision requires every in-scope entity to take reasonable steps to obtain accurate information in respect of its UBOs (including by making enquiries of any person believed to be a UBO and not already registered as such), and to maintain such information in a register. The information to be obtained and maintained in respect of each UBO under the UBO Decision includes:

- the full name, nationality, date and place of birth;
- the residential address or correspondence address to which notices required under the UBO decision are to be sent;
- the passport or identity card number, the country of issuance of such document, and the dates of issuance and expiry of such document;
- the basis and date on which the person concerned became a UBO of the relevant entity; and
- the date on which the person concerned ceased to be a UBO of the relevant entity.

The UBO Decision also requires each director of an in-scope entity to notify the entity if he or she acts as nominee director (ie, a person who acts in accordance with the directions, instructions or wishes of another person), and to provide certain prescribed information to the entity (and update such information upon any change thereto).

ADGM and DIFC

The ADGM's Beneficial Ownership and Control Regulations 2018 (the "BOC Regulations") apply to all entities registered in the ADGM (other than branches of foreign companies or foreign partnerships, public listed companies or UAE government entities), and contains requirements similar to those contained in the UBO Decision, pursuant to which in-scope entities must take reasonable steps to ascertain the identities of beneficial owners, obtain information in respect of persons believed to be beneficial owners (similar to the above), and keep records of the required particulars of the beneficial owners and notify the Registrar of any changes in beneficial ownership.

The DIFC Ultimate Beneficial Ownership Regulations 2018 (the "UBO Regulations") apply to all non-exempted entities registered in the DIFC, and require such entities to maintain a register of UBOs. Similar to ADGM and onshore law, the UBO Regulations define a UBO by reference to the percentage ownership (25% or more), voting rights (25% or more) and/or ability to exercise control over the appointment of directors or influence over the activities of the company.

The beneficial ownership may be traced through any number of persons or arrangements of any description.

4. Legal Developments

4.1 Significant Recent Decisions or Regulatory Developments

The CCL previously required all companies incorporated in the UAE (other than in designated free zones such as the ADGM or the DIFC) to be at least 51% owned by one or more UAE nationals (whether natural or legal persons). However, the CCL was amended in 2020 to permit 100% foreign ownership of companies incorporated in the UAE (other than companies engaged in certain activities of strategic importance – see **3.3 Restrictions and National Security Considerations** for more detail). The removal of this foreign ownership restriction has removed a key concern for foreign investors, opened up the UAE market for foreign direct investments, and obviated the need for nominee structures that were previously commonly used in connection with foreign investment into the UAE.

Federal Decree Law No 47 of 2022 on the Taxation of Corporations and Businesses and its associated Cabinet and Ministerial Decisions (the "Corporate Tax Law") have introduced a federal corporate income tax with effect from 1 June 2023. The corporate income tax for onshore activities is levied at a headline rate of 9% on annual taxable income exceeding AED375,000 (USD102,110). Taxable income below this threshold is subject to a 0% rate of corporate tax.

5. Negotiating the Terms

5.1 Negotiation Documentation

Parties to JV negotiations may agree on a number of documents, depending on the specific circumstances pertaining to the intended JV. Such documents may include due diligence questionnaires and reports, mutual confidentiality agreements, heads of terms and letters of intent, exclusivity agreements, and binding and non-binding offer letters.

Parties typically agree a term sheet in advance that generally covers the following aspects:

- board composition and governance arrangements (see **6.2 Decision-Making** and **7.1 Board Structure**);
- reserved matters requiring specified minimum voting thresholds in order to be passed at board and shareholder levels (see **6.2 Decision-Making**);
- transfers of interests in the JV entity;
- financing of the JV entity;
- events of default; and
- termination of the JV.

5.2 Disclosure Requirements and Timing

A listed company is required to disclose all material information to the market. Depending on the particular circumstances of the discussions, this requirement may capture the signing by a listed company of heads of agreement or other preliminary documentation relating to a JV, as well as subsequent changes to the JV shareholding or board of directors.

Unlisted companies are not subject to such disclosure requirements. However, specific regulatory requirements concerning the disclosure of a JV may apply in certain sectors and circumstances (regardless of whether the company in question is listed or not – eg, mandatory antitrust disclosures).

5.3 Set-Up

Onshore

The incorporation of an onshore company requires certain documents pertaining to the incorporating shareholders to be submitted to the Competent Authority for initial approval (including notarised and attested copies of each shareholder's certificate of incorporation, articles of association and commercial register extract, and a resolution of the shareholders to incorporate the new company). The shareholders will then need to prepare and sign (in the presence of a notary) the articles of association of the new company, and then submit further documents to the Competent Authority to complete the application for registration.

ADGM and DIFC

The incorporation of an ADGM or DIFC company (as applicable) requires the completion of an online application form, and for certain documents pertaining to the incorporating shareholders to be submitted online to the Registrar or ROC (as appropriate), including documents pertaining to the proposed shareholders, a business plan and articles of association.

6. The JV Agreement

6.1 Agreement Documentation

A JV is typically governed by a written shareholders' agreement entered into between the JV partners. In appropriate circumstances, some or all of the JV partners may also enter into written side letter agreements in parallel to the shareholders' agreement.

The terms of a shareholders' agreement will typically also be reflected in a JV's articles of association (AoA). With respect to an onshore company, its AoA and any amendments thereto are required by the CCL to be drafted in Arabic and authenticated by the Competent Authority, failing which the AoA shall be deemed null and void.

In the event of any dispute between parties to an onshore JV, it is likely that the AoA will be regarded by onshore courts as the primary record of the parties' intentions, taking precedence over any shareholders' agreement, side letter or other agreement (even if that other document is expressly stated to take precedence over the AoA), so it is advisable for key governance terms to be adequately reflected in the AoA and for all necessary formalities to be complied with.

AoA for entities incorporated in the ADGM or the DIFC, on the other hand, are required to be drafted in English, and may be expressly subject to the terms of any other written agreements between the JV parties (eg, shareholders' agreements). The general view is that such provisions will be upheld by the respective courts of the ADGM and the DIFC to the extent they conflict with the AoA, to give effect to the parties' freedom to contract and to respect their stated intent.

The following are some key provisions that parties to a JV agreement would typically expect it to cover:

- board composition and governance arrangements (see **6.2 Decision-Making** and **7.1 Board Structure for more detail**);
- reserved matters requiring specified minimum voting thresholds in order to be passed at board and shareholder levels (see **6.3 Decision-Making**);
- transfers of interests in the JV entity;
- financing of the JV entity;
- dividend policy;
- deadlock resolution (see **6.4 Deadlocks**);
- restrictive covenants;
- events of default;
- termination of the JV;
- dispute resolution; and
- governing law.

6.2 Decision-Making

JV entities are typically managed by a board of directors (or, in the case of a limited liability company, a board of managers), with the members of such board being appointed in proportion to the JV partners' respective shareholdings (see **7.1 Board Structure** for more detail). The board of a JV entity will typically be empowered to take decisions concerning the JV entity and its business, including approval of specific transactions and projects, borrowing up to a given monetary threshold, and the appointment of senior management officers and their remuneration.

In addition to matters to be decided upon by the board, there are also certain matters that are typically reserved for the shareholders of the JV entity. Such matters include approval of any changes to the JV entity's capital structure, approval of transactions or acquisitions or disposals exceeding a given monetary threshold, approval of the JV entity's annual accounts and balance sheet, approval of dividends, and appointment of members of the board and approval of their remuneration.

The board will typically delegate day-to-day management of the business of the JV entity to a general manager or chief executive officer (and sometimes to other office holders as well). In a 50:50 joint venture, the JV partners will usually (but not always) agree that the board is entitled to appoint the general manager or chief executive officer. In other circumstances, the right to appoint the general manager or chief executive officer may be reserved for an individual JV partner.

Whilst the general manager or chief executive officer will have broad powers to operate the JV entity's business on a day-to-day basis, JV parties will typically agree for certain matters to be reserved to either the board or the JV partners in their capacities as shareholders. This would be of particular significance for a JV partner in circumstances where another JV partner has the right to appoint the general manager or chief executive officer. Examples of board-reserved matters generally include:

- approval of specific projects or transactions with a value in excess of a given monetary threshold;
- borrowing in excess of a given monetary threshold;
- approval of internal policies and procedures; and
- establishing, amending the composition of and dissolving board committees.

By contrast, the following matters are generally within the remit of the shareholders:

- any amendment to the JV entity's constitutional documents;
- a change in the nature of the JV's business;
- a charge or other security or encumbrance over the JV's assets;
- related party transactions; and
- the dissolution or winding-up of the JV entity.

6.3 Funding

Parties to a JV may elect to fund the JV entity through debt, equity or a mix. The JV partners may also agree to provide the JV entity's future funding requirements, or expressly agree that the JV partners will not be under any obligation to fund the JV entity and require the JV entity's future funding needs to be met from the JV's own cash flows or third-party debt financing, unless the JV parties agree otherwise.

A typical process for additional equity funding would involve the board of the JV entity (or a designated senior officer such as the general manager or chief executive officer) determining that the JV entity requires funding. Following this, a capital call will be issued to the JV partners, and an agreed mechanism will determine the amount and form of the required funding and from whom such funding should be obtained (eg, equity financing or shareholder loans from the JV partners, or debt financing from banks or other third parties). This is typically subject to shareholder approval, with the deadlock resolution mechanism being applicable if the JV partners are unable to come to an agreement on relevant issues within a predetermined timeframe (see **6.4 Deadlocks**).

Where the JV partners agree to make funding contributions (usually pro rata to their equity interests in the JV entity), they will typically specify in the shareholders' agreement the consequences attendant upon default by any JV partner. Such default may entitle the non-defaulting JV partners to fund the shortfall in consideration for additional shares in the JV entity (resulting in the dilution of the defaulting JV partner's equity interest), or alternatively entitle the non-defaulting JV partners to extend shareholder loans equal to the shortfall amount at a preferential rate of interest (and which may also rank ahead of other shareholder loans). Typically, a default with respect to a funding obligation would also constitute an event of default under the shareholders' agreement, which in turn would trigger compulsory share transfer provisions whereby the non-defaulting JV partners may elect to compulsorily acquire the equity interests of the defaulting JV partner at a discount to fair market value of such interests (although there continue to be concerns about the enforceability of such provisions in the onshore context – see **2.2 Choice of JV Vehicle**).

6.4 Deadlocks

A JV agreement will typically provide for the relevant JV partners to endeavour to resolve a deadlock by way of discussion between themselves for a period of time, failing which the matter giving rise to the deadlock is to be escalated for discussion between specified senior individuals (eg, the CEO or chairman) of each of the relevant parties. The JV agreement may further provide that the deadlock is to be referred to an independent expert if such discussions fail to resolve the deadlock, and may also specify how such expert is to be appointed.

JV partners may also negotiate provisions in a JV agreement that provide for a party to exit from the JV if a deadlock is not resolved to such party's satisfaction. The scope and application of such provisions may depend on considerations such as the JV partners' respective bargaining strengths, their wider commercial relationships, and the nature of the industry or sector in which the JV entity is intended to operate. Such provisions may be relatively bespoke, or may take the form of "Russian roulette" or "Texas shoot-out" provisions (although there continue to be concerns about the enforceability of such provisions in the onshore context – see **2.2 Choice of JV Vehicle**).

6.5 Other Documentation

Parties to a JV may negotiate a number of other documents, depending on the specific circumstances pertaining to the intended JV. Such documents may include:

- share subscription agreements (or share purchase agreements where a JV partner is acquiring shares in the JV entity from another JV partner);
- asset transfer/contribution agreements;
- parent company guarantee agreements (especially where a JV partner participates in the JV entity through an SPV);
- IP licence agreements;
- technical services agreements (where a JV partner is to provide specified technical services to the JV entity); and
- confidentiality agreements.

7. The JV Board

7.1 Board Structure

Board composition typically reflects the proportional shareholding of each JV partner, as may be amended from time to time. Therefore, a JV partner whose stake is reduced below a certain threshold may lose its right to appoint a director. Less usually, however, JV partners may agree that board representation will not be proportionate to shareholding interest only but will also (or instead) be determined with reference to other considerations (eg, provision of industry experience, where board presence is especially valuable).

Weighted voting rights are not permitted for limited liability companies under the CCL, but the concept is recognised under some free zone laws. Nonetheless, it is more common for equal voting rights to be granted to partners in a JV entity. JV agreements usually specify reserved matters in respect of which minority shareholders may, in practice, exercise veto rights (see **6.2 Decision-Making** for more detail).

7.2 Directors' and Board's Duties and Functions

Onshore

The key duties of directors of an onshore company include the duty to act in good faith and in the best interests of the company, as well as the duty of care (ie, to exercise the level of care, diligence and skill of a similarly situated director). Directors are also subject to the JV entity's constitutional documents (for example, the AoA of a limited liability company may assign particular responsibilities to directors, such as calling annual general meetings), and are required to disclose conflicts of interest.

The board of an onshore limited liability company may delegate functions to committees, unless it is prevented from doing so by the company's constitutional documents. Note that the board of an onshore public joint stock company (which corporate form has not been considered in this article) is required to delegate certain functions to the company's audit, nomination and remuneration committees.

ADGM and DIFC

Directors of a company registered in the ADGM are subject to duties set out in the Companies Regulations 2020, and directors of a company registered in the DIFC are subject to duties set out in the Companies Law 2018. These duties largely mirror each other (being based on the codification of directors' duties under UK companies law), and include the duty to:

- act in accordance with the company's constitution and only exercise powers for the purposes for which they are conferred;
- act in the way that he/she considers, in good faith, to be most likely to promote the success of the company for the benefit of its members as a whole (as opposed to the benefit of the member that has appointed the director);
- exercise independent judgement;
- exercise reasonable care, skill and diligence;
- avoid conflicts of interest;
- not accept benefits from third parties; and
- declare interests in proposed transactions or arrangements with the company.

The board of an ADGM or DIFC company may delegate functions to subcommittees, unless it is prevented from doing so by the company's constitutional documents.

7.3 Conflicts of Interest

JV agreements typically include specific provisions governing the approval of related party transactions and how conflict of interest situations are to be dealt with. A conflicted director will be required to declare his/her interest in the relevant matter to be approved (see **7.2 Directors' and Board's Duties and Functions**), and may in some cases be barred from voting on such matter. Given these types of provision, it is not unusual for board members of JV entities to be appointed from among persons who are otherwise affiliated with the JV participants.

8. Intellectual Property and the JV

8.1 Key IP Issues

The extent to which IP issues are relevant will depend on the type of JV entity being set up, as well as the intended business of the JV. For instance, industrial designs and technology may be more relevant to an artificial intelligence venture than to a real estate venture.

IP created by the JV entity will usually remain the property of the JV, pursuant to an IP licence agreement.

Where a JV partner contributes IP or technology to the JV (eg, by way of a licence), then such partner would typically retain ownership of its IP unless the IP is being contributed as an in-kind contribution to the JV, in which case there could be an assignment of IP rights (rather than a licence) from the contributing partner to the JV.

The JV agreement should clearly set forth key IP arrangements, including the treatment of improvements to or the development of existing IP owned by each JV partner, and the usage and ownership of IP created by or licensed to the JV entity during the term of its existence and following its termination.

Third-party rights should also be considered. In some cases, the IP rights of the JV partners or the JV entity (as the case may be) could be subject to the rights of third parties (eg, technology providers). Finally, relevant confidentiality safeguards should be put in place regarding access to IP (as well as to work product and data generated from the use of the relevant IP) by the JV partners and their employees or agents.

8.2 Licensing and Assignment

The choice between licensing and assigning IP will be influenced by the specific circumstances and objectives of the JV partners concerned. Licensing IP to the JV entity might be appropriate where a JV partner has a desire to:

- retain ownership and control of the relevant IP, such that it may continue to use the IP outside of the JV (including licensing the IP to third parties, whether or not for royalties); or
- limit its risk, such that it may revoke the licence if the JV does not meet its commercial expectations or if conflicts arise between the JV partners.

On the other hand, assigning IP to the JV entity might be appropriate where the JV partners have a strong alignment of interests and/or a well-established relationship, such that they can benefit from simplified central management of all IP needed by the JV entity and more co-operative sharing of decision-making in relation to the JV entity.

In practice, the nature of the IP in question will often be the most significant factor in the decision on whether to license or to assign. If the IP in question is strategic and/or highly prized, the

JV partner that owns it may be less willing to assign it – and all the more so if it has relatively strong bargaining power compared to the other JV partners.

9. ESG and the JV

9.1 ESG Regulations and Developments Affecting JVs

The paradigm shift to sustainable investments and sustainable finance has placed ESG considerations at the forefront of commercial and political decision-making in the UAE. ESG considerations have a particular resonance in the UAE for a number of reasons, including:

- their alignment with the UAE's economic diversification efforts, by promoting sustainable industries such as renewable energy as well as the economic shift away from hydrocarbons;
- the threat posed to the UAE by climate change, and the imperative to build long-term economic and social resilience in the face of this challenge; and
- enhancing the UAE's global standing, and thereby increasing the attractiveness of the UAE as a destination for foreign investment, as well as affording UAE companies a competitive advantage on the world stage.

In a sign of the widening adoption of ESG considerations, UAE entities have published sustainability commitment statements to align with the UN's sustainable development goals as well as the UAE's Net Zero by 2050 goals. The UAE has also formulated the National Energy Strategy 2050, which emphasises policies and regulation as being key enablers of the energy transition.

The ADGM recently adopted new sustainable finance rules that will require non-exempted ADGM companies with a turnover of USD68 million or more to include certain ESG information in their annual accounts (or in a separate accompanying document to be submitted to the Registrar). This requirement, which has been adopted on a "comply or explain" approach, is codified in Chapter 4A of the ADGM Companies Regulations 2020 (as amended by Amendment No 2 of 2023). Companies that do not meet the threshold requirements for disclosure are also encouraged to voluntarily comply with the requirements of Chapter 4A.

Ahead of the forthcoming COP28 conference in the UAE later this year, the ESG requirements applicable to JV entities and parties are expected to expand in scope (possibly leading to mandatory obligations for qualifying privately owned JV entities, in addition to listed companies). Most such requirements are not expected to be mandatory for smaller companies, but compliance with such requirements to the extent possible on their part will signify good corporate citizenship and commitment to sustainable growth on the part of JV companies.

The governance element of ESG should, in particular, be of key interest to JV entities. Among other things, a JV entity should have an effective management structure in order to function optimally and generate the best returns for its shareholders. In practice, JV parties will typically include provisions in the shareholders' agreement requiring periodic reporting relating to environmental and social matters, and may also include provisions requiring the JV entity to abide by certain ethical codes or requirements.

The main ESG obligations in the UAE are set out in the following:

- the SCA's Corporate Governance Code for Public Joint Stock Companies, Article 76 of which requires listed public joint stock companies to file a sustainability report;
- ADGM Sustainable Finance Regulations 2023; and
- Voluntary ESG disclosure guidelines published by the Abu Dhabi Securities Exchange, the Dubai Financial Market and NASDAQ Dubai.

10. Completion of the JV's Purpose, Winding Up and Redistribution of JV Assets

10.1 Termination of a JV

JV arrangements may be terminated upon:

- a change of control (usually by the leading sponsor or JV partner), with parameters for control pre-determined;
- the withdrawal of JV partners until only one shareholder remains;
- the termination by mutual agreement of the JV partners (including failure to satisfy applicable conditions before an agreed long-stop date) and subsequent voluntary liquidation; or
- insolvency and subsequent involuntary liquidation.

Matters to be dealt with upon the termination of a JV include:

- the liquidation and distribution of net assets;
- the assignment or novation of the JV entity's contracts;
- the dismissal or transfer of employees;
- the surrender of leased premises; and
- the inter se consequences of the termination for the JV partners (eg, whether any accrued rights or obligations will be affected, and to what extent).

Other matters to be considered in connection with the termination of a JV include the length of retention of books and records, the surrender/cancellation of relevant licences and the filing of relevant applications/notices.

10.2 Transferring Assets Between Participants

JV parties would be well advised to document in their JV agreement how assets are to be distributed upon the winding-up of the JV (typically, winding-up/liquidation is designated as a shareholder-reserved matter). Some issues to consider include:

- whether the distribution of net assets will be on a pro rata basis or based on another agreed allocation mechanism;
- the valuation of assets distributed in-kind (eg, whether at fair market value or subject to an independent expert's determination);
- whether there are any encumbrances attaching to the assets, and how such encumbrances should be treated (eg, repayment, restructuring, continuation), which will typically require engaging with the creditor(s) to obtain necessary approvals from their side;
- whether a JV partner is entitled (in the first instance) to purchase assets in-kind, and the subsequent allocation of the proceeds of such sale;
- whether a JV partner has a priority entitlement to the return of any asset that it had contributed in-kind to the JV entity;
- process and timing considerations with respect to any required regulatory approvals or filings in connection with the transfer of certain types of assets;

- whether any associated liabilities should also transfer with particular assets or be discharged first;
- the treatment of IP assets or IP licensing arrangements (see **8. Intellectual Property and the JV**); and
- tax implications for JV partners receiving distributions in-kind rather than cash.

Trends and Developments

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Cleary Gottlieb Steen & Hamilton LLP is an international firm with more than 1,200 lawyers across 16 offices in major global financial centres. The Abu Dhabi office opened in 2012 and offers clients in MENA and those doing business in the region access to a full range of legal services, including leading M&A, capital markets, financing, energy and infrastructure practices. The Abu Dhabi office is fully integrated with Cleary's MENA practice, which comprises more than 30 partners based in Abu Dhabi, London, Paris and New York. It represents corporates, asset managers, financial institutions and sovereign clients (including major sovereign wealth funds and NOCs) operating or looking to invest in MENA in a variety of matters, from complex and transformational assignments to innovative middle-market transactions across a wide range of sectors. It has notably advised on the creation of various strategic UAE JVs, especially in the energy and hydrogen, fertilisers, consumer products and financial sectors.

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Joint Ventures in UAE: Globalisation is a Joint Venture

In today's highly competitive globalised economy, opportunities for cross-border joint ventures (JVs) can present a compelling investment case. Cross-border JVs are often established through mergers and acquisitions, whether driven by a foreign firm seeking to enter or grow its presence in a new market through partnership with local incumbents (eg, Canadian asset manager CDPQ's USD2.5 billion investment in various flagship port assets in the UAE in 2022 as part of entering into a JV with DP World) or driven by a homegrown champion seeking to grow and complement its business lines by partnering with a successful foreign-owned firm (eg, Emirati telecoms giant e&'s acquisition of a majority stake in Careem's "super app" spinout from Uber in 2023).

Foreign multinationals will naturally gravitate towards exploring JV opportunities to expand in those countries that develop the best enabling environments for cross-border business.

The UAE as a magnet for foreign investment and JVs

With the world reeling from myriad economic, geopolitical and environmental shocks in 2023, the UAE has been a safe haven for communities and capital. While global foreign direct investment (FDI) flows fell by 12% year-on-year in 2022, the UAE's FDI flows rose 10% to a domestic record of USD23 billion. Although this economic performance was partly influenced by extraordinary factors (a rapid and decisive COVID-19 response that allowed the UAE economy to reopen for business earlier than competitors, followed by a surge in global oil prices due to geopolitical conflict in Europe), the UAE's FDI success is in greater part a consequence of long-term economic policies centred on the ease of doing business.

The UAE maintains a competitive corporate income tax regime and a stable currency pegged to the US dollar. The nation has established various world-class "free zones", including the Abu Dhabi Global Market (ADGM) and the Dubai International Financial Centre (DIFC), both of which have discrete legal systems based on English common law. The UAE has an effective immigration policy to attract skilled workers, with a menu of visa options for entrepreneurs, salaried workers and freelancers. The UAE is also at the forefront of global cultural exchange and tourism, with a recent highlight being the World Expo 2020 in Dubai. Given the global liquidity crunch caused by tightening interest rates, the UAE is also attracting scores of US and European asset managers to establish branches and JV-like partnerships, as part of their strategy of raising capital from the UAE's colossal sovereign wealth funds (SWFs).

Another significant factor that contributes to the UAE being a magnet for FDI and cross-border JVs is the UAE's considerable foreign policy clout and deft handling of diplomatic relations with major world powers. The UAE was recently invited to join an expanded BRICS group starting from 2024. The UAE further maintains strong diplomatic and trade relations with each of the United States, China, the European Union (and its most influential member states) and Russia. Goldman Sachs identifies the UAE as one of a new class of influential "geopolitical swing states" positioning itself between East and West, and poised to thrive in the 21st century.

Furthermore, in terms of political, social and economic stability, the UAE ranks highly compared to other nations in the MENA region. The UAE's

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tolerant cultural and social outlook as well as its cosmopolitan make-up further distinguish the nation within the region as a welcoming – and even familiar – place for individuals from diverse backgrounds to live, invest and do business.

All of these factors make the UAE a leading destination for FDI inflows in the MENA region. Nevertheless, and as with any other major business decision, investors seeking to participate in JVs in the nation should approach the matter carefully and with all due consideration. In particular, foreign investors must navigate a multitude of intricate legal issues (that may bear little resemblance to what they are used to in other jurisdictions) in deciding how to optimise their UAE JVs for success.

Legal issues to consider when setting up a JV in the UAE

Onshore v free zone

The UAE is unlike most other nations in that it operates a number of free trade zones, and several of these zones have bespoke regulations concerning the establishment and operation of commercial enterprises within their geographic boundaries. Individual consideration of each of these free zones is outside the scope of this article (the UAE has more than 40 such zones), but it will touch upon some issues pertaining to two of the more prominent free zones that have already been mentioned: the ADGM and the DIFC (both of which are financial free zones).

The ADGM and the DIFC have been established as ring-fenced districts in Abu Dhabi and Dubai respectively, each with its own distinct legal system modelled closely on (or in the ADGM's case, directly applying) English common law, and each with its own system of courts to administer such legal system. The ADGM and the DIFC therefore each effectively function as independent jurisdictions within – but separate from – the rest of the UAE (referred to colloquially as "onshore" UAE). The upshot is that JV partners may (in theory) choose to incorporate or register their JV vehicle either in the ADGM, in the DIFC or onshore – with each of these alternatives having specific implications for the establishment and ongoing operation of such vehicle.

Restricted sectors

While the UAE has historically required foreign parties to partner with UAE nationals (or with vehicles 100% owned by UAE nationals) in order to do business in the UAE (the so-called 51:49 rule, under which commercial establishments in the UAE had to be at least 51% owned by UAE nationals and could be no more than 49% owned by foreigners), reforms introduced in 2020 now mean that foreign parties (whether one or multiple) can legitimately own 100% of commercial entities set up in the UAE in most sectors.

However, there are still a few sectors in which foreign participation is either subject to certain restrictions or banned altogether. The list of so-called "strategic impact" activities includes:

- security, defence and activities of a military nature;
- banks, exchange houses, finance companies and insurance;
- currency printing; and
- telecommunications.

Foreign parties wishing to invest in or incorporate any entity engaged in such activities will need regulatory approval and to ensure that there is a specified minimum level of ownership in the entity held by UAE nationals.

Parties to a prospective JV in any such sector will thus need to consider whether the JV will be legally and commercially viable in light of the specific restrictions applicable to it.

Corporate income tax

Another recent reform has abolished the UAE's historic status as a jurisdiction that (mostly) did not levy tax on corporate income. The UAE introduced its first comprehensive federal corporate income tax in 2022, which took effect from 1 June 2023 (the "Corporate Tax Law"). The Corporate Tax Law provides the legislative basis for a federal corporate income tax intended to help the UAE achieve its strategic objectives and accelerate its development and transformation. The corporate income tax is levied at a headline rate of 9% on annual taxable income exceeding AED375,000 (USD102,110). Taxable income below this threshold is subject to a 0% rate of corporate tax.

It goes without saying that the effect of the Corporate Tax Law will need to be considered in evaluating the commercial viability of any prospective venture in the UAE, although it is worth noting that with the relatively low headline rate of tax (and other advantages that the UAE offers), the UAE still remains tax-competitive against many other nations.

Spotlight on specific sectors

Energy transition and ESG issues

Being a world leader in oil production and export, the UAE economy has been heavily reliant on revenues from hydrocarbons. The country has made substantial progress towards transitioning to a greener economy by diversifying away from oil. The key drivers of energy transition in the UAE include global demand for sustainability, oil price volatility and environmental concerns such as climate change.

To facilitate energy transition, the UAE government has implemented initiatives such as the UAE National Energy Strategy 2050 (NES 50) and the Net Zero by 2050 Strategic Initiative, launched in 2017 and 2021 respectively. The NES 50, which was updated in July 2023, includes strategies for hydrogen production, and emphasises policies and regulation as being key transition enablers. Furthermore, investment of up to AED200 billion (approximately USD50 billion) in renewable energy is envisioned, alongside tripling the UAE's renewable energy capacity to 14 GW by 2030.

The UAE has recently seen the formation of ground-breaking renewable energy JVs (including with UAE government-owned entities). For instance, Fertiglobe PLC (a listed free zone company partly owned by the UAE's leading national energy company) has been a key player in energy transition JVs, including various JVs for the development of hydrogen plants in Abu Dhabi. Considering that solar remains one of the most cost-effective forms of renewable energy globally, the UAE's immense solar potential stands to drive further significant JV activity in the sector.

SWFs and the capital markets are key enablers of the energy transition, with a number of investments in long-term sustainable projects. The adoption of measures such as ESG disclosure guidance by stock exchanges and the creation of an ESG sustainability index by the Dubai Financial Market means that JVs intending to attract investments from UAE SWFs and/or list securities in the future will need to closely monitor the development of the UAE's ESG regime. Compared to the existing "lite" regime, some form of mandatory regulation is expected in the future, which may impact not only listed companies but also private entities, including JVs.

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Particular ESG metrics for energy transition JVs include the following.

- Environmental considerations, such as evaluation of carbon footprint and compliance with environmental laws.
- Social considerations, such as engagement with the local host community. The UAE recently revised its "Emiratisation" requirements for companies to employ a minimum percentage of UAE nationals within their total workforce. Previously, this requirement did not apply to companies with fewer than 50 employees. Now, private companies with 20 to 49 employees in sectors such as construction, real estate and financial activities are considered to be "in scope", and must comply with the Emiratisation requirement by 2024. Furthermore, decent labour (including health and safety), ethical supply and customer-related practices must be implemented.
- Governance considerations, such as board diversity (for instance, listed companies must have at least one female director), anti-bribery and corruption measures, adequate board and committee oversight.

Energy transition remains a key focus of the UAE, as evidenced by the initiatives discussed above, as well as the UAE's hosting of the COP28 conference in late 2023. JV partners must bear long-term sustainability factors in mind, and should consider the impact of ESG legislation and trends to evaluate the long-term viability of their JVs.

Fintech and payments

The fintech and payments sector is a hotbed of FDI and JV activity in the UAE. The rapid growth of e-commerce and technological adoption (trends accelerated by COVID-19) have fuelled the sector's development. The UAE's digital payments market is set to grow at a compound annual growth rate of 8% to USD39 billion by 2027.

The UAE serves as a fintech hub for the MENA region, an ideal gateway for foreign multinationals and financial investors looking to establish a foothold in the region. For instance, in 2022 Canadian-headquartered private equity firm Brookfield acquired a 60% stake in Magnati, a payments solution business carved out from First Abu Dhabi Bank, implying a USD1.15 billion valuation for the JV. On the venture capital end, Dubai-based "buy now pay later" start-up Tabby was valued at USD660 million in a 2023 Series C fundraising involving Sequoia Capital India, Saudi Telecom Ventures, PayPal Ventures and others. Domestic players are also joining forces through JVs in the sector – for example, Wio was launched in 2022 as a digital bank, backed by a leading UAE SWF, Alpha Dhabi Holding, e& and First Abu Dhabi Bank.

Investors should consider a range of specific legal and commercial factors when embarking on a JV project in the UAE's fintech and payments sector. Above all, acquisitions in this sector will likely require regulatory review – any change in the control structure of a "Payment Service Provider" is subject to the approval of the Central Bank of the UAE. For financial regulatory purposes, such consent is separate from any other regulatory approvals that may be required under UAE law in relation to antitrust and FDI matters. Note that "onshore" banking and financial institutions are on the list of designated "strategic industries" that still require special review in cases where foreign ownership is implicated, despite the general easing of FDI restrictions in 2020.

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Large financial institutions, such as the UAE's incumbent banks, may spin off individual businesses and divisions (in particular, payments processing units) into standalone subsidiaries to allow for external investment and further growth. The selling institution may thus benefit from external financial investment in the newly spun-out unit, as well as technical expertise from JV partners committed to operate the unit as a nimble standalone business.

Investors in such fintech JVs should be aware of particular carve-out and separation issues. A spun-off fintech unit may still need to rely on material assets owned by the selling institution, such as its technology stack and back-end infrastructure, intellectual property and administrative functions. To mitigate these issues, a JV investor should carry out robust due diligence on the sufficiency of the fintech unit's assets and negotiate adequate remedial measures and protections in respect of any deficiencies in the carve-out process.

Partners in UAE fintech JVs will also need to negotiate the scope of any restrictive covenants (ie, legal restrictions on competition with the JV and soliciting the JV's clients, suppliers and senior employees in respect of conflicting business ventures). The selling financial institution negotiating with a prospective JV partner may require that the prospective JV partner does not acquire significant holdings in nor engage in material business partnerships with a rival financial institution, while for its part the prospective JV partner should ensure that the financial institution does not compete with the fintech JV through other ventures or, indeed, any of its other own business lines.

Technology and artificial intelligence

In 2017, the UAE cabinet adopted a National Artificial Intelligence Strategy, aimed at positioning the UAE as a global leader in AI by the year 2031 (the "AI Strategy"). Subsequently updated in 2021, the AI Strategy outlines eight strategic objectives, including building the "UAI brand" (ie, the UAE's reputation as an AI destination for talent and businesses) and delivering the data and infrastructure required for AI advancement.

The UAE seeks to develop the AI landscape by incentivising UAE entities to partner with AI technology firms. SWFs are also active in this space. Companies such as G42, a UAE-bred AI company, have been entering into partnerships with various players on AI and technology projects.

Whilst there is currently no specific AI regulation, JV parties should be aware that legal issues relating to AI are impacted by other laws, including data protection and sector-specific laws.

Specific challenges in relation to JVs in the UAE

Experienced commercial parties will be familiar with the general issues and challenges that can arise in the context of entering into JVs and their ongoing governance, as well as with certain tools and mechanisms that might be used to address such issues and challenges. Such issues may arise in the context of JVs in the UAE as they may do anywhere else. In addition, however, entering into and operating JVs in the UAE presents specific issues that may diverge from commercial parties' experiences in other jurisdictions, a selection of which are outlined below.

Diligence

Publicly available information on privately held onshore companies is limited, as the competent authorities publish comparatively little information in respect of such companies. The lack of publicly available information on such companies naturally has an impact on the due diligence process. A prospective JV partner looking to acquire a stake in an existing onshore business is therefore reliant on the incumbent shareholder(s) to procure the provision to it of even basic information in respect of the target, which in other jurisdictions would be publicly available (such as extracts from commercial registers, or constitutional documents such as certificates of incorporation or good standing and articles of association).

JV documentation

A JV is typically governed by a written shareholders' agreement between the JV partners. In appropriate circumstances, some or all of the JV partners may also enter into written side letter agreements in parallel to the shareholders' agreement. In the UAE, however, in the event of any dispute between parties to an onshore JV, it is likely that the JV entity's articles of association (AoA) will be regarded by onshore courts as the primary record of the JV parties' intentions, taking precedence over any shareholders' agreement, side letter or other agreement (even if that other document is expressly stated to take precedence over the AoA). It is therefore advisable for key governance terms to be adequately reflected in the AoA (but see further below, under **Compulsory share transfers**).

Furthermore, the AoA of an onshore company, and any amendments thereto, are required by applicable onshore law to be drafted in Arabic and authenticated by the authority that acts as the companies register in the specific Emirate in which the relevant company is incorporated, failing which the AoA shall be deemed null and void.

AoA for entities incorporated in the ADGM or the DIFC, on the other hand, are required to be drafted in English, and are typically expressly stated to be subject to the terms of any other written agreements between the JV parties (eg, shareholders' agreements). The general view is that such provisions will be upheld by the respective courts of the ADGM and the DIFC, to give effect to the parties' freedom to contract and to respect their stated intent.

Compulsory share transfers

JV partners often agree and document mechanisms providing for compulsory share transfers between them in defined circumstances. For example, JV partners might agree that a party in breach will be subject to a call option on its shares at a discount to those shares' fair market value, or they might agree that, in case of an unresolved deadlock, a shoot-out mechanism will ultimately result in one partner being compulsorily bought out. In the UAE onshore context, however, these mechanisms can run into difficulty.

Onshore UAE law does not generally provide for specific performance as a remedy for breach, so contractual provisions requiring the transfer of shares (eg, put and call options, drag-along and tag-along rights, and compulsory transfers on default) may not be enforceable before onshore courts (which are not necessarily bound by precedent, unlike courts in common law jurisdictions).

The ADGM and DIFC regimes, however, are based on English law, so provide for specific performance as an enforceable remedy. In consequence, a cross-border JV might be structured such that the JV partners hold their equity interests in a holding entity incorporated in the ADGM or the DIFC (and subject to a shareholders' agreement governed by ADGM or DIFC law, as appropriate), which in turn wholly owns the operating entity (typically incorporated onshore). This way, contractual provisions requiring the transfer of shares will operate with respect to shares in the ADGM or DIFC holding entity, and thereby indirectly to the operating entity.

Conclusion

The UAE's economy continues to record steady growth, with most of its momentum coming from robust growth in its non-oil sector – a testament to the resolve and efforts of the government to diversify the economy and move it away from its historical dependence on the nation's storied hydrocarbon wealth. The UAE continues to pursue an ambitious structural reform agenda, including significant investment in digital and green initiatives to further advance its economic diversification programme and to support a smooth energy transition to a lower carbon future.

The UAE continues to be an exceptionally attractive market in which to invest and do business, across a broad spectrum of industries, and is expected to remain as such. Positive as the outlook may be, however, a decision to enter into a JV in the UAE needs to be considered and executed properly – as with any other significant commercial decision. While there are undoubtedly opportunities and rewards for the taking, investors must be prepared to navigate the specificities of the local legal landscape with the help of their legal and financial advisers in order to secure the best likelihood of realising their commercial objectives.

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