The Mergers & Acquisitions Review

Fifth Edition

Editor
Simon Robinson

Law Business Research

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FIFTH EDITION

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EDITOR'S PREFACE

After a prolonged period of uncertainty and decreased M&A activity, deal-making is undergoing something of a resurgence. Over the course of recent years, corporations across the world have been carefully navigating the economic downturn and attempting to consolidate their positions. In 2011 the market has proved more conducive to M&A and, at least in the first half year, confidence seems to be returning. Opportunities are seemingly limited to those companies and private equity houses that enjoy a stable financial basis. Governments have addressed the perceived failings of the regulatory framework and, for the most part, reforms have now been implemented. One of the underlying reasons for the drop in M&A was the drought of acquisition finance; without the necessary funding, few players were able to launch major takeover bids. However, the loan market appears to have gained a new lease of life and banks are adamant that they are willing and able to fuel well-conceived bids. The task that lies ahead of companies and funds is identifying truly value-generative targets and negotiating the new regulatory framework. There is increased emphasis on the views of shareholders following the financial crisis, and companies are best advised to gauge shareholder sentiment early. The provenance of M&A is undergoing a gradual shift, with deal-making in the Asia-Pacific region reaching its highest-ever level in 2010 and also representing its highest proportion of the total global value of M&A. In addition, the emerging markets are witnessing heightened deal activity, in particular the BRIC nations. These trends seem set to continue.

It would be premature, however, to suggest that M&A has completed a Lazarus-like revival. The recovery of deal-making is in its infancy and it is still highly susceptible to external forces. A number of major political and economic factors may impede sustained M&A activity, and could even force it to retreat. The sovereign debt tribulations in Europe, the weakening of the US economy, the 'Arab Spring' uprisings, the earthquake in Japan, rising commodity prices and global austerity measures all pose severe challenges. Given the fragile state of the global economy, such issues could well shackle the fledgling M&A revival. In short, economists remain uncertain about the health of M&A, and

although many commentators hope that it will continue to gather pace, albeit slowly, there are a number of variables that may waylay deal-making. Economists have not ruled out short-term stagnation in deal value and volume, as a precursor to the dawning of an M&A renaissance further down the line.

I wish again to thank all the contributors for their continued support in producing this book – one would hope that in this uncertain time the following chapters should provide cause for cautious optimism, while also reiterating some of the lessons from the recent lean years.

Simon Robinson
Slaughter and May
London
August 2011

Chapter 60

UNITED ARAB EMIRATES

*Daniel Abela and Elise S Paul-Hus**

I OVERVIEW OF RECENT M&A ACTIVITY[1]

Over the last 12 months, the UAE M&A market has faced many of the same challenges that have been affecting M&A markets worldwide. The (lack of) availability of funding and uncertainty over risk held M&A activity back, particularly during the latter half of 2010.

Other factors that have impacted on the level of M&A activity generally, and ones that are not unique to the UAE, are extended due diligence and the disparity in the valuations of target companies between prospective sellers and buyers.

In addition, corporate disclosure is historically limited in the Middle East and UAE laws do not require as much disclosure as other more mature jurisdictions. This has made it challenging to do deals.

With Dubai's well-documented woes *vis-à-vis* the slumping property market and several cash-strapped state-owned enterprises, 2010 did not feel like much of a recovery for the UAE economy. However, national accounts data published recently by the National Bureau of Statistics showed that the UAE's real gross domestic product grew by a modest 1.4 per cent in 2010, following a contraction of 1.6 per cent in 2009. Analysts polled by Reuters in March 2011 forecasted that the economy of the world's third-largest oil exporter would expand by 3.4 per cent this year, which is broadly in line with recent UN projections.[2]

The UAE remained the most acquisitive Middle Eastern country for the most part of 2010 by accounting for 57.8 per cent of the total M&A activity in the region.[3]

* Daniel Abela and Elise S Paul-Hus are both senior associates at KBH Kaanuun.

1 All statistics and references in this chapter are derived from publicly available sources and have not been independently verified.

2 The United Nations Economic and Social Commission for Western Asia.

3 Thomson Reuters Middle East Investment Banking Analysis.

While 2010 saw a moderate increase in M&A activity from 2009, the aggregate deal valuation for 2010 was comparatively lower.[4]

Despite the adverse economic and political factors, some significant mergers and acquisitions were completed in the last 12 months, including:

a the sale of Abu Dhabi Commercial Bank's 24.9 per cent stake in RHB Capital Berhad to Aabar Investments PJSC for $1.9 billion;

b Centurion Investment's acquisition of a 40 per cent stake in UAE-based healthcare business NMC Healthcare, worth $1.089 billion;

c DP World's $1.5 billion sale of its Australian container terminal assets;

d Waha Capital PJSC's acquisition of a 20 per cent stake in AerCap Holdings N.V. for $376 million;

e Dnata's 100 per cent acquisition of Alpha Flight UK Limited from Milan-based Autogrill SpA for $158 million;

f Aabar's sale of a 3.22 per cent stake of Atlantia SpA to Sintonia SA (Italy), the Italian based infrastructure holding company of the Benetton family, for $426 million and its acquisition of a 4.99 per cent stake in UniCredti SpA for $2.48 billion through its wholly owned subsidiary Aabar Luxemborg Sarl;

g Majid Al Futtaim Group's acquisition of a 49 per cent stake in MAF Greater Union LLC from Amalgamated Holdings Ltd for $77.06 million;

h Abu Dhabi Commercial Bank's acquisition of the retail banking and SME business of Royal Bank of Scotland ('RBS') in the UAE for a total cash consideration equalling the net asset value of the RBS's UAE retail banking business plus $46 million; and

i Ithmar Capital's $272 million investment in Al Noor Medical Company, a healthcare operator.

It is fair to say that it has not been 'business as usual' in the UAE so far in 2011. Deal volume and value has decreased in the early part of 2011, not only because of the current political unrest in the Middle East and North Africa (MENA) region but also because of rising oil prices. Consequently, many investment bankers are currently revising their predictions for 2011 M&A activity in the UAE.

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The legal framework for M&A activity in the UAE is to be found in the Commercial Companies Law No. 8 of 1984, as amended, ('the CCL').

One principle to keep at the fore in terms of any M&A activity in the UAE is that a number of restrictions are imposed on foreign investors.

The CCL requires nearly all types of foreign-owned companies in the UAE (outside of those constituted in one of the designated UAE commercial free zones[5]) to

4 Zephyr published by BvD.

5 Please see Section IV, *infra*, for a further brief commentary on UAE free zones.

have at least 51 per cent[6] of its shares owned by a UAE national or a company wholly owned by UAE nationals.[7]

Under the CCL, two companies can merge by (1) the passing of a resolution by the shareholders of a company (adopted by 75 per cent of votes in favour where a quorum of 75 per cent of the shares are present or represented) resolving to dissolve and merge with another company; (2) the valuation of the net assets of the dissolving company being undertaken; (3) the passing of a resolution by the shareholders of the acquiring company (adopted by 75 per cent of the votes in favour where a quorum of 75 per cent of the shares are present or represented) resolving to an increase in capital; and (4) the issuance of shares by the acquiring company to the shareholders of the dissolving company.

Due to the absence of a comprehensive takeover code in the UAE, there are no separate sets of rules that regulate takeover transactions for publicly listed companies in the UAE.

There are two takeover regimes applicable to publicly listed companies in the UAE depending on whether the target company is listed on the Abu Dhabi Stock Exchange ('the ADX'), the Dubai Financial Market ('the DFM') or NASDAQ Dubai, the three recognised bourses in the UAE.

The M&A regimes are generally the same for targets listed on the ADX and the DFM and each is governed by the CCL. The main regulator is the Emirates Securities and Commodities Authority ('the ESCA'). The various disclosure and reporting requirements are as prescribed by ESCA. In addition, the DFM and the ADX each regulate the listing and disclosure rules applicable to their respective markets and the Department of Economic Development in Dubai and Abu Dhabi are responsible for certain procedural matters.

The M&A regulatory regime applicable to target companies whose shares are listed on NASDAQ Dubai is very different to the ADX/DFM regime and is broadly similar to the regime in the United Kingdom. M&A transactions in the Dubai International Financial Centre ('the DIFC')[8] involving public companies are principally regulated by the Takeover Rules Module ('the TKO') that is part of the Rulebook administered by the Dubai Financial Services Authority, the financial regulator of the DIFC.

i Exchange offer

Even though neither the CCL nor the rules and regulations of the exchanges of the UAE have takeover rules or regulations, an offeror can make a contractual offer to the shareholders of the target to acquire their shares if the consideration payable is shares in the acquiror. The target becomes a subsidiary of the offeror.

ii Cash offer

An offeror can make a contractual offer to the shareholders of the target company in exchange for cash. Similarly, the target company becomes a subsidiary of the acquiror.

6 In the case of some activities the threshold is even higher.

7 Or nationals of one of the countries of the Gulf Cooperation Council ('the GCC').

8 The DIFC is an onshore capital market designated as a financial free zone.

iii NASDAQ Dubai

Pursuant to the TKO, the offeror may offer to acquire the shares of the target for cash or for shares. If the target is a company constituted pursuant to the laws of the DIFC (where 100 per cent ownership by a foreign entity or national is possible), the offeror who acquires 90 per cent of the shares of the target has a 'squeeze-out' right to buy the remaining 10 per cent from the minority shareholders who have declined its offer. However, there are no scheme of arrangement or statutory merger provisions that can be used to acquire a target.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

i Corporate law

Understandably, the restrictions imposed on foreign investors under UAE law represent an unacceptable loss of control for many potential foreign investors.

Consequently, and for some time now, there have been calls from various corners to relax the restrictions on foreign ownership to attract and encourage local and foreign investment.

A new CCL has been in the making for several years now and earlier this year the UAE Minister of Economy announced that a new CLL could be introduced before the end of 2011.

It is not clear at what stage of the implementation process the new CCL is at but the process involves the draft legislation being laid before the Ministerial Legal Committee for consideration and amendment, after which time it passes to the UAE Cabinet before being tabled before the UAE Parliament. Following parliamentary approval, the draft law is then passed to the Ministry for Presidential Affairs to be officially passed into legislation.

The new CCL has been eagerly anticipated as potentially relaxing foreign ownership restrictions although it is accepted that it is unlikely that the restrictions would be removed entirely in any particular sector.

It is widely reported that the new CCL will also impose a corporate governance framework on UAE companies in an effort to increase transparency as well as revise the annual accounting period.

The actual provisions of the legislation remain to be seen but any (partial) relaxation on foreign ownership restrictions would undoubtedly serve to benefit mainland UAE's economy and boost M&A activity generally.

ii Takeover law

There are no specific ECSA proposals to reform takeover regulation at the present time but, again, any relaxation under the new CCL on the required UAE national ownership percentage from 51 per cent to below 50 per cent would presumably create more opportunities for M&A activity. For example, Reuters reported that the potential takeover of Aramex (by one of a number of notable global suitors) towards the end of 2010 hinged on the relaxation of the UAE laws on foreign ownership.

It is noteworthy that only two initial public offerings ('IPOs') have successfully listed in the UAE over the last two years, both of those occurring in 2011 and both of which were Abu Dhabi led (i.e., Insurance House for $18 million and Eshraq Properties for $225 million).

In January 2011, NASDAQ Dubai released its new Listing Rules for consultation, the broad aim of which is to make it easier to list and to improve liquidity in its market. It is hoped that the new rules will help attract local businesses and other small-to-medium enterprises while maintaining international regulatory standards.

The consultation period ended on 17 March 2011 and at the time of writing the new Listing Rules have not yet become effective.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

An undoubted obstacle to foreign involvement in M&A transactions in the UAE, and a common theme in this chapter, is the foreign ownership restrictions referred to above.

In addition, the majority stakes in many UAE companies are controlled by governments or families that are often reluctant to sell their stakes or give voting rights or representation on their board to foreign shareholders.

Therefore, the majority of foreign M&A activity into the mainland jurisdiction (sometimes referred to as 'onshore UAE') tends to take the form of minority stakes by way of joint venture.

Of the recent top-end deals in onshore UAE, investment has stemmed from several different countries including Canada, China, India and the United Kingdom.

In late 2010, the Economist Intelligence Unit published a report stating that foreign direct investment in the UAE will remain strong in the short term and is expected to average $10.4 billion annually between 2010 and 2014. Projections are that foreign direct investment in the UAE will reach $13.5 billion by 2014 compared with $6.2 billion in 2010 and $5 billion in 2009.

The final report highlights a number of industries as being more positively prone to investment than others. The industries that have the most attractive profile in the UAE are telecoms and utilities.

In the report, professionals from the financial services industry chose Dubai as the sixth most important global destination for future investment.

In terms of non-financial services (in areas such as transportation, business services, health care, legal services and education), Dubai ranked among the global top 20 foreign direct investment destinations.

The UAE also plays host to a larger number of free zones (in excess of 30 across a range of industries). The free zones are areas within certain of the Emirates of the UAE that permit 100 per cent foreign ownership of companies.

The free zones have been established primarily for the purpose of attracting foreign investment in the UAE. The UAE free zones have their own laws and regulations that are different to those in mainland UAE. In particular, companies established in the free zones are outside the regime of the CCL and have been expressly excluded from its operation.

It was reported in late 2010 that the total value of foreign direct investment through UAE free zones has reached $73 billion.[9]

The UAE itself has shown considerable interest in undertaking foreign direct investments that enhance its image as a luxury and leisure hub, including investments over a wide range of sectors, from football clubs to prime pieces of real estate and from historic ships to budget hotels.

The UAE has diversified its investment portfolio in recent years by investing into a variety of assets, including stock exchanges and private banks.

Sovereign wealth funds in the UAE continue to invest state funds, primarily in the form of minority stakes, in several different types of foreign companies.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

Over the last 12 months, financial services (particularly banking), health care and telecommunications were prevalent in the local landscape in terms of M&A activity.

As mentioned, in July 2010, Abu Dhabi Commercial Bank ('ADCB') acquired RBS's retail banking business in the UAE, which was the first time a UAE bank had bought out an international bank's local franchise and was deemed by ADCB's CEO as a historic milestone for the UAE banking industry.

In the current economic climate, the banking industry continues to be the most important sector in terms both of volume and value, the key drivers being consolidation and distress.

Health-care transactions have surged, too, as a result of the facts that it is an area which is deemed to be lacking and that health-care operators are not as exposed to the effects of the financial crisis. These facts coupled with the requirements of an ageing population mean it is a sector that is ripe for further investment. The stellar transaction of this year was the acquisition of a 40 per cent stake in New Medical Centre by Centurion Investments for around $1 billion.

In the telecommunications sector, there has been a flurry of activity, most notably the $2.5 billion acquisition of a majority stake in Nigerian Telecommunications Limited, the former state telecoms monopoly in Nigeria, by New Generation Telecommunications, a consortium consisting of Dubai's Minerva Group, China Unicom (Hong Kong) Limited, and Nigeria's GiCell Wireless Limited.

However, the collapse of the proposed $12 billion mega-merger between the Etisalat Telecommunications Corporation of the UAE and Kuwait's Mobile Telecommunications Company, Zain, and Axiom Telecom's fourth quarter cancellation of its IPO at the last moment serve as a reminder that the markets are still some way from full restoration of confidence.

There have also been major investments in renewable energy projects to allow the UAE to maintain its leadership in this field in the region and remain a global pioneer in undertaking clean energy projects such as Masdar City.

9 Gulf News 3 November 2010.

With the debt finance market still slow and the banks remaining risk averse, the availability of financing to fund M&A deals is scarce. Regional bond markets are not mature enough yet to pick up the slack in this respect, so many transactions are being driven by sovereign wealth funds. One such recent example, and as mentioned previously, is the investment in Italy's UniCredit SpA by Aabar Investments PJSC, one of Abu Dhabi's sovereign wealth funds and the largest shareholder in Daimler AG.

As a direct consequence of the financial crisis, many UAE companies have been forced to undergo a restructuring of their operations to ensure better efficiency and productivity. Companies seeking to deleverage have helped offset some of the slump in M&A activity.

Restructuring in the UAE has become prevalent, and is well publicised, none more so than state-owned conglomerate Dubai World's $25 billion debt restructuring

While perhaps not unique to the UAE, many mid-market deals are often complex due to the nature of the family owned business mentality that exists. This mentality makes it more challenging to do deals and UAE companies still have difficulty splitting management from ownership. Many owners are also emotionally attached to their assets, which cuts across and can hinder M&A activity and the disposal of assets.

The recent financial crisis has highlighted the strengths and weaknesses of the UAE economy, and it is widely acknowledged that the real estate sector is the weak link in the chain. The tourism and aviation sectors were also heavily affected during the financial crisis but they are beginning to fare much better now.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

According to data from Thomson Reuters LPC, syndicated loan activity decreased by 78 per cent in the first quarter of 2011 (compared to the same period in 2010) to reach $2 billion. Fees generated in the Middle East reached $48.8 million during the first quarter of 2011 (58 per cent less than the same period in 2010). Of those fees, M&A generated $16.7 million (a decline of 66 per cent over the same period last year).

While the financial crisis resulted in the pricing of lending by international financial institutions generally becoming more competitive, the region saw the retrenchment of the international banks with fewer banks competing to finance M&A transactions and a greater demand for credit. In addition, the local banks have been struggling with dollar funding.

Following the financial crisis, financial institutions have taken a more careful approach that should force in the medium to long-term greater disclosure, more careful evaluation and differentiation of investment opportunities; in summary, a flight-to-quality.

Furthermore, corporate M&A activity is linked to the confidence of management and the board. Many managers and directors are still uncertain as to the consequences of the Arab spring in the UAE. Therefore, there are many discussions but not necessarily a lot of financing activity that is likely to close soon.

While private equity activity in the MENA region has remained relatively slow over the last year, the UAE ranked top in the MENA region private equity transactions

with over 82 per cent contribution of the total deals worth $993 million reported in the region last year. Even in terms of number of deals, the country was by far the favourite destination.[10]

The main reason for the UAE's success was that it finalised the region's most valuable deal, worth $554 million. The deal saw Abraaj Capital, the region's largest private equity group, acquire a 49 per cent stake in Dubai-based Network International LLC, a payment solutions provider owned by Emirates NBD, through Abraaj Financial Technologies Holdings Limited.

VII EMPLOYMENT LAW

The UAE Labour Law No. 8 of 1980 (as amended) governs employment law in the UAE.

Since January 2011, the maximum age that foreign workers can be employed in the UAE has been raised from 60 to 65 years old.

Expatriate and foreign workers who are over 18 years of age (and less than 65 years old) who have not previously worked in the UAE can now apply for short term work permits valid for 60 days, which can be renewed up to five times.

Also since January 2011, university and college students sponsored by the institute in the UAE at which they are enrolled can legally work part time if they apply for a part time work permit from the UAE Ministry of Labour. A part time employment permit (valid for a year) is also available to expatriate residents working full time who have a valid labour card and to expat wives sponsored by their husband. The part-time employment permit allows the holder to be employed in more than one part-time job.

VIII TAX LAW

There is no federal tax law in the UAE. However, each of the seven Emirates has its own tax law. There is no personal income tax, capital gains tax, value-added tax or withholding tax in the UAE. Currently, there is legislation in force in the Emirates of Abu Dhabi, Dubai and Sharjah establishing a general corporate tax regime.

In Abu Dhabi, according to the Income Tax Decree of 1965 (as amended), every chargeable person who conducts trade or business (including the rendering of services) in Abu Dhabi is subject to pay tax on his earnings on a sliding scale up to a maximum of 55 per cent. There are taxes on oil and gas companies at rates specified in the relevant concession agreement, a flat rate on annual profits of branches of foreign banks and a flat rate service tax on hotel services and entertainment.

The Dubai Income Ordinance of 1969 and Dubai Income Tax Decree (as amended) provide that all companies that conduct trade or business in Dubai are required to pay tax on their earnings on a sliding scale up to a maximum of 55 per cent. Oil companies pay up to 55 per cent tax on UAE sourced taxable income and banks pay 20 per cent. The taxable income of banks is based on their audited financial statements. As

10 Zawya Private Equity Monitor, Thomson ONE Banker.

for oil companies, the computation of their taxable income is based on their concession agreement.

In Sharjah, the Income Tax Decree of 1968 (as amended) specifies that there shall be imposed on the taxable income of every chargeable person generating income from carrying trade or business in Sharjah a tax according to a sliding scale of up to 55 per cent.

Although there are tax laws in certain of the Emirates, currently in practice, only oil, gas and petrochemical companies and branch offices of foreign banks are required to pay tax in the UAE. Therefore, unless M&A transactions are connected to these activities, the UAE tax regime is not a consideration that ought to be taken into account.

IX COMPETITION LAW

With respect to competition law, there is no significant body of law in the UAE dealing with these issues. Traditionally, the UAE has adopted a conservative approach instead of encouraging competition as demonstrated by the above-mentioned requirement that 51 per cent of the shares of a company incorporated in the UAE be held by UAE (or GCC) nationals and the protection granted to Emirati agents duly registered under the UAE Commercial Agencies Law No. 18 of 1981, as amended by Federal Law No. 14 of 1988.

The UAE Consumer Protection Law No. 24 of 2006 ('the CPL') and its Implementing Regulations of 2007 ('the Implementing Regulations') comprise very few provisions with respect to competition law. The CPL states that the Implementing Regulations shall set out the basis for determining when there is an abnormal increase in prices of goods and what constitutes an unlawful monopoly.

The Implementing Regulations deal with anti-competitive and monopolistic conduct in more detail than the CPL. The focus of the Implementing Regulations, to the extent they relate to competition law issues, is on irregular movements in prices resulting from practices that are prohibited by the CPL. Neither the CPL nor the Implementing Regulations prohibit the formation of monopolies *per se*. Consequently, companies can acquire their competitors and reach a dominant position in a given market. But there may be restrictions on the dominant player if his actions are deemed to affect prices to the detriment of the UAE consumers or national economy.

The Implementing Regulations set out cases of prohibited monopolies such as: selling goods or services at below cost to create a state monopoly in the market that will cause damage to the UAE consumers; entering into agreements between suppliers with respect to price fixing that cause harm to the consumers or the national economy; creating alliances between more than one supplier which result in damages to the UAE consumers or economy. The Implementing Regulations also states factors that must be taken into account when considering if there has been an extraordinary effect on pricing. These factors include the national inflation rate, the prices of the goods or services in question over previous periods and comparison with prices in neighbouring states.

The Consumer Protection Department can take the necessary steps and measures against prohibited monopolistic practices and transactions that cause harm to the national economy or the interests of the consumers. Such steps and measures include

ordering the prices of goods or services to be reduced to what the department deems an acceptable level.

X OUTLOOK

Clearly, the political unrest in the MENA region has impacted on M&A activity in the UAE during the first quarter of 2011, with very few deals closing compared to the same period last year. Regional deals appear to be delayed until stability is restored but an increase in restructurings and acquisitions by sovereign wealth funds with more firepower (given the higher price of oil) is predicted, which should help boost M&A activity.

The UAE certainly will remain concerned about the unrest currently gripping the MENA region but it should be better protected than some of the other Gulf States and some commentators have predicted that the unrest should benefit the UAE given its political stability. It remains to be seen if the rest of the year will yield more M&A transactions.

As a consequence of the political unrest, many investment bankers have revised their predictions and some believe that there will be more government investments in domestic economies in infrastructure, health care and education. These investments are designed to better meet the expectations of the national populations. Also, it is expected that sovereign wealth funds will review their investment strategies and invest their capital in national and regional companies.

Trends to watch are consolidation within MENA and divestiture of non-core assets by companies completing restructurings. Other possible trends are cash-rich regional funds investing in international assets and buyers outside of the region seeking strategic assets in the MENA region. Certain professionals in the region also expect financial services, manufacturing and industrials, consumer products, telecoms and property to lead deal values in 2011.

Important catalysts for deal flow in 2011 will be companies that are in the process of completing large restructurings and will need to sell assets following completion of those restructurings and expectations of more realistic values on the part of sellers. Restructuring, particularly in the construction and real estate sectors, is predicted to continue for the foreseeable future, which should drive M&A activity.

In the past few years, there has been much discussion about amending the CCL to provide a higher percentage of foreign ownership for companies constituted in the UAE. People who had seen a draft of the new CLL had indicated that the percentage of foreign ownership would depend on the sector of activity of the company in question.

However, at the time of writing, recent press coverage indicates that a senior official of the Economy Ministry has stated that the UAE now has no plans to raise the 49 per cent foreign ownership limit for UAE companies (listed or otherwise) outside the various free zones.

This will be seen as closing the door on any possibility of having a company law that allows overseas investors to fully own entities outside of the UAE's free zones.

It will also be seen as denting any hopes of the UAE's organised exchanges being upgraded to emerging market status (increasing foreign ownership limits was a key

criterion set out by index compiler MSCI in its review of the UAE for an upgrade to such status).

Finally, earlier this year the GCC Financial Market Committee approved unified rules governing shares, bonds, sukuks and investment funds listed on the GCC financial markets. However, the rules are not mandatory for two years and consequently, it is unlikely they will be implemented fully before 2013.

Appendix 1

ABOUT THE AUTHORS

DANIEL ABELA

KBH Kaanuun

Daniel Abela is a UK qualified senior associate at KBH Kaanuun with over 10 years' experience. His expertise covers mainstream corporate/commercial work. He has a wealth of experience, particularly in the areas of mergers and acquisitions (acting for both public companies and private companies) and company law and administration matters.

He specialises in the establishment of onshore, offshore and free-zone companies and the dissolution of companies, fundraisings, directors' responsibilities and corporate governance issues, compliance and regulatory work, corporate structures and trusts, restructuring and reorganisations, joint ventures, private equity, partnership and shareholders' agreements, and general commercial agreements.

Daniel was admitted as a solicitor of the Supreme Court in England and Wales in October 2000 and he has been based in the UAE since early 2010.

ELISE S PAUL-HUS

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Elise S Paul-Hus is a dual Canadian and US-qualified lawyer with over 20 years' experience in international corporate and capital markets transactions.

She has acted for major listed and non-listed companies as well as institutional investors and investment banks in M&A transactions and corporate restructurings in the Gulf region. Elise has also represented issuers and banks in several public offerings and private placements in the Middle East, Russia, Japan and North America. Elise has worked in law firms in Montreal, Tokyo, Moscow and Dubai. She was also seconded to the Quebec Securities Commission.

She relocated to the Middle East in 2007.

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