THE UNITED ARAB EMIRATES

Contributed by Charles S. Laubach and Omar H. Ayad
Afridi & Angell

Preliminary Issues

1. STRUCTURE OF A JOINT VENTURE

1.1 The structures available to establish a joint venture in the United Arab Emirates (UAE) in which foreign equity participation is permitted are a joint stock company (both public and private) (JSC), a limited liability company (LLC), a limited partnership company (LPC), a share partnership company (SPC), and a joint venture company (also known as a contractual venture or consortium company) (JVC).

In addition, coventurers may elect to establish a free zone company in any one of the UAE's free trade zones. Each UAE free zone has its own rules and regulations specific to joint venture entities, which, depending on the free zone, may apply to the exclusion of general UAE and emirate-level law. This chapter generally refrains from discussing the specific regulations of the UAE free zones.

1.2 The LLC is considered the most suitable form for joint ventures between local and foreign entities due to (among other factors) the LLC's flexible management structure, the availability of minority shareholder protections, and the ease of formation. The LLC may conduct or engage in any lawful activity except insurance, banking, and investment of money for others.

Coventurers should keep in mind, though, that various free zone companies offer the advantage of exemption from certain UAE laws, such as the availability of 100 percent foreign ownership (see foreign ownership restrictions in Section 1.6).

1.3 Coventurers are not necessarily required to enter into a joint venture as a precondition to doing business in the UAE. However, all businesses require licenses, and such licenses are issued by governmental licensing authorities.

1.4 The main considerations for joint venture partners when choosing the structure of a joint venture entity (apart from tax reasons) are the designation of liability, management and governance structure, requirements for formation, and the distribution of profits and losses in the joint venture entity.

1.5 Depending on the specific structure chosen for the joint venture, some restrictions may apply that create a barrier to ownership of the joint venture by a U.S. entity. Some examples include the following: the principal office must be located in the UAE, the parties to the joint venture must be licensed in the UAE, and UAE nationals must own at least 51 percent of the joint venture's equity.

1.6 Depending on the structure chosen for the joint venture entity, there may be restrictions on foreign nationals holding certain positions in the joint venture. In a JSC, the chairman, the vice chairman, and the majority of the board of directors must be UAE nationals. In the the case of an SPC or an LPC, all general partners must be UAE nationals.

1.7 In the UAE, there are no requirements for worker participation in the management of the joint venture entity.

1.8 Depending on the structure chosen, there are legal limitations on the ability of the coventurers to contractually allocate control. In an LLC and a JSC, 51 percent of the share capital must be held by UAE nationals. Further, as noted in Section 1.6, UAE nationals must hold certain executive positions depending on the structure of the joint venture.

2. TIMING

The timing required to set up the joint venture entity will depend on the structure chosen. For a JVC, because it is simply a contractual relationship between the parties with no requirement to have the governing agreement registered or licensed with any authority, there are no formal requirements or processes that will delay formation.

For an LLC, the registration/incorporation process will determine the time required for formation. In particular, the LLC must obtain approval issued by other UAE government authorities depending on the activity of the LLC; and if one of the partners is a foreign entity (as is the case here), then certain documents will have to be attested, legalized, and translated into Arabic. The registration/incorporation process is twofold for an LLC: a submission of documents to receive initial approval, followed by a subsequent submission of documents to receive final approval.

Similarly, for a JSC, the registration/incorporation process occurs in two stages and requires various documentation at each stage. The JSC will have to submit copies of its feasibility study and obtain approvals issued by other government authorities depending on the JSC's activity. In the case of a public JSC, approval of the Emirates Securities and Commodities Authority is required for the public offering of shares. For a private JSC, a resolution from the UAE Federal Ministry of Economy (Federal Ministry) approving incorporation is required.

3. FORM OF DOCUMENTS

3.1 For a JVC, the governing agreement does not have to be registered or licensed with any authority or even be proclaimed publicly.

In the case of an LLC, if a partner is an existing corporate entity outside the UAE, the company's board resolution subscribing the new company must be attested by the UAE Embassy/Consulate or Gulf Cooperation Council (GCC) state embassy/consulate in the partner's home country and then attested by the UAE Ministry of Foreign Affairs and duly translated into Arabic. In addition, the memorandum of association must be duly authenticated by a UAE notary public. If the partner is an existing corporate entity in the UAE, then the originals or notarized true copies of the memorandum of association and the commercial register certificate will suffice.

For a JSC, four counterparts of the JSC's memorandum and articles of association must be duly authenticated by the notary public. Also, a JSC must obtain approval from other government authorities depending on the activity of the company.

3.2 It is common for coventurers to enter into a confidentiality agreement in the preliminary stages of the planned joint venture. Such confidentiality agreements are binding in the UAE but may be difficult to enforce depending on the scope and length of the agreement.

3.3 It is usual for coventurers to use a preliminary document such as a letter of intent or memorandum of understanding to set out the material terms or intent for a proposed joint venture. The parties may determine whether to make such a preliminary document binding or nonbinding. If the parties wish for this preliminary document to be binding, they should ensure that this is clearly stated in the given document and ensure that the terms intended to be binding are sufficiently clear. If the terms intended to be binding are not clear, UAE courts will attempt to ascertain the intent of the parties.

3.4 Depending on the statements made and surrounding circumstances, oral discussions can be found to create binding agreements in the UAE. Both the offer and acceptance of a binding contract may be expressed orally.

3.5 The JSC, LLC, LPC, and SPC must be registered and licensed with the Federal Ministry and with the appropriate authority in the emirate in which its office will be located. The JVC does not have to be registered or licensed with any authority or even be proclaimed publicly.

Formation and Management of Joint Venture

4. REGULATORY APPROVALS

4.1 Antitrust/Competition Filings

(a) The UAE enacted a competition law in late 2012 that by its terms prohibits combinations in restraint of trade and other anticompetitive practices. However, implementing regulations under this statute have yet to be promulgated, and the practical impact it will have is not yet known.

(b) Not applicable.

4.2 Foreign Investment Review

The central restriction with regard to foreign investment in the UAE is that a company established in the UAE must be at least 51 percent owned by UAE nationals unless it is (a) based in one of the free zones; (b) a certain type of sole proprietorship or a professional partnership; or (c) a company 100 percent owned by nationals of the member states of the GCC. (The GCC members other than the UAE are Bahrain, Kuwait, Oman, Qatar, and Saudi Arabia.) There is no separate foreign investment review.

4.3 Other Approvals

Regarding sectors of national interest, such as those relating to telecommunications and petroleum, there are additional restrictions on foreign ownership and/or licensing requirements. Also, depending on its specific activity, (a) a joint venture operating in the banking and financial sector may have to be approved by the Central Bank of the UAE; (b) a joint venture operating in the insurance sector may have to be approved by the Insurance Authority; (c) a joint venture operating in the manufacturing sector may have to be approved by the Ministry of Finance and Industry; and (d) a joint venture operating in the health-care sector may have to be approved by the Ministry of Health.

The period of time required to obtain an approval varies considerably. Some approvals can be obtained in a few weeks or a few months, while others may take many months. The parties may not proceed prior to having obtained the relevant approvals. There is no predetermined waiting period such that closing would be permitted upon its expiry. Rather, the period of time for approval varies considerably and will depend on a host of factors.

5. EMPLOYMENT MATTERS

5.1 Each party to a JVC keeps its own employees. Therefore, in the scenario under consideration, employees of the local coventurer will remain with the coventurer and not be transferred to the JVC.

For the other structures, whether employees of the local coventurer automatically become employees of the joint venture entity as a consequence of the contribution of assets will depend on how exactly the joint venture is created between the two coventurers.

If the joint venture is created through a share sale, in which the shareholders of the local coventurer change while the local coventurer itself continues to exist, then the employees will remain with the local coventurer.

If the joint venture is created as a subsidiary of the local coventurer, then the employees of the local coventurer may transfer to the newly created joint venture. However, the transfer process will not be automatic and will have to be implemented after the joint venture is created. New labor permits and employment contracts for the employees will be required, and the consent of each employee is required for that employee's transfer to the joint venture. Thus, new employment relationships with the newly created joint venture will be established.

5.2 In the event that a change occurs in the form or legal status of the coventurer, the employment contracts of the coventurer that are valid at the time of such change will remain valid with the new joint venture entity, and the employee's services will be deemed to be continuous.

The coventurer and the joint venture entity will be jointly liable for a period of six months for the fulfillment of all obligations in the employment contracts, after which time the joint venture entity will bear sole liability.

5.3 If an employee's terms and conditions of employment are made less favorable due to the creation of the joint venture entity, then that employee's consent will be required in order for the new terms and conditions to take effect. If the employee does not consent to the new terms and conditions, the employee's termination would most likely be deemed to be constructive dismissal by the employer. In this case, the employee could claim all of the normal termination benefits plus damages in an amount equal to three months' salary.

5.4 In the UAE, there are no special rules on protection from termination arising from a business sale or other transaction affecting the local coventurer. However, the same general rules governing termination of employment contracts will apply. It is permissible to require the local coventurer to terminate some of its employees as a condition of closing the transaction; but depending on the type and terms of the terminated employment contracts, the local coventurer may be liable to the terminated employees for damages.

5.5 UAE law will allow the local coventurer and joint venture entity to agree on the allocation of responsibility for severance payment obligations as long as the rights of the employees are not prejudiced. If the employees are going to transfer from the local coventurer to the joint venture entity, then the transfer can be done with either a break in service or continuity of service. With a break in service, the transferring employees are all terminated by the local coventurer and paid their severance benefits. They are then hired by the joint venture entity as new hires, with seniority beginning from the date that they are hired by the joint venture entity. With continuity of service, the employees are transferred from the local coventurer to the joint venture entity without termination of services. Under this method, the joint venture entity takes on the employees with the seniority that they had with the local coventurer, and the joint venture entity also assumes all of the accrued but still unpaid termination benefits of the employees, typically via a cash payment by the local coventurer to the joint venture entity. The employees strongly prefer this latter method, but it might not be available in every instance (such as an international employment transfer or an employment transfer into or out of a free zone).

5.6 If the employment contract of the given employee is for an unspecified term, with the exception of employees who are employed on a daily basis, the joint venture may terminate the employee for a legitimate reason with thirty days' prior written notice, regardless of the employee's length of service. A corporate restructuring is usually viewed as such a legitimate reason.

If the employment contract of the given employee is for a specified term and the joint venture terminates it before the end of its term for any reason other than particular reasons under the UAE Labor Law, unless the employment contract provides otherwise, the joint venture entity will be obligated to compensate the employee in the amount equal to the lesser of three months' salary or the salary for the remaining period of the contract.

If the employee being terminated is a UAE national, the joint venture entity will be subject to further restrictions and procedures.

5.7 Because labor unions and works councils are not permitted in the UAE, a joint venture entity in the UAE will not be subject to notification to, consultation with, or authorization from any works council, labor union, or other similar body.

5.8 The UAE Labor Law contains a provision stating that a woman shall be paid the same wage as a man if she performs similar work.

Regarding affirmative action, UAE nationals are accorded preference in hiring as the UAE Labor Law assigns to employers a general duty to employ UAE nationals. The UAE Labor Law provides that the Ministry of Labor shall not approve the recruitment of a nonnational until it ensures that its register does not contain an unemployed UAE national who is able to perform the given job. Each employer that employs more than fifty employees must ensure that at least 2 percent of its employees are UAE citizens.

5.9 In a JVC, each party to the JVC keeps its own employees, so this structure offers the fewest issues in terms of employees. For other types of joint venture structures, the continuity-of-service method described in Section 5.5 is usually the smoothest way to transfer an employee from a coventurer to the joint venture.

6. CAPITAL REQUIREMENTS AND DISTRIBUTION

6.1 For a JVC, there are no minimum capital requirements to establish a joint venture. For an LLC, the minimum share capital required is AED 150,000. For a JSC, the minimum capital requirement is AED 2 million. For an LPC and an SPC, the minimum share capital requirement is AED 500,000.

6.2 For a JSC issuing bonds, the value of the bonds must not exceed the existing capital in accordance with the last certified budget unless the JSC is so permitted in its articles of association or the bonds are secured by the UAE government or a bank operating in the UAE. This regulation is also applicable to an SPC.

6.3 For a JSC, a minimum of 10 percent of the company's net profit is annually deducted to form a legal reserve. The general assembly may suspend such deductions when the legal reserve amounts to half of the paid capital of the JSC. This legal reserve must be maintained and may not be distributed as a profit. However, the portion of the reserve that exceeds half of the paid capital of the JSC may be allocated for the distribution of profits during years in which the JSC does not attain net profit sufficient to distribute the percentage specified in its bylaws.

These provisions are applicable to SPCs as well as JSCs. LPCs, JVCs, and LLCs are not permitted to issue bonds.

Similarly, an LLC must set aside 10 percent of its net profit for a similar legal reserve. The partners, however, may decide to suspend accumulation of this reserve if it reaches half of the capital of the LLC. There is no legal reserve requirement for an LPC or a JVC.

6.4 In the UAE, there are no currency exchange controls and no restrictions on the remittance of funds, except for restrictions on transactions with Israeli parties or currency. Capital may be repatriated while the joint venture is in operation as long as the remaining capital of the joint venture entity is not less than the minimum required for the specific structure.

6.5 In a JSC, assets and other contributions in kind may be presented as consideration for the issuance of shares in the JSC. Such contributions in kind will be evaluated by a committee formed by the Federal Ministry, which shall issue a report assessing the in-kind contributions, and the shares may not be granted until the transfer of ownership of such contributions in kind to the JSC. The transfer of ownership requirement also applies to an SPC.

In an LLC, if a partner presents an in-kind contribution, appraisal of the value of the contribution must be entered in the LLC's articles of association with a statement of its type, the party that presented it, and the amount of capital it provides. The partner presenting the in-kind contribution is liable for the validity of such appraisal.

7. CONTRIBUTION OF ASSETS

7.1 When founding a JSC, a statement of each noncash contribution, the name of the person submitting it, conditions pertaining to its submission, and mortgages and privileges to which such contribution is subject must be reported. In this report, the founders of the JSC also state the estimated amount of the noncash contribution. In-kind contributions made to the JSC are evaluated by a committee organized by the Federal Ministry. This committee completes and sends a report assessing the in-kind contributions to the JSC's founders. The Companies Law contains no mechanism for seeking review of the committee's evaluation, although in principle an aggrieved party could pursue a judicial remedy.

If the committee's evaluation of the in-kind contribution is less than the evaluation of the JSC founders, the in-kind contributor will be required to pay the difference in cash or to submit another in-kind contribution valued at the difference. In all circumstances, the person who submitted the in-kind contribution may withdraw it in whole and pay the value thereof in cash as evaluated with the acknowledgement of the JSC founders.

The committee's evaluation is also presented to the founding general assembly of the JSC, which may endorse, reject, or decrease the evaluation. If the assembly decreases the evaluation, the in-kind contributor may withdraw it from the capital or pay the difference in cash.

As explained in Section 6.5, if a partner in an LLC presents an in-kind contribution, appraisal of the value of the contribution must be entered in the LLC's articles of association.

7.2 Generally, the transfer of assets to a joint venture entity would not have to be reported unless the assets were intended to constitute part of the capital of the entity.

7.3 Situations in which the nonnational coventurer or the joint venture entity will be responsible for the liabilities of the local coventurer are rare in the UAE. Liability could possibly arise though, for example, if the local venturer contributed property that it did not own, such as patented intellectual property in which the patent was contested, withdrawn, or never properly granted in the first place. In such a case, the joint venture entity could be held liable for patent infringement if it knowingly used this property without right.

8. ASSIGNMENT OF CONTRACTS

8.1 Contracts will not be transferred automatically when one coventurer transfers assets into a joint venture entity.

8.2 In order for a contract to be assigned, all parties to the assigned contract must consent to the assignment. This is the case even if the contract contains language that purports to grant prospective consent to assignments. In a JVC, it is usually the case that a contract with a third-party concluded by one of the parties to the JVC will remain effective between those two parties and will not be assumed by the JVC in the absence of a formal assignment. The effect of such an assignment would be to make each of the parties to the JVC jointly and severally liable for performance of the contract. Whether such contracts are assigned in this manner is up to the parties to the JVC. In some circumstances (such as disclosure of the existence of the JVC to the contract counterparty), the parties to the JVC can become jointly and severally liable for each other's obligations even in the absence of a formal assignment.

9. INTELLECTUAL PROPERTY, DATA PROTECTION, AND PRIVACY

9.1 Use of Corporate or Trade Name

(a) The name of the joint venture entity will be subject to the approval of the relevant authorities in the respective registration/incorporation process.

The name of an LPC must consist of the names of one or more of the general partners. A JSC may not carry the name of any other company or a similar name. The name of an LLC must derive from its objective or from the name of one or more of its partners. The name of an SPC must be composed of the name of one or more of the general partners along with another name or name derived from the SPC's business.

(b) In the case of a JSC that carries the name of another company or a similar name, the other company may demand the governing administrative or judicial authority to require the JSC to change its name.

For an LPC and an SPC, the names of the limited partners may not be included in the company's name. If names of limited partners are included in an LPC's or an SPC's name, that limited partner shall be deemed a general partner in relation to good faith third-parties.

9.2 Share Capital or Units

Intellectual property can qualify as an in-kind contribution to the capital of the joint venture entity. For a JSC, the intellectual property must be evaluated by a Federal Ministry committee. In an LLC, the intellectual property contribution must be appraised and its value stated in the articles of association.

9.3 Granting Back of Rights

The coventurers are free to execute noncompete agreements to operate during the life of and upon termination of the joint venture, as well as upon the exit of one of the coventurers, which may restrict or otherwise govern the granting back of rights to improvements on intellectual property contributed by one of the coventurers. Issues, however, may arise in enforcement, as UAE courts are generally reluctant to grant injunctive relief. Instead, a coventurer claiming breach of such a noncompete clause will most likely be restricted to raising a cause of action for damages.

Intellectual property improvements will be transferred only if the coventurers expressly agree on the transfer. Note that the transfer of the intellectual property improvement from the employee who authors the improvement to the employer (coventurer) must also be specified in writing, failing which the author employee will remain the owner of the improvement.

9.4 Data Protection and Privacy

With the exception of laws applying to parties in the Dubai International Financial Centre, there are currently no data protection laws in force in the UAE. The Central Bank of the UAE has discretion concerning whether to permit banks registered in the UAE to store customer information outside of the UAE. Nevertheless, the misuse of personal or private information can constitute a criminal offense in extreme cases.

9.5 Intellectual Property Requirements and Restrictions

As explained in Section 9.3, in addition to agreements between the coventurers, each coventurer should ensure that the transfers of intellectual property improvements authored by a given employee are clearly recorded in writing.

Trademarks in the UAE are registered at the Federal Ministry's discretion. Unauthorized use of a registered trademark and other related offenses are punishable under UAE law. An aggrieved trademark owner or licensee can raise a civil action for damages, but injunctive relief is typically not granted by UAE courts. Trademark registration is valid for ten years from the date of registration and is renewable.

Copyrights in the UAE can exist in a wide variety of media, including written, verbal, musical, photographic, and drawing form. Copyright protection arises automatically upon the author's creation of the work, and registration is not required. Unauthorized publication of a copyrighted work in the UAE is a criminal offense punishable by imprisonment and/or fines. A copyright is protected for the duration of the author's life plus fifty years.

It is generally recommended that trademarks and copyrights, but not intellectual property licenses, be registered in the UAE.

9.6 Other Limitations

Under UAE law, a patent may not be granted for certain categories, including plant or animal research, diagnostic methods, treatments, surgical operations needed for humans and animals, and generally inventions that would be contrary to UAE public policy and morality. Furthermore, UAE law regulates the granting of title to an invention when made by an employee. An agreement between an employee and an employer that grants the employee lesser privileges than he is entitled to under the law is void. In addition, although a patent is valid for twenty years, the patent owner must use it or license it within four years from the date of application.

Generally, the law provides that if an invention is produced in the course of a contracting or employment agreement, the principal/employer shall assume ownership of the intellectual property rights unless otherwise provided in the governing agreement. Therefore, absolute ownership of the invention/patent may be held by the employer following transfer of the employee.

Unless otherwise agreed by the parties, if the employee's invention is worth more than the parties expected when signing the relevant contract, the employee inventor is entitled to additional compensation to be determined by a UAE court.

If an employee whose employment contract does not require him to engage in inventing discovers an invention related to the employer's activities while utilizing the employer's experiences, documents, materials, or raw materials available to him by virtue of his employment, the employee must submit to the employer an application for the corresponding patent or must otherwise inform the employer of the invention. If the employer does not express his intention to acquire the invention within a four-month period from such notification, the employee will be granted the right to the invention. If the employer expresses his intention to acquire the invention within the four-month period, he shall be considered the rightful owner of it as of the date of the invention. In this case, the inventor employee shall be entitled to fair compensation, which shall be calculated by taking into account the inventor employee's salary, the economic value of the invention, and benefits gained by the employer as a result of the invention. If the parties do not reach agreement on this compensation, a UAE court shall determine it.

Authors of copyrighted material obtain certain moral rights that are not available for prescription or assignment. Such moral rights include the right to decide to first publish the work, the right to claim ownership, and the right to withdraw the work from circulation. Furthermore, if the author of a copyright enters into a contract for the financial rights to the copyright and considers the contract unfair, the author may appeal to a court to reevaluate the agreed compensation in the contract. UAE law also designates certain situations where a copyrighted work may be freely reproduced, including reproduction for judicial proceedings and reproduction for nonprofit archives, libraries, or authentication offices.

Trademarks may not be registered for various categories, including trademarks that violate UAE public policy or public morals (such as trademarks for alcoholic beverages); trademarks of public emblems or symbols of the UAE; symbols of religious character; and geographical names and data if their use creates confusion with respect to the origin or source of the goods, services, or products. The Federal Ministry may also delete registration of a trademark that it determines to be identical or similar to an Israeli mark, symbol, or emblem, as well as any other mark registered to a person with whom transactions have been prohibited via a state decision. The owner of a trademark may license use of the trademark, but such licensing contract must be entered into the UAE trademarks register.

If disputes arise regarding the registration, usage, or transfer of intellectual property, the coventurers and/or joint venture entity may be subject to local litigation in the UAE courts as well as dispute resolution procedures with UAE ministries and departments.

10. CONTROL AND CORPORATE GOVERNANCE

10.1 Decisions in a JVC must be made by unanimous agreement of the partners unless the joint venture agreement provides that decisions will be made by majority vote (either simple or higher majority). Decisions to amend the joint venture agreement must be made by unanimous agreement of the partners.

An LLC must be managed by a minimum of one and a maximum of five managers. If the LLC has multiple managers, their meetings are to be governed by the LLC's memorandum of association. Amendment of the LLC's memorandum of association and removal of a manager named in the LLC's memorandum of association requires the approval of a three-quarters majority of shares unless the memorandum of association itself requires otherwise. If the memorandum of association does not provide for removal of a manager, the manager may nevertheless be removed by the unanimous agreement of all of the partners or by court order. General assemblies do not have a legally mandated quorum provision; instead, all motions must be carried by a vote of partners owning at least one-half of the LLC's capital. Resolutions of the general assembly must be adopted by partners representing at least one-half of the capital unless the memorandum of association provides for a larger majority.

For a JSC, the majority of the directors constitutes a quorum for board meetings, and board resolutions must be passed by a majority of directors present and represented. In general assembly meetings, resolutions must be adopted by an absolute majority of the shares represented at the meeting. For a JSC board meeting, an absent director may nominate another director to vote in his place on the condition that no director present may hold more than one proxy. Voting by mail is not permitted.

An SPC must be managed by one or more of its general partners. The general assembly and resolution requirements of an SPC are the same as those of a JSC. However, the general assembly of the SPC may not adopt resolutions affecting the SPC's relations with third-parties unless the resolutions are approved by the SPC's managers.

An LPC must have at least two partners. If there are multiple managers and the memorandum of association stipulates that they are to act collectively, they must act by at least the majority vote provided in the memorandum of association; but, notwithstanding the foregoing, a manager can act individually in an emergency. However, if there are multiple managers and the memorandum of association does not assign them duties and does not stipulate how they should vote, each manager can carry out any management act individually subject to the other managers' objections by majority vote before commission of the act (in the event of a tie, the matter will be submitted to a vote of the partners). If the managers of an LPC learn of another manager's act after its commission, the manager's act will most likely be held valid barring any misrepresentation or fraud committed by the acting manager. Further, the manager's act is likely to be binding with respect to third-parties that reasonably relied on the manager's apparent authority. Decisions of the partners must be unanimous unless the memorandum of association provides for a simple or higher majority, except that decisions related to amendments to the memorandum of association must be unanimous in any case.

10.2 Allowing one coventurer's nominees a negative veto over certain decisions is acceptable and may be established in the governing documents of a JVC, an LLC, an SPC, and an LPC.

For a JSC, this rule of governance may be applied to the directors of the JSC. If the joint venture seeks to grant to one coventurer's board of directors a negative veto over certain decisions, this power may be established in the articles and memorandum of association.

10.3 Decisions in a JVC must be made by unanimous agreement of the partners unless the joint venture agreement provides that decisions will be made by majority vote (either simple or higher majority).

An LLC is managed by a minimum of one and a maximum of five managers. A manager may be one of the partners. Subject to the provisions of the LLC's memorandum of association, the managers have full power to manage the company and make binding decisions on its behalf. If the number of partners of the LLC exceeds seven, the memorandum of association must provide for the formation of a supervisory board of at least three partners serving for a specified period of time. The managers do not have a vote in the election or removal of members of the supervisory board. The supervisory board's duties include reviewing the budget, creating the annual report, distributing profits, and submitting its reports to the general assembly of partners. Resolutions of the general assembly of an LLC must be adopted by partners representing at least one-half of the capital unless the memorandum of association provides for a larger majority.

The management and governance of a JSC lies in its board of directors, which must be comprised of a minimum of three and a maximum of fifteen members. The directors are elected by the ordinary general assembly of shareholders through secret ballot. The board of directors of the JSC is granted broad powers to act in pursuit of the JSC's objectives other than those reserved by UAE law or the memorandum of association to the general assembly of shareholders. The chairman of the board is the JSC's chief executive, and his signature is considered to be that of the board. The general assembly of shareholders may dismiss any and all directors, even if the articles of association provide otherwise, and may also elect new directors to replace those dismissed. Resolutions passed at a general assembly must be adopted by an absolute majority of the shares represented at the meeting.

An SPC must be managed by one or more of the general partners. A limited partner cannot participate in the management of the SPC with respect to third-parties but may participate in its internal management to the extent provided in the SPC's articles of association. This limited partner will lose its limited liability if it exceeds this restriction. The SPC must have a supervisory board comprised of at least three members, who are appointed by the limited partners or others for a renewable one-year term. This supervisory board oversees the SPC's activities and can demand an accounting from the managers; examine the books of the SPC; and, if provided in the articles of association, approve certain dispositions. If the post of a manager becomes vacant, the supervisory board appoints an interim manager until the general assembly of partners meets. The general assembly and resolution requirements of an SPC are the same as those of a JSC, but the general assembly may not adopt resolutions affecting the SPC's relations with third-parties unless the resolutions are approved by the SPC's managers.

The LPC must have at least two partners. If there are multiple managers and each is allocated duties, each manager is responsible only for his area of responsibility. If there are multiple managers and the memorandum of association stipulates that they are to act collectively, they must act by at least the majority vote provided in the memorandum of association; but, notwithstanding the foregoing, a manager can act individually in an emergency. If, however, there are multiple managers and the memorandum of association does not assign them duties and does not stipulate how they should vote, a manager can carry out any management act individually, but the other managers can object thereto by majority vote before commission of the act (in the event of a tie, the matter must be submitted to a vote of the partners). If a manager is appointed in the memorandum of association, he may not be removed except by unanimous consent of the partners. Moreover, if he resigns other than on "reasonable grounds," he may be subject to payment of damages. If a manager is appointed outside of the memorandum of association, he may be removed by majority vote of the partners. A partner who is a manager appointed outside the memorandum of association or a nonpartner appointed in or outside the memorandum of association who resigns at a time not "reasonable" or without prior notice may be subject to payment of damages. A limited partner cannot participate in the management of the LPC but may participate in its internal management to the extent provided in the articles of association. A limited partner will lose its limited liability if it exceeds this restriction. Decisions of the partners must be unanimous unless the memorandum of association provides for a simple or higher majority (except that decisions related to amendments of the memorandum of association must be unanimous in any case).

For both an SPC and an LPC, there is no provision in the applicable federal law prohibiting the manager from being a corporate or other legal entity. In practice, each emirate's licensing authority may stipulate whether the relevant manager must be an individual or not.

10.4 In the case of an LLC, the mangers' meetings, scope of powers, and removal are governed by the memorandum of association. For an SPC, a limited partner's participation in the management of the SPC is designated in the articles of association. In the case of an LPC, the memorandum of association allocates the duties of the managers and determines whether the managers are to act collectively or not. It is common in the UAE for joint venturers to supplement statutory corporate governance rules to give coventurers additional flexibility.

10.5 The Federal Ministry established a range of corporate governance rules mandatory only for public JSCs with listed securities in the UAE. Although the rules are only mandatory for public JSCs, they serve as a guide for other business entities in the UAE. The rules, among other things, regulate the composition of the board of directors, require the establishment of an audit committee, grant shareholders' rights, require the adoption of rules of professional conduct, and require other mechanisms of transparency and internal control. These rules, as of April 30, 2010, are mandatory and fully enforceable for public JSCs.

The shareholders' rights granted by the corporate governance rules include the right to receive dividends allocated for distribution, to receive the proportionate share of assets upon liquidation, to attend general assembly meetings, to dispose of shares, and to be granted access to the company's financial statements and reports. The corporate governance rules also mandate that a JSC's memorandum of association and articles of association provide an opportunity for shareholders to take an effective part in the deliberations of general assembly meetings and in the voting of resolutions and to maintain the right to discuss and raise questions over agenda issues with board members. Furthermore, a company's directors may not obtain proxies from shareholders to attend general assembly meetings on behalf of such shareholders.

10.6 In the UAE, coventurers may contract to resolve a deadlock situation. One common method is to create a decision-making authority or committee in the joint venture entity and designate the process and procedure for deadlock situations to be resolved. Alternatively, the coventurers may establish an obligation to escalate the deadlock to senior management, along with a period in which to negotiate in good faith to resolve the deadlock. In all cases, the parties are free to contract for the forwarding of the deadlock to the given dispute resolution mechanism.

10.7 The general partners of an LPC and an SPC may not engage in activities of the same kind as their company, nor may they be a partner (limited or general) in another partnership company or limited liability company if such company engages in activities that could compete with the activities of their company.

In an LLC, resolutions of the partners' general assembly that were made in the interest of some of the partners or to the detriment of other partners without consideration of the LLC's interest may be declared void by objecting partners.

11. LIABILITY OF COVENTURERS

11.1 The partners of an LLC enjoy limited liability—that is, each partner is only liable to the extent of its share in the capital of the LLC. The shareholders of a JSC also enjoy limited liability. In the case of an SPC and an LPC, the general partners have unlimited liability, but the limited partners enjoy limited liability.

For all structures other than a JVC, a risk of liability for the coventurer for the acts or omissions of the joint venture will arise if corporate formalities mandated by UAE law are not observed and the joint venture entity is deemed void. In other words, this will produce the legal effect of making the coventurers liable for the obligations of the joint venture entity as general partners.

11.2 In the case of a JVC, a partner has unlimited liability only with respect to third-parties with which the partner has had dealings. However, if the JVC becomes known to third-parties, the partner will also have unlimited liability with respect to third-parties with which the other partners of the JVC have had dealings.

Termination of Joint Venture

12. CHOICE OF LAW, JURISDICTION, AND DISPUTE RESOLUTION

12.1 Restrictions

(a) The corporate documents that form a joint venture entity must state that the governing law shall be the law of the UAE, failing which the authorities will refuse to license and register the entity.

(b) The corporate documents must also provide for resolution of disputes by the UA. courts or by arbitration in the UAE. Ancillary documents and agreements may provide for foreign governing law or foreign resolution of disputes, but it cannot be assured that the courts of the UAE will abide by such provisions. A UAE notary public will likely decline notarization of an agreement that contains a foreign law or dispute resolution clause.

12.2 Dispute Resolutions

Dispute resolution mechanisms common under UAE law are litigation and arbitration. Both possess serious shortcomings. Litigation can be prolonged and opaque, and the courts lack expertise with complex litigation involving sophisticated transactions. Arbitration can provide access to a better caliber of fact finder and permits proceedings in English; however, much depends on the quality of the arbitral body that is chosen, and the courts of the UAE are more willing than courts in other countries to set aside arbitral awards.

12.3 Arbitration

When available, international arbitration is usually the best option for a foreign party. Foreign arbitral awards may be enforced in the UAE under the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards.

13. TERMINATION

13.1 Unless a method for winding up is specified in the joint venture's memorandum or articles of association, or an agreement between the partners is reached, the general provisions of UAE law will govern the treatment of assets upon the termination of a joint venture entity.

The joint venture entity's assets arising from the winding-up shall, after payment of the joint venture entity's debts, be partitioned. Each partner shall, after partition, receive an amount equal to the value of the share it contributed to the joint venture entity's capital. The remaining assets shall be distributed among the partners pro rata based on their respective shares in the profit.

13.2 The LPC and the JVC must be dissolved upon the withdrawal of a partner if there are only two partners, except that a court may order a partner to continue in the company if the withdrawal is in bad faith or at an inappropriate time.

13.3 Regarding tracing liabilities after termination, termination of the JSC, LLC, LPC, and SPC takes place only when the license held by the company is terminated. The shareholders are responsible to make sure that this happens. The termination process can be lengthy in some cases.

For the JSC, LLC, LPC, and SPC, the legally prescribed winding-down process grants parties the opportunity to raise claims against the concluding joint venture. No tracing liabilities attach to the coventurers once the joint venture is legally terminated, with the exception of the commission of fraud, misrepresentation, or other criminal acts. For a JVC, because the partners assume unlimited liability, tracing liabilities may attach to the coventurers after termination.

14. OTHER ISSUES

14.1 The UAE civil code provides that a contract must be performed in good faith and according to its terms and conditions. The UAE civil code also mandates that contractual parties interpret their contract in good faith and not resort to interpretation of intent when contractual terms are clear.

14.2 The UAE generally welcomes foreign investment. Dubai, in particular, has invested heavily in infrastructure and has established liberal policies to attract investors. In fact, there are UAE government departments dedicated to the promotion of investment.

At the same time, a significant restriction with regard to foreign investment is that a company established in the UAE must be at least 51 percent owned by UAE nationals unless it is (a) based in a free zone; (b) a certain type of sole proprietorship or a professional partnership; or (c) a company 100 percent owned by nationals of the member states of the GCC.

14.3 Contracts drafted in English and other foreign languages are binding in the UAE. If the contract is drafted in both Arabic and English, the parties often stipulate that the English version is the operative document and that in the case of any conflict, question, or ambiguity between the two, the English version shall prevail. Such clauses are frequently permitted, but not always. Moreover, in the event of litigation, the contract could well be placed into evidence before a judge, who will read only the Arabic text. In lieu of misplaced reliance on a governing language clause, the parties should ensure that the Arabic and English texts of such a contract accurately reflect each other.