

**International Survey of  
Investment Adviser Regulation**



# **International Survey of Investment Adviser Regulation**

THIRD EDITION

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Editors



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## Preface

The genesis of *International Survey of Investment Adviser Regulation* grew out of our day-to-day contact with investment advisers around the world. In 1994, the first edition of this *Survey* covered 18 jurisdictions. We correctly predicted that there would be increased focus on the regulation of investment advisers and, indeed, five years later, the second edition of the *Survey* included 28 countries and the European Union. Since 1999, the explosion in the growth of the world's securities markets, together with the exponential development of international investment management products, such as collective investment vehicles developed to serve individual investors as well as public and private retirement plans, have compelled regulators to respond. This third edition of the *Survey*, which covers investment adviser regulation in 39 countries and the European Union, is evidence of the pace of regulation and the emergence of other relevant laws on the use of electronic media and the Internet, data protection and consumer privacy.

We believe that investment management firms, regulators, legal practitioners and those who study comparative legal systems will find this third edition of the *Survey* to be a valuable resource. Our aim is to foster understanding, development and rationalization of the regulation of investment advisers in a global environment. To that end, the chapters are organized in a manner to facilitate comparisons among and between different legal systems and approaches.

This *Survey* reflects the true dedication of our contributors, to each of whom we express our deepest gratitude for their commitment to this project and their patience with us through the process of publishing this book. The contributing authors are lawyers who are experts in the field of investment management regulation. Each of them has taken the time to share his or her knowledge, practical insights and expertise.

Our assistant editor, Daniel Wiedemann, a senior associate in the firm's Frankfurt office, provided us with invaluable support in organizing the *Survey*

*Preface*

and coordinating with the contributors, as well as in reviewing many of the chapters. Our colleagues in the Investment Management Group of Debevoise & Plimpton, Gregory Larkin and Jaime Doninger Schechter, devoted long hours to the review of many of the chapters in this book. We are truly indebted to each of them for their excellent and important assistance.

Finally, this book could not have been completed without the substantial efforts of the staff in the Frankfurt office of Debevoise & Plimpton LLP. Claudia Naumann supported us throughout the entire process with unfailing professionalism, dedication and good humor, and Anna Gremmers and Abby Carrigan provided important assistance at crucial times.

Marcia L. MacHarg  
Kenneth J. Berman

# United Arab Emirates

*Afridi & Angell, Dubai*

## **A. OVERVIEW OF THE REGULATORY REGIME**

### **1. Applicable Laws and Regulations**

#### **1.1. Regulatory Structure**

The United Arab Emirates (“UAE”) is a federation established in 1971 under a written constitution composed of seven Emirates: Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwayn, Ras Al Khaimah and Fujairah. Each Emirate has its own Ruler and enjoys considerable autonomy over the conduct of its governmental affairs within the Emirate. The UAE federal government plays an important role in regulating the national economy and retains control over key areas such as defense, foreign affairs, communications, education, labor, monetary policy, banking and securities.

Investment advisers in the UAE have, since 1995, historically been regulated federally by the UAE Central Bank. In January 2000, the Emirates Securities & Commodities Authority (“ESCA”) was established pursuant to UAE Federal Law No. (4) of 2000 concerning the Emirates Securities & Commodity Authority and Market (the “Securities Law”). ESCA is a federal body specifically entrusted with the task of overseeing the UAE securities and commodities markets. In December 2008, ESCA implemented its own rules with respect to investment adviser regulations in the UAE. In the wake of the 2008 global financial crisis and following

Marcia L. MacHarg & Kenneth J. Berman (eds), *International Survey of Investment Adviser Regulation*, pp. 1063–1080.

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concerns of regulatory uncertainty that had emerged as a result, the UAE Central Bank and ESCA entered into a Memorandum of Understanding (“MoU”) in February 2009. While the text of the MoU has not been made publicly available, the MoU has charged ESCA with the ongoing responsibility for regulating all matters relating to licensing and supervising companies providing “financial analysis” and “financial consultancy” services (as defined below) in the UAE. This Chapter will focus on the ESCA rules with respect to investment adviser regulation.

There are no Emirate-level regulatory authorities that are specifically entrusted with the regulation of investment advisers.

## 1.2. The DIFC

The Dubai International Financial Centre (“DIFC”) is a banking and financial services “free zone” established within Dubai with its own set of civil and commercial laws based on the English common law system. The DIFC and entities incorporated within its jurisdiction are regulated by the Dubai Financial Services Authority (“DFSA”). The DIFC is an autonomous, independent jurisdiction which has been created in the Emirate of Dubai. The DFSA has issued its own rules regulating investment advisers operating in the DIFC. Since the DIFC is a specialized jurisdiction operating in the banking and financial sector in Dubai, its rules are not addressed in this chapter.

## 1.3. Definitions of Financial Consultation and Financial Analysis

Through Decision No. (48/R) of 2008 Concerning Financial Consultation and Financial Analysis (“ESCA Resolution”), ESCA imposes a licensing requirement on anyone practicing the business of “financial consultation” or “financial analysis” in the UAE. (ESCA Resolution Ch. 1, Article 1.)

“Financial consultation” is defined as opinions and recommendations, based on economic and financial research, studies and analyses concerning the anticipated current or future values of securities, commodities, commodity contracts and companies, to be provided to clients or published to the public in any of the various means of publication and communication.

“Financial analysis” is defined as the scientific systematic processing of data in connection with the position and performance of companies, based on past, present and future forecasts of the results of their businesses, as well as securities, commodities, commodity contracts, price trends, and trading volumes, for the purpose of obtaining information used to make a decision at the time of providing a financial consultation.

## 1.4. Definitions of Securities and Commodities

The term “securities” means shares, bonds and sukuk (a type of Islamic bond) issued by public joint companies; notes and bonds issued by the federal

government, local governments, or public authorities or institutions; investment units of the investment funds and any other securities or financial instruments, whether local or foreign, as approved by the Board of Directors of ESCA to be considered as such. The term “commodities” means agricultural crops, metals, natural resources or any other goods traded under contracts.

## **2. Licensing Requirements**

### **2.1. Activities or Actions Requiring a License**

An applicant wishing to engage in the financial consultation or financial analysis is required to have a license issued by ESCA in accordance with the prevailing rules and regulations. An entity duly licensed pursuant to ESCA rules is referred to as a “Licensed Company” in the ESCA Resolution. A Licensed Company may employ a number of “Financial Analysts” who are the individuals who actually provide financial analysis services to clients of the Licensed Company.

A client is someone who requests services related to financial consultation from a Licensed Company in consideration for a fee. The rules do not distinguish between retail and institutional clients. There are also no separate provisions for advisers to pooled investment vehicles or advisers to mutual funds, hedge funds or private equity funds. Finally, the rules do not draw a distinction between discretionary and non-discretionary advice.

Both the Licensed Company and any Financial Analysts employed with the Licensed Company must be registered and approved by ESCA. The Financial Analyst may not commence working with the Licensed Company prior to being approved by ESCA. (ESCA Resolution Ch. 3, section 1, Article 12.)

### **2.2. Authorization of Associated Persons**

There are no set requirements, but a Licensed Company must have the required administrative and technical staff to practice its business. Such staff shall consist of a general manager or a chief executive officer assisted by an adequate number of approved Financial Analysts, researchers and technicians. (ESCA Resolution Ch. 2, section 1, Article 5.)

#### **2.2.1. Licensed Personnel Generally**

The general manager or the chief executive officer and any of the approved Financial Analysts, researchers and technicians to be appointed by the Licensed Company are required to:

- (i) be a natural person;
- (ii) have full capacity;
- (iii) be of good conduct and behavior and have never been sentenced to prison for any crime involving honor or honesty, unless rehabilitated;

- (iv) have never been declared bankrupt by a final court ruling, unless rehabilitated; and
- (v) be a full time employee; this condition applies to the general manager or the chief executive officer only if the company is only licensed to provide financial consultation and financial analysis services.

(ESCA Resolution Ch. 2, section 1, Article 5.)

The academic qualifications and practical experience of the general manager or the chief executive officer and Financial Analysts are set out in ESCA Resolution Ch. 2, section 1, Article 5, Clause 3.

#### *2.2.2. General Manager or Chief Executive Officer*

The general manager or the chief executive officer is required to have a university degree and at least five years of experience in the field of economics or finance. ESCA may, at its discretion, exempt the general manager or the chief executive officer from the conditions related to the academic qualifications or the years of experience. (ESCA Resolution Ch. 3, section 1, Article 13.)

#### *2.2.3. Financial Analysts*

A Financial Analyst is required to have a university degree or a recognized professional certificate and at least three years of experience in the field of financial analysis. In addition, the Financial Analyst must also pass any prescribed tests as set by ESCA although ESCA may exempt any person from sitting for any or all such tests if the individual holds exceptional qualifications or experience required to practice the business. (ESCA Resolution Ch. 3, section 1, Article 13.)

#### *2.3. Internal Control and Audit Requirements*

A Licensed Company is also required to have an internal control and regular audit system. ESCA must be informed of the names of those in charge of the internal control in the company and of reporting any violation of the Securities Law and amendments thereto, the regulations or resolutions issued thereunder or the internal by-laws applicable to the securities and commodities market. (ESCA Resolution Ch. 2, section 1, Article 4, Part 1.)

#### *2.4. Exemptions from Licensing Requirement*

The ESCA Resolution does not contain any stated exemptions to the licensing requirement. However, ESCA may exempt any company from any specific licensing preconditions in accordance with the functioning requirements of the securities and commodities market or for the sake of the public interest. (ESCA Resolution Ch. 2, section 1, Article 4.)



## **B. THE LICENSING PROCESS**

### **1. How to Obtain a License**

#### **1.1. Authorization Form**

The application to register a Licensed Company must be submitted to ESCA on the prescribed form enclosing all documents, information and details in support of the application. The registration form is the same for domestic and foreign companies. ESCA may request any other clarifications, information or documents at its own discretion. (ESCA Resolution Ch. 2, section 2, Article 7, Clause 1.)

All Financial Analysts must be approved by ESCA prior to commencing work at a Licensed Company pursuant to an application submitted to ESCA on the prescribed form together with the supporting documents, statements and information required. ESCA may also request any other documents, statements, information or clarifications at its own discretion. (ESCA Resolution Ch. 3, section 1, Article 12.) The Financial Analyst must also pass any prescribed tests as set by ESCA.

#### **1.2. Registration Fee**

There is a license application fee of AED 1,000 for Licensed Companies. The initial fees for the accreditation of a Financial Analyst is AED 1,000.

#### **1.3. Documentation Required**

The applicant will have to supply information about its corporate organization and structure including its name, date and place of establishment; address; contact information; share capital; names of all shareholders who own more than 5% of the share capital of the applicant; the name of the securities authority that currently regulates the applicant; the names of the president and members of the board of directors of the applicant (or if a partnership, the names of the partners and the names of their spouses and children); the names of the executive officers of the applicant; the names of personnel who are authorized (or to be authorized) to be Financial Analysts; and the names of the internal and external auditors.

ESCA may also require additional information based on their review of the application.

In addition to the information described above, the following documents will also need to be provided to support an application for a Licensed Company:

- (i) Memorandum and Articles in Arabic (the English translation may appear by the side) authenticated by the official authorities.
- (ii) Copy of trade license and valid membership of the Chamber of Commerce (if any).
- (iii) Letter from the Ministry of Economy that the company is incorporated under the UAE Companies Law.

- (iv) Certificate of company registration with the Ministry of Economy in the event the applicant is a public shareholding company.
- (v) The license issued by the regulator to foreign companies or their licensed subsidiaries.
- (vi) Statement clarifying that the applicant has experience of not less than five years in the field of financial consultancy and financial analysis (applies only to foreign companies licensed by similar regulatory bodies).
- (vii) Evidence of internal control and periodic reviews to ensure the safety of the application of law enforcement, regulations and decisions issued thereunder.
- (viii) Statement of the applicant's commitment to working in the field of securities with a strict separation of administrative and professional and managerial functions between licensed activities in order to avoid conflicts of interest.
- (ix) Copy of the ownership or lease of the property that will be the chief premises for the licensed activity.
- (x) Certified copy of the financial statements (in the event of the company being already set up) for the last three years, or from the date of incorporation, whichever is less.
- (xi) A statement containing the names of the general manager or chief executive officer, the Financial Analysts, the person responsible for internal audit and internal control, and those persons responsible for financial consultancy activity and financial analysis, along with a statement of the job description for each of them.
- (xii) Resumés and certificates of practical experience for all staff who will be providing financial consulting activities and financial analysis for the applicant and the person responsible for internal audit and internal control (along with a declaration form).
- (xiii) Educational qualifications and practical experience of the general manager or chief executive officer and Financial Analysts.
- (xiv) Copies of the passports of the general manager or chief executive officer and Financial Analysts.
- (xv) Forms of client dealing agreements concluded with clients.
- (xvi) A statement indicating whether the applicant or any of its affiliates have any judicial rulings or disciplinary action or penal sanctions against them by any regulatory or market authorities.
- (xvii) A statement explaining the manner in which the books and records of the applicant are stored and an official statement describing this process.
- (xviii) A statement indicating (a) whether the Financial Analyst is undertaking research operations that will be published in a large-scale or not; (b) the targeted customers and the means of communication for research in the UAE; and (c) whether the Financial Analyst will appear in the public media on behalf of the applicant.
- (xix) The signature of the authorized signatory of the applicant on a board resolution in the prescribed form.

(ESCA Resolution Ch. 2, section 1, Article 4, Part 1)

ESCA may also require additional documentation based on their review of the application.

#### 1.4. How Long Does the Licensing Process Take?

ESCA is required to issue its decision on an application for a Licensed Company or a Financial Analyst within 30 days from the date of submitting the completed application. (ESCA Resolution Ch. 2, section 2, Article 7, Clause 2.) There is no difference in the processing times for domestic or foreign applicants.

## **2. Substantive Requirements for Licensing**

### 2.1. Corporate Form

The applicant for a Licensed Company license should be a legal person established in the UAE and have one of the forms as set forth in Federal Law No. 8 of 1984 pertaining to Commercial Companies. These forms are: (i) limited liability company, (ii) public joint stock company, (iii) private joint stock company, (iv) general partnership, (v) simple limited partnership, (vi) de facto company (or unregistered joint venture company) or (vii) share commandite company (or limited partnership with shares). Further, at least 51% of the applicant's share capital should be held by natural or legal persons who are UAE nationals or Gulf Co-operation Council ("GGC") nationals, subject to the principle of reciprocal treatment. (ESCA Resolution Ch. 2, section 1, Article 4.)

The memorandum of association of the company should be written in Arabic (the English translation may appear by the side) and authenticated by the relevant authorities. The objectives of the applicant entity as set out in its constituent documents should include practicing the business of financial consultation and financial analysis. (ESCA Resolution Ch. 2, section 1, Article 4.)

### 2.2. Capital Requirements

The paid up share capital of a Licensed Company should be at least AED 1,000,000 (ESCA Resolution Ch. 2, section 1, Article 4, Part 1).

### 2.3. UAE Nationals Serving as Directors, Officers or Employees

There are no requirements to employ a minimum number of UAE nationals as officers or directors of a Licensed Company.

#### 2.4. Foreign Applicants

Foreign companies licensed by similar regulatory authorities in their own countries may practice the business of financial consultation and financial analysis, provided that such companies have at least five years of experience and are registered with ESCA. (ESCA Resolution Ch. 2, section 1, Article 4, Part 2.)

Foreign companies are held to the same requirements as domestic companies. However, the former need not comply with the corporate form and local ownership requirements and the share capital requirements set out above. The ESCA Resolution suggests that eligible foreign companies may be able to set up as a branch in the UAE without local ownership requirements. However, foreign companies must appoint a “national agent” as a condition for registration of a branch or office in the UAE. The “national agent” should be a UAE national or a company wholly owned by UAE nationals but need not have equity or management interest in the foreign company.

#### 2.5. Companies with Existing Securities/Brokerage Operations

Companies already operating in the field of securities may obtain a license to practice the business of financial consultation and financial analysis in the UAE in addition to their other activities in accordance with such criteria as set by ESCA. In such cases, the company must comply with all terms, conditions and processes as set forth in the ESCA Resolution, including the minimum capital requirements. Further, the company must administratively, technically and technologically separate the activities of the company in order to avoid any conflicts of interests. (ESCA Resolution Ch. 2, section 1, Article 6.)

### **3. Withdrawal from Registration**

If the Licensed Company wishes to completely cease to practice the activity, it must apply in writing to ESCA at least three months prior to the date of actual cessation of its business. (ESCA Resolution Ch. 5, Article 21.)

### **4. Grounds for Denial of Registration**

Registration may be denied in the event that the applicant does not meet the minimum eligibility requirements as set out in the law and regulations.

## **C. OVERVIEW OF SUBSTANTIVE REGULATION**

### **1. Standard of Care**

A Licensed Company and its employees are required to abstain from any acts that may be detrimental to the securities and commodities market, its members or traders therein. (ESCA Resolution Ch. 2, section 3, Article 9, First Part.) They must, in particular:

- (i) honestly and faithfully practice the business and exert the due diligence of the prudent professional person;
- (ii) ensure that the employees fairly perform their duties and render the required care to the interests of the client avoiding any conflict with the interests of the company or the interests of any other client; and
- (iii) ensure that the employees of the company comply with professional conduct codes.

The rules do not provide for the possibility of contracting out of these minimum standards.

A Financial Analyst is required to:

- (i) comply with the provisions of the Securities Law and the regulations, by-laws and resolutions issued thereunder;
- (ii) comply with the professional code of ethics;
- (iii) maintain the required proficiency to practice financial analysis through continuous education and training and by keeping abreast with the latest developments or updates related to applicable professional international standards and practices;
- (iv) practice his or her work with honesty, faith and impartiality, exert the due diligence of the prudent professional person and abstain from misleading practices; and
- (v) perform his or her duties fairly, exercise adequate diligence and care towards the client interests, and avoid any conflicts of interests.

### **2. Anti-fraud Provisions**

The ESCA Resolution sets out several specific anti-fraud prohibitions, including the restrictions in securities trading discussed in section C.7. and with respect to public statements and reports discussed in section C.9. below.

In addition, a Licensed Company is prohibited from:

- (i) providing any advice to the client in violation of or contrary to any recommendations contained in the financial consultation or the financial analysis report issued thereby unless the Licensed Company reveals the reasons for

- such conflict prior to providing the advice to the client (ESCA Resolution Ch. 2, section 3, Article 10); or
- (ii) exercising any type of material or other pressure, whether directly or indirectly, on an approved Financial Analyst during the performance of his or her duties to influence his or her impartial technical opinion in connection with the company, the security or the commodity that is the subject of a financial consultation or financial analysis report (ESCA Resolution Ch. 2, section 3, Article 10).

A Financial Analyst is prohibited from:

- (i) doing anything intended, directly or indirectly, to influence the integrity of the trading or the prices of the securities and commodities in the event of trading on his or her own behalf or on behalf of third parties (ESCA Resolution Ch. 2, section 2, Article 10);
- (ii) participating in or receiving any fees or proceeds, whether directly or indirectly, for any works in connection with the management of an issuer of securities, including, but not limited to participating in meetings related to the management activities of the issuer; taking part in the promotional campaigns related to the management of the issuer; or establishing any relationships with current or potential clients for any business related to the management activities of the issuer (ESCA Resolution Ch. 2, section 2, Article 14);
- (iii) contacting or consulting with the issuer of the security that is the subject of a financial consultation or financial analysis report, or with any entity undertaking the management of the issuer of the security that is the subject of a financial consultation or financial analysis report, or the promotion or underwriting of such issuer unless there are objective reasons justifying such contact, subject to obtaining the prior written consent of the internal controller of the Licensed Company and subject to indicating the number of times and reasons for such contacts in the financial consultation or report (ESCA Resolution Ch. 2, section 2, Article 15, Part 1); or
- (iv) agreeing with the issuer or any other parties for the purpose of influencing the prices of securities of such issuer or its financial position in a manner that is contrary to the facts (ESCA Resolution Ch. 2, section 2, Article 15, Part 1).

### **3. Conflicts of Interest; Disclosure and Notification Requirements**

A Licensed Company must comply with the principles of integrity, transparency, objectivity and impartiality while practicing its business. In particular, a Licensed Company must:

- (i) disclose any services provided by the Licensed Company to the issuer of the security that is the subject of a financial consultation or a financial analysis

- report within a 12-month period prior to the date of providing such consultation, report, or any services expected to be provided within three months following the date of providing such consultation or report (ESCA Resolution Ch. 2, section 3, Article 9, Part 2);
- (ii) disclose any interest held by the Licensed Company in the security that is the subject of a financial consultation or financial analysis report, if its ownership amounted to 1% or more (ESCA Resolution Ch. 2, section 3, Article 9, Part 2);
  - (iii) disclose the reasons for providing any advice to a client in violation of or contrary to any recommendations contained in a financial consultation or the financial analysis report prior to providing the advice to the client (ESCA Resolution Ch. 2, section 3, Article 10);
  - (iv) disclose in a financial consultation or report the number of times and the reasons for contacting or consulting with an issuer of the security that is the subject of the financial consultation or financial analysis report, or with any entity undertaking the management of the issuer of the security that is the subject of a financial consultation or financial analysis report, or the promotion or underwriting of such issuer (ESCA Resolution Ch. 3, section 2, Article 15, Part 1);
  - (v) explain the relationship, if any, between the Licensed Company and the market maker of the security that is the subject of a financial consultation or financial analysis report (ESCA Resolution Ch. 2, section 3, Article 9, Part 2); and
  - (vi) immediately notify ESCA if the Licensed Company wishes to cease the provision of any financial consultations or the issue of financial analysis reports for a particular security, stating the reasons thereof (ESCA Resolution Ch. 2, section 3, Article 9, Part 2).

A Financial Analyst is required to:

- (i) immediately disclose to the internal controller of the company any relationship linking the Financial Analyst, his or her spouse or dependent children to the issuer of any security that is the subject of financial analysis;
- (ii) immediately disclose to the internal controller of the company any interest the Financial Analyst, his or her spouse or dependent children hold in the issuer of any security that is the subject of financial analysis (the internal controller of the company is required to notify ESCA in such cases if the internal controller deems it necessary to do so); and
- (iii) disclose any interest that the Financial Analyst, his or her spouse or dependent children hold in the issuer of any security that is the subject of financial analysis at the time of any statements to the media.

(ESCA Resolution Ch. 2, section 2, Article 14.)

#### **4. Insider Trading**

Licensed Companies and their employees, including Financial Analysts, are subject to the Securities Law which states that no person may deal in securities based on undeclared or undisclosed information which came to the person's knowledge by virtue of his or her position. Article 37 of Resolution 3 provides for a penalty of imprisonment for a term ranging from 3 months to 3 years and a fine of between AED 100,000 and AED 1,000,000. (ESCA Resolution Ch. 4, Article 19.)

#### **5. Contractual Relationship with Clients**

The ESCA Resolution contemplates a written agreement between the client and the Licensed Company. It is incumbent on the Licensed Company to explain to the client prior to signing the relevant agreement between the Licensed Company and the client, the scope of the company's duty, which is to provide advice and consultancy without guaranteeing results. The Licensed Company and the Financial Analysts are responsible for the recommendations contained in a financial consultation or financial analysis report issued thereto. (ESCA Resolution Ch. 5, Article 20.)

#### **6. Disclosure of Fees**

At the time of signing the relevant agreement, the Licensed Company must also clearly state the rights and obligations of the client and the Licensed Company respectively and also determine the fees and commission payable by the client for the service.

#### **7. Personal Securities Trading**

A Licensed Company and all its board members, general manager, chief executive officer or other personnel of the Licensed Company and their respective spouses and dependent children and any approved Financial Analyst or any person who took part in preparing, reviewing or approving the financial consultation or financial analysis report, as well as their spouses and dependent children, are prohibited from:

- (i) holding the security that is the subject of the financial consultation or financial analysis report, or any financial derivatives associated therewith, prior to offering any such security or derivatives for subscription;
- (ii) trading in the security that is the subject of a financial consultation or financial analysis report, or any financial derivatives associated therewith within 15 days prior to the date of issuing the consultation or publishing the analysis report, and for five days after issuing the consultation or publishing the



- analysis report, or issuing any supplementary consultation or reports that include any amendment or variation to the recommendation or targeted price; or
- (iii) trading in the security that is the subject of the financial consultation or financial analysis report, or any financial derivatives associated therewith, contrary to the recommendations included in the consultation or report for at least 30 days from the date of issuing the consultation or report.

However, the prohibition does not apply in any of the following circumstances:

- (i) if the acquisition (of the security) occurs prior to commencing the consultation or assuming the task of the report;
- (ii) in the case of any material unexpected change in the financial position of any of the persons subject to the prohibition, provided that the prior written consent of the internal controller of the Licensed Company is obtained;
- (iii) if any of the persons subject to the prohibition has contributed to an investment fund trading in the security that is the subject of a financial consultation or financial analysis report, or any financial derivatives associated therewith, provided that the percentage of ownership by any such persons may not exceed 1% of the total assets of such fund and that the investments of such fund in the security or any of its derivatives may not exceed a total of 20% of the assets of such fund; or
- (iv) if any important events or material information arise and may lead to changing the subject of a financial consultation or financial analysis report, and then only after obtaining the written consent of the internal controller of the Licensed Company.

## **8. Performance-Based Fees and Commissions**

While there are no specific restrictions on performance-based fees or commissions, the terms of such must be clearly set out in writing in the advisory agreement between the Licensed Company and the client.

## **9. Advertising; Public Statements and Publication Requirements**

### **9.1. Licensed Company**

A Licensed Company is prohibited from:

- (i) including any false or misleading information or statements in the financial consultation or the financial analysis reports;
- (ii) providing any consultation, publishing any financial analysis report or making any statement by means of the audio, video or printed media or in any public

place regarding a security 15 days prior to and after the expiry of the period during which the founders of the issuer of the security are prohibited to trade in the security, except following important events or disclosure of material information that may affect the financial position of the issuer, and only after obtaining the written consent of the internal controller of the Licensed Company (this prohibition also applies to the board members, general manager, chief executive officer or other personnel of the Licensed Company and their respective spouses and dependent children);

- (iii) providing any consultation, publishing any financial analysis report or making any statement by means of the audio, video or printed media or in any public place regarding a company, a security or any financial derivatives thereof, if the Licensed Company is providing any service in connection with the issuing of such security or any derivatives thereof, whether directly or indirectly, including the management, promotion or underwriting of the issue during the period of providing the service; or
- (iv) publishing any financial analysis report or making a statement by means of the audio, video or printed media or in any public place regarding a company, a security, a commodity or any financial derivatives thereof in return for any tangible or intangible consideration, whether directly or indirectly, of any kind or nature from the issuer of such security or any entity related thereto to the Licensed Company, any of its approved Financial Analysts, board members, general manager, chief executive officer or any staff member.

## 9.2. Financial Analysts

A Financial Analyst is required to comply with the principles of objectivity, professionalism and impartiality when publishing a report or its summary or when making a statement to the media and is prohibited from:

- (i) publishing or promoting any false statements or information in connection with the position of companies whose securities are listed in the securities and commodities market;
- (ii) making any statements pertaining to the issuer of the security that is the subject of a financial consultation or financial analysis report; only such expressions that recommend the purchase, sale or holding of the security or any similar expressions must be made; and
- (iii) giving specific prices of a particular security to be issued by a company under incorporation.

When preparing a financial consultation or financial analysis report, a Financial Analyst is required to:

- (i) identify the names and addresses of all the persons participating in the report;
- (ii) specify the date of preparation of the report;

- (iii) define the relationship between the Licensed Company and all entities concerned with the report;
- (iv) indicate that the recommendation in the report is merely a technical opinion without guaranteeing any results;
- (v) avoid the use of any expressions of exaggeration, promise, allurements, cheating, deception or manipulation in the report;
- (vi) use terms such as “predictions,” “forecasts,” “estimates” or “assumptions” when preparing the report;
- (vii) use terms such as “purchase,” “sale” or “holding” when preparing the report;
- (viii) identify the mechanism of assessment and evaluation used and the assumptions and comparisons relied upon when preparing the report;
- (ix) identify the sources of information and data utilized when preparing the report;
- (x) prepare a table, graphic or chart to illustrate the targeted prices contained in previous analysis reports—for at least the last one year, if any—related to the security that is the subject of the report compared with the actual prices on the date anticipated to achieve the targeted prices contained in those reports; and
- (xi) obtain the approval of the Licensed Company on the report.

(ESCA Resolution Ch. 2, section 2, Article 14)

## **10. Client Solicitors**

There are no specific rules governing persons or firms that solicit or identify potential clients for Licensed Companies. However, depending on their level of involvement, such persons or firms may be deemed to be practicing in the “business of financial consultation” and subject to regulation themselves. (ESCA Resolution Ch. 3, section 2, Article 15, Part 1.)

## **11. Books and Records**

The Licensed Company is required to keep and archive all studies and documents relating to the business of financial consultation and financial analysis; and allow ESCA access to all the information and documents related to such studies. (ESCA Resolution Ch. 2, section 3, Article 9, First part, Clause 7.) The Licensed Company is also required to keep certain written approvals of the controller of the company for at least three years from the date of issue of such approvals. (ESCA Resolution Ch. 2, section 3, Article 9.)

**D. ANTI-MONEY LAUNDERING, DATA PROTECTION AND CONSUMER PRIVACY**

**1. Anti-money Laundering and Terrorism Financing**

Money laundering is a criminal offense in the UAE pursuant to Federal law No. 4 for 2002 Regarding Criminalization of Money Laundering enacted on January 22, 2002 (“Law No. 4”). Law No. 4 defines “money laundering” as any act that involves the transfer, conversion or deposit of “property,” or the concealment or disguise of the true nature of the property, derived from certain specified criminal offenses but made to appear as having originated from a legitimate source.

“Property” is defined broadly in Law No. 4 to include assets of any kind, whether corporeal or incorporeal, movable or immovable, and the legal documents or instruments evidencing title to the assets or rights related thereto, which are derived from the proceeds of certain criminal offenses.

ESCA has adopted Decision No. (17/R) of 2010 concerning Anti-money Laundering and Terrorism Finance Combating Procedures which imposes “know your client” rules on establishments regulated by ESCA, including Licensed Companies. Pursuant to this Decision, Licensed Companies are required to verify the identity documents and proof of residence of clients and to adopt internal rules that ensure identification of whether the customer is of political significance in a foreign country. (Article 3, section 1 & Article 5, section 1 of Decision No. (17/R) of 2010 (“Decision No. (17/R)”). Clients are then required to be categorized into three categories (low risk, medium risk, high risk) according to the rates of potential risk they may pose. The company or institution shall take preventive and precautionary measures towards customers posing high risks by repeated, periodic and careful examination of such customer relationships. (Article 6, section 1 of Decision No. (17/R).) Various categories of suspicious transactions are required to be reported to the Anti-Money Laundering and Suspicious Cases Unit founded pursuant to Law No. 4. (Article 9, section 1 of Decision No. (17/R).)

Licensed Companies are also required to appoint a “compliance officer” who is responsible to ensure compliance with the anti-money laundering rules. (Article 12, section 1 of Decision No. (17/R).)

**2. Data Protection and Privacy**

The ESCA rules require that Financial Analysts not disclose the names of clients or reveal any information relating to them. Further, Financial Analysts are also required to hold in confidence any information that is required not to be disclosed. (ESCA Resolution Ch. 3, section 2, Article 14.)

While the UAE does not have conventional “data protection” laws such as those typically found in Western jurisdictions, notice must be taken of Article 379 of the UAE Penal Code which states that “any individual who by reason of his

profession, craft, situation or art is entrusted with a secret and who discloses it in cases other than those permitted by the law, who uses it for his own advantage or other person's advantage . . . shall be punishable by confinement for a minimum period of one year and by a fine of at least AED 20,000 or by one of these two penalties . . . all this unless the owner of the secret has consented that it be disclosed or used.”

Further, Article 378 of the UAE Penal Code prohibits the publishing of others' private affairs. It states that infringement of privacy under such circumstances is punishable by confinement for a period not exceeding one year and by a fine not exceeding AED 10,000 in both cases or by one of these two penalties. Any individual who, through any means of publicity, published news, pictures or comments pertaining to the secrets of peoples' private or family lives even if such information is real and true is subject to these laws.

### **3. Other Substantive Regulations**

The foregoing is a basic summary of the rules specifically governing Licensed Companies and Financial Analysts. It is not an exhaustive summary of all laws and regulations that may impact investment advisers in the UAE, which laws and regulations may vary depending on the specific nature and operations being undertaken in the UAE.

Typically, apart from the laws already discussed herein, it is likely that the Licensed Company may also be subject to the following laws: (i) The UAE Commercial Companies Law No. 8 of 1984 as amended; (ii) The UAE Civil Transactions Law No. 5 of 1985 as amended; (iii) UAE Federal Law No. 8 of 1980 on Regulation of Labor Relations, as amended; and (iv) any rules, regulations or resolutions passed by the UAE Central Bank.

## **E. ENFORCEMENT**

### **1. Investigations**

ESCA, at its own discretion or upon a request by a concerned market participant, may conduct an investigation of a Licensed Company or a Financial Analyst in any of the following events:

- (i) violation of the provisions of the Securities Law and the by-laws, regulations, resolutions or instructions issued in implementation thereof;
- (ii) an act intended, whether directly or indirectly, to mislead traders, or disseminate or promote any false statements or information on the conditions of the securities and commodities market or the traders therein; or
- (iii) any breach of the professional codes of ethics.

(ESCA Resolution Ch. 4, Article 16).

If the results of any investigation conducted by ESCA reveal that a violation constitutes a penal offense, ESCA will refer such violation to the public prosecution.

## **2. Suspension and Cancellation of License**

ESCA may suspend a Licensed Company or a Financial Analyst from practicing the licensed activity, or may cancel the license in any of the following cases:

- (i) if any of the conditions of the license or the approval stipulated in the provisions of the Securities Law, and the by-laws, regulations, resolutions or instructions issued in implementation thereof is no longer satisfied;
- (ii) a gross breach occurs of any of the duties or obligations contained in the provisions of the Securities Law, and the by-laws, regulations, resolutions or instructions issued in implementation thereof;
- (iii) failure to pay the fee for the annual renewal of the license or the annual approval;
- (iv) the passing of a final court ruling declaring the Licensed Company bankrupt; or
- (v) dissolution or liquidation of the Licensed Company.

(ESCA Resolution Ch. 4, Article 17).

## **3. Right of Appeal**

The Licensed Company or Financial Analyst(s) may appeal the decision to suspend the practice or cancel the license before the competent court within 30 days from the date of being notified of such decision. (ESCA Resolution Ch. 4, Article 18.)

## **4. Penalties**

Apart from administrative penalties, such as cancellation of a license, anyone who violates the provisions of the ESCA Resolution may also be penalized in accordance with the provisions of the Securities Laws, and the by-laws, regulations, resolutions or instructions issued in implementation thereof. (ESCA Resolution Ch. 4, Article 19.) The penalties range from a fine or imprisonment or both depending on the nature and severity of the offense.