United Arab Emirates
Afridi & Angell

Securities regulation in the UAE

Regulation of securities and financial markets in the United Arab Emirates (UAE) is a potential source of confusion to investors and financial institutions. Generally speaking, there are two different regulatory schemes and three different regulators.

Historically, regulation of securities trading and transactions involving investment products has been the domain of the UAE Central Bank. In 2000, the Emirates Securities and Commodities Authority (SCA) was created. Together the Central Bank and the SCA are the regulators under the UAE federal regulatory scheme.

A separate regulatory scheme exists in the Dubai International Financial Centre (DIFC). The DIFC is a financial free zone located in the Emirate of Dubai, which has a separate legal and regulatory structure from the rest of the UAE. The regulator in the DIFC is the Dubai International Financial Services Authority (DFSA).

UAE Federal Scheme

Financial markets in the UAE are relatively young. The first security exchange in the UAE was created only a decade ago. Prior to the creation of the SCA in 2000, the Central Bank assumed responsibility for securities regulation. Today, such responsibility is shared with the SCA.

As a matter of law, the division of responsibility between the Central Bank and the SCA is not clearly delineated. As a matter of practice, the SCA has generally limited its regulatory oversight to publicly listed UAE companies and the three public securities exchanges in the UAE proper – the Dubai Financial Market (DFM), the Abu Dhabi Securities Exchange (ADX) and the Dubai Gold and Commodities Exchange (DGCX). Sale of foreign securities in the UAE is regulated by the Central Bank. The Central Bank also exercises considerable influence through its licensing and related regulatory oversight of banks and various types of financial institutions.

In recent years, the SCA has taken a more active role in financial regulation generally, particularly in the area of corporate governance for publicly listed companies. In addition, regulations passed within the past two years suggest the SCA may be looking to take a more active regulatory role that may expand beyond listed companies and local securities exchanges. For example, SCA Decision No. 33/R of 2009 deals with the function of maintaining a shareholder register for private joint stock companies. Private companies have historically been outside of the scope of SCA regulation. SCA Decision No. 17/R of 2010 concerning Anti-Money Laundering and Terrorism Finance Combating Procedures, although applicable only to the markets, companies and institutions (and their directors and employees) licensed by the SCA, addresses a topic already regulated by the Central Bank.

Securities laws and regulations in the UAE are still in an evolving stage and some observers have questioned whether the country should move to a system whereby securities regulation becomes the sole domain of the SCA. However, there is no indication that such suggestion will be followed any time soon. The UAE Central Bank has been and remains a powerful institution whose authority extends beyond matters conventionally associated with the domain of a central bank.

DIFC/DFSA Scheme

The DIFC was established in 2005. One of the goals was to create a modern financial center with a regulatory structure modeled on best practices followed in major international financial markets such as New York, London, Singapore and Australia.

Creating such a centre involved creating a new legal and regulatory system from scratch, which deviates from the UAE system in several key respects. For example, DIFC law is based on common law (the UAE. has a civil law system), legislation is adopted in English (UAE legislation is adopted in Arabic) and court proceedings are conducted in English by English speaking, common law-trained judges (UAE court proceedings are conducted in Arabic).


Gregory Mayew

Securities regulation in the DIFC is the responsibility of the DFSA. Although the regulatory scheme is young and still evolving, securities legislation in the DIFC is generally more detailed than under the UAE federal scheme and DFSA compliance requirements are generally more rigorous. Contrasts are considerable such that investors and financial institutions should view the DIFC and the UAE like two different countries when it comes to legal and regulatory matters.

One noteworthy feature of the DIFC/DFSA regulatory scheme worth highlighting is that rules governing the marketing and sale of interests in collective investment schemes (eg investment funds) are different from rules governing the marketing and sale other types of securities.

Although the three regulatory bodies communicate with each other, communication does not make for a unified system. At the outset of any proposed securities transaction, an important first step is to ascertain which rules and regulations apply so that compliance can be structured accordingly.

Contacts:
P.O. Box 3961
Al Ghaith Tower - Level 8, Suite 806
Hamdan Street
Abu Dhabi, UAE

Tel: +971 2 627 5134
Fax: +971 2 627 2905
E-mail: abudhabi@afridi-angell.com
Web: www.afridi-angell.com