# The Banking Regulation Review

Sixth Edition

Editor
Jan Putnis

Law Business Research

# The Banking Regulation Review

The Banking Regulation Review
Reproduced with permission from Law Business Research Ltd.

This article was first published in The Banking Regulation Review - Edition 6
(published in May 2015 – editor Jan Putnis).

For further information please email
Nick.Barette@lbresearch.com

# The Banking Regulation Review

Sixth Edition

Editor
Jan Putnis

Law Business Research Ltd

PUBLISHER
Gideon Roberton

BUSINESS DEVELOPMENT MANAGER
Nick Barette

SENIOR ACCOUNT MANAGERS
Katherine Jablonowska, Thomas Lee

ACCOUNT MANAGERS
Felicity Bown, Joel Woods

PUBLISHING COORDINATOR
Lucy Brewer

MARKETING ASSISTANT
Rebecca Mogridge

EDITORIAL COORDINATOR
Shani Bans

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Anne Borthwick

SUBEDITOR
Janina Godowska

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk


ISBN 978-1-909830-46-2

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

# THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW

THE AVIATION LAW REVIEW

THE FOREIGN INVESTMENT REGULATION REVIEW

THE ASSET TRACING AND RECOVERY REVIEW

THE INTERNATIONAL INSOLVENCY REVIEW

THE OIL AND GAS LAW REVIEW

THE FRANCHISE LAW REVIEW

THE PRODUCT REGULATION AND LIABILITY REVIEW

THE SHIPPING LAW REVIEW

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW

THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW

THE TRANSPORT FINANCE LAW REVIEW

www.TheLawReviews.co.uk

# ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADVOKATFIRMAET BA-HR DA

ADVOKATFIRMAN VINGE

AFRIDI & ANGELL

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO

ALLEN & GLEDHILL LLP

AMARCHAND & MANGALDAS & SURESH A SHROFF & CO

ANDERSON MŌRI & TOMOTSUNE

ARAQUEREYNA

ARTHUR COX

BONELLI EREDE PAPPALARDO

BREDIN PRAT

BUN & ASSOCIATES

CASTRÉN & SNELLMAN ATTORNEYS LTD

CHANCERY CHAMBERS

DAVIES WARD PHILLIPS & VINEBERG LLP

DAVIS POLK & WARDWELL LLP

DE BRAUW BLACKSTONE WESTBROEK

ELVINGER, HOSS & PRUSSEN

ESTUDIO JURÍDICO USTÁRIZ & ABOGADOS

FERRERE ABOGADOS

GIDE LOYRETTE NOUEL

GILBERT + TOBIN

GORRISSEN FEDERSPIEL

HENGELER MUELLER PARTNERSCHAFT VON RECHTSANWÄLTEN MBB

KBH KAANUUN

KIM & CHANG

LAKATOS, KÖVES AND PARTNERS

LENZ & STAEHELIN

MARVAL, O'FARRELL & MAIRAL

MATTOS FILHO ADVOGADOS

MIRANDA CORREIA AMENDOEIRA & ASSOCIADOS

MKONO & CO ADVOCATES

MORATIS PASSAS LAW FIRM

NAUTADUTILH

NOERR OOO

PELIFILIP SCA

PIMENTA E ASSOCIADOS

RUSSELL MCVEAGH

SHALAKANY LAW OFFICE

SKUDRA & ŪDRIS

SLAUGHTER AND MAY

SYCIP SALAZAR HERNANDEZ & GATMAITAN

T STUDNICKI, K PŁESZKA, Z ĆWIĄKALSKI, J GÓRSKI SPK

URÍA MENÉNDEZ ABOGADOS, SLP

VASIL KISIL & PARTNERS

VIEIRA DE ALMEIDA & ASSOCIADOS

WERKSMANS ATTORNEYS

# CONTENTS

# EDITOR'S PREFACE

While the pace of new rulemaking affecting banking groups has slowed somewhat in Europe and the United States in the past year, the debate about the future of global banking rages on, not least because implementation of the vast body of rules made since the financial crisis continues. If anything, the debate has become a more complex one, with a number of new fronts opening. Implementing complex new rules is, of course, generally more difficult than making them, and in many areas of activity rules that took shape some time ago are only now exhibiting their shortcomings and unintended consequences.

Questions about 'too big to fail' remain, but with gradually increasing realism among regulators, some governments and banks ask themselves about how this issue might best be managed in the long term. There is now greater recognition that painstaking recovery and resolution planning was not just an urgent post-crisis task but must remain a critical feature of banking supervision in perpetuity. Indeed, the list of points on which regulators should improve cross-border coordination on recovery and resolution matters remains formidably long. There is also a risk that while 'too big to fail' was the most well known and eye-catching phrase to emerge from the financial crisis, any attempt by governments to force or catalyse the break-up of large banking groups would risk neglecting the importance of the 'too inter-connected to fail' problem, which is, of course, far less a function of the size of banks.

The past year has seen further large fines for banks from conduct regulators, most notably in the context of the spot FX markets. Many bank prudential regulators are, sensibly, thinking more seriously now about the implications of these fines (and associated litigation) for the prudential supervision of the banks affected and, potentially, for financial stability itself. The 'conduct agenda', as it is now frequently called, has moved on in other ways in some countries, including increasing discussion among regulators about competition (antitrust) aspects of wholesale as well as retail financial markets. This will begin to create new and, in many cases, unwelcome challenges for large banks.

Return on equity continues to be a significant challenge in the banking sector, with signs of increasing shareholder pressure on some banks. This may add a further dimension to structural reform in addition to the existing regulatory one. In some cases, particularly where activist investors are concerned, all involved would do well to remember that shareholder activism lay behind some of the more disastrous mergers and acquisitions in the banking sector before the financial crisis. While it can be expected that regulators in most important financial jurisdictions will be more vigilant in assessing the viability of major transactions in the sector now than they were before the crisis, boards of directors of banks will also need to avoid the temptation to give in to short termism in the face of poor shareholder returns. This is arguably particularly the case in an environment where market restructuring and new technology present long-term opportunities for some banks as well as threats.

Governance of banking groups continues to be high on the agendas of many regulators around the world. Directors of banks in the UK, many other European countries and the US rightly focus increasingly on whether they are discharging their regulatory obligations properly when taking significant decisions, and whether their knowledge (and their ability to oversee) the businesses for which they are responsible is sufficient. A cynical bystander would, however, continue to say that in a global bank with tens of thousands of employees worldwide, good governance structures will only ever play a limited role in reducing the risk of a calamity on, for example, a trading desk, and that good luck (or bad luck) is more likely to determine success or failure in global compliance. That is surely too cynical a view in light of the significant strides that many banks have made to improve their governance and oversight in recent years. However, it remains a view with some validity in relation to emerging threats that are not yet generally well understood. These include many cyber-related risks, not just the possibility of the use of banks' IT systems by criminals but also the threat to financial stability posed by vulnerabilities (and in some cases unreliability) in systems used to settle payments and securities transactions. Bank governance in the context of the use of banks for criminal purposes, including tax evasion, has continued to have a very high profile over the past year.

Important developments in prudential regulation in the past year include further advances in the EU towards implementation of the Recovery and Resolution Directive and the Financial Stability Board's proposals on Total Loss-Absorbing Capacity (TLAC). TLAC looks set to continue to dominate debates on capital structure and funding in the banking sector this year, particularly on the difficult question of where and how TLAC should be 'positioned' within groups of companies in order to facilitate their chosen resolution strategy.

This sixth edition of *The Banking Regulation Review* contains submissions provided by authors in 48 countries and territories in March and April 2015, as well as the customary chapters on International Initiatives and the European Union. It is a great privilege to share space in this book with such a distinguished and interesting group of banking and regulatory lawyers from around the world, and I would like to thank them all again for their participation (and those authors who have joined the book for the first time this year).

My thanks also to Shani Bans, Nick Barette and Gideon Roberton at Law Business Research Ltd for their further unusual levels of patience and skill in compiling this edition and for continuing to encourage the participation of the authors.

The partners and staff of Slaughter and May continue to inspire and innovate in the area of banking regulation, and to tolerate the time that I spend on chapters of this book. Particular thanks go to Ben Kingsley, Peter Lake, Laurence Rudge, Lucy Bennett, Nick Bonsall, Edward Burrows, Tim Fosh, Helen McGrath and Tolek Petch.

**Jan Putnis**
Slaughter and May
London
May 2015

# Chapter 46

# UNITED ARAB EMIRATES

*Amjad Ali Khan and Stuart Walker*[1]

## I INTRODUCTION

The past year has seen a continuation of the substantial improvement in the performance of banks and financial institutions in the UAE. Provisioning for most non-performing loans is now complete. and banks are in the process of building good assets. More importantly, profits are substantially higher than they were in the previous financial year.

## II THE REGULATORY REGIME APPLICABLE TO BANKS

### i UAE

The regulatory framework for banking in the UAE is based on Federal Law No. 10 of 1980 concerning the Central Bank, the monetary system and the organisation of banking (Banking Law). Under the Banking Law, the Central Bank of the UAE was created and entrusted with the issuance and management of the country's currency, and the regulation of the banking and financial sectors. The Banking Law provides for the licensing and regulation by the Central Bank of:

*a* commercial banks, which are defined to include institutions that customarily receive funds from the public, grant loans, issue and collect cheques, place bonds, trade in foreign exchange and precious metals, or carry on other operations allowed by law or by customary banking practice; and

*b* investment banks and companies, which manage portfolios on behalf of individuals or companies, advise clients on raising or placing equity and debt, subscribe to equity and debt instruments, prepare feasibility studies for projects, market shares and debt instruments, and establish and manage funds. Investment

1 Amjad Ali Khan and Stuart Walker are partners at Afridi & Angell.

banks are distinguished from commercial banks principally in that they do not accept deposits for less than two years;

*c* finance companies, which provide corporate and consumer credit facilities but may not accept deposits from individuals;

*d* financial intermediaries, which broker the purchase or sale of domestic or foreign shares or instruments;

*e* monetary intermediaries, which are foreign exchange dealers who purchase and sell currencies;

*f* representative offices, which are regional or liaison offices of foreign banks and financial institutions;

*g* Islamic banks, finance companies and investment companies, which institutions are regulated by the Central Bank under Federal Law No. 6 of 1985 regarding Islamic Banks, Financial Institutions and Investment Companies. Islamic banks undertake all the activities of a commercial bank, and additionally can own assets financed by them. Islamic finance companies may provide personal and consumer, property, vehicle and trade finance, issue guarantees and enter into foreign exchange contracts with corporate entities, subscribe to shares, bonds and certificates of deposits, accept deposits from corporate entities and manage investment vehicles. All Islamic institutions must operate in accordance with the principles of Islamic shariah; and

*h* real estate banks and finance companies, which specialise in funding real estate projects on a conventional or shariah-compliant basis.

The Banking Law does not apply to statutory public credit institutions, governmental investment institutions and development funds, private savings and pension funds, or to the insurance sector.

While the Central Bank is the principal regulatory authority of banks and financial institutions in the UAE, such entities are also subject to additional registration and licensing requirements at the federal and emirate levels. The Federal Companies Law also governs all commercial companies incorporated in the UAE and all foreign companies with branch offices in the UAE.

All commercial banks incorporated in the UAE must be established as public shareholding companies under the UAE Companies Law and must be majority-owned by UAE nationals. A majority of directors of such companies must be UAE nationals. While for monetary intermediaries and investment companies the minimum UAE national shareholding requirement is 51 per cent, for finance companies, commercial banks and investment banks the minimum UAE national shareholding requirement is 60 per cent. Although branches of foreign companies established in the UAE are required to appoint a UAE national as a national agent, foreign banks are not required to have an agent.

In recent years, some banks incorporated in Member States of the Gulf Cooperation Council (GCC) have been allowed to establish fully fledged branches. GCC banks have also been allowed to acquire controlling stakes in UAE banks and financial institutions. A few banks were issued wholesale banking licences in 2014.

The principal difference in the treatment of local and foreign commercial banks is that local banks are not subject to any taxation on their income, whereas foreign banks are subject to taxation at the emirate level. Normally this tax amounts to 20 per cent of net income.

Non-resident banks grant bilateral credit facilities and also participate in syndications in the UAE. They are not deemed to be resident, domiciled or carrying on business in the UAE, and are not liable to pay tax in the UAE merely on account of such bilateral facilities or participation in syndications. The confidentiality of customer information by banks is not specifically provided for under the Banking Law, but the principle is recognised as a customary banking practice, and, implicitly, under certain regulations issued by the Central Bank. The Central Bank has wide powers to obtain information.

### ii Emirates Securities and Commodities Authority (SCA)

The SCA regulates the securities markets in the UAE. All UAE banks are listed on one of the two onshore markets: the Abu Dhabi Exchange and the Dubai Financial Market. The SCA licenses all brokers, consultants and custodians who provide services related to listed securities. The Investment Funds Regulation issued by the SCA in July 2013 transferred regulatory responsibility for the licensing and marketing of investment funds and for a number of related activities from the Central Bank to the SCA. The sale, marketing and promotion of foreign securities and funds in the UAE, and the establishment of domestic funds, require the consent of the SCA.

### iii Dubai International Financial Centre (DIFC)

The Dubai Financial Services Authority (DFSA) has adopted a regulatory approach modelled, at least in part, on the Financial Services Authority in the United Kingdom. The DFSA does not grant banking licences *per se*; it authorises financial service providers to undertake specific financial services. The relevant financial services in respect of banks would include providing credit and accepting deposits. There are approximately 100 international banking institutions with a registered presence in the DIFC. Of these, a substantial number of institutions have not applied for the authorisation to accept deposits. This reluctance on the part of various institutions to be a 'true' bank can be traced back to two reasons. First, DIFC entities were historically not able to deal with retail customers. This restriction was lifted several years ago, but the business model of the vast majority of institutions within the DIFC has been to focus on corporate clients or high-net-worth individuals. The second reason that banks have been reluctant to apply for the 'accepting deposits' authorisation is that they remain unable to deal in dirhams or accept deposits from the UAE markets. Most of the banks that have set up in the DIFC have done so as branches of overseas companies; this has been done for capital adequacy reasons. Recently, however, it has been the policy of the DFSA to encourage banks to incorporate new subsidiaries within the DIFC and capitalise those subsidiaries to an acceptable level.

### iv US Foreign Account Tax Compliance Act (FATCA)

The UAE and the US reached an agreement in substance in May 2014 to include the UAE on the list of jurisdictions to be treated as having an intergovernmental agreement (IGA) in effect in relation to FATCA. The UAE has adopted Model 1.

Since 1 July 2014, banks and financial institutions in the UAE must comply with the requirements of the IGA.

## III PRUDENTIAL REGULATION

### i UAE

The Central Bank has issued regulations on a whole range of issues and ensures compliance with such regulations on the basis of a bank-examiner type approach.

In July 2012, the Central Bank issued a circular on liquidity as part of a phased implementation of Basel III. Its implementation was due to commence in January 2013, but has been postponed until further consideration of the requirements of the regulations. The qualitative requirements require banks to comply with 12 criteria when setting up their liquidity risk management and governance frameworks. Quantitative requirements require compliance with four ratios: a liquid assets ratio, uses (of funds) to stable resources ratio, a liquidity coverage ratio and a net stable funding ratio. Lenders have been required to hold 10 per cent of their liabilities in 'high-quality liquid assets' from 1 January 2013. The regulations also prescribe the manner in which different categories of assets are to be risk-weighted. The implementation of the regulations, however, is on hold until further directions from the Central Bank.

Circular No. 16/93 issued by the Central Bank governed large exposures incurred by banks. Large exposures were funded exposures. Banks were restricted from exceeding the maximum exposure per client or group. Circular No. 32/2013 was issued by the Central Bank in November 2013 to replace Circular No. 16/93. Now large exposures include funded and unfunded exposures and unutilised committed lines. Revised restrictions have been imposed with regard to lending to government and government-owned entities. Banks cannot lend sums exceeding 100 per cent of their capital to governments and their related companies, or more than 25 per cent to an individual borrower. The rules also prescribe the manner in which different categories of assets are to be risk-weighted. The new Circular allows banks five years within which to bring their exposure within the limits prescribed by the Circular.

The Central Bank has also issued specific circulars on capital adequacy requirements for banks in the UAE. Until 1993, all commercial banks were required to maintain a capital-assets ratio of 1:15, which was widely regarded as inadequate. In 1993, the Central Bank issued new risk-based capital adequacy rules based on the 1988 recommendations of the Basel Committee on Banking Regulations and Supervisory Practices. These rules require all commercial banks to maintain a risk-assets ratio of 10 per cent.

In 2012, a circular was issued by the Central Bank to restrict mortgage loans to expatriates to 50 per cent of the value of a first home, and 40 per cent of the value of a second home. Loans to UAE nationals were capped at 70 per cent of the value of their first home and 60 per cent of their second home. At the request of the banks, the circular was reconsidered by the Central Bank and was reissued in October 2013. As reissued, the mortgage caps have been revised, and banks are now permitted to grant mortgage loans to expatriates up to 75 per cent of the value of a first home, and up to 60 per cent of the value of a second. Loans to UAE nationals are capped at 80 per cent of the value of their first home and up to 65 per cent of the value of the second. If the value of the first home exceeds 5 million dirhams, the mortgage loan cap applicable to an expatriate and a UAE national is 60 and 65 per cent, respectively.

### ii DIFC

***Relationship with the prudential regulator***

Firms authorised by the DFSA are required to notify the DFSA of all matters that could reasonably be expected to be notified to the DFSA. There are quarterly reporting requirements in respect of capital adequacy. The DFSA conducts themed reviews on a regular basis; previous reviews have focused on prevention of money laundering and terrorism financing. The DFSA has also focused on authorised firms' compliance with restrictions imposed on dealing with Iranian counterparties arising from the UN sanctions relating to non-nuclear proliferation; and political exposed persons. Recent reviews have also looked at client take-on processes and suitability assessments.

***Management of banks***

The DFSA requires all financial institutions active in the DIFC to have adequate systems and controls in place to ensure that they are properly managed. There are a number of mandatory appointments (senior executive officer, chief financial officer, etc.). Individuals holding mandatory appointment positions are subject to prior clearance by the DFSA. The DFSA does not impose any requirements or make any restrictions in respect of bonus payments to management and employees of banking groups.

***Regulatory capital***

Those firms holding authorisations to accept deposits and provide credit fall into prudential category 1 (being the highest of categories 1 to 5). Category 1 firms have a base capital requirement of US$10 million. The actual capital requirement may be significantly higher, depending upon the volume of business being conducted and other factors set out in the DFSA Rulebook. As previously mentioned, historically, most banking groups established branches in the DIFC and were able to obtain waivers of the capital adequacy requirements on that basis – in short, they looked to their head office balance sheet as support for their DIFC functions. This approach is becoming less and less acceptable to the DFSA, particularly for smaller financial institutions coming from jurisdictions other than Tier I jurisdictions.

## IV CONDUCT OF BUSINESS

### i UAE

Local banks have a board of directors, a chief executive, a number of board committees and senior executives. There is currently no regulation of bonus payments to management; bonus payments have, however, not been of a magnitude that requires regulation.

UAE banks are all publicly listed companies, and must comply with the Central Bank law, UAE companies law and Emirates Securities and Commodities Authority laws, all of which, *inter alia*, regulate management.

There is currently little or no regulation of bank holding companies or subsidiaries.

Banks are required to publish quarterly audited accounts and to have their annual audited accounts approved by the Central Bank before they are published. Banks are required to obtain prior approval from the Central Bank to changes in directors, senior management, shareholders (holding over 5 per cent equity), constitutional documents and capital.

The Banking Law, along with the various circulars and notices issued from time to time by the Central Bank, govern the conduct of business by banks in the UAE. Any violations of the Banking Law or any of the circulars or notices issued by the Central Bank would attract fines, and additionally could attract other penalties such as warnings, reduction or suspension of credit facilities granted to the bank, prohibition or restriction on carrying on certain activities, or revocation of its licence to conduct banking business, depending upon the gravity of the offence. Accordingly, a bank may be subject to civil or regulatory liability under the Banking Law. There may also be occasions where a bank may be exposed to criminal liability under the UAE Federal Penal Code.

### ii DIFC

The DFSA Rulebook contains a detailed conduct of business module. The Rulebook is essentially a principle-based system.[2] For example, principle 1 (integrity) states that an authorised firm must observe high standards of integrity and fair dealing. Principle 5 (marketing conduct) states that an authorised firm must observe proper standards of conduct in financial markets. There are 12 principles, the final two being: principle 11 (compliance with high standards of corporate governance), which states that an authorised firm must meet the applicable standards of corporate governance as appropriate considering the nature, size and complexity of the authorised firm's activities; and principle 12 (remuneration practices), which states that an authorised firm must have a remuneration structure and strategies that are well aligned with the long-term interests of the firm, and that are appropriate to the nature, scale and complexity of its business. A bank operating in the DIFC will be subject to civil liability under the various DIFC laws, regulatory liability in respect of the applicable DIFC laws such as the Market Law and the Regulatory Law, plus the provisions of the DFSA Rulebook. Depending on the relevant customer documentation, a bank in the DIFC may also be exposed to civil liability under the laws of the UAE outside the DIFC. Finally, there may be occasions where a bank in the DIFC would be exposed to criminal liability (i.e., under the UAE Federal Penal Code).

## V FUNDING

### i UAE

Under the Banking Law, commercial and investment banks must have a minimum paid-up capital. All foreign banks are required to allocate capital for their UAE operations. At least 10 per cent of the annual net profits of banks is required to be allocated to a

2 Note that the principles are set out in the general module of the Rulebook, not the conduct of business module.

special reserve, until such reserve equals 50 per cent of the bank's paid-up capital or, in the case of a foreign bank, the amount allocated as capital for its UAE operations.

### ii DIFC

There is no Central Bank or equivalent within the DIFC; therefore, banks registered within the DIFC must fund their activities through support from other branches of their international operations or debt issuance programmes of their own. As previously mentioned, deposit taking is not a significant source of funding for any institution in the DIFC.

## VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

### i UAE

There is no specific definition of control (except in relation to determination of large exposures). 'Control' is generally viewed as a majority shareholding interest, a right to appoint the majority of the board of directors of a bank, or both. Any change in such control requires the prior approval of the Central Bank.

Transfer of customer relationships (e.g., deposits, loans, credit cards, accounts, investment products) generally requires customer consent. There is no statutory mechanism for transfer of such relationships. In recent acquisition activities, customer consent has been assumed on the basis of the provision of information regarding such acquisition activities to the customer, as well as correspondence by both the acquiring and the selling parties to the customer and the customer's failure to object.

### ii DIFC

Any material change of control in a DFSA-authorised firm requires prior approval from the DFSA.

The DFSA Rulebook does not include detailed provisions regarding the methods by which banks may transfer all or part of their business (comprising deposits and possibly loan agreements and other assets) to another entity without the consent of the customers concerned. The ability of an institution to do this would be governed by the assignment clauses in their contractual documentation as interpreted in accordance with the DIFC Contract Law.

## VII THE YEAR IN REVIEW

### i UAE

The UAE Central Bank has taken action to establish a fine balance between the exposure risk of banks and the requirements of consumers investing in real estate. Enhanced activities and cooperation are being witnessed of the banks towards the implementation of a retail credit bureau.

### ii Emirates Securities and Commodities Authority

In January 2014, the SCA issued Board of Director's Decision No. 1 of 2014 Concerning the Regulations on Investment Management, which became effective on 28 February 2014. This Decision defines investment management as management of securities portfolios for the account of third parties and the management of mutual funds.

In April 2014, the SCA issued two new regulations: Board of Directors' Decision No. 16 of 2014 Concerning the Regulation of Sukuk (Sukuk Regulations) and Board of Directors' Decision No. 17 of 2014 Concerning the Regulations of Debt Securities (Debt Securities Regulations).

*Sukuk* are defined as tradable financial instruments of equal value that represent a share of ownership of an asset or a group of assets, and are issued in accordance with shariah. Retail *sukuk* may only be issued in the UAE through public subscription, and approval must be obtained from the SCA before issuing or listing any *sukuk* in the market in accordance with the provisions of the Sukuk Regulations. Excluded from the provisions of the Sukuk Regulations are government *sukuk* and *sukuk* that are not listed.

The Debt Securities Regulations replace SCA Board Resolution No. 94/R of 2005 Concerning the Listing of Debt Securities. Debt securities are defined as tradable financial instruments of equal value evidencing or creating indebtedness, whether secured or unsecured. The Debt Securities Regulations state that, with the exception of government corporate bonds, no corporate bond shall be issued and offered for public subscription in the UAE without the SCA's approval first being obtained.

### iii DIFC

The DIFC celebrated its 10th year in 2014. Recent policy and legislative changes in the DIFC include the enactment of the DIFC Netting Law, signing of memoranda of understanding with authorities in various jurisdictions, implementation of the new global regulatory standards, and low tolerance of risks such as financial crime and misconduct.

## VIII OUTLOOK AND CONCLUSIONS

As international standard setters continue to upgrade their regimes, it is anticipated that the DFSA will further amend the DIFC regulatory landscape to ensure closer adherence to those international standards.

For its part, the Central Bank has taken various steps in an effort to avoid the excessive leveraging that greatly affected the severity of the downturn of the UAE economy in 2009.

## Appendix 1

# ABOUT THE AUTHORS

**AMJAD ALI KHAN**

*Afridi & Angell*

Amjad Ali Khan is the managing partner of Afridi & Angell. He represents foreign and local clients, including banks and leading multinationals, in banking, financial and corporate transactions in the UAE and abroad. He specialises in banking and financial services, including project finance, syndicated loans, treasury products and Islamic banking transactions.

Mr Khan has considerable experience in undertaking conventional, Islamic and private banking transactions. He has been involved in several project finance transactions in the UAE. He is also a regular speaker at banking seminars.

**STUART WALKER**

*Afridi & Angell*

Mr Walker regularly advises on financial services regulation, corporate finance, mergers and acquisitions and employment matters. Mr Walker leads the field in advising parties during Dubai Financial Services Authority (DFSA) investigations and, where necessary, negotiating settlements on their behalf. He was instructed by the first authorised firm to be fined by the DFSA, and has since gone on to advise in connection with the majority of all DFSA investigations resulting in a public outcome.

Mr Walker is the co-author of the UAE chapter of *Financial Services Regulation in the Middle East* (Oxford University Press, 2008), and has contributed articles to various publications including *International Financial Law Review*. He is a regular contributor to Euromoney's *Global Banking & Financial Policy Review*.

**AFRIDI & ANGELL**
Emirates Towers Offices, Level 35
Sheikh Zayed Road
PO Box 9371
Dubai
United Arab Emirates
Tel: +971 4 330 3900
Fax: +971 4 330 3800
akhan@afridi-angell.com
swalker@afridi-angell.com
www.afridi-angell.com