The International Capital Markets Review

Fifth Edition

Editor
Jeffrey Golden

Law Business Research

The International Capital Markets Review

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Fifth Edition

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EDITOR'S PREFACE TO THE FIFTH EDITION

A review of the Editor's Prefaces from prior editions (which the publishers have kindly included in this volume) of *The International Capital Markets Review* will reveal a common thread: what I referred to last time around as 'a somewhat nervous look-back over the shoulder' both at the global financial crisis (GFC) and the impact that it has had on the professional opportunities and workload of international capital markets lawyers.

That should hardly be surprising. Seven years on from the collapse of Lehman Brothers in September 2008 and nearly four years since the first edition of this review appeared, a great deal of ink has been spilt, so to speak, in recording the lessons of the GFC, much of it reflecting an attempt to focus on what brought the crisis about: risk-taking by bankers, blind spots and lack of understanding on the part of regulators, rating agencies asleep at the wheel and wrong economic incentives from policymakers and management.

Lots of answers with hindsight. (But as Queen Elizabeth II profoundly asked, after having been briefed by a group of academics about the causes of the GFC when opening a building at the London School of Economics in 2008, if it was all so obvious how come everyone missed it?)

Again, none of that should be surprising. But what is certainly interesting, if not surprising, is that with all the finger-pointing – bankers, regulators, rating agencies and policymakers – law firms and lawyers in them have emerged relatively unscathed. There has been no shortage of lawsuits, enforcement actions, penalty fines, and most recently criminal prosecutions for financial market misconduct. However, it has been non-lawyers, and not their counsel, who have found themselves in the hot-seat.

Still, that begs, rather than answers, the question, 'What was, or should have been, the role of the lawyer in mitigating the risk of a financial market meltdown?' Was sufficient resort to outside counsel made by financial institutions in the run-up to the GFC? Would greater utilisation of independent counsel have made a difference? What public responsibility, if any, do international capital markets lawyers have to ensure not just that underlying transactions are legal as a matter of positive law but that the financial marketplace is benefited, and financial market stability not threatened, by them? Until now, these are questions that seem to travel mostly beneath the radars of the financial market commentators who have been reflecting on the GFC.

Let us put to one side for a moment the increasing specialism in our area of law and the special challenges that follow from it – I will return to this. Let us leave aside too the fact that the technical skills that may position an international capital markets (ICM) lawyer so as to be able to structure a transaction and render the required legal opinions on enforceability or tax consequence may not qualify that lawyer to assess the business merits of the transaction, give deep knowledge of the customers who sign up to them or provide the necessary context to assess the macro-finance impact of large-scale development of a particular financial product or service. In either case, two questions remain: Can ICM lawyers do a better job to mitigate financial market systemic risk? And, if a more expansive role for the lawyer is to be expected to achieve this, will clients be prepared to pay for it?

It is interesting, is it not, that in what could be argued to have been their earlier 'glory years', financial institutions did rely heavily on outside counsel to keep on the legal straight and narrow. However, there is much evidence to suggest that there was much greater reliance on in-house teams in 2008 following the considerable build-out of these in the preceding decade. Cost-cutting became the 'buzz word'.

Did that institutional ring-fence, however, heighten the risk of seeing everything through too narrow an institutional prism? Gillian Tett, in her excellent new book *The Silo Effect*,[1] reminds us of the major risk of insular groupthink in an age of increased specialisation.

Seeking outside and independent advice on such matters had been seen as a kind of insurance against that. Of course, that insurance was never thought to be cheap. But was it cheap in fact, at least when compared with the penalties, fines and other conduct costs many financial institutions have paid since the GFC? And did the financial institutions in any way connect the cutbacks in legal spend on independent counsel with the GFC? Here's the paradox: the more that lawsuits and enforcement actions have followed in the wake of the GFC, the greater the pressures seem to have been to reduce the budget for independent legal advice in connection with ongoing transactional work. And those pressures continue.

Still, to change our clients' thinking about legal cost-cutting, ICM lawyers must do two things: first, they must avoid giving the impression themselves of being victims of the silo effect. And for many ICM lawyers in modern practice there is similarly the risk both of the silo of their law firm and the silo of their jurisdiction. Failure to share the expertise of lawyers in different law firms and from different jurisdictions can be catastrophic. In this regard, *The International Capital Markets Review* aims to be what Ms Tett would call a 'silo buster'.

And second, important as it may be to demonstrate value added by being aware of the widest possible range of relevant issues and global market practice, it is important too to get there in as cost-efficient a manner as possible. As has just been noted, this is a time when clients have never been more cost-conscious. Since it first appeared, this publication has sought to reduce the costs of staying current in a rapidly changing,

1 G Tett, *The Silo Effect* (Little, Brown 2015).

multi-jurisdictional and expansive area of practice by bringing a wide range of relevant experience within a single volume and constantly updating its content.

As I write this preface, my morning newspaper reports, in addition to bond funds experiencing record inflows, that US$50 billion of global market deals were announced this week, adding to US$300 billion of M&A activity in a record August and more than US$3 trillion since January – keeping things on track for record levels seen only before the GFC. This is all good news for international capital markets lawyers. Plenty of opportunity.

Still, plenty of risk too, especially for any lawyer living in a silo and looking down instead of around. This is not a time to follow the ostrich and its habit of putting its head down when it senses risk in the air.[2] For today's ICM lawyer, the risk comes from a complicated and ever-changing landscape, and not least the plethora of new regulatory developments and regulations reported in the pages that follow. You constantly need to look about you.

So, heads up, bust out of that silo, get your copy of this new edition of *The International Capital Markets Review* at the ready and share in the expertise that follows. Fingers crossed, may the record year continue, and I wish our readers more than their fair share of it!

In the meantime, I tip my hat once again to the impressive and growing group of experts who have taken on the challenge of this book. This year we welcome five new jurisdictions: Bulgaria, India, Kazakhstan, Mexico and Nigeria. I want to thank all our authors sincerely for their contributions and for allowing me the continuing privilege of serving as their editor.

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
November 2015

2 Pliny the Elder had led us to believe that the ostrich buries its head in sand to avoid danger, but we now know the behaviour of the ostrich is more a matter of 'duck and cover'.

EDITOR'S PREFACE TO THE FOURTH EDITION

It is good of the publishers to include in this volume the Editor's Preface to each of the previous editions of *The International Capital Markets Review*. Reading through these is like an archaeological dig.

The first begins with a somewhat nervous look-back over the shoulder at the then-recent financial crisis. An expression in that preface of admiration for the 'resilience' of the markets sounded at the time more a hope and expectation than a certainty or done deal.

In the second, further signs that a 'big freeze' on capital market transactional work was 'thawing' were noted; however, the challenge of new and voluminous regulation, as much as the potential for deal flow, made this publication of particular relevance when that edition appeared.

By the time the third preface was written, the major global financial institutions were hiring again, but we were still looking for hard evidence or 'confirmation' that an uptick in deal flow lay ahead and that the extra staffing was in anticipation of opportunity rather than more simply a reaction to a compliance burden.

Now, as I put pen to this Editor's Preface to the fourth edition of the work, we have just witnessed the successful launch of the world's largest-ever stock flotation. Alibaba shares soared 39 per cent on the first day of trading and, after the bankers exercised a greenshoe option, raised US$25 billion. Meanwhile, *The Times* reports a buoyant London braced for a 'listing stampede'. Hong Kong is rivalling New York for the greatest number of cross-border deals. The *Financial Times* also reminds us that in fact, measured by deal value, year-to-date listings in New York have raised twice as much as in London and Hong Kong combined – the fastest pace since 2000. A corner turned? Hopefully, we are seeing real opportunity, at least for the informed ICM lawyer. As in the past, this book seeks to keep at the ready for just such an ICM lawyer relevant analysis as a means for staying on top of an ever-expanding flow of necessary information.

New capital market regulation increases exponentially, and often purports to have extraterritorial reach. More than half of the Dodd-Frank rulemakings have now been finalised but nearly a quarter of the rulemaking requirements are still yet to be proposed. This past year has also been a busy period for regulatory reform at the European level and in other key jurisdictions covered in this volume. Notably as well, courts around the world have been building up a significant jurisprudence in disputes involving complex products and other capital market structures. We have almost certainly seen more ISDA

contract cases since this book first appeared than in all the years that preceded that first edition put together.

Not surprisingly then, this volume keeps getting 'fatter'. Soon the publishers will have to provide wheels for the book! What started as coverage of 19 relevant jurisdictions, now surveys 33 – five of which (Colombia, Kuwait, Norway, Peru and Portugal) are included for the first time.

There has, however, certainly been no dilution in the quality of contributions. Someone clever once said that you are only as good as the company that you keep, on which basis the reader can feel very good indeed when turning to the lawyers and law firms that share their collective experience in the pages that follow. It remains a privilege and an honour to serve these contributors as their editor.

I am confident that the latest surveys that follow will prove useful to our practitioner readers, and I will not be surprised if a few legal archaeologists among those get to excavating beyond the prefaces and examine the strata of the jurisdictional landscapes of earlier editions as they aim to equip themselves for their professional journeys ahead. Who knows? One of you may even be an Indiana Jones, who, armed with the information herein, may be tempted to grab that bullwhip and fedora and undertake a particularly ground-breaking transactional adventure or two. Indeed, it may even be that those adventures form part of the ICM story when it gets told in future editions of *The International Capital Markets Review*!

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
November 2014

EDITOR'S PREFACE TO THE THIRD EDITION

As I write the preface to this third edition of *The International Capital Markets Review*, my morning newspaper reports that one of the major global banks, having shrunk its workforce by more than 40,000 employees over the past two years, will now embark on a hiring spree to add at least 3,000 additional compliance officers.

It would be nice if the creation of these new jobs evidenced new confidence that capital markets activity is on the rise in a way that will justify more hands on deck. In other words, capital markets lawyers will have something to celebrate if this bolstering of the ranks was thought necessary to ensure that requisite regulatory approvals and transactional paperwork would be in place for a projected expansion in deal flow.

And, indeed, my morning newspaper also reports a new transaction of some significance, namely, Twitter's filing for a multi-billion dollar international public offering, accompanied by a tweet, of course – but with a true sign-of-the-times disclosure: 'This Tweet does not constitute an offer of any securities for sale'!

Yes, confirmation of an uptick in deal flow – especially 'big deals' flow – would be nice. In the preface to the last edition of this work, I speculated that there were 'signs that any 'big freeze' on post-crisis capital markets transactional work may be thawing'. All the better if the current newspaper reports provide continued and further support for that inference. After all, when our first edition appeared a little over two years ago, the newspapers were saying terrible things about the capital markets.

What is more likely, however, is that this increased staffing aims to cope with regulatory complexity that will now impact the financial markets regardless of any growth and perhaps may even have been designed to slow down the business being done there. That complexity, but also just the scale of recently promulgated new regulation and the practitioner's resulting challenge in 'keeping up' have all encouraged this new third edition. The 8,843 pages of Dodd-Frank rule-making that I reported in my preface to the last edition have now grown to more than 14,000 pages at this time of writing – and approximately 60 per cent of the job remains unfinished. Other key jurisdictions have been catching up. Plus the rules are purposive and aim to change the way things have been done. If compliance and even ethics in the capital markets were ever instinctual, rather than matters to be taught and studied, that is probably a thing of the past.

The thickness of this volume has grown as well because of the increased number of pages and coverage in it. Nine new contributors (Finland, Indonesia, Italy, the Netherlands, the Philippines, Spain, Switzerland, Tanzania and the UAE) and an overview of EU Directives have been added. Banks are lending less to corporates, which in turn are having to issue more to meet liquidity needs. Moreover, with the low interest rate environment of quantitative easing, central banks are encouraging risk-taking rather than hoarding. For investors, risk-free assets have become very expensive. So we see a growing willingness to get off the traditional highway in search of yield. Investment banks are, as a result, often taking their clients (and their clients' regular outside counsel) to difficult, or at least less well-known, geographies.

Having a pool of country experts and jurisdictional surveys that facilitate comparative law analysis can be very helpful in this instance. That is exactly what this volume aims to provide: a 'virtual' legal network and global road map to help the reader navigate varying, and increasingly difficult, terrain to arrive at right places.

There has been much relevant change in the legal landscape surveyed in the pages that follow. However, what has not changed is our criteria for authors. The invitation to contribute continues to go to 'first in class' capital market specialists from leading law firms. I shall be glad if, as a result, the biographical notes and contact details of the contributing firms prove a useful resource as well.

The International Capital Markets Review is not a novel. Impressed I might be, but I would certainly also be surprised by anyone picking up and reading this volume from cover to cover. What I expect instead, and what is certainly the publisher's intention, is that this work will prove a valuable resource on your shelf. And I hope that you will have plenty of opportunities to take it off the shelf and lots of excuses to draw on the comparative jurisdictional wisdom it offers.

Let me again express my sincere gratitude to our authors for their commitment to the task and their contributions. It remains a privilege to serve as their editor and a source of great pride to keep their company in the pages of this book.

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
October 2013

EDITOR'S PREFACE TO THE SECOND EDITION

It was my thought that we should also include in this second edition of *The International Capital Markets Review* my preface to the first edition. Written less than a year ago, it captures relevant background and sets out the rationale for this volume in the series. The contemporary importance of the global capital marketplace (and indeed you must again admire its resilience), the staggering volume of trading and the complexity of the products offered in it, and the increased scrutiny being given to such activity by the courts all continue. And, of course, so does the role of the individual – the difference that an informed practitioner can make in the mix, and the risk that follows from not staying up to date.

However, I was delighted, following the interest generated by our first edition, by the publisher's decision to bring out a second edition so quickly and to expand it. There were several reasons for this. The picture on the regulatory front is much clearer for practitioners than it was a year ago – but no less daunting. According to one recent commentary, in the United States alone, rule-making under the Dodd-Frank report has seen 848 pages of statutory text (which we had before us when the first edition appeared) expand to 8,843 pages of regulation, with only 30 per cent of the required regulation thus far achieved. Incomplete though the picture may look, the timing seems right to take a gulp of what we have got rather than wait for what may be a very long time and perhaps then only to choke on what may be more than any one person can swallow in one go! Regulatory debate and reform in Europe and affecting other key financial centres has been similarly dramatic. Moreover, these are no longer matters of interest to local law practitioners only. Indeed, the extraterritorial reach of the new financial rules in the United States has risen to a global level of attention and has been the stuff of newspaper headlines at the time of writing.

There are also signs that any 'big freeze' on post-crisis capital markets transactional work may be thawing. In the debt markets, the search for yield continues. Equities are seen as a potential form of protection in the face of growing concerns about inflation. Participants are coming off the sidelines. Parties can be found to be taking risks. They are not oblivious to risk. They are taking risks grudgingly. But they are taking them. And derivatives (also covered in this volume) are seen as a relevant tool for managing that risk.

Most importantly, it is a big world, and international capital markets work hugs a bigger chunk of it than do most practice areas. By expanding our coverage in this second edition to include six new jurisdictions, we also, by virtue of three of them, complete our coverage of the important BRIC countries with the addition of reporting from Brazil, Russia and China. Three other important pieces to the international capital markets puzzle – Belgium, the Czech Republic and New Zealand – also fall into place.

The picture now on offer in these pages is therefore more complete. None of the 24 jurisdictions now surveyed has a monopoly on market innovation, the risks associated with it or the attempts to regulate it. In light of this, international practitioners benefit from this access to a comparative view of relevant law and practice. Providing that benefit – offering sophisticated business-focused analysis of key legal issues in the most significant jurisdictions – remains the inspiration for this volume.

As part of the wider regulatory debate, there have been calls to curtail risk-taking and even innovation itself. This wishful thinking seems to miss the point that, if they are not human rights, risk-taking and innovation are hardwired into human nature. More logical would be to keep up, think laterally from the collective experience of others, learn from the attention given to key issues by the courts (and from our mistakes) and 'cherry-pick' best practices wherever these can be identified and demonstrated to be effective.

Once again, I want to thank sincerely and congratulate our authors. They have been selected to contribute to this work based on their professional standing and peer approvals. Their willingness to share with us the benefits of their knowledge and experience is a true professional courtesy. Of course, it is an honour and a privilege to continue to serve as their editor in compiling this edition.

Jeffrey Golden
London School of Economics and Political Science
London
November 2012

EDITOR'S PREFACE TO THE FIRST EDITION

Since the recent financial markets crisis (or crises, depending on your point of view), international capital markets (ICM) law and practice are no longer the esoteric topics that arguably they once were.

It used to be that there was no greater 'show-stopper' to a cocktail party or dinner conversation than to announce oneself to be an ICM lawyer. Nowadays, however, it is not unusual for such conversations to focus – at the initiation of others and in an animated way – on matters such as derivatives or sovereign debt. Indeed, even taxi drivers seem to have a strong view on the way the global capital markets function (or at least on the compensation of investment bankers). ICM lawyers, as a result, can stand tall in more social settings. Their views are thought to be particularly relevant, and so we should not be surprised if they are suddenly seen as the centre of attention – 'holding court', so to speak. This edition is designed to help ICM lawyers speak authoritatively on such occasions.

In part, the interest in what ICM lawyers have to say stems from the fact that the amounts represented by current ICM activities are staggering. The volume of outstanding over-the-counter derivatives contracts alone was last reported by the Bank for International Settlements (BIS) as exceeding US$700 trillion. Add to this the fact that the BIS reported combined notional outstandings of more than US$180 trillion for derivative financial instruments (futures and options) traded on organised exchanges. Crisis or crises notwithstanding, ICM transactions continue apace: one has to admire the resilience. At the time of writing, it is reported that the 'IPO machine is set to roar back into life', with 11 flotations due in the United States in the space of a single week. As Gandhi said: 'Capital in some form or another will always be needed.'

The current interest in the subject also stems from the fact that our newspapers are full of the stuff too. No longer confined to the back pages of pink-sheet issues, stories from the ICM vie for our attention on the front pages of our most widely read editions. Much attention of late has been given to regulation, and much of the coverage in the pages of this book will also report on relevant regulation and regulatory developments; but regulation is merely 'preventive medicine'. To continue the analogy, the courts are our 'hospitals'. Accordingly, we have also asked our contributors to comment on any lessons to be learned from the courts in their home jurisdictions. Have the judges got it right? Judges who understand finance can, by fleshing out laws and regulations and applying them to

facts perhaps unforeseen, help in the battle to mitigate systemic risk. Judges who do not understand finance – given the increase in financial regulation, the amounts involved, and the considerable reliance on standard contracts and terms (and the need therefore for a uniform reading of these) – may themselves be a source of systemic risk.

ICM lawyers are receiving greater attention because there is no denying that many capital market products that are being offered are complex, and some would argue that the trend is towards increasing complexity. These changing financing practices, combined with technological, regulatory and political changes, account for the considerable challenge that the ICM lawyer faces.

ICM activity by definition shows little respect for national or jurisdictional boundaries. The complete ICM lawyer needs familiarity with comparative law and practice. It would not be surprising if many ICM practitioners felt a measure of insecurity given the pace of change; things are complex and the rules of the game are changing fast – and the transactions can be highly technical. This volume aims to assuage that concern by gathering in one place the insights of leading practitioners on relevant capital market developments in the jurisdictions in which they practise.

The book's scope on capital markets takes in debt and equity, derivatives, high-yield products, structured finance, repackaging and securitisation. There is a particular focus on international capital markets, with coverage of topics of particular relevance to those carrying out cross-border transactions and practising in global financial markets.

Of course, ICM transactions, technical though they may be, do not take place in a purely mechanical fashion – a human element is involved: someone makes the decision to structure and market the product and someone makes the decision to invest. The thought leadership and experience of individuals makes a difference; this is why we selected the leading practitioners from the jurisdictions surveyed in this volume and gave them this platform to share their insights. The collective experience and reputation of our authors is the hallmark of this work.

The International Capital Markets Review is a guide to current practice in the international capital markets in the most significant jurisdictions worldwide, and it attempts to put relevant law and practice into context. It is designed to help practitioners navigate the complexities of foreign or transnational capital markets matters. With all the pressure – both professional and social – to be up to date and knowledgeable about context and to get things right, we think that there is a space to be filled for an analytical review of the key issues faced by ICM lawyers in each of the important capital market jurisdictions, capturing recent developments but putting them in the context of the jurisdiction's legal and regulatory structure and selecting the most important matters for comment. This volume, to which leading capital markets practitioners around the world have made valuable contributions, seeks to fill that space.

We hope that lawyers in private practice, in-house counsel and academics will all find it helpful, and I would be remiss if I did not sincerely thank our talented group of authors for their dedicated efforts and excellent work in compiling this edition.

Jeffrey Golden
London School of Economics and Political Science
London
November 2011

Chapter 31

UNITED ARAB EMIRATES

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I INTRODUCTION

The United Arab Emirates (UAE) was established in 1971 and comprises the seven emirates of Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain. Abu Dhabi is the capital of the UAE and is the site of a number of federal ministries, the Central Bank of the United Arab Emirates (the Central Bank) and other government institutions and agencies.

Under the UAE Constitution, each of the seven emirates retains substantial control over the conduct of governmental affairs within the emirate. With some exceptions, regulation of capital markets is generally a matter of UAE federal law.[2]

The legal system in the UAE (which includes UAE federal laws and individual emirate laws, such as those of the emirate of Dubai) is a developing system. UAE law does not recognise the doctrine of binding judicial precedent. In the absence of a doctrine of binding precedent, the results of one court case do not necessarily offer a reliable basis to predict the outcome of a subsequent case involving similar facts. Consequently, the UAE legal system may generally be regarded as offering less predictability than more developed legal systems.

In contrast, the Dubai International Financial Centre (DIFC) has been established as a financial free zone with its own body of laws and regulations, which are largely separate from the UAE legal system. The DIFC also has its own courts. The DIFC laws and rules of court are largely based on English common law and the procedural rules currently in place in England and Wales.

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2 The most notable exception is the Dubai International Financial Centre (DIFC), which is discussed below.

In February 2013, the creation of a new financial free zone in the emirate of Abu Dhabi was announced (Federal Decree No. 15 of 2013), and the Abu Dhabi Global Market (ADGM) was then established pursuant to Abu Dhabi Law No. 4 of 2013. The commercial rules and regulations have been enacted by the ADGM Board of Directors as from March 2015, with the draft financial services legislation and rules (which includes the Financial Services and Markets Regulations and accompanying rules) currently in open market consultation. ADGM began issuing licences to non-financial services entities in May 2015 and aims to begin processing its first financial services licence applications in the final quarter of the year.

The UAE Constitution provides for a federal court system but permits each constituent emirate to opt out of this and maintain an independent court system. The emirates of Sharjah, Ajman, Fujairah and Umm Al Quwain have joined the federal court system. The emirates of Dubai and Ras Al Khaimah each maintain separate court systems. Since 2006, the emirate of Abu Dhabi has also maintained its own court system.

The UAE capital markets are young and still developing. There are currently three securities exchanges in the UAE, all of which are less than 15 years old: the Abu Dhabi Securities Exchange (ADX), the Dubai Financial Market (DFM) and NASDAQ Dubai. In addition the UAE is home to the Dubai Multi Commodities Centre (DMCC) and the Dubai Mercantile Exchange Limited (DME). In 2014, the creation of a 'second market' where shares in private joint-stock companies would be eligible for trading was launched.

Regulation of securities and financial markets in the UAE is a potential source of confusion to investors and financial institutions. Generally speaking, there are two different regulatory schemes. The first is the UAE federal regulatory scheme. The second is the regulatory scheme applicable in the DIFC. With regard to the laws and regulations affecting capital markets, the DIFC is effectively a different jurisdiction altogether, with rules and regulations that differ significantly from the UAE federal regulatory scheme.[3] A detailed discussion of the DIFC scheme is beyond the scope of this chapter, which deals primarily with the UAE federal scheme.

Historically, regulation of securities trading and transactions involving investment products was the domain of the Central Bank. The Central Bank is entrusted with the issuance and management of the country's currency and the regulation of the banking and financial sectors. A governmental agency, its capital is fully owned by the federal government and it has its headquarters in Abu Dhabi. The Central Bank acts as the UAE's central bank and regulatory authority, directing monetary, credit and banking

3 The DIFC is often a source of confusion to international investors who are not familiar with the UAE. The DIFC is a financial free zone established in the emirate of Dubai. It should not be confused with the emirate of Dubai itself. As noted above, the DIFC has its own laws and regulations, which differ considerably from the laws and regulations applicable to capital markets and securities transaction outside the DIFC. The DIFC regulatory scheme applies only within the DIFC. The UAE federal regulatory scheme applies everywhere in the UAE (i.e., in all seven emirates), except the DIFC. The DIFC has its own regulator, the Dubai Financial Services Authority (DFSA).

policy for the entire country (other than inside the DIFC). The individual emirates do not have separate corresponding institutions. The Central Bank is also empowered to set the exchange rate of the dirham against major foreign currencies.

In 2000, the Emirates Securities and Commodities Authority (SCA) was created. Until 2009, the SCA generally limited its regulatory oversight to publicly listed UAE companies and the public securities exchanges in the UAE. In recent years, the regulatory responsibility of the SCA has expanded considerably and the SCA is now the primary regulator of capital markets under the UAE federal scheme. The shift in regulatory responsibility over foreign securities from the Central Bank to the SCA has occurred gradually over time pursuant to an unpublished memorandum of understanding between the Central Bank and the SCA. The public is informed of regulatory developments as and when the SCA publishes new regulations. In addition, the SCA has adopted regulatory procedures and practices, some of which are not published.

Financial markets in the UAE are young and still developing. In June 2013, Morgan Stanley Capital International (MSCI), which maintains the most widely used equity index in the world, upgraded the status of the UAE capital markets from frontier to emerging market status. While the promotion of the UAE capital markets was first announced in 2013, it became effective in May 2014 with the changes to the indexes. At such time, MSCI added nine UAE companies to its benchmark emerging markets index for the first time. Subsequent to the decision to upgrade the UAE markets, and in an attempt to meet listing conditions under MSCI Indexes over the coming period (which requires, in addition to other conditions, that listing conditions include permitting foreign ownership at acceptable rates), a number of companies listed on the ADX and the DFM decided to raise the percentage of foreign ownership.

II THE YEAR IN REVIEW

i Developments affecting debt and equity offerings

In 2012, the SCA issued Board Resolution No. 37 of 2012 Concerning the Rules of Investment Funds, as amended[4] (the Fund Regulations), which became effective on 27 August 2012.

These much anticipated Fund Regulations introduced significant changes to the UAE regulatory scheme, specifically in the following areas:

a primary responsibility for overseeing the licensing, regulation and marketing of investment funds in the UAE was formally transferred from the Central Bank to the SCA;[5]

4 See also SCA Board Resolution No. 13 of 2013 Amending the Regulations for Investment Funds, which amended certain provisions of SCA Board Resolution No. 37 of 2012.

5 However, Article 29 of the Regulations expressly provides for the Central Bank to continue to exercise supervision over the financial position of investment funds established and licensed under the Fund Regulations. The transfer of authority from the Central Bank to the SCA had already occurred but prior to issuing the Fund Regulations, the SCA had not issued any final rules or regulations.

b SCA approval is required for the establishment of a local investment fund, which is any investment fund established in the UAE, excluding the free zones, and licensed by SCA;

c SCA approval is required for the marketing and promotion of foreign funds to investors in the UAE. The Fund Regulations define a foreign fund as 'a mutual fund established outside the UAE under the laws and regulations in force in a foreign country'; and

d with limited exceptions, the marketing of a foreign fund to investors in the UAE requires the appointment of a UAE-licensed local promoter.

The Fund Regulations do not apply to the accumulation of funds for purposes of investment in a joint bank account; concluding group insurance contracts; participation in social security, employee motivation programs, or fund accumulation for the purposes of forming any type of company mentioned in the Commercial Companies Law. They also do not apply to structured or compound products or mutual funds linked with insurance or security contracts or investment portfolios managed by their owners or SCA-licensed companies, or private investment portfolios managed by investment banks and companies.

With limited exceptions, no foreign fund may be offered, marketed, advertised or distributed within the UAE prior to obtaining approval of the promotion from SCA. The exceptions pursuant to which a foreign issuer may market mutual funds without SCA approval are where the fund is marketed to:

a financial portfolios owned by federal or local government agencies; or companies, institutions or entities whose main purpose (or one of their purposes) is to invest in securities for their own account and not on account of their customers;

b corporate entities licensed to practise the activity of investment management provided that the entity is authorised to make and execute any investment decision; and

c UAE-based investors who have approached the fund outside the UAE with regard to an investment in the fund.[6]

As noted above, a foreign entity wishing to promote a foreign fund in the UAE will not be able to do so without appointing a local promoter. The Fund Regulations provide that the local promoter must be a bank or an investment company licensed by the Central Bank or a company licensed for this purpose by the SCA.

Article 38 of the Fund Regulations provides that the units of a foreign fund may be promoted within the UAE in private offerings through the representation or branch office of a foreign company that has already obtained the approval of the fund or its

6 While this reverse solicitation exemption is not included in the Fund Regulations, the SCA released a statement in Arabic on its website explaining that Board Resolution No. 37 of 2012, as amended, shall not apply to the transactions involving the sale of units in foreign investment funds to UAE-based investors when these investors approach and send enquiries to the concerned fund or its promoters or distributors outside the UAE with the aim of investing in such fund.

representative to promote the fund, or by an entity licensed by the SCA to promote securities, provided that the promotion is to institutions only and subject to a minimum of 10 million UAE dirhams per subscriber.

The Fund Regulations apply to both private and public placements. A distinction is, however, made between public and private offerings with regard to their methods of promotion and determination of target investors, and the minimum subscription per single investor.

The methods of promotion of foreign fund units approved by the SCA to be promoted within the UAE in a public offering must be made through 'all methods of promotion and for all investors', whereas the methods of promotion of foreign fund units approved by the SCA to be promoted within the UAE in a private offering must be confined to 'direct contact with predetermined persons'.

The minimum subscription per single investor in the units of a foreign fund approved by the SCA to be promoted in a private offering shall be the limit set out in the offer document, provided that it is no less than 500,000 UAE dirhams for a foreign fund and 1 million UAE dirhams for a fund established in a free zone outside the UAE.

There is no restriction on the minimum subscription per investor in the units of a foreign fund approved to be promoted within the UAE in a public offering, as this amount shall be the limit set out in the offer document.

Pursuant to Article 35 of the Fund Regulations, a foreign fund wishing to obtain the approval of the SCA to promote its units within the UAE in a public offering must satisfy the following prerequisites: the foreign fund must be established in a foreign country and be subject to the control of a supervisory authority similar to the SCA, and the foreign fund must be licensed to promote public offerings in its home country.

In addition to foreign funds, the SCA has assumed oversight responsibilities in relation to the marketing of most types of foreign securities in the UAE. Specifically, the SCA has regulatory oversight with regard to matters pertaining to plain vanilla (non-listed foreign) security products, while the Central Bank still retains oversight authority with regard to sophisticated products such as credit linked notes. To date, the SCA has issued regulations relating to the marketing of mutual funds (the Fund Regulations) but not other types of foreign securities. The SCA is expected to issue regulations on the marketing and promotion of non-listed foreign securities (other than mutual funds) in due course. In the meantime, the SCA's approach (i.e., its regulatory practice) to the regulation of other types of foreign securities is similar to its approach to the regulation of foreign mutual funds.

In addition to regulations relating to investment funds, the SCA has been active on a number of other fronts. Recently, the SCA has issued a series of regulations governing market making, securities lending and borrowing, short selling and liquidity.[7]

7 See SCA Board Resolution No. 46 of 2012, Concerning the Regulations as to Market Maker, as amended by SCA Chairman Resolution No. 26 of 2014, SCA Board Resolution No. 47 of 2012 Concerning the Regulations as to Lending and Borrowing Securities, SCA Board Resolution No. 48 of 2012 Concerning the Regulations as to the Short Selling of Securities, and SCA Board Resolution No. 49 of 2012 Concerning Regulations as to Liquidity Provision.

Market making is defined in these regulations as the activity of providing continuous prices for the purchase and sale of certain securities to increase the liquidity of such securities in accordance with market maker regulations. The practice of market making requires a licence from the SCA. An applicant for such a licence must be a corporate person with paid capital of at least 30 million UAE dirhams (or its equivalent) meeting any of the following criteria:

a a company established in UAE with at least 51 per cent UAE ownership or the nationality of one of the Gulf Cooperation Council (GCC) states. One of its purposes must be to practise market making; or

b a company established in the UAE and licensed by the SCA to operate in the field of securities, in which case the applicant shall be subject to the controls issued by the Authority concerning the prevention of conflicts between activities; or

c a commercial bank or investment company licensed by the UAE Central Bank, or a branch of a foreign bank, provided that the parent bank is licensed to practise this activity, and subject to obtaining the approval of the UAE Central Bank in any of these cases.

Any investor is permitted to lend securities owned by that investor, but the borrowing of securities, unless otherwise approved by the SCA, is permissible only when carried out by a licensed market maker practising market making or by the clearing department of an exchange in the case of a failure to deliver sold securities on the settlement date.

Licensed market makers are permitted to engage in short selling. Each exchange has the power to determine the securities eligible for short sales provided that short selling is not permitted until one month after a company's initial listing. In addition, short selling is not permitted for a subscription in capital increase shares or in covered warrants. More generally, each exchange has the power to create its own rules governing short selling procedures provided that these rules are subject to SCA approval.

Duly licensed market makers are also permitted to act as liquidity providers by entering into agreements with issuers of listed securities provided that the liquidity provider cannot at any time own more than 5 per cent of the listed securities. All liquidity provision agreements must be disclosed to the SCA and the exchange on which the securities are listed and the exchange in turn shall disclose the agreement to the public.

In March 2013, the SCA amended its regulations regarding disclosure and transparency requirements for listed companies.[8] As amended, the regulations require at least two days' advanced disclosure to the SCA and the relevant exchange of the date and times of any meetings of the board of directors in which the board is to discuss resolutions having an effect on the price and movement of shares, such as cash distributions, bonus shares, capital increases (or decreases), subdividing the nominal value of shares, purchase by the company of its own shares and quarterly or annual financial statements. All resolutions and financial statements approved by the board of directors in any such meetings must be immediately disclosed to the SCA and the relevant exchange. Trading

8 See SCA Board Resolution No. 16 of 2013 Concerning the Amendment of the Regulations on Disclosure and Transparency, which amended certain articles of SCA Resolution No. 3/R of 2000 Concerning the Regulations as to Disclosure and Transparency.

of shares will be suspended until such disclosure is made. A partial exception exists for banks and other companies that require Central Bank approval before making such disclosures. In such cases, disclosure is not required until the Central Bank's approval has been granted. In addition, listed companies are required to provide the SCA and the relevant exchange with all resolutions passed by a general assembly of shareholders immediately after such resolutions have been passed.

In June 2013, the SCA issued Board Resolution No. 38 of 2013 Concerning the Trading of Rights Issue for Capital Increases. A rights issue can be listed and traded subject to the provisions of this resolution. A rights issue is defined therein as a financial instrument representing rights that are granted to a company's shareholders to have priority to subscribe for shares in such a company's capital increase.

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

With limited exceptions (the promotion of financial portfolios owned by federal and local government entities), any entity wishing to carry on or promote investment management activities in the UAE must obtain a licence from the SCA. Applicants must meet strict eligibility criteria and must have a paid-up capital of no less than 5 million UAE dirhams and a bank guarantee of 1 million UAE dirhams. There are also conditions to be met relating to technical and administrative staff, the entity's premises, required electronic and software programs, internal control systems, and an operational guide for risk management systems.

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

Sukuk are defined as tradable financial instruments of equal value which represent a share of ownership of an asset or a group of assets and are issued in accordance with shariah law.

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* on the market in accordance with the provisions of these Sukuk Regulations. Excluded from the provisions of the Sukuk Regulations are government *sukuk* and *sukuk* which will not be offered through public subscription and will not be listed on the market. A condition for the principal listing of retail *sukuk* is that the applicant must be established in the UAE and outside a financial free zone.

Other issues covered under the Sukuk Regulations include the procedures and documents required for approval by the SCA of primary and joint listings of *sukuk*, the establishment of an SCA *sukuk* register, as well as trading, clearance and settlement of *sukuk*, and suspension and cancellation of listing.

The Debt Securities Regulations replace SCA Board Resolution No. 94/R of 2005 Concerning the Listing of Debt Securities. Debt Securities are defined to be tradable financial instruments of equal value evidencing or creating indebtedness on the issuer, 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 first obtaining the SCA's approval. The corporate bonds must also be listed on the market. To be listed, debt securities must satisfy the following conditions:

a they must comply with the provisions of the Commercial Companies Law and with the issuer's constitutional documents;

b unless the SCA decides otherwise, the aggregate value of all debt securities to be listed must be at least 10 million UAE dirhams or the equivalent thereof in a foreign currency that is acceptable to the SCA and the market; and

c where the debt securities sought to be listed are secured debt securities, a trustee must be appointed to represent the interests of the holders of such debt securities and that trustee must have the right of access to any information relating to the assets.

The Debt Securities Regulations provide that the general assembly must approve the issuance of corporate bonds if the issuer is a joint-stock company, and that subscription announcement must be prepared and presented according to the format approved by the SCA.

The Debt Securities Regulations also require non-goverment issuers to obtain SCA approval before publishing any document or making any announcement inside the UAE relating to the listing of corporate bonds. The documents or announcement must clearly indicate that SCA approval was granted for publication. This requirement is also applicable to *sukuk*.

Both the Sukuk Regulations and the Debt Securities Regulations provide that neither the SCA nor the markets shall have any responsibility for any information (lists, financial statement, financial data, information, reports or any other documents) presented by the applicant or issuer.

The SCA issued Board of Directors' Decision No. 27 of 2014 on the Regulation of Securities Brokerage in July 2014. The regulation classifies brokerage firms into those which engage in trading only while the clearance and settlement operations are conducted through clearance members and those which engage in trading clearance and settlement operations for their clients.

Some of the features of the new Regulation include the new classification of brokerage firms, new capital requirements (3 million UAE dirhams with respect to the brokerage company (trading member) and 10 million UAE dirhams for the brokerage company (trading and clearing member)), and increases in the value of bank guarantee requirements. Under the new regulation, no company shall engage in brokerage activity without a licence from the SCA and registration in the SCA Register for brokers.

In July 2014 the SCA also introduced controls for brokerage firms trading for their clients in foreign markets whereby a brokerage firm may trade for its clients in the foreign markets in the normal way of trading, or using accounts only after obtaining the approval of the SCA.[9]

9 See SCA Administrative Decision No. (86 / r.t) of 2014 Concerning the Controls of Trading by Brokerage Firms for their Clients in Foreign Markets.

The SCA issued Board of Directors' Decision No. 10 of 2014 Concerning the Regulation of Listing and Trading of Shares of Private Joint Stock Companies, which provides the conditions under which private joint-stock companies would be able to list their shares on the market, including the requirement that the capital be paid in full, that the audited budget be issued for the last two fiscal years and that the company facilitate the trading of its shares through brokerage companies licensed by the SCA. Private joint-stock companies that are listed on the market shall be exempt from Ministerial Resolution No. 518 of 2009 concerning the Governance Rules and Corporate Discipline Standards, Ministerial Resolution No. 370 of 2009 concerning the Share Register of Private Joint-Stock Companies and the SCA Board of Directors' Decision No. 3/R of 2000 concerning the Regulations as to Disclosure and Transparency.

The much-anticipated new UAE Commercial Companies Law (Federal Law No. 2 of 2015) (the Commercial Companies Law) was issued on 1 April 2015 and came into force on 1 July 2015. The provisions relating to corporate governance have been significantly enhanced. Proposed further regulations by the Ministry of Economy and by the SCA will provide further focus on corporate governance. Some of the most significant amendments relate to public companies and capital markets. The minimum free float permitted in an initial public offering (IPO) has been reduced from 55 per cent to 30 per cent, with the maximum proportion that can be floated decreased from 80 per cent to 70 per cent, the share price can now be determined by way of a book building process, and shares can be issued at a premium. The new law authorises the concerned authorities to introduce subordinated legislation in a number of areas, including the governance rules noted above, regulations on IPOs, rules on the formation and qualification of shariah boards, the creation of different classes of shares and their rights, and regulation of book-building. For public joint-stock companies, the minimum share capital requirement of 10 million UAE dirhams has been increased to 30 million UAE dirhams. The concept of authorised (but not issued) share capital has been introduced. Public offers of subscription to shares are expressly prohibited without SCA consent.

The Commercial Companies Law prohibits any company, other than a public joint-stock company, from offering any securities in an IPO. In all cases, no company, or natural or corporate person incorporated or registered anywhere in the world may publish any advertisements in the UAE which include a call for an IPO in securities prior to obtaining the approval of the SCA. This prohibition has also been introduced by the SCA.[10]

A company may now issue shares to a 'strategic partner' (i.e., an investor from a related industry sector to the company's own) through a capital increase on terms approved by special resolution of the shareholders, without needing to comply with pre-emption rights.

The Commercial Companies Law has introduced the concept of investment funds incorporated as separate legal personality in the form of common investment companies.

10 See SCA Board of Directors' Decision No. (18) of 2015 Amending Certain Articles of the Regulations as to Disclosure and Transparency.

ii Developments affecting derivatives, securitisations and other structured products

Derivative products have been marketed and sold in the UAE for many years. There have been no significant recent changes to the rules and regulations affecting such products.

Securitisation transactions are extremely rare in the UAE as the existing legal and regulatory environment is not well suited to structuring such transactions. There have been no significant recent developments.

iii Cases and dispute settlement

As noted above, capital markets in the UAE are young and developing. The UAE achieved emerging market status only within the past year. The UAE is not a common law jurisdiction and the doctrine of binding judicial precedent is not followed. As of yet, there is an absence of significant court cases regarding securities law matters and no significant recent developments.

iv Relevant tax and insolvency law

With limited exceptions, the UAE is (as a matter of practice) a tax-free jurisdiction. There is no federal income tax law in the UAE nor are there any federal taxes on income. There is no personal income tax.

Corporate income tax statutes have been enacted in most of the emirates (all of which predate the formation of the UAE in 1971), but they are not implemented.[11] Instead, corporate taxes are collected with respect to branches of foreign banks (at the emirate level) and courier companies (at the federal level). Further, taxes are imposed at the emirate level on the holders of petroleum concessions at rates specifically negotiated in the relevant concession agreements. Taxes are imposed by certain emirates on some goods and services (including, for example, sales of alcoholic beverages, hotels, restaurant bills and residential leases). There is no sales tax or VAT in the UAE.

Having said that, there has been notable headway on the move to introduce both VAT and corporate tax in the UAE.

In May 2015, the Member States of the GCC concluded a draft agreement on implementing a GCC-wide value added tax. The agreement was reached at the 100th meeting of the GCC Financial and Economic Cooperation Committee (FECC) in Doha, with a levy of between 3 and 5 per cent proposed by the FECC. Kuwaiti Finance Minister Anas Al-Saleh was quoted by the Kuwait News Agency as saying that the draft agreement provides that each GCC state will be allowed to introduce its own VAT regime, providing that common principles are adopted by all GCC states.

On 2 July 2015, the UAE's Ministry of Finance (MOF) announced that progress had been made on drafting the federal corporate tax and value added tax laws, and that these drafts had been discussed with local and federal governments. The MOF suggested

11 Each emirate, except for Umm Al Quwain, has an income tax decree. The income tax decrees of the emirates of Fujairah (1966), Sharjah (1968), Ajman (1968), Dubai (1969) and Ras Al Khaimah (1969) are based on, and broadly similar to, the emirate of Abu Dhabi Income Tax Decree of 1965.

that the laws should be finalised by the third quarter of this year, and while the UAE Cabinet has approved the corporate tax policy, there are still many stages to go through before the laws are enacted, and thus there is still no firm timeline for the implementation of either the corporate tax or the VAT law.

Bankruptcy rules were enacted in the UAE in 1993 pursuant to UAE Federal Law No. 18 of 1993 promulgating the Code of Commercial Practice (the Commercial Code). These rules, set out in Volume V of the Commercial Code, are largely untested in the courts. Instead, insolvency cases are often resolved between debtors and creditors under alternative administrative proceedings or through negotiated settlements.

The economic slowdown that affected the UAE following the global financial crisis highlighted the inadequacy of the existing bankruptcy and insolvency law. While many UAE-based businesses experienced financial duress, the existing laws relating to restructuring and insolvency remain largely untested and a long-awaited modern bankruptcy law has yet to be enacted.

In addition to the Commercial Code, the Commercial Companies Law contains provisions for the dissolution of a company. The Penal Code of the UAE (contained in Federal Law No. 3 of 1987) also contains criminal sanctions for bankrupts.

The Commercial Companies Law provides for the dissolution of a company in certain prescribed circumstances, including where the losses to a company amount to half of its capital. All debts of the company become due and owing upon the company's dissolution. If the company's assets are not sufficient to meet all of the debts, then the liquidator is required to make proportional payment of such debts, without prejudice to the rights of preferred creditors. Every debt arising from acts of liquidation must be paid out of the company's assets in priority over other debts.

Existing insolvency law in the UAE is generally recognised as being inadequate. This is perhaps best illustrated by the Dubai World debt crisis in 2009 in which the government of Dubai, in implicit recognition of the inadequacies of existing insolvency law, created a special law and a special tribunal to deal with debts of one of Dubai's largest companies.[12]

Dubai World is a holding company with a diverse portfolio of investments. Dubai World encountered significant financial difficulties resulting in the promulgation of Decree No. 57 for 2009 (Establishing a Tribunal to decide the Disputes Related to the Settlement of the Financial Position of Dubai World and its Subsidiaries). This law provides for the formation of a tribunal that has jurisdiction to, *inter alia*, hear and decide any demand or claim against Dubai World or its subsidiaries. Under the above-mentioned law, any dissolution or liquidation matters relating to Dubai World or its subsidiaries will be dealt with in accordance with such law.

12 Another relevant example is the emirate of Dubai's decision to create a special judicial committee to decide the fate of cancelled real estate projects. Recently, the Ruler of Dubai, issued Decree No. 21 of 2013 concerning the formation of a special judicial committee for the liquidation of cancelled real estate projects in the emirate of Dubai and the settlement of relevant dues.

The UAE is expected to promulgate a new bankruptcy law that will repeal the relevant provisions of the Commercial Code in the future, although such a law has been anticipated for several years. The new law is expected to introduce financial reorganisation procedures and a protective composition process. The law is also expected to introduce a personal insolvency regime, including an insolvency procedure for non-traders. The time frame for the realisation of the new law cannot be predicted.

v Role of exchanges, central counterparties and rating agencies

The SCA is responsible for the regulatory oversight of the ADX and the DFM.[13] In addition to the rules and regulations of the SCA, each exchange has its own rules and regulations.

The ADX and the DFM each have a Clearing, Settlement, Depository and Registry Department that operates a clearing, settlement and depositary system (CSD), which is responsible for clearing and settlement of the transactions executed on the exchange. Each of these exchanges follows a multilateral netting system under which transactions are cleared and settled on a net basis by brokers. After the clearing of the transactions by the exchange, the transfer of securities ownership is made through the electronic book-entry system operated by the exchange.

To buy or sell securities listed on the ADX or the DFM, an investor must apply for and be granted an identification number called an investor number (IN) by the relevant exchange. The issuance of an IN by an exchange triggers the creation of an investor account for the custody of shares traded on the exchange (custody account). The IN identifies the investors account in the CSD. In addition to the Custody Account, every investor must have at least one trading account with a licensed broker (trading account).

All shares traded on the ADX and the DFM are in dematerialised (electronic) form. Ownership of shares is reflected in a computerised credit entry in the investor account.

All trading is done through licensed brokers. An investor must have at least one trading account with a licensed broker and can have accounts with multiple brokers. To open an account with a broker, an investor has to enter into a customer agreement with the broker. The investor must also give the broker a power of attorney authorising the broker to execute any written share transfer form on behalf of the investor in relation to any trades executed on the applicable exchange by the broker. The broker will process buy or sell orders from the investor upon receipt of instructions in the manner specified in the customer agreement.

To sell listed securities, an investor must transfer the securities from his custody account to his trading account with a broker. Upon receiving a sell order, the broker will record the order into the electronic trading system. The system matches buy and sell orders of a particular stock based on the price and quantity requirements. The cash

13 The SCA does not regulate NASDAQ Dubai, which is regulated by the Dubai Financial Services Authority (DFSA) and is part of the separate regulatory regime applicable in the Dubai International Financial Centre (DIFC). As noted above, the regulatory scheme applicable in the DIFC is beyond the scope of this chapter.

settlement is done among brokers through the designated settlement bank. Once the trade is executed, the investor will be notified of the deal confirmation and the transfer of share ownership occurs electronically by debits and credits to the custody accounts of the seller and buyer.

As a legal matter, the transfer of securities occurs by way of contractual assignment. At the time the seller of securities transfers the securities from his or her custody account to his or her trading account with a broker the obligation to settle transfers to the broker. However, the seller is still at risk up until the time payment is actually received. Every broker is required to submit a bank guarantee of at least 10 million UAE dirhams and the seller may draw upon this guarantee if payment is not received.

While each of the ADX and the DFM operates a CSD, neither acts as a central counterparty in the sense that neither legally guarantees the completion of transactions on the exchange. The economic risk of clearing and settlement is intended to be addressed by the bank guarantees required by each accredited broker and the trading limits imposed on the brokers.

There are no UAE-based rating agencies. Some UAE issuers have securities rated by international rating agencies such as Moody's and Standard & Poor's.

vi Other strategic considerations

Under current law, all companies incorporated in the UAE must have majority UAE ownership. In addition, the authorities impose additional restrictions on the ownership of some publicly traded companies. As a result of these restrictions, the demand from foreign investors for shares in certain publicly traded companies may, at times, exceed the numbers of shares permitted to be sold to foreign nationals. Many UAE banks will hold shares in publicly traded companies on behalf of clients through custodial arrangements. A riskier strategy for investors is to use an unregulated individual holding UAE nationality as a proxy to hold shares on the investor's behalf.

It is possible to register a security interest over listed securities with the relevant exchange. In practice, however, the registration fees charged by the ADX and the DFM are often deemed to be prohibitively expensive by investors and secured parties, who sometimes opt for the cheaper but far riskier (from the perspective of the secured party) alternative of an unregistered contractual pledge.

III OUTLOOK AND CONCLUSIONS

The pace of legislative and regulatory change has been slow but the adoption of the a long-awaited revision of the Commercial Companies Law in 2015 was a significant development. A long-awaited new bankruptcy law has yet to materialise. The most significant changes in the coming years may be in the area of taxation. The UAE has long been a tax-free haven but lower oil prices and a desire to diversify the economy mean both federal corporate taxation and value added tax are under serious consideration. Indeed, such proposals were under consideration before the drop in oil prices. While timing is difficult to predict and the enactment of tax legislation is not a certainty, some experts expect to see federal corporate taxation and VAT implemented in the next few years.

Appendix 1

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