







## DOING BUSINESS IN THE UAE

Eric Teo  
 Head of International Practice & Special Projects, United Advocates.  
 Former Legal Advisor & Committee Member of the Dubai Malaysia Business Council

1





### SPEAKER'S PROFILE

Eric Teo is the Head of International Practice & Special Projects in United Advocates. Before setting up his practice with United Advocates, he was a Partner with an international law firm in Dubai and has been in the GCC region for over 11 years.

He was a project engineer in the construction industry before qualifying as a lawyer and has since practised law with top tier regional and international law firms in Dubai, Australia and Malaysia. He specialises in matters related to the construction, real estate, infrastructure and energy sectors and advises various stakeholders, such as employers, financiers, consultants, main contractors, subcontractors and suppliers.

Eric's expertise has been recognised by the independent Legal 500 EMEA directories and he is the winner of the Lexology Client Choice Award for the construction law practice category in the UAE for the years 2017 and 2019.

2



## THE UAE GOVERNMENTAL STRUCTURE IN BRIEF

The UAE Federal Constitution apportions powers between the federal government and the seven constituent Emirates.

The federal government has exclusive jurisdiction in various substantive matters, e.g. foreign policy, defense and security. And legislation passed at the federal level has primacy over the local laws of each Emirate.

The local government of each Emirate can regulate its own matters which are not subject to any federal legislation, or matters which are not expressly reserved in the Constitution to the Federal Union, e.g. land matters and commercial activities within the Emirate.

3



## THE UAE LEGAL SYSTEM IN BRIEF

Civil Law System with Egyptian and French heritage infused with Islamic rules and principles.

The primary sources of law (for civil matters): the Constitution; the Federal laws and regulations; the individual Emirate laws and regulations, Islamic or Shari'ah principles and customs and practices.

Legislations are framed in statutory codes and supplemented by subsidiary legislations. Examples of commonly used laws for commercial activities:

- The Commercial Transactions Code, Federal Law No.18 of 1993
- The Civil Transaction Code, Federal Law No. 5 of 1985
- The Commercial Companies Code, Federal Law No.2 of 2015
- The Labour Code, Federal Law No. 8 of 1980
- Laws & regulations issued by the respective Emirates and Free Zone authorities

4



**MALAYSIA  
BUSINESS  
COUNCIL**



المحامون المتحدون  
UNITED ADVOCATES

## COMMON BUSINESS VEHICLES

- Unincorporated JV
- Incorporation of a local entity
- Participation in a local entity
- Establishment of a representative office
- Establishment of a foreign branch company
- Note the different requirements for a local sponsor, local shareholder, local service agent and national commercial agent
- Note the impact of the new UAE Foreign Direct Investment regime and its incentives

5



**MALAYSIA  
BUSINESS  
COUNCIL**



المحامون المتحدون  
UNITED ADVOCATES

## MAIN LAND ESTABLISHMENTS

- joint liability company (partnership)
- partnership limited by shares
- joint participation (contractual joint venture)
- sole establishment
- civil professional company
- limited liability company
- private joint stock company
- public joint stock company
- foreign branch company or rep office

6



## FREE ZONE ESTABLISHMENTS

- Free Zone Limited Liability Company
- Free Zone Establishment or Enterprise
- Branch company of a foreign principal
- Offshore company (e.g. Jebel Ali Offshore Company)
- Various other investment vehicles (e.g. special purpose company and holding company in the Dubai International Financial Center)

7



## SOME FACTORS TO CONSIDER

- Lack of means to carry out due diligence/investigation
- Identify the regulating authorities and their requirements
- Government procurement regulations
- Foreign ownership and local sponsorship issues
- Management and control of the business
- Taxes and Duties
- Intellectual Property protection
- Wide usage and significance of Powers of Attorney

8



## DISPUTE RESOLUTION

- Alternative Dispute Resolution Methods
  - Negotiation process, traditional “*Majilis*” approach or by agreement
  - Expert adjudication by agreement (e.g. Dispute Adjudication Boards found in FIDIC forms of contract)
  - Mediation by agreement
  - Court directed reconciliation process
- Arbitration – must recognise the difference between Court administered, ad-hoc based and institutional based arbitrations
- Litigation – must recognise the different court systems adopted by each Emirate and the financial free zones

9



## THE JUDICIAL SYSTEM IN BRIEF (MAIN LAND)

The UAE Federal Constitution permits each emirate to have its own judicial authority. However, all Emirates other than Abu Dhabi, Dubai and Ras Al Khaimah have consolidated their judicial systems into the UAE Federal Judicial Authority.

The UAE has a 3-tier court system, i.e. the Court of First Instance, Court of Appeal and Court of cassation (or the Federal Supreme Court for those Emirates that adopt the Federal judicial system). The Courts have several divisions and circuits to deal with a variety of matters, such as civil, commercial, family and criminal.

The two financial free zones, i.e. Dubai International Financial Center (DIFC) and the Abu Dhabi Global Market (ADGM) – each has its own judicial systems that is modelled on the English judicial system.

10



## COMPARING UAE & MALAYSIAN JUDICIAL SYSTEMS, BRIEFLY

- Judges rely primarily on codified rules and guided by principles laid down by the Supreme Courts, there is no concept of binding precedent
- No express duty of full disclosure, no without prejudice concept, inquisitorial approach (cf. adversarial)
- Arabic the only language of the Court, heavy reliance on court expert's opinion, documentary evidence and written submissions, oral hearing & submissions not prevalent
- An almost automatic right of appeal and Court of Appeal may revisit facts and evidence, limited recovery of costs

11



## FACTORS THAT FAVOUR INSTITUTIONAL ARBITRATION

- Unfamiliar local Court process both procedurally and culturally
- Ability to choose English as the language of the proceedings
- Ability to leverage on the use of specialist lawyers
- Ability to choose specialised arbitrators and independent experts
- Ability to agree on established arbitration rules & procedures (e.g. ICC, DIAC, DIFC-LCIA Rules)
- Recoverability of legal costs and expenses
- Note the impact of the new UAE Federal Arbitration Law 2018

12



HAPPY INVESTING IN THE U.A.E.

THANK YOU

