

United Arab Emirates establishes new financial free zone in Abu Dhabi.

Overview

The United Arab Emirates (“**UAE**”) has established the framework for a new financial free zone in Abu Dhabi. The new free zone, to be known as “Global Marketplace Abu Dhabi” (“**Global Marketplace**”) and located at Al Maryaah Island, is intended to be a financial hub to bridge the time gap between the European and Asian financial markets and to attract financial investment into the UAE, thereby improving liquidity in local markets.

The Federal Government passed Federal Decree No. 15 of 2013 providing for the establishment of the free zone in February 2013, which was recently published in the latest issue of the Federal Official Gazette. The accompanying Cabinet Resolution No. 4 of 2013 specified the size and geographical area of the new free zone. A press release issued on 1 May 2013 by His Highness Sheikh Khalifa bin Zayed Al Nahyan, President of the UAE, publicised that some of the infrastructure has been established that will be necessary for the free zone’s day to day operations, including authorities to be known as The Global Marketplace Registration Bureau and the Financial Services Regulation Bureau, and a two-tier court system to deal with claims and disputes within the free zone. It also specified the activities that free zone licensed entities may practice.

How does Global Marketplace differ from other free zones in the UAE?

The creation of Global Marketplace follows a trend in the UAE and the wider Middle East to establish free trade zones which, to a varying extent, operate outside local laws. Broadly, free zones can offer an attractive route to foreign investors wishing to do business in the UAE, the main benefits being the ability for foreign investors to own 100 per cent. of companies incorporated in the free zone (local laws require majority ownership by a local partner), a favourable tax and customs duty regime and an easier, quicker incorporation process than is the case outside the free zones.

Like other free zones in the region, Global Marketplace offers a zero tax environment for 50 years and exemptions from customs duties. Unlike most

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other free zones in the UAE, Global Marketplace is a financial free zone. It shares many of the same attributes as the Dubai International Financial Centre (“DIFC”), the Dubai financial free zone set up in 2004. Global Marketplace has been set up under the auspices of the same Federal legislation which allowed for the establishment of the DIFC (Federal Law No.8 of 2004). Both Global Marketplace and the DIFC are exempt from the application of Federal civil and commercial laws and have been granted the authority to self-legislate in these areas. The DIFC is, and it is expected that Global Marketplace will be, treated as an “offshore” jurisdiction, outside the UAE, for legal purposes. Licensed entities in both financial free zones are permitted to engage in banking, financial, insurance and financial markets activities and services, together with ancillary activities.

The DIFC has its own independent civil and commercial legal system based on the common law of England and Wales. It has an independent regulator, the Dubai Financial Services Authority, a stock exchange (NASDAQ Dubai) and an independent, common law judicial system - the DIFC Judicial Authority (known as the DIFC Courts). Unlike the Dubai courts and UAE Federal courts, the DIFC Courts operate in English, court procedures are modelled on those of the English courts and advocates from other jurisdictions may plead cases. Reciprocal enforcement arrangements exist between the DIFC Courts and Dubai courts which make it easier for a party to enforce DIFC Court judgments and DIFC Court ratified arbitral awards “onshore” in Dubai than is the case for foreign judgments and arbitral awards. These factors can make DIFC Courts (or arbitration with a seat in the DIFC) an attractive choice of forum for counterparties to transactions with UAE entities, particularly where enforcement is anticipated in “onshore” Dubai. Law and practice in DIFC are still evolving as it is still a relatively newly established jurisdiction.

Global Marketplace could, over time, become a direct competitor to the DIFC.

How attractive will Global Marketplace be to international parties?

As the details of the new free zone continue to emerge, a number of open questions about Global Marketplace remain. The answers to these questions, as they become clear, will influence how attractive the new free zone is likely to be to international parties proposing to do business in Abu Dhabi and the emirates generally, or with Abu Dhabi or UAE entities.

The success of the new free zone will depend on a number of factors including establishing a developed legal and regulatory environment that meets international standards, a sophisticated courts system, straightforward licensing and establishment procedures and a robust restructuring and insolvency framework.

International financial institutions and multinational companies entering into large or complex transactions with UAE entities often choose English law to govern their agreements, preferring the certainty offered by a developed legal system. In these circumstances, parties will often choose the English courts

to hear disputes or arbitration with a seat in the UK (or include the optionality for both).

One of the key risk factors for international parties to transactions with UAE entities is what happens if contractual rights need to be enforced. The challenges surrounding the enforcement of foreign court judgments and arbitral awards in the UAE courts are well known. International financial institutions and companies will be interested to learn in what circumstances parties will be able to opt-in to the jurisdiction of the Global Marketplace courts as a forum to settle disputes. Equally important will be the relationships develop between the courts of Global Marketplace and other UAE courts (Federal, Dubai, Ras Al Khaimah and DIFC), as well as regional and international courts, regarding mutual recognition and enforcement of judgments and arbitral awards.

If Global Marketplace can offer a favourable environment with greater certainty regarding mutual recognition and enforcement of judgments and arbitral awards, the Global Marketplace courts may, over the coming years, become an attractive forum for the resolution of disputes and the enforcement of contractual rights not only within the free zone, but also potentially “onshore” in Abu Dhabi and the other emirates comprising the UAE.

It is expected that further Federal and Abu Dhabi laws and regulations will follow to address these and other issues.

Contacts

For further information
please contact:

Paul Kruger

Partner

(+971) 2 659 2112

paul.kruger@linklaters.com

David Martin

Partner

(+971) 2 659 2113

david.martin@linklaters.com

Sarosh Mewawalla

Managing Partner

(+971) 4 369 5843

sarosh.mewawalla@linklaters.com

Caroline Cheney

Senior Lawyer

(+971) 4 369 5830

caroline.cheney@linklaters.com

Author: Caroline Cheney

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A16541647

Level 27, Al Sila Tower 1
Sowwah Square
PO Box 144970
Al Maryah Island, Abu Dhabi
United Arab Emirates

Telephone (+971) 2 659 2100
Facsimile (+971) 2 659 2101

Linklaters.com