The Asset Management Review

Tenth Edition

Editor
Paul Dickson

The LawReviews

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THE ASSET MANAGEMENT REVIEW

TENTH EDITION

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This article was first published in September 2021
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Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK
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www.TheLawReviews.co.uk

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Enquiries concerning editorial content should be directed
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ISBN 978-1-83862-758-4

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

ACKNOWLEDGEMENTS

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

ABOU JAOUDE & ASSOCIATES LAW FIRM

ADVOKATFIRMAET BAHR AS

ARTHUR COX

CHRYSSES DEMETRIADES & CO LLC

DEYNECOURT

HAN KUN LAW OFFICES

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PREFACE

Last year we reflected on how 2020 might primarily be remembered as the year of the novel covid-19 pandemic. A few events of global significance punctured covid-19's monopoly of economic news: the Democrats winning the White House; an eleventh-hour 'deal' being reached between the European Union and the United Kingdom a mere week before the end of the transition period; and a wrong turn in the Suez canal. However, a year on and the pandemic continues to dominate the global geopolitical landscape and remains a source of significant uncertainty. While it is clear that 2021 will also be overshadowed by the pandemic, successful vaccination campaigns appear to be providing fragile grounds for economic optimism in the near future. Yet unprecedented levels of government spending combined with labour shortages and supply chain disruption mean any recovery will have to grapple with rising inflationary pressures. In the asset management world, it is clear that the sector has faced one of its greatest and most sustained tests in recent history. The need for the industry to remain adaptable and resilient has perhaps never been greater.

Leaving all of this aside though, the importance of the asset management industry continues to grow. Nowhere is this truer than in the context of pensions, as the global population becomes larger, older and richer, and government initiatives to encourage independent pension provision continue. Both industry bodies and legislators are also increasingly interested in pursuing environmental, social and governance (ESG) goals through private sector finance. This should not be a surprise: lack of shareholder engagement has been identified as one of the key issues that contributed to the governance shortcomings during the financial crisis. Given the importance of the asset management industry in investing vast amounts on behalf of clients, the sector is the natural focus of regulatory and governmental initiatives to promote effective stewardship and take the lead in instilling a corporate cultural focus on sustainability and ESG initiatives.

The activities of the financial services industry remain squarely in the public and regulatory eye, and the consequences of this focus are manifest in ongoing regulatory attention around the globe. Regulators are continuing to seek to address perceived systemic risks and preserve market stability through regulation. Operational resilience – a concept focused on ensuring asset managers' holistic preparedness against any risk event, particularly significant operational risks – continues to be a significant focus point for global regulators.

It is not only regulators who continue to place additional demands on the financial services industry: the need to rebuild trust has led investors to call for greater transparency around investments and risk management from those managing their funds. Senior managers at investment firms are, through changes to regulatory requirements and expectations as to firm culture, increasingly being seen as individually accountable within their spheres of

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responsibility. Industry bodies have also noted further moves away from active management into passive strategies, illustrating the ongoing pressure on management costs. This may, in itself, be storing up issues for years to come.

The rise of fintech and other technological developments, including cryptocurrencies, data analytics and automated (or 'robo') advice services, is also starting to have an impact on the sector, with asset managers looking to invest in new technologies, seeking strategies to minimise disruption by new entrants, or both. While regulators are open to the development of fintech in the asset management sector, they also want to ensure that consumers do not suffer harm as a consequence of innovations. Regulators across various jurisdictions launched the Global Financial Innovation Network (GFIN), which aims to facilitate collaboration and communication between regulators regarding financial innovation and to create a cross-border sandbox in which firms can test their new technologies. This continues to be a period of change and uncertainty for the asset management industry, as funds and managers act to comply with regulatory developments and investor requirements, and adapt to the changing geopolitical landscape and respond to the ongoing uncertainties brought about by the global pandemic. Although the challenges of regulatory scrutiny and difficult market conditions remain, a return of risk appetite has also evidenced itself, and the global value of assets under management continues to increase year-on-year. The industry is not in the clear, but, prone as it is to innovation and ingenuity, it seems well placed to navigate this challenging and rapidly shifting environment.

The publication of the tenth edition of *The Asset Management Review* is a significant achievement, which would not have been possible without the involvement of the many lawyers and law firms who have contributed their time, knowledge and experience to the book. I would also like to thank the team at Law Business Research for all their efforts in bringing this edition into being.

The world of asset management is increasingly complex, but it is hoped that this edition of *The Asset Management Review* will be a useful and practical companion as we face the challenges and opportunities of the coming year.

Paul Dickson
Slaughter and May
London
August 2021

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Chapter 20

UNITED ARAB EMIRATES

Nabil A Issa, James R Stull, Macky O'Sullivan and Sayf Shuqair[1]

I OVERVIEW OF RECENT ACTIVITY

The United Arab Emirates (UAE) is arguably the centre of the private equity and asset management industries in the Middle East. With a recent focus on economic and legal reforms, a low-tax regime and a high quality of life, numerous international firms have set up their regional hubs in the UAE, and many talented and educated expatriate and local professionals have put down roots here. Among other factors, the historical strength of the UAE's economy and stable government as well as the country's expected growth led MSCI to upgrade the UAE to its emerging market index in mid-2014 (making it and Qatar the first Middle East countries to be included in the index).

Within the UAE, Dubai has become the epicentre of financial services transactions and innovation in the asset management sector in the Gulf Cooperation Council (GCC) and greater Middle East region, surpassing Beirut, Bahrain, Kuwait and Riyadh. Abu Dhabi, the country's capital, is known for its more conservative and patient investment strategy, and is home to some of the world's largest and most prominent sovereign wealth funds.

During the last global financial crisis, Dubai, with a focus on financial transactions, was particularly hard hit, resulting in a near-default on its debt payments and a subsequent bailout from Abu Dhabi. Many predicted the financial crisis would be the end of Dubai, and would result in a transformative change to Dubai's free-spending and 'casino-like' culture. However, following certain significant restructurings and policy changes, Dubai entered a period of sustainable growth, with significant projects in the tourism and real estate sectors. These sectors have been hard hit by the covid-19 pandemic, and 2020 was a difficult year for the Emirate; however, with swift and strong leadership, Dubai was one of the first countries to emerge and reopen international travel, which the authorities and investors hope will be a boon to the economy.

Abu Dhabi weathered the last global financial crisis by implementing a patient economic vision, buoyed by high oil prices. This approach resulted in four straight years of double-digit fiscal surpluses in the lead-up to 2015, which in turn led to massive budgets for the government to invest in mega-projects, and to focus on important sectors of the economy such as healthcare and education. With an economy predominantly based on oil and related hydrocarbon revenues, the recent slump in oil prices has drastically reduced revenues for Abu Dhabi, which appears to be entering a stage of economic transition toward a more sustainable and diversified economy highlighted in Abu Dhabi Vision 2030.

1 Nabil A Issa and James R Stull are partners, Macky O'Sullivan is a senior associate and Sayf Shuqair is a senior associate at King & Spalding LLP.

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The slump in oil prices took a considerable bite out of the total market capitalisation, as many of the companies listed on the stock exchanges in the UAE (NASDAQ Dubai, the Dubai Financial Market (DFM) and the Abu Dhabi Securities Exchange (ADX)) derive substantial revenues from oil production and related-energy industries. Stock exchanges in the UAE have recorded lower net profits.

In 2017, ADX underperformed targets by 3.3 per cent. Although the total traded volume of stocks on ADX dropped 26 per cent in 2018, the performance of First Abu Dhabi Bank (which comprises just below one-third of the index, in value terms) was strong enough to provide an overall boost to the market. The ADX index finished 2018 10.7 per cent higher. Dubai's stock market ended 2018 with a 25 per cent annual loss, the worst year since the last global financial crisis a decade ago, as the real estate and tourism sectors struggled. Dubai was able to rebound in 2019 to post gains of 9.3 per cent. Despite the announcement of a stimulus package to boost Abu Dhabi's economy in late 2018, its market witnessed only a slight growth of 3.3 per cent in 2019. The UAE bourses have since struggled to attain significant growth, although there is renewed hope since the recent listing of Al Yah Satellite Communications (Yahsat), a unit of Mubadala Investment Company on the Abu Dhabi Securities Exchange. The listing is the first major IPO on the Abu Dhabi bourse since Abu Dhabi National Oil Company Distribution listed 10 per cent of its shares in 2017 with further IPOs expected. Mubadala is reportedly considering an IPO of Emirates Global Aluminum PJSC while Abu Dhabi National Oil Company seeks the same for its drilling business and fertiliser joint venture.

To create additional income to cover the decrease in oil revenues, the government implemented value-added tax (VAT). The International Monetary Fund hailed this decision, which it believes will strengthen the country's fiscal position. There have long been rumours that the government would impose corporate income taxes on onshore companies as well. However, it is not expected that taxes would be imposed on companies operating in a free zone in the UAE, where most funds and investment managers are domiciled. Accordingly, it is not expected that the proposed taxes will have a substantial negative impact on the asset management industry in the UAE.

On 21 January 2017, the President of the UAE, His Highness Sheikh Khalifa bin Zayed Al Nahyan, issued a law creating the Mubadala Investment Company, a company wholly owned by the government of Abu Dhabi. The new company is the merger of two of Abu Dhabi's sovereign wealth funds, the International Petroleum Investment Company (IPIC) and Mubadala Development Company (Mubadala), and their respective assets. The law formalised the announcement made in 29 June 2016 that IPIC and Mubadala would merge, thereby creating an entity with assets worth an estimated US$130 billion. The merger was viewed as part of a larger government strategy to diversify the economy and create stronger entities for its growth. While some cost-saving measures have been put in place and attempts have been made by the government to rein in spending, there has also been investment into other regional asset managers, with the completion of the acquisition of an aggregate 20 per cent interest by Mubadala in Bahraini investment manager Investcorp being an example of this. The merger of IPIC and Mubadala was followed by the announcement in March 2018 by Crown Prince Sheikh Mohammed bin Zayed of the consolidation of Abu Dhabi Investment Council (ADIC) with Mubadala Investment Company. ADIC became part of the Mubadala group, with a combined portfolio worth over US$200 billion. This consolidation of state-run companies in Abu Dhabi was another step towards efforts being made by the government to accelerate the diversification of the UAE's economy. Lower oil

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prices have led the UAE to tighten its spending and to consolidate its investment vehicles to generate higher returns. The rise in mergers has continued through the covid-19 pandemic with Abu Dhabi's National Petroleum Construction Company merging with the National Marine Dredging Company creating one of the leading integrated oil and gas and marine services engineering, procurement and construction players in the Middle East and North Africa (MENA) region with a footprint across the MENA region and South Asia.

Abraaj, the largest private equity firm in the Middle East with assets under management of US$13.6 billion, filed for provisional liquidation in June 2018, and has been in discussions with a number of global asset managers and private equity firms about the potential sale of some of its key funds and assets. This followed the resignation of its chair and founder, the finding by Deloitte that Abraaj had commingled about US$95 million after it faced cash shortages and the recent imposition of a US$1.7 million penalty by the Dubai Financial Services Authority on Abraaj's former chief financial officer. This has impacted the appetite of fund investors to commit, deepened investor perceptions of a lack of transparency and adversely affected the capabilities of fund managers to raise capital. Despite the burgeoning tech economy, concerns about governance and due diligence in the region may be blunting investors' enthusiasm for Middle East-focused funds. Despite some uncertainty, the future of the asset management industry in the UAE, albeit being in a state of transition, looks strong, and the UAE is generally seen as a bright spot in a turbulent region. To sustain the growth in the financial services and asset management sectors, the UAE and the emirates of Dubai and Abu Dhabi have recently published new financial services and funds regulations seeking to provide clarity and confidence to both managers and investors alike and to encourage further growth of the industry. The UAE also introduced a federal bankruptcy law in December 2016, which modernises the insolvency regime in the country to be more in line with international norms, and which should assist asset managers and other businesses when operating in the UAE.

Like other global economies, the UAE has been impacted by the covid-19 pandemic. Efforts have been made by the UAE government to help minimise the detrimental effect of the pandemic on the economy through the introduction of stimulus packages. The UAE Central Bank announced a US$27 billion support plan for banks, while Dubai has announced US$409 million in direct stimulus for the energy, trade, retail and tourism sectors. On 28 March 2020, the Dubai Free Zones Council and several free zones across the United Arab Emirates, such as the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM), announced financial and other support measures (including fee reductions, fee waivers and extended time frames for payment) to mitigate the adverse impact of the covid-19 pandemic on registered entities operating in these free zones. In September 2020, the UAE Cabinet of Ministers issued Law No. 26 of 2020, which amended certain provisions of the UAE Companies Law No. 2 of 2015. The amendments include changing the long-held restrictions on foreign ownership, which prevent foreign nationals, or companies, from owning more than 49 per cent of an onshore business operating in the UAE. The changes are part of a series of measures introduced to make the UAE a more investment-friendly destination (by making operating onshore a lot simpler and a lot less costly) and will hopefully help spur more investment in the country. The clarity over the ability of foreign investors to own 100 per cent of the capital of an onshore UAE entity may stimulate greater interest from foreign investors seeking to acquire UAE businesses.

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II GENERAL INTRODUCTION TO THE REGULATORY FRAMEWORK

Financial services such as investment management are generally provided in the UAE from three hubs, namely onshore in the UAE (i.e., outside of a designated free zone), the DIFC and the ADGM, each of which has its own rules and regulations. The DIFC and the recently created ADGM are economic free zones within the UAE that have been created to encourage foreign investment by offering foreign businesses attractive concessions and a number of investment incentives, including a zero per cent tax rate and the ability to own a 100 per cent subsidiary (foreign ownership restrictions apply outside the free zones).

i Onshore UAE

From 2012 to 2014, primary responsibility for overseeing the licensing, regulation and marketing of investment management was transferred from the Central Bank to the Emirates Securities and Commodities Authority (SCA), with the SCA confirming the implementation in the UAE of a 'twin peaks' model of financial services regulation and supervision. Under this model, the Central Bank remains responsible for systemic stability, prudential oversight and monetary policy, while the SCA is responsible for conduct of business matters (including consumer protection and financial markets oversight). Any firm (whether based inside or outside of the UAE, including free zones in the UAE) that intends to conduct investment management activities in the UAE outside of a free zone must obtain a licence from the SCA prior to conducting such activities. The Investment Management Regulations implemented by the SCA define 'investment management' as the management of securities portfolios for the account of third parties, or the management of mutual funds in accordance with the investment objectives and policies defined in the investment management agreement between the investment manager and its client.

In July 2016, the SCA adopted new investment fund regulations (2016 Fund Regulations), which repealed the prior investment fund regulations (which were adopted in 2012 and amended in 2013), clarified the formation process for the establishment of locally domiciled funds and introduced significant changes to the marketing of foreign domiciled investment funds in the UAE. The 2016 Fund Regulations impose substantial hurdles and costs for managers seeking to promote foreign funds in the UAE, and have generally been subject to negative feedback. Managers wishing to market foreign funds onshore in the UAE had far fewer options: they could register the fund with the SCA and enter into a distribution arrangement with a locally licensed placement agent, engage in reverse solicitation (where the investor inside the UAE initiates the transaction) or rely on a private placement exemption when offering to sovereign entities. However, in January 2017, the SCA issued regulations governing promotion and marketing that reintroduced several private placement exemptions, contemplate the potential listing of certain types of funds and explicitly allow for foreign funds to rely on reverse solicitation when offering in the UAE. Additionally, in March 2019, a new passporting regime was introduced to allow locally domiciled funds to be marketed across the UAE, the DIFC and the FSRA as further discussed in Section V.

After months of speculation, the UAE government confirmed in July 2020 that the Insurance Authority and the UAE Central Bank will merge as part of a wider simplification of the federal government's structure. In January 2021, the UAE Central Bank announced the commencement of operational procedures implementing the merger, which is part of a bigger initiative to transform the UAE Central Bank into one of the top 10 central banks globally. It is expected that the yet unnamed body will be overseen by the Ministry for the Economy.

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ii DIFC

The Dubai Financial Services Authority (DFSA is the independent regulator of all financial and ancillary services conducted through the DIFC, including investment management. The rules and regulations governing investment management in the DIFC are set out in the Collective Investment Law 2010, the Collective Investment Rules module of the DFSA Rulebook (CIR) and the Regulatory Law. The Regulatory Law provides that financial services may only be carried on in the DIFC by a firm authorised and licensed by the DFSA. Managing a collective investment fund is defined under the General Module of the DFSA Rulebook as being legally accountable to the unitholders in a fund for the management of the property held for or within a fund under the fund's constitution; and establishing, managing or otherwise operating or winding up a collective investment fund. A DFSA fund management licence is required to manage a collective investment fund in the DIFC. Fund managers from reputable jurisdictions outside the DIFC (external fund managers) may establish and manage DIFC-based domestic funds without having to obtain a DFSA licence provided certain conditions are satisfied. For example, the domestic fund must be managed from a place of business that is in a jurisdiction either included in the DFSA's Recognised Jurisdictions List (as published on the DFSA website) or assessed by the DFSA as providing an adequate level of regulation.

iii ADGM

In October 2015, the ADGM financial services regulations (the Regulations) were enacted. Under the Regulations, firms carrying on financial services business such as investment management in the ADGM are subject to licensing by both the ADGM (in terms of the obligation to hold a commercial licence) and the ADGM Financial Services Regulatory Authority (in respect of the financial services licensing). The Regulations contain two key prohibitions, namely providing financial services without a licence or exemption, and making an authorised financial promotion. The Regulations to some extent mimic the types of funds permitted in the DIFC, and contemplate public funds, exempt funds and qualified investor funds. The ADGM has also sought to be a hub for real estate asset management in the region, and has introduced a private real estate investment trust (REIT) regime that has proven to be popular.

III COMMON ASSET MANAGEMENT STRUCTURES

The most common forms of asset management in the UAE are privately managed accounts and offshore structures. Privately managed accounts have long been popular in the region as managers have targeted capital from high net worth individuals, family offices and government-related investors in the UAE. For collective investment schemes, managers have generally looked to the Cayman Islands (and to a lesser extent other offshore jurisdictions) as the domicile of choice due to comprehensive corporate and funds laws and predictable legal regimes. Additionally, locally domiciled funds in the DIFC and ADGM have become increasingly utilised in the past couple of years.

Large local banks, such as First Abu Dhabi Bank (created upon the merger of National Bank of Abu Dhabi and First Gulf Bank in April 2017) and Emirates NBD Bank, have established public mutual funds onshore under the Central Bank and SCA regulations. However, to manage an onshore fund, a manager requires an SCA fund management licence,

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which the SCA only recently began issuing. Similar to other funds jurisdictions in the region, onshore funds are not legal entities, but rather are contractual entities formed upon execution by the manager and the investors of the fund's terms.

The DIFC and DFSA have actively promoted the funds industry in the DIFC, with the DIFC recently publishing its 2024 growth strategy, which outlines fund management as its long-term strategic focus area. However, the DIFC funds industry has yet to flourish, and only approximately 103 funds have been established in this jurisdiction. The DIFC has the qualified investor fund (QIF) regime, which can be established in an expedited time frame and is subject to significantly less oversight than other UAE-based fund structures. A QIF structure is designed to be offered only through private placement to experienced investors, with a minimum investment of US$500,000 per investor. To manage a QIF or any other DIFC-domiciled fund, an entity must be licensed by the DFSA or licensed in a recognised foreign jurisdiction. As further encouragement to consider establishing in the DIFC, the DFSA has a fast-track licensing process with reduced fees and share capital for those entities that are seeking to establish in the DIFC for the purpose of launching a fund.

The DIFC has also adopted a prescribed company structure (formerly special purpose companies and intermediate special purpose vehicles were used) through which many managers effect their private equity, real estate and alternative investments. Managers have looked to the prescribed company structure owing to the short time frame to establish a prescribed company (i.e., one week versus potentially months to establish in other local jurisdictions), low incorporation fee (US$100) and annual renewal fee (US$1,000), as well as the DIFC's legal regime (which is based on English law) and the general recognition and treatment of DIFC companies as onshore companies for tax and regulatory purposes in the GCC. The ADGM has a comparable entity, the special purpose vehicle (SPV). The SPV has garnered substantial interest from managers and investors (and more recently start-ups and venture capital firms) since its introduction.

IV MAIN SOURCES OF INVESTMENT

The UAE is home to several prominent sovereign wealth funds, including the second-largest in the world in terms of assets under management (Abu Dhabi Investment Authority, with an estimated US$702 billion under management as of March 2021). These sovereign wealth funds are funded through revenues of the government, which are primarily generated through the sale of oil and other related hydrocarbons, and income from their existing portfolios.

The UAE is also home to the DIFC, which is arguably the most popular and successful financial centre in the Middle East. In March 2019, the governor of the DIFC announced that the size of the wealth and asset management sector in the DIFC is worth US$424 billion and is expected to grow significantly over the coming years.

Local banks dominate the mutual funds industry in the UAE. These mutual funds generally target retail investors in the UAE and invest into listed equities, primarily in the UAE and the greater GCC region, but also into rated debt and other fixed income products. Many regional and international asset managers in the UAE (e.g., Fajr Capital, Franklin Templeton, Jadwa Investment and NBK Capital) have based their operations in the DIFC. These private equity managers tend to target institutional investors and family office investors.

The ADGM is growing as a fund domicile, and currently approximately 58 funds have been established in the free zone. Abu Dhabi government investors are increasingly investing in funds established in the ADGM, thereby playing an integral role in the growth

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and development of the asset management ecosystem in the ADGM. For example, Abu Dhabi Investment Office recently invested in Bedaya Fund I LP, an ADGM-domiciled venture capital fund operated by Shorooq Partners to help develop the start-up ecosystem in Abu Dhabi, and Abu Dhabi Developmental Holding Company invested in Alpha Wave Incubation Fund LP, an ADGM domiciled fund that will invest in Asian tech companies and set up regional headquarters for these companies in Abu Dhabi.

V KEY TRENDS

On 1 April 2020, the DFSA introduced a new listing regime for small and medium-sized enterprises (SMEs), allowing SMEs based in any jurisdiction to raise funds through capital markets by issuing shares, listing such shares on the DFSA's Official List of Securities and admitting them for trading on NASDAQ Dubai. The new listing regime is aimed at boosting the SME sector in the UAE by allowing SMEs to raise equity funding at a lower cost and within a less stringent regulatory framework. The regime is not only beneficial to SMEs that want to raise growth capital but also provides an additional viable exit option for potential private equity, and venture capital, investors that look to initially help grow, and eventually exit from, an SME. A company seeking to admit its shares on the DFSA Official List of Securities will qualify as an SME if the aggregate market value of the shares it is applying to list is reasonably expected to be less than US$250 million. A 24-month prohibition is imposed on repurchases of shares by listed SMEs to ensure that the capital raised through the IPO is used by the SME to support the SME's growth. Additionally, an SME is only required to provide at least one year of published or filed audited accounts prepared in accordance with the national audit and accounting standards of the SME's jurisdiction of incorporation, provided that those standards are acceptable to the DFSA. Instead of requiring a sponsor, the DFSA will usually require an SME to appoint a compliance adviser as a condition for admission to the DFSA's Official List and its ongoing listing. The new DFSA SME listing regime is aimed at enhancing the performance of the SME sector in the UAE by making it easier for SMEs to obtain equity financing in a prompt and cost-effective manner and is a step in the right direction for a growing economy.

The announcement earlier this year of the proposed delisting of Emaar Malls less than a decade after the shares were listed is the latest announcement in what appears to be a developing trend of large corporates withdrawing from certain equity markets in the region. It follows the delisting of DP World, the global ports operator, from Nasdaq Dubai in an US$11 billion move by state-backed Port & Free Zone World last year. News of DP World's pull-out was preceded by ENBD REIT's announcement, in late 2019, of its intent to delist from Nasdaq Dubai. In 2018, Union Cement Company, a leading UAE cement producer based in Ras Al Khaimah, delisted from the Abu Dhabi Securities Exchange. Some of the driving factors behind this trend include: (1) sluggish markets and a lack of liquidity owing to reduced international investment in the region, principally because of concerns over oil prices and geopolitical risks; (2) weak stock prices mean boards of listed companies are coming under increased pressure to find ways to strengthen stock prices and counteract external market influences; (3) inflexibility of permitted debt levels in a listed company as shareholders pay close attention to the debt-to-equity ratio;[2] and (4) strategic conflicts with

2 If perceived debt levels are too high, it can negatively impact share price. Private companies have far greater flexibility in how they are leveraged, which may in fact create a competitive advantage.

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companies such as DP World, which has suggested that the status of being listed is becoming increasingly incompatible with effective, long-term management strategies. DP World stated that a long-term focus on growth requires the pursuit of different priorities from those that apply to a short-term focus on share price.

In July 2019, the UAE Cabinet approved 122 qualifying activities across 13 sectors eligible for up to 100 per cent foreign ownership in the UAE. The list of sectors includes renewable energy, space, agriculture, the manufacturing industry, information and communications, transport and logistics, healthcare, education, construction and hospitality. To benefit from this scheme, applicants will need to make an application to the Foreign Direct Investment (FDI) Authority and satisfy certain obligations including providing evidence of the deposit of the company's capital in a bank account, appointment of one or more licensed auditors for a renewable period of one year (up to six consecutive years), implementation of Emiratisation policies in the company and ongoing collaboration with the foreign direct investment (by notably maintaining regular accounts for the FDI project, notifying the date of commencement of work or production date, providing information and statistics). The decision aims to support the growth environment and to reaffirm the UAE's position on the global arena as a hub for investment.

On 11 March 2019, the SCA, the Financial Services Regulatory Authority of the ADGM (FSRA) and the DFSA announced that a new fund passporting regime will be implemented to facilitate the promotion of funds domiciled in each of onshore UAE, the ADGM and the DIFC. Under the new regime (which only applies to locally domiciled funds and not to the marketing of foreign funds), a fund manager of a DIFC-domiciled fund, for example, can register with the DFSA under the passporting regime and the DFSA will notify the other regulators (i.e., the FSRA or SCA) who will then include the fund on their own respective register of funds allowing the fund to be marketed to investors in the ADGM and onshore in the UAE. The implementation of the passporting regime is seen as an important step to encourage the development of the mutual funds' market so as to achieve the goal of having more diversified investment opportunities and products.

The country's sovereign wealth funds have long invested internationally into diversified portfolios. Because of less exposure in the region, which has seen a downturn owing to the slide in oil prices, and more investment in stronger international markets, the value of these funds' portfolios has not dramatically dwindled. However, it can be expected that the future budgets for UAE sovereign wealth funds will be significantly lower if the country is facing a budget deficit.

The primary asset classes for investment by local managers have been regional listed equities and real estate. With the local stock markets hit by the slump in oil revenues, managers have fallen back onto real estate more than ever. However, as opposed to the 2008 downturn, recently managers have looked to other alternative classes such as debt, venture capital and private equity. While real estate remains the dominant asset class, the past two years have seen a rise of credit funds (across the sector, including mezzanine, distressed and real estate financing funds) as well as blind-pool venture capital and private equity funds.

In an effort to attract new fund managers and provide a cost-effective option to establish and maintain fund management companies in the DIFC, the DIFC Authority recently introduced significantly reduced fees. Fund managers looking to establish a presence in the DIFC will find that there is now no application fee payable (previously US$8,000), and there is a two-year waiver of the annual commercial licence fee of US$12,000. The DIFC has also introduced incentives for venture capital funds and managers, including flexible office

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space options. Additionally, there has been a reduction in the regulatory capital requirement, from US$500,000 to US$70,000 for QIFs and exempt funds, and US$140,000 for public funds. It is expected that many managers will take advantage of the lower fees and the streamlined QIF regime (a more flexible structure that is as quick to establish as vehicles in more traditional offshore funds jurisdictions). Managers setting up investment funds in the DIFC have generally been focused on private equity and real estate assets.

There has been a surge in interest in the fintech sector in the UAE in the past couple of years, with both the DIFC and the ADGM recently launching fintech accelerators. The 'FinTech Hive in the DIFC' was launched as a platform to help identify leading technology entrepreneurs and companies through a competitive process, and then offer them the opportunity to develop, test and modify their innovations in collaboration with top executives from the DIFC and regional financial institutions. In the ADGM, the Regulatory Laboratory was launched, authorising fintech participants for a period of up to two years to develop and test their propositions. The first group of participants was announced in May 2017, with the second group commencing activities in July 2018. In June 2018, the ADGM launched its framework to regulate spot cryptoasset activities, including those undertaken by exchanges, custodians and other intermediaries in the ADGM. The framework also includes guidance from the ADGM Financial Services Regulatory Authority on the regulation of cryptoasset activities in the ADGM and an application form for interested applicants to operate a cryptoasset business within the ADGM. This is aimed at instilling proper governance, oversight and transparency over cryptoasset activities, positioning the ADGM as a destination of choice for cryptoasset players.

There is also an increasing amount of interest in special purpose acquisition companies (SPACs) in the UAE with local companies seeking fast-track listings abroad.[3] Abu Dhabi-based music streaming firm Anghami recently listed on the Nasdaq stock exchange in New York by merging with a SPAC, making Anghami the first Arab technology company to list on Nasdaq. This follows Abu Dhabi's Brooge Petroleum and Gas Investment Co (BPGIC), an oil storage and service operation business that listed in 2019 on Nasdaq after a merger with a SPAC to establish a global presence and access liquid markets. In June this year, Dubai-based FIM Partners, a frontier and emerging markets asset manager backed by EFG Hermes, raised US$200 million in an IPO of a SPAC on Nasdaq and there are continued announcements of further SPAC transactions in the UAE, with the Financial Times reporting in July 2021 that Abu Dhabi sovereign wealth fund Mubadala Investment Company is close to launching two SPACs with a focus on technology and health care.

On 9 May 2021, the SCA enacted its new consolidated 'Rulebook', which came into force on 17 May 2021 and made a major change to the regulation of the promotion of 'financial products' in onshore in the UAE. Arguably the most notable change to the financial promotions regime introduced by the Rulebook is the introduction of a new, wider exemption for promotions made to 'professional investors'. The new exemption is available to promotions made to all types of professional investors. Importantly, professional investors now includes individuals with a net worth of more than 4 million dirhams, or those with sufficient experience and understanding of the relevant investments. Previously, the SCA regulations on promotions treated sophisticated individual professional clients as retail clients. The new exemption permits financial institutions to promote financial products to a much larger segment of UAE investors in light of the extension of the same to include

3 SPACs are currently not permitted on UAE bourses.

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individuals. On 1 June 2021, changes to the UAE Companies law removing restrictions on foreign ownership of onshore companies in the UAE came into effect. The previous restrictions required 51 per cent of the share capital of all UAE onshore companies to be owned by UAE nationals. This requirement has been removed, and the amendment proposes that all business activities in the UAE are open for 100 per cent foreign ownership except for a negative list of activities that would be determined by the relevant UAE authority. Following recent actions from the relevant authorities in the UAE, it appears that the UAE has taken a slightly different approach for now. The new approach is to permit each Emirate in the UAE to determine the business activities that it would allow for 100 per cent foreign ownership within its territory. As of 1 June 2021, the Emirates of Dubai and Abu Dhabi have published their respective permitted activities list. Each list contains over 1,000 activities that have no ownership restrictions. The approach in both Dubai and Abu Dhabi is for 100 per cent foreign ownership to be permitted only if a company's licensed activities are on their list. There does appear to be a broad alignment between the two lists, although the fact that each Emirate has the discretion to determine which business activities are permitted activities has resulted in certain key activities being open for foreign ownership only in some Emirates. For example, Abu Dhabi has included broader healthcare activities in its list of permitted activities, such as owning and operating general, ophthalmology, paediatric and gynaecology hospitals. These activities have not been specifically included on the permitted activities list for Dubai. Dubai has included more general healthcare-related activities that would require further discussion with the relevant authorities. Moreover, Abu Dhabi has included 'onshore and offshore oil and gas fields and facilities services' to its list of permitted activities whereas Dubai has not. It is hoped that the clarity over the ability to own 100 per cent of the capital of an onshore entity will stimulate greater interest from foreign investors seeking to acquire UAE businesses and help boost the UAE economy.

VI SECTORAL REGULATION

i Insurance

The UAE government confirmed in January 2021 that operational procedures had commenced to effect the merger of the Insurance Authority and the UAE Central Bank as part of a wider simplification of the federal government's structure. The merger is part of sweeping changes announced by the Ruler of Dubai, which will see the closure of 50 per cent of government service centres and their transformation into digital platforms within two years, and the mergers of around 50 per cent of federal authorities with other authorities or ministries. The merged entity will be chaired by the Minister of Economy.

ii Pensions

In general, pensions in the UAE are regulated by the General Authority for Pensions and Social Security (GAPSS). The primary objectives of GAPSS have been to expand insurance coverage for UAE nationals and expatriate residents in the UAE, and the rapid disbursement of insurance, pension and other compensation to its beneficiaries. It is expected that GAPSS may play a larger role in the future, as the UAE has contemplated pension schemes for expatriates resident in the UAE, in addition to the existing pensions for UAE nationals.

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The Abu Dhabi Retirement Pensions and Benefits Fund (ADRPBF) manages contributions, pensions and employee benefits for UAE nationals working for government, semi-government and private employers in Abu Dhabi. The ADRPBF is an active investor in private equity funds and has a large diversified portfolio of investments.

The UAE Ministry of Labour requires employers to pay employees 'end-of-service gratuity' pay upon termination of their employment. This payment is calculated based on the term of an employee's employment with a company, provided that the maximum gratuity payable is two years' wages. As an alternative, employers can establish pension schemes that employees can opt into in lieu of the 'end-of-service gratuity' system. However, such pension schemes are not common.

iii Real property

Historically, real estate has been the asset of choice for investors in the UAE, despite the precipitous drop in value during the financial crisis. The years 2013 and 2014 saw a dramatic surge in prices, but the government has taken steps to regulate the market through limited loans and mortgages, imposing transfer fees on sales and limiting certain investment structures.

Real estate companies and funds in the UAE continue to seek public listings allowing these companies to raise funds while enabling investors to gain direct exposure to prime real estate assets. Following the high-profile listing on the DFM of Dubai Parks and Resorts (a Meraas Holding group company) in 2014, raising approximately US$680 million, and DAMAC Properties' trading of global depository notes on the London Stock Exchange and the IPO of ENBD REIT for US$105 million in early 2017, the real estate capital markets have largely dried up.

In the DIFC, the CIR sets out rules and regulations specific to real estate funds, including restrictions on the types of assets a real estate fund can invest into (e.g., a real estate fund may in certain circumstances only invest up to a maximum of 40 per cent of cash in government and public securities), the type of legal structure that can be used to establish a property fund in the DIFC and requirements in relation to the establishment of an advisory committee for real estate funds.

In late 2018, the DFSA introduced open-ended real estate funds. The first open-ended real estate fund was established in the DIFC in March 2020.

iv Hedge funds

Hedge funds in the DIFC are regulated by the CIR, similar to other investment funds. The DFSA has implemented the Hedge Fund Code of Practice, which sets out the principal risks associated with hedge funds and similar structures and sets out best practice standards. Hedge fund managers are permitted a degree of flexibility to adapt the standards to suit their particular businesses in light of market conditions and emerging issues. These standards, inter alia, address back-office systems, valuation procedures, and the skills and resources of managers.

v Private equity

In terms of deals, Preqin data shows there were 12 Middle East private equity buyout deals done in 2019, which was five fewer than in 2018, but the aggregate value rose to US$1.5 billion, compared to US$600 million in 2018. This was largely due to CVC Capital Partners, a private equity firm leading a consortium in July 2019, acquiring a 30 per cent stake from existing shareholders in Dubai-based GEMS Education, which is the world's largest

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provider of private K-12 education by revenue. According to Preqin, there were 17 private equity-backed buyout deals in the MENA region in 2018, which was the same number as in 2017, but considerably lower than completion numbers in 2016, 2015 and 2014, when 32, 31 and 46 deals were completed respectively. Fundraising as a whole for the MENA private equity industry has slowed down, with the decline of Abraaj believed to be a crucial factor that has made fundraising difficult with investors having concerns about governance and due diligence in the region.

In the DIFC, the CIR sets out rules specific to private equity funds. For example, a fund manager of a private equity fund must ensure that, unless the purpose of the private equity fund is to invest in a single venture or undertaking, it does not invest more than 25 per cent of the fund in one such venture or undertaking. Additionally, the CIR sets out guidelines that must be followed by the fund manager of a private equity fund prior to entering into related-party transactions (e.g., prior investor approval by special resolution).

vi Other sectors

Sovereign wealth funds

The UAE is home to some of the most prominent sovereign wealth funds: the Abu Dhabi Investment Authority (ADIA), the Abu Dhabi Investment Council (ADIC), Mubadala Investment Company (Mubadala), the Emirates Investment Authority (EIA) and the Investment Corporation of Dubai (ICD). ADIA, ADIC and Mubadala are all resident in Abu Dhabi, and focus on investments for the benefit primarily of Abu Dhabi but also for the UAE as a whole. EIA is also based in Abu Dhabi, but is a sovereign wealth fund established for the benefit of the seven emirates of the UAE. ICD was established in 2006 to hold the assets of the government of Dubai.

ADIA currently has an estimated US$702 billion in assets under management, which it commits to private equity, venture capital, real estate, debt and other alternatives. ADIA invests the surplus oil revenues generated in Abu Dhabi and focuses on international investments (with a focus on North America, Europe and emerging markets). ADIA tends to be a passive investor relying on the managers of the funds and companies in which it invests.

Formed in 2007, ADIC is a spinoff of ADIA and, similar to ADIA, it invests surplus oil revenues. Whereas ADIA primarily makes international investments, ADIC maintains a stronger focus on UAE and Middle East investments. ADIC is agnostic as to asset class, and will make both direct and fund investments. It is estimated that ADIC has approximately US$123 billion in assets under management. ADIC is currently being consolidated with Mubadala Investment Company.

Mubadala is a sovereign wealth fund established with the purpose of diversifying the Abu Dhabi economy and providing social benefits to the UAE. It has focused on infrastructure, transportation and energy, including renewable energy. One of its most prominent investments is Masdar City, located outside Abu Dhabi, which is designed to be a hub for clean-tech energy companies and is committed to zero carbon. Mubadala recently merged with IPIC, which held the UAE's overseas oil assets, in an effort to realise synergies and promote growth in the energy, utilities, technology and aerospace sectors. It is estimated that the merged entity will have over US$200 billion in assets under management.

EIA was established in 2007 by royal decree to represent the seven emirates of the UAE. EIA invests in many companies that operate across the UAE, such as telecommunications companies and local banks. EIA currently has an estimated US$34 billion in assets under management.

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ICD is a sovereign wealth fund owned by the government of Dubai. ICD's purpose is generally to supervise and manage the assets of the government while adding value to the portfolio. ICD owns assets in the energy, transportation, banking, industrial, real estate and other sectors, including stakes in some of Dubai's most prominent companies, such as Emaar Properties, Emirates NBD Bank and Emirates Airlines. It is estimated that ICD has approximately US$196 billion in assets under management.

Family offices

Family groups are significant players in the asset management industry in the UAE, both on the manager and investor side, and are widely expected to be a very active investor group over the next year. While these family offices invest globally, many have a vested interest in investing in their home economies and the regional markets. There has been a trend of the larger UAE family offices moving away from blind-pool funds and focusing more on trying to take direct stakes in their investments.

VII TAX LAW

Historically, the UAE has been a zero-tax jurisdiction. However, in October 2016, the UAE federal law establishing the UAE Federal Tax Authority (FTA) was issued. The FTA has been tasked with overseeing taxation in the UAE and, in particular, the implementation of the newly introduced VAT, which was implemented in January 2018. The FTA will be responsible for formulating UAE federal tax rules and regulations, including VAT, and will oversee the UAE's application of international tax obligations pursuant to tax treaties, tax information exchange treaties and global tax information exchange programmes. In addition, the FTA will be responsible for implementing all aspects of tax law including assessments, evaluations of returns, audits and the resolution of disputes.

Notwithstanding the introduction of VAT, the following taxes are not applicable in the UAE: withholding tax, corporate tax, personal income tax and capital gains tax. Oil, gas and petrochemical companies and branch offices of foreign banks are, however, required to pay taxes.

Entities established in the DIFC and the ADGM and their employees are subject to a zero rate of tax (income tax, corporate tax, withholding, capital gains, etc.). It is not expected that the new proposed taxes will be assessed on free-zone entities. Therefore, it is hoped that the tax regulations will have a negligible effect on the asset management industry in the UAE.

VIII OUTLOOK

Throughout the financial downturn and the recent slide in oil prices, the UAE has shown its resilience. It has proved that its economy operates outside of the oil and energy sectors, and that it has the infrastructure to maintain and grow its asset management industry. Regional and international managers see the UAE as the logical regional centre for the asset management industry, with Dubai serving as the hub. The DIFC is seeking to capitalise on this success by introducing simpler funds regulations to encourage more growth of the industry. In Abu Dhabi, the authorities have sought to emulate this success and make the ADGM a competitor to the DIFC as a regional funds jurisdiction. Support by government investors in Abu Dhabi have helped support the ADGM and has been an encouragement for local and international managers to set up shop there. The UAE's economy, like all other

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global economies, is being impacted by the covid-19 outbreak. The UAE authorities have taken several measures to help various business sectors to combat the impact of the pandemic on the economy. It is hoped that these measures will help ensure business continuity as the economy gradually reopens, accelerate recovery and ultimately help achieve sustainable economic growth in the UAE.

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Appendix 1

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ISBN 978-1-83862-758-4

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