Global Private M&A Guide - Limited External Content - United Arab Emirates

Common deal structures

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# What are the key private M&A deal structures?

In the UAE, transactions are usually concluded via either a share purchase or an asset purchase. Statutory mergers can also be concluded under UAE law, but are not commonly used.

Auctions are not uncommon in the UAE. Bid process letters are commonly used and often require binding offers to be submitted, although such binding offers are usually drafted to be highly conditional and are, therefore, unlikely to have a binding effect.

The UAE Commercial Companies Law, Federal Law No. 2 of 2015 (CCL), provides for the merger of UAE companies by way of amalgamation (where two companies merge by disappearing into one newly formed company) and absorption (where one company merges into another such that only the merged company survives). These provisions are complex, largely untested and, therefore, not generally used in the context of private company M&A transactions. However, mergers are increasingly being used in the context of restructuring transactions, where there is less likelihood of a dispute in the absence of clear regulations. Certain well-established free zones (such as the DIFC and the ADGM) also have fairly robust regulations regarding mergers and amalgamations, although this is not the case with all free zones (such as Dubai Airport Free Zone or Jebel Ali Free Zone, for instance).

# Which entity is likely to be the target company (on a share sale) or the seller (on an asset sale)?

Corporate entities may be formed onshore in the UAE under either the CCL or the Civil Code.

The CCL provides for five different types of corporate forms: the LLC; the private joint-stock company; the public joint-stock company; partnerships; and foreign companies. In the context of private M&A transactions, the most common form of company incorporated onshore in the UAE is the LLC.

The Civil Code provides for an additional form of entity, being a civil company that undertakes "professional" or "consultancy" activities such as law firms, architecture, engineering and accounting firms. However, civil companies are rarely used for two reasons: (i) they do not have a separate legal identity and it is, therefore, not possible to ring-fence liability using such form of entity; and (ii) civil companies are not generally permitted to have corporate shareholders and are, therefore, not usually suitable for use as part of a multinational corporate group.

In addition to corporate entities formed onshore, corporate entities may be established in one of the many free zones in the UAE provided that the business activities of the company are of a nature that can be performed from within the confines of the relevant free zone. The DIFC and ADGM uniquely apply common law based on English law. The DIFC has been set up as a global financial center within the UAE as part of a broader Dubai strategy to increase its profile as a leading regional financial hub. The aim is to attract global and regional financial institutions, companies and service providers to operate in the DIFC. The ADGM was recently established and is broadly similar to the DIFC in many respects.

# What are the different types of limited liability companies?

The LLC structure offers limited liability to its shareholders. An entity of this nature can have between one and 50 shareholders.

The CCL does not prescribe a minimum capitalization for an LLC. However, there must be sufficient share capital for the realization of the objectives of the company and certain specific business activities have minimum capital requirements imposed by the DED. This will be judged by the relevant emirate-level authority that will regulate the incorporation of the company (for example, in Dubai it is the Dubai DED).

Onshore LLCs are not currently permitted to have different classes of shares (although a number of free zones now provide for different classes of shares, such as ADGM, DIFC and the Dubai Multi Commodities Centre). Government regulations can impose higher minimum capital requirements with respect to certain classes of company or types of activity.

The LLC structure does provide some flexibility in relation to setting out minority protections such as reserved matters but the level of protections do not match what is available in many common law jurisdictions.

In addition to certain limited statutory protections (e.g., preemptive rights on issues of new shares), minority protections can include versions of the following (though the protections will not be identical to those that can be crafted in common-law jurisdictions):

Supermajority voting

Management control

Disproportionate allocation of profits

Shareholder agreements being permitted to supplement the constitutional documents in some circumstances

# Is there a restriction on shareholder numbers?

There is a minimum of one, and a maximum of 50, shareholders for an LLC.

# What are the key features of a share sale and purchase?

A share purchase in the UAE will have many features familiar to those who have undertaken share purchases in other major economies. The key transaction document is the SPA, which will commonly follow the UK style of drafting. The SPA does not need to be submitted before any authorities and can, therefore, be drafted in the language preferred by the parties, but English is most common. SPAs will include terms commonly found in other jurisdictions, such as covenants, conditions, warranties and indemnities. For certain commonly utilized UAE corporate vehicles (e.g., onshore limited liability companies), title to shares will transfer upon submission to the Department of Economic Development of an executed and notarized amendment resolution revising the shareholders of the target entity. A similar, though not identical, procedure is utilized in many freezones.

The UAE introduced VAT on 1 January 2018 and, therefore, tax warranties and covenants are also being routinely included.

Other documents, such as a disclosure letter, transition service agreement or shareholders agreements will be similar to those used in other jurisdictions.

# What are the key features of an asset sale and purchase?

An asset purchase in the UAE will share many features of asset purchases in other jurisdictions. The key transactional document is the APA. This does not need to be submitted before any authorities and can, therefore, be drafted in the language preferred by the parties.

Unless the assets to be transferred are of a type that are registered (e.g., registered trademarks, motor vehicles, real estate), there is no need to file any documentation with the relevant authorities. If registered assets are to be transferred, the parties would typically execute a short-form document to that effect rather than filing the long-form APA that contains the full terms of the transaction with the authorities.

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