

Banking 2020

Type	Questions and Answers
Date	28 juil. 2020
Source	GCC - Middle East Corporate Counsel Advisor
Jurisdiction	United Arab Emirates

Document link: https://www.lexismiddleeast.com/pg/gcc/UnitedArabEmirates_Banking_2020



Table of contents

1. What are the main laws regulating the banking sector in this jurisdiction and what do they cover?	3
2. What is the name of the main regulators responsible for regulating the banking sector and which areas do they cover?	4
3. What is the definition of a bank in this jurisdiction?	4
4. Are the same institutions able to provide regular and Islamic banking services?	4
5. Are there any special regulatory requirements for those providing Islamic banking services?	4
6. Does banking regulation operate in a different way in any free zone jurisdiction?	4
7. What are the main steps a bank needs to take if it wishes to provide banking services in this jurisdiction?	4
8. Are there any special passporting rules or exemptions for banks which already operate in other jurisdictions?	5
9. Are there any particular laws or rules governing lending to consumers or businesses?	5
10. Are there any particular laws or rules on guarantees?	6
11. Are there any specific laws governing customer protection of banking clients?	6
12. Who do rules on capital adequacy operate and how are they enforced?	6
13. In the event a bank goes bankrupt does the state provide any guarantees to consumers?	7
14. Are there any rules or regulations on application of interest?	7
15. Are there laws or rules governing transactions between related parties in the banking sector?	7
16. Are there any activities banks are prohibited from undertaking?	7
17. What supervisory powers do the banking regulators have over banking activities?	7
18. What are the main penalties the banking regulators have at their disposal?	8
19. What happens when a bank becomes under capitalised?	8
20. Are there any rules on bank ownership?	9
21. What are the most frequent type of enforcement actions taken in this jurisdiction?	9
22. What are the rights and duties of an individual who controls a bank either as a director or for a business which owns a bank in this jurisdiction?	9
23. Who can be legally liable if a bank fails?	9
24. Are there any taxes levied over common banking services?	9
25. What steps need to be taken by an individual or company which wishes to purchase a bank in this jurisdiction?	9
26. What constitutes having control over a bank and what are the implications of having this?	9
27. What are the main differences between banking regulation in this jurisdiction and other major jurisdictions such as the US and Europe?	9
28. Are there any special rules of client confidentiality and banking secrecy? If so, what is their impact?	9
29. What is the typical time scale for becoming registered to provide banking services in this jurisdiction?	10
30. What is the typical time scale for registration of a change of ownership in this jurisdiction?	10
31. Are there any special rules on banking set off?	10
32. Are there any special rules on closure of a bank account?	10
33. What are the main rules on cheque issuing and bounced cheques?	10
34. What are the main rules on provision of safe deposits by banks?	10
35. What are the main rules on the provision of letters of credit, promissory notes or bills of exchange by banks?	10
Firm	10
Authors	12

1. What are the main laws regulating the banking sector in this jurisdiction and what do they cover?

The main laws regulating the banking sector in the UAE are:

1. **Federal Decree-Law No. 14/2018 Regarding the Central Bank and Organisation of Financial Institutions and Activities.** This Law came into force in 2018 and has replaced the following two laws:

- (a) Federal Law No. 10/1980 Regarding the Central Bank, the Monetary System and Organisation of Banking; and
- (b) Federal Law No. 6/1985 Regarding Islamic Banks, Financial Institutions and Investment Companies (together the **Previous Laws**)

The New Banking Law only applies to the Central Bank of the UAE (the **Central Bank**), financial institutions, financial activities and persons subject to it. It does not apply to financial free zones (i.e. Dubai International Financial Centre (**DIFC**) and Abu Dhabi Global Market (**ADGM**)) or the financial institutions regulated by the authorities of these free zones (i.e. the Dubai Financial Services Authority (**DFSA**) and the Financial Services Regulatory Authority (**FSRA**)) (Article 151 of Federal Law No. 14/2018).

The regulations, decisions and circulars issued pursuant to the Previous Laws will remain in force until replaced in a three year period, from the date of which the New Banking Law came into force, being September 2021 (Article 152 of Federal Law No. 14/2018).

The New Banking Law contains provisions on the: (a) organisation and objectives of the Central Bank in addition to other regulatory provisions, such as, the Central Bank's management, operations with the public sector, etc.; (b) currency of the UAE; (c) organisation of licensed financial institutions and activities; (d) financial infrastructure; (e) grievances and appeals; and (f) sanctions and penalties.

2. **Federal Decree-Law No. 10/2018 regarding Netting (the **Netting Law**)** which regulates the mechanism of "netting" in the UAE. The Netting Law is also not applicable to the financial free zones or the financial institutions licensed thereby (i.e. the DIFC and ADGM which have their own netting laws.
3. **Federal Decree-Law No. 19/2019 on Insolvency:** this law covers the insolvency of natural persons and the estate of the deceased.
4. **Federal Decree-Law No. 9/2016 on Bankruptcy:** this law covers the bankruptcy of companies, traders etc., but it is not applicable to the financial free zones and state owned companies (unless such companies opt to be governed by this law).
5. **Federal Law No. 5/1985 on the Civil Transactions Law of the United Arab Emirates State (the **Civil Transactions Law**)** which contains provisions on loans, lending, guarantees and other security such as mortgages, pledges etc.
6. **Federal Law No. 18/1993 Issuing the Commercial Transactions Law (the **Commercial Transactions Law**)** which contains provisions on banking operations and commercial papers such as bank deposits, accounts, transfers, loans, guarantees, credit, commercial papers, lending, financial securities, bills of exchange, cheques, promissory notes etc.
7. **DIFC Law No. 1/2004 Regulatory Law:** This law contains provisions on the creation of the DFSA including, but not limited to, its powers, rules, structure, licensing of persons and firms authorised to carry on financial services in the DIFC, money laundering and accounting and auditing.
8. **DIFC Law No. 13/2004 Law Regulating Islamic Financial Business** which covers conduct of Islamic Financial Business in the DIFC.
9. **DIFC Law No. 1/2012 Markets Law** which covers the offer of securities, principles of takeovers, obligations of reporting institutions etc.
10. **DIFC Law No. 2/2014 on Netting** which contains provisions on netting in the DIFC.
11. **Abu Dhabi Law No. 4/2013 Concerning Abu Dhabi Global Market (as amended by Abu Dhabi Law No. 12/2020)** which states that the FSRA is solely responsible for the regulation of financial services and related activities in the ADGM. This law sets out its powers, rules, structure, licensing of entities to carry out financial services and also contains provisions on netting.
12. **Cabinet Decision No. 2/2007 on the Implementing Regulations of Federal Law No. 8/2004 concerning financial free zones:** this resolution contains certain provisions on licensing of Financial Banking Activities in the ADGM. The ADGM then also has many specific regulations passed on various items such as the FSRA Regulations Framework.
13. **Federal Decree-Law No. 20/2018 on Anti-Money Laundering, Combating the Financing of Terrorism and Financing of Illegal Organisations and Cabinet Decision No. 10/2019 On the Implementing Regulation of Federal Decree-Law No. 20/2018 on the Criminalisation of Money Laundering and Combating the Financing of Terrorism and the Financing of Unlawful Organisations:** These are the laws and rules on anti-money laundering in the UAE.

The DIFC and ADGM have also issued separate rules and guidelines on anti-money laundering.

2. What is the name of the main regulators responsible for regulating the banking sector and which areas do they cover?

The main regulators in the banking sector in the UAE are the:

1. **Central Bank:** the Central Bank is an independent federal public institution and is responsible for overseeing all the banks and banking activities in onshore UAE.
2. **DFSA:** the DFSA is the financial regulator of the DIFC.
3. **FSRA:** the FSRA is the financial regulator in the ADGM and supports and facilitates all the financial activities there.
4. **The Securities and Commodities Authority (SCA):** the SCA monitors and regulates the UAE's financial and capital markets and securities related activities in the UAE (excluding the DIFC and ADGM).

3. What is the definition of a bank in this jurisdiction?

Pursuant to Federal Decree-Law No. 14/2018, "Banks" have been defined as any juridical person licensed in accordance with the provisions of this Law to primarily carry on the activity of taking deposits and any other Licensed Financial Activities.

Licensed Financial Activities are the activities subject to the Central Bank licensing and supervision which are specified in Article 65 of Federal Decree-Law No. 14/2018.

The New Banking Law also defines Licensed Financial Institutions which also include institutions other than only Banks. The term has been defined as Banks and Other Financial Institutions licensed in accordance with Federal Decree-Law No. 14/2018 to carry on a Licensed Financial Activity or more, including those which carry on the whole or part of their business in compliance with the provisions of Islamic Sharia and are either incorporated inside the UAE or in other jurisdictions or have branches, subsidiaries or Representative Offices inside the UAE.

Other Financial Institutions have been defined as any juridical person other than banks, licensed in accordance with the provisions of Federal Decree-Law No. 14/2018 licensed to carry on a financial activity or more, of the Licensed Financial Activities.

Representative Office has been defined as an office licensed in accordance with the provision of Federal Decree-Law No. 14/2018 to carry on representation of a financial institution incorporated in other jurisdictions.

4. Are the same institutions able to provide regular and Islamic banking services?

A bank in the UAE that intends to carry on the whole or part of their business in compliance with the provisions of Islamic Sharia will need to obtain a license to do this and adhere to the special regulations that apply to such banks. Therefore, while it may be the same bank, it will be required to have a license enabling it to operate in a conventional and Sharia compliant manner and ensure that it follows the special regulations that would apply to Islamic banks.

5. Are there any special regulatory requirements for those providing Islamic banking services?

A Licensed Financial Institution which intends to carry out its business in compliance with Shari'ah shall be governed by the rules, standards and general principles of the "Higher Shari'ah Authority" which is affiliated to the Central Bank (Article 17 of Federal Decree Law No. 14/2018). Such a bank or financial institution also needs to establish an "Internal Sharia Supervision Committee" which shall supervise the Sharia supervision of the activities of such an institution (Article 79 of Federal Decree Law No. 14/2018).

6. Does banking regulation operate in a different way in any free zone jurisdiction?

The New Banking Law (Article 151 of Federal Decree Law No. 14/2018) and the Netting Law (Article 2 of Federal Decree Law No. 10/2018) do not apply to the financial free zones (i.e. DIFC and ADGM) or the financial institutions regulated by the authorities of these zones (i.e. the DFSA and FSRA).

These financial free zones have their own laws and regulatory authorities i.e. DFSA for the DIFC and the FSRA for ADGM.

7. What are the main steps a bank needs to take if it wishes to provide banking services in this jurisdiction?

A bank must be a public joint stock company (branches of foreign banks are exempt from this requirement) (Article 47 of Federal Decree Law No. 14/2018) and 60% of the shareholding of these banks should be held by UAE nationals (Article 76 Federal Decree Law No. 14/2018). There are also special requirements in relation to the board structure of banks that would need to be followed and are mentioned under the Central Bank Circular No. 83/2019 Corporate Governance Regulation for Banks.

Additionally, a bank that wishes to provide services in the UAE will be required to obtain a license from the Central Bank to carry out one or more Licensed Financial Activities (Article 64 of Federal Decree Law No. 14/2018) and have its name entered into the "Register of Licensed Financial Institutions" which is created by the Central Bank (Article 73 of Federal Decree Law No. 14/2018).

8. Are there any special passporting rules or exemptions for banks which already operate in other jurisdictions?

Article 64 of Federal Decree-Law No. 14/2018 prohibits carrying on or promoting Licensed Financial Activities from or within the UAE without a license.

This means that any bank/institution that intends to carry on such activity will need a license. The definition of Licensed Financial Institutions under Federal Decree-Law No. 14/2018 does include institutions incorporated outside the UAE or those that have branches, subsidiaries or Representative Offices in the UAE.

Branches of foreign banks operating in the UAE are exempted from the rule that banks need to take the form of joint stock companies (Article 74 of Federal Decree-Law No. 14/2018). Such branches shall maintain special accounts for all their operations in the UAE including the balance sheet and profit and loss account (Article 113 of Federal Decree-Law No. 14/2018).

9. Are there any particular laws or rules governing lending to consumers or businesses?

The laws that govern lending and the banking sector in the UAE (both in relation to consumers and businesses) are

1. **Federal Decree-Law No. 14/2018 Regarding the Central Bank and Organisation of Financial Institutions and Activities.** This Law came into force in 2018 and has replaced the following two laws:

- (a) Federal Law No. 10/1980 Regarding the Central Bank, the Monetary System and Organisation of Banking; and
- (b) Federal Law No. 6/1985 Regarding Islamic Banks, Financial Institutions and Investment Companies (together the **Previous Laws**)

The New Banking Law only applies to the Central Bank of the UAE (the **Central Bank**), financial institutions, financial activities and persons subject to it. It does not apply to financial free zones (i.e. Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM)) or the financial institutions regulated by the authorities of these free zones (i.e. the Dubai Financial Services Authority (DFSA) and the Financial Services Regulatory Authority (FSRA)) (Article 151 of Federal Law No. 14/2018).

The regulations, decisions and circulars issued pursuant to the Previous Laws will remain in force until replaced in a three year period, from the date of which the New Banking Law came into force, being September 2021 (Article 152 of Federal Law No. 14/2018).

The New Banking Law contains provisions on the: (a) organisation and objectives of the Central Bank in addition to other regulatory provisions, such as, the Central Bank's management, operations with the public sector, etc.; (b) currency of the UAE; (c) organisation of licensed financial institutions and activities; (d) financial infrastructure; (e) grievances and appeals; and (f) sanctions and penalties.

2. **Federal Decree-Law No. 10/2018 regarding Netting (the Netting Law)** which regulates the mechanism of "netting" in the UAE. The Netting Law is also not applicable to the financial free zones or the financial institutions licensed thereby (i.e. the DIFC and ADGM which have their own netting laws).
3. **Federal Decree-Law No. 19/2019 on Insolvency:** this law covers the insolvency of natural persons and the estate of the deceased.
4. **Federal Decree-Law No. 9/2016 on Bankruptcy:** this law covers the bankruptcy of companies, traders etc., but it is not applicable to the financial free zones and state owned companies (unless such companies opt to be governed by this law).
5. **Federal Law No. 5/1985 on the Civil Transactions Law of the United Arab Emirates State (the Civil Transactions Law)** which contains provisions on loans, lending, guarantees and other security such as mortgages, pledges etc.
6. **Federal Law No. 18/1993 Issuing the Commercial Transactions Law (the Commercial Transactions Law)** which contains provisions on banking operations and commercial papers such as bank deposits, accounts, transfers, loans, guarantees, credit, commercial papers, lending, financial securities, bills of exchange, cheques, promissory notes etc.
7. **DIFC Law No. 1/2004 Regulatory Law:** This law contains provisions on the creation of the DFSA including, but not limited to, its powers, rules, structure, licensing of persons and firms authorised to carry on financial services in the DIFC, money laundering and accounting and auditing.
8. **DIFC Law No. 13/2004 Law Regulating Islamic Financial Business** which covers conduct of Islamic Financial Business in the DIFC.
9. **DIFC Law No. 1/2012 Markets Law** which covers the offer of securities, principles of takeovers, obligations of reporting institutions etc.
10. **DIFC Law No. 2/2014 on Netting** which contains provisions on netting in the DIFC.
11. **Abu Dhabi Law No. 4/2013 Concerning Abu Dhabi Global Market (as amended by Abu Dhabi Law No. 12/2020)** which states that the FSRA is solely responsible for the regulation of financial services and related activities in the ADGM. This law sets out its powers, rules, structure, licensing of entities to carry out financial services and also contains provisions on netting.
12. **Cabinet Decision No. 2/2007 on the Implementing Regulations of Federal Law No. 8/2004 concerning financial free zones:** this resolution contains certain provisions on licensing of Financial Banking Activities in the ADGM.

The ADGM then also has many specific regulations passed on various items such as the FSRA Regulations Framework.

- 13. Federal Decree-Law No. 20/2018 on Anti-Money Laundering, Combating the Financing of Terrorism and Financing of Illegal Organisations and Cabinet Decision No. 10/2019 On the Implementing Regulation of Federal Decree-Law No. 20/2018 on the Criminalisation of Money Laundering and Combating the Financing of Terrorism and the Financing of Unlawful Organisations:** These are the laws and rules on anti-money laundering in the UAE.

The DIFC and ADGM have also issued separate rules and guidelines on anti-money laundering.

The charging of interest between individuals is prohibited in Sharia and is a criminal offence in the UAE.

However, Commercial Transactions Law (Federal Law No. 18/1993) allows for a creditor to receive simple interest on a commercial loan as per the rate mentioned in the loan agreement. If such a rate is not mentioned in the agreement, it would be calculated in accordance with the market rate provided that it does not exceed 12% (Article 76 of Federal Law No. 18/1993). Interest can also be calculated on the arrears in case of delayed payments (Article 77 of Federal Law No. 18/1993). Unless otherwise followed by commercial custom/bank practice, interest is to be paid at the end of the year when the loan is for more than one year or at the date of maturity of the loan if the loan is for a shorter period of time (Article 78 Federal Law No. 18/1993).

Article 409 of Federal Law No. 18/1993 also allows a bank to charge simple interest on a loan and the courts have held that this is considered as a commercial activity where interest can be charged regardless of the capacity of the borrower or the purpose of the loan provided that such interest does not exceed 12%.

Article 121(3) of Federal Decree-Law No. 14/2018 prohibits Licensed Financial Institutions (as defined in the law) from charging interest on accrued interest charged on any creditor or funding facilities granted to its customers.

10. Are there any particular laws or rules on guarantees?

The provisions on "guarantees" can be found under the Federal Law No. 5/1985. These provisions can be found under Title 5

Two important rules that should be noted in relation to guarantees in the UAE are that:

- (a) it is difficult to enforce an "all monies" guarantee in the UAE because according to Article 1061 of Federal Law No. 5/1985, it is important that the guarantee is of a "known debt" therefore the amount should be specified; and
- (b) further, Article 1092 of Federal Law No. 5/1985 also prescribes that there is a limitation period of six months from when the debt was due in relation to the obligations of the guarantor. There are different approaches taken by the Supreme Court in Abu Dhabi and the Court of Cassation in Dubai. The Supreme Court in Abu Dhabi has ruled that the time bar would be 10 years and not six months in commercial transactions where the beneficiaries are banks/financial institutions. The Dubai Court of Cassation has ruled that the six month period is the applicable period of limitation.

There is also case law from the Dubai Court of Cassation that Federal Law No. 5/1985 shall apply to commercial sureties. The Federal Law No. 18/1993 has very limited provisions on "surety" which are Article 73 of Federal Law No. 18/1993 which states that a suretyship shall be commercial if the surety has guaranteed a debt which is deemed to be commercial or if the surety is a trader and has an interest in guaranteeing the debt and Article 74 of Federal Law No. 18/1993 which states that in a commercial guarantee, guarantors are jointly liable with each other and the debtor.

The provisions on "bank guarantees" can be found under Chapter 2 of Federal Law No. 18/1993. The Commercial Transactions Law defines a bank guarantee, prescribes forms for the same and prescribes rules on its discharge, the right of subrogation etc.

11. Are there any specific laws governing customer protection of banking clients?

Chapter 6 of Federal Decree-Law No. 14/2018 contains provisions on Customer Protection. Article 120 of Federal Decree-Law No. 14/2018 contains provisions on confidentiality of banking and credit information. Further Article 121 of Federal Decree-Law No. 14/2018 states that the Central Bank shall establish regulations relating to the protection of customers and raise public awareness on the types of banking products and their risks. It also prohibits banks from charging interest on accrued interest charged on any credit or funding facilities granted to customers. Article 122 of Federal Decree-Law No. 14/2018 states that the board of directors of the Central Bank may issue regulations for the protection of depositors which include compensation funds. Lastly, Article 123 of Federal Decree-Law No. 14/2018 provides that the Board of Directors of the Central Bank shall ensure that every natural Person shall have the right to access banking and finance products and services in accordance with their needs.

12. Who do rules on capital adequacy operate and how are they enforced?

The Central Bank is the regulator that ensures that capital adequacy standards are met in the UAE. Article 75 of Federal Decree-Law No. 14/2018 provides that the Central Bank shall establish the:

- (a) regulations on the minimum capital requirements for the Licensed Financial Institutions (as defined in Federal Decree-Law No. 14/2018);
- (b) conditions/instances of increase or decrease of capital and determine its risk based requirements; and
- (c) necessary actions to be taken in case of capital shortfall in addition to measures taken by the Central Bank in this regard.

In furtherance of these powers, the Central Bank has also issued various regulations, circulars and guidelines over the years, the latest being the circular No 52/2017 re capital adequacy regulations to ensure that the capital adequacy of banks in the UAE is in line with the revised rules outlined by the Basel III regulations. Pursuant to these regulations, the Central Bank has also published Standards re Capital Adequacy in the UAE which can be found on the Central Bank's website. Banks have to follow the prescribed guidelines and regularly report their capital position to the Central Bank. The Central Bank also has various sanctions and penalty powers which it can impose on banks that do not follow the regulations that the Central Bank prescribes.

13. In the event a bank goes bankrupt does the state provide any guarantees to consumers?

Deposits are currently not guaranteed in the UAE. However, Article 122 of Federal Decree-Law No. 14/2018 states that the board of directors of the Central Bank may issue regulations for the protection of deposits and the rights of depositors of these Licensed Financial Institutions (as defined under Federal Decree-Law No. 14/2018) which may include establishment of a compensation fund.

14. Are there any rules or regulations on application of interest?

The charging of interest between individuals is prohibited in Sharia and is a criminal offence in the UAE.

However, Federal Law No. 18/1993 allows for a creditor to receive simple interest on a commercial loan as per the rate mentioned in the loan agreement. If such rate is not mentioned in the agreement, it would be calculated in accordance with the market rate provided that it does not exceed 12% (Article 76 of Federal Law No. 18/1993). Interest can also be calculated on the arrears in case of delayed payments (Article 77 of Federal Law No. 18/1993). Unless otherwise followed by commercial custom/bank practice, interest is to be paid at the end of the year when the loan is for more than one year or at the date of maturity of the loan if the loan is for a shorter period of time (Article 78 of Federal Law No. 18/1993).

Article 409 of Federal Law No. 18/1993 also allows a bank to charge simple interest on a loan and the courts have held that this is considered as a commercial activity where interest can be charged regardless of the capacity of the borrower or the purpose of the loan provided that such interest does not exceed 12%.

Article 121(3) of Federal Decree-Law No. 14/2018 prohibits Licensed Financial Institutions (as defined in the law) from charging interest on accrued interest charged on any creditor or funding facilities granted to its customers.

15. Are there laws or rules governing transactions between related parties in the banking sector?

Article 94 of Federal Decree-Law No. 14/2018 allows banks to extend credit facilities to members of its board of directors, their employees, relatives etc.

Article 6 of the Central Bank Circular No. 83/2019 on Corporate Governance Regulation for Banks mentions that a Bank must enter into any transactions with related parties on an arm's length basis, monitor these transactions and take appropriate steps to control or mitigate the risks and write off exposures to related parties in accordance with standard policies and processes. A Bank may extend credit facilities to members of its board, staff, relatives of such persons as determined by the Central Bank and such credit facilities need to be approved by the board or its committees. The whole board of a bank must approve the credit facilities where they are extended to the members of its board. The Central Bank may also on a case-by case basis set limits for exposure to related parties, deduct such exposures from capital when determining capital adequacy or require collateralisation of such exposures.

16. Are there any activities banks are prohibited from undertaking?

Article 93 of Federal Decree-Law No. 14/2018 restricts banks from the following activities:

- (a) Carrying on for its account commercial or industrial activities or acquiring own or trade in goods, unless the acquisition of such goods was in settlement of debts due from third parties;
- (b) Purchasing real estate for its own account (with certain exceptions prescribed by Federal Decree-Law No. 14/2018);
- (c) Purchase or acquire or deal in shares of the bank in excess of ratios set by the Central Bank (with certain exceptions prescribed by Federal Decree-Law No. 14/2018); and
- (d) Purchase shares of commercial companies except within the ratio of the bank's own funds as set by the Central Bank unless these shares were acquired in settlement of a debt.

The Central Bank shall also issue regulations setting limits on banks purchasing and dealing in securities issued by foreign government or companies.

(a) and (b), set out above are not applicable to banks carrying on business in a Sharia compliant manner.

17. What supervisory powers do the banking regulators have over banking activities?

1. **Central Bank:** Federal Decree-Law No. 14/2018 gives the Central Bank wide powers to supervise all banking activity in the UAE which include:
 - (a) Ensuring prudent management of the Central Bank's foreign reserves;
 - (b) Drawing up and implementing the monetary policy of the UAE;
 - (c) Issuing currency;

- (d) Organising Licensed Financial Activities and determining the standards required for promoting best practices;
 - (e) Setting up appropriate regulations and standards for the customers of Licensed Financial Institutions and supervising the licensing of Licensed Financial Institutions;
 - (f) Monitoring the credit condition of the UAE;
 - (g) Managing and regulating the Financial Infrastructure Systems in the UAE including electronic payment systems, digital currency etc.; and
 - (h) Ensuring that Licensed Financial Institutions follow the rules set by the Central Bank on prohibited activities, capital adequacy requirements etc.
2. **Dubai Financial Services Authority and the Financial Services Regulatory Authority:** the DFSA is the sole independent services regulator for the DIFC and the FSRA is the sole independent regulator for the ADGM. They are responsible for the financial services industry in the respective free zones and have wide powers to carry out whatever is necessary to achieve its objectives of fostering the financial services industry in these free zones which include anti-money laundering powers, gathering reports and documents, imposing restrictions and making necessary rules and regulations to ensure they are able to further their objectives.
3. **The Securities and Commodities Authority:** The SCA is responsible for securities and commodities in the UAE. The SCA has the power to propose regulations in relation to licensing of the market, acceptance, listing, cancellation etc. of any securities or commodities from negotiations in the market, regulations in relation to brokers, disclosure, transparency etc. The board of directors of the SCA is responsible for receiving complaints and notifications pertaining to market or broker activities and taking decisions in relation to the same, obliging the market and brokers to submit their financial records and generally supervising the market to ensure that their prescribed regulations are being followed. The SCA is also responsible for licensing markets and appointing their board of directors who would supervise the markets and report to the SCA.

18. What are the main penalties the banking regulators have at their disposal?

Without prejudice to any sanction or punishment provided for under any other law in the UAE, the Central Bank can impose one or more of the following penalties:

- Issue a caution to a violator, whether it be a Licensed Financial Institution or Authorised Individual;
- Require a Licensed Financial Institution to take certain actions to correct a violation;
- Prohibit certain Licensed Financial institutions from conducting certain operations or activities or impose limitations or restrictions on those activities or the license of the Licensed Financial Institution;
- Reduce or suspend a Licensed Financial Institution's ability to draw on the Central Bank's funds;
- Require the violating Licensed Financial Institution to deposit funds with the Central Bank without return;
- Impose a fine of 400 basis points over the prevailing base interest of the Central Bank on any shortfall in the Reserve Requirements;
- Require the violating Licensed Financial Institution to return to customers any funds it may have received as a result of its violation and any excess funds including revenue and profits shall transfer to the Central Bank;
- Impose a fine between one and ten times the value of an unjust enrichment if the Central Bank determines that to be the case;
- Impose a fine of not less than two million AED and not exceeding 200 million AED on a Licensed Financial Institution or in the case of an Authorised Individual a fine not less than 100,000 AED and not exceeding two million AED;
- Delink the violating Licensed Financial Institution from one or all Financial Infrastructure Systems;
- Withdraw the license and strike off the name of the Licensed Financial Institution from the Register;
- Impose conditions or restrictions on the authorization of the violating Authorised Individual.
- In the case of a Licensed Financial Institution carrying on business outside the scope of its license or if a person represents that it is a Licensed Financial Institution when it is not, then the penalty will be imprisonment and a severe fine or else one of them; and
- Both imprisonment and a hefty fine are the penalties for producing counterfeit currency. Destroying or mutilating the dirham will also result in a fine up to ten times the destroyed currency value.

19. What happens when a bank becomes under capitalised?

There is no express obligation on the shareholders to provide additional capital to rectify a shortfall; however, the Bank must raise the capital to the level required by the Central Bank. It is important to note that since 1 January 2018, compliance with the Basel III standards of capital adequacy is mandatory in the UAE. If the bank cannot reach capital adequacy in the timeline set forth by the Central Bank, it could be fined or its license to conduct banking cancelled.

20. Are there any rules on bank ownership?

In relation to banks incorporated in the UAE (as opposed to branches of foreign banks), the UAE shareholding (whether a person or an entity wholly owned by UAE nationals) must not be less than 60%. The Board of Directors of the Central Bank determine the conditions and controls of ownership of shares of banks incorporated in the UAE, as well as other Financial Institutions.

21. What are the most frequent type of enforcement actions taken in this jurisdiction?

The most common enforcement actions taken by the UAE Central Bank against Licenced Financial Institutions are license restrictions and/or cancellation and the levying of fines for violations. The Central Bank also acts in tandem with the local police in the relevant emirates in respect of enforcement for violations relating to financial fraud, money laundering and terrorism financing.

22. What are the rights and duties of an individual who controls a bank either as a director or for a business which owns a bank in this jurisdiction?

An individual or entity who controls a Bank in the UAE, must ensure that the Bank conducts its business in accordance with its licence, the requirements of the Federal Decree-Law No. 14/2018, the Federal Law No. 18/1993 and all circulars, notices and Resolutions of the Central Bank. In particular, there are numerous reporting obligations as well as compliance with anti-money laundering, terrorism financing and illegal organisation rules and regulations. The director or controlling entity has a right to appeal certain decisions of the Central Bank relating to licensing, authorisation of individuals and licensing and designation of Financial Infrastructure Systems before the Grievances and Appeals Committee.

23. Who can be legally liable if a bank fails?

In the UAE if a Bank fails, no legal liability attaches to the mangers, directors or controlling entity/shareholder of the Bank, unless the failure is caused by proven illegality or fraud committed by them.

24. Are there any taxes levied over common banking services?

Interest bearing banking transactions are not subject to any tax in the UAE, but transaction fees and margin-based transactions have been subject to Value Added Tax (VAT) since 1 January 2018. It is important to note that Islamic banking products will be treated analogously to conventional banking products for the purposes of VAT. There are no other taxes levied over common banking services.

25. What steps need to be taken by an individual or company which wishes to purchase a bank in this jurisdiction?

The current owner would need to obtain the Central Bank's prior written approval before being permitted to transfer any part of its business to another person or entity. A potential purchaser would also need to seek the Central Bank's prior approval to hold a controlling interest in a Licensed Financial Institution. The Central Bank will seek information relating to the identity of the potential purchaser, conflicts of interest and reports to the qualification of the potential purchaser to hold a controlling interest in a Licensed Financial Institution. The individual will need to be a UAE national and the company will have to be owned at least 60 percent by UAE nationals. In practice, acquisitions of banks in the UAE is rare given most are government owned and if a local bank is failing it will typically merge with another local bank.

26. What constitutes having control over a bank and what are the implications of having this?

The Federal Decree-Law No. 14/2018 does not define "control". In practice, "control" would amount to either having a majority shareholding in the bank or a right to exercise control at the bank's board of directors, or both. Having control of the Bank could mean that conditions, restrictions or fines could be placed on you as an Authorised Individual of the Licensed Financial Institution by the Central Bank pursuant to Federal Decree-Law No. 14/2018.

27. What are the main differences between banking regulation in this jurisdiction and other major jurisdictions such as the US and Europe?

The UAE has made monumental strides in the modernisation of banking regulation over the last couple of years, to bring the country in line with the best international standards. These updates include the implementation of the Basel III regulations in the UAE, in addition to the new legislative offerings in Federal Decree Law No. 14/2018, Federal Decree-Law No. 19/2019 and Federal Decree-Law No. 10/2018. The UAE has also recently adopted the OECD's Common Reporting Standard to implement the automatic exchange of information regarding financial accounts. The Emirates Securities and Commodities Authority (SCA) has also approved a plan to regulate initial coin offerings and recognise digital tokens as securities. The UAE is recognised as a global leader in the banking and financial services sector.

28. Are there any special rules of client confidentiality and banking secrecy? If so, what is their impact?

Article 120 of Federal Decree-Law No. 19/2019 requires written permission from clients of Licensed Financial Institutions for their data to be shared with third parties, except for the when it is required for compliance with certain anti-money laundering regulations or proving rights in litigation. The position in respect of "deemed consent" through either signing standard terms

of conditions or through an online "opt in/opt out" functionality is still unclear in the UAE. We may see further regulations enacted by the Central Bank which would restrict these types of permissions in a bid to more closely mirror the European provisions of General Data Protection Regulation. Before Federal Decree-Law No. 19/2019 came into force, there was very limited legislation in relation to confidentiality of client information, but Federal Decree-Law No. 19/2019 brings some clarity to the area as well as sets broad parameters of what constitutes client data in the UAE. We expect this area to be the subject of further Central Bank circulars and legislative rules.

29. What is the typical time scale for becoming registered to provide banking services in this jurisdiction?

The Central Bank has sole discretion in the registration of Licensed Financial Institutions and does not provide time frames in which it will make a decision. In practice, this process is more likely to take months rather than weeks. If the registration is rejected, the Central Bank must notify the applicant within 20 working days from the date of the decision which will be in writing and set out the reasoning for the rejection.

30. What is the typical time scale for registration of a change of ownership in this jurisdiction?

Same as above.

31. Are there any special rules on banking set off?

The UAE does not recognize mandatory set-off in the case of an insolvent counterparty. Parties to a contract cannot make set-off automatic on bankruptcy. The UAE requires mutuality to use set-off, a counterparty with a liability cannot use another individual's debt to set-off against that liability. Set-off in the UAE requires conversion into the same currency. Under Federal Decree-Law No. 10/2018, which came into force on 30 October 2018, set-off became possible if certain conditions are satisfied, namely, if the transaction is "permitted", if the non-insolvent party is a "protected person" and the contract itself is a "Qualifying Financial Contract" as defined in the Netting Law. The Netting Law remedies many of the issues in relation to insolvent set-off in the UAE and rescission of contracts in insolvency; however, the basic rules of set-off are still applicable, notwithstanding, the Netting Law.

32. Are there any special rules on closure of a bank account?

Closing a bank account in the UAE is a simple process. Typically, a bank will require you to visit a branch in person where you will be required to:

1. Empty the account;
2. Fill out an account closure form showing valid photo ID; and
3. Submit all debit cards along with unused cheques to the bank.

Once completed, your account should be closed within three to five working days.

33. What are the main rules on cheque issuing and bounced cheques?

Before issuing clients with chequebooks, banks in the UAE are required to carry out credit checks with Al Etihad Credit Bureau to ensure the client's creditworthiness. New clients will only be issued with a maximum of 10 cheques for the first six months, with a new cheque book to be issued after that time if none of the first 10 cheques are returned unpaid.

In the UAE it is a criminal offence to bounce a cheque pursuant to the UAE Federal Penal Code (Federal Law No. 3/1987). The general rule is that this offence is punishable by up to a three year detention and/or a fine, as well as the civil remedies available to the debtor. Since 2018, bounced cheques for amounts of 200,000 AED or less are no longer punishable by detention in the Emirate of Dubai, where the sentence will only be a fine.

34. What are the main rules on provision of safe deposits by banks?

Safe deposits are rare in the UAE. The limited number of banks that do provide this service have very long waiting lists and the facility itself is expensive. The Central Bank does not regulate or have policies governing this type of facility, so each bank individually determines how they operate this service.

35. What are the main rules on the provision of letters of credit, promissory notes or bills of exchange by banks?

Federal Law No. 18/1993 (the **Commercial Transactions Law**) sets out the rules in relation to letters of credit, bills of exchange and promissory notes in the UAE. These provisions closely mirror the provisions of the Geneva Convention relating to these instruments. The Commercial Transaction Law treats the negotiation, endorsement and avalisation of these instruments similarly. Both bills of sale and promissory notes are capable of being endorsed and assigned by the beneficiary in favour of a third party, but it is important to note that the endorsement must be unconditional and any condition attached to the endorsed instrument will render the endorsed instrument null and void under the Commercial Transaction Law. Letters of credit may be revocable or irrevocable and they are assumed irrevocable unless the letter itself says otherwise. A letter of credit may not be assigned, unless so authorised by the issuing bank and provided such assignment is specifically stipulated in the letter of credit. Unless provided for otherwise, such assignment may only occur once. The assignment can be made by endorsing the letter of credit or by taking delivery of it if it is to bearer.

Firm

**STEPHENSON
HARWOOD**

ستيفنسون هاروود

Stephenson Harwood LLP <https://www.shlegal.com/>

+971 4407 3900

Description

Our award winning banking and finance team is valued by clients for its high-calibre legal advice coupled with a commercial and pragmatic approach and a deep knowledge and insight of the regional market.

We advise on a broad spectrum of banking and finance matters including corporate financing, project finance, real estate and development finance, Islamic finance, asset and asset-based lending, transport finance including aviation and shipping, and trade finance.

Our clients comprise leading financial institutions, investment companies, other corporates, lessors, funds and other stakeholders based worldwide. We advise our clients on a wide range of banking and finance products from general corporate lending through to challenging cross-border structured transactions and on every aspect of the transaction from structuring, documentation and deal execution through to on-going waivers and amendments and default scenarios.

Authors



Nijoe Joseph
Partner, Stephenson Harwood

E: nijoe.joseph@shlegal.com, T: +971 4 407 3921, M: +971 50 644 3571

Biography

Nijoe is a banking and finance expert located in the firm's Dubai office. Nijoe is well known for regularly advising clients, both lenders and borrowers, on a variety of financing transactions, including corporate, asset, project, acquisition and real estate finance.

Nijoe's experience in the Middle East consists of a portfolio of complex loan (bilateral and syndicated) financings, Islamic financings, operating and financing leasing transactions. He advises all major national and international lenders, investors, developers, sponsors, lessors and operators around the world on financing structures.

He is reputed in the market for his work involving complex multi-jurisdictional security transactions and developing innovative structures. Clients praise Nijoe for commercial and pragmatic approach.



Kara Conneely
Associate, Stephenson Harwood

E: kara.conneely@shlegal.com, T: +971 4 407 3944, M: +971 58 990 1737

Biography

Kara is an associate in the banking and finance group in Dubai.

She has worked with a wide range of national and international syndicate lenders, lessors, airlines and investment funds on cross border transactions with multi-jurisdictional security packages. Kara's client- focused and commercial approach to transactions sets her apart from others associates.



Chinar Nuzhat Zaidi
Associate, Stephenson Harwood

E: chinar.zaidi@shlegal.com, T: +971 4 407 3960, M: +971 58 990 1727

Biography

Chinar is a banking and finance lawyer with experience in a broad range of sectors, such as asset finance, real estate finance, trade finance and project finance.

Chinar routinely advises UAE based and international lenders and borrowers in relation to cross-border mandates in both sophisticated and emerging markets.