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CAPITAL MARKETS

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Country Q&A

Equity capital markets in United Arab Emirates: regulatory overview

Douglas G Smith
Squire Patton Boggs LLP

global.practicallaw.com/2-617-6327

MAIN EQUITY MARKETS/EXCHANGES

1. What are the main equity markets/exchanges in your jurisdiction? Outline the main market activity and deals in the past year.

Main equity markets/exchanges

The United Arab Emirates (UAE) was formed in 1971. It is a union of seven Emirates, represented by a single federal and seven local governments. Securities law and regulation in the UAE is quite new as the first equity markets were established in the country in 2000. There are now three principal equity markets.

The basic law relating to securities is the Securities & Commodities Exchange Law (Federal Law No. 4 of 2000). This established a federal regulator, the Securities and Commodities Authority (ESCA).

However, the UAE has also established a number of free zones in which many of the aspects of UAE federal law do not apply, or apply only in part. The most important of these for the purposes of equity capital markets was, until recently, the Dubai International Financial Centre (DIFC). A specific amendment to the Federal Constitution of the UAE created DIFC in 2005 to provide a financial platform through which companies can focus on regional markets rather than the domestic market. Although the DIFC is in the Emirate of Dubai, it is subject to its own laws and regulations and has its own courts and arbitration centre.

The DIFC will very shortly have a competitor or at least an alternative in the UAE. In 2013 the Government of the Emirate of Abu Dhabi enacted a law (Abu Dhabi Law No (4) of 2013) to create a further free zone in the UAE, the Abu Dhabi Global Market (ADGM), an international financial centre similar in many respects to the Dubai International Financial Market. The ADGM, the creation of which was announced in early 2015, will have its own civil and commercial legal regime, based on and incorporating aspects of English law, overseen by a regulator, the Financial Services Regulations Bureau. As with the DIFC, the ADGM will have its own internal court system, the Global Market Courts, consisting of a Court of First Instance and a Court of Appeal. The ADGM is discussed in greater detail in *Question 26.* At present, there are three separate principal exchanges in the UAE:

- **Dubai Financial Market (DFM).** The government created the DFM on 26 March 2000 with the intention of becoming a world-class regional market place. It operates as a secondary market for trading securities issued by the public joint-stock companies, bonds issued by local and federal governments and other local or foreign financial instruments.

  In 2006, 20% of the DFM's shares were offered for public subscription. Borse Dubai, a government body, has a majority holding of 79.63% of the shares in DFM. The federal regulator, ESCA, regulates trading on the DFM (*www.dfm.ae/default.aspx*).

- **Abu Dhabi Securities Exchange (ADX).** The ADX (formerly the Abu Dhabi Securities market) was established on 15 November 2000 in the Emirate of Abu Dhabi. It currently has trading locations in Al Ain and in the Emirates of Fujairah, Sharjah, and Ras Al Khaimah. The federal regulator, ESCA, regulates trading on the ADX. The DFM owns a two-third stake in the ADX (*www.adx.ae/English/Pages/default.aspx*).

- **NASDAQ Dubai.** NASDAQ Dubai, based in the Dubai International Finance Centre, was created in 2005. The law of NASDAQ Dubai is based on modern, primarily European, securities law and regulation. There is a greater emphasis on a regional and global role for the exchange in contrast to the more domestic focus of the DFM and ADX. The DFM owns a two-third stake in NASDAQ Dubai (*www.nasdaqdubai.com*).

Market activity and deals

The recent history of securities trading has been mixed. 2014 was principally a year of net losses, particularly late in the year.

There are presently 67 companies listed on the DFM, consisting of mainly UAE issuers with other issuers from Kuwait, Bahrain, Oman, and Sudan. The ADX has more listed companies, currently in excess of 70 but tends to see less trading activity than the DFM. The on-shore markets, DFM and ADX, received a boost with the listing of Emaar Malls Group PJSC, a unit of the UAE's biggest listed developer Emaar Properties PJSC, on the DFM in September of 2014. Emaar Properties sold a 15% stake for US$1.58 billion, the largest IPO in Dubai since 2007. In early 2015 Daman Investments PSC, a large Dubai-based fund manager, announced its own plans for an IPO, notwithstanding the recent relative underperformance of the market.

There have been few listings on NASDAQ Dubai and liquidity remains somewhat limited. In April 2014, Emirates REIT listed its shares following its IPO. This was the first listing of a REIT on an exchange in the Gulf Cooperation Council (GCC) and the first listing on the exchange since 2009. The Emirates REIT was, however, a major success story for the exchange, as it was 3.5 times oversubscribed and raised US$201 million.

NASDAQ Dubai has become a major exchange for the listing of Sukuk. It is the third largest Sukuk venue globally with a total nominal value of US$24.05 billion in March 2015. It is also a major exchange for other debt issues. However, it has not been similarly attractive for equity listings to date. There are currently ten companies trading on the exchange.

2. What are the main regulators and legislation that applies to the equity markets/exchanges in your jurisdiction?

Regulatory bodies

The UAE federal regulator, the Securities and Commodities Authority (ESCA), is the principal regulator for the Abu Dhabi Securities Exchange (ADX) and the Dubai Financial Market (DFM). ESCA's website is: *www.sca.gov.ae/ENGLISH/Pages/default.aspx*. Both the ADX and the DFM have separate regulation at the exchange level.

In the Dubai International Financial Centre (DIFC), NASDAQ Dubai is subject to regulation by the Dubai Financial Services Authority (DFSA) (*www.dfsa.ae/Pages/default.aspx*). NASDAQ Dubai has its own rules regarding listing and trading.

Legislative framework

For the ADX and the DFM, the applicable legislation is federal:

- ESCA Law (*Federal Law No. 4 of 2000*).
- Listing Resolution (*Council of Ministers' Decision No. 12 of 2000 concerning the Regulations as to the Listing of Securities and Commodities*) (ESCA Listing Regulation).
- Disclosure Resolution (*Council of Ministers' Decision No. 3/R of 2000 concerning the Regulations as to Disclosure and Transparency*).
- Central Bank Resolution (*UAE Central Bank Board of Directors' Resolution No. 164/8/94 regarding the Regulation for Investment Companies and Banking, Financial and Investment Consultation Establishment or Companies*).
- Authority's Board of Directors' Decision No. (7/R) of 2002 concerning the listing of Foreign Companies.
- Ministerial Resolution No. (518) of 2009 Concerning Governance Rules and Corporate Discipline Standards.
- ADX Rules (note that the DFM currently has no separate rules, parties wishing to list on the DFM must comply with the requirements of the ESCA Listing Regulation).
- Companies Law (*Federal Law No. 2 of 2015 concerning Commercial Companies*).

For NASDAQ Dubai, the legislative framework is at DIFC level. The main legislation relevant to listing and admission includes:

- DIFC Regulatory Law 2004 (*DIFC Law No. 1 of 2004*).
- DIFC Markets Law 2012 (*DIFC Law No. 1 of 2012*).
- General Module.
- Islamic Finance Rules.
- DIFC Market Rules (MKT) module of the DFSA Rulebook.

The DFSA administers the legislation. The DFSA Rules additionally contain non-binding written guidance aimed at helping to interpret the provisions of the Rulebooks.

EQUITY OFFERINGS

3. What are the main requirements for a primary listing on the main markets/exchanges?

Main requirements

Abu Dhabi Securities Exchange (ADX) and Dubai Financial Market (DFM). Before listing on either the ADX or DFM, an issuer must apply to the Securities and Commodities Authority (ESCA) (*Decision No (12) of 2000 concerning the Regulations as to the listing of Securities and Commodities* (ESCA Listing Regulation)). Following ESCA's approval, the issuer must make a separate application to the ADX or the DFM. It is a listing requirement that a proposed issuer amend its corporate structure to form a Public Joint Stock Company (PJSC).

The ESCA Listing Regulation differentiates between UAE and foreign issuers. Local issuers must:

- Meet basic criteria relating to minimum size, minimum percentage of shares in public hands and trading records and accounts (*see below, Minimum size requirements and Trading record and accounts*).
- Comply with any additional listing requirements imposed by ESCA.
- Pay the required listing fee.

Foreign issuers are subject to the same criteria, although they are more onerous in some respects, and must comply with the laws in their country of incorporation under the supervision of a regulatory authority similar to ESCA.

The Emirates Investment Authority, the UAE's federal sovereign wealth fund, has the right to purchase up to 5% of any public joint stock company incorporated in the UAE (*Commercial Companies Law*). If the Emirates Investment Authority does not exercise its preferential rights then its reserved portion is available to subscribers for general subscription.

NASDAQ Dubai. NASDAQ Dubai has published detailed listing and trading requirements based on international trading standards. These include the Market Laws 2012 and the Market Rules. The Dubai Financial Services Authority (DFSA) enforces these listing and trading requirements and ultimately approves or rejects the issuer for listing.

The listing process for NASDAQ Dubai involves two applications:

- To the DFSA for admission of the company's securities to the Official List of Securities.
- To NASDAQ Dubai for admission of the company's securities to trading on the exchange.

The DFSA requires the applicant to:

- Meet minimum size requirements.
- Have a minimum percentage of shares in public hands.
- Meet conditions relating to trading record and accounts.
- Have sufficient working capital available for its operations or access to additional working capital if needed.
- Be able to continue its business independent of its controlling shareholder to avoid influence. Details regarding the controlling shareholders must be disclosed in the prospectus and the applicant must have adequate systems and controls in place to deal with any potential conflicts of interest.

Minimum size requirements

ADX and DFM. The following apply:

- DFM: a UAE issuer must have paid-up capital not less than the greater of AED30 million or 35% of the subscribed capital. A foreign issuer must have paid-up capital of AED40 million.
- ADX: paid-up capital of at least AED20 million. Foreign companies proposing to list must have capital of not less than AED40 million and at least 100 shareholders.

NASDAQ Dubai. The issuer's expected market capitalisation must be at least US$10 million.

Trading record and accounts

ADX and DFM. An applicant for listing must have:

- Incorporated at least two years before the application.
- Issued audited annual financial statements each year.
- Hold its ordinary general assembly at least once a year.

NASDAQ Dubai. An applicant must have published audited accounts produced in accordance with IFRS standards for at least three years, ending not more than six months before the application date.

Minimum shares in public hands

ADX and DFM. Companies may sell as little as 30% of their equity. Before 1 July 2015 when the new Companies Law came into force, issuers were generally required to sell at least 55% of the company's equity.

NASDAQ Dubai. A "free float" of not less than 25% of the issued shares of the issuer is required for listing. This means persons unconnected with the issuer must hold 25% of the issued shares as a result of the float.

Waivers

The DSFA, NASDAQ Dubai, the ESCA, DFM and ADX may all grant waivers or exceptions to the listing or documentary requirements. For example, the DFM issued a number of waivers to Emaar Properties in the DFM listing of its subsidiary Emaar Malls Group PJSC in September of 2014. These included waivers relating to the minimum shares to be held in public hands.

4. What are the main requirements for a secondary listing on the main markets/exchanges?

Main requirements

Abu Dhabi Securities Exchange (ADX) and Dubai Financial Market (DFM). The governing regulation relating to secondary listings outside of the Dubai International Financial Centre is the Securities and Commodities Authority (ESCA)'s Decision No (43/R) of 2008 concerning dual listing.

If the company's primary listing is on the ADX or DFM exchanges, a company may undertake a dual listing on a financial free zone market (NASDAQ Dubai) or an external market. The company must obtain ESCA's consent to the dual listing.

A company with securities listed on the NASDAQ Dubai requires ESCA's consent to list on the ADX or DFM exchanges.

Foreign companies that seek to trade on the ADX or DFM must comply with the following conditions:

- They must obtain ESCA's approval.
- The company must be a public joint stock corporation and comply with all laws of its country of incorporation.
- The company must be listed on a stock exchange of its country of incorporation.
- The company must provide audited financial statements for the previous two years before submitting the application to ESCA.
- The company's capital must not exceed AED40 million and there must be a minimum of 100 shareholders.
- The company's net assets cannot be less than 20% of its paid-up capital.

NASDAQ Dubai. To obtain a secondary listing on the NASDAQ Dubai, the issuer must have its primary listing in another jurisdiction. A secondary listing is generally subject to the same regulations and obligations as a primary listing on the NASDAQ Dubai. There is no fast track procedure to list on NASDAQ Dubai for companies listed elsewhere.

5. What are the main ways of structuring an IPO?

The most common structure involves a standard issue of new ordinary shares in the issuer, all ranking *pari passu* with existing shares. The new Commercial Companies Law contemplates the ability for issuers to issue greater than one class of shares, subject to a future Resolution of Cabinet. In some cases, existing shareholders may sell some of their shares as part of the IPO.

6. What are the main ways of structuring a subsequent equity offering?

The main ways to structure a subsequent equity offering are by either:

- An offering under prospectus (*see Question 10*).
- An offering under an exemption from the prospectus requirements (*see Question 11*).

7. What are the advantages and disadvantages of rights issues/other types of follow on equity offerings?

Rights issues are generally a faster and less expensive means of raising capital with fewer documentary requirements, despite it now being standard practice to issue a detailed information circular to shareholders with a prospectus-like disclosure. This practice was launched in 2010 by Emirates Integrated Telecommunications Limited, PJSC (du) when it launched a large rights issue aimed at raising AED1 billion. For UAE securities listed outside the DIFC, rights issues were previously routinely made without a prospectus or information circular and were often documented solely through newspaper notices to shareholders. The shareholders, the Securities and Commodities Authority (ESCA) and the relevant exchange must approve rights offerings.

Rights issues are also equitable in that all shareholders have an equal opportunity to participate.

However, rights issues have had a mixed history. The Dubai 2010 rights issue by Emirates Telecom was the first in five years. There have been a number of high profiles issues since then, including the 2013 Dubai builder Arabtec Holding's offer to raise AED2.4 billion and Abu Dhabi-listed Commercial Bank International's (CBI) AED1.1 billion issue in 2014.

8. What are the main steps for a company applying for a primary listing of its shares? Is the procedure different for a foreign company and is a foreign company likely to seek a listing for shares or depositary receipts?

Procedure for a primary listing

Abu Dhabi Securities Exchange (ADX) and Dubai Financial Market (DFM). The issuer must file an application for listing with the Securities and Commodities Authority (ESCA) and obtain consent for listing before listing on the DFM or the ADX. The issuer must fulfil the prescribed minimum listing requirements (*see Question 3*).

Once ESCA receives the application, an ESCA committee examines the application and make a decision within 15 days of its submission. The committee refers its decision to the ESCA board, which makes the final determination on the application within 30 days of the referral. Following ESCA's approval, the issuer must apply to the market on which it will list, either the DFM or the ADX.

Both the DFM and the ADX have the right to accept or reject the application irrespective of ESCA's decision.

A startup company, with few assets and no track record, can theoretically immediately go public and list on the DFM. In practice, few waivers are granted to allow an immediate listing. There were a number of "greenfield" listings in 2014 including Amanat Holdings PJSC, an investment company whose AED1.375 billion IPO was nearly ten times oversubscribed. But 2014 listings also included greenfield issuers Mark PJSC and Dubai Parks and Resorts PJSC, which had performed more poorly than expected. These disappointing listings prompted the ESCA to announce a planned ban on new startup issues in December 2014. Some critics had hoped that the new Commercial Companies Law, which came into force on 1 July 2015, might address the issue of greenfield listings. It did not amend the law in this respect however.

NASDAQ Dubai. The issuer must apply to the Dubai Financial Services Authority for approval and then to NASDAQ Dubai to be listed. The issuer must provide the required documentation and meet the minimum listing standards (*see Question 3*). NASDAQ Dubai may refuse the application if it determines that the listing could be detrimental to orderly operations or reputation or that the issuer or its business are unsuitable for listing. The issuer will normally receive a final decision within 12 business days of the filing of a complete and acceptable application.

Procedure for a foreign company

Listing applications for foreign companies must meet certain requirements (*see Question 4*).

ADVISERS: EQUITY OFFERING

9. Outline the role of advisers used and main documents produced in an equity offering. Does it differ for an IPO?

Advisers

The principal advisers for an equity listing or IPO are the:

- Investment bank, which guides the overall IPO process and ensures the company complies with listing and admission rules. Depending on the size of the issue, there may be a syndicate of investment banks.
- Financial adviser, who advises the issuer on financial and accounting requirements relating to the listing, including valuation and pricing.
- Legal advisers, responsible for all legal requirements of the IPO process including the prospectus.
- Public relations agency, which positions the company in terms of public perception and deals with the media.

Other advisers may include a:

- Bookrunner, responsible for building the book of demand for the issued shares (*see Question 16*).
- Stabilisation manager (*see Question 19*).
- Underwriter, responsible for underwriting the unsubscribed portion of the issue.

Required documentation

Typically, the documents produced in an equity offering include the:

- Application for incorporation or conversion to public joint stock company (in the case of Dubai Financial Market (DFM) or Abu Dhabi Securities Exchange (ADX) listings).
- Listing application.
- Memorandum and articles of association of the issuer.
- Feasibility study prepared by the issuer and a professional financial adviser (typically an accounting firm).
- Valuation report prepared by a professional financial adviser for any payment in kind.
- Payment of the public joint stock company application fee.
- Arabic (DFM or ADX) or English-language (NASDAQ Dubai) prospectus.

EQUITY PROSPECTUS/MAIN OFFERING DOCUMENT

10. When is a prospectus (or other main offering document) required? What are the main publication, regulatory filing or delivery requirements?

Prospectus (or other main offering document) required

Whether under the Securities and Commodities Authority (ESCA) or Dubai Financial Services Authority (DFSA) regimes, a prospectus is required where there is either:

- An offer to the public for the relevant securities.
- An application is made for listing on one of the exchanges in the UAE.

Main publication, regulatory filing or delivery requirements

Abu Dhabi Securities Exchange (ADX) and Dubai Financial Market (DFM) listings. The company must publish invitations for public subscription in two local newspapers at least five days before commencing the subscription. The announcement must include the public subscription offering timetable, specifying the:

- Offering opening and closing dates.
- Allocation date.
- The refund date for receiving banks in the UAE and the refund date for receiving banks in the Gulf Cooperation Council.

NASDAQ Dubai. A similar announcement is made for listings on NASDAQ Dubai. The announcement is normally referred to as an "intention to float".

11. What are the main exemptions from the requirements for publication or delivery of a prospectus (or other main offering document)?

Abu Dhabi Securities Exchange (ADX) and Dubai Financial Market (DFM)

There are no published Securities and Commodities Authority (ESCA) rules or guidelines defining an offer to the public or which securities transactions may qualify as private placements exempt from the prospectus requirement. Generally, offers and issues to federal and local Emirate governments, governmental agencies or to licensed banks in the UAE are effectively exempt from any prospectus requirement.

Similarly, rights offerings are not considered as offers that require any special disclosures. Circulars directed to shareholders are typically not scrutinised by ESCA and do not require ESCA's approval.

Both ESCA and the relevant exchange must approve issues of shares.

NASDAQ Dubai

The Markets Law 2012 offers considerably more certainty to issuers on the subject of prospectus exemptions as it contains an exhaustive definition of "offer of securities to the public" in or from the Dubai International Financial Centre (DIFC). Under the market law, an offer of securities to the public is "a communication to any person in any form or by any means, presenting information on the terms of the offer and the Securities offered, so as to enable an investor to decide to buy or subscribe to those Securities...". An offer of securities to the public generally triggers the prospectus requirement.

The DIFC Markets Rules (MKT) module of the Dubai Financial Services Authority (DFSA) Rulebook provides certain specific exemptions from the prospectus requirement for:

- Exempt offers, such as:
  - offers made to institutional professional clients;
  - offers made to not more than 50 offerees in any 12-month period;
  - an offer where the consideration to be paid is US$100,000 or greater;
  - an offer where the object is a share exchange with previously issued shares; and
  - offers complying with other specific exemptions.
- Exempt securities, such as;
  - shares representing, over a 12-month period, less than 10% of the number of shares of the same class already admitted to trading on the exchange;
  - securities offered in connection with a takeover by means of an exchange offer, if a document is available containing information, that is regarded by the DFSA as equivalent to that of a prospectus; and
  - securities offered, allotted or to be allotted in connection with a rights issue.

In many respects, the rules regarding prospectus exemption are structured to fall within the principles set out in Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive).

12. What are the main content or disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

The objective of a prospectus is to provide potential investors all necessary information with regard to an investment in the shares of the issuer. A prospectus should provide a complete view of the issuer, including its business, management, the securities to be traded and the terms of any fundraising.

Prospectuses for the Abu Dhabi Securities Exchange (ADX), Dubai Financial Market (DFM) and NASDAQ Dubai must contain the following information:

- A summary of the memorandum and articles of association of the issuer.
- Confirmation that the founders of the issuer have deposited the required percentage relative to the value of the shares to which they have subscribed.
- Clarification of the maximum number of shares to which a person may subscribe.
- Any shareholding requirement that entitles a person to be nominated for membership of the issuer's board of directors.
- The subscription date, place and conditions of the IPO.
- The percentage of UAE national ownership of shares and the conditions on the disposal of the national shareholding.
- Financial information consistent with International Accounting Standards. US GAAP is the standard for the ADX and DFM. IFRS is the standard for NASDAQ Dubai. For DFM and ADX, the financial information is required for two years. Three years' information is required for NADAQ Dubai.
- Details of any other issues affecting the rights or obligations of the shareholders.

The founders of the issuer and the advisers required to sign the disclosure document are jointly responsible for the validity of the information stated in the prospectus.

13. How is the prospectus (or other main offering document) prepared? Who is responsible and/or may be liable for its contents?

Preparation of the prospectus document is a collaborative task requiring input from the issuer, the lead manager and the financial and legal advisers.

Those signing the prospectus are responsible for its contents. The prospectus is signed by the issuer's founders committee and any consultants, parties, or their representatives involved in the incorporation procedures.

Under the NASDAQ Dubai listing rules, responsibility for the prospectus rests with the issuer, the directors and any person who accepts, and is stated in the prospectus as having accepted, or is deemed to have accepted responsibility for any part of the prospectus. The liability of any person who has accepted liability for or authorised only part of the content of a prospectus is liable only for that part. This rule is primarily for the benefit of professional advisers. There are a number of specific defences to liability for the contents of a prospectus including a due diligence defence.

MARKETING EQUITY OFFERINGS

14. How are offered equity securities marketed?

IPOs are typically marketed in a number of ways and stages:

- Background or pre-marketing. The lead manager will typically work with the issuer to narrate the history of the company and the issue. This stage may also include meetings with potential investors often identified by the lead manager. Pre-marketing helps develop key selling points and identify any problems at an early stage.
- "Pilot fishing". This is a face-to-face targeted meeting with potential investors. Pilot fishing provides bookrunners with useful pricing information and helps potential investors understand the issuer and its business.
- Research. Meetings and other communication forums are arranged with analysts who will be presenting information about the issuer.
- Roadshows. These are more formal presentations to targeted investors by management. Roadshows tend to take place once the pricing range is established.
- Other advertising and promotional activity when there is a retail element to the offering.

15. Outline any potential liability for publishing research reports by participating brokers/dealers and ways used to avoid such liability.

Abu Dhabi Securities Exchange (ADX) and Dubai Financial Market (DFM)

Securities and Commodities Authority (ESCA) laws and regulations do not provide any real clarity on the use of market research or set parameters on its use relative to the date trading commences. However, market research is routinely produced, published and used to promote ADX and DFM issues. Market research should not mislead.

NASDAQ Dubai

The DFSA Rulebook Conduct of Business Module (COB) applies to all parties licensed to provide financial services in the Dubai International Financial Centre. It stipulates that:

- Licensed parties (authorised firms) must establish and maintain procedures and controls to ensure that an investment analyst does not gain personally from an investment for which the analyst is preparing investment research.
- An authorised firm acting as a manager or co-manager of an IPO must take reasonable steps to ensure that it does not publish any research on the issuer during the period starting on the day of publication of the prospectus to 30 days after the date on which the securities are admitted to trading on the exchange.

In addition to abiding by the COB's stipulations on the timing of the release of research reports, brokers may also limit their exposure by:

- The use of disclaimers.
- Limiting the distribution of their reports to professional or qualified investors.
- By independently verifying the content of the information contained in their reports.

It is best practice to provide a copy of the prospectus to recipients of research reports.

Bookbuilding

16. Is the bookbuilding procedure used and in what circumstances? How is any related retail offer dealt with? How are orders confirmed?

Abu Dhabi Securities Exchange and Dubai Financial Market

Since 2008, potential issuers have been able to opt for bookbuilding as a means to set a price range. Bookbuilding is apt to be increasingly adopted both as a matter of practice and due to changes under the Commercial Companies Law, which came into force on 1 July 2015. Traditionally, the Securities and Commodities Authority (ESCA) largely set the valuation on the advice of professional financial advisers and auditors had significant involvement in the feasibility study and valuation. A very traditional IPO pricing regime was employed. It was based on a fixed price mechanism, essentially a theoretical valuation process by an independent third party. Discussions and ad hoc meetings were held with local and market authorities to set a price range and finalise the price before the launch of the offering.

In contrast, bookbuilding is based on the principles of supply and demand. Bookbuilding involves obtaining and considering pricing information from potential buyers of the new shares before setting the IPO price.

The new Commercial Companies Law (Law No. 2 of 2015) defines bookbuilding as a process under which the price of the security is determined on its issue or sale in a public subscription under the provisions of the resolution issued by ESCA.

Article 129 provides that ESCA may resolve to regulate the mechanism of a subscription based on the bookbuilding of securities. Entities that wish to use the bookbuilding procedure must comply with the provisions and procedures contained in the resolution issued by ESCA. It is unclear however whether ESCA will enact revisions or amendments to the 2008 Ministerial Resolution.

NASDAQ Dubai

NASDAQ Dubai has always allowed issuers to elect for a bookbuiding procedure in setting offer price.

UNDERWRITING: EQUITY OFFERING

17. How is the underwriting for an equity offering typically structured? What are the key terms of the underwriting agreement and what is a typical underwriting fee and/or commission?

The role of underwriters outside of the Dubai International Financial Centre was recognised for the first time by the new Commercial Companies Law (Law No. 2 of 2015). Previous law did not address underwriting activity. A ministerial decree or Securities and Commodities Authority (ESCA) regulation relating to underwriting activities is anticipated.

In practice, underwriting has long been a recognised part of public issues under both the ESCA and Dubai Financial Services Authority (DFSA) regimes. In the case of NASDAQ Dubai, underwriters must be approved by and registered with the DFSA. There is a contractual relationship between the issuer and the underwriter. A typical underwriting agreement will include:

- The general obligation of the underwriter to acquire unsubscribed shares of the issuer for resale on agreed terms.
- Representations and warranties from the issuer to the underwriter concerning its business, constitution, ownership, the proposed share issuer and its terms. The ambit and scope of the representations is a matter for the parties to negotiate.
- A series of indemnities given by the issuer in favour of the underwriter (or the lead manager) against matters including misrepresentation, non-compliance with existing laws and breaches of the underwriting agreement.
- Rights of termination that relieve the underwriter of its obligation to buy securities if certain contingencies occur, such as a material change in respect of the issuer, regulatory roadblocks, delays or a major market change.
- Continuing post-listing undertakings of the issuer.
- The payment of a commission. These vary widely and there is a competitive market. The median is around 2% to 5% of monies raised, but may be much lower for large issues.

TIMETABLE: EQUITY OFFERINGS

18. What is the timetable for a typical equity offering? Does it differ for an IPO?

Abu Dhabi Securities Exchange and Dubai Financial Market

The Securities and Commodities Authority advises that the process takes between 32 and 52 weeks depending on the issuer.

NASDAQ Dubai

According to NASDAQ Dubai, an IPO can be complete within 20 to 30 weeks provided all documents are completed and submitted in time. In 2011, NASDAQ took a number of steps to streamline the listing process, particularly more clearly delineating the roles of the Dubai Financial Services Authority and the exchange.

However, a significant amount of work is required before the submission stage. The overall IPO process from the time a company starts to think about a public listing may take as long as two years.

STABILISATION

19. Are there rules on price stabilisation and market manipulation in connection with an equity offering?

Abu Dhabi Securities Exchange (ADX) and Dubai Financial Market (DFM)

There is no substantive guidance on price stabilisation in any ADX or DFM rules or guidelines or in the Securities and Commodities Authority (ESCA) Law (*Federal Law No. 4 of 2000*). Market manipulation, or the furnishing of false information, statements or data to affect the market value of securities and an investor's decision to invest is prohibited (*Article 36, ESCA Law*).

In practice, ESCA does appear to recognise the need for price stabilisation to allow the market to operate more efficiently. Investment banks regularly engage in price stabilisation for ADX or DFM issues. However, it remains largely unregulated. Following a number of high profile cases of market manipulation and a falling market in the summer of 2014, ESCA announced publically it would set up a permanent technical committee to prevent price manipulation, ensure corporate disclosures are transparent and report on sharp movements. The committee was to include officials from the UAE Central Bank and Abu Dhabi and Dubai markets, but has yet to be constituted.

NASDAQ Dubai

The Dubai Financial Services Authority (DFSA) Rulebook Price Stabilization Module (PRS) notes that, prima facie, the stabilisation of a price of a security is market manipulation and prohibited. This is because a person may not in the Dubai International Financial Centre or elsewhere, participate in any course of conduct relating to investments or securities that (*Article 51, Markets Law 2012*):

- Results in or contributes to a false or misleading impression as to the supply of, demand for or price of one or more investments.
- Creates or is likely to create an artificial price for one or more investments.

However, limited statutory relief is available if the person carries out those activities in the context of permitted price stabilisation in accordance with the rules set out in the PRS (*Article 64(1), Markets Law*).

The PRS rules permit the appointment of a single qualified stabilisation manager approved by and registered with the DFSA with the power to appoint agents. During a stipulated stabilisation window, the stabilisation manager or his agent may buy and offer to buy the securities with a view to stabilising price. The stabilisation window begins on the date the securities are admitted to trading on an authorised market (NASDAQ Dubai) and ends no later than thirty days later. The stabilisation manager must be named in the prospectus, together with a statement to the effect that the offered securities may be subject to price stabilisation.

TAX: EQUITY ISSUES

20. What are the main tax issues when issuing and listing equity securities?

There are currently no income or profits taxes levied on individuals or companies in the UAE. The Emirates of Abu Dhabi and Dubai have enacted legislation establishing a general corporate taxation regime, the Abu Dhabi Income Tax Decree 1965 and the Dubai Income Tax Decree 1969. The regime is, however, not enforced save in respect of companies active in the hydrocarbon industry, some related service industries and branches of foreign banks operating in the UAE.

Under current legislation, there is no withholding requirement for UAE, Abu Dhabi or Dubai taxation in respect of payments of profit to any holder of shares listed in the UAE, by dividend or otherwise. There is no tax on capital gains realised on the sale of listed shares.

The Constitution of the UAE does however specifically reserve to the UAE federal government the right to raise taxes on a federal basis for purposes of funding its budget. It is unknown whether the government will exercise this right in the future.

CONTINUING OBLIGATIONS

21. What are the main areas of continuing obligations applicable to listed companies and the legislation that applies?

Abu Dhabi Securities Exchange and Dubai Financial Market

The continuing obligations are as principally set out in the Disclosure Regulations (*Decision No (3/R) of 2000 Concerning the Regulations as to Disclosure and Transparency* (Regulations for Disclosure and Transparency)). The main obligations relate to:

- Reporting:
  - half yearly financial reports by the external auditor within 45 days from the end of the relevant reporting period; and
  - annual audited financial reports within 90 days from the end of the relevant financial reporting period.
- Disclosure:
  - material events affecting the share trading price;
  - material board decisions;
  - details relating to sale or acquisition of major assets;
  - changes in the issuer's board and executive management; and
  - dates and agenda of shareholders' general assembly meetings.

NASDAQ Dubai

Rule 9.7 of the Dubai Financial Services Authority (DFSA) Rulebook Markets Rules sets out the continuing obligations that a listed entity must observe. These include continuing compliance with the rules and regulations of the exchange and the DFSA. There are also continuous disclosure obligations similar to those imposed by the Securities and Commodities Authority (ESCA).

22. Do the continuing obligations apply to listed foreign companies and to issuers of depositary receipts?

Continuing obligations apply to any listed entity, foreign or domestic and issuers of depository receipts. Under the Dubai International Financial Centre regime, there are special reporting requirements where there is any change of custodian or depositary or any implication or effect of the change in custodian or depositary in respect of depository receipts (Dubai Financial Services Authority Rulebook Market Rules (MKT)).

23. What are the penalties for breaching the continuing obligations?

Abu Dhabi Securities Exchange and Dubai Financial Market

Non-compliance with the disclosure requirements set out by the Securities and Commodities Authority (ESCA) under the Disclosure Regulation may result in sanctions ranging from imprisonment for a terms of between three months and three years and a fine of between AED100,000 and AED1 million.

NASDAQ Dubai

The Dubai Financial Services Authority (DFSA) can impose a range of sanctions under the Regulatory Law 2004 for breaching the continuing obligations. Where an officer of a company breaches the obligations, penalties may be imposed on both the officer and the company.

The penalties that the DFSA may impose are set out in Article 90(2) of the Regulatory Law 2004 and include:

- Fines of an amount as the DFSA considers appropriate.
- Censure.
- Orders to compensate third parties.
- Account of profits or unjust enrichment arising from the breach.
- Orders to cease and desist a particular action or to take a particular action.
- Prohibitions on a particular infringing person holding a particular office.

The DFSA does not have the power to impose penal sanctions for breach of its listing or market rules. It can, however, levy administrative fines for a broad range of offences to a maximum of US$20,000 for individuals and to US$100,000 for companies operating in the DIFC. The DFSA may impose these sanctions without recourse to the Dubai International Financial Centre Courts or the Financial Markets Tribunal. The DFSA also has the authority to suspend or de-list an infringer.

MARKET ABUSE AND INSIDER DEALING

24. What are the restrictions on market abuse and insider dealing?

MARKET ABUSE

Abu Dhabi Securities Exchange (ADX) and Dubai Financial Market (DFM). In addition to the prohibitions against insider dealing detailed below, the Securities and Commodities Authority (ESCA) Law (Federal Law No. 4 of 2000) prohibits:

- Improper disclosure of inside (non-public) information (tipping).
- Manipulating transactions or share value based on false or misleading information.

NASDAQ Dubai. Market misconduct is prescribed by the Markets Rules 2012, which includes the prohibitions set out in federal law and also specific offences such as:

- Misuse of information.
- Manipulating devices.
- Manipulating transactions.
- Market distortion.
- Dissemination of false or misleading information.

Restrictions on market abuse/insider dealing

ADX and DFM. Insider trading is prohibited in two ways under ESCA Law (Federal Law No. 4 of 2000):

- The exploitation of non-public information that could affect the prices of securities is prohibited under Article 37.
- Trading and securities based on non-public or non-disclosed information that is known by virtue of its position offends Article 39. Article 39 stipulates that no employees of a company, including the chairman and members of the board, may exploit inside information.

This is not to say that the ESCA Law completely prohibits directors, officers and employees of a company from trading in its own securities. Under Article 38, such sales are subject to disclosure through the market. The disclosure must include the directors' approval of the transaction, details of the purchase or sale transaction, together with the quantities and prices of the trade and any other information required by the market. Any trade made in contravention of this provision is deemed void.

More recently, the federal regulator has introduced the concept of "black-out periods" during which insiders are prohibited from trading company shares altogether. Insiders are the company's chairman, board of directors and any employees having non-public knowledge. Black-out periods run for 15 days prior to a company's quarterly release of financial information.

Ministerial Decree No. 302 of 2009 requires boards of directors of joint stock companies to lay down written rules in respect of the dealings of the members of the board of directors and employees in securities issued by the company, parent company, subsidiary or sister companies. This has prompted some companies to extend black-out periods in their internal Codes of Conduct, for example to include any period ten days prior to the release of other price sensitive information. Price sensitive information may include a major sale or purchase of assets, change in management or management structure or similar information likely to affect the trading price of the company's shares.

NASDAQ Dubai. This is covered by the Markets Rules 2012 (*see above, Market abuse: NASDAQ Dubai*).

Penalties for market abuse/insider dealing

ADX and DFM. A person charged with insider trading is liable to imprisonment for a period between three months and three years or subject to a fine of between AED100,000 and AED1 million. In addition, no person can act as a director in the UAE if once found guilty of insider trading, or the equivalent, in any jurisdiction, at any time.

In January 2015, the UAE Government announced to the Federal National Council that a new law will shortly be introduced, designed to deal with insider trading and other market abuses. The new law would create tougher penalties of three years in jail and up to AED10 million for offences. This is a clear indication of the government's commitment to address illegal practices on the national stock exchanges.

NASDAQ Dubai. The DFSA can levy administrative fines and impose other sanctions or restrictions for such offences (*see Question 23*).

DE-LISTING

25. When can a company be de-listed?

De-listing and suspension

Abu Dhabi Securities Exchange and Dubai Financial Market. The Securities and Commodities Authority (ESCA) also has the authority to cancel any listing of securities in the following five circumstances:

- If a resolution is passed to dissolve and liquidate the issuer.
- The listing of the securities remains suspended for or beyond a period of six months.
- Any radical change in the main activity of the issuer occurs.
- The issuer discontinues its activity.
- The issuer is merged with another company or companies by way of a merger in consequence of which the legal entity of the issuer ends.

ESCA, after consultation with the exchange, may choose to suspend a listing of any securities if special circumstances occur or the trading of the securities is no longer in the public interest. Examples of the special circumstances include:

- The issuer fails to comply with the conditions of listing.
- The net value of the shareholder's equity falls below 50% of the capital of the issuer.

- The issuer fails to issue annual, half-yearly and quarterly reports on its activities.

NASDAQ Dubai. Under the Markets Law 2012, the Dubai Financial Services Authority (DFSA) may direct the exchange to suspend or de-list securities from the official list of securities. The DFSA can exercise this authority under special circumstances or if there is a threat to the Dubai International Financial Centre. If a suspension occurs, the issuer must continue to comply with all continuing obligations of the listing throughout the suspension.

Alternatively, the issuer itself can have its securities suspended or delisted by submitting a request to the DFSA.

REFORM

26. Are there any proposals for reform of equity capital markets/exchanges? Are these proposals likely to come into force and, if so, when?

Relaxing of foreign ownership restrictions

The Commercial Company Law prohibits foreign ownership in UAE companies (other than free zone companies) in excess of 49% (*see Question 3*). In March 2015, the UAE's Federal Economy Minister Sultan bin Saeed Al Mansouri, announced that the UAE is in an advanced phase of drafting a new federal law on foreign direct investment that would allow 100% foreign ownership in some activities and sectors outside the free zones, that is, in the mainland UAE.

The announcement came as the government is moving on a number of fronts to make the regulatory environment more open for foreign investors. Foreign direct investment inflows to the UAE increased by 25% to US$13 billion in 2014, up from US$10.4 billion the previous year and the country was ranked 11th in last year's AT Kearney Foreign Direct Investment Confidence Index.

There has been no indication to date of the timing for the enactment of the new foreign investment law or which sectors of the economy will be open for increased foreign participation.

Abu Dhabi Global Market (ADGM)

Early in 2015, the Government of Abu Dhabi announced the creation of the ADGM, a new financial free zone in Abu Dhabi. Through the creation of ADGM, Abu Dhabi is intended to become an increasingly global and diverse financial service market.

ADGM aims to provide a clear and transparent legal and regulatory framework based on the international standards of other market exchanges such as the London Stock Exchange. Already the ADGM has published a series of draft legislation papers, which were open to public comment until February 2015, covering areas such as English law, company law framework, insolvency, real property and operating regulations.

To date, there has been no official announcement concerning when the ADGM will commence business, however it is likely to be before the end of 2015. Al Maryah Island has been prepared as the ADGM's location and the market's website suggests that the Registration Bureau will be open by autumn 2015 indicating that commencement of operations is imminent.

ONLINE RESOURCES

Dubai Financial Market

W www.dfm.ae

Abu Dhabi Securities Exchange

W www.adx.ae

NASDAQ Dubai

W www.nasdaqdubai.com

Dubai Financial Services Authority

W www.dfsa.ae

Securities & Commodities Authority

W www.sca.gov.ae

Practical Law Contributor profile

Douglas G Smith

Squire Patton Boggs LLP
T +971 4 447 8700
F +971 4 456 1271
E douglas.smith@squirepb.com
W www.squirepattonboggs.com

Professional qualifications. Ontario, Upper Canada, Barrister and Solicitor; Hong Kong, Solicitor; England and Wales, Solicitor

Areas of practice. Mergers and acquisitions; corporate finance; joint ventures; international business; corporate governance.

Non-professional qualifications. BA, Queen's University, Ontario, Canada, 1978;

LLB, Queen's University, Ontario, Canada, 1981

Languages. English

Professional associations/memberships. Law Society of England and Wales; Law Society of Upper Canada; Law Society of Hong Kong; Canada Business Council of Dubai and the Northern Emirates.

Publications

- *Negotiating and Settling Joint Venture Agreements, International Bar Association, Asia Pacific Forum, March 2013.*
- *Shareholders' Agreements in the United Arab Emirates, International Bar Association Guide on Shareholders' Agreements, October 2011.*
- *An Overview of the UAE Commercial Agencies Law, In-House Lawyer, September 2011.*
- *Foreign Ownership Restrictions from the Perspective of the Gulf, International Bar Association Journal, August 2010.*