



UAE (COMMERCIAL)

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Thomas Paoletti is a qualified lawyer specialised in protecting the personal and business interests of entrepreneurs in the United Arab Emirates (UAE), and globally, by providing corporate and commercial legal support.

His small team of lawyers aims to listen to clients, analysing their requests, respecting their needs and paying attention to their overall strategy – tailoring legal approaches accordingly.

Paoletti Legal Consultant is a global legal services firm advising clients across the Middle East, EU countries and the rest of the world. They provide value adding and cost-effective solutions for national and multinational businesses in a wide range of sectors including corporate domestic and cross border transactions, finance, new technologies, construction, and oil & gas. Headquartered in UAE, the firm maintains offices in Rome and Milan, and grants its clients access to a worldwide network with operational desks in key jurisdictions around the world.

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TOP TIPS FOR

Successful negotiations

Do be polite. Politeness is cross-cultural. In my experience, pretty much everybody, regardless of their cultural background, appreciates courtesy, a calm tone of voice, and behaviour that is respectful and considerate of other people.

Do be aware of the protocol. Formalities in business may vary from country to country and one should never be caught off-guard. Depending on the situation, using the wrong title when addressing your counterparty may cost you the deal.

Do your homework. Know the deal inside out and, most importantly, identify in advance the main potential deal breakers so that you come to negotiations with a couple of possible solutions in mind.

Don't rush, especially in the UAE. UAE business practice may appear quite uncommon for a foreign lawyer. In the Arab countries it is not rare at all to conclude a negotiation after many hours of talking about non-business related topics with your counterpart, maybe late at night after an abundant dinner together.

Do not take anything for granted. As the saying goes, "don't count your chickens before they hatch". When it comes to international negotiations, it is not closed until it is closed. Be ready for the unexpected, until the very moment the deal is signed.

Do not think of your transaction as 'in a vacuum'. When working on a specific transaction, it is helpful to think of it in the context of comparable deals. Keeping in mind the kind of deal that the specific transaction belongs to, helps you depict what expectations your counterparty may have in mind.

I QUESTION ONE**Which techniques are typically used by international counterparties in your experience to overcome challenges in the negotiation process?**

My day-to-day practice never fails to prove that cultural barriers between parties are the hidden challenge of cross-border negotiations.

In this respect, I believe that doing your homework and maintaining a low business profile are key. You have to be willing to know as much as possible about your counterparts, including the laws and practices they are familiar with and their main cultural assumptions. It usually takes some time and effort for the beginner to adopt this approach, but the more you practice in the legal arena of international negotiations, the more you realise the importance of learning how to turn intercultural differences into opportunities to establish and develop trust between the two sides of an international negotiation.

International counterparties receptive to this topic, effectively rely on simple techniques to establish trust. For example, they recognise that, even in our 24/7 online world, there is nothing better than a face-to-face meeting to discuss the important points of a transaction. They also track the pulse of any given situation and can 'feel' when it is appropriate to postpone discussion around heated points. This is also useful in avoiding deadlocks in the negotiation.

From my side, I take pride in actively listening to my counterparty and I really appreciate whenever I have the chance to work with counterparties that show some reciprocity on this point. I am lucky enough to say that this is what happens most of the time.

As a side note, I personally enjoy being committed to understanding my counterparty to the best of my ability, because being aware and valuing the colourful diversity of human interaction is the single trait that make my every day practice a lot more engaging, challenging and satisfying.

I QUESTION TWO**Is there anything special or peculiar about commercial contract law in your country that General Counsel should be aware of?**

There are many peculiar aspects to the United Arab Emirates (UAE) legal system. One worth mentioning is the case of the UAE Agency Law.

One of the most viable options for a foreign company wishing to enter the UAE market is for them to enter into a commercial agency or distribution agreement with a local distributor or agent. Commercial agency and distribution agreements in the UAE are regulated by the UAE Agency Law (Federal Law no. 18 of 1981, as amended) and, subject to certain conditions, must be registered with the UAE Ministry of Economy (MoE).

Foreign principals might not be fully aware of the fact that, after an agreement is registered with the MoE, the local agent/distributor is granted significant protection under the UAE Agency Law.

For example, the local agent/distributor is entitled to commissions for all transactions made within the territory, regardless of whether or not the transaction was a result of his contribution. The local agent/distributor is also entitled to prevent the import of the principal's products into the UAE.

Perhaps the most relevant consequence of the registration is that the local agent/distributor is protected against termination of the agreement. Under the UAE Agency Law, termination of a registered agency is only permitted for a 'material reason.' However, what constitutes a material reason is not expressly provided for in the Agency Law.

Considering the above, it is not unlikely that, in order to withdraw from a registered contract, the foreign principal will have to pay a high compensation to the local agent.

For all the reasons above, it is key for foreign principals to make sure that the agency agreement is properly drafted to counterbalance the protection enjoyed by the local party under the UAE Law as well as to take special care in selecting the local partner.

I QUESTION THREE**What recent legislative developments in your jurisdiction affect commonly drawn up contracts such as articles of incorporation, shareholder agreements or executive remuneration? Can you provide any relevant case law to illustrate this?**

The most impactful recent development in the UAE legal system is the introduction of VAT, pursuant to the UAE Federal Law No. 8 of 2017, which came into effect on 1 January 2018.

With the new legislation in force, commercial contracts have to deal with VAT, not an easy task for local economic players since, historically, the UAE has not seen any forms of taxation whatsoever.

Although the UAE VAT law contains helpful transitional rules on how existing contracts should be amended to take VAT into consideration, they are not granular enough to regulate every possible situation. Occasionally the task of adjusting contractual provisions to the VAT has proved more challenging than expected. In this respect, the ongoing guidance and support coming from the government authorities, is crucial in helping businesses to adjust to the new scenario.

Secondly, the UAE is perhaps the most digitally advanced country in the Arab world, with a rapidly evolving IT legal framework.

Abu Dhabi General Market (ADGM) is a financial free zone in the Emirate of Abu Dhabi with its own judicial and legislative infrastructure based on Common Law. It amended its data protection regulations in 2018, introducing updated defined terms, data breach notification timeframes and more extensive enforcement provisions, consistent with EU and international standards. Under the regime, ADGM registered companies are imposed with specific obligations when collecting, storing, processing and transferring individuals' personal data, with the aim of protecting the right to privacy of the individuals to whom personal data relates. This has a direct impact on the ADGM registered entities that have to update their internal procedures.