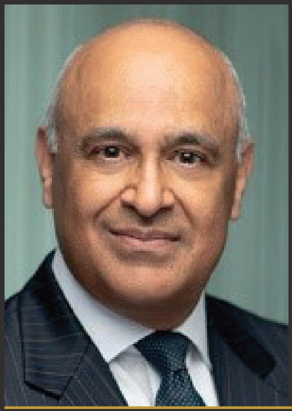
UNITED ARAB EMIRATES



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Overview

1. What is the main legislation and international treaties governing the project financing in your jurisdiction?

The main legislation governing project financing in the United Arab Emirates (the "UAE") is the Federal Law No. 50 of 2022 regarding the Commercial Transactions Law.

There are no international treaties specifically dealing with project financing transactions, although various treaties (i.e., such as bilateral investment treaties and free trade agreements that the UAE has signed with other countries) cover general areas that may be of relevance. In particular, the UAE is a signatory to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), which can be of relevance to project financing transactions as it allows the enforcement of international arbitral awards in the UAE.

2. How mature is the project finance market in your jurisdiction, and what are the most significant project financings closed during the last 12 months?

The project finance market in the UAE is considered to be well-established and mature. The UAE has a well-developed infrastructure, a stable legal and regulatory framework, and a thriving economy, which make it an attractive destination for project finance. Over the years, the country has attracted significant investment in various sectors, including energy, real estate, transportation, and healthcare, among others.

Some of the most significant project financings in the UAE in the last 12 months include:

- The financing of the Dubai Electricity and Water Authority's (DEWA) solar projects expected to power 270,000 homes and offset carbon emissions amounting to 1.18 million tons per year in Dubai
- The financing of Zayed City Schools PPP project in Abu Dhabi relating to the design, build, finance, maintenance and transfer of three school campuses with a capacity of over 5,000 students, the first social infrastructure project in the UAE to achieve financial close under Abu Dhabi's new PPP regulatory framework
- The financing of a high voltage direct current offshore power transmission project involved the construction, ownership and operation of a system linking two offshore production facilities owned by the Abu Dhabi National Oil Company (ADNOC) with the Abu Dhabi onshore power grid

Security Interest

3. What are the most commonly used security types in project financings in your jurisdiction?

In the UAE, the most used security types in project financings are:

- **Mortgage:** a mortgage is a common form of security in project financing in the UAE. It is typically used to secure a loan by granting the lender a lien on the property that is being financed.
- **Pledge:** a pledge is a security interest in specific assets, such as inventory, accounts receivable, or equipment, that is granted to the lender to secure a loan.
- **Guarantee:** a guarantee is a promise by a third party to repay the loan if the borrower defaults. In project financing, a guarantee is often provided by a parent company or a wealthy individual to support the project.
- **Escrow:** an escrow arrangement is a contract between the lender and the borrower that requires the borrower to deposit funds into an escrow account to secure the loan, and released to the lender in the event of default by the borrower.
- **Assignment of Contracts:** assignment of contracts is a common security type in project financing in the UAE, in which the borrower assigns certain contracts or revenues (such as insurance proceeds) to the lender as collateral for the loan.

These security types are not mutually exclusive and may be used in combination in a project financing transaction to provide the lender with a comprehensive package of security. The type and extent of security required for a project financing will depend on various factors, including the nature of the project, the creditworthiness of the borrower, and the lender's risk tolerance.

4. Can the shares of a company be pledged as a security to the benefit of lenders? If so, is there a specific requirement in terms of formalities or procedure to be followed for establishing or perfecting a share pledge?

Yes, shares of a company can be pledged as security to the benefit of lenders in the UAE. A pledge of shares is a common form of security in project finance transaction. In terms of formalities and procedure, specific formalities and procedure vary based on the jurisdiction within the UAE and the specific requirements of the lender.

To establish and perfect a share pledge in the UAE, the following steps are typically followed:

i. The pledgor (i.e., the owner of the shares in the company) and the lender must enter into a share pledge agreement, setting out the terms and conditions of the pledge, including the obligations of the pledgor and the rights of the lender.

ii. The pledgor must execute and deliver a pledge certificate to the lender, which evidences the pledge of the shares and the transfer of the right to vote and receive dividends to the lender.

iii. The pledge certificate must be registered with the relevant regulatory authority, such as the Dubai Financial Services Authority (the "DFSA") in the Dubai International Financial Centre (the "DIFC") or the Financial Services Regulatory Authority (the "FSRA") in the Abu Dhabi Global Market (the "ADGM").

iv. The pledge must be noted in the register of shareholders maintained by the company.

v. In some cases, the pledge agreement may also require the pledgor to provide additional documentation (such as proof of ownership of the shares and evidence of the compliance with any regulatory requirements).

5. Is private sale a recognized method for the enforcement share pledge? What are the endorsement types typically used for the share certificates?

In the UAE, private sale is a recognized method for the enforcement of a share pledge. If the borrower defaults on its obligations, the lender can enforce its rights under the pledge agreement by selling the shares pledged by the pledgor in a private sale to a third party.

The endorsement types typically used for share certificates in the UAE depend on the jurisdiction within the UAE and the specific requirements of the lender. In Dubai, for example, share certificates can be endorsed either in "bearer" or "registered" form.

In the case of a "bearer" endorsement, the share certificate can be transferred by delivery alone, without the need for any further endorsement or registration.

This type of endorsement is often used in project finance transactions, as it allows for the quick and easy transfer of ownership of the shares.

In the case of a "registered" endorsement, the share certificate must be registered with the relevant regulatory authority, such as the DFSA or the FSRA, and any transfer of ownership must be recorded in the register of shareholders maintained by the company. This type of endorsement is often used for more complex transactions, as it provides greater protection to the lender and increases the transparency of the transaction.

6. Can security interest be established over future assets, rights and receivables of the borrower?

Yes, security interests can be established over future assets, rights, and receivables of a borrower in the UAE. In a project financing context, a security interest in future assets, rights, and receivables of the borrower can be a useful tool for lenders, as it allows them to secure their interests in the project and protect their loan against the risks associated with the borrower's operations.

To establish a security interest in future assets, rights, and receivables of the borrower, the following steps are typically followed:

- the borrower and the lender must enter into a security agreement that sets out the terms and conditions of the security interest, including the scope of the assets, rights, and receivables that are subject to the security interest
- the security agreement must be registered with the relevant regulatory authority, such as the DFSA or the FSRA, to ensure that it is legally binding and enforceable
- the borrower must take all necessary steps to ensure that the security interest is reflected in its books and records and that it does not take any actions that would undermine the validity or enforceability of the security interest

The specific requirements and procedure for establishing a security interest in future assets, rights, and receivables of the borrower may vary based on the jurisdiction within the UAE and the specific requirements of the lender.

7. What are the steps to be taken by the lenders to enforce their security interest, in case the borrower becomes insolvent, is technically insolvent and/or commences composition process?

In general, the following steps may be taken by the lenders to enforce their security interest:

- **Notification:** in the event of a borrower default, the lender will typically send a notice of default to the borrower, outlining the breach and, if applicable, giving the borrower a specified period of time to cure the breach.
- **Enforcement:** if the breach is not cured within the specified time period (if applicable), the lender may enforce its security interest by selling the collateral to a third party. In some cases, the lender may also have the right to take possession of the collateral and sell it without the need for a court order.
- **Receiver:** in some cases, the lender may appoint a receiver to manage the collateral and sell it on its behalf. The receiver will be appointed by the lender and will have the power to take possession of the collateral and sell it to a third party.
- **Legal proceedings:** if the borrower becomes insolvent, is technically insolvent, or commences a composition process, the lender may commence legal proceedings to enforce its security interest. The specific legal proceedings will depend on the jurisdiction within the UAE and the specific terms of the security agreement.

It is important to note that the process for enforcing a security interest in the UAE may be complex and may take a significant amount of time.

8. Is security trustee concept enforceable in your jurisdiction? If not, is an alternative mechanism, such as a parallel debt, available?

The common law concept of trust is not legally recognised in the UAE, and an instrument purporting to create a trust might be construed by the UAE courts as giving rise to an agency, bailment, or other relationship. The concept of a local security agent (i.e., an agent holding security for the benefit of third parties), however, is recognised (as the equivalent to a security trustee in another jurisdiction) and enforceable.

As an alternative, paralegal debt structures may be used in the UAE, although they may be subject to regulatory approval and may be subject to specific legal requirements. In a parallel debt structure, multiple lenders provide financing to the borrower, and each lender takes a separate security interest in the same assets. This structure provides each lender with its own separate and distinct security interest and allows the lenders to enforce their security interests in the event of a borrower default.

Incentives and Restrictions

9. What are the main incentives and exemptions for project financing in your jurisdiction?

The main incentives and exemptions for project financing in the UAE vary by jurisdiction within the country, but generally include the following:

- **Tax exemptions:** the UAE offers tax exemptions on corporate income and personal income for a specified period of time for certain types of projects and investors.
- **Infrastructure support:** the UAE government provides infrastructure support to help companies and investors establish and operate their businesses in the country, including access to transportation, energy, and other essential services.
- **Guaranteed returns:** in some cases, the UAE government may guarantee a minimum return on investment for certain projects or investors.
- **Loan Guarantees:** the UAE government may also provide loan guarantees to help investors secure financing for their projects.

10. Are there any incentives or exemptions specifically applicable to foreign investors?

Foreign investors are eligible for most of the same incentives and exemptions as local investors in the UAE, although the specifics may vary by jurisdiction.

11. Are there any restrictions for borrowing bank loans and shareholder loans from abroad and/ or in a foreign currency?

In the UAE, borrowing bank loans and shareholder loans from abroad and/or in a foreign currency may be subject to restrictions and regulatory requirements.

- Foreign currency loans: borrowing in a foreign currency is generally allowed in the UAE, but the Central Bank of the UAE (the "CBUAE") regulates the foreign currency transactions, and there may be restrictions on the amount of foreign currency that can be borrowed.
- Bank loans from abroad: borrowing bank loans from abroad are generally permitted in the UAE, but may be subject to regulatory requirements and restrictions, including the need for prior approval from the CBUAE.
- Shareholder loans: borrowing shareholder loans from abroad may be subject to restrictions and regulatory requirements, including restrictions on the amount that can be borrowed, the use of the loan proceeds, and the requirement to provide security or collateral.

12. Are there any restrictions for foreign investments in your jurisdiction?

The UAE generally has a welcoming attitude towards foreign investment and provides a supportive environment for foreign investors. However, there may be some restrictions on foreign investment in certain sectors, including:

- **Strategic sectors:** foreign investment in certain strategic sectors, such as military equipment, may be restricted.
- **Ownership restrictions:** in some cases, foreign ownership of businesses may be limited to a specified percentage, depending on the sector and the jurisdiction within the UAE.
- **Capital requirements:** certain sectors may require foreign investors to meet minimum capital requirements.
- **Approvals:** foreign investment in some sectors may require prior approval from the relevant authorities, such as the Department of Economic Development or the CBUAE

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13. Is there any minimum equity requirement, under the legislation or in practice, for project financings in your jurisdiction?

In the UAE, there is no specific minimum equity requirement under the legislation for project financings. However, in practice, most project financings involve a certain level of equity participation from the project sponsors or developers. The amount of equity required for a particular project financing will depend on various factors, such as the size and complexity of the project, the creditworthiness of the sponsors, and market conditions.

In general project financiers and lenders will require some level of equity participation from the project sponsors to demonstrate their commitment to the project and to provide a cushion against potential losses. This equity participation can take the form of cash equity, shareholder loans, or other forms of contributions to the project.

14. Please explain the registration and filing requirements which are applicable for project finance documents to be valid and enforceable in your jurisdiction.

In the UAE, project finance documents are subject to various registration and filing requirements in order to be valid and enforceable. Some of the key requirements are as follows:

- **Offshore:** if the project is located within the DIFC or the ADGM, the project finance documents must be executed in accordance with the DIFC or ADGM law (as applicable) and must be registered with the DIFC Companies Registrar of the ADGM Companies Registrar (as applicable).
- **Onshore:** the project finance documents must be executed in accordance with the applicable laws and regulations of the relevant Emirate, and may need to be registered with the relevant authorities, such as the Department of Economic Development.
- **Security documents:** security documents, such as mortgage or pledge agreements, must be registered with the relevant authorities in order to be enforceable against third parties.
- **Notarization:** certain project finance documents, such as power of attorney or security documents, may need to be notarized by a public notary in order to be recognized and enforceable in the UAE.
- **Translation:** if the project finance documents are executed in a language other than Arabic, they may need to be translated into Arabic and notarized by a public notary to be recognized and enforceable in the UAE.

Insurance

15. Can local insurance policies be governed by a foreign law?

In the UAE, the law applicable to insurance policies is determined by the law of the jurisdiction in which the policy is issued. If the policy is issued by a local insurance company, it will typically be governed by the laws of the UAE. However, if the policy is issued by a foreign insurance company, it may be governed by the laws of the jurisdiction in which the insurance company is located.

In practice, insurance policies issued by foreign insurance companies are typically governed by the laws of the jurisdiction in which the insurance company is located, regardless of the location of the policyholder or the insured property. The governing law will be specified in the policy terms and conditions and may be subject to change if the policyholder and the insurance company agree to a different governing law.

16. Can insurance proceeds under the insurance and reinsurance policies be assigned to the benefit of the lenders?

Yes, insurance proceeds under insurance and reinsurance policies can be assigned to the benefit of lenders in certain circumstances. The assignment of insurance proceeds is generally governed by the terms and conditions of the policy and may also be subject to any applicable laws and regulations.

If the assignment of insurance proceeds is permitted under the policy, it typically requires the consent of both the policyholder and the insurer. The assignment may also require the execution of a written agreement between the policyholder, the insurer, and the lender, and the agreement may need to be registered with the relevant authorities to be enforceable.

Assignment of insurance proceeds is a common feature in project finance transactions and is used to provide additional security for the lenders by allowing them to receive the insurance proceeds in the event of a loss or damage to the insured property.

17. What are the other complications, concerns or other issues in relation to the insurance provisions under the project financing documentation, if any?

In the UAE, there are several complications, concerns, and other issues that may arise in relation to insurance provisions under project financing documentation. Some of these include:

- **Regulatory compliance:** insurance policies and the assignment of insurance proceeds may be subject to regulation by the local insurance authorities, and it is important to ensure that the insurance provisions comply with all applicable regulations and laws.
- **Choice of law and jurisdiction:** the laws of the jurisdiction in which the insurance policy is issued may govern the interpretation and enforcement of the insurance provisions. It is important to consider the choice of law and jurisdiction carefully in order to minimize the risk of disputes and ensure that the insurance provisions are enforceable.
- **Insurance coverage:** there may be limitations on the type and amount of insurance coverage that is available for a particular project. It is important to review the policy and ensure the coverage is adequate for the risks involved.
- **Claims handling and payment:** the process for handling and paying insurance claims may vary depending on the policy and jurisdiction, and it is important to understand the process and ensure that the insurance provisions provide for an efficient and effective claims handling and payment process.
- **Premium payment and renewal:** the payment of insurance premiums and the renewal of insurance policies are critical to ensuring that the insurance coverage remains in force. It is important to ensure that the insurance provisions provide for the payment of premiums and the renewal of policies in a timely and efficient manner.
- **Assignment of insurance proceeds:** the assignment of insurance proceeds may be subject to restrictions under the laws of the jurisdiction in which the policy is issued, and it is important to ensure that the assignment of insurance proceeds is valid and enforceable.

Financing of Public-Private Partnership (PPP) Projects

18. Is PPP a permitted method of developing projects, and if so, have any PPP projects been developed to date in your jurisdiction?

Yes, Public-Private Partnerships ("PPPs") are permitted as a method of developing projects in the UAE, and the UAE has a long-standing commitment to promoting PPPs as a means of delivering high-quality infrastructure and services to its citizens and businesses.

Several PPP projects have been developed in the country in recent years. Some of the key sectors in which PPPs have been used in the UAE include:

- **Energy:** the UAE has implemented a number of PPPs in the energy sector, including the development of power plants, renewable energy projects, and energy transmission and distribution networks.
- **Transportation:** PPPs have been used to develop transportation infrastructure in the UAE, including highways, bridges, ports, and airports.
- **Healthcare:** the UAE has implemented a number of PPPs in the healthcare sector, including the development of medical facilities, hospitals, and clinics.
- **Education:** PPPs have been used to develop educational facilities in the UAE, including schools and universities.

- **Tourism:** the UAE has implemented a number of PPPs in the tourism sector, including the development of hotels, resorts, and theme parks.

The UAE continues to promote PPPs as a means of delivering high-quality infrastructure and services, and it is expected that PPPs will play an important role in the development of the country's infrastructure and services in the years to come.

19. Are direct agreements between the public authorities and the lenders permissible under the local law, and if so, commonly seen in the Project Finance market in your jurisdiction?

Direct agreements between public authorities and lenders are generally permissible under UAE law, and they are not uncommon in the project finance market in the UAE. These types of agreements are used to provide lenders with additional comfort and security in relation to the project and the public authority's obligations.

Direct agreements typically set out the terms and conditions under which the public authority will provide support to the project and may include provisions relating to the project's revenue streams, the public authority's obligations to maintain the infrastructure and services provided by the project, and the public authority's guarantees and indemnities to the lenders. In some cases, they may also include provisions that allow the public authority to take certain actions in the event of the borrower's default, such as the appointment of a receiver or the transfer of the project assets to a new operator, however the terms of the agreements are subject to negotiation between the public authority and the lenders, and dependent on the circumstances of the project.

20. Please indicate the types of host government supports (including treasury guarantee, debt assumption etc.) available in your jurisdiction.

In the UAE, the types of host government support available for project financing may include:

- **Treasury Guarantees:** the government may provide a guarantee in support of the project's debt, which means that the government agrees to repay the debt if the borrower is unable to do so.
- **Debt Assumption:** the government may take on the project's debt as its own, which means that the government is responsible for repaying the debt.
- **Revenue Sharing Agreements:** the government may agree to share a portion of the project's revenue with the lenders, which can provide additional security for the lenders.
- **Off-take Agreements:** the government may agree to purchase a portion of the project's output, which can provide additional security for the lenders and help to ensure that the project has a steady source of revenue.
- **Tax Incentives:** the government may provide tax incentives, such as tax holidays or reduced tax rates, to encourage investment in the project.
- **Land Concession Agreements:** the government may provide land to the project developers, either through a lease agreement or a concession agreement.
- **Other:** the government may provide other forms of support, such as infrastructure improvements or regulatory changes, to support the development and operation of the project.

21. Are political risk events usually under the responsibility of the public party or the private party under the PPP agreements?

In the UAE, the allocation of responsibility for political risk events under Public-Private Partnership (PPP) agreements is typically subject to negotiation between the public party and the private party. In some cases, the public party may assume the majority of the risk for political events, such as changes in laws or regulations that impact the project. In other cases, the private party may assume a significant portion of the risk and be responsible for managing and mitigating the effects of political risks.

The allocation of political risk can have a significant impact on the structure and financial viability of a PPP project, and careful consideration should be given to this issue during the negotiation process.

22. Are investors and lenders usually protected against a change in law passing subsequent to the signing of the relevant concession agreement?

In the UAE, the protection of investors and lenders against a change in law is typically addressed in the concession agreement between the public authority and the private party, however the terms and conditions of the change in law clause can vary widely between concession agreements, and the specific provisions will depend on the circumstances of each project. Such a clause may include provisions for compensation, termination or amendment of the agreement, or other remedies.

In general, the UAE has a stable and predictable legal and regulatory framework, and changes in law are relatively rare. However, it is still important for investors and lenders to consider the risk of changes in law as part of their due diligence and risk assessment process when evaluating potential investment opportunities in the UAE.

23. Is force majeure specifically regulated under the local legislation?

Yes, the UAE Civil Code includes provisions for force majeure, which are generally applicable to contracts governed by UAE law. Force majeure is defined as an extraordinary event or circumstance that is beyond the control of the parties and that makes it impossible for one or both parties to fulfill their obligations under the contract. In practice, force majeure clauses are included in many contracts in the UAE, including project financing agreements, to address the risk of events such as natural disasters, epidemics, or other events that may disrupt the performance of the contract.

The application of force majeure provisions will vary depending on the specific terms of the contract and the circumstances of the case. Parties to a contract should carefully consider the specific language used in the force majeure clause and the relevant provisions in the UAE Civil Code to ensure that their rights and obligations are protected in the event of a force majeure event.

24. What are the general environmental and social requirements in project financings?

In the UAE, there are limited environmental and social requirements applicable to project financings, although these requirements may vary depending on the specific nature of the project. In general, project sponsors and developers are required to comply with relevant local and federal environmental laws and regulations, including those related to waste management, air and water pollution, and the protection of wildlife and natural resources.

In terms of social requirements, project sponsors and developers are expected to comply with local labor laws and regulations, including those related to the employment of workers, safety and health conditions, and working hours. They are also expected to respect the rights of local communities, including the right to land, water, and other resources, and to avoid causing harm to the environment or local communities.

Jurisdiction, Waiver of Immunity

25. Are submission to a foreign law and the waiver of immunity provisions enforceable?

In the UAE, it is possible for parties to a contract to agree to have their agreement governed by a foreign law and to submit to the jurisdiction of foreign courts, provided that the foreign law does not conflict with the laws of the UAE. It is, however, important to note that the UAE's courts will apply UAE law in the event of any disputes, and that any foreign judgments or arbitral awards must be recognized and enforced by the UAE courts.

With regard to waiver of immunity provisions, sovereign states and state- owned entities are generally immune from the jurisdiction of foreign courts, except in limited circumstances. Waiver of immunity provisions can be enforceable in the UAE, but they are subject to the principles of sovereign immunity under UAE law and must not be contrary to public policy.

26. Can financing documents provide for arbitration clauses?

Yes, financing documents in the UAE can provide for arbitration clauses. The UAE is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which means that arbitration awards made in other signatory countries will be recognized and enforced in the UAE. The UAE has also enacted its own arbitration law, known as the UAE Federal Law No. 6 of 2018 on Arbitration (the "Arbitration Law"), which governs arbitration in the UAE and is based on the UNCITRAL Model Law. The arbitration clause should be drafted in compliance with the Arbitration Law, and that the arbitration clause should be clear, specific and should indicate the rules of arbitration that will be followed.

Arbitration is a commonly used dispute resolution mechanism in the UAE, and parties to financing documents are free to agree to resolve disputes through arbitration, either in the UAE or in another jurisdiction. The inclusion of an arbitration clause in a financing document is often seen as a way of avoiding lengthy and costly court proceedings and ensuring a more efficient and effective resolution of disputes.

Trends and Projections

27. What are the main current trends in project financings in your jurisdiction?

In the UAE, some of the current trends in project financing include:

- Increased focus on sustainability and environmentally friendly initiatives
- Increased use of alternative financing sources, such as Islamic finance and private equity
- Shift towards public-private partnerships (PPPs) and concession agreements
- Expansion into new sectors, such as healthcare and renewable energy
- Increasing interest in infrastructure development projects

It is worth noting that the COVID-19 pandemic has had an impact on the project finance industry, causing some delays and adjustments in funding and investment.

28. Are any significant development or change expected in the near future in the project finance market?

Yes, some significant developments and changes are expected in the near future in the project finance market in the UAE, being:

- Continued growth in alternative financing sources, including green financing and impact investing
- Expansion into new sectors, such as technology and innovation, with a focus on digitization and automation
- Increased emphasis on risk management and due diligence, as investors seek to minimize exposure to uncertainties and fluctuations

- Growing interest in cross-border investment, as the UAE aims to position itself as a hub for global trade and investment

These trends are expected to shape the future of project finance in the UAE and influence the financing and investment landscape in the region.

29. What are the alternative reference interest rates which are being commonly used in your jurisdiction during the LIBOR transition period?

In the UAE, the alternative reference interest rates most used during the LIBOR transition period are:

- Emirates Interbank Offered Rate (EIBOR): a benchmark rate set by the Central Bank of the UAE and used by banks in the country for interbank lending.
- Secured Overnight Financing Rate (SOFR): a benchmark rate developed by the Federal Reserve Bank of New York as an alternative to LIBOR, based on the cost of borrowing or lending collateralized by Treasury securities.

The transition away from LIBOR is a global effort and financial institutions in the UAE are being encouraged to adopt alternative reference rates in line with international best practices.

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