



GLOBAL EXPANSION GUIDEBOOK

IPT

United Arab Emirates



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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Intellectual Property and Technology*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

INTELLECTUAL PROPERTY AND TECHNOLOGY

Inside this guide, we outline crucial aspects of IPT laws in over 40 jurisdictions that are particularly relevant to businesses seeking to expand their operations globally. We also summarize some fundamental commercial terms that customarily appear in IPT-related agreements.

You will find answers to such common questions as:

- Which jurisdictions recognize moral rights?
- What does my business need to do to have an enforceable assignment of intellectual property from an employee, from a consultant?
- What kind of liability can be excluded from a commercial contract?

With this edition, we've also included a section for each country that discusses the enforceability of electronic signatures.

Our goal is to make the guide as readable and informative as possible, providing you just the background you need to get an overview of the IPT laws in the selected jurisdictions. This is not a substitute for professional legal advice. If you have questions regarding specific matters, we encourage you to contact one of our contributors listed in the contributors section of this guide. With nearly 500 dedicated IPT lawyers around the globe, DLA Piper's IPT group is ready to handle your legal needs wherever you do business.

Also, please note that the guide's use of the term "trademarks" also refers to service marks, unless specifically addressed separately. The summary of intellectual property covers only the most commonly used categories worldwide (for example, we have not addressed plant patents). We have also referred to international treaties and conventions with their most commonly used names and not their formal titles (such as the TRIPS Agreement, the Berne Convention, the Paris Convention and the Patent Cooperation Treaty).

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that intellectual property and technology law is dynamic, and the legal regime in the countries surveyed could change.

UNITED ARAB EMIRATES



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INTELLECTUAL PROPERTY FRAMEWORK

Overview

In the United Arab Emirates (UAE), intellectual property rights are governed by the following Federal Laws:

- i. Federal Law No. 15 of 1980 (Printed Matter and Publishing Law)
- ii. Federal Law No. 7 of 2002 (Copyright Law)
- iii. Federal Law No. 17 of 2002 (Patent Law)
- iv. Federal Law No. 37 of 1992 as amended by Federal Law No. 8 of 2002 (Trademark Law)
- v. Federal Law No. 19 of 2016 on Combatting Commercial Fraud (Anti Commercial Fraud Law)

In addition, the UAE is a civil law jurisdiction, so the laws and regulations are codified. Court judgments are not routinely published. Moreover, UAE courts are not bound to follow the prior decisions of superior courts, although they are treated as persuasive. On this basis, it is difficult to predict with a degree of certainty how the law will be applied by the court.

COMMERCIAL CONTRACT FRAMEWORK

Overview

Commercial contracts are generally governed by:

- i. Federal Law No. 2 of 2015 (Commercial Companies Law)
- ii. Federal Law No. 18 of 1993 (Commercial Transactions Law)
- iii. Federal Law No. 5 of 1985 as amended (Civil Code)

Commercial contracts which are concluded electronically will be subject to additional requirements under Federal Law No. 5 of 2012 (Cyber Crime Law) and Federal Law No. 1 of 2006 (Electronic Transactions Law).

Commercial contracts with government entities are subject to additional requirements under Federal procurement regulations including Ministerial Decision (20) of 2000 on Departmental Contracts Regulation.

Some commercial contracts will also be subject to additional requirements in Federal Law No. 24 of 2006 (Consumer Protection Law).

Exclusive distribution agreements and agency agreements (including franchise agreements) that have been registered with the Ministry of Economy as a commercial agency will be exclusively governed by Federal Law No. 18 of 1981 (as amended) (Agency Law).

COPYRIGHTS

Nature of right

A "work" is defined under the Copyright Law as "any creative work in the field of literature or the arts or sciences of whatever kind or manner of expression or whatever its importance or its purpose." The work must be original, but the threshold for originality is low - essentially the work must not be copied from another work.

The general principle is that copyright exists automatically without the need for registration. Copyright material may be registered in the UAE but this is essentially a process of depositing the work at the Ministry of Economy. However, registration is likely to be a prerequisite for a successful enforcement action in the UAE courts.

Legal framework

Copyrights are governed by the Federal Law No. 15 of 1980 (Printed Matter and Publishing Law) and Federal Law No. 7 of 2002 in respect of Author Copyrights and Parallel Rights (Copyright Law).

In addition to the Berne Convention, the UAE has acceded to the WIPO Copyright Treaty, the Rome Convention and the WIPO Performances and Phonograms Treaty.

Duration of right

For most categories of works, rights protected under the Copyright Law are protected for the entire lifetime of the author, and then for 50 years following the death of the author. Where the author is a corporate person, the right shall be protected for 50 years from the first day of the year following the year of first publication.

Ownership / licenses

Assignments and licenses are both described under the Copyright Law as "transfers." For a transfer to be valid, it must be in writing and while there is no requirement for the transfer to be notarized and legalized, in practice, government authorities in the UAE may not accept a document that has not been formalized in this way. Similarly, the document should be in Arabic and if it is not, it should have an official Arabic translation. The right that is the

subject of the transfer must be specified together with the purpose of the transfer. There is a requirement for the period of exploitation to be identified for all licenses, together with the geographical area in which the right will subsist.

Remedies for infringement

The court may grant remedies in the event of a successful claim for copyright infringement. These include:

- i. Orders to gather evidence
- ii. Orders to seize works copies and the means of infringement
- iii. Orders to stop certain acts
- iv. Orders to assess profits made as a result of the infringement

No provision is made under the Copyright Law for the payment of damages. Instead, the rights holder must resort to other laws (such as the Commercial Transactions Law) to claim compensation.

Copyright infringement is also a criminal offense, and on conviction, the court may order the detention of the infringer for no less than two months as well as order him/her to pay a fine of no less than AED 10,000 (approx. USD 2,700). The court may order confiscation and destruction of seized copies and equipment and the publication of the judgment in the newspapers. The court also has the right to close the business that committed the infringement for up to six months.

MASK WORKS / TOPOGRAPHIES

Nature of right

Mask works do not benefit from specific protection under the law in the UAE.

Legal framework

Not applicable.

Duration of right

Not applicable.

Ownership / licenses

Not applicable.

Remedies for infringement

Not applicable.

PATENTS

Nature of right

When it comes to product patent, the right to exploitation includes the manufacture, sale and use of the product or its import for the purpose of manufacture, sale or use.

In the case of industrial process or method patent, the right to exploitation include the use of the process or method itself as well as the rights to use or sell the product obtained directly by means of the process or method.

In the case of a process or method patent the right to exploitation includes the right to:

- i. Use the process or method
- ii. Use the product that is obtained directly by means of the process or method
- iii. Offer for sale the product that is obtained directly by means of the process or method
- iv. Sell the product that is obtained directly by means of the process or method
- v. Import for any of these purposes the product that is obtained directly by means of the process or method

Rights of prevention do not extend to acts done for non-commercial or non-industrial purposes and do not limit what can be done with a product after it has been sold.

Legal framework

Federal Law No. 17 of 2002 on Patents (as amended) (Patent Law) governs patents. Patents may also be protected in the UAE through a Gulf Co-operation Council (GCC) Patent (administered by the GCC Patent Office in Saudi Arabia, and governed by the GCC Patent Law).

The UAE is a member of the Patent Cooperation Treaty 1970 (PCT) and WIPO Paris Convention for the Protection of Industrial Property 1883 (Paris Convention).

Duration of right

Patents are valid for 20 years from the filing date.

Ownership / licenses

Both patent applications and granted patents can be assigned. Assignments must be executed in accordance with the Patent Law and recorded in the register. Both assignments of applications and granted patents are subject to the vetting procedure of the Department of Industrial Property and may be rejected on a wide range of grounds.

The owner may license the use or exploitation of "the right [which is] the subject of the protection" (Patent Law Article 54). The licensor should be able to license the various rights separately, for example, he should be able to give the right to produce the product (in the case of a product patent) to one person and the rights to offer it for sale and sell it to another, subject to approval from the Department of Industrial Property.

Article 54 of the Patent Law provides that the license term may not exceed the term of protection given by the law so no license can grant rights that exceed the term of patent protection. If no term is expressly stated in the license the term of the license is deemed to be the entire term of the patent.

All licenses are deemed to be non-exclusive unless they are expressed to be otherwise, similarly all licenses are deemed to be for "all the lands of the state" unless stated otherwise (Patent Law Article 57(1)). This means that the licensee is permitted to exercise its rights under the license anywhere in the UAE unless the license expressly states otherwise.

The licensee has the right to prevent infringement or threat of damage to the patent, however, the licensee may only instigate legal and judicial proceedings and demand compensation after the licensee has informed the patentee by registered letter and the patentee does not undertake the "necessary procedures" within 30 days of notice (Patent Law Article 57 (2)).

Remedies for infringement

The Patent Law sets out four criminal acts relating to infringement:

- i. Producing false documents to obtain a patent, utility certificate, know how or an industrial design or drawing registration
- ii. Declaring false information to obtain a patent, utility certificate or know how or an industrial design or drawing registration
- iii. Copying an invention, a process, an element of know how or an industrial design or drawing
- iv. Intentionally infringing any right protected by the Patent Law

A right holder or a licensee may apply for a precautionary attachment order ex parte to the urgent matters judge. The Patent Law gives the court the right to confiscate attached items but does not give the right to grant prohibitory injunctions (either on an interim or a final basis), which would order the defendant to stop the infringing acts. The claimant also has a right to claim damages in respect of the infringement.

TRADEMARKS

Nature of right

Registration of trademarks in the UAE is voluntary, but in practice, is highly advisable because the rights attaching to unregistered trademarks are limited (especially for marks which are not well-known internationally).

Registration provides the proprietor with the exclusive right to the use of the mark in connection with the goods or services for which it is registered (Article 7 Trademark Law). The UAE has adopted the 10th edition of the Nice Classification.

The owner of a registered trademark is considered the exclusive owner of the mark in the UAE.

Legal framework

Trademarks are governed by Federal Law No. 37 of 1992 as amended by Federal Law No. 8 of 2002 as amended (Trademark Law).

The UAE is party to the Paris Convention and the TRIPS Agreement. The UAE is not party to the Madrid Protocol.

Duration of right

Registrations are valid for ten years from the date of the filing of the application, and can be renewed for successive ten-year periods.

Ownership / licenses

The UAE operates a mono-class system which means that a separate application must be filed for each trademark in each class of goods or services. The UAE follows the 10th Edition of the Nice Classification of Goods and Services. Applications for Class 33 are not accepted.

As a contracting party of the Paris Convention, the UAE is bound to follow the minimum standards that it sets. As such, in the UAE, a trademark owner has the right to claim priority from an earlier filed application. The priority period is six months from the filing date of the first application.

Article 17 Trademark Law grants trademark owners a higher level of protection of their rights when the following conditions have been satisfied:

- i. The owner has used the mark continuously for no less than five years from the date of registration
- ii. No decision has been issued in which it is decided that the registered owner is not the owner of the mark

The protection that is granted is that no dispute may be raised against the ownership of the mark.

The court can make an order for the cancellation of a mark for non-use. The party/ies must prove that the mark has not been used for five consecutive years. Use of the trademark by a licensee is deemed to be “use” for the purposes of disproving a non-use claim.

Trademarks may be licensed in the UAE and any user of the trademark should be recorded as such at the Ministry of Economy. For recordal purposes, licenses must be made pursuant to a written and legalized contract. This means that the contract must be witnessed by a notary public. If the contract is made in the UAE it must be witnessed by a UAE notary. Licenses exercised outside of the UAE must be legalized up to the UAE embassy in that country and then stamped by the Ministry of Foreign Affairs in the UAE. If the license is not in Arabic it must be translated either by a UAE licensed translator or a foreign translator and legalized up to the UAE embassy before it can be used for official purpose in the UAE.

The term of the license must not exceed the term of the registration. All licenses are non-exclusive unless expressed to be otherwise.

Remedies for infringement

In the UAE, trademark infringement is a criminal offense. Article 37 of the Trademark Law deals with the various offenses which range from the counterfeit and imitation of trademarks to the use and sale of products bearing an imitation of a trademark.

A trademark owner can petition the judge of urgent matters on an ex parte basis for a Precautionary Measures Order on the grounds that one or more of the crimes set out in the Trademark Law is being committed. However, civil proceedings must be commenced very quickly afterwards which limits the effectiveness of this type of Order.

Involvement in counterfeiting is punishable under the Anti Commercial Fraud Law. Penalties include imprisonment and fines up to AED (one) 1 million (approx. USD 270,000) for pharmaceutical and food products and AED 250,000 (approx. USD 68,000) for other products. Penalties can be doubled in case of repeat violations.

UAE law does not explicitly provide trademark owners with the right to apply for an injunction. In practice, the UAE Courts have granted "stop" orders to successful applicants.

The court may order the destruction of goods bearing unlawful marks and/or the publication of the judgment in the Trademark Journal and in any one of the Arabic newspapers published in the UAE at the expense of the defendant.

TRADE SECRETS

Nature of right

Article 905 of the Civil Code provides that employees must not disclose industrial or trade secrets of their employer, even after the expiration of their employment contract, in accordance with custom or the timeframe specified in their employment contract.

Under Article 379 of the Penal Code, an employee who is entrusted with a secret by virtue of their trade, position, profession or art and who discloses that secret, or uses that secret for personal gain, is liable and may be ordered to pay penalties (see below).

Article 120 of the Labor Law also allows an employer to dismiss an employee without notice if they reveal any secrets of the establishment in which they have been working.

Article 127 of the Labor Law indirectly protects intangible assets in the form of confidential information (eg , clients and business secrets) by permitting an employer to include a restrictive covenant in the contract of employment. Employees can be subject to a ban on working for a competitor within a specified location, business and period although great care should be taken in drafting to ensure that the terms are reasonable. Such clauses are usually enforced by an action in damages and as such, liquidated damages clauses are often coupled to the restrictive covenant. The Civil Code states that liquidated damages clauses attached to restrictive covenants must not be "exorbitant" and this is usually linked to both the realistic losses but also the ability of the employee to pay any award.

Legal framework

Trade secrets are addressed by Federal Law No. 3 of 1987 (Penal Code), Federal Law No. 5 of 1985 as amended (Civil Code), and

Federal Law No. 8 of 1980 as amended by Federal Law No. 8 of 2007 (Labor Law).

Duration of right

No time limits are placed on the confidentiality of the trade secret, and so this right will exist for as long as the information remains a trade secret.

Ownership / licenses

A trade secret will be owned by the entity to which the secret pertains.

Remedies for infringement

Penalties under the Penal Code include imprisonment for not less than one year and a fine of not less than AED 20,000 (approx. USD 5,450).

OTHER KEY IP RIGHTS

Nature of right

Not applicable.

Legal framework

Not applicable.

Duration of right

Not applicable.

Ownership / licenses

Not applicable.

Remedies for infringement

Not applicable.

INTELLECTUAL PROPERTY IN EMPLOYMENT CONTEXT

Employees

The Copyright Law restricts the right to assign copyright in future works. Specifically, future copyright may only be assigned in up to five future works. In practice, this requires that after an author has created five works, he will continue to own copyright from the sixth work onwards. Standard language in employment contracts often vests ownership of all works created by the employee in the employer. Employers that usually rely on future copyright assignments need to ensure they also have the right to require the employee to enter into additional assignments of copyright subsisting in additional future works and requiring retroactive assignments after they have been created. Ideally, they should also insist on a license covering the period between creation and assignment, because those rights will not automatically vest in the employer.

Consultants / contractors

Please see [point above](#) in relation to employees. The same framework applies to all types of employment contracts including those with consultants and contractors.

KEY COMMERCIAL CONTRACT CONSIDERATIONS

Registration of commercial agreements

There is no requirement to register a commercial agreement in the UAE. However, "agency" agreements that are exclusive and concluded with either an Emirati individual or a company which is 100% Emirati can be registered with the Ministry of Economy as a commercial agency under the Agency Law. In this context, "agency" has a broad meaning and will include any contract for the offer, sale or distribution of goods or services (eg, franchise and distribution agreements and trademark licenses).

If an agreement is registered as a commercial agency, the UAE Courts will have exclusive jurisdiction in the event of a dispute and will apply UAE law notwithstanding any choice of law or jurisdiction agreed in the contract (Article 6 Agency Law).

If an agreement is registered, the local agent will be able to benefit from statutory rights which cannot be waived by contract. The most pertinent of these statutory rights are:

- i. Their entitlement to territorial exclusivity
- ii. Their presumptive extra-contractual right to compensation in the event of termination
- iii. Their entitlement to receive commissions on sales of the products in their designated territory irrespective of whether such sales are made by or through them
- iv. Their ability to prevent the import of products into the UAE where they are not the consignee

For as long as the agreement is registered, the Agency Law will allow the local agent to:

- i. Stop the imports of any products which are the subject of their distribution agreements and where they are not the consignee
- ii. Prevent the sale of any of these products by third parties to retailers

- iii. Issue criminal proceedings against the principal, its affiliates and any newly appointed agents in the UAE who are engaged in the activities covered by the registered agency (Article 22 imposes a fine of AED 5,000 (approx. USD 1,360) on any person (this can include the principal) engaged in the activities covered by a registered agency with a party other than the registered agent)
- iv. Issue civil proceedings against the principal for breach of contract and breach of the Agency Law to:
 - Claim compensation
 - Claim the commissions made by such agents on any sales of the products made in their territories

Where the agreement is registered, unless a principal has a legitimate material reason to terminate or refuse to renew an agreement which has been registered as a commercial agency, it can only be terminated by the mutual agreement of the parties.

The approach of the UAE Courts tends to be to protect an "agent" (understood to mean a distributor, licensee or franchisee, which meets the criteria for registration) at the expense of a non-UAE principal. As such, even where agreements are not registered, there is a risk that the UAE Courts will award compensation to the "agent" on termination. When drafting an agreement with a UAE entity, steps should be taken to avoid the risk of being treated as a registered agreement and of the UAE Court accepting jurisdiction.

Recognized language of commercial agreements

Contracting parties are free to choose the governing language of their agreements but, if an agreement is to be submitted to any official body or is subject to consideration in a local court in the UAE, it must be translated into Arabic.

Country-specific issues for online content

Not applicable.

Enforceability of online/clickwrap/shrinkwrap terms

Article 12 of the Copyright Law provides that the assignment of rights to commercial exploitation pertaining to computer software, its applications or databases, shall be subject to the licensing agreement associated or attached to the program, whether appearing on the supporting bar or upon downloading or saving the program. The buyer or user of the program shall be bound to abide by the terms set out in the said agreement.

Governing law

While parties are free to choose a foreign law to govern an agreement, the UAE Courts may as a matter of practice set aside such a provision and apply UAE law. Issues may arise as to the enforceability of a foreign law decision on disputes which relate to the infringement of intellectual property rights where there is a nexus with the UAE, eg, where one or more of the infringers reside in the UAE. This is because such infringements are considered to be criminal in nature, which allows UAE Courts to assume exclusive jurisdiction and apply UAE laws.

KEY COMMERCIAL CONTRACT TERMS

Enforceability of warranty disclaimers

In the UAE, suppliers of products (goods and services) are required to warrant that the products supplied conform to safety standards, are of good workmanship and are suitable for use in relation to their intended purposes. Suppliers are also required to warrant that the products are free from any defects and to undertake the repair or replacement of defective products. Generally, suppliers cannot contract out of these requirements. The local courts may therefore construe a warranty disclaimer accordingly.

Enforceability of exclusions/limitations of liability indemnification

Under UAE law, absolute exclusions of liability in contracts are null and void. Restrictions on the ability of one contracting party to recover losses arising from fault by the other contracting party are not generally enforceable in the UAE, unless this fault is the result of fraud or gross misconduct. Moreover, the UAE Courts would be reluctant to award damages for economic reasons, other than those which the claimant can prove were actually suffered as a direct result of the defendant's fault.

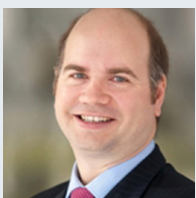
Indemnification

In the UAE, a contracting party is only permitted to indemnify another contracting party for losses which are proven to have been or will be actually incurred by the other party. Successful litigants usually only recover a nominal amount in respect of their legal costs of litigation which have little bearing on their actual legal costs.

Electronic signatures

Consent and acceptance to enter into a contract may be expressed electronically. Article 17(1) bis. Federal Law No. 10 of 1992 the Law of Evidence in Civil and Commercial Transactions as amended (Law of Evidence) provides that an electronic signature shall be "any electronic signature, any letters, figures, codes, signs, images or sounds having a unique character allowing for identifying the signatory and distinguishing him from others." Article 17(3) provides that electronic signatures may be afforded the same evidential weight as physical signatures if they comply with the provisions prescribed in the Electronic Transactions Law.

KEY CONTACTS



Paul Allen
Partner
DLA Piper Middle East LLP
paul.allen@dlapiper.com
T: +971 4 438 6295
[View bio](#)

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