



## Banking Regulation 2010

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# United Arab Emirates

**Bashir Ahmed and Aly Shah**

Afridi & Angell

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## Regulatory framework

- 1** What are the principal governmental and regulatory policies that govern the banking sector?

The principal governmental and regulatory policies that govern the banking sector are UAE Federal Law No. 10 of 1980 concerning the Central Bank, the Monetary System and the Organisation of Banking (the Banking Law), UAE Federal Law No. 18 of 1993, as amended (the Commercial Code), UAE Federal Law No. 6 of 1985 concerning Islamic banks, financial establishments and investment companies (Islamic Banking Law) and the various circulars, notices and resolutions issued by the board of governors of the UAE Central Bank, from time to time.

- 2** Please summarise the primary statutes and regulations that govern the banking industry.

The Banking Law establishes the UAE Central Bank and contains detailed provisions on the role of the UAE Central Bank, which, among other things, includes issuance of currency; organising, promoting and supervising banking; directing the credit policy; advising the government on financial and monetary issues; acting as the government's bank; maintaining gold and foreign exchange reserves and acting as bank for other banks in the UAE. The Banking Law also contains detailed provisions on the registration, licensing and operation of commercial banks, investment banks, financial institutions, monetary and financial intermediaries and representation offices. The Banking Law is, however, not applicable to:

- public credit institutions set up by law;
- governmental investment institutions and agencies;
- governmental development funds;
- private savings and pension funds; and
- insurance and reinsurance companies and agencies.

The Commercial Code contains detailed provisions on banking operations, which include, among others, provisions governing bank deposits, bank accounts, guarantees, documentary credits, bills of exchange, loans, promissory notes and cheques.

The Islamic Banking Law contains provisions relating to the establishment and operation of Islamic banks. Islamic banks shall also be subject to the provisions of the Banking Law, with certain exceptions.

The various circulars, notices and resolutions issued by the board of governors of the UAE Central Bank deal with various aspects of banking including bank accounts, maintaining of certain reserve ratios, capital adequacy norms and reporting requirements to the UAE Central Bank.

- 3** Which regulatory authorities are primarily responsible for overseeing banks?

The UAE Central Bank is primarily responsible for overseeing banks in the UAE, except in the Dubai International Financial Centre (DIFC), where the regulatory authority is the Dubai Financial Services Authority (DFSA).

- 4** Describe the extent to which deposits are insured by the government.

Deposits are not insured in the UAE. In practice, the government has intervened on occasions to ensure that depositors do not suffer a loss.

- 5** Which legal and regulatory limitations apply to transactions between a bank and its affiliates? What constitutes an 'affiliate' for this purpose?

In this regard there are prescribed percentages of maximum exposure that a bank may incur to its parent company or subsidiaries or other subsidiaries of its parent company. A subsidiary is a company in which a bank holds a minimum of 40 per cent of share capital or has controlling influence (for example through the composition of the board of directors).

Also, Circular No. 16/93 issued by the UAE Central Bank governs large exposures incurred by banks. Large exposures are funded exposures (fewer provisions, cash collaterals and deposits under lien). Banks are restricted from exceeding the maximum exposure per client or group.

- 6** What are the principal regulatory challenges facing the banking industry?

The principal regulatory challenges derive from the fact that the Banking Law has not been amended or updated since it was promulgated in 1980 and, accordingly, does not address developments in financial services that have taken place since 1980. The subsisting regulations generally lack sophistication. Draft amendments to the Banking Law were proposed a decade ago but have yet to be promulgated.

- 7** How has regulation changed in response to the recent crisis in the banking industry?

The UAE Central Bank, the UAE federal government and the government of the Emirate of Abu Dhabi have responded to the current state of crisis in the banking sector. The UAE Central Bank has established certain schemes under which banks in the UAE can seek funding from the UAE Central Bank. Such funding will be available to banks in the UAE, subject to certain conditions, including that such funding is to be used only for the purpose of funding existing commitments, banks are to refrain from lending to non-resident foreigners, banks

must liquidate their short-term money market assets to reduce their obligations to the UAE Central Bank and invest any surplus in the Certificates of Deposits issued by the UAE Central Bank.

The UAE Central Bank made available a 50-billion dirham short-term liquidity support facility and the UAE Ministry of Finance injected 50 billion dirhams into the banking sector as medium and long-term deposits.

The UAE federal government made available approximately 120 billion dirhams to the banking sector in the UAE, covering banks across all seven emirates of the UAE. It is reported that only two-thirds of this liquidity fix has been absorbed by the banking sector so far. The UAE federal government has also declared that it will guarantee the deposits maintained with all local banks and with foreign banks that have 'significant operations' in the UAE. Furthermore, this guarantee would be for three years.

The government of the Emirate of Abu Dhabi also injected approximately 16 billion dirhams as additional capital into five Abu Dhabi-based banks. This has substantially strengthened the capital base of these Abu Dhabi banks.

It is reported that the UAE Central Bank and the UAE Ministry of Finance are presently considering a proposal to reduce the interest rates that banks pay on corporate deposits to improve the loan-to-deposit ratio and to increase lending.

The UAE Central Bank has also subscribed to US\$10 billion as the first tranche of an eventual US\$20 billion bond issue by the government of Dubai.

In 2009, the UAE Central Bank issued guidelines for the implementation of the Basel II Capital Accord. The guidelines cover:

- capital adequacy ratios;
- calculation of credit risk (pillar 1);
- market risk (pillar 1);
- operational risk (pillar 1);
- supervisory review (pillar 2);
- market discipline (pillar 3); and
- capital base-related matters.

**8** In what ways do you anticipate the legal and regulatory policy changing over the next few years?

As noted in question 6, an overhaul or substantial amendment of the Banking Legislation is overdue. The establishment of the Dubai International Financial Centre in the Emirate of Dubai, with its own jurisdiction and body of modern laws, might act as a catalyst for changes to the wider UAE legal and regulatory policies.

### Supervision

**9** How are banks supervised by their regulatory authorities? How often do these examinations occur and how extensive are they?

Banks are supervised by the UAE Central Bank through the various reports that are required to be filed by banks with the UAE Central Bank on a periodic basis. Further, under the Banking Law, the UAE Central Bank is entitled to inspect the books, records and accounts of any bank at its discretion. In certain cases, the Central Bank has appointed administrators or representatives to temporarily manage a bank. These audits are ordinarily conducted once a year and are reasonably extensive.

**10** How do the regulatory authorities enforce banking laws and regulations?

Any failure by banks to comply with the laws and regulations would be notified by the UAE Central Bank and the bank given an opportunity to rectify the breach. Continued failure would attract consequences ranging from fines to cancellation of the licence to conduct banking.

**11** What are the most common enforcement issues and how have they been addressed by the regulators and the banks?

The most common issues for the regulator and banks have included approval of investment products, issues pertaining to selling of investment products and concerns regarding institutions operating within the scope of their licences.

**12** How has bank supervision changed in response to the recent crisis?

In January 2009, the UAE Central Bank announced that all banks in the UAE must provide details of each loan in excess of 10 million dirhams to the UAE Central Bank to enable the UAE Central Bank to scrutinise the asset quality of the banks.

In February 2009, the UAE Central Bank created an online unit to settle disputes among banks. Banks may now lodge a complaint directly with the UAE Central Bank through this online process. Upon receipt of a complaint, the UAE Central Bank will investigate the complaint and hope to be able to notify its decision within eight weeks. However, matters that are already before a judicial process and major financial problems or criminal cases would be outside the purview of this online complaint system. The UAE Central Bank believes that this initiative will help them to better monitor the issues faced by banks in the UAE.

In March 2009, the UAE Central Bank announced that it will set up a joint task force comprised of representatives of the UAE Central Bank and the country's banks to discuss further measures to face the global crisis.

### Capital requirements

**13** Describe the legal and regulatory capital adequacy requirements for banks.

Pursuant to Circular No. 13/93 issued by the UAE Central Bank all banks are obliged to maintain a minimum capital base relative to the total of their risk weighted assets, as measured by the risk assets ratio.

The capital base of a bank is defined as the sum of tier I capital and tier II capital, less certain prescribed deductions.

Tier I capital shall be the paid-up share capital and published reserves of a bank. Profits of the current period are not allowed to be included except in certain exceptional cases at the discretion of the UAE Central Bank. Goodwill and other intangible assets, own shares held, shortfall in provisions, current year losses and others (as may be prescribed by the UAE Central Bank from time to time), must be deducted from tier I capital.

Tier II capital comprises undisclosed results, revaluation of assets limited to a maximum of 45 per cent of the excess of the market value over their net book value (revaluation reserves in respect of a bank's property assets are not to be included), hybrid (debt or equity) capital instruments and subordinated term loans.

The prescribed deductions from the aggregate of the tier I and tier II capital are investments in unconsolidated subsidiaries, investment in associate companies, investments in other banks or financial institutions and any other deductions as may be prescribed by the UAE Central Bank from time to time.

Risk weighting of assets is prescribed by the UAE Central Bank from time to time.

The risk assets ratio to be maintained by banks at all times is a minimum of 10 per cent, in which tier I capital must reach a minimum of 6 per cent of total risk weighted assets and tier II capital must not be more than 67 per cent of tier I capital.

Pursuant to Notice 3735/2006 dated 27 August 2006, the UAE Central Bank implemented the Basel II Accord. The implementation was to be in stages. In the first stage, the banks were required to be compliant with the standardised approach for credit risk by 31 December 2007. Further banks were required to adopt their own

**Update and trends**

The guidelines issued in 2009 by the UAE Central bank in respect of the Basel II Capital Accord have been discussed in question 13.

Developments relating to the 'Dubai World' debt are also of interest. Decree No. 57 for 2009 (Decree No. 57): 'Establishing A Tribunal To Decide The Disputes Related To The Settlement Of The Financial Position of Dubai World And Its Subsidiaries' has been issued. Decree No. 57 is an emirate of Dubai law and contemplates the establishment of a tribunal in Dubai. The tribunal has jurisdiction, firstly, to hear and decide any demand or claim submitted against the corporation (defined as Dubai World or its subsidiaries, or both), including hearing and deciding any demand to dissolve or liquidate the

corporation, and any person related to the settlement of the financial obligations of the corporation, including the chairman, members of the board of directors and all the employees and workers of the corporation. Secondly, it may issue interim and interlocutory orders and decisions, including injunctions to any person to act or not to act, or other order as the tribunal considers appropriate. Decree No. 57 also provides that the tribunal may, as it considers appropriate, assign or appoint experts with expertise and competence in the matters submitted to it. Should any lender wish to initiate legal proceedings against the corporation (as defined), it can do so before the tribunal established pursuant to Decree No. 57.

procedures for operational risk and to adopt the 1996 Amendment to Basel I for Market Risk.

Further to the above, as mentioned in question 7, in 2009 the UAE Central Bank issued guidelines for implementation of the Basel II Capital Accord. The guidelines state that the minimum capital adequacy ratio of banks will be set at 11 per cent, rising to 12 per cent as at 30 June 2010 as specified in Notice 4004/2009. The said Notice 4004/2009 dated 30 August 2009 of the UAE Central Bank provides as follows:

- banks should work towards increasing their capital adequacy to 11 per cent at the latest by 30 September 2009, of which tier 1 capital must not be less than 7 per cent;
- banks must increase their capital adequacy once more to 12 per cent at the latest by 30 June 2010, of which tier 1 capital must not be less than 8 per cent; and
- these percentages will be applied on a temporary basis and will be re-examined at the beginning of 2011 to determine whether they will continue. The Notice shall become effective on 31 August 2009.

**14** How are the capital adequacy guidelines enforced?

Pursuant to the said Circular No. 13/93 issued by the UAE Central Bank, all banks are required to report to the UAE Central Bank on prescribed banking return forms on a quarterly basis no later than 14 days following the end of each quarter, based on the end-of-quarter figures.

The UAE Central Bank has also issued Basel II Standardised Approach>Returns (including the capital adequacy calculation) which need to be filed by banks. In view of this, the status of Circular 13/93 is not clear.

**15** What happens in the event that a bank becomes undercapitalised?

If a bank is undercapitalised at any point, it must rectify the deficiency within one year from the date it is notified to do so. Any failure to so rectify could attract consequences ranging from fines up to cancellation of its licence to conduct banking.

**16** What are the legal and regulatory processes in the event that a bank becomes insolvent?

Commercial banks in the UAE are incorporated as public joint-stock companies or as branches of foreign banks. Investment banks and other financial institutions may be incorporated as public joint-stock companies or private joint-stock companies or as branches of foreign investment banks and financial institutions. Monetary and financial intermediaries may be incorporated as public joint-stock companies or private joint-stock companies or limited liability companies or as branches of foreign monetary and financial intermediaries.

Insolvency of public joint-stock companies, private joint-stock companies, limited liability companies and branches of foreign com-

panies are governed by the provisions of the UAE Federal Law No. 8 of 1984, as amended (the Companies Law) and the bankruptcy provisions of the Commercial Code. Additionally, pursuant to the Banking Law, a notice of liquidation of any commercial bank must be published in the official gazette and in at least two local daily newspapers. The notice of liquidation shall give the bank's customers at least three months' notice to take necessary steps to enforce their rights. The notice shall also provide the name of the liquidator entrusted with the payment of the outstanding deposits and other transactions relating to the bank.

Traditionally, if any locally incorporated banks face bankruptcy situations, they have been merged with other banks.

**17** Have capital adequacy guidelines changed, or are they expected to change in the near future?

See question 13.

**Ownership restrictions and implications**

**18** Describe the legal and regulatory limitations regarding the types of entities and individuals that may own a controlling interest in a bank. What constitutes 'control' for this purpose?

Under the Companies Law at least 51 per cent of any company incorporated in the UAE (outside free zones) must be owned by UAE nationals or entities wholly owned by UAE nationals. Additionally, for financial and monetary intermediaries and finance companies, at least 60 per cent of the shares must be held by UAE nationals or entities wholly owned by UAE nationals.

**19** Are there any restrictions on foreign ownership of banks?

Yes. A bank incorporated in the UAE must be majority-owned by UAE nationals. There are several branches of foreign banks operating in the UAE.

**20** What are the legal and regulatory implications for entities that control banks?

The experience and expertise of an entity that acquires control of a company involved in banking and financial services will be considered by the UAE Central Bank to approve the acquisition of control. However, there are no formal restrictions on such entity carrying on any other business.

**21** What are the legal and regulatory duties and responsibilities of an entity or individual that controls a bank?

The legal and regulatory duties and responsibilities of an entity or individual who controls the Bank would be to ensure that the banking operations are conducted in accordance with the requirements

of the Banking Law, the Commercial Code and the various notices, circulars and resolutions of the UAE Central Bank. There will be no express obligation on the shareholders to provide additional capital in the event that a bank becomes undercapitalised, but the Central Bank will require the capital to be increased, failing which the bank may be fined or its licence cancelled.

- 22** What are the implications for a controlling entity or individual in the event that a bank becomes insolvent?

Generally, no legal liability attaches to the controlling entity as a result of insolvency of a bank.

#### Changes in control

- 23** Describe the regulatory approvals needed to acquire control of a bank. How is 'control' defined for this purpose?

There is no specific definition of control (save in relation to determination of large exposure). Thus 'control' should mean a majority shareholding interest in the bank, a right to exercise control through representation at the board of such bank, or both. Any change in such controlling entity requires the prior written approval of the UAE Central Bank. Upon receipt of such approval subsequent approvals of the local licensing authorities of the emirate where the bank is incorporated must also be obtained.

- 24** Are the regulatory authorities receptive to foreign acquirers? How is the regulatory process different for a foreign acquirer?

In the view of the local ownership requirements, a foreign party may not acquire a UAE-incorporated bank.

- 25** What factors are considered by the relevant regulatory authorities in considering an acquisition of control of a bank?

A change in ownership or control of a bank is a relatively rare phenomenon in the UAE. A majority of the locally incorporated banks are owned by the governments or the ruling families of the relevant emirates in which they are based. In the event of a proposed acquisition, we would expect the UAE Central Bank to consider issues such as the identity of the acquirer, its track record, any conflicts of interest as well as the purpose and term of the investment.

- 26** Describe the required filings for an acquisition of control of a bank.

See questions 23 and 24.

- 27** What is the typical time frame for regulatory approval for both a domestic and a foreign acquirer?

All approvals from the UAE Central Bank are at its discretion and no approximate time frames may be stated. However, depending on the identity of the acquirer, approval of the Central Bank would be a matter of months, rather than days or weeks.

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