



February 2021

Managing Legal and Compliance Risks in Israel-UAE Investments

On September 15, 2020, the State of Israel and the United Arab Emirates ("UAE") entered into the Abraham Accords Declarations and Peace Agreement (see further information [here](#)).

The time since has seen a flurry of interest in the development of cross-border investments between the UAE and Israel. This interest has been supported by the negotiation and execution of economic agreements between Israel and the UAE, such as a Bilateral Investment Treaty ("BIT"), a memorandum of understanding on cooperation in science and innovation, an aviation agreement and a visa-exemption agreement.

In recent weeks this general interest seems to be translating to a first wave of concrete investments, and it is expected that there will be many more in the coming weeks, months and years.

While the economic possibilities seem significant, any investor looking at a cross-border investment between the UAE and Israel should not neglect its management of the legal and compliance risks posed by cross-border investments. Such risks should be properly managed in every investment, but even more so when investing in a new market.

In this update, the Gornitzky & Co and Kroll teams will flag a few such risks that are particularly pertinent in the context of investments between Israel and the UAE, especially pre-investment considerations in the UAE.

Managing Legal Risk:

- Choosing the right law to apply to the contract and understanding the implications for such choice is key. An investor from the UAE will likely not be familiar or comfortable with an application of the laws of Israel to an agreement, while an Israeli investor in the UAE will likely feel the same about applying UAE law. Therefore, in most cases, applying the law of a third country will be the right course, but such choice needs to be well informed and tailored to the specifics of each investment. The UAE offers a unique option in this respect, with the Abu-Dhabi Global Market (ADGM) and Dubai International Financial Centre (DIFC), which apply different laws than the local UAE laws, which are similar to that of leading common-law jurisdictions. Those “special” jurisdictions might give Israeli investors an option to mitigate the risks associated with applying UAE laws by applying one of these hybrid common-civil law regime which are used specifically for these reasons in the special free trade zones within the UAE.
- As with the choice of law, it is expected that Israeli investors will be hesitant to subject themselves to the courts of the UAE, and vice-versa. In these circumstances, international arbitration will normally be the preferred choice for the parties, allowing them to place the dispute in the hands of a neutral and well-respected dispute resolution forum which will normally enjoy a significant advantage in terms of enforcement. As always with international arbitration, an informed choice of the arbitral institution, seat and other elements is crucial. As with the applicable law, the UAE offers a unique mix of local and international institutions which may serve as an adequate option to Israeli investors who may have concerns about local institutions. One such notable institution is the DIFC-LCIA, which was originally formed in 2008 and was relaunched in 2014, and while its management is in the DIFC the administration and management of arbitrations is performed by the LCIA in London.
- Investors should consider the important protection afforded to them by bilateral investment treaties ("BITs"). Such treaties include crucial protections on investments by investors of one state in the other and will usually afford the investor the right to seek recourse in international arbitration against the host state in cases its rights are not properly protected in accordance with the terms of the BIT. Such treaty was recently signed but not yet published between Israel and the UAE, but investors can also consider structuring an investment in a way that will afford protection under other BITs Israel or the UAE has signed which may have wider or stronger protections. An examination of the concrete investment and the possibilities to maximize protections under BITs is of crucial importance.

Managing Compliance Risks:

- New markets always present significant opportunities, but also significant compliance risks. Carrying out proper due diligence on potential investment targets, joint venture (JV) partners and commercial counterparties is key. This is of particular importance as one of the key concerns for international investors when considering a business relationship in the Middle East is the close nexus between the ruling political/government class and local businesses. Regulatory and reputational challenges can be presented by politically exposed persons (PEPs) or government sponsored entities maintaining a direct or indirect interest in locally registered companies in addition to acting as an investment partner, key customer and/or supplier.
- A thorough investigative due diligence process is focused on the company, its management team and its shareholders. It often includes obtaining information on the subject's previous dealings with business partners, its strategic and operational intent, reputation and market credibility, source of funding, declared shareholder structure and an understanding of its beneficial ownership. Given public records are limited in part of the region, this requires focused information gathering from discrete interviews with individuals that have knowledge of the subject company's ownership and its operations. This can include former employees, commercial counterparties, clients, suppliers and individuals in the legal community.
- The results of the due diligence can then be used to develop an appropriate deal structure. This may include some of the following mitigations: replacing key management, requesting changes in ownership of a joint venture partner, securing anti-bribery/ anticorruption audit rights, requesting representations and warranties that would protect from prior incidents of corruption, bribery and fraud, etc.
- As many transactions include transfer of funds, AML and sources of funds are also key elements to keep in mind. An examination of possible connection to people from countries that are currently sanctioned, have been sanctioned in the past, or where news sources/public records are limited, is also important. This requires enhanced due diligence on investors.
- The nature of many investment targets in the region as small to medium sized enterprises and family-owned conglomerates mean that such targets may often be closely held businesses where the shareholders are also the key decision makers and adequate governance structures have not been instituted as a result. Managing risks within this context requires an understanding of what governance procedures are in place. Investors often see the requirement for greater transparency around governance structure and often insist on compliance audits and fraud risk assessments post acquisition.

About Gornitzky & Co.

Founded in 1938, Gornitzky & Co. has been involved in many of the largest and most complex transactions and disputes in the Israeli market and has played a key role in the development of Israel's economy and legal practice. Gornitzky & Co. is consistently ranked by the leading international legal guides as one of Israel's leading law firms in multiple practice areas and is well-known for its extensive experience in all areas of commercial law. In particular, Gornitzky & Co's International Arbitration and Transnational Litigation is consistently recognized as a market leader, and regularly advises on the structuring of dispute resolution provisions and on the protection afforded by BITs.

Gornitzky & Co. welcomes the Abraham Accords Peace Agreement and supports the efforts to promote peace through commercial cooperation, trade and investment. Gornitzky & Co. is happy to continue assisting parties in exploring new opportunities between the UAE and Israel.

About Kroll, a division of Duff&Phelps

Kroll is the leading global provider of risk solutions. For more than 45 years, Kroll has helped clients make confident risk management decisions about people, assets, operations and security through a wide range of investigations, cyber security, due diligence and compliance, physical and operational security, and data and information management services.

Kroll also assists its clients with market entry initiatives. These include information gathering to provide an overview of the market, to include recent developments and drivers of growth and the identification of major competitors and counterparties; an assessment of government initiatives and the local regulatory environment; and a forward view of the market based on current trends, obstacles to entry, competitor and client profiling and potential future changes to the regulatory environment

For further information please contact:

Nir Keidar

Partner, Gornitzky

 nirke@gornitzky.com

Shai Sharvit

Of Counsel, Gornitzky

 ssharvit@gornitzky.com

Amine Antari

**Managing Director, Business Intelligence
and Investigations, UAE, Kroll**

 amine.antari@kroll.com

Dr. Efraim Chalamish

Senior Advisor, U.S./Israel, Kroll

 Efraim.Chalamish@duffandphelps.com