

**" Legal Profession in UAE and Problem of Independence of Bar Associations "**

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' Knowledge speaks, but wisdom listens ' .

Jimi Hendrix

**Abstract :**

For many Attorneys, Comparative Law students, judges, and researchers, which practice legal professions and those who are involved in legal consultancy and serving as a Lawyer, before the courts of UAE, lack of independent Bar at UAE is an interesting issue. It seems to find the problem as mystery, a veil of mystery should be lifted. In this brief survey, we take a look to model of practising as an Attorney at Law & legal counsel at UAE a well known neighbouring Islamic country. It helps our colleagues to know more about UAE legal system, esp. relating to Attorneys activities abroad and before the UAE Courts. In Islamic Republic of Iran, there is 23 independent Bar Association i.e., the oldest is Central Bar ( [www.icbar.ir](http://www.icbar.ir) ) and the newest member is Kerman Province Bar Association ( <http://www.iranbar.org/pk30p.php> ) which all of them are the members of Iran Bar Association Union ( [www.iranbar.org/pltren1.php](http://www.iranbar.org/pltren1.php) ) and the latter is a member of IBA. Nevertheless, many attorneys in I.R. of Iran are individually members of the IBA, according to definition of ' Member ' and Member of the legal profession of IBA ( Member includes both a Full and a

Sustaining Member Organisation and an Individual Member, Members of the legal profession means practitioners of the law, including, but without limiting the generality of the foregoing, attorneys, counsellors, solicitors, barristers, advocates, members of the judiciary, professors of law and other persons versed in the law

[http://www.ibanet.org/About\\_this\\_site/Glossary\\_M.aspx](http://www.ibanet.org/About_this_site/Glossary_M.aspx)).

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## 1. General background :

### 1.1: Introduction :

The United Arab Emirates (UAE) is a federation situated in the southeast of the Arabian Peninsula in Southwest Asia on the Persian Gulf, bordering Oman and Saudi Arabia while Islamic Republic of Pakistan and Islamic Republic of Iran lie to the north on the Persian Gulf.

In December 1971, the UAE became a federation of six emirates : Abu Dhabi, Dubai, Sharjah, Ajman, Umm al-Quwain, and Fujairah, while the emirate of Ras Al Khaimah joined the federation in 1972. The capital city is Abu Dhabi, located in the largest of the seven emirates. Abu Dhabi is investing heavily in educational institutions, such as the Sorbonne and New York University campuses, and cultural and sporting attractions such as the Formula One racing track, Ferrari theme park, Louvre Gallery and Guggenheim museum to diversify the economy away from oil and encourage tourism.

Before 1971, the UAE was known as the Trucial States or Trucial Oman, in reference to a 19th century truce between the United Kingdom and several

Arab Sheikhs. The name 'Pirate Coast' was also used in reference to the area's emirates from the 18th to the early 20th century.

Since 1971, the UAE has developed rapidly into a nation with modern infrastructure (particularly in Abu Dhabi and Dubai) and one of the highest per capita incomes in the world.

#### 1.2:Political overview:

The President of the UAE is Sheikh Khalifa bin Zayed Al-Nahyan, who is also Ruler of Abu Dhabi Emirate. The Ruler of Dubai Emirate, Sheikh Mohammed bin Rashid Al-Maktoum, is the Vice-President, Prime Minister and Defence Minister.

The UAE federal structure includes a Federal Supreme Council (comprising the Rulers of each Emirate), a Council of Ministers, a semi-appointed Federal National Council with an advisory role. Each Emirate is nevertheless still governed by its own Ruler and has its own local government.

The UAE is a member of the [Persian ]Gulf Cooperation Council (GCC), which also includes Saudi Arabia, Kuwait, Oman, Bahrain and Qatar. It is a member of the Arab League, the Organization of the Islamic Conference, the United Nations and the World Trade Organisation. The International Renewable Energy Agency, officially established in 2009, has its headquarters in Abu Dhabi.

To ensure effective governance of the United Arab Emirates after its establishment in 1971, the rulers of the seven emirates that comprise the Federation agreed to draw up a provisional Constitution specifying the powers allocated to the new federal institutions. As in many federal structures around the world, certain powers remained the prerogative of each of the individual emirates, which already had their own governing institutions prior to the establishment of the Federation.

Under Articles 120 and 121 of the Constitution, the areas under the purview of the federal authorities are foreign affairs, security and defence, nationality and immigration issues, education, public health, currency, postal, telephone and other communications services, air traffic control and licensing of aircraft, in addition to a number of other sectors specifically prescribed, including labour relations, banking, delimitation of territorial waters and extradition of criminals. All other matters were left to the jurisdiction of the individual emirates and their local governments. In May 1996, the Federal Supreme Council – comprising of the rulers of the seven emirates – approved two amendments to the provisional Constitution and agreed to make it permanent.

A closer look at the working of the federal and local governments, both separately and combined, underlines the UAE's unique amalgamation of the traditional and modern political systems that have guaranteed national stability and laid the foundation for development.

At present, the federal system of government includes the Supreme Council, the Council of Ministers (Cabinet), a parliamentary body in the form of the Federal National Council (FNC) and the Federal Supreme Court, which is representative of an independent judiciary. The Supreme Council elects a president and vice-president from amongst them to serve for a renewable five-year term in office. Accordingly, the Supreme Council re-elected President H.H. Sheikh Khalifa bin Zayed Al Nahyan for another five-year term in November 2009.

The Supreme Council, comprising the rulers of the seven emirates, has both legislative and executive powers. It ratifies federal laws and decrees, plans general policy, approves the nomination of the prime minister and accepts

his resignation. It also relieves him from his post upon the recommendation of the president.

The Council of Ministers, described in the Constitution as ‘the executive authority’ for the Federation, is headed by a prime minister, chosen by the president in consultation with the Supreme Council. The prime minister, currently also the vice-president, then proposes the Cabinet, which requires the president’s ratification. In line with the UAE’s rapid socio-economic developments, major steps have been taken, both at the federal and local levels, to reform the political system in the UAE in order to make it more responsive to the needs of the country's population and to ensure that it is better equipped to cope with the challenges of development.

This process has been directed, at a federal level, by President Sheikh Khalifa and devised and guided at an executive level by UAE Vice-President and Prime Minister and Ruler of Dubai H.H. Sheikh Mohammed bin Rashid Al Maktoum. Similar programmes have been launched at the local level in the individual emirates of the federation.

Elections to the Federal National Council and the launch of the UAE Government Strategy in 2007 were important developments in the reform process. The strategy, according to Sheikh Mohammed bin Rashid: sets the foundations for a new era of public administration. The changing times and the nature of the challenges prompt us to think in a different way and to adopt international best practices in the area of public administration. This strategy unifies efforts within a strategic framework with clear objectives, based on detailed studies (and)...clearly identifies and integrates federal and local efforts.

A key focus of the UAE Government Strategy is to create synergy between federal and local governments. Other principles include revitalising the

regulatory and policy-making roles of the ministries and improving their decision-making mechanisms, increasing the efficiency of governmental bodies and upgrading their services in accordance with the needs of the people, as well as reviewing and upgrading existing legislation.

A significant development in this sphere was the amendment of Article 62 of the Constitution in late 2008. The amended law states that the prime minister or his deputies or any federal minister shall neither practice any professional or commercial job nor shall they enter into a business transaction with the Federal Government or local

governments( [http://www.uaeinteract.com/government/political\\_system.asp](http://www.uaeinteract.com/government/political_system.asp) ).

### 1.3: Legal system:

When contrasted with other Arab states, such as Saudi Arabia for instance, the UAE has comparatively very liberal laws. The country has a civil law jurisdiction.

However, Shari'a or Islamic law is applied to aspects of family law, inheritance and certain criminal acts.

Although ,there is a strong emphasis in equality and human rights brought by the UAE's National Human Rights Committee,but there is some argumentswhich ,inter alia, criticise the government for ignoring fundamental rights of citizens ( [lcweb2.loc.gov/frd/cs/profiles/UAE.pdf](http://lcweb2.loc.gov/frd/cs/profiles/UAE.pdf)).

A federal court system applies to all emirates except Dubai and Ras Al Khaimah, which are not fully integrated into the federal judicial system. All emirates have secular courts to rule about criminal, civil, and commercial matters, and Islamic courts to review family and religious disputes.

The country has undergone a period of liberalization and modernisation during the reign of Sheikh Zayed bin Sultan Al Nahyan. The laws of the

UAE tolerate alcohol to a certain extent. However, public bars and nightclubs in the UAE operate mainly in hotels and clubs, much like in Qatar, although some do operate independently.

In the UAE the establishment of the Civil and Criminal Courts resulted in diminishing the role of the Sharia Courts.

Nevertheless, the competence of the Sharia Courts in some emirates, particularly Abu Dhabi, was substantially expanded later on to include, in addition to matters of personal status, all types of civil and commercial disputes as well as serious criminal offences. Therefore, in addition to the Civil Courts, each of the seven emirates maintains a parallel system of Sharia Courts which are organised and supervised locally.

Civil cases may also be tried under Sharia courts with one exception: Shi'ite Muslims may try such cases in their own courts.

Other civil proceedings include those involving claims against the government and enforcement of foreign judgements.

The constitution vests the Court of Cassation with judicial authority over the constitutionality of legislation: Article 99 of UAE 'Constitution states that:

تختص المحكمة الاتحادية العليا بالفصل في الأمور التالية:

..... - بحث دستورية القوانين الاتحادية ، إذا ما طعن فيها من قبل إمارة أو أكثر لمخالفتها لدستور الإتحاد وبحث دستورية التشريعات الصادرة عن إحدى الإمارات إذا ما طعن فيها من قبل إحدى السلطات الاتحادية ، لمخالفتها لدستور الإتحاد ، أو للقوانين الاتحادية.

"Article A:

Union Supreme Court shall have jurisdiction in the following matters :

....

Examination of the constitutionality of Union laws, if they are challenged by one or more of the Emirates on the grounds of violating the Constitution of the Union. Examination of the constitutionality of legislations promulgated by one of the Emirates, if they are challenged by one of the Union authorities on the grounds of violation of the Constitution of the Union or of Union laws " .

## 2.DIFC:

The Dubai International Financial Centre (DIFC) is a near-shore financial hub for the or Middle East and North Africa (MENA) containing a capital market designated as a financial free zone in Dubai. The centre was designed by Eric Kuhne. It was established to create an environment for growth, progress and economic development in the United Arab Emirates and the wider region by providing the needed legal and business as well as physical infrastructure benchmarked against international standards.

### 2.1: Independent Jurisdiction:

The DIFC is an independent jurisdiction under the UAE Constitution, and has its own independent civil and commercial laws, which are written in English and which default to English law. It also has its own courts, with judges taken from the common law world including England, Singapore and Hong Kong.

The DIFC-LCIA Arbitration Centre is an independent centre of international arbitration that uses rules modeled on the London Centre of International Arbitration.

### 2.2: Role as International Financial Centre:

There are six primary sectors of focus within the DIFC: Banking Services (investment banking, corporate banking and private banking); capital markets (equity, debt instruments, derivatives and commodity trading); asset

management and fund registration, fund administration and fund management reinsurance, Islamic finance and back office operations. Licence applications are considered from financial institutions in the sectors. Each of these units offer benefits such as zero tax rate on income and profits, 100 percent foreign ownership, no restrictions on foreign exchange or capital/profit repatriation, operational support and business continuity facilities.

The job creation plan for the DIFC is to create about 10,000 jobs in all the sectors listed above. It is anticipated many of these positions will be filled with a mixture of foreign employees and local residents with specialist skills along with many graduate training programs.

One of the key subsidiaries of the centre is NASDAQ Dubai (Formerly Dubai International Financial Exchange (DIFX)).

According to UAE legal system and its structure ,there is no independent Bar Association in UAE.As we know ,there is a society called :JAM EI YAT EL HOGHO GHI YEEN(<http://www.jurists.ae/default.asp>),which established on 1980,but it doesn't deem as independent Bar Association.My numerous searches to receive more information about this matter was failed (<http://www.dc.gov.ae/> and [http://www.dubaicourts.gov.ae/portal/page?\\_pageid=53,72555,53\\_72559&dad=portal&\\_schema=PORTAL](http://www.dubaicourts.gov.ae/portal/page?_pageid=53,72555,53_72559&dad=portal&_schema=PORTAL) ).

### 3.Conclusion:

3.1.Enhance transparency and accountable governance mechanisms throughout the federal entities,as the Government's vision underlines ( [http://www.uaeinteract.com/government/political\\_system.asp](http://www.uaeinteract.com/government/political_system.asp) , and [www.uaecabinet.ae/.../UAESTrategy/.../UAEGovtStrategy2011-2013.aspx](http://www.uaecabinet.ae/.../UAESTrategy/.../UAEGovtStrategy2011-2013.aspx))requires independent Associations & NGOs and among most

important of them, Bar Associations and it is a priority for every federal government.

3.2 : The current legal system of the UAE is based on the Constitution of the United Arab Emirates, 1971 ,as amended ,( [www.afridi-angell.com/.../cross-border\\_dispute\\_resolution.pdf](http://www.afridi-angell.com/.../cross-border_dispute_resolution.pdf)) and despite emphasizing UAE's Constitution on different sort of freedoms , for instance Article 25-44 ,encouraging the government to resolve the problem is a universal task of every Law Firm,and Legal Counsels of UAE as well. Never forget that ,according to Iran's history of establishing an independent Bar,the role of Elite Groups among them Lawyers was a key one,for instance,Dr.Mosaddegh's effort in this regard. Apparently,as stated above ,may it the time for UAE's Legislative Power to correct current legal system,as Iran made it many years ago.