

# UAE: working towards increasing e-commerce

New technology in the UAE necessitates a review of existing legislation and the introduction of new laws for e-commerce to grow, says Anthony Garrod of Clyde & Co.

In the context of the United Arab Emirates (UAE) and e-commerce, some basic facts need to be established first. Each of the seven emirates in the UAE federation has an interest in e-commerce but is approaching it in a different way. Dubai has already opened the Dubai Internet City and the Dubai Media City and is promoting e-commerce in a big way. Abu Dhabi was developing Saadiyat Island as its digital city of the future, but there is now a fundamental review of the project, which is on hold.

However, there are big differences in the two emirates' approach. In Dubai, the buildings are going up and there is a minimum of legislation, ie an enabling law creating a Dubai technology, electronic commercial and media free zone (DIC), together with some regulations for the operation of DIC.

But Saadiyat Island has its enabling legislation with detailed regulations having been drafted to regulate it as a financial services and commodities trading centre.

Companies have already been granted licenses to set up and operate in both Dubai and Saadiyat, yet there is no e-commerce-specific legislation in the UAE – although the introduction of new laws is actively under consideration by those involved in DIC.

## **Doing business over the internet**

As there are no restrictions on selling goods directly to someone in the UAE in a conventional sense (where there is no registered agent for the goods) it should be possible to do the same over the internet. But e-businesses do not exist in a vacuum, they need to employ people and provide goods or services over the internet.

Much about an e-business is the same as any traditional business and the existing rules will apply to that extent. But there are practical and legal differ-

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ences between the two, and certain issues need to be addressed.

## **E-specific legislation**

Electronic business is truly global. So, when a transaction takes place, what law applies, and what are the terms of a contract? The following example illustrates how traditional laws apply to a transaction and why there is a need for e-specific legislation.

We can choose to deal with each other either face to face or over the telephone. You make an offer to sell me your car, say, and I accept that offer — the time I accept will be the time you hear my acceptance and the deal is concluded. So where there is a means of instantaneous communication, a contract is concluded when acceptance is communicated. Where we adopt a delayed form of communication, such as a letter, then under the laws applying in England, for example, acceptance is deemed to take place at the time the letter is posted – not when it is received.

So when trading over the internet, are we dealing in instantaneous or delayed communication? Is the acceptance communicated at the time the trade is received or when it leaves the acceptor's server?

## **Bringing the process together**

Online transactions need to be put on the same footing as off-line transactions. An important step towards this was the United Nations Commission's International Trade Law (UNCITRAL) publishing in 1996 a model law on e-commerce, governing the formation of contracts and dealing with other issues, placing e-commerce on a similar footing as offline trade.

Next to contract formation, another key question needs to be answered: what is an original document? Those familiar with the Middle East know what a passion the authorities have for establishing the provenance of documents. For instance, if you sign a power of attorney in the UK, your signature has to be attested by a notary. The document for use in the UAE is then produced to the Foreign & Commonwealth Office, and the UAE Embassy in London for authentication. In the UAE, the authenticated document must be further authenticated by the UAE Ministry of Foreign Affairs and then translated into Arabic by a government-certified translator.

But how will this process be modified for electronic business and trade, and what is the electronic equivalent?

Legalised digital signatures and the technique of encryption are already in use on the internet. Such techniques involve public and private keys which enable the person who has sent the encrypted message to be identified (authenticated) and, to ensure its integrity, that the message has not been tampered with. Legislation is therefore needed to make electronic documents acceptable in the Middle East, as is now the case elsewhere.

## **Data protection**

For e-commerce to flourish all parties must feel confident that not only their transactions are safe but that the data

will not be abused. Throughout the EC, for instance, there is a requirement for member states to protect data. Under the terms which apply to data protection you cannot send information of a personal nature about an individual out of the EU unless that country has in place an adequate data protection regime. There have been protracted negotiations between the EU and the US over what have been called 'Safe Harbour Principles', to allow personal data to be sent from the EU to the US. These Safe Harbour Principles are likely to be adopted by the EU in its negotiations with other countries, including countries within the Middle East.

#### **Existing laws in the UAE**

There are laws in the UAE, both at a Federal and Emiri level, that can be applied to e-commerce. For instance, those relating to the formation of contracts and jurisdiction. But it would help greatly for there to be specific e-business law, to remove uncertainty and increase confidence in e-commerce, without which it may not flourish.

#### **Business potential**

The amount of business to be done over the internet is vast. Some 90% of business is currently business-to-business, rather than business-to-customer. The main reason for this split is that e-commerce offers the potential of huge savings. For instance, British Telecom anticipates reducing its annual procurement costs by £1bn. The cost for one government department in the Middle East for each item procured was \$150. Upon implementing an e-procurement solution, this cost was more than halved. Oracle claims to have saved \$1bn by becoming an e-business.

#### **E-marketplaces**

The Gulf is a long established trading environment, and it is interesting to look at the early developments of the electronic markets. Firms such as Commerce One and Ariba have produced software that replicates a market electronically. Typically, traders can join the exchange, sell goods over the exchange and the exchange can facilitate access to catalogues, billing and all the other activities that go into everyday trading. The software accommodates changes in usual practices, for instance, by allowing auctions and reverse auctions.

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As important as the existence of the market is the technology working back from the market, through to the businesses and their office systems. To truly exploit this, the business' inventory, its prices and other relevant information must be available online for customers, and its existing systems should tie in with its logistics providers and suppliers.

So the exchange itself is only the beginning. Companies will need to re-engineer the technology they use and alter their businesses to fit in with that technology. These exchanges will be hosted on servers. These will have to be sited where there is sufficient bandwidth to allow them to operate effectively and where the telecoms costs are low and physically where people with the appropriate skills exist. This combination of requirements currently points to the US, Europe or Singapore for many businesses.

#### **Server location**

That a server is located in a specific

location potentially means that all transactions moving across the server are subject to the laws within that country and the jurisdiction of its court. Therefore, will the presence of a business on a server render the transactions on that server liable for taxation? At the moment, this is uncertain but if a business is operating on a dedicated server for a lengthy period, it seems likely it could be liable to such taxation. If the business is hosted on several different servers, however, then this is less likely.

For companies looking to get involved in one of these markets in the UAE, there are other issues that need to be considered. For technical reasons, it is unlikely that the servers on which markets will be physically located will be in the Middle East – although this may change rapidly. However, it is likely that the market owners or operators will be looking to have, as shareholders and members of the exchange, those who currently own the franchise and distribution networks in a locality together with the suppliers, both national and multinational, who supply product in that region.

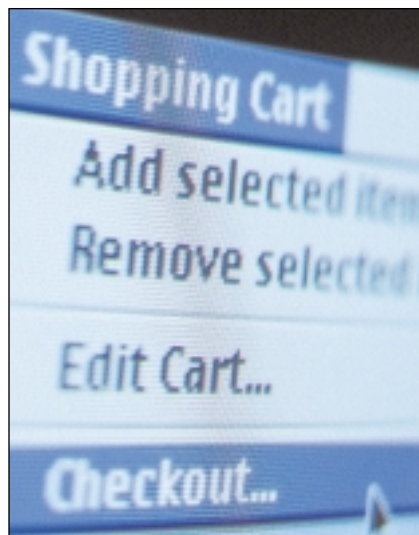
#### **Market ownership**

So, given the problems accompanying foreign ownership of companies in the UAE, in what country will the company owning the market or exchange be incorporated? Unless it is owned by government or a government authority, it is unlikely that the holding company for any of these markets will be sited within the Middle East.

The issue of majority 'local' ownership aside (which affects nationals of other Arab states too), there is a lack of sophistication in the corporate law in the Middle East, meaning that the vehicles being established, certainly in the UAE, are not appropriate for venture capital investment although there are developments in the regulations affecting companies set up in Dubai Internet City which offer greater flexibility in shares structures.

#### **In search of sympathy**

Foreign companies making substantial investments will want the company regulated in an offshore jurisdiction which is more sympathetic to them. A point made by a leading venture capitalist from California talking in Dubai recently was that investment will



not thrive in any country where there is no faith in the Rule of Law.

This could be a politically sensitive thing for him to say but, whether justified or not, it is an issue for investors looking to invest in the region. Will the courts treat them in the same manner as nationals? From an investor's point of view, what security are they able to take over the company or its assets?

And what opportunities are there for exiting the investment or realising a whole or part of the value in the company. Investors and entrepreneurs want to know what their exit will be. If they are successful, they may want to float the company, both to realise their investment and to obtain funding to expand the business.

The question of national ownership aside, the stock exchanges in the Middle East, still in their infancy, are behind those in the US and Europe.

So what if it goes wrong? The bankruptcy laws in the UAE are erratically applied (if at all) and this must be a material factor for any investor in, or lender to, a business in the UAE.

The purpose of making these points is not to malign the jurisdiction – it is to point out how the legal issues act as a barrier to attracting new e-business.

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#### Why Internet City?

Dubai's Internet City, Media City and Ideas Oasis are part of a process of the development of the emirate as a regional hub. Dubai is not as wealthy as Abu Dhabi and is looking to its future, a future not reliant on proceeds from sales of commodities. E-commerce is a part of trading's future and, as the commercial centre for the UAE, Dubai obviously sees participation in the new economy as a part of its own future.

In the short term, the effect may be simply to relocate business and divide the available market among more firms coming to Dubai. This is the potential downside for existing businesses, although the attraction of

new businesses to Dubai will mean more income being spent on property, services and the like.

In the long-term, Dubai's success depends in large part upon the education of its young people. Not only education in the use of computers but of all the skills that go into making products and running businesses. By effectively creating a campus on which all the businesses are in one place, along with a university and science park, Dubai is creating opportunities for nationals to be employed by some of the world's leading businesses.

It is heartening to see initiatives such as this and the UAE becoming a signatory to the World Trade Organisation. We will watch with interest to see how the UAE and other GCC countries continue to integrate with the rest of the world, while seeking to preserve their cultural and religious identity. ■

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#### Education & Qualifications:

Colchester Royal Grammar School  
1990-1993 Nottingham University,  
BSc Hons Chemistry  
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Training at Ernst & Young gave me the opportunity to work across a wide range of industries and roles, but it was my experience auditing a corporate swaps book which caught my imagination and led to me pursuing a role in treasury. I applied for the role of Treasury Accountant at the insurance intermediary Willis Group Ltd and, after passing the ACT exams, moved from the back office role to Treasury Manager, with responsibility for the front office trading and derivatives programme in the UK.

Willis has a large fiduciary asset portfolio hedged using a programme of interest rate swaps and options. Unusually, however, the company also has a similar level of own debt as a result of an LBO in 1998.

The combination of the asset base and the highly leveraged environment, with all its associated constraints and shift in focus towards cash generation, has led to a wide variety of experience in a relatively short period. Coupled with internal projects, including managing the implementation of a new treasury system, the work has been interesting and varied.

Sitting the MCT examinations last year complemented my knowledge in the areas where I already had experience and also gave me a strong insight into further aspects of treasury which I am sure I will come across in more depth as my career goes forward.