Intellectual Property: Asset and Share Purchases (UAE)

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A Practice Note addressing the key legal issues to consider in relation to intellectual property (IP) when entering into an asset or share purchase agreement governed by United Arab Emirates (UAE) law.

This Note forms part of a global suite of country-specific resources helping private practice and in-house lawyers and attorneys navigate different jurisdictional frameworks for the transfer of IP rights as part of an asset or share purchase transaction.

This Note addresses the key issues to consider when transferring intellectual property (IP) assets in the context of an asset or share purchase transaction. This Note discusses the legal due diligence process specific to the IP assets, and considerations when drafting and negotiating IP aspects of the asset or share purchase agreement, and any ancillary agreements.

For information on asset or share purchase agreements in the United Arab Emirates (UAE) more generally, see Practice Notes:

- *Acquisition Structures: Comparing Asset and Share Purchases (UAE)*.
- *Asset Acquisition Documents: Private Acquisitions (UAE)*.
- *Due Diligence for Private Acquisitions in the UAE*.
- *Earn-Out, Locked Box, and Retention: Private Acquisitions (UAE)*.
- *Key Documents for Acquiring a Private Company (UAE)*.
- *Signing and Closing: Private Acquisitions (UAE)*.
- *Tax: Private Company Acquisitions (UAE)*.

For an example of a jurisdiction-neutral asset or share purchase agreement, see *Acquisition of a Private Business or Company by a Foreign Company in the UAE: Checklist*.

Overview of Asset and Share Purchase Transactions in the UAE

Asset Purchase Transactions

In an asset purchase, the buyer acquires specific assets and liabilities of a business rather than the entire company. Therefore, it becomes crucial to conduct thorough due diligence before purchasing any specific assets and to assess the liabilities, thereby identifying the risks involved. For this purpose, it is important to formulate detailed and comprehensive agreements that clearly outline the terms of the sale, including payment structures and any warranties.

Share Purchase Transactions

In a share purchase, the buyer acquires the shares of a target company, gaining control of the entire business and its assets. Appropriate legal procedures must be followed to transfer shares, which involve updating the commercial register in accordance with *Federal Decree-Law No. (37) of 2021 Concerning the Commercial Register* (Commercial Register Law). Share transactions may also require compliance with *Federal Decree-Law No. (32) of 2021 on Commercial Companies* (Commercial Companies Law), along with any sector-specific regulations, particularly for foreign investments. Any purchaser must also ensure that it has the required corporate structure and necessary UAE commercial licences to be able to continue the acquired business.

Share purchases appear to be by far the most used transaction structure for acquisitions in the UAE.

Preliminary Considerations

The following considerations may be relevant when entering into an asset or share purchase agreement:

- Identifying the types of IP involved (patents, trademarks, copyrights, or trade secrets), as each has different legal frameworks and valuation methods.
- Confirming the ownership status of IP assets to ensure they are free from encumbrances and assessing the valuation of IP assets, considering factors like market position, revenue generation potential, and the cost of development or acquisition.
- Conducting thorough due diligence to uncover any potential liabilities, infringement issues, or disputes related to the IP assets.
- Reviewing existing licenses to understand any restrictions or obligations that may affect the use or transfer of IP assets.
- Assessing compliance with relevant regulations, such as data protection laws, especially if the IP involves personal data.

Areas of Focus for IP Counsel

In asset and share purchase transactions, legal issues involving IP are typically addressed by both specialist IP counsel and the corporate counsel handling the overall transaction. The division of responsibilities often depends on the complexity of the IP involved and the specific transaction structure.

Main Areas of Focus for Counsel Advising a Buyer

For counsel advising a buyer, the primary areas of focus include:

- Transaction structure implications. For:
    - an asset purchase, counsel must consider how IP rights will be transferred and ensure that all necessary assignments, licences, and registrations are completed; or
    - a share purchase, counsel should assess how the IP assets are owned by the target company and the implications of any existing liabilities or encumbrances on those assets.
- Legal IP due diligence. Counsel should:
    - evaluate the ownership, validity, and enforceability of the IP assets; and
    - identify any potential infringements, disputes, or pending litigation related to the IP.
- Key relationships. Counsel should:
    - assess existing licensing agreements, joint ventures, or collaborations that may affect the IP assets; and
    - review any obligations to third parties that could impact the buyer's use of the IP.
- Drafting and negotiating agreements. For:
    - an asset purchase, counsel should draft clauses related to the transfer of IP rights, including any licences granted to third parties, including warranties and indemnities; or
    - a share purchase, counsel should negotiate representations and warranties concerning IP ownership, compliance, and potential liabilities.
- Post-completion IP matters. Counsel should:
    - coordinate any necessary filings or registrations following the transaction; and
    - ensure that the buyer can use the IP assets effectively post-acquisition, including updating licenses or addressing any continuity issues.

Transaction Structure

In share purchase agreements, IP assets can be identified in multiple ways:

- In the "definitions" section of the agreement, which typically includes definitions of IP assets. This section may define terms like "Intellectual Property," "IP Rights," or "IP Assets" to clarify what is included.
- In a separate schedule or an exhibit attached to the agreement detailing the IP assets being sold. This could include patents, trademarks, copyrights, trade secrets, and other IP rights, along with their registration details, their validity or renewal due dates, and jurisdictions. This may also include documentation proving ownership or rights to use the IP, including assignment agreements or licensing agreements.

In an asset purchase, IP is explicitly listed and transferred as part of the assets. Buyers typically seek detailed representations and warranties about the ownership, validity, and enforceability of the IP. The focus is on ensuring that all relevant IP is included in the purchase.

Considerations and Protections

Buyers will seek robust representations from sellers regarding ownership, the absence of conflicts, and the validity of IP rights. This is particularly critical in asset purchases. Buyers may also negotiate indemnities for breaches of IP representations or for any third-party claims related to the IP, ensuring that they are protected from future liabilities.

In both structures, buyers may require covenants from sellers, such as non-compete clauses or agreements to assist in transferring IP rights, especially if there are ongoing business operations related to the IP. Conducting thorough due diligence to assess the state of the IP assets, including searches for potential infringements, opposition proceedings, or pending applications, is an important aspect in both types of transactions.

Carve-Out Transactions

Sometimes, the sale of the assets and liabilities of a discrete portion (rather than the whole) of a seller's larger business is referred to as a carve-out transaction.

In a carve-out transaction, considerations include:

- Clear identification of the IP assets being sold, including patents, trademarks, copyrights, and trade secrets.
- Determination of the value of these IP assets, as they may significantly affect the overall transaction value.
- Ensuring that the seller has clear ownership rights to the IP assets being carved out.
- Addressing how the buyer can use the IP post-completion.
- If certain IP rights are not being transferred (for example, proprietary software), a licensing arrangement may be required to allow the buyer to use these assets.
- The presence and scope of confidentiality clauses to protect proprietary information during and after the transaction.

In the body of the main Asset Purchase Agreement (APA), the basic terms regarding the transfer of IP assets should be included, which, among other things, also covers descriptions, representations, warranties, and covenants related to the IP.

Public and Private Transactions

In the UAE, which comprises seven emirates, companies must file various documents with government authorities depending on the legal structure and jurisdiction, which can be the mainland, a free zone, or offshore.

For example, mainland companies must register with the Department of Economic Development (DED) of the relevant emirate, and they must file trade licences, Memorandums and Articles of Association (MOA and AOA), and shareholder details. They must also comply with regulations from the *Ministry of Economy* (MOE) for foreign direct investment (FDI) approvals and intellectual property filings, and the *Federal Tax Authority* (FTA) for VAT, excise, and corporate tax registrations. Public joint-stock companies and financial entities must submit regulatory disclosures to the *Securities and Commodities Authority* (SCA).

Free zone companies register with their respective free zone authorities, such as *Jebel Ali Free Zone* (JAFZA), *Dubai Multi Commodities Centre* (DMCC), *Abu Dhabi Global Market* (ADGM), or *Dubai International Financial Centre* (DIFC), and may be required to submit annual financial statements and corporate amendments. Offshore companies operating in jurisdictions like *RAK International Corporate Centre* (RAK ICC) and JAFZA must file incorporation documents, renewals, and other compliance reports, although shareholder details generally remain confidential.

Industry-specific filings apply to financial institutions regulated by the UAE Central Bank, real estate firms registering property transactions with *Dubai Land Department* (DLD) or *Abu Dhabi DARI*, and employers submitting work permits and Emiratisation reports to the *Ministry of Human Resources & Emiratisation* (MOHRE). However, thorough buyer due diligence may be required, as these public filings may contain omissions or inaccuracies that might not be apparent without deeper investigation.

Therefore, to protect against post-closing IP claims and liabilities, buyers may consider taking following steps:

- Ensuring that the purchase agreement includes strong representations and warranties regarding the target's IP rights, including ownership and freedom from infringement claims.
- Confirming that the agreement contains indemnification provisions where the seller agrees to cover any losses arising from IP claims post-closing.
- Conducting thorough due diligence on the target's IP assets, including trademarks, patents, and licenses, to identify potential risks, if any.

Public companies may have more extensive disclosure requirements, which can provide more information upfront but might also complicate negotiations due to the scrutiny of public investors and regulatory bodies.

For private companies, there may be less publicly available information, making thorough due diligence even more critical.

IP Legal Due Diligence

The main purpose of a buyer's IP legal due diligence exercise in an acquisition or investment context is to ensure that the buyer gains a clear understanding of the IP assets, rights, and potential risks associated with the target company. Therefore, the due diligence should cover the following:

- Identifying any IP-related risks, including potential litigation, infringement, or invalidity issues.
- Evaluating the IP assets to help determine the target company's fair value.
- Verifying that the target owns or has sufficient rights to all essential IP assets.
- Uncovering any licenses, liens, or other encumbrances that may impact the IP's value or utility.
- Determining the ability to protect and enforce IP rights post-acquisition.
- Confirming that all IP assets are actively maintained, with fees paid and renewals filed.

Initiating the legal due diligence process typically begins with the buyer issuing a request to the seller. The request is usually a comprehensive list of documents and information the buyer needs to assess the IP assets. There is no strict standard format, and these requests can be adapted based on the specific transaction.

Registered IP

To identify all registered IP owned by the seller or the target company, the buyer should request a list and documentation of each registered IP asset, including relevant registration details with registration numbers, jurisdictions, and registration and expiration due dates, along with copies of official registration certificates for each asset, and documentation proving that renewal fees and maintenance obligations are up to date.

It is common for IP owners to work with patent and trademark attorneys to secure and maintain their IP rights, particularly for complex IP portfolios or international registrations. Therefore, the buyer should also ask for additional information, such as:

- Details of attorneys or firms involved in advising the seller.
- Any contracts or agreements with these attorneys, to understand scope, obligations, and fees.
- Any relevant communication between the attorneys and IP offices, showing prosecution history, office actions, and responses.
- Information on pending applications, upcoming renewals, or fees due that the attorney manages.

In the UAE, there are specific databases and registries for searching registered IP, primarily managed by the MOE, which handles IP registrations, including patents, trademarks, and industrial designs. Any inquiries can be directed through the MOE's portal or customer service channels:

- *MOE: Trademark Registration*.
- Buyers can review details on trademarks registered within the UAE, which helps verify ownership, status, and validity. These are paid searches (see *MOE: Enquire About Registration of Trademarks*). The official fee is about USD100

per mark per class. Though these searches are generally reliable, errors are always possible because the data being searched is entered manually, and may not be entirely up to date at any one time.

- *MOE: Apply for Patent* and *Abu Dhabi Department of Economic Development: Search for existing IP rights*.

The **World Intellectual Property Organization (WIPO)** provides international patent, trademark, and design search capabilities, which may include UAE filings.

Common issues identified in UAE registered IP searches include:

- There may be discrepancies between registered owner details in UAE and international filings, which can raise concerns about complete ownership. Also, any unrecorded transfers or assignments can lead to incomplete title, making it unclear if the seller has full ownership rights.
- The presence of liens or security interests on the IP may not always be fully recorded in UAE databases, creating potential undisclosed risks.
- Inadequate renewal can cause IP rights to lapse, and the UAE IP register does not automatically display expiration status, so verification with the MOE may be needed.
- Any unpaid renewal fees could result in IP registration cancellation, especially for patents, trademarks, and designs with regular renewal requirements.

Abandoned or Expired Applications or Registrations

If an IP asset that is material to the transaction is discovered by the buyer as having been abandoned or expired, this may reduce the target's valuation, particularly if that IP asset was a vital source of competitive advantage or market protection. It may also be difficult or impossible to enforce IP rights against third-party infringers. For trademarks, losing a brand name or logo can impact brand recognition. For patents, loss of protection can enable competitors to use or replicate the technology.

For registered IP assets (for example, patents, trademarks, and designs), registry renewal fees must be paid at regular intervals in accordance with the applicable law (which depends on the type of IP right). Failure to pay these fees by the due date will lead to expiration of the registered IP right. Similarly, if an applicant for a registered trademark fails to respond to examination queries or office actions within 30 days of having been notified of them, the applicant is deemed to have waived their application (Article 12 of the Trademarks Law, Federal Decree Law No. (36) of 2021 on Trademarks).

In the event of abandonment or expiration, in some cases, it may be possible for the buyer to file a reinstatement request with the UAE MOE, especially if it occurred due to a missed payment or procedural error. Alternatively, the buyer might require the seller to file a reinstatement request as a precondition to the transaction taking place. Timelines and fees apply, and are dependant on the type of IP asset in issue, so prompt action is crucial.

If reinstatement is not possible, the buyer might consider filing a new IP application for the abandoned or expired IP right. For trademarks, this is not possible if a third party has since registered the same or a similar mark; and for patents this is just not possible at all. Alternatively, the buyer might require the seller to file a new IP application as a precondition to the transaction taking place.

If the IP cannot be reinstated or refiled, the buyer may seek to renegotiate the transaction price or terms to reflect the value of the lost IP. In addition or as an alternative, the buyer may ask for warranties or indemnities to cover the risks associated with its abandonment or expiry.

Pending Applications and Registrations Nearing Expiration or Maintenance

The buyer needs comprehensive information about any material upcoming prosecution decisions and related fees for pending applications, and any filing deadlines and fees for the maintenance of existing registrations.

Between exchange and completion, typically, the seller is responsible for maintaining and prosecuting IP assets. This includes handling renewals, filings, and paying associated fees.

The buyer usually takes over management of the IP portfolio immediately after completion, unless the parties agree a transition period, during which the seller continues to maintain the IP assets. The duration of the transition period depends on factors such as the complexity of the IP portfolio, jurisdictional requirements for updating ownership records, and any anticipated prosecutions or renewals. Typically, it may last a few days to few weeks, though there is no fixed time for it. During this time, the buyer and seller might also set up regular updates to ensure that maintenance is proceeding smoothly and deadlines are being met.

Discrepancies in Chain of Title

The buyer should focus on the following when conducting searches of the relevant IP databases and registries:

- Confirming that all IP assets are registered in the name of the seller or, in the case of a share purchase, the target company or its affiliates. This can be done through the MOE and *Dubai Department of Economy and Tourism* (DET) for trademarks, patents and design rights. There is no database available for copyright searches.
- Verifying the entire chain of title for each IP asset to identify any potential breaks or inconsistencies in ownership. This includes examining past ownership records and any assignments or other transfers of IP rights that might affect the seller's or target's claim to ownership.
- Checking for any encumbrances, such as pledges, licenses, or security interests, on the IP assets in UAE registries, as these can restrict the buyer's intended use or transfer of the IP rights.
- Investigating any ongoing disputes or claims associated with the IP assets in the UAE, including checking local courts and arbitration center for any relevant proceedings.
- Reviewing any agreements that could affect the IP, such as licenses or co-ownership arrangements, which may restrict the buyer's ability to use or enforce the IP.

If the registered owner is not the seller or target company, then it may not be possible for the buyer to purchase all right, title and interest in and to the relevant IP asset from them. It may also result in future disputes for the buyer regarding their ownership and use of the asset post-completion. The buyer can ask the seller to correct any ownership discrepancies by securing the necessary assignments or transfers of the IP assets to the seller or the target company before completion. The seller may also need to make corrective filings with the MOE to update the registration records and establish a clear chain of title, which, again, the buyer should require them to do before completion.

The buyer can also negotiate an indemnity clause to protect against any future claims arising from ownership discrepancies. Alternatively, an escrow arrangement can be set up, withholding a portion of the purchase price until ownership is properly transferred.

Unreleased Security Interests

Security interests can be recorded against registered IP assets in the UAE. This process typically involves registering a pledge or mortgage over the registered right to secure an obligation, commonly a loan.

If unreleased security interests are recorded against a registered IP asset at the time of a corporate transaction, it may indicate that there are existing financial obligations or encumbrances on that asset, which may limit the seller's ability to transfer that asset to the buyer.

In these cases, depending on the nature and scope of the security interest, a buyer may wish to consider the following before entering into the transaction:

- Verifying the nature and scope of the security interest and obtaining as much information about it as possible.
- Requesting appropriate warranties and indemnities in the terms of the purchase agreement to sufficiently protect their interest in the IP asset, in spite of the existing security interest.
- Requesting a release of the security interest ahead of completion.

IP Unrelated to the Business

If there is IP being excluded from the purchased assets (in an asset purchase) or that is not owned by the target company (in a share purchase), there are a number of options available to ensure that the buyer or target company can continue to use that IP post-completion, if they want to do so:

- **License agreement**. The seller can grant the buyer or target company a license to use the necessary IP on a standalone basis. Licenses can be exclusive or non-exclusive, and may be limited by territory, duration, a specific field of use, or for specific products or services. The license agreement is typically executed at the same time as the purchase agreement or as a closing deliverable, which ensures the buyer's access to the IP without interruption, from the moment the transaction is completed.
- **Assignment agreement.** If the buyer requires full ownership of the IP post-completion, but for some reason it is not to be included in the scope of the main transaction, the seller could transfer the IP to the buyer through a separate assignment agreement. This would typically be executed at the same time as the main purchase agreement, or within an agreed timeframe thereafter, particularly if regulatory approvals are needed for the IP transfer to be valid and enforceable.

Patents and Patent Applications

There are a number of common issues concerning issued patents and patent applications in asset and share purchase transactions.

Unpublished Patent Applications

It is important for a buyer to have as complete an understanding as possible of any unpublished patent applications that might impact the transaction. However, patent applications are not published immediately after filing in the UAE, and cannot be searched for in online public databases until publication. It may take anywhere between 12 to 18 months from the filing date for an application to be published. A buyer can seek the expert support of specialized patent attorneys, who can provide insights and assist in an **Freedom to Operate (FTO)** analysis, for example. An FTO analysis helps the buyer to understand any third-party patent rights within the UAE, and any potential obstacles preventing commercialisation of any material IP assets included in the transaction.

Also, since the UAE is a member of international patent systems (such as the **Patent Cooperation Treaty (PCT)**), it may be possible to access patent applications filed in other jurisdictions if they were filed under the PCT. An IP attorney can perform a multi-jurisdictional search through patent databases, like WIPO's *PATENTSCOPE* or the European Patent Office's (EPO) *database*, which might indicate similar applications that have been filed in other countries.

Employee and Third-Party Inventions

If a current or former employee or contractor of the seller, or an unaffiliated third party, is the record owner of a patent, or pending patent application that is included in the purchased assets (asset purchase) or owned by the target company (share purchase), the buyer must ensure the right mechanisms are put in place pre-completion for that IP to be included in the transaction.

Under UAE law, IP rights developed by employees within the scope of their employment typically belong to the employer. However, if the patent was registered in the employee's name, a formal written assignment is recommended to avoid potential disputes. Ideally this should take place before completion and should transfer ownership of the patent from the employee to the seller (asset purchase) or the target company (share purchase). The buyer should ensure that the assignment is recorded at the MOE to avoid any future disputes about its validity or enforceability. According to Article 21 of the UAE Patent Law, *Federal Law No. (11) of 2021 on the Regulation and Protection of Industrial Property Rights*, patent assignments and transfers must be recorded in the patent register to be effective against third parties.

Trademark Registrations and Applications

There are a number of common issues concerning trademark applications and registrations in asset and share purchase transactions.

Nonuse

It is possible for trademarks to become vulnerable to a third-party cancellation action if they are not being used. Specifically, a registered trademark is at risk of deregistration if it has not been used for a continuous period of five years, unless there are emergency circumstances which prevented the trademark from being used (Article 24, UAE Trademark Law (*Federal Decree-Law No. 36 of 2021*)).

In the UAE, "use" generally means that the trademark is being used in a commercial context in connection with the goods or services for which it was registered. This includes:

- Affixing the trademark to goods or packaging.
- Using the trademark in advertising, marketing, or other promotional materials directed at consumers in the UAE.
- Offering goods or services in the UAE under the registered trademark, even if the trademarked goods or services are not produced within the UAE but are marketed and sold there.

The use must be genuine, aimed at maintaining a market for the goods or services associated with the trademark, rather than token use solely to maintain registration.

There is no automatic or statutory presumption of abandonment simply due to nonuse. However, if a trademark is unused for five years and a third party files a cancellation action, the burden shifts to the trademark owner to demonstrate active use within the relevant timeframe or provide a valid reason for nonuse, if any.

If an asset or share purchase transaction includes any marks that may be vulnerable to deregistration for nonuse, then the buyer must take it into consideration. Generally, there is nothing in particular a buyer could require of the seller in this regard. Rather, as part of its due diligence regarding all material trademarks, the buyer should look for proof of active, continuous use in commerce in connection with the goods or services registered.

Appropriate Use

There are certain types of trademark use that might result in weakening or loss of trademark rights in the UAE.

In particular, if use of a mark becomes generic, as it is used so widely that it becomes the common term to describe a general product category, then the mark can lose its distinctiveness (for example, escalator and aspirin).

Also, if a trademark is licensed without proper quality control, or any consistency in the way it is applied and the goods or services it is used in relation to, then it can also lose distinctiveness. This can lead to dilution of the mark, which can have a significant impact on its overall value.

When acquiring assets or shares that include material trademark rights, a buyer can consider the following to assess the specific risk of improper trademark use:

- Assess whether any licenses for the mark include adequate quality control provisions.
- Examine internal policies for how the company monitors licensee compliance with trademark standards, as these demonstrate the owner's active involvement in maintaining the mark's integrity.
- Review all branding materials to confirm the trademark is used consistently in line with its registered form, which includes color, design, and format.
- Evaluate whether different variations of the mark exist and if they are managed properly to avoid confusion or dilution.

- Investigate if there is any risk of genericide by looking at consumer surveys, market research, and the general public's usage of the mark.
- Ensure that proper trademark symbols (™ or ®) are used in all public-facing materials, which indicates that the company actively protects its marks.
- Check if the company has actively enforced the trademark against infringers to avoid claims that the mark has become diluted.

International Trademark Registrations

International trademark registrations, and national extensions, issued by the WIPO, can only be owned by and assigned to entities based in countries that are members of the **Madrid Protocol**.

The UAE joined the Madrid Protocol on 28 December 2021, making it a member country. This means that entities based in the UAE can file international trademark applications, and receive assignments of trademarks under the Madrid Protocol system. If either the buyer or seller, or (in the case of a share purchase) the target company are domiciled or incorporated outside of the jurisdiction, however, then this must be taken into consideration to the extent that any International trademark registrations are included among the material IP assets.

With the Madrid Protocol, maintaining, renewing, and managing the trademark portfolio becomes easier. So, the buyer will be able to manage these across multiple jurisdictions through a single WIPO registration, significantly reducing administrative complexity.

Enforcement

There are various implications for a trademark owner if they have not properly monitored or policed use of their registered trademarks. In particular:

- **The risk of dilution.** When a trademark owner does not actively police unauthorized or incorrect use of its mark, it can lead to brand dilution, which occurs when a mark loses its distinctiveness due to widespread, unchecked use by others, reducing the trademark's strength and association with the brand. It is possible for a third party to bring a cancellation or deregistration action against a registered mark, on the grounds of lack of distinctiveness.
- **Acquiescence.** A history of leniency or non-enforcement against unauthorized users can weaken the owner's ability to enforce the trademark in the future, and courts may view a lack of monitoring, or acquiescence, as implicit consent, making it harder to enforce the mark against infringers. Generally, well-known trademarks are better protected than other marks, but the law of acquiescence is complex and consists of a combination of statutory law and judicial interpretation, and each case is considered on its own set of facts.
- **Decreased brand value.** If the trademark has not been consistently protected, this may decrease the overall brand value and goodwill associated with the goods or services the mark is used in relation to, potentially impacting the buyer's valuation of the target company.

There are certain confirmations the buyer might seek from the seller or target company regarding any failure to monitor or police use of the trademarks:

- **A history of enforcement actions.** Buyers should request records of any actions the seller has taken to enforce trademark rights, including cease and desist letters, infringement lawsuits, and settlement agreements, which helps the buyer assess the level of trademark policing and any patterns of misuse.

- **Agreements with third parties.** If the seller has granted third-party use of its trademarks, such as through licenses, the buyer should confirm that these agreements expressly reserve the seller's rights in the trademark. It is common for trademark licenses to include quality control provisions and clarifications that the owner retains ownership and can enforce against misuse.

- **Trademark monitoring policies.** The buyer should request documentation or evidence of policies or procedures that the seller has implemented to monitor trademark usage, whether through internal monitoring efforts, third-party services, or informal policing efforts, which provides insight into how actively the trademark portfolio has been managed.

- **Any known unauthorized uses.** The buyer should inquire whether the seller is aware of any unauthorized or potentially infringing uses of its trademarks because understanding the landscape of known unauthorized uses helps the buyer assess potential enforcement needs.

Options and considerations for the buyer regarding the monitoring and policing of trademark use include:

- **Requiring warranties and indemnities.** The buyer can negotiate warranties or representations in the acquisition agreement. These provisions could include assurances that the seller has actively monitored and enforced its trademarks, and is unaware of any unauthorized uses that have not been addressed. A seller may seek to limit the scope of the warranty to their reasonable awareness.

- **Conducting a post-closing audit and enforcement.** Following the acquisition, the buyer could plan to audit trademark usage and evaluate the status of any known unauthorized uses. This would involve setting up proactive monitoring practices (also referred to as watching services, typically provided by trademark attorneys) if they were not in place before.

- **Trademark re-registration or rebranding options.** If the buyer finds that the trademark rights have significantly weakened due to lack of enforcement, it may consider rebranding or strengthening new marks as a backup. In cases where loss of rights is likely, this can be a proactive way to preserve brand identity.

- **Negotiating price adjustments.** If the target company's failure to monitor trademarks affects the perceived value of its IP, the buyer may seek a price adjustment or specific indemnities to reflect potential costs associated with enforcing or re-establishing trademark rights.

Copyright Registrations and Applications

There are a number of common issues concerning copyright applications and registrations regarding asset and share purchase transactions.

Failure to Register

Copyright is registrable in the UAE.

Registration is not mandatory, however, and so a failure to register does not prevent the copyright owner from enforcing their rights in the copyright work against third parties (Article 4, UAE Copyright Law, *Federal Decree-Law No. (38) of 2021 on Copyright and Neighboring Rights*).

The UAE is a member of the **Berne Convention for the Protection of Literary and Artistic Works (Berne Convention)**, which ensures automatic copyright protection for creative works without requiring registration, benefiting cross-border licensing of works like films or software, and so on.

However, registration is still recommended as it is much smoother, easier and less costly to enforce a registered copyright than an unregistered copyright. Therefore, if the buyer identifies unregistered copyright among the purchased assets (in an asset purchase) or the target company's IP (in a share purchase), the buyer might require the seller to arrange for registration of those rights before completion.

Practitioners should note that there is no copyright database available for search in the UAE.

Termination of Rights by Author

Under UAE Copyright Law, there is no specific provision for reversion rights or termination rights that allow an author to reclaim their copyright in a work, after a fixed period from the date of transfer of a work. Generally, once an author grants an assignment or license, it is binding under the terms agreed by the parties.

However, an author retains ownership of all rights not expressly assigned. So, while the UAE Copyright Law does not mandate a right of reversion, a buyer can carry out certain proactive checks and measures to safeguard against unforeseen claims by original authors, that might impact their future use of material copyright works:

- Review all copyright assignments to confirm the duration, scope, and conditions of any copyright transfers.
- Ensure there is no ambiguity in terms that could imply reversion or early termination.
- Confirm validity periods on copyright licenses (if any), identify any licenses nearing expiration, and clarify the renewal terms, if applicable.
- Although reversion may not apply, authors have moral rights that are perpetual, non-transferable, and non-waivable. These rights allow the author to, among other things, object to modifications to their work that they may deem to be harmful to their reputation.

Moral rights are governed by Article 5 of the UAE Copyright Law.

- If possible, secure written assurances from authors (where identified) that they do not intend to seek modification or reversion rights over their works.

- Alternatively, the buyer might require the seller to arrange this before completion.
- In the purchase agreement, require the seller to warrant that no termination rights or reversion rights exist. An indemnity clause can also protect the buyer against any unexpected future claims by authors.
- Where licenses are nearing expiration, negotiate with the original author for an extended license to mitigate any interruption in asset use post-completion.

Scope of Registration

In the UAE, copyright registration does not automatically cover all works related to a registered copyright. Registration typically applies to the specific version of the work submitted at the time of registration, provided it is a Protected Work under Article 2 of the Copyright Law. Variants, adaptations, or separate works related to the registered copyright are generally not included in the scope of a registration, unless expressly set out as part of the original copyright application, or separately registered.

For a buyer in an asset or share purchase involving copyright assets, careful due diligence is necessary to ensure the scope of the acquired copyright covers all intended works. The buyer must make specific inquiries to ensure that all relevant works are included within the scope of the purchased IP (asset purchase) or the target company's IP (share purchase).

The following may form part of the due diligence in this regard:

- Confirm that the original authors of the works have legally assigned all of their rights to the seller or target company. In the UAE, assignment of copyright must be documented in writing, and the assignment should include reference to the right that is to be transferred or assigned and the purpose, duration, and the place of its use.
- Review all copyright registration certificates and accompanying documentation to confirm the exact nature and scope of each registered copyright. Ensure that all intended works, including adaptations, derivative works, and updates, are explicitly identified. If the definition of the copyright being transferred as part of the transaction includes related works (such as translations, derivative works, or unpublished drafts), verify whether these have separate registrations or if additional filings are needed.
- In the purchase agreement, include warranties that all copyrights, including for related works, have been properly assigned to the seller or target company. The buyer should also include indemnity provisions to protect against claims by authors asserting rights over unregistered or related works. For added protection, consider including a blanket assignment clause that explicitly transfers or licenses all copyright owned by the seller, whether registered or unregistered, to ensure no works are unintentionally omitted.
- After completion, the buyer may wish to register any previously unregistered, related works to ensure comprehensive IP coverage. This will strengthen enforceability and ownership clarity under UAE law. The buyer should consider requiring the seller to make any additional filings before completion.

Domain Name Registrations

There are a number of common issues concerning domain name registrations in asset and share purchase transactions.

Employee or Contractor Owners

In the UAE, domain name registration and purchase processes, including ownership verification, follow specific procedures due to local regulations.

The *Telecommunications and Digital Government Regulatory Authority* (TDRA) administers .ae domain names through the .ae Domain Administration (.aeDA) authority. Registrations are handled by accredited registrars, such as Etisalat, and require applicants to follow the UAE's naming and eligibility guidelines. Applicants select a domain name, check availability through an accredited registrar, and provide required documentation. Once approved, the registrar completes the registration and charges a registration fee. For .ae domains, a WHOIS search is available through the TDRA's aeDA site.

It is not common for domain names used by a business to be registered under the names of employees or contractors. However, if for any reason a domain name that is relevant to the transaction is registered in the name of an employee, the buyer will want to ensure that it is transferred to the seller or target company before completion. This typically involves a formal transfer process with the registrar by virtue of a written assignment from the employee or contractor, that includes a clear transfer of rights to the seller or target company, ensuring that they become the domain registrant. The buyer should be able to confirm that the assignment has taken place by conducting a WHOIS search which should display the name of the new registrant.

Country-Specific Top-Level Domains

In the UAE, domain regulations govern ownership of country-specific top-level domains (ccTLDs) like .ae domains. The TDRA oversees these regulations through the aeDA, which manages the allocation of .ae domains (see *Domain Name Registrations*).

Ownership Requirements for .ae Domains

While there is no strict residency or incorporation requirement for individuals or entities to register .ae domains, there are certain conditions that must be met. Foreign entities can register an .ae domain, but they generally must do so through a registrar accredited by the TDRA. Registrants must provide accurate contact information and agree to comply with the local policies, regulations, and procedures defined by the TDRA and aeDA. Even if a foreign entity holds an .ae domain, it must adhere to local laws, including the UAE's content and data protection regulations. Non-compliance can lead to domain suspension or revocation by the TDRA, which enforces these regulations. Further, for any domain transfer within the UAE, the aeDA requires registrants and registrars to follow specific protocols, including obtaining necessary approvals from the aeDA. These rules are in place to ensure that only compliant entities hold .ae domains.

Asset Purchase Transactions and Domain Ownership Checks

In an asset purchase transaction, the buyer must ensure that they qualify as a permitted owner of any UAE-specific domains included in the transaction.

If the buyer (or an affiliate) does not meet the qualifications for an .ae domain, one option available to the buyer is to establish a local presence, either through a UAE-based subsidiary or by using a UAE-licensed registrar that provides services for non-resident entities. The buyer will need have this in place before completion, to avoid its ownership of any domains falling foul of UAE law.

Key Considerations for Buyers

Buyers should:

- Check if there are any annual renewal fees or obligations that come with the domain and seek confirmation from the seller that these have all been complied with and no outstanding fees are due.
- Ensure that the intended use of the domain complies with UAE data protection and content laws, as the TDRA can revoke domains for non-compliance (see *TDRA: Regulations and Ruling*).

In a share purchase transaction, if the target company has used a local agent to register domain names on its behalf, and that agent appears as the record owner or registrant, the buyer will want to rectify this before completion. For this, the buyer should:

- Request that, as a pre-condition to the transaction taking place, the agent formally transfer the domain name ownership, and any associated rights and obligations, to either the target company or the buyer, and arrange for the registry to be updated, so that the target or buyer is listed as registrant on the relevant database. The buyer may wish to impose specific timelines, to ensure that this is completed promptly and does not delay execution of the share purchase agreement.
- Verify the terms of the agreement between the target company and the local agent regarding the domain names. This process involves a comprehensive legal review to establish clear ownership, transfer rights, and financial obligations, ensuring compliance with UAE data protection and .aeDA policies. It is also crucial to examine termination, liability, and indemnification clauses to avoid inheriting unforeseen contractual obligations or legal disputes. Thorough due diligence, including verifying the agent's credentials and obtaining all relevant domain documentation, further minimizes risks associated with unpaid fees or ongoing legal issues, thereby securing a clean and unrestricted transfer of domain assets.
- Ensure that the agreement between the agent and target includes an obligation on the agent to cooperate with the target and provide assistance as the target may require from time to time. Additionally, the buyer might consider entering into a separate agreement with the agent, so that there is a direct contractual relationship between them.

Unregistered IP

The most common format for a seller or target company to use when disclosing information about unregistered IP to a buyer is a disclosure schedule or annex attached to the main transaction agreement. This schedule typically provides details about the unregistered IP, including descriptions and other relevant information. Unregistered IP may include:

- Trade secrets.
- Confidential business information such as formulas, processes, customer lists, or manufacturing techniques.
- Proprietary software, custom software, or code that, for whatever reason, have not been registered with the copyright office, even though registration was possible.

The buyer will typically seek to understand the following about any unregistered IP asset:

- The nature and description of the asset, and the type of unregistered IP right that it may be protected as (for example, trade secret, unregistered copyright, and so on).
- The extent and scope of the use that the business has made of the asset, in terms of duration, geographic reach, purpose, etc.
- The estimated value and significance of the asset to the business.
- The seller or target company's right, title, and interest in or to the asset, and their legal capacity to use and transfer it.
- Steps taken to maintain the confidentiality of the asset and to prevent its unauthorized use (for example, non-disclosure agreements (NDAs) or restricted access).
- Details of any existing licenses, assignments, security interests or other encumbrances related to the asset.
- Any disputes, claims, or challenges (past, present or potential) concerning the asset.
- Whether any similar IP is owned by known competitors or third parties in the same market.
- Any known risks of third-party infringement or misappropriation claims.

Trade Secrets

In the UAE, trade secrets are primarily protected under *Federal Decree-Law No. (34) of 2021 on Combatting Rumors and Cybercrimes* and other related laws, though the term more commonly used in legislation to describe this type of IP right is "confidential information". Essentially, for information to be classified as a trade secret, it must have actual or potential economic value due to its secrecy.

There are a number of common issues that typically arise in asset or share purchase transactions that include trade secrets among the IP assets. In particular:

- **Unauthorized disclosure:**
  - **using computer systems and other digital means.** In a share purchase involving a target company that is in possession of confidential information relating to third parties, for example, it will be crucial for the buyer to confirm that the target has not made any unauthorized use, disclosure, or distribution of that information using computer systems or other digital means, that could be deemed a criminal offense under Articles 44 and 45, Federal Decree-Law No. (34) of 2021 on Combatting Rumors and Cybercrimes, which set out penal provisions regarding unauthorised disclosure and invasion of privacy. Penalties include imprisonment and fines ranging from AED150,000 to AED one million depending on the nature of the violation;
  - **by an individual due to their connection with the target company.** Similarly, the buyer will also need to investigate whether any individual who, due to their profession, position, or nature of work with or for the target

company, are entrusted with confidential information or a secret and unlawfully disclose it without permission contrary to Article 432 of the Penal Code, *Federal Law No. (31) of 2021 Promulgating the Crimes and Penalties Law.*

- **by an employee or business partner.** The buyer will also need to consider whether all relevant employees and business partners of the business (in an asset purchase) or the target company (in a share purchase) have managed to maintain confidentiality during and after their contractual relationship with the business or target company, under *Federal Decree-Law No. (50) of 2022 Concerning Promulgating the Commercial Transactions Law*. Unauthorised disclosures can lead to significant legal and financial consequences, including liability for damages, injunctions, potential criminal penalties, and reputational harm, all of which pose substantial risks in corporate transactions. Buyers must conduct thorough due diligence to assess these risks, which can impact valuation and integration, and should negotiate robust protections such as representations, warranties, indemnification, escrow provisions, and enforceable non-compete agreements to mitigate potential losses from past or future breaches.

- **Written confidentiality policies and non-disclosure agreements (NDAs).** During the due diligence process, a buyer reviewing written confidentiality policies and NDAs will be looking for robust protection of sensitive information, which in part relies on clear and well-defined confidentiality obligations, broad definitions of "confidential information," and specified remedies for breaches. Conversely, red flags include vague or overly narrow definitions of confidentiality, ambiguous or unenforceable terms, inadequate remedies, missing or poorly executed agreements with key personnel or partners, or indications of past breaches or inconsistent application of policies. The buyer should also look for any evidence of enforcement related to these documents, if any, as a lack of these may indicate a higher risk of future breaches and potential liability.

Unregistered Copyright

If any unregistered copyright works are included in the purchased assets (in an asset purchase) or owned by the target company (in a share purchase), the buyer should make inquiries into those works.

There are a number of common issues that can arise regarding unregistered copyright, including:

- **Ownership.** The buyer must ascertain the identity of the author of the copyright work. Specifically, Article 28 of the UAE Copyright Law addresses copyright ownership in works created within an employment context. It generally establishes that copyright in a work created by an employee during their employment, and related to the employer's business, vests in the employer. In other words:
  - if an employee, then any unregistered copyright is automatically owned by their employer under work for hire rules; and
  - if a third-party contractor, then any unregistered copyright is automatically owned by the contractor under work for hire rules.

  If the copyright is not owned by the seller (in an asset purchase) or the target company (in a share purchase), then the buyer will want this to be resolved by an assignment before completion.

- **Licenses.** If the seller or target company only has the benefit of a license to use the copyright work, the buyer must review the scope of the license and consider whether it is sufficient for its purposes. In particular, it must look at the degree of exclusivity granted under the license, as well as its scope and duration. The buyer will also need to consider whether the license is transferable, or if the licensor is likely to agree to enter into another license with the buyer or target company, as needed.

- **Ongoing agreements.** The buyer must consider whether there are any ongoing agreements with third parties relating to the copyright work and, if so, whether these are on terms acceptable to the buyer. It may not be that they continue post-completion, so the buyer must consider whether they require them to and, if so, whether they are transferable or the third party in each case is willing to enter into similar terms with the buyer directly.

- **Registrability.** The buyer may want to consider whether the copyright work is eligible for registration, noting that it must meet the legal requirements including originality and fixed form under the UAE Copyright Law. If yes, the buyer should consider why the seller or target company has not already registered it. Unless a prior application failed, the buyer could require the seller to register the copyright before completion, if it is sufficiently material to the transaction, or the buyer might plan to register it themselves post-completion, while requiring the seller's support insofar as may be needed.

- **Third parties.** The buyer should consider whether the seller or target company is or has been involved in any past, pending, or threatened legal proceedings with third parties regarding the copyright work. In particular, the buyer should consider whether there is a risk of disputes due to ambiguous ownership or improper transfer of rights. Comprehensive representations and warranties should be included in the terms of the agreement, relating to the validity of the copyright, the absence of any actual, pending or threatened litigation, and the proper transfer of rights. The buyer should seek indemnification from the seller for any losses or liabilities arising from copyright infringement claims or disputes related to pre-existing legal proceedings. The buyer may also wish to consider establishing escrow accounts to hold a portion of the purchase price, which can be used to cover any potential liabilities arising from copyright disputes. The buyer should ensure that the purchase agreement clearly defines the scope of the acquired copyrights and addresses any potential future disputes. It is also important to have all contracts and agreements written in both Arabic and English.

- **Entry into public domain post expiry.** When a copyrighted work enters the public domain, after the copyright term expires, it is no longer subject to exclusive rights. Importantly, this means that anyone can use, reproduce, or adapt it without seeking permission or paying royalties. This shift enables broader creative and commercial engagement, reducing entry barriers for businesses and stimulating innovation. However, this transition also introduces challenges, such as the original creator can no longer control how the work is used, leading to potential misuse or distortion. However, other forms of protection, such as trademarks (in case of any titles or names) or moral rights, may continue to apply.

- **Third-party rights or encumbrances.** It is possible to have security interests, such as liens or co-ownership, against unregistered IP rights. For registered IP, security interests are typically recorded with the registry. However, unregistered IP presents a more complex scenario. To safeguard the buyer's interests, the buyer should engage in meticulous due diligence, including reviewing contracts, conducting thorough searches of public records, and obtaining warranties from the seller.'

Unregistered Trademarks

Under UAE law, unregistered trademarks are not afforded the same robust protection as registered trademarks. Unregistered trademarks in the UAE are primarily protected under general provisions of the Civil Code, *Federal Law No. (5) of 1985 Concerning* *the Issuance of the Civil Transactions Law of the UAE*, and the Commercial Transactions Law, which are less predictable compared to registered trademark rights. This creates uncertainty in enforcement. Enforcing rights against infringers is difficult without formal registration. The burden of proof is high, requiring the owner to demonstrate reputation, goodwill, and consumer confusion in case of infringement. Unregistered marks can still hold value through reputation and goodwill, but thorough due diligence is essential.

There are a number of common issues that can arise in relation to unregistered trademarks, including:

- **Ownership.** The buyer will want to ensure that the seller or target company has a legitimate claim to the unregistered trademark. In particular, they must review agreements with employees and any third-party contractors involved in creating the trademark (such as designers) to ensure there are no conflicting claims.

- **Ongoing agreements.** The buyer should check for any existing licenses, including informal agreements, in particular any that could complicate the transfer of the unregistered mark to the buyer, if an asset purchase.

- **Eligibility for protection.** The buyer must conduct careful due diligence to ascertain the strength of the seller or target company's claim to the unregistered mark, which will depend on use. The buyer should investigate the duration and scope of use of the mark in the UAE. Unregistered marks can only be protected under the laws of unfair competition or, for well-known marks, passing off. These protections are dependent on established reputation and goodwill, so the buyer should seek proof of widespread, consistent, and prominent use of the mark, such as advertisements, product packaging, sales records, and marketing materials.

- **Registrability.** The buyer may want to consider whether the unregistered mark is eligible for registration. If yes, is there a reason why the seller or target company has not already registered it? Did an application fail? If not, then the buyer could require the seller to register the trademark before completion, if it is sufficiently material to the transaction, or the buyer might plan to register it themselves post-completion, while requiring the seller's support insofar as may be needed.

- **Third parties.** The buyer will also need to conduct a search to identify any similar registered trademarks in the UAE that are owned by third parties and might conflict with the unregistered mark. This can be done through the MOE's trademark database (see *Registered IP*). The buyer should consider whether the seller or target company is or has been involved in any past, pending, or threatened legal proceedings with third parties in relation to the unregistered mark.

Other IP Ownership Issues

The buyer should consider possible restrictions on its use of the following IP if it arises in an asset or share purchase transaction.

Jointly Owned IP

When a buyer is involved in an asset purchase or share purchase that includes jointly owned IP, the buyer must carefully review any joint ownership agreements or related documents to understand the rights and obligations of the joint owners. The buyer should be aware of any existing licenses, royalty-sharing arrangements, and ongoing financial obligations linked to the jointly owned IP.

Jointly Developed IP

While UAE law generally does not restrict the transfer of IP or require licensing, joint ownership, or other mandated sharing of IP with third parties, there are several important points for a buyer to consider for patents.

The law itself grants ownership rights of patents to inventors or their employers, depending on the nature of the employment relationship. If an invention is created during the course of employment (especially for government employees or those employed in research institutions), the employer may have rights over the patent.

However, the law does not automatically give the government the right to claim ownership of patents unless explicitly stated in the contract or agreement between the government and the inventor or the institution funding the research.

For government-funded research or public sector research, if the government is a financial or resource partner, it may claim certain rights over the resulting inventions, typically through specific funding agreements or contracts between the researcher or institution and the government. These agreements would outline the ownership rights or any licensing requirements for the developed IP.

The UAE's public institutions or universities may have their own policies or internal rules regarding the ownership and commercialization of IP developed by faculty members or students, particularly if the research is government-funded.

Further, although the Patent Law does not explicitly address military or national security-related IP, parties should recognize that the UAE has separate regulations governing military technologies and national security. The UAE's defense sector (as well as strategic industries) typically has its own set of regulations that restrict the transfer or commercialization of military or sensitive technologies. This is not explicitly covered under the Patent Law itself but under military laws and national security regulations.

As for patent pools or collaborative research, these arrangements generally involve separate agreements between the parties and may cover the terms of the IP sharing, licensing, and ownership.

Even though the Patent Law does not impose automatic restrictions on IP ownership or transfer in these contexts, buyers must still consider certain practical aspects in transactions involving IP developed through government funding, university collaborations, or military-related technologies:

- **Identify agreements.** Buyers should conduct thorough due diligence to identify any agreements or contracts related to the IP, especially those involving government funding, research institutions, or military applications. These agreements could include clauses that restrict the transfer or commercialization of the IP without approval from the relevant authorities or stakeholders. A buyer should take care to understand the full scope and implications of any collaborative arrangements before completion.

- **Understand terms.** Buyers should request copies of research and development agreements, funding agreements, and collaboration contracts that could involve third parties like universities, research institutions, or the government. These contracts might impose conditions such as joint ownership with the institution or government, licensing requirements or restrictions on who can license or use the IP, or royalties or revenue-sharing obligations.

- **Approvals required.** If the IP is tied to sensitive sectors like defense or national security, the buyer must assess whether any government approval is required before the IP can be fully exploited or transferred. In some cases, the government might require notification or consent for commercialization, particularly if the IP relates to critical infrastructure or technologies. The buyer should understand what approvals are already in place and whether they are transferable at completion, and any additional approvals they must obtain post-completion. If there is a risk of an approval not being granted, the buyer should consider its options to reduce or eliminate that risk, particularly is the approval is material.

Other Encumbrances

If the seller has granted rights in its IP that extend beyond the scope of a non-exclusive license, the buyer must review these closely to understand the nature and scope of those rights, and any impact they may have on the buyer's ability to fully exploit the acquired IP post-completion.

Buyers need to conduct detailed due diligence to identify any rights that might limit the buyer's freedom to use, sublicense, or commercialize the IP. The buyer must understand the terms of any agreements in place, and the impact of the transaction on their continuity. These might include:

- **Sole and exclusive licenses.** A sole and exclusive license grants the licensee exclusive rights to use the IP, potentially to the exclusion of the IP owner (seller) and all other parties, including the buyer (post-sale).
- **Sub-licenses.** If the seller has granted the right to sub-license the IP to third parties, it means that third-party entities could gain rights over the use of the IP that the buyer must respect after the acquisition. The buyer should seek copies of all existing sub-licenses. This will help the buyer understand the scope and duration of any rights granted to third parties.
- **Royalty or revenue sharing agreements.** The seller may have entered into royalty or revenue-sharing agreements with third parties, including joint ventures or collaborators, which could entitle those third parties to a share of any income derived from the IP. The buyer needs to know if they will be required to share revenues or honor any ongoing obligations to third parties after the acquisition.
- **Any encumbrances or security interests.** The buyer should seek information regarding any encumbrances, security interests, or liens placed on the IP, as these could affect the buyer's title and ability to use the IP freely. The seller may have used the IP as collateral for a loan or other financing arrangements, creating security interests or encumbrances over the IP, for example.
- **Geographical or territorial restrictions on use.** The seller may have granted geographical or territorial restrictions on the use of the IP, meaning the IP can only be used within specific geographic areas.
- **Moral rights of the inventor (for patents).** While moral rights are typically associated with copyright, inventors may also accrue moral rights in the context of patents, the most notable of which is the right to be named as inventor (Article 8 of the UAE Patent Law). Unlike the economic rights subsisting in patents, which can be transferred, moral rights are personal and cannot be waived. A buyer must bear this in mind when entering into a transaction, a key component of which is patents.

Depending on the nature and scope of any other encumbrances that are discovered, there may be some options available to the buyer:

- The buyer may seek to negotiate the release or modification of any exclusive license, sub-licensing rights, or other encumbrances that may limit their ability to use the IP.
- The buyer could negotiate with the seller or third-party licensees to clarify or redefine the terms of existing licenses.

- If there are royalty agreements or revenue-sharing obligations, the buyer may agree to take over these financial obligations or negotiate for their removal as part of the purchase price or agreement terms.
- The buyer could request warranties or indemnities from the seller that any existing encumbrances, licenses, or restrictions will be fully disclosed and resolved before or during the acquisition.
- The buyer may also seek to acquire additional IP rights or control over the IP from third parties if there are concerns regarding territorial or field-of-use restrictions.
- If there are significant issues, such as unresolved disputes over the IP or claims from third parties that affect the buyer's ability to use the IP, the buyer may need to pursue legal remedies through the courts or alternative dispute resolution mechanisms (for example, arbitration).

IP and IT Agreements

When considering the inclusion of IP and IT agreements in an asset or share purchase in the UAE, the buyer must be diligent about the potential risks and implications these agreements may have on the value, ownership, exploitation, and transferability of the purchased assets. IP and IT agreements can significantly impact the future commercial use of the IP and IT assets, so it is critical to review these agreements carefully.

The buyer should:

- In a share purchase, ensure that the target company holds clear and unencumbered rights to the IP and IT assets, and that those assets can be transferred without violating any terms of existing agreements.
- Assess whether any third-party rights (for example, exclusive licenses, royalty obligations, or security interests) are attached to the IP that could limit its full use post-acquisition.
- Review the scope of existing licenses (both exclusive and non-exclusive) granted to or by the target company, especially if the IP is licensed to third parties or if the company has licensed third-party IP. The buyer should consider whether the licenses are sufficiently broad in scope to meet their needs, or those of the target company, post-completion.
- Verify if there are any sub-licensing restrictions, geographic limitations, or field-of-use restrictions, if the buyer or target company plans to use the acquired IP in a different manner post-completion. If yes, then the buyer should make inquiries to be comfortable that their intentions for the IP are possible.
- Understand the rights and obligations under any IT or outsourcing agreements (for example, agreements with software developers, third-party service providers, or cloud service providers). Will the buyer or target company have the benefit of those agreements post-completion? If they can impact the buyer or target company's ability to access and use critical IT infrastructure and software, then they will be particularly important.
- If employees or consultants of the business or target company have developed (in whole or in part) any material IP or IT (including software), the buyer should take care to review all related contracts of employment and consultancy

appointments to understand the ownership position in relation to those rights. Any discrepancies should be resolved before completion.

- Review any **Software as a service (SaaS)** agreements, cloud hosting contracts, and other technology agreements that may affect the ownership, use, or licensing of software or systems critical to the business or the target company's operations post-completion.

- Inquire about any pending or past disputes related to IP and IT, such as allegations of infringement, breach of contract, or misappropriation of trade secrets. Ongoing or potential litigation could materially impact the value of the IP and IT included in the transaction.

- Ensure that the seller provides warranties and indemnities regarding the validity, enforceability, and ownership of the IP and IT, as well as assurances that no third-party claims exist that could interfere with the buyer's future use of the assets.

The particular IP and IT agreements that might be of interest to a buyer, and that they should specifically request from the seller or target company, include:

- **Assignments.** Any documents proving the ownership of IP by the target company (for example, assignment agreements from employees, consultants, inventors, authors, or any other previous owners).

- **Licenses.** All exclusive, non-exclusive, and solo licenses, as well as any related sub-licenses, relating not only to the main IP rights but also any technology or software licenses, including SaaS contracts, cloud services agreements, and end-user license agreements (EULAs).

- **Development and collaborations.** Any agreements documenting the development of IP and IT, including any jointly owned IP and IT, and collaboration agreements involving the creation and sharing of IP. These might include research and development agreements, joint-ownership agreements, and even software development contracts and IT outsourcing agreements. The terms on which any IP is to be jointly owned will be key to the ability of the buyer or target company to use that IP post-completion.

- **Distribution or reseller agreements that involve IP or IT assets.** In a share purchase, it is important the buyer understands the extent of any ongoing obligations they inherit post-completion under these arrangements, particularly.

- **Confidentiality agreements (including NDAs) and trade secret protection agreements.** The buyer should familiarize themselves with the duration and scope of any of these agreements in particular and should make inquiries about any actual, suspected or potential breaches of their terms, either by the seller, the target company, or the other party to the agreements. These might also restrict the extent to which the buyer can use certain information post-completion.

- **Non-compete and non-solicitation clauses.** These might restrict the ability of the buyer or target company to fully exploit the IP and IT post-completion.

- Third-party agreements, joint development agreements, collaboration agreements, and any contracts with suppliers or partners involving shared or co-owned IP**.**

- Settlement agreements or court rulings that may impact the buyer's or target company's use of the IP post-completion**.**

The buyer should also require sight of any patent registrations, trademark certificates, copyright registrations, and domain name ownership records, as well as details of any litigation involving material IP.

There are particular issues that might be raised by an IP and IT agreement that could affect the valuation or completion of the transaction.

If an agreement relates to IP or IT assets that the buyer expects to be included among the purchased assets but the seller or target company does not have clear, unencumbered ownership of them, because they were created by employees or third party consultants and the relevant agreements do not adequately address ownership, then this could impact the value of those assets to the buyer. Similarly, if the IP is subject to moral rights (that is, in the case of patents or copyright), especially if it involves the work of key inventors or authors, these rights could complicate the buyer's ability to use or commercialize the IP without facing objections. If they are sufficiently material to the transaction, the buyer may decide not to proceed unless clear assignments or acknowledgements of the author or owner are executed before completion.

If the scope of an agreement is not sufficiently broad for the buyer or target company's purposes post-completion, then the buyer must investigate the possibility of broadening the scope or proceeding but seeking a reduction to the purchase price to reflect the limited scope. For example, the degree of exclusivity granted by an agreement or geographic or market restrictions set out in its terms may limit the ability of the buyer or target company to fully exploit the IP, reducing the potential return on investment.

Further, if any key IP agreements include termination clauses, change of control provisions or automatic renewal rights (for example, in SaaS contracts or other IT licenses), the buyer must review these terms to understand if the buyer or target company could lose access to critical technology post-completion.

If there are any actual or potential disputes under an IP and IT agreement (which might include IP infringement actions or breach of contract claims, for example), then the buyer must understand the status of, and risks associated with, those disputes. If the disputes could result in significant financial or operational disruption for the buyer then, depending how material the agreements are to the business then, in a share purchase, they must discuss with the seller the possibility of a settlement being reached before completion. Alternatively, the buyer might seek a reduction in the purchase price or could decide not to proceed with the transaction altogether.

In an asset purchase, the buyer could pursue renegotiation of the transaction terms, seeking to obtain more robust warranties, or an adjustment to the purchase price to reflect any increased risks associated with the problematic agreement. Alternatively, the buyer could make the asset purchase contingent on the seller resolving the identified issues, or they could simply exclude the agreement from the scope of the transaction altogether, thereby avoiding any associated liabilities or unwanted obligations.

Restrictions on Assignment or Change of Control

It is fairly common for agreements under UAE law, including IP and IT agreements, to include provisions that restrict assignment or require approval from both parties in the event of a change of control. These clauses are typically used to protect the interests of the parties, by ensuring that the agreement remains with a specific entity or group and does not get transferred or altered in a way that could undermine its purpose. Seeking consent is especially common in IP agreements (for example, licenses, software agreements, or joint development contracts).

The concept of change of control is not explicitly defined under UAE law but is commonly understood to refer to a change in the ownership or control of a company, typically involving the transfer of more than 50% of the shares or voting rights, which would result in a shift in the ability to control the company's decisions. In practice, the definition of change of control depends on the specific contract language used. It could also encompass a change in management or any transaction that fundamentally alters the ownership or management structure of a party, including joint ventures or private equity transactions.

The buyer must consider carefully the implications of any non-assignment or change of control provision in any of the IP and IT agreements included in the purchased assets, or to which the target company is a party.

Considerations differ slightly for asset and share purchases, though:

- **Asset purchase**. In an asset purchase, the buyer cherry picks the specific assets it wants to acquire. If those assets include an IP and IT agreement that has a non-assignment clause, the buyer might require the seller to seek a waiver of that non-assignment clause, and express consent from the counterparty to the seller's rights and obligations under the agreement being assigned to the buyer. Alternatively, the buyer must approach the counter party to the agreement and seek a new, direct agreement from them, on the same or similar terms. They would need that to be in place, or at least have confirmation that this is going to be possible, before completion. Failing this, the buyer may find itself unable to enjoy the benefit of the agreement, impacting the overall value of the transaction.

- **Share purchase**. In a share purchase, the buyer acquires shares in the target company and so inherits all of the company's rights and obligations, including under any IP and IT agreements. If an agreement contains a change of control provision, though, then depending how it is drafted, it is likely this will be triggered by the buyer acquiring the target company. For example, if the buyer acquires more than 50% of the target company, it could trigger a breach of a change of control clause in an existing agreement. The buyer must understand the impact of the transaction on the agreement and, before completion, may require the seller to seek confirmation from the counterparty that they will either agree to an amendment to the change of control provision or agree not to enforce it. This is particularly important if the agreement is critical to the target company's operations.

  In a share purchase, a non-assignment provision may not be directly relevant unless the agreement involves the transfer of specific IP rights or obligations that are tied to the identity of the party.

In either an asset or share purchase, the buyer might also seek warranties or indemnities from the seller to cover any liabilities arising from a violation of non-assignment or change of control clauses. In some cases, the buyer might agree to place a portion of the purchase price in escrow until the necessary approvals or consents are obtained. If consents cannot be obtained and the agreements are critical, the buyer may consider restructuring the transaction insofar as possible to avoid triggering the relevant non-assignment or change of control provisions.

If an agreement is silent on assignment, UAE law generally allows for the assignment of rights unless specifically prohibited under the contract. However, it is always prudent to include an express assignment clause to avoid ambiguity, and a buyer should ensure that the consent of a counterparty is in place for each material agreement, before completion.

If an agreement is silent on change of control, it is possible that it will continue in force despite a change of control of either of the parties. However, this would depend on the specific terms and nature of the agreement, which a buyer should assess carefully. As a matter of best practice, a buyer should not assume a change of control will be permitted and should always require the seller to obtain advance approval from the counter party ahead of completion.

Trademark Agreement Issues

If trademark agreements are included in the purchased assets (asset purchase) or to which the target company is a party (share purchase), the buyer must consider several key issues related to the assignment, licensing, and coexistence of trademarks. Each type of agreement has specific implications for the buyer, especially in terms of ownership, use, and exploitation of the trademarks.

- **Trademark assignments.**The buyer will want to ensure that any assignment is valid and enforceable under the applicable law, which will depend on a number of factors. The agreement must comply with the legal formalities for an IP assignment (regarding method of execution, the language of the agreement, and so on). It will also need to have been granted by a party with the necessary right, title, and interest in and to the assigned mark for it to take effect. For it to be enforceable against third parties, the assignment must be recorded at the UAE Trademark Office. If it has not been, then the buyer might require the seller to rectify this ahead of completion. It is advisable for the buyer to insist on the complete chain of title being recorded.

- **Trademark licenses.** Similarly, the buyer will want to ensure that any license is valid and enforceable under applicable law, which will depend on a number of factors. The agreement must comply with the legal formalities for an IP license (regarding method of execution, the language of the agreement, and so on). It will also need to have been granted by a party with the necessary right, title, and interest in and to the licensed mark for it to take effect. For it to be enforceable against third parties, the license will also need to be recorded at the UAE Trademark Office, showing the buyer as the current owner. If it has not been, then the buyer might require the seller to rectify this ahead of completion. The buyer will also need to consider a number of specific issues regarding any licenses:

  - the buyer should check whether a license is exclusive or non-exclusive and, if non-exclusive, the extent to which any additional licenses have been granted to third parties, if relevant, and, in the case of exclusive licenses, the buyer should confirm whether the licensor retains any rights to use the trademark which could limit the buyer's ability to fully exploit the mark;

  - the buyer will also need to consider whether the scope of any license is sufficient for their purposes, including in terms of licensed goods and services, licensed territory, and duration;

  - any restrictions on the license will also be relevant, including field of use restrictions, and limitations on how licensed goods or services can be marketed in the jurisdiction. The buyer must consider whether these are likely to impinge on their future plans for the mark. If there are any restrictions on sub-licensing, these might impact on the buyer's plans for expansion into new territories or markets, and so should be taken into account;

  - the buyer must review the royalty provisions and check if they are affordable and line with their expectations, particularly if based on minimum or milestone payments; and

  - the buyer must understand any dispute resolution mechanisms in place, particularly if they involve alternative dispute resolution methods, to ensure they fully understand their implications.

- **Trademark coexistence or cooperation agreements.** Trademark coexistence and cooperation agreements are often used when there are similar trademarks in the same market, and the owners agree to coexist under agreed terms and conditions. For all types of trademark agreements, the buyer must consider the implications of any non-assignment or change of control provisions (see *Restrictions on Assignment or Change of Control*). When conducting its legal due diligence into any coexistence agreements, the buyer must consider in particular:

  - the identity and reliability of the counterparty;

  - the strength and nature of their trademark;

- the precise scope of permitted usage, including regarding form, font and colour, geographical territories, specific goods and services, and market or sector restrictions;
- the term and duration of the agreement, grounds for termination, and possibility of renewal;
- consequences for breach of the agreement by either party, including notice requirements, and any transition period before trademark usage must stop; and
- governing law and jurisdiction, and any mechanisms for enforcement and dispute resolution.

Invention Assignment Agreements

When considering invention assignment agreements under UAE law in an asset purchase or share purchase, the buyer must address several specific issues related to employee inventions and assignments of IP. These issues are especially important where inventions have been assigned from an employee to the seller or target company.

There are specific clauses that a buyer will want to ensure are included, for example:

- An all-encompassing assignment clause by which the employee assigns all right, title and interest in and to any inventions made by them (in whole or in part) during the term of their employment. The assignment should contain clear, unambiguous language specifying that all rights to inventions made by the employes, whether or not patented or patentable, are automatically transferred.
- A future assignment clause, by which the employee makes clear that they assign not just current inventions, but also all right, title and interest in and to any future inventions made by them (in whole or in part) during the term of their employment.
- An express right for the seller or target company to file patent applications regarding any assigned inventions that are not yet patents. The buyer will also want to ensure that the employee is obliged to assist in the filing and prosecution of any patent applications.
- A non-compete clause to prevent the employee from using knowledge of the assigned inventions for their own benefit, or for competing businesses. The buyer should also check if any prior inventions were created by employees that might conflict with their intentions regarding the assigned patents.
- An indemnification clause is important, to protect against any losses or harm arising from the use of the assigned inventions, including through any legal proceedings or other disputes, such as third-party claims of infringement or ownership.
- A confidentiality clause should also be present in employee assignments to oblige the employee to maintain the confidentiality of all information related to the assigned invention, so that they cannot benefit from or disclose that information after their employment ends. The legal foundation for employee confidentiality within the UAE is primarily established by Articles 16 and 44 of the UAE Labor Law, *Federal Decree-Law No. (33) of 2021*. Article 16 mandates employees to safeguard work-related secrets and return company materials on termination, while Article 44 allows

termination without notice for disclosing secrets that significantly harm the employer. Complementing this, the UAE Civil Code reinforces contractual obligations, emphasizing good faith, which inherently includes maintaining confidentiality. However, the enforceability of indefinite confidentiality clauses is tempered by the principle of reasonableness. Employers must draft clear, specific clauses that balance business protection with employee rights. Extensive restrictions may be deemed unenforceable.

The buyer may need to make some additional inquiries. For example:

- To the extent that they are aware of any inventions created by the employee outside the scope of their employment, the buyer must consider whether they want these to be included among the purchased assets, or to be owned by the target company; and if so, whether sufficient assignments are in place to provide for this. While under Article 10 of the UAE Patent law IP rights in inventions created by employees in the context of their employment typically accrue to the employer, this is not the case for rights in inventions created outside of the scope of employment.

- The buyer might want to consider whether it would be helpful for the employee to be obliged to support the ongoing protection and commercialization of any assigned inventions after the assignment and, if applicable, after their departure from the employer. If yes, the buyer must make inquiries about how likely the employee is to agree with this, and the buyer should consider carefully the extent and scope of these obligations.

- The buyer should inquire whether any third-party agreements (for example, joint ventures or collaboration agreements, including with universities or research institutions) are in place that have created any rights to the assigned inventions that might limit the buyer or the target company's ability to commercialize the inventions post-completion.

IP Disputes and Office Actions

The buyer should seek the following documents from the seller or target company about any IP included in the purchased assets or owned by the target company:

- Information about any past, present or future (threatened or anticipated) IP disputes (litigation, arbitration, mediation, oppositions, or administrative proceedings). This should include details of the parties to the dispute, copies of all filings made (if applicable), identification of the IP that is the subject of the dispute, an updated status report, and an estimate of all associated costs (to the extent possible).

- Copies of any other complaints, petitions, or legal filings related to the IP rights.

- Any expert legal opinions provided by external counsel regarding the validity, strength, likelihood of success, or risks associated with any disputed IP.

- Copies of all court judgments, alternative dispute resolution rulings, and settlement agreements or coexistence agreements relating to any of the IP rights.

- Copies of all office actions and communications from the *intellectual property offices of the MOE*, including copies of any objections, examiner reports, or official office actions from the office concerning any of the IP rights.

- Documentation related to any oppositions filed against any of the IP rights (for example, trademark or patent oppositions).
- Any correspondence between the seller or target company and the UAE Patent and Trademark Offices (which are part of the MOE) regarding the registration or defense of IP rights.

It is also important the buyer is aware of any non-disclosure or confidentiality agreements that might impact the seller's ability to fully disclose information relating to IP disputes.

Claims and actions alleging IP infringements may be heard in the following venues:

- Civil courts. IP infringement is typically a civil claim made in the civil courts, which have a three tier system:
    - Courts of First Instance, where the lawsuit is initially filed;
    - Court of Appeal, for appeals of lower court decisions; and
    - Court of Cassation (Supreme Court), for final appeals on points of law.
- Criminal courts. In cases where the IP infringement involves criminal offenses (for example, counterfeiting), criminal proceedings may be initiated alongside or instead of civil actions, in the criminal courts.
- Customs Authorities. For border measures to prevent the import or export of infringing goods.

IP office actions. While the MOE's IP offices do not hear infringement lawsuits, they do handle administrative actions that might occur resulting from an infringement, for example, cancellation actions.

Claims challenging the validity of the target company's IP rights may include trademark cancellation actions (based on lack of use, descriptiveness, and so on), patent revocation actions (based on lack of novelty, inventive step, and so on), and industrial design invalidation actions. These can be heard as follows:

- Trademark cancellation actions: Trademark Office within the MOE.
- Patent revocation action: Patent Office within the MOE.
- Industrial design invalidation actions: Industrial Design Office within the MOE.
- Judicial review of IP office decisions can be sought in the civil courts.

See below for more information on IP office actions.

Claims challenging the ownership of certain IP assets, which could arise from employees, collaborators, or other parties could include disputes over ownership of IP created by employees (for example, "works made for hire" disputes), claims of joint ownership, disputes over ownership arising from collaboration agreements, and disputes arising from assignment agreements. All of these can be filed in:

- Civil courts, which are the primary venues for ownership disputes.
- Labor courts, for employee-related ownership disputes.

As to third-party claims in response to IP enforcement actions, such as antitrust claims, unfair competition, or unjust enrichment, the civil courts are the primary venue. The UAE Competition Law, *Federal Decree-Law No. (36) of 2023 Regulating Competition*, is enforced by the MOE, which may investigate and take action against antitrust violations.

For claims relating to the breach of IP-related contracts, such as licenses, distribution agreements, or confidentiality agreements, the civil courts are the primary venues for contract disputes. Specific commercial divisions within the civil courts may handle these cases.'

For any claims that have arisen on account of settling of disputes resolved by arbitration under arbitration clauses in IP agreements or IP joint ventures, these may be initiated and concluded before bodies like the *International Chamber of Commerce* (ICC), *Dubai International Financial Centre* (DIFC), or *Dubai International Arbitration Centre* (DIAC) or *Abu Dhabi International Arbitration Centre* (ADIAC), depending the choice of forum present in the agreement.

Finally, intellectual property office actions in the UAE include:

- Any issues raised by the MOE regarding the patentability of inventions, such as rejections, refusals, or requests for amendments to patent applications.
- Any issues raised by the UAE Trademark Office in the examination of trademark applications, including objections based on similarity with prior marks, descriptiveness, or non-distinctiveness.
- Any opposition to the registration of trademarks or patents, where third parties challenge the validity or ownership of the rights being registered.

The buyer can verify the information related to IP disputes and office actions through the MOE, which manages the trademark and patent registration system. After paying prescribed fees, the buyer can search for public records related to the target company's IP portfolio and any relevant office actions (see *MOE: Trademark Inquiry*, *MOE: Apply for Patent*, and *Abu Dhabi IP Unit: Search for existing IP rights*). F

or litigation records, the buyer may need to access court records from relevant UAE courts, such as the Dubai Court of First Instance, Dubai Court of Appeal, or Court of Cassation. Information related to court cases can be accessed via the *UAE Courts Portal*, *TAMM – Abu Dhabi Courts*, or *About courts in Dubai*, or by requesting information directly from the relevant court. The courts provide this information free of costs to legal representatives, though details are in Arabic.

If the target company is involved in arbitration proceedings, then the records of the DIAC or the DIFC Courts may be useful. These bodies often have online services or allow inquiries related to ongoing or past arbitration proceedings.

An IP dispute or office action can bring significant legal and financial risks. If any IP that is included in the purchased assets or owned by the target company is impacted by a dispute or office action, the buyer must consider:

- **Status.** The buyer should familiarize itself with the current status of the dispute or action and the likely timeline going forward so that it can understand how much time and effort the buyer or the target company may need to spend on it post-completion. Ongoing litigation or unresolved office actions may delay the transfer of IP or lead to significant legal expenses.

- **Likely outcome.** The buyer should seek legal advice on the likely outcome of the dispute or action, including a percentage chance of success if appropriate, so that it can conduct an analysis of how great a risk it poses to the overall value and success of the transaction. If there is a possibility of settlement before completion, the buyer may want to investigate with the seller or target company the extent to which the buyer can influence the terms of the settlement, insofar as that may be beneficial.

- **Materiality.** The buyer should consider how material the IP right is to the success of the transaction. In an asset acquisition, if the IP right is not sufficiently important, the buyer might decide to exclude it from the purchased IP rights to avoid inheriting the risk of the dispute or action. In a share acquisition, if the IP right is key to the transaction and there is a risk of the buyer losing the right to use the IP or facing significant liabilities regarding it, the buyer might consider its options, including renegotiating the purchase price or walking away.

Information Technology Assets

While technical aspects of software systems and hardware integration are usually handled in a separate legal due diligence process by IT specialists, the buyer's IP counsel might support with the legal due diligence review of certain IT issues in an asset or share purchase transaction.

Proprietary Software

The buyer must conduct investigations regarding any proprietary or in-licensed software included in the purchased assets (asset purchase) or owned by the target company (share purchase). This investigation typically involves several areas of focus, including the ownership, licensing, and potential risks associated with the software.

The buyer must confirm that the seller or target company owns any software created by or for them, and has all right, title and interest necessary to be able to use, modify, maintain or transfer ownership of the software post-completion, without any hidden liabilities or restrictions.

The buyer will also need to confirm that any software license included in the purchased assets or owned by the target company will continue in force and is sufficiently broad in scope for the buyer or target company's requirements post-completion. The buyer should also check for any non-assignment or change of control clauses that might impact continuity of any software licenses (see *Restrictions on Assignment or Change of Control*).

Other Areas of Investigation

There are a number of other investigations the buyer must conduct regarding IT assets. In particular, these might include:

- Open-source software.

- AI technology.
- Source code escrow.
- Ongoing access to the seller's IT systems.

These are all technical matters that the buyer's IT agent would deal with.

Privacy and Data Security

In the UAE, the primary laws governing the protection of personal data include:

- **The Personal Data Protection Law, *Federal Decree-Law No. (45) of 2021 Concerning the Protection of Personal Data* (UAE PDPL)** is an integrated framework to ensure the confidentiality of information and protect the privacy of individuals in the UAE. It provides governance for data management and protection and defines the rights and duties of all parties concerned.
- **Federal Decree-Law No. (34) of 2021 on Countering Rumors and Cybercrimes** provides a comprehensive legal framework to address concerns relating to the misuse and abuse of online technologies. It aims to enhance the level of protection from online crimes committed through information technology, networks, and platforms.
- **Federal Law No. (15) of 2020 on Consumer Protection** protects all consumer rights, including protecting consumer data and prohibiting suppliers from using it for marketing. The ***Data Protection Law, DIFC Law No. 5 of 2020***, may also apply.

The UAE has aligned some of its data protection practices with international standards including the EU **General Data Protection Regulation (GDPR)**, especially for companies dealing with international data flows. The UAE law includes provisions on cross-border data transfers, ensuring that companies comply with appropriate safeguards when transferring personal data outside of the country.

Penalties for Violation

Penalties for violations of data privacy and security laws are set out in Federal Decree-Law No. (34) of 2021 on Countering Rumors and Cybercrimes, as follows:

- Article 6 governs infringement of personal data and information and provides for a penalty of imprisonment for at least six months or a fine between AED20,000 and AED100,000.
- Article 7 governs infringement of government data and information. It provides a penalty of imprisonment for at least seven years or a fine of between AED500,000 and AED3 million, which increases to imprisonment for at least ten years or a fine of between AED500,000 and AED5 million if the act causes harm to the UAE or certain military and security systems.

- Article 8 governs infringement of data related to any financial, commercial, or economic establishment. It provides a penalty of imprisonment for at least five years and a fine of between AED500,000 and AED3 million.
- Article 9 governs illegal acquisition of a third party's PIN code, cipher, or password. It provides for imprisonment or a fine of between AED50,000 and AED100,000. The penalty increases to imprisonment for at least six months or a fine of between AED300,000 and AED500,000 if the person accesses or enables access using the stolen credential with intent to commit a crime.

Inquiries and Key Aspects the Buyer Should Consider in an Acquisition

The buyer must make certain inquiries regarding the seller's or target company's collection, use, and protection of any personal information included in the purchased assets (asset purchase) or owned by the target company (share purchase). In particular, the buyer must consider:

- Whether any personal data is collected, stored, and processed by the seller or target company and, if so, the identity of that data.
- Whether the seller or target company has a data protection policy and whether it complies with the UAE PDPL and other relevant regulations.
- Whether data processing agreements in place with third-party vendors comply with UAE law and are transferable to the buyer (in an asset purchase) or continue in force on a change of control of the target company (on a share purchase).
- Whether the consent obtained from individuals (data subjects) is valid or compliant with the UAE PDPL. This includes confirming that the seller or target company has clear records of consent, where necessary, for data processing and that it can demonstrate compliance.
- Whether the seller or target company has experienced any data breaches or incidents of non-compliance with data protection laws. If so, the buyer should request details of how breaches were handled and whether the company faced any regulatory scrutiny or penalties. This will be particularly important in a share purchase.
- Whether the data security measures that the seller or target company has in place ensure that personal data is protected from unauthorized access or misuse.
- Whether the seller or target company has been transferring personal data outside the UAE and whether these transfers comply with the UAE's cross-border data transfer provisions (which require that those countries where the data is being transferred to provide similar protection and safeguards). The buyer should confirm that the necessary safeguards (such as model clauses or specific data protection agreements) are in place.
- Review any third-party contracts that involve data processing (for example, with IT providers, marketing agencies, or cloud services) to ensure that these contracts include appropriate data protection clauses and comply with the law. The buyer should also confirm that the contracts are transferable to the buyer (in an asset purchase) or continue in force on a change of control of the target company (on a share purchase).

User-Generated Content

If the purchased assets include, or the target company has, a website that permits users to post content, the buyer must make additional inquiries, particularly if the website allows users to upload content such as text, images, videos, or other IP.

Those inquiries should include a thorough review of the website's terms of use to ensure that they clearly set out the rights and responsibilities of users, particularly regarding user-generated content. The buyer should check in particular:

- Whether there is an assignment or license of rights in the content from the user to the website when it is uploaded, and whether that comes into effect automatically at the point of upload. This is particularly important if the website hosts user-generated content that may be protected by copyright. If a license is granted, then the terms should address the scope of any license, which should include rights to use, modify and distribute, on a non-exclusive perpetual basis. Whether the website has the right to remove infringing content and handle related copyright claims. It is also important that the website has a clear process for responding to copyright complaints, such as a notice-and-takedown procedure for handling claims of infringement.

- Whether there is a dispute resolution clause in case of IP infringements or other issues arising from user-generated content.

The buyer should also review the website's:

- Copyright policy, to ensure it is compliant with UAE laws, including provisions for handling complaints of copyright infringement.

- Privacy policy, to ensure it is compliant with local data protection laws, such as the UAE PDPL and the GDPR (if applicable to international users). The buyer should review how the target company collects, processes, and protects personal data, especially if the content involves personal or sensitive information.

If the website has partnerships with content creators or third parties (for example, content distribution or licensing deals), the buyer should review any licenses to ensure that those agreements are valid and transferable.

As to user rights and indemnity provisions, the buyer should:

- Ensure that the website's terms and privacy policy grant users the necessary rights to control their personal data, including rights to access, rectify, and delete their personal information as per UAE law.

- Check if the website terms include indemnity clauses that protect the company against claims arising from user-generated content. The buyer should assess the potential risk exposure related to user content and whether the seller or target company can be held liable for IP infringements.

- Ensure that the website has mechanisms to comply with content moderation requirements, especially regarding the UAE's strict regulations around obscene or offensive content. The buyer should also verify that the website adheres to the guidelines set by the *National Media Council of the UAE*, which regulates the content published online, including content that could be considered harmful, immoral, or offensive.

If the website stores large amounts of user-generated content, the buyer should confirm that the website has secured the appropriate licenses and clearances for any third-party content (for example, music, images, and video) used by the users.

IP Provisions in the Asset or Share Purchase Agreement

IP counsel's primary role in drafting and negotiating the asset or share purchase agreement is to handle the various IP provisions and to ensure that IP rights are free from any encumbrances.

IT related provisions are generally handled by a separate IT agent (see *Information Technology Assets*).

Defining Scope of IP Assets in Purchase Agreement

In an asset purchase transaction under UAE law, IP counsel's main considerations will be to accurately and comprehensively identify all IP assets that the buyer wishes to obtain ownership of at completion. Every asset should be carefully identified, ideally categorized by IP type, and set out with as much detail as possible in a separate schedule or annex that forms a part of the purchase agreement.

Counsel must clarify the extent to which the buyer wishes to obtain ownership of not only the identified IP assets, but also any related, associated, or similar rights that might also belong to the seller and be useful in the buyer's future exploitation of the identified assets. The definition of purchased assets (or whatever defined term the parties agree to use for these purposes) must be explicitly clear on this point.

Counsel will also need to be careful not to inadvertently include in the scope of the definition assets that bring with them unwanted or unquantified risks or liabilities. The buyer typically has the following priorities when negotiating the scope of the purchased IP assets to be transferred, and any related liabilities:

- The buyer will want to ensure that all relevant IP is transferred and that it has the right to use, exploit, and protect the IP without any restrictions. This includes making sure the seller has full ownership and that the transfer is free of encumbrances.

- The buyer will want to ensure that any IP that is non-essential to their business remains with the seller and is not included in the transaction. The buyer will also want to avoid rights to any IP that carries unwanted liabilities.

In contrast, the seller typically has the following priorities:

- The seller may want to retain certain IP that is not essential to the buyer's business or that the seller plans to continue using post-completion. This could include IP used in other product lines or services not being sold in the transaction.

- The seller will aim to minimize its risk and liability, particularly regarding IP infringement claims, enforceability of the IP, and liabilities under any ongoing agreements. The seller will want to pass on any ongoing financial obligations tied to the purchased IP, particularly relating to royalties.

In a share purchase transaction, the scope of the purchased IP is not usually defined separately in the same way it is in an asset purchase. This is because the buyer acquires ownership of the target company, including all its assets and liabilities, whether or not they are listed individually in the terms of the purchase agreement. It can still be useful to identify the most material or valuable IP assets in a share purchase agreement, particularly if they require special treatment as part of the transaction.

Typical IP Representations and Warranties

It is common for the seller or target company to make certain representations and warranties in both asset and share purchase agreements under UAE law. The representations and warranties are key components of the transaction negotiations. They provide the buyer with assurances about the purchased assets or target company and help to allocate risks between the parties, providing a legal basis for the buyer to claim remedies if they later transpire to be false.

Representations and warranties are typically included in the main body of the purchase agreement.

Disclosure schedules (often referred to as annexes or exhibits) are documents that the seller provides to disclose any exceptions, qualifications or other limitations to the scope of the representations and warranties. They are designed to protect the seller by identifying specific exceptions to the blanket representations and warranties (for example, noting certain IP rights that are encumbered or subject to disputes).

They are negotiated as part of the overall transaction and are typically attached to the purchase agreement or referenced within it, so that they form a part of the overall terms agreed between the parties.

Buyer's Priorities in Negotiating IP and IT Representations and Warranties

The buyer will prioritize obtaining the most comprehensive and wide-reaching representations and warranties regarding the purchased assets or target company to mitigate any risks. In particular, when negotiating their scope, the buyer will prioritize the following:

- **Ownership and capacity.** The seller owns all IP rights being assigned to the buyer (in an asset purchase), or the target company owns all the IP rights used in its business (in a share purchase), and these are all valid, enforceable, and free from third-party claims.

- **Non-infringement**. The IP included among the purchased assets (in an asset purchase), or the IP owned by the target company, does not infringe any third-party rights, and there are no pending or threatened infringement claims against this IP.

- **Encumbrances.** There are no encumbrances on the IP included among the purchased assets (in an asset purchase), or owned by the target company, including any third-party licenses, liens, or security interests, and the buyer or target company can enjoy the full benefit of the IP post-completion without restriction.

- **Litigation.** None of the IP is impacted by any ongoing or threatened litigation which could affect the value or usability of those assets.

- **Maintenance.** The seller or target company has taken all necessary steps to maintain and protect the IP (for example, paying renewal fees and filing necessary registrations). The buyer will seek a warranty that the seller or target company has not acquiesced regarding any ongoing infringement activities.

- **Permission to use key technology.** The IT agreements included in the purchased assets (in an asset purchase) give the buyer all necessary permissions to use all third party software and other technology that is material to the business; and the target company has all necessary permissions, and there are no unauthorized uses that could expose the buyer or target company to risks after completion of the transaction.

Seller's Priorities in Negotiating IP Representations and Warranties:

The seller's priority will be to limit the scope of their liability for IP-related matters and avoid excessive risk exposure after the transaction closes. In particular, when negotiating the scope of the representations and warranties, the seller will prioritize the following:

- **Limitations**. The seller may seek to limit the duration of certain representations (for example, representations about IP ownership, validity, and infringement) or to exclude certain assets from the scope of the transaction.
- **Liability caps.** The seller may negotiate for caps on the total amount of liability they could face in case of any breach of representations and warranties.
- **Qualifications.** The seller may negotiate for representations to be qualified by a "knowledge standard," meaning they are only liable for breaches that were known (or should reasonably have been known) to the seller when entering into the transaction.

Information shared in the disclosures limits the scope of the representations and warranties, and so the seller will also seek to disclose as much information as possible in the disclosure schedules to protect themselves against potential future claims (for example, by disclosing third-party claims or existing IP disputes).

IP Representations and Warranties Commonly Included in Asset and Share Purchase Agreements under UAE Law

Since the buyer is acquiring individual assets in an asset purchase, representations and warranties regarding IP assets should be highly detailed and tailored to the specific assets being transferred. For example:

- The seller represents that they own all the IP assets being sold and the IP is free from any third-party rights, claims, encumbrances, or obligations.
- The seller represents that the IP assets do not conflict with or infringe any third-party IP rights.
- The seller represents that the IP is valid, enforceable, and has not been contested or is not subject to any current or threatened dispute.
- The seller represents that there are no ongoing or threatened IP-related lawsuits or proceedings and there are no claims or demands related to infringement.

- The seller represents that the target is not bound by any third-party licenses and that all necessary licenses or agreements are disclosed. If third-party IP is used, it is properly licensed.

- The seller represents compliance with all applicable data protection and privacy laws (for example, the UAE PDPL or international regulations like the GDPR) and that the data held is validly collected and protected.

In a share purchase, the buyer acquires the entire company and its assets, including the IP assets. The representations and warranties related to IP assets will often be more general but are still critical to allocate risk. Common IP representations and warranties in a share purchase include:

- The target company owns or has valid licenses for all IP used in its business, and it has the right to assign this IP.

- The target company's IP does not infringe on any third-party rights, and there are no claims, disputes, or infringements regarding this IP.

- The target company has maintained and renewed all necessary IP registrations (for example, patents and trademarks) and paid any fees or taxes due.

- The target company has not experienced any material breaches of its IT systems, and no significant data security incidents have occurred.

- The target company complies with applicable data protection laws and has implemented appropriate safeguards to protect personal data.

IP Disclosure Schedules

In an asset or share purchase agreement under UAE law, disclosure schedules serve a crucial role in detailing exceptions to the representations and warranties made by the seller or target company. In the schedules, the seller discloses information about specific IP assets to which the representations and warranties do not apply, apply to a limited extent, or apply with exceptions. The disclosure schedules take on a particularly key role in share purchase transactions, where the buyer acquires the entire target company including all risks and liabilities. The schedules offer critical context and minimize post-closing disputes by precisely outlining known issues and qualifications to the seller's statements.

The additional information provided to the buyer through the disclosure schedules can help them to make an informed decision about entering into the transaction and agreeing to particular terms of the agreement. They also help to allocate risk between the parties. Everything that is disclosed in the schedules serves as a carve out from the scope of the representations and warranties, limiting the seller's exposure.

In the schedules, the seller typically discloses details of all licenses and other agreements relating to the IP assets, any past or present litigation relating to them, any encumbrances over them, and any other actual or potential legal risks associated with them.

This information enables the buyer to evaluate whether to proceed with the deal, adjust the purchase price, or negotiate revised terms, such as enhanced indemnities for identified risks.

In certain cases, especially in asset purchase agreements, the seller might list all purchased IP assets individually in the schedules. For each asset, the seller will then include details of any actual or potential risks, liabilities or encumbrances impacting the asset. This is common for highly valuable or unique IP, where a clear chain of title and scope of protection is vital.

More typically, though, IP assets are grouped into defined categories (for example, by type of IP right) to provide a clear structure to the disclosure schedules. This can be an efficient way to format the disclosures, especially when the target owns many IP assets.

Negotiation Process for IP Disclosure Schedules

When negotiating an IP disclosure schedule, the buyer should prioritize comprehensive disclosures of all IP assets, agreements, encumbrances, and any potential risks that could affect the business post-acquisition, so that the buyer understands as much as possible about the purchased assets or target company when entering into the transaction.

This includes obtaining full details about the condition and ownership of IP, as well as any legal disputes, third-party claims, or restrictions on use. The buyer should insist on transparency, seeking to identify any potential IP liabilities (for example, infringement claims, obligations under licenses, or expired IP rights) that could affect the future use or value of the IP assets.

As every disclosure limits the scope of the representations and warranties, the buyer should push for specific detailed disclosures and should refuse to accept broad statements from the seller unless they can be substantiated.

If issues are identified in the disclosure schedules, the buyer may want to negotiate specific indemnities or price adjustments based on the disclosed risks.

Sellers tend to minimize the scope of the disclosures, especially regarding any potential liabilities or risks related to IP assets. The seller might attempt to keep certain issues off the disclosure schedules altogether, to avoid triggering post-closing indemnity obligations or price adjustments. The seller may also be cautious about protecting confidential information (such as trade secrets) by limiting the level of detail included in the disclosure schedules, especially in terms of proprietary know-how or business methods. Further, the seller may negotiate for a knowledge qualifier on certain representations and warranties in the purchase agreement, so that the seller is only responsible for breaches that were known or should have been known at the time of completion. The seller may also seek to include qualifications or disclaimers in the disclosure schedules that limit their liability for certain IP issues.

IP Agreements the Target Company May Object to Including in the Disclosure Schedule

Certain types of IP agreements or arrangements may be difficult for the target company to identify or fully disclose, and the target might object to including them in the disclosure schedules due to the complexity or the potential risks they introduce:

- **Changeable licenses.** Licenses that are uncertain, subject to change, or difficult to track (for example, evolving software or SaaS contracts with vendors, where terms change regularly) might be difficult to list comprehensively. The seller may not have complete visibility over all licenses granted to third parties.

- **Oral agreements.** Oral agreements (such as informal licensing arrangements or confidential business relationships) may be difficult for the target company to track and identify, particularly if they are not formalized in writing.

- **Non-exclusive or perpetual licenses.** Non-exclusive or perpetual licenses granted to third parties may be difficult to list or fully quantify, especially if the target company has multiple overlapping relationships or if the license's scope is ambiguous.

- **Pending rights.** IP assets that are still under development and those that are subject to pending applications (for example, patents that have not yet been granted or trademarks in the process of registration) might be harder to disclose in full. These are also less tangible, which could cause complications in providing complete and accurate details.

- **Complex data licenses.** Data licensing or sharing agreements (especially in industries like technology, healthcare, or finance) where the seller shares or licenses data to third parties might be more challenging to disclose comprehensively. These arrangements can be complex, especially when data rights are shared and privacy concerns (such as personal data under GDPR or UAE data protection laws) are involved.

Sufficiency of IP Assets

In a carve-out transaction, it is common for the buyer to seek a representation that either:

- All the IP & IT assets included in the purchased assets, and any rights provided to the buyer under ancillary agreements, constitute all of the IP and IT assets and rights necessary to operate the purchased business (asset purchase).

- All the target company's IP and IT assets, and any rights provided to the buyer under any ancillary agreements, constitute all of the IP and IT assets necessary for the buyer to operate the divested business in the same manner after completion as the target company operated it before completion (share purchase).

In some jurisdictions, this is referred to as a sufficiency representation, although this term is not used in the UAE. This sort of representation interacts with other key representations, such as non-infringement and clear title and ownership, and must be carefully negotiated to reflect the business's current and future needs.

IP Ownership

Critical for protecting the buyer's interests is the scope of representations a buyer typically seeks from a seller or the target company regarding:

- The seller's ownership of the purchased IP and IT assets.

- The target company's ownership of the IP and IT assets it purports to own.

The buyer will typically seek comprehensive, clear representations confirming the seller's or target company's ownership of the IP assets being transferred.

However, the seller or target company will seek to limit the scope of these representations by excluding unregistered IP, qualifying them with materiality thresholds or knowledge qualifiers, and narrowing them to only the specific assets disclosed or identified in schedules. These limitations are designed to reduce the seller's or target company's exposure to future claims and risks.

However, the buyer must carefully assess these limitations during negotiations to ensure they are acquiring the full set of IP rights necessary for the continued operation of the business.

Validity and Enforceability

The buyer will seek representations from the seller or target company about the validity and enforceability of the IP and IT assets. Specifically, the buyer will want assurance that the IP assets are enforceable under UAE law and that there are no legal disputes, claims, or encumbrances affecting them. This includes asking the seller or target company to confirm that no third parties have claims in or rights to the IP and that the IP has not been encumbered in any way (for example, no outstanding royalty payments and no pending litigation regarding ownership or use). The buyer will want to ensure that the IP does not infringe any third-party rights, meaning it is free from any potential infringement actions or licensing disputes (particularly important for all material IP assets, which might include patents or software licenses, for example).

The buyer may also seek a representation that the IP assets are not involved in any litigation or arbitration regarding their validity or enforceability. This is particularly important for trademarks or patents, which are often subject to legal challenges.

If the buyer is acquiring software, technology, or other IT-related assets, the buyer will want to ensure that any agreements governing the use, maintenance, or transfer of those assets (for example, licenses or SaaS contracts) are enforceable and will transfer to the buyer.

On the other hand, the seller or target company may seek to limit the scope of these representations for several reasons, typically to reduce their exposure to liability, especially regarding IP that they may not have full control over or that could be subject to legal risks. Specifically, the sellers may seek to exclude unregistered IP (for example, unregistered trademarks or trade secrets) from validity or enforceability representations. It may be difficult for the seller to provide a robust representation regarding the enforceability of unregistered IP, especially if the buyer has not conducted an extensive due diligence process.

If the seller is transferring IP that is licensed from third parties or subject to restrictions, they may seek to exclude these from the validity or enforceability representation. For example, if the seller has only a limited license to use a certain software or patent, the seller might not be able to represent that the IP is fully enforceable or that it can be transferred to the buyer without restrictions.

Sellers may also seek to qualify the validity and enforceability representation with a knowledge qualifier, meaning the seller can only provide assurances regarding IP that they are aware of and have knowledge of based on their due diligence or experience. This is particularly common where the seller has not conducted an extensive internal audit or where the IP portfolio is complex. For example, a seller may state, "To the best of the Seller's knowledge, the IP assets are valid and enforceable." This would limit the seller's liability for unknown issues, such as undiscovered infringements, claims, or third-party challenges to the IP.

In practice, it is particularly common to limit the validity representation for certain types of IP, especially as patents are subject to legal challenges (for example, opposition or invalidation proceedings), the seller may limit the representation regarding the ongoing validity of patents.

Trademarks can be contested (for example, through oppositions or cancellations), and the seller may seek to limit the representation regarding the enforceability of a trademark, particularly if there is any ongoing dispute.

Since trade secrets are not registered and are dependent on internal protections (for example, confidentiality agreements and employee restrictions), it is common to qualify representations on enforceability or protection.

For the buyer, obtaining robust representations regarding the validity and enforceability of the IP assets is critical to minimize legal and financial risks post-closing. Specifically, these representations help to ensure that the buyer is not acquiring IP that is subject to ongoing litigation, challenges, or limitations that could undermine the business operations post-completion. Robust representations are particularly important in the following circumstances:

- If the business being acquired is heavily reliant on its IP assets (for example, tech companies, startups, or businesses with significant patent or trademark portfolios), the buyer will want to ensure the IP is valid, enforceable, and free from legal issues. If any of the IP assets are invalid or unenforceable, it could severely impact the value of the acquisition.

- If issues are identified during the IP and IT due diligence (for example, unclear ownership, pending challenges, or third-party claims), robust representations from the seller regarding the validity and enforceability of the IP assets can help resolve or address these issues before the transaction is completed. If the representations are breached (for example, if an IP asset is later challenged or invalidated), the buyer will want strong remedies, such as indemnification or a price adjustment, to cover any losses incurred due to the IP issues.

Non-Infringement

The scope of representations typically sought by the buyer from the seller or target company, regarding non-infringement of the IP and IT assets, is typically focused on ensuring that the IP assets being acquired are free from third-party claims and legal risks.

The buyer will seek broad and comprehensive assurances, while the seller will seek to limit their exposure through knowledge-based representations, with specific exclusions, and indemnities. The compromise usually involves balancing the need for security with reasonable limitations to avoid excessive liability.

Typically, the buyer will want the seller to confirm that the purchased IP and IT assets, or target company's IP does not infringe any third-party rights, and that there are no claims of infringement that have been made or are likely to arise from the buyer or target company's use of the IP and IT assets. The buyer will also seek confirmation that the seller or target company has the full right to use, transfer, and license the IP without restriction, liens, or claims, and is in compliance with any data protection regulations impacting the buyer or target company's use of the IP and IT assets.

On the other hand, the seller might seek to narrow the representation to a knowledge-based standard (for example, "to the best of the seller's knowledge at the time of entering into the transaction"), acknowledging that they cannot guarantee absolute non-infringement but will make the representation based on what they know. This reduces their responsibility for unknown claims. By way of compromise, the seller may agree to the inclusion of certain specific indemnities in the buyer's favor, in case of any breach of the non-infringement representation transpires.

The seller may also seek to clarify that the representation of non-infringement only applies to the current state of the IP and IT assets at the time of completion and does not extend to future developments or the impact of future technological advancements, which might bring new infringement risks.

The parties need to consider the relationship between the non-infringement representations and any other representations that might be included in the general terms of the agreement. It is common for the seller or target company to seek an acknowledgement from the buyer that the non-infringement representations relate only to the IP and IT assets. This limitation is important because general business operations could inadvertently infringe third-party IP rights, and the seller will want to avoid being held responsible for issues outside of the core IP and IT domains that are the subject of the representations.

Trade Secrets and Confidential Information

The representations and warranties typically sought by the buyer from the seller or target company, regarding trade secrets and other confidential information, will usually focus on giving the buyer assurances that these IP assets are free from material legal risks covering areas such as ownership, security, unauthorized disclosure, and compliance.

There are certain categories of personnel that the buyer will be keen to ensure the scope of representations covers. In particular, depending on the business, the buyer may want to prioritize senior management for stability, key employees for specialized knowledge and contractual obligations, sales and marketing personnel for compliance and accuracy, technical staff for technology continuity, and compliance and legal officers for regulatory adherence. Additionally, a buyer may seek representations concerning key independent contractors if they are vital to the business, particularly if they influence the target's operational continuity, financial performance, legal compliance, or are otherwise critical for the buyer's assessment of risk and value.

The parties might also agree to specific monetary caps that apply to any claim for breach of these specific representations. Knowledge qualifiers can be narrowed to specific individuals, and detailed disclosure schedules can carve out known issues.

Furthermore, parties might negotiate "no material adverse change" clauses during the transition period between exchange and completion, with specific carve-outs relating to the departure of key personnel, offering a balanced approach to risk allocation and protection for both buyer and seller.

Under UAE law, these protections must also comply with relevant data protection and IP regulations, ensuring that both parties manage legal and financial risks associated with the handling of sensitive information.

IP and IT Agreements

Buyers will seek specific representations from the seller or target company about the IP and IT agreements included in the purchased assets (asset purchase) or to which the target company is a party (share purchase). The validity, ownership, enforceability, and transferability of these agreements will matter most to the buyer, and they will seek to negotiate representations to provide comfort on all these considerations.

Although IP and IT agreements are often included under general material contracts representations, it is important to distinguish between these representations to avoid conflicts. This can be achieved by carving out IP-specific warranties, providing detailed schedules, and ensuring complementary representations. These steps help ensure the buyer has a clear understanding of the status and risks associated with the target's IP and IT assets.

Determining the scope of representations to be sought regarding proprietary software, IT systems, and use of open-source software is a technical matter that the buyer's IT agent would deal with.

Other Common IP and IT Representations and Warranties

Depending on the transaction, the buyer may seek representations and warranties addressing a range of other matters. These might include:

- **Research and development (R&D) activities.** In a transaction where the purchased assets include IP arising from R&D activities (in an asset purchase), or the target company has been involved in R&D activities (in a share purchase), which are key to the transaction value, the buyer might seek assurances around that R&D. In particular, they will want to know:

  - what R&D projects the target is or has been involved with;
  - the identity of any R&D partners;
  - who owns any resulting IP, and how ownership is formalized;
  - the viability of any resulting IP;
  - the likelihood of successful commercialisation for the benefit of the target company; and
  - whether there are any hidden R&D costs that will become payable post-completion.

- **Employee and consultant invention assignments.** To the extent that any employee or consultant inventions are included in the purchased assets, or are owned by the target company, the buyer will want to ensure that these have been properly assigned to the seller or target company, and that there are no conflicting claims that could prevent the buyer or target company from enjoying the full benefit of them post-completion.

- **Products.** The buyer will also want to reduce the likelihood of product liability claims being made against them regarding products arising from IP included in the purchased assets, or owned by the target company. For this, the buyer might seek specific warranties relating to the quality of any product safety issues and any undisclosed defects, and compliance with all applicable regulations including health and safety, The buyer will want reassurance that there are no potential product liability claims, and confirmation that the seller has adequate product liability insurance.

- **Compliance with data protection and privacy laws.** The buyer may also be concerned about potential liabilities arising from the target company's non-compliance with data protection laws set out in the UAE PDPL, including fines, lawsuits, and reputational damage. For this, the buyer might seek representations regarding the accuracy of data handling practices, the adequacy of data security measures, compliance with relevant privacy policies, and the absence of past or pending data breaches.

- **Source code.** The buyer should also ensure that any source code included in the purchased assets, or owned by the target company, is complete, properly documented, and free from third-party claims or open-source licensing issues that could hinder future development or commercialization.

The buyer might also request representations on compliance with industry-specific regulations and any environmental or litigation issues.

Pre-Completion Covenants and Other Provisions

It is not common in the UAE for the buyer to seek pre-completion covenants to avoid any loss of value of the purchased IP assets, or the target company's IP assets, between exchange and completion. However, certain representations and warranties may be drafted with the aim of safeguarding the value of the purchased IP or the target company's IP assets. These can ensure that the target company's IP rights remain intact, that no unauthorized changes are made to IP-related agreements, and that the seller or target company does not engage in actions that could undermine the value of the purchased IP, or the target company's IP assets. Buyers use these representations and warranties to protect their interests when signing purchase agreements.

Disclaimer of Trademark Rights

In a carve-out transaction, if either the purchased IP assets include key trademarks that are necessary to operate the purchased business (asset purchase) or the target company's trademarks are key assets (share purchase), the buyer would want the transfer to be absolute, and for that to be expressly stated in the purchase agreement or assignment deed.

Transitional Trademark License

In a carve-out transaction, if the purchased business or target company uses any trademarks that are being retained by the seller, it is possible for the buyer or target company to be given a license to continue using these for a temporary period after completion while it transitions away from use.

This is not a common approach, but the parties are free to agree to it if appropriate. The license might take the form of a short form license set out in the terms of the purchase agreement, or a separate license. The seller may wish to include provisions that limit the buyer or target company's use of the mark (by territory, duration or type of goods or services, for example), and that enable the seller to supervise and control the type of use, to protect the quality and reputation of the mark during this time.

For more on trademark licensing, see *Practice Note, Trademark License Agreements (UAE)*.

Third-Party Consents

It is common for the buyer to require the seller or target company to obtain consents from counterparties to IP and IT agreements, especially when the transaction triggers change of control provisions or non-assignment clauses. If consent cannot be obtained, the buyer might negotiate price adjustments, indemnities, or other remedies to mitigate the risk. Alternatively, if the agreement is material to the success of the business or target company going forward, the buyer might pull out of the transaction altogether. The buyer should therefore require that all necessary consents be in place before completion.

Similarly, if any of the IP and IT agreements have problematic terms, it is common for the buyer to require the seller to terminate or modify those agreements before completion. Any resulting costs are typically negotiated between the parties and may be borne by either the buyer or seller, depending on the circumstances of the transaction.

Ancillary IP and IT Agreements

In a carve-out transaction, it is possible for the parties to enter into ancillary agreements setting out the terms on which they intend to share IP and IT assets and services post-completion.

This is not a common approach, but it is advisable. Ancillary agreements can clearly outline the transfer, control, and use of any shared assets.

Ancillary agreements are usually negotiated and agreed simultaneously along with signing the purchase agreement and can either be attached as appendices or kept separate, depending on the circumstances.

License Agreements

The are certain circumstances in which either party may require an ongoing license to use the other party's IP post-completion.

The need for these licenses arises primarily to ensure the continuity of business operations after the transaction, to protect IP rights, and to avoid potential conflicts over ownership or use of the IP assets that are necessary to continue the business operations. In some cases, if both the buyer and the seller are working on joint development projects post-completion, both may require ongoing licenses to each other's IP to continue collaborative work. This is particularly common in technology or pharmaceutical sectors.

There may be agreements that include provisions by which the seller grants a temporary license to the buyer to use IP for a specified period. Similarly, the buyer may need to grant a limited license to the seller to facilitate the transition, particularly where the buyer will not immediately assume full control over the IP (although in the majority of cases this transition in ownership is effected at completion of the transaction).

When negotiating the scope of the license, the licensor will have certain priorities, which will depend on the type of IP involved but might include:

- **Quality control.** The licensor will want to retain control over their IP, including the way it is used in the marketplace, so as to avoid any dilution of their rights or reputation relating to the IP.
- **Limited scope.** The licensor will want to define the geographic scope and the field of use for the licensed IP, ensuring that the licensee's rights are limited to a specific market, industry, sector, or use type. They may also want to prohibit sublicensing so that only the licensee can use the IP, and not any third parties.
- **Royalties.** The licensor will likely negotiate for favorable royalty terms, upfront payments, or other financial considerations in exchange for granting the license. The licensor will also prioritize mechanisms for audit and compliance to ensure they are receiving the appropriate compensation. However, the licensee will typically want flexibility in terms of payments and may push for lower fees, especially if the IP is critical to their operations.
- **Expiration or termination.** The licensor may want to include an expiration date for the license or to make the license terminable on certain conditions, such as breach, non-payment, or other contractual defaults.

In contrast, the licensee's priorities might include:

- **Degree of exclusivity.** The licensee will want a broad license to use the IP, including potentially the exclusive right to use the IP within the specified field or market. Exclusivity is highly desirable because it guarantees that no one else (including the licensor) can use or grant rights to the same IP in the same field.
- **Scope of use.** The licensee may also seek to expand the scope of the license, covering additional territories, technologies, or uses, if the IP is critical to their ongoing operations.
- **Term of license.** The licensee will often prefer perpetual licenses or at least long-term licenses to ensure ongoing access to the IP without the risk of having the license revoked or expiring within a short period.
- **Sub-licensing.** The licensee will also likely seek the ability to sublicense the IP to third parties, especially if the licensee plans to expand its business operations or needs flexibility in how it uses the IP.

- **Improvements and modifications.** The licensee may also try to remove constraints on their ability to improve, modify, or exploit the IP. Without this flexibility, the licensee runs the risk of being confined to outdated IP, limiting their competitive edge and potential revenue streams. Under UAE law, absent specific contractual terms, the original IP owner generally retains strong rights, particularly regarding copyrights and trademarks. While licensees may own new patentable inventions or industrial designs resulting from their efforts, the original IP holder's rights over the underlying technology remain significant. Therefore, a clear and comprehensive license agreement is paramount to define ownership and exploitation rights, preventing future disputes and ensuring both parties understand their positions regarding IP modifications.

Licensees often favor perpetual licenses, especially when the IP is critical to their business. A perpetual license gives the licensee ongoing access to the IP without the risk of losing access at the end of a defined term. Defined expiration dates are more common in non-exclusive licenses or where the IP's value is expected to change over time. In contrast, the licensor may prefer a time-limited license, particularly where they want to maintain control over the IP or want to reassess the terms after a certain period, or if the license is exclusive.

Non-terminable licenses are rare, but the buyer (as licensee) may seek this if the IP is fundamental to their operations and they want to avoid the risk of losing access to the IP. More commonly, terminable licenses are agreed with specific grounds for termination, such as breach of contract, non-payment of royalties, or insolvency.

If both parties require the use of each other's IP post-completion, a cross-license is a typical solution, by which both parties grant each other licenses to use certain IP, and the terms of the agreement are usually reciprocal. This allows both parties to use each other's IP without the need for separate payment arrangements or licensing fees. The terms are often tailored to the specific needs of the parties but can include royalty-free usage or fixed payments, depending on the relative value of the IP being exchanged.

In the absence of a written license, the laws of the UAE (like many other jurisdictions) could imply the existence of a license under certain circumstances. For example:

- If the licensee has been using the IP with the tacit approval or knowledge of the owner, the law may imply a license to continue that use, particularly if the relationship between the parties is established as a long-term arrangement or there is evidence of mutual understanding regarding the usage rights.

- If the licensor has allowed the licensee to use the IP without objection for a prolonged period, the licensor may be estopped from later claiming that there was no license or that the use was unauthorized.

- In certain sectors, custom or trade practice may support the notion of an implied license, particularly where parties have previously granted access to IP without formal agreements, and this practice is understood in the industry. However, relying on an implied license can be risky because it lacks the clear legal certainty that a formal, written license agreement provides. Therefore, it is generally recommended that the parties formalize any licensing arrangement in writing to avoid ambiguity.

For more on licensing, see Practice Notes:

- *Patent License Agreements (UAE)*

- *Trademark License Agreements (UAE)*.

Transitional Trademark License Agreement

In transactions involving the ongoing use of the same trademarks by both parties post-completion (whether in an asset purchase or a share purchase), several concerns may typically arise.

Foremost, there is a risk of consumer confusion as to the source or origins. This could harm both the buyer and seller's ability to distinguish their respective goods or services, especially if the brands are in overlapping markets or goods or services. Further, it could result in a dilution of the brand's identity or a negative impact on its reputation, especially if the two parties operate in the same markets or use the trademark in ways that are not consistent with the original branding strategy. Therefore, clear indication as to ownership of rights is critical. Any ambiguity could lead to disputes regarding who has the final say on the use, maintenance, or protection of the trademark. Also, the licensor typically wants to ensure that the quality of the products or services associated with the trademark remains consistent to avoid any harm to the brand's reputation. If both parties retain rights to use similar or identical trademarks, there could be concerns about how to prevent legal conflicts over infringement. The parties may need to negotiate the specific territory where each can use the trademark, especially if one party's operations extend into new regions or if the trademark has different legal protection levels in different jurisdictions.

If the parties agree on a joint use of the trademark, they need a clear exit strategy that outlines how either party can exit from the arrangement without causing harm to the brand or market confusion. This could involve transfer of rights, rebranding, or an agreement on phasing out the trademark over a specified time.

A limited trademark license is often essential for the buyer or target company to ensure a smooth operational transition and brand continuity, though it is not common in UAE. It helps the buyer manage the brand identity, meet customer expectations, and avoid disruptions in sales or services post-completion. The license allows the buyer to use the seller's trademarks for a limited period while preparing for a rebranding or phasing out the seller's marks, mitigating the risks of market confusion and ensuring ongoing business success during the transition.

A transitional trademark license is often essential in a carve-out transaction to allow the buyer to continue using the seller's trademark during a period of transition. However, the seller may have concerns about losing control over the trademark, potential brand dilution, and reputational risks. These concerns can be alleviated by including provisions for quality control, indemnity, termination rights, and clear rebranding requirements. The typical duration of this kind of license is usually between six months to two years, with flexibility depending on the complexity of the transaction and the buyer's need for rebranding.

For more on trademark licensing generally, see *Practice Note, Trademark License Agreements (UAE)*.

IP Assignments

In both asset purchases and share purchases, the transfer of registered IP (such as patents, trademarks, and copyrights) is typically an important aspect of the transaction. Whether separate assignment agreements are required to complete the transfer of these IP rights depends on the structure of the transaction and intention of the parties to the agreement.

In an asset purchase, the buyer acquires the purchased IP assets, as listed in the asset purchase agreement. IP counsel must define the mechanism of transfer for each type of IP and ensure that it is complied with the UAE regulations regarding these transfers. Even if the terms of the asset purchase agreement deal with these adequately, it is always advisable to have a separate agreement relating to the IP transfers, which the parties can submit to the relevant IP office at the MOE for recordal purposes, without having to divulge the commercial terms of the whole transaction.

In a share purchase, the buyer acquires the target company's shares, meaning the buyer acquires ownership of the company itself. As a result, the target company's IP rights are not transferred directly in the same way as in an asset purchase. Instead, the buyer inherits the target company's existing IP assets as part of the company's overall assets. Therefore, in a share purchase, separate assignment agreements for the transfer of registered IP are generally not required because the buyer is acquiring the target company and all of its assets, including its registered or applied-for IP. Therefore, there is no need for formal assignment of the IP from the seller to the buyer.

However, if certain IP assets are not automatically transferred with the shares due to the IP being held by a subsidiary or a separate entity, additional documentation (for example, assignments, novations, or licenses) may be needed.

Separate agreements for each type of IP asset is advisable, rather having one master agreement covering all forms of IP. This ensures compliance with the varying legal frameworks governing the transfer of different types of IP rights, preventing ambiguity that a single, broad agreement might introduce. This approach also provides flexibility for independent negotiation and management of each type of IP asset, simplifying administration and mitigating the risk of unintended consequences or cross-contamination of rights. By isolating each IP type, the parties ringfence the scope of potential disputes, thereby safeguarding other assets, and can tailor provisions to address the unique requirements of each form of IP.

All assignments of registered IP rights need to be recorded at the relevant registry for the assignment to be enforceable against third parties. The buyer typically bears recordal fees and any associated costs.

It is advisable to include a further assurances clause, or a support clause, by which the seller is obliged to support the buyer or target company in submitting the required documents to each office or registry, to ensure proper recordal of the assignments.

Transition Services Agreement

Although not commonly used in the UAE, in addition to the asset or share purchase agreement, it is advisable for the parties to enter into a transition services agreement (TSA) at completion, for the seller's continued performance of any critical shared business functions for the purchased business or target company, for a prescribed transition period after completion.

A TSA is governed by various provisions of the Civil Code, which sets out the general framework for contracts. It is important for the TSA to address the scope of services, compensation, dispute resolution, and other essential clauses (relating to consent, fraud, errors, and so on) to ensure enforceability under UAE law. If the TSA involves complex cross-border aspects or services between entities in different jurisdictions, additional legal considerations (such as international law and regulations) may also apply.

Post-Completion Issues

The post-completion steps that are usually necessary to document the transfer of the purchased IP assets to the buyer (asset purchase) or of the target company's IP assets in connection with the transaction (share purchase) vary depending on the structure of the transaction.

In an asset purchase, each IP asset is individually transferred, requiring careful attention post-completion to ensure that each assignment has been formalised and, if necessary, perfected. On the other hand, a share purchase involves the indirect transfer of IP assets through the acquisition of the target company that owns them, which necessitates comprehensive due diligence on the company's legal and financial status, including its IP portfolio.

For any registered IP rights included in an asset purchase transaction, the parties must ensure proper recordal of their transfer with the relevant registry or office post-completion. The particular requirements will depend on the type of IP right:

- **Trademarks.** The parties can enter into a separate short form deed of assignment, detailing the terms and conditions on which the trademarks are assigned to the buyer, including pending applications. The deed should identify the relevant trademarks, be signed by both parties or their authorized representatives, and be submitted to the MOE. There is no standard short form of a trademark assignment that needs to be used for these purposes.

- **Patents.** Similarly, the parties can enter into a separate short form deed of assignment, detailing the terms and conditions on which any patents or utility certificates are assigned to the buyer, including any pending applications. The assignment should be in writing and signed by all the contracting parties before the MOE and authenticated by a notary public or duly attested by the UAE government. The MOE is the recordation authority. There is no standard short form of patent or utility certificate assignment that needs to be used for these purposes.

- **Copyright.**The author or their successors can transfer all or part of their financial rights in a copyright work to a third party, whether a natural person or corporate entity. The parties can enter into a separate short form agreement to record this, which must be in writing and include a reference to the copyright being transferred, the purpose of the transfer, the duration of transfer, and the place of use. The MOE is the recordation authority. There is no standard short form of agreement that needs to be used for these purposes. The author retains ownership of all moral rights pertaining to the copyright work.

- **Industrial design.** Once the protection deed or the registration certificate is granted to the holder, the holder can grant a license to any natural or corporate entity to use or exploit the right. The license period cannot exceed the duration of the protection established under the Patent Law governing industrial designs. The license should be in writing and signed by both parties. The license must be recorded with the MOE. It becomes effective against third parties from the date it is published in the Industrial Property Bulletin. Further, it is not permissible for the license, other than in the case of assigning the establishment or transferring its ownership in whole or in part, to assign then license or grant sub-license to third parties unless the contractual license stipulates otherwise.

Recordal varies in timeframe and cost depending on the type of IP right:

- Trademarks: recordal typically takes one to two months, with fees of approximately AED3,500 to AED4,000 per trademark.

- Patents: recordal typically takes one to two months, with fees of approximately AED3,000 to AED3,500 per patent

- Copyright: recordal typically takes one to two months, with fees of approximately AED3,600 to AED4,000 per Copyright license

- Design right: recordal typically takes one to two months, with fees of approximately AED,3000 to AED3500 per Industrial Design license

After completion, there may be unresolved matters that the seller must coordinate with the buyer on after completion, that relate to the purchased IP and IT. In particular, if specific issues have been identified during the legal due diligence process, these may need resolving post-completion with the support and involvement of the seller. It is common for the seller to be obliged to assist and support the buyer post-completion. This obligation is typically outlined in the purchase agreement or a TSA.

In addition to recordals, the buyer might need the seller's help completing any IP right applications, ensuring any pending rights are successfully registered. Similarly, if there is any ongoing litigation regarding any of the IP assets included in the transaction, the buyer might require the seller's help with court filings and information sharing for an agreed period of time after completion, to ensure a smooth transition.

If the transaction involves IT assets, the seller might need to assist in ensuring a smooth transition of IT systems and infrastructure, including ensuring continued access to IT services or support.

