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SERVICES FOR SCIENCE AND EDUCATION

Improvements of Ease of Doing Business and the Access to Justice in United Arab Emirates

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ABSTRACT

There is an enormous body of legal literature hypothesizing that differences in economic prosperity can be traced to the legal systems of countries, in the same vein, some research has posited that countries with a sophisticated legal system have enjoyed greater per capita growth than countries whose legal systems having operational shortcomings. Hence, this Article provides an assessment on the role of the access to justice and the ease of ease of doing business in United Arab Emirates. This article finds that the access to justice in UAE have played a crucial role for not only the ease of starting the business but also provided a general healthy business environment.

Keywords: Justice, Business, New Business Density.

METHODOLOGICAL APPROACHES

Any economy cannot bloom without a healthy private sector. When domestic businesses flourish, they add jobs and generate income that can be spent and invested locally. Any wise government that cares about the economic well-being pays particular attention to laws and regulations affecting local businesses.[1]

Since, the judiciary matters not only for its essential value, but also for its impact on business environment, i.e., a more efficient judiciary promotes businesses through better enforcement of contracts and more secure property rights. The judicial system can incentivize businesses, have a positive effect on firms' outcomes and growth, and even affect the output of other industries that heavily rely on contracting.[2]

It should be noted also that effective business regulation enables micro and small firms the chance to grow and innovate. Accordingly, the methodological approaches of this article were conducted based on data concerning access to justice from one side such as civil justice and for which degree it is free from corruption, effective enforcement of the civil justice, rule of law, etc. and from the other side the data related to the doing business in UAE such as the data related the newly registered businesses and their density, the ease of doing business, etc.

[1] Zoltan Acs, "How Is Entrepreneurship Good for Economic Growth?" Innovations: Technology, Governance, Globalization 1, no. 1 (January 2006): 97–107, https://doi.org/10.1162/itgg.2006.1.1.97.
[2] Gregory C. Shaffer, "How Business Shapes Law: A Socio-Legal Framework," Connecticut Law Review 42 (November 2009): 147–83.

JUDICIAL SYSTEM AND ACCESS TO JUSTICE IN UAE

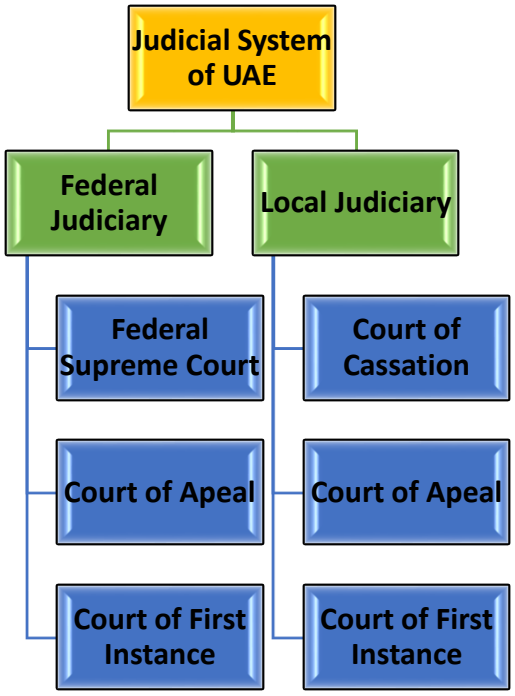
UAE Judicial System

Justice institutions in any country are critical not only for achieving well justice system but also to the achievement of the development goals. Hence, sophisticated justice institutions may foster business environment.

Structure of the Judicial Body:

The UAE is made up of seven Emirates – Abu Dhabi (Abu Dhabi city is the federal capital of the The United Arab Emirates), Dubai, Ras Al Khaimah, Ajman, Sharjah, Fujairah and Umm Al Quwain. The United Arab Emirates (UAE) is mainly a continental law system influenced by French, Egyptian and Islamic law. Common law principles, like adopting preceding court judgments as legal precedents, are broadly not acknowledged, although the judgments of the higher courts are often applied by lower courts.[3]

The judicial system in the UAE comprises two separate entities: the Federal Judiciary, as the highest judicial authority in the federation,[4] and the local courts at Emirate level on the other.



According to the UAE Constitution of 1971, every Emirate is entitled to its own court system if it so opts, or to participate in the Federal Judiciary.[5] Nevertheless, Solely the Emirates of Dubai

[3] Kristin Kamøy, *Diversity of Law in the United Arab Emirates* (Routledge, 2020), 27–56.
[4] "United Arab Emirates's Constitution of 1971 with Amendments through 2004," CHAPTER FOUR. THE UNION AUTHORITIES, Article 45. § (n.d.).
[5] Ibid, Article 104, which stipulates that "The local judicial authorities in each Emirate shall have jurisdiction in all judicial matters not assigned to the Union judicature in accordance with this Constitution." Moreover, Article 105 provides more discretion to the emirates to transfer part of its jurisdiction to the federal courts. Hence, stipulates that "All or part of the jurisdiction assigned to the local judicial authorities in accordance with the preceding Article may be transferred by a Union law issued at the request of the Emirate concerned, to the Union Courts of the First

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and Ras al Khaimah retain their own autonomous judicial systems, while the other Emirates are part of the federal judicial authority.[6] It should be noted that there are cases that always should be resolved within the ambit of the federal jurisdiction, such as the cases of 'National Security.[7]' Hence, Federal Courts are intitled to hear all cases arising within the UAE territory, like disputes, domiciliary, transactions, etc.

Three Court Systems:

The UAE provides disputing parties a choice of three court systems under outstanding different jurisdictions, for reaching settlement of their disputes by resorting to a litigation. These are the Civil courts (onshore local courts) and, two common law free zones (the offshore courts).

The UAE onshore civil courts and the offshore free zones provide parties with different procedures and processes

UAE Civil Courts (Onshore Courts):

The UAE onshore local courts operate under the civil law system and, all proceedings before these courts were conducted in Arabic. English has been added as a secondary language in specified courts. The civil onshore courts abide with both federal and local laws, which can vary according to the emirate.

Hence, according to Article 25 of the UAE Federal Civil Procedure Law, the Court of First Instance is the primary court of dispute and is entitled to consider civil, commercial, administrative, labour and personal status disputes.[8] Decisions issued by the Court of First Instance can be appealed before the appellate courts having jurisdiction. Appeals from the judgments of the appellate courts can be filed with the cassation/supreme court on specified grounds.

DIFC Courts (Offshore Courts):

The offshore courts provide for a common law jurisdiction and are independent from the local court system. The Dubai International Financial Centre (DIFC) Courts are an independent English language common law judiciary, with jurisdiction governing civil and commercial disputes nationwide, regionally, and international. The Courts began operation in 2006. Firstly,

Instance. Circumstances in which appeals against judgements by the local judicial authorities in penal, civil, commercial, and other cases may be made before the Union courts shall be defined by a Union law provided that the judgment of the Union courts in such appeals shall be final."

[6] Michelle Nelson et al., "Know-How - Arbitration News, Features and Reviews - Global Arbitration Review," web.archive.org, March 12, 2016, https://web.archive.org/web/20160312085414/http://globalarbitrationreview.com/know-how/topics/73/jurisdictions/33/united-arab-emirates.

[7] "United Arab Emirates's Constitution of 1971 with Amendments through 2004," CHAPTER SEVEN. THE DISTRIBUTION OF LEGISLATIVE, EXECUTIVE AND INTERNATIONAL JURISDICTION BETWEEN THE UNION AND THE EMIRATES, Article 120. § (n.d.).

[8] The text of Article 25 was amended by virtue of Article 1 of Federal Law no. 30/2005 dated 2005/11/30, then it was replaced by virtue of Article 1 of Federal Law no. 10/2004 dated 2014/11/10 to read as follows: The First Instance Courts shall consider the civil, commercial, administrative, labour and personal status disputes. In case of any disputes in which the Federation is a part, the Federal Courts shall consider them. "Federal Law No. 11," Chapter 2 Subject-Matter and Value-Based Jurisdictions of the Courts, Article 25. § (1992).

the jurisdiction of the DIFC Courts was restricted to the geographical area of the DIFC. In October 2011, the issuance of Dubai Law No 16. permitted the DIFC Courts to hear any domestic or international cases and to resolve commercial disputes with the consent of all parties.[9]

ADGM Courts (Offshore Courts):

The Abu Dhabi Global Market (ADGM) is an international financial free zone in Abu Dhabi, the capital city of the UAE.

It was established in accordance with Abu Dhabi Law No (4) of 2013, ADGM Courts are broadly modelled on the English judicial system. The common law of England, including the principles and rules of equity, apply and form part of the law of the Abu Dhabi Global Market (ADGM).

ADGM Courts regulations were additionally drawn from Scots and Australian Federal law and have been designed to meet the prerequisites of ADGM Courts.

Hence it should be noted here that UAE has established itself as a regional hub for providing disputes settlement platforms for international businesses. So, many foreign investors prefer to assign their disputes to arbitration committees for many reasons such as, avoiding long process of commercial disputes reviewed by the local courts, avoiding controversial international laws and accordingly save time, money and efforts which would otherwise be spent on many sessions at the courts of law.

Access to Justice

Access to justice is generally conceptualized as the enabling the people to uphold their rights and seek remedy for their grievances.[10] The UNDP, for example, defines Access to justice as "the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards". The World Justice Project, it is "the ability of all people to seek and obtain effective remedies through accessible, affordable, impartial, efficient, effective and culturally competent institutions of justice".[11] Enormous studies show that the crucial role of justice for strengthening a healthy business environment, promote growth, improving access to public services, fighting corruption, and restraining the abuse of power. Justice fosters the political process by safeguarding individuals' rights, facilitating collective action and enabling credible commitment.[12]

Hence, a sound legal system and well-functioning justice institutions are key contributors to long-term economic and social outcomes and a thriving business environment. The rule of law, justice, and access to redress may support contract enforcement, reduce transaction costs (which are impeded by theft, corruption, weak property rights, etc.), and facilitate longer-term investments and engagement in trade for stakeholders.

[9] "Law No. (16) of 2011 Amending Certain Provisions of Law No. (12) of 2004 Concerning Dubai International Financial Centre Courts" (n.d.).
[10] Catherine R. Albiston and Rebecca L. Sandefur, "Expanding the Empirical Study of Access to Justice," *Wisconsin Law Review* Volume 2013, no. No. 1 (April 9, 2013).
[11] Hassane Cissé, *Legal Innovation and Empowerment for Development* (Washington, Dc World Bank, 2012).
[12] Deborah L. Rhode, "Access to Justice," *Fordham Law Review* 69, no. 5 (2001): 1785–1819, https://ir.lawnet.fordham.edu/flr/vol69/iss5/11.

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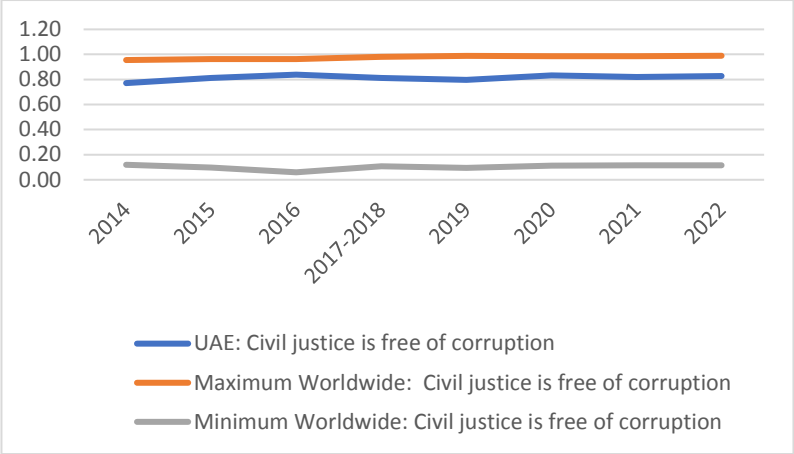


Figure 1:Civil Justice is Free of Corruption.
Source: World Justice Project.

Justice services which are free from corruption are crucial to maintain business markets by ensuring fair competition and safeguarding the property rights. It is further a key factor for strengthening good governance, legal certainty and foreseeability, thereby enhancing the development of business and investment climates and supporting private sector growth.

As it is shown in figure no. 1 UAE have witnessed from 2014 to 2022 high level of civil justice free from corruption,[13] and this can be reflected in the 2022, i.e., UAE regionally ranked 1 in the middle east and globally ranked 20 among 140 countries.[14]

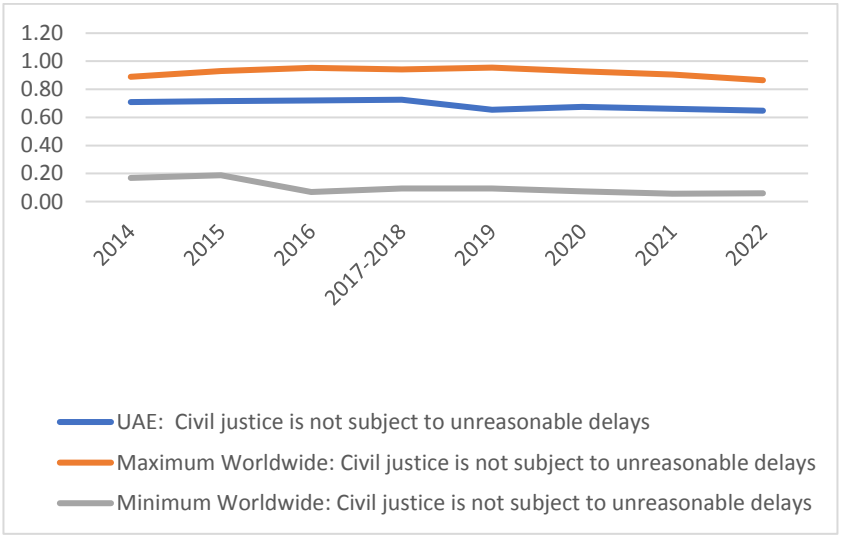


Figure 2: Civil justice is not subject to unreasonable delays
Source: World Justice Project.

[13] Civil justice is free of corruption measures whether the civil justice system is free of bribery and improper influence by private interests.
[14] "WJP Rule of Law Index," worldjusticeproject.org, accessed April 16, 2023, https://worldjusticeproject.org/rule-of-law-index/country/2022/United%20Arab%20Emirates/Civil%20Justice/.

Effective performance of justice generally and specifically justice which is not subject to unreasonable delays is necessary both to create a supportive environment for business and to enable a level playing field for economic stakeholders. Businesses may face legal issues related to tax, regulation, employment or payment of invoices, which may result in financial, social and reputational costs so effective justice services may help to solve those problems.

As it is shown in figure no. 2, UAE justice system experienced from 2014 to 2022 a high level of civil justice that is not subject to unreasonable delays, which positioned UAE justice system on 2022 from this assessment to be ranked 2nd in the middle east and ranked globally 22 among 140 countries.[15]

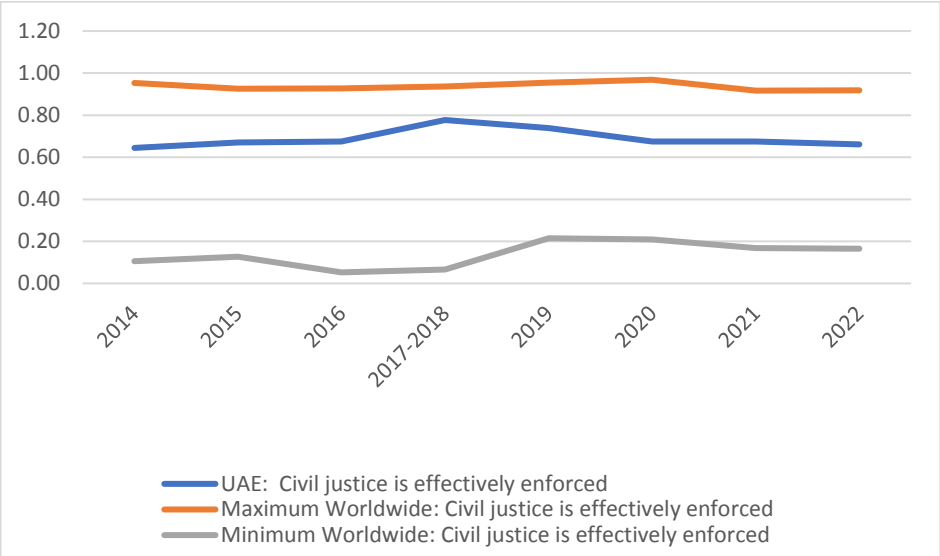


Figure 3: Civil justice is effectively enforced
Source: World Justice Project.

Effective enforcement of civil justice enquired about the enforcement of court rulings and their timeliness. As it is shown in figure no. 3 the effectiveness of the civil justice enforcement of UAE was highly ranked from 2014 to 2022 and this can be reflected in 2022 rank since it occupied 26th position of the most effective enforced justice among 140 countries, and regionally it ranked no. 1.[16]

[15] "WJP Rule of Law Index," worldjusticeproject.org, accessed April 16, 2023, https://worldjusticeproject.org/rule-of-law index/country/2022/United%20Arab%20Emirates/Civil%20Justice/.
[16] "WJP Rule of Law Index," worldjusticeproject.org, accessed April 16, 2023, https://worldjusticeproject.org/rule-of-law-index/country/2022/United%20Arab%20Emirates/Civil%20Justice/.

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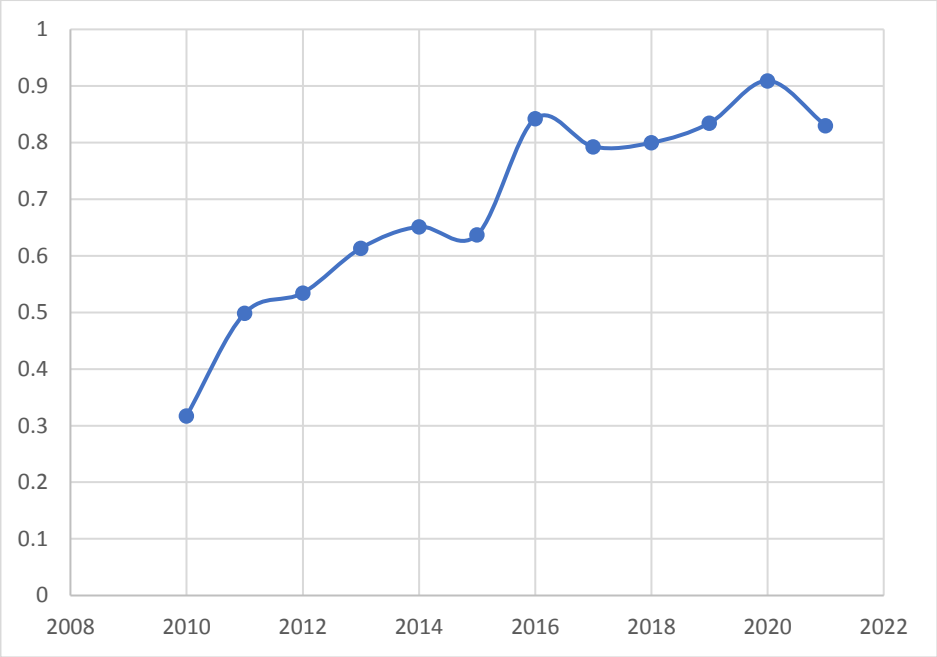


Figure 4: Rule of Law: Estimate.
Source: World Bank

Access to justice is a basic principle in rule of law which describe how citizens should have equal access to the legal systems in their contex, i.e., the rule of law requires that all individuals, institutions, entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated.[17]

The rule of law requires adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, legal certainty, avoidance of arbitrariness, and procedural and legal transparency. As it is shown in figure no. 4 rule of law in UAE witnessed incremental improvements from 2010 to 2022,[18] so, where the rule of law flourishes, there is higher potentiality of economic growth and better social good. Conversely, the poor of the rule of law stifles business activities.

DOING BUSINESS IN UAE

Newly Registered Businesses and Their Density

New businesses registered are the number of new limited liability corporations (or its equivalent) registered in the calendar year.

Generally, it can be said that the businesses relevant data is a critical source of data that facilitates the measurement of entrepreneurial activity in certain economy over time. The data also allows for a greater understanding of the relationship between new firm registration, the

[17] Iutisone Salevao, *Rule of Law, Legitimate Governance & Development in the Pacific* (ANU E Press, 2005), 1–35, http://www.jstor.org/stable/j.ctt2jbhxk.6.

[18] According to the World Bank, Rule of Law captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. Estimate gives the country's score on the aggregate indicator, in units of a standard normal distribution, i.e., ranging from approximately -2.5 to 2.5.

regulatory environment, and economic growth. Many studies used the businesses data has shown a significant relationship between the level of cost, time, and procedures required to start a business and new firm registration.[19]

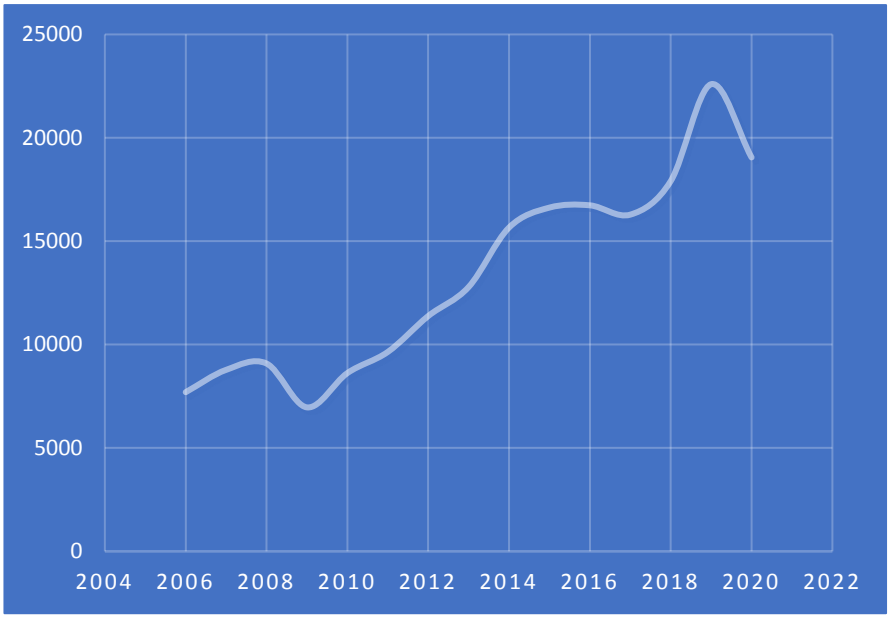


Figure 5:Source: New Business Registered in UAE
Source: World Bank's Entrepreneurship Database

As it is shown above in figure no.5 the number of newly registered businesses in UAE was growing over time, so, in the light of the relevant studies, it can be assumed that the registered companies benefit from the legal and financial services provided by court system and financial institutions, services not available to unregistered businesses (unformal economy). Their workforces enjoy the benefits of social security protections. The economy itself profits from positive spillovers: where formal businesses are high, adding new jobs and economic growth also tend to be high. Moreover, as more businesses formalize, the tax base magnifies, enabling the government to spend on productive activities and pursue other social and economic policy objectives.[20]

Ease of Doing Business in UAE

The ease of doing business data here are meant to measure regulations directly affecting businesses and did not directly measure more general conditions such as a nation's proximity to large markets, quality of infrastructure, inflation, or crime.

[19] Leora F. Klapper and Inessa Love, "The Impact of Business Environment Reforms on New Firm Registration," *SSRN Electronic Journal*, 2011, https://doi.org/10.2139/ssrn.1786802.
[20] M. Fritsch and F. Noseleit, "Investigating the Anatomy of the Employment Effect of New Business Formation," *Cambridge Journal of Economics* 37, no. 2 (October 8, 2012): 349–77, https://doi.org/10.1093/cje/bes030.

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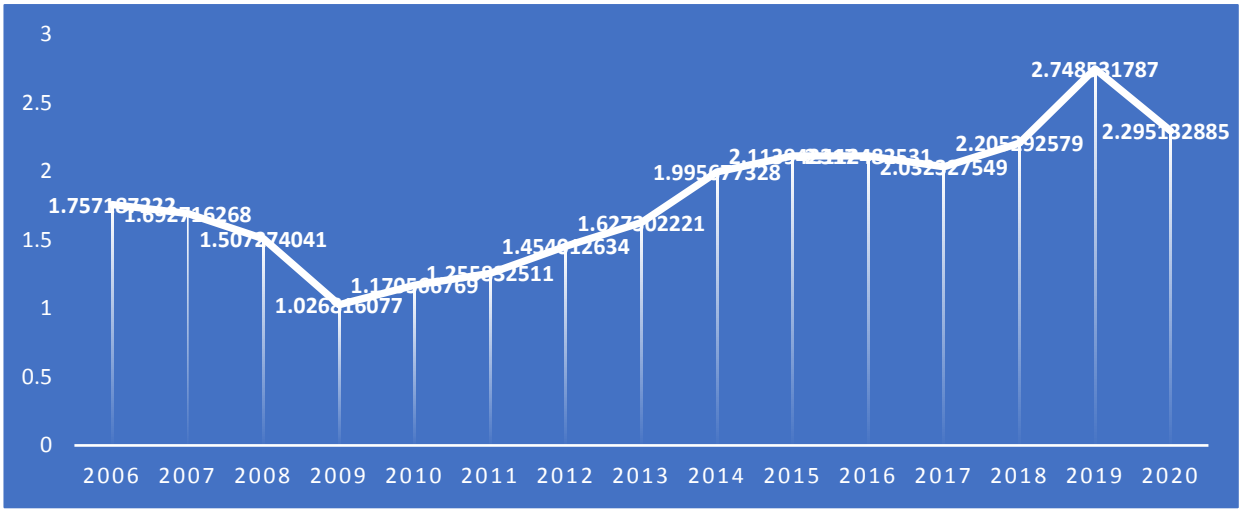


Figure 6: UAE New Business Density (New Registration Per 1,000 People Ages 15-64)
Source: World Bank's Entrepreneurship Database

As it is shown in the above figure no. 6 the new business density rate which means the number of newly registered firms with limited liability per 1,000 working-age people (ages 15-64) per calendar year. According to the World Bank adopted methodology, the main input for calculating the new business entry density rate is the number of newly registered companies with limited liability (or its equivalent), per calendar year. Importantly, limited liability is a concept whereby the financial liability of the firm's members is limited to the value of their investment in the company. In the figure no. 6, the density of the new businesses increased steadily from 2009 to 2020, which means another valuable indicator that quantifies the impact of regulatory, political, and macroeconomic institutional changes on new business registration, a vital component of a dynamic private sector.

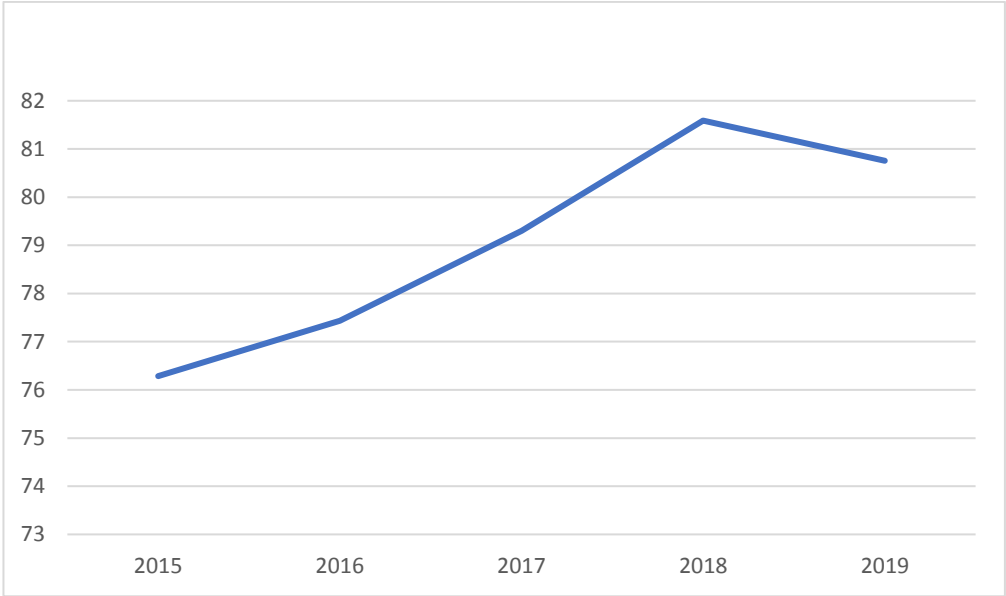


Figure 7:UAE Ease of Doing Business Score from 2015 to 2019
Source: World Bank's Entrepreneurship Database

The ease of doing business scores UAE economy with respect to regulatory best practice, showing the proximity to the best regulatory performance on each Doing Business indicator.[21]

When compared across years as it is shown in figure no. 7, the ease of doing business score shows how much the regulatory environment for local entrepreneurs in UAE has changed over time in absolute terms, as indicated there is overall sharp increase of the ease of doing business in UAE from 2015 to 2018 and a minor decline in 2019. These scores reflecting inter alia the improvement of protection provided to the minority investors, enforcement of contracts, resolving insolvency disputes over time.

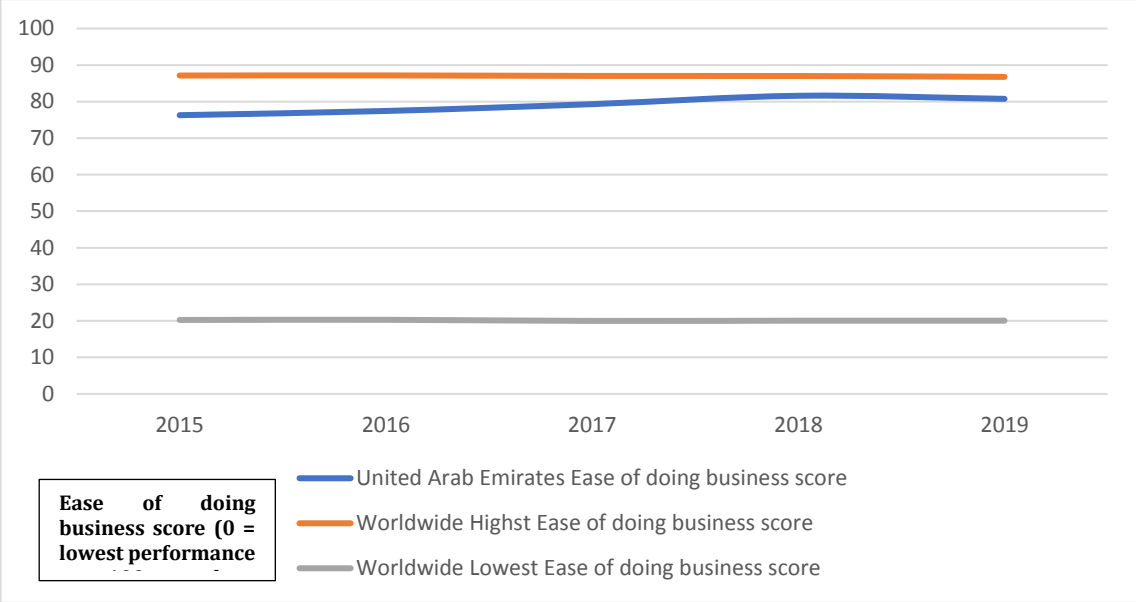


Figure 8: Ease of Doing Business in UAE Score in comparison to the worldwide highest and lowest Scores from 2015 to 2019.
Source: World Bank's Entrepreneurship Database

As it is shown in the above figure no. 8 the ease of doing business ranking shows only how much the regulatory environment in UAE has changed relative to that in other economies.

As reflected in this figure, ease of doing business score in UAE is close to the worldwide highest ease of doing business score, so, UAE ranked 16th among 190 countries in 2019.[22]

[21] An economy's score is indicated on a scale from 0 to 100, where 0 represents the worst regulatory performance and 100 the best regulatory performance. The aggregate ease of doing business score for the economy is the simple average of its scores on each of the 10 topics included in the ranking: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency. All topics are weighted equally.

[22] Ease of doing business ranks economies from 1 to 190, with first place being the best. The ranking of economies is determined by sorting the aggregate ease of doing business scores. A high ranking (a low numerical rank) means that the regulatory environment is conducive to business operation.

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CONCLUSION

UAE has emerged as one of the most attractive destinations not only for investments but also for doing business, the data related to the doing business in UAE such as the data related the newly registered businesses and their density, the ease of doing business obviously demonstrate that fact, so, UAE ranked 16 out of 190 countries in 'World Bank's Ease of Doing Business Ranking 2019. Access to justice relevant data in terms of doing business in UAE such as civil justice for which degree it is free from corruption, effective enforcement of the civil justice, rule of law, judicial system, etc., demonstrated that access to justice in UAE provides the ability of businesses to seek and obtain a just resolution of legal problems through a wide range of legal and justice services, which were reflected in the onshore of offshore courts, the onshore courts, where proceedings are conducted in Arabic, operate a civil law-based system.

In contrast, the offshore jurisdictions, which include the Dubai International Financial Centre in Dubai, and the Abu Dhabi Global Market in Abu Dhabi. Both offshore courts are free to adopt their own civil and commercial laws and procedures, and to establish their own courts.

Proceedings in the offshore courts are conducted in English and a common law-based system is operated. So, businesses disputes can be resolved in either the onshore or offshore jurisdictions and can be adjudicated in the light one or both legal traditions, depending on the circumstances.

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