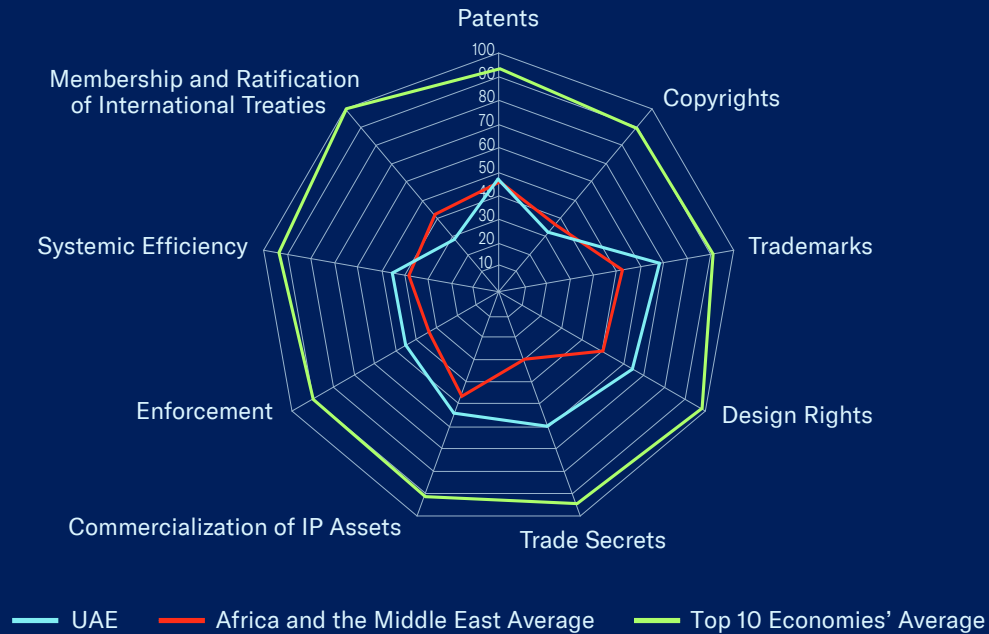
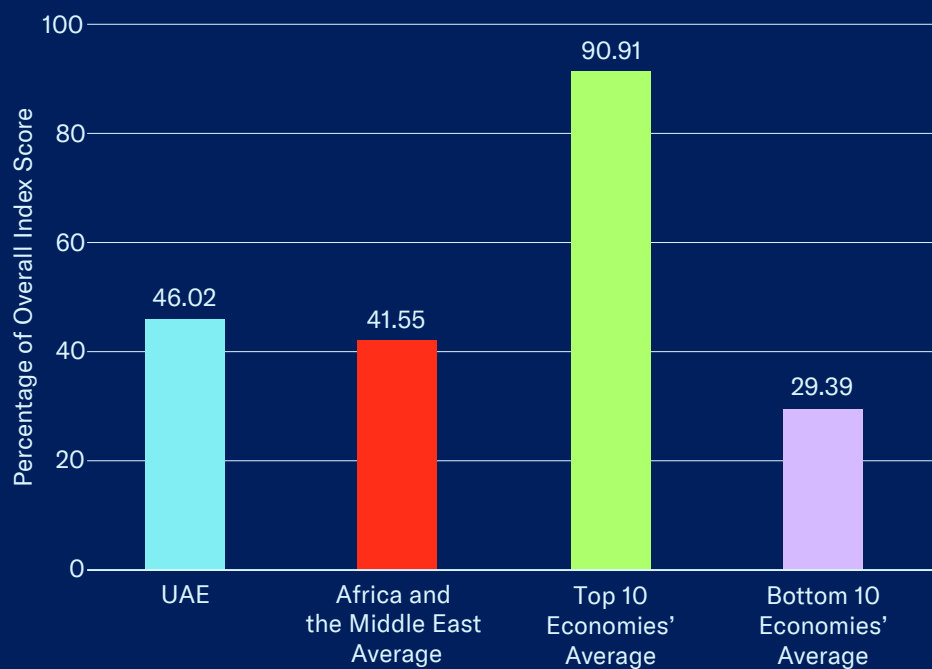
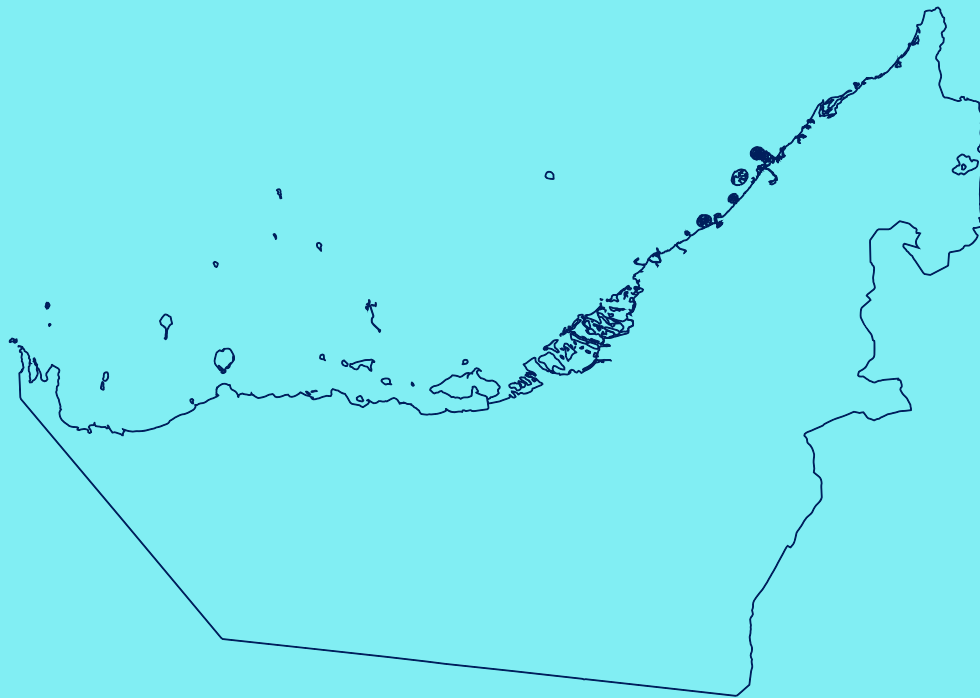


Category Scores



Overall Score in Comparison





Key Areas of Strength

- Term of protection for design rights extended in 2021
- Acceded to Madrid Protocol in 2021
- New Trademark Law improves environment for well-known marks and raises potential damages
- New Trademark Law provides stronger border measures against counterfeit goods
- Defined RDP term introduced in 2020
- New Foreign Direct Investment Law offers the possibility of 100% foreign ownership, granting foreign investors a potential exemption from the requirement of having an Emirati partner holding a minimum of 51% of a company's shares
- Basic IP protections in place
- Enhanced anti-counterfeiting efforts, including criminal penalties
- Awareness-raising and capacity-building efforts on importance and value of IP rights

Key Areas of Weakness

- RDP term contains a potential exception, establishing a compulsory license (Article 5) potentially out of step with its international obligations
- Deep uncertainty over protection for biopharmaceutical patents, as no action has been taken on 2017 approval of two generic versions of a pharmaceutical product still on-patent
- Significant holes in copyright regime—limited online specific legal framework and enforcement capacity
- High levels of physical counterfeiting—UAE physical markets listed in USTR's *Out-of-Cycle Review of Notorious Markets*
- Gaps in customs measures and civil remedies for infringement
- Limited participation in international treaties

Indicator	Score
Category 1: Patents, Related Rights and Limitations	4.25
1. Patent term of protection	1.00
2. Patentability requirements	0.50
3. Patentability of computer-implemented inventions (CIIs)	0.50
4. Plant variety protection, term of protection	1.00
5. Pharmaceutical-related patent enforcement and resolution mechanism	0.00
6. Legislative criteria and use of compulsory licensing of patented products and technologies	1.00
7. Patent term restoration for pharmaceutical products	0.00
8. Membership of a Patent Prosecution Highway (PPH)	0.00
9. Patent opposition	0.25
Category 2: Copyrights, Related Rights, and Limitations	2.28
10. Copyright (and related rights) term of protection	0.53
11. Legal measures which provide necessary exclusive rights that prevent infringement of copyrights and related rights (including Web hosting, streaming, and linking)	0.50
12. Expeditious injunctive-style relief and disabling of infringing content online	0.00
13. Availability of frameworks that promote cooperative action against online piracy	0.00
14. Scope of limitations and exceptions to copyrights and related rights	0.50
15. Technological protection measures (TPM) and digital rights management (DRM) legislation	0.50
16. Clear implementation of policies and guidelines requiring that any proprietary software used on government ICT systems should be licensed software	0.25
Category 3: Trademarks, Related Rights, and Limitations	2.75
17. Trademarks term of protection (renewal periods)	1.00
18. Protection of well-known marks	0.75
19. Legal measures available that provide necessary exclusive rights to redress unauthorized uses of trademarks	0.75
20. Availability of frameworks that promote action against online sale of counterfeit goods	0.25
Category 4: Design Rights, Related Rights, and Limitations	1.30
21. Industrial design term of protection	0.80
22. Legal measures available that provide necessary exclusive rights to redress unauthorized use of industrial design rights	0.50
Category 5: Trade Secrets and the Protection of Confidential Information	1.80
23. Protection of trade secrets (civil remedies)	0.50
24. Protection of trade secrets (criminal sanctions)	0.50
25. Regulatory data protection term	0.80

Indicator	Score
Category 6: Commercialization of IP Assets and Market Access	3.25
26. Barriers to market access	0.25
27. Barriers to technology transfer	0.50
28. Registration and disclosure requirements of licensing deals	0.50
29. Direct government intervention in setting licensing terms	0.50
30. IP as an economic asset	0.50
31. Tax incentives for the creation of IP assets	1.00
Category 7: Enforcement	3.13
32. Physical counterfeiting rates	0.45
33. Software piracy rates	0.68
34. Civil and preceudural remedies	0.75
35. Pre-established damages and/or mechanisms for determining the amount of damages generated by infringement	0.25
36. Criminal standards including minimum imprisonment and minimum fines	0.50
37. Effective border measures	0.50
38. Transparency and public reporting by customs authorities of trade-related IP infringement	0.00
Category 8: Systemic Efficiency	2.25
39. Coordination of IP rights enforcement	0.25
40. Consultation with stakeholders during IP policy formation	0.50
41. Educational campaigns and awareness raising	1.00
42. Targeted incentives for the creation and use of IP assets for SMEs	0.25
43. IP-intensive industries, national economic impact analysis	0.25
Category 9: Membership and Ratification of International Treaties	2.00
44. WIPO Internet Treaties	1.00
45. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	0.50
46. Patent Law Treaty and Patent Cooperation Treaty	0.50
47. Membership of the International Convention for the Protection of New Varieties of Plants, Act of 1991	0.00
48. Membership of the Convention on Cybercrime, 2001	0.00
49. The Hague Agreement Concerning the International Registration of Industrial Designs	0.00
50. At least one post-TRIPS FTA with substantive IP provisions and chapters in line with international best practices	0.00

Total Score:
23.01



Spotlight on the National IP Environment

Past Editions versus Current Scores

The UAE's overall score has increased from 41.98% (20.99 out of 50) in the ninth edition to 46.02% (23.01 out of 50) in the tenth edition. This reflects a score increase on indicators 18, 21, 28, 32, 35, 37, and 45.

Area of Note

As noted last year, in January 2021, the Gulf Cooperation Council (GCC) Patent Office announced that following the 41st Session of the Supreme Council and amendments to the Patent Regulation, the Patent Office would no longer be accepting patent applications. The announcement was unexpected, as the GCC patent application route had been operational for more than two decades. This was followed up with an announcement by the GCC Secretariat in April 2021. Under this announcement, new amendments to the GCC Patent Regulation were issued whereby a new patent application pathway had been introduced replacing the old regulation. Under this new proposed system, the regional GCC patent appears to have been abolished. Instead, future patent applications will be routed through individual GCC member states. At the time of research, no further announcements had been made and it remained unclear, first, what would happen to applications filed prior to 2021 and, second, how this new system would work in practice and how/if individual applications would be validated in all GCC member states. Statistics on patents granted, published on the GCC Patent Office's website, suggest that no patents had been granted by the office in 2021. The Index will continue to monitor these developments in 2022.

Patents, Related Rights, and Limitations

2. Patentability requirements; 3. Patentability of computer-implemented inventions (CIIs); and 6. Legislative criteria and use of compulsory licensing of patented products and technologies:

In 2021, a new industrial property law, Federal Law No. 11, was introduced and came into effect. The new legislation replaces the old Patent Law and introduces some important changes to the UAE's national IP environment; see indicator 21 for details relating to the protection of design rights. With respect to patents, up until 2021, patent registration in the UAE was available through a traditional domestic/national route as well as through the filing of a GCC patent application. Given the suspension of the GCC regional route (described above), rightsholders wishing to obtain patent protection for their inventions in the UAE must now apply directly to the relevant Emirati registration authorities.

Historically, there have been some differences between patentable subject matter in the UAE compared to the GCC. For example, with respect to CIIs, while computer programs and software have been excluded as such, patents have been granted for CIIs in the UAE if the invention was linked to hardware and the claims were drafted as a technical solution to a technical problem, provided that the other criteria for patentability were satisfied. The data bear this out. According to international patenting statistics from WIPO, since 2000 a relatively large number (about 7%) of patent applications in the UAE have been in the field of computer technology. The situation is different under the old GCC route where few CII patents have been granted.

Unlike the UAE, statistics published by the GCC on the scientific fields with the highest number of patents granted do not include ICT and computer-related grants. It is not expected that the new

industrial property law will fundamentally change practices relating to CII, but the Index will monitor the extent to which Emirati examination guidelines and practice change and do become more restrictive. In contrast, for other high-tech fields, the new law appears to impose new restrictions. For example, patentable subject matter appears to have been somewhat restricted with additional exclusions added for biological research activities. Similarly, the basis for overriding granted rights through the issuing of a compulsory license and the use of patented technologies in biopharmaceutical combination therapies appear to have been broadened and patent rights weakened. At the time of research, no implementing regulations had been published and it was not clear if these changes would amount to substantially different examination and grant criteria, particularly for biopharmaceutical inventions. On this basis, the UAE's score on these indicators remains unchanged in this edition of the Index. The Index will continue to monitor these developments in 2022 and the extent to which rightsholders are able to continue to obtain and maintain patent protection for their inventions.

Trademarks, Related Rights, and Limitations

18. Protection of well-known marks: In 2021 a new trademarks law, Federal Decree-Law No. 36/2021 On Trademarks, was introduced and came into effect. The new law replaces the old trademark law and introduces several improvements to the legal environment for trademark. As detailed below under indicators 28, 35, and 37, the new law eliminates registration requirements for trademark licensing agreements, increases potential damages for trademark infringement, and clarifies the extent to which customs officials may take *ex officio* action against suspected goods. In addition, the new law also improves the protection of well-known marks. Under articles 4 and 5, the definition of well-known marks is now clearer, and protection is better defined with regard to likelihood for confusion even for products in different classes of

goods. As a result of these positive developments, the score on this indicator has increased by 0.25.

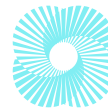
Design Rights, Related Rights, and Limitations

21. Industrial design term of protection:

Under article 49 of Federal Law No. 31 of 2006, registered design rights were granted a non-renewable 10-year term of protection. The new industrial property law, Federal Law No. 11, has doubled this term of protection to 20 years. As a result of this positive development, the score on this indicator has increased.

Trade Secrets and the Protection of Confidential Information

25. Regulatory data protection term: The protection of biopharmaceutical innovation in the UAE has historically been defined by Ministerial Decree 404 from 2000, which tied the exclusivity status of a product in the UAE to the term of patent protection in the country of origin. The period of protection for applications submitted for marketing approval after January 1, 2000, has been for the remaining term of the patent or patents protecting the drug in its country of origin. As such, there has been no period of RDP defined or recognized in UAE law. As noted in last year's edition of the Index, this changed in 2020 when the Ministry of Health and Prevention issued Ministerial Resolution 321. The resolution provides a defined eight-year period of RDP for submitted pre-clinical and clinical data submitted by an original reference applicant. Article 2 of the resolution explicitly states that it is "not permissible" for a follow-on applicant to "obtain the marketing approval for a similar drug product" by relying on a previously submitted dossier. There is, however, some uncertainty over whether the full eight-year RDP term will be available. Specifically, Article 3 allows follow-on applicants to register their products in the last two years of the granted RDP in what amounts to a so-called "Bolar exemption." Bolar exemptions are normally in place to allow



follow-on manufacturers to conduct research and necessary scientific studies to meet regulatory safety and quality requirements in preparation for market approval. Due to the long timelines involved in the drug approval process, the primary goal of these types of exemptions is to ensure that there is no undue delay for the launch of a generic follow-on product once the reference product's exclusivity has expired. In the case of the UAE, Article 3 of the resolution does not specify or outline what type of activities follow-on manufacturers are allowed to engage in, and there is no assurance that the reference product's full eight-year period of data exclusivity will be maintained.

There is also a degree of uncertainty regarding the meaning and purpose of Article 5 of the decree. The article states that the relevant drug regulatory authorities may, under "exceptional" circumstances, including "for the purpose of protecting public health," override or disregard an existing term of RDP and approve a follow-on product. New developments in 2021 add to the uncertainty over whether a full eight-year period of data exclusivity will be available to rightsholders. Article 62(2) of the new industrial property law, Federal Law No. 11, states that the period of protection for confidential information submitted to government agencies will be protected for "a period not exceeding (5) five years." This is less than the eight-year term in Resolution 321. At the time of research, it was not clear how the conflicting provisions of Federal Law No. 11 and Resolution 321 would interact, and which would take precedence.

As the Index stated last year, the introduction of a defined term of RDP was a positive step and a clear improvement in the biopharmaceutical IP environment in the UAE. Providing rightsholders with a full, uninterrupted eight-year term of protection would position the UAE as one of the leaders on biopharmaceutical RDP in the MENA region. Should the term of RDP be reduced from eight years to five years of protection, in line with

the new provisions of Federal Law No. 11, the score on this indicator will be reduced. The Index will continue to monitor these developments in 2022.

Commercialization of IP Assets and Market Access

28. Registration and disclosure requirements of licensing deals: Emirati law has historically required licensing agreements to be registered with the relevant authorities. Under both national law and the GCC Patent Regulation, a licensing contract must have been recorded in order to have legal effect against third parties. For GCC patents, licensing agreements were required to be registered with the GCC Patent Office. Agreements were to be registered, reviewed, and approved by the Patent Office as outlined in Article 54 of the Implementing Bylaws. The registration application included a requirement of submitting the licensing contract, which must be translated into Arabic. Details of an agreement that shall be listed on a register include the legal names of the contracting parties, the legal domicile of the parties, and "contract subject and term." The UAE's new industrial property law, Federal Law No. 11, does not fundamentally change this. Under Article 50, patents and industrial design rightsholders must continue to register the relevant licensing agreement with the register. In contrast, and in a positive development, the new trademark law (Federal Decree-Law No. 36/2021 On Trademarks) has eliminated this requirement for trademarks. Specifically, Article 31 of the law states explicitly that licensing agreements do not need to be registered. As a result, the score on this indicator has increased by 0.25.

Enforcement

35. Preestablished damages and/or mechanisms for determining the amount of damages generated by infringement: Both the new industrial property law (Federal Law No. 11) and the new trademark law (Federal Decree-Law No. 36/2021 On Trademarks)

have increased the potential damages available to rightsholders in the event of infringement of relevant IP rights. Both laws now provide potential penalties of between AED 100,000 and AED 1 million (circa USD 27,000-270,000). As a result, the score on this indicator has increased by 0.25.

37. Effective border measures: Article 45 of the new trademark law (Federal Decree-Law No. 36/2021 On Trademarks) provides UAE customs officers with *ex officio* authority to suspend the release of suspected trademark-infringing goods up to a maximum period of 20 days. This is a positive development, as the UAE has long been identified as a central hub for the transshipment of counterfeit goods and the global trade of physical counterfeit goods. For example, in the 2021 publication *Global Trade in Fakes: A Worrying Threat*, the OECD and EUIPO found that the UAE was one of the top provenance economies for counterfeit products in the world. As a result, the score on this indicator has increased by 0.25.

Membership and Ratification of International Treaties

45. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks: In September 2021, WIPO announced that the UAE had acceded to the Protocol Relating to the Madrid Agreement. The UAE's accession to the protocol is a positive development and has resulted in a score increase on this indicator.