



Setting up business in the UAE

General Information

The UAE extends along the southern coast of the Arabian Gulf from Qatar in the west to Oman in the east, bordering Saudi Arabia to the south. In 1971, Abu Dhabi, Ajman, Dubai, Fujairah, Sharjah and Umm Al Qaiwain formed a federation, creating the UAE as a sovereign state. Ras Al Khaimah joined the UAE in 1972.

Figure 1 shows UAE's major cities and its position in the Arabian Gulf region.

Figure 1



Investment Attractiveness

Despite maintaining ownership interests in several key economic sectors, including oil production, petrochemicals and large-scale manufacturing, the Government is committed to liberal, free market policies and to the creation of a business environment conducive to commercial activity. There are no foreign exchange controls, quotas or trade barriers. Import duties are extremely low, many products are exempt from duties and currently no corporate taxation is levied.

The UAE has been rated by official regional bodies as one of the most attractive investment destinations in the Arab world for foreign capital based on its various incentives, practical laws, advanced infrastructure, inexpensive energy and labour and its location in the heart of a regional consumer market of more than 1 billion people.

Taxation and Custom Duties

No corporate, income, withholding, value added or sales taxes are currently assessed in Abu Dhabi other than (a) a flat rate tax on the annual profits of branches of foreign banks, (b) a flat rate tax on hotel services and entertainment, (c) taxes on oil and gas companies at rates specified in the relevant concession agreements, and (d) taxes/custom duties on alcohol and cigarettes. In addition, agreements for the avoidance of double taxation have been concluded between the UAE and various countries including France.

A customs union was introduced by the Gulf Co-operation Council ("GCC") on 1 January 2003. A standard custom duty of 5% is levied on the import of most goods into GCC member states. However, a significant number of classes of goods are exempt from duty. These include, amongst others, goods listed for exemption pursuant to the GCC Unified Customs Tariff, goods imported by military and security forces, personal effects and used household items and certain exempted raw materials, equipment and spare parts. Intra-UAE trade is not generally subject to custom duties and neither are certain "qualified industrial projects".

Exchange Rate

The currency for the UAE is the Dirham (100 Fils to the Dirham). The exchange rate has remained relatively constant since 1980 and is currently USD 1 to AED 3.6. There are no exchange controls in the UAE and the Dirham is freely convertible.

Interest Rates

The link with the US dollar and the large amount of US dollar-denominated exports means that local interest rates are expected to track US rates to avoid large movements in and out of the currency.

Business Vehicles

Limited Liability Company (LLC)

A foreign company can become a shareholder in an LLC incorporated in the UAE. At least 51% of the shares of such an LLC must be held by UAE Nationals or companies which are 100% owned by UAE Nationals. The initial share capital of such an LLC must be at least Dhs 150,000 (Dhs 300,000 in Dubai). It is also a requirement that all of the initial share capital must be fully paid up prior to an LLC being formed (although in practice, in most cases the share capital can be removed once the company is incorporated).

Subscription will have to be evidenced by a bank certificate. Individual shares will have an equal nominal value of at least Dhs 1,000 each. As with most limited companies, the liability of the shareholders of an LLC is limited to the extent of their respective shareholdings in the LLC.

It is not necessary to distribute the profits of an LLC between the shareholders in direct proportion to their shareholdings. It is not uncommon to have a situation whereby up to 80% of the profits available for distribution are paid to a shareholder in return for the provision of technical know-how and management services. In practice, many foreign investors enter into arrangements whereby all or most of the share capital is provided by the foreign investor and the vast majority of profits are to be passed to the foreign investor. While there are a number of devices which may be used for this purpose, it should be noted that any side arrangements which purport to contradict the registered articles of association of the company may not be enforceable before a UAE court.

The law imposes mandatory pre-emption rights on the sale of shares in an LLC whereby a selling shareholder must first offer his shares to the other shareholders. A 49% foreign shareholder may not buy the shares held by a UAE National shareholder so the pre-emption rights will only protect the local shareholder in practice.

Joint Participation

The UAE Companies Law permits the formation of joint participations between two or more partners who have agreed to share the profits or losses of one or more commercial businesses operating in the UAE.

The advantage of using this structure is that a joint participation does not need to be formally registered and can therefore be established immediately. In normal circumstances the joint participation would trade under the name and trade licence of the locally registered partner. The main disadvantage of a

joint participation is that it will not always be possible to obtain independent financing or to hire its own employees. All such activities are likely to be carried on in the name of the local party.

Commercial Agency

The appointment of a registered commercial agent is regulated by Federal Law No. 18 of 1981, as amended, regarding commercial agencies (the "CAL"). It is not possible to contract out of the CAL and its requirements override any conflicting contractual agreements between a foreign company and a registered commercial agent. In order to create a commercial agency, a foreign entity has to enter into an agreement with a UAE National or a company wholly owned by UAE Nationals. Under such an agreement, the foreign entity appoints the national party as its commercial agent to market its products and services within a defined territory, which is usually one of the Emirates or the whole of the UAE. This type of representation does not involve a foreign company having an independent presence in the territory in question.

The commercial agency route may be cheaper than other methods of doing business in the UAE, as the foreign entity does not need to establish a physical presence in the UAE. This avoids the need to procure any separate registrations as the business will be carried on under the trade licence of the commercial agent. Subject to the provisions of the agreement between the parties, the only recurring expense might be the amount of commission payable to the commercial agent, which generally only becomes payable once contracts for products or services have been obtained.

A commercial agent would be appointed to distribute and/or sell the services of the foreign entity in return for a commission. No real distinction is made between a commercial agent and a distributor, so the expression "agent" is interpreted to apply equally to both.

A commercial agent's appointment is, generally, an exclusive one. It is not possible normally to appoint different trade agents in the same territory to "target" different groups of customers in respect of the same class of products or services.

It is very important to note that such appointments may prove difficult to terminate, regardless of the termination provisions in the agency agreement. In most cases, such relationships are terminated by way of mutual consent, which commonly involves a payment of compensation to the commercial agent. In addition, a principal may be considered in breach of the agency agreement if it refuses to renew such agreement upon the expiration of the duration of such agreement.

In order to try to avoid the protection afforded to registered agents by the CAL, many foreign entities enter into unregistered agency agreements, often with companies that are not wholly owned by UAE Nationals. The CAL is not applicable to unregistered agency agreements. However, the CAL states that unregistered commercial agencies shall not be recognised and nor shall any claim be heard with regard to them. There is considerable confusion as to whether the CAL renders unenforceable all unregistered agency agreements. In 1998 the Dubai Court of Cassation held that an unregistered commercial agency was unenforceable on this basis. Alternatively, the court might apply the provisions of the Commercial Code. Unregistered agents benefit from various protection set out in the Commercial Code but termination of unregistered agency agreements is less onerous on the principal than termination of a registered agency agreement.

Branch Office

This option would involve the foreign entity establishing an independently licensed branch office in the UAE which will be registered with the authorities. Although the companies law recognises this type of structure it does not deal with it in any detail and, to a large extent, existing Emiri based practices continue to govern the registration and operation of branch offices.

Once registered, a branch office is permitted to carry on business in its own name. It may, for example, sponsor its own personnel for employment purposes, lease offices and enter into contracts in its own name. However certain matters, in particular the import of goods, equipment or plant are not permitted and, in practice, will require the assistance of the branch's "sponsor".

To establish a branch, the foreign entity must have a local agent, colloquially referred to as a "sponsor". Although it is not unknown for "sponsors" to be active, for example by providing promotional services, often the sponsor's role is limited to providing assistance in relation to registration and official administration formalities including:

1. the obtaining of licences from the Municipality, the Ministry of Economy and Commerce and the Chamber of Commerce;
2. the obtaining of visas, residence and work permits and licences for employees; and
3. assistance in dealing with local authorities.

A "sponsor" is entitled to a fee (even if inactive) and the level and method of calculation of the fee is very much dependent upon the type of business which the branch carries on. The fee rates are fairly established and the authorities have been known to query rates which do not comply with the norm, although there is still considerable scope for negotiation.

If a "sponsor" is required to provide services in addition to the basic registration requirements, it is likely to seek an additional fee. There are however some restrictions on payment of fees over and above the norm and this aspect should be further examined should the need arise.

Some UAE based companies specialise in finding appropriate sponsors for foreign entities.

It must however be appreciated that branches are not regarded as "local" companies. As a result, the "local preferences" are not available to them and branches can be specifically excluded from some fields of activity.

The Companies Law specifically provides that a "sponsor" is not liable for any of the obligations or liabilities of a branch's operations, nor are "sponsors" required to invest any capital in the branch office. Further, a "sponsor" should play no role in the management of a branch office and should not be involved in negotiating contracts on behalf of the branch office.

It must be emphasised that the termination of "sponsorship" arrangements is likely to be as difficult to achieve, regardless of any contractual provisions, as the termination of a commercial agency.

Free Zones

A number of Free Zones ("FZ") have been established in the UAE. They include the Jebel Ali FZ, the Dubai Airport FZ, the Dubai Technology, Electronic Commerce and Media FZ (which contains the Dubai Internet City and the Dubai Media City) and the Sharjah FZ (also called the Hamriyah FZ).

The UAE Companies Law (as amended by Federal Law No.15 of 1998) exempts certain entities from its provisions. Exempt companies include those established in FZs to the extent that the FZ has alternative regulations. Many FZs now have their own regulations set by their own authorities allowing much greater flexibility in corporate structuring.

The advantages of establishing entities in FZ's depend on the FZ in question but include the ability to have a 100% foreign owned company and to have a single shareholder and director. A foreign entity setting up in a FZ does not need to appoint an agent or have a sponsor. There are also tax advantages in setting up in FZs (for example, FZ establishments and their employees are exempt from taxes relating to operations within the FZs). There are no restrictions on repatriation and transfer of capital, profits and wages to any place outside the FZs.

Setting up business in a FZ is often simpler (and consequently quicker and cheaper) than setting up elsewhere in the UAE as the relevant FZ authority is the only authority which needs to be dealt with. In addition, FZ authorities often provide additional services such as renting office and warehousing space and organising visas and work permits.

It should be noted that FZ entities are intended to operate within the relevant FZ and are not licensed to operate within the rest of the UAE. Thus, goods imported by a Jebel Ali FZ company will be subject to customs duties when taken out of the FZ into the rest of the UAE and the FZ company will not be permitted to set-up offices or branches in the UAE outside the FZ. However, employees of FZ companies may reside and travel elsewhere within the country and this presence can assist greatly with direct sale to customers in the UAE. Further, the recent creation of FZ's concentrating on the provision of services rather than goods has significantly widened the possibilities for foreign companies working to provide services in the UAE and the region in the relevant market sectors.

Further Information

If you require further information, or wish to discuss any of the above, you can contact:



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