



Business opportunities in the United Arab Emirates.

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The United Arab Emirates (UAE), the major thriving regional and international business hub in the Middle East. World class infrastructure, efficient business friendly processes and procedures and a tax friendly environment create a favorable environment for investors.

Introduction

The United Arab Emirates, being one of the youngest countries in the region formed on 2 December 1971, is a federation of the seven Emirates, Abu Dhabi (the city of Abu Dhabi also the capital of the country), Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah, and Umm Al Quwain. Nearly 90 percent of the 10 million residents in the UAE are expatriates from 200 nations (with a majority of low-paid laborers from South Asia, and many professionals from the United States, Europe, India and other Arab countries).

Although an oil rich state, the UAE has diversified its economy, becoming nowadays a regional and global hub for business, trade and finance.

While Arabic is the official language, English is widely spoken and used in business.

Setting up a Business in the UAE

UAE Legal Framework

The legal system in the UAE (outside of the Dubai International Finance Centre ("DIFC") and the Abu Dhabi Global Market ("ADGM"), see below) is based on both civil code and on the Islamic Shariah Law principles (also prevailing as public policy/order). The key legal sources are, along the federal structure and in the following order of precedence:

- The UAE Constitution (providing for the allocation of powers between the Federal and the Emirate's governments);
- Federal laws and regulations (legislation promulgated at Federal level and as delegated in the constitution, such as foreign policy, defense and security);
- Emirate laws and regulations (local matters which are not subject to Federal legislation such as commercial activities (including the issuance of trade licenses) and effect the incorporation of legal entities);
 - Islamic Shariah principles (see below); and
 - Free Zone regulations (if applicable).

The UAE constitution provides that Shariah shall be the (main) source of law, it is however not the only source of law and its application is usually limited to the following areas:

- being used by UAE mainland civil law (hence not DIFC and ADGM) courts as an interpretative aid in the event that there is no express legislation governing a particular question;
- Religious, morality and personal law matters, particularly involving Muslims (e.g. inheritance, divorce, etc.); and
- Transactions that are explicitly expressed to be Shariah-compliant (e.g. Islamic banking transactions).

The DIFC and the ADGM, the two financial free zones in the UAE, have their own body of laws based on common law principles. Hence, such laws are also supplemented by case law (each also having their own court system and jurisprudence). Additionally, the ADGM also implemented the 'Application of English Law Regulation' in 2015 making in fact the England and Wales common law (including the concept of equity) and statutes directly applicable in ADGM.

Doing Business in the UAE

Currently, foreign companies/investors have essentially six options to undertake business and commercial activities in the UAE:

1. Trade from overseas

Saving the need to physically establish a presence locally in the UAE, this form of conducting business allows a foreign company to trade to the UAE from the respective home jurisdiction.

Factually, it is however not uncommon for UAE based clients to request or rather even require (especially when dealing with public sector clients) the foreign entity to establish a physical presence in the UAE. Moreover, certain business activities require special licenses and consents from government authorities to carry out business, so this option of doing business is not always available. The same of course is applicable if the business operations require "on the ground" presence.

2. Conduct business through an agent / distributor

Avoiding the need for foreign companies to establish a physical presence in the UAE, this option provides for the opportunity for foreign companies to take advantage of the agent's or distributor's local market connections and network. A contractual agency / distribution hence involves an UAE based agent / distributor representing the foreign principal in the distribution and sale of products, or the provision of services in return for an agreed fee. Commonly, such agreements grant exclusivity to the local agent/distributor. It is important to pay close attention when choosing the right agent/distributor. The UAE Commercial Agencies Law (the "CCL") grants certain rights to registered agreements, providing a certain, however extensive and far-reaching, protection to agents.

Before entering into such agency/distribution arrangements, advice should be taken in order to assess the UAE specific limitations, as it is often very difficult to terminate such agreements.

3. Set up of a Local Entity

In general, there are three main options available to a foreign investor:

- Mainland UAE
- Free Zone onshore
- Free Zone offshore

The decision to establish an onshore presence in the UAE mainland versus setting up a company in one of the more than 45 free zones factually depends on (i) the involvement of the foreign shareholder (mandatory minimal shareholding requirements for local Emirati shareholders for UAE mainland companies), (ii) on customer locations (UAE or abroad) and (iii) the nature of the business activity to be carried out in or from the UAE.



It is also possible to set up a business presence offshore (often also referred to as 'International Business Companies') in some UAE free zones, like

Jebel Ali Free Zone ("JAFZA") in Dubai, RAK International Corporate Centre ("RAK ICC") in Ras Al Khaimah and Ajman Free Zone ("AFZ") in Ajman. These offshore companies are issued a certificate of incorporation however they are not allowed carry out business in the UAE (neither have offices in the UAE nor entertain a UAE based client).

When setting up an entity in the UAE, it is necessary to apply for a trade license selecting one or more activities from the approved activity list of the respective licensing authority (Economic Department of the respective Emirate for mainland companies or the competent free zone licensing authority for free zone onshore and offshore entities).

Generally, there are three types of commercial licenses available to businesses:

- Industrial
- Service
- Trading

a) Onshore / Mainland

The UAE Commercial Agencies Law applies to most economic activities conducted in mainland UAE. Foreign companies intending to conduct business in mainland UAE can do so either through a limited liability company or a branch / representative office of a foreign entity.

The main advantages of having an onshore mainland entity include fewer restrictions on how business activities can be undertaken and that a mainland company can legally trade freely within the UAE. There is no restriction in business premises location, provided it is located onshore and in the respective emirate from which the license is issued.

Company Structures

Federal law stipulates that UAE nationals must own at least 51% of the company's share capital (while the remaining 49% may belong to foreigners) for the majority of company activities from an official government list of more than 2,000 business activities.

Businesses that require a local sponsor, who owns at least 51% of shares in the company, can become a challenging and daunting experience for foreign investors and finding a reliable local partner in a foreign country can be difficult. Often, the main concern for an investor is how much involvement the sponsor will have and whether the local sponsor could potentially interfere in business operations request a percentage of profits or possibly make it difficult for the foreign investor to exit in future. While not all concerns can be eased, experienced business and legal partners such as Swiss Group can help set up the legal structure and corresponding agreements with reliable local partners, to minimize these risks.

Since June 2021, around 1,000 of the listed business activities (mostly commercial, trading and industrial activities) can now be conducted under 100% full foreign ownership. Professional Licenses, branches of foreign or free zone companies and Sole Proprietorship companies, can be directly registered in the UAE without the need to appoint a local service agent, as previously required. Dubai Economy has also stated that there will be no additional fees, guarantees or enhanced capital requirements in terms of activities now newly eligible for 100% foreign ownership.

Foreign investors are currently (and most likely also in the future) further restricted for certain activities in the UAE (especially for sensitive industries such as oil and gas), given that some activities are strictly reserved for UAE / GCC nationals (and, as such, require 100% local ownership) by federal law.

UAE Branches (or Representative Offices) of Foreign Companies

A foreign company is permitted to establish a branch (or a representative office) in the UAE. A mainland branch (or representative office) does of course not have a legal identity separate or distinct to its foreign parent company.

Hence, there is no legal protection in the form of limited liability afforded to the branch (or the representative office). Such mainland branch is restricted to carrying out the same activities as its foreign parent company.

Certain activities (amongst others, trading activities) however require an LLC to be established rather than a branch.

In line with international best practice, a representative office is only permitted to represent its foreign parent company in the UAE and so is restricted predominantly to undertaking marketing and promotional activities on behalf of its foreign parent company, however not allowed to enter any agreements on behalf of the parent company.

b) Onshore / Free Zone

As an alternative to setting up in onshore mainland UAE, foreign investors can also establish a 100% foreign owned company (with a corporate or individual shareholder), or branch, in one of the various free zones across the UAE.

The first UAE free zone opened in the 1980s, setting the framework for the many that followed, and today there are more than 45 free zones across the UAE. Most of these free zones are “themed”, e.g. Dubai Health Care City, Dubai Internet City, and the activities permitted in the respective free zone were originally to be in line with the zone’s specific theme.



While DIFC and ADGM are financial free zones offering mostly “financial” activities and activities ancillary to those regulated activities, many of the other free zones, such as Dubai Multi Commodity Centre (“DMCC”) and JAFZA, are “generalist” free zones, offering a broad and comprehensive list of licensed trading and services activities.

Each free zone, established by an act of the competent Emirate, is administered and governed by its own regulatory authorities operating under their own rules and regulations. Subsequently, the respective licensing authority of each free zone is responsible for issuing free zone licenses. In line with the CCL and the relevant free zone regulations, the free zones offer three main types of entities:

- Free zone establishment (FZE, single shareholder company);
- Free zone company (FZC, a company with two or more shareholders);
- Branch of a foreign company (similar to onshore branches, but no need for appointing a UAE national service agent); and
- Some free zones also offer Partnerships (LLP)

c) Offshore Establishment and International Business Companies

Entities not intending to engage in business within the UAE (neither mainland nor within one of the free zones) can set up an entity under the offshore regulatory system. These types of entities should not be confused with onshore free zone entities which are required to have their own UAE business address while an offshore entity is mandatorily addressed at its registered agent address. Such offshore entity can also not obtain UAE tax residency certificate.

Typically, offshore businesses act as holding companies. Under the offshore regulations of certain free zones, these companies can even act as a vehicle to own freehold real estate property in the UAE.

JAFZA, RAK ICC and AFZ offer such offshore companies in the UAE. The general benefits of these types of structure are:

- Relative low establishment and running costs;
- Carry out business internationally;
- No foreign ownership restrictions;
- No need for shareholders/directors to reside in the UAE either at the time of incorporation or subsequently; and
- No requirement to rent a physical office space or premises in the UAE.
- However, it has become very difficult to open bank accounts for such entities in the UAE.

4. Setting up a Joint Venture

A foreign company intending to enter the UAE market or developing their existing operations beyond an agency or distribution arrangement often prefer a Joint Venture solution. Such a setup enables the foreign investor to take an equity stake and a role in the operation and management of their UAE entity, while benefiting from the participation of a local partner as such local partner may contribute financially, by way of technical skills or local connections and reputation.

The CCL allows for a particular type of entity to be used as a Joint Venture vehicle, in practice however, most Joint Ventures are set up using either conventional mainland or free zone companies. The restriction of foreign ownership in mainland companies remain valid (as noted above).



5. Acquire an existing Local Entity

Another entry strategy for foreign investors might be the acquisition of or investment in an existing UAE company or business. For an acquisition of a company / business, the following regional factors should be taken into consideration:

- Limited amount of publicly available information (and, as such, the need for thorough due diligence);
- The impact of the foreign ownership restrictions;
- The potentially limited scope of operations (UAE as such, free zone only or only abroad);
- The likelihood of any regulatory consents or approvals being required (e.g. UAE Central Bank consent for local banks and financial institutions);
- The need to deal with the transfer of employee contracts and visas as part of any asset sale and purchase; and
- The impact of UAE on the mandatory end of service benefits for employees in the case of business transfers.

6. Free Lance Option

The Freelance Permit offers the ability to operate as a freelance professional. The Permit identifies the holder as a sole practitioner enabling the holder to conduct business in his/her birth name as opposed to a brand name. Freelancing is becoming more common in the UAE. The multiple Government initiatives and various cost-effective freelance permits issued by some of the Economic Departments (Dubai and Abu Dhabi) for a mainland solution as well as the various Free zones is supporting this new trend.

The Freelancer License Permit is of great interest for individuals engaged in providing professional services who are keen on working as individuals and not under any company. The Freelancer Permit enables the applicant to have the necessary legal structure for his/her job identity. The Permit is also a good option for professional entrepreneurs wanting to test the market with a cost-effective solution before investing and setting up a company in UAE.

The License is available to UAE residents and non-residents. Applicants must prove relevant expertise in the activity they are seeking to be licensed for and this can be in the form of a university degree, a certificate of experience or accredited accomplishments in the specific activity. Obtaining a freelance license is in fact registering as a Sole Proprietor/establishment acting as the sole practitioner of the respective craft.

An establishment or sole proprietorship is a setup owned by one individual with the trade license issued in his or her own name. The owner assumes all the financial responsibilities of the entity including all its financial liabilities. Hence the owner is personally liable for business debts and any other financial obligations. This liability cannot be limited by shares as the setup is inseparable from its owner's personality and financial standing.

The only thing to note in terms of doing business is that some larger companies may request a tax registration number (TRN), which is for the time being not available to freelancers. Furthermore, as a freelancer, it is also not possible to open a corporate bank account in the UAE.

Additional Considerations

Taxation

Corporate Tax

On 31 January 2022, the Ministry of Finance (MoF) announced the introduction of Corporate Tax (CT) in the United Arab Emirates. The applicable laws and regulations are however still pending. This regime will become effective for financial years starting on or after 1 June 2023.

The competitive CT Regime, based on international best practices, shall strengthen the UAE's position as a leading global hub for business and investment, while also accelerating the UAE's development and transformation to achieve its strategic objectives. Such regime shall also reaffirm the UAE's commitment to meeting international standards for tax transparency and preventing harmful tax practices.



Scope:

CT will apply to all individual (e.g. freelancer) and legal persons (companies) carrying out business activities under a commercial license in the UAE (incl. the banking sector, however not companies engaged in the extraction of natural resources which remain subject to Emirate level corporate taxation only).

The Corporate Tax rates and Tax Basis:

- 0% for taxable income up to AED 375,000;
- 9% for taxable income above AED 375,000; and
- a different tax rate for large multinationals that meet specific criteria set with reference to 'Pillar Two' of the OECD/G20 Base Erosion and Profit Shifting project.

Tax basis under the CT regime will be the Taxable Income, hence the accounting net profit of a business (as reported in the financial statements prepared in accordance with internationally acceptable accounting standards) after making adjustments for certain items (to be defined and clarified in the applicable law and regulations).

Considerations for Free Zone Companies:

There will be a consistent CT treatment to apply across all free zones, hence companies setup up in the various UAE Free zones (including the financial free zones ADGM and DIFC) will be subject to CT. The MF has however stated and clarified as follows "Incentives currently offered to be honoured" where businesses (i) comply with all regulatory requirements and (ii) do not conduct business with the mainland UAE. We expect further clarification on this matter with the issuance of the applicable laws and regulations, amongst others on mixed business setups where a company does conduct business outside the UAE and within.

As per the MoF, the issuance of the CT law and regulations is expected later in 2022.

Withholding Tax

There are no withholding taxes in the UAE - not on royalties, interest, dividends or similar made by UAE licensed entities to other entities or person (resident or non-resident).

Personal Income Tax

There is also no personal income tax law enacted in the UAE, neither on federal nor on Emirate level. As such, there is no domestic legislative definition of personal tax residence in the UAE. Hence, individuals are not subject to any personal taxes in the UAE by reason of their income or capital gains arising from the UAE or anywhere else in the world. As such, there is no requirement to submit UAE personal tax returns and individuals are not issued with a UAE Tax Identification Number.

Immigration

In fact, the UAE has a dual employment market: UAE nationals serve in the majority in public sector roles while expats are dominating the private sector. Such delineation by citizenship is not uncommon in the GCC.

Given this delineation, the employment regime is linked to the immigration regime: foreign nationals require sponsorship through a UAE licensed and registered entity for local work permit and residency visa purposes. The expat sponsorship is both employer-specific (only for one employer) and location-specific (e.g. just for the relevant free zone), hence third-party working is permitted but on a conditional basis.

The immigration process varies depending on the Emirate and on the free zone in which a company is based. Free zones usually operate their own government service office that liaise with the immigration authorities on behalf of the sponsoring entity, and generally have streamlined work authorisation processes.

Companies based in mainland UAE with more than 100 employees require a 'quota' of local employees to be able to hire expatriates. Such entity in fact must seek approval from the Ministry of Human Resources and Emiratization ("MOHRE") to sponsor foreign nationals. MOHRE has implemented a resident labour market test to ensure that Emiratis have fair access to the labour market.

Real Estate

The UAE Federal law allows the following real estate related transactions:

- Ownership;
- Leasing;
- Co-ownership of floors and apartments.

The Dubai Land Department ("DLD") and the DIFC entered into a Memorandum of Understanding in 2017 which allows DIFC registered entities to purchase properties and register their properties with the DLD. The MOU stipulates that certain 'eligible entities' in the DIFC can own properties in Dubai. This includes companies, partnerships, foundations, real estate investment trusts and other real estate funds.

Likewise, other free zones such as ADGM and RAK ICC since entered into a MoU with DLD. In practice, the DLD is reluctant to register a property, which is owned by a trust or foundation.

Swiss Group

The Swiss Group as a one-stop shop offers a wide range of consultancy, legal and management services with an emphasis on corporate and commercial matters. We offer our clients a wide range of comprehensive and practical advice to navigate through the legal and administrative pitfalls in the UAE. Our international team of qualified practitioners, lawyers, accountants and business consultants who speak 8 different languages under Swiss Management combines expertise and capability with an intimate and profound knowledge of the local requirements in the Middle East since the 1970s.

We cleave to high ethical and professional standards in all our activities. We therefore enjoy the confidence of numerous private clients as well as local and international authorities and governmental agencies.

With our Dubai Company, Swiss Group Advisory DMCC, we provide a wide range of comprehensive advisory, management and commercial services for corporate and private clients. We have extensive experience in advising our clients in setting up a presence in the UAE (formation of local LLC companies, free zone companies, offshore companies and Special Purpose Vehicles) as well as in optimizing and maintaining existing structures and entities. Our Dubai based Company also provides accounting and VAT registration and filing services.

Through our sister company in Abu Dhabi, Swiss Group Legal Ltd, we provide fiduciary and tax planning services (amongst others, regarding the double tax treaties between various countries and the UAE) and estate planning including the registration of non-Muslim Wills (DIFC Wills, Dubai Court Will and Abu Dhabi Wills). In addition, we give legal advice on corporate and general contracts, as well as real estate matters.

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