How To Set Up A Business In The UAE: A Guide

EUROPE EMIRATES GROUP
DUBAI

Index

Welcome To Europe Emirates Group's Guide To Doing Business In The UAE

Positioned at the centre of the world, the UAE is one of the globe's most connected countries.

The UAE has thrived on its East-West links over its nearly 50-year history and lies at the heart of the Asia, Africa and India triangle. Historically, its geographic location has facilitated secure connections, business networking and access to trade. Today it remains one of the world's top places to do business.

In recent years, the government has introduced new corporate law reforms to make the country even more business-friendly. The changes include the formal recognition of holding companies and the simplification of the company registration process.

In this essential guide, Europe Emirates Group offers necessary advice on all aspects of setting up a business, including company laws, employment visas, accounting requirements and taxation issues. These fundamental business aspects serve as the pillars of setting up and developing your business hub in the UAE.

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1. An Overview Of The UAE

1.1 Introduction

As thousands of new businesses are discovering each year, the UAE is the perfect gateway between East and West. It also happens to be the preferred hub for the region's imports and exports market, and in turn, one of the world's most lucrative. There are no profit repatriation restrictions, offering you outstanding opportunities for your professional success and personal finances.

The UAE is a participant in many free trade agreements that ensures that goods produced in the UAE are exportable without customs fees. These include partnerships with fellow members of the Gulf Cooperation Council (GCC) and those agreements between the GCC and other countries such as the U.S.-GCC Framework Agreement for Trade, Economic, Investment and Technical Cooperation. Other noteworthy free trade agreements include the GAFTA with a group of fellow Arab nations and bilateral accords with countries such as South Korea, the Netherlands and India. They are exploring other agreements, including with the European Union. The UAE also has signed avoidance of double taxation treaties with more than 60 countries.

Other benefits in regards to trade include mutual investment protection treaties and customs benefits for imports and re-exports. For goods coming from any country in the GCC, the importer only pays customs fees once, and when re-exporting products, you do not pay customs fees when storing goods within the confines of a Free Zone.

1.2 Seven Emirates

The UAE was formed in 1971 as a federation of seven emirates: Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain. Bestowed with a rich history of trading, this vibrant and multicultural country has continued its tradition by growing its international industries in areas such as tourism, aviation, shipping, energy and retail. The UAE has an estimated population of 8.6 million, of which almost 80 per cent are expatriates. In just over four decades, the country has successfully diversified its economy from hydrocarbon while focusing on becoming a regional and global centre for business, trade and finance. Arabic is the official language of the UAE, while English is widely spoken and used in business.

1.3 About the UAE Federal Constitution

The UAE federal constitution provides the framework for the federation and is the basis of all legislation enacted at the federal and emirate level. The Emirati constitution dictates that the federal government has exclusive jurisdiction in various substantive matters, including foreign policy, defence and security. However, the local government of each emirate is permitted to regulate any local issues that are not subject to federal legislation. The respective Emirati governments each retain considerable powers to control their commercial activities, issue trade licenses and implement the incorporation of corporate entities. Every Free Zone in the UAE has its own set of regulations regarding these parameters.

2. The Legal System Explained

2.1 Legal and Regulatory Framework

The UAE has developed a robust and dynamic legal and regulatory framework over a relatively short period of time to give international businesses and investors significant comfort when deciding to invest or conduct business in the UAE. The framework also encourages local Emirati businesses to flourish in a well-regulated environment. Investment laws, regulations and incentives are continuously improving to encourage further foreign investment. This includes the introduction of foreign ownership of land and stocks. Dubai became the first emirate within the UAE to open its property market to foreign ownership, followed by Abu Dhabi.

The sources of UAE law for civil matters include:
- The Constitution;
- Federal laws and regulations;
- Emirate laws and regulations;
- Islamic Sharia Law

When would Sharia Law apply in the UAE? Sharia Law applies in the following contexts in the Emirati legal system:
a) Religious, morality and personal law matters, particularly involving Muslims.
b) Being used by courts as an interpretative aid where there is no express legislation governing a particular question.
c) Transactions that are intentionally expressed to be Sharia-compliant, such as banking transactions.

One area that we see Sharia law applied is in estate law upon a person's sudden death if there is no will. If you are not a Muslim and do not have a will in place, your assets would go into probate upon your passing and your assets could be distributed under Sharia tenants even if you are not a Muslim. This is why legacy planning for non-Muslim expatriates in the United Arab Emirates is necessary. If you live in Dubai or Ras Al Khaimah, you can plan for this by using the array of services at the DIFC Wills Service Centre.

The federal government recognises and permits the concept of freedom of contract except when these provisions may not fit under Emirati law (including Sharia law and public policy). This allows contractual counterparts to regulate their relationship as they choose.

2.2 Company Law

On December 4, 2011, the UAE Federal Cabinet approved a Company Law that paved the way for more relaxed foreign ownership above the existing ceiling of 49 per cent in the future. In addition, the new law allows for a simplified process of starting a business in the UAE and strengthens the protection of shareholders. The new FDI law (Federal Decree-Law No. 19 of 2018 on Foreign Direct Investment) enacted in 2018, has made the investment environment of the UAE more attractive as it establishes a framework and pathway towards enabling 100% foreign ownership of UAE Limited Liability Companies outside of the various UAE designated Free Zones.

Some of the main features of the new company law include the following:

1. The existing 49 per cent foreign ownership threshold will remain; however, the new law permits the Cabinet to issue a separate resolution specifying the types of businesses that may be majority-owned by foreigners.

2. It is expected that those enterprises that have majority foreign ownership will initially be permitted only in business sectors in which the government seeks to increase foreign direct investment.

3. The new law reportedly exempts from its application public joint-stock companies wholly owned by a federal or local government, and will likely focus on private joint-stock companies and limited liability companies.

4. With respect to minimum capital requirements, the current position remains unchanged as the new law will not require new companies to have a minimum required share capital and this has been the position under the existing law since 2009.

5. One of the many aims of the new legislation is to reduce the length of time required to establish a company. The new law is likely to increase stock subscription amounts for raising capital for newly-established public joint-stock companies.

3. The Local Economy

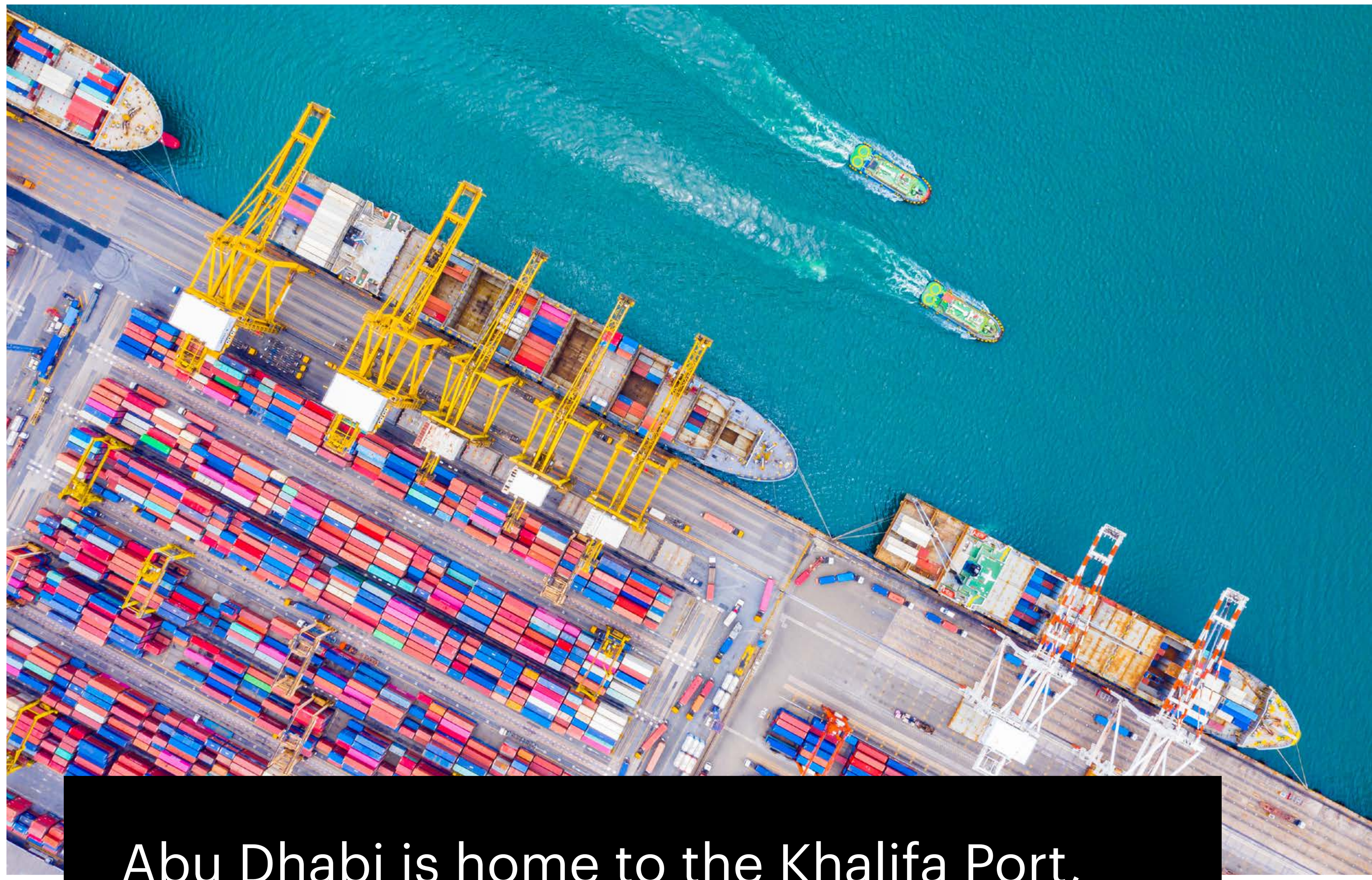
3.1 Physical Infrastructure

The UAE's highly developed network of roads links all seven emirates and is the primary means of business and leisure transport. Each emirate also has thriving port facilities. Dubai dominates the cargo and re-export markets owing to the size and sophistication of its two ports, Port Rashid and Jebel Ali Port. Despite being the second port in Dubai, Port Rashid remains the busiest in the Gulf region with 35 berths.
The massive Jebel Ali facility has 63 berths and includes an economic free zone.

Dubai government-owned Emirates is the Arab world's largest airline with more than 150 destinations and 271 aircraft in 2020, with nine more on planned. Abu Dhabi-owned carrier Etihad Airways is expanding at a rapid pace and is currently among the world's fastest-growing airlines.

3.2 Labour Force

It is relatively easy and cost-effective to employ both Emirati nationals and expatriates in the UAE. The country offers excellent access to a skilled, experienced and cosmopolitan workforce. The governments from across the seven emirates continue to invest heavily in training the national workforce to play a more significant role as competitive members of the Emirati economy. A corporation does not have to make any social security/pension payments because there are no taxes for foreign workers. If your enterprise operates in the mainland, however, there is a wage protection system (WPS) to ensure the timely payment of wages.



Abu Dhabi is home to the Khalifa Port, which has a Phase 1 capacity of 2.5 million TEU containers and 12 million tonnes of general cargo a year. Khalifa Port is projected to have the capacity for 15 million TEU containers and 35 million tonnes of general cargo.

3.3 Access to Financing

Emirati banks are more active in lending to private enterprises than their regional counterparts and offer a greater variety of financial products and services. The cost of borrowing in the UAE is relatively low for companies looking to begin or expand their operations in the Middle East. In the current climate of weakened oil prices, the governments of the individual emirates are recognising the importance of supporting small and medium-sized enterprises (SMEs) to help boost its non-oil economy. Several ongoing financing and non-financing programmes have been designed and implemented by Dubai SME, an agency under the Dubai Department of Economic Development, tasked with improving SME access to bank lending. One of Dubai SME's initiatives was establishing a rating system in 2017 that allows SMEs to receive loans more easily through a better qualification of those enterprises. Private entities are also joining efforts, such as the Emirates Development Bank (EDB) Credit Guarantee Scheme, announced in February 2019, that offered $27.2 million worth of guarantees for these entities.

3.4 Corruption and Bureaucracy

Corruption is not part of the UAE's business culture, and the country was ranked number 16 on the World Bank's Ease of Doing Business rankings, the highest among its regional peers. The government is also embracing new technologies to improve its efficiency further and cut down on bureaucracy. It's projected that as a result of the Emirates Blockchain Strategy 2021 initiative, 50 per cent of all government procedures will run through blockchain. The move is estimated to result in increased cost savings and other optimisations throughout the process of working with government entities.

The UAE has also undertaken measures to reduce red tape surrounding foreign investment approval processes. Foreign entities with proven experience even have access to government tenders on the same conditions as Emirati-owned entities when registering their branch in the UAE.

3.5 The UAE's Promising Future

The UAE's favourable business environment, transparent regulatory system and central geographic location give it a competitive edge as a business destination on both a regional and global level. Dubai, in particular, has emerged as a significant access point for foreign investments, with many companies using the emirate as a platform to enter the wider region. The surrounding Middle East and North Africa (MENA) region is home to around 1.7 billion consumers. The majority of the region's population is under 25 years old, which bodes well for future purchasing power.

The UAE's location at the fulcrum of a booming India, Africa and Asia trade triangle also affords the country access to high-growth emerging markets. Also, the UAE has an excellent international transport infrastructure and a globalised, highly skilled talent pool.

The UAE’s favourable business environment, transparent regulatory system and central geographic location give it a competitive edge as a business destination on both a regional and global level.

The UAE government offers a broad range of foreign investment incentives, such as low corporate taxes and 100 per cent foreign ownership for the entities carrying out professional activities or for any entities registered within any of the 45 free economic zones.

The UAE has a relatively sophisticated banking system. It is home to a vast network of investment companies, private equity firms and brokerages – these allow for consumer and institutional investment into stocks and bonds. The UAE has two well-liquidated stock markets open to foreign investors, the Dubai Financial Market and Abu Dhabi Securities Exchange. As the government continues with its ambitious economic diversification plans, foreign direct investment (FDI) opportunities will open up in transformational and other heavy industries, including aluminium and petrochemicals, as well as other sectors such as tourism and aviation.

4. How To Establish A Business In The UAE From Overseas

Starting a business in the UAE can take several different forms. The process of company formation differs according to which emirate you choose to set up in.

The advantages of setting up in the UAE are numerous. Most businesses do not pay direct taxes on corporate profits, or personal income and custom duties stand at five per cent, with many exemptions.

There are no foreign exchange controls and trade quotas. Plus, the value of the national currency, the Emirati dirham (AED), is pegged to the United States dollar. Costs in other vital areas such as import duties, labour, energy, and financing are also highly competitive. The UAE is privy to an extensive foreign trade network, giving investors access to global marketing outlets for their goods and services. Dubai is also a major re-export hub for the region.

4.1 UAE Company Advantages

What makes incorporating your enterprise in the United Arab Emirates so appealing? Here are some of the benefits you can enjoy from choosing the UAE as the location for your corporate domicile:

- In most cases, incorporation requires minimal paperwork, and you can carry out the process remotely;
- 100 per cent foreign ownership;
- Banking confidentiality guaranteed by law;
- Ability to open residential bank accounts in the UAE;
- No public registry;
- 100 per cent exemption from corporate and income taxes;
- Zero foreign currency restrictions;
- Full repatriation of company profits and capital;
- Possibilities of registering using a legal address, desk or separate office unit;
- No share capital requirement for most entity structures;
- Ability to hold shares in foreign and local entities;
- Ability to issue tax domicile certificate for residential companies;
- Huge choice of business activities to be included in the license

The Emirati federal government oversees business incorporation for the entire country. Still, each of the seven individual emirates also has company incorporation and financial oversight legislation in place.

There are various options available to foreign investors who are looking to undertake business and commercial activities in the UAE. They are:

- Conduct business through an agent/distributor;
- Establish a local entity;
- Set up a branch or representative office;
- Joint Venture;
- Merger and Acquisition;

4.2 What legal entity should you choose and where should you register?

The main points to consider when choosing the right place of registration and legal structure are:

1. What is the ultimate purpose of establishing the entity?
Examples include:
- Marketing to represent the parent entity's products/services that are abroad;
- Optimising your group of companies' expenses using the tax treaties between the UAE and other countries;
- Entering the UAE/GCC market with a new entity;
- Establishing a global presence from the UAE

2. What activities are you planning to carry out?
Some activities may only have authorisation in special economic zones.

3. Where are you planning to carry out your activities?
Since every place of registration has separate territorial access, you will have different needs if you are planning to only carry out operations abroad rather than entering the local market.

4. How are you planning to commercialise your services or products?
The legal form and place of registration might differ for the companies planning to participate in tenders, sell goods online, work with retails customers, re-export goods or build the sales process through distributors.

5. What commercial space you might need for your activities?
The commercial space should be in the same place where the entity is registered. So, if your company wants to have an office in Dubai, then your place of registration should be the Dubai Mainland or one of Dubai's Free Zones. Note that not all free zones have offices or warehouses. Therefore, you should have a full picture of your future business from the very beginning because you usually are not allowed to transfer your company from one free zone to another in the UAE.

4.3 Trading through an Agent or Distributor

If you intend to export goods or services to the UAE, you may want to appoint an agent, distributor or franchisee, which must be either a UAE national or a company entirely owned by UAE nationals.

While you can import goods into the Emirati market without registering an entity, you would need to find a local agent or distributor to represent you. This arrangement would typically require the distributor to independently certify goods and lead to granting the local agent or distributor the exclusive right to distribute your products, which could limit other opportunities. Another caveat is that the importer would have to sell their products at a meagre rate compared to the price they could charge when independently commercialising those products.

There are two types of relationships with commercial agencies in the UAE:

Registered Commercial Agency

You appoint registered commercial agents under an agreement registered with the Ministry of Economy. Agents should be either UAE nationals or 100% owned UAE companies, and they have the exclusive right to market and sell a particular product in one or more Emirates. The agent is also entitled to commissions payable on any product sales even if the registered agent did not contribute towards those sales. A registered agent is ordinarily able to prevent parallel imports of the same product into their territory. While this can be a useful tool for foreign principals wanting to limit sales of competing products in the emirates, it can also prevent a principal from appointing another agent or from directly selling its products on the market.

Unregistered Commercial Agency

Unregistered Commercial Agency agreements do not benefit from the protections offered by the Commercial Agencies Law. The Commercial and Civil Code (CCL) governs these agreements. According to a strict reading of the Commercial Agencies Law, a foreign principal that supplies products to its agent under an unregistered agency agreement may not have the right to sue the agent for payment of their products through the court system. However, the UAE Civil Code makes provisions for hearing claims. It is therefore advisable to insist on guaranteed methods of payment in the agency agreement. A prospective UAE agent will likely encourage you to establish a registered agency agreement rather than an unregistered one. In all cases, you must carefully draft all commercial agency agreements, and foreign companies should seek legal advice before entering into any agency agreement. Terminating registered agency/distribution agreements can be difficult and costly because strict rules and restrictions apply.

5. Setting Up A Local Entity And Establishing A Business

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

- Establishing in local Emirati territory, known as "mainland."
- Establishing an entity in one of the many free economic zones. It is also possible to set up a business presence offshore, but this comes with limitations.

It might sound like there is a considerable difference between UAE mainland versus Free Zones when it comes to ownership rights. However, business ownership and operational control are two separate matters. In reality, UAE nationals and their overseas partners can agree on profit sharing and business decision-making amongst themselves. Essentially, this means that even if non-Emirati business owners set up their businesses in UAE mainland, they will still have full control of their business operations.

5.1 Mainland

While you can buy shelf companies in the UAE, we do not recommend this practice as there is no way to check whether the entity is entirely clean.

While there is no central public platform in the UAE that compiles company information, the Department of Economic Development does disclose certain necessary information on registered companies. These details include the company name, commercial registration number, company address, contact details and commercial activities. The name of your shareholders and directors do not appear in these records. The purpose of this registrar is to allow counterparties to ensure if your potential holds the required licence and other permissions to carry out activities.

As a general requirement, locally-incorporated entities must obtain a commercial licence from the Department of Economic Development in the emirate you're looking to incorporate and, if necessary, authorisation from the relevant ministry or government entity in the relevant emirate. Locally-incorporated bodies may be formed as Civil Companies or incorporate under Federal Law No. 2 of 2015 Concerning Commercial Companies (the Companies Law). The Department of Economic Development defines the available legal format. Companies with professional/service activities generally fall under the civil category and companies with trade/industrial activities fall under the commercial category.

A) Split Ownership

When establishing a local company or other commercial entity, foreign ownership is generally limited to 49%, with the remaining 51% to be held by a UAE national. Under the Commercial Companies Law (CCL), there are seven forms of recognised commercial entities.

1. Professional (Civil) Companies

This entity type is a local company that can be wholly owned by foreign investors. This class of corporate structure is permitted for those enterprises comprising an individual shareholder and can take the following forms:

- Sole Establishment;
- Civil Company

A Sole Establishment/Civil Company only requires that you appoint a Local Service Agent (LSA) to assist in representing the firm in front of the Immigration and Labour departments. They do not play any role in the management or operations of your enterprise.

2. Commercial Companies

The Companies Law requires companies to adopt one of the following legal forms:

- Limited Liability Company;
- Private Joint-Stock Company;
- Public Joint-Stock Company;
- Limited Partnership (or Simple Commandite Company);
- General Partnership (or Joint Liability Company)

3. One-Person LLC for Real Estate Brokerage Activities

This new legal format has been available since 2018 and allows entities to issue a Memorandum Of Association that only has the local sponsor on the board with full ownership. This structure gives the foreign client, as the entity manager, all independent representation rights for their enterprises through the MOA.

Of the entities listed previously, most foreign investors choose to establish a limited liability company (LLC) given that foreigners can exert significant control over such legal entities and there are no minimum capital requirements to establish a limited liability company. According to Article 76 of the Companies Law, the shareholders of a limited liability company have the right to determine the share capital of the company provided that such a company has sufficient capital to conduct its corporate objects.

However, the Companies Law prohibits limited liability companies from conducting certain commercial activities. For example, only public joint-stock companies can carry out banking, insurance or investment activities on behalf of third parties.

Additionally, limited liability companies may not offer their shares for public subscription, a right reserved only for public joint-stock companies. Nevertheless, a company can change its legal form to qualify for public subscription. The critical consideration concerning entities incorporated under the Companies Law is that an Emirati national or a company under full Emirati national ownership must hold 51 per cent of the capital of a company. The one exception to this rule is if citizens from countries in the Gulf Cooperation Council (GCC) hold 100 per cent of the enterprise's capital.

In addition, certain services and investment activities are reserved for UAE nationals only. For example, only UAE nationals and companies wholly owned by UAE nationals may supply real estate services, the supply of personnel and some engineering activities; however, there are ways to manage those restrictions.

The constitutional documents of a limited liability company can allocate up to 80 per cent of the profits of the company to the foreign shareholder in Dubai and up to 90 per cent in Abu Dhabi.

The constitutional documents may also incorporate the following provisions designed to protect the interests of a foreign shareholder:

- The foreign shareholder may appoint all of the company's directors;
- The foreign shareholder may nominate the company's general manager;
- The foreign shareholder may have a veto over major decisions of the company;
- The foreign shareholder may be entitled to all of the assets of the company on liquidation

Concerning the remaining 10 to 20 per cent of profits of the company, additional contractual arrangements can be put in place to give the foreign shareholder the right to receive 100 per cent of the profits.

There is debate about the enforceability of such contractual side agreements that aim to confer beneficial ownership and profits to a foreign shareholder when constitutional documents require the 49/51 split. Our reliable, high-profile local team crafts quality documents that seek to protect foreign investors' rights.

Important points to note include:

- The day-to-day management of the company may be vested in a manager who in practice is usually appointed by the foreign shareholder.
- It is possible to designate the profit and loss share in a ratio that is different from the share capital ratios in the Memorandum of Association.
- Although no such ownership restrictions are respecting onshore branches, you must appoint a Local Service Agent (LSA) that is an Emirati national. A local agent must be an individual. The LSA is not entitled to the profits or revenues generated by the branch and only provides certain limited governmental and administrative services, as agreed in the Local Service Agent Agreement. Such services typically include assistance in communication with Immigration and the Ministry of Labour.
- Some entity types require a local sponsor, and in this case, a corporation can serve as a local sponsor.

4. Local Branches and Representative Offices

The foreign parent company wholly owns a local branch of an international company or Free Zone company, but you must appoint a local agent. A branch in the UAE may freely carry out the activities for which it has authorisation through licences. An entity seeking to operate as a foreign branch in Dubai must obtain a licence from the Ministry of Economy before receiving its permit from the Department of Economic Development (DED). Professional and service firms may open their Dubai branches without registering with the Ministry of Economy, while those acting as a Representative Office must register with the Ministry of Economy.

If the parent company trades, you must also receive special permission to carry out trade activities.

Representative Offices are also wholly owned by the foreign parent company and require you appoint a local agent. A representative office may only carry out promotional activities for the products and services that the parent company provides. It may not engage in trade or any professional activity, nor sign any contracts with customers on its own.

B) UAE National Agent Requirements

You usually have to enter a national agency agreement with an Emirati national or 100% Emirati national-owned entity. The national agent does not have to possess equity or actively participate in managing the representative or branch office. In practice, the national agent's role is confined to providing specific services such as assisting in communications with government departments (e.g. facilitating visas for foreign company personnel) or undertaking other administrative matters. The annual fee payable to a national agent is a matter of negotiation.

C) Procedure

Both branch and representative offices must obtain an operating licence from the relevant Emirate's Department of Economic Development. Once initial approval has been received, you must apply with the Ministry of Economy. The fees charged by each department will vary between the emirates, and if your activity is regulated, you may also need additional approval from other ministries. For example, insurance activities require the approval of the UAE Insurance Authority. You must submit various corporate documents including the parent company's memorandum of association, audited accounts, certificate of incorporation and board resolutions of the establishment of the representative or branch office to the relevant licensing authority and Ministry of Economy. Powers of Attorney granted by the parent company to the managers or other employees of the branch or representative office will also be required along with the deposit of a bank guarantee with the Ministry of Economy of AED 50,000.

5.2 Free Zones

A vital feature of a free zone entity is that it is not subject to the foreign ownership restrictions imposed by the Companies Law in the UAE mainland. However, issues of foreign ownership may still be relevant if you are using the free zone entity as a holding company for assets outside the corresponding free zone. Free zone entities are also typically granted certain ancillary financial benefits.

A free zone entity will generally take one of the following three forms, depending on the structure of ownership:

- A branch of a foreign company;
- Free Zone Company;
- Free Zone Establishment;

There are no minimum capital requirements for branches, while each Free Zone has different share capital and yearly audit requirements. Free Zones in Dubai are known to have tighter regulations by requiring potential business owners to deposit the share capital into account and imposing pre-approval and yearly audit requirements. In contrast, the Free Zones in the Northern Emirates tend to be more relaxed and do not have these types of conditions on entities registering in those zones. These requirements impact the prestige of these Free Zones and have resulted in banks and counterparties becoming more loyal towards Free Zones in Dubai.

A Free Zone Establishment may be owned by a single individual or company, whereas a free zone company typically requires two or more shareholders. The critical limitation of a free zone entity is that it is generally only permitted to conduct business within the relevant free zone or internationally and is limited to performing solely those activities specified in its licence.

A Free Zone Entity must typically hold one or more of the following licenses:

- Trading license;
- Service License and/or;
- Manufacturing/ Industrial license

Should the entity want to engage in selling in the UAE outside their relevant Free Zone, they must hire a commercial agent or distributor, or choose to establish an onshore entity.

Some of the most popular free zones are:

- DIFC – Dubai International Financial Centre
- JAFZA – Jebel Ali Free Zone Authority
- DMCC – Dubai Multi Commodities Centre
- DAFZA – Dubai Airport Free Zone
- DMC – Dubai Media City
- KIZAD – Khalifa Industrial Zone Abu Dhabi
- IFZA – International Free Zone Authority Fujairah
- UAQ – Umm Al Quwain Free Trade Zone
- RAKEZ – Ras Al Khaimah Economic Zone

An Abundance of Choice

The UAE is home to more than 40 free zones, many of which are industry-specific and contribute to the economy in different ways. UAE free zones are a magnet for foreign direct investment, providing thousands of jobs, driving economic diversification outside of traditional hydrocarbons and supporting the transfer of knowledge, technology and expertise to the emirates. Each Free Zone complies with the federal regulations. Still, many of them have their own rules and regulations that they received from the government to apply to those entities registered in the Free Zone. Some of them, such as DIFC and ADGM, even have their court based on Common Law principles.

The licensing authority within each Free Zone is responsible for issuing free zone licenses and registering companies. Free Zones can be General or tailored to specific industries, and in the case of being tailored to particular sectors, will only offer activity licences for those activity classes. Although there are a large number of free zones within the UAE, the majority are located in Dubai.

5.3 Establishing Offshore and International Business Companies

An offshore entity can be structured in several ways: as an international business corporation (IBC); offshore limited liability company (offshore LLC); trust or offshore foundation. Each entity comes with its legal framework. You must execute the incorporation process through a registered agent based in the UAE. Europe Emirates Group is an expert in offshore company formation and can guide you through the multi-step process and provide pre and post-set-up support. Companies not intending to engage in any business within the UAE (whether onshore or within one of the free zones) can set up an entity under the offshore regulatory system. Typically, such companies act as holding companies and do not carry out commercial activities. Under the offshore regulations of certain free zones, these companies act as a vehicle to own freehold property onshore. The Jebel Ali Free Zone and the Ras Al Khaimah International Corporate Centre are the significant authorities that offer offshore company formats in the UAE.

5.4 Joint Ventures

Foreign companies wanting to enter the Emirati market or develop their existing operation beyond an agency or distribution arrangement often favour a joint venture (JV). JVs enable the foreign investor to take an equity stake and role in the operation and management of their UAE entity while still benefiting from the participation of a local partner. The local partner may contribute financially or by way of technical skills or local connections and reputation. While the CCL allows for a particular type of entity to serve as a JV vehicle, in practice, most JVs form using the mainland, or free zone limited liability company corporate structures. In the case of a mainland company, the requirement as mentioned earlier for 51 per cent ownership of the share capital by a UAE national or a company wholly owned by UAE nationals applies. There is no need to license a JV or publish the JV agreement. As in all jurisdictions, choosing the right JV partner(s) is key to ensuring that they will be able to contribute to the JV as intended.

5.5 Mergers and Acquisitions

A final market entry strategy for foreign companies is to acquire or invest in an existing UAE company or business. Both share and asset purchases are possible in the UAE.

Particular factors to bear in mind include:

- The minimal amount of publicly available information and, as a result, the need for thorough due diligence;
- The absence of a provisional equivalent to the European transfer of undertaking regulations, and the resulting need to deal with the transfer of employment contracts as part of any asset deal;
- The impact of UAE end of service benefits in the case of asset transfers.

5.6 Key Considerations

The decision to open a mainland enterprise versus establishing in a Free Zone depends significantly on the location of clients and customers and the nature of the business activity. If the customer base is across the Middle East rather than only in the UAE, then it would make more sense to open in the Free Zone. It is vital that the business licence obtained accurately reflects the intended and actual business activities. This process differs from approaches in other jurisdictions where you more often see "shelf companies" and other companies that can carry out general business activities.

An example is that if a client set up a Free Zone entity for planning to develop and own mobile applications and registered the activity under the Computer Software House licence. However, upon applying for a bank account, the application was rejected because the receipt of in-app purchases from the Google Play and Apple App Stores are only permitted under the Software Publishing licence. Since the client set up in a Free Zone without that licence, they had to liquidate their entity and set up a new one.

The costs for establishing an entity can be greater than in other jurisdictions since you will have a residential entity in the UAE instead of offshore that can only be available in other countries on beneficial tax conditions. However, this residential entity will possess the same tax benefits as an offshore company, making the UAE stand out from other popular business formation jurisdictions.

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6. Taxation Essentials

6.1 Corporate Income Tax

The UAE currently has no system of federal income taxation. In practice, income tax legislation is only to foreign banks and oil and gas companies. Most emirates levy various municipal taxes. Indirect taxation through official fees is commonplace. There is currently no taxation on capital gains. There have been no public announcements from the UAE regarding the potential introduction of corporate income tax, beyond references from the International Monetary Fund to economic impact studies carried out by the UAE government and general statements from the UAE Government in the media.

6.2 Value Added Tax (VAT)

The UAE introduced a VAT levy in 2018. It applies to goods and services sold locally at a standard rate of five per cent. A zero per cent rate will apply to those products or services sold abroad. Also, certain goods and services are fully exempt from VAT.

6.3 Customs Duties

The UAE is part of the GCC Customs Union, which was established in 2003 to remove customs and trade barriers among the GCC member states. The implementation of the GCC Customs Union is still in progress. The GCC member states apply a Common Customs Law and a United Customs Tariff with a standard customs duty rate of five per cent of goods' cost, insurance and freight value, except for tobacco, alcohol and goods subject to a customs duty rate of zero per cent. Some categories of goods are exempt, e.g. certain agricultural products, printed material and pharmaceuticals. There may be exemptions for goods imported for industrial or manufacturing purposes. Customs duties are not payable for goods imported into a UAE free zone until you transfer the products to the local territory. You can only import goods into the UAE using a company registered in the UAE, and the goods in question must be relevant to business's licence activity. There are no duties or tariffs on exports.

The UAE grants duty-free imports to most goods originating from other GCC member states, member countries of the Greater Arab Free Trade Agreement ("GAFTA") and Singapore. They are hoping that most goods originating in the European Free Trade Association ("EFTA") countries will also benefit from customs duty exemption when imported into the UAE.

6.4 Municipal or Property Tax

Most emirates impose a municipality tax on properties, mostly by reference to the annual rental value. It is generally the tenants' obligation to pay the tax; however, the tenants' employer will typically pay the tax on behalf of the employee. In some cases, separate fees are payable by both tenants and property owners. For example, in Dubai, it is currently imposed at five per cent of the annual rental value for tenants or five per cent of the specified rental index for property owners. You may also have to pay a registration fee on the transfer of ownership of land or property. For example, Dubai levies a land registration fee at a rate of four per cent of the sale value of the property (shared between the buyer and seller), payable to the Dubai Land Department. These levies are imposed and administered differently by each emirate.

6.5 Personal Taxes

Income is currently not subject to personal income taxes in the UAE, and there is no requirement to file income tax returns. Employees who are GCC nationals are subject to a social security regime in the UAE. Generally, the social security payment is at a rate of 17.5 per cent of the employee's gross remuneration as stated in an employee's employment contract and applies regardless of the Free Zone tax holidays: five per cent is payable by the employee, and the remaining 12.5 per cent is payable by the employer. The rates can differ between emirates. The withholding obligation is on the employer. There are no social security payments for expatriates. For completeness, expatriates that work for an Emirati employee have the right to a gratuity payment (or an "end of service" benefit). End of service benefits do not apply for employees who are Emirati nationals.

As the UAE has double-taxation avoidance treaties with more than 60 countries, those expatriates looking to take advantage of those benefits can apply for a Tax Domicile Certificate (TDC). You must present documents certifying your residency records and your income. It takes between three to four weeks for your TDC to be issued.

Upon approval, you will have your TDC issued for one year for a specific tax treaty and you will receive the TDC via email after payment processing.

6.6 Obtaining a Tax Domicile Certificate for Companies

You must submit the following documents to begin the process of filing for the Tax Domicile Certificate:

- Copy of a valid trade licence;
- Latest audited financial statements;
- Copy of a valid lease/rent agreement in the name of the applicant;
- Copy of the passport and resident/work visa of the applicant's director/authorised signatory;
- Copy of a bank statement for the last six months;
- Application letter to the Ministry of Finance and certificate application form

Fees are payable as part of the process. The UAE Ministry of Finance guidelines suggest that companies may not be able to obtain tax domicile certificates until the company has been in operation for at least three years. In practice, however, a TDC is generally issued once a company has been in existence for at least one year.

7. Legal Information: Corporate and Commercial Key Points

7.1 Dispute Resolution

The UAE allows freedom of contract, including the right for parties to mutually agree upon the laws governing contracts and the forum for resolving disputes.

Foreign companies may choose one of these options for the resolution of disputes as follows:

- UAE “onshore” courts;
- DIFC courts;
- Arbitration;
- Courts of another jurisdiction

The UAE Onshore Courts comprise of three levels:

- Court of First Instance;
- Court of Appeal;
- Court of Cassation

The UAE is a civil law country and, therefore, unlike common law jurisdictions, case law does not act as binding precedent, and the courts do not need to decide future cases based on a previous court’s decision. However, in practice, a decision of the Court of Cassation is usually regarded as persuasive in deciding subsequent cases.

All court proceedings are in Arabic, and only specific individuals are allowed to attend court proceedings. They must be qualified local attorneys with special licences.

7.2 DIFC Courts

The DIFC courts comprise of two levels:

- Court of First Instance
- Court of Appeal

The DIFC courts were established in 2004 to offer an independent common law judiciary and have jurisdiction concerning various civil and commercial matters. The DIFC courts conduct proceedings in English and are available to businesses incorporated inside or outside DIFC. The DIFC courts have signed several memorandums of understanding and treaties to facilitate the enforcement of its judgments in the rest of the UAE, the GCC and abroad.

7.3 Arbitration

Arbitration has long been a popular method of dispute resolution in the UAE. Since it allows for proceedings to occur in private, in a language of the parties’ choice and with arbitra-

tors selected and approved per the relevant individual arbitrators' organisation's own rules. Historically there have been concerns about the ability to and costs associated with the enforcement of arbitral awards.

Parties to a contract can mutually agree upon their choice of arbitration forum. Popular forums include:

- ICC;
- DIA;
- DIFC LCIA

The DIFC LCIA Arbitration Centre ("DIFC LCIA") is known as a seat of arbitration in the UAE (as well as the Middle East), and it has a modern set of rules based on the long-established rules of the London Courts of International Arbitration. The DIFC LCIA is a court of arbitration fostered on a strategic partnership between the DIFC and the LCIA.

7.4 Immigration

A person must receive sponsorship either based on owning a business or property in the UAE or an employment contract with a UAE-based employer to live there. The sponsorship requirements include obtaining a residence visa or work permit. Nationals from certain countries may enter the UAE with a short visit visa issued upon arrival. The employer must process and obtain visas for its employees.

The employer will carry out the following process:

1. The Government Relations Officer or PRO sends the requisite documents to the Labour/ Immigration offices to apply for the residency visa;
2. Once approved, the employee goes for a medical test;
3. The application will receive the residency visa if the medical examination results are satisfactory. The Ministry of Labour ("MOL") then issues a labour card and identifies an employee and his/her place of work.

Employees working for employers established in a free zone are sponsored by the relevant Free Zone Authorities ("FZA") and not by their employers. It is noteworthy that holders of a residency visa can sponsor dependents (subject to restrictions).

7.5 Real Estate

The Emirati UAE constitution states that real estate falls within the Federal jurisdiction (i.e. to be regulated by the federal government of the UAE, rather than by the local government of each of the emirates). However, if the Federal legislation is silent on a particular area of real estate law, then each emirate may legislate and issue local real estate laws.

UAE Federal law covers legislation regarding:

- Land ownership;
- Leasing;
- Co-ownership of floors and flats;
- Creation and operation of owners' associations

Foreign individuals and entities wholly or partly owned by foreign individuals cannot own property in the UAE, except within areas designated for foreign property investment ("Investment Areas"). Purchase may be on a freehold basis or as leasehold property within such Investment Areas. The rules and regulations surrounding property ownership differ depending on the emirate.

GCC nationals are permitted to purchase property anywhere on a freehold basis or rent property on a leasehold basis except in the emirate of Abu Dhabi. GCC nationals and foreigners are subject to various restrictions in the emirate of Abu Dhabi, including that they are only permitted to:

- Own units or entire floors in buildings constructed within Abu Dhabi Investment Areas;
- Lease units, floors or buildings constructed within Abu Dhabi Investment Areas (up to 99 years);
- Acquire leasehold for up to 99 years

8. About Europe Emirates Group

Europe Emirates Group provides company formation services for firms looking to expand into new geographies.

With primary headquarters in Dubai Jumeirah Lake Towers and associate offices in major business hubs, we provide professional corporate setup solutions in over 60 low tax and tax-free jurisdictions worldwide.

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