

# An introduction to setting up a business in Dubai

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## Introduction

1.1 This guide provides an overview of the legal issues for those considering setting up business in Dubai. The guide examines the numerous commercial entities that can be used and provides an overview of the most popular methods used by foreign companies to operate in Dubai. The guide also provides information on the 'free zones' established to facilitate foreign investment.

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## 2. The Main Requirements

2.1 In order to set up a business within Dubai, the business entity used must fall within one of the seven business categories stipulated in Federal Law no 8 of 1984 Concerning Commercial Companies (as amended by the Federal Law no 15 of 1998) (the Companies Law).

2.2 In addition, a trade license must be obtained from the Dubai Department of Economic Development (the DED) prior to the entity commencing commercial activities. Certain business sectors may also require further approval from various ministries and/or other authorities<sup>1</sup>. Certain commercial activities are restricted to UAE nationals or companies fully owned by UAE nationals.

## 3. The Seven Business Entities

3.1 The seven business entities permitted by the Companies Law are: a limited liability company; b public joint-stock company; c private joint-stock company; d joint liability company (general partnership); e simple commandite company (simple liability partnership); f private unlimited company; and g share commandite company.

3.2 The majority of the entities (outside the specified 'free zones' referred to in paragraph 4) require participation by a UAE national (usually in the form of holding an equity interest).

3.3 It is also permissible in the UAE to establish a branch of a foreign company or a representative office.

#### **4. The Free Zones**

4.1 Businesses wishing to operate in Dubai should be aware that several zones, known as 'free zones', have been established with the specific purpose of facilitating foreign investment into Dubai. However, businesses operating within a free zone are restricted as to the type of dealings that they may conduct outside of the designated free zones. Businesses wishing to conduct local business in Dubai should comply with the requirements of the Companies Law and other relevant laws applicable to the respective industry.

4.2 Below is an overview of the most popular methods used by foreign companies to operate in Dubai outside and within a free zone.

#### **5. Operating outside of a Free Zone**

5.1 The limited liability company (LLC) is the most widely used commercial entity for companies with a non UAE national element wishing to conduct commercial activities in Dubai. An LLC is a private company and shares in it cannot be offered to the public.

5.2 Article 22 of the Companies Law requires that no less than 51 per cent of the shares in an LLC must be held by UAE nationals. However, Article 227(2) of the Companies Law permits profits (and losses) of the LLC to be distributed disproportionately to the UAE national/non UAE national shareholding ratio. This ratio should be set out in the LLC's memorandum of association.

5.3 Article 218 of the Companies Law regulates the composition of an LLC. An LLC requires a minimum of two shareholders, with a maximum of 50 shareholders permitted.

5.4 There are no nationality restrictions regarding the management of an LLC. The minimum number of directors is one, with a maximum of five directors permitted by the Companies Law.

5.5 While Article 227 of the Companies Law (which applies throughout the UAE) stipulates that the minimum share capital of the company is AED150,000; the Dubai authorities require a minimum share capital of AED300,000 for Dubai incorporated LLCs. Individual shares should have a minimum face value of AED1,000. The shares cannot be other than 'equal shares'.

5.6 An LLC may not conduct the business of insurance, banking or the investment of money on behalf of third parties.

5.7 Several administrative steps must be completed before the LLC's incorporation is effected. These include the approval of the LLC's name and memorandum of association by the DED. Article 219 of the Companies Law sets out various requirements that must be followed when naming an LLC: these include a requirement to derive the LLC's name from either its purpose or from the name of one or more of its shareholders. The DED also provides a standard form of memorandum of association and will review an LLC's memorandum to ensure compliance with local requirements. The DED must also be satisfied that the minimum share capital of the LLC has been deposited with a bank operating in Dubai before it will allow the LLC to be incorporated.

5.8 A public joint-stock company (PJSC) is very similar to a UK public limited company or German Aktiengesellschaft (AG). It requires a minimum share capital of AED10,000,000 and a minimum of 10 founders, who are responsible for the incorporation of the company.

5.9 Shares in a PJSC must be offered for public subscription and the subscription notices must be published in two local daily Arabic newspapers. The founders are obliged to subscribe for a minimum of 20 per cent of the share capital (but this cannot exceed 45 per cent of the share capital). Article 153 of the Companies Law prevents shares being issued which have differing rights.

5.10 A PJSC is required to have between three and 15 directors, who are elected for three year terms. The chairman and a majority of the board of directors must be UAE nationals.

5.11 A private joint-stock company (Private Company) is similar to a UK private limited company. It requires a minimum share capital of AED2,000,000 and a minimum of three founder shareholders. Shares in a Private Company cannot be offered for public subscription but in all other respects the regulations applicable to a PJSC apply equally to a Private Company.

5.12 Article 314 of the Companies Law regulates the operation of branch and representative offices of foreign companies in the UAE. These may be wholly owned by a foreign entity,

provided that a UAE national is appointed as local agent. The role of the local agent is further discussed below.

5.13 While a branch office may carry out activities similar to those of its parent company, there are certain activities which are restricted to UAE nationals such as importing goods.

5.14 A representative office may only promote its foreign parent company's activities through, for example, gathering information and soliciting orders and projects to be performed by the company's head office. It is not permitted to carry out the parent company's activities. Representative offices are also restricted as to the number of employees that they can sponsor and, due to these constraints, representative offices tend to act as administrative and marketing centers for their foreign parent company's head office.

5.15 The role of a local service agent for a branch/representative office is to assist generally with administrative matters such as obtaining visas, licenses and dealing with local authorities. The local service agent is generally paid a fixed fee and does not have a right to participate in any profits from the branch or representative office.

5.16 Provided that approval is received from the Ministry of Economy and the DED, and the appropriate trade license is obtained, a company may establish a branch/representative office in the UAE. The branch/representative office must be registered on the Registry of Foreign Companies at the Ministry of Economy before it commences trading.

5.17 In setting up a professional firm, 100 per cent foreign ownership is generally permitted, however certain sectors and activities are restricted to either UAE nationals or have a UAE national shareholding requirement. Professional firms may be in the form of a sole proprietorship or a civil company. Such firms may engage in professional or artisan activities but the number of persons that may be employed by such firms is limited. A UAE national must be appointed as local service agent for sole proprietorship, but he has no direct involvement in the business and is paid a lump sum and/or percentage of profits or turnover. The role of the local service agent is, among other things, to assist in obtaining licenses, visas and labor cards.

## **6. Setting up a business in a Free Zone**

6.1 A number of free zones exist within Dubai and, as such, have a distinct legal status within the UAE. Companies incorporated and operating within the free zones are not subject to many of the restrictions imposed by the Companies Law and other UAE laws and regulations. Entities operating within the free zone may be 100 per cent foreign owned and benefit from a

guarantee that tax will not be applied for a certain period of time, notwithstanding any subsequent change to federal or local laws.

6.2 The free zones include the Jebel Ali Free Zone (the JAFZ), the Dubai International Airport Free Zone (DAFZA), the Dubai Technology and Media Free Zone (TECOM), the Dubai Cars & Automotive Zone, the Dubai Health Care City, the Dubai Multi Commodities Centre and the Gold and Diamond Park. We understand that additional free zones will be established in the coming years.

6.3 The type of business that is to be set up dictates which free zone should be used. For example, the DAFZA is intended for businesses that import and export goods and the business activities permitted in TECOM include 'design, development, use and maintenance of everything relevant to Information Technology, E-commerce and Media'.

6.4 The largest free zone in Dubai is JAFZ. It was established in 1985 and was the first zone to be set up in the UAE.

6.5 Each free zone is governed by an independent Free Zone Authority (FZA), which among other things, is responsible for issuing to businesses the necessary operating licenses for operation within the relevant free zone.

6.6 As an illustration of the types of operating licenses issued by the free zones, the following is a description of the operating licenses issued by the JAFZ:

1. **Trade license:** This license is available to companies who wish to import, export, sell, distribute or store items identified on their license. Sales cannot be made directly to the UAE. Any company wishing to sell goods from the JAFZ into the UAE must appoint a distributor or agent in the UAE.
2. **Industrial license:** Industrial licenses are intended for companies wishing to carry out manufacturing activities. Restrictions on selling products into UAE also apply to industrial licensees and a distributor or agent must be appointed in the UAE in order to sell products into the UAE.
3. **Service license:** A service license permits the licensee to provide services within the free zone. Services provided by the free zone licensee must be the same as those stipulated in the parent company's license in the UAE or abroad.
4. **National Industrial license:** A national industrial license permits the holder to import raw materials, manufacture specified products and export the finished products. However, a minimum 51 per cent of the shareholding must be owned by Gulf Co-operation Council (GCC) nationals. In addition to this restriction, a minimum 40 per cent of the value of the final product must have been added in the free zone.

6.7 From the above description of the relevant licenses, it should be noted that a license holder cannot operate outside the free zone using its free zone license. A distributor or agent must be appointed within the UAE. However, potential customers from the UAE may visit the premises of the license holder to view the goods.

## **7 Free Zone business entities.**

7.1 In general, three options exist for those wishing to set up in a free zone. A business wishing to operate from a free zone can either incorporate a free zone establishment (FZE), a free zone company (FZC) or operate through a branch office of a foreign or local company. Branch offices are designed to be opened with a limited amount of administrative formality.

7.2 An FZE in the JAFZ requires a minimum capital of AED1,000,000. The minimum capital requirement represents one share and it can only have one shareholder.

7.3 The minimum capital required to incorporate an FZC is AED500,000 and an FZC can have between two and five shareholders. Each share must have a minimum value of AED100,000 or multiples thereof and there can only be one class of share.

7.4 The FZC must have a board of directors, consisting of a minimum of three people and having at least two directors and one secretary (although a person may hold both the offices of director and secretary within a company simultaneously). These individuals must be resident in Dubai.

## **8. Rights of FZE's and FZC's**

8.1 One hundred per cent foreign ownership and full repatriation of profits and capital is permitted.

8.2 Exemption from corporate and income taxes for a determined period, regardless of subsequent changes to local laws.

8.3 Goods may be imported into the free zone, free of duty.

8.4 It is relatively straightforward to set up a company in a free zone. The first step is to complete a questionnaire issued by the relevant FZA. Once the questionnaire has been considered by the FZA the company will be required to provide the FZA with information on individual and corporate shareholders.

8.5 Individual shareholders are required to provide a personal profile which may include a business background, specimen signatures, domicile and address.

8.6 Corporate shareholders are required to provide:

1. certificate of registration or good standing;
2. memorandum and articles of association;
3. board resolution authorizing the incorporation of the FZE or FZC;
4. Powers of attorney in favor of the FZE/FZC managers; and e audited financial statements for the last two financial years.

8.7 Companies operating within the free zone are generally entitled to employ who they wish. However, various administrative requirements must be complied with such as providing the FZA with certain details of the license holder's employees.

8.8 While rates of pay are not specifically regulated, a minimum salary is stipulated in the JAFZ. Overtime rates are regulated by the FZA and shift working must be notified to the FZA.

8.9 Working hours are regulated and these are shortened during the Holy Month of Ramadan. The shortened hours apply to all employees, regardless of religion.

8.10 Employee numbers are restricted according to various criteria, including office area and machinery installation.

## 9. Tecom

The TECOM requirements are slightly different as the regulations only provide for limited liability companies, composed of between one and 50 shareholders. The current minimum share capital for a TECOM limited liability company is AED50,000 and the share capital may, upon the appropriate approvals being received from the authorities, be divided into different classes of shares. Each TECOM limited liability company is required to have at least one director and may have a maximum of four directors.

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