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Doing Business in the United Arab Emirates

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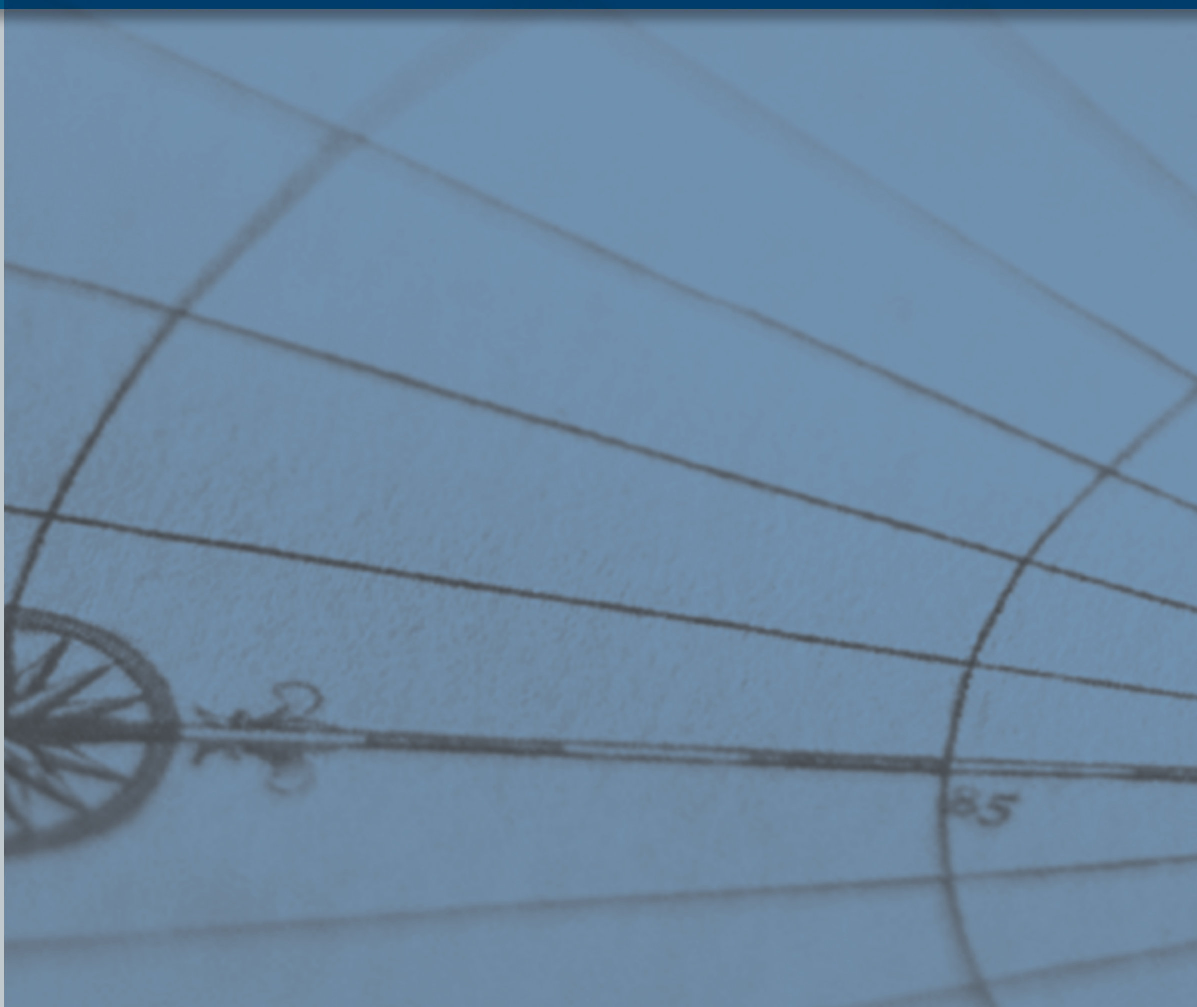

Contents

This guide provides an overview of the principal legal issues for foreign investors considering doing business in the United Arab Emirates (*UAE*).

A. INTRODUCTION

(i) Country Background

The UAE is a federation of seven Emirates comprising Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain and was formed on 2 December 1971.

The UAE federal constitution was permanently accepted in 1996[1] and provides for an allocation of powers between the federal government and the government of each Emirate.

The constitution provides the legal framework for the federation and is the basis of all legislation promulgated at a federal and emirate level. Pursuant to the constitution, the federal government has exclusive jurisdiction in various substantive matters, including foreign policy, defence and security. Legislation passed at a federal level has primacy over the local laws of each Emirate. The local government of each Emirate is, however, permitted under Article 113 of the constitution to regulate all local matters which are not subject to federal legislation or matters which are not expressly reserved in the constitution to the federal union (examples of such federal matters being foreign affairs, defence and health). As such, the governments of each individual Emirate retain substantial powers to regulate commercial activities, issue trade licences and effect the incorporation of corporate entities to the extent that such activity is not already regulated under federal legislation.

The UAE judicial system varies significantly across the Emirates and the free zones. Only five Emirates submit to a federal court system — Dubai and Ras Al Khaimah have their own independent court systems. All of the Emirates (except in respect of some of the free zones) follow uniformly similar rules of civil procedure and evidence, and trials are decided by a single judge or a panel of three judges, and not by a jury. In addition, some of the free zones have their own judicial systems, as well as their own rules of civil procedure and evidence.

(ii) Free Zones

The UAE federal constitution, the federal laws relating to free zones and the powers reserved by the individual Emirates under the federal structure, permit each Emirate to set up “free zones” for general or industry-specific activities. The purpose of free zones is to encourage foreign direct investment into the UAE. Free zone entities are not generally required to have any UAE nationals as owners. This contrasts with most companies incorporated in the UAE outside of the free zones, where UAE nationals are typically required to own at least 51 percent of the company’s capital.

Various free zones have been set up in the UAE, most of which are in the Emirate of Dubai. Free zones are authorised to enact their own laws and regulations in specific areas, which in some cases override federal and Emirate law on the subject matter. For example, the Dubai International Financial Centre (the ***DIFC***), which is a financial free zone within Dubai, has its own body of law, including corporate law, contracts law and employment law, as well as its own court system.

B. ESTABLISHING A LEGAL PRESENCE IN THE UAE

In order to conduct business in the UAE, a foreign investor is required to establish a formal legal presence (directly or through an agent) within the UAE through any of the following means:

- incorporating a local entity;
- registering a branch or representative office of a foreign company;
- establishing a free zone entity; or
- entering into a commercial agency relationship.

Further details of each of these means is set out below. A matrix summarising the pros and cons of the means likely to be most relevant to foreign investors is set out in **Appendix 1**.

(i) Incorporating A Local Entity

Unlike in many other jurisdictions throughout the world, it is not possible to buy shelf-companies in the UAE.

As a general requirement, locally incorporated entities must obtain the following licences:

- a trade licence from the Department of Economic Development (or other similar agency) of the Emirate(s) where office(s) will be located;[2] and
- if applicable, authorisation from the relevant Ministry or government entity with jurisdiction over the type of business activities to be conducted.[3]

Locally incorporated entities may be formed under the UAE Civil Code or incorporated under Federal Law No. 8 of 1984 Concerning Commercial Companies (as amended by Federal Law No. 15 of 1998) (the ***Companies Law***).[4]

(a) Entities formed under the UAE Civil Code

Entities formed under the UAE Civil Code are restricted to carrying out “non-commercial” or civil activities — these are activities which involve the promotion of the skills and expertise of the individual(s) conducting the business. Most consultancy services (including the practice of law, medicine and research activities), the production of works of art or literature, and the sale of agricultural products by farmers are examples of activities that may be conducted by a UAE Civil Code entity.

UAE Civil Code entities may take one of the following forms: (i) the professional services company; (ii) the speculative venture partnership; or (iii) an Islamic Shari’a-compliant arrangement known as a *mudaraba*.[5] Although these three entities are generally referred to as companies, legally they are not companies as the only companies which may be formed in the UAE are those set up under the Companies Law (*see* (b) below).

The most common form of civil entity used by foreign investors is the professional services company. Such entities are only appropriate for carrying on service businesses, such as engineering, medical and consultancy services. The primary benefit of establishing a professional services company is that such an entity may be 100 percent foreign owned,[6] although a national agent must be engaged by all such companies. The national agent generally receives a fixed fee, is not liable for the debts and liabilities of the company and has no management authority. The national agent is required to sponsor the professional services company for its licence application and interact with government bodies to obtain any entry permits and employment visas necessary to carry on business in the UAE. A key disadvantage of a professional services company is that it is not a separate legal entity from its foreign owner(s).

The provisions of the Companies Law do not apply to entities formed under the UAE Civil Code.

(b) Entities incorporated under the Companies Law

All locally incorporated companies (other than those formed under the UAE Civil Code) must be set up in accordance with the Companies Law. The Companies Law requires companies to adopt one of the following forms:

- Limited Liability Companies;
- Private Joint Stock Companies;
- Public Joint Stock Companies;
- Joint Participation Ventures (or Private Unlimited Companies);[7]
- Limited Partnerships (or Simple Commandite Companies);
- Partnership Limited with Shares (or Share Commandite Companies); and
- General Partnerships (or Joint Liability Companies).

Appendix 2 summarises the key differences between the entities set out above.

Of the entities listed above, most foreign businesses choose the limited liability company as foreigners can exert significant control over them and it requires a relatively small amount of minimum capital to start up. Previously limited liability companies in Dubai were required to have a minimum share capital of AED 300,000 and those in other Emirates required a minimum of AED 150,000. However, following an amendment to Article 227 of the Companies Law,[8] shareholders now have the right to determine the share capital of their limited liability companies, provided that such company will have sufficient capital to achieve its objects.[9] Such an entity may, however, be inappropriate to achieve certain business goals. For example, businesses involving banking, insurance or investment activity on behalf of third parties may only be conducted by a public joint stock company, and limited liability companies may not offer their shares for public subscription, which is a central feature of the public joint stock company.

The key limitation on entities incorporated under the Companies Law is that 51 percent of the capital of a company must be owned by a UAE national.[10] However, it is possible for the constitutional documents of a limited liability company to contain the following provisions designed to protect the interests of a foreign minority shareholder:

- the foreign shareholder may appoint all of the directors;
- the foreign shareholder may appoint the general manager;
- the foreign shareholder may veto major decisions of the company;
- the foreign shareholder may be entitled to all of the assets of the company on winding up; and
- the foreign shareholder may be entitled to more than 49 percent of the company's profits.[11]

(ii) Opening A Branch Or Representative Office (Outside Of A Free Zone)

Articles 313 to 316 of the Companies Law, permit foreign companies to open branches or representative offices within the UAE. A branch or a representative office of a foreign company may be wholly owned by foreigners.

However, Article 23(1) of the UAE Commercial Code requires non-UAE nationals engaging in "commercial business" in the UAE to partner with a UAE national who owns 51 percent of the capital of the company. Accordingly, branch and representative offices which are wholly owned by foreigners may typically only engage in non-commercial business — *e.g.* activities which involve the promotion of the skills and expertise of the individuals conducting the business, such as the provision of engineering, medical and consultancy services. Further, a branch office must only engage in those activities that are carried out by its parent company.

A representative office is more limited than a branch office in the scope of activities that it is permitted to undertake. A representative office may only conduct marketing and administrative functions on behalf of its foreign parent. A representative office typically gathers information on the local market, establishes relationships and solicits orders to be performed by the parent company. The parent company will generally be required to engage a commercial agent if it wishes to conduct sales activities within the UAE.

In addition to obtaining a trade licence similar to that required for a locally incorporated entity (as described in paragraph B(i) above), the parent entity opening a branch or representative office must appoint a UAE national to serve as the national agent (and sponsor) pursuant to a national agency agreement. The national agent is required to sponsor the foreign company for its licence application and interact with the government bodies to obtain any entry permits and employment visas necessary to carry on business in the UAE. The national agent will not be liable for the obligations or liabilities of the branch or representative office and as a result, the national agent will not have any managerial authority with respect to the company. The negotiated fee will typically vary depending upon the value and nature of the business and is often in the nature of a fixed annual fee.[12]

(iii) Setting Up A Free Zone Entity

The main benefit of a free zone entity is that it can be wholly owned by a foreigner. Free zone entities are also granted certain ancillary financial benefits (described further in C below).

A free zone entity will generally take one of the following three forms: a branch or representative office of a foreign company, a free zone company or a free zone establishment. There is no minimum capital requirement for a branch or representative office, while in most free zones, a free zone establishment and a free zone company are typically required to have a minimum capital of around AED 500,000, but the precise requirements vary from free zone to free zone. A free zone establishment may be owned by a single individual or company, whereas a free zone company typically requires two or more owners.

The key limitation of a free zone entity is that it is generally permitted to conduct business solely within its relevant free zone and is limited to performing solely those activities specified in its licence.[13] A free zone entity must typically hold one of the following licences issued by the relevant free zone authority: (i) trading licence; (ii) service licence; (iii) manufacturing/industrial licence. In order for a free zone entity to engage legally in sales within the UAE (and outside of the relevant free zone), the entity will generally have to retain a commercial agent or distributor. However, free zone entities with service licences have been known to provide services outside of their free zone.

(iv) Commercial Agency Relationship

If a foreigner wishes to carry out business in the UAE but does not wish to maintain a physical presence in the UAE it may enter into a commercial agency relationship with a wholly local owned entity or UAE national. Commercial agents are generally used by foreign manufacturers and traders who are engaged in the large-scale importation of goods into the UAE on a regular basis.

Under a commercial agency, the foreign business and the commercial agent agree to the terms of the sales commission, the territory of the distributorship (at a minimum, this would be one Emirate) and the duration of the relationship. If the commercial agent registers the contract with the Ministry of Economy and Commerce the agent can obtain the various protections afforded to agents under the UAE Commercial Agencies Law (Federal Law No. 18 of 1981, as amended by Federal Law No. 14 of 1988 and Federal Law No. 2 of 2010[14]). These protections include:

- **exclusivity** — registered commercial agents have the exclusive right to import the goods which are the subject matter of the agency;
- **commissions** — registered commercial agents are entitled to receive commissions on the sales they make as well as commissions on sales made in the UAE by the principal or any other party; and
- **termination** — the principal may only terminate a registered commercial agency arrangement unilaterally for "material reasons". Such reasons must be acceptable to the Commercial Agencies Committee.[15] Further, a principal may not refuse to renew a registered commercial agency agreement after its expiry date without the payment of compensation to the registered commercial agent.

Unregistered commercial agencies on the other hand are not subject to the above restrictions. There is no formal procedure required for an unregistered commercial agency to be valid other than parties negotiating and agreeing the terms of their arrangement.

C. GENERAL LEGAL CONSIDERATIONS

(i) Doing Business With The Public Sector

Foreign businesses that do business with the federal government or the government of any Emirate must comply with public sector procurement rules as set forth in Financial Order No. 16 of 1975, the Federal Regulation of Conditions of Purchases, Tenders and Contracts. These rules provide that foreign entities must: (i) have a UAE national as a representative (either through a registered commercial agent or a national agent for a branch or representative office); (ii) set up an entity that is majority owned by UAE nationals; or (iii) work through a joint participation venture with a locally licenced entity.

(ii) Import & Export Regulations

As a member of the World Trade Organization (the ***WTO***) and as a party to various regional free trade agreements throughout the GCC, the UAE has low rates of tariffs.

Import duties are normally charged on products imported into the UAE (outside of the free zones), at rates which can vary according to the nature of the import (*e.g.* higher duties apply to alcohol and tobacco products). The duty may be alleviated by exemptions based on the importer's status (*e.g.* free zone entity, majority owned by a GCC national, etc.) or exemptions based on the type of product. Generally, foreign parties cannot import goods into the UAE for the purpose of resale, other than a free zone entity directly for sale within the relevant free zone or for its own use.

There are no duties or tariffs on exports.

The UAE imposes a boycott of trade with Israel.

(iii) Foreign Exchange Controls & Anti-Money Laundering

The UAE does not generally have any currency exchange controls and restrictions on the remittance of funds. Further, free zone entities are generally expressly permitted to repatriate 100 percent of their profits from the UAE in accordance with regulations in place in their respective free zones.

The UAE has recently strengthened its laws relating to the use of criminal proceeds and terrorist financing activities. As the GCC is a member of the global Financial Action Task Force (the ***FATF***), the UAE has implemented anti-money laundering procedures to meet the standards of the FATF. The various free zones also generally have rules on preventing money laundering. For example, the DIFC requires companies incorporated in the DIFC to appoint a senior manager as a money laundering reporting officer and to submit an annual report detailing steps that such company has taken to implement its anti-money laundering rules.

(iv) Taxation

There is no federal corporate or income tax levied in the UAE (except on oil companies and banks). Certain Emirates, including Dubai under the Dubai Income Tax Ordinance of 1969, have introduced a local income tax; however, these taxes have not been implemented as of the date of this memorandum. In addition, free zone entities may be able to benefit from formal tax holidays for periods of up to 50 years (renewable 15 year holidays are common). The UAE has tax treaties (concluded with a number of jurisdictions (including GCC countries) which UAE nationals and locally incorporated entities can benefit from. Currently, there is ambiguity regarding whether, under the laws of other GCC states whether free zone entities should qualify for the favorable tax treatment usually afforded to other GCC nationals / GCC-incorporated entities, particularly where such entities are not majority or wholly-owned by UAE nationals.

There is currently no value added tax or sales tax in the UAE, although the imposition of a GCC-wide value added tax has been widely discussed for the last several years.

(v) Employment Law

Employment in the UAE is governed by federal law, which imposes certain minimum standards on employing juveniles, working hours, vacation and public holidays, sick leave, maternity leave, employee records, safety standards and termination of employment. In January 2011, the Ministry of Labour and Social Affairs introduced, for the first time, a minimum wage limit for different categories of workers. Employee grievances are handled by a special programme run by the Ministry, and the Ministry must also be informed if an employee is subject to the disciplinary code. Pensions and social security schemes in the UAE are governed by the Pensions & Social Securities Law, Federal Law No. (7) of 1999, as amended.

Most free zones have their own employment laws and employee grievance procedures. In some free zones, for example the DIFC, the free zone's laws will take precedence over the federal employment laws.

Most employees working in the UAE, including in the free zones, have written contracts of employment. Written contracts of employment are certainly advisable for any business in the UAE. There is no employment at will in the UAE.

Since September 2009, all institutions registered under the Ministry have been required to make all payments of their workers' wages and salaries through the Wages Protection System. This involves the transfer of monies through a few selected financial institutions which are authorised and regulated by the government. The Wages Protection System does not apply to some free zones, for example the DIFC.

UAE federal law also sets out preferences for hiring UAE nationals and, for some administrative positions, requires that only UAE nationals be employed (*e.g.* public relations officers who liaise with the government at large companies, attorneys appearing in the courts, etc.). If a non-free-zone company has more than 50 employees, it must employ a minimum percentage of UAE nationals in accordance with the "Emiratization" policy of the UAE Federal Government as originally expressed in Council of Ministers

Order No. (259/1) of 2004 entitled “Resolutions on Training and Employment of UAE Citizens in the Private Sector” (the ***Resolution***). The Emiratization policy applies to both the public and the private sector, and both local and international companies operating in the UAE are subject to the Emiratization policy in the sectors for which such guidelines have been formulated. The Emiratization policy quotas are higher in the public sector, and have recently been amended for the private sector to require a blanket 15 percent quota of UAE national workers, across all private sector industries. The Resolution principally tasks the National Human Resources Developing and Employing Authority and the Ministry of Labor with developing further Emiritization guidelines.

(vi) Immigration

As a country with a very high percentage of expatriates (85 percent to 90 percent of the total population) and visiting tourists, the UAE is generally accommodating to legal immigrants and visitors. Visas are available for business and tourists visits, transit and residency, and in the majority of cases, an attorney is not required to handle processing of visas.

Visitors from approximately 33 countries (including the US and UK) can obtain visit visas upon arrival at an airport in the UAE for no cost. Visitors from other countries can typically obtain tourist visas from certain hotels or tour operators. Business visitors can be sponsored by an employer with a business licence (*e.g.* a branch or representative office, free zone entity, entity under the Companies Law, etc.).

Employers can obtain residency visas, which last for three years, for a certain number of employees, as determined by the federal government in relation to particular industries. For entities located outside of the free zones, employers must register the employment contract with the Ministry of Labour and Social Affairs before a residency visa can be issued. In most free zones, the sponsor of each employee is the free zone itself and the free zone interacts with the federal government directly, which makes the process more efficient. Once a residency visa is obtained and the employee earns a certain salary, the employee may sponsor his or her family for immigration, provided that he or she earns a minimum of AED 4,000 per month.

(vii) Real Property

Except in certain designated freehold areas or certain free zones, real property may only be owned by UAE (or GCC in certain Emirates) nationals or entities that are wholly owned by such persons. Most foreign residents and foreign businesses lease their homes and office spaces.

Entities operating outside free zones are permitted to lease space in the UAE upon registration as a locally incorporated entity or as a branch or representative office. For entities operating within free zones, registration within free zones entitles and in most cases requires one to apply for a lease or freehold from the free zone’s real estate authority.

(viii) Intellectual Property

UAE law recognises a broad range of national intellectual property rights, which are similar in form to those under the UK, European and US systems. By virtue of the UAE’s membership of certain worldwide conventions on intellectual property (*e.g.* the Madrid Convention, the WTO, TRIPS, Patent Cooperation Treaty (the ***PCT***), etc.), there is also recognition within the UAE of worldwide intellectual property rights. Registration of intellectual property is handled by the federal Ministry of Economy.

There has not been any significant patent litigation in the UAE, principally due to low level of local patent registrations.

(a) Patents (or Industrial Property)

Patents are protected under the UAE's Industrial Property Law (Federal Law No. 17 of 2002). UAE patents, foreign patents with PCT priority dates and certain unregistered patents are enforceable in the UAE. However, it is preferable to register patents in the UAE to maximise protection. Patents which are not registered in the UAE but which are the subject of a PCT application would have priority if any other party attempted to register the same patent in the UAE. Infringers of patents registered in the UAE are subject to fines and imprisonment. The UAE is also part of the GCC Patent system which provides a mechanism for regional filings of patent applications within the GCC countries.

(b) Copyrights and Trademarks

Federal Law No. 7 of 2002 Concerning Author's Rights and Neighboring Rights gives copyright protection to a wide range of works. Federal Law No. 37 of 1992 gives protection to both trademarks and trade names. Trademarks and copyrights are protected in the UAE in accordance with widely accepted international conventions, though there are some areas (notably in the area of ownership of employee works and the assignment of future copyright) where UAE law diverges from international norms. The UAE trade mark office does not allow filing of multi class application for trademarks.

(c) Confidential Information

Currently, there is no specific law in force in the UAE that specifically protects trade secrets. However, there are overlapping provisions under the UAE's Industrial Property Law (Law No. 17 of 2002) and the UAE's general contract law, unfair competition law and various confidentiality provisions in specific areas of law (*e.g.* employment law) that protects know how and confidential information. The absence of a uniform trade secrets law means that there is a degree of uncertainty as to protection of these rights under UAE law. A proposed draft law of trade secrets is currently in the pipeline.

UAE Courts will generally act to prevent the confidential information of one party being used or disclosed by another party.

(ix) GOVERNING LAW & DISPUTE RESOLUTION

(a) Governing Law

The United States and Western European jurisdictions tend to have more developed bodies of commercial and corporate law than the UAE. Laws and cases in the UAE also tend not to be readily available or available with reliable English translations. Accordingly, where a foreigner is entering into contracts with a party located in the UAE (other than an entity connected to federal or Emirate governments), it is quite common to see English law (and, in some instances, US law) selected as the governing law for a contract.

(b) Dispute Resolution

Many parties doing business in the UAE (both foreign and locally based) tend to select binding arbitration as the preferred method of dispute resolution as arbitration generally allows for selection of experts as arbiters, increased confidentiality and quicker resolution than litigation.

The UAE recently ratified the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards, so arbitration decisions made in other treaty nations are recognised within the UAE.

The London Court for International Arbitration (and its rules) is commonly selected by international parties doing business in the UAE as the arbitration forum, as are the major arbitration centres in other parts of the world. The Dubai International Arbitration Centre and the Abu Dhabi Commercial Conciliation and Arbitration Centre tend to be more popular among local parties.

Pros and Cons of Means to Set Up a Legal Presence in the UAE

Means	Pros	Cons

Incorporating a Limited Liability Company (under the Companies Law)	• Allows entity to conduct a broad range of activities in all of the UAE (other than in the free zones).
	• Allows entity to conduct business with federal and local governmental bodies (without the involvement of a commercial agent or national agent).
	• Separate legal entity from its foreign owner.
		• At least 51 percent of the company's capital has to be owned by UAE nationals.[16] However, the foreign owner may seek the following protections in the constitutional documents:
		  • the right to appoint all of the directors;
		  • the right to appoint the general manager;
		  • the right to veto major decisions;
		  • the right to all of the assets of the company on a winding up; and
		  • the right to more than 49 percent of the profits.[17]
		• Can take up to several months to set up.
		• Must employ a specified number of UAE nationals if employ more than 50 people and fall within the scope of the Emiritization guidelines.
		• No general minimum capital requirement.

Opening a Branch Office	• Quicker than incorporating a local entity. • More activities permitted than for a representative office.	• A branch office may only engage in activities that do not constitute "commercial business" — which typically means that branch offices are limited to professional activities (although an exception has developed in practice for branches engaged in the sale of products manufactured by its parent company). • Not a separate legal entity from the foreign owner. • Must engage a UAE national agent to act as a service agent who will handle sponsorship and government paperwork. • Limited to employing the number of foreigners permitted under its business licence.
Opening a Representative Office	• Quicker than incorporating a local entity.	• May only handle marketing and administrative functions on behalf of a foreign parent. • Not a separate legal entity from the foreign owner. • Must engage a UAE national agent to act as a service agent who will handle sponsorship and government paperwork. • May only employ up to three or four foreigners.

Continued on following page

Pros and Cons of Means to Set Up a Legal Presence in the UAE		
Means	**Pros**	**Cons**
Setting up a Free Zone Entity[18]	• 100 percent foreign ownership permitted. • Geographical proximity to entities carrying out similar activities. • Commitment to zero taxes for a period of at least 15 years (renewable for an additional 15 years). • Full repatriation of profits and capital expressly permitted. • Sponsorship process for employees	• Generally, a free zone entity is permitted to conduct business solely within its relevant free zone and limited to performing solely those activities specified in its licence.[19] • Each free zone authority is limited in the scope of activities it may authorise (*e.g.* only licences for media and IT services in the Dubai Media City, etc.) • Many free zones require an actual physical presence in the free zone (*e.g.* leasing office space and at least one employee). • It is difficult and expensive to obtain space in the popular free zones (*e.g.* DIFC, Sharjah Airport International Free Zone).

Commercial Agency Relationship	• Does not require establishment of a physical presence in the UAE.	• Third party handles all aspects of the foreign business in the UAE.
		• Once a commercial agency contract is registered with the Ministry of Economy and Commerce:
		  • **exclusivity** — registered commercial agents have the exclusive right to import the goods which are the subject matter of the agency;
		  • **commissions** — registered commercial agents are entitled to receive commissions on the sales they make as well on sales made in the UAE by the principal or any other party; and
		  • **termination** — the principal may only terminate a registered commercial agent for “material reasons”. Further, a principal may not refuse to renew a commercial agency agreement after its expiry date without the payment of compensation to the registered commercial agent.

Companies Law Entities							
Type of Entity	**Limited Liability Companies**[20]	**Private Joint Stock Company**[21]	**Public Joint Stock Company**[22]	**Joint Participation Ventures**[23]	**Simple Limited Partnerships**	**Partnership Limited with Shares**	**General Partnerships**[24]
Minimum Ownership % for UAE nationals[25]	51%.	51%.	51% of shares[26] (pre and post-public issuance).	51% of capital must be contributed by the local partner.	• Must have at least one general partner who is a UAE national. • Limited partners can be both UAE and foreign nationals.	• Must have at least one general partner who is a UAE national. • Limited partners can be both UAE and foreign nationals.	100%.
Liability	Limited.	Limited.	Limited.	Joint.	• Joint for UAE nationals. • Limited for foreign nationals.	• Joint for UAE nationals. • Limited for foreign nationals.	Joint.
Minimum Capital Requirement	No requirement.	AED 2,000,000.	AED 10,000,000.	No requirement.	No requirement.	AED 500,000.	No requirement.
Number of Founding Members/ Partners	Two to 50.	At least three.	Three to 15.	At least two.	At least two.	At least three.	At least two.
Management or Director Restrictions (by Nationality)	No restrictions.	Chairman must be a UAE national. Majority of directors must be UAE nationals.	Chairman must be a UAE national. Majority of directors must be UAE nationals.	No restrictions.	Must be managed solely by UAE nationals.	Must be managed solely by UAE nationals.	Must be managed solely by UAE nationals.

END NOTES

1 The UAE federal constitution was established as a temporary legal framework for the union of the seven Emirates in 1971. In 1979, a draft "permanent" constitution was prepared which provided for the unification of the judicial systems and armed forces of each of the individual Emirates into combined federal entities. Dubai refused to accept the unification of either its courts or military forces under a federal umbrella until 1996, when it acceded to the unification of military forces only. The UAE federal constitution was permanently accepted by Dubai and the other Emirates after the unification of military forces in 1996. Dubai continues to maintain its own court system which is not subject to oversight from the Supreme Court of the UAE.

2 Certain activities are restricted to UAE nationals and companies wholly owned by UAE nationals (*e.g.* real estate agency and brokerage activities, and educational activities) and to certain forms of entities (*e.g.* limited liability companies cannot conduct banking, insurance or investment activities for others).

3 These business activities (and the relevant government agencies) include, among others, the following: industrial projects (Ministry of Finance and Industry), engineering consultants and related technical services (municipality authority of the relevant Emirate), law firms (Ruler's Court of the relevant Emirate), banking and financial services (UAE Central Bank), recruitment agencies (Ministry of Labor and Social Affairs); sea cargo, freight forwarding and cargo clearing (Department of Ports and Customs).

4 There is an exception to this general rule for entities that are (a) specifically exempted by the federal Cabinet of Ministers from the requirements set forth in the Companies Law; and (b) operating in any of four sensitive industries: oil and gas, electricity and gas production, water treatment and transmission, distribution or other related activities thereof. Entities under subsection (a) are subject to specific requirements imposed by the federal government, and those under subsection (b) are subject to specific requirements imposed by the relevant Emirate (and federal government), on an *ad hoc* basis.

5 A speculative venture partnership is a contract between two or more persons to purchase property on credit, to sell it at a profit and to share the profits. A *mudaraba* arrangement, as defined in Article 693 of the Civil Code, is a contract agreement between two parties where one of the parties to the contract contributes a certain amount of capital and in exchange the other party contributes his efforts or work to make a profit.

6 Certain activities, even if carried out by professional services companies, are restricted to UAE nationals and companies wholly owned by UAE nationals (*e.g.* real estate agency and brokerage activities, and education activities).

7 The joint participation venture is established by a formal agreement between at least two parties, of which one is locally incorporated under the Companies Law and is authorised to do business. The joint participation venture is not required to be registered with the federal or local government under the Companies Law; however, the locally incorporated party must be properly registered and the joint participation venture "piggybacks" off such registration.

8 The UAE Federal Government issued a Federal Decree on 10 August 2009, amending Article 227 of the Companies Law. The amendment applies retroactively to limited liability companies set up on or after 1 June 2009.

9 The amendment to Article 227 impacts certain other provisions of the Companies Law.

Article 255 of the Companies Law requires a limited liability company to retain 10 percent of its net profit in each year in order to create a statutory reserve, thus leaving the remaining 90 percent of profits to be distributed as dividends. Once the statutory reserve amounts to half of the share capital of the company, the shareholders may suspend the retention of such profits, thus allowing all future profits of the company to be distributed as dividends. If a limited liability company is established following the above legislative amendment with a minimal share capital, it is likely that the shareholders will have a larger pool of funds to be distributed as dividends, as the retention of half of the share capital ought to be easier and quicker to attain.

Article 289 of the Companies Law, which relates to the dissolution of a limited liability company, provides a trigger event for dissolution by the shareholders if the company sustains losses amounting to one half its capital. Any new limited liability company incorporated with a minimal share capital amount may easily reach the losses prescribed in this Article resulting in the winding up of the company (unless the shareholders elect to recapitalise the company).

10 A number of public statements have been made in the last few years about the proposed introduction of a new Companies Law, which will reduce the restrictions on foreign ownership. There is uncertainty as to when this law will be introduced and how it will change foreign ownership restrictions. In addition, a practice has recently developed whereby the 49 percent cap on foreign participation is not enforced provided that 100 percent of the capital of a company is owned by GCC nationals. If, however, there is any non-GCC national ownership, irrespective of the size of the ownership interest, then UAE nationals will be required to own 51 percent of the company's capital. It is not clear how far up the ownership chain the relevant regulatory authorities will look to verify that 100 percent of the issued capital is in fact held by GCC nationals.

11 There is no law with respect to the maximum amount of profits that a local entity may distribute to a foreign shareholder. However, as a matter of local practice, the foreign shareholder may receive up to 85 percent of the profits of a company incorporated in Abu Dhabi and the foreign shareholder may receive up to 80 percent of the profits of a company incorporated in Dubai.

12 Note that a national agent is not the same as a commercial agent. Commercial agents are discussed in paragraph (iv) below.

13 The relevant licence will be issued by the free zone authority regulating the free zone in which the company is incorporated. In certain instances, a free zone entity may be able to apply for an additional licence from a UAE authority that has jurisdiction outside of the free zone (for example, the Dubai Department of Economic Development) if it is conducting certain kinds of permissible business in a particular Emirate outside of the free zone of incorporation.

14 The 2010 amendments to the UAE Commercial Agencies Law strengthen the protection afforded to UAE nationals agents. The 2010 amendments remove the concept of a principal being able to unilaterally deregister a fixed term agency arrangement upon expiry of the fixed term.

15 The Commercial Agencies Committee is a special committee, reintroduced by the 2010 amendments to the UAE Commercial Agencies Law, that is charged with the duty of reviewing terminations of agency arrangements.

16 A number of public statements have been made in the last few years about the proposed introduction of a new Companies Law, which will reduce the restrictions on foreign ownership. There is uncertainty as to when this law will be introduced and how it will change foreign ownership restrictions. In addition, a practice has developed whereby the 49 percent cap on foreign participation is not enforced in relation to companies which are wholly owned by GCC nationals.

17 There is no law with respect to the maximum amount of profits which a local entity may distribute to a foreign shareholder. However, as a matter of practice, the foreign shareholder may receive up to 85 percent of the profits of a company incorporated in Abu Dhabi, and the foreign shareholder may receive up to 80 percent of the profits of a company incorporated in Dubai.

18 In most free zones there are three permitted forms that a free zone entity can take: a free zone company, a free zone establishment and a free zone branch. A free zone establishment and free zone company are required to have minimum capital of at least AED 500,000 in some free zones (and a higher threshold in others). Typically, a free zone company must have more than one owner whereas a free zone establishment may have a single owner. A branch has no minimum capital requirement, but is more limited in the types of activities that it may conduct as compared to the free zone establishment or free zone company.

19 Free zone entities with service licences have been known to provide services outside of their free zone. Free zone entities with trading or industrial licences generally require a local distributor or commercial agent to sell goods outside the free zone and within the UAE.

20 This is the preferred form of entity for foreigners wishing to enter the UAE (outside of a free zone). This is primarily because of the relatively small capital requirements and the flexibility to decide how management decisions will be made and how profits will be distributed, irrespective of the foreigner's equity holding. One important limitation is that it cannot be used to transact the following activities: banking, insurance or investment for a third party, which are restricted to public joint stock companies.

21 The rules governing a private joint stock company are the same as the rules governing the public joint stock company, except that public joint stock companies are permitted to issue securities to the public.

22 The UAE federal government has encouraged certain high-profile projects to be undertaken via a public joint stock company in order to allow the issue of shares to the public. Further, any company carrying on banking, insurance or investment for a third party must be a public joint stock company. Note that in the case of some listed public joint stock companies, higher local ownership restrictions may be imposed or may be included in the company's articles of association.

23 Joint participation ventures are often formed by foreigners who wish to set up in the UAE on a short-term basis to carry out a specific project, often with government bodies. Each participant in the venture will generally conduct business in its own name. The major drawback of a joint participation venture is that the liability of the participant who is conducting business is unlimited. In addition, if the liability of other participants is disclosed to third parties, each participant will be liable to third parties as if it were a general partner.

24 Foreigners are not permitted to join a general partnership.

25 An exception to the UAE national ownership requirements has developed in practice for entities that are 100 percent owned by GCC nationals.

26 At least 20 percent and no more than 45 percent of the initial capital must be owned by the founders.

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