DOING BUSINESS IN THE UAE

DUBAI, 2020

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A. The UAE's Position in the World Economic Order

Despite much scepticism, the United Arab Emirates (UAE), especially the Emirates of Dubai and Abu Dhabi, managed to transform an area, originally known for its solitude and pearls and infamous for its legendary pirates, into a major business and logistic hub, attracting people and businesses from about 200 nations setting up their entities and lives in a place offering its inhabitants an increasing comfort of living.

Besides the fact that project finance is secured for the next decades, thanks to the vast oil deposits amounting up to 10% of the world reserves, the ideal location from the logistical point of view, the ability to reach three quarters of the world population within a 6 hours flight, being well placed in between Europe and Asia the investor friendly business climate and the political stability overall attracts many investors from less steady regions of the world. Although nothing was expected to happen in the UAE during the Arab spring events early 2011, the total absence of riot and the debate or critics against the system in the UAE, on the contrary, the flow of cash, investment and business coming from other Arab countries in the UAE comforted the international business community and investors that the country is a pillar in terms of political stability.

Moreover, the good news for investors is that the UAE have learned its lessons from the recent worldwide finance and business crash. From the official site, huge efforts have been undertaken to avoid having "bubbles" bursting by learning from previous mistakes and therefore securing a safer investment environment, especially in the real estate industry. The 2013/2014 speculation over the real estate industry is predicted not to last and is any manner executed within a legal framework enabling investors to assess their risks in a better way, however still based on emerging country standards. Many official fees related to company formations have been reduced, office space is available at now reasonable prices and living became cheaper.

Furthermore, it was the employer friendly local labour law which enabled investors to react fast to the circumstances of the crisis. Only this flexibility together with the aspects mentioned previously, allowed most local set ups and companies to survive the critical times of the past year and guaranteed a faster recovery than in most other regions of the world.

2017 has been a landmark year in the UAE which has witnessed the most far-reaching reforms on the economical local market in the young history of the county. The UAE have released the text of its domestic Value Added Tax (VAT) Law, shortly after releasing the text of its Excise Tax Law, and the Federal Tax Procedures Law (FTP), based on the VAT Agreement for the Gulf Cooperation Council (GCC) (GCC VAT Treaty) which has been signed by the representatives of the Member States of the GCC. On 1 January 2018 UAE implemented VAT at the rate of 5%. The UAE becomes herewith no longer a tax-free country.

Last but not least, 2018 was also the year in which UAE introduced a significant law for investors, allowing 100% ownership of UAE-based enterprises for international investors oppose to the current mandatory rule of 51% local ownership of enterprises established in the UAE. The law aims to continuously attract foreign investment into the country. In line with the agenda to attract and generate Foreign Direct Investment (FDI) and establish economic sustainability, the UAE also implemented a catalogue of long-term visas, such as the investors and entrepreneur visa, which is issued for 5 years.

Before describing in more detail, the possibilities of doing business in the United Arab Emirates, private investors and foreign companies are well advised to carefully consider the right concept of their activities in the UAE Starting a new business in a foreign region should be well prepared and not put under time pressure or premature commitments. Mistakes in the concept could be detrimental and are often difficult and costly to correct.

MENA Legal is offering such investors a one-stop-shop support from an analysis of the regional market for the relevant product or service, up to support in setting up the most appropriate business model and lastly, all related legal issues.

I. Categories of UAE Related Business Activities and the Related Legal Form

Business activities related to the United Arab Emirates can be categorized from the legal point of view and linked to a related legal form of implementation:

Business Activity	Legal Form of Implementation
Sales of products	Direct sales from abroad, travelling salesmen, commercial agent or distributor, Joint Venture (JV) - company; For promotion only or for negotiations on behalf of the foreign head office: A representative office or a Free zone Company (FZCo) or a Free zone Establishment (FZE), insertion of an outsourcing company
Services	Same legal forms as for sales of products; Foreign branch subject to approval of Ministry of Economy (MOE).
Production	JV-company, FZCo, FZE, appointment of a toll manufacturer, Offshore Company
Contracting	Foreign branch, JV-company
Business outside the UAE	JV-company, FZCo, FZE, Offshore Company
Holding of shares in other companies	Offshore Company

Real estate investments in restricted UAE areas	As foreign individual, legal entity, Offshore Company
Real estate investments in the UAE but outside the approved areas	No legal form available
Real estate investments outside the UAE.	Offshore Company

II. The Tools for the Appropriate Concept

Depending on the activities and the intentions, while taking the general legal forms into consideration, the preparation of the concept may require the following information to take the following steps:

Information for a detailed analysis of the subject business;
Information for a detailed analysis of the intended business;
Compilation of a profitability study for the targeted region;
Preparation of a legal concept including corporate structure, set of contracts required and regional considerations;
Optimization by fiscal consideration and adjustments;
Optimization by modifying infrastructure, financial issues and logistic;
Evaluation and optimization of local business support (competent partners, outsourcing);
Selection of suitable local partners.

III. Dubai's Position as a Regional Hub and its Effect on the UAE

Whereas an investor, who is developing new or reconsidering existing business lines generally, has limited alternatives to change the business line, and whereas the suitable legal form of implementing new ideas is predominantly an evaluation of what is available and what is the optimal alternative, the consideration of the regional environment for the indented business may have even more relevance for the conceptual considerations.

The economies of the Arab Gulf States are intensively based on (and to some extent dependent on) their oil revenues. The Iran-Iraq war and the Iraqi invasion in Kuwait have caused some political shadows but have commercially not affected non-involved countries. Iran has liquidity problems and Iraq is suffering from the instable political situation after the war in March/April 2003. The United Arab Emirates - and especially the Emirate of Dubai - always kept its sense for the commercial requirements notwithstanding the conflicts and paid due attention to its economy. This attitude is one of the pillars of Dubai's success.

Foreign companies servicing somewhere in the Gulf have to reconsider their set-up in the Gulf from time to time and adjust their regional concept in accordance with the prevailing circumstances. As of now, Dubai, forming part of the UAE, is the very first choice for a regional centre. Therefore, it appears worthwhile to analyse Dubai's, the UAE's and the region's business environment:

Dubai's importance has grown into a traditionally commercial trading center for the region, which is still expanding and developing. Excellent relations exist with all GCC -countries except of Qatar. In 2017 a diplomatic crisis resulted to severed diplomatic relationship between Qatar and the other GCC countries. The coalition alleged Qatar to support terrorism and as a result banned Qatari airplanes and ships from utilizing their airspace and sea routes along with Saudi Arabia blocking the only land crossing and banning all trading relationships with Qatar;

UAE had a deep-rooted trading history with Iran until the relations between the two countries were soured out of solidarity action, after Saudi Arabia severed ties with Iran following the January 2016 attack on the Saudi diplomatic missions in Iran. With the withdrawal of the United States (USA) from the Joint Comprehensive Plan of Action (the "JCPOA") and reimplementation of the sanctions against Iran, UAE -considered as a US ally- supports the decision of USA, which led to drastic decrease of Iran UAE trading transactions and increased compliance checks within the country;

Its relationship to Iraq and even to more remote countries like Pakistan and India however is unimpaired;

The recently established relationship between UAE and Israel, manifested by signing of the Abraham Accord on September 15th, 2020 will expand the business opportunities and trading markets for the UAE enormously, in particular in the advanced technology, real estate and agriculture industry new trade and capital flows with immediate benefits for Israel and the UAE are expected.

In the West, the importance of trading with Africa, in particular East Africa is growing. A market with a population of well beyond 1.2 billion people can be reached from Dubai.

Overall the Middle - East region has accepted Dubai as the regional hub for business, investments and as an infrastructural center. In consideration of its deep-rooted trading tradition, based on the freedom of business, Dubai has been called the "City of Merchants" and may be considered one of the most important business links between the East and the West;

The UAE's solid national budget, secured by the income from oil, especially in the Emirate of Abu Dhabi, and encouraging growth rates;

The ideal job conditions in the UAE., a comfortable environment for tourists and expatriate residents, high living standard, a modern system of health care, well-developed school systems for nationals and foreigners;

A stable, political situation since its foundation in 1971 with prevailing economical, and commercial interests, low crime rate;

The UAE's well-developed dynamic logistic infrastructure for trade activities with the entire region, e.g. the establishment of a second airport Dubai World Central (DWC) to with 5 - 7 million capacity passengers terminal and to accommodate to cargo operations and serve as a multi –

modal logistics hub for 12 million tons of freight. Dubai has the 9th largest container port in the world, regional trading and distribution centers and a huge number of first class hotels and shopping centers;

Dubai has become the dominating exhibition center of the Gulf, e.g. the World Expo 2021 hosted in Dubai;

Dubai is the prevailing location for foreign representative offices, which are often in charge for the entire Middle East and beyond. The Emirate of Abu Dhabi, on the other hand, is the more suitable location for businesses related to the government and more and more incentives are offered for industries especially the oil related ones;

Dubai has developed a strong attitude for new commercial ideas and business opportunities, diligently developed with skill, expertise and a good sense for success, which may serve as a solid platform for a positive forecast for Dubai's future.

With Saudi Arabia, Kuwait, Qatar, Iraq, Iran , Dubai neighbors 5 of the world's largest oil and gas producers. Most of these countries, excluding Iraq and to a certain extent Iran, are currently booming. Movements are even noted on the Iraqi side of Kurdistan with Erbil as a reliable place for doing business. Nevertheless, foreign companies face difficulties to access these markets. Dubai's trade relations to most of them (excluding Iran and Qatar at the moment) are excellent and it is much easier to approach these countries from Dubai.

IV. Tax considerations

As mentioned above the UAE has introduced the VAT on 1 January 2018. The standard VAT rate of 5% is applied on goods and services (e.g. food, consulting services, maintenance works etc.) that are not VAT exempt or zero-rated. Some key sectors are confirmed as having VAT reliefs such as: healthcare; education; financial services; and transportation; exports; and hydrocarbons (though not petrol). There are also special rules for paying import VAT, VAT grouping rules and so on.

On one hand to provide locally the needed guidance to businesses in the UAE taxpayers are advised to seek consultation which allows them to take the necessary meassures in time. On the other hand as the taxable unit for the profits from the FZE and FZCo is the company or the branch itself, the owner/s should consider the tax law of their country concerning their share of profit. Most onshore countries have provisions within their tax legislation whereby any company, no matter where it is incorporated which is managed or controlled from within their jurisdiction will be tax resident there and taxable on its worldwide income at local rates. However, there are within and outside the UAE corporate structures, e.g. offshore companies, in place which could act in some cases as a tax optimization vehicle for local companies and their foreign owner/s or shareholders. For instance, any offshore company which has US based directors would be tax resident in the US and subject to US tax on its worldwide income. Failure by the directors to declare the liability of the offshore company to US tax would be an offence with potentially very serious consequences. Most other onshore countries have similar provisions within their tax legislations, so it will rarely be advisable for onshore resident clients to act as the directors of an offshore company. However, to establish an offshore tax residency for the company we can provide professional third party directors and in most cases it is essential to take this service if tax savings are to be made.

At the moment, all businesses in the UAE are advised, if not already in place, to record their financial transactions as per international accounting standards and ensure that their financial records are accurate and up to date and also file the economic substance report, were applicable.

Any UAE-resident business making taxable supplies or imports that exceed the mandatory registration threshold of AED 375,000 or more in any 12-months period was required to be VAT registered.. Also, if the businesses anticipate that the total value of supplies will exceed the mandatory registration threshold of AED 375,000 in the next 30 days, then they too will have to register under UAE VAT.

Those businesses, who do not have a place of residence in the state of UAE, will have to compulsorily register under VAT irrespective of the registration threshold.

Businesses that do not think that they should be VAT registered, anyhow, are advised to maintain their financial records in any event, in case it is needed to establish proof whether they should be registered.

Any business will be able to recover VAT on purchases of goods and services, to the extent that those purchases are only used for business purposes, and subject to certain conditions. The input VAT deduction adequate for a business depends ultimately on the activities performed by this taxable person, and whether those activities allow VAT recovery on related costs.

The Federal Law on Tax Procedures aims to clarify several topics, including keeping accounting records and commercial books related to tax purposes, period of record-keeping mechanism and saving. This is in addition to the Federal Law on VAT which identifies liability to tax, tax registration and exception methods, and rules of tax payment, with a detailed explanation about exemption for selective goods. The UAE Cabinet also issued the Federal Law on Excise Tax on excise Goods, excise tax rates and the methods of calculating the excise price. The Executive Regulations add details to key areas such as: registration obligations, zero and nil rating for certain supplies; liability to VAT of financial services; VAT return obligations; and VAT treatment of supplies between Gulf States.

To provide the needed guidance the Ministry of Finance has launched a dedicated tax website for the Federal Tax Authority (FTA) which is as described above the government entity responsible for the collection and management of federal taxes.

To fully comply with the implemented VAT system, existing businesses had to make some changes to their core operations, their financial management and book-keeping, their technology, and perhaps even to their human resource populations (e.g. accounts and tax advisors). It is intended that to allow foreign businesses to recover the VAT they incur when visiting the UAE.

1. Tax consideration between Germany and the UAE

a. Fiscal situation

The Federal Republic of Germany (Germany) and the UAE signed a new double taxation treaty on July 1, 2010. According to the previous regulations, income of German citizens, if the person would not reside in Germany and would be at least 187 days out of the country, as well as German entities which were active in the UAE, were exempted from tax.

The new agreement, which came into force retroactive as per January 1st, 2009, has been adapted to the OECD-standards and is providing an extensive intergovernmental information exchange. Regarding the new fiscal treatment, German expatriates follow the abatement method (Anrechnungsmethode).

The abatement method stipulates that taxes paid in a foreign country shall be deducted from the individual's/entity's German tax burden. As it is known, the United Arab Emirates do not tax the income of entities and individuals and therefore no taxes may be deducted from the German tax burden.

This information created a lot of panic and rumors of German nationals and German companies leaving the UAE could be read everywhere. However, a second and deeper look into the matter shows that under certain prerequisites the German taxation still can be avoided.

b. Prerequisites for tax exemption

Individuals, who do not have their residency or habitual residence and center of life in Germany, will be further exempted from the German tax. Here, it is important that such a person does not have any kind of domicile in Germany, neither just a furnished room nor weekend home used. It has to be obvious to the German tax authorities that the person does not intend to return to Germany in the foreseeable future. The notice of departure alone is not sufficient to obtain tax exemption status.

However, a person might have a restricted tax liability if income from renting and leasing is generated, then such income will be taxable. Interest earned by a German expatriate from German debtors and dividends from German corporate entities will be imposed with a flat rate withholding tax of 25% (Abgeltungssteuer). Entities, whose management board or registered office is located in Germany, are taxable according to the worldwide income principle (Welteinkommensprinzip) at a flat rate of 15.83%. However, as per the Agreement, the profits made by a permanent establishment which is defined as a fixed place of business through which the business of an enterprise is wholly or partly carried on, are taxable in the state of this permanent establishment. Thus, the profits made by a place of management, a branch, an office, a factory or a workshop localised in the UAE will be exempted from tax.

Only dividends distributed to the parent company will be taxed as income with 5%. 95% of such dividends will remain tax-free. However, it is important that such independent subsidiary is not classified as an intermediate company according to Art. 7 sub. 1 German Foreign Transaction Tax Act (AStG). Furthermore, the subsidiary should not generate passive income, which means other income than active income according to Art. 8 sub. 1 AStG. Passive income would be added onto the tax burden of the parent company.

As the subject is quite complex, it is strongly recommended to seek legal and tax consultancy on a case- by- case basis.

2. Tax consideration between France and the United Arab Emirates

a. Fiscal situation

On 19th July 1989, France and United Arab Emirates (UAE) signed a non double-taxation treaty, amended on 6th December 1993.

With regard to the incomes based on and resulting from an employment contract, as soon as the residency conditions are fulfilled (only a real and actual residency must be proved of more than 183 days per year), all salary and related remunerations, including bonuses and allowances, are taxed by the Tax Law of the State where the employee has his/her residency. Therefore, as the Tax Law of the UAE does not tax an employee for his salary, there is no tax which can be deducted from a salary and employee’s related remunerations.

b. Prerequisites for tax exemptions

Individuals, who do not have their residency or habitual residence in France, will be further exempted from the French Income Tax. Here, it is important that such a person does not have any kind of domicile in France, neither just a furnished room nor weekend home used. It has to be obvious to the French tax authorities that the person does not intend to return to France in the foreseeable future.

However, a person might have a restricted tax liability if income from renting and leasing is generated, then such income will be taxable in France.

As the subject is quite complex, it is strongly recommended to seek legal and tax consultancy on a case- by -case basis.

B. Commercial Agencies and the Sale of Products and Services of a Foreign Manufacturer in General

I. Sales by Travelling Salesmen

Foreign products may be imported into the UAE by whoever has an appropriate import license e.g. a commercial agent or distributor, a JV-company established in accordance with the laws of the UAE or a company holding a corresponding trade license.

Therefore, salesmen of a manufacturer may visit the country and the customers on a regular basis. The customers may order from the representative or directly from the producer on a case-by - case basis. This area is legally governed by the law of sale. The question of agency or distributorship law does not arise. The manufacturer is legally not present, legal requirements e.g. for the import, customs clearance etc., have to be taken care of by the buyer.

II. Appointment of a Commercial Agent or Distributor

The appointment of a commercial agent or distributor is the classic form to organize the sale of products or services in the U.A.E. The manufacturer appoints a commercial agent or distributor who takes care of the marketing and sales within the territory designated in the agency contract. Generally, the commercial activities of foreign companies in the United Arab Emirates - like in other countries in the Gulf - have to meet certain legal conditions, thus certain commercial activities require mandatory local partners. Commercial agencies or distributorships may be given to UAE-nationals or local companies 100% owned by UAE-nationals only.

Commercial agencies or distributorships must be registered. The commercial agent or distributor enjoy legal protection to some extent. In particular, it might be difficult for the principal to terminate the commercial agency or distributorship agreement unless he pays a substantial compensation. Therefore, legal advice is recommended as more flexible solutions exist in order to avoid any inconvenient situation.

III. Formation of a Joint Venture Company (JV-Company)

The distribution of the products or services may be given to a JV-company having a UAE national or a fully Emirati held UAE-company and the manufacturer as shareholders. This company may perform the required trading activities, notwithstanding that no commercial agency or distributor-ship agreement may be registered, because the JV-company is not fully locally owned. There is no legal objection against agreeing on the trading (not commercial agency) of the foreign manufacturer in the articles of association. Typically, the JV-company is a limited liability company.

IV. Distribution of Foreign Products outside the UAE

The distribution of foreign manufacturer products outside the United Arab Emirates may face difficulties because most of the commercial agency laws of the neighbouring countries require direct business relations between the foreign manufacturer and the commercial agent or distributor of the respective country. A company in the UAE, being an independent legal entity is interrupting the direct relations, whereas a representative office of the foreign manufacturer does not constitute an interruption in the distribution chain and does therefore comply with this requirement.

V. Marketing and Promotion of Products and Services

The representative office, which may be in charge for the entire region, may not conduct the activity of sale but it may provide services to a UAE-Joint Venture Company (JV-company), generally under a Limited Liability Company (LLC), such as marketing, promotion and consulting. It may supervise the UAE-LLC and may have a permanent representative in its board of directors. The structure of the set-up also depends on financial and logistical issues. A well-structured set-up has additional costs, which have to be covered by the total turnover (see below for more details about the Representative Office).

VI. Product Safety Law

A new Federal Law on product safety has been issued in July 2019. This new law aims to ensure the safety of products supplied in the UAE and to facilitate trade between the UAE and international markets and is part of the UAE's wider legal framework including the Food Safety Law and the Consumer Protection Law. Since this law applies a broad definition of the word "liable provider", meaning extending the liability towards customer on the entire distributor chain, including manufacturer, supplier, local agents, distributor and anyone involved in the circulation of the product or service, it is essential for a foreign manufacturer to understand the degree of responsibility and liability and how he can exclude certain liability to his benefit through recourse within the distributor chain in the terms and condition of the service agreements.

Provider must ensure that their products comply with any applicable standards issued by Emirates Authority for Standardisation and Metrology (ESMA), or by a foreign regulator that has been approved by ESMA. Provider will also need to remain attentive and monitor the market after circulation of the product to conduct remedial measures in case a product becomes unsafe during normal use.

In case of breach of its responsibility the provider will be subject to fines of up to AED 3 million and potentially imprisonment. The court may also order the seizure or destruction of products (at the provider's cost), closure of the business for up to six months, and revocation of the provider's trading licence.

C. Branches and Representative Offices

I. The Definition and the Differentiation between Branches and Representative Offices

Provided the intended activities are acceptable, foreign companies may establish their own branch, whereby the foreign company retains 100% ownership and may manage it itself. The mandatory UAE-National agent fulfils only a legal requirement and may not interfere in the branch's decisions nor is he liable for it but can support with immigration or other authority related filings. The UAE -National is entitled to a fixed remuneration.

Branches of foreign companies are regulated at federal level in the UAE-Commercial Company Law of 1984 as amended (hereafter "CCCL") which enables foreign companies to have an independent presence. Each Emirate issues independent laws related to the conduct of economic activities and the possible legal forms.

The differentiation in the law (see article 3 CCL) between ‘representative office’ and ‘branch’ indicates that these are two different legal forms. Actually, they basically differ only in the scope of licensed activities. The differentiation is significant for the scope of activities based on the trading license received after registration by the Ministry of Trade and Industry from the Economy Department of the respective Emirate.

While the representative office only “represents”, coordinates, supervises, acts as an agent (not as commercial agent), advertises etc., but does not directly intervene in any economic process, the branch can directly take part in economic life. This means that the branch can sign documents, contracts and facilitate the decision-making process directly from the UAE. The legal dependency of the branch or the representative office results in these bearing the same name as the motherhouse. In practice, however, additions such as "XYZ Middle East Office" or "ME-Regional Office" or "XYZ Ltd - Dubai Branch" are common and covered by the license as long as the affiliation with the motherhouse remains evident.

II. The Activities of the Branch

The activities of the branch go beyond those of a representative office. The branch therefore requires an ascertained capital and underlies stricter regulations regarding accounting and monitoring by an auditor. The activities applied for are checked by a commission of the Ministry of Trade and Industry and are either approved or rejected individually. A precise legal basis or generally applicable rules on what can and cannot be registered does not exist, it is decided on a case- by -case basis.

In general, the following applies: The planned activities are to be beneficial with regard to the entire area of the United Arab Emirates and should not violate any existing legal regulations. A legal review of a negative decision is likely to be possible only in exceptional cases.

The permitted range of activities is to be precisely specified in the license. With regard to this, Art. 314, Para. 1 of the UAE-CCL states: "...such license shall categorically specify the activities, which the company has been licensed to carry out”.

III. The Activities of the Representative Office

The presence can be realized by means of a regional representative office or a branch. While subsidiaries directly participate in business within the scope of their license, representative offices prepare business activities or concomitantly support the activities of the motherhouse. On a regional level, the representative office can but is not limited to:

Representing the motherhouse;
Permanently advising, supporting and supervising the commercial representatives;
Carrying out marketing activities;
Training regional commercial agents;
Advising consumers;

Watching the market, preparing projects, keeping track of proposals; and
Taking on a controlling role for Joint Venture companies.

A representative office is not permitted to produce goods itself, to conclude deals or to carry out any kind of trade within and outside of the United Arab Emirates.

IV. The Role of the "National agent " or "Local Agent"

1. The Legal Definition of the Term "Agent"

According to Art. 329 of the UAE-CCL, a foreign branch or representative office requires an agent who must be a UAE-national. In order to distinguish the agent who is required under the Art. 329 UAE-CCL from the commercial representative, the agent is often referred to as "National agent " or "Company Agent" or "Local Service Agent". At Emirati level he/she is also referred to as "Local Agent". This agent should be at least 21 years old but does not require his/her own trade license. This means that employees and public servants also qualify as National agent as long as this does not conflict with their other functions. If the National agent is a company, all shares of this company are to be held by UAE-nationals. Two individuals or legal persons cannot jointly be appointed as National agent, except if they both obtain a joint trade license.

The foreign company is granted an own, direct presence by the law, with its own, direct opportunity to act on location, which has priority over the representative authority of the National agent. As the vaguely formulated term "*providing such services without any responsibility or financial* obligations in connection with the business or activity of the branch or office of the foreign company inside the State or abroad." in the law shows, the "National agent" only retains the function of an assisting body with no decision rights. With this, however, it ensures that the "National agent" is not a mandatory but intermediary acting body through which the foreign company has to act, or which can directly and immediately intervene in the less significant day to day business operation. The wording of the law allows for the conclusion to be made that the appointment of a National agent is limited to obtaining a license for the represented party. The reason for the legal requirement of a National agent, who is actually not required due to the foreign company's own legal presence, is not evident without knowledge of the historic development. The legally required involvement of a local agent is replacing the possibility before the enactment of the UAE-Trade Companies Law of arranging "sponsorships". Beyond its actual wording, this term describes a special legal relationship between the foreign "guarantee" and the local "guarantor" which is aimed at enabling specific economic processes. With the issuance of the company law in 1984, these agreements, created through practical experience and recognized by administration and jurisdiction, were without any legal basis. For some UAE nationals, however, the "sponsorships" formed a significant source of income.

2. The Versatile Term “Sponsor”

Using the term “sponsor” for the National agent is therefore historically motivated, not supported by the law and indeed misleading and inadmissible in legal documents. Liability and representative capacities therefore will also be explicitly excluded in the National Agency Agreement. Nevertheless, in non-legal usage the versatile word “sponsor” remains common practice.

3. The Agreement with the National Agent

The contents of the contractual relationships with the “national agent” are related to some extent to the former sponsorship agreements, taking into consideration the legal changes that are legally small but commercially amend significantly the role of the national agent. The agreement must be notarized. The notary in the United Arab Emirates, whereby the foreign party may let itself be represented by a lawyer, usually attests it.

The remuneration of the national agent is also not legally governed. It can be freely agreed and fluctuates considerably in practice. A nominal fee of AED 1 only is sometimes charged, especially when the national agent, due to other agreements, has a stake in the principal’s turnover or is for other reasons personally interested in the set-up of a representative office. The annual fee largely depends on the rank and the reputation of the National agent as well as on the type of the intended business. A well reputed agent may ask for several hundreds of thousands of Dirhams if the foreign company is requesting his promotional services. In individual cases, influential national agents from the ruling families or the reputed trading families may even break the one (or more) million Dollar barrier. As a thumb rule, AED 30-50,000 may be considered as a reasonable fee for a National agent who is not expected to deliver any significant, business-promoting support. Agreements extending the supportive duties of the national agent beyond the regular level in the administrations level are permissible. They do not however impact on the legally regulated duties of the national agent and can therefore also be negotiated in a separate agreement. Participation in turnover or commissions on contract conclusions is also possible.

The direct liability of the representative for the represented is explicitly excluded in Art. 329, UAE-CCL. This underlines de facto, that the national agent cannot be used anymore as sponsor, i.e. guarantor for the represented foreign company..

The law makes no provisions for the legal consequences applicable in case the agreement with the national agent expires or is terminated during the registration of the branch. In case of a termination of the agreement with the national agent, several questions need to be addressed, yet, whereby the emphasis is on the effects on the registration of the branch. The obligation to have a national agent is continuous, meaning that an expiring agreement must be replaced by a new agreement, either with the same or with another national agent. For lack of a law to that effect, the end of the national agent’s agreement, however, does not automatically result in the removal of the registration. Nonetheless, the annually required extension is likely to be rejected until a new appointment is made. In general, an adequate period of time should be made available after the expiration of the agreement for the appointment of a new national agent. The regulations of the UAE Law for Commercial Representatives, which significantly protect the commercial representatives, i.e. commercial agent or distributor do not apply to the relation with the non-commercial National agent. E.g. the restrictive rules for the termination of the principal without or with inadequate reasons, are neither directly nor analogically applicable to the national agent to be appointed as per Art. 329, UAE-CCL. The National agent is not a commercial representative and therefore is also not entitled to a commercial representative adjustment. The end of the agreement as well as the termination can therefore be freely agreed on.

D. The UAE Limited Liability Company

I. General Comments

The legal foundations of the Limited Liability Company (hereafter: “UAE-LLC”) can be found in the CCL. The UAE-LLC plays a significant role in the business life of the UAE. With its registration, the company receives the status of a legal person and the partners’ liability is limited to the invested capital. The stated capital must “be sufficient for the purpose of the company”, i.e. a minimum of between AED 150,000 to 300,000 is usually required respectively by all Emirates. The UAE-LLC shows considerable flexibility regarding the distribution of profit and losses and the area of power of management. If foreign capital is involved, the UAE-LLC is the legal type of company at the forefront as far as the prerequisites for an own branch or a representative office are not met. In contrast to a branch, in which the foreign company retains its full ownership, at least 51% of the company shares must be surrendered to a local partner in an UAE-LLC.

Foreign companies often initially regard the UAE-LLC with considerable scepticism, as the law imperatively prescribes the above-mentioned 51% share majority for a local partner. This is regarded as unfit for the interests of the company, especially in cases where the foreign partner provides the know-how, the management and/or the financial support. As a result, it is often overlooked, however, that the CCL offers several possibilities for compensating the 51% capital majority held by the local partner. A compensation for the influence legally granted to the local majority partner can occur through solutions in sub areas that may merely not lead to diverge from the law in its entirety.

The most common and legally accepted practice is the limitation of the local partner’s powers into the management and the contractual limitation of his/its profit share to reduction down to 10-20% of the gross profit or even to a lower percentage through so called “side agreements”. Such agreements, structured as per approved standards, are considered valid in front of UAE courts. However, legal advices are highly recommended when drafting the corporate documents since in certain circumstances (such as agreements determining no risk of loss of the local partner in any event,) the said corporate documents and their execution may lead to the dissolution of the company (for more information contact MENA LEGAL). However, it should never be overlooked that the involvement of an active local partner, either through a natural person or a local legal entity, can be of great value, due to his/its excellent contacts, experience and knowledge of the local business practices.

A general patent remedy for the appropriate design does not exist, however, and should therefore always be decided after legal and economic scrutiny regarding the concrete, individual case.

II. The Objects of the Company

The objects of the company to be indicated in precise and comprehensive terms in the company articles of association, as the company will be operating later on within these boundaries. The definition must take into account local customs and prevailing terminology as used by the responsible authorities. Defining the object of the company will, among other things, also define the scope of the trade and the import license. The boundaries of the permitted activities are, however, not as strictly defined as in other countries of the Gulf Cooperation Council, such as Saudi Arabia, where it is not only the production volume that is also set via the license. As already mentioned above, the job of the commercial representative or the trader is reserved to UAE nationals or companies that are fully owned by UAE nationals. The CCL consequentially grants the UAE-LLC the status of a legal person, linked to the UAE nationality, however the CCL; does not put it on par with UAE nationals. A UAE-LLC with an associated company abroad can nevertheless also do business according to the prevailing views and the practice of the administrations of the Emirates of Dubai and Abu Dhabi. The trade of products is therefore equated with conclusion of agreements with commercial representatives or traders, which need to be registered, for the exclusive sales and distribution of products in accordance with Federal Law No. 18 of 1981 on Commercial Agencies as amended.

III. The Company's Share Capital

The minimum share capital is AED 150,000 (since 2009 reduced in some Emirates and most Free Zones from AED 300,000 to AED 150,000) in Abu Dhabi and AED 300,000 in Dubai, divisible in shares of at least AED 1,000 per share. The stock has to be deposited with a UAE bank and can only be released once the management of the new company has been set up. The bank must provide an appropriate written declaration with regards to this. In Dubai, this bank related requirement is no longer enforced by the government representatives which means that a LLC can be established without any actual invested capital.

IV. The Management

The management is the executive body of the company. Its form is regulated very flexibly in the law (Art. 83-91, CCL). The management consists of one or more managers, which can be selected from within the circle of partners or from outside. If there is more than one manager, the company's articles of association may contain terms on the rapport between the managers. The management can be assigned in the company's articles of association, via agreement or by the company's general meeting. It is therefore permissible, for instance, that even if he/she is a legal person, the foreign partner is appointed managing partner in the company's articles of association or via a separate (management) agreement.

E. Professional Licenses Companies (civil company)

The Activities falling under Professional Licenses companies' requirements are the following:

- Legal practice and consultancy
- Auditing, Organizing and keeping accounting records and books
- Civil engineering and architecture consultancies
- Managerial and economic consultancies and studies
- Technical services
- Medical and curative services
- Educational services

The establishment of a civil company, 100% owned, is possible for the aforesaid activities. The registration procedure is a mix between the ones required for establishing a limited liability company and a branch since such a civil company is an independent legal structure but may be established without local partner, however a UAE national service agent shall be required, in exchange of certain fixed fee.

F. The Free Zones

I. The UAE Free Zones

Meanwhile, all Emirates of the U.A.E. have established free zones, which are offering alternative legal forms to do business in those free zones and outside the UAE

Each free zone (FZ) is administered autonomously by its own administrative authority. In the Jebel Ali Free Zone, for instance it is the Jebel Ali Free Zone Authority (JAFZA), in the Dubai Airport Free Zone the Dubai Airport Free Zone Authority (DAFZA) Dubai Development FZ the Dubai Development Authority (DDA), formerly known as Dubai Creative Clusters Authority (DCCA) or TECOM.

All applications in connection with a free zone entity must be addressed directly to those authorities. Neither the city council nor the Economic Department nor any of the Federal Ministries are directly responsible. The companies established enjoy tax exemption (up to 50 years). However, the VAT of 5% would still apply, with the exemption of supply of goods within

Designated Zone. VAT free Designated Zones are special geographical areas within the UAE, but outside of the UAE VAT regime. Designated Zone refers to an area specified by a cabinet decision and that meets the conditions specified in the Executive Regulation. They have security measures and customs controls to monitor the movement of goods. The transfer of goods or provision of services within the Zones will not be subject to VAT – similar to the bonded warehouse concept. Import VAT becomes payable when any goods leave the Zone.

For the purpose of VAT, a Designated Zone will be treated as being outside the state and any supplies between Designated Zones will not attract VAT at 5%. In Dubai DAFZA and JAFZA (North – South) for instance are considered as Designated Zones. There are about 45 FZ in UAE. Whichever FZ is applicable for your business will depend on several factors, such as budget, business activity, location and timing. MENA LEGAL can advise you on this subject matter and determine the suitable FZ for your business.

Further free zones are under development or planning. The most economically significant include the above-mentioned Jebel Ali Free Zone, the Dubai Airport Free Zone and the Dubai Development Authority. However, free zones like the Ras Al Khaimah Free Trade Zone, the Dubai Multi Commodities Centre, located in Jumeirah Lakes Towers (JLT) district of Dubai and the Dubai International Financial Centre (DIFC) are also common and innovative business hubs, meeting both the latest international standards and investors' interests.

II. Advantages for Foreign Companies

While the CCL requires a local majority, this is not the case in a free zone; indeed in any of the free zones in the U.A.E., foreign companies can establish themselves without any local participation. The form of the subsidiary can hereby be a so-called Free Zone Establishment (similar to a one-person LLC), a Free Zone Company (a legal person with 2-5 associates and limited liability) or be a branch. The advantages can be summarized as follows:

In particular, the free zones in Dubai do have high quality standards, the flexibility required by foreign companies, excellent sea, air and/or road connections, excellent logistics; the same applies to most free zones in other Emirates, such as the Emirates of Ras Al Khaimah or of Sharjah.

Legal entities of foreign companies in a free zone do not require a national agent, local agent, sponsor or partner. The free zone authority itself fills this position pro forma as far as required by law.

Possibility of founding a legal person with its own identity and limited liability either as "Free Zone Establishment" (FZE) or as "Free Zone Company" (FZC);

If the majority share of the foreign company is owned by GCC nationals, the company can receive a National Industry License for its branch or FZE/FZC, even if it is registered outside of the GCC-states.

Foreign companies can decide themselves whether they want to recruit their staff from the local job market, from third countries (such as Egypt, Sudan, Lebanon, Pakistan, India, Bangladesh, Philippines) or from their own country without respecting the statutory Emiratisation regulations.
Workers and employees can be sponsored by the free zone authority without excessive formalities.
There is no limit on the transfer of capital gains.

III. FZ-Branches

Prior to 1992, foreign companies were limited to founding branches without their own legal personality in the free zones (as far as these existed). The foreign company was liable for the activities of the branch. The administrative authority of the Jebel Ali Free Zone was the first to offer three different types of licenses for branch offices that are, even today, only issued in conjunction with an office or warehouse lease or a lease agreement for land for the construction of own facilities. The intention is clear: P.O. Box companies are not desired, but investors that play an active role in the economy of Dubai or the other Emirates.

IV. The Free Zone Establishment and the Free Zone Company (FZE and FZC)

A crucial milestone towards the FZE was achieved in 1992 when Law No. 9 of the Emirate of Dubai (FZE-Law) on the foundation of a 100% foreign company in the Jebel Ali Free Zone was issued. A FZE registered in the Jebel Ali Free Zone has its own legal form, is financially independent and the partner's liability is limited to the capital invested. The FZE can itself found further FZEs, which allows for the formation of a holding with subsidiaries in the UAE or abroad (unless not considered as a proper founding entity such as in Qatar). According to the CCL, the formation of such a holding with subsidiaries that are owned 100% by the mother company would not be possible, as the law principally demands that at least two shareholders are involved.

As the FZE has to be solely owned by a natural or a legal person, it was previously not possible to found a legal entity with several shareholders. This problem has henceforth been solved with the introduction of the FZC, especially as the FZC must have between two and five shareholders (30 to 50 shareholders in other free zones). Apart from that, all factors mentioned in the context of the FZE apply in equal measure to the FZC. It is to mention that, for many reasons, it is advisable to have signed and registered with the free zone authority articles of association of a FZE. The other free zones have adapted accordingly, and all UAE free zones are nowadays offering the formation of the same type of legal entities.

V. Exporting from the Free Zone to the U.A.E.

Based on its license, the entity in the free zone can export goods to the United Arab Emirates and anywhere else required. However, the right to export does not include the right to import the goods to the destination, be it Dubai, the United Arab Emirates, the GCC states or any other foreign country. The recipient or importer must have such a right based on its license. In the UAE, the client buying the goods may only import them himself if he is permitted to act as an importer for the goods which is not necessarily the case.

Companies which have, based on their activities as outlined in their trade license, a justified interest in the import of these goods are allowed to import directly. The right to import is thus usually given when the purchased goods are directly associated with the business activity as arising from the importer's trade license.

However, a free zone entity must choose a third-party recipient that provides the prerequisites for import (called a "forwarder" in the jargon) of the specific good that the free zone entity is not allowed to import according to its license.

For goods that are only temporarily exported from the free zone for repairs or processing and then brought back into the free zone, the payment of customs fees can be substituted by the payment of a corresponding deposit as security which will be refunded when brought back into the free zone.

Transit goods can be directly re-exported with a Bill of Export from the free zone authority. They can hereby also pass through the area of the United Arab Emirates to be exported again via port or airport. The goods are not sealed during transit or in any way inspected. The export certificate is issued against the deposit of the import duty totalling 5% of the goods' value. In the event of an actual re-export, this amount will be reimbursed upon presentation of the export certificate. If the goods stay in the United Arab Emirates for more than 6 months, there will be no reimbursement; however, no further fees or penalty by the customs authorities will be raised, neither in the UAE nor in any of the GCC countries. This regulation is independent of quantities.

VI. Individual Free Zones

The following free zones can be considered as the most successful and advisable places for setting up business for foreign companies:

1. The Jebel Ali Free Zone

The Jebel Ali Free Zone covers an area of about 39 square miles and includes wide docks with a water depth of up to 66 feet, ultra-modern port facilities as well as storage facilities for containers, liquids, bulky goods, reefer-cargo, etc. The free zone's infrastructure is fully developed and constantly being improved.

The international airport of Dubai is located about 22 miles away. Modern highways enable fast connections in about one hour. The international airports of Abu Dhabi are also located nearby at approximately one and half hour. The new International Airport (Dubai World Central) has opened its cargo services in 2010 and the passengers flights in 2013 and is located at less than 10 minutes away from the free zone port.

Ownership and Vehicles	Activity	Type of license	Capital requirements	Fees & Costs	Lease
FZCO - max of 5 shareholders-, FZE and branch	All, subject to a fixed list - Particularly adapted for trading and industry	General trading, trading, services, industry, national industry, logistic (branch of UAE based company only)	1 million AED for a FZE and 500,000 AED for a FZCO; no capital is required for a branch	Trading license 7 products: 5,500 AED per year Trading license 12 products: 9,000 AED per year General Trading License: 30,000 AED per year Industrial license: 5,500 AED per year Service license: 8,000 AED per year Registration Fees: 5,000 AED for branch, 10,000 AED for FZE and 15,000 for FZCO	Warehouse + integrated Office of 40 sqm o 313 sqm at a rate of 600 AED/sqm/year: 187,800 AED – 10 visas o 555 sqm at a rate of 550 AED/sqm/year: 302,250 AED – 15 visas o 690 sqm at a rate of 550 AED/sqm/year: 379,500 AED – 20 visas Warehouse + separated office o Same rate for the warehouse o Office only (from 9 sqm per visas) – DEWA included. For example, an office of 50 sqm would cost: -Old building: 1,800 AED/sqm/year: -New building: 1,950 AED/sqm/year: -Ultra modern building: 2,300 AED/sqm/year:

2. The Dubai Airport Free Zone

The Dubai Airport Free Zone is directly connected to Dubai Airport. The area is extended as required. This free zone seems ideal for highly technical products, especially those transported by plane. Moreover, companies primarily providing services have opted for the Dubai Airport Free Zone in the past.

Ownership and Vehicles	Activity	Type of license	Capital requirements	Fees & Costs	Lease
FZCO - max of 5 shareholders-, FZE and branch	Limited - Particularly adapted for trading and high technology industry	Trade License: import, export, distribution, storage of specific products. Service License: requires consultation with a sales executive. Industrial License: light manufacturing, processing, assembling and packaging.	1 million AED for a FZE and 500,000 AED for a FZCO; no capital is required for a branch	Trading license: 10,000 AED per year Service license: 10,000 AED per year Industrial license: 10,000 AED per year Registration Fees: 0 AED for branch, 10,000 AED for FZE and 15,000 for FZCO	Warehouse + integrated Office: about 350 sqm at a rate of 1,000 AED/sqm/year + 10% charges (about 20 visas) Office Units: 1850 AED/sqm/year Standard office 25 sqm (2 visas): 84,000 AED/year => 8.33 sqm per visas

3. The Dubai Internet City

The Dubai Development FZ is the former "Technology, Electronic Commerce & Media Free Zone", which was also referred to as 'Internet City' or "TECOM" in colloquial terms, whereby the latter merely represents a part of the free zone in legal terms. Located north-east of Jebel Ali between the Emirates Golf Club and the Arabian Gulf. The change of the FZ structure reflects the entity's new broader mandate overseeing development control, municipal, economic and immigration functions across select free zone clusters and other communities by various master developers throughout Dubai. The Authority, has founded nine clusters, each of which is responsible for different divisions within the TECOM-Free Zone:

Dubai Internet City; Dubai Outsource City; Dubai Media City; Dubai Production City; Dubai Knowledge Park; Dubai International Academic City; Dubai Studio City; Dubai Science Park; Dubai Design District.

The Dubai Media City (DMC) was established to attract companies active in the media, such as radio and TV stations, advertising and multimedia agencies, dotcom-companies along with innovative factors in the area of computer technologies.

The production and storage for companies of the TECOM-Free Zone are secured through close collaboration with already existing free zones, especially with the Jebel Ali and the Dubai Airport Free Zones. This is because the TECOM-Free Zone is only designed for intangible activities as the limited space available prohibits the chance for considerable activities.

Ownership and Vehicles	Activity	Type of license	Capital requirements	Fees & Costs	Lease
FZ-LLC (one to 50 shareholders) and branch	E-commerce Telecommunication and Network IT Service Service Provider Consultancy Regional Head Quarters Hotels and Leisure Services	Commercial License Free Lance permit	No capital is required for a branch FZ-LLC: Dubai Internet City: 50,000 AED Dubai Outsource Zone: AED 300,000 Dubai Media City and Dubai Studio City: AED 50,000 or AED 2,500,000 for: All activities within Broadcasting TV Segment All activities within Broadcasting Radio Segment (except for IP streaming) International Media Production Zone: AED 300,000 or: Printing Machinery and Printing Consumables Manufacturing Segment AED 500,000 Printing Press Segment AED 500,000 Publishing Segment AED 200,000 Graphic Arts Support Services Segment AED 50,000 Dubai Knowledge Village: AED 50,000 Dubai International Academic City DuBiotech: AED 50,000 or AED 300,000 for: Manufacturing and Production Activity under the Therapeutics, Food, Agricultural, Forestry, Horticulture, Environment, Medical/Scientific Devices, Equipment, Speciality Supplies Segments Enpark: AED 300,000 or AED 50,000 for Associations (Non-Profit Organisations)	Normal commercial License: 15,000 More than 30 other licenses (Publishing, School, etc): from 7,500 to 300,000 AED	1. Commercial Offices, Innovative design and green surroundings equipped with a Building Management System (BMS) 2. First Steps Business Centre: minimum lease term of one year after successfully completing the registration process. Executive Desk: only for one visa license. Executive Office: between two to seven employees per office. 3. Conference Facilities

4. Dubai International Financial Centre

The Dubai International Financial Centre (DIFC) has been planned to act as a catalyst to the region's economic development and as a world-class "onshore" financial centre with the aim of bridging the gap between the world's major financial centres – London in Europe, Hong-Kong in the Far East and New York in America. The DIFC has been designed to become, from A to Z, a second "City", almost fully westernized, with an independent government within the Federal and the Dubai government, an independent court of justice (except – including but not limited to - criminal, immigration and personal status matters), a reliable arbitration centre and a state of the art quality of infrastructures with high-end facilities. As a result, it requires a full time support team or consultants to observe and comply with the statutory regulations of the free zone and requires the employment relationship to be more respectful of the employees' rights. It is, as a result and combined with its modern and very pleasant atmosphere, the most expensive way of doing business in the U.A.E. and certainly in the region.

Set-up in September 2004, during the booming period of Dubai, the DIFC has known a specular period attracting most of the world key players in banking, financing and business processing operations. The current period is more reasonable and DIFC represents, nowadays in the UAE and perhaps in the entire region, the most reliable - and also the less flexible – place to do business and operate in the aforementioned sectors or to locate a headquarter for tax, human resources, logistic or business reasons.

Ownership and Vehicles	Activity	Type of license	Capital requirements	Fees & Costs	Lease
LLC LLP LP SPC General Partnership Single Family Office	Bank Insurance Wealth management Capital market Professional services (legal, accounting, consulting, recruiting) Global HQ and Management offices Retail	Commercial License	A capital of 50,000 USD is required for LLC	Application LLC: 32,000 AED License LLC: 43,500 AED	Grade A quality - Leasing services not provided by the Free Zone 800 to 10,000 sqf 70 AED to 300 AED per sqf per year

5. Ras Al Khaimah Economic Free Zone

Since incorporation in May 2000, the Ras Al Khaimah Free Trade Zone (RAK FTZ) has been committed to sourcing and attracting quality investors who are environmentally friendly in the service, manufacturing and industrial sectors. Ras Al Khaimah is a fast-developing city and emirate, beautifully situated against the backdrop of the Al Hajar Mountain Range, on the Arabian Gulf shoreline in the north of the UAE in only 80 km distance from Dubai, connected through a new 8 lane highway.

Setting up business within the RAK FTZ is considerably cheaper than in the Dubai Free Zones. Furthermore, different from most other Free Zones it has enough office and warehouse space in place, ready for moving in without waiting for months.

For investors who prefer still having the “DUBAI” brand on their letter heads, RAK FTZ offers virtual addresses in prestigious Dubai locations through its Dubai branch office.

Ownership and Vehicles	Activity	Type of license	Capital requirements	Fees & Costs	Lease
FZCO, FZE, Branch (local or foreign)	Import, export, distribution or warehousing of goods Management, marketing, academic, real estate, logistic or industrial consulting Import of raw materials, manufacturing, processing, assembling, packaging and export of finished products	Commercial license Industrial license Consultancy /Services License General Trading License	A capital of 150,000 AED is required for FZCO and FZE. No requirement for a branch	Commercial license: 3,650 AED per year Industrial license: 5,000 AED per year Consultancy/Services License: 7,500 AED per year General Trading License: 15,000 AED per year Registration Fee: 7,000 AED Services: 1,200 AED per year	Flexi desk: 12,500 per year Flexi office: 19,000 per year Standard office (furnished 10 sqm): 22,000 per year Executive office (not furnished from 25sqm): 1,250-1,700 AED per sqm per year Warehouse: 20/31 AED per sqf per year Land: 35/50 AED per sqf per year

G. U.A.E. Offshore Companies

I. Why not Cayman Islands, BVI or Lichtenstein, but UAE-Offshore?

Thanks to the European Union (EU) Savings Directive of 2003 and recent United States-EU initiatives to wipe out tax havens, the U.A.E. became the ideal place to incorporate offshore companies for various reasons and purposes. Dubai intends to set to reap the rewards of a recent EU and US ruling under which banks are now forced to reveal information to tax authorities. Financial institutions in the EU and US are now obliged to either disclose tax and bank information to the relevant tax authority, or charge clients a hefty withholding tax.

Though the new directive specifically affects EU residents, a number of banks in ‘tax havens’ have also agreed to exchange customer information, including Jersey, Guernsey, the Isle of Man, the British Virgin Islands, the Cayman Islands, Switzerland, Liechtenstein, Monaco and San Marino.

The reputation of discretion for some of these countries is being eroded. Since July 1, 2005 in order to keep details of their wealth private, bank customers now have the option of paying a withholding tax which will be levied directly in the country in which their savings are held. This will be charged at a rate of 15 per cent for the first three years, 20 per cent for the following three years, and 35 per cent from 2011 onwards.

The United Arab Emirates and especially Dubai has long enjoyed a reputation as a secure, tax-free jurisdiction for international banking and company incorporation. With this latest development from the EU and the US, U.A.E./Dubai company registration and corporate and personal banking options are becoming more popular with international businesses and high net worth individuals.

Even though the UAE is a signatory and party to the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, UAE is still considered an attractive destination for offshore companies.

Any company can be configured to a clients’ individual specification. Clients may or may not need to provide some of the elements for – in general – carefree incorporation, depending on their personal circumstances or preferences.

In the meanwhile, there are three different Free Zones for establishing an offshore company within the U.A.E.: Ras Al Khaimah, Fujairah and Jebel Ali. The characteristics of the relevant offshore companies are similar. However, as the most accepted structures the Ras Al Khaimah Offshore Company and the Jebel Ali Offshore Company shall be explained in more detail in the following.

II. The Jebel Ali Offshore Company (JAOC)

1. The Advantages of a JAOC at a First Glance

The advantages at a first glance are obvious: the J*ebel Ali offshore company* (hereinafter referred to "JAOC") is a legal entity, which may be founded within a few days in a comprehensive procedure at low costs; it does not need an office (but a Registered Agent) and employees (but Directors who may act from any remote place). The features will be explained in more detail hereinafter. The JAOC is a special type of company in the United Arab Emirates, which may be established in the Jebel Ali Free Zone in the Emirate of Dubai. The legal structure of the JAOC is based on the *Jebel Ali Free Zone Authority Offshore Companies Regulations* dated 15.01.2003 (the "JAOC-Regulations", abbrev. "JAOC-Reg."), which were mainly developed on the model of the rules for offshore companies on the British Virgin Islands. However, there are a few significant changes, e.g. bearer shares may not be issued. Additionally, some Jebel Ali Free Zone Authority's circulars are to be observed.

Whether the JAOC represents in the end a suitable and advantageous form for the intended purpose largely depends on the intended activities to be carried out via and/or by the company. An accurate analysis may reveal at the conclusion that another form of company or branch or a combination may be more favourable. This is where the law of the Emirates offers several other possibilities for the foundation of companies or subsidiaries, which should be taken into consideration before a final decision on a concept is made. The information given herein shall provide a general introduction only. It shall not replace other sources, e.g. legal advice, feasibility studies, interviews with trade commissioners etc.

To discuss the question whether the JAOC really is the best solution or whether it is better to develop an optimal concept, your advisor(s) would need full information about your business and your intentions. The right concept is essential and should be carefully evaluated.

2. Scope of Activities of a JAOC

The legal form of the JAOC – generally – is not suited for pursuing day to day business activities in the Free Zone or in the UAE. If it intends to operate locally, it may apply for an office, but then it generally has to comply with the same terms and conditions as other companies.

There are only a few limitations as to which business transactions offshore companies may engage into. The usual fields of activity are trade, investment, holding shares in other companies and real estate. Offshore companies, however, may not engage in banking and insurance (No.15 JAOC-Reg.) and they may not carry out business transactions in the U.A.E. outside the borders of the Free Zone.

As for the scope of activities of the company, it is regarded to be sufficient to describe it as to "engage in any lawful act or activity for which offshore companies may be organized under the

Jebel Ali Free Zone Offshore Companies Regulations 2003“. Additionally, the main line of the intended business should be stated.

The JAOC is often used as a vehicle to hold real estate (Dubai World, Dubai Holdings, Emaar Properties) and intellectual/industrial property or to do remote business, where no local presence is required. The JAOC may also hold shares in other companies outside the national territory of the UAE. The intended JAOC activities are to be disclosed on the application form and in the articles of association of the JAOC. The activities, which are permitted to be carried out are expressly mentioned in Part 3, Clause 15 JAOC-Reg. The Registrar has the power to add other activities to the list of restricted activities in the Regulation. Note 15, Clause 3 of JAOC-Reg. determines that a JAOC, which wants to do business or trade in the UAE, has to apply for a permission / license at the competent authority. Note 15 Clause 3 JAOC-Reg. basically postulates the legitimacy of such an establishment of a company, because the license that permits the trade in the UAE is principally bound to the establishment of such company in the UAE (except outside the Free Zone).

A JAOC is not permitted to carry out business with any “persons” in the UAE. However, there are some exceptions: a JAOC may have professional relations with accountants, banks, legal consultants, management companies or other similar service companies in UAE. Thus, it may outsource some of its activities to companies in the UAE which have a corresponding license for the outsourced activities.

Competent officers of JAFZA orally confirmed that it is not prohibited by Note 15 of JAOC-Reg. to invest in and hold shares of UAE companies as affiliates, but it will be considered as a foreign partner. Consequently, investment in shares of foreign companies is generally also permitted.

3. The JAOC as a Real Estate Owner

The JAOC explicitly can “own” real estate on the Palm Island or Jumeirah Island or any property owned by Nakheel Company LLC, which has been extended to real estate developed by Dubai World (alias Nakheel), Dubai Holdings (alias Dubai Land), Emaar Properties and/or one of their subcontractors (e.g. DAMAC). This provision allows foreigners to become shareholder of a legal entity holding real estate property within the U.A.E. Using an offshore company to own real estate property also gives the advantage that in case of the shareholder’s death the deceased is not succeeded by his or her heirs according to U.A.E.-law but to the law of his nationality. A general provision of UAE-law (Art. 17-1, 17-2, 17-3 and 17-4 Civil codes) provides that the law of the legato shall apply for inheritance. However, a special provision of UAE-law (Art. 17-5 Civil Code) provides that real estate property within the UAE. is bequeathed following the rules of UAE-law of succession. In case of the shareholder’s death not the real estate but the ownership of the shares of the company is to be transmitted. This special provision does not apply and the law of the country of the deceased remains relevant. Also, because the title to the real estate does not change but the company continues to be the owner, the land department does not get involved and therefore fees for a transfer are saved.

4. Foundation Costs and Fees

The incorporation and operational costs for a JAOC are much lower than for other types of companies. Different to other business types, the JAOC does not have to have an office. In lieu of an office it needs a so called “Registered Agent” (see Note 31 JAOC-Reg.) MENA LEGAL would be able to provide you with such an agent as well. The fees of Registered Agents for providing the assistance in incorporation and maintenance of JAOC’s registers are generally much lower than similar fees of other types of companies or activities.

5. Corporate Requirements

As per the JAOC-Reg., the JAOC shall meet the following requirements:

6. The Shareholders and the Share Capital of the JAOC

The JAOC-Reg. are rather investor-friendly and leave a wide scope of activities at the discretion of the shareholders. Because of the international fight against terrorism, money laundering and other crimes, the practice of bearer shares giving the shareholder extensive anonymity has not been adopted for the JAOC. The shareholders have to be named and registered. Although the privacy is still fairly maintained to some extent, it is not absolute.

There is no minimum or maximum number of shareholders required. All shares issued by a JAOC rank equally to each other and must be fully paid up on the time of issue. The liability of shareholders is limited by their shares in the JAOC. There is some discretion for the share transfer, which may be done as described in Articles of Association of the JAOC.

There is no minimum capital requirement in the JAOC-Reg., however, the Registrar has the authority to require that the JAOC’s capital shall be commensurate with its stated objects. Often a share capital of AED 10.000 divided into 1000 shares of AED 10 each is considered sufficient and acceptable.

The JAOC must issue the share certificates within 2 months from incorporation or share transfer. Bearer certificates are not permitted

7. The Articles of Incorporation

Concerning the contents of the articles of incorporation, the JAOC-Reg. only specify sample provisions that may be changed by the founders. There shall be provisions regulating the sales of stocks, the shareholders’ general meetings, how the books and the financial situation of the company are to be presented at such meetings, etc. JAFZA provides model articles to allow investors to start up an offshore company easily and efficiently. The models may be used and changed as it deems appropriate.

8. Directors and Secretary

The JAOC-Reg. require two directors and one secretary for an offshore company. They are appointed by the founding shareholders, who may also nominate themselves. The directors are the executive management and may act on behalf of the company without any limitation in compliance with the articles of incorporation. Internally, there may be provisions which require the directors to secure the shareholder's approval before carrying out business actions on behalf of the company or it may be mandatory to inform the shareholders before taking certain actions. The directors have to inform the shareholders of any personal interest in such matters where conflicts of interest with the company are possible.

The secretary's powers are not clearly defined in the JAOC-Reg. In the company's hierarchy, the secretary ranks below a director. A director may simultaneously be appointed as secretary. However, the JAFZA empowers the secretary to give legally binding declarations on behalf of the company.

9. JAOC's Registered Agents

Instead of opening an office in the Free Zone, the shareholders of the JAOC may make use of an alternative, provided by the JAOC-Reg. and appoint a Registered Agent. The Registered Agent has to be a lawyer or accountant licensed by the Jebel Ali Free Zone Authority or in Dubai, and he/she must be registered as Registered Agent with JAFZA. The Registered Agent's address also serves as the JAOC's business address (so called "P.O. Box – Company). The Registered Agent's duties can be freely agreed on with the JAOC's shareholder.

10. JAOC Registers, Name

JAOC shall keep a Register of members/shareholders, a Register for the directors and the secretary, a Register for the minutes of the general meetings, and the meetings of directors and/or the board of directors.

These JAOC's Registers are to be kept at the JAOC' registered office or – if such does not exist – it shall be kept by the Registered Agent. The Register shall be opened for inspection by shareholders, directors and authorized authorities with free of charge.

As the JAOC is a legal entity on its own (having its own name) it must comply with the general rules for names of companies in Dubai and has to be approved by the concerned authority. Offshore companies are limited liability companies and the extension "Ltd." must be carried in the company's name.

11. General Meetings

The JAOC must hold at least an annual general meeting. The first general meeting shall be held within 18 months from the date of incorporation.

MENA LEGAL

12. Auditors, Accounting Records

The JAOC shall appoint an auditor (general meeting of shareholders) for preparing its reports in line with the JAOC-Regulations. Accounts shall be audited at least annually.

JAOC must keep sufficient accounting records of its transactions to ensure that JAOC accounts comply with the JAOC-Regulations' requirements.

III. The Ras Al Khaimah Offshore Company

In September 2006, the Ras Al Khaimah Government launched an offshore facility, the second in the UAE, which is regulated by the Ras Al Khaimah Economic Zone (RAKEZ) International Companies Regulations 2006 (RAKEZ-Reg.). In principal the same specifications and advantages as with the JAOC apply. However, the Ras Al Khaimah version is deemed to offer a less costly and faster set up of an offshore company. Furthermore, the main figures of an RAK Offshore Company (RAKOC) are as follows:

1. Features:

Unlike the legislation governing companies incorporated in the U.A.E., the RAKEZ-Reg. require no local shareholding in a company, enabling 100% foreign ownership.

Although all UAE companies follow UAE law, RAKEZ have allowed the RAKOC to decide which favored jurisdiction it wants applied for inheritance, disputes or any other matters. The law must be cited in the Memorandum & Articles of Association.

RAKEZ-Reg. have imposed very few restrictions on the activities of RAKOC allowing for a wide range of business activities to be carried out.

The RAKOC can own real estate properties on Palm Islands, or any properties owned by Nakheel Company LLC, EMAAR, or any other real estate properties approved by the RAKEZ authority.

Despite a general prohibition on RAKOC to conduct business with "persons" resident in the UAE, the RAKEZ frequently allows offshore companies to hold shares in both offshore and onshore UAE companies (i.e. local LLC companies).

The RAKOC can hold a bank account in the UAE for the purpose of conducting routine operational transactions and can also maintain professional relations with legal consultants, accountants and management companies or other similar persons carrying out business within UAE.

Incorporation documents can be signed without having to visit RAKEZ.

2. Characteristics

Characteristics of an offshore company registered in the RAKEZ are as follows:

Shareholders: A minimum of one shareholder is required. Corporate shareholders are permitted. Shareholders will decide capital structure of the Company. Whilst there are no minimum share capital requirements please note that par value of each share must be AED 1,000. Bearer shares are permitted. Different classes of shares are permitted, and shares have to be fully paid when allotted. Every company shall maintain minutes of all proceedings at general meetings. The Register of Members shall be open for inspection by any member of the offshore company and any other person. It is an offence to refuse inspection.

Directors: A minimum of one director is required and corporate directors are permitted. Details of directors are not available for public inspection.

Secretary: Every company must have a secretary.

Annual reporting: Every company must keep accounting records, which must be kept for 7 years from the date on which they were prepared. Accounts must be approved by the directors and signed by one of them. The accounts do not need to be filed with RAKEZ authority.

Time scale: Registration of the company in the Free Zone will take 1 week once all documents are gathered and relevant paperwork are signed.
Restrictions on name and activity: Names must end with Limited or Incorporated. The following words, and their associated activities, cannot be used: Assurance, Bank, Building Society, Chamber of Commerce, Chartered, Co-operative, Fund, Imperial, Insurance, Municipal, Mutual Fund, Royal and Trust. NB: if the RAKOC wishes to conduct trade or other business outside the RAKEZ elsewhere in the UAE, it must obtain the appropriate license to conduct such trade or other business activity from the competent authorities in the UAE.

Local requirements: as a matter of local company law the company MUST maintain a registered office address within the Free Zone and appoint an approved Registered Agent (Sovereign are approved for this purpose). A Registered Agent's office in the UAE or in the Free Zone can also be used as the registered office.

H. Opening of Representative Offices

I. Options With Regard to Representative Offices

The Ministry for Economy and Trade was solely responsible for the approval and registration of a representative office until July 1996. Based on the permission of the Ministry, the Economic Departments of the Emirates granted the trade license. Since July 1996, the Dubai Department for Economic Development offers the option to directly receive applications for the registration of a representative office. This process is significantly less complicated and time-consuming as the

Dubai Department for Economic Development is more flexible in adjusting to the specifications of the economic process and the given facts for each individual case.

II. Application of the Basic Principles for Registration with the Ministry

Except for certain aspects, the process within the Economic Department and the required details and documents to be submitted are basically the same as required for a registration with the Ministry for Economy and Trade. However, the same authority will in this case carry out the approval process and the granting of the trade license or professional license.

III. Competence of the Dubai Department for Economic Development

The competence of the Dubai Department for Economic Development for the registration of a representative office of a foreign company is based on Decree 63/1991 of the Municipality of Dubai.

IV. Activities, Personnel Requirement, Local Agent

A representative office of a foreign company may, according to the regulations of the aforementioned Decree, as stated in Art. 5, Para. 2, carry out business (consulting) activities but may not have more than 9 employees, unless the director of the Dubai Department for Economic Development permits a larger number. For this reason, the staff requirements should be planned and included in the considerations at the earliest possible stage. A staff requirement plan can already be included in the application with the request for approval.

Similarly, to UAE Commercial Company Law, prescribes that a representative office must have an agreement with a national agent approved by the Ministry of Economy and Trade. Art. 6 Para. 1 of the Decree confirms that a local agent must be appointed. The national agent must be a national of the UAE and from Dubai only, i.e. it is not sufficient if he is from one of the other Emirates.

I. Business Activities in the Emirate of Abu Dhabi

I. General Overview

The Emirate of Abu Dhabi is THE new emerging Emirate of the U.A.E. Thanks to almost limitless financial resources due to the 7% of the world’s oil reserves under its shore and as a result of conservative spending policy during last years, Abu Dhabi seems to be one of the winners of the recent financial and economic crises. Most multi-billion US Dollar projects within the Emirate are still going on and some international companies, especially international giant, are relocating their headquarter from Dubai to Abu Dhabi in order to be closer to the centre of the decision-making process.

On a touristic stand, Abu Dhabi is trying to attract more foreigners with its Formula 1 racetrack together with the huge surrounding leisure park on Yas Island, the the first Louvre exhibition launched outside Paris and the building of a new Guggenheim museum. The hotel industry is diversifying, and the occupancy sometimes hits the same level as Dubai (between 75 and 100%). The participation in public contracts is of particular economic significance in the Emirate of Abu Dhabi.

In the area of the public procurement matters, rules exist on Federal as well as on Emirate level that are elaborated in parts and carried by largely consistent principles. The General Conditions in the Tender Documents are usually based on the FIDIC-Model Contracts, albeit with numerous modifications to make them more “client friendly”.

Local companies often enjoy a general price advantage of 10% compared with foreign applicants. They also receive considerable pre-payments when the contract is signed and have to put lower guarantees. Special rules apply for certain economic sectors such as banking and insurance.

The Government of the United Arab Emirates only concludes contracts with companies that are locally owned by at least 51% (Art.8 Federal Law on the Conditions for Acquisitions, Public Tenders and Contracts read in conjunction with Finance Ordinance No. 16 of 17.11.1975; Art.1 Federal Regulation on Tenders; Decree No.14 of 1978 of 1980) or with foreign companies that are contractually linked to a local agent or partner. Therefore, a local connection must always be in place.

If it comes to Free Zones, although well-established in the Dubai business world, Abu Dhabi is still much more restrictive. So far there are only a few free zones, the TwoFour54 Media Free Zone, Abu Dhabi Global Market (ADGM) and the Masdar City Free Zone, the latter with a focus on companies investing into renewable energy and related activities.

The Emirate of Abu Dhabi is traditionally the place participating in government contracts. Thus, Abu Dhabi has an own law for the regulation of public contracts, the Law on Public Tenders, Auctions and Stock in Trade (Abu Dhabi-Law No.4/77 of the version of Laws No. 4/1979 and No.9/1979 together with executive orders).

II. Masdar City

The construction of Masdar City, a designed economical initiative in Abu Dhabi began in February 2008. Announced as “CO2 -neutral scientific city”, the project shall be completely supplied by renewable energies. It is planned to supply water through solar-powered desalination plants and to achieve an energy need of 25% per capita compared to the current consumption. Furthermore, the entire city shall be aligned to a strict sustainability principle so that it will be CO2-free and through consequent recycling almost waste-free. Parks shall cross the apartment blocks and decrease the temperature in comparison to Abu Dhabi city drastically.

Masdar is built approximately 19 miles east of the Capital Abu Dhabi, bordering the Abu Dhabi International Airport in the West. The ambitious project spreads over an area of 2.3 square miles and can accommodate approximately 50,000 people and about 1,500 companies and institutes from the ecological sector. Also, no point in the city will be further away than 218 yards from a station of the public transport. The initiative is led by the Abu Dhabi Future Energy Company (ADFEC) and Sheikh Muhammad bin Zayed Al Nayan.

First, having a company in Masdar City is possible and should be taken into consideration by international companies specialized in eco-friendly solutions. Opportunities are considerable, not only for the small market of the City, but because being registered in this Free Zone may have a real impact for accessing to the UAE market and exchanging with the UAE officials and leaders - especially from Abu Dhabi - in charge of the energy sector.

Then, additionally, a company registered in Masdar City will have the opportunity to provide services and products to Masdar City. Indeed, the provider must, as per Part. 2 Article 1 of the Business Licensing Regulations dated 26th April 2009 of Masdar City, be licensed by the Abu Dhabi Future Energy Company (ADFEC). This license is automatically issued for the company registered in Masdar City but is upon discretionary approval of the ADFEC for other company.

Finally, such a company will have the possibility to carry on all the marketing, research and development, business development and other services for the UAE and GCC business.

III. ADGM

Similar like DIFC, ADGM is a financial free zone with the focus to cater to financial service institutions. Established by UAE Federal Decree, ADGM’s jurisdiction extends across the entire 114 hectares of Al Maryah Island.ADGM's three independent authorities - the Registration Authority (RA), the Financial Services Regulatory Authority (FSRA) and ADGM Courts - together ensure that its business-friendly environment operates in line with international best practices, recognised by major financial centres worldwide. Since opening for business in late October 2015, ADGM quickly gained global recognition for its robust, progressive and responsive business-friendly ecosystem. Through collaboration and by focusing on understanding business needs, ADGM introduced many ‘firsts’ both regionally and globally. As a catalyst of growth, ADGM delivers value to its clients and its peers, and contributes to Abu Dhabi's ambitious growth plan and strategy.

This document does not constitute a legal advice and shall not bind his authors to any liability.

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