

DOING BUSINESS IN UNITED ARAB EMIRATES



COMPANY FORMATION IN THE UNITED ARAB EMIRATES

MAIN FORMS OF COMPANY/BUSINESS IN THE UNITED ARAB EMIRATES

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:

1. Incorporating a Limited Liability Company ("L.L.C.");
2. Establishing a Branch office or Representative office;
3. Establishing a wholly owned entity in one of the U.A.E. Free Trade Zones; and
4. Entering into a commercial agency relationship.

SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

None Investing in UAE is 100% tax free, and the government does not impose any taxes through DTT (Double Taxation Treaty) on the business owners planning to setup their business in UAE.

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

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LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

1. A license is a must for conducting any commercial, industrial or professional activity in UAE;
2. Business sites should not be used for residential purposes;
3. Approval is required before re-locating businesses;
4. Sale or display of printed material that goes against the public morality or Islamic teaching is prohibited;
5. Presenting false or misleading documents to any government authority of relevant Emirates in UAE is prohibited;
6. The United Arab Emirates has a comprehensive anti-money laundering system. This position was further enforced by the passing of Federal Law No.4 of 2002 on Money Laundering Criminalization on January 22, 2002 and is compliant with the Financial Action Task Force on Money Laundering (FATF)

7. Approach to payment terms and timing are likely to be different from the approach of the foreign investor. Foreign investors will need to be aware of lock-up periods to manage cash flow.
8. Additional permits are required for opening for work beyond regular working hours
9. Additional permits may be required for other activities such as working during the month of Ramadan, working in offices located in premises for vehicle mechanical testing, installing an ATM outside bank premises, conducting business activity from vehicles or carts, advertisement posters, and for promotional campaigns

CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

Although the local business environment has become very westernized, researching Islamic culture and customs is a must. Business is conducted according to the dictates of religious law, The Sharia, and traditional custom for any business seeking to operate in the UAE.

A few key points to note:

1. Westerners should try to dress conservatively, although within hotels and restaurants a more relaxed approach can be taken.
2. Working hours are different (and limited) during Ramadan and public festivals (Eid).
3. Local government authorization is required for: alcoholic beverages, firearms, fireworks and sparklers, ammunition, explosives, narcotics and medical drugs, agricultural pesticides, pork/pork products, and wireless transmitters.
4. Handshakes are a common form of greeting in the Middle East and shaking hands at the beginning and end of a meeting is usual. However, some Arab men and women will have reservations about shaking hands with people of the opposite gender, as contact between men and women who are not married or related is forbidden by Islam. Non-Muslims should not be offended by this, and should simply wait until a handshake is offered by a member of the opposite gender.
5. Hospitality is very important in Islamic culture and it can be considered impolite to decline offers of refreshments when they are made. It is also customary to treat strangers with the same level of respect as one would treat a friend, as kindness is considered a virtue in Islam.

OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

1. There are no restrictions on the transfer of funds into or out of the UAE, except that Israeli currency may not be bought or sold in the UAE.
2. All goods exported or re-exported from the UAE must have proper documentation issued by the Ministry of Economy and the various Chambers of Commerce in the respective individual emirates.
3. Companies set up in the free zones cannot conduct business onshore (outside the free zones) in the United Arab Emirates without first obtaining the necessary license, which in turn requires a company to be set up onshore and for such company to have a 51% UAE national shareholder (subject to certain exceptions).
4. Prohibited business cannot be established in UAE, especially gambling, adult oriented materials, and dubious, immoral and illicit trades like prostitution and drugs.

PERMANENT ESTABLISHMENT IN THE UNITED ARAB EMIRATES: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

A permanent establishment is when an investor registers a company in the territory of the United Arab Emirates. It may be performed with a partner - resident of the country in case of onshore registration or with full foreign ownership by registering a company in free trade zones.

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

Both types are affiliates of a parent company, carry its name and remain wholly owned by the parent company without them having their own legal entity. However, both types of affiliates require a service agent, who has to be a national of the UAE, but has no decision-making rights or any other rights whatsoever. The role of the service agent is to assist in obtaining licenses, visas, labour cards, etc.

The main difference between both types of affiliates is that a representative office – as opposed to a branch office – is not allowed to perform any commercial activities.

TAX AND ACCOUNTING OBLIGATIONS

Tax Obligation

There is no federal income tax in the UAE for general businesses. However, the Dubai Income Tax Ordinance 1969 states that any organization conducting business or trade, including rendering of any services in Dubai, will be subject to a certain tax scale. For instance, for income range Dh.1,000,000 to Dh.2,000,000 (10% rate applicable); Income range Dh.3,000,000 to Dh.4,000,000 (30% rate applicable); Income in the range Dh.4,000,000 to Dh.5,000,000 (40% rate applicable) and for income above Dh.5,000,000 (50% rate applicable).

Legislation is there for corporate tax in each emirate: Abu Dhabi, Dubai and Sharjah (not on federal level). But in practice corporate tax is only for Oil & Gas companies and Branch Offices of foreign banks.

In Abu Dhabi emirate, no tax is levied on corporations other than on Branches of Foreign banks (20% of their taxable income); Oil & Gas Companies (as per respective agreements); and hotel & entertainment services.

Accounting Obligations

Under Federal Law No. 13 of 1988, all commercial companies are required to keep financial records, while Federal Law No. 18 of 1993 specifies that a business enterprise must keep such commercial books as the nature and scope of its business requires in a manner that accurately reflects its financial position, including assets and liabilities.

Also, if the Company setup is in Mainland (LLC), the businesses must have their accounts audited annually. If it's registered in a Free Zone, it will depend on that Free Zone if they will require it or not. For example:

1. Banks (local banks and branches of foreign banks);
2. Insurance companies and agencies;
3. Public and private shareholding companies;
4. Limited liability companies;
5. Branches of foreign companies;
6. Partnerships limited by shares; and
7. Other companies whose articles require annual audits.

REGISTRATION FORMALITIES

A Trade License must be issued to the Investor from a government authority of the relevant Emirate.

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

The Commercial Companies Law stipulates that they should be 100 percent foreign owned, provided, and a local agent appointed. Only UAE nationals or companies owned by UAE nationals should be appointed as local agents. The UAE service agent will render the necessary services for obtaining licenses, visas and other permits, and run the business of the office without assuming any financial obligation. Also, a branch office should provide the Ministry of Economy with the following information and documentation for its formality:

1. Articles of association of the company;
2. Certificate of incorporation;
3. A resolution of the board of directors of the company to:
 - a) Set up the office and practice activities in the UAE,
 - b) Power of attorney authorizing the representative to establish an office and submit the required applications to the local government authorities;
4. The last two audited balance sheets of the foreign company together with the auditor's report, or any other documents which proves the sound financial position of the company;
5. A copy of the national agent/sponsor agreement duly authenticated;
6. Photocopies of the passport of the national agent/sponsor; and
7. A valid lease agreement of the company's office premises.

Note: All the above-mentioned documents should be notarized and authenticated by the concerned governmental authorities.

HOW TO HIRE MY FIRST EMPLOYEE IN THE UNITED ARAB EMIRATES

MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

1. Signing of employment contract;
2. Submission of resident visa;

3. After arrival of employee in UAE, he/she will undergo a medical test, then preparation of labour employment contract;
4. Applying for Emirates ID; and
5. Submission of passport, medical test result and labour employment contract for visa stamping.

DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

As of July 2014, labour contracts in UAE are electronic and of one of two types: Limited and Unlimited. You can use any design and template of Employment contract but it needs to cover regulations/policies as per UAE Labour Law. It is important to know which contract you have, as the legal rights and entitlements between the two are different.

I. Limited or “Fixed” Term Contract

- A Limited contract has a start date and an end date;
- It cannot exceed a period of 4 years, although it can be renewed if both the employer and employee agree to it;
- Unless the contract is renewed, it is automatically canceled when it expires;
- In the event of an employee with a limited contract being terminated by the employer
- For reasons other than that stated in Article 120 of the UAE Labour Law
- Then the employer is liable to pay compensation to the employee. The compensation should be based on either 3 month’s wages or for the remaining contract period; whichever is less;

Article 120 of the UAE Labour Law states: The employer may dismiss the employee without notice in the following cases:

1. If the employee adopts a false identity or nationality or if he submits forged documents or certificates;
2. If the employee is appointed under a probationary period and dismissal occurred during or at the end of said period;
3. If he commits an error causing substantial material loss to the employer, provided that the latter advises the labour department of the incident within 48 hours from having knowledge of the same;
4. If the employee violates instructions concerning safety of the place of business provided that such instructions are displayed in writing at conspicuous places and in case of an illiterate employee the latter be informed verbally of the same;

5. If he fails to perform his basic duties under the contract of employment and persists in violating them despite formal investigation with him in this respect and warning him of dismissal if the same is repeated;
6. If he divulges any secrets of the establishment where he is employed;
7. If he is awarded final judgment by the competent court in respect of an offence prejudicing honour, honesty, or public morals;
8. If during working hours he is found drunk or under the influence of drugs;
9. If in the course of his work he commits an assault on the employer, the manager, or any of his colleagues; and
10. If he absents himself without lawful excuse for more than twenty intermittent days or for more than seven successive day during one year.

Note: If, however, the employee resigns of his or her own free will - for reasons other than those stated in Article 121 of the UAE Labour Law - then they will be liable to compensate the employer. The employee will have to pay either 45 days salary or the remaining period of the contract; whichever is less.

Article 121 of the UAE Labour Law states: The employee may leave the service without notice in the following cases:

1. If the employer does not fulfill his obligations towards the employee as provided for in the contract or in this Law; or
2. If the employer or his legal regal representative has committed an act of assault against the employee.

II. Unlimited contract

- An Unlimited contract has a start date, but no end date;
- The contract may be terminated by either the employer or the employee so long as 30 days' notice is given. It is possible to extend this notice by mutual agreement;
- The employee's wages during the notice period will be paid in full for the entire notice period served;
- If, for one reason or another, no notice period was given, whoever should have given the 30 day notice must compensate the other with the payment of 30 days wages;
- If the employee violates any of the points stated in Article 120 of the UAE Labour Law, the employer may terminate the employee's contract without issuing notice;

- The employee may terminate the contract without notice if the employer fails to fill his obligations as stated in Article 121 of the UAE Labour Law;
- The employee will be entitled to compensation of three months' wages if they are terminated without justification. Compensation for damages, if any, awarded to the employee for unreasonable dismissal will not affect the employee's entitlement to end of service gratuity and payments in lieu of notice.

Standard Employment Contract Contents (may include but not limited to):

1. Remuneration/Breakdown of Salary
2. Terms/Cover Period of Contract
3. Probation Period (optional)
4. Duties, responsibilities, working hours, etc.
5. Benefits e.g. (housing allowance, medical insurance, leave allowance/s, etc.)
6. Renewal
7. Termination/Repatriation
8. End of Service Benefits
9. Confidentiality

CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

Only through an Agency Contract between that person and your company. But this person should/must have a valid trade license for the business.

HOW TO READ FINANCIAL STATEMENTS IN THE UNITED ARAB EMIRATES

FINANCIAL STATEMENTS IN UAE CONSIST OF THE FOLLOWING:

- Statement of Financial Position (Balance Sheet)
- Statement of Comprehensive Income (Income Statement)
- Statement of Changes in Equity - Statement of Cash Flows
- Notes to the Financial Statements (showing Company's business information, summary of significant accounting policies, significant accounting judgments and estimates, and details of accounts in the balance sheet and income statements.

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