

Establishing a presence - UAE



The choices for establishment in the UAE may be initially divided into the following two categories: (i) establishment “*onshore*” - i.e. within the UAE but outside one of the free zones which have been established in the UAE or (ii) establishment within one of the UAE free zones.

At the outset it is important to take professional advice on both the intended activities in the UAE and the location of target customers/clients as this can dictate the establishment options that are available. Checks should also be made as to whether any of the proposed activities are restricted exclusively to UAE/GCC nationals and/or whether any special approvals are required from relevant authorities in the UAE to undertake the activity.

Establishment onshore in the UAE

There are a number of ways to establish a presence “*onshore*” in the UAE. The principal choice available to foreigners is either a limited liability company or a branch of a foreign company.

Any entity established in the UAE must be licensed by the competent authority to undertake a specific activity. The requirements will differ slightly in each Emirate. This note focuses mainly on the Emirate of Abu Dhabi (Abu Dhabi) and the Emirate of Dubai (Dubai).

The competent authority in Abu Dhabi is the Government of Abu Dhabi Department of Economic Development (the Department of Economic Development) and in Dubai it is the Government of Dubai Department of Economic Development (the Economic Department).

Limited liability company

- A limited liability company must, according to the provisions of Federal Law No. 8 of 1984 (the Companies Law) have 51% of their shares owned by a UAE national or companies that are wholly owned by UAE nationals (a UAE National). It is not yet possible to establish onshore companies that are 100% foreign owned (except in the case of individuals or companies resident in one of the GCC countries).
- Historically, in Dubai, the Economic Department has been willing to license limited liability companies to undertake manufacturing and trading activities but has been reluctant to permit such companies to undertake professional or



consultancy activities. In Abu Dhabi, the Department of Economic Development will license limited liability companies to undertake manufacturing and it is possible for limited liability companies to obtain a licence to undertake trading and consultancy activities.

- It is possible, and is common practice, for foreigners who wish to establish limited liability companies onshore in the UAE, to put in place arrangements under which the rights to control and profit of the company are assigned from the UAE National to the foreign partner. These arrangements need to be carefully drafted as there are potentially criminal penalties where UAE nationals are held to be “fronting” companies for foreign partners.

Branch of a foreign company

- It is also possible to establish a branch of a foreign company “onshore” in the UAE, which will not have a separate legal identity from its parent in its home jurisdiction (although it will be separately registered and licensed by the competent authority). It is advisable to take advice regarding any tax liability (that may arise in relation to any activities of the branch) in the home jurisdiction of the company.
- A branch tends to be more restricted in the type of activities it is permitted to carry out by the licensing authority. The UAE Ministry of Economy has traditionally been unwilling to license trading activities in respect of branches of foreign companies, though in recent years there have been cases where trading has been permitted. This is generally where the product being traded is manufactured by the parent of the branch in its home jurisdiction.
- There is no requirement for a branch to have a UAE National shareholder, as there is no separate share capital involved. However, pursuant to the provisions of the Companies Law, it is a legal requirement for a branch of a foreign company to enter into a service agreement with a UAE National. This is a contractual relationship which is essentially the provision of services (for example the assistance by the UAE National in dealing with governmental authorities) in return for a fixed

fee, although in some cases the relationship may involve payments of commissions by the branch in return for contacts provided by the UAE National. It is important to note that this relationship does not give the national service agent any right over the management of the company or any rights to profits generated by the branch.

Foreign companies or individuals which establish a commercial entity onshore in the UAE typically do so because they wish to carry on business within the UAE itself.

Establishment in a free zone

- There are more than 20 free zones established in the UAE, the vast majority of which are in Dubai.
- It is possible to establish limited liability companies within a free zone which are 100% foreign owned. Free zone entities are also exempt from any requirement to enter into any compulsory service or agency agreement with UAE nationals.
- It is possible to establish a branch of a foreign company in most of the free zones. A branch will not have a separate legal identity from its parent in its home jurisdiction (although it will be separately registered and licensed within the free zone). It is advisable to take advice regarding any tax liability (that may arise in relation to any activities of the branch) in the home jurisdiction of the company.
- In the case of most of the free zones, the implementing legislation guarantees an initial tax free period for specified number of years. In practice, this does not offer any significant advantage over onshore establishment at present, as although there is no guarantee that an obligation to pay tax may not arise in the future there is currently no corporation or other tax payable by entities established onshore.
- A limited liability company or branch which is set up in a free zone must apply for a licence to undertake its particular activity from the authority administering that free zone. Many of the larger free zones concentrate on a specific range of activities, for example, manufacturing and trading (the Jebel Ali Free Zone), technology (Dubai Technology and Media Free Zone) and commodities (Dubai Multi Commodities Center). Other significant Free Zones, such as the



Dubai Airport Free Zone, are less specialised and licensees within the zone carry out a range of manufacturing, trading and service activities.

- A licence will permit a licensee to undertake its activities within the free zone and, depending on the laws of the relevant foreign country, to operate overseas. **It is important to note that a license issued by the free zones will not permit the licensee to conduct its activity onshore in the UAE.** In order to carry on business onshore in the UAE it is necessary to have a

separate licence. To obtain such a licence, it is necessary to establish an onshore company or branch.

- Entities established in the free zones are typically involved in activities such as manufacturing and export to the Gulf region or beyond the provision of services within the free zone or as regional hubs performing back office activities

Further information

If you would like further information on any issue raised in this fact sheet please contact:

Niall O'Toole, Partner
niall.o'toole@clydeco.com

Stephen McKenna, Associate
stephen.mckenna@clydeco.com

Clyde & Co accepts no responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this summary. No part of this summary may be reproduced in any form or by any means, electronic, mechanical, photocopying, reading or otherwise without the prior permission of Clyde & Co.

Clyde & Co LLP is a limited liability partnership registered in England and Wales. Regulated by the Solicitors Regulation Authority. QFC Branch licensed by the QFCA. Abdulaziz A. Al-Bosaily Law Office in association with Clyde & Co LLP is licensed in Riyadh - see www.albosailylawoffice.com for licence detail.

© Clyde & Co LLP 2014

www.clydeco.com