

Doing Business in the United Arab Emirates:

Choosing a Legal Structure



Introduction

Based in Dubai in the United Arab Emirates, **Hugh Fraser International** Legal Consultancy is a corporate and commercial legal consultancy focused on supporting our clients' international business interests.

This guidance note provides a brief summary of the key legal and commercial issues involved in establishing a business in the United Arab Emirates. In all cases, specific legal advice should be taken in the context of the particular circumstances.

In addition to the selection of the most appropriate legal structure, consideration of the necessary licensing rules and procedures must also be undertaken in respect of carrying on business, construction or modification of business premises and the hiring of expatriate and national personnel.

What options are available in terms of legal structure for my business?

The legal system in the UAE allows a number of different legal structures to be established by a foreign owned business which seeks to establish itself in the country. The options which are generally available where the UAE business is to be at least partly owned by non-UAE nationals are as follows:-

Direct Sales without a Commercial Agent

Direct Sales using a Commercial Agent

Joint Participation Venture

Representative Office

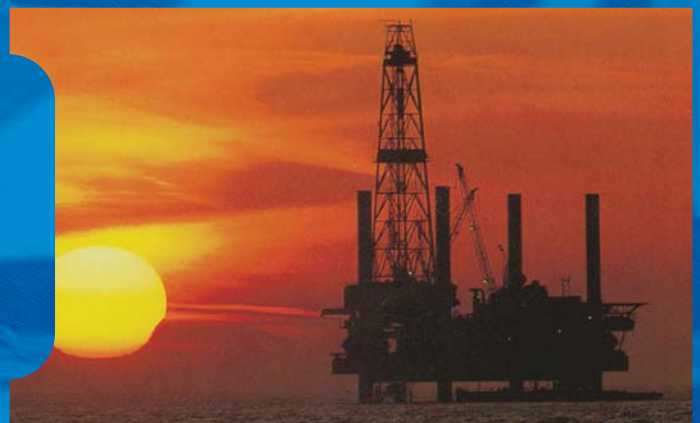
Branch Office

Limited Liability Company

Free Zone Company, Free Zone Establishment

Dubai International Financial Centre

Professional Service Company



What is the best legal structure for my business?

The choice of optimum legal structure can only be properly decided after a thorough review of all of the relevant legal and commercial issues. These issues may include the following questions:-

Does the nature of the business mean that a specific form of legal structure must be used in the UAE (e.g. most professional services businesses cannot incorporate)

Will the business require the approval of a UAE federal ministry prior to a licence being issued?

Do the business's customers or potential customers have any specific requirements (note especially the requirements of the Abu Dhabi oil and gas industry)

Will a marketing 'shop window' suffice or will the business need full trading capacity?

Will the business be wholly owned by the foreign owners or is partial ownership by UAE nationals required or desirable?

Is limited liability a key issue?

Should the business and assets of the UAE business be ring-fenced away from other foreign businesses and assets?

What business operations will be undertaken in the UAE e.g. import and re-export only? Trading within the Emirate of Dubai? Trading with the oil and gas sector in the Emirate of Abu Dhabi?

How much initial capital is required?

Are there any taxation implications associated with the selection?

Are there any specific issues as to the location of the business within the UAE e.g. staff travel/accommodation, proximity to port facilities, proximity to airport, availability and cost of premises?

Is the business likely to seek to offer shares for public subscription?

What other issues should be considered?

Prior to embarking on the establishment of the UAE business a number of other key commercial issues should be addressed, which will apply irrespective of the legal structure selected:-

Who will be the General Manager of the business?

Who will be the Directors/Supervisory Board or Committee?

What other personnel (expatriate and local) are needed?

Should new Terms and Conditions of Business be drafted for the UAE and/or in other regional territories?

Who will be the auditors of the business?

What additional insurance cover is needed?

What banking arrangements are needed?

Should trade marks of brand names and logos be registered?

How can the intellectual property of the business be protected?



Direct Sales without a Commercial Agent

Depending on the Emirate concerned and the nature of the products it may be possible for overseas manufacturers and traders to sell directly to importers and traders in the UAE without an agent or other permanent local presence. However, this will not be the case in relation to the oil and gas industry in Abu Dhabi. In other sectors this route may be workable for 'one off' or low volume trading activities but is unlikely to be satisfactory where high levels of trading are to be undertaken and/or the owners of the business wish to establish business goodwill and profile in the UAE.

Disadvantages which may be experienced without a local agent or other presence are often:-

Difficulties in securing repeat business

Difficulties in payment collection

Difficulties in meeting after-sales and delivery obligations



Direct Sales with a Commercial Agent

The appointment of a local commercial agent may be a means to overcome some or all of the disadvantages of the direct sales without an agent route.

The following advantages are often available:-

The presence of the agent stimulates higher levels of sales and/or repeat business

The agent can be proactive locally in collecting payment

The agent may have operational capability to assist with after-sales and delivery support

An agent is essential for dealing with the oil and gas industry in Abu Dhabi.

However, the following disadvantages may be experienced:-

The agent's portfolio is too large to dedicate sufficient time to the principal's products and services

The agent may have "oversold" his influence and clout in the market place and may not engender the levels of sales anticipated

Difficulties may be experienced in the remitting of funds if paid directly to the agent by customers

The agent must be given exclusivity for the relevant Emirate(s) for the relevant products and services

Commissions will be payable on sales in the Emirate irrespective of the contribution made by the agent

Termination of the agency may be practicably impossible without payment of compensation

Joint Participation Venture

A joint participation venture (JPV) is one of a number of types of 'partnership' structures permitted under the Federal Laws of the UAE. In a JPV two or more partners jointly participate in one or more businesses and share the profits according to their own contractual arrangements. Local UAE nationals must hold at least 51% of the JPV's capital.

The other types - General Partnership, Simple Limited Partnership and Partnership Limited by Shares – are unlikely to be suitable for foreign owned businesses as the 'general' partners (i.e. those active in the day to day management of the business) must be UAE nationals.

The JPV may be suitable for 'market testing', 'one off' projects or other limited forms of trading in the UAE. In effect the local partner(s) conducts the in-country business under his own business licence.

The JPV has the following advantages over the agency route:-

The provisions as to exclusivity, commissions and compensation rights applicable in an agency situation do not apply in a JPV

The legal formalities are entirely contractual with no official registrations or licensing procedures required.

However, the JPV has the following disadvantages:-

If the existence of the JPV is made known to third parties (necessary in most business situations where the specialist skills or products of a foreign party are involved) the parties are jointly and severally liable to the full extent of their assets for the liabilities of the business

The foreign partner has no legal capacity to market itself within the country nor to enter into contracts.

Even with appropriate contractual protections and insurance arrangements the existence of actual or potential joint and several liability may make this route unacceptable to many foreign businesses.

Representative Office

The Representative Office (RO)* route is the simplest means of a foreign business establishing its own 'local presence' in Dubai. RO is merely an administrative and marketing centre for the foreign company and is limited to gathering information and soliciting orders and projects to be performed by the company's head office.

The advantages of the RO route are:-

- Local legal presence of the foreign company
- Can market the foreign company
- Can facilitate sales for the foreign company
- The RO is 100% owned by the foreign company

However, the RO route has some significant limitations and disadvantages:-

- A local service agent is required
- A local manager will be required with the entailing costs (premises, visas, house lease)
- A trade licence is needed
- The RO cannot obtain credit facilities
- The RO cannot enter into commercial contracts or make offers
- Importation of goods and products must still be undertaken through a commercial agent.

*** This route is not currently recognised in Abu Dhabi.**



Branch Office

Foreign companies are permitted to establish branches in the UAE. The branch is 100% foreign owned and is a fully fledged business, permitted to perform, contract or conduct other activities as specified in its licence.

The foreign entity must appoint a UAE national or a wholly owned UAE entity incorporated in the UAE as a local service agent.

The local service agent will not own equity in or participate in the substantive management of the branch. Rather the Local Service Agent will usually provide services such as assisting in communications with government departments (i.e. in obtaining visas) or undertaking other administrative matters

The advantages of the branch office route are:-

- Local legal presence of the foreign company
- Can market the foreign company
- The branch is 100% owned by the foreign company
- The branch can obtain credit facilities
- The branch can enter into commercial contracts or make offers

However, the branch office route has some significant limitations and disadvantages:-

- A local service agent is required
- A local manager will be required with the entailing costs (premises, visas, house lease)
- A trade licence is needed
- Certain types of licenses cannot be held by branches

Limited Liability Company

The UAE limited liability company (LLC) is similar to the UK private limited company, that is each of the partners shall only be liable to the extent of his/her shares in the capital.

It offers the following advantages:-

- Limited liability and 'ring-fencing' of risk to the assets owned by the LLC
- No agent is necessary

However, the key disadvantage of the LLC is the requirement that a maximum of 49% of the shares are held by foreign persons or foreign companies. UAE nationals must hold at least 51% of the shares.

The practice has developed where all or part of the 51% 'local' shareholding is held in trust for the 49% foreign shareholder, however the enforceability of these trust arrangements before the Dubai courts is questionable.

A minimum share capital is required when setting up a LLC. The minimum share capital is as follows:

Dubai - 300,000 UAE Dirhams (approx. GBP 43,000/ US\$ 80,000);

Abu Dhabi - 150,000 UAE Dirhams (approx. GBP 19,650 / US\$ 40,860).

Public Joint Stock Company

An alternative option for a limited liability structure is a Public Joint Stock Company (PJSC) which is modeled on the UK public limited company. A PJSC must be used if shares are to be offered to the public. UAE nationals must hold at least 51% of the shares. The minimum share capital is 10 million UAE Dirhams (approx. GBP 1.45 million) and it must have at least ten shareholders. Higher levels of capital are required for certain types of PJSC, for example banks and insurance companies.

Private Joint Stock Company

A Private Joint Stock Company (JSC) is essentially the same as a PJSC and in fact has the same setting up procedures as a PJSC however:

The minimum capital requirement is 2 million UAE Dirhams (approx GBP 290,000)

The shares cannot be offered to the public; and

Only three founder members are required.

UAE nationals must hold at least 51% of the shares. A JSC can be converted into a PJSC, although certain conditions must be satisfied.

The likely rationale for taking the JSC route rather than the LLC option is the desire to project a greater scale of financial substance or where the LLC route is specifically debarred for certain types of businesses such as banks, insurance companies and investment companies.

Free Zone Company or Free Zone Establishment or Branch

Free Zones allow business established in these areas to be 100% foreign owned. However a company set up in a free zone can only trade within the free zone or internationally.

The advantages of establishing in a free zone are considerable:-

- 100% foreign ownership is permitted
- Tax exemptions for up to 50 years are granted
- Goods and products may be imported and re-exported duty free (although a 5% duty will be payable on non-exempt goods and products imported into the UAE from the relevant free zone)
- A one stop shop whereby the Free Zone authority deals with all incorporation, licensing and visa formalities

The main disadvantages are generally:-

- Only businesses carrying on specific business activities are permitted
- The location of the free zone may not be ideal
- A commercial agent will still be required if the free zone company intends to trade outside the free zone but within the UAE

Each free zone has its own minimum share capital requirements. For example, in the case of the Jebel Ali Free Zone, the minimum share capital is 500,000 UAE Dirhams for a free zone company (which requires a minimum of two shareholders). Whilst a free zone establishment (which can be established by one shareholder, commonly an overseas corporation) requires a minimum share capital of 1,000,000 UAE Dirhams.

It is normally possible to establish a foreign branch within Dubai's free zones.

Companies established within a free zone are subject to the Free Zone's laws and regulations as distinct from Dubai law.

The Dubai authorities have established a number of free zones in Dubai including:

- Dubai Aid City Free Zone
- Dubai Airport Free Zone
- Dubai Auto Parts City Free Zone
- Dubai Biotech Free Zone

- Dubai Carpet Free Zone
- Dubai Cars and Automotive Zone
- Dubai Flower Centre Free Zone
- Dubai Gold and Diamond Park
- Dubai Healthcare City
- Dubai International Financial Centre
- Dubai Internet City
- Dubai Maritime City
- Dubai Media City
- Dubai Silicon Oasis Free Zone
- Dubai Textile Village Free Zone
- Heavy Equipment and Trucks Free Zone
- International Arbitration Centre
- International Media Production Free Zone
- Jebel Ali Free Zone
- Knowledge Village/ Academic City
- Metals & Commodities Free Zone

Free zones that have been established in other parts of the UAE are as follows:

- Sharjah - Hamriyah Free Zone
- Sharjah Airport International Free Zone
- Ras Al Khaimah - Ras Al Kaimah Free Trade Zone
- Ajman -Ajman Free Zone
- Fujeirah - Fujeirah Free Zone
- Umm Al-Qwain - Ahmed Bin Rashid Free Zone

Abu Dhabi Free Zone will be based on Sadiyaat Island but it is still under development.

Dubai International Financial Centre

The Dubai International Financial Centre (DIFC) is a Free Zone located within Dubai. This is a business and financial centre located in the centre of Dubai and has its own separate legal and regulatory system.

The DIFC allows companies to be 100% foreign owned with a zero percent tax rate on income and profits.

The DIFC focuses on several sectors of financial activity such as banking services (Investment Banking, Corporate Banking & Private Banking), capital markets (Equity, Debt Instruments, Derivatives and Commodity Trading), asset management and fund registration, insurance and reinsurance, Islamic finance, business processing operations and ancillary services.

The minimum share capital varies depending on the type of business being conducted.

Professional Service Company

UAE Law provides in special circumstances for the 100% foreign ownership of professional practices in Dubai including doctors, dentists, lawyers, accountants and engineering consultants. These professional services must be rendered through an unincorporated legal structure which does not have limited liability. A professional licence and a local service agent are required (although the local service agent will not be required if a UAE national is a partner in the practice with an entitlement to not less than 15% of the profit share).

It should be noted that most professional services businesses require special regulatory consents from the relevant federal ministry before a licence may be issued.

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General

Further information on establishing a business in United Arab Emirates
can be obtained from emailing the following:

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