

Doing Business in United Arab Emirates

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LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

The United Arab Emirates (UAE) is a civil law jurisdiction. The Federal Constitution apportions powers between the federal government (based in Abu Dhabi) and the seven constituent emirates. Certain areas are regulated federally (such as immigration and labour), some at the emirate level (such as natural resources within each emirate, including petroleum), and some are regulated at both the federal and emirate levels (such as company formation and registration).

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

A foreign company can establish a presence in the UAE by setting up a branch or forming a company.

A branch of a foreign company must have a sponsor (called a national agent). Branch sponsors have no ownership rights in the branch. The sponsor must be a UAE national or a company wholly owned by UAE nationals. A UAE company must be at least 51% owned by UAE nationals, with the following general exceptions:

- Certain sole proprietorships and professional partnerships can be wholly foreign-owned.
- A UAE company can be 100% owned by nationals of the Gulf Co-operation Council (GCC) nations, the other GCC members being Bahrain, Kuwait, Oman, Qatar and Saudi Arabia.

In each case, the branch or company must obtain a licence from the federal and/or municipal authorities to carry on its proposed activities.

For activities of national interest, such as those relating to telecommunications or petroleum, there may be restrictions on foreign ownership and/or additional licensing requirements. In addition, certain industries are subject to additional regulation, such as banking, insurance and investment.

3. Are there any exchange control or currency regulations?

There are no currency exchange controls and no restrictions on the remittance of funds, except for restrictions on transactions involving Israeli parties or currency.

4. What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?

The UAE has established various free zones, each of which is regulated by the relevant free zone authority. Free zones are subject to their own respective company laws, independent of the company law of the UAE. Foreign companies are permitted to establish branches or incorporate wholly owned subsidiaries in each of the free zones, without the need to appoint a UAE national sponsor or have any UAE national ownership.

Free zones attempt to distinguish themselves by appealing to a particular type of business and offering an environment attractive to those businesses in terms of infrastructure, location and other factors such as guaranteed tax holidays. Even outside the free zones, there is presently no corporate or personal income tax (except on foreign banks and courier companies operating in the UAE).

BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies to conduct business in your jurisdiction? In relation to this vehicle, please provide details on:

- Registration formalities (including timing).
- Minimum (and maximum) share capital.
- Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).
- Any restrictions on the rights that can attach to shares.
- Any restrictions on foreign shareholders.
- Management structure and any restrictions on foreign managers.
- Directors' liability.
- Parent company liability.
- Reporting requirements (including filing of accounts) and cost of compliance.

The most common form of business vehicle used by foreign companies is the limited liability company (LLC).

- **Registration formalities.** An LLC is formed by a memorandum of association (memorandum) entered into by all the shareholders of the LLC. The LLC must be registered with the federal Ministry of Economy (MoE) and licensed by the appropriate emirate level authority. Once all necessary documentation is in order, the registration and licensing process takes about ten working days, or longer if the subject licence requires the approval of an additional regulatory body (for example, additional approvals from the Dubai Municipality are required to license a contracting company).
- **Share capital.** The requirement for an LLC to have a minimum amount of share capital was recently abolished. The law now provides that an LLC should have a capital that is sufficient to achieve its purpose of incorporation. In practice the level of the capital will need to be approved by the appropriate emirate authority.
- **Non-cash consideration.** In-kind contributions are accepted as payment for shares in an LLC, but are subject to certain requirements concerning certification of the value of such contributions.

- **Rights attaching to shares.** An LLC cannot issue transferable shares or bonds, or resort to public subscriptions (these activities are reserved for public joint stock companies). Federal Law No. 8 of 1984 regarding Commercial Companies, as amended (Companies Law) sets out the rights and restrictions on shares of an LLC.
- **Foreign shareholders.** An LLC must have no fewer than two and no more than 50 shareholders. UAE nationals or companies wholly owned by UAE nationals must own at least 51% of an LLC's shares at all times, unless the LLC is 100% owned by GCC nationals.
- **Management structure.** An LLC must be managed by a minimum of one and a maximum of five managers. A manager can be one of the shareholders or any other person. Where an LLC has more than one manager, its meetings are regulated by the LLC's memorandum, subject to which the manager(s) have full power to manage the LLC and make binding decisions on its behalf. If the LLC has more than seven shareholders, the memorandum must provide for a supervisory board of at least three shareholders. The supervisory board:
 - can examine the LLC's books and documents;
 - can require the managers to submit reports on their management;
 - supervises the LLC's budget, its annual reports and the distribution of profits;
 - submits its own reports to the general assembly of shareholders.

An LLC must hold a general assembly of the shareholders at least annually, or at any other time demanded by the supervisory board or by shareholders holding at least 25% of the LLC's capital. Resolutions of the general assembly must be adopted by shareholders representing at least 50% of the LLC's capital, unless the memorandum provides for a greater majority.

- **Directors' liability.** The managers of an LLC are liable to the LLC, the shareholders and third parties for:
 - all acts of fraud;
 - abuses of power;
 - violations of the Companies Law (or regulations promulgated under it);
 - errors in management.

Any provisions that purport to provide otherwise are void.

- **Parent company liability.** The liability of a shareholder in an LLC is generally limited to the value of its shareholding.
- **Reporting requirements.** An LLC must keep a record of the names, nationalities and domiciles of its shareholders and their respective share values, at the headquarters of the LLC. An LLC must maintain financial records, which must be audited by a licensed auditor. Although these audited financial statements are required to be filed with the MoE, at present this requirement is not implemented.

EMPLOYEES

6. What are the main laws regulating employment relationships?

UAE Federal Law No. 8 of 1980 Regulating Labour Relations (Labour Law) regulates most employment relationships in the UAE. The Labour Law applies to foreign employees working in the UAE, but does not apply to UAE national employees who are employed abroad, or employees of UAE companies working abroad. The Labour Law does not apply to the government sector, domestic servants and agricultural workers.

The Labour Law imposes minimum standards on termination of employment, working hours, vacation time and safety standards, among other things, which cannot be contracted out of. All employers in the UAE (other than those in exempt categories or in free zones) must register with the Federal Ministry of Labour and Social Affairs (MoL).

Trade unions and collective bargaining are not currently permitted, and for both UAE nationals and non-nationals, employee grievances are handled through a conciliation process administered by the MoL.

7. Is a written contract of employment required? Are any agreements and/or implied terms likely to govern the employment relationship?

A written employment contract is required and the minimum standards provided in the Labour Law apply regardless of contrary contractual provisions.

For a foreign national to obtain residency in the UAE:

- The foreign national must enter into an employment contract with an employer that is duly licensed in the UAE.

- Employment contracts with MoL-registered employers must be on the form prescribed by the MoL and registered with it.

8. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees are not entitled to management representation or to be consulted in relation to corporate transactions.

9. How is the termination of individual employment contracts regulated?

The Labour Law provides for a 30-day minimum notice period for termination for legitimate reasons and pay in lieu of notice is acceptable. What constitutes a legitimate reason is not defined, but generally the reason for termination must relate to the employee's work.

In a wrongful dismissal, the employer can be ordered by the court to pay compensation of up to three months' base salary to the employee. Employee grievances are handled through a conciliation process administered by the MoL.

10. Are redundancies/mass layoffs regulated? If so, please give details.

There are no specific regulations regarding redundancies and mass layoffs.

11. Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?

Employment visas are required for foreign persons to work in the UAE. The entire process costs about AED7,500 (as at 1 October 2010, US\$1 was about AED3.7) and takes four to five weeks.

TAX

12. In relation to employees, what constitutes tax residency in your jurisdiction?

Tax residency is not clearly defined under UAE law as there is no enforced income tax legislation.

13. What income tax or social security contributions must the following pay:

- Tax resident employees?
- Non-tax resident employees?
- Employers, in relation to their employees?

Employees

The UAE does not impose any personal income taxes on either UAE national or non-UAE national employees.

A statutory pension contribution of 5% of the salary is payable by UAE national employees. Non-UAE national employees do not make any social security contributions.

Employers

A statutory pension contribution of 12.5% of the salary is payable by the employer in relation to UAE national employees.

14. In relation to business vehicles, what constitutes tax residency in your jurisdiction?

Tax residency is not clearly defined under UAE law, in the absence of any enforced corporate income tax legislation.

15. Please give details of the main taxes that potentially apply to a tax resident business vehicle (including rates).

No corporate income tax is imposed at the federal or emirate level, except in relation to branches of foreign banks (at the emirate level) and courier companies (at the federal level). Emirate-level taxes are imposed on the petroleum concession holders at rates specifically negotiated in the relevant concession agreements.

Dubai, and certain other emirates, impose taxes on some goods and services (including sales of alcoholic beverages, hotel and restaurant bills, and residential leases). However, there is no generally applicable sales tax or VAT in the UAE.

16. How are the activities of non-tax resident business vehicles taxed?

The UAE does not impose income tax on resident or non-resident business vehicles.

17. Please explain how each of the following is taxed:

- Dividends paid to foreign corporate shareholders.
- Dividends received from foreign companies.
- Interest paid to foreign corporate shareholders.
- Intellectual property (IP) royalties paid to foreign corporate shareholders.

■ **Dividends paid.** The UAE does not impose taxes on dividends (paid or received).

■ **Dividends received.** The UAE does not impose taxes on dividends (paid or received).

■ **Interest paid.** The UAE does not impose taxes on interest payments.

■ **IP royalties paid.** The UAE does not impose taxes on royalty payments.

18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.

No thin capitalisation rules apply in the UAE.

19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

No controlled foreign company rules apply in the UAE.

20. Are there any transfer pricing rules? If so, please give details.

No transfer pricing rules apply in the UAE.

21. How are imports and exports taxed?

Under the Arab Gulf Co-operation Council's (AGCC) agreement to impose uniform rates for customs duties, the UAE imposes a uniform 5% customs duty on the import of goods from outside the AGCC. Limited exemptions apply to military and security purchases and some foodstuff items.



22. Is there a wide network of double tax treaties? If so, please give details.

The UAE is party to more than 40 international tax treaties.

COMPETITION

23. Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.

There are currently no anti-trust laws in force in the UAE.

INTELLECTUAL PROPERTY

24. Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:

- **Nature of right.**
 - **How protected.**
 - **How enforced.**
 - **Length of protection.**
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The UAE is a member of the General Agreement on Tariffs and Trade, and accordingly all provisions relating to intellectual property, including reciprocity, apply in the UAE. The UAE also has its own legislation regulating intellectual property.

Patents

- **Nature of right.** To be patentable, an invention must satisfy the following requirements:
 - novelty. Novelty is not described except using the word “new”. The Ministry of Finance and Industry examine the application for novelty;
 - inventiveness. The patent must be non-obvious, as judged by the Ministry;
 - industrial application. The invention must be practically useful in industry.
- **How protected.** Protection is achieved by registration under Federal Law No. 44 of 1992 Regarding the Regulation and Protection of the Industrial Property of Patents, Designs and Industrial Prototypes (as amended by Federal Law No. 17 of 2002)

(Patent Law), which regulates the protection of patents, designs, industrial models and know-how, and is administered by the Ministry of Finance and Industry.

- **How enforced.** A petition can be made to the Administration of the Industrial Property, a statutory administrative body, for the enforcement of provisions of the Patent Law, appeals from which must be made within 30 days of a decision.
- **Length of protection.** A patent is valid for 20 years. The patent owner must use it or license it within four years from the date of application.

Trade marks

- **Nature of right.** To be registrable in the UAE, a trade mark must be distinguishable and not yet registered by another person. Registrability is at the MoE's discretion.
- **How protected.** Protection is achieved by registration under Federal Law No. 37 of 1992 Regarding Trademarks (as amended by Federal Law No. 8 of 2002) and is administered by the MoE. Applications are submitted to the Trade Control Section of the MoE. The process takes slightly over a year, and costs about AED13,000.
- **How enforced.** Unauthorised use of a registered trade mark and other related offences are punishable under UAE law. An aggrieved trade mark owner (or licensee) can also bring a civil action for damages. No injunctive relief is available in the UAE courts.
- **Length of protection.** A trade mark registration is valid for ten years from the date of registration and can be renewed.

Registered designs

- **Nature of right.** Industrial designs are defined as any innovative three-dimensional shape that can be used in industry or craft. To be registrable, a design must be:
 - new;
 - innovative;
 - usable as an industrial product.
- **How protected.** Protection is achieved by registration under the Patent Law and is administered by the Ministry of Finance and Industry. An application is made to the Administration of Industrial Property for a deed of protection in relation to an industrial design.

- **How enforced.** Unauthorised use of a registered industrial design, to manufacture or import goods relating to the industrial design, with the intention of selling those goods, is punishable under UAE law. The aggrieved industrial design owner (or licensee) can also bring a civil action for damages. No injunctive relief is available in the UAE courts.
- **Length of protection.** The protection term for a registered design is ten years from the date of filing the application for registration.

Unregistered designs

Unregistered designs are protected as an unregistered copyright (*see below, Copyright*).

Copyright

- **Nature of right.** Copyright can subsist in a wide variety of media, including:
 - written;
 - verbal;
 - musical;
 - photographic;
 - drawings.
- **How protected.** Copyrights in the UAE are protected under Federal Law No. 7 of 2002 Regarding Copyrights and Neighboring Rights, which is administered by the Ministry of Information and Culture. Protection arises automatically on the author's creation of the work and registration is not required. However, a copyright can be registered with the Ministry of Information and Culture to provide public notice of the copyright or to establish priority in time. No greater substantive protection is afforded a registered copyright compared to an unregistered copyright.
- **How enforced.** Unauthorised publication of a copyrighted work in the UAE is a criminal offence punishable by imprisonment and/or fines.
- **Length of protection.** A copyright is protected for the duration of the author's life plus 50 years.

Confidential information

Confidential information is not specifically regulated. However, a person is liable for acts causing harm generally (*UAE Federal Law No. 5 of 1985 regarding Civil Transaction*), which would include harm caused by unauthorised use or publication of the personal or private information of another.

MARKETING AGREEMENTS

25. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- **Agency.**
- **Distribution.**
- **Franchising.**

The UAE Commercial Agencies Law (*Federal Law No. 18 of 1981, as amended*) regulates the appointment of commercial agents, sales representatives, and distributors. A commercial agency is defined as any arrangement whereby a foreign company is represented by an agent to distribute, sell, offer or provide goods or services within the UAE for a commission or profit.

The Commercial Code (*Federal Law No. 18 of 1993*) augments the Commercial Agencies Law and establishes the regulatory framework for the various types of permitted commercial agencies. The most common type of agency is the contractual agency, whereby the agent undertakes, on a permanent basis and in a specific area of activity, to instigate and negotiate deals for the principal in return for payment. Distributor contracts are treated as contractual agencies when they involve one agent as the sole distributor.

The primary requirements and characteristics of commercial agencies are:

- Commercial agents must be UAE nationals or companies incorporated in the UAE and owned entirely by UAE nationals.
- Commercial agents must be registered with the MoE to engage in commercial agency activities. In practice, there are many unregistered commercial agencies held by companies with some foreign ownership.
- The agency agreement must be registered for the agent to be protected under the law and to have the agency relationship recognised.
- Commercial agents are entitled to an exclusive territory encompassing at least one emirate for the specified products.
- Unless otherwise agreed, commercial agents are entitled to receive commissions on sales of the products in their designated territory irrespective of whether these sales are made by or through the agent.
- Commercial agents are entitled to prevent products subject to their agency from being imported into the UAE.

E-COMMERCE

26. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.

Federal Law No. 1 of 2006 regarding Electronic Transactions and Commerce regulates electronic records, documents and signatures relating to electronic transactions, but does not apply to wills, immovable property, negotiable instruments, personal law issues such as marriage or divorce, or documents that must be attested before the notary public. Generally, contracts can be formed by any means of electronic communication. A person can rely on an electronic signature, to the extent such reliance is reasonable in the circumstances.

DATA PROTECTION

27. Are there any data protection laws? If so, please give brief details.

There are currently no data protection laws in force in the UAE. The Central Bank of the UAE has discretion concerning whether to permit banks registered in the UAE to store customer information outside of the UAE.

PRODUCT LIABILITY

28. Are there any laws regulating product liability and product safety? If so, please give brief details.

The UAE Federal Law No. 5 of 1985 regarding Civil Transactions (Civil Code) contains general provisions imposing liability for harm done to another. These provisions could apply to product liability claims. The Civil Code provides for a distinction between direct and indirect (or consequential) harm, but does not define these terms. It is not possible to contract out of liability for causing direct harm, whereas liability for indirect harm can be limited by contract. In all cases, liability is assessed on the basis of the amount of harm suffered (including loss of profit if it was a natural result of the harmful act).

CONTRIBUTOR DETAILS



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