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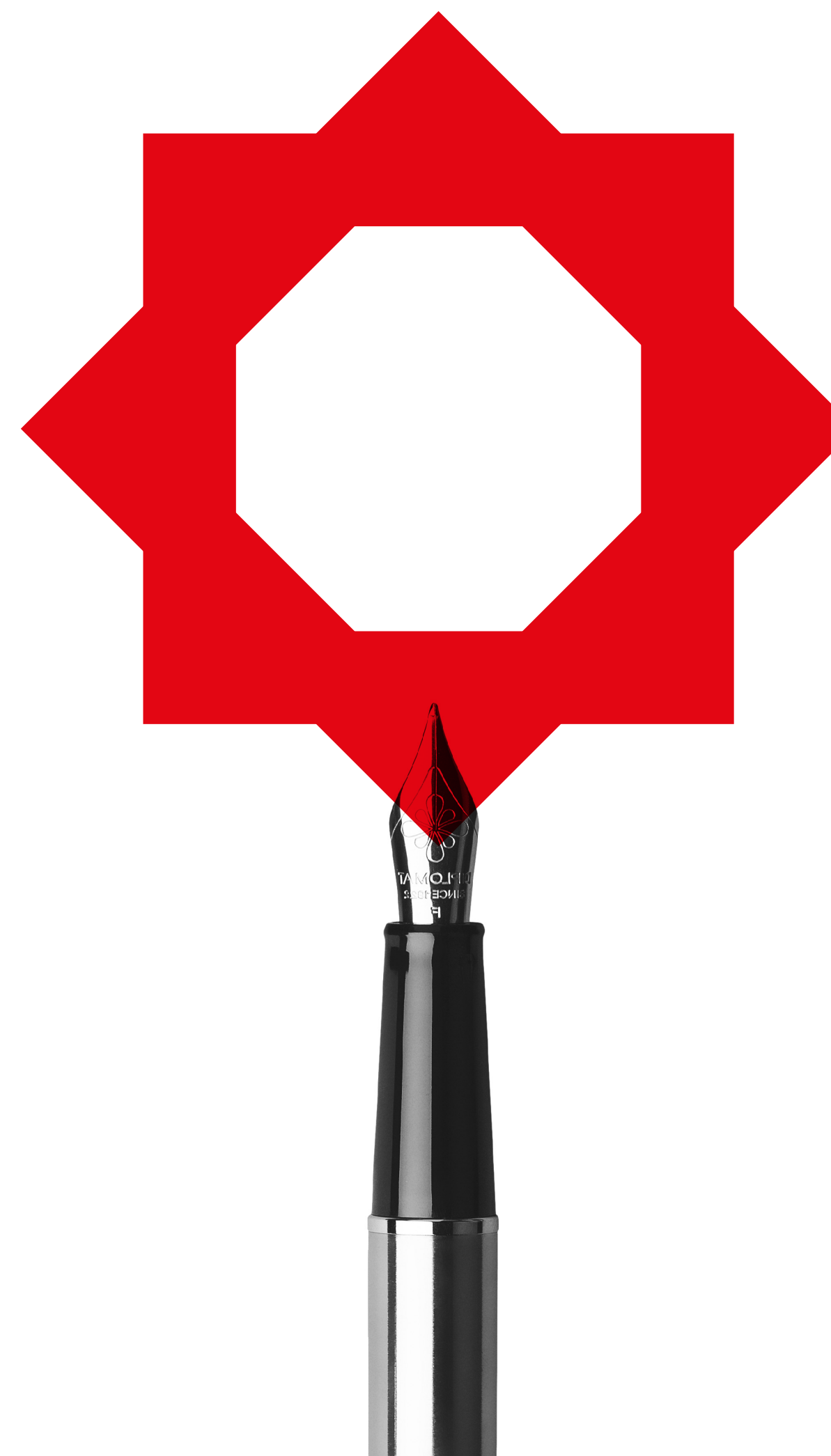
Doing business in The United Arab Emirates

Legal insights 2024




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CONTENTS

WELCOME TO OUR GUIDE TO THE UAE	3
OVERVIEW OF THE LEGAL AND REGULATORY FRAMEWORK	4
ESTABLISHING A PRESENCE IN THE UAE	5
DISPUTE AND DISPUTE RESOLUTION	7
ADDITIONAL CONSIDERATIONS	9
TAXATION	10
WHAT HAPPENS NEXT?	11

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WELCOME TO OUR GUIDE TO THE UAE

A GLOBAL HUB FOR DIVERSIFIED, INNOVATIVE, AND INVESTOR-FRIENDLY BUSINESS

The United Arab Emirates (UAE) presents a dynamic business environment, characterized by a diversified economy and strategic initiatives aimed at fostering sustainable growth. The nation's commitment to innovation and sustainable growth is evident through initiatives like Vision 2021 and Vision 2030, which aim to establish the UAE as a leading global hub for commerce and investment. This commitment is evident in its investment in promising sectors such as advanced technology, AI, research and development, and the digital economy. The UAE's economic principles, inspired by the Principles of the 50, serve as a roadmap for the country's new era of political, economic, and social development, positioning it as a globally integrated economy with a fully-fledged digital infrastructure.

In terms of growth, the UAE's non-oil sectors, including real estate, tourism, and transportation, are significant contributors to its economic trajectory. Financial services have shown remarkable growth, indicating a robust and resilient economic landscape. Furthermore, the UAE's geostrategic location serves as a gateway to Africa, offering access to a wealth of opportunities on the continent.

EVERSHEDS SUTHERLAND IN THE UAE

We have 44 lawyers based in our two UAE offices. We provide a comprehensive full service offering across the UAE from our offices in Abu Dhabi and Dubai. Our UAE lawyers have a diverse range of experience in advising on and working with the laws and regulations of the UAE, the various free zones and across the globe.



OVERVIEW OF THE LEGAL AND REGULATORY FRAMEWORK

THE UAE GOVERNMENT

The UAE government operates as a unique blend of a federal and a monarchical system, known as a federal absolute monarchy. It is a federation of seven emirates, each governed by its own monarch, with the President of the UAE traditionally being the ruler of Abu Dhabi, the largest emirate. The constitution of the UAE provides for a dual court system, which includes both federal and local emirate-level courts. The Federal Judiciary, headed by the Federal Supreme Court, is the highest judicial authority.

THE LEGAL SYSTEM

The UAE has a unique legal system that combines elements of civil law, Islamic Sharia law, and aspects of common law. The federal courts have jurisdiction over a broad range of matters, including criminal cases, while the local courts handle matters of personal status and some civil cases. Additionally, some emirates, like Dubai and Abu Dhabi, have established special jurisdictions for commercial disputes which operate on principles of English common law.

THE REGULATORY FRAMEWORK

The UAE has established a comprehensive regulatory framework to support its dynamic business sector. This framework includes a matrix of federal civil, commercial, and criminal laws, along with various regulatory and supervisory authorities responsible for their implementation and enforcement. Additionally, the UAE has special legislative and regulatory frameworks in its Financial and Commercial Free Zones to cater to the unique needs of businesses operating there.



ESTABLISHING A PRESENCE IN THE UAE

Establishing a business in the UAE involves adherence to specific legal requirements. The law mandates that businesses must either obtain the necessary licenses before starting business activities or appoint a properly licensed local agent or distributor.

The foreign investor, in general, has the following main options available when setting up of a local entity:

- establishment 'onshore' or 'mainland'
- establishment in one of the free zones (see below)
- establishment of a joint venture

Depending on the type of products or services offered, multiple licenses may be needed, or a combination of licenses and the appointment of distributors.

For the official registration of the entity, a series of procedures and approvals from the Department of Economic Development and other concerned authorities are required.

LEGAL STRUCTURES AVAILABLE

Investors can choose from a variety of legal structures when establishing a business. Each structure caters to different business needs and offers distinct advantages and limitations. Popular options include:



The choice of legal structure will depend on various factors such as the type of business, the number of shareholders, the level of liability protection required, and the preferred method of capital investment. It's crucial to consider these factors carefully to ensure compliance with UAE laws and regulations.



ESTABLISHING A PRESENCE IN THE UAE continued

FREE ZONES WITHIN THE UAE

The UAE offers over 40 multidisciplinary free zones which are designated areas that offer a wealth of benefits to businesses. These free zones are areas where companies can be 100% foreign-owned and are exempt from UAE federal law in terms of taxation and ownership. Each free zone caters to specific industry categories and is governed by an independent Free Zone Authority (FZA), which is responsible for issuing operating licenses and assisting companies with their establishment in the zone.

Free zone areas include (but are not limited to):



FREE ZONE	LOCATION	SECTORS OF OPPORTUNITY
Dubai International Financial Centre (DIFC)	Dubai	DIFC is one of the foremost financial hubs in the region, providing a platform for business and financial institutions to reach into and out of the emerging markets of the Middle East, Africa, and South Asia
Abu Dhabi Global Market (ADGM)	Abu Dhabi	ADGM is a financial free zone that provides a robust legal framework and a variety of financial services, attracting businesses from around the globe.
Dubai Multi Commodities Centre (DMCC)	Dubai	DMCC is a hotspot for global trade and an ideal base for companies trading in commodities like gold, diamonds, and tea
Ras Al Khaimah Economic Zone (RAKEZ)	Ras Al Khaimah	RKEZ caters to a wide range of industries and is particularly attractive to SMEs and startups
Jebel Ali Free Zone (JAFZA)	Dubai	JAFZA is one of the world largest freezones with businesses operating from over 100 countries handling \$69bn in trade. JAFZA offers the concept of an offshore company structure but this does not permit trade within the UAE.
Khalifa Industrial Zone Abu Dhabi	Abu Dhabi	With a focus on industrial growth, KIZAD offers licenses for trading, logistics, industrial, and service activities, supported by excellent infrastructure



DISPUTE AND DISPUTE RESOLUTION

MAINLAND COURT SYSTEM

The UAE’s court system is divided into three main levels: the Court of First Instance, the Court of Appeal, and the Federal Supreme Court or the Court of Cassation at the local level for emirates with independent judicial departments.

At the first level, the Court of First Instance handles all civil, commercial, administrative, labor, and personal status lawsuits. It is responsible for examining claims, authenticating documents, and enforcing judicial execution deeds. If a party is dissatisfied with a decision made by the Court of First Instance, they can appeal to the Court of Appeal, which is the second level of the judicial system. The Court of Appeal reviews cases based on the provisions of the civil and criminal procedural laws effective in the UAE.

The highest level of the court system is the Federal Supreme Court at the federal level, and the Court of Cassation at the local level. The Court of Cassation is the highest judicial body with the power to try cases contested by the Court of Appeal. It supervises the interpretation of laws and ensures their proper enforcement. Decisions made by the Court of Cassation are final and binding.

In addition to the federal courts, the emirates of Abu Dhabi, Dubai, and Ras Al Khaimah have their own local court systems. These local courts handle matters within their respective emirates, while the other emirates rely on the federal court system for all legal proceedings.

The UAE Government has implemented virtual litigation systems, allowing for remote court hearings and e-filing to facilitate the judicial process during times when in-person sessions are not possible.

FREE ZONE COURTS

One of the unique features of some UAE free zones is their own judicial systems, which operate independently of the UAE’s federal legal system. The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) are two prominent examples of free zones with their own courts.

The DIFC Courts and ADGM Courts are based on the English common law framework which is already familiar to international businesses. The DIFC Courts, for instance, have jurisdiction over civil and commercial disputes related to the financial hub, and they operate in English, which adds to their accessibility for international stakeholders.

FREE ZONES: ADDITIONAL BENEFITS AND CONSIDERATIONS

Free zones in the UAE offer several significant advantages to businesses. One key benefit is the exemption from custom duties for imported goods, provided these are used within the business or re-exported outside the UAE. It’s important to note, however, that if these goods are transferred onshore, they become subject to custom duties as if they were being imported from overseas.

Many free zones also provide attractive tax incentives. Typically, they offer a “tax-free” period, often extending to 50 years, for both businesses and their employees. This exemption, however, may not apply to UAE federal taxes, which could still be imposed.

Traditionally, free zone companies faced restrictions on operating outside their designated zones. To overcome this limitation, businesses would need to either establish an onshore branch or enter into agency or distribution agreements with onshore-licensed entities. However, recent developments have introduced a more flexible solution: dual licensing



DISPUTE AND DISPUTE RESOLUTION continued

DUAL LICENSING: BRIDGING FREE ZONES AND ONSHORE MARKETS

In an effort to enhance the UAE's attractiveness to foreign investors and streamline business operations, the concept of dual licensing has been introduced. This innovative approach allows free zone companies to expand their operations into the UAE's onshore market while maintaining their free zone presence.

The dual licensing system eliminates the need for free zone companies to rent separate onshore premises. Instead, these businesses can now obtain an additional onshore license, enabling them to conduct business both within the free zone and in the broader UAE market. This arrangement significantly reduces operational costs and simplifies the process of market expansion, making it easier for free zone companies to access the full spectrum of business opportunities in the UAE.

ENFORCEMENT OF LEGAL OBLIGATIONS

In the United Arab Emirates (UAE), the enforcement of legal obligations is a structured process that adheres to the civil law system influenced by Islamic Sharia. The UAE's legal framework for litigation and enforcement includes several key aspects:

- **Dispute Resolution Methods:** Commercial disputes in the UAE are typically resolved through litigation or arbitration. Arbitration is particularly popular and the UAE is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- **Enforcement of Judgments:** To enforce a judgment, one must obtain an execution deed, lodge a statement of execution with the relevant court, and serve the statement on the defendant.
- **Breach of Contract:** Parties seeking to enforce a contract must ensure the agreement is properly executed, contains clear terms, and complies with UAE laws. In case of a breach, the injured party should gather evidence and may file a lawsuit or initiate arbitration proceedings.
- **Enforcement of Foreign Judgments:** The UAE has specific procedures for enforcing foreign judgments, which include verifying that the judgment satisfies certain criteria and does not contradict UAE public policy or Sharia principles.



ADDITIONAL CONSIDERATIONS

EMIRATIZATION REQUIREMENTS

Emiratization is a strategic initiative by the UAE government aimed at increasing the employment of Emirati citizens in the workforce, particularly within the private sector. Companies operating in the UAE are encouraged to support this initiative by adhering to the Emiratisation requirements, which include hiring a certain percentage of Emirati nationals based on the company's size and providing them with competitive skills and career development opportunities.

As of mid-2022, businesses with 50 or more employees are required to incrementally increase their Emirati workforce by 2% annually, with the goal of achieving 10% Emiratization by 2026. Smaller entities, employing between 20-49 staff, have specific hiring mandates to meet by the end of 2024 and 2025.

Non-compliance with these quotas can result in financial penalties, potential restrictions on interactions with the Ministry of Human Resources and Emiratization (MOHRE), and possible reclassification leading to higher administrative costs.

These measures underscore the government's commitment to developing local talent and integrating Emirati professionals into the private sector. Companies are encouraged to not only meet these quotas but also to provide competitive compensation and robust career development opportunities for Emirati employees.

ANTI-BRIBERY AND CORRUPTION

The UAE does not have a stand-alone anti-bribery or corruption law. Instead, provisions addressing these issues are integrated into various legal frameworks. The primary source for anti-corruption regulations is the Federal Law on Crimes and Penalties No. 31 of 2021, known as the Penal Code. This legislation has been updated to align the UAE's anti-corruption measures with international standards.

The Penal Code's anti-bribery clauses are comprehensive, covering both public and private sectors. These provisions apply to a wide range of individuals, including government officials and those in leadership and employee roles within private enterprises. This broad scope is designed to address potential corruption across various sectors of the economy.

TAXATION

Tax advice in the UAE is generally provided by dedicated tax advisors with whom we work closely. We have summarised some of the key considerations below.

For mainland companies, as of 2023, a federal corporate tax has been introduced at a basic rate of 9% on profits exceeding AED 375,000. This applies to all taxable income generated within the UAE. Mainland businesses are also subject to customs duties on imports and exports, and they must navigate VAT compliance, ensuring accurate reporting and adherence to regulations.

VAT, introduced on January 1, 2018, is levied at a standard rate of 5% on most goods and services. Certain supplies are zero-rated or exempt. Businesses with taxable supplies exceeding AED 375,000 annually must register for VAT. While free zone companies are generally subject to VAT, special rules may apply in Designated Zones.

In contrast, free zone companies can enjoy several tax benefits. They are generally exempt from corporate income tax on profits, provided the income qualifies under certain criteria, such as being derived from non-UAE operations or from transactions with other free zone entities. Additionally, free zone companies are exempt from customs duties on imports and exports, which can significantly reduce operational costs. However, they are still subject to the standard rate of VAT and must maintain separate commercial books if they have a mainland branch to avail of the 0% rate on free zone income.

Other taxes in the UAE include excise tax on certain products like carbonated drinks (50%), tobacco, and energy drinks (100%). There is no personal income tax, but real estate transfers are subject to registration fees, which vary by emirate (e.g., 4% in Dubai).

The distinction between free zone and mainland tax environments can significantly impact business strategy and financial planning.



WHAT HAPPENS NEXT?



GERALDINE AHERN
Senior Office Partner – Abu Dhabi
T: +971 2 494 3632
geraldineahern@
eversheds-sutherland.com



ZEID HANANIA
Head of Corporate – Middle East
T: +971 4 389 7023
zeidhannia@
eversheds-sutherland.com



