

# Rödl & Partner

INVESTMENT GUIDE  
UNITED ARAB EMIRATES

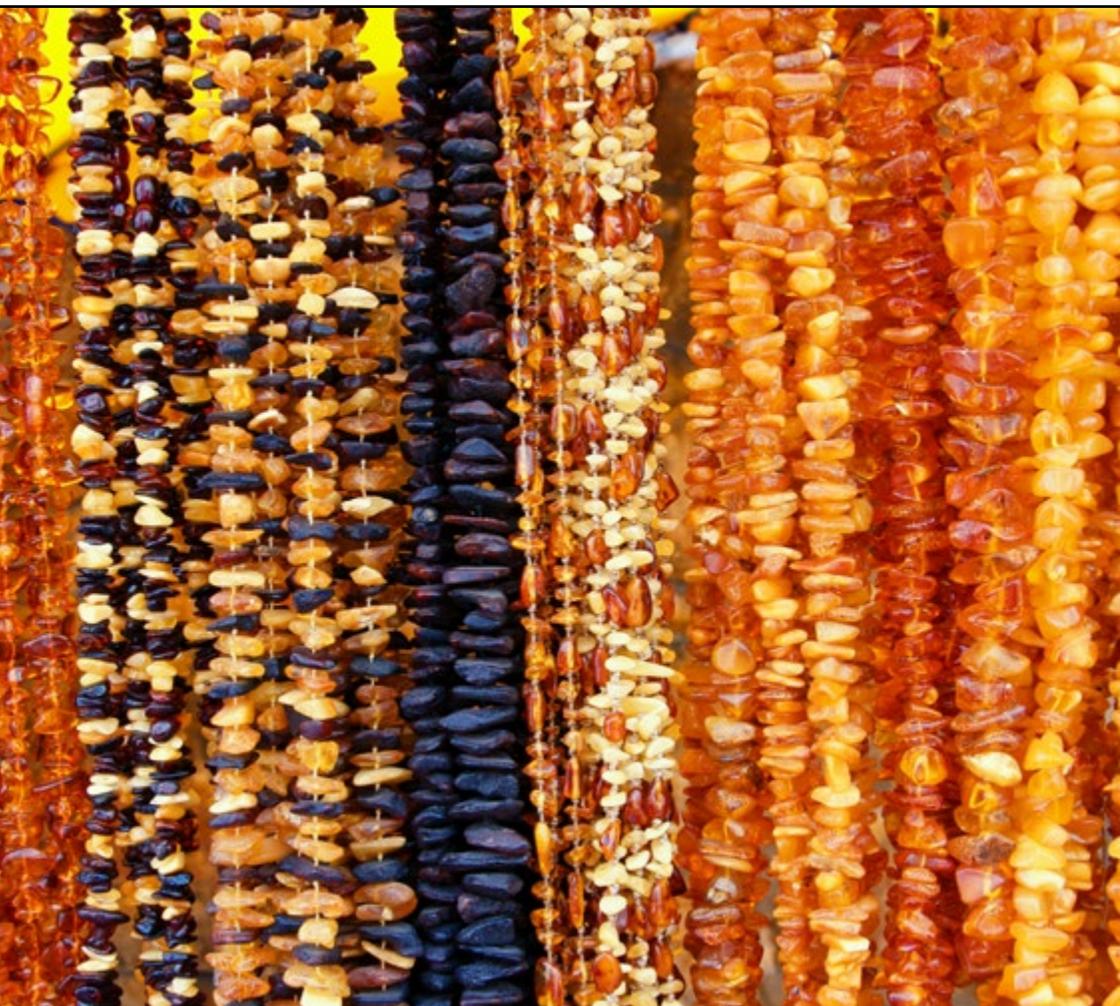
Framework for investments

2022  

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2023

## Acting jointly



## Acting jointly

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“The Arab region offers abundant opportunities for German investors: a liberal trade policy, big international events and a skilled local workforce are only three of all the good reasons to invest there. Having our colleagues on board and collaborating with local partners who have strong ties to our firm, we advise investors and clients on all economic, legal and tax issues in this exciting region.”

Rödl & Partner

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# About us

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Rödl & Partner – The agile caring partner for Mittelstand shaped world market leaders

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# Rödl & Partner in the United Arab Emirates

The economic importance of the Middle Eastern states has grown enormously during the last decade, notwithstanding minor trouble spots of political instability. Products and services “Made in Germany” are in high acclaim in the Arab countries, currently making this region one of the most attractive sales markets for German exports; in 2010 Germany even became the biggest European exporter to the Middle East & North Africa (MENA) region.

In particular, the United Arab Emirates (UAE) have developed to a dynamic economic hub of the Middle East during the recent years, notwithstanding the international financial crisis, and even outdid the Kingdom of Saudi Arabia by becoming the most important foreign trade partner of the German export economy in the Arab world. Thanks to their political stability, diversified economy and outstanding infrastructure, the United Arab Emirates are an ideal location for foreign investments – even during the time of economic and political disturbances in the Middle East.

A liberal economic policy based in particular on facilitation and promotion of direct foreign investments must ensure sustained economic stability of the Emirates – even in a situation of decreasing oil exports. In the federation of the Arab Emirates, Dubai developed promptly to a regional foreign trade hub and important financial center of the Arab world. Dubai is attractive for foreign investors in no small measure due to its multiple free trade zones, which have been implemented as a concept unprecedented for this region. The emirate of Abu Dhabi, the largest of all emirates by territory, is also a seat of the UAE government.

Therefore it is an optimum location for all public law investment projects. In particular, the invariably liberal economic policies of this emirate offer foreign businesses investment incentives for further development of real estate and tourism sectors.

Rödl & Partner has been successfully present in the Middle East and doing business through its local offices in the region since 2004. Due to its internationally proven uniform consultancy approach,

Rödl & Partner was also able to expand in the Middle East, having won over a strong market foothold during the recent years.

Our clients in the Arab world benefit from legal consulting and tax management, auditing, accounting and business process outsourcing (BPO) services of our local and international experts, which are provided as comprehensive service packages in accordance with “one face to the client” approach – whether to prepare a market entry in the region or to expand the current market presence and business operations.

We know first-hand the requirements of this market to foreign investors. Therefore our in-depth knowledge of local specifics and business practices can be a major contribution to the sustainable success of our clients also in the long-term.

From our office in Dubai (UAE), we direct and coordinate business operations of our clients in this region. In Egypt, Bahrain, Qatar, Kuwait and Saudi Arabia, we are working in close cooperation with our partner Rödl Middle East. In the other countries of this region, we rely on a network of experienced, highly skilled local partners with whom we have developed a longstanding cooperation history.



# Our services

In line with the range of our services offered in Germany and worldwide, our Dubai office offers the services of our German-speaking professionals in the following areas:

## AUDITING AND ACCOUNTING

- Annual audits and compilation of annual financial statements in accordance with national and international standards;
- Interim audits and compilations of interim financial statements.

## LEGAL ADVISORY

- On-going legal support;
- Establishment of new companies;
- Commercial agency law;
- Drafting of contracts;
- Infrastructural projects, public procurements;
- Energy law;
- Industrial property rights;
- Real estate law;
- Legal advisory support in all matters of labor law and law on aliens that concern senior management and core experts;
- Representation in national and international courts of arbitration.

## TAX MANAGEMENT

- National and international planning of tax structures;
- Advisory support in cross-border and transfer pricing matters;
- Advisory support in expatriate matters;
- Compilation of tax returns.

## BUSINESS PROCESS OUTSOURCING

- Bookkeeping and financial accounting;
- Payroll accounting;
- Reporting, controlling, accounting systems;
- Compilation of annual financial statements;
- Cash management
- Compilation of tax returns.

# The United Arab Emirates in Figures

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- Founded 1971 (1972)
  - Federation of seven autonomous emirates (Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al-Khaimah, Sharjah, Um Al Quwain)
  - Capital: Abu Dhabi
  - Population: 10 million (according to official sources)

- Over 800 German companies have operations in the UAE
- Portion of foreigners: almost 90%
- Oil reserves: seventh-largest in the world
- GDP: approximately USD 421.1 billion (2019), almost USD 39,180 per capita
- Inflation rate: 1.93% (2019)

# Growing Market

During the recent years, the United Arab Emirates (UAE) have grown to a dynamically developing economic hub of the Middle East, notwithstanding the international financial crisis, and even outdid the Kingdom of Saudi Arabia by becoming the most important foreign trade partner of the German export economy in the Arab world.

In the meantime, the UAE have become Germany's most important trade partner among the Gulf States. In 2019, the value of deliveries of goods to the countries of the Gulf Cooperation Council (GCC) equaled 18.7 billion euros.

Currently, approximately 800 German companies have operations in the UAE, and the majority thereof are located in the emirates of Dubai and Abu Dhabi.

The emirate Abu Dhabi, besides having the largest territory among the seven united emirates, is also the seat of the UAE government. Therefore, it is an optimum location for all public law investment projects. In the federation of the Arab Emirates, the emirate of Dubai has promptly grown to become a regional foreign trade hub and an important financial center of the Arab world. Dubai is attractive for foreign investors in no small measure due to its multiple free trade zones, which have been implemented as a concept unprecedented for this region.

Of particular importance are the diverse commercial agreements in effect between the UAE and Germany, which include an air transport agreement and an investment protection agreement.

# Direct Foreign Investments

## INVESTMENT CLIMATE

For foreign companies with operations in the Gulf Region, the emirate Dubai is often a location of choice for the development of a regional (distribution) center.

As a consequence, this overview focuses more on the economic and investment climate and legal framework in Dubai, in so far as any differences worth mentioning are in existence between individual emirates in this respect.

Dubai has already become the commercial and trade center of this region and it continues to grow and develop dynamically. Dubai maintains, expands and fosters its traditionally good trade relations with the member states of the Gulf Cooperation Council (GCC) (Saudi Arabia, Kuwait, Bahrain, Qatar, Oman and the UAE), Iraq and even more outlying countries, such as Pakistan and India. Trade with East African states is steadily gaining in importance for the Western World. Dubai is a springboard making it possible to access this market of considerably more than 1.2 billion.

Dubai has become an accepted regional economic, investment and infrastructural center for the whole Middle East. In consideration of its commercial traditions based on economic freedom, Dubai is also called “city of merchants”. It is a hub for trade relations between the Eastern and the Western worlds.

A stable national budget of the UAE secured by oil revenues – in particular those coming from the emirate Abu Dhabi – and thus not overly dependent on tax revenues – is the basis for substantial growth rates in all emirates.

An ideal working environment, pleasantly liberal living conditions – also for non – Muslims, high living standards, a modern healthcare system and a well-developed education system are the arguments sufficiently convincing for locals as well as foreigners to settle down in Dubai.

Political stability maintained since the establishment of the UAE in 1971, invariable priority to political-economic interests and comparatively low crime rates make Dubai a popular tourist destination.

A well-developed infrastructure for trade with the total region includes a major network of international flights, one of the world's largest container transshipment points, an extensive distribution hub and multiple first-rate hotels and shopping malls.

Dubai has become the Gulf region's leading trade fair center; furthermore it is the region's location of choice for representative offices of foreign companies, which are often in charge of business development in the whole Middle East and even in more remote areas. However, the emirate of Abu Dhabi is the best location for state procurement projects.

Dubai represents new commercial ideas and economic possibilities. Dubai's leaders have developed adequate capacities and skills to build a solid platform for future global scale projects with professional competence and unerring instinct for success. Saudi Arabia, Kuwait, Qatar, Iraq, Iran and the UAE themselves are the world's six largest natural oil and gas suppliers located in direct proximity to Dubai. The economies of all these countries are flourishing. However, foreign businesses may face problems with gaining access to these markets for diverse reasons. The task becomes much easier if you have a foothold in Dubai.

## BUSINESS DEVELOPMENT / FREE TRADE AGREEMENTS

The importance of the GCC states for German economy has grown significantly during the recent years. In addition, the GCC states are notable for their high affinity to Europe. In particular, goods marked "made in Germany" are invariably popular and in high demand there. A number of incentivizing and promotional measures have been taken to improve the framework conditions for German and European business in the GCC states.

The German-Emirati Joint Council for Industry & Commerce (AHK), the only bilateral chamber of commerce in the Arabian Peninsula, was established in 2009 with offices in Abu Dhabi and Dubai. Furthermore, AHK business delegation offices attend to locations in Qatar, Oman, Kuwait, Saudi-Arabia, Bahrain and Yemen. Through its activities, AHK offers an important networking platform and provides market entry support in the UAE as well as in the other GCC states.

The European Union is also a very important trade partner for the Gulf Cooperation Council. As early as 1988 the two organizations concluded a cooperation agreement, which has been in effect since 1990. This agreement is the basis for extensive and comprehensive development of economic relations. Workgroups have been set up for economic cooperation, energy and environment. Ministers of foreign affairs from the EU and the GCC are meeting annually in turns in the EU and in the current state of the GCC Presidency-in Office (the most recent meeting took place in Manama, Bahrain, in June 2013).

The most important step towards more intensive bilateral contacts is the free trade agreement between the EU and the GCC. Although started in 1990, the negotiations were suspended between 1991 and 2001. Most of the controversial issues have been cleared meanwhile, even though there have been no further progress since 2009.

Next to the development of economic relations, the EU is also making efforts to expand the cooperation to other areas (such as energy security, environment protection, culture and education, human rights, combating terrorism).

## LEGAL FORMS OF DOING BUSINESS

### Legal framework

From the foreigner's perspective, business carried on in the UAE is shaped to a major extent by the UAE Commercial Companies Law (CCL). This law offers a range of legal forms available for

a commercial company to be constituted under the UAE law. These forms dictate (to varying extent) the corporate structure, the rights and obligations of shareholders towards one another, and the liability of the company itself and of its shareholders. This law grants certain company organization forms a de facto juristic personality (i.e. the status of a legal entity) without giving a definition of this legal term (Article 12 of the CCL).

The Commercial Companies Law gives an impression that the concern of the UAE government is giving UAE citizens a dominant role in all legal forms available to constitute a company under the UAE law has been neglected. Previously, it was a requirement for any company constituted in the UAE to have one or more national partner(s) whose share in the company's capital is not less than 51 percent (Article 22 of the CCL). However, there is no longer a need for such ownership. Only in the case of companies with a strategic impact, such as banks or businesses in the health care sector, there are special restrictions on full ownership by non-UAE nationals.

Therefore, a foreign investor can either become a partner in a limited liability company constituted under the UAE law or establish an own branch office, which will not enjoy a juridical personality. However, some other company organisation forms offered by the CCL law, such as a private joint stock company under the UAE law, may also be of interest for foreign investors.

### Limited liability companies

Foreign products or services can be distributed in the UAE through a limited liability company (LLC) constituted under the UAE law. This LLC must no longer provide a 51 percent compulsory portion of the local capital but can be in a 100 percent ownership of a foreign entity. The internal relations between the shareholders are regulated relatively liberally and are only subject to the mandatory rule of the UAE law in respect to certain aspects.

- General

The legal framework for business carried on by the LLC is the UAE Commercial Companies Law (CCL). Limited liability companies play an important role in the economic life of the United Arab Emirates. A LLC becomes a juristic personality upon constitution, and the liability of the partners in it is limited to their shares in the company capital. The LLC is characterized with considerable flexibility in all matters regarding allocation of its profits and losses and authority to govern the company. Where a share of foreign capital is involved, the LLC is the most popular legal form for a company constituted under the UAE law – to the extent and unless the conditions prerequisite are satisfied for a branch office or representative office of a foreign company.

Despite the numerous compensation options, the LLC was initially viewed with considerable skepticism by foreign companies due to the mandatory 51 percent majority shareholding of a local partner, which was prescribed by law. In the meantime, this supposed disadvantage has disappeared due to the new regulation of the CCL, so that as of now a full foreign ownership is possible.

- Business object

The company's business object must be stated clearly and comprehensively in its Memorandum of Association because the company will only be able to operate within these limiting borders subsequently. The business object statement must be worded very carefully, with account of the traditional local expressions and accepted phrases used by the relevant authorities. The business object also determines the scope of the company's business license and import license, among other things.

The business of trade agents or authorized dealers may only be carried on by UAE citizens, i.e. by individuals with the respective citizenship as well as public joint-stock companies, and public legal entities with at least 51% national capital contribution. Consequently, the CCL law only gives the LLC (in Article 3) the

status of a juristic personality with the UAE nationality without giving it a full-scale UAE citizenship, and so the business objective of a trading business is basically limited by the UAE law on trade agents. Nevertheless, a LLC with foreign capital can also carry on a trading business in practical terms – in accordance with prevailing views and current accepted practices of the emirates Dubai and Abu Dhabi. But it should be remembered at all times that trade in own products is treated differently from conclusion of trade agency agreements (that are subject to compulsory registration) on exclusive distribution of another’s products.

– Company capital

The minimum share capital to be paid in by the partners at establishment of the company varies from emirate to emirate; for example, in Abu Dhabi that is AED 150,000 – whereas the emirate Dubai does not currently have any mandatory minimum threshold for share capital to be paid in at establishment of a LLC. The capital should be paid in to a deposit account with a bank in the UAE because these funds will only become available to the LLC management after the constituting process is completed. The bank issues the partners a respective confirmation in writing, which must also be included in the documentation package to be submitted to authorities for state registration of the newly constituted company.

Similar to a German limited liability company – GmbH, the executive governance body in a UAE limited liability company is also the board of directors. The law regulates the structure of the executive governance body very flexibly. The board can

consist of at least one director who is either appointed from among the shareholders or hired externally. In case of more than one director, the Memorandum and Articles of Association can include provisions that regulate the relations among the board members. The authority of the board of directors can be regulated in the Memorandum and Articles of Association, or in a private contract in writing, or in the resolution issued by the shareholders. In case of a LLC with foreign capital, the foreign

partner, whether an individual or a legal entity, can be appointed to the board of directors under the Memorandum and Articles of Association or under a separate (management) contract.

Partners also do have the option to make pledges. This must be conducted in accordance with the company's memorandum under an official notarized document and requires an entry into a central commercial register (Art. 79). This enhanced opportunity for financiers to take security over shares will probably facilitate the credit flow to UAE business.

## JOINT STOCK COMPANIES

A private joint stock company under the UAE law (JSC) is comparable to a German private joint stock company (private AG), whose shares are not listed at a stock exchange. The UAE JSC must have a share capital not less than AED 5 million and at least three shareholders. Next to private joint stock companies, the law also speaks of public joint stock companies whose shares are traded at a stock exchange. A public JSC under the UAE law must have at least 10 shareholders and a share capital not less than AED 30 million.

The UAE Commercial Companies Law (CCL) is also the legal framework for operation of private and public JSCs. The CCL sets very detailed rules and requirements for public JSCs. Most of these rules, including those with respect to company organization, governance, accounting and reporting, also apply to private JSCs.

The business object of a private JSC is not limited by any legal provisions. However, the company must be able to prove that its business is properly organized and adequately carried on and accounted for and that it is in compliance with accepted business standards and practices. The founding shareholders must state the objective for which the company is constituted in the Memorandum of Association and be able to demonstrate a feasibility study paper, which substantiates the feasibility of founding the company.

The share capital with a minimum of AED 5 million, which can fully be owned by foreign investors, must be subdivided into shares of the same value, which may not be less than AED 1 and more than AED 100. The JSC is not allowed to issue any personal shares, founder shares or preferential shares. The liability of shareholders in a private JSC is also limited to their subscribed shares in the share capital.

A private JSC is managed by the board of directors (BoD) of not less than 3 and not more than 11 members. Directors are elected to the board to serve for three years and may be re-elected after the expiry of their term in office. The Board members elect from among themselves a chairman, who also fills the office of the company CEO. The ordinary general meeting of shareholders elects members to the board of directors by secret ballot. As an exception, the JSC Articles of Incorporation can state that after the JSC is constituted the founding shareholders may appoint the first board of directors from among themselves for maximum three years after the JSC is constituted. The BoD rules of procedure must be regulated basically in the Articles of Incorporation of the JSC.

The JSC legal form should be considered for a bank, an insurance company and an investment fund because the law does not allow them to be constituted in the LLC form.

## A REPRESENTATIVE OFFICE AND BRANCH OFFICE

### Definition and distinction

Foreign companies can establish a representative office or a branch office, if their intended business is generally permitted in the UAE; these legal forms are denied an own legal identity and are treated as a part (remote office) of the foreign company – and thus they are 100 percent owned and can be fully controlled by the head office (parent company) that has established them. The company agent (“National Agent”) prescribed by the law is only needed to ensure formal compliance with legal requirements, if the agency contract is worded carefully.

The legal framework for the establishment of remote offices of foreign companies in the UAE is the Commercial Companies Law (CCL), which draws a differentiating line between representative offices and branch offices. The main difference between these two types of remote offices of a foreign company is the range of activities they are allowed to carry on. The both offices may not be established until a permit to this effect is obtained from the Ministry of Economy after prior approval by the competent authority in the concerned emirate. The both may not commence their activities except after registration in the register maintained by the Ministry of Economy. The representative office may only represent, coordinate, supervise, act as an intermediary, advertise, etc., but it may not get directly involved in any business transactions, whereas the branch office can directly participate in the parent company's business activities.

Since the representative office and the branch office are not treated as an independent juristic personality, they use the name of the foreign company that has established them – mainly adding to it the words “Middle East Regional Office” or “Dubai Branch”, which is a direct indication that they are only a remote office of the concerned foreign company.

#### Operating a representative office

The permit issued to a representative office does not allow it any direct, active involvement in business transactions carried on locally. Therefore representative offices are mainly established to carry on preparatory actions and to provide assistance and support to business operations of their foreign head office, for example, by performing market research, holding marketing events for the parent company or operating a local service center that provides warranty services to customers. In particular, representative offices of foreign companies are permitted to carry on the following activities in the UAE:

- Representation of the head office at the local market;
- Delivery of training and support to trade agents, supervision over their activities;

- Holding marketing events and market research;
- Provision of advisory support and warranty repairs to customers;
- Actions preparatory to bidding in tenders;
- Support to and supervision over activities of the head office's joint ventures.

In all its activities, the representative office should remember at all times that it is not permitted to carry on any economic activities of its own and in particular that it is not allowed to conclude any contracts, or to run any trading operations, or to offer any chargeable services, and consequently to generate own revenues.

### Operating a branch office

The permitted activities of a branch office extend outside the scope of those permitted to a representative office. In particular, a branch office may carry on business transactions. Therefore, the branch office needs own capital and is subject to severer regulation in terms of accounting and auditing. The Ministerial Committee checks one by one all activities for which a permit is requested by the foreign head office and either permits or does not permit them. There are no clearly phrased legal rules or even general rules defining which activities may and which activities may not be permitted to a branch office. However, it can be concluded as a general rule that the branch office's intended activities must be useful for the whole territory of the UAE and may not infringe the existing legal rules. In exclusive situations, it may be possible to challenge the refusal of permission by the ministry of economy in court. A National Agent, who previously must have been a UAE citizen, is no longer required for a branch office - regardless of the free trade zones.

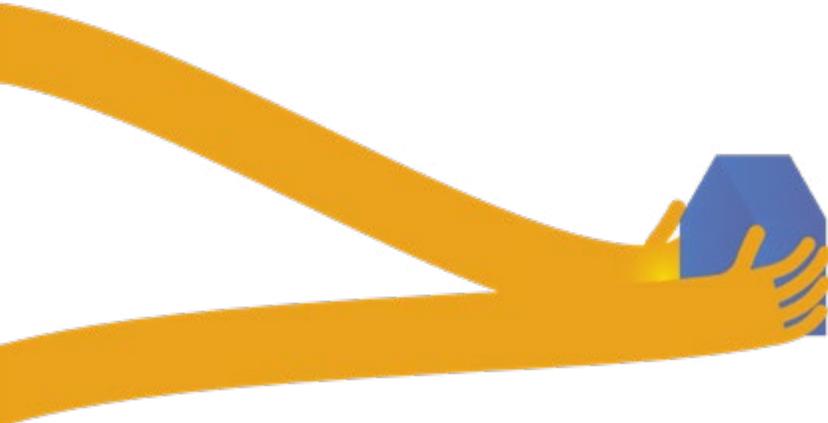
### TRADE AGENT

Distribution of goods or services in the UAE. Basically, all third party agency forms known in Europe, such as a trade agency, authorized dealership or commission agency, are also represented in the UAE. However, their rights and obligations are fully regulated

by the UAE law on commercial agents because the concerned distribution partners are citizens of the UAE. All references to an agent below will be references to a trade agent.

A foreign company must appoint a trade agent for distribution of its products or services; the agent distributes these products within the territory specified in the contract. Until 2020, business operations of foreign companies in the UAE and in the other Gulf States required compulsory involvement of a local partner. Therefore, the activities of a trade agent had to be carried on only by individuals who are UAE citizens or by companies fully owned by UAE citizens. Since 2020, public joint-stock companies, and public legal entities with at least 51% national capital contribution have the right to register commercial agencies. Federal Law No. 3/2022 even grants the Cabinet authority to allow international companies, including those not owned by UAE nationals, to engage in commercial agency activities related to their products without the need for a commercial agent in the UAE if they meet special requirements and if it is recommended by the responsible Minister.

Trade agency agreements are subject to compulsory registration with the relevant ministry of economy. The reason is that only after registration of the contract the trade agent can enjoy distinctive legal protection, which can considerably complicate termination of the concluded agency agreement for the foreign company. An attempt to terminate the contract can lead to time-consuming negotiations and the necessity to pay a significant reimbursement.



# Free Trade Zones

## GENERAL

There are many free zones in the UAE. The majority thereof are located in the emirate of Dubai. A large number of free zones have been set up in the UAE since the emergence of the oldest free trade zone Jebel Ali, which was established in Dubai as a seaport free zone in 1985, after the construction of Jebel Ali, the world's largest man-made harbor of that time, had been completed. Each free zone is managed and operated autonomously by its own authority. For instance, the Jebel Ali Free Zone Authority (JAFZA) manages, operates and supervises the functioning of the Jebel Ali free trade zone.

Next to their management and supervision functions, free zone authorities also have legislative duties. That is why the rules and regulations applicable to foreign-owned businesses operating in free zones can actually vary within a broad range. Therefore, all applications relevant for business operations in a free zone should be submitted directly and solely to the authority responsible for the management and operation of that zone. Neither the administration of the concerned emirate nor the federal government of the UAE is directly responsible for such matters.

## ADVANTAGES OFFERED BY FREE ZONES TO FOREIGN BUSINESSES

A company established in a free zone offers the foreign parent the main benefit of guaranteed tax and customs duty exemptions, which can be a substantial advantage – even though there is a general customs duty of 5 percent and corporate income tax of 9 percent starting from June 2023 onwards in the UAE.

Despite the numerous advantages of free zones, their role has changed significantly within the past years. With the amendments to the U.A.E. Commercial Companies Law (CCL) and the resulting abandonment of the need for a National Agent, free zones have lost one of their most significant advantage. The exact impact of these changes, which generally increase the attractiveness of investing in

the UAE, but deprive the free zones of their main advantage, cannot be estimated with regard to a possible framework legislation yet.

The different types of affiliates available to foreign investors to establish a free zone company include basically a Free Zone Establishment (FZE) – a legal form similar to that of a German one-person GmbH, a Free Zone Company (FZC) – a legal form similar to a German limited liability company (GmbH), and a remote office. However, the exact rules for these legal forms can vary from zone to zone.

The advantages for a company set up by a foreign investor in a free zone can be summarized as below:

- Outstanding infrastructure, especially in Dubai (e.g. flexibility of free zone authorities and dedication to provide services to investors, well-equipped offices and warehouse premises, availability of excellent sea, air and motorway logistics solutions);
- Companies with foreign capital in which a majority partner is a citizen of a GCC member state can obtain a production license valid for the whole country through their presence in a free zone.

## LEGAL FORMS IN A FREE TRADE ZONE

### Remote offices

Offices of foreign companies can also be set up in free zones of the UAE without an independent juristic identity. A reference is basically made in this respect to the general information which can be found in this guide regarding remote offices.

Particular terms and conditions for registration of a remote office in a free zone (e.g. permitted activities) depend on the rules and regulations of the concerned free zone. Before 1992, the possibility of foreign companies to set up a remote office was generally limited to the possibility to establish such an office solely in a free zone

existing at the time. For instance, the Jebel Ali Free Zone Authority was offering three different types of licenses for setting up of a remote office. Back then, same as presently, a license could only be obtained for a remote office in conjunction with the conclusion of an office / warehouse tenancy contract or in conjunction with the conclusion of a contract to lease land on which own facilities will be constructed. This approach clearly demonstrates the intent of free zone authorities to attract only investors that will actually play an active role in the economic life of the UAE and not restrict their activities solely to the establishment of a “letter-box” company.

### Free Zone Establishment (FZE) and Free Zone Company (FZCo)

The establishment of a corporate entity with a sole (foreign) shareholder (so-called FZE) only became possible for the first time in the Jebel Ali Free Zone in 1992.

As a legal entity, the FZE has its own juristic identity and own capital, and the sole shareholder’s liability is limited to the paid-in contribution to the company’s share capital. The FZE can establish its subsidiaries within the free zone, where necessary, also in the legal form of a FZE. Basically, this approach makes it possible to establish a concern (group of companies). Where a subsidiary is set up outside the free zone, it should be remembered that a FZE can often be established even without a Memorandum and Articles of Incorporation, which fact may lead to problems with the establishment of its subsidiaries under certain circumstances.

Almost all adjacent emirates and neighbor states of the UAE require as part of the newly established company registration process that an authenticated copy be presented of the parent company’s Memorandum and Articles of Incorporation. Therefore, if a FZE is intended to function (at least in the medium term) as a holding company for the total Middle Eastern region, care should be taken to arrange for the Memorandum and Articles of Incorporation for it (on voluntary grounds, if applicable) as early as during its establishment process. In case the authority of the concerned free zone does not accept these bylaws, it would make sense to set up a company in the legal form of a FZCo with at least

two shareholders and, in the worst possible case, even to consider moving the company's location to a different free zone.

It became possible to set up a legal entity with more than one shareholder via introduction of the FZCo form (in part also FZ LLC), which must usually have between two and five shareholders. Depending on the legal characteristics of a FZCo in the concerned free zone, it is basically comparable in legal terms with a limited liability company constituted under the German law (GmbH).

### Exports to the UAE

Its license entitles a foreign company with a subsidiary in a free zone to export goods from the free zone to the UAE or to other countries. Such goods are treated as foreign goods – even where they are exported from a free zone to the territory of the UAE. It should be remembered in this respect that the right to export goods usually does not automatically imply the right to import them to the intended destination. The consignee must take care in advance to obtain this right to import the shipped goods in accordance with the applicable laws of the destination place.

In the UAE the right to import foreign goods depends on whether the consignee's license also entitles the holder to import goods. A trade agent in the UAE invariably enjoys the right to import foreign goods; the same applies to a company that has a vested lawful interest in imports of these goods in view of its (permitted) business activities. Therefore, the importation right is usually granted to commercial companies whose permitted business carried on under a valid license is directly associated with the concerned imported goods.

Transit goods moved from a free zone either through an airport or through a seaport located outside free zones in the UAE or goods temporarily imported from a free zone to the UAE for repairs, further procession, etc. and subsequently moved back to the free zone are not subject to subsequent customs duty in the UAE. In case of temporary imports of goods, an adequate security deposit can be provided to the relevant customs office instead of payment

of the customs duty. This security deposit will be repaid when the goods are returned back to the free zone.

Other transit goods can be exported directly on the basis of an export certificate issued by the free zone authority.

Goods are neither sealed nor made subject to any other form of government control, while in transit. The export certificate is issued against presentation of a document that confirms deposit of the applicable import duty of 5 percent of the value of the concerned goods. After the goods are exported, the deposited amount is repaid against valid evidence that the goods have been exported. If transit goods never leave the UAE, the deposited amount will not be repaid – but customs authorities do not impose any further duty or penalties in respect thereof.



# Labor and Social security Law

## LABOR LAW

In the UAE, the legal framework for the legal relationship between the employer and the employee is the UAE Federal Law No. 33 of 2021, which entered into force on 2. February 2022 and repeals the previously existing UAE Labor Law, UAE Federal Law No. 8 of 1980, as amended. The UAE LL regulates all fundamental aspects of the legal relationship between the employer and the employee and in particular working hours and working conditions, paid leave entitlement, employment termination and the employer's diverse contractual and duty of care obligations. These mandatory rules of law are applicable to local as well as foreign employees in equal measure. However, these provisions do not apply to employees of federal and local government entities, members of the armed forces, police and security and domestic workers. Furthermore, some free zones have specific regulations that slightly differ from those of the UAE Labor Law, but only apply within the concerned free zone.

Generally, employment contracts are drafted on the basis of a bilingual (English-Arabic) model employment contract issued by the Ministry of Labor and Social Affairs or by the authority of the relevant free zone. The employment contract is subject to compulsory official registration after it is signed by the both parties.

Furthermore, it is a common practice for the employer and the employee to agree on additional terms and conditions. In such cases, the provisions of the UAE LL must be complied with, unless the additional agreement offers more favorable terms and conditions to the employee.

Although in theory a contract in writing is not necessary to validate the employment relationship in legal terms, it is advisable nonetheless to conclude one as documentary evidence.

A fundamental change in the new law is the abolition of contracts with an unlimited term. The parties must agree on a fixed term. However, a maximum duration of the contract is no longer

stipulated according to the amendment by Article 1 of Federal Law No. 14/2022. An extension does not necessarily have to include an explicit written notification and consent. The contract can be extended implicitly if the parties continue their rights and obligations after the actual expiry of the employment relationship.

Employers are required to implement provisions of the new UAE Federal Law No. 33 of 2021 regarding fixed term employment by 1. February 2023, or face fines of up to AED 1,000,000 for a single violation or up to AED 10,000,000 for repeated violations.

The parties can agree in a probation period of up to six months. During this period, either party may terminate the employment contract at any time. If the employer intends to terminate the employment relationship during the probation period, the employer must observe a notice period of at least 14 days. If, on the other hand, an employee wishes to terminate during the probation period, he or she must observe a notice period of at least 30 days if he or she subsequently wishes to enter into employment with another employer in the UAE, or a notice period of at least 14 days if the employee wishes to leave the UAE. After the end of the probation period, the contractually agreed notice periods apply. For the employer, the contractual notice periods may not be shorter than the statutory notice period of 30 days and not longer than 90 days. If one of the parties does not comply with the notice period, it must compensate the other party (“payment in lieu of notice”), even if the failure of notice did not result in harm to the other party. The compensation should be equal to the worker’s salary for the entire notice period or the remaining part thereof.

The employment contract can be terminated ordinary or extraordinary by either party. The requirement in each case is the existence of an important reason. Possible valid dismissal reasons are described in the UAE LL in an exhaustive list. The employee may challenge the termination by means of an appeal to the Ministry of Labor. The appeal claim may only seek reimbursement of damages, not re-employment.

The labor law regulations are interlocked in part with the regulations on aliens because a foreign employee – with the exception of individual exceptions such as the so-called remote work visa – will only receive a residence visa (for a limited term) if he holds a work permit issued by the Ministry of Labor and Social Affairs. A work permit will only be issued if the employee's profession and skills are generally useful for the UAE and if the employee has entered the country legally and is thus in compliance with the regulations on aliens. Furthermore, a work permit may only be issued to a foreigner against proof that no similarly qualified UAE citizens are available to fill the concerned vacant position. Next to the work permit, the foreign employee will need a visa which is issued upon submission of the relevant employment contract and a legalized and translated certificate of professional training. On top of that, the foreigner also has to pass a health check.

The UAE labor and migration law is very restrictive concerning the employment of foreigners – and therefore any of the following situations will be viewed as an offence against the law:

- Employment without a valid work permit or residence visa;
- Residence in the UAE without being employed (exceptions are very rare);
- Omission to notify termination of work to the Ministry of Labor and Social Affairs within three months of leaving the employer;
- Omission to notify filing of a “dismissal protection suit” to the Ministry of Labor and Social Affairs within six months of its filing date.

It should be pointed out in this respect that UAE authorities severely punish any infringements of the labor and migration law, which may cause grave consequences for the employee as well as for the employer. For example, if the employer does not comply with its obligation to arrange for a proper work permit and residence visa for its employees, the employer will be fined and entered in the so called “black list”, complicating the receipt of further visas in the future.

Correspondingly, the law entitles the employee to terminate the employment relationship without notice, should his employer demand that he work without a proper work permit and residence visa.

The maximum number of working hours in a week is 48 (8 hours a day for the statutory working week of six days). Deviations from this rule are possible in some industries (e.g. hotel business, security agencies, etc.) as well as provided they are to the employee's benefit. During the lent month of Ramadan, daily working time is two hours less (also for non-Muslim personnel).

Compared to the previous legal situation, the law no longer stipulates Friday as a mandatory weekly day of rest, whereby only one weekly day of rest – to be agreed individually – must now be granted as a minimum requirement. This is particularly in line with the change in the weekend for the public sector in the United Arab Emirates. The private sector is basically free to adopt this adjustment, so that this adjustment of the working days is now also no longer opposed from a labor law perspective.

Since the public sector officially moved the weekend from weekdays Friday and Saturday to Saturday and Sunday in January 2022, most private companies also remain closed on Saturdays and Sundays when they allow their workers to work a five-day week.

The new UAE Federal Law No. 33 of 2021 provides for companies to introduce part-time and flexible work arrangements and introduces, in its implementing regulations, among others, the following work models in addition to the usual "full-time employment contract" for a single employer:

- Part-time work - work for a single employer on a part-time basis;
- Temporary work - work performed for a specific period of time and for a specific task;
- Flexible work - work that allows for a change in work hours to accommodate the employer's business needs;
- Remote work - work performed away from the workplace that can be either full-time or part-time; and

- Job sharing - work that is divided between one or more employees on a part-time basis.

The new UAE Federal Law No. 33 of 2021 also provides that a minimum wage may be set in the future. However, this has not yet been used at this point in time.

Overtime is subject to mandatory overtime premium rates. To protect employees, after 1 September 2009 payroll may only be paid via so-called Wages Protection System (WPS) (Order no. 788 / 2009 of the Ministry of Labor). This system applies to all companies and employees registered with the UAE Ministry of Labor. This obligation does not yet extend to companies in free zones, but such zones often have own protection arrangements in place. Based on information from the employment contracts registered with the Ministry of Labor, the WPS checks whether the reported wages are actually being transferred in local currency to the employee's account with a local bank. If the employer does not comply with the WPS rules, it can be fined and work permits and residence visas can be withdrawn from its employees.

Next to fourteen (14) days of national holidays in the UAE, any employee becomes entitled to a mandatory paid leave of 30 calendar days after he has worked for his employer for one year. If the length of his employment is between six and twelve months, the employee is only entitled to two days per month. In case of sick leave, the employee is entitled to sick leave allowance, which makes full payroll for 15 days in a year and 50 percent of payroll for further 30 days in a year. No allowance is payable for sick leave days in excess of that number. However, an employee is not entitled to sick leave if the illness is due to the employee's misconduct. After a total of 90 days of sick leave, the employer becomes entitled to terminate the employment contract due to the employee's sickness.

Before a claim is initiated in case of a labor dispute, a reconciliatory hearing must be held with the reconciliation committee in the Ministry of Labor (free zones may have differing arrangements). The reconciliation committee issues its recommendation for

settlement of the dispute within two weeks. Ordinary courts may only be applied to after this. The limitation period for such claims is one year after the emergence date.

The new legal situation also now makes it easier for employees to assert claims against their employers in that employees are exempt from court costs when enforcing claims in court up to a maximum of AED 100,000.

## SOCIAL SECURITY LAW

There are no mandatory unemployment insurance or pension insurance schemes for foreign employees in the UAE. Only the employees who are UAE citizens are covered by pension insurance schemes. For foreigners, there is no mandatory accident and disability insurance either, but it is highly recommended to acquire such insurance policies because in case of an accident during the course of work, the employer is obliged to pay for the employee's treatment, travel and rehabilitation costs resulting from the accident. In addition, the employer is obliged to pay 100 percent of the employee's wages for up to six months and 50 percent for a further six months during the period of absence from work due to the accident. In the event of death or permanent occupational disability, the employee's dependents are entitled to compensation in an amount determined by law.

The UAE has also introduced a new unemployment insurance scheme that provides financial support for employees in the public and private sectors, which came into effect at the beginning of 2023. The unemployment insurance is mandatory for employees who are not exempt by law, with monthly contributions to be paid by the employees themselves. This provides employees who lose their jobs under unforeseen circumstances with monthly financial assistance amounting to 60 percent of their basic salary for a limited period of time, up to a maximum of AED 20,000. The program is open to both Emirati and foreign nationals who are UAE residents and work in the public and private sectors, as well as in local and foreign companies. Investors, domestic workers, people on temporary contracts, workers under the age of 18, and retirees are exempt from the new scheme.

According to the UAE LL, the employer is obliged to ensure medical treatment for his employees. For example, this obligation had been limited in the Emirate of Dubai until recently to the employer's obligation to provide for a so called "health card" to the employee. However, this health card only covers basic medical treatment in public hospitals. It is highly advisable in any case to acquire additional private health insurance.

Some of the individual emirates have acknowledged that their existing health care system is not sufficient and started the development of a new system some years ago, with the emirate Abu Dhabi as a leader in this field. Since 2007, the employers have been obliged to conclude a contract with an officially recognized and licensed health insurer for their foreign employees (Law no. 23/2005). A work permit may not be issued unless such mandatory health insurance is in place. The full costs thereof shall be borne by the employer.

The emirate Dubai followed this practice and created (with its Law no. 11/2013) the basis for the respective insurance obligations, which have to be implemented step by step, starting in 2014. Based on this obligation, employers in Dubai are also obliged to conclude health insurance contracts for their foreign employees.

The minimum requirements for health services are set by law, and such insurance can be concluded only with a state-approved and certified insurance company.

# Contract Law and Settlement of Disputes

## GENERAL

In early 70's, seven sovereign emirates – Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al-Khaimah, Sharjah and Umm Al-Quwain – united into a federation under the name of the UAE. According to the UAE provisional constitution of 18 July 1971, general jurisdiction of the Federation covers implementation of laws and regulations, in particular in the fields of civil law, commercial law, procedural law and protection of intellectual property rights. Furthermore, the constitution states that pre-constitutional laws of individual emirates will find further application unless they come in conflict with the constitution or until they are amended or suspended by new laws.

Since the federal legislative authority has not made extensive use of its constitutional powers, laws of the individual emirates are still in effect to a major extent. These laws are based in part on Islamic law and in part on non-Islamic modern legislation. Therefore, detailed and comprehensive contractual regulation is highly advisable to avoid eventual conflicts.

In particular, the contract should typically regulate terms and conditions of the contractual relationship, contract duration and termination as well as situations of default and special conditions. Such contractual provisions are binding unless they infringe applicable law or the substance of Islamic law (the Islamic order public) because one of the Sharia principles is, “A contract is the law for the parties thereto”.

## WARRANTY RIGHTS

Warranty claims arising from sales contracts are regulated by the UAE Civil Code (“UAE CC”). However, Article 1 of the UAE CC says that civil code provisions do not apply within the scope of the commercial law. But since the commercial code regulations concerning warranties are still in the pipeline and the respective amendment has not yet been enacted, the current legislation is

still applicable to warranty claims. Therefore, common law and the Sharia is applied to regulate warranty claims (the Sharia being an unreliable source because of its differing interpretations by different legal Islamic doctrines). The chances to succeed are highly unpredictable, whether in court or out of court, in warranty litigations in the UAE. To avoid problems of this kind, detailed and comprehensive contractual regulation of warranty issues is highly recommended in all trade transactions.

In the UAE, common law regulation of warranty claims arising from trade transactions is currently as follows:

Generally, the seller is obliged to transfer the buyer the title to the goods free of defects in title and quality. In order to protect possible warranty claims the buyer should strictly fulfil his/her obligation of inspection and notification of defects. The buyer must inspect the goods promptly upon their arrival and notify eventual defects to the seller. In the absence of such notification, the goods are deemed accepted and the purchase contract properly executed. If the goods have any hidden defects, prompt notification to the seller is necessary to give a warranty claim. Otherwise, the goods are deemed accepted unconditionally.

## PUBLIC PROCUREMENTS

In the UAE, public procurement contracts are basically awarded in open tenders. Traditionally, the emirate Abu Dhabi is the most important location for bidding in tenders for public procurement contracts. That is why a separate law has even been enacted to regulate tendering procedures and the execution of public procurement orders.

There are detailed regulations on public procurements at the federal level and at the level of individual emirates. These regulations are generally based on uniform principles underpinned by model contracts of Fédération Internationale des Ingénieurs Conseils (FIDIC).

Often the UAE government only awards public procurement contracts only to companies which are either a juristic personality constituted under the UAE law (if appropriate, including companies with 49 percent of foreign capital) or a party in some other contractual relationship with a local agent or partner.

Additionally, local companies often benefit from a general price advantage of 10 percent, as opposed to foreign bidders. Furthermore, they receive considerable prepayments upon conclusion of the contract with the government and must provide less security (lower value guarantees) than foreign companies. Thus, local involvement of a bidding company is crucial for success in a tender for a public procurements contract.

## INTERNATIONAL JURISDICTION AND APPLICABLE LAW

Contracts concluded in the UAE are generally governed by the UAE law. According to the UAE Civil Code, accepted commercial practices and the circumstances of the concerned commercial transaction should also be taken into account for determination of the intended contract content (in addition to the contract wordings and the applicable law).

Generally, the UAE law allows the parties to regulate the contract status as well as the place of jurisdiction directly in the contract. However, in practice UAE courts tend to assume their jurisdiction even where the contract states otherwise.

The decision of the Court of Appeal of the emirate Dubai can be taken as an example: Court assumed its jurisdiction notwithstanding a jurisdiction clause to the contrary agreed between the contracting parties. The decision was supported with the following arguments: A jurisdiction clause in favor of a foreign court cannot prevent local courts, otherwise competent, from the execution of their authority. This should be remembered in particular where enforcement of a foreign court ruling cannot be ensured.

According to the UAE Civil Procedure Law ("UAE CPL"), international courts have jurisdiction, if local courts at the place of

execution have jurisdiction over a lawsuit against a foreigner who is a non-resident regarding a contract with a place of execution within the UAE. In case of an illegal act committed within the UAE, jurisdiction lies with courts with jurisdiction over the place where the act has been committed. Furthermore, Article 24 of the UAE CPL says that any agreements amending the above international jurisdictions are null and void.

## BRINGING COURT ACTIONS

### Recognition and enforcement of foreign court awards

Currently, there is no international treaty between the Federal Republic of Germany and the United Arab Emirates on mutual recognition and enforcement of court rulings. Moreover, there are no approved federal-level or emirate-level regulations concerning recognition and enforcement of foreign court decisions. Only the civil procedure law of the emirate Abu Dhabi deals with certain aspects of recognition and enforcement of foreign court rulings – for recognition of a foreign court decisions. According to this law, the reciprocity principle must be complied with, i.e. court decisions of the respective countries must be mutually recognized.

There are no other laws in the UAE or in individual emirates to regulate recognition and enforcement of foreign court rulings. Regarding decisions of German courts, that means that such decisions must first be recognized by emirate courts and then enforced according to the procedure for enforcement of local court rulings. Notwithstanding the unclear legal situation within the UAE and possibly lengthy proceedings in the matter of recognition and enforcement of German court decisions by Emirate courts, prior experience shows that recognition and enforcement of German court decisions in the UAE is not unusual.

The jurisdiction clause and the arbitration clause in the contract are of utmost importance to avoid unnecessary difficulties with claim enforcement.

The UAE became the 138th country to accede in 2006 the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

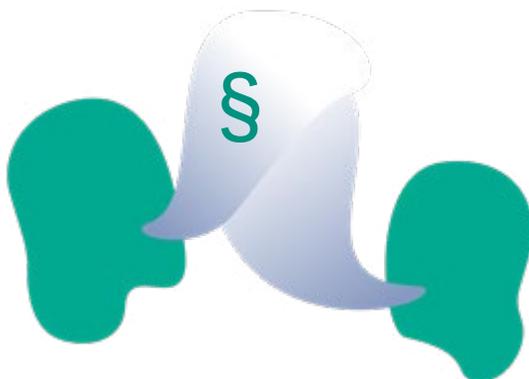
Implementation of the declaration of accession into the local law in 2006 created a legal framework for recognition and enforcement in the UAE of court rulings pronounced in other member states.

### Legal assistance

Lawsuits are often protracted and cost-intensive in the UAE. Therefore, litigation should only be considered as an option where the amount in dispute is sufficiently high. On the other hand, an amicable out-of-court settlement would often be more advisable in view of prospective future business relations with UAE partners. If litigation is inevitable, you should remember that the plaintiff must be represented by an attorney-at-law in dealings with UAE courts.

On the other hand, the defendant can either be represented by an attorney-at-law or represent himself. Similar to the Anglo-American legal system, the UAE system differentiates between litigators and consultant lawyers. Although a foreigner may give out-of-court advice (provided he has a valid consultancy license for the UAE), foreign, i.e. non-Arabic, attorneys are not permitted in UAE courts. The only official court language is Arabic.

Legal fees can be negotiated freely. Please note that each party to a lawsuit must bear its legal expenses independently (notwithstanding in whose favor the court ruling is made).



# Tax framework

## NATIONAL TAX LAW

The current UAE constitution of 1971 grants individual emirates the authority to tax legal entities and individuals and to enact own tax laws at emirate level.

In exceptional cases, the authority to collect taxes and to enact tax laws can be moved to the federal level under a law or an agreement, although till presently the Federation has never until now made use of such authority to enact tax laws. However, from June 2023, an income tax in the form of a corporate income tax will be introduced for the first time. In fact, the UAE federal government has so far generated more revenue from fees for registration of companies and foreign representative offices or branch offices. Fees for trade licenses payable by companies at regular intervals (it is not possible to carry on business in the UAE without such license) are another source of revenue. Despite the introduction of corporate income tax as of June 2023, it can be generally stated that the UAE does not currently levy the following taxes:

- Income tax;
- Withholding tax.

Individual emirates have made use of their tax legislative authority and enacted laws for certain areas of fiscal law. For instance, in the emirate of Dubai the Dubai Income Tax Decree of 1969 regulates a uniform system for taxation of corporate incomes (incomes of legal entities) within Dubai.

Tax rates are set according to a sliding scale, the highest rate being 55 percent. However, only oil, gas and petrochemical companies are taxed in practice, and the applicable tax rates are agreed individually during the concession negotiations.

Business of foreign banks is also subject to taxation and the applicable tax rates are set individually when the license is issued. There is actually no tax burden in effect at the moment for commercial companies outside the above industries and sectors. In Dubai, hotel business services are directly taxed at the rate of 10 percent (for example, catering and accommodation).

The UAE has introduced taxation of companies and corporations for the first time through the levy of a corporate income tax with Federal Law No. 47 of 2022. This is levied on an annual basis and the first assessment period will be for companies with a fiscal year from 1. January – 31. December, the period from 1. January 2024 – 31. December 2024.

The standard tax rate is 9 percent on net profits exceeding the threshold which is to be set by the Cabinet (AED 375,000). The tax rate for incomes below this threshold is 0 percent.

Corporate Tax applies to all taxable persons, including resident and non-resident persons except for the exempted persons according to Art. 4 of the law. Under certain conditions, Free Zone companies are also subject to corporate income tax.

## VAT

In accordance with a decision by the six member states of the Gulf Cooperation Council (Bahrain, Qatar, Kuwait, Oman, Saudi Arabia, United Arab Emirates; the so-called GCC states) in 2015, the UAE legal system has a uniform nationwide value added tax system since January 1, 2018. The main motivation for the introduction the Value Added Tax (VAT) was, in addition to the creation of another source of revenue to finance the rising costs of services of general interest and welfare, and in particular to minimize the dependence on oil and gas resources. To this end, the United Arab Emirates established the Federal Tax Authority (FTA) at considerable financial expense to collect the tax. The Federal Tax Authority is the executive authority in the tax refund procedure and the competent authority in the appeal procedure.

### - Organization

The legal framework for value added tax in the UAE is provided by the Federal Decree-Law No. (8) of 2017 on Value Added Tax (in short: VAT-Law) and its implementing regulation (Cabinet Decision No. (52) on the Executive Regulations of the Federal Decree law No. (8) of 2017 on Value Added Tax). Accordingly, all imports of goods and services provided in return for

consideration (fee) by a person with business capability in the UAE are subject to VAT. The standard tax rate is 5 percent.

However, some specific transactions, although taxable in themselves, are subject to a reduced VAT rate of 0 percent (tax-exempt supplies). These include, among others, the cross-border transportation of passengers and goods, the first-time transfer of residential buildings or the supply of oil and gas products. Federal Law No. 18 (2022) extended the goods subject to zero-rating and the further exemptions for VAT registration.

Furthermore, there are numerous transactions that are generally exempt from VAT. These include, for example, the sale of undeveloped land, local public transport and certain financial services.

The taxable amount for VAT is the consideration. The supplier of goods or services is therefore obliged to collect the VAT as part of the supply of the service and to pay it to the tax authorities.

- Mandatory registration

All companies in UAE territory that reach a taxable annual turnover of AED 375,000 must register with the Federal Tax Authority (FTA) for the collection of VAT. In this respect, there is a registration obligation for these companies. Lower-turnover companies that reach a taxable annual turnover of at least AED 187,500 are free to register with the FTA.

- Import and export of goods and services

The so-called Reverse Charge Mechanism facilitates the collection of VAT within contractual relationships, which concentrates on the import of goods or services from a for tax purposes UAE registered company.

Under this mechanism, the importer is treated as if he had supplied the goods to himself within the UAE. The tax liability is transferred to the recipient of the goods or services at no extra cost, thus exempting the supplier abroad from collecting and paying the tax and from the obligation to register in the destination country.

On the other hand, goods exported to third countries but also within the GCC states are subject to zero-percent taxation (zero-rated supply).

However, with regard to services provided to a customer located outside the United Arab Emirates (UAE), the place where the actual benefit of the service occurs is decisive, thus not every service provided outside the UAE is subject to zero-rated taxation.

– Free zones and VAT

The respective free trade zones are treated differently for VAT purposes. For example, there are so-called Designated Zones, which are treated as being outside the UAE territory for VAT purposes. Deliveries of goods between such Designated Zones and imports into these zones are therefore not taxable.

The remaining free zones are generally considered to be within the territory of the UAE for VAT purposes, meaning that the supply of goods or services by companies located in these free zones is taxable in the same way as if they had been supplied in the national territory.

## INTERNATIONAL TAX LAW

With regard to the delimitation of the taxation of cross-border activities between the Federal Republic of Germany and the UAE, the Double Taxation Treaty (“DTT”) concluded between the two countries with effect from 1. January 2009 has been in effect until 31. December 2021.

This agreement provided for the tax credit method to avoid double taxation from a German perspective. There was no provision for exempting income generated in the UAE by companies or individuals with unlimited tax liability in Germany. Since then, the DTT has not been renewed.

As already explained, the UAE will introduce income taxes for the first time as of June 2023. This will make the DTT between Germany and the UAE more relevant than ever.

With regard to the German structure of companies willing to invest, the question arises whether only the tax credit method or the exemption method will be applied under the future DTT to avoid possible double taxation. Under the tax credit method, the income is subject to German taxation in full, with any income tax levied in the UAE being offset (subject to the maximum offsetting amount). In this way, the profits generated in the UAE are brought up to the German taxation level.

But in case a capital company constituted under the UAE law pays dividends to a German limited liability company, the method prescribed by the DTT to avoid double taxation has no effect due to the absence of a double taxation situation because the German Corporate Tax Law grants an exemption for such earnings (subject to a “fine” of 5 percent on intercompany dividends) at the national level.

If dividends are paid to a German private company, the legal form of shareholders should be analyzed. The so-called “partial income method” applies to individuals (i.e. only 40 percent of the dividends are tax-free).

In case of profits of UAE-based permanent establishments (for example, a branch office without an independent juristic identity), profit withdrawals can only be performed tax-free basically if a profit exemption is granted by the DTT (subject to the so-called exemption with progression clause). It remains to be seen whether the future DTT will contain such a provision or whether it will be replaced by the tax credit method.

## TAX BURDEN COMPARISON

The aggregate tax burden of German companies with operations in the UAE is demonstrated below on the example of a German capital company with a subsidiary in the UAE, assuming that the UAE subsidiary is comparable to a German capital company in terms of the legal form chosen for it. It is further assumed that the subsidiary is transferring its total profits to the German holding company. The 2008 corporate tax reform was taken into account for the purposes of the following tax burden comparison. The data for Dubai and Germany is expressed as percentages.

## Dubai (2023)

Capital company			
Income before tax			100.00
Corporate tax 9%	./.		9.00
Profit after tax			91.00
Dividends paid out, gross			91.00
Withholding tax on dividends 0%	./.		0.00
Dividends, net			91.00

## Germany

Capital company			
Net cash inflow			100.00
Non-deductible business expenses according to § 8(b) Para. 5 of the Corporate Tax Law (5% percent of gross dividends)		5.00	
Local trade tax rate, in percent		400.00	
Trade earnings		4.17	
Trade tax	./.		0.83
Corporate tax 15%	./.		0.63
Solidarity tax 5,5%	./.		0.03
<b>Balance in case of profit retention</b>			<b>98.51</b>

Further payment to the shareholder			
Amount paid out (gross dividends)			98.51
Capital gains tax 25%	./.		24.63
Solidarity tax 5,5%	./.		1.35
Net payment			72.53
Individuals (private property)			
Dividends, gross		98.51	
Taxable income			98.51
Flat rate withholding tax 25%		24.63	
Credit on capital gains tax	./.	24.63	
Remaining income tax	./.		0.00
Solidarity tax (5.5%) on top of income tax		1.35	
Credit on solidarity tax on top of capital gains tax	./.	1.35	
Remaining solidarity tax	./.		0.00
<b>Balance after tax</b>			<b>72.53</b>
<b>Tax burden in case of profit retention in a local capital company</b>			<b>0.00</b>
<b>Tax burden in case of profit retention in a German capital company</b>			<b>1.49</b>
<b>Tax burden in case of further payment to a shareholder with German tax residence (an individual)</b>			<b>27.47</b>

# Customs and Importation Regulations

In the UAE, customs legislation and customs administration is generally within the authority of individual emirates, which have however relatively uniform practices.

A bill of entry must be filed with the competent customs authority in respect to goods imported from third countries. This bill of entry is viewed as an application for an import permit with simultaneous declaration and customs clearance of the concerned goods as well as payment of customs duty. The importer fills in the respective form, which will be stamped by customs after an inspection. Together with the bill of entry, the importer must submit the relevant shipment documents (such as bill of lading, air waybill or certificate of origin).

Certain goods (such as drugs, weapons, munitions, pesticides or wireless information transmitter devices) require a special import permit. Upon filing of the customs declaration, applicable customs duty must be paid or a bank guarantee must be provided as security. A customs duty exemption certificate must be provided in respect to goods exempted from customs duty or not subject to customs duty.

The lists of goods exempted from customs duty in the emirates of Abu Dhabi and Dubai can be requested from the Federal Agency for Foreign Trade (Bundesagentur für Außenwirtschaft). A stamp of the competent customs authority on the bill of entry certifies customs clearance of the imported goods, and the importer becomes entitled to bring them into the UAE. Another confirmation of compliant importation of goods is the so-called “landing certificate”, which is issued by the customs authority on request (upon presentation of the stamped bill of entry).

If imported goods are processed within the UAE and exported (or even re-exported without processing), the amount paid as customs duty or provided as a security deposit is returned and the respective bank guaranty is released on the basis of a so-called “Custom Exit/Entry Certificate”. This certificate is issued

by a competent customs authority at (re-)export of the goods upon presentation of the respective bill of entry or landing certificate.

The compulsory import duty is generally 5 percent in the UAE, which is at the level of the minimum customs duty of the Gulf Cooperation Council. The customs duty for tobacco wares and alcohol range between 25 and 34 percent (if a bill of entry is issued at all). Goods from Gulf Cooperation Council member states can be imported duty free. Travelling luggage in reasonable volumes is also free of duty (if not intended for commercial use). Trade samples and advertisement materials for distribution free of charge or at nominal price are generally also duty free.

Specific regulations apply to importation of goods to UAE free zones. Since no customs duty is charged in free zones, there is generally no customs clearance. Nonetheless, goods to be imported are subject to customs examination of the respective free zone, excluding transit goods which are re-forwarded without delay. Goods remaining in the free zone are inspected by customs and declared under a special trade free zone bill. Goods manufactured, processed or stored in a free zone are declared (with the appropriate bill of entry of the concerned emirate) and customs duty is levied at importation to the UAE territory, because they are treated as goods imported from a foreign customs territory.



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