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Emirates

# Doing business in Dubai

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# Middle East Network

# Doing Business in Dubai

Emirates

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AL TAMIMI & CO.

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# About Emirates

Emirates was founded as an airline in 1985. It now flies to over 150 destinations across six continents, providing air services that enable trade and travel to its home base in Dubai and beyond.

Emirates also connects millions of people on the ground each year through its other operations including Emirates Holidays, its destination marketing arm, and tour operator Arabian Adventures.

Seamless trade connections are supported through Emirates SkyCargo, its cargo division. A multinational and multicultural employer with over 160 nationalities working together, Emirates is committed to connecting people around the globe, and helping them to discover, enjoy and share new experiences together. This commitment is reflected in its wide portfolio of international sports and cultural sponsorships.

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# About Al Tamimi & Company

Al Tamimi & Company is one of the pre-eminent law firms in the Middle East with 17 offices across nine countries. Established in 1989, we are a full service commercial firm combining knowledge, experience and expertise ensuring our clients have access to the best legal solutions that are commercially sound and cost effective.

**Our clients are at the centre of everything that we do - their business is our business.**

Our strength comes from our clients' trust that we will provide them with the quality of service that they deserve. We make it our business to find creative and commercial legal solutions whilst focusing on making the law work for them.

**We're not like everyone else.**

As a firm, we have the ability to practice local law in each of nine jurisdictions where we have a presence. This means that each of our licensed litigators have rights of audience before local courts. We are proud of this unique strength, which truly sets us apart from the competition.

**Doing Business in the Middle East?**

So are we! Our regional footprint means that wherever our clients are doing business in the region, we are there to support them. Our expansion has been strategic and client driven.

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# Foreword

It is no surprise that Dubai has become one of the world's most sought after locations for doing business.

Since the UAE was established in 1971, Dubai has shifted dramatically from an oil and gas dependant state to a highly diversified economy, thriving on international trade, banking, tourism, real estate and manufacturing.

Although a relatively young city, Dubai's infrastructure is second to none. Soon, Dubai International will handle more international airline passengers than any other airport in the world. The next infrastructural chapter is Dubai World Central. A true aerotropolis is gradually rising in Jebel Ali at the crossroads of the global community.

Those of us who know Dubai often refer to the images of the Sheikh Zayed Road, Dubai's main thoroughfare, from barely 20 years ago. You see mostly sand.

Dubai is now an architect's dream – famously hosting the world's tallest building, the Burj Khalifa, but also a myriad of urban creations that dazzle visitors. The Palm Jumeirah, the Burj Al Arab, the Jumeirah Beach Hotel, and many more, have all become icons of this awe inspiring city.

I can talk about Dubai for as long as you have. But listen too to the experts. In the latest PwC Cities of Opportunity report, Dubai ranks 1st for airport access to central business districts and 1st for lowest total tax rate globally. The endorsements are not just about business. In Dubai, we also place a great deal of value on lifestyle. The latest Knight Frank Lifestyle Report places Dubai top of its global list of favourable locations to live.

One of Dubai's greatest strengths is its diversity. Around 200 nationalities come together to share this land of opportunity, which has become a connector in every sense of the word.

Our Expo 2020 theme, Connecting Minds, Creating the Future, embodies this spirit. We invite you to be part of Dubai and develop your own success story.

**His Highness Sheikh Ahmed bin Saeed Al Maktoum**
Chairman and Chief Executive Emirates Airline & Group


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Emirates Business Rewards, our reimagined corporate traveller programme, lets you redeem Business Rewards Points for any available seat as if you were paying cash—even on last-minute flights. Earned Points will also be quickly reflected in your account within two weeks, while a simple enrolment process makes it easier than ever to get started. Experience Emirates Business Rewards, with cash-like convenience.
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# Message

Our guide to 'Doing Business in Dubai' provides companies and individuals with the vital information they need when considering their operations in the Emirate. The guide seeks to answer some of the most important questions that investors have regarding their business structures based on the specific activities they wish to undertake. We have also provided an insight into the key employment issues for companies and employers alike.

As a regional business hub, Dubai has experienced exponential growth in recent years, and consistently strives to reinforce its position as a commercial, cultural and economic leader in the GCC and beyond. Our "Doing Business" series of books have become increasingly popular in helping not only to set up new businesses, but also in keeping businesses up to date on legal policies and changes in legislation.

We trust you will find the information presented of value and that it provides you with a greater understanding of both the business and legal aspects of operating in Dubai. We look forward to the opportunity to work with you to ensure your success when doing business here.

**Essam Al Tamimi**
Senior Partner & Founder
Al Tamimi & Company

**Husam Hourani**
Managing Partner
Al Tamimi & Company


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AL TAMIMI & CO.
Seeing
the bigger picture
Al Tamimi & Company knows more than just the law. We focus on the here and now and also understand that our advice may affect the future. We therefore ensure our lawyers think about the situation at hand, current and future challenges and potential opportunities.
In a region where the legal landscape is never black and white, we have the knowledge, expertise and cultural awareness to make sure our clients are at the forefront of doing business in the Middle East.
17 Offices I 9 Countries I 350 Lawyers
www.tamimi.com

# About Dubai

# About Dubai

Dubai is a cosmopolitan city with a diverse and vibrant culture. Considered to be the most liberal place in the Middle East, it is home to over 200 nationalities. Attracting visitors from across the globe, Dubai is also home to the Burj Khalifa, the world's tallest building, as well as some of the largest shopping malls and most luxurious hotels in the world.

Well known for its innovative construction and development projects and having proven its ability to host world class events, in November 2013 it was announced that Dubai had won the right to host the World Expo 2020. With an estimated 25 million visitors, hosting the Expo will boost Dubai's economy and reinforce its position as a world hub.

**Why do business in Dubai?**

Dubai is one of the seven emirates that form the Federation of the United Arab Emirates (UAE). It has the largest population in the UAE and has long been considered a business and cultural hub of the Middle East.

With an economy historically built on the oil industry, Dubai's main revenues now come from tourism, trade, aviation, real estate and financial services, with income from oil now accounting for less than 3% of the Emirate's GDP. Committed to free trade, Dubai has a modern business infrastructure with a corporation-friendly tax regime and a healthy banking and financial system.

Home to the world's largest man-made harbour and the Middle East's largest port, Dubai is the region's transport and logistics hub - a key factor in the decision of numerous multinational companies in having a presence in the emirate. The creation of unique investment opportunities with the establishment of industry-specific free trade zones throughout the emirate further enhance the attractiveness of doing business in Dubai.

## Statistics

**Population:**

Approximately 3 million

**Religion:**

Islam

**Currency:**

The currency of the UAE is the United Arab Emirates Dirham (AED). 1 dirham equals 100 fils.

**Language:**

The official language of the UAE is Arabic, although English is widely used in business circles.

**Government:**

Under the leadership of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and the Ruler of Dubai, The Government of Dubai's strong commitment to free market economy and fair competition has seen the emirate become the region's most competitive business hub. The Government's strategic infrastructure investment and transparent corporate governance policies have created a world class business environment.

# Setting up in Dubai

# Setting up in Dubai

## a. Investment considerations

In recent years Dubai has emerged as a major global business hub. Visionary leadership has seen the emirate's economy - previously reliant on hydrocarbons - diversified across sectors including trade, tourism, banking and logistics. Dubai's political stability, advantageous geography, free market philosophy and strong prospects for future growth have combined to attract considerable foreign direct investment (FDI). The emirate's growth story has captured the global imagination, attracting tourists, entrepreneurs and multinationals alike. Once a sleepy fishing village, today Dubai is a bustling metropolis able to compete on equal terms with any of the world's cities.

Before setting up a business in Dubai, some specific factors to consider are:

**Location:** Dubai is strategically located in the heart of the MENASA belt (Middle East, North Africa and South Asia) and has superb international trade links. Emirates, Dubai's globally famous airline, flies to more than 140 destinations all over the world. Much work has taken place in recent years to ensure Dubai is the best place to do business in the region.

**Laws:** Dubai's laws and regulations are frequently amended to provide a flexible and up-to-date legal framework for commercial best practice. Dubai is a dynamic, business-friendly environment; companies can be established quickly in any of the emirate's freezones and incentives include virtually zero corporate or personal taxation and no limits on the repatriation of money.

**Government:** Dubai's government is the driving force behind the emirate's push to become the world's leading business destination. The Department of Economic Development (DED) works tirelessly to create a commercial environment free of unnecessary bureaucracy in which companies have everything required to thrive. The DED is mandated to actively pursue FDI into Dubai and recently took steps to make Dubai a more attractive business destination by simplifying licensing procedures.

**Political Stability:** Dubai enjoys excellent political stability, a factor that makes it a very attractive business destination in the Middle East.

**Infrastructure & Services:** Dubai's ultramodern infrastructure is purpose-built to facilitate business and tourism. The emirate's transport and telecommunications networks are second to none. In terms of legal and financial services, the most successful banks and law firms all have headquarters in Dubai.

Dubai attracts FDI because it offers an unrivalled environment in which to do business, with political stability, low set-up costs, excellent geography and superb quality of life. The emirate offers year-round sunshine, a myriad of leisure and dining options and one of the lowest crime rates in the world. At every point, Dubai is focused on achieving investor satisfaction.

### b. Doing business

Dubai's business environment has much to offer companies of all sizes. A variety of registration options are designed to make setting up as simple and practical as possible.

## 1. Legal Structures

Business may be carried out through a direct business presence in Dubai, be it through a sole proprietorship or though a corporate entity. Business may also be carried out indirectly through commercial agents.

### a. Sole Proprietorship

A sole proprietorship is a simple business method whereby an individual trades on his own account pursuant to a trade licence issued in his own name. This form of business entity is referred to as an 'establishment' rather than a company and the sole proprietor is personally liable to the full extent of his assets for the liabilities of the business. The establishment will not have an independent legal entity from that of the owner.

Mainly UAE nationals and nationals of Gulf Cooperation Council (GCC) countries (subject to certain conditions) are permitted to form sole proprietorships in Dubai. A practice has, however, arisen in recent years whereby a UAE national obtains a trade licence for a sole proprietorship and leases it to expatriates who then take on all of the management functions of the business and retain all of the profits. However, this type of arrangement is not recommended as it is essentially unlawful and problems can arise if the business relationship between the parties breaks down. Furthermore, the legal holder of the licence will be 100 percent liable for debts vis-à-vis any third party who may not have any knowledge of the private arrangement.

Foreigners may form sole proprietorships if they reside in the UAE. However, the law restricts the activities a foreigner may engage in as a sole proprietor to certain fields. These include the following:

- The provision of medical services
- Engineering consultants
- Legal consultants
- Computer consultants
- Similar services and non-trading activities.

A foreign sole proprietor is required to appoint a local services agent. The local service agency contract must be authenticated by the Notary Public and the foreigner's residence should be under the new business sponsorship.

Thus, the procedures for establishing a sole proprietorship vary according to the nationality or identity of the prospective sole proprietor. However, the common and main factor for establishing any type of sole proprietorship is that a licence should be obtained from the DED after submitting an application together with all relevant documents.

## b. Corporate Forms

Various legal corporate forms are available for the establishment of a business in Dubai. The table below provides an overview of some of the corporate vehicles available to set up in Dubai and certain salient comparative features of each, which are based on the provisions of the Commercial Companies Law, Federal Law No. 2 of 2015, (CCL) – the primary law governing corporate entities:

| Corporate Forms | Structure of Partners / Shareholders | Minimum Capital Requirement |
|---|---|---|
| Joint Liability Company | 2 or more partners who owe joint and several unlimited liability | None |
| Limited Partnership Company | General (active) partners who owe joint and unlimited liability and limited partners who owe limited liability to the extent of the share in the partnership | None |
| Public Joint Stock Company | 5 or more shareholders who owe limited liability | AED 30,000,000 |
| Private Joint Stock Company | Between 2 and 200 shareholders who owe limited liability | AED 5,000,000 |
| Limited Liability Company | Between 2 and 50 partners/shareholders who owe limited liability | None |
| Branch of a Foreign Company | None | None |

Additional information on the corporate forms listed above is as follows:

**Joint Liability Company:** A joint liability company is an arrangement between two or more partners whereby each partners is jointly and severally liable without limit for the company's liabilities. The CCL provides that only UAE nationals are allowed to be partners in a joint liability company. This form of business is therefore not appropriate for foreigners wishing to set up in Dubai.

**Limited Partnership Company:** The CCL defines a limited partnership company as a company which consists of one or more active partners who are jointly and severally liable for the obligations of the company and act in the capacity of a trader, and one or more silent partners who are not liable for the obligations of the company other than to the extent of their respective shares in the capital and do not act in the capacity of a trader.

Thus, a limited partnership company is essentially a modified joint liability company. As in a joint liability company, only UAE nationals may be partners, in a limited partnership company, although foreigners may be silent partners, who essentially do not have a role in the management as opposed to the administration of the company regarding third parties. In addition, a silent partner's liability is limited to the extent of their share capital in the company. Silent partners should, of course, ensure they do not lead third parties to believe they are anything other than a silent partner otherwise their limited liability will cease. The management of the limited partnership company is vested in the general (active) partners.

**Public Joint Stock Company (PJSC):** PJSCs are governed by the CCL, which defines a PJSC as a company whose capital is divided into equal value negotiable shares.

A PJSC is very similar to the public limited company in the United Kingdom. According to the CCL, the shareholders of a PJSC are liable only to the extent of contributing the value of their shares in the capital of the company. The nominal value of each share of a PJSC should not be less than AED 1 and not more than AED 100, and the minimum share capital requirement is AED 30 million for a general company, AED 40 million for a banking entity and AED 250 million for an insurance company.

Among the requirements for the establishment of a PJSC is the preparation of a founders' agreement, a prospectus or invitation for public subscription supported by an overall business plan/feasibility study and an auditor's certificate, a due diligence survey and a memorandum and articles of association, which must be in accord with the specimen issued by the Security and Commodities Authority. Any deviation from the specimen form must be approved in advance by the Security and Commodities Authority which regulates PJSCs. Further, the name of the intended company must end with the words 'Public Joint Stock Company'.

A PJSC must have at least five founding members and its management should be vested in a board of directors consisting of an odd total number of directors of which the minimum is three and a maximum is eleven persons whose term of office may not exceed three years. Directors can be re-elected when their term of office has expired. A public joint stock company is required to have a chairman of the board of directors who must be a UAE national. In addition, the majority of the directors on the board are required to be UAE nationals.

At least 10 percent of the net profit should be allocated to a reserve account until such reserve account amounts to half of the total paid-up capital of the company.

In addition, UAE nationals should hold at least 51 percent of the shares of the PJSC. The founder members must subscribe to a minimum of 30 percent and a maximum of 70 percent of the share capital of the company. If new shares are issued, the existing shareholders should be offered the opportunity to subscribe for such shares in proportion to their existing shareholding in the company.

There are additional requirements for the incorporation and operation of a PJSC stipulated under the CCL that should be considered by interested investors. However, given the fairly restrictive rules and controls governing the establishment and management of a PJSC and the substantial capital requirement, it is not regarded as a suitable business vehicle for most foreign investors.

The PJSC has become increasingly popular in the recent years vis-à-vis the private sector an indicator of which is that there are currently more than 100 PJSCs in the UAE due to the fact that such business vehicles enable businesses to raise substantial amounts of capital, particularly where large-scale projects are concerned. This allows small foreign and local investors to participate in such projects.

It should also be noted that, where one is contemplating a business venture which involves insurance or commercial banking the establishment of a PJSC is a legal necessity and no other type of company may be established for such activities. For businesses engaged in the investment of funds on behalf of third parties, either a PJSC or a Private Joint Stock Company needs to be established.

**Private Joint Stock Company:** A private joint stock company is essentially the same as a PJSC, with the following differences:

1. The minimum capital requirement is AED 5 million;
2. The shares of a private joint stock company may only be offered to the public after two financial years have been completed and upon conversion to a PJSC (and other requirements are met); and
3. It is supervised by the Ministry of Economy (as opposed to regulated by the Security and Commodities Authority);
4. Only 2 founder members are required.

Considering the lower capital requirement of AED 5 million, private joint stock companies are more popular with foreign investors than PJSC's.

It is worth noting that the procedures for setting up a private joint stock company are the similar to those of a PJSC.

**Limited Liability Company (LLC):** A LLC is governed by the CCL. A LLC is often the most suitable method of establishing a business in Dubai by foreign investors. This is similar to the private limited liability companies in the United Kingdom. However, as mentioned earlier, where the intended business involves banking, insurance and/

or investment activities conducted on behalf of third parties, a LLC is not legally permitted to practice such activities and a PJSC will have to be established. The CCL defines a LLC as a company "with limited liability…where the number of partners may not exceed fifty and should not be less than two. Each of the partners shall only be liable to the extent of his share in the capital. The partners' participation should not be represented by negotiable certificates."

In addition, the following may be noted with regards to a LLC:

Public subscription for raising capital is not permitted;

- Although a foreign partner is only generally permitted to own a maximum of 49 percent of the capital of the company, the day-to-day management of the company may be vested in a foreign manager;
- Managers may be one or more of the partners or any other parties (including foreigners) provided that they do not exceed a total of five persons;
- In practice, national partners often play no part in the operations of the company and may well give the foreign partner a power of attorney authorizing him to vote in the general assembly on his behalf;
- It is possible to provide in the Memorandum that profit and losses will be shared into a ratio different to that of the share capital ratios;
- It is necessary to appoint an auditor who must be accredited in the UAE;
- The auditor should be appointed by the general assembly (which is essentially a meeting of all the shareholders of the company).

**Branch Office of a Foreign Company:** A very popular way for foreign companies to benefit from 100 percent foreign ownership is to establish a branch office of the parent company. The CCL contains provisions regulating the establishment of branch offices of foreign companies in the UAE.

A branch office is legally part, and an extension of, its parent company and does not have a legal identity distinct from its parent company.

Therefore, the name of a branch office will be the same as that of the company of which it is a part.

Branch offices are nevertheless required to have a national agent. It is preferred that a national service agent be an individual. However, if the agent is a company, it must be wholly owned by UAE nationals. The national agent will not acquire any rights or interests in the business of the branch office and will simply provide services on matters that concern federal and local government departments such as fulfilling immigration requirements on the business' behalf. In return for their services, agents usually receive a fixed annual fee.

One of the conditions for establishing a branch office in the UAE is that it may only be engaged in activities similar to those of its parent company (subject to such activities being licensed by the relevant authority). It is important to note that a branch office is not permitted to carry on the business of importing, exporting, manufacturing or distribution of the products of its parent company.

The issuance of a branch licence from the DED allows the parent company to conduct business in Dubai through the branch office. The activities the branch office will be allowed to practise, therefore, will depend on the type of licence it obtains and, more importantly, the activities of the company of which it is a part.

A branch must be registered with the Ministry of Economy, which requires submission of a bank guarantee of AED 50,000 in favor of the Ministry of Economy and a letter from a local auditor confirming its appointment.

**Representative Offices of Foreign Companies:** Representative offices are governed by the CCL. A representative office of a foreign company is legally distinct from a branch office of a foreign company in that it is only allowed to promote its parent company's activities. Therefore, if a parent company deals in the sale and/or production of certain products and opens a representative office in Dubai, the office will only be able to promote and market the sale and/or production of such products and facilitate contracts in the UAE, as distinct from conducting the sale and production itself.

It should be noted that in addition to the above limitations, representative offices have other restrictions in that they are not allowed to obtain credit facilities or put forward offers.
As in the case of a branch office, it is necessary when establishing a representative office to appoint a national service agent. However, in some exceptional cases the requirement of a national service agent may be waived.

**Civil Companies:** Apart from the companies which may be established under the CCL, the UAE Civil Transactions Law, Federal Law No. 5 of 1985 (Civil Code) provides for the formation of three forms of civil or professional entities, namely:

- Companies to perform work (work/service companies);
- Speculative venture partnerships;
- Mudaraba companies.

The main difference between entities under the CCL and those under the Civil Code is that the activities which may be practised in the former are of a commercial nature, whereas in the latter, the activities that may be practised involve the use or investment of intellectual faculties, acquired information or the use of skills, for example, carpentry. The fact that civil companies do not practise activities of a 'commercial' nature does not denote that they are non-profit making organizations. It is simply a distinction made in the UAE's legal system in terms of the 'types' of activities a business practices.

Although the above three entities are called companies, strictly and legally speaking they are not companies as the only companies which may be formed in the UAE are commercial companies as listed under the CCL. Instead, such entities are more representative of civil activities that may be practised rather than legal structures of business in their own right.

This distinction is particular to the UAE. However, in practice, most people do not differentiate between civil and commercial entities and instead use the term 'company' for all business. The difference is, nevertheless, legally significant as civil entities are subject to the Civil Code in addition to local law and commercial companies are subject to the CCL.

Further, the only legal entity a civil company may be established under is a partnership either between UAE nationals or between UAE nationals and foreigners for the practice of civil rather than commercial activities such as consultancy and carpentry. Therefore, legally speaking, civil activities may not be set up as LLCs or other forms of companies and are thus not subject to requirements such as those of minimum share capital as stipulated under the CCL. In addition, and as mentioned earlier, the activities civil entities may be engaged in will be restricted to those of a civil nature alone.

### Companies to Perform Work (Service/Professional Companies)

Under the Civil Code, service or professional companies are defined as companies where two or more persons agree to be bound to carry out work and to be liable thereafter to third parties against payment of consideration, where they share equally in the distribution of the work, provided that the work is of a single and inseparable nature.

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### Speculative Venture Partnerships

This form of partnership is a contract between two or more persons to purchase property on credit, to sell it at a profit and subsequently to share the profits as agreed between them.

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### Mudaraba Companies

A Mudaraba is a contract where one of the parties to the contract contributes a certain amount of capital and in exchange, the other party, the Mudarib, contributes his efforts/labour in order to make a profit. Here, the Mudarib is treated as a trustee of the capital as well as a partner to the profits.

There are other conditions, many of which must be satisfied for a Mudaraba to be valid. Among these conditions is a provision that the contract must not stipulate that the Mudarib will be liable for any loss or waste of the capital, provided there is no wrongful act on part of the Mudarib.

Thus, the Mudarib is given the power to make dispositions on behalf of the owners(s) of the capital. Nevertheless, the owner of the capital may stipulate the conditions of the contract provided they are not contrary to the Civil Code. However, he alone will bear any losses incurred and under the Civil Code any provisions made to the contrary are deemed void.

### c. Commercial Agents

Foreign companies can trade in Dubai through importers and traders. However, such arrangements are not particularly well suited to continuous, high volume trading. Overseas manufacturers or traders who wish to import goods into Dubai in large quantities and on a regular basis may want to appoint a local trade or commercial agent through the establishment of a commercial agency.

Unlike other jurisdictions in general, the UAE legal system distinguishes between two forms of commercial agencies, the registered commercial agency and the unregistered commercial agency. The main difference between the two lies in the set of rules and regulations governing each.

**Registered Commercial Agent:** Registered Commercial Agency is defined by Federal Law No. 18 of 1981 on the Organisation of Commercial Agencies as amended by Federal Law No. 14 of 1988 (Agency Law), as "the representation of a principal by an agent for the purpose of distributing, selling, offering or providing merchandise or services within the state for a commission or profit" and a principal is defined as "the producer or manufacturer or the exclusive accredited exporter or representative of the producer".

Under the Agency Law there are various benefits of a registered service agency for the agent as follows:

**Exclusivity**

Registered agents have the exclusive right to import the goods that are the subject matter of the agency agreement. Any import of goods which are the subject matter of the registered agency through the parties other than the registered agent can be seized by the Customs Department unless the agent or the Ministry of Economy & Planning consent to their release. This also includes goods that have been imported by the principal. If the principal or any other person distributes or markets the specified products or services within the territory, they will be liable to compensate the trade agent. Where exclusivity of the agent is not a concern for the principal, the restriction on import of the said goods by any third party is, of course, also a protection of the interests of the principal.

**Commissions**

Registered commercial agents are entitled to receive commissions on both the sales they make as well as the direct sales made by the principal or other parties, regardless of whether or not the agent has contributed towards such direct sales. The principal should, consequently, ensure that the agency agreement clearly defines the products that constitute the agreement and the territory concerned.

**Non-termination and non-renewal**

A concern for principals can be the fact the Agency Law does not allow the principal to terminate such agencies without there being a 'justifiable cause', which is not a defined term. Recent judicial pronouncements, however, have discussed justifiable cause to include: gross negligence, dealing with competitive products in breach of agreement, assigning the agency to a third party, failing to meet sales targets, etc. It is at the discretion of the Ministry of Economy and Planning to decide whether or not a 'justifiable cause' exists. However, the Ministry's decision is subject to review by the courts. In Dubai the party need not go to the Ministry, but may proceed directly to court. A principal will also need to show a justifiable reason to refrain from renewing a trade agency agreement upon the expiry of its term. Wrongful termination or failure to renew a trade agency agreement may lead to the principal being obliged to compensate the former trade agent for any losses the agent may have suffered.

**Unregistered Commercial Agent:** unregistered commercial agencies, on the other hand, are conventional principal-agent relationships that do not benefit from the protection of the Agency Law as these relations are not made under or subject to the Agency Law. An unregistered commercial agency is created by the contract between the principal and agent, and there is no additional procedural requirement to make the same a valid arrangement. A prospective agent is, therefore, likely to seek establishment of a registered commercial agency to avail the benefit as opposed to one that is unregistered, subject to fulfilling the relevant criteria.

Despite the fact that the Agency Law provides that any commercial agency not registered in the Ministry of Economy & Planning Register shall be deemed void and no claim shall be recognised with respect thereto, unregistered commercial agencies are, nevertheless, seen as valid commercial contracts where the parties will be subject to the terms and conditions they have agreed to.

Three types of unregistered commercial agencies may be created: contract agencies, commission agencies and commercial representations. Unlike registered commercial agencies, unregistered agents are not required to be UAE nationals or commercial entities wholly-owned by UAE nationals. What would, however, be required is for the unregistered agents to be an entity licensed to trade in the UAE. In addition, a principal is allowed to terminate an agency agreement in a number of circumstances including cases where the agency arrangement has expired after a fixed term agency contract. From the point of view of a principal, unregistered agencies may be more attractive.

## 2. Jurisdictions

The laws of the UAE permit various types of corporate vehicles and structures (discussed above) that may be set up in multiple jurisdictions. Besides the conventional jurisdiction of mainland Dubai, Dubai has various special freezones where entities may be set up. The said freezones are geographically located within Dubai but are considered distinct legal jurisdictions, usually having their own (non-criminal) laws. The following are salient differences between mainland Dubai and the freezone jurisdictions:

| Feature | Mainland Dubai | Freezone |
|---|---|---|
| Ownership of Limited Liability Company (LLC) | 51% shareholding must be of a UAE national, or an entity owned by UAE nationals | 100% shares may be owned by a non UAE national |
| Minimum Shareholders | 2 for a LLC | 1 or more for a LLC. A single shareholder LLC is titled a Freezone Establishment and a multiple shareholder LLC is titled a Freezone Company |
| Branch | Requirement of a 'service agent' who is a UAE national | No requirement to have a UAE national 'service agent' |
| Conduct of Business | Subject to any restrictions, a mainland entity may conduct licensed activities in the mainland | Entities doing business in freezones cannot 'carry out' business activities in mainland Dubai |
| Minimum Capital Requirement | LLC's are required to have capital that is sufficient for conducting the commercial objectives of the LLC; the law prescribes no minimum capital requirement | LLC's in the freezone are required to have a minimum capital. The prescribed minimum capital varies between AED 50,000 to AED 1,000,000 depending on the freezone |
| Tax | There is a tax regime in place, but for the time being is not in effect. As such, no tax is paid by entities operating in Dubai, except for certain specific industries such as banking | Laws of freezones prescribe a tax free period where under all establishments and employees are exempt from all taxes, usually of 50 years, which is extendable |
| Physical Office Space | Mandatory | Mandatory |
| Customs Duty | Normally 5% of the invoiced value | Corporate entities are exempt from payment of any customs duties if the imported goods are for use of the company itself or for re-export outside of the UAE |

**Offshore Jurisdiction:** in addition to mainland Dubai and the freezone jurisdictions, the Jebel Ali Freezone in Dubai offers an 'offshore jurisdiction' as well. It may be noted that the function and purpose of companies incorporated in the offshore jurisdiction is mainly to act as a holding company, which is by law authorised to own designated properties in mainland UAE and can own shares in other companies. An offshore entity is not regarded as an operational entity and as such does not require a business licence (licensing is discussed further below). Further, setting up an offshore company does not require a foreign company to establish any physical existence (i.e. no office space is required), while retaining all other benefits of a freezone entity.

It may be noted that not all corporate forms discussed earlier are available to be set up in freezones. Usually the entities permitted to be set up are LLCs (single shareholder or more) and branch or representative offices of companies.

However, where a freezone entity is desirous of trading its goods in mainland Dubai, it may appoint its agents in mainland Dubai who may carry out the distribution of their goods, as in the case where a foreign entity may appoint a local commercial agent, whether registered or unregistered. However, upon entry of the goods into mainland Dubai, either from another country or from a freezone, an import duty will be applicable (currently 5 percent of the value of the goods).

## 3. Business Considerations

### Foreign Ownership

While freezones permit 100 percent ownership of entities by foreign nationals, the CCL prescribes that UAE nationals must own at least 51 percent of the shares in an entity incorporated in mainland Dubai. An overview of the minimum requirement of UAE national ownership is tabulated in the following:

| Corporate Forms | UAE National Requirement |
|---|---|
| Joint Liability Company | All partners |
| Limited Partnership Company | All General (active) partners |
| Public Joint Stock Company | At least 51% of the registered share capital should be registered under the name of UAE national(s). UAE nationals must also constitute the majority of the members in the board of the directors. The Chairman of the board of directors must also be a UAE national |
| Private Joint Stock Company | At least 51% of the registered share capital should be registered under the name of UAE national(s). UAE nationals must also constitute the majority of the members in the board of the directors. The Chairman of the board of directors must also be a UAE national |
| Limited Liability Company | At least 51% of the registered share capital should be registered under the name of UAE national(s). A foreigner can be the manager and director of the company |
| Branch of a Foreign Company | Requirement of a UAE national service agent where the branch is established in mainland Dubai |
| Joint Liability Company | All partners |
| Limited Partnership Company | All General (active) partners |

In addition to the aforestated arrangements, the interests of the minority foreign shareholder may also be protected by the following:

- The CCL makes directors liable to be sued by both the company and the shareholders' for 'mal-management' (this includes the minority shareholder);

- The CCL provides that every shareholder may, upon written request, obtain a copy of the last audited accounts of the company and of the last report of its auditor;

- A robust shareholders' agreement and memorandum and articles of association, which provide for certain key reserved matters and should require either unanimous or 75 percent approval of the shareholders or directors, and should have mechanisms for the exit of shareholding of the minority foreign shareholder.

**Licences**

All business activities in Dubai, conducted by any type of entity, regardless of whether it is set up in mainland Dubai or in one of the freezones (except the offshore jurisdiction – since those entities are usually non-operational holding companies), require one or more licences. Certain regulated activities may require additional licences from specialist regulatory authorities and/or certain ministries. For example, banks and financial institutions require special approval from the Central Bank, media companies require special approval from the National Media Council, and manufacturing companies require special approval from the Ministry of Finance.

For entities set up in mainland Dubai, the licence is issued by the Department of Economic Development. The three main types of licences are as follows:

- Commercial licence (all kinds of trading);
- Industrial licence (manufacturing or industrial); and
- Professional licence (professions, services and craftsmen).

For entities set up in one of the freezones the licence is issued by the respective freezone authority. Different types of licences are available and these vary from freezone to freezone. Certain freezone licences are discussed below:

**General Trading Licence:** Allows the holder to import, export, distribute and store items and to trade but not in mainland Dubai.

**Trading Licence:** Allows the holder to import, export, distribute and store the particular items specified in the licence.

**Industrial Licence:** Allows the holder to import raw materials, carry out the manufacture of specified products and export the finished products.

**Service Licence:** Allows the holder to carry out services specified on the licence within the freezone.

**National Industrial Licence:** This licence is designed for manufacturing companies with an ownership or shareholding of at least 51 percent by GCC nationals/citizens. The value added to the product in the freezone must amount to a minimum of 40 percent. This company licence allows the holder the same status as a local or GCC national/citizen inside the UAE.

## Dubai Freezones

As discussed above, Dubai has a number of freezones within which entities may be set up. Once the determination has been made to set up in a freezone as opposed to mainland Dubai, the next decision is the proper freezone within which to set up. While this decision may not seem as onerous as determining whether to set in the mainland versus a freezone, it requires a multitude of considerations to ensure that the features of the freezone meet the business needs and objectives of the company. An even more daunting task when consideration is given to the significant number of freezones within the Emirate of Dubai.

Salient features of Dubai freezones of varying importance based on the business needs and objectives of the company include the following:

- Expense of setting up including licensing, registration and legal professional fees
- Time frame in setting up, which includes processing time of application by freezone authority and number of documents required by authority
- Sectors in which freezone is dedicated (promoting synergy between like businesses)
- Location of freezone within the emirate of Dubai such as proximity to ports (sea and airports)
- Prestige of freezone address

- Availability and cost of suitable office space or warehousing in the freezone
- Range of permitted activities within the freezone
- Specific incentives offered by the freezone authority, if any

A few of the most recognised free zones in Dubai are the following:

Jebel Ali Free Zone (JAFZA) www.jafza.ae

Dubai International Financial Centre (DIFC) www.difc.ae

Dubai Creative Clusters Authority (DCCA) www.dcca.gov.ae

Part of DCCA - Dubai Design District (d3)

www.dubaidesigndistrict.com

Dubai Airport Free Zone (DAFZA) www.dafz.ae

Dubai Multi Commodities Centre (DMCC) www.dmcc.ae

Dubai Silicon Oasis (DSO) www.dsoa.ae

Dubai South (DS) www.dubaisouth.ae

To find out more information about which freezone will be suited to your business needs and objectives, please contact Samer Qudah, Partner and Regional Head of Corporate Structuring via email at *s.qudah@tamimi.com*.

# Taxation in the UAE

## 1. Corporate income tax

Currently there is no corporate tax at the Federal level.

The Emirate of Dubai imposes corporate tax on companies engaged in the production and exploration of oil and gas at progressive rates up to 55% and branches of foreign banks at 20%.

A tax holiday for up to 15-50 years may be available for businesses established in a free zone.

The UAE has entered into more than 80 double tax treaties.

## 2. Value added tax (VAT)

VAT was implemented in the UAE at the Federal Level on 1 January 2018.

Unless the supply is specifically zero rated or exempt, VAT is imposed on the supply of goods of goods and services in the UAE as well as imports of goods and services. The standard rate of VAT is 5%.

The export of goods and services outside the GCC, international transportation of goods and passengers, medicine and medical equipment, the first supply of residential real estate and certain healthcare and education services are subject to VAT at the zero rate. The supply of margin based financial services, life insurance, local passenger transport and residential real estate other than the first supply are exempt from VAT.

A UAE business is required to register for VAT if the value of annual taxable supplies exceeds the mandatory registration threshold of AED 375,000. A UAE business may register for VAT if the value of annual taxable supplies exceeds the voluntary registration threshold of AED 187,500. Non-residents that are liable to account for VAT must register for VAT irrespective of the value of the supplies.

### 3. Excise tax

In the UAE, excise tax became effective on 1 October 2017 and applies to tobacco products at 100%, carbonated drinks at 100% and energy drinks at 50%. The tax is based on the higher of the retail sales price of the excise goods or a standard price published by the Federal Tax Authority.

The responsibility for accounting for excise tax falls on importers of the excise goods on import into the UAE, producers of excise goods when they are released for consumption in the country and stockpilers of excise goods when the goods are acquired by a stockpiler and excise tax has not previously been paid on those goods.

### 4. Customs duties

The UAE has enacted the GCC Customs law under which customs duty is imposed at the first point of entry into the GCC.

Customs duty applies to imported goods agenerally at the rate of 5% of the cost, insurance and freight (CIF) invoice value. However, certain goods may be subject to customs duty at a higher rate whereas other goods are exempt.

The import of goods into free zones is generally not subject to customs duty and the duty is suspended until the goods are imported into the UAE mainland. There are also other exemptions from customs duty.

### 5. Real Estate

A registration fee is payable on the transfer of ownership of land or property at 4% of the sale value. This fee is also payable on the transfer of shares in companies holding real estate based on the value of the underlying property.

## 6. Municipal taxes

The Emirate of Dubai imposes a municipal tax on properties based on the annual rental value. This is generally payable by tenants at 5% for residential properties and 10% for certain commercial property. The tax is payable through the monthly utility bill in instalments.

## 7. Hotel and tourism taxes

The Emirate of Dubai imposes various taxes on hotels based on the value of the hotel services. These include a municipality fee of 10% and a service charge of 10%. In addition, a Tourism Dirham Fee is chargeable to hotel guests and tenants of hotel apartments per night of occupancy (for a maximum of 30 consecutive nights) ranging from AED 7 to AED 20 per night depending on the category/grade of the hotel.

## 8. Personal income tax and Social security

There is no personal income tax in Dubai.

Social security is due in respect of GCC nationals only. The employer is required to pay 12.5% and 5% is payable by the GCC employee.

Under the labour law, foreign employees are entitled to an end of service gratuity which is based on 21 days of the annual basic salary per year after the completion of at least one year of employment.

# Employment law in Dubai

# Employment Law in Dubai

Employment relations in the UAE and Dubai are generally governed by Federal Law No. 8 of 1980 (as amended) (Labour Law) that set out a minimum standard of employment conditions. As a Federal statute, the provisions of the Labour Law apply to all private sector employers based in the UAE, including employers established in a freezone. Although a freezone may implement internal employment regulations applicable to companies established and operating within it, these regulations will merely supplement the minimum provisions as laid out in the Labour Law. Whilst some governmental corporations/entities operate like private sector enterprises they generally fall outside the scope of the Labour Law.

The only current exception to the overarching application of the Labour Law in Dubai is in the Dubai International Financial Centre (DIFC) that is a separate jurisdiction with its own employment legislation, namely DIFC Law No. 4 of 2005 (as amended) (Employment Law). The application of the Employment Law is to all employees and employers who are based and ordinarily work out of the DIFC.

## 1. Contracts

### Dubai

The Labour Law provides that contracts of employment may be for an unlimited or fixed period. A fixed-term contract cannot be longer than two years in duration and must specify a start and end date. It may be renewed following the expiry of the agreed fixed term period.

### DIFC

The Employment Law recognises both unlimited and fixed-term contracts. However, in the case of a fixed-term contract the Employment

Law does not expressly restrict the length of the term. Similarly there is no restriction upon entering into further fixed-terms.

## 2. Probation

### Dubai

A probationary period can be for a maximum period of six months and cannot be extended beyond this period even with the consent of the employee. If an employee is working under a probationary period, he may be dismissed for any reason by his employer within or immediately upon the completion of the probationary period without notice. When an employee has completed his probationary period successfully and continues employment, the probationary period is counted towards his overall period of service.

### DIFC

The Employment Law does not expressly address the issue of probation. In practice it would generally be expected that a probationary period would be in line with the period under the Labour Law (i.e. up to six months). However, this is a matter of contract between the parties. Termination of employment within the probationary period is covered by the general termination provisions of the Employment Law (see further below).

## 3. Salary/wages

### Dubai

There is no statutory minimum/maximum salary in the UAE however, in order to sponsor a dependent (spouse and children) to live in the UAE an employee must earn a minimum salary of at least AED 4,000 (approx. USD 1,100) per month. In order to sponsor parents to live in the UAE this minimum salary is increased to AED 20,000 (approx. USD 5,500) per month.

There are no statutory provisions governing matters such as the provision by employers of itemised payslips. These matters are governed by individual employment contracts. Employees are typically paid weekly, fortnightly or monthly.

The UAE operates an electronic Wage Protection System (WPS) that has been established in order to safeguard the timely payment of employees' salaries (primarily aimed at protecting blue-collar workers) and to ensure that payments made are accurate. Employers are required to pay salaries through the WPS, and these payments are registered and monitored against the employee list and registered wages for each employee. The WPS does not operate in freezones, with the exception of Jebel Ali Free Zone.

### DIFC

As above, there is no minimum/maximum salary in the DIFC. However the Employment Law does provide that the payment of salary/wages must be made at least monthly and, in any event, within seven days of the end of the pay period.

## 4. Public/national holidays and annual leave

### Dubai

Public/National holidays are not fixed and may consist of up to 11 days on eight different occasions. Employees are entitled to leave with full pay on the following public holidays (declared for the private sector):

- Al-Hijra (Islamic New Year) – one day
- 1 January (Gregorian Calendar New Year) – one day
- Mouloud (Birth of the Prophet) – one day
- Al Meiraj (Ascension of the Prophet) – one day
- Eid al-Fitr (End of Ramadan) – two days
- Martyrs Day (30th November) – one day
- National Day (2nd December) – one day
- Eid al-Adha (Feast of the Sacrifice) – three days

Certain holidays are based on local sightings of the moon. Accordingly, the authorities provide a predictive date for the holiday which is confirmed closer to the time.

Private sector employer can decide whether or not to grant time off during public holidays. If employees work, they are entitled to other days off in lieu, or a payment of 150 percent of salary. If a public holiday happens to fall on a weekend (i.e. Friday or Saturday), an employer is not obliged to provide employees with a day off in lieu, although it may do so if it wishes.

In addition to the public holidays listed above, employees are entitled to annual leave. Under the Labour Law an employee does not accrue annual leave until he/she has completed six months of service. The basic entitlement in the first year of employment is two calendar days per month, after completion of the first six months. In practice, the minimum accrual in the first year under the Labour Law is not commonly enforced and a prorated entitlement is more common. Where an employee has more than one year of service he/she is entitled to 30 calendar days annual leave, which is equivalent to approximately 22 working days.

Under the Labour Law an employee cannot lose his/her annual leave entitlement as this is a statutory benefit that vests in the employee. As such, accrued but untaken leave must either be carried forward or paid out (either at the end of the holiday year) or upon the termination of employment.

## DIFC

Whilst the entitlement to public holidays subsists throughout the UAE, in the Employment Law there is no right to enhanced payment if an employee works on such a day.

Employees are entitled to an annual paid vacation leave of a minimum of 20 working days (exclusive of public holidays) to be accrued pro rata for employees who have been employed for at least 90 calendar days. Accrued but untaken vacation leave can also be carried forward for a maximum of 12 months at which point it will expire. However, in the Employment Law payment in lieu of accrued untaken vacation leave can only be made upon termination of employment or if the employer agrees to otherwise make payment.

## 5. Working hours and overtime

### Dubai

The Labour Law provides that the maximum working hours for employees is eight hours per day. Employees working a five day working week may therefore work up to 40 hours; employees working a six day week may work up to 48 hours per week. Employees must not work over five consecutive hours without a break time of one hour. During Ramadan the normal daily working hours are reduced by two.

Overtime should not exceed two hours per day, other than in exceptional circumstances and is calculated as 125 percent of the normal hourly rate or 150 percent where the employee works overtime during the hours of 9.00pm and 4.00am, or on a Friday or other rest day.

Only those employees who are either the Chairman of the Board of Directors, the General Manager, Department Managers or supervisory staff, in all cases who act with the authority of the company, can be excluded from the overtime provisions.

### DIFC

The Employment Law provides that working time for employees will not exceed an average of 48 hours for each seven-day period. Whilst there are no provisions dealing with overtime, the working hours are in any event subject to the principle that they shall not be excessive or such as to be detrimental to the employee's health and safety.

During Ramadan, a fasting Muslim employee shall not be required to work in excess of six hours per day (without any commensurate reduction in remuneration).

An employee whose daily working time is more than six hours is entitled to an uninterrupted rest break of one hour. The daily rest period is not less than 11 consecutive hours in each 24-hour period. The weekly rest period is not less than 24 hours in each seven-day work period.

## 6. Sick leave and health insurance

### Dubai

Sickness absence entitlement under the Labour Law is 90 calendar days as follows: full pay for the first 15 days, half pay for the next 30 days, and no pay for the remaining 45 days. An employee on probation is not entitled to any paid sick leave.

An employer may legitimately terminate an employee's contract of employment, should they fail to resume their duties at the end of the sick leave entitlement, but not during it.

In November 2013, the Government of Dubai introduced legislation for all employers in the emirate to provide mandatory private medical health insurance to all employees. The application of this legislation was rolled out in phases, depending on the size of an employer's workforce. The final phase came into force on 31 March 2017.

### DIFC

The Employment Law provides a maximum paid sick leave entitlement of 60 working days in any twelve-month period. Employment may be terminated immediately in writing where an employee has taken in excess of an aggregate of 60 working days sick leave in any twelve month period.

Employers in the DIFC are required to provide health insurance cover for their employees.

## 7. Maternity leave

### Dubai

Employees are entitled to 45 calendar days maternity leave with full pay provided they have served a minimum of one year's continuous employment. The leave may be taken before and after confinement takes place. Where a shorter period of employment has been served, employees are entitled to the leave at half pay.

An employee is also entitled to an additional 100 calendar days leave without pay, if such absence is due to an illness occurring as a result of her pregnancy. During the 18 months following delivery, employees are entitled to two half-hour nursing breaks each day during the working week.

### DIFC

An employee is entitled to minimum maternity leave of 65 working days provided the employee has been continuously employed with the employer for at least twelve months preceding the actual or expected week of childbirth. Any national holidays falling on a working day within the maternity leave period shall be additional to and extend the period of maternity leave.

The employee is entitled to maternity leave pay at the following rates:

- Normal daily wage for the first 33 working days; and
- 50 percent of the normal daily wage for the remaining 32 working days.

An employee is not entitled to receive payment in lieu of maternity leave.

## 8. Haj leave

### Dubai

An employee is entitled to Haj or pilgrimage leave once during the course of his service. This is without pay and should not exceed a period of 30 calendar days.

### DIFC

The Employment Law replicates the Labour Law in this respect but subject to a service qualification of not less than one year of continuous employment.

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## 9. Annual return ticket

### Dubai

There is no requirement under the Labour Law to provide an annual flight home, however this is market practice and some freezones make this a mandatory requirement as part of their internal employment regulations. The employer may use their discretion to extend this entitlement to the employee's family if deemed appropriate.

### DIFC

Likewise, the Employment Law does not require employers to provide an annual flight home, but it is customary to do so.

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## 10. Termination

### Without notice

### Dubai

There are limited grounds under which an employer may validly terminate an employee's services without notice (and without payment of end of service gratuity (see below)). These exhaustive grounds are if the employee:

- Assumes a false identity or nationality, or produces fake documents or certificates
- Is terminated during the probation period
- Makes a mistake which causes the employer to suffer substantial material loss, provided that the employer informs the Labour Department of the incident within 48 hours of discovering it
- Has violated instructions for work or work place safety: provided that instructions were written and displayed in a prominent place and the employee was informed of them orally if the employee is illiterate
- Fails to carry out his basic duties as provided in the employment contract and has continued to do so despite receiving a written warning that his services will be terminated if he fails to rectify the situation
- Discloses a secret of the employer
- Is convicted of a crime involving honour, honesty or public morals
- Is found under the influence of alcohol or drugs during working hours
- Assaults his employer, manager or a colleagues during work
- Is absent from work, without a valid reason for more than 20 non-consecutive days in any year or for over seven consecutive days
- Works for another employer during annual or sick leave

## DIFC

The Employment Law adopts a similar principle in respect of termination without notice, referred to as termination for cause. Employment may be terminated for cause where the conduct of one party is such that a reasonable employer/employee would have terminated the employment in such circumstances. By contrast with the above exhaustive list in the Labour Law, the Employment Law adopts a principle of reasonableness in the response to the particular conduct.

## Unlimited term contract

### Dubai

If the contract of employment is for an unlimited term, both the employer and the employee may terminate the employment contract for any legitimate reason provided they give a minimum 30 days notice (maximum allowable notice period being 3 months). The contract of employment will continue to be valid during the course of the notice period and the employee can be required to continue working for this period. However, an employer can opt to make a payment in lieu of notice if it so chooses.

If the employer or the employee fails to give the required period of notice prior to terminating the employment contract, the party in breach will be liable to pay the other compensation in lieu of notice. This holds true even where such failure has caused no loss to the other party. Compensation in lieu of notice is calculated as the amount equal to the employee's wage for the notice period in full (or in proportion to the diminished part if some notice has been provided).

Termination of an employee's services may be considered arbitrary if the reason for dismissal given by the employer does not relate to the employee's performance. The Labour Law provides for compensation for arbitrary dismissal that is capped at three months' wages.

In addition to the above, an employer may not terminate the employee's services for health reasons before the employee has taken the period of sick leave he is entitled to and any agreement made to the contrary is null and void.

### DIFC

Subject to the right to terminate employment for cause, the notice required to be given by an employer or employee under the Employment Law to terminate a person's employment (where the person has been continuously employed for one month or more) shall not be less than (unless otherwise agreed by the employer and employee):

- seven days if the period of continuous employment is less than three months
- 30 days if the period of continuous employment is three months or more but less than five years
- 90 days if the period of continuous employment is five years or more

The parties may agree to waive or accept a payment in lieu of notice.

## Fixed-Term contract

### Dubai

In the event that an employer terminates a fixed term contract prior to the expiry of the fixed term period, it is liable to pay the employee early termination compensation equivalent to three months' salary or for the remainder of the contact period (if this period is shorter). It is important that legal advice is sought in relation to the drafting and termination of fixed term contracts as a notice period could potentially be imposed by operation of law.

If the employee terminates a fixed term contract prior to the expiry of the fixed term period, he is liable to pay the employer early termination compensation equivalent to half of three months' salary or for half of the remainder of the contract period (if this period is shorter).

### DIFC

No specific distinction is made between unlimited term and fixed-term contracts in the Employment Law. Termination of a fixed-term would be subject to the notice provisions that apply to an unlimited term contract, but if a fixed-term contract is terminated before the expiry of the fixed-term without cause, the employee may also claim damages for the unexpired period of the fixed-term. There is no express provision for early termination compensation or similar in the Employment Law.

## 11. UAE national employees

### Dubai

In 2009, the Ministry of Human Resources and Emiratisation issued a decree that limits the circumstances in which a UAE nationals employment can be terminated by an employer. The decree states that the termination of UAE nationals in the private sector is unlawful if the employer does not first notify the Ministry of the proposed dismissal (and at least 30 days before the termination date). The Ministry will investigate whether the UAE national's employment is being terminated for valid reason and if the Ministry decides the termination is not for a legally valid reason, the employer is given 15 days to resolve the situation.

### DIFC

Under the Employment Law, UAE national employees do not enjoy any specific enhanced protection against termination from employment.

## 12. End of service gratuity

### Dubai

In the UAE, an employee who has completed at least one year of continuous service is entitled to an end of service gratuity payment on termination of employment, which is calculated with reference to the last basic salary (excludes any allowances) as follows:

- 21 calendar days' basic pay for each year of service for the first five years
- 30 calendar days' basic pay for each year of service above five years

The entitlement is subject to a cap of two years' wages and is not payable in the event that an employee is validly terminated without notice.

There is a sliding scale of entitlement to end of service gratuity depending on the length of service where an employee resigns from service:

| Service | Fixed term contract | Unlimited term contract |
|---|---|---|
| 1 - 3 years | No entitlement | Entitlement reduced by two thirds |
| 3 - 5 years | No entitlement | Entitlement reduced by one third |
| 5+ years | Full entitlement | Full entitlement |

Employers commonly divide an employee's total remuneration into basic salary and allowances. However, there is no legal obligation to break down salary this way. It is common practice to set basic salary at 60 percent of the total remuneration and in this way employers reduce their overall end of service gratuity liability.

Should the employer wish to provide a pension scheme to non-nationals, the employees are entitled to select either the pension scheme or the end of service gratuity (whichever is more favourable to the employee). Employers offering pensions should expressly specify that any pension provided is in lieu of the employer's obligation to pay end of service gratuity (pensions offered in lieu cannot be less favourable than end of service gratuity), otherwise, the employee is entitled to collect both payments on termination.

## DIFC

The end of service gratuity in the DIFC is not subject to a sliding scale of entitlement and there is no differentiation between unlimited and fixed-term contracts.

Under the Employment Law, an employee who completes continuous employment of one year or more is entitled to a prorated gratuity payment at the termination of employment calculated as follows

- 21 calendar days' basic wages for each year of the first five years of service
- 30 calendar days' basic pay for each year of service above five years

The entitlement is subject to a cap of two years' wages and is not payable in the event that an employee is validly terminated for cause.

The payment of gratuity can only be contracted out in the event that the employer has put in place a pension scheme and the employee has agreed to opt into such scheme in lieu of gratuity.

## 13. Pension for UAE & GCC nationals

### Dubai

Employers are legally obliged to contribute to a state pension for all eligible UAE and GCC national employees, and an end of service gratuity payment for non-eligible UAE and GCC national employees (and expatriate employees). There is no legal obligation to provide non-eligible UAE and GCC national employees with a private pension; however, as referred to above in certain circumstances, eligible employer maintained pension schemes may replace the obligation to pay end of service gratuity.

### DIFC

The Employment Law requires an employer to enroll eligible UAE and GCC nationals to the state pension scheme in accordance with the applicable Federal legislation.

## 14. Repatriation ticket

### Dubai

Where an employer terminates a contract of employment, it should provide the employee with a repatriation ticket to the employee's home country, except where the employee has been validly terminated without notice. If the employee resigns, there is no obligation to provide the repatriation ticket unless the employee does not have the means to pay. There is also no requirement to provide repatriation if the employee takes up alternative employment in the UAE.

### DIFC

The terms of the Personnel Sponsorship Agreement between the DIFC Authority (DIFCA) and the employer provide that unless an employee obtains a new residence and work permit within 30 days from the date of termination of the employment contract, the employer shall immediately apply to the DIFCA for cancellation of the residence and work permit and provide the employee with a repatriation ticket to his country of origin.

## 15. Emiratisation

### Dubai

This is essentially a positive discrimination policy with financial incentives for employers to recruit UAE nationals in the private sector. The policy seeks to increase the number of UAE nationals in the private sector by providing recruitment targets for employers. The government offers lower transactions fees for processing entry permits, residency visas, and labour or ID cards for employers who meet those targets and who seek to maintain a diverse workforce.

The current rates of Emiratisation are set at a minimum of two per cent for all private sector employers (where a company has at least 50 employees), other than the banking and insurance sectors where there are higher rates applicable and increase year on year as determined by the UAE Central Bank and the UAE Insurance Authority respectively.

A Cabinet Resolution, which came into effect in January 2011, introduced a new classification system for employers as well as a penalty and black point scheme should employers commit certain offences against the Emiratisation policy. The Resolution also includes incentives (by way of an exemption from paying bank guarantees for employees) where UAE nationals employed at a professional level are at least fifteen per cent of the total workforce. However, there are other requirements to obtain this classification, particularly for banks and insurance companies.

In December 2016, the Ministry of Human Resources and Emiratisation introduced a pilot program to promote Emiratisation in the private sector. 250 private sector companies have been selected and notified of a new process for hiring employees. When the company applies for a new work permit in order to hire an expatriate employee, it will be referred to the resumes of potential UAE national candidates. The company must interview at least three UAE national candidates and may choose to hire one of the recommended UAE national candidates or can provide reasoning for not hiring the candidates. It is yet to be seen if the Ministry will roll out this program across the UAE.

Emiratisation quotas are not applicable in the freezones.

**DIFC**

Emiratisation quotas are not applicable in the DIFC.

## Immigration considerations

In most instances, the issuance of residency visas for expatriates in the UAE is linked to the employment of individuals by a UAE registered employer. The employer is responsible for procuring either a work permit from the Ministry of Human Resources and Emiratisation or a freezone identity card issued by the relevant freezone authority. Employers in the UAE are required to provide sponsorship to its employees for residency purposes, with the exception of persons sponsored by spouses or on dependant residency visas, or nationals of GCC states. Where an individual does not require sponsorship for visa purposes from their employer, the employer is still obliged to procure a work permit/identity card. In addition, it is compulsory for all employees to apply for an Emirates ID card as part of the residency visa process.
Employers are obliged, as part of the residency process, to issue standard form offer letters and employment contracts prescribed by the Ministry of Human Resources and Emiratisation or, in respect of freezones, a relevant freezone authority prescribed contract. These contracts are required to be submitted to the relevant authority as a condition to obtaining a residency visa and/or a work permit/identity card.

The residency visa process generally follows the following stages:

- Filing of countersigned offer letter to the Ministry of Human Resources and Emiratisation (not required in respect of freezones);
- Filing of countersigned employment contract and application made to the Ministry of Human Resources and Emiratisation/freezone for 'entry permit' to allow the individual arrive in UAE;
- Security and background check undertaken on the individual. Certain nationalities are currently barred from obtaining new UAE residency visas;
- Entry by the individual into the UAE for employment purposes;
- Undergoing a medical examination which usually consists of a blood test and chest x-ray to primarily identify infectious diseases. The presence of certain infectious diseases will lead to the application for residency to be automatically rejected;
- Application for work permit/identity card and Emirates ID card;
- Application for residency submitted to the immigration authorities; and
- Submission of application to have the residency visa stamped in the passport. Residency visas are valid for two years (three years if issued by a freezone).


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Emirates