

Using an SPV as a holding company

Nasouh Raslan - Associate - Corporate Structuring / Corporate Services
- Abu Dhabi



Introduction

In this article, we will discuss the use of Special Purpose Vehicles ('SPV') as a holding company. We will also discuss how business families, investors, entrepreneurs, property investors and existing companies can use a SPV to their advantage. Unless otherwise mentioned, the discussion will be in the context of a SPV registered in Abu Dhabi Global Market ('ADGM').

What is a SPV?

A SPV is a type of company that its shareholders set up for a specific purpose. One can use an ADGM SPV to hold assets such as shares of private companies (e.g. UAE mainland limited liability companies ('LLCs')), shares in publicly listed companies, real property, intellectual property rights ('IP rights') (e.g. trademarks), etc.

A SPV can only engage in "passive" activities and it is not allowed to act in an operational manner. So while for example, a SPV can hold shares in a construction company or a software development company, the SPV cannot itself engage in construction activities or software development activities. On this basis, the SPV does not have employees and would not be eligible for any work or residency visas in the UAE.

An ADGM SPV is not permitted to rent a physical office for purposes of registration, and is required to use the registered office of a group company (e.g. parent or subsidiary) based in ADGM or that of a corporate service provider registered in ADGM.

ADGM is an English common law jurisdiction, and it applies certain (amended) provisions of common law and equity. In other words, ADGM recognises the use of equitable arrangements such as nominee agreements and trust agreements. Foreign investors who are investing in UAE mainland LLCs can consider combining both a SPV and equitable agreements. This can help foreign investors to both protect their interests and comply with the UAE mainland local ownership requirements.

Why use a SPV?

1. Flexibility of asset ownership

Many different parties can benefit from using a SPV. For example:

1. **Investors and business people** who own shares in UAE LLCs in their personal name can corporatise their holding and use a SPV instead (for a further discussion on the benefits of Corporatising your Ownership Structure, please see our article [here](#));
2. **Individual and corporate real estate investors** who own property, or who plan to own property, may also use the SPV to hold the asset. A SPV can be used for a single property or for a property portfolio. Investors with large property portfolios may want to consider the feasibility of allocating ownership of the properties to different SPVs, e.g. whether by geography (Abu Dhabi, Dubai, etc.) or by property type (residential, commercial, industrial, etc.) or by some other split. However, note that since SPVs are a relatively new vehicle in the region, not all jurisdictions may be familiar with them. Therefore, it is advisable to confirm, with the property regulator in the jurisdiction where the property is based, whether a SPV can hold the specific property;
3. **Inventors, companies, start-ups, and start-up founders** who create or hold intellectual property can use a SPV specifically to hold those IP rights. The SPV can then enter into licensing and IP agreements as needed, and the shareholders will have a vehicle into which they can pool any royalties or licensing fees;
4. **Business families**, especially if they have a complex family holding structure. This can be, for example, where the founder (in their personal name) holds the shares of certain family companies, and their siblings or offspring hold the shares in other family companies, and yet all are operating under the family company umbrella. The family can use SPVs to streamline their ownership at the family level, and allocate different family companies to different SPVs, e.g. on a geographic- (UAE entities, Abu Dhabi entities, Bahrain, etc.) or sector-specific basis (hotel company shares, retail company shares, etc.) or other split (e.g. one family SPV for assets that the family fully owns, and another family SPV for assets in which the family has co-shareholders); and
5. **Companies entering into joint venture ('JV') agreements** can consider whether they prefer to establish, with their partners, a SPV specific to that JV (i.e. the company and the partner will be the SPV's shareholders). Another option is for the company to establish its own SPV which will then enter into the JV with the partner.

2. Segregating risk

A SPV would be in the form of a "private company limited by shares". Since the SPV is a private company, the liability of the shareholders would be limited to any investment made (or yet to be made) in the company. The shareholders' other assets (i.e. outside the SPV) would generally not be exposed to liability, except where, for example, a shareholder made a personal guarantee or a corporate guarantee regarding the liability.

So to follow the examples from above, the liabilities of the following would be separated from one another:

1. **the Investors and business people**, the SPV and UAE LLC;
2. **The individual and corporate real estate investors**, “Dubai Property SPV”, “AUH Property SPV” and “Residential Property SPV”;
3. **Inventors, companies, start-ups, and start-up founders**, “IP SPV Invention 1” and “IP SPV Invention 2”;
4. **Business families** as individuals, “Family SPV”, “UAE Entities SPV”, “Bahrain Entities SPV”, “KSA Hotel SPV” and “Retail SPV”; and
5. **Companies entering into joint venture (‘JV’) agreements** and “JV1 SPV” and “JV2 SPV”

3. Third party beneficiary arrangements

As mentioned above, ADGM recognises the use of third-party beneficiary arrangements such as nominee agreements and trust agreements. ADGM approves their use so long as the agreement is compliant with ADGM’s provisions.

This can be relevant for SPV shareholders who want to protect the rights of third parties, or where the parties agree for one shareholder to hold the shares on behalf of another party. So while for example “Individual A” can be the 100 per cent legal shareholder of an SPV, ADGM allows that “Individual B” can be the 100 per cent beneficial owner of the shares.

4. Flexible shareholding

ADGM has a flexible shareholding regime where:

1. there are no residency requirements on the shareholders;
2. there is no minimum capital requirement;
3. shareholders are allowed to have multiple classes of shares (e.g. ordinary voting shares, multiple voting shares, preferential dividend shares, etc.), and enter these in the SPV’s Articles of Association; and
1. shareholders can have incorporate pre-emption rights such as rights of first offer, drag-along rights, and tag-along rights into the Articles of Association or separate shareholder’s agreement.

Other considerations regarding the SPV

1. The ADGM SPV nexus requirement

When applying to register an ADGM SPV, the applicants must satisfy the ADGM Registration Authority, which is the ADGM companies’ regulator, that the SPV will have an appropriate connection, or ‘nexus’, to ADGM, the UAE or the GCC. This means the applicant must demonstrate that, and the ADGM Registration Authority must be satisfied that:

1. an UAE or GCC based individual, family, or company will own or control the SPV; or
2. the SPV holds or will hold assets based in the UAE or GCC; or
3. the SPV facilitates transactions connected, or provides real or economic benefit, to the UAE [For a discussion on the use of ADGM SPVs for financing transactions and for securitisation purposes, please see [here](#)]; or
4. the SPV’s purpose includes issuing securities that the ADGM Financial Service Regulatory Authority approves for listing in ADGM, or on a trading platform or exchange in ADGM.

However, a non-UAE resident individual or company, that will only hold assets based outside the UAE or GCC is unlikely to meet the nexus requirement.

2. ADGM SPVs and Tax Residency Certificates ('TRCs')

The UAE is a signatory to several double-taxation treaties worldwide. The UAE Ministry of Finance is the party that reviews applications for TRCs, and which decides whether or not to issue them.

Generally, ADGM SPVs are not eligible for TRCs. However, if the SPV has an UAE parent company that has operational assets in the UAE, or if the SPV owns an UAE subsidiary that has operational assets in the UAE, it may receive the TRC (subject to the Ministry of Finance's discretion).

3. ADGM SPVs and Economic Substance Regulations

"The Cabinet of Ministers Resolution No. 31 of 2019 Concerning Economic Substance Regulations" ('ESR') applies to all entities in the UAE whether these are registered on the mainland or in free zones. The ESR specifies certain activities, and companies that perform these activities must demonstrate adequate economic substance in the UAE.

A SPV generally would be performing the "Holding Company Business" activity as per the ESR. To the extent the SPV owns any IP Rights, it would also be performing the "Intellectual Property Business" as per the ESR. This means that the SPV would be required to demonstrate adequate economic substance in the UAE according to the guidelines set for both those activities.

Conclusion

An ADGM SPV is a holding company that business families, investors, entrepreneurs, property investors and existing companies can customise to cater to their needs. The SPV is flexible enough to hold shares, property, and IP rights. The SPV may make use of multiple share classes with different rights, as well as third-party beneficiary arrangements such as nominee agreements and trust agreements.

For further information, please contact [Nasouh Raslan \(n.raslan@tamimi.com\)](mailto:n.raslan@tamimi.com).