UAE Holding Structure: an umbrella for your African operations

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Introduction

The UAE is a federation of seven emirates, located in the Arabian Peninsula. Having its land and maritime borders with Oman, Saudi Arabia, Qatar and Iran, it is well positioned between Africa and Asia. With its central location and openness to business, the UAE offers a wide range of corporate structures to African investors with additional potential tax benefits depending on the application of Double Taxation Agreements concluded between the UAE and a host of African States.

Each emirate has its own unique characteristics

Abu Dhabi has traditionally been dependent on its strong hydrocarbons industry and large government sector. In the past years it has focused its attention and energies to develop a wider industrial base, and with a particular emphasis on food security and the “industries of the future” such as artificial intelligence and cybersecurity.

Dubai is a cosmopolitan city that attracts the doers and the dreamers. Lacking the vast oil wealth of its neighbour Abu Dhabi, for the past decades has concentrated its efforts to become the region’s most business- and tourist-friendly jurisdiction. It attracts businesses large and small, as well as tourists from all over the world. It is a diverse city with a vibrant culture, and is home to the Burj Khalifa, the world’s tallest building.

Sharjah, Ajman, Fujairah, Ras Al Khaimah and Umm Al Qaiwain are sometimes referred to as the “Northern Emirates”. They have smaller populations than Abu Dhabi and Dubai, and do not have hydrocarbon wealth. However, they have successfully carved a niche for themselves in industries such as culture, outdoor activities, eco-tourism, and mining and quarrying.

The UAE also has signed “Double Taxation Agreements” with 27 African nations. These are Algeria, Angola, Benin, Burundi, Cameroon, Comoro Islands, Egypt, Equatorial Guinea, Ethiopia, Gambia, Guinea, Kenya, Libya, Maldives, Mali, Mauritania, Mauritius, Morocco, Mozambique, Nigeria, Rwanda, Senegal, Seychelles, South Africa, Sudan, Tunisia, and Uganda.

The above characteristics, combined with the numerous airline connections into and out of the UAE, make the country a natural choice for African businesses to establish themselves. The UAE’s unique characteristics will offer to African businesses seamless access to their Asian or European business partners/clients.

Holding entities

A holding entity is a company that its shareholders set up to hold assets such as shares of private companies, shares in publicly listed companies, real property, intellectual property rights (‘IP rights’) (e.g. trademarks), fixed assets, etc.

Holding entities can be used on a stand-alone basis or form complex structures whereby, for example, there exists a master holding entity and sub-holdings for specific geographies or sectors that specific assets fall under. Holding vehicles offer streamlined investment arrangements with a degree of flexibility.

Assuming the jurisdiction in which the assets are situated allows it, one can use a UAE-based holding entity to hold their African assets. For example, one can use a RAK ICC company to hold hotels and hospitality assets in African resorts. Alternatively, one can use an ADGM LTD to hold the IP rights of brands prominent in the African consumer markets. Or one can use a DIFC Holding Company to own shares in a portfolio of fintech companies operating in Africa.

UAE mainland

In the UAE, each Emirate has its own business regulator or “department of economic development” (‘DED’). This is where companies obtain a commercial licence that sets out which business activities the company can perform in the specific Emirate. Colloquially businesses with a DED licence are referred to as “UAE mainland companies”.

Companies with a DED licence are subject to UAE Federal No. 2 of 2015 Concerning Commercial Companies (the UAE Commercial Companies Law), which specifies that these companies must have at least 51 per cent ownership by UAE nationals.

However, this ‘local ownership requirement’ has been loosening in the past few years. Depending on the business activity, non-UAE nationals may be eligible to hold a majority, and potentially 100 per cent of the shares in their mainland companies.

A holding company can be established in the UAE mainland, and subject to the DED requirements of the particular Emirate.

Free zones

UAE law allows that companies established in UAE free zones can have up to 100 per cent foreign national ownership.

A free zone is a defined geographic area that is governed by a set of economic and business incentives that are different from the ones generally applicable in the jurisdiction in which it is based. The aim of a free zone is to support the development of a business or industry cluster, encourage foreign investment, boost employment, promote trade and diversify the economy.

There are over 30 free zones in the UAE spread across the different Emirates. While some free zones focus on specific sectors, others are more general. Several of the free zones allow for establishing holding companies. We discuss some of them below.

Abu Dhabi Global Market (ADGM)

There are two options for holding companies in ADGM, the financial free zone in Abu Dhabi.

SPV

The first option is to establish a special purpose vehicle or “SPV”. By definition, a SPV is a type of company that its shareholders establish for a specific purpose. It is a passive company and is not meant to be used for anything else. As a pure holding company, it is not allowed to have employees.

However, it is important to note the “ADGM SPV nexus requirement”, in which the applicant 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 Gulf Cooperation Council countries. 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; 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. In general, in the context of Africa-based assets, the SPV would make sense if the shareholder is a UAE resident or national.

The establishment requirements include an application form, and the applying entity’s constitutional documents, registry extracts, and ultimate beneficial owner details. The documents would need to be issued by the relevant authority or registrar, without the need for attestations at the Ministry of Foreign Affairs. Additionally, the applicant is required to provide proof of identity of the proposed director(s) and company secretary (optional).

The company is not allowed to have employees, and it must have a registered office address based in ADGM.

The application fees are approx. US$1,600 with approx. USD$,200 in renewal fees. However, one should consider the additional costs such as the registered office address.

The timeline to incorporate an SPV in ADGM is approximately 10 business days after submitting a complete application.

LTD

The second option is to establish a regular private company limited by shares (‘LTD’), but which has a ‘holding company’ activity. The LTD is an operational company, and can have different business activities on its commercial licence.

The LTD does not have a nexus requirement as to where the shareholders or assets are located.

The establishment requirements include an application form, and the applying entity’s constitutional documents, registry extracts, and ultimate beneficial owner details. The documents must be issued by the relevant authority or registrar, but do not require attestations at the Ministry of Foreign Affairs. Additionally, the applicant is required to provide proof of identity for the proposed director(s) and company secretary (optional).

The company is allowed to have employees, and it must have a physical office address based in ADGM. The maximum number of employees is dependent on the size of the office premises.

The application fees are approx. US$10,300 with approx. US$8,100 in renewal fees. However, one should consider the additional costs such as the physical office address.

The timeline to incorporate an LTD in ADGM is approximately 10 business days after submitting a complete application.

Dubai International Financial Centre (DIFC)

The DIFC allows applicants to establish holding companies in their jurisdiction (‘DIFCCo’). A DIFCCo can hold shares and assets within and outside the UAE (if the jurisdiction in question permits).

The requirements to form a DIFCCo include completing an application form, providing the applying entity’s constitutional documents, registry extracts, and ultimate beneficial owner details. The corporate documents would need to be attested by the Ministry of Foreign Affairs and the UAE Embassy in the country of origin of the incorporating shareholder(s), and legalised by the UAE Ministry of Foreign Affairs and International Cooperation. Additionally, the applicant is required to provide proof of the identity for the proposed director(s) and company secretary (optional).

A DIFCCo is allowed to have employees, and it must have a physical office address in the DIFC.

The application fees are approx. US$22,500, and the ongoing license renewal cost is US$12,500.

It usually takes about 6-8 weeks to form a DIFCCo, from the time when the application process has been initiated.

Jebel Ali Free Zone (JAFZA)

A JAFZA Offshore Company (’OffshoreCo’) is a limited liability company that can act as a holding entity. It can, but is not required to, have assets based in the UAE. It cannot, however, conduct commercial activities in the UAE. Rather, it can only hold shares and assets within and outside the UAE (if the jurisdiction in question permits). The OffshoreCo is required to have a registered agent.

The incorporation requirements include submission of an application form, provision of the applying entity’s constitutional documents, registry extracts, and ultimate beneficial owner details. The corporate documents must be attested by the Ministry of Foreign Affairs and the UAE Embassy in the relevant country, and legalised by the UAE Ministry of Foreign Affairs and International Cooperation. Additionally, the applicant is required to provide proof of identity for the proposed director(s) and company secretary.

The OffshoreCo is not allowed to have employees, and it must have a registered agent, locally licensed to provide the registered agent services. Its address would normally be that of the registered agent.

The application fees are approx. U$ 2,750 with approx. US$850 in renewal fees.

The OffshoreCo can be incorporated in 10 business days, from the date of submission of a complete application pack with Jebel Ali Free Zone Authority.

RAK International Corporate Centre (RAK ICC)

One can establish a holding company (special purpose company) in RAK ICC.

The requirements to form it include submitting an application form, and the applying entity's constitutional documents, registry extracts, and ultimate beneficial owner details. The corporate documents must be attested by the Ministry of Foreign Affairs and the UAE Embassy in the relevant country, and legalised by the UAE Ministry of Foreign Affairs and International Cooperation.

The company is not allowed to have employees, and it must have a locally-licensed registered agent.

The application fees and are approx. US$850 with renewal fees of US$850 per year.

A RAK ICC holding entity can be formed in about a week, after submitting the complete application pack with the regulatory authority.

Attractive corporate structure

Given the variety of UAE options where one can establish a holding entity, and the flexibility of this corporate vehicle, African investors and businesses can establish one to suit their needs. Considering also that a large number of African countries have signed a Double Taxation Agreement with the UAE, African investors and businesses can set up an attractive, robust and tax-efficient structure in the UAE.

In light of the strong historical links between the GCC and the larger MENA region and the tradition of business co-operation, it appears only natural that the ever more global nature of doing business will allow the UAE become an attractive proposition for African businesses seeking for investment holding options.

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