

Licences to Occupy Premises and Concession Agreements

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The need to share business premises

Businesses often need to share their premises with other companies and in the UAE they first need to consider some practical and legal issues. If businesses do not consider these issues they could be in breach of the terms of their leases and in contravention of labour laws, unable to obtain or renew their commercial licences or secure visas for their employees.

Across the globe many businesses need to share use of their business premises from time to time, for example:

- Businesses may share the use of offices with others in order to work together on joint projects;
- It may be necessary or beneficial for connected companies to share premises for logistical or cost reasons;
- Retailers routinely grant concession agreements to enable unrelated businesses to promote certain brands within their stores;
- Employers may contract with third parties for the delivery of services to their employees within their premises, perhaps for a staff cafeteria or an onsite crèche.

These sorts of arrangements usually need to incorporate a degree of flexibility so that they can be changed at short notice as commercial circumstances require.

In many jurisdictions businesses are able to grant licences to occupy premises or concession agreements to enable third parties to share their premises without the need to complete formal leases. Using these documents it is often possible to conclude arrangements more quickly and at lower cost than by completing formal leases. In many parts of the world licences to occupy and concession agreements also allow businesses to retain flexibility when sharing premises as they can usually be varied or terminated with much more ease than leases.

The concepts of granting licences to occupy premises or concession agreements is not recognised by UAE law so businesses in the UAE which need to share premises should consider putting in place alternative arrangements. Failure to put in place these alternative arrangements could expose businesses to both practical and legal difficulties.

Practical and legal difficulties

Difficulties businesses can expect in the UAE if they record the sharing of premises using licences to occupy or concession agreements, rather than a suitable alternative arrangement, include:

• Breach of lease terms

Article 787 of the UAE Civil Code provides that the prior consent of the landlord is required for any subletting. If a business is the tenant of premises and purports to grant a licence to occupy or concession agreement of part of those premises to another company then, as the concept of these documents is not recognised under UAE law, such action is likely to be regarded as the grant of a sublease. A business may therefore find that it has acted in breach of the terms of its lease by granting a sublease without the prior consent of its landlord. In this situation a claim may be brought before the Rent Committee in Dubai or

Abu Dhabi to terminate the unauthorised sublease and possibly also to terminate the head lease;

- **Labour law issues**

UAE labour law requires that employees work at the registered premises of their employer. If an employer has entered into a licence to occupy or concession agreement, rather than a formal lease, then the employer's right to use the premises as a place of employment may not be recognised. It is likely that an employer that does not have a legally recognised right to use premises will encounter difficulties when applying for visas for its employees. Furthermore, if inspectors from the authorities carry out an inspection and find employers from the holder of a licence or concession agreement working at the premises, there could be serious repercussions for both the tenant and the holder of the licence or concession agreement;

- **Licensing issues**

All businesses must provide evidence to the authorities that they either own or have a valid lease of premises when applying for new commercial licences and on renewal of existing commercial licences. The business must show that it has ownership or a valid lease of its own defined and recognisable premises. A licence to occupy premises or a concession agreement is unlikely to be sufficient for this purpose.

Alternative arrangements

Although in the UAE it is not possible to have licences to occupy premises or concession agreements in the forms known in many other jurisdictions, we have advised many clients on suitable alternative arrangements.

It is often possible to agree with landlords during the negotiations for the grant or renewal of a lease of business premises that these arrangements will take effect if the business needs to share use of its premises. Alternatively, if the terms of the lease have already been concluded then it is possible to introduce alternative structures to accommodate the needs of the business. These structures can either be temporary, to accommodate the requirements of a particular project or short term need, or they can deal with long term sharing of premises.

There are also arrangements we can suggest that overcome the labour law and licensing difficulties businesses may experience when sharing premises. These arrangements ensure that the business does not breach the terms of its lease or contravene the law whilst at the same time maintaining the flexibility necessary to accommodate its commercial needs.