

Economic Activities Practice In The Emirate Of Dubai

Joumana Azzam
j.azzam@tamimi.com

Law No. 13 of 2011 ("The Law") which came into force on the 24th of August 2011:

1. codifies existing practice for licensing of business activities in the Emirate of Dubai;
2. sets new rules for licensing of certain business activities; and
3. identifies the role of the Department of Economic Development ("DED") in the licensing process.

In this article, I will briefly outline:

The objectives of the Law as described above, the role of the DED in this regard and important matters covered by this recent Law. In this article wherever the term "Establishment" has been used, this refers to a limited liability company, a branch office or other form of corporate entity recognized under the commercial companies law No. 8 of 1984 and its amendments.

A. OBJECTIVES OF THE LAW AND COMPETENCES OF THE DEPARTMENT:

The aim of the Law No. 13 of 2011 is to:

1. Organize the conduct of business activities, encourage investment in different economic fields, spread economic and investment awareness and identify investment opportunities in Dubai.
2. Create coordination among competent government authorities in the commercial licensing process.
3. Ensure accuracy, transparency and availability of information to facilitate public and private stakeholders.

To achieve these objectives, the DED is entitled to:

1. Set the rules required for the conduct of business activities in Dubai subject to the oversight and conditions set out by the executive council of the Emirate of Dubai.
2. Set rules for the validity of business licenses and the extension of such licenses.
3. Issue business licenses and register Establishments in the commercial register.
4. Develop and upgrade rules and regulations periodically according to the business needs of Dubai.
5. Control and inspect intellectual property rights, fight commercial fraud and put in place and manage the processes of consumer protection in Dubai.
6. Regulate and inspect Establishments licensed in Dubai to ensure their compliance with the rules and conditions of their business licenses.

B. A GENERAL OVERVIEW OF MATTERS COVERED BY THE LAW:

Generally, Law no.13 codifies earlier practice of licensing Establishments in Dubai.

The licensing mechanism

The licensing of an Establishment starts by applying to the DED which shall examine the application to confirm its compliance with applicable rules and regulations, and to ensure that it satisfies the conditions prescribed for the legal form of the Establishment.

The term of the License of the Establishment may be for a period of one to four years, to be renewed

during the last month of its expiration within a time frame of thirty days (grace period) from the date of expiry.

Amending license or legal form of the Establishment

Amendments in the legal form of an Establishment or in its constitutional documents shall be published in at least one daily newspaper if prior consent of the DED and concerned authorities is required. In the event of any objection by third parties to such amendments, the objector must submit its objections to the competent court. The proposed amendment will therefore become subject to the order of the court.

Permission for marketing business activity

Before an Establishment may conduct any marketing campaign of its products or services, it must obtain prior permission from the DED.

Legal Form of the Establishment

The Law reiterates existing practices to conduct business activities in Dubai through the below legal forms:

- (a) partnership.
- (b) civil company.
- (c) the limited liability company, which includes the simple form limited liability company, a private joint stock company and a public joint stock company.
- (d) branch of local or foreign company or branch of company incorporated in the free zone.

Grant of business activities discretionary with the DED

The DED is entitled to expand or reduce the business activities set out in a license which can be granted to an Establishment in the Emirate of Dubai based on the requirements of public interest and subject to approval, if any, of the concerned authorities.

The DED may suspend some economic, industrial, agricultural and service and professional activities or any other activities for a certain period or amend the conditions or restrictions imposed.

The role of the Local Service Agent

The role of the local service agent appointed for a branch or a representative office of a foreign company and his responsibilities in this regard have not been changed. His role continues to be that of a facilitator in matter connected to the government, without assuming any civil or financial liabilities connected with the business of the Establishment.

Exemption from condition to lease office:

The general rule is for the Establishment to conduct business activities from a suitable leased/owned office, but there can be an exception to the office condition where the DED allows UAE nationals to set up an Establishment to conduct certain business activities from their homes.

Obligation of the Establishments

Under the law, Establishments shall:

1. comply with applicable laws, regulations and decisions in the Emirate of Dubai.
2. notify the DED of any change or amendment in any of its particulars and provide the DED with any new information.
3. use its trade name as defined in the license issued to it in all its transactions with third parties.
4. keep clear financial statements and a special register for the companies' shareholders and allow authorized employees of the DED - who will act as judicial officers - to access the Establishment and

review its data and records.

Penalties

The Executive Council of the Emirate of Dubai shall have the authority to determine acts which infringe the Law, and a fine between AED100 to AED100,000 may be imposed in case of any violation to the Law.

Amicable settlement

Any infringing Establishment, which has not committed an infringement of the law within past 12 months of the commission of an infringement, may request the DED amicable settlement, subject to payment of minimum 50% of the due fine. Following the settlement, the Establishment shall be bound by any conditions set by the DED as part of the settlement.

Grievance against DED decisions

Any person aggrieved by a decision of the DED may challenge the decision in writing to the general manager of DED within 30 days from the date of his knowledge of such decision.

By a decision of the general manager, a committee shall be formed to consider the grievances of the aggrieved party. The said committee shall process these grievances within thirty days of the date referred the grievance to it, and the decision made in this regard by the said committee shall be final.

Representation of the general successor

According to the Law, if an owner or the shareholders of an Establishment decease, their heirs or successors shall appoint from amongst them who shall represent them and their interest in the Establishment. In the event that they do not agree on the appointment of a representative, a representative appointed by the court shall be accepted by the DED.

Suspension of the business

This practice of temporarily suspending business licenses has been applicable by the DED since last year, but it is now modified by article 13 of the Law no. 13 of 2011, which allows the owner of an Establishment to approach the DED requesting to suspend the validity of an expired existing business license for a limited period ranging between one to three years during which the operation of the Establishment should remain suspended for the period during which the license remains suspended.

New regulation and practice for the professional and handicraft Activities

In order to encourage further investments in different economic fields, the Law allows both UAE nationals and others to be engaged in certain professional activities such as handicrafts, which were earlier reserved for UAE nationals.

Those activities can be conducted through registering a sole establishment or a limited liability company where a corporate person may also be a partner provided the nature of his activity is similar to the activity to be practiced.

Licensing free zone Establishments in Dubai

The Law enables free zone companies to open their branches in Dubai, subject to applicable laws and procedures.

In compliance with the controls and applicable conditions set by the Executive Council of the Emirate of Dubai, the branch of a free zone company can be registered in Dubai without appointing any local service agent if:

- a. 100% UAE or GCC nationals own the free zone company, or
- b. 51% of the owners are UAE nationals

If the shareholders are all foreigners, or if citizens of the UAE own less than 51% in the free zone company, a local service agent must be appointed when setting up a branch of the same in Dubai. In the event of appointing a local service agent, such branch must be registered with the foreign companies registry at the Ministry of Economy.

Closure of the Establishment

Pursuant to the Law, DED may close an Establishment or cancel its license in the event of non-renewal of its license, or in case of suspension of its business operation; such closure, is published in a local newspaper and if no objection is received within two weeks of the date of publication the closure will be confirmed.

Reasons for cancellation of the Establishment license by the DED are:

- (a) violation of the provisions of the Law no.13 and the applicable legislations .
- (b) if such license was issued based on false information or documents.

The cancellation of the license shall not prejudice the rights and liabilities of the Establishment or holder of the license towards third parties.

C. IMPLICATIONS OF THE NEW LAW ON EXISTING LICENSES:

The Establishment licensed before issuance of this Law shall have a grace period of no more than one year after the date of its enforcement to comply, and the general manager of the DED may extend this term for another similar term.

Comments and Conclusions:

The Law no. 13 of 2011 has confirmed the primary role of the DED in organizing the business activities in the Emirate of Dubai and has modified many practices being followed in the past.

The Law established the DED as a one window service center for licensing Establishments by enabling the DED to provide approvals from several concerned authorities before issuing the license; this will ultimately facilitate the licensing procedures for investors.