

Establishing innovation-based commercial entities in Dubai

Samer Qudah - Partner, Head of Corporate Structuring - Corporate Structuring
s.qudah@tamimi.com - Dubai International Financial Centre

Ahmad Saleh - Partner, Head of Innovation, Patents & Industrial Property - Innovation, Patents & Industrial Property (3IP)
ah.saleh@tamimi.com - Dubai International Financial Centre

Noff Al Khafaji - Senior Counsel - Corporate Structuring / Corporate Services
n.alkhafaji@tamimi.com - Dubai International Financial Centre

March 2015

Dubai has created a number of options to encourage innovation-based companies to set up entities in Dubai in an environment that is both supportive and dynamic.

This article sets out how and why you may wish to set up an innovation-based company in Dubai.

Introduction to setting up an entity in Dubai

Dubai offers multi-jurisdictional corporate setting-up opportunities. Subject to business objectives and preferred shareholding structure, businesses proposing to set up in Dubai can register in the Dubai mainland under the UAE Commercial Companies Law 1984 ("**the Companies Law**"), or in one of the numerous free zones available which operate under self-regulated legal regimes. If a business proposes to set up an office in mainline Dubai, it needs to comply with provisions of the Companies Law and the procedures set by the Dubai Department of Economic Development ("**DED**").

Forms of corporate entities that can be set up in Dubai

Generally speaking, a corporate presence can be established in Dubai (UAE mainland or a free zone) through either setting up a limited liability company ("**LLC**") or a branch office. The following table sets out the differences between these two corporate entities:

Limited Liability Company	Branch
<i>Provides the comfort of limited liability</i>	<i>A branch office is an extension of its parent and is not an independent corporate entity. The liabilities of the branch are that of its parent.</i>
<i>Can set up branches</i>	<i>A branch office cannot set up its branches</i>
<i>Can be a vehicle for directly introducing investment</i>	<i>A branch has no share capital has cannot be a vehicle for direct investment</i>

Can have its own balance sheet and retain profits	Profits made by the branch business are normally considered as the profits of its parent, and can be taxable in the jurisdiction where the parent is set up. This however is an issue you may wish to discuss with your tax advisors in the parent company's jurisdiction.
---	--

Free zone versus company set up under the Companies Law in Dubai mainland

The most commonly known advantage of having an entity in a free zone is the ability of foreigners to own 100 percent shares the company. This is in contrast to companies formed under the UAE Companies Law which limits foreign investments in LLCs in Dubai mainland (and also in the entire UAE) to 49 percent, where 51 percent of the shares in the company should be owned by UAE nationals (individuals) or a corporate entity wholly owned by UAE nationals.

Although there are contractual arrangements by which 100 percent beneficial ownership in shares of the subsidiary can be retained by the foreigner, the foreign entity remains shareholder of 49 percent of the LLC.

Other advantages of setting up in a free zone are as follows:

- No local sponsor or partner required
- Permitted corporate structure includes branch of a foreign company and free zone incorporated companies, with one or more than one shareholder;
- A simple employee sponsorship system
- The option to lease land and to develop it according to one's own needs
- Modern and updated communication and infrastructure and facilities

Please note that strictly speaking, a free zone company cannot "carry on" activities outside the free zone. All licenses issued by a free zone authority are only valid for activities in the free zone. However, this restriction would arguably not apply where the entity in the free zone is providing services that do not involve any movement of material goods transporting out of the geographical territory of the free zone.

Establishing an entity in the innovation sector

Phase 1 – Research and Development

R&D activities in the mainland

It is possible to set up a business conducting Research & Development (**R&D**) activities in Dubai mainland. For example, the DED, which is the licensing authority in Dubai mainland, offers the opportunity to set up entities with R&D activities in the life sciences sector, such as "*Research and Experimental Development of Natural Science*" which includes firms, centers or institutes specialized in elaborating studies and experimental and development research in social sciences (economics, psychology, sociology, legal sciences etc.) and human sciences (languages, arts, etc.).

As another example, the DED also offers the opportunity to set up entities with R&D activities in the education sector, such as "*Education Technologies Research and Development*" which includes centers or institutes specialized in elaborating studies and experimental and development research on learning technologies.

R&D activities in the free zone

There are multiple free zones, each one being suited for specific types of businesses depending on the

nature of their activities.

For example, the Dubai Biotechnology and Research Park (“**Dubiotech**”) is a free zone that attracts innovative activities in the life sciences sector. The park is divided into zones dedicated to various initiatives, including R&D and manufacturing. The R&D activities offered by DuBiotech includes entities involved with the investigation or experimentation and/or the process of transforming a scientific discovery into a commercial product, and companies that undertake methodical investigations in improving and developing scientific technologies in the relevant fields in the following sectors:

- Therapeutics
- Food
- Agricultural, Forestry, Horticulture
- Environment
- Medical/Scientific Devices or Equipment
- Specialty Supplies
- Diagnostics and Analysis
- Life Sciences Services
- Renewable Energy
- Energy Generation
- Energy Transmission and Distribution
- Energy Efficiency Equipments
- Air and Environment
- Water and Waste Water
- Recycling and Solid Waste
- Transportation
- Green Building
- Organic Products

As another example, Dubai Internet City (“**DIC**”) hosts approximately 1,400 companies in media and telecommunications many of which are key players in the technology industry, such as IBM, Google, Microsoft, Facebook, MasterCard and LinkedIn. Their R&D activities in the telecommunications and network sector are aimed at companies that create, customize or modify networks and/or operate networks or provide relevant services designed for operating network based applications or services for themselves or third parties. Another R&D activity in the Internet and Media and IT Service sector is catered to companies that create or customize discrete content, components, applications or programs for themselves or third parties.

Dubai Design District (“**D3**”) is a free zone catered to R&D activities in the design, fashion, art and luxury sector. It is located in the heart of Dubai, adjacent to downtown Dubai^[r1]. An interesting feature about D3 is that entities intending to set up in this free zone can apply for two licenses enabling them to operate within D3 as well as in the mainland; however the requirements for acquiring each license will remain the same.

Though there may be some similarities, there are no set standard requirements to set up a corporate entity in the R&D field. The legal requirements for setting up a corporate entity for R&D in Dubai would normally depend on:

- the type of R&D activity proposed to be conducted by the corporate entity in Dubai;
- the jurisdiction in which the foreign innovator decides to set up the entity; either, in Dubai mainland or free zone and whether or not this activity requires any external approvals; and
- if the entity can be set up in one of the free zones, which free zone is chosen by the parent to set up the corporate entity. Costs associated with each set up would differ also depending on the jurisdiction.

Phase 2 – Commercialization of products

In order to transform innovative ideas into tangible products, innovators will need to develop their new product by acquiring a license to manufacture. Depending on the subject field in question, innovators can establish their manufacturing entity in the mainland or in certain free zones which facilitate the issuance of manufacturing licenses and provide the appropriate facilities, such as a warehouse etc. The Jebel Ali Free Zone offers an industrial license, which allows innovators to import raw materials, carry out the manufacture of specified products and export the finished product outside of the free zone.

Due to the legal restrictions of doing business outside of the free zone, in order to export the finished product into mainland Dubai, the free zone entity will need to engage a distributor which is licensed in the mainland in order to distribute the product on behalf of the free zone entity.

Phase 3 – Incorporation of a holding company to hold Intellectual Property (“IP”) rights

Intellectual property assets are generally the most valuable assets of innovation based entities. These can include patents, trade marks, copyright, industrial designs and trade secrets. It is fundamental for a innovation based entity to seek intellectual property protection for its assets so as to prevent competitors exploiting or misappropriating them without its authorization.

The legal protection of intellectual property also provides their owners with a range of commercial options enabling them to license or sell these rights. The incorporation of a holding company is a popular vehicle for owning and maintaining intellectual property. The most cost-efficient corporate vehicle for this purpose is a limited liability company in an offshore jurisdiction. However this option would only be suitable in a situation whereby the IP rights would be licensed to entities outside the UAE, since offshore companies are not issued with a license at the time of incorporation, and are not permitted to conduct any commercial activity within the UAE.

The most common free zones which offer the incorporation of offshore companies in the UAE is the Jebel Ali Free Zone (“JAFZ”) and the Ras Al Khaimah Free Zone (“RAKFZ”). An offshore company cannot maintain an office or sponsor employees. There is also no paid up capital requirement, which makes it a cost and time efficient structure to establish. Such companies are also permitted to open local bank accounts onshore in the UAE.

Offshore companies must also appoint a registered agent in the UAE, to act as the company’s registered office. Such appointment is a statutory requirement^[2] and the registered agent is required to maintain a copy of the constitutional documents and the corporate registers of the company, which the offshore company’s registry may require to inspect from time to time. The agent will also liaise with the registry to pay the annual maintenance fee.

This is an ideal structure for a quick and easy set up with minimum costs, for a particular purpose such as owning IP rights and licensing those rights outside of the UAE. If the intention is to license the IP rights to entities within the UAE, the proposed entity will need to acquire the relevant holding company license, either within the mainland or a free zone.

Future expectations

With the UAE’s new initiative of accelerating innovation in the region, we expect a rise in investors wishing to set up their innovative business within the Emirates. For any comments or queries regarding the establishment of a corporate vehicle in the UAE, please contact Mr. Samer Qudah, Partner and Regional Head of Corporate Structuring (s.qudah@tamimi.com). For any comments or queries regarding research & development, innovations and intellectual property rights management and protection, please contact Mr. Ahmad Saleh, Regional Head of Patents & Designs (ah.saleh@tamimi.com).