

E-Trading Business Activities in Dubai

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The Dubai Department of Economic Development (DED) has recently introduced a number of E-Trading activities evidencing Dubai's efforts to establish itself as an E-Commerce hub. Traders will have the opportunity to obtain a license for their online trading platform. This new E-Commerce initiative has sparked some questions in relation to whether or not an E-Trading license is necessary, and if so, what an E-Trading license can allow you to do.

Is an E-Trading license necessary?

When activities are conducted via an online platform, it generates a lot of confusion in terms of whether or not these activities constitute conducting commercial activities within the UAE, given that they are online.

Article 6 of Law no. 13 of 2011 regulates the conduct of economic activity within the Emirate of Dubai and Article 328 of the Commercial Companies Law of 2015 ("CCL") states that a foreign company should not conduct activities inside the UAE without obtaining a licence.

Article 355 of the CCL prescribes a penalty between AED 100,000 and AED 500,000 on a foreign company if it does not register itself with the Registrar.

Therefore the strict application of law requires a foreign company to be fully incorporated and hold a valid license to conduct activity in the UAE. Failure to do so, risks a penalty between AED 100,000 to AED 500,000.

Some may argue that an online business does not need to have a registered office nor does it need to employ staff in the UAE to carry out any activity on the ground, thus, Article 328 and Article 355 do not apply. However, it is difficult to predict how the Authorities will address this argument given their discretion is not structured by statute or practice. The strict approach is that in order to conduct any commercial activity within the UAE, the appropriate license must be obtained. A prerequisite to obtaining a license is to obtain and maintain a registered office. Therefore, the Authorities can in their discretion apply the strict approach to a company seeking an E-Trading license in the UAE.

In practice, there may be many unlicensed online platforms trading across the UAE. However it cannot be guaranteed that the regulator will not identify these unlicensed online traders and impose a penalty between AED 100,000 to AED 500,000.

The DED has recently introduced the following E-Commerce activities:

- Jewellery and precious stones E-Trading;
- Garments, Textiles and Gifts E-Trading;
- Publications and Media Materials E-Trading;
- Household, Professional and Personal Goods E-Trading;
- Vehicles and Transport means E-Trading;
- Equipment E-Trading;
- Sport and Recreational Events Tickets E-Trading.

An E-Trading license provides traders the opportunity to sell to the general public over the internet without needing any human interaction, using any of the applications that rely on the internet. It involves co-ordinating with payment service providers which offer online electronic payments by a variety of payment methods including credit card, smart cards and digital money E-cash.

At present there is no general E-Trading activity available, however the activity 'General Trading' will allow a company to perform and undertake all types of trading whether physically or via an online platform. Typically, if a company is licensed to trade in a particular industry, that trading license will qualify the company to also trade online.

E-Trading activity in the free zone

Unlike Dubai mainland which is subject to the CCL, free zones have their own set of regulations when it comes to licensing business activities. Free zone companies cannot conduct commercial activities outside of the free zone. Therefore, for a trader to freely trade and sell its products online, into the wider UAE, the trader must also obtain a license to do so from the DED. Some free zones do offer E-Commerce activities, but the scope of a free zone E-Commerce activity is limited to facilitating a sale through an electronic medium, rather than directly conducting retailing activities. In short, a free zone company with an E-Commerce activity can only act as a middleman, unless it also obtains a license from the DED to allow the free zone company to trade freely across the UAE.

Introduction of the DED's E-Trader Scheme

Another development by the DED is the introduction of the 'e-trader' scheme whereby online business established via various social media applications such as Instagram, Snap Chat, Whatsapp, Facebook etc can now be licensed by the DED. The conditions are that the license holder must be a UAE national, over the age of 18 and the license cannot be used to open a physical store, nor can it issue visas. This development was introduced with a view to "promote consumer confidence when shopping for products and services on social networking sites" said Omar Bushahab, Chief Executive of the DED's Business Registration and Licensing Department.

Al Tamimi & Company's Corporate Structuring team regularly advises on corporate structures and incorporation requirements. For further information please contact Noff Al-Khafaji (n.alkhafaji@tamimi.com).