التميمي و مشاركوه
AL TAMIMI & CO.

Doing Business in Ras Al Khaimah

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Published by Al Tamimi & Company

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Foreword

It is with great pleasure that we are now able to welcome Al Tamimi & Company to the Emirate of Ras Al Khaimah. Al Tamimi will be the first leading professional services firm to enter the Ras Al Khaimah market, and I am sure that their commitment to Ras Al Khaimah will be a great success.

The Government of Ras Al Khaimah has worked closely with Al Tamimi over many years, across multiple industry sectors, and we have benefited greatly from their unsurpassed local and regional law capability, and practical, common sense legal advice. In essence we see Al Tamimi as a key partner in helping to manage the Government›s legal risk profile whilst it implements the vision of His Highness Sheikh Saud bin Saqr Al Qasimi, Ruler of Ras Al Khaimah, in delivering continued sustainable economic development; we truly value their support.

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Doing Business in

Ras Al Khaimah

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'Doing Business in Ras Al Khaimah' has been produced to provide companies and individuals with information on operating in the emirate. The guide seeks to answer some of the most important questions that investors may have with regards to their business structures based on the differing business activities. We have also aimed to provide an insight into the key employment issues for companies and employers alike.

We trust you will find the information presented of value and that it provides you with a greater understanding of both the business and legal aspects of operating within Ras Al Khaimah. We look forward to the opportunity to work with you to ensure your success when doing businesss in one of the fastest growing emirates in the United Arab Emirates.

Ras Al Khaimah Free Trade Zone Authority (RAK FTZ)

Ras Al Khaimah Free Trade Zone (RAK FTZ) is one of the fastest-growing and most cost-effective free trade zones in the United Arab Emirates (UAE). With a reputation for affordability, flexibility and broad geographical reach, RAK FTZ is rapidly emerging as the preferred business hub in the region, from where investors can easily access and branch into the emerging markets.

RAK FTZ's commitment to simple and customer-friendly procedures is recognised throughout the region. RAK FTZ clients enjoy a wide range of value-added services and key benefits such as:

- 100% tax exemption
- 100% foreign ownership
- Transparent laws and regulations
- No restrictions on capital and profit repatriation
- Strategic location, with proximity to Dubai
- State-of-the-art communication facilities
- Easy access to Ras Al Khaimah's airport and seaports

Since the establishment of RAK FTZ in May 2000, the free zone has gone from strength to strength, garnering accolades and awards along the way. Starting with only a handful of staff and a few offices, the free zone has grown by leaps and bounds and is now home to some 6,000+ active companies from 106 countries around the globe, employs more than 350 full-time staff, operates business and promotion centres in four locations in the UAE, and has an expanding international presence, with liaison offices in Germany, Turkey, India and the USA.

To learn more about RAK FTZ, visit: www.rakftz.com

RAK Investment Authority (RAKIA)

RAKIA Business and Industrial Parks offer attractive and competitive Free-zone and Non-Free-zone facilities to companies and entrepreneurs looking for low operating costs and high living standards. RAKIA comprises of 2 purpose-built industrial parks: Al Ghail and Al Hamra, offering industrial and business investors a smooth set up of their operations, within a dynamic and synergistic environment allowing them to thrive in the region and beyond.

Our 'one stop shop' approach provides business facilities and solutions such as industrial land, warehouses, commercial and residential units as well as assistance with licenses, visas and all coordination efforts with government departments.

RAKIA is centrally located with government offices, health centre, civil defense and excellent leisure facilities for business and residential community. With its exceptional geographical location and proximity to 5 ports and 3 airports, it benefits from a unique connectivity (sea, air, road and soon rail) and gives access to the growing markets of almost 5 billion people.

Thanks to its excellent facilities and investor friendly policies, RAKIA is home to over 500 manufacturers in various sectors, including metal, chemicals, food, plastics and automotive. Some of the major companies and brands present in RAKIA Industrial Park include:

- Guardian Glass
- Ashok Leyland
- JBF
- Zamil Steel
- Falcon Technologies International
- SeAH Steel
- Mahindra Motors
- Arc International
- Dabur
- Duscholux

Our clients continue to be at the centre of our focus, with an emphasis on satisfaction apparent from our very inception. The success-story that Ras Al Khaimah and in turn RAKIA is a step into an even more positive future. Through government reforms, business-friendly policies and excellent infrastructure and facilities, the emirate is ready for further growth.

www.RAK-IA.com

About Al Tamimi & Company

As the largest law firm in the Middle East, Al Tamimi & Company knows more than just the law. We pride ourselves on understanding the business environment in which we operate ultimately benefiting the clients we work with.

Established in Dubai in 1989, we have 11 offices in 6 countries, including Iraq, Jordan, Kuwait, Kingdom of Saudi Arabia, Qatar and the United Arab Emirates with over 230 specialist lawyers and a full service offering. We are proud of where we have come from and excited about where we are heading.

As a full service law firm, we specialise in a range of practice areas - each being a genuine strength. We provide not only professional expertise but superior client service and quality strategic advice. We combine internationally qualified and experienced lawyers with lawyers who have deep local roots. Along with this, the ability to practice local law in each of the jurisdictions we are present, rights of audience before local courts, and licensed litigators in each of our offices, really sets us apart.

We have advised on some of the most complex legal issues and continue to be at the forefront of business and legal challenges facing our clients.

www.tamimi.com

About Ras Al Khaimah

Why do business in Ras Al Khaimah?

Ras Al Khaimah is one of the seven emirates that form the Federation of the United Arab Emirates (UAE). Commonly referred to as RAK, the emirate prides itself on being the center of traditional shipbuilding and trade; and is at the forefront of quarrying, manufacturing and tourism. RAK has steadily grown and gained credibility as an attractive hub for business with a dynamic and diversified economy. The commercial incentives and low cost business set up has attracted a wide range of commercial activity. RAK offers growth opportunities in all sectors of trade including the provision of professional services. The transition from an economy historically centered on agriculture and fishing, RAK has adopted many commercial privileges enjoyed by neighboring emirates such as Dubai in the introduction of Free Zone Trade. RAK boasts a wide range of commercial and trade licenses, extending to industrial and professional consultancy services licenses'. RAK's GDP has grown 14% per year from 2004 – 2008, and 9% in 2009. The GDP now stands at USD 4.30 Billion.

Location:

The emirate of RAK is located at the northern end of UAE on the coast of the Arabian Gulf. RAK is highly regarded as one of the most pristine emirates. Only 50 minutes from Dubai International Airport (DXB) and 25 minutes from RAK International Airport this rising emirate boasts beautiful and dramatic mountains, red sandy deserts and lush green plains indented by a series of creeks and lagoons. It has a rich heritage, dating back 5,000 years, which manifests in numerous historical sites, forts and abandoned villages.

Government:

In response to the growth and expansion of RAK as a competitive global economic hub, under the leadership of His Highness Sheikh Saud bin Saqr al Qasimi, Ruler of RAK, the government strive to represent, support and protect the interests of the business community. The government are committed to creating a favourable business environment supporting the development of business and promoting RAK as an international business hub. RAK governance reflects a continuous effort in streamlining its processes to make it easier and quicker for companies to set up their desired business.

Laws:

RAK has strong laws and regulations, which are constantly amended to provide a flexible and up to date legal frame work to do business in.

Political Stability:

RAK's political and social fabric is very strong and the government's focus is social and economic growth and development.

Currency:

The currency of the UAE is the United Arab Emirates Dirham.

Language:

The official language of the UAE is Arabic, although English is widely used in business circles. A significant portion of the expatriate population also speaks Hindi, Urdu, Malayalam, Tamil and other languages of the subcontinent.

Population:

RAK's population is approximately 231,000.

Setting up in Ras Al Khaimah

Setting up in Ras Al Khaimah

During the past few years, Ras Al Khaimah (RAK) has progressed towards its goal of becoming a thriving investment destination, as well as one of the top tourist draws in the Gulf region. With its varied landscape, including pristine coastline, expansive desert, and pleasant wadis and oases in the Hajar Mountains, picturesque RAK was ranked sixth on fDi magazine's list of Top 20 Middle Eastern Cities and first on its list of 'Cities Most Attractive for Foreign Investment', followed by Abu Dhabi and then Dubai.

This chapter aims to outline the various structures and corporate forms for setting up business in RAK depending on the products or services the business will offer.

There are two main options for investors to set up, the first being in mainland RAK and the second in one of the free zones that RAK has to offer.

1. Legal Structures

There are three main legal structures available to companies. Business may be carried out in RAK through a sole proprietorship or through one of the corporate forms, including a branch, incorporated in RAK. This will give the owners a direct presence in UAE. Business in RAK can also be carried out without having direct corporate presence, by appointing commercial agents incorporated in RAK.

a) Sole Proprietorship

A sole proprietorship is a simple business model whereby an individual conducts business in his or her personal capacity pursuant to a license obtained by the relevant authorities. This form of business entity is referred to as an 'establishment' rather than a company and the business is not a distinct entity from the sole proprietor. As such the sole proprietor is personally liable to the full extent of his or her assets for the liabilities of the business.

Mainly UAE nationals and nationals of GCC countries (subject to certain conditions) are permitted to form sole proprietorships in RAK. A practice has, however, arisen in recent years whereby a UAE national obtains a license for a sole proprietorship and by way of a contractual arrangement permits a third party to use and benefit from the license, including to take on all the management functions of the business and retain all the profits. However, this type of arrangement, while commonly practiced, is not recommended as it is essentially unlawful and problems can arise if the business relationship between the parties breaks down. Further, the legal holder of the license will be 100% liable for debts vis-à-vis the third party, who may have no knowledge of the private arrangement.

Foreigners may form sole proprietorships if they reside in the UAE. However, the law restricts the activities a foreigner may engage in as a sole proprietor to certain fields. These restricted activities include the following:

- The provision of medical services;
- Engineering consultancies;
- Legal consultants;
- Computer consultants; and
- Similar services and non-trading activities.

A foreign sole proprietor is required to appoint a local service agent. The local service agency contract must be authenticated by the Notary Public and the foreigner's residence in UAE should be under the new business sponsorship.

Thus, the procedures for establishing a sole proprietorship vary according to the nationality or identity of the prospective sole proprietor. However, the common and fundamental requirement for establishing any type of sole proprietorship is that a license should be obtained from the RAK Department of Economic Development (DED) for the envisaged activity after submitting an application together with all relevant documents.

b) Corporate Forms

Various legal corporate forms are available for the establishment of a business presence in RAK. The table[1] below provides an overview of the various corporate vehicles available to set up in RAK and certain salient comparative features of each, which are based on the provisions of the Commercial Companies Law, Federal Law No. 8 of 1984, as amended (CCL) – the federal law governing corporate entities:

Corporate Forms	Structure of partners / shareholders	Minimum Capital Requirement
General partnership	Two or more partners who owe joint and unlimited liability	None
Simple limited partnership	One or more general partners who owe joint and unlimited liability & one or more limited partners who owe limited liability	None
Joint venture company / joint participation	Two or more partners among whom, in principle, only a trading partner owes unlimited liability in relation to the counterparty and the other partners owe no liability, however, if the existence of the partnership is disclosed to a third party, all partners owe joint and unlimited liability in relation to the third party	None
Public joint stock company	Ten or more shareholders who owe limited liability	AED 10,000,000
Private joint stock company	Three or more shareholders who owe limited liability	AED 2,000,000
Limited liability company	Two to fifty partners/shareholders who owe limited liability	None
Branch office	Branch office of a foreign company, which owes limited liability	None

1 - It is advisable to consult with relevant authorities and legal advisors with respect to the up-to-date information in this regard.

Additional information on the corporate forms listed is as follows:

(i) General Partnership

A general partnership is an arrangement between two or more partners whereby each partner is jointly and severally liable without limit for the partnership's liabilities. The CCL provides that only UAE nationals are allowed to be partners in a general partnership. This form of business organization is therefore not appropriate for foreign investors wishing to set up in RAK.

(ii) Simple Limited Partnership

The CCL defines a simple limited partnership or a partnership in-commendam as a "company formed by one or more general partners liable for the company liabilities without limit, and one or more limited partners liable for the company liabilities to the extent of their respective shares in the capital only."

Thus, a simple limited partnership is essentially a modified general partnership. As in a general partnership, only UAE nationals may be general partners in a simple limited partnership, although foreigners may be limited silent partners, who essentially do not have a role in the management as opposed to the administration of the company regarding third parties. In addition, limited partner's liability is limited to the extent of their share capital in the partnership.

Silent partners should of course ensure that they do not lead third parties to believe that they are anything other than a silent partner, otherwise their limited liability will cease. The management of a simple limited partnership is vested in the general partners. As non-UAE nationals are excluded from assuming any form of business organization, this is seemingly inappropriate for foreign investors.

(iii) Joint Participation Venture

The CCL governs the establishment of joint participation ventures or consortium companies, and are defined as a "company between two or more parties to share the profits or losses of one or more commercial businesses being performed by one of the partners in his personal name. The company shall be confined to the relationship between the partners and will not be effective towards third parties."

From the above, it is clear that the existence of such a company is restricted to the arrangement between the partners therein and must not be made known to third parties. Between the partners themselves, the arrangement is essentially a partnership. Each partner conducting business will generally do so in his own name and will not disclose the interest of the other partners. The liability of the partners who are conducting business is unlimited regarding the liabilities of the company. If the liability of the other partners is disclosed, the venture will be treated for every purpose as a general partnership.

Joint participation ventures are popular with foreign companies who wish to set up in RAK on a short-term basis, for example, to carry out a specific project. They are often formed where there is some participation by government bodies.

There are no resignation formalities for this type of company as it is not a distinct legal entity.

(iv) Public Joint Stock Company

A Public Joint Stock Company (PJSC) is governed by the CCL, which defines a PJSC as "any company whose capital is divided into equal value negotiable shares."

A PJSC is very similar to the public limited company in the United Kingdom. According to the CCL the shareholders of PJSC are liable only to the value of their shares in the capital of the company. The nominal value of each share of a PJSC should not be less than AED 1 and not more than AED 100, and the minimum share capital requirement is AED 10 million for a general company, AED 40 million for a banking entity and AED 25 million for insurance and investment company.

Among the requirements for the establishment of a PJSC is the preparation of a founders agreement, a prospectus or invitation for public subscription supported by an overall business plans or feasibility study and an auditor's certificate, a due diligence survey, and a memorandum and articles of association which must be in accordance with the specimen issued by the Ministry of Economy. Any deviation form the specimen form must be approved in advance by the Ministry. Further, the name of the intended company must end with the words 'Public Joint Stock Company'.

A PJSC must have at least ten founding members and its management should be vested in a board of directors consisting of a minimum of three and a maximum of twelve persons whose term of office may not exceed three years. Directors can be re-elected when their term of office has expired. A PJSC is required to have a chairman of the board of directors who must be a UAE national. In addition, the majority of the directors on the board are required to be UAE nationals.

At least 10 percent of the net profit should be allocated to a reserve account until such reserve account amounts to half of the total paid-up capital of the company.

In addition, UAE nationals should hold at least 51 percent of the shares of the PJSC. The founding members must subscribe to a minimum of 20 percent and a maximum of 45 percent of the share capital of the PJSC. If new shares are issued, the existing shareholders should be offered the opportunity to subscribe to such shares in accordance with their existing shareholdings.

There are additional requirements for the incorporation and operation of a PJSC stipulated under the CCL which should be considered by interested investors. However, given the fairly restrictive rules and controls governing the establishment and management of a PJSC as well as the substantial capital requirement, it is a business vehicle suitable only for certain business objectives.

Notwithstanding that, the PJSC has become increasingly popular in the recent years vis-a-vis the privatization sector and there are currently more than 100 PJSCs in the UAE. In addition, as it is the only business vehicle which allows shares to be offered to the public, thereby enabling businesses to potentially raise substantial amounts of capital, particularly where large-scale projects are concerned. This allows small foreign and local investors to participate in such projects.
It should also be noted that, where one is contemplating a business

venture which involves insurance, banking or investment of funds on behalf of third parties, such activities can only be carried out through a PJSC.

It should also be noted that, where one is contemplating a business venture which involves insurance, banking or investment of funds on behalf of third parties, the establishment of PJSC is a legal necessity and no other type of company may be established for such activities.

(v) Private Joint Stock Company

A private joint stock company is essentially the same as a PJSC, with the following differences:

- The minimum capital requirement is AED 2 million;
- The shares of a private joint stock company cannot be offered to the public; and
- Only three founder members are required.

Considering the lower capital requirement of AED 2 million, private joint stock companies are popular with foreign investors, with the disadvantage however of not being able to offer shares to the public.

It is worth noting that the procedures for setting up a private joint stock company are the same as for a PJSC.

(vi) Limited Liability Company

A Limited Liability Company (LLC) is governed by the CCL. LLC's are popular and often considered to be a suitable option for business in RAK by foreign investors. LLC's are similar to private limited liability companies in the United Kingdom. However, as mentioned earlier, where the intended business involves banking, insurance and/or investment activities conducted on behalf of third parties, a LLC is not legally permitted to engage in such activities. CCL defines LLC as a company "with limited liability…where the number of partners may not exceed fifty and should not be less than two. Each of the partners shall only liable to the extent of his share in the capital. The partners participation should not be represented by negotiable certificates."

In addition, the following may be noted with regards to a LLC:

- Public subscription for raising capital is not permitted;
- Although a foreign partner is only generally permitted to own a maximum of 49 percent of the capital of the company, the day-to-day management of the company may be vested in a foreign manager;
- Managers may be one or more of the partners or any other third party (including foreigners) provided that they do not exceed a total of five persons;
- Given that foreign ownership is limited to 49 percent, in practice, national partners holding 51 percent enter into contractual arrangements with the foreigner pursuant to which the foreigner receives all benefits from the company, assumes all risks of the company and fully operates the company. In such cases, the national may also give the foreign partner a power of attorney authorizing him to vote in the general assembly on his behalf;
- It is possible to provide in the memorandum of association that the profit and losses will be shared into a ratio different to that of the share capital ratios;
- It is necessary to appoint an auditor who must be accredited in the UAE; and
- The auditor should be appointed by the general assembly (which is essentially a meeting of all the shareholders of the company).

(vii) Branch Office of a Foreign Company

A very popular way for foreign companies to benefit from 100 percent foreign ownership is to establish a branch office of the parent company. CCL contains provisions regulating the establishment of branch offices of foreign companies in the UAE.

A branch office is legally part and extension of its parent company and does not have a legal identity distinct from its parent company. As such the liabilities and assets of the branch will not be deemed to be distinct from that of the parent company. Further, the name of a branch office will be the same as that of the company of which it is a part. Accordingly, a branch office can only carry out business activities permitted in the memorandum and articles of association of the parent company, subject to such activities being licensed by the DED. The license will be issued to the parent company for it to conduct business in RAK through the branch. The activities the branch will be allowed to practice, therefore, will depend on the type of license it obtains. It is important to note that a branch office is not permitted to carry on the business of importing products of its parent company, since such activities are restricted to local trade agents.

There are some restrictions governing the activities a foreign company may practice. For instance, only UAE nationals may practice banking, insurance, money investment and operate commercial agencies.

Branch offices are required to have a national agent. It is preferred that a national service agent be an individual, however, if the agent is a company, it must be wholly owned by UAE nationals. The national agent, however, will not acquire any rights or interests in the business of the branch office and will simply provide services on matters which concern federal and local government departments such as fulfilling immigration requirements on the business' behalf. In return for their services, agents usually receive a fixed annual fee.

(viii) Representative Offices of Foreign Companies

Representative offices are governed by the CCL. A representative office of a foreign company is legally distinct form a branch office of a foreign company in that it is only allowed to promote its parent company's activities. Therefore, if a parent company deals in the sale and/or production of certain products and opens a representative office in RAK, the office will only be able to promote and market the sale and/or production of such products as distinct from conducting the sale and production itself.

In addition to the above limitations, representative offices have other restrictions in that they are not allowed to obtain credit facilities or put forward offers.

As in the case of a branch office, it is necessary when establishing a representative office to appoint a national service agent. However, in some exceptional cases the requirement of a national service agent may be waived.

(ix) Civil Companies

Apart from companies which may be established under the CCL, the UAE Civil Transactions Law, Federal Law No. 5 of 1985 (Civil Code) provides for the formation of three forms of civil or professional entities, namely:

a. Companies to perform work (work/service companies);
b. Speculative venture partnerships; and
c. Mudaraba companies.

The main difference between entities under the CCL and those under the Civil Code is that the activities which may be practiced in the former are of a commercial nature, whereas in the latter the activities which may be practiced involve the use or investment of intellectual faculties, acquired information or the use of skills, such as carpentry. The fact that civil companies do not practice activities of a 'commercial' nature does not denote that they are non-profit making organizations. It is simply a distinction made in the UAE's legal system in terms of the 'types' of activities a business practices.

Although the above three entities are called companies, strictly and legally speaking they are not companies as the only companies which may be formed in the UAE are commercial companies as listed under the CCL. Instead, such entities are more representative of civil activities which may be practiced rather than legal structures of business in their own right.

This distinction is particular to the UAE. However, in practice most people do not differentiate between civil and commercial entities and instead use the term 'company' for all business. The difference is nevertheless legally significant as civil entities are subject to the Civil Code in addition to local law and commercial companies are subject to the CCL.

Further, the only legal entity a civil company may be established under is partnership either between UAE nationals or between UAE nationals and foreigners for the practice of civil rather than commercial activities such as consultancy and carpentry. It follows therefore that legally civil activities may not be set up as LLCs or other forms of companies and are thus not subject to requirements such as those of minimum share capital as stipulated under the CCL. Moreover, as mentioned earlier, the activities civil entities may be engaged in will be restricted to those of civil nature alone.

a. Companies to Perform Work (Service/Professional Companies)

Under the Civil Code, service or professional companies are defined as companies where two or more persons agree to be bound to carry out work and to be liable thereafter to third parties against payment of consideration, whether they share equally in the distribution of the work, and provided that the work is of a single and inseparable nature.

b. Speculative Venture Partnerships

This form of partnership is a contract between two or more persons to purchase property on credit, to sell it at a profit and subsequently to share the profits as agreed between them.

c. Mudaraba Companies

Broadly stated, a Mudaraba is a contract where one of the parties to the contract contributes a certain amount of capital and in exchange the other party, referred to as the Mudarib, contributes his efforts/labour in order to make a profit. Here, the Mudarib is treated as a trustee of the capital as well as a partner to the profits.

There are other conditions which must be satisfied for a Mudaraba to be valid. Among these is the provision that the contract must not stipulate that the Mudarib will be liable for any loss or waste of the capital, provided there is no wrongful act on the Mudarib.

Thus, the Mudarib is given the power to make dispositions on behalf of the owners(s) of the capital. Nevertheless, the owner of the capital may stipulate the conditions of the contract provided they are not contrary to the Civil Code. However, he alone will bear any losses incurred and under the Civil Code any provisions made to the contrary are deemed void.

c) Commercial Agents

Foreign companies can trade in RAK through importers and traders. However, such arrangements are not particularly well suited to continuous, high volume trading. Overseas manufacturers or traders who wish to import goods into RAK in large quantities and on a regular basis may want to appoint a local trade or commercial agent through a contractual commercial agency.

Unlike other jurisdictions in general, the UAE legal system distinguishes between two forms of commercial agencies, the registered commercial agency and the unregistered commercial agency. Different set of rules and regulations governing each.

i) Registered Commercial Agent

A registered commercial agency is defined by Federal Law No. 18 of 1981 on the Organisation of Commercial Agencies as amended by Federal Law No. 14 of 1988 (Agency Law), as "the representation of a principal by an agent for the purpose of distributing, selling, offering or providing merchandise or services within the state for a commission or profit" and a principal is defined as "the producer or manufacturer or the exclusive accredited exporter or representative of the producer".

Under the Agency Law there are various benefits of a registered service agency for the agent, discussed as under:

Exclusivity

Registered agents have exclusive right to import the goods which are the subject matter of the agency agreement. Any import of goods, the subject matter of the registered agency, brought into the territory through the parties other than the registered agent can be seized by the Customs Department unless the agent or the Ministry of Economy & Planning consent to their release. This includes goods which have been imported by the principal. If the principal or any other person distributes or markets the specified products or services within the territory, they will be liable to compensate the trade agent. Where exclusivity of the agent is not a concern for the principal, the restriction on import of the said goods by any third party is of course also a protection of the interests of the principal

Commissions

Registered commercial agents are entitled to receive commissions on both the sales they make as well as any direct sales made by the principal or other parties, regardless of whether or not the agent has contributed towards such direct sales. The principal should consequently ensure that the agency agreement clearly defines the products which constitute the agreement and the territory concerned.

Non-termination and non-renewal: A concern for principals can be the fact that the Agency Law does not allow the principal to terminate such agencies without there being a 'justifiable cause', which is not a defined term. Recent judicial pronouncements however have discussed justifiable cause to include: gross negligence, dealing with competitive products in breach of agreement not to, assigning the agency to a third party, failing to meet sales targets, etc. It is at the discretion of the Ministry of Economy and Planning to decide whether or not a 'justifiable cause' exists. However, the Ministry's decision is subject to review by the courts. In RAK the party need not go to the Ministry and may proceed directly to court. A principal will also need to show a justifiable reason to refrain from renewing a trade agency agreement upon the expiry of its term. Wrongful termination or failure to renew a trade agency agreement may lead to the principal being obliged to compensate the former trade agent for any losses he may have suffered.

ii) Unregistered Commercial Agent

Unregistered Commercial Agencies on the other hand are conventional principal agent relationships which do not benefit from the protection of the Agency Law and as such, relations are not made under or subject to the Agency Law. An unregistered commercial agency is created by the contract between the principal and agent, and there is no additional procedural requirement to make the same a valid arrangement. A prospective agent is therefore likely to seek establishment of a registered commercial agency to avail the benefit as opposed to one that is unregistered, subject to fulfilling the relevant criteria.

Despite the fact that the Agency Law states that any commercial agency not registered in the Ministry of Economy & Planning Register shall be deemed void and no claim shall be recognized with respect thereto, unregistered commercial agencies are nevertheless seen as valid commercial contracts where the parties will be subject to the terms and conditions they have agreed to.

2. Jurisdictions

The laws of the UAE permit various types of corporate vehicles and structures as discussed above, which may be set up in multiple jurisdictions the conventional jurisdiction of mainland RAK and the free zone jurisdictions. All jurisdictions currently do not have personal, income or corporate taxes and permit repatriation of profits and capital. RAK currently has two free zone jurisdictions where entities may be set up. While free zones are geographically located within RAK, they are considered distinct legal jurisdictions, usually having their own (non-criminal) laws.

a) Mainland RAK

Salient features

Salient features of setting up an entity in mainland RAK are that:

1. entities are governed by the CCL;
2. entities are under the regulatory purview of DED;
3. shareholding of non-UAE nationals and non-GCC nationals in companies is limited to 49 percent;
4. entities can carry out business activities in mainland RAK; and
5. applicable customs duty is payable of goods entering mainland RAK.

Licenses

All business activities in RAK, conducted by any type of entity, regardless of whether it is set up in mainland RAK or in the free zones (except the offshore jurisdiction – since those entities are usually non-operational holding companies), require one or more licenses. For entities set up in mainland RAK the license is issued by DED. For entities set up in the free zones the license is issued by the relevant free zone authority. Certain regulated activities may require additional licenses from specialist regulatory authorities and/or certain ministries. For example, banks and financial institutions require special approval from the Central Bank, media companies require special approval from the National Media Council, and manufacturing companies require special approval from the Ministry of Finance.

The three main types of licenses are as follows:

- Commercial license (all kinds of trading);
- Industrial license (manufacturing or industrial); and
- Professional license (professions, services and craftsmen).

b) Free zones

Salient features & benefits

Salient features of setting up an entity the free zones in RAK are that:

1. entities are governed by the special laws of the free zone, in addition to the CCL as applicable;
2. entities are under the regulatory purview of the relevant free zone authority;
3. there is no limitation on shareholding of non-UAE nationals or non-GCC nationals;
4. entities cannot carry out business activities in mainland RAK; and
5. no customs duty is applicable on goods entering or exiting the free zone.

Free zones have certain additional benefits compared to mainland RAK, such as a simplified incorporation process and one-stop-shop service for a variety of government services such as licensing, visa, traffic and postal services.

Entity type

The following entities may be set up in the free zone:

1. Free zone establishment – a limited liability establishment with one shareholder;
2. Free zone company – a limited liability company with a minimum of two and a maximum of five shareholders; and
3. Branch of a foreign or local company.

Licenses

All business activities conducted directly by any type of legal structure in the free zones in RAK, (except the offshore jurisdiction – since such entities are usually non-operating holding companies), require one or more licenses. The license for the entities set up in the free zones is issued by the relevant free zone authority. Certain regulated activities may require additional licenses from specialist regulatory authorities and/or certain ministries.

The free zones offer the following licenses:

License Type	Activities Covered
Industrial License	Manufacturing, processing, assembling, packaging etc.
Trading License	Import, export, distribution, warehousing, trading (maximum 5 activities from similar product lines or 3 different activities from 2 different product lines).
General Trading	All kinds of trading, import, export, warehousing and distribution of goods
Commercial License	Activities covering contracting, repairing, maintenance, renting, shops, restaurants etc.
Consulting / Services License	Any type of management, business, industrial consultancy or professional services including real estate consulting.
Media License	All kinds of media and communication services.

Note:

The type of license depends on the type of business activity. Clients whose activities fall under different categories will be issued separate licenses for each category of activity subject to the approval of the authority (e.g. a licensee who is carrying out both trading and manufacturing will be issued two Licenses one for the trading activity and the other one for manufacturing. Whenever possible, a separate Lease will be drawn for each activity.

Current free zones

RAK currently has two free zones discussed as follows:

RAK Free Trade Zone

RAK Free Trade Zone (RAKFTZ) was established in 2000 is one of the fastest growing and most cost effective free trade zones in the UAE. A unique feature of RAKFTZ is that it consists of five parks, which include:

- Business park
- Industrial park
- Technology park
- Aviation park
- Academy zone

RAK Investment Authority

The RAK Investment Authority (RAKIA) was established in 2005 to promote the sustainable social and economic development of RAK; its aim is to establish RAK as a regional hub for industrial manufacturing, trade and commerce. RAKIA offers industrial plots which are suited for manufacturing companies and warehousing/ light industrial complexes, which have contributed to RAKIA's success in attracting investors in the industrial sector. RAKIA also stands out for its 65 MW power plant.

RAKIA Offshore

RAKIA also offers an 'offshore' jurisdiction, which was launched in 2007, whereby companies can be used for numerous business purposes, ranging from setting up business entities to owning overseas financial and real estate assets, inheritance planning, setting up holding companies and special purpose vehicles, ship registration and tax optimization. RAKIA offshore companies can have one or more shareholders and are usually used as non-operating holding companies, which own assets including shares and permitted real estate. As such, offshore companies are not granted any licenses by RAKIA to carry out any business activities, nor do they have provision for visas as there are no employees of offshore companies due to their non-operating nature. Accordingly, an offshore company does not have the need for an office space. The registered address of the offshore company is that of its 'registered agent'.

RAKIA offshore companies are required to have a 'registered agent'. A registered agent is pre-approved by RAKIA, and it represents the offshore company at RAKIA with respect to all matters.

Al Tamimi & Company is an approved registered agent of RAKIA.

Labour Law in the UAE

Labour law in the UAE

Employment relations in UAE are governed by *Federal Law No. 8 of 1980 (as amended)* (the "UAE Labour Law") which sets out a minimum standard of employment conditions that are obligatory for all employers in the UAE. As a Federal statute, the provisions of the UAE Labour Law apply to all private sector employers based in Ras Al Khaimah, including those that are established in a free zone. Although the free zone may implement internal employment regulations applicable to companies established within it, these will merely supplement the minimum provisions as laid out in the UAE Labour Law.

Overview of employment in the UAE

Contracts

The UAE Labour Law provides that contracts of employment maybe for a fixed or unlimited period. Fixed term contracts cannot be longer than four years in duration and must specify a start and end date. It may be renewed following the expiry of the agreed fixed term period.

Probation

A probationary period can be for a maximum period of six months and it cannot be extended beyond this period even with the consent of the employee. If an employee is working under a probationary period, he may be dismissed for any reason by his employer within or immediately upon the completion of the probationary period without notice. When an employee has completed his probationary period successfully and continues employment, the probationary period is counted towards his overall period of service.

Salary/Wages

There is no statutory minimum/maximum salary in the UAE, however, in order to sponsor a dependent to live in the UAE an employee must earn a minimum salary of at least AED 4,000 per month.

There are no statutory provisions governing matters such as the provision by employers of itemised payslips. These matters are governed by individual employment contracts. Employees are typically paid weekly, fortnightly or monthly.

The UAE operates an electronic Wage Protection System ("WPS") which has been established in order to safeguard the timely payment of employees' salaries (primarily aimed at protecting blue-collar workers) and to ensure that payments made are accurate. Employers are required to pay salaries through the WPS, and these payments are registered and monitored against the employee list and registered wages for each employee.

Public Holidays and Annual Leave

Public holidays are not fixed and may consist of up to 10 days on seven different occasions. Employees are entitled to leave with full pay on the following public holidays (declared for the private sector):

1. Al-Hijra (Islamic New Year) – one day
2. Gregorian Calendar New Year – one day
3. Mouloud (Birth of the Prophet) – one day
4. Al Meiraj (Ascension of the Prophet) – one day
5. Eid Al Fitr (End of Ramadan) – two days
6. National Day – one day
7. Eid al-Adha (Feast of the Sacrifice) – three days

Certain holidays, e.g. Eid Al Fitr, are based on local sightings of the moon. Accordingly the authorities provide a predicative date for the holiday and this is confirmed, closer to the time.

Private companies can decide whether or not to grant time off during public holidays – if employees work, they are entitled to other days off in lieu, or a payment of 150% of salary. If a public holiday happens to fall on a weekend day (i.e. a Friday or a Saturday), an employer is not obliged to provide employees with a day off in lieu, although it may do so if it wishes.

In addition to the public holidays listed above, employees are entitled to annual leave. Under the UAE Labour Law an employee does not accrue annual leave until he/she has completed 6 months of service. The basic entitlement in the first year of employment is 2 calendar days per month, after completion of the first six months – i.e. 12 calendar days' entitlement in the first year. In practice, the minimum accrual in the first year under the UAE Labour Law is not commonly enforced and a prorated entitlement is more common. Where an employee has more than one year of service he/she is entitled to 30 calendar days annual leave, which is equivalent to approximately 22 working days.

Under the UAE Labour Law an employee cannot lose his/her annual leave entitlement as this is a statutory benefit which vests in the employee. As such accrued, but unutilised, leave must either be carried forward or paid out (either at the end of the holiday year) or upon the termination of employment.

Working Hours and Overtime

The UAE Labour Law provides that the maximum working hours for employees is 8 hours per day. Employees working a five day working week may therefore work up to 40 hours; employees working a six day week may work up to 48 hours per week. In respect of mandatory rest breaks, the UAE Labour Law provides that employees must not work over five consecutive hours without a break time of one hour. During the holy month of Ramadan the normal working hours are reduced by two.

As provided by the UAE Labour Law, overtime should not exceed 2 hours per day, other than in exceptional circumstances. Overtime is calculated as 125% of the normal hourly rate or 150% where the employee works overtime during the hours of 9.00pm and 4.00am, or on a Friday or other rest day.

In accordance with the applicable Ministerial Order, only those employees who are either the Chairman of the Board of Directors, the General Manager, the Department Managers or supervisory staff, in all cases who act with the authority of the employer, can be excluded from the overtime provisions.

Sick Leave and Health Insurance

Sickness absence entitlement under the UAE Labour Law is 90 calendar days as follows: full pay for the first 15 days, half pay for the next 30 days, and no pay for the remaining 45 days. An employee on probation is not entitled to any paid sick leave.

An employer may legitimately terminate an employee's contract of employment, should they fail to resume their duties at the end of the sick leave entitlement, but not during it.

There is currently no statutory requirement in the Emirate of Ras Al Khaimah to provide employees with private medical insurance or a medical allowance; however, it is normal practice for employers to provide employees with either benefit. There is ongoing discussion at a UAE Federal level to oblige employers to provide private medical insurance for all employees.

Maternity Leave

Employees are entitled to 45 days maternity leave with full pay provided they have served a minimum of one year's continuous employment. The leave may be taken before and after confinement takes place. Where a shorter period of employment has been served, female employees are entitled to the leave at half pay.

A female employee is also entitled to an additional 100 days leave without pay, if such absence is due to an illness occurring as a result of her pregnancy. In addition, during the 18 months following delivery, female employees are entitled to two half hour nursing breaks per day during the working week.

Haj Leave

An employee is entitled to Haj or pilgrimage leave once during the course of his service. This is without pay and should not exceed a period of 30 days.

Annual Return Ticket

There is no requirement under the UAE Labour Law to provide an annual flight home, however this is customary market practice. The employer may use their discretion to extend this entitlement to the employee's family if deemed appropriate.

Termination

Without notice

There are limited grounds under which an employer may validly terminate an employee's services without notice (and without payment of end of service gratuity (see below)). These exhaustive grounds are if the employee:

- assumes a false identity or nationality, or produces fake documents or certificates;
- is terminated during the probation period;
- makes a mistake which causes the employer to suffer substantial material loss, provided that the employer informs the Labour Department of the incident within 48 hours of discovering it;
- has violated instructions for work or work place safety: provided that instructions were written and displayed in a prominent place and the employee was informed of them orally if the employee is illiterate;
- fails to carry out his basic duties as provided in the employment contract and has continued to do so despite receiving a written warning that his services will be terminated if he fails to rectify the situation;
- discloses a secret of the employer;
- is convicted of a crime involving honour, honesty or public morals;

- is found under the influence of alcohol or drugs during working hours
- assaults his employer, manager or a colleagues during work;
- is absent from work, without a valid reason for more than 20 non-consecutive days in any year or for over 7 consecutive days; and
- works for another employer during annual or sick leave.

Unlimited term contract

If the contract of employment is for an unlimited term, both the employer and the employee may terminate the employment contract for any legitimate reason provided they give a minimum 30 days notice. The contract of employment will continue to be valid during the course of the notice period and the employee is required to continue working for this period. However an employer can opt to make a payment in lieu of notice if it so chooses.

If the employer or the employee fails to give the required period of notice (other than in instances of summary dismissal) the party in breach will be liable to pay the other compensation in lieu of notice. This holds true even where such failure has caused no loss to the other party. Compensation in lieu of notice is calculated as the amount equal to the employee's wage for the notice period in full (or in proportion to the diminished part if some notice has been provided).

Termination of an employee's services may be considered arbitrary if the reason for dismissal given by the employer does not relate to the employee's performance. The UAE Labour Law provides for compensation for arbitrary dismissal which is capped at three months' wages.

In addition to the above, an employer may not terminate the employee's services for health reasons before the employee has taken the period of sick leave he is entitled to and any agreement made to the contrary is null and void.

Fixed term contract

In the event that an employer terminates a fixed term contract prior to the expiry of the fixed term period, it is liable to pay the employee early termination compensation equivalent to three months' salary or for the remainder of the contact period (if this period is shorter). If the employee terminates a fixed term contract prior to the expiry of the fixed term period, he is liable to pay the employer early termination compensation equivalent to half of three months' salary or for half of the remainder of the contract period (if this period is shorter).

UAE national employees

In 2009, the Ministry of Labour issued a decree which limits the circumstances in which UAE nationals' employment can be terminated by an employer. The decree states that the termination of UAE nationals in the private sector is unlawful if the employer does not first notify and seen prior approval from the Ministry of Labour of the proposed dismissal (and at least 30 days before the termination date). The Ministry of Labour will investigate whether the UAE national's employment is being terminated for a legally valid reason. The Ministry are obliged under the decree to revert to the employer within 15 days of the submission with their decision. The grounds upon which an employer may validly terminate a UAE national unlimited to the grounds upon which an employer may terminate an employee's services without notice.

End of Service Gratuity

In the UAE, an employee who has completed at least one year of continuous service is entitled to an end of service gratuity payment on termination of employment, which is calculated with reference to the last basic salary (excludes any allowances) as follows:

- Twenty-one (21) calendar days' basic pay for each year of service for the first five (5) years; and
- Thirty (30) calendar days' basic pay for each year of service above five (5) years.

There is a sliding scale of entitlement to end of service gratuity depending on the length of service where an employee resigns from service:

Service	Fixed term contract	Unlimited term contract
1- 3 years	No entitlement	Entitlement reduced by two thirds
3 - 5 years	No entitlement	Entitlement reduced by one third
5+ years	Full entitlement	Full entitlement

In the UAE, employers have the option to divide salary into "basic salary" and "allowances", together comprising an employee's remuneration. However, there is no legal obligation to break down salary this way. It is common practice to set basic salary at 60% of the total salary. In this way employers reduce their end of service liability.

Should the employer wish to provide a pension scheme to non-nationals, the employees are entitled to select either the pension scheme or the end of service gratuity (whichever is more favourable to the employee). Employers offering pensions should expressly specify that any pension provided is in lieu of the employer's obligation to pay end of service gratuity (pensions offered in lieu cannot be less favourable than end of service gratuity), otherwise, the employee is entitled to collect both payments on termination.

Pension for UAE and GCC Nationals

Employers are legally obliged to pay a state pension for all eligible UAE and GCC national employees, and an end of service gratuity payment for non-eligible UAE and GCC national employees (and expatriate employees). There is no legal obligation to provide non-eligible UAE and GCC national employees with a private pension, however, as indicated above in certain circumstances, eligible employer maintained pension schemes may replace the obligation to pay end of service gratuity.

Individuals are free to take out their own personal pension insurance policies or open pension savings accounts. Personal pensions may also be provided by employers, usually for white-collar staff, as an employment benefit in the individual employment contract.

Repatriation Ticket

Where an employer terminates employment, it should provide the employee with a repatriation ticket to the employee's home country as a minimum. If the employee resigns, there is no obligation to provide the ticket unless the employee does not have the means to pay. There is also no requirement to provide repatriation if the employee takes up alternative employment in the UAE.

Residency Visas and Sponsorship

In order to live and work in the UAE, all expatriates must have an employment residency visa issued by the immigration authorities which will be sponsored by the employer or the relevant free zone authority in which they are employed. In addition, all expatriates are required to have a work permit from the Ministry of Labour or a free zone identity card issued by the relavant free zone authority. This will ordinarily involve the employer and employee entering into a standard form employment contract prescribed by the Ministry of Labour or the free zone authority. Due to the limited scope of such prescribed contracts, it is common practice in the UAE for employers to issue supplemental terms of employment to their employees.

UAE and other GCC nationals do not require residency visas but must be registered with the relevant authority (Ministry of Labour or free zone authority) for work permit/free zone ID card purposes.

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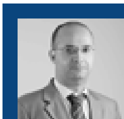

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