# DOING BUSINESS IN RAS AL KHAIMAH



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# **AL TAMIMI & COMPANY**

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#### Published by Al Tamimi & Company © 2019

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# **ABOUT US**

Al Tamimi & Company is the largest law firm in the Middle East with 17 offices across 9 countries. The firm has unrivalled experience, having operated in the region since 1989. Our lawyers combine international experience and qualifications with expert regional knowledge and understanding.

We are a full-service firm, specialising in advising and supporting major international corporations, banks and financial institutions, government organisations and local, regional and international companies. Our main areas of expertise include arbitration & litigation, banking & finance, corporate & commercial, intellectual property, real estate, construction & infrastructure, and technology, media & telecommunications. Our lawyers provide quality legal advice and support to clients across all of our practice areas.

# Doing Business in the Middle East? So are we.

Our regional footprint means that wherever our clients are doing business in the region, we are there to support them. Our expansion has been strategic and client driven. Our values define who we are and what is important to us. As a firm, we have grown based on a set of core values, which are integral to all that we do.

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### **FOREWORD**

Our guide to 'Doing Business in Ras Al Khaimah' aims to answer some of the most important questions that investors may need to know when assessing their business operations in the Emirate of Ras Al Khaimah, depending on the commercial activities which they wish to undertake.

Solidifying our commitment to the Emirate, Al Tamimi & Company was the first law firm to set up an office in Ras Al Khaimah in 2012. We have worked closely with our local and international clients as well as the local Government and Regulators for many years, and are pleased to share our knowledge and experience within this guide.

Our "Doing Business" series of books have become increasingly popular in helping not only to set up new businesses, but also in keeping businesses up to date on legal policies and changes in legislation.

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 in Ras Al Khaimah.

We look forward to the opportunity to work with you to ensure your success when doing business in one of the fastest growing Emirates in the UAE.

#### Doing Business in Ras Al Khaimah?

So are we.



ESSAM AL TAMIMI
Senior Partner & Founder
Al Tamimi & Company



HUSAM HOURANI Managing Partner Al Tamimi & Company



AMMAR HAYKAL

Partner, Head of Office

Ras Al Khaimah

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# Seeing the bigger picture

Al Tamimi & Company knows more than just the law. We focus on the here and now and also understand that our advice may affect the future. We therefore ensure our lawyers think about the situation at hand, current and future challenges and potential opportunities.

In a region where the legal landscape is never black and white, we have the knowledge, expertise and cultural awareness to make sure our clients are at the forefront of doing business in the Middle East.

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# ABOUT RAS AL KHAIMAH



# **ABOUT RAS AL KHAIMAH**

#### Why do business in Ras Al Khaimah?

Ras Al Khaimah ("RAK") 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 its 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 centred on agriculture and fishing, RAK has adopted many commercial privileges enjoyed by neighbouring emirates such as Dubai in developing Special Economic Free Trade Zones. RAK boasts a wide range of commercial and trade licenses, extending to industrial and professional consultancy services licenses. In 2018, Standard & Poor's (S&P) Global Rating affirmed the Emirates "A" long term and "A-1" short term sovereign credit ratings in local and foreign currencies. RAK's GDP is expected to grow by 2.3% in 2019, 3% in 2020 and 2.5% in 2021.

#### 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 regularly amended to provide a flexible and up to date legal frame work to do business in.

#### **Political Stability**

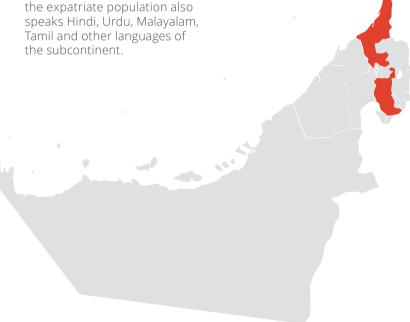
RAK's political and social fabric is very strong and the government's focus is social and economic growth and development.

#### 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.

#### CURRENCY

The currency of RAK and the UAE is the United Arab Emirates dirham (AED).



• RELIGION Islam

#### POPULATION

RAK's population is approximately 400,000.



### A COST-EFFECTIVE INVESTMENT HUB

RAKEZ offers premium business set-up packages with options for free zone and non-free zone formations. Investors also enjoy a wide range of customisable facilities and first-class services provided in a one-stop shop.

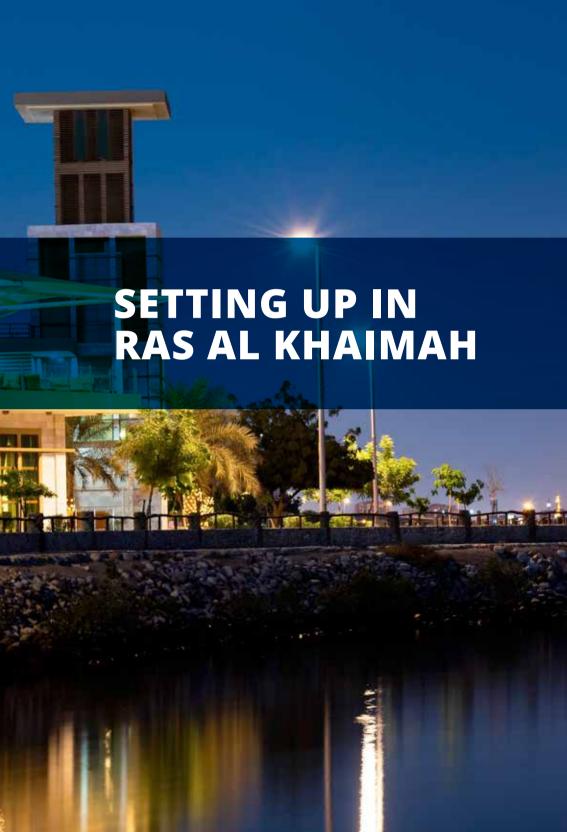
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# SETTING UP IN RAS AL KHAIMAH

With its varied landscape including pristine coastline, expansive desert, pleasant wadis and oases in the Hajar Mountains, RAK has become a thriving investment destination as well as one of the top tourist draws in the Gulf region.

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

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

#### 1. Setting Up in Mainland RAK

The main types of business forms, and related applicable rules and regulations, that allow for investors to perform economic activities in mainland RAK are as follows:

#### (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. The sole proprietorship concept is regulated under the Federal Commercial Transactions Law No. 18 of 1993 (the "Commercial Code") and the relevant RAK local laws.

Sole Proprietorships owned by UAE / GCC Nationals: 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 management functions of the business and retain the profits. However, this type of arrangement 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 visà-vis any third party who may have no knowledge of the private arrangement.

Sole Proprietorships owned by non-GCC Nationals / Service Agent Arrangement: Foreigners may form sole proprietorships 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. If the foreign sole proprietor does not have an existing residence in the UAE, then the foreigner's residence in the UAE should be under the sponsorship of the new business.

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 under the Commercial Companies Law, Federal Law No. 2 of 2015 ("CCL")

Various legal corporate forms are available under the CCL, the primary federal law governing corporate entities<sup>1</sup>, for the establishment of a business presence in RAK.

The table 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 CCL:

<sup>&</sup>lt;sup>1</sup>It is advisable to consult with relevant authorities and legal advisors in order to receive up-to-date information in this regard.

Corporate Forms	Structure of Partners / Shareholders	Minimum Capital Requirement
Partnership	Two partners (or more) natural persons who shall be personally and jointly liable in all their property for the company's obligations.	None
Limited Partnership Company	One (or more) active partners who shall be personally and jointly liable for the obligations of the company and shall acquire the capacity of a merchant; and one (or more) dormant partner that shall not be liable for the company obligations other than to the extent of their share in the capital and they shall not acquire the capacity of a merchant.	None
Limited Liability Company	A company in which the number of partners are no less than two and no more than 50 partners and the liability of each partner shall only be proportionate to his or her share in the capital.	No minimum requirement
Single Person Limited Liability Company	A company regulated under the provisions of the limited liability company, owned by one person who must be a UAE national, whether natural or corporate, and the owner shall not be liable for the company's obligations other than to the extent of share capital that appears in the Memorandum of Association; the general provisions relating to the Limited Liability Company, shall apply to a Single Person Limited Liability Company.	No minimum requirement
Public Joint Stock Company	Five or more shareholders who owe limited liability.	AED 30 million
Private Joint Stock Company	Between two and 200 shareholders who owe limited liability.  The CCL also allows for a Single Person Private Joint Stock Company, on the condition that the single owner must be a corporate UAE entity.	AED 5 million

Additional information on the corporate forms listed above:

**Partnership:** A 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 corporate form of business organisation is, therefore, not appropriate for foreign investors wishing to set up in RAK.

**Limited Partnership Company:** The CCL defines a limited partnership company as a company which consists of one or more active partners who are jointly and severally liable for the obligations of the company and act in the capacity of a trader, and one or more silent partners who are not liable for the obligations of the company other than to the extent of their respective shares in the capital and do not act in the capacity of a trader.

Thus, a limited partnership company is essentially a modified joint liability company as in a joint liability company, only UAE nationals may be active partners. However, in a limited partnership company foreigners may be silent partners who essentially do not have a role in the management regarding third parties. In addition, a silent partner's liability is limited to the extent of their share capital in the company. Silent partners may be involved in internal control administration of the Company but should, of course, ensure they do not lead third parties to believe they are anything other than a silent partner otherwise their limited liability will cease. The management of the limited partnership company is vested in the general (active) partners.

Limited Liability Company ("LLC"): An LLC is governed by the CCL and is similar to the "Private Limited Liability" or "Ltd" company in the United Kingdom. An LLC is often the most suitable method of establishing a business in RAK by foreign investors. However, as will be mentioned below, where the intended business involves banking, insurance and/or investment activities conducted on behalf of third parties, an LLC is not legally permitted to practice such activities and a PJSC will have to be established. The CCL defines an LLC as a company "in which the number of partners are no less than two and no more than 50 partners and the liability of each partner shall only be in proportionate to his or her share in the capital".

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

- LLCs are governed by the CCL;
- LLCs are, in general, under the regulatory purview of the DED;

- Shareholding of non-UAE nationals and non-GCC nationals in LLCs is generally limited to 49%;
- LLCs can carry out business activities in mainland RAK; and
- Applicable customs duty is payable of goods entering mainland RAK.

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

- Public subscription for raising capital is not permitted.
- Although a foreign partner is only generally permitted to own a maximum of 49% 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 parties (including foreigners).
- In practice, the national partner may wish to take no part in the operations of the company and may give the foreign partner a power of attorney authorising him to vote in the general assembly on his or her behalf.
- It is possible to provide in the Memorandum of Association that 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.
- The auditor should be appointed by the general assembly (which is essentially a meeting of all the shareholders of the company).

Single Person Limited Liability Company ("SPC"): Pursuant to the provisions of the CCL, it shall be permissible for a single UAE national person, whether natural or corporate, to incorporate and own a limited liability company and the owner of the company capital and the owner's liability shall be limited to the amount of the capital which appears in the Memorandum of Association thereof and the provisions of the CCL relating to LLCs, shall apply to SPCs, providing that there shall be no conflict with its nature.

The SPC can be useful in implementing group restructuring, and especially where the holding company is established in a UAE free zone, as the practical interpretation of the ownership requirements allow for a UAE free zone entity to completely own an SPC as long as the UAE free zone entity (which may involve foreign shareholders) qualifies as a UAE national.

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

A PJSC is similar to the "Public Limited Company" or "PLC" in the United Kingdom. According to the CCL, the shareholders of a PJSC are liable only to the extent of contributing 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 30 million for a general company. However, with regards to financial services and insurance PJSCs, the minimum share capital would be higher and it varies in accordance to the respective activity.

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 plan/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 UAE Security and Commodities Authority ("SCA"). Any deviation from the specimen form must be approved in advance by SCA which regulates PJSCs. Further, the name of the intended company must end with the words PJSC.

A PJSC must have at least five founding members and its management should be vested in a board of directors consisting of an odd total number of directors of which the minimum is three, and a maximum is eleven 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% 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% of the shares of the PJSC. The founder members must subscribe to a minimum of 30% and a maximum of 70% of the share capital of the company. If new shares are issued, the existing shareholders should be offered the opportunity to subscribe for such shares in proportion to their existing shareholding in the company.

There are additional requirements for the incorporation and operation of a PJSC stipulated under the CCL that should be considered by interested investors. The PJSC has become increasingly popular in recent years, visà-vis the private sector, an indicator of which is that there are currently more than 100 PJSCs in the UAE, due to the fact that such business vehicles enable businesses to raise substantial amounts of capital, particularly where large-scale projects are concerned. This allows small foreign and local investors to participate in such projects.

However, given the fairly restrictive rules and controls governing the establishment and management of a PJSC and the substantial capital requirement, it is not regarded as a suitable business vehicle for most foreign investors.

It should also be noted that, where one is contemplating a business venture which involves insurance or commercial banking the establishment of a PJSC is a legal necessity and no other type of company may be established for such activities. For businesses engaged in the investment of funds on behalf of third parties, either a PJSC or a Private Joint Stock Company needs to be established.

**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 5 million;
- the shares of a Private Joint Stock Company may only be offered to the public after two financial years have been completed and upon conversion to a PJSC (and other requirements are met);
- it is supervised by the Ministry of Economy (as opposed to regulated by SCA); and
- only two founding members are required.

Considering the lower capital requirement of AED 5 million, Private Joint Stock Companies are more popular with foreign investors than PJSCs.

It is worth noting that the procedures for setting up a Private Joint Stock Company are to a certain extent similar to a PJSC, but with a more streamlined and faster process.

In exception of the minimum number of shareholders stipulated by the CCL, it shall be permissible for a single corporate person to incorporate and own a Private Joint Stock Company and such owner shall only be liable to the extent of the share capital that appears in the Memorandum of Association thereof. The name of this type of company shall be followed

by the expression "private joint stock sole proprietorship" and provisions of the Private Joint Stock Company stipulated by this Law shall apply to such company, providing not to conflict with the nature thereof.

#### (c) Companies Under Civil Transactions Law – Civil Company

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

- Speculative Venture Partnerships;
- Mudaraba Companies; and
- · Companies to perform work ("Business Companies").

A Speculative Venture Partnership is a form of partnership by way of 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.

A Mudaraba Company an arrangement under a contract where one of the parties to the contract contributes a certain amount of capital and in exchange, the other party, the Mudarib, contributes his or her 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, and he or she alone will bear any losses incurred.

Although Speculative Venture Partnerships and Mudaraba Companies are called 'companies', strictly and legally speaking they are not considered as types of entities that can be incorporated in the DED. Instead, such entities are more representative of civil activities that may be practised rather than legal structures of business in their own right. In contrast, Business Companies can be incorporated with the DED.

Business Companies: Under the Civil Code, Business 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, where they share equally in the distribution of the work, provided that the work is of a single and inseparable nature.

The main difference between entities under the CCL and those under the Civil Code is that the activities which may be practised in the former are of a commercial nature, whereas in the latter, the activities that may be practised involve the use or investment of intellectual faculties, acquired information

or the use of skills, for example, carpentry, engineering consultancy and barber shops. The fact that civil companies do not practise activities of a 'commercial' nature does not denote that they are non-profit making organisations. It is simply a distinction made in the UAE's legal system in terms of the 'types' of activities and business practices.

Furthermore, it is worth mentioning that RAK licensing authorities should allow the setting up of small-scale commercial activity as a Business Company, for example, small grocery shops and supermarkets.

The ownership of a Business Company shall consist of two or more partners, provided that at least one partner must be a UAE national.

#### (d) Branch Office of a Foreign Company

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

A branch office is legally part and an extension of its parent company and does not have a legal identity distinct from its parent company. Therefore, the name of a branch office will be the same as that of the company of which it is a part.

Branch offices are nevertheless required to have a national service agent. The national service agent can be an individual or a corporate entity. However, if the agent is a corporate entity, then such corporate entity must be wholly owned by UAE nationals. The national service agent will not acquire any rights or interests in the business of the branch office and will simply provide services on matters that 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.

One of the conditions for establishing a branch office in the UAE is that it may only be engaged in activities similar to those of its parent company (subject to such activities being licensed by the relevant authority). It is important to note that a branch office is not permitted to carry on the business of importing, exporting, manufacturing or distribution of the products of its parent company.

A branch must be registered with the Ministry of Economy, as the main regulatory authority for registration of branches and representative offices, before obtaining the licence from the DED. The issuance of a branch licence from the DED allows the parent company to conduct business in RAK through the branch office. The permitted activities that the branch office will be allowed to practise, will depend on the type of licence it obtains and, more importantly, the activities of the parent company.

#### (e) Representative Office of Foreign Company

Representative offices are governed by the CCL. A representative office of a foreign company is legally distinct from a branch office of a foreign company in that it is only allowed to promote its parent company activities. Therefore, if a parent company deals in IT consultancy services and opens a representative office in RAK, the office will only be able to promote and market such services and facilitate contracts in the UAE, as distinct from conducting the service itself.

It should be noted that 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.

All business activities in mainland RAK, conducted by any type of the above listed entities, should be licensed by DED. 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 Energy & Industry.

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).

In addition to setting up a business entity, 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 the establishment of a commercial agency.

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

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 (the "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, as follows:

#### Exclusivity

Registered agents have the exclusive right to import the goods that are the subject matter of the agency agreement. Any import of goods which are the subject matter of the registered agency through the parties other than the registered agent can be seized by the Customs Department unless the agent or the Ministry of Economy consent to their release. This also includes goods that 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 the 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 that constitute the agreement and the territory concerned.

#### Non-termination and non-renewal

A concern for principals can be 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. However, recent judicial pronouncements have discussed justifiable cause to include, amongst others, gross negligence, dealing with competitive products in breach of agreement, and assigning the agency to a third party and failing to meet sales targets. It is at the discretion of the Ministry of Economy to decide whether or not a 'justifiable cause' exists. However, the Ministry's decision is subject to review by the courts. 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 the agent may have suffered.

Unregistered Commercial Agent: An unregistered commercial agency on the other hand, is a conventional principal-agent relationship that does not benefit from the protection of the Agency Law as the relationship is 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 provides that any commercial agency not registered in the Ministry of Economy's register shall be deemed void and no claim shall be recognised with respect thereto, unregistered commercial agencies are, nevertheless, seen as valid commercial contracts where the parties should be subject to the terms and conditions they have agreed to.

Three types of unregistered commercial agencies may be created including, contract agencies, commission agencies and commercial representations, as regulated under the Commercial Code. Unlike registered commercial agencies, unregistered agents are not required to be UAE nationals or commercial entities wholly-owned by UAE nationals. However, what would

be required is for the unregistered agents to be an entity licensed to trade in the UAE. In addition, a principal is allowed to terminate an agency agreement in a number of circumstances including cases where the agency arrangement has expired after a fixed term agency contract. From the point of view of a principal, unregistered agencies may be more attractive.

#### 2. Setting Up in Free Zones in RAK

Besides the conventional jurisdiction of mainland RAK, there are currently four main RAK free zone jurisdictions that offer different types of licences. While these free zones are geographically located within RAK, they are considered distinct legal jurisdictions, usually having their own (non-criminal) laws.

In addition, the salient features of entities in the RAK free zones are that:

- Entities are governed by the special laws (Implementing Rules & Regulations) of each respective free zone, in addition to the CCL, as applicable;
- Entities are under the regulatory purview of the relevant free zone authority;
- There is no restriction with regards to the shareholding of non-UAE nationals or non-GCC nationals;
- Entities cannot carry out business activities in mainland RAK (unless additional specific licenses are obtained); and
- No customs duty is applicable on goods entering or exiting the RAK 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, residency visas and postal services.

#### Main Free Zones in RAK

#### RAK Economic Zone ("RAKEZ")

RAKEZ was established by Law No. 2 of 2017, as part of a merger between the established RAK Free Trade Zone ("RAKFTZ") and the RAK Investment Authority ("RAKIA"), and is one of the most cost effective

special economic free trade zones in the UAE. A unique feature of RAKEZ is that it consists of various parks, which include:

- Business Park
- Industrial Park
- Technology Park
- Aviation Park
- Academic Zone
- Media Zone

RAKEZ offers a special dual licensing arrangement whereby an investor with a free zone license issued by RAKEZ may obtain an additional mainland RAK license, such additional license is issued by the DED for the same premises/office in the free zone. RAKEZ has put in place a special system to facilitate the quick setup of both free zone and mainland licences through a dedicated DED branch located within RAKEZ itself.

#### RAK International Corporate Centre ("RAK ICC")

RAK ICC is a free zone that offers an 'offshore' jurisdiction and was established, by virtue of Decree No. 4 of 2016, as part of the merger between RAKFTZ and RAKIA. Companies can be incorporated and used for numerous business purposes, ranging from owning overseas financial and real estate assets, inheritance planning, setting up holding companies and special purpose vehicles, ship registration and tax optimisation.

#### **RAK Maritime City**

The RAK Maritime City Free Zone was established by virtue of Emiri Decree No. 21 of 2009. RAK Maritime City Free Zone is the nearest Free Zone to the Strait of Hormuz and its port functions and features include deep water berths and exclusive jetties.

#### The Free Zone in the Areas Surrounding RAK International Airport

In accordance with Emiri Decree No. 26 of 2014, on the Establishment of a Free Zone in the Areas Surrounding RAK Airport, a free zone was established in the area surrounding RAK International Airport, divided into three sections as follows:

Industrial Free Zone:

- · Cargo Free Zone; and
- Maintenance and Training Free Zone.

The free zone in the areas surrounding RAK International Airport is under the authority of the management of RAK International Airport and was established to promote investment. Entities established within this free zone may also service the airport itself.

#### Types Of Entities in Free Zones

The following entities may be generally set up in the free zones:

- 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, or, depending on the free zone, fifty, shareholders.
- 3. Branch of a foreign or local company.
- 4. Company Limited by Shares (RAK ICC off-shore entities), with a minimum of one shareholder, one director and one secretary.

RAK ICC offshore companies can have one or more shareholders and are typically 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 RAK ICC 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 office space. The registered address of the offshore company is that of its 'registered agent'.

RAK ICC offshore companies must have a 'registered agent'. A registered agent is pre-approved by RAK ICC and represents the offshore company at RAK ICC with respect to all matters.

Al Tamimi & Company is an approved registered agent of RAK ICC.

#### Types Of Licenses in Free Zones

All business activities conducted directly by any type of legal structure in the RAK free zones (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.
General Trading License	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. For example, a licensee who is carrying out both trading and manufacturing will be issued two licenses, one for the trading activity and one for manufacturing. Whenever possible, a separate license will be drawn for each activity.





# **TAXATION**

#### **Corporate Income Tax**

Currently there is no corporate tax in the UAE at the Federal level.

The Emirate of RAK imposes corporate tax on companies engaged in the production and exploration of oil and gas at progressive rates up to 50% and branches of foreign banks at 20%.

A tax holiday may be available for businesses established in free zones.

The UAE has entered into more than 80 double tax treaties.

#### Value Added Tax ("VAT")

VAT was implemented in the UAE at the Federal Level on 01 January 2018.

Unless the supply is specifically zero rated or exempt, VAT is imposed on the supply of goods and services in the UAE as well as imports of goods and services. The standard rate of VAT is 5%.

The export of goods and services outside the GCC, international transportation of goods and passengers, medicine and medical equipment, the first supply of residential real estate and certain healthcare and education services are subject to VAT at the zero rate. The supply of margin based financial services, life insurance, local passenger transport and residential real estate, other than the first supply, are exempt from VAT.

A UAE business is required to register for VAT if the value of annual taxable supplies exceeds the mandatory registration threshold of AED 375,000. A UAE business may register for VAT if the value of annual taxable supplies exceeds the voluntary registration threshold of AED 187,500. Non-residents that are liable to account for VAT must register for VAT irrespective of the value of the supplies.

#### **Excise Tax**

In the UAE, excise tax became effective on 01 October 2017 and applies to tobacco products at 100%, energy drinks at 100% and carbonated drinks at 50%. The tax is based on the higher of the retail sales price of the excise goods or a standard price published by the Federal Tax Authority.

The responsibility for accounting for excise tax falls on importers of the excise goods on import into the UAE, producers of excise goods when they are released for consumption in the country and stockpilers of excise goods when the goods are acquired by a stockpiler and excise tax has not previously been paid on those goods.

#### **Customs Duties**

The UAE has enacted the GCC Customs law under which customs duty is imposed at the first point of entry into the GCC.

Customs duty applies to imported goods generally at the rate of 5% of the cost, insurance and freight ("CIF") invoice value. However, certain goods may be subject to customs duty at a higher rate whereas other goods are exempt.

The import of goods into free zones is generally not subject to customs duty and the duty is suspended until the goods are imported into mainland UAE. There are also other exemptions from customs duty.

#### Real Estate

A registration fee is payable on the transfer of ownership of land or property at 4% of the sale value. This fee is also payable on the transfer of shares in companies holding real estate based on the value of the underlying property.

#### Municipal taxes

The Emirate of RAK imposes a municipal tax on properties based on the annual rental value. This is generally payable by tenants at 1% for residential properties (with a minimum fee of AED 300) and 5% for certain commercial properties. The tax is payable through the monthly utility bill in instalments.

#### **Hotel And Tourism Taxes**

The Emirate of RAK imposes various taxes on hotels based on the value of the hotel services. These include a municipality fee of 10% and a service charge of 10%. In addition, a Tourism Dirham Fee is chargeable to hotel guests and tenants of hotel apartments per night of occupancy (for a maximum of 30 consecutive nights), ranging from AED 7 to AED 20 per night depending on the category/grade of the hotel.

#### Personal Income Tax and Social Security

There is no personal income tax in RAK.

Social security is due in respect of GCC nationals only. The employer is required to pay 12.5% and 5% is payable by the GCC employee.

Under the labour law, foreign employees are entitled to end of service gratuity which is based on 21 days of the annual basic salary per year, after the completion of at least one year of employment.



# SET UP YOUR INTERNATIONAL BUSINESS COMPANY WITH RAK ICC

A WORLD-CLASS CORPORATE REGISTRY



## **OUR PRODUCTS & SERVICES**

- Company Limited by Shares
- Company Limited by Guarantee
- Restricted Purposes Company
- Segregated Portfolio Company
- Unlimited Company
- Transfer of Domicile
- Will Registration
- Premium Product (International business company with an onshore subsidiary)



## WHY REGISTER WITH RAK ICC?

- 100% foreign ownership
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- 100% corporate tax exemption
- 100% capital and profit repatriation
- No capital gains tax
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# **LABOUR LAW**

#### 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 RAK, including those that are established in a free zone. Although a 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 may be for a fixed or unlimited period. Fixed term contracts are limited to two 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/she may be dismissed for any reason by his/her employer within or immediately upon the completion of the probationary period without notice. When an employee has completed his/her probationary period successfully and continues employment, the probationary period is counted towards his or her 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 14 days on six 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. Eid Al Fitr (End of Ramadan) up to five days
- 4. Commemoration Day one day
- 5. National Day two days
- 6. Eid al-Adha (Feast of the Sacrifice) up to four 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 (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 is not entitled to use accrued annual leave until he/she has completed six months of service. The basic entitlement in the first year of employment is two calendar days per month. Where an employee has more than one year of service he/she is entitled to 30 calendar days annual leave.

Under the UAE Labour Law an employee cannot lose his or 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 and 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 two 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 RAK 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 calendar 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 maternity leave at half pay.

A female employee is also entitled to an additional 100 calendar days (in aggregate) 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/her service. This is without pay and should not exceed a period of 30 calendar 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 or her basic duties as provided in the employment contract and has continued to do so despite receiving a written warning that his/her services will be terminated if he/ she 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/her 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 seven consecutive days; or
- · 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 calendar 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.

A 2016 Ministerial decree provides that the notice period in an employment contract can be up to a maximum of three months in duration.

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/she 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).

Pursuant to a 2016 Ministerial decree, the situation is slightly different where the employee's initial fixed term contract has expired and the parties enter into a new fixed term contract. In this context, either party may terminate the contract prior to its expiry by giving the required notice to the other party (which must be specified in the contract and be between one and three months). Further the parties can contractually agree on an indemnity or compensation amount (of up to three months' salary) which one party must pay to the other if they terminate prior to the contract's expiry date.

#### **UAE** national employees

In 2009, the Ministry of Labour (now, the Ministry of Human Resources and Emiratisation ("MOHRE")) 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 seek prior approval

from the MOHRE of the proposed dismissal (and at least 30 days before the termination date). The MOHRE will investigate whether the UAE national's employment is being terminated for a legally valid reason. The MOHRE are obliged under the decree to revert to the employer within 15 days of the submission with their decision.

In 2018, the MOHRE issued a further law regarding the termination of UAE nationals in the private sector. Notably, employers must conduct and submit an "exit interview" with UAE national employees identifying the reasons for termination. Termination may be considered unlawful if the exit interview is not carried out, or if the employer hires a nonnational employee to perform the same duties of the UAE national whose services were terminated. Where the courts determine that the termination was unlawful, it may suspend the issuance of new work permits to the company for up to six months, thereby not allowing the company to hire new employees.

### End of Service Gratuity

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

- 21 calendar days' basic pay for each year of service for the first five years; and
- 30 calendar days' basic pay for each year of service above five 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. This way, employers are able to 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 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 saving 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 MOHRE or a free zone identity card issued by the

relevant free zone authority. This will ordinarily involve the employer and employee entering into a standard form employment contract prescribed by the MOHRE 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 (MOHRE or free zone authority) for work permit/free zone ID card purposes.



## "THE LEADING INDUSTRIAL FREE ZONE WITH MARITIME ACCESS"

'RAK Maritime City Free Zone is a conveniently-located logistics gateway at the entrance of the Arabian Gulf, which offers unrivalled port and free zone facilities.'

- ➤ Immediately adjacent to:
  - Saqr Port (the largest bulkhandling port in the MENA region);
  - Hutchison Container Terminal RAK (350,000 TEUs terminal capacity);
  - Major limestone quarries and cement works.
- ➤ 8 million square metre Free Zone, with 4 million square metres immediately available for industrial projects requiring bespoke waterside access;
- Customised plot sizes to meet your requirements;

- Over 5 kilometers of exclusive quay wall;
- Supported by the other ports in Ras Al Khaimah;
- Already boasting numerous international tenants;
- 100% Foreign Ownership;
- Long and stable lease agreements.









## **DISPUTE RESOLUTION**

#### The Courts of Ras Al Khaimah ("RAK Courts")

Ras Al Khaimah has its own court system which may resolve civil, commercial and/or criminal disputes in connection with matters arising under jurisdiction in the Emirate. The RAK Courts besides to its local Laws, by laws and regulations apply the civil codified laws of the United Arab Emirate and RAK.

Any case at the RAK Courts generally commences in the Court of First Instance, with two stages of appeal, the Court of Appeal and the higher Cassation Court

The RAK Courts have jurisdiction to recognise and execute local and foreign judgments and arbitration awards in RAK.

The RAK Property Committee, part of the RAK Courts, generally has exclusive jurisdiction over real estate disputes related to developer and tenancy matters in RAK.

The RAK Courts are transitioning to a user-friendly electronic and smart service.

# Collaboration with the Courts of the Dubai International Financial Centre ("DIFC")

The DIFC is a financial free zone in Dubai, which has its own legal jurisdiction and courts system, applying English language DIFC common law which is based on the laws and legal system of England and Wales.

DIFC law and courts provide a popular forum for commercial dispute resolution in the Middle East, due to court hearings and documentation being held in English and the application of developed common laws.

RAK Courts (and other RAK governmental bodies) entered into collaboration arrangements with the DIFC courts in 2016, seeking to develop the relationship between the RAK and DIFC judiciaries and to simplify the enforcement of court and arbitration awards issued in the DIFC and vice-versa in RAK.

Parties can "opt-in" to DIFC law and courts under contractual terms. Therefore, the DIFC provides a potential alternative jurisdiction for contractual dispute resolution for businesses in RAK.



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# **NOTES**

