

## **Part IV**

### **Establishment of businesses in the UAE:**

One of the important aspects of doing business in the UAE is the legal structure. In the past, each Emirate followed its own procedures governing the operations of foreign business interests and most foreign individuals and companies operated in one of three ways: with a local sponsor, through a partnership with a UAE National or company, or through private / public shareholding companies incorporated by Ruler's decree.

Since 1984, steps have been taken to introduce a codified companies law applicable throughout the UAE. Federal Law No. 8 of 1984, as amended by Federal Law No.13 of 1988 – the "Commercial Companies Law" – and its by-laws have been issued.

With regard to ownership requirements, a minimum of fifty-one per cent participation by UAE National(s) is mandatory for all UAE – established companies except:

- Companies set up in the various Free Zones;
- Foreign companies registering branches or representative offices in the UAE; and
- Service companies where 100% foreign ownership is permitted subject to their complying with the relevant local laws and regulations.

The Commercial Companies Law also defines several categories of legal entities which can be established in the UAE. It sets out the requirements for companies in terms of shareholders, directors, minimum capital levels and incorporation procedures. It further lays down provisions governing conversions, merger and dissolution of companies.

Some of the important legal entities, permitted to be registered under the Commercial Companies Law, are broadly characterised as under:

#### **1. General Partnerships**

General Partnerships are constituted between two or more partners who are jointly and severally liable for all liabilities of the partnership. All the partners have to be UAE Nationals only.

## **2. Joint Venture Companies**

A Joint Venture Company is formed under a contractual agreement between two or more partners for sharing profits/losses of one or more commercial businesses undertaken by one of the partners in his own name. The joint venture contract, which may be written or oral, regulates the relationship between the partners and need not be disclosed to third parties. The contract is also not required to be notarised or registered. Third parties have recourse only against the partner with whom they have dealt with. However, if the existence of the joint venture is disclosed to third parties, the partners will become jointly liable to such third parties. In practice, joint ventures are seen as offering a suitable structure for foreign companies who wish to set up specific projects on short term basis.

## **3. Public and Private Joint Stock Companies**

Public Joint Stock Companies require at least ten shareholders and a minimum capital of Dirhams 10 million (US\$ 2.725 million) and may be suitable primarily for large projects or operations. The chairman and a majority of shareholders and directors of such companies must be UAE Nationals.

Private Joint Stock Companies require a minimum of three shareholders and a minimum capital of Dirhams 2 million (US\$ 0.545 million). Shares of such companies cannot be offered for public subscription. With the exception of these provisions, all other provisions in the Commercial Companies Law applicable to Public Joint Stock Companies are also applicable to Private Joint Stock Companies.

The Law further stipulates that companies engaging in banking, insurance, or financial activities should be run as Public Joint Stock Companies. However, foreign banks, insurance and financial companies can establish a presence in UAE by opening a Branch or Representative Office.

## **4. Limited Liability Companies**

A Limited Liability Company can be formed by a minimum of two and a maximum of fifty shareholders whose liability is limited to their shares in the company's capital. At least 51% of the share capital of the company should be owned by UAE National(s). Such companies are recognised as offering a suitable structure for foreign individuals or organisations interested in developing a long term relationship with the local business community.

In Dubai, the minimum capital required (to be contributed in cash or in kind) for the Limited Liability Company engaged in business activity other than general trading is currently Dirhams 300,000 (about US\$ 82,000). For general trading activity, the minimum capital requirement is Dirhams 3,000,000 (about US \$ 820,000).

Although the maximum foreign equity participation in a Limited Liability Company is 49%, profits can be distributed in different proportions as agreed by the promoters/shareholders of the company. With the approval of the UAE National Shareholder(s), the entire business operations of the company may be entrusted to the foreign shareholder(s). The foreign shareholder(s) can, therefore, claim a higher share of profit in case such shareholder(s) provides exclusive management and/or any special services or facilities to the company. As far as the protection of the minority shareholder(s) interest is concerned, this can be done by way of shareholders resolutions and certain related security documents.

Although the rules and regulations for establishing the Limited Liability Companies are generally similar in all the seven Emirates of UAE, the requirement of minimum capital and costs involved for registering the company may vary from one Emirate to the other.

## **5. Branches and Representative Offices of Foreign Companies**

The Commercial Companies Law also covers the formation and regulation of branches and representative offices of foreign companies in the UAE and stipulates that they may be 100% foreign owned, provided a UAE National Agent is appointed in accordance with provisions of the Law.

A branch office, on registration, carries on business under the name and form of the parent company. The branch office does not have a separate legal identity of its own but is considered as part of its parent company. The main difference between a branch office and a representative office is that a branch office may exercise freely the activities for which it is licensed whereas a representative office may practice only promotional business for the products and services provided by the parent company. Unlike a branch office, a representative office cannot conduct business operation or market directly its products.

The registration procedures for a branch or a representative office of a foreign company are more elaborate as compared to the incorporation of a Limited Liability Company. As stated above, one of the important requirements for a branch or representative office license is the appointment of a "Service Agent", who will be a UAE National. The parent company will be solely and fully responsible for providing the capital and management for the operations in UAE and for all the financial liabilities towards third parties which may arise as a result of their conducting the licensed activities. The Service Agent's responsibility will be limited to providing his experience and expertise of the local procedures and practice in relation to the establishment and conducting of the licensed activities. For his services, the Service Agent will be paid an annual fee to be mutually agreed with him.

### **Service Companies**

Under the local laws of the various Emirates, foreign nationals are permitted to open Service Companies in their own name or in partnership with UAE Nationals or foreign nationals to practice a vocation or a profession such as legal consultancy, medical services, accountancy, engineering consultancy and other similar services. Such establishments can, as per current regulations, be 100% foreign owned and do not require a UAE National as a partner. However, it may be noted that for carrying out certain specific professional activities, it is necessary to comply with the related laws and regulations which include obtaining prior approvals from the concerned Government and Local Authorities and appointing a UAE National as a Partner or Service Agent.