

## Options for Business Activities in the UAE

The matrix below provides an overview of the options available for a foreign company to conduct business activities within the United Arab Emirates (the “UAE”).

The matrix has been structured to provide a sense of the advantages and disadvantages of each form of participation in the UAE, their required degree of formal presence in the UAE and any related contractual arrangements. The choice depends upon the foreign company’s objectives and preferences, as to its desired involvement within the UAE.

Pursuant to the Commercial Companies Law (the “CCL”) of the UAE, foreign companies may not practice their “*main activities*” in the UAE until a permit is obtained from the UAE Ministry of Economy and Commerce. In effect, this requires a foreign company to follow one of the designated forms of structure, as outlined below:

Form of Participation	Related Contracts	Advantages	Disadvantages	Considerations
(1) UAE Limited Liability Company (“LLC”)	<ul style="list-style-type: none"> <li>Joint venture agreement</li> <li>Various service and distribution agreements between the parties and the LLC.</li> </ul>	<ul style="list-style-type: none"> <li>If formal entrenchment of a relationship with a proposed local business partner is desired, a formal joint venture entity could be established to conduct activities in the UAE. The foreign company and its proposed business partner would share profits etc. and participate as agreed.</li> <li>A foreign company (through its appointees</li> </ul>	<ul style="list-style-type: none"> <li>UAE nationals must own at least 51% of company’s equity – although management control can be as agreed.</li> <li>Principal office must be in the UAE.</li> <li>Can be costly to negotiate and implement joint venture documentation and arrangements if complex.</li> <li>Enforcement relating to the</li> </ul>	<ul style="list-style-type: none"> <li>The CCL recognizes seven types of companies for formation under its provisions and permits foreign equity participation in all but one (the general partnership). Of these, the LLC has been the vehicle of choice for foreign companies due to, among other factors, its flexible management structure, and protection of minority shareholders.</li> <li>While a UAE LLC has restrictions limiting foreign equity to a maximum of 49%, the profit and loss distribution can be shared in a ratio different to that of the share capital ratio (in practice, down to a minimum split of 80%-20% between the foreign investor and the UAE national). Management agreements can also be entered into, if appropriate, which can provide for fees based on profits</li> </ul>

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		<p>and as a shareholder) may have a greater degree of control embedded in the constitutional documents of the entity in the UAE.</p> <ul style="list-style-type: none"> <li>• LLC may generally engage in any lawful activity, with limited liability protection.</li> <li>• Can operate as a fully fledged business, permitted to perform contracts or conduct other activities as specified in its license.</li> <li>• Registration and licensing occurs at local Emirate level (in the Emirate in which the LLC's office will be located), no substantive role for the UAE Federal Ministry in registration and licensing process easing administrative burden somewhat.</li> <li>• Currently no corporate income tax in the UAE.</li> </ul>	<p>LLC is subject to UAE law.</p> <ul style="list-style-type: none"> <li>• Possibly more difficult to unwind/terminate.</li> </ul>	<p>and therefore, effect the overall economic allocation defined by the parties. In addition, the day-to-day management of the company may be vested in a foreign manager (i.e., the restrictions only relate to ownership).</p> <ul style="list-style-type: none"> <li>• Hybrid structures can be developed depending upon the parties' objectives etc., and as a form of security. For example, an offshore joint venture company could be set up which registers a branch in the UAE to keep value and joint venture arrangements outside of the UAE. Owing to the applicable ownership restrictions and the formality in establishing an LLC in the UAE, this option may be most viable if the foreign company has long-term plans to establish business operations in the UAE. Furthermore, if the LLC intends to be actively involved in the collaboration and if it is intended that a proposed local business would serve as the long-term local joint venture partner, this could be a suitable vehicle.</li> <li>• <b>Timing:</b> Assuming no major impediments, or extensive negotiations between the LLC partners, a typical LLC can be registered in approximately six weeks. However, where a professional license is sought for certain types of services, the level of scrutiny may be much higher and additional approvals may be required. This may increase the time required for registration.</li> </ul>

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<p>(2) UAE Free Zone Company</p>	<p>As required:</p> <ul style="list-style-type: none"> <li>• Exclusive Supply Agreement</li> <li>• Consultancy Agreement</li> <li>• Sub-Contracting Agreement</li> <li>• Marketing Agreement</li> </ul>	<ul style="list-style-type: none"> <li>• Allows foreign company to have 100% foreign ownership and operate outside the purview of the CCL.</li> <li>• Exempt from requirement to appoint a local sponsor.</li> <li>• Depending on the free zone, various incentives are offered such as guarantee of long-term zero percent tax rates and waiver of physical office space requirements.</li> <li>• Free zones generally have efficient licensing and registration processes.</li> </ul>	<ul style="list-style-type: none"> <li>• Conducting business operations “onshore” in the UAE is prohibited (i.e., business activities must be limited to the applicable free zone).</li> <li>• While the requirements to be a member of a particular free zone are generally broad (typically, the company must have interests in the field and otherwise meet applicable licensing requirements), it is usually a requirement that only activities related to the particular free zone may be carried out therein.</li> <li>• Each free zone has its own commercial companies laws and regulations which must be complied with, in lieu of CCL.</li> </ul>	<ul style="list-style-type: none"> <li>• There are a number of free zones in the UAE, all of which generally share the common characteristics set forth in the advantages and disadvantages sections. However, it should be noted that different free zones in the UAE have different registration, licensing, local office, etc. requirements. As such, once a decision has been made to explore a free zone operation as a viable vehicle for business operations, the advantages and disadvantages of a particular free zone operation should be judged on its own merits.</li> <li>• Certain types of companies are not well-suited for establishment in the free zone, namely, companies that need to provide extensive services outside of the free zone i.e. onshore. In cases where a service is to be provided which will necessarily involve being onshore, free zone authorities are very reluctant to issue a license. In particular, JAFZA is not a recommended option when extensive onshore activity is likely.</li> <li>• A free zone company is often viewed as a good liaison office with the foreign parent’s country of origin and a place to base staff. However, the significant restrictions on the geographic scope of operations make it infeasible in cases where more extensive penetration into the broader UAE market is desired.</li> <li>• <b>Timing:</b> Depending on the free zone, the typical timing for registration of a free zone company is two months. Although, this can be more depending on the speed with which necessary documents by the parent company are collected, notarized and attested by the local UAE embassy. As mentioned below, there is heightened scrutiny of certain types of companies which may significantly delay the registration process.</li> </ul>

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(3) Branch Office	As required: <ul style="list-style-type: none"> <li>• Exclusive Supply Agreement</li> <li>• Consultancy Agreement</li> <li>• Sub-Contracting Agreement</li> <li>• Marketing Agreement</li> </ul>	<ul style="list-style-type: none"> <li>• Enables direct representation by a foreign company in the UAE (note that this would enable a foreign company to have a formal presence) but a contractual relationship with a local UAE business (or individual) would still be needed to serve as sponsor/agent etc.</li> <li>• License typically permits the holder to open and operate bank accounts, to lease office and residential premises, to sponsor residence visas and labor permits for expatriate employees and to take other actions within the scope of its licensed objectives.</li> <li>• Less entrenched UAE “footprint” but allows a foreign company’s personnel to work in UAE etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Branch office may only be engaged in activities similar to those of its parent company.</li> <li>• Certain activities are restricted, such as general trading (including importing the products of its parent company), and real estate ownership outside of certain locations.</li> <li>• Requires UAE sponsor and contractual arrangements with local partner to enable local partner to import etc.</li> <li>• Subject to the approval and requirements of UAE Federal Ministry which can vary as to scope and timing depending upon identity and activities of foreign company etc.</li> <li>• A foreign entity has unlimited liability for the operations of the branch (although a new offshore company could possibly be used as a conduit).</li> </ul>	<ul style="list-style-type: none"> <li>• The permitted activities of the branch will depend on the type of license it obtains, and more importantly, the activities of its parent company.</li> <li>• A sponsor has no equity or management interest in the branch and does not bear any of its liabilities. Its compensation is an annual fee stipulated in a sponsorship agreement. Fees for sponsors vary depending on the level of services the sponsor agrees to perform (i.e., aiding in processing visas and other regulatory issues). Typically, a sponsor who performs no added services, charges an annual fee between AED 30,000-70,000 (USD 8,000-19,000), which will increase as services are added.</li> <li>• If a foreign company desires to have “<i>people on the ground</i>” and a substantive business presence in the UAE, a branch office enables it to establish formal operations without ownership restrictions. However, if a foreign company has more limited temporary business goals, this option may not provide it with the optimal level of flexibility and cost-minimization.</li> <li>• <b>Timing:</b> A typical branch can be registered within 2-3 months.</li> </ul>
(4) Representative Office	As required: <ul style="list-style-type: none"> <li>• Exclusive Supply</li> </ul>	<ul style="list-style-type: none"> <li>• Enables (limited) direct representation by a foreign company in the</li> </ul>	<ul style="list-style-type: none"> <li>• Representative office is limited to gathering information and soliciting</li> </ul>	<ul style="list-style-type: none"> <li>• If a parent company deals in the sale and/or production of certain products and opens a representative office in Dubai, the office will only be able to market and promote</li> </ul>

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	<ul style="list-style-type: none"> <li>Agreement</li> <li>• Consultancy Agreement</li> <li>• Sub-Contracting Agreement</li> <li>• Marketing Agreement</li> </ul>	<p>UAE (enabling the foreign company to have a formal presence) but, a contractual relationship with a local UAE business (or individual) would still be needed to serve as sponsor/agent etc.</p> <ul style="list-style-type: none"> <li>• Allows promotion of the foreign parent company’s activities and facilitating contracts in the UAE, which may be sufficient if no actual sales or production is required in the UAE.</li> <li>• Representative office does not need to be registered with UAE Federal Ministry (as opposed to a branch office, which requires registration) and thus no registration fees etc.</li> </ul>	<p>orders and projects to be performed by the company’s head office. In essence, a representative office merely serves as an administrative and marketing center for the foreign company.</p> <ul style="list-style-type: none"> <li>• Others, as for branch office.</li> </ul>	<p>the sale and/or production of such products and facilitate contracts in the UAE, as distinct from conducting their sale or production itself.</p> <ul style="list-style-type: none"> <li>• Other than in relation to the UAE Federal Ministry approval, the procedures and requirements for establishing the representative office of a foreign business are largely the same as those for a branch office.</li> <li>• A representative office is largely the same as that of a branch office. However, given that the operations of a representative office are limited, in comparison to that of a branch, it is not clear that the benefits (such as reduced registration requirements) are significant enough to accept such limitations. Especially, if the long-term plan of the foreign company in the UAE is unclear.</li> <li>• <b>Timing:</b> A representative office can be registered in 6–8 weeks.</li> </ul>
<b>(5) Agency Relationship</b>	<ul style="list-style-type: none"> <li>• Agency Agreement</li> </ul>	<ul style="list-style-type: none"> <li>• See below</li> </ul>	<ul style="list-style-type: none"> <li>• See below</li> </ul>	<ul style="list-style-type: none"> <li>• A common way for overseas manufacturers or traders, who wish to import large quantities of goods into Dubai on a regular basis, is to appoint a local trader, distributor or commercial agent. Such agreements will form a commercial agency relationship, which can either be registered or unregistered.</li> </ul>
<b>(a) Registered Local Commercial Agent(s)</b>	<ul style="list-style-type: none"> <li>• Agency Agreement</li> </ul>	<ul style="list-style-type: none"> <li>• Enables achievement of limited objectives in the UAE without establishing</li> </ul>	<ul style="list-style-type: none"> <li>• UAE Agency Law offers significant protections to the local agent if the local party</li> </ul>	<ul style="list-style-type: none"> <li>• Unregistered commercial agencies are not subject to the Agency Law, but are instead governed by the Commercial and Civil Codes, and thus such agents may not benefit</li> </ul>

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		<p>a formal corporate presence.</p> <ul style="list-style-type: none"> <li>Certain governmental departments may insist on dealing only with registered agents.</li> <li>Relatively streamlined approval and registration process, from the perspective of the foreign company, since it is the agent who must take steps to register the commercial agency agreement with the UAE Federal Ministry.</li> </ul>	<p>is registered with the UAE Federal Ministry.</p> <ul style="list-style-type: none"> <li>Statutory protections afforded to the local party include:                             <ul style="list-style-type: none"> <li>(i) Exclusivity;</li> <li>(ii) Restrictions on the foreign party’s right to terminate or withhold renewal of the relationship;</li> <li>(iii) Right to receive compensation on termination or non-renewal of the relationship; and</li> <li>(iv) Commissions for all sales in the agency’s territory.</li> </ul> </li> <li>Commercial agents must be UAE nationals or companies incorporated within the UAE and owned entirely by UAE nationals.</li> </ul>	<p>from the protections listed under “disadvantages.” Therefore, in practice, a prospective agent is likely to insist upon the establishment of a registered commercial agency rather than an unregistered one.</p> <ul style="list-style-type: none"> <li>Agency Law defines a registered commercial agency as “<i>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.</i>”</li> <li>The Agency Law states that only registered commercial agents may be authorized to engage in “<i>commercial</i>” agency activities. However, as noted below under “<i>Unregistered Local Commercial Agents - Comments,</i>” contracts for unregistered commercial agents are treated as valid.</li> <li>Commercial agents are entitled to an exclusive territory encompassing at least one Emirate for the specified products or services.</li> <li>Agency Law imposes consequences on a principal that terminates an agency relationship where there is no “<i>justifiable cause</i>” or it is not renewed. In such cases, the agent may possibly be able to preclude the foreign party from appointing a replacement agent in the UAE.</li> <li>Registered 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 these sales.</li> <li>If a foreign company’s objectives in the UAE are limited (for example, to the importing of goods into the UAE), a registered agency relationship provides it with a capable governmentally recognized presence. However, a</li> </ul>

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				<p>registered agency, as opposed to an unregistered agency, limits a foreign company’s flexibility (for example, termination of the relationship, exclusivity, etc.) and as such, an unregistered agency relationship may be more advantageous.</p>
<p><b>(b) Unregistered Local Commercial Agent(s)</b></p>	<ul style="list-style-type: none"> <li>• Agency Agreement</li> </ul>	<ul style="list-style-type: none"> <li>• Enables achievement of limited objectives in the UAE without establishing a formal corporate presence.</li> <li>• Unregistered commercial agencies are not subject to Agency Law and thus many of the protections afforded to registered agents would not be applicable.</li> <li>• A principal is allowed to terminate an agency agreement in a number of circumstances, including cases where the agency arrangement has expired.</li> <li>• No procedure required for an unregistered commercial agency to be valid, other than the parties negotiating and agreeing to provisions of a commercial contract.</li> </ul>	<ul style="list-style-type: none"> <li>• Whilst it is becoming increasingly common to enter into unregistered commercial agencies falling outside of the Agency Law, most prospective agents will insist upon the establishment of a registered commercial agency.</li> <li>• Certain governmental departments may insist upon dealing with registered agents.</li> </ul>	<ul style="list-style-type: none"> <li>• Unregistered commercial agencies are governed by the Commercial Code and the Civil Code, which are substantially less burdensome from the perspective of the foreign entity (principal).</li> <li>• Agency Law provides that any unregistered commercial agency shall be deemed void and therefore no claim shall be recognized with respect thereto. However, unregistered commercial agencies are nonetheless seen as valid commercial contracts, where the parties will be subject to the terms and conditions agreed.</li> <li>• If a foreign company’s objectives in the UAE are limited, and they do not currently envision a long-term business presence, an unregistered agency relationship provides greater flexibility and minimal regulatory or governmental burdens, in comparison to a registered agency relationship.</li> </ul>
<p><b>(6) No Formal Presence</b></p>	<p>As required:</p>	<ul style="list-style-type: none"> <li>• Purely a contractual relationship - very light</li> </ul>	<ul style="list-style-type: none"> <li>• Very limited actions can be taken directly by the foreign</li> </ul>	<ul style="list-style-type: none"> <li>• If the intention is to let a local contractual partner carry out the client-facing operations, and for the foreign</li> </ul>

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	<ul style="list-style-type: none"> <li>• Exclusive Supply Agreement</li> <li>• Consultancy Agreement</li> <li>• Sub-Contracting Agreement</li> <li>• Marketing Agreement</li> </ul>	<p>“footprint” in the UAE, although this may be a disadvantage depending upon intentions etc.</p> <ul style="list-style-type: none"> <li>• Very straightforward to implement, in terms of cost and time.</li> <li>• One possible option is to combine with a consultancy and/or marketing arrangement whereby the foreign company provides certain services from outside of UAE (or possibly within the UAE if a registered branch).</li> <li>• Flexible but restrictions on actions should be noted.</li> </ul>	<p>company in the UAE.</p> <ul style="list-style-type: none"> <li>• Less entrenched in the UAE, if that is desired.</li> </ul>	<p>company to supply the relevant goods and services from a foreign country while keeping a general oversight, this arrangement may be appropriate. In particular, if the foreign company’s staff is not going to be based in the UAE and there is no intention to contract directly with the ultimate customer, this may be an appropriate “starting out” approach ahead of building a stronger business presence in the UAE.</p>

*Gibson Dunn has been advising leading Middle Eastern institutions, companies, financial sponsors, sovereign wealth funds and merchant families on their global and regional transactions and disputes for more than 35 years. Please contact the lawyers named below in our Dubai office with any questions, thoughts or comments arising from this article.*

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