

Doing Business in Abu Dhabi



Abu Dhabi is one of the seven Emirates comprising the United Arab Emirates (the "UAE"). The UAE came into being as an independent foreign state on 2 December 1971 following many years of close relations with Britain which were effected through a series of diplomatic agreements.

The economy of the UAE is mainly oil-based, although diversification is encouraged. The oil and gas industry remains fundamental to the UAE economy, and particularly that of Abu Dhabi, which has the majority of the UAE's oil and gas reserves.

Abu Dhabi is the federal capital of the UAE and is the site of a number of federal ministries, the UAE Central Bank and other government institutions and agencies.

Legal framework

Executive authority

Each Emirate is ruled by its own Sheikh, commonly known as the Ruler. The Ruler in Abu Dhabi is HH Sheikh Zayed Bin Sultan Al Nahayan, who was the first and is the current President of the Federation. The Ruler is the ultimate governmental authority in his own Emirate and, in the absence of federal legislation on areas specifically reserved to Federal Authorities, will apply his own rules, regulations and practices.

The Supreme Council is the highest Executive Authority within the Federation of the UAE and comprises the Rulers from each of the seven Emirates.

The legislature

In addition to the Supreme Council of Rulers, the Federal Government includes the Council of Ministers, which is responsible to the Supreme Council for the Federation's general internal and external policy.

There is also a Federal National Council, which is responsible under the Constitution for examining and has a limited power to amend proposed federal legislation.

Legal system

In Abu Dhabi there are two systems of law and courts: the Sharia (Islamic) Law and the general civil law. The Sharia Courts operate alongside the civil courts, having a parallel and exclusive jurisdiction in matters relating to personal status, divorce and inheritance. Islamic

Sharia is regarded as the primary (but not the sole) source of law. Federal courts will not apply statute and legal principles if inconsistent with the Sharia.

Legal proceedings brought under the civil law are commenced in the Court of First Instance with a right of appeal to the Federal Court of Appeal. A further appeal to the Federal Supreme Court (based in Abu Dhabi) is also available.

In common with the other Emirates, Abu Dhabi has a municipality court which deals with matters relating to industrial land and market disputes.

Establishing a presence in Abu Dhabi

Forming a branch office

Approvals

A foreign company may establish a branch in Abu Dhabi provided it has been approved by the Executive Council and the Federal Ministry of Economy and Commerce, is granted an appropriate licence from the Abu Dhabi Municipality and been accepted as a member of the Abu Dhabi Chamber of Commerce. Additional specific approvals may be required from various Federal Ministries and local government departments depending on the intended activities of the branch.

Appointing an agent

Foreign companies wishing to establish a branch office in Abu Dhabi must appoint a local agent by entering into a national service agency agreement with a UAE national (or a company wholly owned by UAE nationals) who, for an annual fee, will act as its national agent.

The national agent will not be liable for any of the obligations or liabilities of the foreign company's branch operations. The role of the national agent is usually administrative only, e.g., obtaining (and renewing) the necessary licences which are required to enable the branch to carry on its business. The national agent may agree to provide additional services on an ongoing or ad hoc basis for an additional fee.

National service agency agreements

National service agency agreements usually provide for the payment of a fixed annual fee, a commission to an agent - or a combination of both. Although the amount of commission payable is negotiable, the amount will often vary depending upon the value of the business being carried on through the branch and the nature of the business, i.e., whether a "trading",

“contract” or “service” licence is required. The maximum rate of commission payable to national agents for government tenders is limited under Abu Dhabi law to between 1% and 2% depending on the value of the tender. As it is likely to be difficult to terminate a service agency agreement, notwithstanding termination provisions set out in the agreement itself, professional advice should be obtained at an early stage.

Procedures

In addition to entering into an agency agreement, certain procedures must be followed involving the provision of prescribed documentation, board minutes and company accounts and depositing AED 250,000 in a local bank account to serve as the “capital” of the branch before the branch is registered. The branch capital is frozen until the branch is registered after which it may be used to fund the activities of the branch. The registration procedure may take some months to complete.

A registered Abu Dhabi branch office of a foreign company is not required to appoint a commercial agent (see below) as well as a national service agent or have a local UAE partner or shareholder, as the case may be. Branch offices cannot sell or distribute goods (but can provide a service) unless they are branch offices of UAE registered companies.

Once established, the branch must prepare local accounts, which must be audited by local auditors. Audited branch accounts should be filed with the Abu Dhabi Ministry of Economy and Commerce on an annual basis as part of the licence renewal process. These accounts will not be published.

Registration

Registration of a branch office will enable a foreign company to establish a local presence in Abu Dhabi and to obtain a trade licence in its own name.

All branches of foreign banks must obtain the approval of the UAE Central Bank before they can commence operations. No new licences have been granted to foreign banks for some time.

Limited liability companies

Limited liability companies (“LLCs”) can be established in Abu Dhabi by foreign companies to conduct most types of business provided that the foreign investor holds not more than 49% of the shares. At least 51% of the share capital of the company must be held by one or more UAE nationals, or by a company wholly owned by UAE nationals. There is a minimum of two and a maximum of fifty shareholders. The liability of shareholders is limited to the amount unpaid on their share capital. The minimum share capital is Dhs.150,000 fully paid up. Shares must be of a nominal value of at least Dhs.1,000 each.

Because of the local ownership requirement, it is advisable for the foreign company concerned to enter into various ancillary agreements with the local shareholder(s) to regulate the management of the company, payment of capital, ownership of intellectual property rights and the distribution of profits. Some such agreements may be of uncertain legality. It is important that professional legal advice be sought in this regard at an early stage.

LLCs need a trade licence (as well as other licences and registrations) to enable them to carry on business in Abu Dhabi. An LLC is not permitted to carry on the business of insurance, banking or the investment of money for third parties.

There has been considerable speculation that the local ownership requirement may be relaxed. No firm proposals have yet been issued.

Partnerships.

Although it is possible to establish both general and limited partnerships under Abu Dhabi law, it is unlikely that either form will be suitable for foreign investors. In the case of general partnerships, the general partner(s) can only be UAE nationals. In the case of limited partnerships (where there is a general partner and a limited partner whose liability is limited to a specific amount), whilst a foreign company could be a limited partner, the law provides that the limited partner cannot become involved in the running of the business.

Professional firms

Most professional firms establish themselves in Abu Dhabi as a branch office unless a joint venture is involved, in which case an LLC may be appropriate.

Selling into Abu Dhabi from abroad

Appointing a commercial agent

As a general rule, it is not possible to market and supply goods or services to customers in Abu Dhabi on a sustained basis without appointing a local commercial agent for such purpose. Government departments and quasi government companies may require the appointment of a local commercial agent.

There is a certain grey area in that it may not be practically necessary to establish a presence in Abu Dhabi to fulfil export orders to the UAE, particularly for one-off large ticket items.

A foreign company may only enter into a commercial agency agreement with a UAE national or a company wholly owned by a UAE national or nationals. The term "agency" also encompasses "distributorships".

Commercial agency agreements

The exact form of the commercial agency agreement will be for the parties to decide (for instance the parties will need to consider whether the agent will sell on the foreign company's behalf or simply act as a distributor of the foreign company's goods or services). By law, the agent has to be granted exclusivity for the relevant product or range of products for each Emirate for which it is appointed. It is possible, however, to have different agents for different Emirates.

The registration of a commercial agency agreement will not result in the foreign company establishing a legal presence in its own name in Abu Dhabi or in its obtaining a trade licence in its name.

The Commercial Agencies Law requires that commercial agency agreements be registered at the Ministry of Economy and Commerce. Registration affords certain benefits and protections for the local commercial agent.

Termination

The termination of a registered commercial agency agreement usually involves the foreign company paying compensation to the agent. Under the law, the registration of an agreement cannot be terminated, even after the expiry of the term, unless there is a justifiable reason. This can be difficult to prove to the satisfaction of the Commercial Agencies Committee (part of the Ministry of Economy & Commerce), the body which has prime responsibility for handling agency disputes. It is not possible to register another agent until all existing registrations are cancelled. A registered commercial agent may claim commission on sales not made through him and can even block the import and export of the relevant products. It is important that legal advice be obtained in this regard.

Importing and Exporting

Exchange controls

There are no restrictions on inward investment, currency accounts or the repatriation of capital and earnings.

Customs duties

There is a 4% customs tariff on goods imported from countries outside the GCC. There are, however, many detailed exemptions to these rules and these should be carefully checked especially in relation to inter-GCC trading. Duties of over 50% are levied on alcohol and tobacco products and are expected to increase.

There has for some years been a movement towards a GCC customs union, but differences over the level of tariffs have meant that so far no agreement has been reached. There are no duties on exports.

Free zone

Abu Dhabi has established a free zone on Saadiyat Island. So far this exists as a legal entity only. Abu Dhabi is thought to be reconsidering how best to structure this Free Zone and how to develop Saadiyat Island.

Offsets programme

There is a substantial and established offset programme in the UAE which is managed by the UAE Offsets Group (known as the "UOG") in Abu Dhabi. The UOG is responsible for negotiating and assessing offset proposals submitted by contractors. The UAE offsets programme requires foreign contractors to commit to an offset obligation to qualify for selection as a supplier of overseas-sourced goods or services by the UAE Government (if the price of the import exceeds US\$10 million). Although currently offset is required for supplies to the UAE armed forces, it may also apply to civil purchases. The UOG is itself developing into an industrial development authority beyond offsets projects only. The UOG is currently promoting Project Dolphin, a US\$11 billion integrated gas project with regional implications and other projects outside Abu Dhabi.

Capital Markets

Stockbroking and stock exchange

The Abu Dhabi Securities Market opened for trading on 15 November 2000. The market was established by Local Decree (No 3 of 2000). Detailed regulations govern the conduct of business, the licensing and regulation of brokers and listing requirements.

Banking

The UAE Central Bank was established in 1980 and is situated in Abu Dhabi. Its principal objects are the management of the national currency to ensure stability and the formulation and implementation of banking policies to support the national economy. The Central Bank is specifically required to organise and develop the banking profession and supervise the operation of the banking system in accordance with the law. One of the main activities of the Central Bank is licensing and regulating foreign and local banks. The Central Bank also licences and regulates financial consultants and advisors. The Bank was thought to be reviewing offshore banking operations.

Banking operations

Generally, banking transactions are treated as commercial transactions falling within the ambit of the UAE Commercial Transactions Code, a law which contains a number of provisions relating to banking operations, including provisions relating to rights of set-off, bank transfers, bank deposits, current accounts, guarantees, lending guaranteed by securities, deposit of securities and the hiring of safety deposit boxes.

Interest

The Civil Transactions Code could be interpreted as preventing the charging of interest on loans. However, the Code specifically refers only to civil transactions, and an Abu Dhabi court has ruled that a bank loan is a “commercial” transaction.

The Commercial Code now specifically addresses the question of interest and permits a creditor to charge interest at the rate identified in the relevant agreement. If no rate of interest is identified then the rate must be determined by the market rate, but must not exceed 12%.

It is generally accepted that interest cannot be compounded although the overall position concerning interest is still not entirely clear. The legality of interest, or “riba”, is a complex question much debated by Islamic scholars, notwithstanding that the payment and receipt of it is a well established aspect of commercial life. Sharia Courts will not, however, enforce claims for interest, nor will they order it. It is, however, increasingly rare for Sharia Courts to become seized of matters involving the payment of interest as cases involving banking transactions are generally reserved to the exclusive jurisdiction of the Civil Courts.

The Courts and civil procedures

Commencing proceedings

Although it is possible to appear in person without legal representation in the Abu Dhabi Courts, it should borne in mind that all proceedings are conducted in Arabic and written evidence must be presented in Arabic (by official translation of the original if in another language). Accordingly, it is usual to appoint an Arab advocate who has a right of audience before the Courts. Denton Wilde Sapte has considerable experience of instructing and negotiating appropriate fee levels with local advocates.

Where jurisdiction has not been reserved to a Civil Court, proceedings must generally be commenced in the Sharia Court, which has a discretion to transfer issues of a commercial nature to the Civil Courts. A contractual provision excluding the jurisdiction of local Courts will not be recognised. A recent Federal Law requires disputes to be referred to a Settlement Committee before Court proceedings can be started. It is too early to judge the effect of this requirement or to assess whether it is being applied in practice.

There is no developed system of reporting Court judgments in Abu Dhabi (or the UAE) as the concept of binding precedent is not applied by the Courts. The Courts will have regard to legal principles taken from recognised and acceptable systems of law, at least in relation to certain other Arab states. It is not uncommon for the Courts to nominate an expert whose opinion they will have regard to when attempting to reach a decision.

The burden of proof is on the plaintiff and most evidence, written or oral, is admissible. There is little concept of discovery and inspection, but if a document is known to exist, its production may be ordered. The Courts may order the compulsory attendance of witnesses who do not appear voluntarily. There is no concept of without prejudice or off the record correspondence.

Judgment, appeal and enforcement

Judgments are generally delivered in open Court and appeal is possible. It is increasingly common for parties to litigation to anticipate at the outset that the matter is unlikely to be finally resolved at the first instance. Appeals are commonplace with some cases taking several years before final judgment.

In the event of a final judgment, enforcement is through separate proceedings before the Execution Courts.

Foreign judgments

Whilst there is provision in the law for the recognition of foreign judgments, other than judgments of courts of other GCC countries, foreign judgments will not be automatically enforced in Abu Dhabi.

Costs

Generally, there is no provision for orders for costs to be made against the losing party in legal proceedings in Abu Dhabi. Each party must be prepared to bear its own costs.

Arbitration

Choice of arbitration

There is specific provision in the Federal Law relating to arbitrations and arbitrators. Generally, however, arbitrations arise from a contractual agreement to have disputes resolved in such a forum, rather than the Courts, and such agreement is likely also to specify a particular arbitral constitution, place, language and the governing law. It is usual to conduct arbitrations under the auspices of the competent court, or, if not, then to have the award ratified by the Court. It should be borne in mind that there are provisions in the law which

restrict the use of arbitration. For example, Abu Dhabi Government contracts must not contain arbitration clauses.

Choice of law

Subject to the provisions of any Federal or Emirate Law to the contrary, the applicable law will be that chosen by the parties or the proper law of the contract as determined by the arbitral awards.

Arbitration procedure

If no particular arbitration procedure has been specified in the contract, then the rules followed by arbitrators tend to be a combination of local practice and standard principles. Where the parties submit to the jurisdiction and auspices of a particular body, be it a Court, the Abu Dhabi Chamber of Commerce, or a foreign body, then its rules will be adopted and followed.

Foreign awards

Neither the Emirate of Abu Dhabi nor the UAE is a party to the New York Convention 1958 governing the enforcement of foreign arbitral awards. Accordingly the enforcement of foreign awards is not automatic and is subject to judicial review. The UAE recently acceded to the Arab Gulf Co-Operation Council States Arbitration Centre. In theory decisions of this Bahrain based centre will be enforceable in the UAE.

Employment

Governing Law

UAE labour law governs all employment related matters and is administered by the Federal Ministry of Labour and Social Affairs. The law is protective of employees in general and any contractual term which is contrary to the labour law is null and void unless it is beneficial to the employee. Accordingly, a contract can vary the labour law only in favour of the employee but may not reduce the employee's entitlements below stated minimum levels. The labour law provides for certain basic employee benefits which cannot be contracted out of.

The Labour Law established a preference for the employment of UAE nationals. Foreign nationals may only be employed after obtaining the approval of the Federal Ministry of Labour and obtaining a work permit. The Labour Law does not apply to government bodies and excludes certain classes of employment e.g. housemaids.

Holidays

Employees have a right to thirty days' paid leave for each year of completed service. There are also provisions for sick and maternity leave and for Haj and Umrah leave for Muslim employees.

Termination

Service contracts may be terminated in a number of ways: by agreement (in writing), at the end of a fixed term contract or, for an unlimited term contract, on thirty days' notice (if justifiable reasons are given). Contracts may also be terminated without notice for several reasons, including intoxication during working hours and conviction for criminal offences concerning honesty, public morals, etc. Termination of employment contracts without due cause could give rise to the employer being liable to pay compensation subject to a maximum of three months' salary.

Repatriation

At the end of an employee's employment contract, his employer is generally responsible for repatriation of the employee.

Termination gratuity

Every employee is entitled to an end of service gratuity payment from his employer calculated by reference to his basic salary. Broadly, the payment is based on twenty-one days' pay for each of the first five years and thirty days' pay for each subsequent year. For long-serving employees, the end of service gratuity payment can amount to a considerable sum and this should be borne in mind by employers.

Bank guarantees

A recent regulation requires certain companies to submit a bank guarantee of Dhs 3,000 per employee. This is intended to protect the benefits and entitlement of employees. The implementation and interpretation of this requirement is still evolving.

Immigration

Visas

In the past most foreigners, other than citizens of GCC countries, visiting Abu Dhabi required a visa to enter the UAE. Visit visas must be obtained in advance.

Citizens of the European Union, USA, Canada, Australia, New Zealand and certain other countries do not require an entry visa to visit Abu Dhabi, although their passports must be

valid for at least six months. On entry to Abu Dhabi, qualifying visitors will have their passports stamped with an initial one month visit visa. This may be extended for a further two months without the need to leave the UAE.

"Sponsors"

When a visit visa is obtained by an Abu Dhabi national for a foreigner, that person is said to be the foreigner's sponsor, and to some extent stands surety for that foreigner's good conduct in Abu Dhabi. Other than in this immigration context, care should be taken in attributing any wider legal significance to the concept of sponsorship. Agreements whereby a sponsor also undertakes to promote and support a foreign company's business in Abu Dhabi can be exposed to a number of legal hazards.

Work and residence permits

Applications for residence permits must be made within thirty days of arrival in Abu Dhabi. If the purpose is to take up employment, foreign nationals must obtain in advance an entry visa and a work permit having been sponsored by an Abu Dhabi company or individual. Residence and work permits are valid for three years and may be renewed. Work permits issued in one Emirate are not automatically transferable to another Emirate although it is possible (with permission) to work in another Emirate for the same employer.

Medical certificate

Foreigners seeking to obtain a work permit/residence visa must obtain a medical certificate (including a blood test) when they have arrived in Abu Dhabi.

Exit visas

Although exit visas are not required, work permit/residence visas must be cancelled before the passport holder leaves the UAE. If not, re-entry to the UAE will not be permitted during the validity of the passport.

Intellectual Property

Copyright

In the UAE, the Ministry of Information and Culture is responsible for registration of copyright (although failure to deposit such a work will not apparently fatally prejudice the author's rights in the work).

Works protected include books, speeches, theatrical plays, musical and photographic works, cinema exhibitions and television and radio broadcasts, works of applied art (whether

professional or industrial) and computer programs. News programmes and laws and judgments are excluded. It is not clear which drawings would fall within copyright and which would fall to be registered under the Patents Law.

The period of protection provided by the Law is either the life of the author plus twenty-five years (Gregorian years) or twenty-five years from the date of publication for cinema films, works of art, works produced by bodies corporate, works published under a pseudonym or without mention of the name of the author and works first published only after the death of the author, or ten years from the date of publication for photographic works.

Fines for copyright infringement vary from Dhs.10,000 to Dhs.50,000. It is also open to the Court to order a period of detention (of between one month and three years). An order may be made for the confiscation of all the infringing copies and the Court may also order that the place of business be closed down.

Trademarks

Trademarks are protected under UAE Federal Law by means of registration covering the whole of the UAE.

As elsewhere, for a trademark to be registered, it must be distinctive and capable of distinguishing the goods or services to which it will be applied. The period of initial protection is usually between seven and ten years (ten years in the UAE). Once registered, marks can generally be renewed for varying periods, usually of not less than ten years.

There is a maximum fine of Dhs.10,000 for infringement of a registered mark. The Courts may order the closure of an establishment for a period of not less than fifteen days and not more than six months for persistent infringement.

Patents, drawings and designs

Intellectual property rights in patents, industrial drawings and designs are also protected under UAE Federal Law. The Ministry of Finance and Industry (Department of Industrial Property) is the competent authority under the Law for granting patents. A patent may be granted for any new invention resulting from an original idea. A beneficial use registration will alternatively be granted for a new invention which is not sufficiently original. An industrial drawing or model registration will be granted provided it is new or innovative. All, however, need to be capable of industrial application.

Land Ownership

Basic principles

Foreign companies or individuals cannot own land in Abu Dhabi. All land in the Emirate is owned by the Ruler, HH Sheikh Zayed, except that which he has gifted to individual citizens, government departments or companies. All sales of land require the consent of the Ruler. Generally only Abu Dhabi nationals can own land in the Emirate.

Lease interests

Foreign companies and individuals may lease land from Abu Dhabi landlords for any period up to a maximum of eight years for the purpose of construction. Leases of buildings must be registered with the Registrar of Lands, Abu Dhabi Municipality if they are for a term exceeding four years. Any buildings erected become the property of the landlord at the end of the Lease. Leases of residential plots cannot exceed four years.

Office space in Abu Dhabi is typically let to business tenants on simple twelve-month tenancies. The Department of Social Services and Commercial Buildings (known as the Khalifa Committee) is the largest landlord in Abu Dhabi.

Mortgages over land

Two types of mortgages are available in Abu Dhabi – security mortgages and possessory mortgages. The distinction is now blurred following a decree by the Ruler which effectively prevents a bank from selling repossessed land. A bank may obtain possession of mortgaged land and receive the benefit of all rent. For this reason mortgages in Abu Dhabi are considered as secondary items of security.

Taxation

Although Abu Dhabi has an income tax decree which is stated to apply to all types of business concerns, it is not enforced, with the exception of oil companies and banks.

Oil and gas producing companies pay corporation tax at a flat rate of 50% on their taxable income. Foreign banks pay a 20% tax on profits.

There are no personal income taxes in Abu Dhabi. There are no withholding taxes, value added or sales taxes.

Notes

Insurance

The registration and conduct of insurance companies established in the UAE (and branch offices of foreign companies) is regulated by Federal UAE Law. Local and foreign companies must comply with reporting requirements and the need to establish and maintain reserves and fixed deposits in the UAE. There are further regulations which govern the activities and conduct of insurance consultants, brokers and loss adjustors in the UAE.

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Consistent with our policy when giving advice on a non-specific basis, we cannot assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem, it is recommended that professional advice be sought.

Notes

Notes

Also available in this series:

- Doing Business in Egypt
- Doing Business in Dubai
- Doing Business in Oman
- Doing Business in Turkey

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