

Companies Under the UAE Commercial Companies Law

**Federal Law No. (8) of 1984 (as amended) &
Other Business Entities in the UAE**

**AL TAMIMI
& COMPANY**

Advocates & Legal Consultants

**التميمي
و شركاه**

للمحاماة والاستشارات القانونية

1. Introduction

The United Arab Emirates Commercial Companies Law, Law No. (8) of 1984 as amended by Law No. (13) of 1988 and Law No. (15) of 1988 (the “CCL”) is a federal statute applicable to all the seven emirates that constitute the UAE.

The primary objectives of the CCL are to provide for an exhaustive uniform commercial companies’ law applicable throughout the UAE; to regulate the formation and functioning of companies and to lay down the different types of corporate entities that are permitted to be registered as companies in the UAE.

At the outset, it may be stated that the CCL is based primarily on the companies’ laws of European civil jurisdictions. It is thus essential for readers familiar with companies laws in common law jurisdictions to keep this fact in mind in order to appreciate the provisions of the CCL in their correct perspective and to avoid confusion in understanding the concept and structure of companies provided for and the terminology used in the CCL.

The CCL was enacted in 1984 and was originally intended to come into operation a year later by which time existing entities in the UAE were to reconstitute themselves so as to conform to the CCL.

This brochure has been written with the lay reader in mind. We have attempted to summarise the salient features of the CCL with the aim of providing the reader with a brief description of the various types of entities that are permitted to be registered as companies in the UAE. Although this brochure deals primarily with Commercial Companies, we have also made reference to Civil Companies and Service Establishments which are not covered under the CCL but are other forms of business entities that exist in the UAE.

This brochure is designed and intended to provide the reader with a general view of the CCL and should not be relied upon as being exhaustive or a substitute for proper legal advice on specific issues.

2. Salient Features of the CCL

2.1 The CCL and Ministerial Decrees

The substantive provisions relating to commercial companies are to be found in the CCL while the implementary or executory provisions relating to details and modalities of implementing the CCL are promulgated by various Ministerial Decrees in the form of regulations. These Ministerial Decrees are a form of subordinate legislation in the UAE which have the force of law.

2.2 Union Legislation

The CCL is a federal statute applicable in all the emirates comprising the federation of the United Arab Emirates and supersedes local laws. As a federal law therefore, all commercial companies in the UAE must comply with its provisions. Company law is one of the subjects in respect of which exclusive legislative jurisdiction has been vested in the Union under Article 121 of the UAE Provisional Constitution of 1971 * However, by virtue of Article 149 of the Constitution, member emirates are competent, in respect of the subjects referred to in Article 121, to enact legislation which is consistent with federal legislation. Thus, relying on Article 149, it is possible for member emirates to supplement the provisions of the CCL by local legislation, providing it does not conflict with the federal legislation. An example of this is the exercise of the powers under Article 149 by the Emirate of Dubai in relation to the minimum capital requirements for limited liability companies under the CCL. Under the CCL, a minimum capital of UAE Dirhams 150,000 is prescribed, however local licensing authorities in the Emirate of Dubai insist on a minimum capital of UAE Dirhams 300,000 for incorporating a limited liability company in the emirate.

2.3 Exclusion from the CCL

Under the CCL as it stood originally, companies that have special agreements with the UAE Government or the Government of any of the emirates, are excluded from the CCL. Examples are oil companies with concession agreements and foreign banks. However, in practice, foreign banks are required to comply with the registration requirements of the CCL for establishing branches but are exempt from having to appoint a sponsor .

In addition, under the new Federal Law No.13 of 1998 amending the CCL, certain other companies are exempted from the provisions of the CCL. These exceptions are:

- (a) Companies established in any of the UAE's free zones if the free zone concerned has special provisions regulating these companies, otherwise the CCL prevails;
- (b) Companies' whose activities are in the oil and gas industry, the production of electricity and gas, the treatment of water and transmission, distribution and other related activities;
- (c) Any company excluded from the provisions of the CCL by resolution of the Cabinet of Ministers.

The provisions of the CCL shall apply to companies in categories b) and c) of the above, to the extent that the Memorandum and Articles of Association of such companies do not exclude the provisions of the CCL.

* The Constitution of the UAE is no longer 'provisional' in accordance with Constitutional Amendment No. 1 of 1996

2.4 Exhaustive Code

The CCL and the Ministerial Decrees comprise an exhaustive code on the law relating to commercial companies in the UAE. However, the UAE Civil Transactions Law No. (5) of 1985, also has provisions for companies which are “Civil” as opposed to “Commercial Companies”.

The dichotomy between civil and commercial companies and the larger distinction between civil and commercial transactions is yet another example of UAE law being derived from, and adopting concepts of, civil jurisdictions, although, in the UAE, this influence has come about indirectly via Egypt from whose laws the UAE draws heavily.

2.5 Only Permitted Forms Recognised

Except for the seven types of companies enumerated in Article 5 of the CCL, any other form of commercial ‘company’ operating within the UAE is deemed to be void and individuals who deal on behalf of such companies are held to be personally and jointly liable for liabilities arising from such dealings. However, there are certain exceptions to this in some of the individual emirates.

2.6 Local Majority Shareholding

The CCL has adopted as an underlying premise common to all companies constituted under the CCL the requirement that the forms of companies registerable under it must have a local majority holding (Article 22 of the CCL). This means that it is mandatory for all types of companies constituted under the CCL to have at least fifty one per cent of their capital held by UAE nationals.

However, as a rare exception to the CCL and subject to special permission being obtained from the Ruler, companies may be established in the UAE without the necessity to appoint a local partner or a local sponsor.

Similarly, some companies are granted a concession, which exempts them from certain rules and requirements under UAE law such as customs and tariffs and the exemption from the requirement to obtain a local sponsor. Such companies are particularly those which have special contracts with the government e.g. oil companies that carry out certain activities.

2.7 Domicile & Nationality

Every company constituted under the CCL is deemed to have UAE domicile and nationality by virtue of Articles 2 and 3 of the CCL. These provisions, it appears, were included for the purposes of enabling companies to carry out some activities which, under UAE law, were restricted to UAE nationals. While this was so, it was thought prudent to expressly provide, in Article 3 of the CCL, that a company having UAE nationality would not, ipso facto, be entitled to all privileges reserved for UAE nationals.

A consequence of this safeguard is to be found in the fact that a company not wholly owned by UAE nationals cannot purchase immovable property in its name even though 51% of its capital is held by one or more UAE nationals. In addition, there are certain activities, which are exclusive to UAE nationals such as registered commercial agencies and the purchase of real estate in the UAE.

2.8 Incorporation & Commencement of Business

The Memorandum of Association of all companies incorporated under the CCL, except joint ventures, must be written in Arabic and notarised.

In the absence of notarisation the memorandum is deemed to be void. However, failure to notarise the memorandum cannot be pleaded against third parties against whom the partners remain personally liable. If a company is held to be void because of its failure to notarise its Memorandum of Association in a suit filed by a third party, the partners are held personally liable. However, if the company is deemed void at the insistence of a partner, the company is only deemed to be void from the date of the judgement.

In all cases, where a company is deemed to be void, the liquidation and distribution of its assets, amongst its partners inter se is carried out in accordance with the company's Memorandum of Association.

The CCL requires companies constituted under it to have their names entered into the Commercial Register, except joint participating (venture) companies maintained by the local licensing authorities, under Federal Law No (5) of 1975. Until such registration is made, a company does not acquire corporate personality and is not entitled to commence business.

Failure to register in the Commercial Register renders the Memorandum of Association void as against third parties but if the failure to register relates only to one or more particulars required to be registered, only those particulars are void as against third parties.

In addition to the formalities under the CCL, a company is required to obtain a trade licence from the local licensing authority in the emirate concerned before it can commence its operations in that emirate.

With the exception of the provisions relating to incorporation, the CCL is applicable to foreign companies which have a presence in the UAE, however, foreign companies licensed in the free zones and foreign companies doing business in the UAE from outside the UAE, are not subject to the CCL. Article 314 of the CCL prohibits any foreign company from establishing offices or branch offices in the UAE or carrying on business without first being licensed by the Ministry of Economy & Commerce and by the Competent Authority in the emirate concerned.

3. Foreign Companies

Articles 313 to 316 (inclusive) of the CCL relate to the regulation of foreign companies carrying on their main activities or establishing branch offices in the UAE. These articles are without prejudice to special agreements entered into between foreign companies, which maintain agreements with federal and local governments.

4. The Permitted Forms of Business Entities under the CCL

The CCL sets out seven types of companies, which may be registered under its provisions as discussed below. It is mandatory for a company under the CCL to adopt one of these forms. The CCL expressly provides that, any company which does not adopt one of the seven forms will be deemed void.

The important attributes of the seven types of companies permitted to be constituted under the CCL are dealt with below.

4.1 General Partnerships

General partnerships are between two or more partners who are jointly or severally liable to the extent of their personal assets for all of the liabilities of the company. The name of a general partnership should consist of the names of all of its partners or may be restricted to the name of one of its partners with words to indicate the existence of a company, or it may have a special trade name.

There is no prescribed minimum capital requirement for general partnerships and no negotiable shares are permitted to be issued due to the personal nature of the company. Similarly, assignment of a partner's share without the consent of all partners is not permissible and any contract to the contrary is deemed to be void. The names of the person(s) who will manage the company is required to be set out in the company's Memorandum of Association and decisions in a general partnership have to be unanimous unless the memorandum provides otherwise, in which case, the management is carried out in accordance with such provisions. All the partners of a general partnership have to be UAE nationals.

4.2 Limited Partnerships

This type of entity is constituted by general or active partners and limited, or dormant (sleeping) partners. The former take an active part in the management of the company and are jointly and severally liable to third parties to the extent of the partnership assets, while the latter do not interfere in the management of the company vis-à-vis third parties and their liability is limited to the extent of their share capital in the partnership. Limited partners may, however, take part in the internal administration of the company to the extent permitted by the Memorandum of Association. Provisions regarding the name of a limited partnership are the same as those for a general partnership with the addition that a limited partner's name cannot be mentioned as part of the name of the company.

A limited partner may be held liable personally to third parties if he holds himself out as a general partner and third parties are induced to believe so.

Internal decisions in a limited partnership are valid only by unanimous consent unless otherwise provided in the Memorandum of Association. Only UAE nationals may be active partners, however limited partners may be non UAE nationals. Limited partnerships are prohibited to issue negotiable shares in the form of instruments. There is no minimum capital requirement.

4.3 Joint Participation (Ventures)

A joint participation is a type of company where two or more partners agree by contract to share the profits or losses of one or more commercial enterprises which will be carried on in the name of one or more of the partners while the other partners remain undisclosed to third parties dealing with the joint venture. The contract constituting the joint venture may be written or oral. The contract is not expected to be disclosed to third parties dealing with the venture. The statutory provisions dealing with this type of company are few (eight in all) and provide, essentially, that the rights and obligations of the partners, inter se, shall be governed by the contract between the partners. This type of company is prohibited from issuing negotiable shares.

Only the partner(s) who personally performs the venture's business is deemed a trader(s). The implication of this provision is that the active partner(s) will have to enter his name in the Commercial Register and obtain a trade licence after complying with the licensing formalities. Third parties only have recourse against the partner(s) with whom they have dealt with but if the existence of the joint venture is disclosed to third parties by acts of the partners, the partners become jointly liable to third parties and the partnership will be deemed to be a general partnership.

It is not mandatory to have a written contract between the partners or to notarise or register it, if there is one. The existence of a joint venture may be proved by any method of proof. Decisions of the joint venture have to be made by the consent of all partners, unless otherwise provided in the joint venture agreement, in which case decisions are made in accordance thereof.

4.4 Public Joint Stock Companies

The main characteristics of a Public Joint Stock Company are as follows:

- a) The capital is represented by negotiable shares publicly subscribed to with provision for rights issues;
- b) The minimum capital requirement is UAE Dirhams 10,000,000 and a minimum of ten founding members (unless the Federal Government or the Governments of the Emirates are incorporating the company) are required to subscribe to a minimum of 20% and a maximum of 45% of the share capital of the company;
- c) The management vests in a Board of Directors consisting of a minimum of three and a maximum of 15 persons, the Chairman being a UAE national;
- d) The liability of its members is limited to the extent of their respective share value.
- e) There is indefinite duration and separate legal personality;
- f) The founders' shares and/or preference shares are not permitted to be issued;
- g) The value of debentures, if any, can not exceed the equity capital;

- h) The shares are freely transferable provided always that 51% of the shares are held by UAE nationals;
- i) At least 10% of its net profits must be retained as a statutory reserve, until the point when the reserve amounts to at least half the equity; and
- j) It is mandatory to appoint an accredited auditor on an annual basis.

This type of company is not preferred by the expatriate investor as the managing body of the company is the Board of Directors whose chairman must be a UAE national and the majority of the directors of the company must be UAE nationals.

Notwithstanding that, the public joint stock company has become increasingly popular in recent years vis a vis the privatisation sector, with a substantial number of public joint stock companies now established in the UAE - a figure that is rising steadily. This popularity has arisen due to the fact that it is the only business vehicle which allows shares to be offered to the public and it enables businesses to raise substantial amounts of capital, which is particularly the case when large scale projects are concerned. Small foreign and local investors are consequently able to participate in such projects.

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

4.5 Private Joint Stock Companies

This type of company is constituted by at least three founding members who fully subscribe to the company's capital between themselves, the capital being not less than two million UAE Dirhams. It follows that the shares of this type of company cannot be offered for public subscription. With the exception of provisions in respect of public subscription, all the provisions in the CCL applicable to public joint stock companies are applicable to private joint stock companies.

In accordance with the requirements set out in the CCL a private joint stock company can be converted into a public joint stock company.

4.6 Limited Liability Companies

Limited liability companies must have at least two and not more than fifty partners. Each partner is liable to the extent of his share capital. The company is prohibited from issuing negotiable share certificates; carrying on the business of insurance, banking and investment of funds; resorting to public subscription for raising its capital and accepting deposits or taking loans from the public.

The shares of the company should be of a minimum value of UAE Dirhams one thousand each. At the time of incorporation the value of all the shares must be fully paid up. Partners enjoy a right of pre-emption in respect of shares to be transferred by any partner of the company to third

parties. If any partner wishes to transfer his shares to a third party the existing partners have the right, within thirty days of receiving notice, to purchase the shares offered for sale at a mutually agreed price. If no price can be agreed, the company's auditor must value the shares and existing partners may purchase the shares at that price. Shares offered for sale are required to be distributed amongst the existing partners in the ratio of their respective share holdings, unless the partners agree otherwise. If the existing partners do not elect to purchase the shares offered for sale within the period of thirty days from receipt of notice, the partner offering to sell the shares is free to sell them to third parties.

The words "company with limited liability" must be added to the company name and the amount of the capital of the company must be stated.

To form a limited liability company a written Memorandum of Association is required which must be notarised. The capital of the company must not be less than UAE Dirhams 150,000 (In Dubai, not less than UAE Dirhams 300,000).

The management of the company vests in a manager(s), not exceeding five in number, who may be appointed under the Memorandum of Association or by a separate agreement or by the General Assembly of the company comprising all of the partners. The manager may be an expatriate and may maintain full authority to manage the affairs of the company.

If there is more than one manager the Memorandum of Association may provide for the formation of a Board of Managers and may specify the method of operation of the board and the majority required for passing its resolutions. If the number of the partners in the company exceeds seven, supervision of the company must be entrusted to a Board of Supervisors formed from at least three of the partners. The board should be appointed under the Memorandum of Association for a specific period.

It is mandatory to appoint auditors on an annual basis. The auditors are appointed by the General Assembly, usually at the Annual General Meeting. On all decisions of the General Assembly, each partner has a number of votes equal to the number of shares owned or represented by him in the capital of the company.

The company must allocate 10% of its net profits each year to a statutory reserve. Such deposits may be suspended when the reserve reaches an amount equal to 50% or more of the company's capital.

The Limited Liability Company is the preferred choice of expatriate investors, as it allows the expatriate partner to maintain control of the management of the company.

In addition, the shareholders can agree in the Company's Memorandum of Association that profits and losses be shared in different proportions to their share holdings.

4.7 Partnership Limited With Shares

A partnership limited with shares is a company formed by general partners who are jointly liable to the extent of their personal assets and participating partners who only participate in the capital and are jointly liable with the general partners only to the extent of their shares in the capital of the company. All general partners must be UAE nationals whereas participating partners may be non-UAE nationals. The capital of a partnership limited with shares must be divided into negotiable shares of equal value.

The names of the general partners must be part of the name of the partnership. If the name of a participating partner is mentioned, with his knowledge, as a part of the partnership name, such a partner becomes liable towards third parties.

The provisions relating to the incorporation of a joint stock company apply to partnerships limited with shares, the liability of founder members being the same as the founder members of joint stock companies. The capital of the company must not be less than UAE Dirhams 500,000. Provisions relating to instruments issued by joint stock companies are applicable to the shares issued by the partnership.

The management of the partnership is entrusted to one or more general partners under the Memorandum of Association. A participating partner may not, even with consent of the general partners, deal with third parties. He may however, be actively involved in the internal management of the company within the limits laid down in the Memorandum of Association. A participating partner who performs any management functions against the prohibition laid down in the CCL is personally liable for all liabilities arising out of his acts. Every partnership limited with shares must have a Board of Supervisors consisting of at least three members appointed by the General Assembly from amongst the participating partners or others appointed for periods of one year. The general partners are not entitled to vote for the election of the members of the Board of Supervisors. The Board of Supervisors does not take part in the day to day management of the company but performs a supervisory function and may request the manager(s) to present a report of their management and examine the company's books and documents.

5. Branch & Representative/ Liaison Offices of Foreign Companies

The establishment of branch offices of foreign companies in the UAE is regulated by the CCL and Ministerial Decision No. (69) of 1989. 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.

Under the CCL, no foreign company may open a branch office within the UAE, without first obtaining a licence issued by the Ministry of Economy & Commerce and entering its name in the Foreign Companies Registry at the Ministry (and in Dubai, in the Commercial Register at the Dubai Department of Economic Development). However, as discussed under section 3, there are exceptions to this where foreign companies have entered into special agreements with the federal or local governments in the UAE.

A branch office is not permitted to carry on commercial activities and cannot physically deal in or trade in goods within the UAE. It is, however, permitted to render maintenance and repair services to customers of its parent company. A branch office can promote, advertise and market its parent company's goods and services and even enter into contracts for sales, however, because of the prohibition against physically dealing in goods, the goods, when supplied to customers, must be imported into the UAE in the name of the customers as consignees.

As a prerequisite to obtaining a licence, the parent company must appoint a UAE national as the National Agent of the branch office under a written agreement. If the national agent is a company, all of its partners must be UAE nationals. The national agent is, in common parlance, referred to as a sponsor. The national agent's obligations towards the company are restricted expressly by the CCL to rendering the necessary services to the company without assuming any financial responsibility or liability relating to the business or activity of the parent company. The national agent is not entitled to represent the branch office nor take part or interfere in the running or management of the business. The services the national agent provides basically involve obtaining licences, visas and permits necessary for the running of the business of the branch office. In consideration of his services as national agent, the agent is paid a fixed annual sum as sponsorship fees and is not entitled to a share in any of the profits or other compensation.

6. Civil Companies & Service Establishments

6.1 Civil Companies

Besides the companies permitted under the CCL, the UAE Civil Transactions Law, (Federal Law No. (5) of 1985) provides for the formation of civil companies. These companies can be formed for any object or activity that is not considered to be 'commercial' by the licensing authorities and rather, involve the exploitation of the personal expertise or skills of the proprietor. Further, Articles 5 to 10 (inclusive) of the Commercial Transactions Law set out the activities which will be deemed as 'commercial'. This states as follows:

Article 5 - The following activities shall be deemed to be commercial activities by virtue of their nature:

- (1) The purchase of commodities and other material and non-material moveable property with the intention of selling these for profit, whether they are sold as is or following modification or fabrication.
- (2) The purchase or hire of commodities and other material and non-material moveable property with the intention of hiring them out.
- (3) The sale or hiring out of commodities purchased or hired in the manner described above.
- (4) The operations of banks and money changers, the stock market, investment companies, safe deposits and financial institutions, and all other operations of financial mediation.
- (5) All operations in connection with commercial documents, whatever the capacity therein of the persons concerned and whatever the nature of the operations established thereby.

- (6) All activity in connection with shipping and aviation, including:
 - (a) The construction of ships and aircraft and their sale or purchase, their leasing out or repair or maintenance, and marine or air consignments including marine and air transportation.
 - (b) The sale or purchase of supplies, tools and materials for ships and aircraft or their provisioning.
 - (c) The actions of loading and unloading
 - (d) Marine and aviation loans.
 - (e) Contracts of employment of captains and crew of commercial ships and aircraft.
- (7) Establishment of companies
- (8) Current accounts
- (9) Insurance in its various forms with the exception of co-operative insurance.
- (10) Places of sale and public auction.
- (11) The activity of hotels, restaurants, cinemas, theatres, sports facilities and places of entertainment.
- (12) Distribution of water, electricity and gas.
- (13) The publication of newspapers and magazines where the purpose of their publication is profit from the publishing of advertisements, news and articles.
- (14) The activity of post, telegraph and telephone.
- (15) The activity of radio and television and recording and film studios.
- (16) The activity of public depositories and the security resulting from the property lodged therein.

Article 6 - The following shall be deemed commercial activities if they are pursued as a profession:

- (1) Brokerage
- (2) Commercial agency
- (3) Agency for commission
- (4) Commercial representation
- (5) Contracts of supply
- (6) The purchase or sale of land or immovable property for the purpose of making a profit from their sale in their original form or after their conversion or division.
- (7) Transportation by land
- (8) Real estate development provided the contractor undertakes to supply materials and labour .
- (9) Industries extracting natural resources.
- (10) Travel, tourism, export, import and customs clearance agencies, services and employment agencies.
- (11) Printing, publishing, photography, recording and advertising.
- (12) Industry.
- (13) Activity regarding animal and fish resources.
- (14) The hiring out of the labour to a third party, or the hiring of labour for the purpose of hiring out.
- (15) Letting or renting of houses, flats and rooms, furnished or unfurnished, with the intention of re-letting.

Article 7 - Activities which may be considered to be similar to those specified in Articles 5 and 6 on the grounds of resemblance of their characteristics and aims, shall be deemed to be commercial activity.

Article 8 - The production by an artist of a work of art, either by himself or by the employment of labour, and the sale thereof, and likewise an author's publication and sale of his literary work, shall not be deemed to be commercial activity.

Article 9 -

- (1) The sale by farmers of agricultural product which they own or which they cultivate shall not be deemed commercial activity, even after processing by the means he normally employs.
- (2) If the farmer establishes a business or factory on a permanent basis for the sale of his products as it is or after processing then the sale in this case shall be deemed commercial activity.

Article 10 - If the activity is commercial in respect of one of the contracting parties and civil in respect of the other, the provisions of this law shall apply to the liabilities of both parties, provided the law does not specify, and that the parties have not agreed otherwise.

Typical examples suitable for the formation of civil companies are companies engaged in the business of offering some kind of service such as consultancy.

A civil company is formed by a contract, in writing, which is the constitutive document that sets out the rights of the partners inter se. However, even if there is no written contract between the partners, it does not affect the rights of third parties who contract with the company.

The Civil Transactions Law provides for the following three types of civil companies.

7. Service Establishments

Under the local laws of the various emirates, non-UAE nationals are permitted to open establishments in their own name to practice a vocation or a profession such as legal consultancy, medicine, accountancy or research. For professionals wishing to continue their vocation in the UAE, this type of an establishment is the ideal, as it does not require a local partner. Such establishments, however, are required to appoint a service agent who must be a UAE national. The service agent is usually paid a fixed fee or an agreed percentage of the profits annually. The service agent is not entitled to any remuneration besides the fee or agreed percentage and is not liable for the debts or liabilities of the establishment. Such establishments are licensed under a service licence.

In Dubai the relevant local law for forming service establishments is Local Order No. (63) of 1991, whereas in Sharjah the relevant law is Local Order No. (1) of 1991.

These kind of companies can now be formed by the Dubai Economic Department, the Sharjah Municipality (or Economic Department) and the Abu Dhabi Municipality.

8. Companies in the Free Zones

There are several free zones across the Emirates, these are:

- (a) The Jebel Ali Free Zone;
- (b) The Dubai Airport Free Zone;
- (c) The Hamriya Port Free Zone;
- (d) The Sharjah International Airport Free Zone;
- (e) The Fujairah Free Zone;
- (f) The Ras Al Khaimah Free Zone;
- (g) The Ajman Free Zone; and
- (h) The Saadiyat Free Zone (Abu Dhabi)

Companies established in the free zones are outside the ambit of the CCL and have been expressly excluded from its operation.

The free zones have primarily been established for the purpose of attracting foreign investment in the UAE. Establishing a company in one of the free zones rather than elsewhere in the Emirates under the CCL, is considered a favourable alternative for foreign investors due to a number of beneficial incentives. For instance, it is possible for a 100% foreign owned company to operate in the free zone (without a local sponsor or partner) as a branch of a foreign company, or as a Free Zone Establishment (which is essentially a limited liability company as discussed below) under a licence issued by the free zone. Further, companies in the free zones benefit from a tax exemption of both corporate and income tax for a guaranteed number of years (normally 15 years) with a renewable option.

Due to the limitations of space, a brief overview has been provided below regarding the free zones in Dubai alone, namely, the Jebel Ali Free Zone and the Dubai Airport Free Zone. Notwithstanding, the procedures for establishing businesses in the remaining free zones and the incentives offered to investors are very similar to the free zones in Dubai. However, it is worth noting that the Executive Council in Abu Dhabi has issued a decision to regulate the establishment of companies in the newly established Saadiyat Island Free Zone. In Dubai, Sharjah, Fujairah, Ras Al Khaimah and Ajman, this has not yet happened. Therefore, the only form of business entities one may establish in the free zones are (a) the Free Zone Establishment and (b) branches of foreign companies (except for the Saadiyat Free Zone).

In order to establish a business in the free zones, it is necessary to obtain a licence from the free zone authorities. The licence relates to the activities the business will undertake. The free zone authority in the respective free zones mainly issue four kinds of licences to companies; a Trading Licence, a Service Licence, a Manufacturing Licence or a National Industrial Licence.

(a) Trading Licence

This licence is applicable to companies (incorporated within or outside of the Free Zone) who wish to import, export, sell, distribute and store items stipulated under the licence.

However, if the company wishes to make sales within the UAE, it may only do so through a distributor or an agent in the UAE. Companies operating in the Free Zone under a trade licence need not obtain a licence from the Dubai Economic Department.

(b) Industrial Licence

The industrial licence is necessary where the business venture involves the importation of raw materials, the manufacture of certain products and the export of the finished products abroad. Again, should the company wish to sell the products in the UAE, it can only do so via a distributor or an agent. Companies incorporated within or outside of the UAE may obtain an industrial licence.

(c) Service Licence

As the name suggests, a service licence is used in cases where the business activity involves the provision of a service or services within the Free Zone. There is an additional condition concerning the service(s) which may be practised, in that it must be the same as the service(s) stipulated in the parent company's licence in the UAE or abroad.

However, in our practical experience in establishing businesses in the JAFZ, we have found that the JAFZA are reluctant to issue service licences.

(d) National Industrial Licence

The national industrial licence is designed for manufacturing companies registered either inside or outside of the UAE. It allows the holder to import raw materials, manufacture the specified product(s) and export the finished product(s) worldwide.

In order to qualify for such a licence, the company's share holding must be at least 51% owned by GCC state nationals. In addition, the value added to the product that is produced in the free zone must amount to at least 40%. Its activity is confined to the activity stated in the National Industrial Production Certificate which is issued by the Ministry of Finance & Industry.

Once a company is granted such a licence it is treated as a local company within the UAE and is entitled to customs duty exemptions on the product(s) exported to GCC countries. Also, if the conditions outlined above are satisfied and if the licence holder is at least 25% UAE owned, products manufactured in the free zone will qualify for a UAE certificate of origin.

The goods and services of foreign companies operating in the free zones are currently not entitled to exemption from AGCC customs tariffs on export to AGCC countries.

Products manufactured within the free zones may qualify for a Certificate of Origin of the UAE provided certain conditions are fulfilled. That is, the UAE added value component attributable to the manufacturing and or finishing process must be at least 40% of the total value of the product.

8.1 Free Zone Establishments (FZE)

A unique entity known as a Free Zone Establishment may be formed in the free zones under the local laws of each emirate. This is a one-shareholder company with separate legal personality and limited liability. The owner of a FZE is a single individual or company. The liability of the owner is limited to the extent of the paid up share capital. The right of formation and regulation of the FZE vests in the free zone authority. While the FZE is exempt from the documentation and filing requirements of local authorities in Dubai, the FZE is subject to the laws in force in the Emirate of Dubai and the laws and regulations of the free zone.

The capital of a FZE is required to be at least UAE Dirhams 1 million or such other amount as the Authority may require from time to time. The capital of a FZE must be divided into numbered shares each share being of the face value of UAE Dirhams 1 million or multiples thereof unless otherwise permitted by the Authority. Each share shall be represented by a share certificate in such form as the authority may prescribe. The share capital of a FZE must be fully paid up in cash at the time of incorporation unless otherwise permitted by the authority. The name of a FZE must end with the letters FZE and such name shall be approved by the Authority. A FZE must at all times have an office in the free zone to which all communications and notices may be addressed.

A FZE must have at least one director and one secretary, although the offices of director and secretary may be held jointly by a single person. The director and secretary must be individuals and at least one of the directors and the secretary must be resident in the Emirate of Dubai. The business of the FZE is managed by the directors who may exercise all the powers of the FZE. A FZE is required to appoint an auditor from among those approved by the free zone authority. The auditors are required to make a report to the owner of the FZE on all annual accounts of the FZE. The FZE is required to provide a copy of the auditor's report to the FZE Department together with the annual accounts.

The detailed procedure and documentation requirements for establishing an FZE are to be found in Implementary Regulation No. (1) of 1992, which has been published pursuant to Law No. (9) of 1992.

The free zone authority has designated a department known as the FZE Department for the smooth functioning and implementation of Law No. (9) of 1992, and the Implementary Regulations. This department handles registration of the Free Zone Establishments and related matters.

APPENDIX A COMMERCIAL REGISTRATION

Under the CCL, commercial registration is a condition precedent to the commencement of the business of a company. A register called the Commercial Register is maintained by the Competent Authority in each emirate pursuant to Federal Law No. (5) of 1975. The purpose of this Register is to record the names of both national and foreign merchants, individuals and companies which have agencies or branches in the UAE. Every merchant or manager of a branch or agency must, within two months from the date of establishing his place of business, file an application in duplicate, signed by the applicant to the competent authority to register his name in the Commercial Register.

In the appendices below, the requirements and procedures prevailing in the emirate of Dubai have been described. Although the details may differ from emirate to emirate the basic requirements and procedures in all the emirates remain largely the same.

Pursuant to an application and after satisfying itself that all the necessary documentation has been furnished, the competent authority registers the applicant in the Commercial Register. All subsequent changes to the particulars supplied with the application must be recorded in the Commercial Register by an application.

Under Law No. (5) of 1975, every person responsible for the management of a company has to indicate in all correspondence and printed material related to the company the registration number in the Commercial Register and affix his trade name in a prominent place in his place of business in the Arabic language showing the registration number .

APPENDIX B LOCAL LICENSING

1. Types of Licences

The Trade Licence and Commercial Registration Section of the Dubai Economic Department maintains the Commercial Register and issues the different types of licences to businesses in Dubai.

There are three major types of licences that are issued by the Dubai Department of Economic Development as follows:

- (a) Industrial licences, which are issued for manufacturing, processing or assembly operations.
- (b) Professional licences, which are issued for professional activities to accountants, architects, lawyers etc.

- (c) Trade licences, which are generally issued for commercial and trading activities of all kinds - trade in goods and merchandise, shipping, banking and insurance and other commercial activities.

Besides the above licences, service companies involved in vocational businesses are issued (service) licences under local laws.

It should be noted that in addition to the requirement of obtaining a licence from the Dubai Economic Department in order to establish a new business entity, it is at times also necessary to obtain what is known as a no-objection letter or special approval from certain bodies which will depend on the activity or the industry the business will be involved in. For instance, it is necessary to obtain such a letter from the Port Authority in the case of a shipping business. If a no-objection letter is required, it will be necessary to obtain it in order to obtain a licence for the new business from the Dubai Economic Department.

Commercial Companies Liabilities CCL



