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日本企業のためのアウトバウンド投資ガイド





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Investment opportunities in the UAE

The United Arab Emirates (UAE) is the second-largest economy in the Middle East. In the past two decades, it has emerged as the preferred destination for foreign investors to establish a presence to undertake business in the region. It has consistently outperformed several countries in the Ease of Doing Business rankings by the World Bank, and is currently ranked 16th out of 190 countries.

The advantages for foreign investors to establish a presence in the UAE are the flexibility in terms of entity options and transparency in rules and regulations. Among the many decisions required to be taken by foreign investors while deciding to set up overseas are: Entity type, required documents, investment amount, licensing, staff hiring, office space, market acceptability of products or services, taxation, finance availability, and repatriation of profits.

Onshore companies. For the purpose of setting up a presence, all emirates in the UAE are divided into mainland (onshore) and free zone areas. Up until recently, there was a requirement that all onshore companies were mandatorily required to have 51% of the shares held by an Emirati national or company. As a result of this requirement, foreign investors were limited to holding 49% of the shares of an onshore company, notwithstanding the fact that the beneficial ownership of 100% of shares, management and control was vested with the foreign shareholder. This requirement created a risk in the mind of the foreign investor, and measures such as a side agreement and power of attorney from the Emirati shareholder were put in place to mitigate the risk.

Foreign ownership changes. This requirement has now been done away with in the Federal Decree Law No. 26 of 2020, which come into effect on 1 April 2021, and detailed regulations are expected to be published soon to provide for sectors where 100% foreign ownership in onshore companies would be allowed. This change

would allow foreign investors the complete freedom to manage and control the affairs of their onshore companies. It is expected that the overhauled legal framework will provide an impetus to foreign businesses from a procedural and cost standpoint.

Free zone companies. In all the free zone areas, 100% foreign ownership has been allowed since their inception. Free zones are areas governed by a free zone authority, and generally cater to certain specific types of industries. Free zone companies are required to adhere to federal laws, as well as free zone laws.

Types of entities. Both on the mainland as well as the free zones, foreign investors can establish subsidiaries, sole shareholder companies, and branch or representative offices. Foreign investors can also establish joint ventures, or enter into a partnership with local companies.

Document requirement and legalisation. The documents required for setting up entities vary from one authority to the other. However, they mainly consist of foreign shareholder constitutional documents, and authorisations to set up a foreign entity. The foreign shareholder documents are required to be legalised from the home country, before being submitted to the local authorities for incorporation purposes. The legalisation of documents is the most time-consuming part of the incorporation process, on ac-

count of various government departments and embassies being involved.

Issue of licences. The economic departments of the various emirates, as well as the free zone authorities, have a detailed list of activities that are permitted to be carried out by companies set up under these authorities. The activities to be pursued by a company are mentioned in the licence issued to the company. The licence also stipulates the names of the shareholders, name of the manager, and the share capital of the company.

Except for certain sectors such as banking, insurance and currency exchanges, for most of activities and entity types there is no minimum share capital requirement. Licences are issued for a term of one year and are required to be renewed annually. Certain activities such as setting up a factory, distribution of pharmaceuticals, real estate, insurance etc., require additional approvals or licences from specialised authorities after setting up of the legal entities.

The management. Managers are required to be natural persons. Certain free zones require the manager on the licence to have a residence visa. The manager has the responsibility to ensure that the company complies with all laws and regulations, and does not undertake activities outside its licensed activities. In the event of any breach, the manager can be called upon by government authorities to explain the non-compliance, and can be held personally liable.

Board of directors. There is no legal requirement for foreign companies to mandatorily have a board, and the company can be managed by a manager. How-

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ever, the law recognises the appointment of directors, and several companies use a board structure for decision making. The law prescribes certain matters to be approved by the shareholders, which cannot be delegated to the directors. Decisions can be authorised by resolutions and/or power of attorney.

The incorporation process. A typical incorporation process entails name and initial approval on the basis of shareholder documents and business plan, submission of memorandum, articles of association and office space lease, and payment of licence fees before issuance of the final licence. The incorporation process can take two to three weeks after the submission of all documents. From the start of planning to actual set-up, the time taken could be longer.

Office space and staffing. Foreign investors are allowed to buy or lease office space depending upon the area chosen by the foreign investor. In most free zones, there are several lease options that are offered including flexi desk, business centres, independent offices and even floors. Leases are generally provided for a term of one year to be renewed thereafter. However, some landlords or authorities may provide leases for longer terms with a lock-in period stipulated.

The number of people that can be staffed by a company is a function of the area of the office. Therefore, it is advisable for companies to plan for a minimum of two years, regarding staffing needs, before deciding on the office area and location.

Except for the hiring of Emiratis, persons of all other nationalities are required to be sponsored by the company, and need a visa to be able to work in the UAE. The requirements for issuance of visas are fairly straightforward and easy to implement. Most foreign companies are allowed to decide on their hiring needs and “Emiratisation” is mandatory only for certain sectors or entities.

Taxation issues. There is no income tax charged and no corporate taxes imposed in the UAE, except for certain limited sectors. However, value-added tax (VAT) is imposed on the sale of all goods and provisions of services. Currently, a flat VAT rate of 5% is being imposed. No VAT is charged on the export of goods and services. The

VAT Law requires companies meeting a certain threshold to obtain mandatory registration and file quarterly VAT returns.

Foreign investment. There are no limits on the extent of foreign investment that a foreign investor can bring into the UAE. The investment can be brought by way of equity or debt. There are no government approvals required. However, all equity issuances are required to be reported to the relevant authority. Repatriation of profits is also freely allowed without any prior approval requirement.

Financing availability. Financing is readily available in the UAE, and there are several local and foreign banks, non-banking finance companies and funds providing funded and non-funded limits for businesses from all sectors. However, banks require a track record and some sort of collateral in the form of guarantees or immovable assets to secure the financing. Many newly set up subsidiaries or branch offices are able to raise debt on the strength of the parent company financials.

Economic substance regulations (ESRs). The UAE recently published ESRs that require UAE onshore and free zone companies, as well as other certain business forms that carry out any of the defined relevant activities in the regulations, to maintain and demonstrate an adequate economic presence in the UAE, relative to the activities they undertake. There are exceptions carved out for companies that have either not earned any revenue from the relevant activities, or that meet other conditions for being exempt.

Being home to people from 200 countries, the UAE offers the advantage of a very diverse marketplace, and several foreign investors have found their operations in the UAE to be successful on account of a vibrant local demand, as well as the ability to supply to various markets in the region. Many foreign companies use the UAE as their Middle East headquarters, owing to a location advantage.

Meticulous planning and well intended execution can ensure a smooth set up and successful operation. Using the services of an experienced adviser can be the difference between success or failure through the entire process of setting up and doing business in the UAE, since ignorance of the law is not an excuse.



Rohit Kochhar
Chairman

Tel: +971 4277 6075

Email: rohit@kochhar.com



Anjuli Sivaramakrishnan
Managing Partner

Tel: +971 4277 6075

Email: anjulis@kochhardubai.com



Kochhar & Co

Suites 1406-1410, The Citadel

Business Bay, Dubai, United Arab Emirates

PO Box 113297

Tel: +971 4277 6075

Email: dubai@kochhar.ae

www.kochhar.com



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