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SWITZERLAND GLOBAL ENTERPRISE

United Arab Emirates
Legal Provisions

Compiled by:

Swiss Business Hub Middle East, Dubai Office

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GENERAL REMARKS

A. Economic position of the UAE

The UAE has an open economy with a high per capita income and a sizable annual trade surplus in addition to a virtually tax free economy, which makes it a fast paced growing business hub and truly international business centre of global significance. Successful efforts at economic diversification have reduced the portion of GDP based on oil and gas output to approximately 29%. The country has undergone a profound transformation from an impoverished region of small desert principalities to a modern state with a high standard of living. The government has increased spending on job creation and infrastructure expansion and is opening up utilities to greater support the private & SME sector involvement.

The UAE did not escape the impact of the global economic slowdown in 2009. However, its exposure to the global economy, combined with the government's considerable fiscal resources and the encouraging performance of other sectors (tourism, retail, banking, etc.) helped the UAE to stage a strong recovery. Fast growing sectors in 2016 include aviation, clean energy/energy efficiency, food. The European Free Trade Association (EFTA) successfully finalized its negotiations with the Member States of the Gulf Cooperation Council (GCC) – comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE – on 24 April 2008. The agreed texts cover a broad range of areas including trade in goods, trade in services, government procurement, competition and intellectual property rights. Bilateral arrangements on agricultural products between the individual EFTA States and the GCC are also part of the package.

The UAE has reached Double Taxation Agreements (DTAs) with 118 countries (87 in force,31 pending) from all over the world including Switzerland. The DTA between the UAE and Switzerland was signed in 2011 and entered into force in 2012.

The UAE has been able to maintain its position in the 2017-2018 World Economic Forum "Global Competitiveness Report". Ranked 17th, the UAE confirmed its position as one of the most competitive economies in the Middle East region. The higher oil prices and the diversification of the economy have allowed the UAE to stabilize its economy, invest in a high quality infrastructure, and identify itself as a world hub. However, there have been recent changes in this regard after the fall in oil prices. The country's institutional environment remains, as in previous years, a competitive advantage, characterized by a low regulatory burden, high public trust in politicians, and reliable security services.

B. Investment incentives

Due to strategic location, UAE has been hosting & providing routes to business since centuries. It offers easy access to the 1.5 billion consumer markets situated in Africa, West Asia, CIS countries, and Europe as well as the areas surrounding the Red Sea and the Gulf. With 11 state-of-the-art ports – with the most well-known being the Jebel Ali Port in Dubai - 9 airports and satellite links to most countries, the UAE has become one of the leading entry port centres of the world, rivalling the emerging tigers of South East Asia. Having long since consolidated its position among the top oil producing nations, the visionary leadership of the UAE is concentrating its efforts on industrial development in the country.

According to experts, sustained economic growth still can be expected in the future as well, due to political stability and liberal economic policies. The UAE offers incoming business all the advantages of a highly developed economy. Its infrastructure and services match the highest international standards, facilitating efficiency, quality and service. Among the benefits are: tax exemption, no corporate taxes, no income taxes, no foreign exchange controls, no trade barriers, competitive import duties (5% with many exemptions), competitive labour costs, balanced labour law, free enterprise system, Free-Trade zones, highly developed transport infrastructure, state-of-the-art telecommunications, sophisticated financial and services sector, diversified industry, top international exhibition and conference venues, high quality office and residential accommodation, reliable power and utilities, first class hotels/hospitals/schools/shopping, and a cosmopolitan lifestyle.

C. Court and legal system

A stable court and legal system provides investors with the necessary security in carrying out business transactions. Although the individual emirates retain the right to pass laws, federal uniform laws apply to the economically most important judicial areas, since the UAE has legislative rights for this area. While Islamic law, the Shari 'a, is constitutionally the source of most legislations, such as personal matter laws for Muslims, it has only a subordinate role in economic law. One basic principle of contract law of the Shari 'a should however, always be observed: "The contract is the law of the parties." Therefore, individual legal concepts and intentions should always be exhausted in the implementation of planned investments.

The courts of the UAE have a three-tiered structure. Each of the seven emirates has the constitutional right to pass its own independent regional laws. Thus far, this has been utilized up to the highest level of appeals only by Abu Dhabi with the Supreme Court of Cassation, Dubai with the Dubai Court of Cassation and Ras Al Khaimah with Ras Al Khaimah Court of Cassation The four other emirates also have courts of first and second instance, but in matters of final instance they are subordinate.

Furthermore, the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM), two financial-themed free zones, have established their own court systems. Being independent common law based jurisdictions formed under the UAE Constitution, they have their own laws and regulations – ADGM directly applying English law – except for UAE criminal laws, administrative laws and anti-money laundering regulations, which continue to apply in all UAE free zones. ADGM and DIFC both provide for a court of first instance and a court of appeal, which are not subordinated to the Supreme Court of Cassation in Abu Dhabi. It is possible for parties to a contract to “opt in” in favour of either DIFC or AGDM law and elect DIFC or ADGM courts as the competent authority to hear a dispute.

Thus far, no agreement exists between the UAE and Switzerland on mutual recognition and enforcement of judicial decisions or arbitration. However, it is worth mentioning that in 2006 the UAE has subscripted to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. The recognition and enforcement of foreign arbitration decisions in the UAE is thus possible through the implementation of the said new law.

CUSTOMS

The Harmonized System (HS) coding structure is used in the UAE for the import of goods. Unless a particular product is exempted, the UAE levies a relatively low import duty of 5% on import goods into UAE and outside the Free Zones (as of 01/01/2003), based on the CIF (cost, insurance and freight) value of the goods. No customs are levied on a variety of goods, e.g. foodstuffs, certain raw materials, or medical equipment. However, 50% duties are levied on alcohol and 100% on tobacco products. For goods that are intended for re-export, the customs duties paid are returned after a certain period following re-export. There are no taxes implemented if goods are imported into a free zone, and then re-exported of the GCC again. Furthermore, once the applicable 5% customs duty is paid for importing goods into the UAE, they should move freely across the GCC (in most cases). To benefit from reduced customs duties, manufacturers will have to prove that at least 40% of the value was added in the UAE and at least 51% owned by UAE nationals.

For further information, please visit: www.fca.gov.ae/En/.

FREE TRADE AGREEMENT (FTA)

On 1 July 2015, the Free Trade Agreement (FTA) between Switzerland and the GCC was officially implemented, providing customs duty exemptions between the two parties. However, at this point in time, the GCC member countries are still working on ensuring the smooth implementation of the agreement, and some delays may occur as a result.

For certification technicalities and other related matters, the Swiss exporters are advised to consult the following:

Arab-Swiss Chamber of Commerce
70, route de Florissant, CH-1211 Geneva 12
Tel.: +41 22 347 3202
Fax: +41 22 347 3870
Email: arabswisscham@casci.ch
Website: www.casci.ch

IMPORT AND EXPORT REGULATIONS

Goods, which are not already prohibited by the country, can be imported with an import permit issued by UAE customs. Goods can either be imported through a third party freight forwarder or logistics provider, or through a distributor/agency. Some products may require special documents, and this can be clarified at the UAE Customs.

Normally, the below documents will be required to bring goods into the UAE:

- Master Airway Bill/House Airway Bill for Air channel
- Master Bill Of Lading/House Bill Of Lading for Sea Channel
- Commercial Invoice
- Certificate of Origin
- Packing List
- Delivery Order
- Permits wherever applicable

(*additional documents may apply for the FTA*)

When importing through a Free Zone, all goods are exempt of customs duties. As long as the goods are not exported to other GCC countries (including UAE) from the Free Zone, they may be exported onwards without any duties.

The UAE government prohibits the import of drugs and narcotics into the UAE, as well as pornographic material, non-Islamic religious pamphlets for missionary activities, fireworks, ivory, weapons & ammunition, chemical and organic fertilizers, laser pens, radar jammers/unauthorized communication devices, endangered animal species, and any objects, sculptures, paintings, books or magazines which do not adhere to the religious and moral values of the UAE.

CURRENCY REGULATIONS

In the UAE, there are no restrictions on currency exchanges. It is freely convertible and is pegged to the American Dollar (US$). Average Exchange Rate: 1 CHF = AED 4.00 (3.71815 on 24.07.2016).

REGISTRATION PROCEDURE FOR PRODUCTS

The necessity for product registration depends mainly on the industry line of the products. Usually, it is the importer or trade agent based in the UAE that is responsible for carrying out the registration procedures. Such products tend to fall under appliances, cosmetics, medicines, and electronics, food products, to name a few. Normally, the agent or distributor is well aware of these procedures and requirements.

Please refer to the Emirates Authority for Standardization & Metrology for further information:
http://www.esma.gov.ae/en-us.

STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS

The Gulf Standards Organization (GSO) sets the framework for the UAE's packaging and labelling requirements, which are also made up of international norms for standards and other technical requirements. In addition, American standards are also recognized.

Exporters are encouraged to consider cultural norms and values when designing and developing product packaging. A best practice would include consulting local contacts for context and current information when developing labels and packages. An Arabic translation should appear on the packing in addition to other languages used.

The labels should include:
- A complete list of ingredients in decreasing order
- Name and brand of the product
- All the food additives
- Water content should appear on the label
- The transport and storage conditions should appear
- Name and address of the manufacturer and packer

- Country of origin
- Method of preparation for consumption
- Origin of animal fat or gelatin should be mentioned
- Manufacturing and expiry dates

Sometimes, other regulating bodies (eg. ESMA http://www.esma.gov.ae/en-us) will have additional labeling conditions that need to be considered as well.

Halal should be clearly mentioned for all meat products. Food products should not contain alcohol or pork. Municipalities have established a list of food additives or colorings authorized in the Emirates.

TAXES

The UAE has no uniform tax law for the whole country. Tax legislation is reserved to the individual emirates. The laws in the overwhelming majority of the emirates provide for taxes to be levied, but in practice, most of these regulations are not applied. In principle, the individual emirates do not levy income tax on natural persons (locals or foreigners). The income tax for legal entities/bodies is thus far levied only on companies that are directly involved in the production and processing of oil, gas, and petrochemical products, and on domestic and foreign banks at the Emirate level and courier companies at the Federal level. Further, Emirate-level taxes are imposed on the holder of petroleum concession at rates specifically negotiated in the relevant concession agreements.

In the various free zones, the governments of the respective emirates guarantee a (direct) tax exempt status for 50 years, with the option to renew for another 50 years.

On 1st January 2018, VAT was implemented in the UAE at a rate of 5% with some limited exemptions.

Aside from VAT, the UAE applies a sale tax on the sale of alcohol, hotel and restaurant bills, as well as residential leases.

As mentioned above a 5% custom duty is imposed on the majority of goods entering the GCC (including the UAE). Imports into free zones, which are considered as offshore for GCC customs purposes are not subject to customs duty. Custom duties are only charged once goods enter the mainland UAE.

INHERITANCE AND SUCCESSION

On 30 April 2015 the Dubai International Financial Centre launched the Wills and Probate Registry ("DIFC WPR"). The DIFC WPR provides a unique service that allows non-Muslim individuals over 21 years of age to register their wills in accordance with their wishes with full testamentary freedom, hence avoiding the application of Sharia Law.

The DIFC WPR aims at addressing with certainty succession and inheritance matters of non-Muslims with assets in Dubai and Ras Al Khaimah. The testator does not need to be a Dubai resident to register a DIFC will. The DIFC is a Common Law jurisdiction and the WPR's Rules are based primarily on the principles contained in the UK Estates Act and Probate Rules. Shari'a principles do not form part of the DIFC WPR's legal framework.

The DIFC Courts have sole jurisdiction over probate proceedings of the testator's will registered with the DIFC WPR,

Prior to the implementation of the DIFC WPR, the non-Muslims alternative in Dubai was a duly executed will before a Notary Public with an express stipulation of the applicable foreign law. It is a condition *sine qua non* for the application of such law by a competent Court. In November 2017, the Dubai Law no. 15 on Non-Muslim Wills and Administration of Non-Muslim Estates in Dubai was published creating clear legal framework and procedures on will registration.

If no will has been made, Shari'a principles would automatically apply.

FOUNDATION REGIME

After Abu Dhabi Global Market (ADGM) – which introduced its own foundation regime on 16th of August 2017 – the DIFC is the second common law jurisdiction within the UAE to extend its structuring and legacy planning offering with the adaption of the civil law based foundation regime. The DIFC Foundation Law no. 8 of 2017 was launched in March 2018.

A foundation is an independent legal entity which holds assets separately form the founder's personal wealth. The foundation shares similarities of functions and mechanisms with both a company and a trust, while not strictly considered a hybrid of the two. Unlike a trust which was derived from the concept of common law principles, the foundation originates from civil law jurisdictions. Furthermore, the ADGM and DIFC Foundations can be a very effective tool for estate planning.

COMMERCIAL LAW

Commercial Agency in the UAE is regulated by Federal Law No. 18 of 1981 as amended by Federal Law No. 14 of 1988, Federal Law No. 13 of 2006 and Federal Law No. 2 of 2010 (CCL). The Commercial Agency main principles have essentially remained unchanged since the law's promulgation in 1981.

Pursuant to the Commercial Agency law, neither foreign individuals nor foreign companies can act as commercial agents in the UAE, as said law has reserved such activities to national individuals or UAE companies fully owned by UAE national(s). In practice, foreign companies/principal seeking to sell their products in the UAE may enter into a commercial agency or distributorship agreement with a licensed local agent.

Currently, a principal that has a registered agreement with a UAE agent can only terminate it – regardless of the term provisions of such agreement – and register an agency agreement with another agent, if the principal: (i) has obtained a consent of the agent; (ii) has proved “justifiable reasons” accepted by the Committee; or (iii) has obtained a conclusive court order confirming the termination or non-renewal.

Increasingly, termination and deregistration of agency agreements in the UAE are completed through settlement between the parties, when typically a monetary compensation is paid by the principal to the agent.

Effective 1 July 2015, the new UAE Commercial Companies Law - Federal Law No. 2 of 2015 ("New CCL") has been implemented, replacing the existing Federal Law No. 8 of 1984 concerning Commercial Companies. The New CCL aims to achieve a global high standard in the market, improve the corporate governance, raise companies' social responsibility, alleviate the economic status of the jurisdiction and protect the rights of the shareholders.

The New CCL brought changes relating to Limited Liability Companies as well as to Joint Stock Companies among others. Notable features of the New CCL include the recognition of the concept of holding companies, procedures for pledging shares, expert valuation of shares in kind and the requirement to rotate auditors (for Public Joint Stock Companies) every three years. Furthermore, companies are required to amend their existing memoranda and articles of association to comply with the changes introduced by the New CCL. In practice, any company that fails to make the mandatory amendments by 30 June 2017 will be fined, and potentially deemed to be dissolved

SETTING UP COMPANIES

In the UAE, economic activity is regulated by individual Emirates as well as by the Federal Government. Generally, the following business possibilities are available to foreign companies:

- Direct Trade
- Appointment of commercial agency
- Establishment of /or participation in a commercial company
- Establishment of a business in a free trade zone
- Offshore Companies

A foreign investor can set-up a company in the UAE either in one of the many free zones or in mainland UAE. Free zones allow 100% foreign ownership, offer prebuilt facilities and streamlined one stop-shop registration and administrative services, however, free zone companies are only allowed to carry out business in the free zone of registration and/or overseas. Mainland companies, on the other hand, do not have such territorial restriction but are required to have at least 51% UAE National shareholding (natural or juristic).

Basically, business activity in the mainland UAE is based on the principle of local participation.

Mandatory 51% ownership in a mainland company ensures participation of the local population in the economic boom and guarantees some degree of control by the locals. Only purely export business from a free trade zone is exempted from this regulation.

A new investment law allowing 100% foreign ownership in specific onshore business sectors is to be implemented in late 2018 / early 2019. it is anticipated that the new law will be limited to key sectors, be subject to a vesting process (likely to include a substantial investment).

While a commercial agency ought to be fully owned by a local UAE national (natural or juristic person), the foreign investors may have an option to incorporate a free zone entity to avail the benefit of 100% ownership and enter into commercial agency agreement or distributorship agreement to distribute goods within the local market. appointment of commercial agents, but also to the establishment of a business, and this principle can be found in various forms in all provisions of business law in the UAE and also in the rest of the GCC states.

Often, the principle of local participation is (mistakenly) equated with the so-called sponsor. Originally, the sponsor functioned exclusively as a guarantor for foreigners who conducted business in the UAE. However, the increase of foreign business activity in the country transformed the term and the liability of the sponsor. As per the Commercial Companies Law, a local UAE National shareholder must hold at least 51% shareholding in a limited liability company incorporated within mainland UAE. The required 51% participation of UAE citizens as real partners in limited liability companies is mandatory[1].

On the other hand, a UAE National local agent (natural or juristic person) is required to act as a local agent for branches of foreign companies[2] and civil companies. . Function of a service agent is often limited to liaise with the local authorities for immigration and labour purposes. *De legge*, the service agent has no right in participation of any profits or returns generated by the branch of a foreign company or a representative office.

With regard to the previously mentioned peculiarity, there are two points that are of decisive significance:
1. The appointment of a credible local business partner, whether a commercial agent, partner in one of the commercial companies, or a service agent of a branch, or just an importer / exporter of goods.

[1] *It is commonplace for foreign investors in a mainland company to enter into various types of legal agreements with the local nominee 51% shareholder to «mitigate» any risks associated with local ownership as well for determination of profit distribution generated from the mainland company.*

[2] *Such as representative offices*

2. For any kind of business relationship, a well-balanced contractual basis must be adapted to ensure a maximum security at the local level and business customs.

The search for the right business partner can often take a long time and require patience, but it is always worth it in the long run. You should therefore be urgently fore-warned of the often extensive legal consequences of a hasty and untested contractual commitment to a local partner. For anyone who does not have sufficient experience and local connections, professional advice – of any kind – can only be recommended for those seriously considering attempting to establish a successful business in the Gulf states. The New CCL allows one person, a natural or a corporate national, to incorporate and hold a Limited Liability Company (LLC) as a sole shareholder.

PROMOTION OF INVESTMENT

The UAE economy is open to Foreign Direct Investment, and it is usually done so in the form of either joint ventures or direct investments. Part of the UAE foreign investment strategy is to offer attractive incentives to foreigners such as no taxes, 100% ownership, affordable manpower, ease of opening and doing business, and high standards of living. It is nevertheless advised that swiss companies interested in investing in the UAE study all aspects of their plan and be prepared for unexpected consequences. Seeking legal advice is strongly recommended.

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW

In order to lawfully work in the UAE, expats ranging from 18-65 will need an employment contract as well as a work permit. In order to be eligible to sponsor his/her family dependants in the country as well, the UAE authorities have set a minimum salary level for a person to do so. This minimum salary is set at AED4,000/month.

In order to be issued a work permit, the expat will need to be sponsored by an Emirati sponsor, which can be in the form of an individual, a private company or a governmental entity. This work permit is issued by the Ministry of Labour, in accordance to the license of the Emirati sponsor. In addition, it has become mandatory for employers to issue health insurance for their employees in order for the Ministry of Labour to issue the work permits.

Only then will the expat be issued a renewable (every 2-3 years) residence visa.

In May 2018, the UAE announced the issuance of a 10-year residency visas for investors and specialists such as doctors and engineers. Families of the latter who are their will also have the same period of visa validity.

Visitors

Citizens of EU benefit from a very advantageous regime since April 2015 pursuant to an agreement between the European Union (EU) and the UAE, according to which nationals of EU countries may stay in the territory of the UAE for a maximum period of 90 days in any 180-day period. Such visa waiver does not apply to persons travelling for the purpose of carrying out a paid activity during their visit to the UAE.

PROCEDURES FOR COLLECTING PAYMENT

The collection of outstanding payments for projects executed especially by foreign entities in the UAE has become stricter, especially when it comes to working with governmental entities. Payment terms usually include an upfront payment, with the outstanding amount being paid directly upon the delivery of the project. Generally, import of goods into the UAE is received on the basis of an irrevocable letter of credit (L/C), although other arrangements such as open account, cash in advance and documentary collection are also permitted. It is advised that the terms of payment be clearly defined in contracts, with a legal advisor going over the details.

The Dubai Land Department (DLD) has extended until 31 October 2015 the registration of all property transactions in the Emirate. The fee for registering a real property sale contract is 4% of the property value as per Executive Council Resolution No. 30 of 2013.

A new bankruptcy regime was introduced in 2016 in the UAE (Federal Decree Law No. (9) of 2016 concerning Bankruptcy – the “New Bankruptcy Law”) . The purpose of this law is to help owners of small- and medium-sized enterprises withstand a slowing economy and rising levels of bad debt. The previous regime was flawed and contemplated court-driven and creditor-friendly insolvency procedures, which prioritized the realization of assets to satisfy the claims of creditors, as opposed to preventive assistance to debtors in financial difficulties.

The New Bankruptcy Law seeks to promote a “rescue culture” by setting out a process of “preventive composition” (for financial situations not yet amounting to insolvency) and a “restructuring scheme” (for bankruptcy procedures). Additionally, it sets forth solutions to avoid bankruptcy, e.g.: financial reorganization, pre-emptive settlement, financial restructuring and raising new funds. It also foresees that both debtors and creditors, under certain conditions, may file petitions for bankruptcy.

SOURCES OF INFORMATION AND LINKS

MEED	www.meed.com
NOOZZ	www.noozz.com
Department of Economic Development	www.dubaided.gov.ae
Dubai Chamber of Commerce	www.dubaichamber.com

Expat Arrivals	www.expatarrivals.com
Federal Customs Authority	www.fca.gov.ae
Dubai Customs	www.dubaicustoms.gov.ae
Official Portal of Dubai Government	www.dubai.ae
Abu Dhabi E-Government Gateway	www.abudhabi.ae

Note: Due care and diligence have been taken to ensure the highest accuracy and quality for the production of this report, however S-GE and its partners decline any responsibility for decisions taken based on the findings of this report.

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Author: Lamia Damerje
Trade Advisor

Author's address: Swiss Business Hub Middle East
C/o Consulate General of Switzerland
P.O. Box 9300
Dubai, United Arab Emirates
Tel: +971 4 329 0564
Fax: +971 4 331 3679
sbhdubai@eda.admin.ch

Laws & Regulations revised by: Yann Mrazek
M/HQ
Office 13, Al Gurg Tower 3
Baniyas Road, Rigga Al Buteen
PO Box 186549, Dubai, UAE
Tel. +971 4 295 5737
ask@m-hq.com
www.m-hq.com