



Updates on UAE Company Law: Foreign Direct Investment Law, Dual License, Instant License & JAFZA Offshore Companies Regulations 2018

Business conditions are subject to constant change wherefore legal circumstances are continuously transforming. The overall economic climate of the United Arab Emirates ("UAE") might currently be described as rather challenging. As a response, several new measures have been introduced by both the UAE on a federal level and the individual Emirates that intend to boost the local economy and strengthen the business hub UAE as a whole. In the following, we will provide you with an overview on some of the most important innovations:

1. Foreign Direct Investment Law

The most noteworthy novelty has been the issuance of the Foreign Direct Investment Law ("FDIL", Federal Decree-Law No. 19 of 2018). The FDIL has caused quite some noise, however, many details are not known as of yet. Hence, the practical impact of the FDIL, in particular on small and medium-sized companies, cannot be assessed at this point.

Fact is that the FDIL in certain instances allows foreign investors to hold 100% of shares in a company licensed in the territory of the UAE. Previously, foreign shareholders of a limited liability company, for example, had to mandatorily assume the role of a minority shareholder.

The sectors in which a foreign majority or sole investment pursuant to the FDIL is permitted or prohibited are defined by the so-called positive list and the so-called negative list.

The negative list has already been included in the FDIL itself and names those industry segments in which a majority or sole foreign investment is prohibited. These include the oil and gas sector, areas of public services and public safety as well as commercial agency.

The publication of the positive list has been announced for the first quarter of 2019. It will include such industry segments in which foreign direct investments will be permissible. Its scope, however, will not be determined by the negative list. Hence, items not mentioned on the negative list will not automatically be included on the positive list. On the contrary, the positive list will contain specifically chosen sectors only.

In case that a majority or sole foreign investment is generally allowed based on the positive list, further requirements stipulated by the FDIL must still be met. Such requirements include, amongst others, the permissible company form, the minimum share capital as well as the quota of Emirati employees that have to be employed by a company.

2. Dual License

The so-called dual license enables companies located in specific free zones in the Emirates of Dubai and Abu Dhabi to establish a

branch in the territory of the respective Emirate without the need to lease separate commercial premises. Instead, the premises of the free zone company serve as the seat of the branch.

In Dubai, only free zone companies licensed in the Dubai Airport Freezone or the Dubai International Financial Centre are currently permitted to request the issuance of a dual license at Dubai Economy. In Abu Dhabi, companies licensed in any of its free zones may apply for a dual license.

The practical advantages of a dual license are limited. Admittedly, rental costs can be saved. Other than that, however, all further cost items have to be paid for and the regular procedures when establishing a branch have to be adhered to. In addition, the free zone authorities levy extra charges.

Furthermore, it remains unclear how employees of such branches will be able to operate in the territory of the respective Emirate since the issuance of their residence visas and work permits will have to be arranged for by the free zone companies.

3. Instant License

As of recently, a so-called instant license can be applied for in the territory of the Emirate of Dubai. A limited liability company, a sole establishment or a civil company will thus be established in the course of one appointment with Dubai Economy within 30 minutes only.

Currently, instant licenses are solely offered to those companies which are being set up by natural persons and will conduct activities that do not require additional approval from another authority.

The presentation of a notarised memorandum and articles of association ("MoA and AoA") or a tenancy contract for the premises of the company is not required. On the contrary, the license is issued immediately against payment of all applicable reservation and license fees.

MoA and AoA as well as an EJARI certificate - the latter will be issued based on the relevant tenancy contract - must, at the very



latest, however, be submitted to Dubai Economy when renewing the company's license for the first time.

The main advantage of an instant license is the opportunity to quickly and, at first, inexpensively establish a company. This should be of interest particularly for start-up companies that intend to test the market environment before making a long-term commitment. Further, an instant license benefits those who need to establish a legal entity on short notice, for example for the purpose of participating in a tender.

On the flip side, the opening of a bank account will normally not be possible without providing proof of the company's place of business as well as its MoA and AoA. In addition, residence visas and work permits can only be applied for the founding shareholders should the company not have its own premises.

4. JAFZA Offshore Companies Regulations 2018

The Jebel Ali Free Zone Offshore Companies Regulations 2018 have practically relevant effects. They replace the previously applicable provisions dated 2003 and concern offshore companies that have been incorporated in the Jebel Ali Free Zone.

The new regulations introduce the possibility to appoint legal entities as director, manager or secretary. Further, the minimum number of directors was reduced from two to one director only. Subject to the approval of the authority, different classes of shares can now be issued as well.

Once the technical requirements have been created in the free zone authority's system, offshore companies will be able to lease their own office space and will be entitled to apply for residence visas and work permits. By leasing their own premises, the offshore companies will be exempt from appointing a so-called registered agent. Additionally, it will become possible for offshore companies to convert into free zone companies.

Lastly, new rules concerning company migration will strengthen the location Jebel Ali Free Zone. They allow foreign companies to

transfer their incorporation to the free zone and act as an offshore company. Furthermore, offshore companies licensed in the Jebel Ali Free Zone are now permitted to redomicile to a jurisdiction abroad.

Do you have questions? - We would be glad to answer them!

From our office located in the heart of Dubai, our team of German attorneys has been advising small and medium-sized companies, corporations and individuals on the laws of the United Arab Emirates for more than a decade. Our areas of expertise include corporate and commercial law (in particular business set ups), commercial agency law, employment law as well as tenancy and real estate law. We would be happy to attend to your questions as well. Contact us!

ANDERS LEGAL CONSULTANCY
Sama Tower, Office 806
Sheikh Zayed Road
PO Box 333 558, Dubai, UAE

Telephone: +971 4 327 5888
Telefax: +971 4 327 5999
eMail: info@anders.ae
Web: www.anders.ae

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