

eCommerce in the United Arab Emirates

The eCommerce sector in the United Arab Emirates ("UAE") has seen a significant increase in 2020 - also due to the COVID-19 pandemic. Further substantial growth is expected for the future. This development is, amongst others, triggered by the excellent digital and logistics infrastructure already in place as well as a number of business-friendly eCommerce initiatives launched by various local authorities. Therefore, many businesses are currently looking into establishing an eCommerce business or expanding their existing distribution channels through an online presence. In this article, we provide you with insights into the UAE's legal framework for eCommerce.

What is covered by the term eCommerce?

In a broad interpretation, the term eCommerce covers all aspects of business activities undertaken online. In this article, we use the term for the sale of goods and the provision of services via the internet.

What is the importance of eCommerce in the UAE?

eCommerce has played a significant role in the UAE for some time already and gained significant momentum as a result of the COVID-19 pandemic and the consequent implementation of strict restrictions on movements in the early stages of the pandemic.

It is expected that this trend will continue long-term. Catalysts are the outstanding digital infrastructure and the various government initiatives to promote eCommerce as well as the high per capita income and the technical savvy of the comparatively young population with a very high smartphone penetration. To meet the ever-growing customer demand, an increasing number of UAE-based companies are shifting their offerings and operations fully or partially online.

What eCommerce initiatives have been launched?

Various authorities have launched eCommerce initiatives in the recent past. Based on the vision of further strengthening Dubai as a distribution hub, two free zones particularly focusing on eCommerce have been recently created with the launch of Dubai CommerCity, which is associated with the Dubai Airport Freezone, as well as EZ Dubai in Dubai South. Apart from that, some licensing authorities have either introduced entirely new eCommerce licenses, such as the DED Trader License launched by Dubai Economy, or at least added new activities to their catalogues of license activities. For example, Dubai Multi Commodities Centre has introduced the license activity "eMarketplace Service Provider".

Apart from the public sector, eCommerce-specific initiatives have also been implemented in the private sector. Mastercard, for example, supports smaller companies in establishing or expanding their online presence with the "SME-in-a-Box" solution.

Is a license required for conducting eCommerce activities?

Holding a valid license is a prerequisite for any permanent business activity in the UAE. A license is therefore required even if the business activity is conducted wholly or partly online.

The license is generally restricted to the respective Emirate or free zone in which the company is established. It further determines the scope of permissible business activities. In addition, every license holder is generally required to rent office space in the Emirate or free zone in which the license was issued.

What special licensing requirements apply to existing companies?

Companies already registered in the UAE that wish to (also) conduct their business activities online must inquire with their competent licensing authority whether the existing license activities (also) cover the intended online activities.

For some licensing authorities, such as Dubai Economy and Dubai Multi Commodities Centre, existing license activities, such as "General Trading", currently also comprise online activities. Thus, a license amendment would not be required. In other instances, existing license activities do not automatically cover activities conducted online. For example, Dubai Airport Freezone Authority currently requires businesses that wish to undertake online activities to add an eCommerce activity to their existing license.

What should be considered when setting up a new business?

For companies yet to be established, it must first be inquired whether it is permissible to conduct the intended business activity online in the UAE. If this is the case, depending on the budget and the medium to long-term objective of the company, different types of licenses and legal forms are available.

In this regard, some licensing authorities have recently introduced special eCommerce licenses that, amongst others, aim at offering businesses a cost-effective alternative to traditional license types. A popular example is the DED Trader License which allows foreigners to obtain a license for services such as social media marketing or marketing management.



However, the DED Trader License does not enable foreigners to engage in trading activities. Instead, only UAE nationals and other GCC nationals may apply for a trading activity. The DED Trader License neither entitles its holder to apply for residence visas or work permits nor to rent office space. The license therefore primarily targets individual entrepreneurs who run their business on their own from home.

Another cost-effective alternative to a conventional license is the Instant License launched by Dubai Economy. The Instant License allows license holders to run the business without renting office premises and concluding a tenancy contract in the first license year. However, an Instant License is only available in cases where no special approvals from local authorities need to be obtained.

What additional approvals may be required for an eCommerce activity?

In addition to the license itself, further approvals may have to be obtained for eCommerce activities. For example, it is important to check whether a No Objection Certificate ("NOC") must be applied for with the Telecommunications Regulatory Authority ("TRA"). In such NOC, the TRA declares that it has no objection as to the undertaking of eActivities on websites and social media accounts in the UAE.

In other cases, the issuance of an eMedia License by the National Media Council based on the Electronic Media Regulation 2018 may be required. The exact scope of application of this set of rules is still unclear. However, the eMedia License seems to be particularly relevant for influencers who conduct media activities for commercial purposes.

Depending on the intended business activity, it might be required to apply for further special approvals, such as approvals from the Roads and Transport Authority for passenger transport or the Knowledge and Human Development Authority in the case of online training.

What is the right location for a company that (also) intends to conduct eCommerce?

A general answer to this question cannot be given as the choice of the right location is - also in relation to eCommerce activities - closely linked to the actual activities to be carried out in the individual case as well as the location of the customers. Hence, also with regard to online activities, the difference between the mainland of the UAE and the various free zones has to be kept in mind.

The UAE mainland comprises of the territory of the UAE with the exception of the free zone areas. The respective Emirate-level authority is competent for issuing licenses. An extension of operations to another Emirate may require an additional license. Importing goods into the mainland triggers the payment of import duty.

Free zones, on the other hand, are special economic zones, i.e. areas within the UAE in which special economic and legal regulations apply. Free zones exist in all Emirates. Companies that establish themselves in a free zone are restricted to carry out their activities within the area of the respective zone. Although imports and re-exports to countries other than the UAE are generally duty-free, import restrictions apply in relation to the UAE mainland. In principle, goods can only be imported into the mainland by a distributor based in the mainland or a consignee that disposes of a respective import license himself. Consequently, free zone companies are generally only entitled to sell their goods to other businesses (so-called B2B transactions).

If a trading company located in a free zone intends to (also) sell directly to consumers, a strategy has to be implemented in order to be able to legally conduct such B2C transactions. A traditional approach is to establish a separate company in the UAE mainland that imports the goods into the mainland by making use of its own import license and, subsequently, delivers them to mainland-based consumers.

More interesting opportunities may open up for free zone companies in the near future under a new initiative recently launched by Dubai Customs. The cross-border eCommerce platform is basically intended to enable those free zone companies that have joined the platform to conduct eCommerce from within the free zone, i.e. to import goods into the mainland and deliver them directly to mainland-based customers. However, the exact details are not yet clear. Dubai Customs has announced that the initiative will be fully implemented by the end of the first quarter of 2021.

Already today, it seems possible for companies based in some free zones to deliver goods to customers in the UAE mainland with the support of certain logistics providers. Prerequisite is, however, that the logistics provider is specifically licensed by Dubai Customs to import goods from the particular free zone into the mainland and to deliver them to businesses or consumers located in the mainland.

How can companies minimise risks concerning eCommerce?

Risks specific to eCommerce include infringements of third-party intellectual property and breaches of data protection. To ring-fence these risks, it may be beneficial for liability reasons (depending on the size of the company) to establish a separate legal entity from which all eCommerce activities are conducted.

What aspects need to be considered with regard to logistics, warehousing and delivery?

The eCommerce market is highly competitive. It is therefore essential for an eCommerce business to provide for fast and reliable delivery.



Companies can manage the logistics including warehousing and delivery on their own. This requires comparatively complex and cost-intensive in-house administration, including hiring employees as well as renting suitable office premises and warehouse facilities. Free zone companies might further be required to opt for rather complex licensing.

As an alternative, eCommerce businesses may opt to outsource logistics, warehousing and/or delivery. Depending on the level of support required, the scope of services varies. Keywords in this context are 3PL, 4PL, last mile delivery or drop shipment business. In principle, external service providers can, for example, provide warehouse facilities and packaging services as well as payment gateways, arrange for customs clearance and the import of goods and handle returns from customers.

When concluding contracts concerning e-commerce activities, the company needs to safeguard its own interests and distribute risks appropriately. Of particular importance are clauses on the individual handling of products (such as requirements on temperature, humidity level, storage and delivery) as well as general aspects on liability, damages, contract duration, termination and insurance.

What other legal aspects should be considered?

The above-mentioned areas only highlight some of the legal aspects that can be relevant for eCommerce activities. Attention must also be paid to other factors, such as:

- Considerations regarding contract law (such as drafting valid and enforceable electronic contracts and website terms and conditions as well as compliance with consumer protection regulations)
- Agreements with payment gateway providers
- Labour law-related aspects for the employment of staff
- Data protection (such as compliance with data protection rules including an assessment of the applicability of the European Union's General Data Protection Regulation)
- Publishing rules
- Protection of own intellectual property and avoidance of infringement of third-party rights

- Tax considerations (such as the requirement to register for VAT and compliance with the Federal Tax Authority's eCommerce VAT Guide).

Conclusion

It may only take a few clicks to start an eCommerce activity. From a legal perspective, however, there are a number of aspects that should be taken into consideration to ensure successful and seamless business operations.

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 15 years. Our areas of expertise include corporate law (in particular business set-up), 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!

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