

**J B NAGAR STUDY GROUP**  
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**DOING BUSINESS      INDIA – UAE**

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## **A) INTRODUCTION**

### **Country Background**

#### **a) Constitutional Background**

The UAE is a federation of seven Emirates comprising Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain and was formed on 2 December 1971.

The UAE federal constitution was permanently accepted in 1996 and provides for an allocation of powers between the federal government and the government of each Emirate.

The constitution provides the legal framework for the federation and is the basis of all legislation promulgated at a federal and emirate level. Pursuant to the constitution, the federal government has exclusive jurisdiction in various substantive matters, including foreign policy, defence and security. Legislation passed at a federal level has primacy over the local laws of each Emirate. The local government of each Emirate is, however, permitted under Article 113 of the constitution to regulate all local matters which are not subject to federal legislation or matters which are not expressly reserved in the constitution to the federal union (examples of such federal matters being foreign affairs, defence and health). As such, the governments of each individual Emirate retain substantial powers to regulate commercial activities, issue trade licences and effect the incorporation of corporate entities to the extent that such activity is not already regulated under federal legislation.

#### **b) Judicial System**

The UAE judicial system varies significantly across the Emirates and the free zones. Only five Emirates submit to a federal court system — Dubai and Ras Al Khaimah have their own independent court systems. All of the Emirates (except in respect of some of the free zones) follow uniformly similar rules of civil procedure and evidence, and trials are decided by a single judge or a panel of three judges, and not by a jury. In addition, some of the free zones have their own judicial systems, as well as their own rules of civil procedure and evidence.

#### **c) Geographical Location**

It is situated in Southwest Asia, bordering the Gulf of Oman and the Persian Gulf. It is strategically located between Asia, Europe and Africa.

#### **d) Demographic Detail**

As per Wikipedia, in 2013, the U.A.E population was around 9.2 million out of which 1.4 million were Emirati citizens and 7.8 million were expatriates.

Around 60% of the population consists of South Asians (Indian, Sri Lankan, Pakistani and Bangladeshi) out of which around 40% consists only of Indians.

The official religion of U.A.E is Islam and official language is Arabic. However, Urdu, English and Hindi are also widely spoken there. English is a predominant language used in the business world.

e) **Economic indicators**

The U.A.E devotes approximately 25% of the total federal government spending to education. The overall literacy rate is 90%.[2007].

The economy of the U.A.E is the second largest in the Arab world (after Saudi Arabia), with a gross domestic product (GDP) of \$377 billion (AED 1.38 trillion) in 2012. The U.A.E Emirates has been successfully diversifying its economy. 71% of U.A.E's total GDP comes from non-oil sectors.

Tourism is one of the main sources of revenue in the U.A.E, with some of the world's most luxurious hotels being based in the U.A.E. Although, the U.A.E is now less dependent on natural resources as a source of revenue, petroleum and natural gas exports still play an important role in the economy, especially in Abu Dhabi.

Today, the UAE has one of the most open and dynamic economies in the world. A number of global business indexes have recognized the advantages that the UAE brings to international business

The UAE also gets positive rankings from Transparency International and the World Bank's Worldwide Governance Indicators for control of corruption, ranking in the top quarter of the least corrupt countries in the world.

Other clear advantages to doing business in the UAE include:

- No restrictions on profit transfer or repatriation of capital
- No corporate or income taxes
- A currency, the Dirham, that is stable, secure and pegged to the US dollar
- Very low, or non-existent, import duties
- Competitive labor costs

These factors, combined with a strategic geographic location, an expanding infrastructure and an extremely safe environment, make the UAE an ideal place to do business.

**B) INVESTMENT OPPORTUNITIES**

Dubai, the most populous city of U.A.E, has emerged as a global city and a business gateway for West Asia and Africa. It is a choice for local and international organizations because of its strategic location, world class infrastructures, diversified and easily accessible market offering low logistics and operational cost.

More & more people are doing business in Dubai due to excellent communication, infrastructure and social environment and culture in addition to the fiscal benefits described earlier.

The major types of business activities conducted in Dubai are Oil & Gas, Information Technology Service, Healthcare, Tourism, Real Estate & Construction, Banking & Finance amongst others.

The business hours are 8 a.m to 6 p.m with official weekend on Friday and Saturday.

With strong laws, virtual crime free society and strong international relationships, this country is secured for investment and living.

#### Key Industries

Sectors with strongest demand and opportunity include:

- Construction services
- Materials and supplies
- Defense – Aerospace
- Energy – Alternative Energy
- Professional services
- Select tourism products/services
- High end hotel brands
- Creative/profitable arts and culture entertainment products
- High end, strongly - branded medical service providers and cutting edge products

### C) **BASIC INFORMATION & LEGAL CONSIDERATION**

#### a) **Immigration & VISA requirements**

As a country with a very high percentage of expatriates and visiting tourists, the U.A.E is generally accommodating to legal immigrants and visitors.

Visas are available for business and tourists visits, transit and residency, and in the majority of cases, an attorney is not required to handle processing of visas.

Visitors from approximately 33 countries (including the US and UK) can obtain visit visas upon arrival at an airport in the U.A.E for no cost. Visitors from other countries can typically obtain tourist visas from certain hotels or tour operators.

Business visitors can be sponsored by an employer with a business licence (e.g. a branch or representative office, free zone entity, entity under the Companies Law, etc.).

Employers can obtain residency visas, which last for three years, for a certain number of employees (which could be as many as employer desires), as determined by the federal government in relation to particular industries. For entities located outside the free zones, employers must register the employment contract with the Ministry of Labour and Social Affairs before a residency visa can be issued.

In most free zones, the sponsor of each employee is the free zone itself and the free zone interacts with the federal government directly, which makes the process more efficient.

Once a residency visa is obtained and the employee earns a certain salary, the employee may sponsor his or her family for immigration, provided that he or she earns a minimum of AED 4,000 per month.

Investors in U.A.E (except for offshore jurisdictions) are eligible to get investor / residence visas in U.A.E.

Therefore, it can be seen that VISA's in U.A.E can be easily obtained, with minimal requirements, within 2 weeks and this provides a significant advantage over other jurisdictions like Singapore or Mauritius where it takes a few months.

## **b) INVESTMENT IN IMMOVABLE PROPERTY**

### **1) Residential Property**

#### **(a). Costs:**

Residential properties can be owned in freehold areas earmarked by the U.A.E Government. Most of the foreign investment in real estate in U.A.E is in Dubai. For an investor purchasing any property, additional fees payable (over and above the purchase price) will include the Land Department fee of 4% (if property is purchased in the secondary market i.e not directly from the developer), Property Pre-Registration Fees (Okoot) of 4% (if the property is not registered) and Real Estate Agency Fees of 2% (if the property is purchased through a broker).

Incase, an investor wishes to hold a residential property (not in a Free Zone area) through a holding company, under the new U.A.E laws, the holding company must be an offshore company based in U.A.E. Within a Free Zone area comprising of residence and commercial premises, the property can be owned by the Free Zone Company.

#### **(b). Returns:**

For an investor considering leasing the owned property, typical annual rental returns on a residential property in Dubai are about 4-7% of the investment value. Capital gains on properties are volatile (though prices have stabilized in the past one year) and vary with location within the Emirate. With the announcement of World Expo 2020, it is expected that more than 20 Mn international investors will visit Dubai for the event, a big boost to the real estate and tourism industry.

(c). Rental Costs:

Non-Residents looking to rent are allowed to rent apartments anywhere in U.A.E by executing a tenancy contract with the lessor. Typical rental rates vary from AED 25 per sq ft in Ajman (one of the cheapest locations and about 45 minutes drive from Dubai) to AED 200 per sq ft in plush locations in Dubai. A tenancy contract fees of 5% of rent value is payable by the lessee, in case rented through a broker.

**2) Commercial and Industrial Property**

(a). Costs & Restrictions:

LLCs can own or rent offices across U.A.E, but Free Zone Companies can only invest in commercial properties within the specific Free Zones. Additional costs above the purchase price are the same as those in residential properties.

Commercial properties can be found for purchase in Dubai in freehold areas (like Business Bay) or Free Zone Areas (like DMCC or Jebel Ali). Industrial warehouses can also be purchased for manufacturing or storing in RAK, Jebel Ali or various investment parks in UAE. (Generally, the per sq ft cost of purchase of commercial space is lesser than that of residential properties in U.A.E, but commercial properties in strategic locations are harder to find)

(b). Returns:

Rental returns on commercial properties are about 5%-12% of the investment value.

(c). Rental Costs:

For a business license holder (LLC or Free Zone), commercial spaces for rent are easier to find in strategic locations, than commercial spaces for purchase. Rental costs for warehouses or commercial spaces range from around AED 10-30 per sq ft in Ajman or Ras Al Khaimah and about AED 50-250 per sq ft in Dubai. Rental costs are cheaper outside Free Zones since a large variety of options are available, thus costs for LLCs are generally lesser than for Free Zone Companies.

**c)Overview of Labour Laws in U.A.E**

Employment in the UAE is governed by federal law, which imposes certain minimum standards on employing juveniles, working hours, vacation and public holidays, sick leave, maternity leave, employee records, safety standards and termination of employment. In January 2011, the Ministry of Labour and Social Affairs introduced, for the first time, a minimum wage limit for different categories of workers. Employee grievances are handled by a special programme run by the Ministry, and the Ministry must also be informed if an employee is

subject to the disciplinary code. Pensions and social security schemes in the UAE are governed by the Pensions & Social Securities Law, Federal Law No. (7) of 1999, as amended. Most free zones have their own employment laws

Most employees working in the UAE, including in the free zones, have written contracts of employment. Written contracts of employment are certainly advisable for any business in the UAE. There is no employment at will in the UAE. Since September 2009, all institutions registered under the Ministry have been required to make all payments of their workers' wages and salaries through the Wages Protection System. This involves the transfer of monies through a few selected financial institutions which are authorised and regulated by the government. The Wages Protection System does not apply to some free zones, for example the DIFC.

**(a). Wage and Working Hours:**

The U.A.E Labour law does not stipulate any minimum wage for employees. However, it mandates that the working hours and the wage be clearly mentioned in an Employment Contract. An adult employee can work for a maximum of 48 hours as stipulated by the law. However, special permissions can be obtained from Free Zones (in case of FZCs) or the relevant local authority (in case of LLCs) for additional working hours if the job so demands.

**(b). Leave:**

Employees are entitled to a minimum of one calendar month of paid annual leave, in addition to the official holidays of the U.A.E government. Employees are also entitled to paid sick leave for 15 days (after first three months of service) annually.

**d) Import & Export Regulations**

As a member of the World Trade Organization (the *WTO*) and as a party to various regional free trade agreements throughout the GCC, the UAE has low rates of tariffs. Import duties are normally charged on products imported into the UAE (outside of the free zones), at rates which can vary according to the nature of the import (*e.g.* higher duties apply to alcohol and tobacco products). The duty may be alleviated by exemptions based on the importer's status (*e.g.* free zone entity, majority owned by a GCC national, etc.) or exemptions based on the type of product. Generally, foreign parties cannot import goods into the UAE for the purpose of resale, other than a free zone entity directly for sale within the relevant free zone or for its own use.

There are no duties or tariffs on exports.

The UAE imposes a boycott of trade with Israel.

**e) Foreign Exchange Controls & Anti-Money Laundering**

The UAE does not generally have any currency exchange controls and restrictions on the remittance of funds. Further, free zone entities are generally expressly permitted to repatriate 100 percent of their profits from the UAE in accordance with regulations in place in their respective free zones.

The UAE has recently strengthened its laws relating to the use of criminal proceeds and terrorist financing activities. As the GCC is a member of the global Financial Action Task Force (the *FATF*), the UAE has implemented anti-money laundering procedures to meet the

standards of the FATF. The various free zones also generally have rules on preventing money laundering. For example, the DIFC requires companies incorporated in the DIFC to appoint a senior manager as a money laundering reporting officer and to submit an annual report detailing steps that such company has taken to implement its anti-money laundering rules.

**f) Transportation in U.A.E**

Dubai and Abu Dhabi are well- connected internationally through flights. Flights ply on a daily basis between major cities in India and Dubai or Abu Dhabi.

Metro connectivity is present only in Dubai, covering major areas but not all (expansion is underway). Maximum cost for travelling anywhere in the metro is about AED 10. Buses ply within Dubai and between Dubai and other Emirates for transport to and fro residential areas. There are local transport agencies as well which provide buses or vans to travel at personalized timings. Carpooling has been introduced in U.A.E by the U.A.E Transport Authority for hiring cars, cost effectively to travel to workplace. Local cabs are much faster to travel, but about 5-7 times expensive as compared to the metro.

**g) The Sharia Law in U.A.E**

Sharia law is the body of Islamic law. It is the legal framework within which public and some private aspects of life are regulated for those living in a legal system based on Islam. Since the official language of U.A.E is Islam, Sharia Law is applicable to them. It is a forced heir ship rule.

Under the Civil Code of 2005 in the U.A.E, foreigners can elect to have their assets disposed off under their own laws and exclude Sharia law. However, these rights can only be expressed in a will. Without a will, U.A.E and Sharia law will almost certainly prevail for the disposition of immovable property.

Therefore, if individual foreigners purchase property in U.A.E directly in their name, and if they die intestate, it creates ambiguity for the U.A.E government in disposing off its property as they are unaware of the succession laws of his home country.

Therefore, to avoid any such ambiguity, it is advisable for all foreigners in U.A.E to have a Will which specifies his desires upon death.

Further, if foreigners invest by way of shares in Companies in U.A.E which in turn invests in immovable property, then on death of the investor, the shares can be easily transferred as per his Will and the property can continue to be in possession of the Company (having perpetual succession). This is one way of protecting the property from the operation of the Islamic Sharia law provisions on inheritance.

To ensure validity of the Will, one should translate it into Arabic and get it certified by the U.A.E Embassy in ones home country. The Sharia court will accept this document as clear evidence of the wishes of the testator and these wishes shall be honoured.

#### **D) Basic knowledge of FEMA**

##### **Overseas Direct Investment**

Direct investment outside India means investments, either under the Automatic Route or the Approval Route, by way of contribution to the capital or subscription to the Memorandum of a foreign entity or by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, signifying a long-term interest in the foreign entity (Joint venture i.e. JV or wholly owned subsidiary i.e. WOS).

The salient features of Overseas Direct Investments(ODI) by Person Resident in India (PRII) is as under;

##### **(a). Who can invest outside India:**

A Company incorporated in India, a body created under an Act of Parliament, Registered Partnership Firms / LLPs, Individuals holding RFC A/c (no limit-no prohibition), Proprietary Concerns engaged in profession, a registered Trust and a registered Society (with prior approval)

##### **(b). Prohibited investments outside India**

Investment in foreign entity engaged in real estate(trading) and banking business  
Investment in Pakistan (only through approval route)

##### **(c). Investment under Automatic Route**

Under the Automatic Route, an Indian Party does not require any prior approval from the Reserve Bank for making ODI in a JV/WOS abroad. The Indian Party should approach an AD bank with an application in Form ODI (online as well as physical) along with the prescribed enclosures / documents for effecting the remittances towards such investments.

##### **(d). General Conditions for Overseas Investment under Automatic Route**

- \* Indian Party is engaged in Bona fide Business activity of Investor
- \* Investor is not in adverse or the Negative List of Banking sector
- \* Remittance through AD within the amount specified in the regulation.
- \* Additional conditions for compliance by Indian party for overseas financial sector activity i.e compliance to Financial Sector Regulator, track record of profit and approval of regulator in India and outside India.

##### **(e). Ceiling for Investment**

Total financial commitments (equity + loan + guarantee) outside India shall not be more than 400% of net worth of Indian Co. along with its 51% subsidiary plus balance in EEFC account and funds raised through ADRs/GDRs.

(f). Investments under the Approval Route

Subject to specific conditions, Investment in Energy & Natural Resources and Oil sector by Indian Companies in excess of 400%, Investment by Societies & Trusts, Individuals & Proprietary Concerns, Unregistered Partnership Firms

(g). Source of Investment

Purchase of Foreign exchange, Balance in EEFC A/c & RFC A/c, ADR-GDR Issue, SWAP share of Indian party, Capitalization of Exports, Proceeds of ECBs/FCCBs

(h). Post Approval Compliances

- \* Obtaining Share Certificate
- \* Repatriate all receivables to India
- \* Furnishing report of performance (APR)
- \* Furnishing report of disinvestment & liquidation, if any
- \* Furnishing annual Foreign Exchange Asset and Liability i.e. FLA Return

**E) Establishing legal Presence**

In the UAE, regulation of the establishment and conduct of businesses is shared at the federal and emirate levels. There are two paths for doing business in the UAE: through joint partnerships or through a Free Zone.

**1) Joint Partnership**

In order to establish a business that sells products or services freely throughout the UAE, at least 51 percent of the business must be owned by a UAE national. (Forming this type of joint partnership is the best and easiest way to establish a business in the UAE.) All businesses require a license and licensing procedures vary from Emirate to Emirate.

Companies that undertake certain activities are exempt from the 51% requirement, including oil companies with concession agreements, companies involved in the oil and gas industry, companies that produce electricity and gas, companies involved in treatment of water and transmission and distribution. Foreign banks are exempt from having to appoint a sponsor. Companies established in free zones are exempt from the 51% requirement, if the relevant free zone has special provisions regulating the company.

- a. Public Shareholding Companies i.e. An entity which comprises any company whose capital is split into publicly subscribed negotiable shares of equal value or any company in which a U.A.E public body holds any share capital. There is a minimum capital requirement of AED 10 million and that capital must adequately achieve the objectives of the company. This entity requires a minimum of 10 founding members. U.A.E businesses

involving banking, insurance or investment of funds on behalf of third parties must take the form of a public shareholding company;

- b. Private Shareholding Companies i.e. An entity which requires minimum 3 founding members who, between them, fully subscribe to a minimum capital of AED 2 million. The shares of private joint stock companies may not be offered for public subscription;
- c. Limited Liability Companies i.e. An entity with minimum 2 and maximum 50 partners, where each partner's liability is limited to the extent of its share participation in the capital of the company;
- d. General Partnerships: i.e. A partnership only between U.A.E nationals. It may be established between two or more general partners who are jointly and unlimitedly, to the extent of their personal assets, responsible for the company's liabilities.
- e. Limited Partnerships: i.e. A partnership which comprises of at least one jointly associated partner, liable for the partnership's obligations to the full extent of their assets, along with at least one inactive partner liable for the partnership's obligations limited to this partner's capital contributions. This entity usually has one active partner who manages the company and a silent partner who does not participate in day-to-day management. General partners are required to be U.A.E nationals.
- f. Partnerships Limited by Shares i.e. A partnership formed by general partners who are jointly liable to the extent of their personal assets and participating partners who are liable to the extent of their share participation in the company. General partners must be U.A.E nationals and participating partners can be non U.A.E nationals. The minimum capital required to form a partnership limited with shares is AED 500,000, and participating partners are prohibited from being involved with the day-to-day management of the partnership. They may, however, participate in its internal administrative affairs.
- g. Joint Ventures: i.e. An association formed by an agreement between at least two natural persons or legal entities and its objectives and terms are governed by the joint venture contract. The partners will share the profit and loss in one or more commercial businesses conducted by one of the partners (who is a U.A.E national) in his or her own name;

Each entity must be registered (for presence in U.A.E) and licensed (for conducting activity in U.A.E) with the U.A.E Federal Ministry of Economy and Commerce and with the appropriate authority in the Emirate in which its office will be located.

The structures generally availed by foreign investors are Limited Liability Company (LLC), Branch Offices of Foreign Companies, Free Trade Zones Companies (FZC/FZE in case of one shareholder) and Offshore Companies.

The different types of business licenses available are Representative Office License, Trade License, Industry License, Service License, Professional License etc.

We shall focus the article only on FZC/FZE, LLC and Offshore Companies.

## 2) Free Zones

Establishing a business entity in one of the numerous UAE Free Trade Zones (FTZs) can be an attractive option for foreign investors and businesses. All seven Emirates already have, or are developing, such economic zones.

The purpose of free zones is to encourage foreign direct investment into the UAE. Free zone entities are not generally required to have any UAE nationals as owners. This contrasts with most companies incorporated in the UAE outside of the free zones, where UAE nationals are typically required to own at least 51 percent of the company's capital.

Free zones are authorised to enact their own laws and regulations in specific areas, which in some cases override federal and Emirate law on the subject matter. For example, the Dubai International Financial Centre (the *DIFC*), which is a financial free zone within Dubai, has its own body of law, including corporate law, contracts law and employment law, as well as its own court system.

Listings of most UAE free zones are included below.

### **Abu Dhabi**

- Twofour54 Media Free Zone
- Masdar City Free Zone
- Abu Dhabi Airport Free Zone (*under development*)
- Khalifa Port and Industrial Zone (*under development*)

### **Dubai**

- Jebel Ali Free Zone (JAFZ)
- Dubai Airport Free Zone (DAFZ)
- Dubai Internet City (DIC)
- Dubai Media City (DMC)
- Dubai Gold and Diamond Park (DGDP)
- Dubai Cars & Automotive Zone
- Dubai Health Care City (DHCC)
- Dubai International Financial Centre (DIFC)
- Dubai Maritime City
- Dubai Logistics City
- Dubai Knowledge Village
- Dubai Outsource Zone (DOZ)
- Dubai Techno Park (DTP)
- Dubai Silicon Oasis Authority (DSOA)
- Dubai Studio City (DSC)
- Dubai Textile City (DTC)
- Dubai Flower Centre (DFC)
- Dubai Carpet Free Zone

- Jumeirah Lakes Towers Free Zone (JLT)

#### **Sharjah**

- Sharjah Airport Free Zone (SAIF Zone)
- Hamriyah Free Zone (HFZ)

#### **Ras Al Khaimah**

- Ras Al Khaimah Free Trade Zone (RAKFTZ)
- Ras Al Khaimah Media Free Zone
- Ras Al Khaimah Investment Authority (RAKIA)

#### **Fujairah**

- Fujairah Free Zone (FFZ)
- Fujairah Creative City

#### **Ajman**

- Ajman Free Zone (AFZ)

#### **Umm Al Quwain**

Ahmed Bin Rashid Free Zone

The major advantages in operating in a free zone are:

- 100 per cent foreign ownership of the enterprise
- 100 per cent import and export tax exemptions
- 100 per cent repatriation of capital and profits
- No corporate taxes for 15 years, renewable for an additional 15 years
- No personal income taxes
- Less burdensome documentation, mostly in English
- Assistance with labor recruitment, and additional support services such as sponsorship and housing.

There are over 20,000 companies in 21 Free Zones around the UAE. The largest Free Zones, by number of companies, are the following:

- Jebel Ali Free Zone (6,000 companies)
- Sharjah Airport International Free Zone (3,900 companies)
- Dubai Airport Free Zone (1,300 companies)
- Dubai Media City (1,200 companies)
- Dubai Internet City (1,000 companies)

#### **Procedures:**

An independent Free Zone Authority (FZA) governs each free zone and is responsible for issuing FTZ operating licenses and assisting companies with establishing their business in the FTZ. Investors can either register a new company in the form of a Free Zone Establishment (FZE) -- a limited liability company governed by the rules and regulations of the Free Zone in which it is

established -- or simply establish a branch or representative office of their existing company based within the UAE or abroad.

The procedures for establishing a business in a Free Trade Zone are usually very straightforward and can be completed in a short space of time, especially if there are no environmental issues involved. Individual Free Zones may have specific requirements, but general steps are:

- Questionnaire from the relevant Free Zone Authority which will assist in assessing a company's requirements
- License application, planning documents, and a consumer request for electricity
- Provisional approval and lease agreement
- Meetings with the authority to finalize details of the project

### **Licenses:**

Once a legal presence has been established in the Free Zone, the business will need to lease premises or land and acquire an operating license from the FZA. Different types of licenses apply in the different types of free zone, however, it is important to understand that companies with trade and industrial licenses can only conduct business within the Free Zone or abroad. To sell products in the UAE, a UAE official agent is required, and a joint venture needs to be formed.

#### When not to choose a Free Zone

There are a few scenarios in which a prospective company might not want to choose to do business in a Free Zone, and should instead opt for a regular joint partnership. These are if a company:

- Practices a regulated profession
- Requires a lot of visas or warehouse/office space
- Plans a long presence in the UAE and wants to reach a wider portion of the UAE market
- Has a particular UAE company or individual with which to partner

### **3) Branch Offices vs. Representative/Liaison Offices**

A branch office has the same legal identity as its parent company and conducts business under the name of its parent company. While each Emirate has its own licensing rules for branch offices, this type of entity can carry out a variety of activities (as approved by the Department of Economic Development of the relevant Emirate). Branch offices are regarded as fully-fledged businesses permitted to perform contracts or conduct other activities as specified in its license.

For example, in order to open a Branch Office in Abu Dhabi, a foreign company must comply with points 1 and 2 from the following list:

1. Obtain the following documents in the home country of aforementioned company

- Official document evidence that the company is duly registered and established in that country, indicating its legal form, paid up capital, as well as names, title, and powers of its representative.
- Resolution from the company's board of directors (or other competent administrative entity) regarding opening of its branch in Abu Dhabi and practicing its activity there.
- True copy of the memorandum of association of the foreign company, or its articles of association.
- The last two approved financial statements (balance sheet, statement of profit and loss, and notes to the financial statements) of the company, in addition to the auditor's report thereon.
- A declaration from the company addressed to the UAE Ministry of Economy in which it undertakes to bear any financial obligations caused by its branches in the United Arab Emirates.
- A notarized power of attorney for the person who will sign the agency agreement with the company's national agent in Abu Dhabi and who will represent the company before the Abu Dhabi authorities.\*

*\*All of the above documents (except item d) must be attested at the Embassy of the UAE in the country of origin. In addition, all these documents must be translated into Arabic in the UAE and certified by a UAE-certified translator and attested by the UAE Ministry of Justice.*

2. Obtain the following additional documents to be submitted by the company applying for a branch license. However, these documents do not need to be attested outside the UAE

- Licensing application.
- Details list of activities in which the company wishes to practice in the state.
- Agency contract concluded between the foreign company and the local agent.
- List of the major operations carried out by the company outside the UAE plus the previous experiences in the field of activity intended to be practiced, in addition to the countries where such activities are taking place.
- A statement showing the number of staff numbers expected to be appointed in the company's branch office in Abu Dhabi.\*

*\*The working capital of the branch may not be less than AED 250,000 which may be required to be deposited in a bank in Abu Dhabi. Alternatively, the UAE Ministry of Economy may request an open-ended unconditional bank payment guarantee favoring the Ministry for AED 50,000 issued by a bank in the UAE.*

Alternatively, a representative/liaison office is limited to promoting its parent company's activities. This means that a representative office is only permitted to perform such activities as gathering information, soliciting orders, and marketing projects to be performed by the company's head office. This type of office is also limited in the number of employees that they sponsor (usually three to four).

#### 4) Civil Company

It is currently possible in Dubai and Sharjah to create a civil company. These entities are establishments which are sole traders operating under a license. Civil companies are usually not intended to trade (e.g., engage in the purchase and sale of goods, contracting, transport, banking and finance, and other similar transactions) and are typically used by the professions. Civil companies may not be formed within the Emirate of Abu Dhabi.

#### **5) Commercial Agency Agreement**

Foreign companies may engage in a commercial agency arrangement which is defined as any arrangement whereby a foreign company is represented by a UAE agent to distribute, sell, offer, or provide goods or services within the UAE for a commission or profit. The agent must either be a person holding UAE nationality or a company that is 100% owned by UAE nationals. The agent must be registered with the Ministry of Economy. Unless otherwise agreed in writing between a foreign company and its commercial agent, an agent is entitled to receive a commission on the sale of products in his or her designated Emirate, irrespective of whether such sales are made by or through the agent.

#### **6) Dubai Fast-Track License.**

The Emirate of Dubai Department of Economic Development (DED) is offering a fast-track trade license that will be valid for 120 days, giving businesses time to not only complete official licensing paperwork and registration but also allow them to hire employees, test products, and establish new ventures. A valid rental contract and business owner's work history are prerequisites for the license. To learn more, contact the Dubai Department of Economic Development.

#### **7) Offshore Companies**

##### **1) Introduction:**

As the name suggests, these are non-resident companies based out of U.A.E, primarily for the purposes to act as a holding company for companies in other jurisdictions or to hold investments. Minimum 1 shareholder and director is required. (Some Zones require minimum 2 Directors). Further, offshore companies can be formed only through registered agents authorized by the respective offshore free zones.

U.A.E offshore companies cannot carry on the business activities like banking, insurance, financial services etc.

##### **2) Advantages offered:**

Offshore Companies offer all the benefits of the Free Zone Companies at a relatively cheaper cost of operation, except that the Offshore Companies cannot sponsor Resident VISAs.

##### **3) Main offshore jurisdictions in U.A.E:**

Jebel Ali Free Zone Offshore Companies (JAFZA)

Ras Al Khaimah Investment Authority (RAKIA)

Ras Al Khaimah Free Zone International Companies (RAK FTZ)

The indicative rates of the authorized agents (in AED) is as under;

| <b>Particulars</b>                        | <b>JAFZA</b>  | <b>RAK FTZ</b> | <b>RAKIA</b> |
|---|---------------|----------------|--------------|
| Indicative rates of the authorized agents | 13,000-18,000 | 8,000-13,000   | 8,000-13,000 |

Note: These prices are subject to revision from time to time as per the laws of U.A.E.

**BROAD COMPARISON OF THE ABOVE 3 STRUCTURES:**

| <b>Particulars</b>          | <b>Free Zones</b>   | <b>LLCs</b>   | <b>Offshore Companies</b>   |
|-----------------------------|---|---|---|
| Shareholding                | 100% foreign shareholding is allowed and no local sponsor requirement   | 51% shareholding held by U.A.E national who will act as a sponsor                                 | 100% foreign shareholding is allowed and no local sponsor requirement |
| Minimum Capital Requirement | In case of branch office- no<br>In case of FZE/FZC-approx AED 50,000 to AED 1 Million, but varies from free zone to free zone       | Depends upon the emirate you open LLC in and the business activity you opt for your trade license | No minimum capital requirement  |
| Type of Share Capital       | Equity  | Equity  | Equity & Preference   |
| Share Transfer Charges      | Free Zone Fees  | Local Govt. Authority Fees  | Offshore Zone Fees  |
| International Trade         | Yes   | Yes   | Yes   |
| Local Trade                 | *Trade within Free Zone<br>*Local U.A.E Trade only through a local distributor (Custom Duty @ 5% applicable for all local business) | Yes   | No  |
| Direct Sale to Consumers    | Cannot directly trade with individual consumers in U.A.E  | Allowed to trade with all types of companies and end consumers directly in U.A.E                  | Cannot directly trade with individual consumers in U.A.E              |
| Resident VISA Provided      | Yes   | Yes   | No  |
| Office Requirement          | Yes (min Flexi)   | Yes (min 250sq.ft in Dubai)   | No  |

**F) OVERVIEW OF TAXATION IN DUBAI**

Dubai is a 'no tax on Income' Emirate. Currently, the federation does not impose;

\* Tax on Corporate Income other than on oil and gas companies which are taxed @ 55% and branches of foreign banks having operations in the emirates which are taxed @ 20%.

\* Personal Income Tax on individuals

\* VAT on Goods

\* Wealth Tax & Inheritance Tax

Also, there are no transfer pricing rules and regulations, no thin capitalization, no withholding tax requirements and no requirement for filing corporate tax returns.

U.A.E is the only OECD "White List" jurisdiction that has no taxes for international companies, free zones or local companies or individuals.

## **G) DTAA provision**

### **Double Taxation Avoidance Agreement (DTAA)**

#### 1) Introduction:

A DTAA (also referred to as Tax Treaty) is a bilateral economic agreement between two countries with an objective to avoid or eliminate double taxation of the same income in both the countries. It can be economic double taxation or juridical double taxation.

Economic double taxation takes place when the same income is taxed in the hands of more than one person. Juridical double taxation takes place when the income is taxed in the hands of the same person in more than one jurisdiction. Economic double taxation is typically resolved through bilateral negotiations whereas juridical double taxation is addressed in treaties, typically, through the tax credit article.

India has signed the DTAA with U.A.E on 21.08.1993 with full knowledge of the fact that there are no tax laws in U.A.E. The main object of entering into the tax treaty was to promote cross border/inter country trade and commerce.

Thereafter, a protocol was signed on 04.09.2007 amending certain articles of the tax treaty. These are in the form of specific anti-avoidance rules.

In India, DTAA can be used by Residents mainly for tax credits of the foreign tax paid and the concessional source taxation in the other country as well as by Non-Residents of the country mainly for their source taxation as well as scope of the taxation which is being restricted by the agreement.

#### 2) Important clauses of DTAA between U.A.E and India

[205 ITR (St) 49];

(a) Business Profits - Article 7: deals with those incomes which are not covered by the specific articles of DTAA and only profits attributable to the Permanent Establishment (PE) shall be taxed in the source country. Resident State may give credit of taxes paid in Source State against the tax payable in Residence State.

(b) Shipping - Article 8: profits derived from operations of ships in international traffic shall be taxable only in the State in which the Company is Resident. This is similar to the

shipping article of India-US tax treaty. However, as per shipping article of India-Mauritius tax treaty, profits shall be taxed only in the State of place of effective management of the enterprise.

A reference can be made in the case of Integrated Container Feeder Service v JCIT [2005] 96 ITD 371 (Mum ITAT) wherein a Company situated in Mauritius was carrying on business of operating ships in international traffic from India and claimed exemption on basis of Article 8 stating that the place of effective management was in Mauritius. However, after enquiries been conducted by the Revenue it was found that the place of effective management was Dubai. Therefore, the assessee was not entitled to benefit of Article 8 of India-Mauritius tax treaty as place of effective management was Dubai. Further, as per Article 8 of India-U.A.E tax treaty, such income would be taxed in the State in which the Company is Resident i.e. not U.A.E. Therefore, neither U.A.E nor Mauritius tax treaty was applicable and hence tax was deductible in accordance with ITA i.e. section 44B.

If the Company was incorporated in U.A.E and had a place of effective management in Mauritius then India-Mauritius treaty would apply resulting in no withholding of taxes in India.

It is pertinent to note the case of Seabird Exploration FZ LLC, U.A.E [2010] 192 Taxmann 471, where a Company incorporated in U.A.E was providing geophysical services to oil companies in India, for which purposes it entered into agreements with foreign companies outside India. Since the vessels were delivered outside India under global contract and payment was also made outside India, the hire charges paid to foreign companies was not taxable in India as mere physical presence of non residents vessel in territorial waters of India cannot amount to PE in India. However, in case income is derived by applicant in India, then section 44BB is attracted. The decision was based on peculiar fact of the case.

(c) Interest - Article 10: Interest shall be taxed in source country @ 5% in case it is paid by banks or 15% in case of others.

(d) Royalties - Article 12: Royalty shall be taxed in the source country @ 10% of the gross amount.

It is pertinent to note that since India - U.A.E DTAA does not have an article on Fees for Technical Services, if the Non Resident earns any such income in India, it shall be treated as Business Profit which will be taxed on in India only if there is PE in India on a net basis , otherwise, ie if there is no PE it is not liable to be taxed in India.

### 3) Important Clauses of Protocol

[Notification No. 282 dated 28.11.2007 - 295 ITR (St) 40];

As per the Protocol to the DTAA w.e.f 01.04.2008, the following key definitions are of importance;

(a) Resident - Article 4

An individual who is present in the U.A.E for a period or aggregate period of at least 183 days in a calendar year will be treated as resident of U.A.E.

A company which is incorporated in the U.A.E and which is managed and controlled wholly in U.A.E is considered as a resident in U.A.E for the purposes of this Treaty. The Treaty provides for "residential status" definition only in respect of individuals and corporate.

Certain countries do consider and allow filing of the tax returns to Individuals as residents without regard to the physical presence test in their domestic tax law, then in such a case if the definition of the treaty resident is similar to that in India-UAE DTAA protocol, then treaty will be applicable only if conditions of Article 4 of physical presence are satisfied.

However, in lieu of the protocol, individuals holding Resident permit of U.A.E may not qualify as resident of U.A.E for the purposes of India-U.A.E tax treaty if the physical presence test of the protocol is not satisfied.

A U.A.E Company, if controlled and managed partly from India or any other jurisdiction, may not qualify as Resident of U.A.E for tax purposes as it requires the control to be wholly located in UAE.

Tax resident status of a Non Resident is decided as per the domestic laws of the country where Non Resident is a Resident, however, strangely, to take benefit of the India-U.A.E DTAA, the aforesaid condition OF THE protocol also needs to be satisfied

This is an unusual provision of the treaty which may have been introduced as there are no tax laws in U.A.E.

There has been a continuous debate as to the applicability of the treaty benefits to the U.A.E Residents as they do not pay taxes even though they are liable to tax. In the case of M. A Rafique v CIT [1995] 79 Taxman 75 (AAR) it was held that "*A person liable to tax in the state by reason of his domicile, residence, place of incorporation or place of management or any other criterion of similar nature does not connote an actual taxation measure but connotes a person who is liable to be subjected to tax by the taxation laws of that state.*" Therefore, actual payment of tax is not a condition precedent to avail the benefits of the treaty. A similar view was taken in the case of Rajnikant R. Bhatt v CIT [1996] 89 Taxman 82 (AAR), ADIT v Green Emirate Shipping & Travels [2006] 100 ITD 203 amongst others.

However, a contrary view was taken in case of Cyril Pereira v CIT [1999] 105 Taxmann 273 (AAR), Abdul Razak A. Meman [2005] 146 Taxmann 115 (AAR), General Electric Pension Trust [2006] 150 Taxmann 545 (AAR).

The above controversy is set at rest in plethora of cases like ADIT v Resource Connection FZE [2010] 42 SOT 23 (Mum ITAT), Hindustan Petroleum v ADIT [2010] 36 SOT 120 (Mum ITAT), ADIT v Fidelity Management Trust Co.[2010] 711 Taxpundit

11, Emirates Shipping Line FZE v ADIT [2012] 23 taxmann.com 400 (Delhi HC), ITO (International Taxation)-3(1), Mumbai v Chandersen Jatwani [2013] 33 taxmann.com 215 (Mum ITAT) and consequently U.A.E Residents are eligible to take the benefits of India-U.A.E tax treaty although they do not pay taxes in U.A.E.

Further, to determine the residential status, while calculating the no. of days of stay, one must include both, the day of entry in India as well as day of exit from India. [Petition No. 7 of 1995 225 ITR 462 (AAR)].

(b) Capital Gains -Article 13

The protocol provides that in the following circumstances the taxation of capital gain would not depend on the residence of the alienator. Capital gains arising from the alienation of the capital stock of a company, the property of which consists directly or indirectly principally of immovable property, shall be taxed in the state in which the property is situated. In the case of gains arising on alienation of shares other than those mentioned above, the same shall be taxed in the state in which the company issuing the shares i.e. the investee company is a resident and not where the holder of the shares is resident unlike popular treaties where taxing right is with the State where alienator is the Resident.

Before the introduction of the protocol, the article on capital gain in India-U.A.E tax treaty was similar to India-Mauritius and India-Singapore tax treaty wherein capital gain would be liable to tax only in the country of Residence of the alienator of the movable property. A reference can be made to the case of Emirates Fertilizers Trading Company WLL [AAR No. 628 of 2004]) wherein it was held that gains arising from alienation of shares in Indian companies held by the U.A.E Resident, will not be taxable in India.

Now, India has a right to tax(company is in India ) the capital gains arising out of sale of movable property where alienator is a U.A.E Resident. These provisions regarding source taxation of capital gains of India-U.A.E tax treaty is similar to India-UK tax treaty.

There has been an ongoing controversy regarding the applicability of rate of tax on capital gains arising on sale of listed securities off market i.e. not through the stock exchange. This was set at rest by the Delhi High Court in the case of Cairn UK Holdings Ltd v DIT [2013] 38 taxmann.com 179 (Delhi HC), where the company had sold shares by off market transaction of a listed Indian Co. to a Non Resident and computed capital gains after claiming benefit of the 1st proviso to section 48 (currency translation mode) of ITA. The capital gain arising on such transfer was to be taxed @ 10% as per proviso to section 112(1) which states that;

*"Provided that where tax payable in respect of any income arising from the transfer of a long term capital asset, being listed securities [or unit or zero coupon bond], exceeds ten percent of the amount of capital gains before giving effect to the provisions of the second proviso to section 48, then, such excess shall be ignored for the purpose of computing the tax payable by the assessee."*

It was contested by the revenue that if 2nd proviso to section 48 (indexation benefit) is applicable in the case of the assessee then only the benefit of proviso to section 112(1) was available and since in the given case, the Company is a Non Resident, it was not entitled to indexation benefit on such transfer as per 2nd proviso to section 48, the tax rate should be 20%. It was held that the proviso nowhere stipulated that if an assessee takes benefit of first proviso to section 48, the proviso to section 112(1) is not applicable. The language of the provisions is clear and unambiguous and therefore, the assessee was entitled to benefit of proviso of section 112(1) to be taxed @ 10% and not 20%.

(c) Limitation of Benefit (LOB) Clause - Article 29

This clause requires a bona fide business activity. Therefore, if a Company has been incorporated in U.A.E then it will be a resident as per the treaty. However, due to the L.O.B, to take benefit of any of the treaty provisions, it will have to prove the bona fide business activity. The place of effective management is also required to be established. The Company cannot be a shell or conduit company and take benefit of the tax treaty. This is elaborately discussed under the provisions of GAAR in India

4) Tax Credit Mechanism

(a) Elimination of double taxation - India-U.A.E tax treaty

Article 25 of India's DTAA with U.A.E provides as under;

Tax Credit in India (in case of Investment from India)

*"Where a resident of India derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in U.A.E., India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in U.A.E. whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in U.A.E. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in U.A.E. Further, when such resident is a company by which surtax is payable in India, the deduction in respect of income-tax paid in U.A.E. shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from the surtax payable by it in India."*

Tax Credit in U.A.E (In case Investment is in India ):

*"Subject to the laws of the U.A.E. where a resident of the U.A.E. derives income which in accordance with the provisions of this Agreement may be taxed in India, the U.A.E. shall allow as a deduction from the tax on income of that person an amount equal to the tax on income paid in India. Such deduction shall not, however, exceed that part of income-tax as computed before the deduction is given, which is attributable to the income which may be taxed in the U.A.E."*

(b) In U.A.E

Since, U.A.E is a tax free jurisdiction, there is no system for foreign tax credit.

(c) In India

Tax credit in India is generally governed by the provisions of a DTAA concluded between India and the other contracting state.

Relief against double taxation has been provided by section 90 and section 91 of the ITA.

Section 90 provides bilateral relief (where tax treaty has been entered into between India and the other country) and section 91 provides unilateral relief (where tax treaty has not been entered into between India and the other country).

It will not be possible to take unilateral tax credit of any taxes paid in other country with which India has DTAA.

5) Tax Residency Certificate (TRC)

Any Non Resident assessee who is availing the benefits of the DTAA needs to obtain a TRC from the government of the foreign nation in which he is a resident. The TRC is to be duly verified by the revenue authority issuing such certificate.

(a) In U.A.E

TRC in U.A.E is issued to a Resident Individuals and Resident Company operating in the country. A country operating in the Mainland Dubai and a Free Zone Company can apply for a TRC. A Offshore Company is not entitled to the tax treaty benefit.

An application in the prescribed format has to be made to the Ministry of Finance along with the prescribed fees. The documents required to be submitted have been listed on [www.mof.gov.ae](http://www.mof.gov.ae)

TRC is valid for a period of 1 year from date of its issue.

(b) In India

The Finance Act, 2012 inserted sub-section (4) to section 90 and 90A of the ITA w.e.f 01.04.2013, which makes it mandatory for Non Resident assesseees to submit TRC for availing the benefits of the DTAA. If the TRC is not produced, then the assessee shall not be able to apply the beneficial provisions of the DTAA. Also, if Non Resident has not obtained PAN in India, penal withholding of section 206AA may apply.

The Finance Act, 2013 inserted sub-section (5) to section 90 and 90A of the ITA w.e.f 01.04.2013, which provide that the Non Resident assesseees shall submit such documents and information as may be prescribed in addition to TRC. Such particulars have been prescribed in Form 10F.

Further, taxpayers, who are residents of India, requiring a TRC to be furnished in other foreign countries, can make an application to the concerned Assessing Officer in Form 10FA along with the relevant documents supporting the information stated therein. Upon

receipt of TRC request, the tax authorities will issue the TRC in Form 10FB after being duly satisfied of the claim.

TRC is valid for a period as specified in the Form 10FB, generally 1 financial year.

6) List of countries with which U.A.E has DTAA's

The first DTAA was signed between the U.A.E and France in 1989. As on date, U.A.E has signed about 50 tax treaties with major countries such as India, Sri Lanka, Singapore, Austria, Germany, Italy, France, Belgium, Luxembourg, Malaysia, China, Malta, Mauritius, Uzbekistan etc.

It may pertinently be noted that no tax treaty has been signed by U.A.E with U.S.A, U.K, Russia, Ukraine etc.

The exhaustive list of countries with which U.A.E has signed DTAA is available on [www.mof.gov.ae](http://www.mof.gov.ae).