

Zoning issues in the UAE

THE UNITED ARAB EMIRATES HAS ENJOYED AN INFLUX OF FOREIGN COMPANIES CAPITALISING ON THE INCENTIVES OF THE COUNTRY'S FREE ZONES, AND COMPETITION AMONG THE ZONES IS INTENSIFYING. BUT WITH UNCERTAINTY SURROUNDING THE DRAFT OF A NEW COMPANY LAW, QUESTIONS REMAIN ABOUT THE EASE AND EFFICIENCY OF SETTING UP SHOP IN THE UAE. LUCIA DORE REPORTS

Opinions differ markedly on whether the United Arab Emirates, and Dubai in particular, has been well served by the growing number of free zones in the country. There are 20 such zones in Dubai alone, six in Abu Dhabi, two each in Ras Al Khaimah, Fujairah and Sharjah, and one apiece in Ajman and Umm Al Quwain.

The number of free zones in Dubai dwarfs that of Abu Dhabi, which is the UAE's largest emirate and its federal capital, and this in many ways reflects how Dubai approaches the idea of free zones – as a way of generating substantial revenues through the issuance of visas, company registrations and so on, as well as attracting FDI. According to one source: “Abu Dhabi doesn't make any profit from its free zones and doesn't like them. It thinks they are a sneaky way around the 51% requirement.”

This refers to the fact that, according to UAE company law, a foreign company is limited to holding a 49% stake in an onshore entity. But if it is located in a free zone, the owners or shareholders can bypass the requirement to have a local partner, thereby retaining the right to own and control the company in its entirety. But the rules are not straightforward. A free zone entity is not legally entitled to trade or distribute goods in onshore UAE, whether it is Dubai or Abu Dhabi. To operate in either emirate, a company must be registered as an onshore company within it. The source also notes that the Abu Dhabi government is “cracking down on companies registered in Dubai doing business in Abu Dhabi”.

Regulation shake-up

The rules that apply to the establishment of a company in the UAE may change in the near future, however, because a revised company law is reportedly at draft stage. This law may pro-



The Dubai International Financial Centre is one of Dubai's 20 free zones

vide companies with dispensation from the 51% local sponsor requirement for certain sectors, although what exactly the new law contains remains uncertain.

So to what extent have free zones encouraged foreign investors to come to the UAE and how compelling and cost-effective are their business models? Is the high number of free zones a good thing or is there a risk, as one source suggests, of one free zone “eating another”? And how does a company choose between free zones? For example, is it on the basis of location, preferential tax exemptions, industry clustering or a specific manufacturing zone? Are there other considerations at play?

Eric Milne, a Dubai-based partner at US law firm Jones Day, describes the choice of free zones in the UAE as “dazzling”. He says that increasingly Abu Dhabi's new and developing free zones, such as its Kizad and Abu Dhabi Airport Free Zone, as well as those in other emirates, including Fujairah and Ras Al Khaimah, are offering attractive options to foreign investors. ▶



THIS COMPETITION TO ATTRACT GLOBAL BUSINESS SHOULD BE GOOD FOR INVESTORS



COUNTRY PROFILE

UNITED ARAB EMIRATES

Population:	5.31 million
Pop. growth rate:	3.06%
Area:	83,600 sq km
Real GDP growth:	3.3%
GDP per capita:	\$48,500
Current account:	\$38.45bn
Largest sector	
(% of GDP):	Industry (59.4%)
Labour force:	4.11 million

Source: CIA World Factbook, 2012



“This competition to attract global business should be good for investors, keeping set-up and operational costs competitive,” he says. He also notes that Dubai’s free zones have contributed a “colossal” amount to the emirate’s economy and suggests that other Gulf Co-operation Council states are looking at the establishment of similar free zone areas to increase the speed at which their economies are diversifying.

Bureaucratic barriers

While few would dispute the fact that Emirati governments have been highly successful in attracting companies from all over the world to set up entities in free zones, many still see the physical act of doing so as far too bureaucratic and complicated. To make it compelling for a company to set up in a free zone, the proposition not only has to be cost-effective but procedures must be smooth and hassle free, sources say. Some free zones recognise this.

The Jumeirah Lakes Towers (JLT) free zone, for example, acknowledges the concerns companies have setting up a business. “Often businesses are worried about the ease and efficiency of setting up a new business,” a company statement says. Therefore, the free zone aims “to guide clients through the process and provide them with access to information and introductions to other member companies through networking events and workshops”.

JLT has more than 4300 registered companies, many of which are small and medium-sized enterprises (SMEs) from a broad range of industries. In this respect it is different from many other UAE free zones, which aim to create industry clusters for sectors such as media, IT and healthcare.

However, even though many free zones are aware of what occupants want, there is still a wide gap between intent and delivery of service. Some free zone occupants are still left frustrated at what they consider to be too much bureaucracy, a lack of service and unreasonable charges.

Tom Thraya, an Abu Dhabi-based partner at international law firm Baker & McKenzie, says: “There is a massive disconnect between the ‘form-based approach’ adopted by most of the free zones in the UAE and the business-type approach that is required if they are to ensure smooth ongoing interaction with clients.”

Mr Thraya, who has registered about 40

companies in the UAE’s free zones, says that when it comes to filling in forms and bureaucratic requirements, “some free zones really do take an unreasonable stance”. He suggests that this may be to do with “someone simply being lazy” or “failing to think outside the box”.

“The bureaucratic requirements of registering a company, and even changing a company’s named power of attorney, can be nightmarish,” he says. “Streamlining the incorporation question and introducing a more user-friendly set of regulations and procedures that are not riddled with too much bureaucracy would be fantastic.”

Clear guidelines

Mr Milne says that although clarity of information and the speed of set-up matters, it is also important to have a clear legal framework surrounding the interaction between free zone trade licences and onshore trade licences.

Costs also continue to be a big concern. The head of one SME located in a highly popular Dubai free zone argues that new free zones being established in neighbouring emirates, such as those in Ras Al Khaimah, Ajman, and some in Abu Dhabi, are offering rates below those of Dubai free zones, forcing some companies to re-locate to less expensive sites. While in some cases this may be true, Mr Thraya argues that industry fee structures are becoming more closely aligned and that a free zone’s location is the single biggest differentiating factor. There are only “subtle differences between them” and “location is what matters most”, he says.

The head of the Dubai-based SME also argues that newer free zones appear to have a better understanding of clients’ needs (many of which are SMEs) than the more established ones. For example, some free zones are allowing clients to obtain a trade licence without the need to have a physical presence in that zone. Mr Milne also notes this development.

While this development will be welcomed by many companies looking at establishing a presence in the UAE, whether it is within a free zone or outside it, this is only one of many issues that a company will have to consider. The passing of a new UAE company law may yet change the rules of the game. ■

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