

**AL TAMIMI
& COMPANY**

Advocates & Legal Consultants

**التميمي
وشركاه**

للمحاماة والاستشارات القانونية

Establishing Offshore Companies in the Jebel Ali Free Zone



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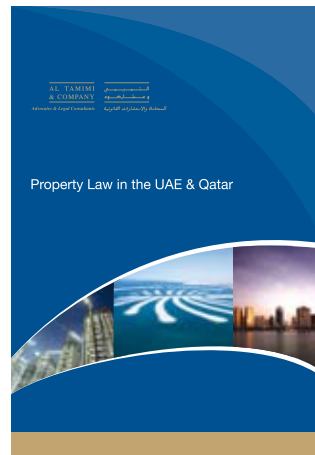
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Introduction

The Jebel Ali Free Zone (“JAFZ”) was established in 1985 by the Government of Dubai, and now covers over 100 square kilometres constructed around the largest man-made port in the world. JAFZ includes offices, warehouses and storage facilities for all kinds of goods, and a container port with 70 berths. Since its inception, over 1,300 businesses from 80 countries have opened offices at JAFZ. Companies established at the JAFZ have traditionally been required to have a physical presence.

However, following the introduction of the Regulations for Jebel Ali Free Zone Offshore Companies, which came into force on 15 January 2003 (the “Offshore Regulations”), the international business community can now establish offshore entities at JAFZ, in line with other international offshore jurisdictions.

As well as the traditional advantages of total tax and duty exemption, and a cooperative regulatory regime, offshore companies established under the Offshore Regulations will enjoy the added benefits of Dubai’s reputation for commercial transparency and its forward regional location.

Formation Requirements

The offshore company formation process is initiated by one or more person(s), who may be either natural or juristic (each an “incorporator”), submitting a signed application form to the Registrar of offshore companies at JAFZ (the “Registrar”) together with the relevant prescribed supporting documents. Every incorporator is deemed to have agreed to become a shareholder of the new offshore company.

An offshore company is free to carry out any lawful activity other than banking or insurance business. However, the Registrar is empowered to add to the list of prohibited activities from time to time and has recently prohibited service related activities and will now only permit trading activities.

The proposed capital of the offshore company should also be stated in the application form. No minimum capitalisation is specified but the Registrar has the authority to require that an offshore company’s capital be commensurate with its stated objects.

The information required on an application form should include the full names and addresses of the incorporators, the number of shares proposed to be held by them and the value of the shareholding. In addition, the names and addresses of the first directors (if different) and secretary, name and address of the Registered Agent and, any other particulars that the Registrar may require. The application form should also be accompanied by the offshore company’s proposed memorandum and articles of association.

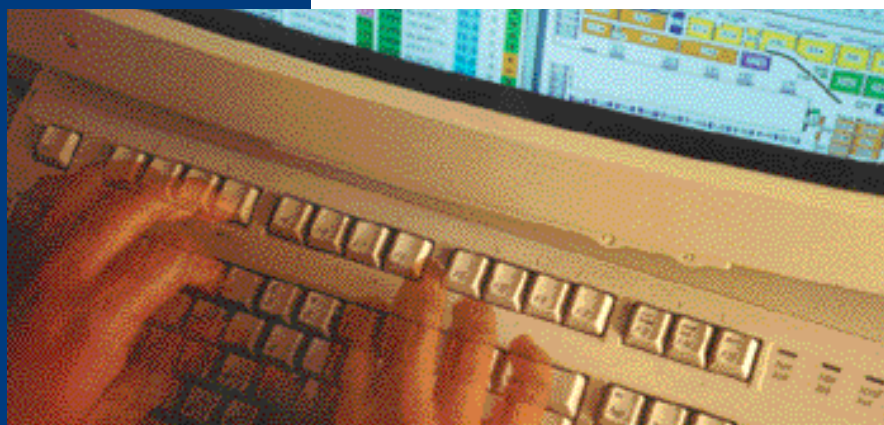
In addition to the application for registration of the offshore company and the proposed memorandum and articles of association, the following documents need to be submitted to the Registrar:

1. Individual Applicant(s):
 - (a) Personal profile of applicant(s);
 - (b) Passport copy of applicant(s);
 - (c) Bank reference(s).
 - (d) Proof of physical address of applicant(s) (e.g. utility bills)
2. Corporate Applicant(s):
 - (a) Certificate of registration;
 - (b) Certificate of good standing;
 - (c) Board Resolution calling for the establishment of the offshore company;
 - (d) Memorandum and Articles of Association of corporate applicant(s).
 - (e) Proof of physical address of directors and secretary (e.g. utility bills)

Corporate applicants’ documents will also require notarisation, attestation and legalisation through to the Ministry of Foreign Affairs in the country of incorporation, followed by the UAE Embassy in such country. The Registrar reserves the right to request additional documents, if necessary.

Memorandum and Articles of Association

The offshore company's memorandum and articles of association must include provision for the following:



- (a) transfer of shares;
- (b) general meetings of shareholders (at least annually);
- (c) keeping of accounts and presentation of financial statements at general meetings of shareholders;
- (d) audit of the offshore company accounts (at least annually) by an auditor appointed by general meeting of shareholders;
- (e) number of shareholders required to constitute a general meeting.

The Registrar may prescribe a set of model memorandum and articles of association which the offshore company incorporators may utilise. Any variation to the model memorandum and articles of association will require approval from the Registrar.

JEBEL ALI FREE ZONE





Restrictions on Activities

Apart from the restrictions on activities (no banking, insurance or any activity specifically prohibited by the Registrar), offshore companies are not permitted to carry on business with any “persons” resident in the UAE (“onshore entities”).

However, an offshore company shall not be treated as transacting business with onshore entities by reasons only that it does any of the following in the UAE:

- (a) has business relations with the providers of professional and managerial services;
- (b) prepares and maintains books and records;
- (c) holds meetings of its shareholders and/or board of directors;
- (d) leases office premises for use as a registered office or purchases property on the Palm Islands, Jumeirah Islands developments or any properties owned by Nakheel Company LLC, or any other real property approved by the JAFZ Authority;
- (e) maintains a bank account for the purpose of its routine operations.



If an offshore company wishes to be allowed to conduct trade or other business within the JAFZ or elsewhere in the UAE, it must obtain an appropriate licence from the competent licensing authority.

This exception to the general rule enables an offshore company wishing to conduct trade or business with onshore entities in the UAE to hold shares in entities incorporated in the UAE or free zones. However, an offshore company may not establish branches in the UAE.

Offshore Company Shares

All shares issued by an offshore company rank equally with each other, and must be fully paid up at the time of issue. Different classes of shares or bearer shares may not be created.

Offshore company shares are transferable and must be completed in the manner laid down in the offshore company's memorandum and articles of association.



Offshore companies are required to maintain a register of shareholders, which should be open for inspection by any shareholder of the offshore company free of charge or, on payment of a reasonable fee, by any other persons. The Registrar may order inspection of a register where inspection has been refused by the offshore company.

Registered Office and Registered Agent

All offshore companies are required to maintain a registered office which may be an office at the JAFZ, if maintained by the offshore company, or the offices of its Registered Agent. A registered office shall be the effective address for receiving company documents and/or correspondence from JAFZ.

Every offshore company must retain a Registered Agent (selected from the Registrar's list of approved registered agents). Registered Agents are appointed to act as liaison between the offshore company and the JAFZ. The Registered Agent address provides a place for the service of process, notices or other official communications from JAFZ and others.

All correspondence with an offshore company may be addressed to its Registered Agent.



Directors and Company Secretary

All offshore companies must have at least two directors. The first directors are appointed by the offshore company on incorporation, and thereafter, elected by the shareholders.

Each director holds office for a period determined by the shareholders. If a vacancy is created e.g. by the death or resignation of a director, another director may be appointed to take his place by resolution of the shareholders.

Directors are required to disclose all direct or indirect interests in relation to any transaction which the offshore company proposes to enter into. Every offshore company must appoint a company secretary, who may also be a director of the offshore company

Offshore companies may not make loans to directors or provide guarantees or any other form of security, on a director's behalf.

Companies must maintain a register of its directors and secretary, which is open for inspection by the Registrar and by the shareholders and directors of the offshore company, without charge.



JAFZ operate an extremely restrictive and limited policy regarding residence visas for directors of the offshore company and, as a general rule, UAE residence visas will not be available.

Other Provisions

The Offshore Regulations contain exclusive provisions covering shareholders meetings, the maintenance and audit of financial records, the distribution of dividends, voluntary and creditors' winding up procedures (including the appointment, powers and duties of the liquidator), Registrar's investigations of offshore company's affairs and the power of inspectors, the right of shareholders to apply to the court (in the case of unfair prejudice), the appointment and duties of the Registrar, corporate takeovers, and the provision of penalties for breach of the Offshore Regulations.



Registration

Upon registration of the offshore company's memorandum and articles of association, the Registrar

- (a) issues a certificate of incorporation as evidence that the offshore company has been incorporated and
- (b) allocates a registration number to the offshore company.



As from the date of issue of its certificate of incorporation, the offshore company can begin operating, in accordance with the Offshore Regulations.

Company Profile

Al Tamimi & Company is the largest independent law firm in the United Arab Emirates, with offices in Dubai, Abu Dhabi, Sharjah and the Dubai Internet City.

The Firm generally acts in the all areas of business law, and provides specialized legal services in the fields of shipping, construction, property, commercial and Islamic banking, project finance, intellectual property, information technology, media law, arbitration and local and foreign litigation matters.

The Al Tamimi & Company team is comprised of qualified and experienced lawyers from the UK, North America, Europe, South Africa, the UAE, Iraq and other Arab countries.

Our clients depend on our proficiency in local and regional laws. Within the UAE we enjoy long established contacts within the public sector, and regularly confer with government departments and ministries, with respect to new legislation and regulations. Such local contacts and regional knowledge greatly assist our private sector clients and the international corporations that represent the majority of our client base.

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