



UAE STRUCTURING SERIES (III)

CORPORATE MIGRATION TO THE UAE: WHICH OPTIONS FOR WHICH BENEFITS?

1. What is a corporate migration?

A corporate migration – or corporate “redomiciliation” – is the process whereby a company transfers its domicile from one jurisdiction to another by changing the country under whose laws it is incorporated or registered, while maintaining the same legal identity. Subject to compliance with corresponding legal requirements in both jurisdictions, the company is removed from the register in the country of original incorporation and continues its legal existence as a company registered in the destination jurisdiction.

2. Why consider a corporate migration?

A corporate migration may be considered for a variety of reasons, chief among which:

- Utilizing the advantages of a more favorable tax regime¹;
- Capitalizing on a more compliant environment²;
- Bringing offshore business onshore³;
- Bringing the company “close to home” – further to an acquisition (entire or partial) by a third-party;
- Facilitating access to new capital markets.

3. What are its main benefits?

The legal continuation enables the company to maintain all its history and track record – e.g. existing contractual relationships with third parties, banking relationship (including credit facilities) – while availing the benefits of the new jurisdiction.

4. Why a migration to the UAE?

The UAE has successfully established itself as one of the premier structuring hub worldwide, primarily capitalizing on the following competitive advantages:

- Zero tax regime⁴;
- Vast range of corporate vehicles and regimes;
- Extensive network of tax treaties with over 80 countries;
- Full repatriation of capital and profit;

- Recognized financial hub⁵;
- World-class infrastructure facilities and connectivity;
- Presence of internationally recognized financial, legal and tax services providers;
- Primary hub and platform to access international business;
- High quality of life;
- Political stability and liberal business environment

5. UAE’s regulatory framework for corporate migration

Until recently, only a handful of free zones – Dubai Creative Clusters free zone (DCCA), Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (AGDM) – had enacted corporate redomiciliation regulations, and the regulatory framework applicable in the UAE mainland⁶ did not provide for corporate migration from a foreign country to the UAE mainland (*See also our factsheet “UAE Structuring: Which vehicle for which purpose?” which outlines the differences between UAE mainland and UAE free zone regimes*).

All afore-said free zones are deemed “themed”, i.e. activities permitted in the zone must be consistent with the zone’s specific theme. E.g. DIFC and AGDM only permit “financial” activities – including private investment companies (“PICs”) and holding companies – and activities deemed ancillary to such regulated activities; DCCA’s activities’ list is broader but still theme-restricted.

6. What’s new?

ADGM offers a particularly innovative and flexible mechanism: a “morphing” route from special purpose vehicle (“SPV”) into substantiated holding company (*See Case Study below*).

Elsewhere, two of the region’s most prominent free zones have recently revamped their regulatory frameworks, introducing a corporate migration option to their offering. Jebel Ali Free Zone (JAFZA) did so in 2016⁷; the Dubai Multi Commodities Centre (DMCC) is expected to formally roll out its regime in the fall.

This is a significant move, in that it opens the UAE inbound migration route to a vast array of businesses: DMCC and JAFZA are both “generalist” free zones, with a broad and comprehensive list of licensed activities.

1. E.g. radical change of regime in the country of original incorporation.

2. E.g. country of origin falling foul of OECD/FATF standards.

3. E.g. a start-up initially set-up offshore for costs considerations outgrowing its environment (logistic, infrastructure, staffing).

4. With certain insignificant exceptions.

5. One of the 18 “Global” financial centres worldwide (International Global Financial Index 2016).

6. Primarily consisting of Federal Law n° (2) of 2015 (also referred to as the “Company Law”) replacing the law n° (8) of 1984 Commercial Companies.

7. The Jebel Ali Free Zone Companies Implementing Regulations 2016.

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This is a significant move, in that it opens the UAE inbound migration route to a vast array of businesses: DMCC and JAFZA are both “generalist” free zones, with a broad and comprehensive list of licensed activities.

ADGM and Dubai’s free zones are not the only ones proactively seeking to attract existing businesses by way of corporate migration.

The Ras Al Khaimah International Corporate Centre (RAK ICC) registrar – a dematerialized corporate registrar – introduced its migration regime in 2016. It is expected to shortly launch a facilitated regime for RAK ICC companies to establish substantiated subsidiaries under the supervision of RAK Economic Zone (RAKEZ), another “generalist” free zone.

Corporate migration is not restricted to free zones either. In Dubai, the little known Dubai law No (14) of 2015 set up a legal framework for foreign companies to transfer their place of registration to Dubai mainland.

At the request of any establishment licensed outside the UAE, the Dubai Department of Economic Development (DED) may transfer the entries of their constitution to the DED’s records and issue a business continuation certificate and license for them.

7. Conclusions

The UAE is “all-in” on corporate migration. The regime is spreading across most UAE jurisdictions, cementing arguably the world’s most versatile and comprehensive corporate migration framework.

By perfecting its mainland regulatory framework with the introduction of a corporate migration mechanism, Dubai has added yet another tool to its already vast arsenal.

The regime should prove particularly popular with companies initially set-up in jurisdictions without substance and having outgrown their environment, and now seeking to capitalize on the UAE’s many advantages. It is further to be expected that some free zones currently lacking corporate migration regimes will follow the Dubai DED and other free zones’ lead and adapt their regulations to remain competitive.

Case Study: Use of ADGM SPV as a conduit “conduit route” for a corporate migration

A young and talented entrepreneur creates a revolutionary digital product (the “App”). He registers a company (“App co”) in an undefined offshore jurisdiction, settles the ownership of the App onto App co and sets off raising seed money to fund the commercial launch of his venture.

The offshore jurisdiction has struggled to meet OECD/FATF standards for years. The negative media scrutiny is impacting App co’s ability to raise seed capital. App co also struggles to open a relationship with a reputable custodian bank.

App co migrates to ADGM as a dematerialised SPV.

What is achieved:

- Capitalisation on a credible jurisdiction
- Robust common law regulatory framework
- Low maintenance costs
- No tax

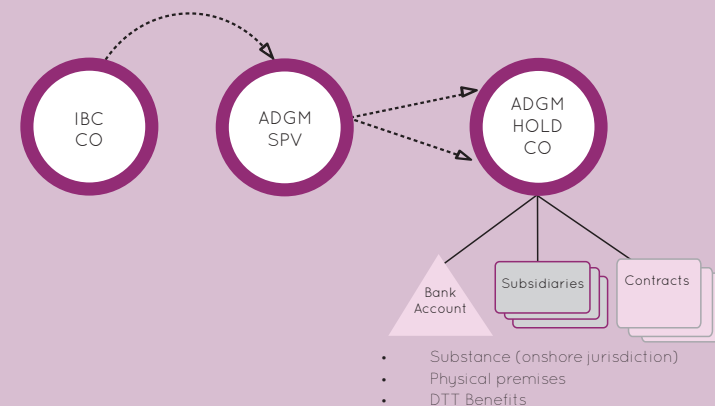
With its seed capital now raised, it is time for App co to launch a full-on operation. It initially requires a small back-office and a couple of staff members. App co will license the use of its product worldwide and receive royalties.

Royalties are subject to withholding tax (WHT) in several countries. App co needs to obtain a tax residence certificate in the UAE to seek double tax treaties benefits and reduce the WHT impact.

App co secures premises within ADGM and “morphes” from SPV to Holding co.

What is achieved:

- App co new logistical needs are met
- Substance = ability to obtain a TRC, avail treaty benefits
- (Still!) no tax





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	IBC/SPV		FREE ZONE					DUBAI MAINLAND	
	Abu Dhabi Global Market (ADGM) SPV	Ras Al Khaimah International Corporate Centre (RAK ICC)	Abu Dhabi Global Market (ADGM)	Dubai Creative Cluster (DCCA)	Dubai International Financial Centre (DIFC)	Dubai Multi Commodities Center (DMCC)	Jebel Ali Free Zone (JAFZA)	Ras Al Khaimah Economic Zone (RAKEZ)	Dubai ⁸ Department of Economic Development (DED)
In a nutshell	Dematerialised SPV offering within themed free zone with core focus on Financial services. Common law regulatory framework	Dematerialised IBC offering in stand-alone RAK located Corporate Registry. RAK ICC is the result of merger of RAK Investment Authority (RAKIA) and RAK Free Trade Zone Authority (RAK FTZ)	Themed free zone with core focus on Financial services. Common law regulatory framework	Themed multi-cluster free zone with core focus on services relevant to the industries of IT, Media, Healthcare, Fashion, Movie and Production, Science and Technology	Themed free zone with core focus on Financial services. Common law regulatory framework	Generalist free zone with core focus on oil & gas, precious metals and diamond trading	Generalist free zone with core focus on trading, manufacturing and logistics. State-of-the-art logistic facilities – operated by DP World. Direct connection to airport (DWC)	Generalist free zone with core focus on trading, manufacturing and logistics	Domestic commercial registry licensing all activities undertaken in/from the UAE mainland (to the exclusion of free zones)
Available activities	<ul style="list-style-type: none"> SPVs restricted to: <ul style="list-style-type: none"> Holding Financing 	<ul style="list-style-type: none"> Domestically: <ul style="list-style-type: none"> Holding Financing Abroad: <ul style="list-style-type: none"> Holding Financing Services Trading 	<ul style="list-style-type: none"> Regulated financial activities Non-regulated financial activities Ancillary services activities Vast range of non-regulated / non-financial business activities⁹ 	<ul style="list-style-type: none"> Commercial activities - covering different sectors e.g. media, arts, education, science & technology, etc 	<ul style="list-style-type: none"> Regulated financial activities Non-regulated financial activities Ancillary services activities 	<ul style="list-style-type: none"> Professional (services) Commercial (trading, including general trading) Industrial 	<ul style="list-style-type: none"> Commercial (trading, including general trading) Industrial Innovation¹⁰ Services licenses no longer issued 	<ul style="list-style-type: none"> Professional (services) Commercial (trading, including general trading) Industrial 	<ul style="list-style-type: none"> Any lawful activity as listed in the standard classification of economic activities issued by the DED, e.g. any general or commodity specialized trading activities
Mostly suitable for	<ul style="list-style-type: none"> Holding Financing 	<ul style="list-style-type: none"> Services and holding activities – if substance not required Trading activities (abroad) 	<ul style="list-style-type: none"> Financial services (regulated or non-regulated) Ancillary support services Proprietary investment Holding / Regional HQ SFO Operating companies across various industries 	<ul style="list-style-type: none"> Services within the core sectors of Healthcare, IT, Media & Production, Science & Technology and Fashion 	<ul style="list-style-type: none"> Financial services (regulated or non-regulated) Ancillary support services Proprietary investment Holding / Regional HQ SFO 	<ul style="list-style-type: none"> Commodity trading (core) Services Proprietary investment Holding SFO 	<ul style="list-style-type: none"> Commodity trading Manufacturing Logistic 	<ul style="list-style-type: none"> Commodity trading Services Holding 	<ul style="list-style-type: none"> Trading activities (in the UAE and abroad) Commercial brokerage Holding/Regional HQ

→ Entities can morph

--> Possibility of morphing under discussion

8. Unavailable in other emirates.

9. E.g. manufacturing, utilities supply, construction, transport & storage, HoReCa, RE, professional and administrative, education etc.

10. New license available in JAFZA to carry out development of new products and services.



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Advantages	<ul style="list-style-type: none"> • Low running costs • High credibility jurisdiction • Common-law framework & Courts • Sophisticated back office; able to handle complex structures • Ability to "morph" SPV into (substantiated) ADGM HoldCo 	<ul style="list-style-type: none"> • Low running costs • Covered by DIFC WPR regime¹¹ • Ability to avail fast track premium RAKEZ subsidiary option¹² 	<ul style="list-style-type: none"> • Wide range of available licenses • Common law regulatory framework & Courts • High credibility vis-à-vis banks • Central location (in Abu Dhabi) • Sophisticated back office; able to handle complex structures 	<ul style="list-style-type: none"> • Wide range of available licenses • Covered by DIFC WPR regime¹¹ • Central location 	<ul style="list-style-type: none"> • Wide range of available licenses • Common law regulatory framework & Courts • High credibility vis-à-vis banks • Covered by DIFC WPR regime¹¹ • Central location (Dubai) • Sophisticated back office; able to handle complex structures 	<ul style="list-style-type: none"> • Wide range of available licenses • Central location • High credibility vis-à-vis banks • Covered by DIFC WPR regime¹¹ • Sophisticated back office; able to handle complex structures • Virtual offices options (year 1) 	<ul style="list-style-type: none"> • High credibility jurisdiction • Wide range of available licenses • Covered by DIFC WPR regime¹¹ • JAFZA Port and onsite customs 	<ul style="list-style-type: none"> • Wide range of licenses • Virtual offices options • Visa requirements can be undertaken in Dubai 	<ul style="list-style-type: none"> • Broad variety of activities including all types of trading activities • Flexible Registrar • Broad range of facilities of all qualities/costs • Covered by DIFC WPR regime • Possibility of forum election in favour of DIFC jurisdiction for dispute adjudication
Disadvantages	<ul style="list-style-type: none"> • Limited range of available activities • No Substance • Inability to arrange local residence visas 	<ul style="list-style-type: none"> • Lower credibility in high profile trading operations • Difficulties to open bank accounts domestically • Inability to arrange local residence visas 	<ul style="list-style-type: none"> • High running costs (license, premises) 	<ul style="list-style-type: none"> • Limited range of available activities, e.g. no trading activities available • Expensive facilities 	<ul style="list-style-type: none"> • High running costs (license, premises) 	<ul style="list-style-type: none"> • Expensive facilities 	<ul style="list-style-type: none"> • Expensive facilities • No services activities available 	<ul style="list-style-type: none"> • Far from Dubai City (90 min) • Low(er) credibility 	<ul style="list-style-type: none"> • Mandatory (nominal) ownership of shares by a UAE national / company wholly owned by UAE nationals
Ownership	100% foreign ownership allowed	100% foreign ownership allowed	100% foreign ownership allowed	100% foreign ownership allowed	100% foreign ownership allowed	100% foreign ownership allowed	100% foreign ownership allowed	100% foreign ownership allowed	At least 51% of the shares must be held by a UAE national / company owned by UAE nationals ¹³

→ Entities can morph

--> Possibility of morphing under discussion

11. Allowing registration of a will with DIFC Wills and Probate Registry ("DIFC WPR") for non-Muslims individuals – resident or not.

12. Ability to "morph" IBC into RAKEZ entity under discussion.

13. Economical ownership and management can be structured in favor of the foreign partner.



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Registered Office	Must be located on Al Maryah Island ¹⁴	Must be located in the UAE ¹⁵	Must be located within ADGM	Must be located in one of free zone's clusters (depending on activity)	Must be located within DIFC	Must be located within DMCC	Must be located within JAFZA	Must be located within RAKEZ	Anywhere in Dubai mainland
Minimum number of shareholders	1	1	1	1	1	1	1	1	1 ¹⁶
Minimum share capital requirement ¹⁷	No minimum capital required	No minimum capital required	Non-regulated: no minimum capital requirement Regulated: from USD 50,000 (AED 183,958) depending on the activity/segment (authority further requires evidence of a suitable operational capital)	From AED 50,000 (USD 13,590) depending on the activity/segment	From USD 50,000 (AED 183,958) depending on the activity/segment (regulated activities require higher capital; authority further requires evidence of a suitable operational capital)	AED 50,000 (appr. USD 13,700)	No minimum capital requirement for FZE/FZCo; however, capital shall be sufficient for the licensed activity	No minimum capital requirement; however, capital shall be sufficient for the licensed activity. Exceptions apply	No minimum capital requirement; however, capital shall be sufficient for the licensed activity

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14. Through appointed service provider.

15. Through appointed Registered agent.

16. Subject to compliance with local mandatory shareholding; 2 in most cases where foreign shareholders are involved.

17. The company will be expected to continue with its existent share capital subject to minimum capital requirements prescribed by the local authorities.



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Directors	Minimum required	1	1	1	1	1	1	1	1	1
	Corporate directors	Allowed provided there is at least one natural person as director	Allowed	Allowed provided there is at least one natural person as director	Not allowed	Not allowed	Not allowed	Not allowed	Allowed	Allowed
	Location	Non-UAE residents allowed	Not required <i>de lege</i> ¹⁸	Regulated activities: At least one director must be a resident Non-regulated activities: not required <i>de lege</i> ¹⁸	Not required <i>de lege</i> ¹⁸	Regulated activities: At least one director must be a resident Non-regulated activities: not required <i>de lege</i> ¹⁸	Not required <i>de lege</i> ¹⁸	Not required <i>de lege</i> ¹⁸	Not required <i>de lege</i> ¹⁸	At least one director must be a UAE resident
	Evidence of Capital pay-up	Not required	Not required	Required	Required at inception	Required	Required	Required	Not required at inception (with exceptions)	Not required at inception
	Time-frame ¹⁹ to set-up (by way of migration)	2-3 days	2-3 days	Regulated: 4-6 months Non-regulated: 6-8 weeks	4-6 weeks	Regulated: 4-6 months Non-regulated: 6-8 weeks	8-10 weeks	4-6 weeks	2-3 weeks	8-10 weeks
	Submission of Audited Financial Report at the time of migration/ registration	Not required	Not required	Required	Required	Required	Required	Required	Required	Required

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18. In practice, one resident Director is required if one wishes to avail of DTTs and/or IPTs benefits.

19. Assessment, not including legalizing of corporate documents of foreign entity/ies and provisions of external approval that may be required for specific activities.



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Audited accounts thereafter	Not required if turnover less than USD 13.5M and/or staff less than 35	Not required	Required annually Not required for small ²⁰ and micro ²¹ entities	Required annually	Required annually	Required annually	Required annually	Not required; recommended as part of best practice	Required annually
Legalization ²² process of PoA & corporate documents	Not required (notarization sufficient)	Not required (notarization sufficient)	Not required at ADGM level (notarisation sufficient) but required as standard by domestic banks if redomiciled company is held by a foreign structure	Required	Required	Required	Required	Required	Required
Company name	Prior approval required – some wording sensitive names with trademark or copyright are not allowed Must be followed by “Ltd”	Prior approval required – some wording sensitive names with trademark or copyright are not allowed Must be followed by “Ltd”, or “Limited”, “Incorporated” or “Inc”, “Unlimited” or “Unltd”, “Segregated Portfolio Company” or “SPC” should be included before any of the above for segregated portfolio companies	Prior approval required – some wording sensitive names with trademark or copyright are not allowed Must be followed by “Ltd”	Prior approval required – some wording sensitive names with trademark or copyright are not allowed Must be followed by “FZE”, “FZC or FZLLC”	Prior approval required – some wording sensitive names with trademark or copyright are not allowed Must be followed by “Ltd”	Prior approval required – some wording sensitive names with trademark or copyright are not allowed Must be followed by DMCC	Prior approval required – some wording sensitive names with trademark or copyright are not allowed Must be followed by ‘FZE’ ‘FZCO’ or by “PLC” depending on the type of company	Prior approval required – some wording sensitive names with trademark or copyright are not allowed Must be followed by “FZE”, “FZ” or “FZC”	Prior approval required – some wording sensitive names with trademark or copyright are not allowed Must be followed by “LLC”

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20. Turnover < 13,5 Million USD, no more than 35 employees; same exclusions.

21. Turnover < 2,5 Million USD, no more than 9 employees; same exclusions.

22. Standard legalization would consist of notarization by the Notary Public, legalization by the Supervising authority, super-legalization by the UAE Embassy abroad and certification by the UAE Ministry of Foreign Affairs.



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TAX CONSIDERATIONS

Tax status	Total tax and duty exemption, i.e. 0% corporate tax, no WHT	Total tax and duty exemption, i.e. 0% corporate tax, no WHT	Total tax and duty exemption, i.e. 0% corporate tax, no WHT	Total tax and duty exemption, i.e. 0% corporate tax, no WHT	Total tax and duty exemption, i.e. 0% corporate tax, no WHT	Total tax and duty exemption, i.e. 0% corporate tax, no WHT	Total tax and duty exemption, i.e. 0% corporate tax, no WHT	Total tax and duty exemption, i.e. 0% corporate tax, no WHT	Total tax and duty exemption, i.e. 0% corporate tax, no WHT
Double tax treaties, special treaties ²³	No Access to DTTs and IPTs due to reduced substance ²⁴	No access to DTTs benefits due to reduced substance	Full benefit of DTTs and IPTs - subject to conditions	Full benefit of DTTs and IPTs - subject to conditions	Full benefit of DTTs and IPTs - subject to conditions	Full benefit of DTTs and IPTs - subject to conditions	Full benefit of DTTs and IPTs - subject to conditions	Full benefit of DTTs and IPTs - subject to conditions	Full benefit of DTTs and IPTs Full benefits of special treaties (e.g. GAFTA)
Disclosure	Registry is public. Some exceptions	Information disclosed only in case of a formal authorized request	Registry is public. Some exceptions	Information disclosed only in case of a formal authorized request	Registry is public. Some exceptions	Information disclosed only in case of a formal authorized request	Information disclosed only in case of a formal authorized request	Information disclosed only in case of a formal authorized request	Registry is public

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23. Subject to all requirements set by the Ministry of Finance being met, notably to maintain audited accounts and to retain our resident director.
24. Unless upgraded to a substantiated holding company.

Who we are

We are a multi-services platform catering to a broad spectrum of clients – from individual entrepreneurs and local SMEs to wealthy international families, to established blue-chip companies and multinationals. Our one-stop-shop offering is unique in the Middle East: a holistic and cross-disciplinary combination of a market-leading corporate services firm, a law firm’s specialist expertise and a regulatory & compliance services practice, all through one single platform.

We have broad experience in all aspects of corporate migrations across UAE’s jurisdictions, and have unique insights into Dubai mainland’s transfer of registration framework as a result of our involvement in developing the white-paper proposal which served as a basis for the newly introduced regime.

Headquartered in the UAE, we are an entrepreneurial firm for entrepreneurial clients.

Who will assist you



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