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Commentary

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How to Set Up a Fintech Business in the UAE – Part 2: Conducting Business in the UAE

Investors should consider specific factors when choosing whether to establish a legal presence onshore or in a UAE free zone.

Key Points:

- Fintech companies typically must establish a legal presence — either onshore or in a free zone — in order to conduct business in the UAE.
- Existing foreign incorporated companies also have the option of either entering into a commercial agency relationship with a UAE national or an entity that is wholly owned by UAE nationals.
- Most free zones in the UAE are industry-specific and only license certain activities. Investors should consider which free zone is most appropriate based on the nature of the proposed business.

This Latham & Watkins *Client Alert* is the second in a three-part series that aims to provide high-level guidance to individuals and organizations that are considering establishing a fintech company in the United Arab Emirates (UAE). Part 1 discussed onshore regulation and licensing requirements for fintech companies. Part 2 addresses how to conduct business in the UAE, with a focus on distinguishing between "onshore entities" (*i.e.*, incorporated and licensed outside a free zone in the UAE) and "offshore entities" (*i.e.*, incorporated and licensed inside a free zone), while highlighting how this distinction impacts an entity's business activities in the UAE. Part 3 will set out additional considerations relevant to operating a fintech business in the UAE, whether onshore or offshore.

In order for fintech companies to conduct business in the UAE, they must generally establish a legal presence in the UAE. However, existing foreign incorporated companies also have the option of either entering into a commercial agency relationship with a UAE national or an entity that is wholly owned by UAE nationals. Latham & Watkins' *Guide to Doing Business in the UAE* details the legal, financial, and business considerations for conducting business in the UAE. A brief summary of how to conduct business in the UAE is set out below.

Establishing a Legal Presence in the UAE

The decision to establish a legal presence onshore in the UAE rather than in one of the UAE's free zones depends on a number of factors, such as the nature of the intended business activity and the location of the investors and the customer base. However, in certain cases, UAE law and regulations may impose restrictions on an entity's place of incorporation. For example, the Regulatory Framework for Stored Values and Electronic Payment Systems (the Electronic Payment Regulation) prohibits payment service providers that are applying for a license under the Electronic Payment Regulation from incorporating an entity in financial free zones, such as the Dubai International Financial Centre (DIFC). As such, fintech companies that wish to conduct an activity that the UAE Central Bank licenses under the Regulation may be more inclined to set up onshore or in a non-financial services free zone, such as the Dubai Multi Commodities Centre (DMCC).

Typically, entities looking to establish a legal presence in the UAE will do so through one of the following means:

- Incorporating an entity, such as a limited liability company or joint stock company
- Registering a branch or representative office of a UAE or foreign company
- Establishing a free-zone company or free-zone branch

As a general requirement, entities incorporated in the UAE must obtain a commercial license from the Department of Economic Development (or a similar government agency) and, if necessary, authorization from the relevant ministry or government entity in the relevant emirate or free zone. All entities incorporated in the UAE must be established in accordance with Federal Law No. 2 of 2015 concerning commercial companies. Free-zone entities must also ensure that they comply with the applicable free-zone regulations, which may in some cases override federal and emirate laws on the relevant subject matter.

The main requirement for incorporating an entity in the UAE is that a UAE national or a company that is wholly owned by UAE nationals must own 51% of the entity's capital, unless GCC nationals own 100% of the entity's capital. Such foreign ownership restrictions are not applicable in free zones. This makes free zones an attractive option for foreign investors looking to conduct business in the UAE, as does the fact that free-zone entities are generally expressly permitted to repatriate 100% of their profits from the UAE in accordance with the applicable free-zone regulations.

The main limitations for a free-zone entity are: 1) it is generally required to have physical operations within the free zone in which it is incorporated, and 2) it generally may conduct business solely within its relevant free zone. A free-zone entity may only perform those activities specified in its license. The DIFC, however, recently announced on 1 May 2017 that it had entered into a memorandum of understanding with the Dubai Department of Economic Development to permit non-regulated entities within the DIFC to obtain licenses to operate onshore in Dubai. Whether or not DIFC non-regulated entities will be subject to onshore UAE regulatory requirements, such as Emiratization quotas, is unclear at this stage.

Latham's *Guide to Doing Business in the UAE* provides additional information about establishing a legal presence in the UAE.

Free Zone Options

The choice of free zone depends in part on the type of commercial activity that the entity wishes to carry out, as well as the licensing options available in the particular free zone. For example, investors looking to carry out media-related businesses may wish to consider setting up in Dubai Media City or twofour54 in

Abu Dhabi. Investors looking to carry out software and internet-related businesses, on the other hand, may wish to consider setting up in Dubai Internet City. Although many of the UAE's free zones are industry-specific, the DMCC is one of the few free zones that permits a wide range of commercial activities. Consequently, the DMCC has become a popular option for investors looking for both flexibility and efficiency. More recently, the Abu Dhabi Global Market (ADGM) and the DIFC have also come to the forefront of fintech innovation with the establishment of "RegLab" and "Fintech Hive at DIFC," respectively, as discussed in further detail below.

DMCC

The DMCC is becoming an increasingly popular option for fintech companies due to the wide range of commercial activities that the free zone offers and the flexible approach it takes in classifying and granting licenses for certain activities. The process for establishing an entity in the DMCC is very efficient. Often, the DMCC is willing to waive certain requirements if such requirements are not applicable to the company or if the company is unable to satisfy them due to reasons beyond its control. In addition, DMCC-licensed companies have the option to take advantage of the DMCC's available co-working spaces.

ADGM

On 10 May 2016, ADGM published Consultation Paper No. 2 of 2016 (Fintech Regulatory Framework) setting out its proposal for a "Regulatory Laboratory" (RegLab). RegLab is a tailored regulatory regime for fintech participants that aims to create a safe and controlled environment through which participants can develop and test their proposed fintech businesses under a flexible regulatory framework for up to two years. After the two-year period, fintech participants with viable business models will be transferred to the full authorization and supervisory regime upon successfully demonstrating compliance with the authorization criteria.

Following the publication of the Fintech Regulatory Framework, ADGM published Consultation Paper No. 3 of 2016 on 31 August 2016 in order to consult on the draft legislative framework for implementing RegLab within ADGM. ADGM finally announced the launch of RegLab on 2 November 2016. Notably, RegLab was the first regulatory regime of its kind to launch in the Middle East and North Africa (MENA) region. ADGM has also more recently established a "fintech bridge" with the Monetary Authority of Singapore by entering into a cooperation agreement to set out how they will each help fintech players understand the applicable regulatory regime in each jurisdiction. The fintech bridge is also the first of its kind in the MENA region.

As ADGM continues to pursue its goal of becoming the MENA region's fintech hub, it faces close competition from the DIFC.

DIFC

In January 2017, the DIFC launched its "Fintech Hive at DIFC" accelerator program in partnership with Accenture, which aims to offer leading technology entrepreneurs and companies the opportunity to test and modify fintech innovations in collaboration with executives from the DIFC and regional and international financial institutions. Since launching the program, the DIFC has received more than 100 applications from more than 32 countries that cover a range of activities, including big data and analytics, block chain, payments, peer-to-peer lending and crowdfunding, robo-advice, and mobility. The program is due to formally commence on 21 August 2017.

On 24 May 2017, the DIFC further announced that it would be offering fintech entities the opportunity to apply for a class of financial services licenses referred to as Innovation Testing Licenses. The Innovation Testing License is a restricted license that will allow qualifying fintech entities to develop and test innovative concepts from within the DIFC, without being subject to the normal regulatory requirements. The license will likely be valid for six to 12 months, although the Dubai Financial Services Authority (DFSA) may consider extending such period in certain exceptional cases. Upon successfully demonstrating to the DFSA that they have met the DFSA's requirements during the testing period, fintech entities will receive a full-fledged license.

Commercial Agency Relationship

A foreign entity that wishes to carry out business in the UAE but does not wish to maintain a physical presence in the UAE may enter into a commercial agency relationship with a UAE national or an entity that is wholly owned by UAE nationals. Under a commercial agency, the commercial agent agrees to distribute, sell, offer, or provide goods or services within the UAE for a commission or profit. The commercial agency agreement should cover the terms of the sales commission, the territory of the distributorship (at a minimum, this would be one Emirate), and the duration of the relationship. If the commercial agent registers the contract with the Ministry of Economy, the agent can obtain certain protections afforded to agents under the UAE commercial agencies law (Federal Law No. 18 of 1981, as amended by Federal Law No. 14 of 1988 and Federal Law No. 2 of 2010), including, for instance, entitlement to compensation if the principal under the commercial agency agreement refuses to renew the agreement after its expiration date.

Latham's *Guide to Doing Business in the UAE* provides additional information on entering into a commercial agency relationship.

Conclusion

Investors looking to set up a fintech business in the UAE face a number of legal options, including, particularly, whether to set up onshore in the UAE or in one of the UAE free zones. Investors will need to consider which legal form is most appropriate for their business and the types of commercial activities that they intend to conduct. In order to select the best option, investors should assess the potential impact on the business' commercial intentions.

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