



Investing Globally – Flexible Corporate Structures

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Rima Mrad
Partner

BSA

BSA Ahmad Bin Hezeem
& Associates LLP

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BSA introduction

- Founded in 2001, BSA Ahmad Bin Hezeem & Associates is a law firm that reflects the energy and ambition of the Middle East.
- We are deeply rooted in the region with 9 offices in 6 countries, including the UAE, Oman, Saudi Arabia, Iraq, Lebanon and now France.
- Our key practice areas are:
 - Corporate and M&A
 - Litigation
 - Arbitration
 - Banking and finance
 - Commercial
 - Construction
 - Employment
 - Fraud
 - Insurance and reinsurance
 - Intellectual property
 - Real estate.

BSA introduction

- Our combined offices in UAE, Oman, Lebanon, Iraq, KSA and France have 60 lawyers (including 13 Partners).
- Our lawyers come from diverse backgrounds with a majority who speak Arabic, English and French fluently.
- Our lawyers have hands-on experience and thorough knowledge of the requirements in dealing with legal issues faced by companies operating throughout the UAE, as well as other GCC countries.
- Our clients include public and private sector companies, local and international businesses from various industries.



Current Investment Environment

The current global environment encourages international and cross border investments more than any time before:

- Investment opportunities in developed jurisdictions are getting more selective, complicated and exclusive.
- Excessive taxation, limited opportunities and slow pattern of economic growth in the most renowned leading economic capitals pushed investors to look for new global opportunities.
- There is a growing appetite for new playgrounds and this is mainly encouraging the inflows of investments to new areas such as Latin America, African continent, Gulf and South East Asia.

Value of Foreign Direct Investment (FDI)

- Although majority of global FDI used to be placed in developed jurisdictions such as the USA, China and Hong Kong however in the last ten years, it has been noticed that emerging countries are receiving the greater share of FDI.
- According to International Monetary Fund regional statistics, nations in Latin America, the Middle East, and Europe relied mostly on FDI as the source for capital flows. Asia received most of its investments from FDI, and Africa received most of its capital inflows from development assistance.
- This is an indication of the importance and size of foreign investments in the rising economies.

International Investments - 101

Before investing in a new jurisdiction, an investor must:

- Understand the legal environment regulating their investments (i.e. requirements, licenses, reporting etc..)
- Know their obligations as foreign investors and any restrictions or limitations that they will have to comply with.
- Be aware of:
 - Tax exposure / disclosure
 - Restrictions on repatriation of capital and profit
 - Ownership restrictions
 - Maintenance fees
 - Restrictions on exchange of currencies.

Corporate Structure – How to decide on the most suitable and flexible structure?

- Before deciding on the most suitable and flexible corporate structure, it is imperative that the following questions are addressed:

Who are the shareholders?

What activity the company will carry out?

How the company will be managed?

For how long do we need the company?



Let us go through each of these questions separately:

The identity of the shareholders

- Whether they are individuals or corporate bodies
- Whether any of the shareholders is a regulated entity
- The nationality of individual shareholders or place of incorporation of corporate shareholders
- The nationality of the ultimate beneficial owners

The identity of the shareholders (2)

- The answers to the above question will identify any restrictions that are applicable on such persons and that should be considered when determining a suitable corporate structure.
- How this is relevant:
 - Nationals of certain countries (such as countries on the FATF blacklist) will have to go through extensive KYC procedures or background checks in order to be able to hold shares.
 - Regulated entities such as financial institutions may not be able to hold shares in certain structures.


Activity of the company

- What types of activities the company will be carrying out: trading, industrial, services, act as a holding company or holding ownership of certain equities and assets etc...
- Will the company carry out any direct activities in the jurisdictions where it is established.
- Will the company recruit any employees to handle certain tasks within the place of its incorporation.
- Will the company needs financing to fund its operations.

Activity of the company (2)

- Eventually the answers to the above questions will lead the investor to understand what is the most relevant structure that will allow them to execute their business plan.
- By way of example:
 - A simple offshore company cannot be granted financing in Dubai without any tangible guarantees
 - A simple offshore company cannot participate in a bid for the procurement of products to government entities or semi public corporations.
 - A simple offshore company cannot carry out any commercial activities in the UAE territory.

Management of the company

- Whether the company will be needing a management body to handle its management
 - Whether it will be managed remotely
 - Whether there are any restrictions on non national managers or residents
- 

Duration of the company

How long do we need the company for?

- This is very essential as it will allow the investor:
 - Consider the future restrictions that he will have to deal with when he is exiting.
 - Timeframe needed to move out of the investment and close down the company.
 - Formalities relating to the exit such as any reporting or filings.
 - Any applicable restrictions such as minimum period of registration before they can exit.

What matters to investors?

A flexible structure is typically a structure that offers the following advantages:

- Cost Efficient - set up fees, maintenance fees, deregistration fees.

Case Study - Misconceptions: *An offshore in the BVI is a perfect example of a low cost corporate vehicle. Nonetheless, there are excessive attestations fees to be paid for each document that will be issued by a BVI company and used in the GCC. These are hidden fees that usually investors do not consider at the time of choosing a structure.*

What matters to investors? (2)

- Minimal reporting Requirements - such as the requirement to file annual audit, yearly returns or financial data to one or more authority in a certain country.

Case Study - Misconceptions: *In order to liquidate a JAFZA offshore company, the shareholders will need to submit a liquidator's report. Shareholders in this type of company tend to overlook the need to prepare and have in place annual audited accounts.*

What matters to investors? (3)

- Smooth Exit - such as any restrictions on existing before a certain time, restrictions on repatriation of capital / profit or currency exchange.

Case Study – Misconceptions: A major UAE company entered into various investment in Tunisia including real estate investments. By the time when the investment matured, they needed to exit and move out however they found out that they cannot transfer out any of the profits they made in Tunisia. They had at that time to reinvest the profits in another project.

Case Study – Dubai as an attractive jurisdiction for international investments

Strategic location:

- Dubai is a time zone bridge between the Far East, Europe and Africa
- Dubai is located in the midst of one of the world's richest regions with ample supplies of low cost energy
- Dubai is a base for one of the largest ports in the world (Jebel Ali Port) being a regional base for import and export activities
- Dubai is served by over 120 shipping lines and linked via 85 airlines to over 130 global destinations

Case Study – Dubai as a flexible jurisdiction for international investments

(2)

Political and economic stability:

- Dubai is a low-crime and politically-stable country
- Dubai enjoys financial and monetary stability
- Dubai has a well developed banking system with extensive provision of credit and financial facilities for corporations
- Dubai has an up to date and sound regulatory systems for most of the vital sectors like telecommunications, banking, insurance etc.
- Dubai is committed to the implementation of liberal economic policies

Case Study – Dubai as an attractive jurisdiction for international investments (3)

Open and free economic system:

- Government control and regulation of the private sector is minimal
- No direct taxes on corporate profits or personal income (except for oil companies and branches of foreign banks)
- Customs duties are low at 5% with many applicable exemptions
- 100% repatriation of capital and profits is permitted

Case Study – Dubai as an attractive jurisdiction for international investments

(4)

Developed infrastructure and service sector:

- World class transport, telecommunications, energy and industrial infrastructure
- Renown and specialized free zones, industrial areas and a sophisticated service sector
- Global exposure to international business practices and technologies

Most Common & Flexible Structures in Dubai

LLC	<ul style="list-style-type: none">• Activity in the emirate where it is incorporated• Companies Law No 2 of 2015 applies• Transparent and recognized structure• 51% UAE shareholding• New Investment Law may increase the level of foreign investment to 100%
FZCO	<ul style="list-style-type: none">• 100% foreign ownership• Activity in the free zone and out of the UAE• Renown and well established structure• Tax free (except for VAT at the rate of 5% in some free zones)• Perfect for trading with other countries
Offshore	<ul style="list-style-type: none">• 100% foreign ownership• Cannot carry out any activity in the UAE• Faces challenges to open bank accounts• Perfect choice as an SPV to own properties in the UAE or to manage and own international assets / equities

Main features of Dubai most flexible and common structures





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Email us info@bsabh.com

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