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A MONTHLY COMPILATION OF ARTICLES AND LEGISLATIVE & REGULATORY UPDATES CURATED BY RASMA LEGAL

COVER STORY

E-Commerce Key Considerations in the UAE: What Online Businesses Must Comply With

Driven by digital transformation, consumer demand, and government initiatives supporting online business development, the e-commerce sector in the UAE has experienced rapid growth. However, operating an e-commerce business in the UAE requires strict compliance with various legal and regulatory requirements. This article outlines key aspects online businesses must adhere to when operating in the UAE.

THIS ISSUE

1.What is an e-commerce license?

An e-commerce license is a legal permit that allows individuals or businesses to sell goods and services online within a specific jurisdiction. In Dubai, an e-commerce license is mandatory for businesses that trade exclusively through digital channels. Even if a business holds physical inventory but does not conduct in-person sales, it may still require an e-commerce license.

Obtaining an e-commerce license in the UAE is essential for legal compliance, as it is a regulatory requirement. It also helps build consumer trust and ensure business credibility.

2.What is the difference between e-trader and e-commerce license?

Surely, you've probably heard about these two licenses. In Dubai, the Department of Economy and Transport (DET) issues two primary types of licenses for online businesses: e-trader license and e-commerce license

While both licenses enable businesses to operate online, they differ in scope and purpose. An e-commerce license is designed for full-scale online businesses that operate through websites, social media platforms, and international markets. It supports larger operations with extensive product offerings and broader customer bases. Conversely, an e-trader license is intended for small-scale businesses, often home-based, with minimal product supply. It suits entrepreneurs selling products through social media platforms within the UAE. As the business expands, transitioning to an e-commerce license or a similar commercial license may become necessary.

While both involve digital transactions, e-commerce is typically consumer-focused, whereas e-trade relates to business dealings in a digital format.

Read more on our website.

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THOUGHT LEADERSHIP

DFSA Consultation Paper No. 165: Proposed Changes to Licensed Functions and Authorised Individuals

The Dubai Financial Services Authority (DFSA) has released Consultation Paper No. 165, outlining proposed changes to its approach regarding Licensed Functions and Authorised Individuals. The DFSA, as the regulator of the Dubai International Financial Centre (DIFC), mandates that Authorised Firms take responsibility for appointing and ensuring the ongoing suitability and competence of their staff.

Current Regulatory Approach:

Individuals authorised by the DFSA to perform Licensed Functions are referred to as Authorised Individuals. The DFSA currently identifies eight Licensed Functions:

1) Senior Executive Officer (SEO)
2) Licensed Director
3) Licensed Partner
4) Finance Officer
5) Senior Manager
6) Money Laundering Reporting Officer (MLRO)
7) Compliance Officer
8) Responsible Officer

GEN Rule 7.5 stipulates that four functions must be held by an Authorised Individual:

1) Senior Executive Officer (SEO)
2) Finance Officer
3) Money Laundering Reporting Officer (MLRO)
4) Compliance Officer

Authorised Firms must conduct due diligence on individuals applying for Licensed Functions to ensure their fitness and propriety. They must not submit applications if there is reason to believe an individual is unsuitable for the position.

Proposed Regulatory Changes:

The DFSA is introducing Designated Functions and Designated Individuals to ensure that Authorized Firms take full responsibility for appointing suitable individuals. Compliance Officers, Finance Officers, and Senior Managers will no longer require DFSA approval, and these roles will no longer be Licensed Functions. Instead, firms will assess candidates internally and ensure they meet the required standards.

- The SEO and MLRO roles will remain Licensed Functions requiring DFSA authorization.
- Compliance Officer and Finance Officer roles will remain mandatory but as Designated Functions.
- The same assessment criteria for Licensed Functions will apply to Designated Functions.
- Authorized Firms must maintain records demonstrating the fitness and propriety of Designated Individuals.
- Notifications to the DFSA will be required within seven calendar days of the appointment or removal of a Designated Individual, including the reasons for any termination.
- Firms must attest annually that Designated Individuals remain fit and proper.

Role Combinations and Prohibitions:

Certain role combinations will remain restricted. For example, an individual cannot simultaneously serve as both SEO and Compliance Officer. This restriction will extend to Designated Functions. Firms must ensure that individuals performing multiple functions have the necessary competence and capacity.

Additional Proposed Amendments:

- Finance Officers, Senior Managers, and Compliance Officers will be classified as Designated Functions.
- Finance Officers may become non-mandatory for Lower Prudential Risk Firms.
- Senior Managers will be defined as individuals responsible for management, supervision, or control of an Authorized Firm's financial services, provided they do not already hold another Licensed or Designated Function.
- The requirement for a Compliance Officer to be a Director or Partner will be removed, aligning with the removal of Compliance Officers as Licensed Functions.
- The Principles for Authorised Individuals will be renamed Conduct Principles, with minor amendments, and applied to all employees involved in financial services

Read more on website.

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THOUGHT LEADERSHIP

Overview of the DIFC Employment Law

The Dubai International Financial Centre (DIFC) operates as an independent jurisdiction within the UAE, governed by its own legal framework based on English common law. Employment matters within DIFC are regulated by DIFC Law No. 2 of 2019 (as amended) (hereinafter referred to as the "DIFC Employment Law"), which establishes rights and obligations for both employers and employees within the DIFC.

Starting with its purpose, the DIFC Employment Law is designed to:
(a) establish minimum employment standards for employees;
(b) promote fair and equitable treatment by employers; and
(c) encourage workplace practices that contribute to the DIFC's growth and success.

While employers may provide additional benefits at their discretion, they shall not offer terms or conditions that fall below the minimum requirements set out in the DIFC Employment Law. To reinforce this principle, Article 11 of the DIFC Employment Law explicitly states that its provisions establish the minimum requirements for employment and any agreement that seeks to waive these requirements, unless expressly permitted by the DIFC Employment Law, shall be deemed void in all circumstances.

However, the DIFC Employment Law does not prevent an employee from voluntarily waiving any right, remedy, obligation, claim, or action under the law by entering into a written agreement with their employer to terminate their employment or resolve a dispute. This waiver is only permissible under two conditions: (i) the employee must warrant in the settlement agreement that they had the opportunity to receive independent legal advice from a legal practitioner regarding the terms and effect of the agreement; or (ii) botl employee must have participated in mediation proceedings provided by the Court prior to entering into the agreement.

In terms of its applicability, the DIFC Employment Law applies to any entity with a place of business in the DIFC that employs one or more individuals. Hence, it also extends to individuals employed under an employment contract by such an entity, provided they are based in, or ordinarily work in or from, the DIFC, or have contractually agreed to be governed by the DIFC Employment Law. This ensures that employment relationships within the DIFC adhere to the statutory standards, promoting a fair and regulated work environment.

Regarding the terms of the employment relationship, it is governed by an employment contract, which must be provided by the employer. This contract must include the mandatory elements outlined in the DIFC Employment Law, including but not limited to the employee’s wage, pay period, and working hours and days. The employer is required to provide the Employment Contract within seven (7) days of the employee’s commencement of employment.

In addition to outlining the fundamental terms of employment, an employment contract may also include provisions that extend beyond the duration of employment. One such key aspect is post-termination restrictions, which employers may impose to protect their business interests after an employee’s departure. These restrictions, commonly referred to as restrictive covenants, primarily include non-compete, non-solicit, non-poaching, and non-dealing clauses. While these terms are not explicitly outlined in the DIFC Employment Law, they are recognized by the DIFC Courts. However, the enforceability of such covenants depends on several factors. When imposing such restrictions, employers should carefully consider whether they are reasonable, how much exposure the employee has had to clients, what interests they are trying to protect, and the employee's role prior to leaving.
The enforceability of restrictive covenants must remain within the limits of protecting the employer's legitimate business interests. If the restrictions are deemed to be overly broad or not aimed at safeguarding the employer’s legitimate business interests, their enforceability may be at risk. Therefore, any restrictions should be limited in terms of duration, geographical scope, and the type of activities being restrained.

Read more on our website.

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REGULATORY UPDATE

Dubai's New Regulation Allows Free Zone Companies to Operate in Mainland

TDubai has introduced a new regulation permitting free zone companies to expand their operations into the mainland, aiming to enhance economic integration and attract further investment.

Key Aspects of the Regulation:

• Permit Requirement: Free zone companies can now operate anywhere within Dubai after obtaining the necessary permit from the Dubai Department of Economy and Tourism (DET).

• Compliance: Companies must adhere to both federal and local regulations and maintain separate financial records for their free zone and mainland operations.

• Licensing: The DET is authorized to issue licenses allowing free zone establishments to operate in mainland Dubai or to open branches within the emirate. These licenses are valid for one year and can be renewed.

Implications for Businesses:

This regulatory change is expected to create a more dynamic and competitive business ecosystem in Dubai, encouraging foreign investment and providing businesses with greater market access. Companies looking to operate beyond Dubai's borders must secure appropriate licenses from relevant authorities in those jurisdictions.

Conclusion:

Dubai's new regulation signifies a progressive step towards economic integration, offering free zone companies the flexibility to operate in the mainland and potentially boosting the emirate's attractiveness as a global business hub.

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Team Spotlight

Eid Mubarak from Rasma Legal!

Wishing you and your loved ones a joyous and blessed Eid filled with peace, prosperity, and happiness.

Team Spotlight

Happy Women's Day from **Rasma Legal**.

To the talented women at Rasma Legal and all incredible women around the world - you are strong, resilient, and inspiring. Today, we honor your outstanding achievements and the strides you have made.

Keep breaking barriers and driving transformative impact!

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DRIVING CHANGE THROUGH INNOVATIVE EXPERTISE

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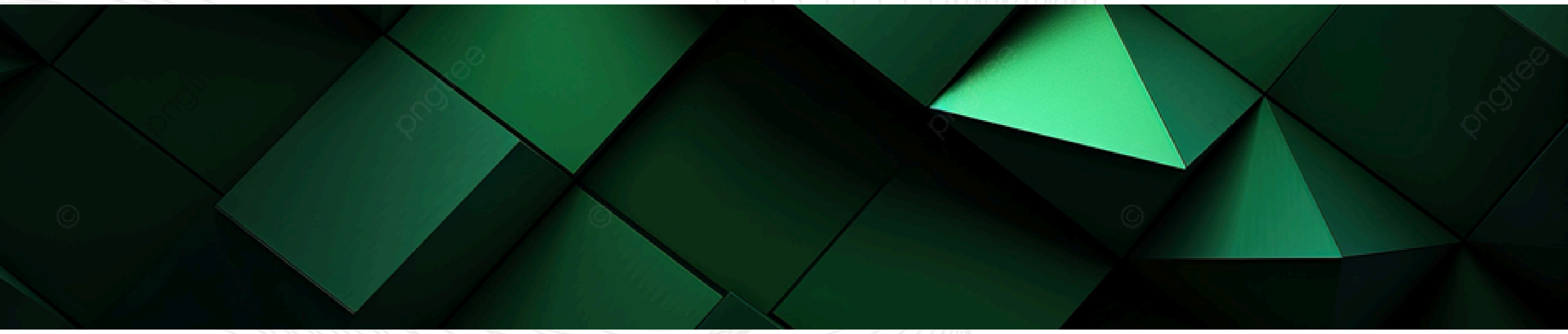
Rasma Legal is a multi-service law firm catering to the innovation economy. The firm is headquartered in the United Arab Emirates (UAE) and has branches in Saudi Arabia (KSA) and Lebanon. Led by the expertise and leadership of Mazen Rasamny, Rasma Legal stands as a beacon of legal excellence, equipped to guide clients through their diverse legal undertakings. Having an extensive legal background spanning over 23+ years, Mazen Rasamny brings a wealth of knowledge and experience to the table.

The firm is focused on innovation and growth and has been instrumental in providing comprehensive legal services to entrepreneurs and start-ups in areas such as M&A, Corporate and Commercial laws, Debt & Equity Capital Markets, Banking & Finance (including Project Finance), Corporate & Financial Restructuring, Energy, Infrastructure, and Project Development.

The firm has also been recognized by several leading legal publications such as Asian Legal Business, IFLR1000, The Legal 500, Legal Era, The Law and more.



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