

Live streaming services in the UAE: questions of licenses and locations

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You are a media company looking to take advantage of the global boom in live streaming services. Naturally, you would like your online platform to be visible within the United Arab Emirates ('UAE'). Do you need a licence?

Should you incorporate a local entity, and, if so, what and where?

The COVID-19 pandemic has changed the way in which the world consumes live content – and possibly forever. Globally, use of live streamed content rose by a fifth in March 2020 relative to the preceding two weeks. Daytime (i.e. non-prime time) usage surged by 40 per cent [1]. For companies with live streaming platforms, the opportunities should also have increased a lot in the UAE and across the region.

If you are doing business in the UAE, you will need a commercial licence from the relevant corporate regulator

The question that perhaps arises for media companies wishing to extend their reach to the UAE would be whether or not they are required by law to set up a local entity: the alternative is to deliver content to the UAE consumers from offshore.

As a general observation, foreign investors wishing to undertake commercial activities in the UAE need to comply with generally applicable foreign investment requirements. This involves being registered and licenced by the relevant authorities in the UAE. Failure to comply with the general foreign investment and commercial registration requirements relating to doing business in the UAE can attract penalties – including fines up to AED 500,000 (approximately US\$136,000).

You will also need to consider the requirements of the National Media Council

The National Media Council ('NMC') is an independent federal government agency that regulates traditional and digital media. Among others the NMC issues licences that are required under the 2018 Electronic Media Regulation ('the E-Media Law').

There are no specific laws in the UAE that address the distribution of content or the authorisation/licensing of content distributors. The E-Media Law does, however, address the issue of what will be "Licensable Electronic Media Activities".

The following activities are considered Electronic Media that must be licensed in advance, even if they are practised through Social Media platforms:

1. websites of trading, offering and selling of audio-visual and print material;
2. on-demand electronic publishing and printing;
3. specialised websites (e-ads, news sites,);
4. any electronic activity that the NMC may determine to add.

It is worth noting that the range of activities that fall under the scope of the E-Media Law is broad but vague. An aggressive, but reasonable, interpretation of the E-Media Law is that a company that is set up in the UAE will need a licence from the NMC if it wishes to sell audio-visual content of any nature to the public.

Crucially, the E-Media Law requires that the media company behind the platform has a licence if the company is seen to be doing business in the UAE (including the Free Zones). There are no clear criteria that must be met.

In general, the regulator will probably regard your company as actually doing business in the country if: your platform appears to be actively marketed to UAE residents or; your platforms using servers or other infrastructure that is physically in the country.

Look at what, exactly, you want to do before choosing a location and a corporate structure

Aside from the NMC licence, a media company which intends to commence business activities in the UAE has the option of setting up a presence either “onshore” or in one of the available “free zones” that have been established throughout the UAE.

For an onshore (also referred to as a “mainland”) presence, subject to Federal Law No. 19 of 2018 in relation to foreign direct investment law, foreign media companies must partner with a UAE national (either an individual or a company wholly owned by UAE nationals) [2]. The UAE partner must hold at least 51 per cent of the shares in the onshore company.

By contrast, setting up in a free zone does not require partnering with a national shareholder: this makes for a more attractive environment for many businesses. There are two types of free zones in the UAE: financial free zones and economic free zones. Currently, the only two financial free zones are the Dubai International Financial Centre (‘DIFC’) and the Abu Dhabi Global Market (‘ADGM’). There are a large number of free zones located in each emirate.

Economic free zones are usually industry-specific. In Dubai, the Dubai Development Authority (‘DDA’) was formed to foster Dubai’s creative and innovative industries. Free zones overseen by the DDA include, amongst others, Dubai Media City, Dubai Internet City and Dubai Studio City. Any of these three free zones may be attractive to international media companies. This is in part because the DDA itself will obtain necessary approvals from the NMC when the companies apply for incorporation.

The three most widely used corporate vehicles in the UAE are the LLC, a branch of a foreign company and a representative office. Choosing the best vehicle depends on the purpose of the company and on the business activities that are contemplated. Certain media companies may also enter the market through a distributorship or commercial agency, depending on the nature of their contemplated activity, rather than through a direct investment. In addition to the commercial and NMC licences, a media company that intends to operate in the UAE will also need an office lease and, probably, registration for Value Added Tax (‘VAT’).

To date (September 2020), some platforms have been operated entirely from outside the UAE. However, the risks of making live streamed content available within the country without proper licensing and documentation are significant. Violation of federal law concerning companies can result in fines of AED100,000- 500,000 (approximately US\$27,000- 136,000). The NMC may impose sanctions. The authorities may also block the online platform.

To conclude, the right corporate structure and location will depend on what activities you intend to pursue in the UAE.

¹Conviva, *Streaming in the Time of Coronavirus*, 2020, p2.

²An onshore (or 'mainland') presence is one that is outside of a free zone.

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