



ADDLESHAW GODDARD

آدِلشو جودارد

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DOING BUSINESS IN THE UNITED ARAB EMIRATES





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INTRODUCTION

Doing Business in the UAE

This guide provides a general overview of the legal framework of the United Arab Emirates (the UAE) and some of the key considerations for foreign investors doing or seeking to do business in the UAE.

This document is for general information only. It is not legal advice and should not be acted or relied on as being so. Legal advice should be taken before applying any information in this document to any facts and circumstances.

We would very much welcome the opportunity to discuss with you any questions you may have in relation to the contents of this document or any of the services offered by Addleshaw Goddard.

The Addleshaw Goddard team has an impressive depth of regional experience and are well-trusted in relation to complex transactions

THE CARLYLE GROUP

Addleshaw Goddard

Addleshaw Goddard is a premium business law firm with an international reach and an exceptional breadth of services.

Our reputation for outstanding quality and service is built upon our investment in long term client relationships, a deep understanding of our client markets combined with high calibre expertise, commercial advice and a collaborative team culture.

By delivering what clients want wherever they need it, be it high value strategic advice or advice in relation to more day to day matters, we pride ourselves on providing a service which is high quality, focused, relevant and consistently excellent.

Our presence in the Cooperation Council for the Arab States of the Gulf region (the GCC) comprises offices in Dubai, Doha and Muscat and our lawyers are all long-term residents in the region. Our team has what we believe to be an unrivalled depth of knowledge and experience across the GCC and is able to advise in both English and Arabic. Accordingly, our team is ideally placed to advise international clients and their internal legal counsel on all matters connected with investing in and doing business in the GCC.

Clients tell us time and again that the combination of our lawyers' insight and understanding about the things that really matter to them, allied with first-rate technical expertise and a flexible approach to fees, creates an identifiably different and valuable experience.

Our absolute commitment to developing long term relationships, coupled with deep experience of providing advice in the region across a range of legal disciplines, means that we have the requisite experience to be able to support all facets of our clients' businesses now and in the years to come.

LEGAL AND REGULATORY FRAMEWORK

Federal Constitution

The UAE is a federation of the following seven Emirates: Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al-Khaimah, Sharjah and Umm Al Quwain.

The UAE Federal Constitution was entered into between six of the Emirates in 1971 (with Ras Al-Khaimah joining in 1972). Supporting laws were passed shortly afterwards. There have been nine amendments to the Constitution since 1971 with the words 'provisional/temporary' being removed in 1996. The UAE is a 'civil' (as opposed to 'common') law jurisdiction.

Pursuant to the Constitution, the Federal Government has exclusive jurisdiction in respect of various matters such as foreign policy, defence and security. The Local Government of each Emirate is permitted to regulate other matters which are not subject to federal legalisation, such as the regulation of commercial activities.

The Emirates of Abu Dhabi (the capital of the UAE) and Dubai are likely to be of most interest to foreign investors due to their established infrastructure and business environment. However, it should be noted that the other Emirates also offer significant investment opportunities.



International Trading Hub

Today Dubai enjoys a strong reputation as one of the leading business centres in the GCC. Due to its tax free status, continued economic growth and political stability together with its strategic location between Europe, Africa and Asia, it has become a regional and global hub of commerce.

Since the 1970s, the Government of Dubai has purposely attempted to reduce the Emirate's dependence on oil and gas revenue and instead move towards a diversified economy based on international trade, finance, tourism, real estate and manufacturing.

In order to further encourage foreign investment, a number of economic free trade zones have been established throughout the UAE offering foreign individuals and businesses 100% ownership and a range of other investment incentives.

Foreign Direct Investment in the UAE

Onshore vs Free Zone

The two principal ways in which a business presence can be established in the UAE are as:

- an onshore entity; or
- a free zone entity.

An onshore company (generally speaking) must have at least 51% of its share capital owned by a UAE national or nationals or a company or companies wholly owned by a UAE national or nationals (**UAE National**). Investment by a foreigner is therefore restricted to 49%. There have been various indications over the years that this foreign investment restriction may be lifted but this has not yet been passed into UAE law.

In contrast, entities which are incorporated in one of the UAE's free zones may be wholly owned by foreign investors. However, unlike onshore entities which are permitted to carry on business 'onshore' (i.e. outside of the free zones in the Emirate in which the entity is incorporated), a free zone entity is not generally permitted to carry on business outside of the geographical area of its 'home' free zone. What constitutes 'carrying on business' is not always certain and the foreign investor may be required to seek specific advice in order to ensure that the relevant licensing laws (see further below) are not breached.

Therefore ownership and operating restrictions are often the key considerations for investors when deciding which type of corporate entity they wish to incorporate.

Commercial License

In order to operate in the UAE, a corporate entity must obtain a commercial license which will permit such entity to undertake one or more permitted activities.

It is important to ascertain which activity or activities the entity will be required to undertake at the start of the incorporation process. Different activities may require the approval of, or licenses, consents or permits from, different government ministries or departments (which will have an impact on both the incorporation fees and the incorporation timetable).

Additionally, some activities are prohibited altogether, some can only be undertaken by entities wholly owned by a UAE National and some free zones authorities only permit certain activities to be undertaken within the boundaries of their free zones.

Accordingly, legal advice will be required at the start of the incorporation process to determine the required activities and the impact this will have on the incorporation timetable.



COMMON TYPES OF UAE INVESTMENT VEHICLES

Federal Law No. 2 of 2015 (the **Companies Law**) prescribes that five main forms of entities can be established onshore in the UAE, the most common of which is the limited liability company (LLC).

The other two most common forms of establishment in the UAE for foreign investors are the branch of a foreign company (**Branch**) and representative office. Free zone companies can also be set up in one of the many free zones that have been established in the UAE.

The purpose and key features of each of these main entities are set out on the next page.

Other Ways of Doing Business

It is also possible to operate in the UAE by entering into an agency or distribution agreement with a UAE National. This type of arrangement involves using the agent's existing UAE commercial license and distribution channels to distribute the foreign investor's products and services.

The Commercial Agencies Law (Federal Law No. 18 of 1981) offers considerable statutory protection to UAE Nationals who have registered an agency or distribution arrangement and so care should be taken and advice sought in relation to this area.

Additionally, offshore companies (incorporated in jurisdictions such as the Cayman Islands or the British Virgin Islands) are sometimes used by foreign investors to hold shares in UAE entities.



UAE CORPORATE ENTITIES

UAE CORPORATE ENTITIES		PURPOSE	KEY FEATURES
	LIMITED LIABILITY COMPANY (ONSHORE UAE)	<p>A LLC offers the ability for a foreign investor to establish a permanent presence onshore in the UAE with a separate legal identity and limited liability.</p>	<p>At least 51% of the share capital of an LLC must be owned by a UAE National. Foreign ownership is therefore limited to 49% of share capital.</p> <p>If the foreign shareholder chooses to engage a silent or 'nominee' UAE National, the foreign shareholder may enter into protective documents with such UAE National in return for a fee. The intention is to protect the foreign party as the minority shareholder in the LLC by assigning the rights to control and profit from the shares in the LLC held by the UAE National to the foreign shareholder.</p>
	BRANCH (ONSHORE UAE)	<p>A Branch permits a foreign investor to establish a permanent presence onshore in the UAE in situations where a separate legal identity is not required or permitted.</p>	<p>Branches have no separate legal identity. The 'parent' company retains 100% ownership and the Branch must operate under the same name and conduct the same business activity as its parent company.</p> <p>A Branch must formally appoint a UAE National as sponsor in return for a fee but the sponsor will have no share or ownership rights in the Branch.</p>
	REPRESENTATIVE OFFICE (ONSHORE UAE)	<p>A representative office offers the ability for a foreign investor to establish a permanent presence onshore in the UAE for businesses that will only carry out promotional or marketing activities.</p>	<p>A representative office is not permitted to trade or generate profits. Representative offices are generally used for promotional and marketing purposes.</p> <p>A representative office must formally appoint a UAE National as sponsor in return for a fee but the sponsor will have no share or ownership rights in the representative office.</p>
	FREE ZONE ENTITY (UAE FREE ZONE)	<p>A free zone entity permits a foreign investor to establish a permanent presence in a UAE free zone with 100% foreign ownership.</p> <p>Note that it is also possible to establish a branch or a representative office in a free zone.</p>	<p>A free zone entity can only carry on business in the free zone in which it has been incorporated and not onshore in the UAE. 100% foreign ownership is permitted.</p> <p>There are over 25 free zones in the UAE including the Jebel Ali Free Zone (manufacturing), Dubai Healthcare City (healthcare) and the Dubai International Financial Centre (financial services).</p>

REGISTRATION

A LLC must be registered and licensed with the Department of Economic Development (**DED**). An online application and supporting documentation will need to be submitted to the DED and the DED will issue the LLC's commercial license.

The DED may refer the application to one or more government authorities who may also need to grant a license, consent or permit in relation to the LLC's specific business activity (e.g the Knowledge & Human Development Authority for schools and the Ministry of Health for medical clinics).

LIMITED LIABILITY COMPANY
(ONSHORE UAE)

A Branch must be registered and licensed with the DED. An online application and supporting documentation will need to be submitted to the DED and the DED will issue the Branch's commercial license.

The DED may refer the application to one or more government authorities who may also need to grant a license, consent or permit in relation to the Branch's specific business activity.

Branches must also be registered with the Ministry of Economy (the **MOE**).

BRANCH
(ONSHORE UAE)

A representative office must be registered and licensed with the DED. An online application and supporting documentation will need to be submitted to the DED and the DED will issue the representative office's commercial license.

No additional government authority approvals will be required.

Representative Offices must also be registered with the MOE.

REPRESENTATIVE OFFICE
(ONSHORE UAE)

Free zone entities must be registered and licensed with the relevant free zone authority.

In certain circumstances, a free zone entity may also need approvals from one or more government authorities but this is generally not required.

FREE ZONE ENTITY
(UAE FREE ZONE)

BANKING & FINANCE

Financial Regulation

The UAE is home to two financial free zones, being the Dubai International Financial Centre (the **DIFC**) and the Abu Dhabi Global Market (the **ADGM**). Regulated financial services activities include banking and insurance. Different regulators are relevant for different financial service providers, depending on which activity is being undertaken in the UAE. The key consideration is to identify the business which will be undertaken, including the target clients, and the scope of the regulated activities. For many international financial services companies, a licence or a representative office in a financial free zone meets their needs. For entities wishing to carry out business with the general public in the UAE, a licence issued by the relevant regulator (the Central Bank of the UAE for banks or the Insurance Authority for insurance companies) is necessary.

Banking

The UAE has local, regional and international lenders actively participating in finance deals. Different banks provide different types of financing arrangements to their clients. There are many branches of foreign banks operating in the UAE, and these generally work with businesses from their jurisdictions of establishment in order to promote cross border trade. For new businesses looking to set up in the UAE, these can be a helpful source of funding.

Capital Markets

There are three operating stock exchanges within the UAE. The Dubai Financial Market (DFM) and the Abu Dhabi Securities Exchange (ADX) both fall under the regulation of the Emirates Securities and Commodities Authority (ESCA) and their focus is on local and regional listings. For international offerings, there is NASDAQ Dubai, which is regulated by the Dubai Financial Services Authority (DFSA). The legislation for the ADGM includes a stock exchange, regulated by the ADGM's Financial Services Regulatory Authority.

Secured Lending

It is important to take proper advice in structuring any secured lending transaction in the UAE. Many different types of security are available in the UAE. With the existence of so many free zones, each transaction needs to be assessed on its own merits, since the location of the asset and identity of the client will all affect the security which may be taken. As the UAE is a civil law jurisdiction, one concept that does not generally exist under UAE law is that of a floating charge over all the assets of an entity.

Islamic Finance

The UAE is one of the world leading jurisdictions for Shari'ah-compliant financial products and structures. A full range of innovative banking and finance products are available in the UAE for clients who want to operate their business in line with Shari'ah principles.



EMPLOYMENT

Overview

Federal Law No. 8 of 1980 as amended (the **Labour Law**) which governs key issues such as working hours, overtime, annual leave and termination, is the core employer/employee legislation in the UAE. Many free zones have developed additional employment regulations but, except for the DIFC which has its own separate regulations, the Labour Law still applies to most free zone employers and employees.

Work Visas

Foreign nationals intending to work in the UAE (except GCC nationals) require an employment visa and a residence permit which must be applied for before the employee starts work. The visa application process usually includes security/background checks and a medical examination.

Dependants of foreign employees also need residence permits to live in the UAE. Generally speaking, an employee must earn at least AED 10,000 a month to sponsor a spouse or child.

Employment Contracts

Pursuant to the Labour Law, employers must issue written employment contracts in Arabic (except for employees in the DIFC). In practice, dual English and Arabic template employment contracts are usually electronically registered with the Ministry of Labour.

All onshore companies are required to electronically transfer employee wages to the employee's local UAE bank account authorised by the UAE Central Bank. This is known as the wage protection system. If the salary transfer does not match the registered salary details, the Ministry of Labour may refuse to grant further work permits to such employer.

Federal Law No. 11 of 2013 introduced a mandatory requirement for employers (including those in the free zones) to provide employee health insurance. Employers are prohibited from passing on the cost of such insurance to their employees. The insurance must provide for GP visits, emergency treatments, specialist referrals as well as surgical, investigative and maternity procedures.

Termination

There is a minimum notice period in the UAE of 30 calendar days (in the DIFC the notice period is determined by the employee's length of service). Ministry of Labour approval is required to terminate the employment of a UAE national.

Termination at will or "arbitrary termination" usually entitles the employee to be compensated up to a maximum award of three months' gross salary. DIFC employees are not currently entitled to compensation for arbitrary termination, but they can sue for breach of contract or wrongful dismissal.

Employees who have completed at least one year of continuous service are entitled to an end of service gratuity payment from their employer at the end of their employment, unless they are terminated for gross misconduct.

INTELLECTUAL PROPERTY

Overview

The UAE has recognised that protecting intellectual property is vital to ensure its position as a dominant trading hub in the Middle East.

Accordingly, the UAE has developed an intellectual property regime that offers international standards of protection to intellectual property right owners through a range of intellectual property laws and its accession to a number of key international treaties.

Registration Regimes

The UAE has established registration regimes to recognise and protect various forms of intellectual property, including:

- **Trade Marks:** registered with the Trade Mark Section of the Ministry of Economy
- **Patents and Utility Certificates:** registered with the Administration of Industrial Property at the Ministry of Finance and Industry
- **Doman Names:** registered with a registrar authorised by aeDA

The UAE also recognises rights which subsist without the need for registration such as copyright, moral rights and rights in industrial secrets and know-how.

Enforcement

Local authorities and customs officials are aware of the importance of brand protection and actively take enforcement action against counterfeiters and other types of intellectual property infringement in the region. Federal and Local Government authorities have jurisdiction to enforce intellectual property laws and have trained personnel to carry out raids, seize goods and levy fines.

Private enforcement in the UAE Courts is also possible but can be challenging. There are no specialist intellectual property Courts in the UAE and judges may not have the expertise to adequately deal with technical issues. However, there are examples of international companies enforcing their intellectual property rights in the UAE Courts.



REAL ESTATE

The property market in the UAE was regarded as one of the most volatile following the downturn in property prices during the global financial crisis in 2008 and 2009. The industry has since undergone a period of growth and recovery, with some seeing the emergence of a more mature market as tighter regulations are enacted in certain Emirates to increase transparency and guard against speculation. Moderate growth is expected across a range of asset classes as the UAE continues to solidify its reputation as a global and regional hub for finance, trade and tourism.

Overview

The fundamentals of UAE property rights are set out in the Federal constitution, but the individual Emirates have delegated rights to deal with real estate within their borders. Under the Federal constitution, there are three main classes of real rights applicable to real estate: freehold, usufruct and musataha.

FREEHOLD	USUFRUCT	MUSATAHA
Absolute ownership right in land	Right to use and exploit property belonging to another person	Right to use and exploit land belonging to another person together with the right to build on that land
No time restriction	Limited in Abu Dhabi and Dubai to a maximum term of 99 years	Term must not exceed 50 years, but can be renewed.

The law also provides for rights to be granted under a lease, however these confer contractual rights on the tenant only and not real property rights in most cases.

Designated Areas

Laws have been enacted in some of the individual Emirates to regulate property rights in respect of non-UAE and non-GCC nationals. In Dubai and Abu Dhabi for example, the rights of non-UAE and non-GCC nationals in relation to acquiring freehold ownership of property are limited to certain 'designated areas' and 'investment zones'.

Acquiring freehold ownership of property in the UAE usually involves a buyer and seller entering into a sale and purchase agreement, before title of the property is transferred to the buyer by registration with the local authorities. Currently, the process for transferring title differs between each Emirate. Care should be taken to ensure that the correct steps are taken in registering the buyer's interest, as failure to do so could result in the buyer's right to subsequently sell or lease the property being restricted.

Registration of Property Rights

There is no Federal register for property rights, therefore each Emirate has separate rules for registering property rights.

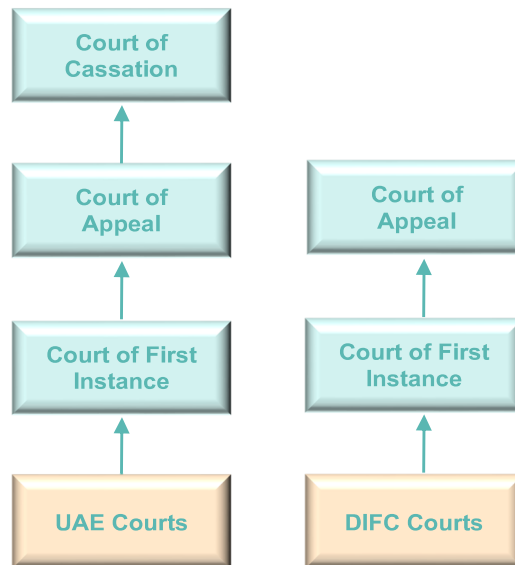
DISPUTE RESOLUTION

Managing Disputes

Disputes in the UAE are generally resolved by litigation or arbitration. The use of arbitration has become more established over the past decade mainly because, until recently, it was the only forum to offer proceedings in English.

Court Proceedings

In the UAE there are two court systems, as described below:



UAE Courts

The default forum for dispute resolution in the UAE is the local UAE Courts. The UAE Courts are divided into three tiers: the Court of First Instance, the Court of Appeal and the Court of Cassation. Proceedings are conducted in Arabic and only a limited class of advocates (including UAE nationals but not international consultants) can appear before the UAE Courts.

The UAE Courts commonly apply UAE law even if the disputed contract is governed by foreign law and they do not follow precedent so decisions can be inconsistent.

Proceedings in the UAE Courts are conducted by written memoranda, only nominal legal costs are recoverable and parties cannot appoint their own expert witnesses. Proceedings can last up to a year, with an automatic right to appeal so it can take years for proceedings to conclude.

A UAE Court judgment is enforceable against assets in the UAE although enforcement proceedings can be lengthy. International treaties may be required to effect enforcement for assets located outside the UAE.

DIFC Courts

The DIFC Courts (located in the DIFC) have jurisdiction in and outside the DIFC. The DIFC Courts are divided into two tiers: the Court of First Instance and the Court of Appeal.

Proceedings in the DIFC Courts are conducted in English before international and local judges. The DIFC Courts will recognise and apply the parties' choice of governing law and they follow a precedent system. International advocates can gain rights of audience in the DIFC Courts, legal costs are recoverable and parties may appoint their own expert witnesses. The DIFC Court rules are based on the courts of England and Wales Civil Procedure Rules.

A DIFC Courts judgment is immediately enforceable within the DIFC but an application to the UAE Courts is necessary to enforce outside the DIFC (but within the UAE).

Arbitration

The key UAE arbitral institutions are:

- the Dubai International Arbitration Centre (**DIAC**);
- the Dubai International Financial Centre London Court of International Arbitration Centre (**DIFC-LCIA**); and
- the Abu Dhabi Commercial Conciliation and Arbitration Centre (**ADCCAC**).

The key advantages to arbitration is the speed by which proceedings can be resolved, the fact that proceedings are conducted in private, the flexible procedure and the non-appealable decision of the tribunal. Additionally, legal costs are usually recoverable from the losing party.

Arbitral awards rendered in the UAE must be ratified by the UAE Courts before they are enforceable in the UAE and may be unenforceable if a procedural irregularity is found to exist. Awards rendered in DIFC seated arbitrations will be converted by the DIFC Courts into a DIFC Court judgment which is immediately enforceable within the DIFC. This judgment may also be taken to the UAE Courts for enforcement onshore.



TRANSACTION TIPS

Undertaking any transaction is about managing execution and value risks. Inevitably, a UAE transaction can involve greater uncertainty than a developed market deal and buyers/investors/funders need to be suitably prepared. Here are a few thoughts on risk management:

Generally

- Plan and execute the deal and deliver the integration plan on the ground. Visibility, local relationships (with sellers and regulators) and the ability to respond rapidly are important.
- Expect surprises. A flexible and nimble approach to problem solving is vital to close the deal and the integration plan. Give yourself as much contractual flexibility as possible.
- Plan ahead. If you anticipate involving third party financing at any point in the life of your project or deal, then plan ahead and ensure you put in place a bankable corporate structure (with appropriate offshore entities if required) and take care to ensure all procedural steps are carefully complied with in the expectation that your lenders will undertake a thorough due diligence exercise.

Execution Risks

- The UAE is growing and developing at a fast pace which often involves rapid change in the regulatory regime that underpins business and the local market may be volatile. Think carefully about which types of material adverse changes (to the business or to the local economic, fiscal or political landscape) you can live with and which you cannot.
- Expect delay. Regulatory frameworks may not be well developed and timetables may not be followed. This may heighten concerns about any gaps to completion.
- Good deals can be hard to come by and may involve sales by private individuals. Stay close to them during the negotiation period, especially given the potential delays noted above.

Value Risks

- Due diligence needs to be rigorous. It may be hard to quantify legal risks (for example due to lack of precedent or clear regulatory process) so it is important to find the right lawyer to advise on legal analysis, local market practice and regulator attitudes.
- Possession is nine tenths of the law. The best contractual protection may mean little depending on the seller's identity and the territory in which you may wish to enforce your rights (or recover assets). If necessary, focus on retention options.
- Consider joint venturing. Retaining personal business connections and knowledge of how business gets done in the territory may be critical to maintaining and growing the business.

FURTHER INFORMATION

Useful contacts

Business Services

- Ministry of Economy www.economy.gov.ae
- UAE Federal e-Government Portal <https://services.economy.ae>
- Ministry of Labour www.mol.gov.ae
- UAE Federal Customs Authority www.fca.gov.ae
- Dubai Department of Economic Development www.dubaided.gov.ae
- Dubai Chamber of Commerce & Industry www.dubaichamber.com
- Abu Dhabi Department of Economic Development www.ded.abudhabi.ae
- Abu Dhabi Chamber of Commerce & Industry www.abudhabichamber.ae
- Dubai Electricity and Water Authority www.dewa.gov.ae
- Transport Department www.rta.ae
- Emirates Post www.emiratespost.com
- Addleshaw Goddard www.aglaw.com

Financial

- Dubai International Financial Centre www.difc.ae
- Dubai Financial Services Authority www.dfsa.ae
- Dubai Multi Commodities Centre www.dmcc.ae
- Jebel Ali Free Zone (JAFZA) www.jafza.ae
- Dubai Financial Market www.dfm.ae
- Nasdaq Dubai www.nasdaqdubai.com
- Abu Dhabi Global Market www.adgm.com
- Abu Dhabi Securities Exchange www.adx.ae

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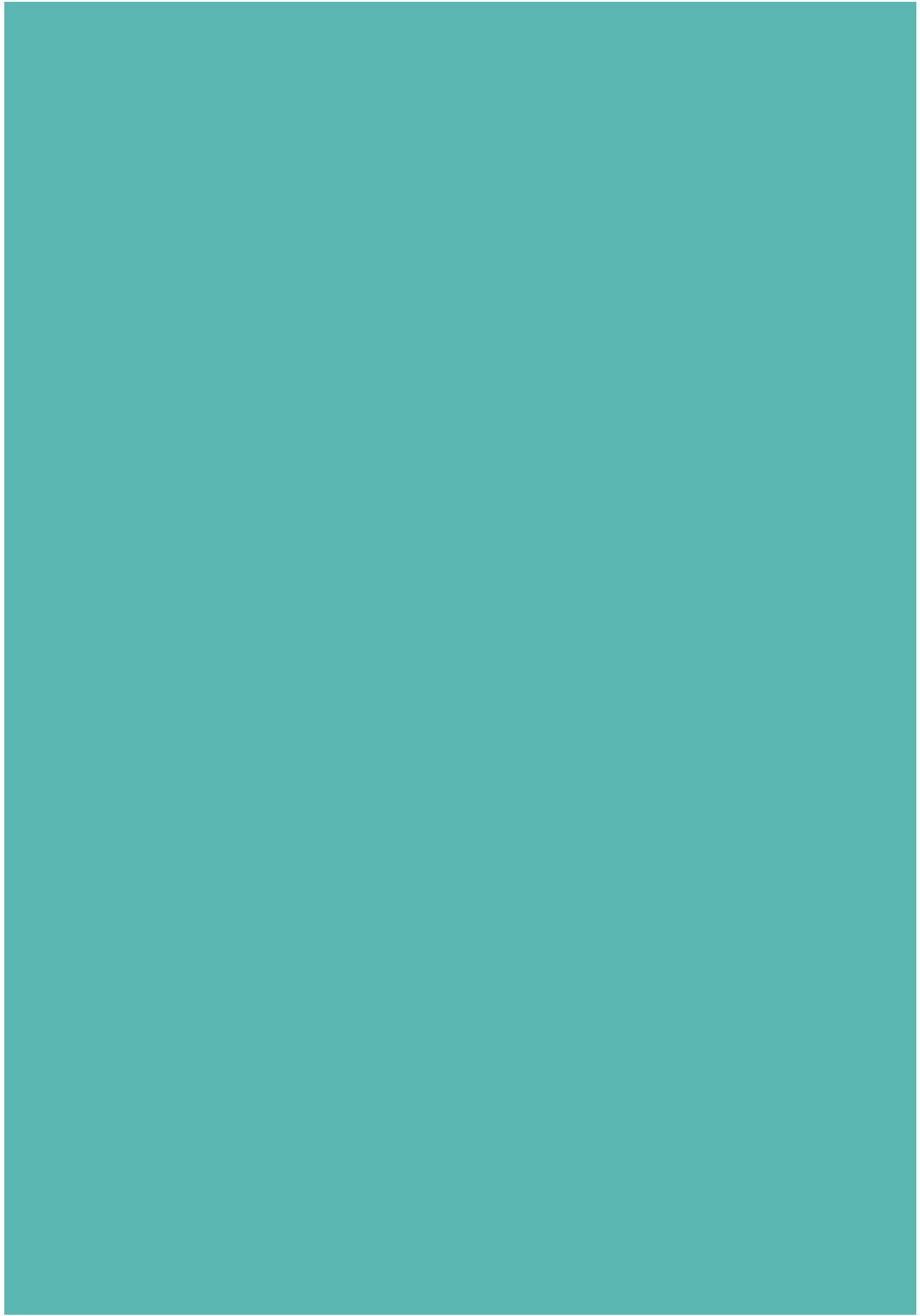


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