The beauty and personal care market in the Gulf Cooperation Council (GCC) has significantly expanded over the past five years and is projected to enjoy a compound annual growth rate of over 11% between 2018 and 2023.

The personal care sector is strictly regulated in the Middle-East. In particular, the Member States of the GCC have introduced a variety of legislation regulating this sector.

This means that it is paramount for international companies looking to export and distribute these regulated products in the region to understand how to navigate the regulatory and legislative landscapes.

In this article, we look at the mandatory steps in order to import and put cosmetics and perfume products on the UAE market.

Overview

In the UAE, the Emirates Standardisation and Meteorological Authority (ESMA) is the body established and mandated by the Federal Law No 28 of 2001 to regulate and supervise the personal care sector in the country.

ESMA has implemented a product certification scheme, the Emirates Conformity Assessment Scheme (ECAS), for all imported and locally-manufactured cosmetic and perfumery products. The purpose of the ECAS is to ensure that such products comply
with the applicable technical standards before they are imported into the UAE, at the port of entry, or put on the UAE market (for locally manufactured products).

Such technical standards relate to health, safety, packaging, labelling, and metrology. Further guidance is provided below.

If the products are deemed to comply with the ECAS requirements, ESMA issues an ECAS Certificate of Conformity. Ports and custom departments would only allow imported products with an ECAS Certificate of Conformity to enter the country and be distributed onwards.

Once a Certificate of Conformity has been issued by ESMA, imported and locally manufactured cosmetic and perfumery products must be registered with the relevant Municipality(ies) in the UAE before they can be offered for sale in the retail market.

It must be noted that only an entity incorporated in the UAE may register such products with ESMA and Municipalities. Further information is provided on the type of company later in this article. As such, this means that international companies seeking to market their products in the UAE must either establish a local presence or appoint a local distributor[5] to import, register and distribute the products on their behalf.

**Legal landscape**

**Key legislation**

In order to be offered for sale and used in the UAE, imported and locally-manufactured cosmetics and perfumery products must comply with health and safety requirements that are primarily set out by the following legislation:

- Cabinet Decision No. 18 of 2014 on the UAE Regulation for the Control of Cosmetics and Personal Care Products (the *Cosmetics Law*)
- Cabinet Decision No. 5 of 2014 on the UAE Regulation for the Supervision of Fragrances (the *Fragrances Law*)

The *Cosmetics Law* applies to all types of cosmetics and personal care products offered, manufactured, imported, supplied, packed, or used within the UAE.

The Cosmetics Law defines cosmetics and personal care products as:

"any substance or mixture made for the use and contact of the external organs and parts of the body (such as the skin, hair, nails, lips, teeth, genitals or the mucosa of
oral cavity) for the purpose of cleaning or perfuming them, changing their appearance, or enhancing their smell, or protecting or keeping them in the best shape.

This excludes:

- medical products used in the treatment of diseases; and
- devices and tools accompanying cosmetics.

The **Fragrances Law** applies to all types of perfume products offered, manufactured, imported, exported, packed, or used within the UAE.

The Fragrances Law defines perfume products as:

"any cosmetics and personal care products with a nice scent, composed of essential oils, fixatives, alcohol solution, water, permissible colorants, anti-oxidants and solvents."

### Applicable technical standards

The Cosmetics Law and the Fragrances Law (the "Regulations") set out the technical adopted standards to be fulfilled in relation to safety, packaging, wrapping, labelling and metrology for all cosmetics and perfumery products to be offered for sale and used in the UAE.

### Safety requirements

At any phase of the supply chain, the products shall comply with the general safety requirements of **Standard GSO 1943/2016** set by the Gulf Standardisation Organization (GSO).

The main safety and quality requirements under this Standard are as follows:

- Products shall be free of any prohibited substances, including any substances or derivatives prohibited by Islam (such as pork);
- They shall be safe for human health when used under normal or reasonably foreseeable conditions of use;
- They shall be homogeneous, stable and their properties shall not change during their shelf life when stored and used as per their instructions.
Packaging and wrapping requirements

Products shall be packed in appropriate and clean containers that do not interact with the cosmetic product and vice versa, and it shall be ensured that the containers are free of sharp edges, and are properly closed.

Containers used for products shall comply with the requirements set forth in Standard UAE.S. GSO ISO 22175 relating to packaging and labelling and Standard UAE.S GSO 2093 relating to glass containers (in case of glass containers) used for cosmetics.

Metrology requirements

Products shall meet the requirements of Standard UAE.S GSO OIML R87 relating to the quantity of product in containers.

Labelling requirements

The labels of products that are intended for sale to consumers in the UAE must satisfy the general requirements stipulated by Emirati Standard No. UAE.S GSO 1943. Labelling shall be in clear font and applied in a way that is not easy to remove. In particular, all cosmetic and personal care products shall bear the following information in visible lettering:

- Name of the product and brand name
- Name and address of manufacturer or supplier or distributor
- Country of origin
- Nominal content of the product
- Expiry date expressed by date of minimum durability or period after opening
- Conditions of use, warning statements and precautionary information
- Batch number or lot code
- Product function
- Ingredients

All information contained on the labels must be accurate, scientifically or laboratory verified, and shall not be misleading. It should be in English and/or Arabic, apart from the following information that must be in English AND Arabic:

- Product function and/or use
Warning instructions and precautionary information
Storage instructions for safe use

The foregoing information must be included on the label of both the container and outer packaging (if any).

In addition, if products contain allergens, these substances must be mentioned on the list of substances composing the product which appears on the labels of container packages.

As for perfumes, if the composition contains any aromatic allergenic substances of a concentration exceeding (0.001%), these substances must be indicated within the list of substances composing the product appearing on the container's packaging.

**Conformity assessment scheme**

In order to ensure that imported and locally manufactured cosmetics and perfumes comply with the applicable technical standards set out in the Regulations, ESMA has implemented a product certification scheme, the Emirates Conformity Assessment Scheme (ECAS).

All cosmetics, perfumery and personal care products to be distributed in the UAE need to go through the ECAS in order to get a Certificate of Conformity that is mandatory for customs clearance and for placing the products in the UAE marketplace.

Without such certificate of conformity, any shipments of products that arrive to the UAE customs will be rejected, causing delays in goods clearance, penalties or shipments being returned to the country of origin. With respect to locally manufactured products, unregistered products may be withdrawn from the market, confiscated or destroyed (in addition to penalties).

There are a number of agencies approved by ESMA to move companies' applications through the ECAS, take care of the conformity assessment and issue the mandatory Certificate of Conformity for cosmetic and perfumery products.

**Process**

The process for obtaining a certificate of conformity is as follows:

- **registration of the applicant** on the ESMA website
- submission of the **application form together with the qualifying documents**[10]
• **Conformity assessment of the product** with the requirements of the approved standards\(^{[11]}\) by ESMA or recognised conformity assessment bodies

• If the products comply with the requirements, the products are registered on the ESMA portal and ESMA issues an **ECAS Certificate of Conformity**, upon payment of the applicable official fees

• The **ECAS Certificate of Conformity** constitutes evidence that the product has been approved by the UAE Federal Government through ESMA. It shall be **valid for one year** and shall be renewed at least one month before the end of validity.

### Supporting documents

Below is a list of the documents required to be submitted along with the application form in order to ascertain the compliance of the product with the applicable requirements set forth in the Regulations:

- Valid UAE trade license: only a company incorporated in the UAE may proceed with such registration process\(^{[12]}\)
- Test Report from an accredited and recognised laboratory according to Gulf standard UAE.S GSO 1943
- A certified document issued by the manufacturer setting out the ingredients and corresponding percentages
- For imported products: Free sale certificate issued by the Competent authority in the country of origin (legalisation is not mandatory)
- Representative artwork and label of the product according to Gulf standard UAE.S GSO 1943
- Health and Safety report related to the product.

This report shall contain information regarding:
- Quantitative and qualitative composition of the product
- Physical/chemical characteristics and stability of the product
- Microbiological specifications
- Impurities, traces and information about the packaging material
- Normal and foreseeable use of the product
- Exposure to the product (taking into its toxicological effects)
- Toxicological profile of the substances contained in the product
- Undesirable effects
- A statement on the safety of the product
- Statement on the need to label any particular warnings and instructions of use
- Electronic Declaration of conformity of the products

**Periodic review**

Registered products are subjected to periodic review and market surveillance by ESMA to ensure that products are consistently complying with the applicable technical regulations.

**Registration with the Municipality**

In addition to the foregoing, cosmetics and personal care products must be registered with the Dubai Municipality or the Municipality of the relevant Emirate in which the products are intended to be sold.

It is important to note that, again, only a company incorporated in the UAE may proceed with such registration process. It may therefore be the local importer, manufacturer or distributor of the product.

Once registered with the relevant Municipality, the applicant may proceed with the application process by submitting the following information alongside the application form:

1. Picture or artwork of the product illustrating all the required information, including shelf life, batch lot number, period after opening
2. Free Sale Certificate from the country of origin (for imported products)
3. Analysis and Ingredients Report from the manufacturing company
4. Laboratory Test report related to certain heavy metal and preservatives and microbiology tests from an accredited laboratory
5. ESMA Certificate of Conformity

The Municipality may request other documentation, on a case by case basis.

**Distributing the products in the UAE**

To the extent that only an entity incorporated in the UAE may register the products with ESMA and the Municipalities, this means that international companies seeking to market its products in the UAE must choose one of the following approaches:
Establishing a local presence by incorporating a UAE entity

The UAE entity importing and distributing the products into the UAE may be a company incorporated onshore with up to 49% foreign ownership. The UAE Commercial Companies Law requires companies incorporated under such law to have at least 51% of share capital owned by UAE nationals. As a result, any company established in the UAE onshore is required to have one or more UAE partners holding at least 51% of the share capital of the company.

It is also possible to incorporate a company in a free zone (offshore), whereby 100% foreign ownership is possible. However, there are a number of considerations that need to be considered before setting up a company in a free zone.

The main disadvantage is that a company established in a free zone is restricted from doing business outside the free zone. As a result, if the UAE entity importing the products into the UAE is incorporated in a free zone; a local distributor will need to be appointed onshore for the purpose of distributing the products. However, this is something for international companies to consider, as the registered importer with the Municipality could be the free zone entity, which allows the international company to retain control over the importation of its products at least.

In both cases, the licensed activity of the newly established company will have to relate to the import of cosmetics or perfumes.

Appointing a local distributor

An international company may choose to appoint an already existing local company to import and distribute its products in the UAE.

In such a case, international companies should enquire about the ownership of such distributor before entering into any distribution agreement. The reason is that where a local distributor is wholly owned by UAE nationals and appointed on an exclusive basis, the exclusive distribution agreement may be registered with the Ministry of Economy as a commercial agency agreement pursuant to the UAE Commercial Agency Law.

It should be noted that the registration of the distributor with the Ministry of Economy results in a number of statutory rights vesting in the distributor pursuant to the UAE Commercial Agency Law.
These rights place the distributor in a strong position, commercially, with respect to the principal company. For example, without mutual agreement, it is impossible for the principal to terminate or end the distribution agreement without a "justifiable cause", irrespective of contractual arrangements between the parties. This means that absent a mutual agreement, it will be up to the courts to decide whether or not there is a "justifiable cause" for terminating the agreement.

Which approach is most suited will depend upon the circumstances.

In any event, it is advisable to obtain experienced local advice before entering into a distribution agreement with a local company.

In this respect, international companies should take steps to protect their trademarks in the UAE as soon as possible, to avoid the local distributor registering the trademark(s) in its name. The danger is that this could result in the local distributor blocking the international company from continuing to use the trademark(s) in the UAE once the distribution agreement expires or is earlier terminated.

In any event, registration is key in the UAE since absent registered rights, the only enforcement option available in case of infringement would be an expensive court case, rather than the more cost-effective administrative and criminal enforcement actions.

Footnotes

[1] comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE.
[5] For more information on how to mitigate exposure to the UAE Commercial Agency when appointing a local distributor, please see our earlier article International franchisors expanding in the UAE: Dos and don'ts.
[6] According to Standard GSO 1943, cosmetics include, by way of example, creams, emulsions, lotions, gels for the skin, make-up powders, after bath powders, hygienic powders, soaps, bath and shower preparations, depilatories, deodorants, hair care products, shaving products, products for making up and removing make up, products intended for care of the teeth and mouth, products for nail care, product for external intimate hygiene, sunbathing products.
[7] The GSO sets the framework for the technical requirements for products distributed in the GCC. Standard GSO 1943/2016 lists the general safety as well as the labelling and
packaging requirements that must be fulfilled by all cosmetic and personal care products distributed in the GCC.

[8] In this respect, Standard No UAE.S GSO 1943/2016 is the current standard in force that must be complied with in the UAE.

[9] There exists specific marking and labelling requirements for toilet soaps, gift sets and kits, hotel amenities and cosmetics supplied as multi-packs.

[10] An application from an applicant other than the manufacturer shall be signed by both the applicant and the manufacturer of the product.


[12] It may therefore be the local importer, manufacturer or distributor of the product.

[13] Registration with the Public Health and Safety Department of the Dubai Municipality may be carried out online on the portal www.dm.gov.ae.

[14] However, it is possible, provided that the local partner is amenable, to overcome such a requirement by entering into a Shareholders' Agreement and other side agreements with the UAE partner(s) owning 51% of the share capital which will effectively give control of the entity and the economic benefits deriving from the entity to the foreign company.

Whilst the entry of such arrangements is common in the region, it should be noted that the enforceability of such arrangements is uncertain given that they could be seen as circumventing foreign ownership restrictions.

[15] For more information on the requirements to be fulfilled by a commercial agreement to be eligible for registration under the UAE Commercial Agency Law, please see our earlier article International franchisors expanding in the UAE: Dos and don'ts

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Related Retail, Leisure & Hotels, Intellectual Property

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