UAE

Possible 100% Foreign Ownership in on-shore Entities?

Article 10 of the Commercial Companies Law (Federal Law No. 2 of 2015) (the **CCL**) sets out the foreign ownership restriction. Any company constituted in the United Arab Emirates (the **UAE**) must have a UAE National holding at least 51% of the capital.

In September 2017 pursuant to Federal Decree-Law No. 18 of 2017, the UAE Government provided that the UAE Cabinet could issue a resolution to determine the activities and companies in which a foreigner may own all or the majority of the capital.

News released on 21 May 2018 suggests that such Cabinet Resolution has been passed by the UAE Government. It remains to be seen whether the lifting of the ownership restriction will apply to all types of entity, across all sectors. Some commentators believe that the restriction will not be lifted for the oil and gas, and banking sectors.

The news reports further suggest that full foreign ownership of all UAE entities will be allowed by the end of 2018. But further details are not yet available.

The announcement also contained details of new long term visas of up to 10 years for investors, certain professionals in medical, technical and scientific fields, and students.

As a consequence of this Cabinet Resolution, certain issues will need to be addressed by foreign investors in the UAE including:

1. LLCs - Nominee Agreements

In many instances, foreign investors have put in place Nominee Agreements to protect their minority interest. Foreign investors will need to review those arrangements and to plan for their restructuring. Some of these Agreements already provide for a change in the law whereby the UAE Nominee agreed in advance to transfer his shares for a nominal amount. For those without this provision, the UAE National shareholder's co-operation is likely to be needed for a transfer of its 51% holding.

2. Free Zones

One of the key advantages of setting up in one of the UAE Free Zones is the right for a foreign investor to have 100% ownership of a given Free Zone entity. If the Cabinet Resolution allows full foreign ownership in all sectors outside of the Free Zones (i.e. onshore), this will affect the perception of the benefits of setting up a Free Zone entity. However, there are other advantages for Free Zone entities notably customs and duty exceptions and a tax free period granted under various laws of each Emirate.

Free Zone entities are currently required to do business only within the boundaries of the Free Zone where they are licensed. In practice, it will be interesting to see whether those operational barriers are removed from the licence conditions.

3. LLCs - Number of Shareholders

Currently, the CCL permits a *single UAE National* shareholder to hold all of the capital in an LLC constituted in the UAE. Unless this provision is amended, a foreigner will not be able to hold the entire LLC capital through one entity.

4. Branches - Conversion to LLC

Foreign investors may have preferred to establish a branch of a foreign company, rather than an LLC, due to the foreign ownership restrictions. However, there is no limited liability for branch offices operating in the UAE as they are not separate legal entities from their "parent". Overseas companies may wish to review that decision and convert to an LLC. A further question is whether this new legislation will also permit UAE branch entities to operate without a UAE national branch sponsor.

New Mortgage and Finance Law in Dubai

The Dubai Land Department (**DLD**) has announced a new Mortgage and Finance Law in order to grow investment and update financing mechanisms in the Dubai's real estate sector.

The move is part of a series of initiatives which were presented to Dubai Ruler Sheikh Mohammed bin Rashid Al Maktoum aimed at stimulating economic growth.

The initiatives will be applied by the Executive Council following the directives of Dubai Crown Prince and Chairman of the Dubai Executive Council, Sheikh Hamdan bin Mohammed.

Their main objectives are to develop Dubai's mortgage law to attract foreign investors and NASDAQ listed companies, encourage alternative financing methods and allow investors to diversify their property investments.

The initiatives are in line with the Dubai Plan 2021 to create an enhanced property investment environment that is transparent and safe for all investors.

New Corporate Social Responsibility Resolution

The UAE Council of Ministers has issued a new resolution (the **CSR Law**) concerning Corporate Social Responsibility (**CSR**) in the UAE which came into force recently. The CSR Law imposes reporting requirements on contributions made to CSR activities and financial contributions which will apply to many companies in the UAE on a mandatory basis, and to others on a voluntary basis.

It also offers various incentives to contribute to CSR initiatives.

Please note that Free Zone companies and professional service firms are not currently within the mandatory provisions of the CSR Law but may decide to abide voluntarily by the CSR framework.

1. Objectives of the CSR Law

The objectives of the CSR Law are the following:

- establish a regulatory framework for CSR contributions in the UAE;
- document, manage and direct CSR contributions made to UAE based CSR initiatives;
- provide incentives and privileges for UAE businesses that contribute to CSR practices within the UAE;
- establish the Federal Social Responsibility Fund, a new body under the authority of the Ministry of Economy (the **SR Fund**); and
- empower the SR Fund to promote a culture of social responsibility, including the preparation of a National Social Responsibility Index as an annual report to rank contributions made by UAE businesses to CSR in the UAE.

The CSR framework will be delivered through a new platform launched by the UAE Ministry of Economy (the **Platform**). The Platform will provide information on government strategy and co-ordinate interaction with companies, the State and private-sector entities contributing to welfare and social responsibility within the UAE. UAE businesses will be required to use the Platform to report on their CSR contributions.

The Ministry of Economy has already launched a new website that will host the Platform: https://www.csruae.ae/.

Applications may be made by companies contributing to CSR projects and programmes, as well as by beneficiaries and private sector organisations undertaking CSR projects and programmes, for inclusion on the Platform.

2. Compliance with the CSR Law

The CSR Law applies to:

- all companies operating in the UAE, including banks, financial institutions and branches of foreign companies;
- companies owned (partially or wholly) by Federal or Local Governments; and
- other organisations and entities which choose to be listed on the Platform.

3. CSR Contributions

CSR contributions which may be considered for inclusion on the Platform include:

- contributions to social developments by monetary or in-kind contributions to fund development programmes and projects;
- adopting eco-friendly policies for production and work;
- promoting the spirit of innovation and scientific research;
- contributing to solutions to problems or challenges faced by society; and
- establishing a culture of social responsibility though strategies, providing opportunities for humanitarian and community campaigns and initiatives and engaging in voluntary programs.

4. CSR Projects and Programs

The Platform will list the CSR projects and programmes which count for the purposes of positive contributions under the CSR Law. It will include details of the beneficiaries and the stages and progress of those projects and programmes. It is likely that these will be projects which have a direct impact on the development of the UAE and on the lives of its citizens and residents. However, details on projects and programs are not yet available.

The CSR Law states that social responsibility is based on voluntary principles. However, while CSR contributions will remain voluntary, filing a CSR return and listing on the platform will become mandatory for all businesses in the UAE which fall within the scope of the CSR Law.

The CSR Law provides that before the annual trade licence renewal, businesses must disclose their contribution, or non-contribution, to social responsibility for the preceding year, via the Platform. If the company discloses a CSR contribution, it must include all data and information relating to the type and volume and the beneficiaries of the contribution.

In practice, co-ordination will be needed between the Federal Government responsible for the CSR initiatives (the Ministry of Economy and the SR Fund) and the Economic Departments of each Emirate in order for the requirements to come into effect at the trade licence renewal stage.

5. Benefits and Privileges of the Social Responsibility Mark

The CSR Law envisages that the SR Fund will issue a Social Responsibility Mark and Social Responsibility Permission as a means to promote selected companies and business. The SR Fund will allow these companies and organisations to use the Social Responsibility Mark and Permission for a defined period.

Qualifying for the Mark will also bring further benefits and privileges which are yet to be published. The CSR Law sets out that the SR Fund will enter into Memoranda of Understanding with stakeholders to form a list of benefits and privileges. Possible benefits may include preference in government tenders, reduced fees and priority in government services.

6. Costs

The CSR Law establishes a mandatory annual contribution to the SR Fund, currently AED 1,500, which forms part of a UAE business's contribution to social responsibility. If companies wish to obtain the Social Responsibility Mark there must contribute AED 10,000, and AED 15,000 to obtain the Social Responsibility Permission.

7. Preparation

In order to take advantage of the benefits that the CSR Law will provide, it would be advisable:

- To assign responsibility internally for CSR activities, and for the annual CSR report;
- To monitor the Platform for listings of new projects and programmes;
- To speak to the management of any projects or programmes which businesses currently contribute to, with a view to recommending an application to the SR Fund for inclusion on the Platform; and
- maintain logs of the details of CSR activities undertaken by the business to ensure timely disclosures on the Platform for renewal of the trade licence.

Saudi Arabia

Amendments to the Companies Law

The Council of Ministers of the Kingdom of Saudi Arabia recently approved amendments to the Companies Law (the ***Amended Companies Law****).*

1. Limited Liability Companies (LLCs)

Paid-up Capital

The Amended Companies Law now provides that payment of the entire share capital is not required upon incorporation.

This is similar to joint stock companies where one-fourth of the share capital can be paid on incorporation with the remaining three-fourths paid within the next five years.

In practice, this provision will likely only be applicable to companies wholly-owned by Saudi or GCC nationals as foreign investors are generally required to produce a bank certificate evidencing deposit of the entire capital as part of the incorporation process.

However, the Amended Companies Law does not specify a timeframe for when the LLCs share capital must be fully paid-up.

Share Transfer Restrictions

The existing Companies Law provided a rudimentary statutory framework governing LLC shareholder pre-emption rights. The existing legislation was unclear and vague with respect to the terms and conditions of the transfer and restrictions on such pre-emptive rights.

However, the Amended Companies Law clarify that pre-emption rights apply to proposed transfers to third parties and may be based on the third party's proposed purchase price within 30 days (or any other time period or valuation method agreed by the shareholders). The Amended Companies Law also requires disclosure of the identity of the buyer as is often required in similar legislation in North America.

Minority Shareholders

Whereas the existing Companies Law requires shareholders representing half of the capital to call an Extraordinary Meeting, the Amended Companies Law lowers this threshold. Now shareholders representing only 10% of the capital may call a Shareholder’s Meeting.

2. Joint Stock Companies

Directors' Liabilities in case of Conflicts of interest

The Amended Companies Law clarifies that damage caused to a joint stock company by a director's conflict of interest shall be attributable to that director and to the wider Board except for those directors who opposed the action giving rise to the damage and whose objections were duly noted in the Minutes of the Meeting in question during which the decision was taken.

Absence from a Board Meeting where a director's conflict of interest caused damage to the company is not a defense to liability unless the director can also prove that he had no knowledge of the proposed resolution.

In addition, whereas previously the Board's consent to a director's personal interest in the company's affairs could be renewed annually, the Amended Companies Law provide that such consent must be made "in accordance with the controls laid down by the competent authority".

Shareholder Lawsuits

The Amended Companies Law provides that a shareholder may sue the company, and the company shall bear the costs of the lawsuit, regardless of the result of the claim, if the following conditions are met:

- the claim was filed in good faith, on valid legal grounds, and is in the best interests of the company; and
- the shareholder submitted the complaint to the company prior to filing the claim and did not receive a reply within 30 days.

Companies should consider reviewing existing Shareholder Agreements, constituting documents, and corporate governance procedures to ensure compliance with the Amended Companies Law.

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