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REFORMS IN UAE OPENING TO FOREIGN INVESTMENTS

Introduction

On 20 May, the Cabinet of the UAE, chaired by the Prime Minister, Vice President and Ruler of Dubai, his Highness Sheikh Mohammed bin Rashid Al Maktoum, passed a resolution to: (i) loosen restrictions on foreign ownership of the share capital in UAE companies; and (ii) grant long-term residency visas for some categories of expatriates.

No legislation has been issued yet, but the reforms are expected to come into force by the third quarter of this year.

The reforms are hoped to boost foreign direct investment in the UAE and, thus, reduce the UAE's economic reliance on the oil sector. The effects of the reforms will extend to foreign investment in mainland UAE and its free zones (which are delimited geographical areas that were established specifically to encourage foreign investment).

I. Foreign Ownership Restrictions

1. Restrictions on foreign ownership of UAE companies' share capital under the current legal regime

Foreign investors seeking to do business in the UAE must be registered and licensed. They may set up business in mainland UAE or in a free zone.

a. Setting up a business in mainland UAE

Under Federal Law No. 2 of 2015 on commercial companies (the CCL), in line with the provisions of Federal Law No. 8 of 1984 (the old companies law), the majority of a UAE company's share capital must be owned by a UAE national. Specifically, at least 51% must be owned by a UAE national or a company fully owned by UAE nationals. Therefore, foreign ownership of shares in UAE companies is limited to 49% of the company's share capital. Foreign investors must thus partner with a UAE national to establish and conduct business in mainland UAE. Nevertheless, a foreign minority shareholder partner may reserve economic rights, corporate governance and management rights through specific arrangements with the UAE shareholder.

But although these arrangements have generally been recognised by UAE courts, some uncertainty still exists about a possible change of stance by the local authorities and courts, especially considering that, similarly to other civil law jurisdictions, judicial decisions are not binding on UAE courts when deciding similar cases.

b. Setting up a business in free zones

The UAE currently boasts over 30 free zones, with the majority in the Emirate of Dubai. Most are industry focused, meaning that they are typically tailored to specific industries or activities. Most free zones have their own set of rules, with some having also their own judicial system. Generally, regulations within free zones tend to be investor-friendly: foreign investors may enjoy 100% ownership of a company's share capital if it is incorporated in the relevant free zone. However, there is one main drawback to setting up a business in a free zone: generally, businesses incorporated in a free zone may not conduct business outside that free zone.

2. Restrictions on foreign ownership of UAE companies' share capital in light of the newly passed reforms

a. Effects of the reforms in mainland UAE

The Cabinet passed the resolution loosening restrictions on foreign ownership of UAE companies' share capital in furtherance of the recent amendments to the CCL (which came into force at the end of October 2017). The resolution grants the Cabinet the power to determine which activities may be carried out by foreign investors without the mandatory 51% participation of a UAE national. Through this reform, the powers of the Cabinet will be expanded to empower it to determine which activities must be carried out exclusively by UAE nationals and which may be carried out by foreign investors without any foreign ownership restrictions.

Until further intervention by the Ministry of Economy, it will remain unclear which sectors will benefit from the full foreign ownership of share capital. However, it is believed that industries of strategic or national importance, such as telecoms and oil &

gas/energy, will be excluded. It also still needs to be determined what other CCL provisions might need to be amended in tandem with these reforms. For instance, under Art. 71 of the CCL, the share capital of a limited liability company (LLC) may be fully owned by a sole shareholder if a UAE national. Once the reforms permitting ownership of 100% of a UAE company's share capital by a foreign national are implemented, Art. 71's language should be amended accordingly to allow sole-shareholder LLCs also if the sole shareholder is not a UAE national.

The reforms will also impact existing relationships between foreign and local investors. Foreign investors who established their businesses under the current regime may want to contemplate restructuring the shareholdings to benefit from the new reforms. Some existing arrangements grant call options to foreign shareholders in the case of a change of legislation or similar right to reorganise the shareholding. These provisions might be triggered by the reform and, if they do, may be exercised by the foreign investors. In the absence of any such provisions, foreign investors will have no choice but to seek the collaboration of local partners to reorganise the shareholding structure of the invested-in companies.

b. Effects of the reforms in the free zones

One of the main incentives for foreign investors to set up business in free zones is the option of owning 100% of the share capital of the companies incorporated there. Questions might arise as to how attractive UAE free zones will become once the reforms are implemented. However, free zones offer other attractive features, particularly in terms of investor friendly regulations and a favourable tax regime (in terms of import duties and, in certain free zones, VAT).

II. Visa Reforms

A foreigner must have a residency visa to live and work in the UAE. Foreigners can generally be sponsored for a residency visa either by a business they own in the UAE or by a UAE-based business that they have an employment contract with. The current visa term is two years or, in some cases, three (such as in the Dubai Financial Centre). The re-

forms target some categories of expatriates who will benefit from long-term residency visas. It is expected that under the new visa system, a ten-year entry visa will be issued for investors and specialists in medical, scientific, research and technical fields. Also students studying in the UAE will benefit from the new system and be granted five-year residency visas, with exceptional students benefitting from ten-year residency visas. The criteria for determining which categories of expatriates will benefit from the long-term visas still needs to be decided.

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