

## THE END OF THE UAE FOREIGN OWNERSHIP RESTRICTIONS?

In what is being hailed as a major shake-up for foreign direct investment into the UAE, we understand from both local and international press reports that a decision has been issued by the President of the UAE, His Highness Sheikh Khalifa, to give effect to a reform of the UAE's current foreign ownership regime.

### Anticipated changes

We understand that significant amendments will be made to the Commercial Companies Law (CCL) to remove the current foreign ownership restrictions and effectively repeal the Foreign Direct Investment Law (FDI Law). The FDI Law was issued in 2018, as framework legislation that ran alongside the CCL, to ease the restrictions on foreign investment into the UAE.

Local press has reported that the following amendments will be made:

- 51 provisions related to foreign investment into the UAE, affecting both Limited Liability Companies (LLCs) and Joint Stock Companies (JSCs), will be amended under the CCL, along with the addition of three new articles.
- Key amongst these changes is the amendment to Articles 10 and 329 of the CCL to remove the requirement for 51% UAE national ownership of onshore companies and the appointment of a UAE national agent in respect of branches of foreign companies.
- Emirate level Economic Departments (or local FDI units), will be responsible for determining the level of UAE national participation in onshore companies.
- It is anticipated that a Federal Committee will be established to work alongside Emirate level Economic Departments to determine both:
  - the entities that will benefit from the lifting of the foreign ownership restrictions; and
  - the business activities which are considered to be of strategic impact to the UAE economy, their licensing requirements (such as the level of UAE national participation that may or may not be required in such entities) and any further exemptions for such entities that are deemed necessary as part of this legislative change.
- Requirements in respect of JSCs' boards being comprised of a UAE national chairman and a majority of UAE nationals are to be removed.

### Foreign direct investment - expected changes

- Significant changes to the CCL in respect of both LLCs and JSCs
- Removal of the requirement for a UAE national shareholder or local service agent (although the full extent of this change is unclear)
- Changes to JSC board composition in favour of non-UAE nationals
- Potential changes to free float requirements, which may encourage IPO activity in the UAE
- Promotion of foreign investment into the UAE to stimulate local economy and capital markets

- Changes to the free float requirements for public JSCs. The free float levels are currently set at a minimum of 30% and a maximum of 70%, which has previously been seen as being attractive to local JSCs as it allows founder members the ability to retain a significant/controlling stake in the business post-IPO. It is not yet clear what changes will be made to the free float requirements but it is possible that these will be expanded to enable both a greater maximum level of free float and greater foreign participation in public JSCs than is currently permitted.

### **When will these changes take effect?**

It has been reported that these changes will come into effect from 1 December 2020. At the date of publishing this briefing, amendment legislation has not been made publicly available or issued in the UAE Federal Gazette. We are following these developments closely and will issue further updates as information becomes available.

### **Conclusion**

Despite reports of the CCL's foreign ownership restrictions and the FDI Law being repealed, it remains unclear what reach these changes will have in practice. In particular, the press has reported Emirate level decision making in respect of which business activities may benefit from the changes, which suggests that the removal of the current restrictions will not be a wholesale one. It may be that we see a retention of the current "Positive List" of activities (that was issued by way of Cabinet Resolution in April this year) being maintained in some form by the Emirate level Economic Departments (and the anticipated Federal Committee, mentioned above), in terms of what types of business activities will benefit from the removal of the foreign ownership restrictions.

Nevertheless, this is another positive step forward for the UAE's economic landscape and the ease of doing business in the Emirates. In particular, although the devil will be in the detail, a lifting of the foreign ownership restrictions will not only benefit LLCs but, in respect of public companies, could have a significant and positive impact on local capital markets.

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