

# WATSON FARLEY & WILLIAMS

## BRIEFING

# FOREIGN OWNERSHIP OF COMPANIES IN THE UAE AND NEW RESIDENCY RULES IS THERE A REVOLUTION ON THE HORIZON? MAY 2018

- RULER OF DUBAI AND UAE PRIME MINISTER ANNOUNCES THE INTRODUCTION OF 100% FOREIGN OWNERSHIP OF COMPANIES IN THE UAE AND TEN YEAR VISAS – WHAT DOES THIS MEAN FOR THE FUTURE OF THE UAE?



On 20 May 2018, Sheikh Mohammed Bin Rashid Al Maktoum, the Prime Minister of the United Arab Emirates and the Ruler of Dubai, announced on Twitter:

“At today’s Cabinet meeting, we decided to allow 100% foreign ownership of companies in UAE, with a ten year visa for investors, scientists, doctors, engineers, entrepreneurs and innovators. The UAE has always welcomed, and always will, innovators and business leaders.”

“This decision will be enforced by third quarter this year. Our open society, tolerant values, excellent infrastructure and flexible legislation offer the best environment for international investment and exceptional talent.”

Federal Law No.2 of 2015 (the “Commercial Companies Law”) limits the maximum participation in the share capital of a UAE registered company to 49% with a mandatory requirement for a UAE national (or a company wholly owned by UAE nationals) to hold the other 51%. The only current exemptions to this requirement are applicable to non-UAE GCC nationals for whom the licensing regulations of the UAE’s Department of Economic Development permit 100% sole ownership of companies operating in certain industries. For all other foreign investors, the only viable option to establish a wholly foreign owned corporate presence is to look towards the UAE’s various free-zones where 100% foreign ownership is permitted. The announcement made on 20 May is therefore a major potential “game changer” for foreign investors.

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“THE PLANS TO ALLOW FOREIGN OWNERSHIP OF COMPANIES REGISTERED OUTSIDE OF THE UAE’S FREE-ZONES ARE SCHEDULED TO BE IMPLEMENTED IN A NEW INVESTMENT LAW TO BE PUBLISHED IN THE THIRD QUARTER OF THIS YEAR.”

The plan to allow foreign ownership of companies registered outside of the UAE’s free-zones is expected to be implemented in a new investment law to be published in the third quarter of this year.

#### **Will the new investment law open the gates for foreign investors?**

The question of whether the new investment law will open the gates to foreign investors in the UAE will depend, of course, on its content and no doubt foreign investors will be eagerly awaiting the publication of the investment law. At this stage, it cannot be stated whether the relaxation on foreign ownership restrictions will apply across all industries. A popular view in the UAE market is that the relaxation is likely to be restricted to certain key sectors and industries which will benefit the UAE economy as a whole. We expect the UAE’s Department of Economic Development to continue to play an important role in the implementation of the law and to devise guidelines for the licensing of UAE registered companies that are wholly owned by foreign companies. It is most likely that, notwithstanding the new investment law, UAE national ownership will remain mandatory in certain sectors and industries.

It will also be interesting to see how the new investment law will work alongside current free-zone licensing rules. Given that it is beneficial to a foreign investor to trade in the UAE using a company registered under the Commercial Companies Law (given there are no territorial limits on trading within each Emirate for such a company), does the advent of the new investment law make free-zone companies irrelevant?

In our view, free-zone companies will continue to play an important role in the UAE for customs duty purposes (where imports into a free-zone are exempt from the 5% customs duty charge), applicable VAT regulations and possibly the wider question of corporation tax from which free-zone companies are exempt under current law. The establishment of the UAE’s Federal Tax Authority in 2017 now provides the infrastructure for the government to collect tax and the question arises whether the new investment law might also look at the tax treatment of companies registered outside the free-zones.

#### **A case for restructuring?**

Currently, foreign investors in the UAE who are mindful of the restrictions in the Commercial Companies Law but nevertheless wish to access the wider UAE market, will typically structure their route to market with a mixture of free-zone and “mainland” branch operations or otherwise engage with local distributors. With the advent of the new investment law, there may be a case to review these arrangements and indeed to establish new corporate structures capable of being wholly foreign owned.

For those foreign investors currently operating with a UAE national as their majority 51% shareholder, there will also be the possibility to acquire full control (where permitted by the new investment law). We are aware that foreign investors will have a scheme of arrangement (sometimes referred to as a “side agreement”) in place with UAE nationals to deal with the treatment of the 51% share capital they own. Such schemes of arrangement may include a shareholders’ agreement which incorporates an option for the foreign investor to acquire complete ownership upon a change in law permitting this. Hence, it may be time to review the underlying shareholder arrangements to see whether such rights exist and are capable of exercise upon the new investment law coming into effect. Otherwise it is likely to be

IN OUR VIEW, THE OVERWHELMING CONSENSUS IS THAT THE ANNOUNCEMENTS DEMONSTRATE THE CONTINUING PROGRESSION OF THE UAE ECONOMY AND ARE A VERY WELCOME CHANGE TO THE EASE OF DOING BUSINESS AND LIVING IN THE UAE.”

the case that foreign investors will need to negotiate exit arrangements with the UAE national.

The new investment law may also prove a welcome catalyst for M&A activity in the UAE, given that to date foreign investors may have been reluctant to participate in a market where they are unable to have full legal control of a target company.

#### Ten Year Visas

Along with the announcement of the changes to the Commercial Companies Law, it was also announced that ten year residency visas will be permitted for certain categories of investors, scientists, doctors, engineers, entrepreneurs and innovators. This is another welcome change. It will reduce some of the current bureaucracy and administrative costs associated with renewing a residency visa every two or three years. In addition, it may help to incentivise long term investment in the UAE, not least from key professionals who may wish to buy property locally and relocate their families on a longer term basis.

In our view, the overwhelming consensus is that the announcements demonstrate the continuing progression of the UAE economy and are a very welcome change to the ease of doing business and living there.

## FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.



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