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Client Alert

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100% Foreign Ownership to be Permitted in the UAE

This article is a two-part article concerning the foreign ownership restriction (the **Ownership Restriction**) which is currently in force in the United Arab Emirates (the **UAE**) and recent announcements from the Cabinet of Ministers in the UAE (the **UAE Cabinet**) to amend such restriction. The second part to this article will be issued following further expected announcements from the UAE Cabinet.

THE UAE CABINET RESOLUTION

On May 20, 2018, the UAE Cabinet issued a resolution effecting a substantial change to the Ownership Restriction, which currently prevents foreign nationals or companies from owning more than 49% of an onshore business operating in the UAE. The proposed change will potentially allow foreign nationals or companies to own up to 100% of a business operating in the UAE, without the need for a local Emirati co-investor.

THE ANTICIPATED INVESTMENT LAW

Earlier this year, the UAE Minister of Economy announced that the UAE will adopt a new investment law pursuant to which certain onshore business sectors will be exempted from the Ownership Restriction, rather than a blanket exemption for all business sectors. It was reported that the new investment law would be adopted by Q4 2018.

THE PURPOSE OF THE PROPOSED CHANGE TO THE OWNERSHIP RESTRICTION

The clear purpose of the proposed change to the Ownership Restriction is to promote foreign direct investment into the UAE. However, it is expected that there may be certain business sectors which will be excluded from this exemption. Such sectors have not yet been disclosed. We will provide further clarity on any such sectors in the second part to this article. It should also be noted that, currently, branches of foreign companies which are established onshore in the UAE must be sponsored by a local Emirati agent. It is yet to be seen whether this sponsorship requirement will be dis-applied with respect to branches or perhaps even extended to 100%

foreign owned companies, notwithstanding the proposed foreign ownership exemption.

POTENTIAL BENEFITS OF THE PROPOSED CHANGE TO THE OWNERSHIP RESTRICTION

In addition to promoting foreign direct investment into the UAE, the proposed change to the Ownership Restriction will likely provide other additional benefits including:

- transfer of know-how by foreign companies into the UAE business sector;
- better protection for foreigners with regard to their intellectual property rights;
- greater certainty for foreigners owning onshore assets in the UAE; and
- greater M&A activity in the UAE due to a potential wider pool of foreign purchasers for local UAE assets. Note that the effect of the proposed change to Ownership Restriction on publicly listed companies is yet to be determined.

Furthermore, the change will likely dispense with the need for side agreements or schemes of arrangements with local Emirati co-investors, which have become fairly typical in the UAE but which some would argue trigger anti-fronting issues in violation of UAE law. We expect that many of these existing arrangements will terminate and foreign companies will restructure their business operations in the UAE to directly benefit from the proposed new exemptions. However, care should be taken when restructuring or terminating any such arrangement to ensure that it is done in accordance with any specific contractual arrangements and in compliance with the UAE law.

Furthermore, the proposed change will bring the UAE closer to other member states of the Gulf Cooperation Council (the **GCC**), such as Saudi Arabia, which have permitted 100% foreign ownership in certain business sectors for several years. The table below compares the current foreign ownership restriction in certain member states of the GCC:

GCC member state	Foreign ownership restriction
UAE	Up to 49% ownership Up to 100% ownership in free zones
Saudi Arabia	100% ownership in certain industries (sectors excluded are oil exploration, real estate, military equipment production among others)
Kuwait	Up to 100% ownership (subject to obtaining certain approvals)
Bahrain	100% ownership possible in most sectors (excluding those on a negative list)
Oman	Up to 70% ownership (with further conditional exceptions)

There has also been some suggestion that the UAE may impose an Emiratisation requirement on the private sector in connection with changes to the Ownership Restriction, but this is yet to be seen.

IMPACT ON FREE ZONES

In recent years, the UAE has developed free zone areas which allow 100% foreign ownership but prevent foreigners from operating outside the boundaries of those free zones. With the change to the Ownership Restriction, it is expected that investors may prefer moving their operations onshore and thereby benefit from the ability to operate more widely across the UAE. Notwithstanding any change to the Ownership Restriction, free zones are expected to continue to have various benefits, for example, as tax-efficient holding company structures for investments within, or even outside of, the

UAE and from an enforcement perspective, particularly with respect to financing transactions where the enforcement of onshore security can be challenging, as compared to a recognised free zone.

The proposed change to Ownership Restriction in the UAE is certainly exciting and welcomed. We will provide a further update to the new law in the second part of this article.