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Changes to the UAE Foreign Ownership Laws

In September 2020, the UAE Cabinet of Ministers (the **Cabinet**) issued Law No. 26 of 2020 (the **Amendment**) which amended certain provisions of the UAE Companies Law No. 2 of 2015 (the **Companies Law**).

The amendments include changing the long-held restrictions on foreign ownership, which prevent foreign nationals, or companies, from owning more than 49% of an onshore business operating in the UAE (the **Ownership Restriction**).

The Amendment proposed that all business activities in the UAE are open for 100% foreign ownership except for a negative list of activities which would be determined by the relevant UAE authority. However, following recent actions from the relevant authorities in the UAE, and our discussions with the relevant authorities, it appears that the UAE has taken a slightly different approach for now. The new approach is to permit each Emirate in the UAE to determine the business activities that it would allow for 100% foreign ownership within its territory (the **Permitted Activities**).

As of 1 June 2021, the Emirates of Dubai and Abu Dhabi have published their respective Permitted Activities. Each list contains over 1000 activities that have no Ownership Restrictions. For those business activities, to which the Ownership Restriction may continue to apply (for example, certain banking and financial services activities) we expect investors will still want to carefully monitor future changes to the Permitted Activities and would be recommended to review their current, or expected, shareholder arrangements to ensure they continue to remain compliant with the Companies Law, as now amended.

PERMITTED ACTIVITIES

The nature of the Permitted Activities spans most industrial and trading business sectors, including hospitality and F&B sectors. However, certain vital business sectors have been excluded from the Permitted Activities. For example, education, defence, publication and telecommunication have not been opened for foreign ownership in Dubai or Abu Dhabi. It should also be noted that activities, that are deemed professional services, still require a



UAE national agent. Therefore, arrangements will still need to be put in place if you are considering establishing a company to provide professional services.

We understand, from the relevant authorities, that each Emirate has discretion to revise and update its list of Permitted Activities at any time. As such, the current lists of Permitted Activities may change from time to time. So, where an activity is currently subject to the Ownership Restriction, it could be moved to the Permitted List and vice versa. As such, we will monitor changes from time to time.

HIGHLY REGULATED ACTIVITIES

We understand from the relevant authorities, that highly regulated activities (such as activities regulated by the Central Bank or the Securities and Commodities Authority) including insurance services, banks, financial services and brokerage, which usually have a more stringent Ownership Restriction¹, will be excluded from the lists of Permitted Activities. We understand that, absent specific instructions from the relevant federal regulator, these activities will continue to be subject to the current limits on foreign ownership. However, close monitoring is still required.

DIFFERENCES BETWEEN EMIRATES

The fact that each Emirate has the discretion to determine which business activities are Permitted Activities, has resulted in certain key activities being open for foreign ownership only in some Emirates. For example, Abu Dhabi has included broader healthcare activities in its list of Permitted Activities such as owning and operating general, ophthalmology, paediatric and gynaecology hospitals. These activities have not been specifically included on the Permitted Activities list for Dubai. Dubai has included more general healthcare related activities which would require further discussion with the relevant authorities. Moreover, Abu Dhabi has included “*Onshore and Offshore Oil and Gas Fields and Facilities Services*” to its list of Permitted Activities whereas Dubai has not. It should be noted that this activity is required to be held by entities to be eligible to act as a supplier for certain oil and gas companies in the UAE. Based on our initial discussions, we would expect that, overtime, it would be likely that the relevant authorities in the different Emirates will make their lists more similar to each other.

EFFECT ON SIDE AGREEMENTS

If you have a business activity in the UAE and have implemented any side arrangements to mitigate the effects of the Ownership Restriction, we recommend that you look at those side arrangements closely and assess the merits of terminating them within sectors that are now on the list of Permitted Activities.

Given the substantial changes to the Ownership Restriction, we expect more emphasis and policing of the UAE Anti-Concealment Law No. 17 of 2004 (the **Anti-Concealment Law**), particularly for the highly regulated sectors (such as banking and financial services). The Anti-Concealment Law prohibits foreign investors from conducting business activities which they are not permitted to carry out in the UAE. A violation of the Anti-Concealment Law may result in a penalty of up to AED 100,000 being imposed on the persons involved and the foreign investor may also face deportation out of the UAE. If a violation is repeated, the penalty may involve imprisonment of up to 2 years.

RELEVANCE OF FREE ZONES

Free zones will still be relevant in the UAE for various reasons including (a) business activities which are not Permitted Activities; (b) the fact that certain free zone laws remain beneficial for financing and security purposes (i.e. the Dubai International Financial Centres and Abu Dhabi Global Market, each have laws and registration systems which support the granting, and enforcement, of financing and security backed commercial transactions); and (c) enforcement of key

¹ For example, the UAE Central Bank requires banks to be at least 60% locally owned.



provisions in shareholder agreements (e.g. tag and drag rights and put and call options, which are not as readily enforceable “onshore” in the UAE).

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