

21st May 2018

News Alert – UAE – Corporate – 100% Ownership of Companies

Reservations as to the Timeframe and the Scope of Application

This morning, 21 May 2018, and as expected since few months, the UAE Federal Government Cabinet, executive branch of the UAE Federation in charge, among other duties, to draft and prepare federal laws and submit them to the Federal National Council, announced a still vague decision allowing 100% ownership of UAE-based enterprises for international investors. It seems that it relates to the current obligation for foreign companies to establish UAE companies with a UAE national holding a certain percentage of the shares in the concerned company.

First, the process for actual implementation of such a decision is long. Second, the scope of application is quite uncertain.

The UAE Constitutional Process

The Cabinet is composed of the Ministers and is at the origin of most laws currently in force in the UAE but has also suggested various laws that never came into force. Indeed, the legislative process involves quite few steps as follows.

Cabinet is to make suggestions (1), then draft the legislation (2) and finally submit it (3) to the Federal National Council (the parliamentary body of the UAE – its members being elected by a college of electors). Then the Federal National Council deliberates about the suggested draft of the law and adopts it, rejects it or amends it (4). Next is the submission of such approved law to the President of the UAE who has the power to hold the draft law or submit it (5) for approval to the Supreme Council. The Supreme Council is composed of the seven Rulers of the UAE and has all authority to adopt or reject (6) an approved draft law. Once a law is enacted, in most occurrence, implementing decrees (7) are needed and are issued by the different Ministries involved.

A 100% ownership of companies in the UAE is a revolution, even if it is restricted to some fields only. It is expected to impact not only the Ministry of Economy but also the free zones, the land departments, the Ministries involved in the business activities subject of the release of the obligation of a 51%, and all the departments in charge of implementing such a change.

Hence, the path for such a decision to be enacted is at the beginning of the UAE Constitutional process but it would be incorrect to state that it is a mere announcement without legal effects. Politically, it has undoubtedly a certain importance and on an international level, the credibility of the UAE is somehow engaged.

The Cabinet has given itself until end of September 2018 to submit a detailed report to the Cabinet; such a report may include a draft law. The announcement that “The global investors' ownership of UAE-based businesses is expected to reach 100% by the end of the year” is to consider carefully. Based on earlier experience, the Federal process for adoption of such law may take up from 9 months. Considering, among others, the impacts of such a law (a) on the interests of the

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UAE nationals currently holder of 51% and on the financial benefits it procures them and indirectly the UAE economy whereby such financial benefits are very often spent and (b) on the core of the free zones' business models and their real estate interests, such a law is not expected to be passed within the usual amount of time.

Scope of Application

Second, assuming the decision would be implemented, there is very limited indication in the current announcement as to which business it will apply to. The Cabinet refers to “global investor’s ownership of UAE-based businesses”, to “investors” and “professionals”, to “specialists in medical, scientific research and technical fields, as well as for all scientists and innovators” (same wording in Arabic) and is linked to a substantially different topic, residency visas, that only concern natural persons. Considering that the word [foreign] “investor” is considered by most international institutions and legal texts as a natural or legal person located in a country A investing assets (in kind, cash, HR) in a country B and considering the context of its announcement (attracting foreign investors), such announcement would concern all business fields in the UAE and all persons. The further reference to special fields and its link to residency visa (natural person only) restricts its potential application and is therefore confusing.

It does make sense to look at the Qatar and KSA practices and legal framework as well as the latest exemption granted for instance to Apple for its retail activities in the UAE. A 100% ownership is granted exceptionally, and the process is subject of a careful review of the special importance of the business and its contribution to the vision of Qatar. In Saudi Arabia, any foreign investor can hold 100% of a company as long as the activity is not one of those mentioned on a “negative list” (which mainly relates to strategic sectors such as but not limited to media, telecom, religion or military).

It is to be noted that the topic had been raised in 2012 by the Cabinet as well when the drafting of the new UAE Federal Commercial Companies Law no. 2 of 2015 had started. The 100% ownership (of LLC) was finally only granted to UAE national who were not to partner with another person.

Last but not least, such a change of the legal system (should it happen), is expected, alike in KSA, to be accompanied by an increase of the Emiratisation obligations in the employment law.

Conclusion

To conclude, the process for such an announcement to be implemented may be quite long and is not guaranteed to materialize; also, should it materialize, there is little indication as of today regarding the business field it will apply to and under which condition such an exemption or new legal system will apply.

The purpose of this newsletter is to assist you in your communication with your head-quarters, partners or colleagues and does not constitute a legal advice since there is no legal ground, yet, to consider.

MENA LEGAL will remain attentive to the evolution of the process and keep you informed.

Thank you.

MENA LEGAL
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