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Investing in the UAE

EXECUTIVE SUMMARY

Foreign investors commonly invest in United Arab Emirates ("**UAE**") businesses by buying or subscribing for shares in limited liability companies ("**LLC**") which are locally incorporated (i.e. onshore in the UAE and not in a free-zone).

The share capital of an LLC may be 100% owned by nationals of the member states of the Gulf Cooperation Council (the "**GCC**").[1] However, if a single share is ultimately owned by a non-GCC national, then a minimum of 51% of the share capital must be held by one or more UAE national shareholders.[2] This national participation requirement may be satisfied by utilizing the services of a UAE national nominee shareholder, who is not involved in the management of the LLC nor receives profits, save for the payment of a fixed service fee.

An LLC may be managed by a foreign individual or corporate entity who need not reside in the UAE.

Other Options:

LLCs are the most flexible form of company in the UAE and therefore, tend to be the most common corporate entity used by foreign investors. Although other forms of legal entities exist within the UAE, for example branch offices of foreign companies and free-zone entities, there are reasons why they are not heavily utilized by foreign investors; consequently, we will not consider such entities further.

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[1] The members of the GCC are United Arab Emirates, Saudi Arabia, Kuwait, Bahrain, Qatar and Oman.

[2] Non-GCC persons may own up to 100% of the share capital of a company established in a free zone, however a free zone company cannot, in turn, own more than 49% of an on-shore business.

OVERVIEW OF INVESTING IN THE UAE

1. INTRODUCING AN LLC:

An "LLC" is a limited liability company which limits the liability of each shareholder to the nominal value of their shares.

2. PRINCIPAL CHARACTERISTICS OF AN LLC:

2.1 Assets, debts and obligations of the business are ring-fenced within the LLC. Therefore, once the shares have been fully paid-up, creditors cannot ordinarily pursue the shareholders for LLC debts.

2.2 Profits of the LLC may be retained or disbursed (tax-efficiently) to the shareholders, and are only susceptible to tax in the shareholder's own jurisdiction when a dividend is declared or paid. Shareholders may reduce exposure to taxation on dividends by holding their interest in an LLC via an intermediate holding company incorporated in a country operating a double taxation treaty with the UAE.

2.3 LLCs are a reasonably flexible form of entity. For example, LLCs can carry on most forms of commercial activities in the UAE, if they hold the requisite license.

2.4 LLCs can submit direct tenders to government authorities and other public bodies under federal and local procurement laws.

3. UAE PARTICIPATION:

3.1 An LLC must have a minimum of two shareholders and at least 51% of its issued shares registered must be held in the name of a UAE individual (or a company wholly owned by UAE individuals). The management of an LLC may be vested in a single manager or a board of directors, who may be either UAE nationals, foreigners or a mixture of the two.

3.1.1 Nominee LLC shareholders:

It is common practice for LLCs to feature a UAE national shareholder who agrees to not exercise the rights attached to his shares in exchange for a fee. Usually, the UAE national shareholder agrees to waive all rights to receive dividends, exercise votes in general meetings or receive capital gain on an increase in share value. Nominee services can be provided for an annual fee. This sum will vary depending upon the nominee's prominence and whether the nominee offers to refer business opportunities to the LLC.

3.1.2 Legality of nominee shareholder arrangements:

(a) In 2004, the UAE Federal Government adopted legislation, commonly referred to as, "*anti-fronting regulations*", which was aimed at prohibiting nominee arrangements. While the regulations came into force in 2009 (after much delay), the framework required to enforce them has not yet been implemented.

(b) In the UAE, it is believed that between 70-80% of all LLCs involve some element of UAE national nominee shareholding. As such, these arrangements have greatly facilitated foreign investment and have created revenue for many UAE nationals. Therefore, enforcement of the regulations would seem to be at odds with the UAE's wider economic interests.

4. RESTRICTIONS UPON LLC MANAGEMENT:

4.1 A foreign legal entity could lawfully manage a UAE-incorporated LLC under a management services agreement. Further, it is possible to entrench in the LLC's constitution that a foreign shareholder shall have the exclusive right to direct or select the LLC's management.

4.2 If the manager of the LLC is a natural person, he/she need not physically reside in the UAE either before or after the LLC is incorporated or registered. However, it will probably be easier for him/her to fulfill their management role if he/she is a resident in the UAE. As manager he/she will be entitled to a UAE work permit and residency visa, and is not required to purchase or lease accommodation in the UAE or to spend a particular period of time per month or year in the UAE.[3] Furthermore, landlords often require tenants to hold a residency visa. Therefore, it will prove to be convenient for a manager to apply for a visa if he/she intends to spend a substantial period of time in the UAE. Also, without a residency visa, a person cannot apply for basic utilities, purchase a car or sponsor family members to reside within the UAE.

5. MINIMUM CAPITAL REQUIREMENTS FOR AN LLC:

5.1 There is no minimum capital requirement for LLCs. However, the initial share capital should be enough to achieve the company's objectives at incorporation. While technically a company can be incorporated with an initial share capital as low as AED 100, it is uncertain how such an amount will be perceived by a notary. Therefore, it is advisable to hold discussions with a notary prior to notarization of the company's memorandum of association.

[3] However, a residency visa will lapse if the holder does not return to the UAE at least once every six months.

5.2 The share capital maintenance regime in the UAE is not stringent. For example, there is no requirement for the company to demonstrate its share capital remains at a particular level and there are no thin capitalization requirements. However, the board of directors of the company will be required to convene a shareholders' general meeting should company losses amount to a certain proportion of the initial capital. In such circumstances, the shareholders will need to consider whether the company ought to be wound up and dissolved to safeguard further losses; but, they are under no obligation to approve such action. Essentially, the principal restriction is that an LLC's subscribed share capital should not be returned to shareholders, other than pursuant to a formally approved capital reduction or upon liquidation.

6. REGISTRATION AND LICENSING TIMEFRAMES:

The process for incorporating a new LLC takes approximately six weeks (provided that any special licensing processes have been completed (e.g. licensing from the health authorities in relation to a medical business). The first two weeks are spent preparing and attesting the various corporate documents, prior to their submission before the UAE authorities.

7. TAXATION:

Currently no revenue, capital gains, income or withholding tax is payable in the UAE, except in certain specified sectors, such as petrochemical extraction and branches of foreign banks.

Gibson Dunn has been advising leading Middle Eastern institutions, companies, financial sponsors, sovereign wealth funds and merchant families on their global and regional transactions and disputes for more than 35 years. Please contact the lawyers named below in our Dubai office with any questions, thoughts or comments arising from this article.

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