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Cautious Optimism on 100 per cent Foreign Ownership

By Gregory Mayew | 27 May 2018

Recent media reports have suggested that 100 per cent foreign ownership of companies in the UAE will now be permitted. The reports are based on a government press release regarding a UAE Federal Cabinet (**Cabinet**) meeting held on 20 May 2018.

The press release states that the Cabinet announced changes in the system of foreign ownership in the UAE allowing global investors to own 100 per cent of companies by the end of the current year. While this is welcome news, some media reports and expert analysis have jumped the gun giving the impression that 100 per cent foreign ownership is a done deal. This news is better understood as a statement of intent and is not confirmation that the relevant legislation is already in place.

Companies incorporated in the UAE require a minimum of 51 per cent UAE ownership. This long-standing rule is set out in Article 10 of Federal Law 2 of 2015 on Commercial Companies, as amended (the **Companies Law**). The previous Companies Law (Federal Law 8 of 1984) contained a similar restriction. As an exception to this rule, 100 per cent foreign ownership is permitted in free zones.

An amendment to Article 10 of the Companies Law adopted in September of 2017 (pursuant to Federal Decree-Law 18 of 2017) stipulates that the Cabinet may adopt resolutions permitting greater than 49 per cent foreign ownership. Under the revised Article 10, the Cabinet has discretion to determine what types of companies may be majority or wholly owned by foreigners.

The idea of giving the Cabinet the power to designate companies in certain sectors as being eligible for 100 per cent foreign ownership is not new. For example, in September of 2011, following announcements by the Ministry of Economy regarding a series of forthcoming new laws, media reports circulated that a new foreign investment law giving the Cabinet the power to allow 100 per cent foreign ownership of certain companies was being drafted.

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As of this time, no foreign investment law has been enacted. Instead, the mechanism for permitting the Cabinet to designate the sectors eligible for majority and 100 per cent foreign ownership has been inserted into the Companies Law.

While 100 per cent foreign ownership would be a welcome development, it is not yet a reality. Some reports may give the impression that a Cabinet Resolution that would allow implementation of 100 per cent foreign ownership is already in place. Such reports are misleading. A committee is currently studying the issue with a view to making recommendations but the Cabinet has not yet issued any resolutions stipulating that specific types of companies are eligible for 100 per cent foreign ownership. Until this happens, 100 per cent foreign ownership will be a goal rather than a reality.

Reports about new legislation in the UAE should always be treated with caution until the actual legislation is published in the Official Gazette. In some cases, rumored legislation never materialises. In other cases it takes much longer than predicted. For example, there were many reports going back well over a decade that the new Companies Law was imminent before it was finally promulgated in 2015. In the current case, the government's press release indicates that the Cabinet has set a goal of implementing 100 per cent foreign ownership by the end of the year. Whether or not this goal will be achieved remains to be seen.

Permitting 100 per cent foreign ownership in certain sectors would be a major development. Not only have the relevant sectors not yet been identified, if and when such sectors are identified the government may get resistance from existing companies operating in these sectors. Industry resistance is a potential obstacle to implementation. The relevant business sectors must be identified and then the Cabinet must agree with the recommendations and adopt a resolution.

The recent news is cause for optimism that 100 per cent foreign ownership will eventually be implemented in certain sectors but 100 per cent foreign ownership is not yet a reality. ■

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