

The following summary is designed to set out some of the chief considerations and potential pitfalls in preparing, negotiating and settling shareholders and joint ventures in the United Arab Emirates (UAE). It is focused upon such arrangements for UAE limited liability companies formed under the Commercial Companies Law (Federal Law No. 2 of 2015) (the Companies Law).

Note that currently, all locally formed limited liability companies must, by law, be locally owned with at least 51% of the company's issued shares owned by a UAE national or a company entirely owned by one or more UAE nationals. Foreigners are accordingly restricted to owning only minority stakes in UAE limited liability companies.

## Interpretation

- The Agreement will contain certain definitions and legal "boilerplate" including regarding such matters as:
  - a. the applicable currency of the Agreement, typically UAE Dirhams (dollars in many of the free zones);
  - b. the governing law of the contract, which will typically, but may not necessarily be, UAE law;
  - c. provisions regarding waiver and amendment; and
  - d. in the case of a company which is going to be present and operating through subsidiaries, particulars regarding the organization and management of those subsidiaries.

## Business and Affairs of the Company

- Particulars concerning the management of the day-to-day business and affairs of the company should be set out in some detail and may include such matters as:
  - a. detailed descriptions of the business obligations of the parties including concerning capital contributions and ongoing duties to the company;
  - b. the constitution and identity of the manager or managers of the company (the company must have one or more managers who act as a board of managers in a manner similar to boards of directors);
  - c. a requirement for periodic meetings of the managers;
  - d. a requirement for periodic meetings of the shareholders/members of the company;
  - e. stipulated quorums for meetings of directors and shareholders;
  - f. particulars as to what the types of majorities which can carry pass general resolutions before the board (other than with respect to substantial matters), subject to the requirements of the Companies Law;

- g. an indication as to who will act as the bank of the company, the types of accounts to be maintained and particulars as to what persons are authorized to draw cheques on any of the company's bank accounts;
- h. a statement as to who will serve as the auditors of the company;
- i. the fiscal year end of the company;
- j. specific details concerning, and perhaps limitations upon, the ambit of the company's business;
- k. matters requiring special majorities of the directors or shareholders such as:
  - i. amendments to the Memorandum of Association of the company;
  - ii. the issuance or granting of options to purchase shares of the company (note that under the current Companies Law, only one class of shares is permitted);
  - iii. the redemption, purchase for cancellation or other payment by the company for any of the company's shares;
  - iv. the declaration or payment of any dividends or making any distribution, whether in cash, in stock or in specie;
  - v. the creation, assumption or liability for any borrowing or mortgage, pledge, charge, grant of security interest or other encumbrance upon any of the company's assets;
  - vi. the giving of security for or guarantee of or giving of any support in respect of, any debt, liability or obligation of any person;
  - vii. the making of any capital (or any) expenditure in excess of a stipulated agreed amount (e.g. AED500,000);
  - viii. entering into any contract, agreement or commitment out of the ordinary course of business or acquiring or establishing any additional business or making any material change in, or termination or suspension of, any material part of the company's existing business;
  - ix. the taking, holding, subscribing for or entering into any agreement to purchase or acquire shares of any company or the taking or having of any interest in a joint venture or partnership or similar undertaking;
  - x. entering into any contract, agreement or commitment with any shareholder or any associate or affiliate of any shareholder or any person controlled by an individual shareholder or with any person who does not deal at "arm's length" with any shareholder;

- x*i*. repayment of any principal outstanding on any loan made to the company by any shareholder or any associate or affiliate of any shareholder or any person controlled by an individual shareholder or any person who does not deal at arm's length with any shareholder or payment of interest upon any such loans;
  - x*ii*. making any payments or advances of any kind to any individual shareholder or the spouse or any other relative of any individual shareholder, except for salary and commission payable in the ordinary course of business in accordance with employment arrangements which have been approved by all the shareholders;
  - x*iii*. selling or otherwise disposing of, by conveyance, transfer, lease or otherwise, assets of the company as an entirety or substantially as an entirety or amalgamating or merging with or into any other corporation or applying to be continued as a corporation under the laws of any jurisdiction;
  - x*iv*. approval of the company's annual business plan (the Annual Business Plan);
  - x*v*. entering into any transaction not contemplated by the Annual Business Plan;
  - x*vi*. replacement of the manager or managers of the company;
  - x*vii*. taking or instituting any proceedings for the winding-up, reorganization or dissolution of the company; or
  - x*viii*. permitting any subsidiary of the company to do any of the matters contemplated by Clauses (i) to (xvii) above.
- The Agreement should set out particulars regarding ongoing financing requirements for the company, whether by approved annual business plan or otherwise, as well as set out the limits for the providing of funding by the shareholders.

## General Matters Relating to the Holding of Shares

- The Agreement should contain basic representations and warranties by the parties, including regarding the beneficial ownership of their shares in the capital of the company.
- There should be a general prohibition on share transfer without the consent of the other parties, subject to the terms of the Agreement.
- There may be a provision to the effect that an individual shareholder can transfer all or any shares in the capital of the company to an entity controlled by him/her subject to terms, such as prohibitions on future transfers.
- There should be a general prohibition against pledges or mortgages of shares.
- The Agreement should provide that no registration of any transfer of shares will be made unless it is made in accordance with the terms of the Agreement.
- Each of the shareholders should give a general covenant to the effect that all necessary consents and approvals and all attendances (before a Notary or applicable governmental department) to a transfer of shares permitted under the Agreement are or shall be given or made as soon as practicable in compliance with the relevant provisions of the Agreement relating to such a transfer.

## Matters Relating to the Disposition and Acquisition of Shares

- The Agreement should specify designated representatives of the shareholders entitled to make offers and receive notices with respect to share transfers and to execute documentation in connection therewith.
- The Agreement may contain a "shot-gun" buy-sell provision and set out its terms.
- The Agreement may contain rights of first refusal and set out their terms. The Commercial Companies Law does provide for preemptive rights on the sale of shares to third parties but the shareholders can augment and clarify those rights.
- The Agreement may contain "piggy-back", "tag-along" or "drag-along" rights in the event of a third-party share sale.
- The Agreement may provide that on the occurrence of certain events, a shareholder may be required to sell or to offer to sell its shares. These circumstances might consist of such things as:
  - a. the breach or continuing to breach by a shareholder of its obligations under the Agreement;
  - b. any representation or warranty of a shareholder being untrue or becoming untrue or incorrect;
  - c. the death of an individual shareholder;
  - d. the bankruptcy or insolvency of a shareholder; or
  - e. any change in voting control of a corporate shareholder.

## Valuation and Completion Procedures

Where the Agreement provides that a shareholder is required to sell its shares on the occurrence of a particular event (such as breach, death, insolvency, change of control, etc.), clear valuation methodology should be set out for the determination of a purchase price for such shares. Completion procedures such as notice periods, time limits and other closing procedures should be set out in detail so as to avoid misunderstandings at a later date.

## Restrictive Covenants

- The Agreement should provide for a requirement for shareholders to refrain from directly or indirectly competing with the business of the company.
- There should be general confidentiality covenants regarding confidential information received by the parties in their capacity as shareholders.
- It is also typical for such agreements to provide for so called non-solicitation clauses, prohibiting shareholders from soliciting for their own purposes or enticing away employees or clients of the company.

## Dispute Resolution

- There are a variety of dispute resolution mechanisms including litigation or arbitration. A reasonable choice for companies with operations in Dubai, depending upon the circumstances, would be to stipulate for arbitration in the Dubai International Arbitration Centre (DIAC) or in the DIFC-LCIA (London Court of International Arbitration) Arbitration Centre in Dubai under the DIFC-LCIA Rules.

- There are circumstances under which the parties may wish to forego the arbitration process altogether and have immediate recourse to the courts of the UAE or of another jurisdiction. In such a case, the parties should specifically contractually submit to the exclusive or non-exclusive jurisdiction of the courts, again dependent upon the circumstances.
- The Agreement may also wish to address what occurs if there is a deadlock among the parties. Deadlocks can sometimes be resolved by arbitration or, in some cases, by adjudication by an expert. Some agreements stipulate that where there is a deadlock which cannot be amicably resolved, the shareholders shall have right to put their shares to the other parties or otherwise provide for forced sale arrangements.

## Reconciliation With Constatting Documents

- Unlike the many jurisdictions, entering into a unanimous shareholders' agreement in the UAE does not bind the parties to the exclusion of the company's constating documents, its Articles of Association or Memorandum of Association, depending on the type of corporate entity involved. Under the Companies Law, where there is a discrepancy between these constating documents and the terms of a unanimous shareholders' agreement, with few exceptions, the constating documents will prevail.
- Accordingly, the Memorandum of Association of the company should be carefully reviewed to ensure that the Agreement does not contradict them in any respect. Also, the parties may consider a clause to the effect that the parties will, at the time of signing the Agreement, take all steps as are necessary to amend the company's constating documents such that they conform to the terms of the Agreement.

## General Provisions

The Agreement will contain a number of general provisions, including relating to the binding effect of the Agreement upon the parties, an indemnity by the company of its directors and shareholders for certain acts; the term of the Agreement; provisions regarding notices and delivery of the same; and similar general contractual terms.

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