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Investing in the GCC

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Investing in the UAE

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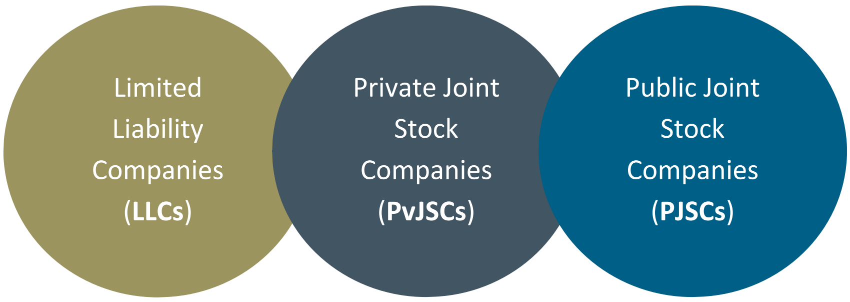
Conducting any kind of business in the UAE generally requires a foreign investor to establish a legal presence in the country. Usually, this is done in one of the following ways:

- Establishing a physical presence, either by:
  - incorporating a local entity 'onshore' or in a free zone; or
  - setting up a representative office or branch 'onshore or in a free zone.
- Carrying on business indirectly through a commercial agency relationship with local agent.

Incorporating a local entity

'Onshore' UAE companies

The most common types of 'onshore' UAE companies are:



Other corporate entities are permitted under the Commercial Companies Law 2015 (the **Companies Law**) but these are less common and are not generally used by foreign investors.

Of the above three, LLCs are the most common. They permit differential profit-sharing arrangements and, enable foreign shareholders to exert control over them.

PvJSCs and PJSCs have a lot of features in common. The main distinction is that a PvJSC cannot invite the public to subscribe for its shares, while a PJSC (unless government-owned) must invite public subscription. Businesses involving banking or insurance activities may only be conducted by PJSCs, while investment activities for third parties may be conducted by either PvJSCs or PJSCs. The foregoing activities could be conducted by companies taking a different form if they benefit from an exemption.

Investment in a company incorporated 'onshore' in the UAE presents certain difficulties for international investors however. These arise primarily out of the UAE Ownership Requirement, which is discussed in detail at page 7.

Representative and branch offices

Foreign investors may open a representative office or a branch 'onshore' or in a free zone, which may be 100% foreign owned.

A representative office is prohibited from carrying out commercial activities and as a consequence is lightly regulated. A representative office promotes the products and services of the parent company, boosts its business, facilitates commercial agreements and undertakes administrative tasks on its parent company's behalf. A branch office, whilst not an independent legal entity, may carry out a wider range of activities than a representative office. These are generally limited to specified activities or the supply of professional services in the emirate in which it is established, and must be the same activities as those carried out by the parent company. Both representative and branch offices require a licence and, in the case of 'onshore' branches or representative offices,, must be sponsored by a UAE national or by a UAE company wholly owned by UAE nationals, normally in return for an annual fee.

A quick comparison of the three types of 'onshore' UAE company and of 'onshore' representative and branch offices is set out below.

Comparison of 'onshore' UAE entities

	Representative Office	Branch office	LLC	PvJSC	PJSC
Ownership	100% foreign ownership permitted	100% foreign ownership permitted	Up to 49% foreign ownership – with at least 51% being owned by a UAE national or a UAE company wholly owned by UAE nationals	Up to 49% foreign ownership – with at least 51% being owned by a UAE national or a UAE company wholly owned by UAE nationals	Up to 49% foreign ownership – with at least 51% being owned by a UAE national or a UAE company wholly owned by UAE nationals
Management	Not applicable	Not applicable	One or more managers. Supervisory board if more than seven shareholders	Board must have an odd number of no less than three and no more than 11. Majority of board and chairman must be UAE nationals	Board must have an odd number of no less than three and no more than 11. Majority of board and chairman must be UAE nationals
Sponsor	Local service agent required, must be a UAE national	Local service agent required, must be a UAE national	Not applicable	Not applicable	Not applicable
Capital paid-up	Not applicable	Not applicable	Determined on a case-by-case basis	AED5m/100% paid up. PvJSCs incorporated with a lower share capital prior to **the** Companies Law coming into force are exempt	AED30m/25% paid up
Shareholders	Not applicable	Not applicable	Two to 50; as an exception a UAE natural or juridical person can incorporate a 'single person' LLC	Two to 200; as an exception one UAE juridical person can incorporate a PvJSC	Minimum of five (no maximum)
Founder Lock-in	Not applicable	Not applicable	None	Founders locked in for one year	Founders locked in for two years
Regulator	Ministry of Economy/ Economic Department in the relevant emirate (the **DED**)	Ministry of Economy/DED	Ministry of Economy/DED	Ministry of Economy/DED	Ministry of Economy/DED/ Emirates Securities and Commodities Authority (**SCA**)/ Central Bank (for insurers, banks and financial institutions)
Incorporation Timing (approx.)	Four to six weeks	Four to six weeks	Four to six weeks	Three to five months	Three to six months

Free zones

There are over 45 free zones in the UAE, established by the individual emirates to attract investment. Among the most popular are the Dubai International Financial Centre (the **DIFC**), the Abu Dhabi Global Market (the **ADGM**), Jebel Ali Free Zone, Dubai Development Authority (formerly known as Dubai Creative Clusters or TECOM) and the Dubai Multi Commodities Centre. Free zones are jurisdictions separate from the remainder of the UAE, with their own commercial and corporate laws, and which are only subject to UAE federal law and the relevant emirate's laws to a limited extent. Each free zone has its own regulatory authority and its own licensing regime and is able independently to incorporate and license companies. Free zones are generally industry-specific, catering, for example, to the financial services industry, the media and telecoms industry or the health care industry, although in practice businesses unrelated to, or which support, these sectors may be incorporated there.

Free zones have many advantages for foreign investors, the most significant of which is the fact that the UAE Ownership Requirement does not apply to free zones. The ownership of free zone entities is not subject to any UAE ownership restrictions or requirements and they may therefore be wholly owned by foreign investors. Investors are also guaranteed tax-free status for a fixed period, exemption from import duties (as they are considered to be 'offshore' for customs purposes) and no restrictions on capital and profit repatriation.

Branches of foreign companies can also be established in the free zones, and, as with onshore branches, these are an extension of the parent company without their own legal identity.

The main limitation when establishing in a free zone is the restriction in the free zone company's licence preventing the holder from operating and trading in the UAE outside that free zone. As these companies (and branches) are considered 'offshore' for the purposes of general UAE laws, the UAE authorities do not permit them to trade within the rest of the UAE (but see page 11 in relation to the DIFC). The Companies Law indicates the possibility for a free zone company to operate 'onshore' if the particular free zone's legislation permits it to do so, but unless and until procedures dealing with the registration of free zone companies are addressed by way of cabinet resolution, this is not permitted. In any case, establishing a presence in a free zone can be a useful option for establishing a regional trading hub or headquarters.

Incorporation timings

Experience shows that establishing an 'onshore' representative office or a branch office, or incorporating an 'onshore' LLC (from the date of the initial application and assuming all documentation has been provided) will be approximately four to six weeks. The process for on 'onshore' joint stock company, whether public or private, will generally be much longer, while for a free zone entity (other than a regulated entity) it is likely that the incorporation process will be shorter, typically taking around four weeks.

Commercial agencies and distributorship arrangements

Foreign individuals and companies are prohibited from the practice of commercial agency in the UAE. As a result, it is common to enter into agency or distribution agreements (the relevant law in the UAE does not distinguish between the two) with UAE nationals when foreign companies want to market or sell products within the UAE.

Such agreements, when registered with the Ministry of Economy, ensure that the local partner is afforded the benefit of exclusivity, so that no other party can import the goods the subject of the agreement into the UAE. The local partner is entitled to commission on sales he makes himself or on those made by the foreign principal and any third parties. Generally, such agreements will be renewed automatically. In the event of a dispute, the courts have, on numerous occasions, taken a stance very much in favour of the UAE partner. These arrangements can only be terminated unilaterally by the principal if there are 'material reasons'. Terminating these arrangements is therefore very difficult and potentially very costly and international investors should take steps to ensure that any agency or distribution arrangements fall outside the scope of the relevant law. Agency arrangements not registered with the Ministry of Economy do not contain the restrictions outlined above and have no formal requirements to be valid. As with the local shareholder in an LLC, the local partner should be chosen carefully as the relationship will be very important.

Licensing

Carrying on any kind of business in the UAE (whether as an individual, a partnership, a company or a branch, onshore or in a free zone) will require a licence. A licence holder can only carry on the activities set out in the licence. As a general rule, licences are granted by the DED in the relevant emirate, and in some cases, by the ministry or government body with jurisdiction over the type of business conducted by the licence. Each licence is emirate-specific, such that a separate licence is required for each emirate, and is usually renewable annually. For free zone companies, the licence will be issued by the relevant free zone authority.

Licences for certain activities, eg, those relating to oil, will only be granted to UAE nationals or to companies wholly owned by UAE nationals. The licensing regime is complex, however, and advice should always be sought as to the specific licences required for any proposed activity and which authorities grant those licences.

Foreign ownership restrictions - shares

The Companies Law sets out the long-standing restriction on foreign companies owning more than 49% of an 'onshore' company established in the UAE. Under the Companies Law, 51% of the issued share capital of a company established in the UAE must be held by one or more UAE nationals, either an individual or a UAE company (the **UAE Ownership Requirement**). If the 51% is held by a UAE company, that company in turn must be wholly owned by UAE nationals (the authorities will 'look through' to determine the identity of the ultimate shareholder). This is the main hurdle for a foreign company seeking to establish an 'onshore' corporate presence in the UAE.

In some sectors, the minimum UAE national ownership percentage is higher, eg, a 60% minimum UAE national shareholding is required in the case of a bank, and a 70% minimum UAE national shareholding in the case of insurers. Companies incorporated in free zones in the UAE are not generally considered to be UAE nationals and, accordingly, will only be entitled to hold 49% of the shares in an LLC, for example (although refer to the discussion at page 9 relating to investment through an entity incorporated in the DIFC or the ADGM (together, **FFZ Entities**)).

Foreign ownership restrictions- real estate

Whilst UAE federal law does not state that foreigners cannot own real estate in the UAE, long established practice restricts real estate ownership to UAE nationals and, to a lesser extent, GCC nationals. The restrictions apply equally to foreign individuals and companies which are foreign owned or contain foreign ownership, even if incorporated in the UAE. In recent years the restrictions on foreign ownership have been reduced through the introduction of new legislation identifying specific zones where exceptions apply. Each emirate has its own legislation and, whilst similar, there are differences in how the legislation applies in the different emirates. The gradual reduction in these restrictions has coincided with the development of an increasingly sophisticated legal framework across the UAE (particularly in Dubai and Abu Dhabi) which has been introduced with the intention of stimulating the local real estate market and protecting the interests of purchasers and owners of real estate.

Mitigating the impact of the UAE Ownership Requirement

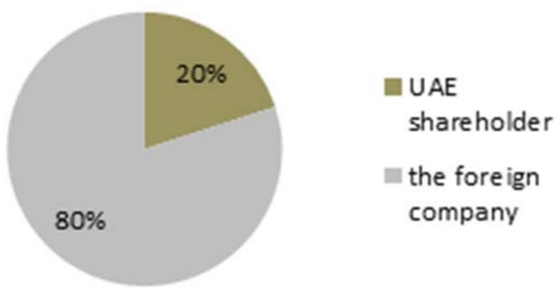
Where 49% of the shares in an onshore LLC are owned by a foreign entity and 51% are owned by a local shareholder, there are various contractual arrangements which can be put in place to protect the foreign shareholder and effectively confer 100% of the economic benefit in, and 100% of the control over, the LLC on the foreign shareholder.

The specific nature of the corporate structures may vary, but we believe that a significant proportion of foreign-owned companies operating in the UAE employ such arrangements. The details of the possible contractual arrangements are set out in detail below. This is not an exhaustive list; additional layers can be added depending on individual requirements.

Memorandum of association

The LLC's constitutional document, the memorandum of association (the **MOA**), is amended on a change of ownership, to reflect the new shareholders. The foreign company should request the following additional changes with a view to minimising the effect of the UAE Ownership Requirement.

The percentage of profit allocation in the MOA should be amended. The profits and losses of an LLC do not have to be allocated according to the percentage shareholding in the LLC; different allocations can be specified in the MOA. The MOA can provide a distribution of profits and losses in the following proportions:



In our experience, notaries public and the DED have accepted such an allocation but will not accept an MOA where the local shareholder is entitled to less than 20% of the profits of the LLC.

The foreign company should be given the right to appoint a manager for the day-to-day operations and management of the LLC (a power of attorney will be granted by the shareholders of the LLC to the general manager, allowing the manager to manage the day to day issues of the LLC).

The foreign company can also have the right to appoint all the directors.

The percentage of shareholder votes required to approve all resolutions should be increased to 100%. Unanimous approval will enable the foreign company to have a veto right on all matters presented before the shareholders and allow it negative control. This is subject to the notary accepting this change in the MOA (which they typically do accept).

Management agreement

The foreign company and the LLC should enter into a management agreement in which the LLC appoints the foreign company as its sole and exclusive manager, with full powers to control, manage and direct the affairs of the LLC. The management agreement should provide that 60% of the net profits of the LLC (before distribution) are paid to the foreign company as a management fee in consideration for it providing management services to the LLC. We believe that, in the event of a dispute, if the management fee is more than 60% of the profits, it may not be enforceable.

The management fee of 60% would be extracted prior to profit distribution to the LLC shareholders. The remaining 40% of the profits would then be distributed to the shareholders in accordance with the terms of the MOA: 80% of the remaining 40% (ie, 32%), would be payable to the foreign company; 20% of the 40% profits (ie, 8%), would under the terms of the MOA, be payable to the local shareholder.

Loan agreement

The foreign company should enter into a loan agreement with the local shareholder in respect of the local shareholder's acquisition of the 51% stake in the LLC. The foreign company will fund the acquisition of all the shares in the LLC, thereby effectively providing the local shareholder with a loan equating to 51% of the consideration for the acquisition of the LLC. The terms of the loan agreement will entitle the foreign company to: (i) receive interest payments equal to the local shareholder's dividend entitlements (ie, 8%); and (ii) dictate the local shareholder's terms of ownership of the shares; for example, the local shareholder shall not transfer its shares in the LLC without the foreign company's approval and the local shareholder will transfer the shares in the LLC to a third party as and when the foreign company requires.

Irrevocable payment instructions

The local shareholder should irrevocably instruct the LLC that any amounts due to the local shareholder as profits or distributions should be paid to the foreign company, for the duration of the LLC.

General manager's power of attorney

The LLC should appoint the foreign company as its general manager. This power of attorney will enable the foreign company to do all acts and things and execute all documents, necessary or convenient for carrying on the business of the LLC.

Power of attorney in relation to the local shareholder's shares

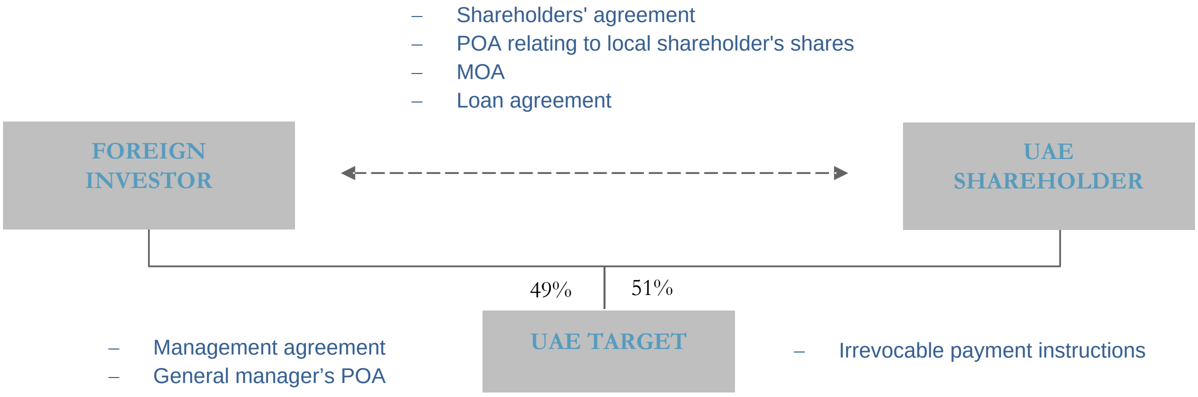
The local shareholder should give the foreign company a power of attorney enabling it to deal with the local shareholder's shares in the LLC as the foreign company thinks fit. This may include transferring the shares and voting and exercising the rights attaching to the shares.

Powers of attorney may not, under UAE law, be irrevocable and so may technically be revoked at any time by the local shareholder. It is possible to include provisions in the shareholders' agreement that these powers of attorney will be maintained however.

Shareholders' agreement

A shareholders' agreement should be entered into between the foreign company and the local shareholder which sets out how the LLC will be run. Along with customary terms regulating the relationship between the shareholders, the shareholders' agreement should contain provisions allowing the foreign company to appoint all directors to the board of the LLC and otherwise giving all control in the running of the LLC to the foreign company. The shareholders' agreement would also commonly contain a provision obliging the local shareholder to transfer the maximum possible numbers of its shares in the LLC to the foreign company, should the foreign ownership restrictions become more permissive.

The diagram below shows the various agreements that should be entered into and between whom:



Investment through a DIFC or ADGM entity

UAE federal law allows a FFZ Entity to be recognised and treated as a UAE entity (for the purposes of holding a 51% stake in a UAE company), provided that the FFZ Entity is itself wholly-owned by UAE nationals. Accordingly, a FFZ Entity may, in principle, hold 51% of the shares in a Dubai LLC with the foreign company limited to holding 49% of the issued share capital in the Dubai LLC.

The key advantage of this structure is that the DIFC and ADGM recognise trust arrangements and so shares held on trust by the UAE shareholder in the FFZ Entity for the benefit of the foreign company are more likely to be enforceable than any trust arrangement put in place at the UAE company level. In practice however, there may be restrictions on the ability to establish such a company, and the rules and practices of the DIFC and the ADGM may differ on this point. The authorities may also be reluctant to register such a company, meaning the ability to do so would have to be tested on a case by case basis.

Enforcing the UAE Ownership Requirement

Commercial Concealment Law

In connection with the UAE Ownership Requirement, the UAE has adopted Federal Law No.17 of 2004 (the Concealment Law), which provides that it is not permissible to allow a non-UAE national, whether using the name of another individual or through any other method, to practise any economic or professional activity that is not permissible for him to practise in accordance with the law and decrees of the UAE.

The Concealment Law was scheduled to come into effect in November 2007 but was suspended by cabinet resolution until November 2009 – with a subsequent suspension until September 2011. Foreign-owned companies in the UAE which employ corporate structures similar to those outlined above may now technically be in breach of compliance with the requirements of the Concealment Law. However as far as we are aware at this time, the provisions of the law have not been enforced against any UAE company, nor are we aware of such arrangements having been unilaterally or in any other manner challenged, by the Government of the UAE or any individual emirate. Nevertheless, the UAE Federal Government has the ability to enforce the Concealment Law at any time in the future. Were it to do so, there is no certainty as to the approach that the UAE courts would take in relation to the application of the Concealment Law or other laws or polices to the types of arrangement described above.

General

There could be a number of adverse implications for the foreign company if its ownership structure were to be successfully challenged or an enforcement action initiated, including the shareholders' agreements, the management agreements, any irrevocable payment instructions and the loan agreements which are in place being deemed void. This could result in the loss of the foreign company's sole appointment to manage the LLC, the loss of the foreign company's right to be appointed as a proxy for the LLC during shareholders' meetings of the LLC and the loss of the foreign company's 100% economic ownership in the LLC. In addition, the DED in the relevant emirate has wide discretion in relation to the company's operating licences, and a successful challenge or enforcement action against the foreign company's ownership structure might lead the relevant DED to exercise its discretion to suspend the company's operating licences (which would require the LLC to suspend its operations).

The introduction of VAT in the UAE will also result in a company's books being made available to the authorities in a way in which they had not been previously.

Having said that, such shareholder structures are frequently used in the UAE where a foreign shareholder wants to continue to retain all or a substantial portion of the economic returns of a UAE company. Although the UAE does not have a system of binding judicial precedent, a successful challenge to the shareholder arrangements under the Concealment Law, for example, would put many similar profit-sharing arrangements between shareholders in the UAE at risk of being deemed void, which may have a material adverse effect on the UAE economy. In any event, the persons that could possibly have standing to challenge the shareholding arrangements or the irrevocable payment instruction for a violation of the Concealment Law are relatively low in number and would most likely be limited to the relevant authorities (if they believe a crime has been committed under the Concealment Law) and the UAE shareholder.

Identity of nominee UAE shareholder

The foreign company should consider carefully the identity of the UAE shareholder. While arrangements will be put in place to minimise the effect of the UAE shareholder's ownership, a good relationship and the avoidance of potential disputes is key.

There are a number of professional service providers in the UAE which offer local sponsor services, via a corporate shareholder model. In the absence of other relationships, foreign investors would be well advised to consider engaging one of these.

The Foreign Direct Investment Law

On 1 November 2018, the UAE enacted the Foreign Direct Investment Law (Federal Law No.19 of 2018) (the **FDI Law**) which seeks to put in place a framework for the relaxation of the UAE Ownership Requirement for certain sectors and activities. The FDI Law states that its objectives are, amongst other things, to enhance the investment environment in the UAE and to attract and encourage foreign direct investment.

The FDI Law provides for the UAE Cabinet to determine in due course, and from time to time, a list of sectors and activities (known as the **Positive List**), where it will be possible for a company which is operating in any of those sectors or carrying out any of those activities to apply to the relevant regulator (once established) for a licence that permits the company to have foreign ownership of between 49% and 100% (subject to meeting certain conditions which will be defined in due course).

On 2 July 2019, the UAE Cabinet announced that it has approved the sectors and economic activities in which up to 100% foreign ownership will be possible under the FDI Law. Following the Cabinet's approval of the sectors, the first Positive List has been issued by the Ministry of Economy. The cabinet announcement refers to 122 economic activities and the Positive List groups these into three broad sectors: agriculture, industry and services, which will include:

• Renewable energy • Space • Agriculture • Manufacturing • Transport and storage	• Hospitality and food services • Information and communications • Professional, scientific and technical activities • Insurance services	• Administrative services • Support services • Education services • Healthcare • Art and entertainment

The actual amount of foreign ownership permitted in each activity is not set out in the Positive List. It will be left up to each emirate's government to determine, introducing the possibility of differing levels of foreign ownership in the same sectors in different emirates.

The DED in Dubai (although not in any other emirates) has begun to consider applications made by foreign companies under the FDI Law and registrations and conversions have already been granted.

The FDI Law lists a number of sectors and activities which will not be included in the Positive List, the so-called Negative List.

The Negative List includes:

- Petroleum exploration and product
- Fisheries
- Investigation, security, military sectors and manufacturing of weaponry, explosives, military equipment and associated devices and uniforms
- Postal telecommunications and audio-visual services
- Banking and financing activities, payments and funds management systems
- Land and air transport services
- Insurance services
- Publishing and printing services
- Hajj and Umrah services
- Commercial agencies services
- Labour and servant services, and recruitment of personnel
- Medical retail businesses (eg, privately owned pharmacies)
- Electricity and water services
- Poison control centres, blood banks and quarantines

Therefore, whilst the proposed licensing regime under the FDI Law is a positive signal of intent by the UAE authorities to relax the foreign ownership restrictions, it will not be open to all foreign investors.

At this stage, it remains unclear how the FDI Law will be applied in practice and it is therefore not possible to be certain that its enactment will not lead to either or both of the UAE federal government and the UAE Courts being more inclined to enforce the Concealment Law or other foreign ownership related laws or policies against companies not licensed under the FDI Law to have more than 49% foreign ownership.

The DIFC

The DIFC, established in 2004, is a federal financial free zone and has its own body of civil and commercial laws, including contract, corporate, arbitration and employment law and its own code of law governing financial services regulation. The laws in the DIFC are consistent with, and based as far as possible on, English common law. The DIFC has its own independent court system, which has jurisdiction over all civil and commercial disputes arising within the DIFC, or relating to bodies and companies registered in the DIFC. Further detail on dispute resolution in the DIFC is set out at page 14.

The DIFC has its own stock exchange, NASDAQ Dubai, which is regulated by the Dubai Financial Services Authority.

Non-regulated DIFC companies are able to operate onshore (as a branch of a foreign company), provided they have a licence issued by the DED. Their activities are limited to those of a branch however.

Unless they qualify for an exemption, entities registered in the DIFC must maintain a register of their ultimate beneficial owners (**UBO**s), being those who own or control at least 25% of the company. UBO details must be provided to the DIFC registrar, but these details are not required to be made public.

The Abu Dhabi Global Market

The ADGM, a financial free zone in Abu Dhabi regulated by the Financial Services Regulatory Authority, opened for business in October 2015. As with the DIFC, the ADGM is exempt from the application of UAE federal and Abu Dhabi civil and commercial laws (other than penal laws) and has its own independent set of regulations as well as its own independent court system. English common law and principles of equity are directly applicable in the ADGM and its companies legislation is based on the UK Companies Act 2006.

Documents for use in the ADGM prepared in any language other than English must be translated in to English.

The AGDM has also implemented regulations on beneficial ownership and control which require ADGM companies to maintain accurate and up to date information on beneficial ownership and control.

The ADGM is the only jurisdiction in the UAE in which it is possible to establish a shelf company.

Regulation of public transactions

Prior to the SCA releasing Resolution No. (18/RM) of 2017 (the **Takeover Regulations**) in 2017, there was no formal, codified regime relating to offers for public companies. The process involved consulting the SCA at an early stage to agree the manner and procedure of an offer on a case by case basis. The SCA continues to regulate takeovers and mergers of public companies, but the process and timetable under the Takeover Regulations is much more prescribed and expected to bring a higher degree of certainty to public deals.

The Takeover Regulations apply to PJSCs listed on the Dubai Financial Market or the Abu Dhabi Securities Exchange, although certain exemptions apply, at the discretion of the SCA. Such exemptions include: acquisitions made by the government; restructurings of companies in financial difficulty; acquisitions made by a strategic partner (a concept introduced by the Companies Law); and the conversion into shares of convertible bonds.

The Takeover Regulations contemplate: (i) mandatory offers, with a mandatory tender offer threshold of 30% (plus one share) of the PJSC's shares; (ii) voluntary offers; and (iii) partial offers. They contain squeeze out procedures allowing a bidder with 90% of the shares to purchase minority shareholdings, and sell-out procedures allowing minority shareholders with a minimum 3% shareholding to apply to the bidder for the purposes of selling their shares.

Equality of treatment for shareholders and competing bidders is required, and there are strict obligations in relation to announcements, confidentiality, disclosure and dealing.

The Disclosure and Transparency Regulations (No. 3 of 2000), as amended, require notification to be made to the SCA if a person or a corporate entity or its affiliates (including parent companies, subsidiaries or other companies belonging to the same group) holds, in aggregate, 5% of the shares in a listed PJSC. Additional disclosures are required with any 1% increase or decrease once the 5% threshold has been crossed. In addition, prior SCA approval is required to obtain 30% or more of the shares in a listed PJSC.

Many listed companies in the UAE are still under the control of a single shareholder (or a single shareholder group), often a government entity or a family conglomerate, which will of necessity play an important role in any proposed takeover and potentially require bidder and target interests to be aligned. The UAE Ownership Restriction is also likely to remain an important hindrance on the ability to obtain control, and a target's articles of association may also contain additional restrictions.

Additional rules apply to banks and financial institutions, which are separately regulated by the UAE Central Bank, and to insurers.

Unlike in the Financial Free Zones, there are no statutory rules in mainland UAE which enable an issuer to require shareholders and other persons interested in the issuer's securities to disclose the extent and nature of their interest.

Takeovers of companies listed on NASDAQ Dubai are subject to the Takeover Rules Module, which has significant similarities to the UK Takeover Code.

Competition Law

Federal Law No. 4 of 2012 (the **Competition Law**) was passed in the UAE in October 2012, with the aim of protecting and enhancing competition, and tackling monopolistic practices. The law prohibits activity which constitutes an abuse of a dominant market position, restrictive agreements (above a certain *de minimis* level) and regulates any economic activity (including M&A transactions) which will result in a dominant market position.

There are some fairly broad exceptions to the law. Its provisions do not apply to:

Federal and local government entities

(or those acting under their authority or controlled at least 50% by them)

Small and medium sized enterprises (SMEs)

which are divided into: services; trade and manufacturing. In the services and trade sectors, an enterprise will be considered to be an SME if its revenues are less than AED250m per year and it has 51-200 employees. The thresholds are higher for the manufacturing sector: revenues of AED250m per year or more and between 101-250 employees. The Competition Law does not state whether all parties have to be SMEs for the exemption to apply, or whether it is sufficient for one party to qualify.

Enterprises operating in certain sectors

including telecommunications, financial services, petroleum and gas, the production and distribution of pharmaceuticals, land, sea and air transport, sanitation and waste disposal services. Cultural activities and the distribution of water and electricity are also exempt. These sectors are likely to be subject to sector-specific regulation.

The cabinet issued the final implementing regulations of the Competition Law in October 2014. The regulations set out procedures for obtaining an exemption from the rules applicable to restrictive agreements or practices that abuse a dominant position, approvals of economic concentration and procedures for carrying out investigations in relation to complaints made under the Competition Law.

Cabinet resolutions issued in 2016 provided clarification in relation to the relevant percentages and thresholds under the Competition Law and completed the legislative picture. While establishments with a dominant position are prohibited from abusing their dominance to restrict competition, an establishment will only be deemed to be dominant if its share of the relevant market exceeds 40% of the total transactions in the relevant market. Restrictive agreements will be deemed to be of 'weak impact', and therefore not within the scope of the prohibition on restrictive agreements if the total share of the parties does not exceed 10% of the overall transactions in the relevant market. This is broadly analogous to the EU concept of *de minimis* agreements. Economic concentrations will only trigger the requirement to obtain approval from the authorities where the market share of the parties exceeds 40% of the total transactions undertaken in the relevant market.

The competent authority is the Competition Department of the Ministry of Economy, supported by the Competition Committee. The Competition Committee is now fully operational, and is accepting merger applications. Entities looking to invest in the UAE or whose activities may affect competition in the UAE should therefore be prepared to undertake the analysis on whether a notification to the Competition Committee is necessary.

Data Protection

Whilst there is no comprehensive federal data protection law in the UAE, provisions relating to confidentiality, privacy and the disclosure of secrets are found in various different pieces of legislation, both at federal and emirate level. Violations of privacy and the disclosure of confidential information are punishable under criminal law in the UAE. An individual's right to privacy is also enshrined in the UAE Constitution.

There have been recent developments in relation to data protection in the UAE however. A new federal Health Data Law (Law No. 2 of 2019) regulates the use of electronic data relating to healthcare and is the first federal law specifically to address specific data protection obligations. New regulations on the Internet of Things issued in 2019 also contain provisions which are relevant for data protection purposes and use terminology familiar from the data protection regime in the European Union.

The Cyber Crimes Law (Federal Law No. 5 of 2012) deals with the abuse and misuse of electronic information, addressing fraud, hacking and identity theft as well as instances where access to an electronic information system, website or computer network is gained without authorisation. The unauthorised disclosure of information obtained by such means is also illegal.

Certain free zones do have specific data protection legislation. The DIFC and the ADGM's data protection laws impose obligations also modelled on the European Union's data protection regime (albeit not updated to take account of the 2018 General Data Protection Regulation). Dubai Healthcare City has similar legislation, relating to the collection and use of data relating to healthcare.

Intellectual Property

There are five types of intellectual property (**IP**) recognised in the UAE:

- **Trademarks**
- **Copyright**
- **Patents**
- **Designs**
- **Confidential Information**

Specific federal laws exist in relation to: trademarks (Law No.37 of 1992, as amended by Law No.8 of 2002); copyright (Law No.7 of 2002); and patents and designs (Law No.17 of 2002). Confidential information is protected under general criminal, civil and employment laws, with protection for know how specifically provided under Law. No 17 of 2002.

The UAE is subject to the GCC Patent Law, which provides a method for obtaining patent protection throughout the GCC, and is also party to a number of international IP treaties, including the World Trade Organisation's TRIPS Agreement and the World Intellectual Property Organisation's Rome, Paris and Berne Conventions.

The Ministry of Economy maintains the registers of IP rights at a UAE level. In order for owners of IP rights to establish claims against alleged violators and prevent third parties from registering the same or similar IP, it is advisable to establish rights over such IP by way of registration in the UAE. This would also make it easier to assert rights over the relevant IP in any claims brought before the UAE courts.

Taxation

Traditionally an environment of no or low taxation, on 1 January 2018, the UAE implemented VAT at a rate of 5%. VAT is applicable on most goods and services. VAT also applies in most free zones, but certain free zones are 'designated' for VAT purposes, meaning they are exempt. This is the case in JAFZA and the free zone of Khalifa Port in Abu Dhabi for instance.

There are no personal income or capital taxes in the UAE, other than for companies operating in the hydrocarbons sector and branches of foreign banks. There are no foreign exchange controls or restrictions on the repatriation of capital and profit transfer.

Dispute resolution and enforcement

There are a number of different methods available for dispute resolution in the UAE, including 'onshore' litigation in local courts and 'offshore' litigation in the DIFC or the ADGM's juridically independent court systems. The UAE also provides a number of available options for arbitration, with 'onshore' and 'offshore' arbitral institutions, seats and numerous arbitral institutions.

Litigation in the UAE, the DIFC and the ADGM

The UAE is a civil law jurisdiction and, with the exception of Dubai and Ras Al Khaimah, all the Emirates participate in the UAE federal court system.

The DIFC court has jurisdiction over all civil and commercial disputes arising out of, or relating to, a contract that is concluded or performed within the DIFC, or which is supposed to be performed in the DIFC, and all civil and commercial disputes arising out of, or relating to, any incident or transaction which has been wholly or partly performed within the DIFC and which is related to DIFC activities. In addition, parties based outside the DIFC may agree in writing to voluntarily 'opt in' to the jurisdiction of the DIFC court, regardless of whether they have any connection to the DIFC.

Similarly, the ADGM court has jurisdiction over all civil and commercial disputes arising out of, or relating to, a contract or a transaction conducted in whole or in part in the ADGM, or arising out of, or relating to, an incident that occurred in the ADGM. As with the DIFC, it is possible to 'opt in' to the jurisdiction of the ADGM courts.

Both the DIFC and ADGM function as independent common law jurisdictions. DIFC law is similar to English law, and English law is directly applicable in the ADGM, which means that a number of English laws (including the Supply of Goods (Implied Terms) Act 1973 and the Unfair Contract Terms Act 1977) are directly incorporated into ADGM law.

Proceedings in the DIFC and ADGM courts are conducted in English. In addition, both the DIFC and ADGM courts have the power to order summary judgment and injunctions and to impose costs sanctions, none of which are generally available in the 'onshore' UAE courts.

With its panel of experienced international judges, the DIFC courts are often recommended over local courts for the litigation of complex business disputes involving international parties. As the ADGM court is newly established, it is untested at present, but it is expected that it will operate in a similar way to the DIFC courts.

Enforcing UAE court judgments

DIFC court judgments are directly enforceable 'onshore' in Dubai, provided that the DIFC court has certified those judgments as final. Importantly, the Dubai courts do not have the jurisdiction to review the merits of a DIFC court judgment, which streamlines the process of enforcement and reduces the risk of a party re-litigating the dispute during enforcement proceedings. 'Onshore' Dubai court judgments can also be enforced by the DIFC court without any review of the underlying merits of the dispute. DIFC court judgments can be enforced in the UAE's other emirates by a 'deputisation' or 'referral' process via a Dubai execution judge.

'Onshore' Dubai court judgments are enforceable in the rest of the UAE. Local UAE court judgments are enforceable throughout the GCC pursuant to the GCC Convention and judgments are also enforceable outside the GCC through the Riyadh Convention or via bilateral judicial cooperation treaties.

ADGM court judgments are directly enforceable in 'onshore' Abu Dhabi pursuant to a Memorandum of Understanding entered into between the ADGM courts and the Abu Dhabi Judicial Department (the **MoU**). The MoU provides that ADGM court judgments should be enforced by the 'onshore' Abu Dhabi courts, and that 'onshore' Abu Dhabi court judgments should be enforced by the ADGM courts, without any review of the underlying merits of the dispute.

ADGM court judgments that have been enforced by the 'onshore' Abu Dhabi courts are enforceable in other Emirates and more widely in the GCC in the same way that 'onshore' UAE court judgments are enforced (see above).

Arbitration in the UAE

International investors will often prefer to resolve commercial disputes through arbitration proceedings. The advantages of arbitration over litigation include the enforceable nature of the awards and the flexibility afforded to the parties to tailor the proceedings to their particular dispute.

For arbitrations seated 'onshore' in the UAE, the procedural law governing the arbitration proceedings is Federal Law No. 6 of 2018 (the **Arbitration Law**). For arbitrations seated 'offshore' in the DIFC, the DIFC's Arbitration Law will apply, and for arbitrations seated 'offshore' in the ADGM, the ADGM's Arbitration Regulations will apply.

Since 2008, the DIFC has had an institutional arbitration centre in partnership with the LCIA, the DIFC-LCIA Arbitration Centre.

The ICC has recently opened a branch in the ADGM. The branch accepts registration of arbitration cases under the ICC Rules.

Enforcement of arbitral awards within the UAE

'Onshore' arbitral awards are enforceable by the 'onshore' UAE courts pursuant to the Arbitration Law. The Arbitration Law contains a number of provisions which simplify the enforcement procedure and reduce the scope for a number of challenges that were previously very common in the UAE.

'Offshore' arbitral awards with a DIFC seat, however, can be converted into DIFC court judgments that are directly enforceable in Dubai. As with the enforcement of all DIFC court judgments, the Dubai court has no ability to review the merits of the underlying dispute.

'Offshore' arbitral awards with an ADGM seat are enforceable under the MoU which allows reciprocal enforcement of arbitral awards in Abu Dhabi (once the award has been ratified or recognised by the 'onshore' Abu Dhabi courts or ADGM courts) without re-examination of the merits of the dispute.

Foreign arbitral awards (ie, with seats outside the UAE) are enforceable in onshore UAE pursuant to the New York Convention, to which the UAE became a signatory in 2006. The New York Convention provides only limited grounds for objecting to the enforcement of arbitral awards, and does not permit an enforcing court to review the merits of the underlying dispute.

The procedure for enforcing foreign arbitral awards (and foreign judgments) is governed by UAE Cabinet Resolution 57 of 2018 (the **Resolution**).

The Resolution should allow parties to enforce foreign judgments and arbitral awards more quickly than has previously been the case, although it remains to be seen how the UAE courts will apply the Resolution in practice.

Both 'onshore' and 'offshore' arbitration awards will be enforceable outside of the UAE pursuant to the New York Convention, as applied in the law of the state of enforcement.

UAE investment treaties

The UAE is party to over 50 bilateral investment treaties that are currently in force. The investment treaties are entered into with countries aiming to encourage foreign investment and to secure significant protections for their nationals' investments in the UAE. UAE nationals with investments in the territory of any one of the UAE's treaty partners may be entitled to significant protection under the terms of the UAE's bilateral investment treaties. International investors should consider the applicability of these treaties and the protections they offer when structuring their international investments.

Investing in Qatar

Investing in Qatar

Qatari companies

Qatari corporate entities

Under the Qatar Commercial Companies Law (Law No. (11) of 2015) (the QCCL), the main types of Qatari companies are:

- limited liability companies (**LLCs**); and
- Qatari public shareholding companies (**QSCs**).

LLCs are the most common vehicle used by foreign investors as they are relatively simple to establish and have no capital requirements. Generally speaking:

- 49% of the shareholding of an LLC can be owned by one or more non-Qatari persons (natural persons or companies) without the need for an approval; any foreign ownership percentage above 49% requires the approval of the competent department at Ministry of Commerce and Industry (the **MCI**);
- there is no minimum share capital;
- an LLC cannot engage in insurance, banking or investment activities on behalf of third parties.

A QSC can be formed by a minimum of five shareholders.

A special category of QSC exists which is generally called an 'Article 207 company' (by reference to Article 207 of the QCCL) and was previously known as an Article 68 company. Article 207 companies are not subject to the majority of the requirements of the QCCL but instead are governed by their own constitutional documents. At least 51% of the shares of an Article 207 company must be held directly or indirectly by the State of Qatar (however, this requirement could be varied on approval from the MCI).

Foreign ownership restrictions

The Qatar Foreign Investment Law (Law No. (1) of 2019) (the **Foreign Investment Law**) allows foreign investments:

- up to 49% ownership in all economic sectors without the need for an approval, and
- above 49% provided an approval from the competent department at the MCI (the CDMCI) is obtained (as further detailed below),

subject to the specific legislation regarding commercial activities carried out by non-Qatari persons and as determined by the executive regulations of the Foreign Investment Law.

As indicated above, foreign investors are required to apply to the CDMCI for an approval to exceed the threshold of 49% share capital ownership in companies by filing a form to be issued by the CDMCI along with the appropriate documentation determined by the CDMCI and the settlement of a fee. The CDMCI has 15 days to approve or refuse the application and notify the concerned party. The absence of response following the period shall be deemed to be an implicit refusal. The decision can be challenged by submitting a grievance before the Minister of Commerce and Industry (the **Minister**) within 15 days of being made aware of the decision or the lapse of the stipulated period. The Minister will have 30 days to decide and his decision would be deemed final.

Where approval is not granted, many foreign investors take practical steps to retain operational control and minimise dividend 'leakage' to the local partner; for example, the foreign shareholder may receive a profit share greater than 49%, have the right to appoint the general manager or have the right of veto over certain corporate decisions. While such actions are carried out in practice, they must be carefully structured so as to mitigate (to the extent possible) the strict prohibitions under Qatar's applicable 'anti-avoidance' legislation.

Foreign ownership in companies listed on the Qatar Exchange is set at a maximum of 49%. The maximum foreign shareholding percentage is usually provided for in the memorandum and articles of those listed companies which are approved by the MCI.
This percentage can be further increased subject to the approval of the Council of Ministers upon recommendation of the Minister.

Other options for 'onshore' Qatari establishment

Branch offices

A branch office refers to a wholly owned foreign entity in Qatar established for the sole purpose of carrying out a contract with a governmental entity, or a subcontract to such a contract. A branch's duration is limited to the duration of the underlying contract and the branch's activities are limited to those activities necessary and appropriate for carrying out the underlying contract. Following the award of the project and prior to the execution of the qualifying contract, a commercial registration for such branch must be issued.

Trade representative offices

A trade representative office (a **TRO**) can only be used for a limited number of marketing and administration related activities which relate to approaching clients to promote products or services, approaching sellers or exporters of products, handling complaints or facilitating the distribution of products. A TRO cannot undertake any financial transactions or commercial activities in or from Qatar or otherwise enter into any sales or services agreements. Any commercial activities relating to the marketing activities of the TRO must be carried out by the foreign parent (and performed substantially outside Qatar).

Commercial agencies and distributorship arrangements

A foreign company wishing to make direct sales of goods in Qatar without establishing an LLC or a branch may be able to do so through a commercial agency arrangement whereby a local commercial agent markets goods and services in Qatar in exchange for a commission. A commercial agency agreement will be subject to the Commercial Agency Law and the provisions of the Qatar Commercial Code. The Commercial Agency Law requires that the agency agreement is registered with the Ministry of Economy and Commerce, and imposes specific requirements in relation to the agency arrangement.

Generally, commercial agency agreements are renewed automatically and can be difficult to terminate. The Commercial Agency Law provides that an agent may be entitled to compensation if it has brought about the substantial success of the marketing of the product and the non-renewal or termination of the agreement has deprived the agent from benefiting from such success.

There are no laws in Qatar dealing directly with franchise or distribution agreements. As a result, these types of agreements can at times be confused with commercial agency arrangements. International investors considering franchise, distribution or agency arrangements should consider carefully which type of arrangement they wish to enter into and how it may be characterised. Once registered, it is not possible to contract out of the provisions of the Commercial Agency Law, and any provision to the contrary in any registered agency agreement will be void.

The Qatar Financial Centre (**QFC**)

The QFC is an 'onshore' financial and business centre established in 2005. The QFC was designed to attract international financial services institutions to grow and develop the market for financial services in the region. The QFC legal framework permits the establishment of various types of corporate entity (including companies, partnerships and branches) and permits 100% ownership of these entities by foreign owners. All the profits and capital of QFC entities can be remitted outside Qatar. Tax is levied at a rate of 10% on business profits arising from local sources.

The QFC comprises the QFC Authority, its commercial arm, and the QFC Regulatory Authority, which acts as an independent financial regulator.

The QFC has an English language legislative and regulatory system modelled primarily on the UK FCA system as well as incorporating elements from other leading financial centres. It also provides an independent judiciary, which holds civil and criminal courts as well as a regulatory tribunal.

International investors should note that the QFC Authority requires entities established in the QFC to maintain physical premises only in QFC Authority approved buildings (except in limited circumstances).

Qatar Science and Technology Park (**QSTP**)

Established as a part of the Qatar Foundation, the QSTP is a dedicated environment with free zone characteristics for local and international companies that operate in a range of fields relating to science and technology. By setting up in the QSTP, a company may be 100% foreign-owned as an independent company or a branch of a foreign company; it will not be subject to any corporate tax and will not pay duties on imports. In addition, full repatriation of profits and capital is permitted for QSTP companies, along with other benefits.

The QSTP's support programmes help organisations to develop and commercialise their technologies. The QSTP is located alongside the Qatar Foundation's Education City, which hosts several leading international universities.

All QSTP companies must maintain physical premises in the QSTP.

Taxation

There is no personal income tax in Qatar. New corporate tax legislation was implemented in 2010, providing for:

- a uniform corporate tax rate of 10% on LLCs;
- withholding tax on payments outside Qatar of 5% on royalties and technical and consultancy fees and 7% on interest, commissions, intermediary fees and directors' remuneration in relation to services conducted outside Qatar.

Regulation of public transactions

Takeover and merger transactions relating to public companies in Qatar are governed by the QCCL, the Qatar Financial Markets Authority's Takeover and Acquisition Rules (the **Takeover Rules**) and the Qatar Financial Markets Authority's Regulations dated 5 January 2011 (the **QFMA Regulations**). The Takeover Rules and the QFMA Regulations include specific disclosure obligations for relevant companies.

The Takeover Rules apply to all takeovers and mergers when one of the parties to the transaction is a company listed in Qatar, or a subsidiary of such company. Certain provisions of the Takeover Rules will not apply where one of the parties to the takeover or merger is incorporated outside of Qatar. The Takeover Rules establish a timetable for mergers and acquisitions and prescribe the information that must be included in the offer documents.

Under the Takeover Rules, the acquisition of 75% or more of the share capital of a listed company will trigger a mandatory bid obligation at a price which is at least equal to the highest price paid by the bidder in the previous 12-month period. The Takeover Rules do not provide for a squeeze-out mechanism; however, if a purchaser (or group of associated purchasers) acquires 90% or more of the share capital or voting rights in a company, any remaining shareholders holding in aggregate more than 3% of the capital may apply to the QFMA for it to require the bidder to purchase the remaining capital or voting rights.

Stakebuilding is permitted before the start of the offer period but any acquisition of shares will be subject to disclosure obligations under the Takeover Rules, and the QFMA must be notified by any person acquiring the shares if:

- a person will own (alone or with his spouse or children) 10% or more of the issued shares of a listed company; and/or
- a person owning 20% or more of the issued shares of a listed company (alone or jointly with another person) increases that shareholding to 30%.

During the offer period, the listed company must disclose the transactions of any shareholder who alone or in conjunction with a spouse or child owns 5% or more of the company's shares.

Competition Law

In 2006 Qatar implemented its Competition Law with the aim of protecting and enhancing competition and tackling anti-competitive practices. The law prohibits monopolistic and price-fixing arrangements by market participants. As required by the Competition Law, the Ministry of Economy and Commerce has established the Competition Protection and Anti-Monopoly Committee (**Competition Committee**) to investigate potential violations of the law, coordinate with foreign authorities and provide advice in relation to any draft laws or regulations relating to the prevention of anti-competitive practices.

There are notable exceptions to the Competition Law. Government institutions or entities which are subject to governmental direction and supervision are exempt from the Competition Law. Private entities may also be exempt from the law upon authorisation from the Minister of Economy and Commerce, if the consequences of the exception will be in the interest of consumers.

The Competition Law also sets out notification obligations in respect of certain transactions. Persons intending legally or beneficially acquire assets or shares, or contemplating merger transactions, are obliged to notify the Competition Committee in circumstances where the contemplated transaction may result in the establishment of a dominant or controlling market position. The Competition Committee is then required to issue a resolution with respect to the proposed transaction within 90 days of receipt of the notification. If the 90-day period elapses without a response from the Competition Committee, the transaction is deemed approved. The Competition Law does not set out specific ownership thresholds in relation to notification requirements; however, it defines 'control' as the ability for a person (or persons acting in concert) to control the product market and impact the prices or the supply of goods in a market where competitors are unable to carry out the same.

Comparison of Qatari corporate entities

	Commercial Agency	Trade Representative Office	Branch	LLC	QSC
Ownership	Not applicable – foreign entity only has a commercial relationship with local Qatari agent	100% foreign ownership permitted (marketing and administrative function only on behalf of foreign owner)	100% foreign ownership permitted (for the purpose of carrying out a specific contract in Qatar)	49% foreign ownership permitted without approval, above 49% foreign ownership, an approval is required from the CDMCI	49% foreign ownership permitted without approval, above 49% foreign ownership, an approval is required from the CDMCI If listed foreign individual or company may own up to 49%
Capital Paid-Up	Not applicable	Not applicable	Determined on a case-by-case basis	Not applicable	QAR10m
Shareholders	Not applicable	Not applicable	Not applicable	One to fifty	Minimum of five shareholders (no maximum).

Data Protection

Qatar has enacted data protection laws both 'onshore' and in the QFC.

Law No 13 of 2016 (the **DP Law**) applies to persons (natural or legal) processing, within Qatar, data relating to an individual either identified or who can reasonably be identified, both through such data or by combining it with any other data (the **Personal Data**). Under the Data Protection Law and subject to limited exemptions, Personal Data may only be processed (including viewed and transferred), if (i) fair processing information is provided to the data subject, (ii) the data subject has given consent; and (ii) specific procedural steps have been taken to ensure data security. The DP Law does not apply to the processing of Personal Data for purely private purposes, or where the processing is for the purpose of obtaining official statistics. The DP Law should not apply to digital service providers established outside Qatar, offering goods or services in Qatar.

The QFC's data protection regime consists of the QFC Data Protection Regulation No. 6 of 2005 (the **DP Regulations**) and the QFC Authority Data Protection Rules (the **DATA**). It protects data subjects, being individual natural persons to whom personal data relates, and applies to the activities of (i) data controllers authorised by or registered in the QFC that determine the purposes and means of processing personal data; and (ii) data processors that process personal data on a data controller's behalf. Personal data is information relating to a natural person who can be identified, directly or indirectly, in particular by reference to an identification number or one or more factors specific to his/her physical, physiological, mental, economic, cultural, or social identity (the **QFC Personal Data**). The DP Regulations and the DATA do not apply to natural persons during purely personal activities.

In some circumstances, a data controller must notify the QFC Employment Standards Office – Data Protection Directorate before starting the processing of QFC Personal Data. QFC Personal Data must be processed fairly, lawfully, and securely for specified, legitimate purposes. The purposes for which it is collected or further processed must be adequate, relevant, and not excessive. In most cases, the data subject's consent must be obtained unambiguously and explicitly.

Intellectual Property

There are five types of intellectual property (**IP**) recognised in Qatar:

- **Trademarks**
- **Copyright**
- **Patents**
- **Designs**
- **Trade Secrets**

Specific federal laws exist in relation to: trademarks (Law No.2 of 2002 pertaining to trademarks, commercial indications, trade names, geographical indications, and industrial designs and models); copyright (Law No. 7 of 2002 on the protection of copyright and related rights); patents (Patents Law No. 30 of 2006); and trade secrets (Law No. 5 of 2005 for the protection of trade secrets).

Qatar is subject to the GCC Patent Law, which provides a method for obtaining patent protection throughout the GCC, and is also party to a number of international IP treaties, including the World Trade Organisation's TRIPS Agreement and the World Intellectual Property Organisation's Paris and Berne Conventions. Whilst there is no federal law in relation to registered or unregistered designs, as party to the Paris Convention, there is a general assumption that this would be applied to registered designs.

The MCI maintains the registers of IP rights at state level and there is an office for trademarks, copyrights and patents. From a purely legal perspective it is also possible to register designs with the MCI. In practice however, no register has been established to allow this. In order for owners of IP rights to establish claims against alleged violators and prevent third parties from registering the same or similar IP, it is advisable to establish rights over such IP by way of registration with the Ministry. This would also make it easier to assert rights over the relevant IP in any claims brought before the Qatari courts.

Investing in Saudi Arabia

Investing in Saudi Arabia

The Saudi Arabian Companies Regulations

On 2 May 2016, new and amended Companies Regulations (issued pursuant to Royal Decree M/3) (the **Companies Regulations**) came into force. The Companies Regulations were years in the making and replace the previous regulations which were in place for over 40 years. The Companies Regulations are intended to foster a more transparent corporate environment in the Kingdom, and address a number of issues that frequently arose previously, such as equity and debt funding, investment structures, shareholder protections, and board duties.

Incorporating a local entity

'Onshore' Saudi Arabian establishments

Foreign investors commonly use one of the following structures for investments into Saudi Arabia:

- a wholly owned subsidiary, either in the form of a limited liability company (an **LLC**) or joint stock company (a **JSC**). Wholly owned subsidiaries can be formed by two or more of the investor's group entities, but can also be formed by a single group entity (single shareholder companies), subject to conditions below
- a joint venture, either in the form of an LLC or a JSC
- a branch of a non-Saudi company or
- other forms of cooperation with a Saudi partner, eg an agency or distribution agreement.

Limited liability company

An LLC does not have a minimum number of shareholders and it can be formed with only one shareholder, whether a natural or juristic person. However, a natural person may only form one single shareholder LLC and a single shareholder LLC may not form another single shareholder LLC.

There are no minimum capital requirements for an LLC, although the capital must be sufficient to conduct the LLC's objects. In many cases, there will also be minimum capital requirements imposed by the Saudi Arabian General Investment Authority (**SAGIA**). Saudi Arabian laws allow some latitude in defining the management structure of an LLC by permitting LLCs to retain a sole general manager or board of managers, and empowering the shareholders to set out the management powers and shareholders' reserved matters in the articles of association.

The articles of association are largely standardised, and the Saudi Arabian Ministry of Commerce and Investment (**MOCI**) provides templates on its website. However, the management clause and shareholders' reserved matters can be drafted according to the shareholders' requirements to the extent that there is no conflict with the Companies Regulations or public order.

In joint ventures, it is common for partners to enter into a shareholders' agreement that contains more detailed provisions than the articles of association. Foreign investors should take into account that (i) some provisions commonly valid in other jurisdictions may either be difficult to enforce or unenforceable in the Kingdom. Examples of such provisions are put and call options or provisions on mandatory redemption; (ii) third parties will rely on the articles of association and not the shareholders' agreement. Therefore, and to the extent permissible by MOCI, the articles of association should include the key provisions from the shareholders' agreement such as the shareholders' reserved matters and the management structure. However, it will not be possible to incorporate all the shareholders' agreement's provisions into the articles of association because MOCI will only allow for limited variation from its template articles of association.

Some freedom is permitted when designing profit sharing policies. Shareholders can either agree that distributable profits are distributed automatically or retained until the distribution is approved by the shareholders. However, 10% of the annual net profit must be retained every year until the capital reserve amounts to 30% of the registered capital.

Joint stock company

A JSC may have a single shareholder; but the single shareholder must be the government, a public juristic person, a company wholly owned by the government or a company with capital of not less than SAR5m. A JSC must have a minimum of three directors and a maximum of 11 directors as well as a minimum capital of SAR500,000.

While non-resident non-Saudi Arabian nationals are not allowed to own shares directly in listed Saudi Arabian JSCs, the Saudi Arabian Capital Markets Authority (the **CMA**) has published rules for qualified financial institutions (the **QFI Rules**) allowing certain foreign investors registered with the CMA to invest directly in the shares or convertible debt instruments of a JSC listed on the Saudi Arabian Stock Exchange (the **Tadawul**). The QFI Rules prescribe percentage limits on investments into listed companies. These, however, can be waived (subject to residual limitations under applicable law) for 'strategic investors' under the CMA's 'Instructions for the foreign strategic investors ownership in listed companies', issued on 17 June 2019 (the **SI Rules**). Non-resident foreign persons may also invest in the 'Parallel Market' under the CMA's 'Guidance note for the investment of non-resident foreigners in the parallel market', issued on 16 October 2017 (the **PM Investment Guidelines**). Non-resident non-Saudi Arabian nationals who are not registered under the QFI Rules, the SI Rules or the PM Investment Guidelines are not allowed directly to own shares or convertible debt instruments in listed Saudi Arabian JSCs.

The rules relating to profit sharing in LLCs also apply to JSCs.

Branch offices

A branch is not a legal entity and does not shield the parent from liability. It has no registered capital, but SAGIA typically requires a minimum amount to be deposited on behalf of the branch. Opening a branch office normally requires a minimum investment of SAR 500,000. These funds must be paid into an account with a local Saudi Arabian bank and remain blocked until the formation formalities have been completed.

A foreign company may set up more than one branch office.

The table below outlines some of the main differences between the three types of structure:

	Branch	LLC	JSC
Ownership	100% foreign ownership permitted (for certain types of licences as stated in the below table)	100% foreign ownership permitted	For a JSC listed on Tadawul, 49% aggregate foreign ownership (including interests under swaps) of listed shares or convertible debt instruments is permitted (among other applicable limitations under the QFI Rules, subject to waiver under the SI Rules). For non-listed JSCs, 100% foreign ownership is permitted
Capital Paid-Up	SAR500,000 – must be fully paid-up in advance	Minimum SAR100,000 (required by SAGIA in practice) – must be fully paid-up in advance	SAR500,000 – may be partially paid-up in stages with a minimum of a quarter to be paid-up on incorporation
Minimum Number of Shareholders	One shareholder	One shareholder	One shareholder, with certain conditions
Incorporation Timing (approx.)	Two to four months	Two to four months	Four to six months

Obtaining a SAGIA licence can be a relatively speedy process once all the requirements set out in the SAGIA manual are met, and most procedures set out in the SAGIA manual are stated to require between two and five working days. This assumes that all relevant documentation (notarised and consularised where necessary) has been presented.

In order fully to incorporate a company, the foreign investor must also draft articles of association, obtain a registration certificate, open a file with the General Organisation of Social Insurance, open a zakat file with the General Authority of Zakat & Tax, open File No. 700 at the Labour Office, and obtain a municipality licence. All this can take some time.

Technical and scientific office

A technical and scientific office (**TSO**), while similar to a branch, can only support the activities of a Saudi commercial agent or distributor. It cannot engage in other economic activities, is financed by the foreign parent company, and is thus only a cost centre that does not generate income. SAGIA has recently reviewed applications to register TSOs with increased scrutiny, and seems to only approve pharmaceutical-based applications or applications where the products are relatively sophisticated and require specific manufacturer expertise on the ground to support the agent.

Temporary registration

Foreign investors planning to enter into contracts with Saudi Arabian governmental bodies for specific projects may be entitled to obtain a temporary commercial registration (**TCR**). TCRs are limited in scope and duration to the terms set out under the project contract(s).

Commercial agency and distributorship arrangements

The last option for foreign investors is distribution through a local commercial agent. Foreigners cannot be commercial agents. Saudi Arabian law distinguishes between commercial agents and distributors by defining commercial agents as brokers and distributors as independent dealers dealing in their own names. Only companies owned 100% by Saudi Arabian nationals can operate as commercial agents.

An additional restriction on foreign investors is that only resellers and commercial agents based in the manufacturer's country of origin can act as principals for a Saudi Arabian commercial agent. Commercial agency and distribution agreements must be registered in the commercial agents' register at MOCI. While failure to register is a legal offence, a non-registered agreement is still binding.

Licensing and Restricted Activities

Any foreign investor must obtain a foreign investment licence from SAGIA.

Although foreigners may freely invest in the Kingdom as a general rule, restrictions do apply for some activities.

These restrictions are set out in a list known as the 'negative list' and include, inter alia, certain activities relating to defence, petroleum and publishing. The negative list is available on the SAGIA website (sagia.gov.sa). SAGIA periodically reviews the negative list, meaning the list may change from time to time.

Minimum required investment and mandatory Saudi Arabian participation

SAGIA requirements for minimum capital investments are based on the type of licence sought by the foreign investor (see the table below) and SAGIA may also impose additional capital requirements based on the size of the project.

For most activities, 100% foreign ownership is allowed, although see below in relation to the requirements to be complied with for foreign shareholders. One of the notable exceptions is foreign investment in banking. Historically, foreign participation in Saudi Arabian banks has not exceeded 40%, although, under the terms of the Kingdom's accession to the World Trade Organisation, foreign participation of 60% should be permissible subject to regulatory approval.

SAGIA has recently opened the wholesale and retail trading sector, which was formerly restricted to 75% foreign participation, to 100% foreign investment, providing certain conditions relating to the investor's international presence, the amount of investment and Saudisation are met.

The following table sets out certain minimum capital and Saudi shareholding requirements:

Type of Licence	Minimum Capital Investment Required	Minimum Saudi Shareholding Requirement
100% foreign commercial (trading) licence	SAR30m	-
Commercial (trading) licence with a Saudi Arabian shareholder	SAR27m	25%
Insurance licence	-	40%
Reinsurance licence	-	40%
Real estate financing licence	-	40%
Real estate development licence	Minimum project value (land and construction): SR30m	-
Service licence	Although minimum capital is no longer expressly required for service licences, in practice SAGIA continues to require a minimum capital of SAR100,000	-
Industrial licence	-	-
Communications licence	-	40%
Value Added Communications licence	-	30%
Engineering Procurement Construction (EPC) licence	-	25%
Public transport (by bus, inter-city) licence	SAR 500,000	30%
Public transport (by metro or train, inter-city) licence	SAR 500,000	20%
Innovation licence	-	-
Foreign companies branches[1]	SAR 500,000	-

[1] Except technical and scientific offices and temporarily licences to execute contracts to which a governmental entity is a party.

Required documentation

A number of documents must be submitted together with the application for a foreign investment licence, as noted above.

SAGIA's requirements are often subject to interpretation by individual officials who have discretion to request additional documents. The requirements imposed by SAGIA have and do change without notice and even published rules seem to be under continuing review. It is therefore important for foreign investors to obtain up to date advice on the current SAGIA documentation requirements at the time of applying.

Taxation

In general, Saudi Arabian tax law has different rules for taxes imposed on foreign-owned and nationally owned equity stakes. Foreign-owned companies must pay corporate income tax while Saudi Arabian nationals and companies owned by Saudi Arabian nationals, to date, only pay Zakat on their equity shareholdings. Foreign nationals will pay tax on certain Saudi Arabian source income (this excludes employment income). VAT was implemented in the Kingdom on 1 January 2018, at a rate of 5%.

Tax rates

All corporate income generated in the Kingdom is subject to a uniform tax rate of 20% on the shares of foreign investors. Zakat is levied at a rate of 2.5% on the Zakat basis (the Zakat basis differs from the tax basis, so the rates are not comparable – the economic difference is smaller than the rate difference would suggest). For companies, this is taxation on income after deductible expenditure.

Withholding tax

Certain Saudi Arabian sourced income of foreign recipients is subject to withholding tax. This could be, for example, income from licensing agreements. The Saudi Arabian payer must withhold tax and pay it to the tax office. The withholding tax rates range from 5% to 20% depending on the type of service.

Capital gains tax

Divestment of shares in an LLC (or other company) will usually be subject to capital gains tax at 20%.

Competition law

Under the Saudi Arabian Competition Law, the approval of the Council of Competition Protection is required for any merger, acquisition or consolidation of the management of two or more entities that may create a dominant position in the market. A dominant position is defined as a position where an entity is able to influence prices in a certain market through the control of a specific percentage of supply of a certain product or service in a relevant market. Furthermore, the Saudi Arabian Competition Law prohibits all practices, agreements and contracts – whether written or verbal, express or implied – between competing establishments or likely competing establishments where the intention or the result of such practices, agreements or contracts is to restrict commerce or to limit competition between such establishments.

Regulation of public transactions

The public mergers and acquisition market in the Kingdom remains relatively undeveloped and there have been few public deals since the CMA issued mergers & acquisitions regulations in 2007.

Given the lack of precedent in relation to public mergers and acquisition deals in the Kingdom, guidance from the CMA should be obtained at an early stage when a takeover is being considered.

Trading on the Tadawul is restricted to GCC nationals, Saudi Arabian residents and persons and foreign investors registered under the QFI Rules, the SI Rules or the PM Investment Guidelines.

Disclosure requirements exist where a shareholding or interest in securities equals or exceeds 5%. Such persons must notify the company and the CMA by the end of the third trading day (ie, the date on which settlement is complete) of the occurrence of the relevant event. The bidder (and those acting in concert) must not sell the target's securities without the CMA's consent during the offer period, and any sale for a value that is below the value of the offer will not be permitted. Dealings in the relevant securities by the bidder or target (or by any person acting in concert with either of them) during the offer period must also be disclosed in line with the above disclosure requirements.

There are no rules relating to squeeze-outs in the legislation, although the CMA has, on one occasion, allowed a squeeze-out where the acquiring company achieved acceptances from shareholders representing more than 50% of the company's capital.

There is no requirement to make an announcement immediately on approach to the bidder. However, announcement obligations may be triggered in certain circumstances, such as: if an approach has been made and the parties have agreed terms; if a firm intention to make an offer has been communicated to the board by a legitimate source; upon the trigger of an obligation to make a mandatory offer; if there is speculation in the market or a price movement of 20% or more above the lowest price since the approach or a price movement of more than 10% in one day; and if negotiations are extended such that more than a very restricted number of people are involved. The offeree company must make a brief announcement that talks are taking place or that a potential offeror is considering an offer before a firm intention to make an offer has been notified.

A mandatory offer may be required when a person acquires 50% of the voting rights, if the CMA believes this to be in the interests of the market and the shareholders.

If any part of the offer is to be paid in cash, the offer document must contain a guarantee issued by a Saudi Arabian bank guaranteeing the offeror's ability to satisfy full acceptance of the offer.

Dispute resolution and enforcement

The judiciary is composed of the following: (i) courts of general jurisdiction (General Courts), (ii) an administrative court (known as the Board of Grievances) and (iii) various adjudicatory bodies with special jurisdiction over particular matters, such as banking, labour, capital markets and copyright.

Commercial disputes were previously heard by the commercial circuits within the Board of Grievances. However, the Ministry of Justice in the Kingdom of Saudi Arabia recently announced that all commercial disputes must be heard by the newly established separate Commercial Courts commencing from 20 September 2017in order to comply with the Law of the Judiciary, which states that the commercial circuits within the Board of Grievances are set to be separated into new Commercial Courts. The Law of the Judiciary also creates new Labour Courts, Personal Status Courts and Criminal Courts (together with the General Courts, referred to as the Non Administrative Court System). The Board of Grievances and the Non-Administrative Court System are each divided into three levels of adjudication: first instance courts; appellate courts; and a supreme court.

Banking disputes (defined as those involving at least one bank party where the dispute arises from a banking transaction) are heard by the Banking Disputes Committee, while capital markets disputes are heard by the Committee for the Resolution of Securities Disputes.

The Kingdom's Basic Rules of Governance state that the Qur'an (the holy text of Islam) and the Sunna (the words and deeds of the Prophet Muhammad) are the Kingdom's constitution and that no law or regulation may conflict with Islamic law (Shari'ah). Judges are therefore required to adjudicate cases in accordance with Islamic law, as well as with laws and regulations that do not contravene Islamic law. Thus, where the enacted legislation is silent, judges will resort to the principles of Islamic law.

Enforcement is regulated by the Enforcement Regulations enacted in 2012. The enforcement courts are staffed by enforcement judges, who are granted wide powers under the Enforcement Regulations, including the power to seize assets, freeze bank accounts, impose travel bans, search for assets with related persons, and imprison delinquent debtors.

Applications for the execution of foreign judgments and arbitration awards used to be filed with the Board of Grievances. Under the Enforcement Regulations, applications for the execution of foreign judgments and arbitration awards must now be lodged with an enforcement judge.

Investing in Oman

Investing in Oman

Options for 'onshore' Oman establishment

Omani corporate entities

The following types of corporate entities can be incorporated in Oman:

– a limited liability company (**LLC**);
– single member company (**SMC**);
– a closed joint stock company (**SAOC**) which does not offer its shares to the public; and
– a public joint stock company (**SAOG**) which does offer its shares to the public.

(SAOC and SAOG each being a joint stock company (**JSC**)).

An LLC must have a minimum of two and a maximum of 50 shareholders. All shares must be fully paid-up at the time of incorporation and of the same nominal value.

An LLC is less regulated than a JSC. Reporting requirements are less onerous than for a JSC and an LLC is simpler to operate on a daily basis. Management of an LLC is usually effected through a manager or managers rather than through a board of directors. Under the terms of the company's constitutive contract, the day-to-day running of the company, and many of the decisions taken in the ordinary course of business, can be delegated to the manager or managers.

Accordingly, foreign investors usually choose to conduct their operations in Oman through LLCs.

A JSC must be formed by at least three founder members (natural or juristic persons). Companies formed by the government solely or jointly with others are exempt from this requirement.

Shares in a JSC may have any nominal value per share. It is possible for a JSC to have different classes of shares providing for enhanced voting rights or profits, provided that all shares of the same class have equal rights and the different classes of shares are provided for in the articles of association. Historically, the Ministry of Commerce and Industry (**MOCI**) and the Capital Market Authority (**CMA**) have been reluctant to allow JSCs to be established with different classes of shares. This may change with the implementation of the new Commercial Companies Law, Royal Decree No. 18/2019 (the **New CCL**) however, which has removed certain restrictions concerning the issuance of preference shares. The requirements and the provisions for issuance of the different classes of shares will be provided for in the Executive Regulations to be issued by MOCI pursuant to the CCL.

The management of a JSC is entrusted to a board of directors. The minimum number for an SAOC is three and for an SAOG is five; the maximum number for both is 11 and the total size of the board must be an odd number. The term of office is up to three years, subject to re-election. There are detailed statutory provisions relating to the form and structure of the board of directors and the arrangements for general meetings of shareholders.

JSCs and LLCs are required to establish a legal reserve using 10% of the company's annual net profits until the legal reserve amounts to one-third of the company's capital. This reserve cannot be used for payment of dividends but may be used to cover accumulated losses.

The structure of an SAOC is more suited to larger projects than a foreign owned LLC, both in terms of initial capital requirements (minimum OMR500,000 instead of OMR150,000) and the minimum number of shareholders. It is not possible to register a pledge over the shares of an LLC – another reason why an SAOC is more suited to larger projects, particularly where lenders will insist on security being taken through a share pledge over a project company's shares. An SAOC is often established as a first step towards taking a company public as a listed SAOG.

An SMC is an LLC whose capital is owned by one natural or juristic person. A corporate entity is not permitted to establish more than one SMC and an SMC itself may not establish another SMC. The SMC is governed by the rules applicable to LLCs except where the law provides specific rules.

Incorporation timings

Experience shows that it takes seven to ten working days to set up an LLC. It may take around three to four months to set up a JSC.

Comparison of Omani corporate entities

	LLC	SAOC	SAOG
Ownership	Up to 70% foreign ownership is permitted, subject to obtaining the prior approval of MOCI	Up to 70% foreign ownership is permitted, subject to obtaining the prior approval of MOCI	Up to 70% foreign ownership is permitted, subject to obtaining the prior approval of MOCI
Sponsor*	Local shareholder required; must be an Omani national	Local shareholder required; must be an Omani national	Local shareholder required; must be an Omani national
Capital Paid-Up	No minimum share capital for Omani nationals. If there is foreign participation, the minimum share capital is increased to OMR150,000	The minimum share capital is OMR500,000	The minimum share capital is OMR2m (except where a company is converted into an SAOG in which case the minimum share capital is OMR1m
	Capital contribution may be made in cash or kind (except for services) Shares must be fully paid-up at the time of incorporation.	Capital contribution may be made in cash or kind	Capital contribution may be made in cash or kind
Shareholders	Two to 50	Three or more	Three or more
Incorporation Timing (approx.)	One to two weeks	Three to four months	Three to four months

* Unless specific exemption exists under the law, eg under the Sector Law or Privatisation Law of Oman in relation to power and/or water projects. See page 33 for details on the new foreign capital investment law.

Representative and branch offices

A branch office can be established in accordance with the Commercial Register Law issued by Royal Decree 3/74, as amended. Branches need to be registered with MOCI and a foreign company will be permitted to establish and register a branch office provided:

– the company has been awarded a contract by a government department or agency in Oman and a branch is being registered for execution of such contract; or

– a branch is permitted for a specific type of business under applicable law in Oman. Currently, foreign banks, financial services providers, engineering consultancy firms, insurance companies and audit firms are permitted to establish branches.

Branch registrations are temporary in nature (ie, to enable the foreign company to perform a specific contract) and foreign companies planning to establish a long-term presence in Oman generally choose to operate through LLCs or SAOCs.

Foreign companies engaged in the trade, industry and services sectors may open commercial representative offices in Oman. These offices may not import, export or sell products in Oman. However, they may promote and market products and services provided by their company. These offices may also rent an office and obtain visas necessary for their expatriate employees.

Commercial agencies and distributorship arrangements

Oman's Commercial Agencies Law, issued by Royal Decree 26/77, as amended (which also applies to distribution and other similar agreements), provides a means for foreign entities to do business in Oman through agents, who must be Omani nationals or companies. Agency contracts must be registered at MOCI in order to be enforceable under Omani law.

Royal Decree 34/2014, enacted on 22 July 2014, amended key provisions of the Commercial Agencies Law removing a number of statutory protections the previous regime provided to local agents. These protections, common to most GCC agency arrangements, are widely viewed as unfavourable to foreign principals and as restrictive practices by the World Trade Organisation. As well as creating a more balanced agent-principal relationship, the amendments aim to enhance competition by preventing both foreign principals and local agents from dominating a particular market. Notable changes include:

– The removal of the prohibition against direct sales of a foreign principal's goods or services or sale through an intermediary other than the registered agent (thus removing the potential for Omani commercial agents to acquire a monopoly over particular goods/services). Registered agents no longer have a statutory right to claim damages for commission or profits earned from such sales (Article 7)).
– The removal of provisions entitling an agent to claim compensation in the event of the 'without cause' termination of an agency agreement of indefinite duration or failure to renew a fixed-term agreement upon expiry (Article 10(b)).
– The removal of powers previously granted to MOCI to ban the imports of a foreign principal's goods in the event of its 'without cause' termination of the agency.

The Council of Ministers has new powers to seek the recommendation of the competition and anti-monopoly authorities, in order to decide the number of commercial agents which may be appointed by a foreign principal. Effectively this is the power to break up monopolies over specific goods and services which have a negative impact on supply and demand and lead to unjustified price increases.

Foreign ownership restrictions

If a foreign company proposes to subscribe for or acquire more than 70% of the share capital of an Omani company, it will be required to make an application to MOCI, for consideration by the Council of Ministers. Approval for 100% foreign participation is reserved to circumstances where: (i) foreign participants can demonstrate that they will be introducing technical expertise which is not readily available in Oman; (ii) the foreign participants will be contributing to the development of the national economy and will be investing substantial capital in the country; and (iii) job opportunities will be created for Omani nationals. In practice, such approvals are rarely granted and any such application can take up to six months to be considered.

However, a new Foreign Capital Investment Law was issued by Royal Decree 50/2019 on 1 July 2019 (**New FCIL**) to come into effect on 1 January 2020 which removes the requirement for minimum 30% Omani ownership of a commercial company. It appears that full foreign ownership may be permitted in respect of certain economic activities but the list of such activities is not set out in the New FCIL. The impact of the New FCIL is still not clear therefore, and further guidance is expected in the form of the Implementing Regulations of the New FCIL, to be issued by the Minister of Commerce and Industry by or before 1 January 2020.

A free trade agreement between Oman and the U.S. came into force on 1 January 2009 pursuant to which U.S. incorporated entities are permitted to set up 100% owned companies in Oman.

Foreign ownership restrictions - real estate

In general, foreign companies and foreign nationals may not own land for business purposes in Oman and may only own land in specially designated tourism complexes. There are exceptions for GCC nationals and companies with foreign shareholdings may own real estate for their business purpose (eg, offices), subject to certain conditions.

Mitigating the impact of the 30% Omani shareholding

It is common practice in Oman for foreign companies to engage with non-participating Omani partners in establishing a new company. The parties enter into a shareholders' agreement pursuant to which the foreign company may be given management control and responsibility for providing all financial and technical support to the company. The Omani partner's initial share capital may be funded by the foreign shareholder by way of a loan secured by a charge and power of attorney in favour of the foreign company. Under such an arrangement, the Omani partner may agree to receive a substantially reduced share of the profits whereas the foreign national receives a higher percentage of the profits. Such arrangements will be binding if provided for by the company's constitutive contract as required by the Commercial Registry Law and the CCL. Omani superior courts have recently upheld arrangements involving unequal distribution of profits and the New CCL continues to permit unequal distribution so long as this percentage is mentioned in the company's constitutive contract duly registered with MOCI. Prior to approving any incorporation of a company with foreign ownership or registering a share transfer to a foreign owner, MOCI will now require evidence confirming that the foreign investing entity has been in existence for at least three financial years to establish the financial standing of the foreign investor.

Licensing

A foreign shareholder wishing to engage in trade or business in Oman or to acquire an interest in the capital of an Omani company must obtain a licence from MOCI. Foreign companies must also register with the Chamber of Commerce and Industry. Licences for certain activities, eg, those relating to real estate brokerage services or printing and publishing services, will only be granted to Omani nationals or to companies wholly owned by Omani nationals. The licensing regime is complex, however, and advice should always be sought as to the specific licences that are required for any proposed activity and which authorities grant those licences.

Free zones

Oman has three free zones and one special economic zone. The free zones are the Al Mazyounah Free Zone (an industrial free zone on the Oman-Yemen border), the Sohar Free Zone (a trading free zone located in the port of Sohar) and the Salalah Free Zone (a trading free zone located in the port of Salalah). In addition, a special economic zone has been created at Duqm which is an integrated economic development of a series of zones composed of a sea port, industrial area, new town, fishing harbour, tourist zone, logistics centre, and education and training zone.

Additionally, certain incentives are offered to companies setting up in one of Oman's nine industrial states and the Knowledge Oasis, Muscat (a technology park dedicated to hosting companies in the field of information technology and communications) and in certain industrial estates (eg, Rusayl and Sohar Industrial Estates) established pursuant to the Public Establishment for Industrial Estates Law.

Regulation of public transactions

The substantial shareholding disclosure and approval regime in Oman is set out in the Capital Market Law (**CMAL**). These provisions apply in relation to shareholdings in all public joint stock companies incorporated in Oman (ie, SAOGs) and which are listed on the Muscat Securities Market (**MSM**). The regime established by the CMAL is concerned with direct and indirect shareholdings in SAOGs generally.

The Capital Market Authority (the **CMA**) has recently issued the Takeover and Acquisition Regulations for Public Joint Stock Companies Listed on Muscat Securities Market (Decision No. 2/2019) (the **Takeover Code**). Under the Takeover Code, a person who intends to acquire 25% or more of the voting rights of a listed company would be obliged to make an offer to acquire all remaining shareholders of the target company. The mandatory offer requirement is also triggered when a person (alone or in concert) holding 25% of the voting shares or voting right increases its stake by acquiring additional shares carrying more than 2% of the voting shares of the target company in any 6 month period from the date of first purchase.

The threshold for disclosure is when any person (which includes a corporate entity) acquires individually or together with his or her minor children shares amounting to 10% or more of the total share capital of an SAOG. The person shall also notify the CMA of any increases above the 10% limit of the total share capital. While, technically, the reduction of a shareholding below the 10% level does not require reporting to the CMA, it is generally advisable to make such a report. Where a notification has been made of the acquisition of more than 10% of the total share capital and a disposal is then made but the disposal does not take the level of the shareholding below 10%, no notification is required. Further, the prior approval of the CMA must be obtained in order to increase a shareholding up to or above 25% of the total share capital of an SAOG.

The general disclosure rules of the CMAL apply only to shareholders of issuers who are both incorporated in Oman and listed on the MSM, which currently is the only stock exchange in Oman.

An Omani issuer may also be subject to specific substantial shareholding disclosure and approval requirements from other regulators depending on the business or industry sector in which it operates.

Competition Law

Oman's Competition and Anti-Monopoly Law came into force on 8 December 2014 with the enactment of Royal Decree 67/2014 (the **Competition Law**). The Competition Law introduced, for the first time in Oman, a comprehensive regime of prohibitions on abuse of a dominant market position, anti-competitive agreements, and merger control.

The Competition Law applies to any natural or legal entity engaged in economic or commercial activity in Oman as well as practices and agreements relating to activity which occurs outside Oman but has the ability to affect competition in Oman. Activities of 'public utilities' that are fully owned and operated by the government are exempt from the application of the Competition Law. Additionally, the competition authority, the Competition Protection and Monopoly Prevention Centre (the **CMC**), has discretionary power to exempt other business entities temporarily if their activity promotes technical progress, achieves a public benefit or increases the competitiveness of Omani SMEs.

Businesses in a position of dominance (defined as having the power to control or influence the relevant market by holding more than 35% of the market share) may be regarded as abusing their dominant market position if they engage in activities such as predatory pricing, tie-ins or resale price maintenance.

The prohibitions on anti-competitive agreements apply to all businesses whether dominant or not. They cover restrictive agreements such as those between competitors or suppliers and distributors or manufacturers and dealers that aim to prevent, restrain or reduce competition, as well as cartel-style arrangements between competitors to create a market monopoly.

The merger control provisions require businesses to seek prior approval from the CMC for a broad range of transactions, including share or asset transfers, the creation of consortia, mergers or the consolidation of two managements into one that would place a person, or group of persons, directly or indirectly in a position of dominance (as defined above). The transaction cannot then proceed until approval is received, or until the expiration of a 90-day period. The Competition Law categorically prohibits approval of any transaction that results in one enterprise (or a group of enterprises) controlling more than 50% of a relevant market.

Breaches of the Competition Law attract penalties ranging from hefty fines to prison terms for executives, managers and officers of the enterprise in question as well as for any CMC official who discloses confidential information relating to a pre-merger/acquisition application.

The Competition Law represents a significant step in removing barriers to trade and creating an open and competitive market in Oman. It requires businesses conducting business in Oman to audit their existing agreements and practices for compliance. Where anti-competitive agreements or activities are identified, enterprises will need to take steps to either make changes or secure an exemption from the CMC. The CMC has yet to issue implementing regulations to clarify the scope and application of the Competition Law however.

Taxation

Corporate entities incorporated in Oman, including branches of foreign entities and permanent enterprises are required to pay corporate tax at the rate of 15% on taxable income.

Withholding Tax

Foreign companies that do not have a permanent establishment in Oman for tax purposes and that derive income from Oman in the nature of the following are subject to withholding tax at 10% of gross income from such sources:

- Dividends;
- Interest;
- Royalty;
- Consideration for research and development (R&D);
- Consideration for use of or right to use computer software;
- Management fees; and
- Provision of services.

Such withholding tax is required to be withheld by the Omani-based company and paid to the tax department within 14 days of the end of the month in which tax is deducted or payments are due or made to the foreign company.

Royal Decree No. 9/2017 introduced key changes to the Oman Income Tax Law (Royal Decree 18/2009) (the **Tax Law**) including the introduction of new categories of payment attracting withholding taxes such as dividends, interest and provision of services which were not taxable earlier. The Executive Regulations to the Tax Law issued by Ministerial Decision No. 14/2019 have clarified that withholding tax is applicable only on dividends distributed by joint stock companies and investment funds (and consequently, no withholding tax is payable on profit distribution by LLCs).

The CMA announced on 15 May 2019 that, pursuant to a royal directive, withholding tax applicable to dividends distributed by Omani JSCs to foreign shareholders, and interest on foreign borrowings will be suspended for three years as of 6 May 2019. The Secretariat General for Taxation subsequently issued a circular on 11 June 2019 confirming this.

VAT

There have been a number of press reports with regard to the introduction of VAT in Oman following the execution of a Common VAT Agreement amongst the GCC member states. However, no amendments to the Tax Law have been introduced as yet and our understanding is that no firm date has yet been set for VAT's introduction in Oman. We understand that it is likely that VAT will be introduced either in the last quarter of 2019 or in the first quarter 2020. There is currently no information as to what goods and services will be likely to benefit from zero rating or exemptions.

Excise Tax

Excise tax is applicable in Oman under the Excise Tax law Royal Decree No. 23/2019 and is applicable to importers and local producers of 'excise goods' or to any person stockpiling or holding excise goods in their inventory (ie, hotels, restaurants etc.). Excise goods are defined as goods detrimental to human health or environment or electronics and include carbonated drinks, tobacco, energy drinks, pork and alcohol. The excise rate on alcohol was earlier announced to be 100% but was subsequently reduced to 50% for a period of six months according to an announcement made by the Ministry of Finance.

Data Protection

At the current time, there is no standalone data protection law in Oman and the protection of personal data is provided by the Electronic Transactions Law Royal Decree No 69/2008 (as amended) (**ETL**). There is no specific definition available for 'Personal Data' under the ETL or under any other Omani law.

The ETL contains provisions dealing specifically or broadly with issues connected with data protection and transfer of data including a prohibition on processing of personal particulars if such processing inflicts any damage upon the persons about whom such particulars were collected or would adversely affect their rights or their freedom. The ETL also requires certain levels of protection to be maintained while transferring personal data outside of Oman with reference to the nature and source of such personal information in question, the purpose and period for which such information is to be processed, the country to which such information is intended to be transferred to and such country's international commitments and data protection laws and measures taken in such country for safeguarding such information.

The ETL requires persons controlling personal data to give special notice to individuals whose personal data is being 'processed' ie any transaction involving such data including accumulation, recording, sorting, storing, amending, modifying, recovering, proof reading, disclosing through dispatching or forwarding or making such data available through other means, or classifying, merging, concealing, deleting or cancelling personal data.

Generally, the Basic Law of the State Royal Decree No. 101/96, as amended) provides for the protection of an individual's right to privacy in communication, prohibits any interference or monitoring of an individual's written correspondence and guarantees the confidentiality of written correspondence, except as is otherwise permitted by law and renders it unlawful to monitor, search, disclose, delay or confiscate written correspondence, except as is otherwise permitted by law.

Special restrictions and condition apply to use and sharing of personal data collected by financial institutions which are contained in the Oman Banking Law Royal Decree No 114/2000, as amended.

Intellectual Property

Intellectual property rights in Oman are protected by the Law of Industrial Property Rights (RD 67/2008) (**IPR Law**). Trademarks and patents must be filed and registered with the Trademark and Patents Department at the MOCI. Owners of trademarks, patents and similar intellectual property rights are required to publish cautionary notices in the Official Gazette and local newspapers for the protection of their rights after appropriate applications have been submitted to the Trademark and Patents Department at MOCI.

It can take up to two years from the date of submitting an application for registration of a trademark or patent with all supporting documents before a registration certificate is received. Protection of a trademark or patent will however be given from the date of filing of the application. Trademark registrations have of late been moving more speedily than in the past and it may be possible to obtain the registration within the year.

Copyright protection is guaranteed by the Law of Author's Copyrights and Related Rights (**Copyright Law**). The Copyright Law protects original literary, technical and scientific works irrespective of the value of these works, their nature or the method of expression or the purpose of their authorship. This protection is granted, amongst other forms of expression, to computer databases, audio-visual works, photographic works and various publications such as recorded performances. Even the title of the works may be protected if it is innovative. Mere ideas, procedures, methods of work, mathematical concepts, principles, inventions and data are not protected by copyright.

To benefit from the Copyright Law, the content must be deposited with the Copyright Office at MOCI. The Copyright Law allows the owner to assign the copyrighted content to third parties or to grant licences for use of such rights pursuant to a written agreement.

Dispute resolution

Omani courts

Omani law provides for different levels of courts as follows:

- Supreme Court Appellate Courts;
- Courts of First Instance; and
- Courts of Summary Jurisdiction.

These courts are competent to hear civil and commercial matters, labour, tax and rent cases in addition to arbitration applications. The Administrative Judiciary Law Royal Decree 91/1999, as amended, provides for the establishment of an Administrative Court, an independent judicial body with exclusive powers to review decisions issued by Government bodies.

The Omani courts must, when issuing judgments on disputes brought before them, adhere to the laws in force, consider the contract between the disputing parties (provided that it does not conflict with any law, public order, proprietary or established valid practices in the field of commercial activities) and also consider those general principles which establish justice between litigants and lead to the stabilisation of commercial transactions. The Omani courts must consider the following matters when proving commercial contracts:

- terms of the contract;
- legislative provisions;
- rules of custom and practice; and
- the provisions of Shari'ah law.

Subject to the possible application of the Basic Law of Oman, it is likely to be the case that only in the absence of the first three provisions would Shari'ah law be considered in any commercial dispute.

All court hearings are in Arabic and, accordingly, documents originally prepared in a language other than Arabic must be translated into Arabic before presentation to the court. Alternatively, the parties may agree for an arbitration process to resolve any dispute where proceedings may be in English.

Arbitration proceedings in Oman

Oman's Arbitration Law (Royal Decree 47/1997, as amended) permits the parties to the arbitration to choose the rules of arbitration to be adopted in respect of their dispute or for a third party to select such procedure for them. In this regard, the third party chosen may be any arbitration organisation or centre based inside or outside of Oman. The parties may also agree upon the governing law (Omani or foreign) which the arbitrators will be required to apply in respect of their dispute.

If, despite the existence of an arbitration agreement, one of the parties refers the dispute to an Omani court, such court will be required to dismiss the action brought before it upon an objection being raised by the other party to the dispute, provided that such objection is raised before the filing of a statement of defence. This position has been confirmed by the Supreme Court and is expressly provided for in the Oman Arbitration Law.

Judgment upon an arbitration award rendered outside of Oman may be entered in the Omani courts pursuant to an application made to the Omani courts for judicial acceptance of the award or an enforcement of the arbitral award, in view of Oman having ratified the New York Convention.

Alternative dispute resolution

Pursuant to the Law of Reconciliation and Arrangement, parties to a dispute may also refer a dispute to the Committee for Conciliation and Adjudication, prior to lodging a claim with the courts. In our experience, orthodox alternative dispute resolution procedures such as conciliation, mediation and adjudication are not widely used in Oman.

A new Royal Decree was issued in late 2018 to establish a Commercial Arbitration Centre in Oman (Royal Decree No. 26/2018) and we understand that work is progressing on making the centre operational during the course of 2019. The new centre is expected to address the requirement for alternative ways of resolving commercial disputes and help resolve disputes other than through courts.

Investing in Kuwait

Investing in Kuwait

Options for 'onshore' Kuwait establishment

Kuwaiti corporate entities

The main forms of companies that may be established in Kuwait are:

- limited liability company (**WLL**)
- joint stock company (**JSC**)

A JSC may be privately held by shareholders or may be publicly listed on the Kuwait Stock Exchange (**KSE**) (or another foreign exchange provided they are first listed on the KSE).

Of the two forms of company, WLLs are generally easier and faster to set up and have the lowest capital requirements.

A brief comparison of JSCs and WLLs is set out in the table on page 42.

In addition to JSCs and WLLs, the Companies Law as amended (Law No. 1 of 2016) (**Companies Law**) introduced new forms of corporate entities. These include professional companies and single person companies.

Representative and branch offices

With limited exceptions (such as companies operating in banking and insurance and GCC companies wholly owned by GCC nationals), foreign companies are not entitled to establish branch or representative offices in Kuwait. Foreign companies conducting business in Kuwait must do so either through an agent or through a Kuwaiti 'partner'.

Commercial agency and distributorship arrangements

Many foreign companies operate in Kuwait through a Kuwaiti agent or distributor. An agency/distributor agreement may be entered into and, subject to agreement of the commercial terms, these are often concluded relatively quickly.

Pursuant to the Commercial Agencies Law (No. 13 of 2016) (**CAL**) all commercial agencies (which includes agencies, distributorships and franchises) must be registered. This means that the agency arrangements have to be registered at the Commercial Agencies Register at the Ministry of Commerce and Industry (**MoCI**). The agency agreement will have to include certain provisions consistent with the CAL in order to be validly registered with MoCI. For example, the agreement will need to refer specifically to a particular contract or to the particular services to be carried out, as opposed to referring to general 'sponsorship' activities to be provided. An unregistered commercial agency will not be valid or enforceable in Kuwait in accordance with the CAL.

There are a number of protections for Kuwaiti agents upon termination or expiry of the agency agreement, and it is likely that compensation would need to be paid to the agent.

Commercial visit visas

A 30-day commercial/business visa for expatriates may be applied for by a Kuwaiti sponsor. These sponsors are generally the parties who will be meeting or transacting business with the expatriate or the party for whom the expatriate will render services.

Foreign ownership restrictions

The main hurdle for a foreign company to overcome in seeking to establish a corporate presence in Kuwait is the foreign ownership restrictions, which generally permit no more than a 49% foreign ownership in a Kuwaiti company. However, Kuwait has certain exceptions to the foreign ownership restrictions.

Specifically, exemptions from the foreign ownership restrictions may exist for:

- companies established in GCC countries which are wholly owned by citizens of GCC countries (the **GCC Exemption**); and
- companies which have obtained an exemption from the foreign ownership restrictions under Law No. 116 of 2013 for Encouraging

Foreign Investment (LEFI) (the **Foreign Investment Exemption**).

Stricter restrictions are imposed on certain sectors. For example, there is currently a requirement that publishing/advertising companies be 100% Kuwaiti owned. Of note is the fact that the Companies Law excludes the requirement that was set out in the old companies law for banks and insurance companies to be owned 60% by Kuwaitis. However, the 51% Kuwaiti ownership requirement still applies.

Mitigating the impact of the foreign ownership restrictions

It is common practice to seek to mitigate the effect of the foreign ownership restrictions. In this regard, several safeguards may be used to enhance control over the company and minimise risks for the foreign shareholder. These include:

- for WLLs, naming the foreign shareholder's representative in the memorandum and articles of association as the manager or co-manager of the company to ensure the day-to-day management control of the company;
- entering into a management agreement between the company and the foreign investor providing for the payment of a percentage of profits before distribution as a management fee for the provision of management services to the company;
- entering into a profit-participating loan arrangement whereby the foreign shareholder advances a loan to the local shareholder (which is then used by the local shareholder to acquire his 51% stake in the company) in return for which the local shareholder assigns certain of his dividend rights to the foreign investor;
- entering into a call option agreement under which the local shareholder is paid an annual service fee from the profit to which he is otherwise entitled in exchange for granting a call option to the foreign investor over the local shareholder's shares in the company;
- entering into a pledge agreement by which the local shareholder pledges its shares in the company in favour of the foreign investor; and
- entering into an assignment of rights agreement by which the local shareholder assigns all monetary rights associated with the shares (eg, profits, proceeds from sale and liquidation, etc) to the foreign investor.

However, there is a risk that certain elements may not be enforceable by the Kuwaiti courts.

In addition, on a winding-up of a company, the assets available to distribute to shareholders are divided according to the shareholders in the company's memorandum of association. If a local partner who is an individual dies, his assets, including his shares in the company, are subject to Shari'ah law regarding inheritance and will pass to his heirs. The Companies Law, however, provides that the articles of association of a WLL may include a provision entitling the remaining partners to purchase the shares of a deceased partner.

Licensing

Any person carrying on a business in Kuwait (whether as an individual, a partnership, a company or a branch) will require a commercial licence. A licence holder is permitted to carry on the activities set out in the commercial licence and activities which are ancillary to the licensed activities. Certain activities may require additional licensing or restrictions from applicable regulatory authorities, such as banking, securities, brokerage and professional practices.

Foreign investment exemption

The LEFI came into force on 15 December 2013 and repealed the Foreign Capital Investment Law (**Law No. 8 of 2001**) in its entirety. The executive regulations to the LEFI were issued in December 2014.

The LEFI retained most of the incentives to applicants that are granted a licence thereunder similar to those that were provided under Law No. 8 of 2001, including but not limited to foreign investors being able to have 100% ownership of the local entity and tax holidays of up to ten years.

Importantly, the LEFI provides that all types of Kuwaiti companies established under the Companies Law for the purpose of direct investment are eligible to apply for a licence under the LEFI. This is a new development as the regulations issued under Law No. 8 of 2001 provided that only joint stock companies were eligible for a licence thereunder.

The LEFI provides that the Kuwait Cabinet shall set up a list of direct investments which cannot benefit under the LEFI. This list was issued by the Kuwait Cabinet pursuant to Ministerial Resolution No. 75 of 2015 and excludes, among other activities, certain activities within the oil sector, security and investigation, defence and social security.

Incorporation timings

The timeframe for incorporating a WLL is approximately three to five weeks from the filing of the application if no additional regulatory approvals are involved.

The timeframe for incorporating a JSC is approximately ten to 12 weeks from the filing of the application.

Additional time may be required for obtaining special regulatory approvals or to apply for an exemption from foreign ownership restrictions.

Comparison of Kuwaiti corporate entities

	WLL	JSC
Ownership	Generally, a foreign company may only own up to 49% of the capital; at least 51% must be owned by a GCC national or a GCC entity wholly owned by citizens of GCC countries	Generally, a foreign company may only own up to 49% of the capital; at least 51% must be owned by a GCC national or a GCC entity wholly owned by citizens of GCC countries Exceptions are available for publicly listed companies
Capital Paid-Up	Minimum of KWD100 but this may be greater depending on the objects of the company	In practice, a minimum of KWD10,000 for private JSCs and KWD25,000 for publicly listed JSCs, depending upon the objects of the company
Shareholders	Two to 50 shareholders	Minimum of five shareholders
Incorporation Timing (approx.)	Three to five weeks, assuming that no special approvals are required, minimal or no changes are proposed to the standard articles of association issued by MoCI and the Foreign Investment Exemption is not sought	Ten to 12 weeks for private JSCs, assuming that no special approvals are required and the Foreign Investment Exemption is not sought; timings may vary for publicly listed JSCs

Takeovers of listed companies

Kuwait has in place a legal regime for the takeover of KSE-listed companies. The Kuwait takeover rules are provided for under Law No. 7 of 2010 (the Kuwait Capital Markets Law) (as amended) (the **CML**) and the bylaws thereto, as amended (the **CML Bylaws**, and together with the CML, the **CML Rules).** The CML Rules provide for two types of takeovers namely, a voluntary takeover offer (**VTO**) and a mandatory takeover offer (**MTO**).

Under a VTO scenario, an offeror/bidder is entitled to make an offer for 100% of the total issued share capital in a KSE-listed company (the **Target**). The VTO offer to shareholders in the Target may be made subject to conditions, and the consideration offered to shareholders does not need to only be cash – as opposed to an MTO, which must be an unconditional cash offering. An offer document (which must be approved by the Kuwait Capital Markets Authority (**CMA**)) must be produced, and an extraordinary general assembly meeting is required for both the shareholders of the offeror/bidder and the Target where the VTO is to be approved in order for the VTO to proceed and ultimately be concluded.

Under an MTO scenario, the CML Rules require that within 30 days from the date of obtaining an ownership interest (whether directly or indirectly) of more than 30% of the total issued share capital of the Target, any person must make a mandatory offer – that is, submit an offer to purchase the remaining shares of the Target in accordance with the provisions of the CML Rules and instructions of the CMA. A mandatory offer must be submitted directly to the shareholders of the Target, and there will be no requirement to hold an extraordinary shareholders' meeting to consider the MTO. The MTO must be an unconditional cash offer and must not be less than the higher of the following: (i) the average of the daily price per share (as determined by the KSE) of the Target on the KSE for the six-month period preceding the date of the announcement of the MTO or (ii) the highest price paid per share by the offeror/bidder or any of its subsidiaries or allied parties during the six-month period preceding the date of the MTO announcement.

Competition Law

Law No. 10 of 2007 and the Executive Regulations issued thereunder (the **Competition Law**) regulate competition in Kuwait.

The Competition Law applies to all persons who are in control over an Intended Market. A person or entity is considered to exercise control over an Intended Market if: (i) it alone controls 35% of the Intended Market, (ii) it works directly with another person (or group of persons) to control 35% of the Intended Market or (iii) it works indirectly with another person (or group of persons) to control 35% of the Intended Market. The term Intended Market refers to related or similar products which may be considered a substitute for one another in the geographic area of Kuwait.

The Competition Law contains provisions which should be considered in the context of M&A transactions where the transaction may result in exercise of control over the relevant market. The Executive Regulations provide that natural or legal persons wishing to acquire assets, equities, usufructs or establish unions, or who undertake a merger or conglomerate or undertake the merging of the management of two persons or more entities which leads to controlling or increasing the existing control over the relevant market, are required to submit a request to the Chairman of the Competition Protection Board (**CPB**). The CPB would then issue such resolutions relating to the transaction as it deems appropriate.

Data Protection

Kuwait does not have a specific data protection law. Kuwaiti data protection issues are primarily addressed in certain sections of Kuwait's Electronic Transactions Law (Law No. 20 of 2014). According to Articles 32-36 of the Electronic Transactions Law, data may only be collected/utilised with the consent of the data subject. The parties who collect the data are legally required to state the purpose of the data collection and limit collection/use of data to the scope of such stated purpose. Parties which collect/use data are obliged to secure such data against loss, damage, divulgence, etc. and should regularly verify the accuracy of the data and amend such data as necessary.

Intellectual Property

There are four types of intellectual property that are recognised in Kuwait:

- **Trademarks**
- **Copyright**
- **Patents**
- **Designs**

Specific laws exist in relation to: trademarks (Law No. No 13 of 2015); copyright (Law No. 22 of 2016); and patents and designs (Law No. 4 of 1962, as amended by Law No. 71 of 2013).

Kuwait is subject to the GCC Patent Law, which provides a method for obtaining patent protection throughout the GCC, and is also party to a number of international IP treaties, including the World Trade Organisation's TRIPS Agreement and the World Intellectual Property Organisation's Paris and Berne Conventions.

Investing in Bahrain

Investing in Bahrain

Options for 'onshore' Bahraini establishment

Bahraini corporate entities

The main types of Bahraini companies are:

- limited liability company (**WLL**);
- joint stock company (**BSC**);
- joint stock company (closed) (**BSC(C)**); and
- single person company (**SPC**).

WLLs and SPCs generally have the lowest share capital requirements and are the most straightforward entities to be incorporated. Note, however, that WLLs and SPCs are not permitted to undertake banking, insurance and investment activities.

A brief comparison of the different types of Bahraini entities is set out in the table on page 47.

Bahrain allows 100% foreign ownership of companies and has no restrictions relating to the nationality of directors and/or management. However, companies operating in certain sectors (such as real estate, journalism and the media) must be wholly owned by Bahraini nationals or companies owned by Bahraini nationals.

There are additional restrictions on the foreign ownership of Bahraini companies operating in certain sectors, including:

- trade (including sale and purchase, import and export) where: a minimum of 51% Bahraini ownership is required; and
- medical clinics and centres, where licensing is confined to Bahraini or GCC citizens resident in Bahrain with medical qualifications (excluding hospitals).

Nevertheless, pursuant to GCC treaties and the U.S. Bahrain Free Trade Agreement, foreign ownership restrictions have limited application to 100% GCC and/or U.S. owned entities.

Branch offices

A foreign company which is established outside Bahrain may establish a presence in Bahrain as:

- an operational office;
- a representative office; or
- a regional office.

Operational offices are permitted to trade in Bahrain and may undertake banking, insurance and investment-related services subject to Central Bank of Bahrain (**CBB**) licensing. A local office presence is required for an operational office.

Representative offices and regional offices are only permitted to undertake marketing and promotional activities.

Branches have no minimum share capital but the parent company is required to provide a letter of undertaking. A Bahraini local sponsor is not required to incorporate an operational branch in Bahrain.

Commercial agency and distributorship arrangements

Foreign companies may operate in Bahrain through a Bahraini agent or distributor. An agency/distributor agreement may be entered into and, subject to agreement on the commercial terms by the parties, these arrangements are often concluded relatively quickly.

Commercial agencies are governed by the Bahraini Agency Law. There are provisions in the Bahraini Agency Law regulating and protecting Bahraini agents and distributors which include an entitlement to receive compensation upon termination or expiration of their relationship with a foreign principal.

Exclusive distributors are entitled to rights similar to agents under parallel provisions of the Bahraini Law of Commerce.

Taxation

There is no income tax or corporation tax in Bahrain. However, there are corporation taxes levied on companies operating in the oil and natural gas sectors.

Bahrain has implemented Value Added Tax in line with the Unified VAT Agreement for the GCC (the **Framework Agreement**). The VAT rate is 5% on most products and services; although various financial services, educational services and services provided from Bahrain to offshore persons (other than those directly related to a Bahrain person) that are not resident in an implementing state under the Framework Agreement are rated at 0%. For importation of services, a reverse charge mechanism has been instituted.

Licensing

Any person carrying on business in Bahrain (whether as an individual, a partnership, a company or a branch) will require a commercial licence. A commercial registration licence holder is only permitted to undertake the activities listed on the licence.

Certain activities may require additional licensing, ministerial 'no objection' or have other restrictions from applicable regulatory authorities such as banking, securities, brokerage and professional practices.

The Bahrain International Investment Park (**BIIP**)

The BIIP is a not free zone but a business park that has been developed by the Ministry of Industry, Commerce and Tourism (**MoICT**). It was designed to attract export oriented local, regional and international companies looking to develop manufacturing or international services operations.

The BIIP offers several advantages, amongst which are:

– no minimum capital requirement;
– 100% foreign ownership;
– 0% corporate tax with a ten year guarantee;
– 100% repatriation of capital;
– renewable 50-year leases;
– no recruitment restrictions for the first five years;
– exemption from import duties on raw materials and equipment;
– free trade access to the U.S.; and
– duty free access to all GCC markets (unlike free zones in the region).

Products manufactured in a free zone (eg Jebel Ali in Dubai) are generally subject to 5% customs duties when sold into GCC and other Arab markets.

However, as the BIIP is not a free zone but rather an integral part of the GCC, products manufactured in Bahrain and sold into GCC and other Arab markets are free of import duties. This provides a 5% margin against other free zone locations.

Incorporation timings

The timeframe for incorporating an SPC or WLL is approximately five to seven business days from the date of filing the application with MoICT.

The timeframe for incorporating a BSC and BSC(C) is approximately two to three weeks from filing the application to MoICT.

The timeframe for establishing a branch is approximately five to seven business days from filing the application to MoICT.

The timeframes set out above may vary if special regulatory approvals or 'no objection certificates' are required as discussed above.

Comparison of Bahraini corporate entities

	WLL	BSC	BSC(C)	SPC
Ownership	100% foreign ownership	100% foreign ownership	100% foreign ownership	100% foreign ownership
Capital	Minimum share capital requirement of BHD100**	Minimum share capital requirement of BHD1,000,000	Minimum share capital requirement of BHD250,000	Minimum share capital requirement of BHD50
Shareholders	Minimum of two, maximum of 50	Minimum of two founding shareholders. BSC companies are publicly traded	Minimum of two shareholders	An SPC must have a single owner, either individual or corporate entity
Incorporation Timing (approx.)	Five to seven business days	Two to three weeks NB: This excludes the period to complete listing on the Bahrain Bourse and/or completing formalities associated with an IPO	Two to three weeks	Five to seven business days

** Irrespective of the legal form of the company, the MoICT has the discretion to impose higher capitalisation amounts if the corporate objects necessitate higher capitalisation (eg a holding company taking any form must be minimally capitalised at BHD 250,000). In particular, if the company is to undertake major banking/insurance/financial services, the capitalisation is likely to be a minimum of BHD 1,000,000 or higher.

Regulation of public transactions

The Central Bank of Bahrain (the **CBB**) is the sole regulator of Bahrain's financial sector, covering the full range of banking, insurance, investment business and capital market activities. The CBB has issued regulations with regard to takeovers, mergers and acquisitions of publicly listed equity securities in Bahrain. These rules are applicable to publicly listed companies and, in certain instances, to non-publicly listed companies.

Under these regulations, any takeover or merger transaction, however effected, including schemes of arrangement which have similar commercial effect to takeovers and mergers, are considered 'offers' and should obtain the approval of the CBB. Mandatory offers, voluntary offers, partial offers, offers by a parent company for shares in its subsidiary and (in some cases) share repurchases, are also regulated.

All concerned parties to the transaction are obliged to give full cooperation to the CBB Capital Markets Supervision Directorate throughout the transaction.

An offer for a listed company should first be presented to the board of directors of the offeree. Where an offer results in the offeror (singly or in concert with others) taking a controlling interest in the offeree (deemed at 30% shareholding regardless of whether actual control is obtained), the CBB and any independent committee must be consulted to assess the proposed offer.

The offer document and any other documents relating to the offer must be submitted to the CBB for approval prior to release or publication.

Disclosure is required when an acquisition of 5% or more of the issuer's issued and paid-up capital by a beneficial owner reaches 5% or more and when ownership of a beneficial owner reaches 10% or more.

Mandatory offers and partial offers are also strictly regulated.

Competition Law

Competition law in Bahrain is regulated under two pieces of legislation: Law No. 35 of 2012, concerning Consumer Protection (**CPL**) and the Competition Law, No. 31 of 2018 (the **Competition Law**). The CPL provides in part that it is prohibited to conclude any agreement designed to breach or which results in the breach of the rule of free competition. The CPL also in part prohibits the manipulation of the price of products being sold either by increasing or reducing the price without justification or the concealment of the availability of products from certain persons. Such acts would be considered in breach of the rule of free competition.

The CPL also provides that, subject to free trade, no harmful commercial or monopolistic practices shall take place. However, to date, implementing regulations setting out the rules and procedures identifying the practices mentioned above have not been issued.

The Competition Law was issued in July 2018, with the aim of protecting and enhancing competition, and tackling monopolistic practices. The law prohibits activity which constitutes an abuse of a dominant market position, restrictive agreements (above a certain *de minimis* level) and regulates any economic activity (including M&A transactions) which will result in a dominant market position.

The Competition Law identifies various practices which will be deemed to be anti-competitive and unlawful as well as outlining particular transactions which are regulated and should be reported to and approved by the Competition Authority (the **CPA**). The Competition Law does not specifically regulate issues regarding the exchange of information with a view to possibly eventually concluding a transaction in the future (unless such information is shared with one of multiple competitors).

The Competition Law sets specific thresholds for anti-competitive behaviour, being 40% singly and 60% acting together with another person of a relevant market.

The implementing regulations of the Competition Law are expected to be issued in the coming months.

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