

A Renewed Regional Alliance?

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With the lifting of the Qatar embargo previously imposed by the UAE and Saudi Arabia, questions are being asked whether trading relationships between the three countries will return to the pre-embargo 'normal'. Whilst a total return to the status ante is unlikely, Qatar has independently undertaken legislative developments that run surprisingly close to the latest moves adopted by its neighbours, which in turn bids well for the reintroduction and future solidification of the state in the GCC economy.

The latest trend with respect to developments in Qatar, the UAE and Saudi Arabia can perhaps be best described as one of convergence and increasing homogeneity. The theme in this regard is the internationalisation of the respective states' markets and easing up of previously entrenched foreign ownership rules.

Law No 1

The combination of the then ongoing embargo and then subsequent impact of the COVID-19 pandemic might have caused international investors to miss the major legal development in Qatar, introduced under Law No (1) of 2019 regulating the Investment of Non-Qatari Capital in the Economic Activity (Law No 1). Law No 1 opens to foreign companies and individuals the possibility to own 100% of the shares of most Qatari-incorporated limited liability companies, thus effectively abolishing the previous (and GCC prevalent) obligation under Qatar Foreign Investment Law No. 13 of 2000 to have a local partner holding at least 51% of the shares in any Qatari limited liability company. This is an incredibly positive development for Qatar with the propensity to open up the domestic market to international competition and participation.

Naturally, Law No 1 is not without its caveats and fine print.

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- Certain activities and sectors are excluded from the scope of Law No 1, such as banking and insurance.
- Law No. 1 does not apply to specific entities, including companies set up by the government and public institutions or in which they participate and companies in which the government participates in partnership with foreign investors. Clearly, therefore, PPPs which habitually include government investment (usually in the form of direct shareholding in the project company) would fall outside of Law No 1.

For example, Al Kharsaah 800.15MW solar photovoltaic IPP in Qatar, which we (Bracewell) closed on 22 July 2020, is majority owned by Qatari institutions. This is again in line not only with previous Qatari I(W)PPs but moreover the approach in most GCC states, excluding Saudi Arabia.

However, a notable recent departure from this norm is the Al Wakra & Wukair ISTPs in Qatar, which are currently under procurement by Ashghal (Public Works Authority of Qatar). Interestingly, Ashghal went to market on the back of Law No 1 first being promulgated, asking all bidders to make their own arrangements regarding local shareholding, categorically declining to front any government (direct or indirect) co-shareholding. This resulted in international developers either partnering up with local Qatari entities at a 49:51 ratio (thus effectively fitting within previous foreign ownership restrictions) or assuming that majority or full foreign ownership of the project company will be allowed.

- With that in mind, it serves noting that Law No 1 does not automatically grant foreign investors the right to own majority stakes in Qatari entities. Instead, foreign investors are required to apply to the Ministry of Commerce and Industry for an approval to exceed the threshold of 49% foreign share capital ownership in companies. Therefore, foreign investor who (as in the case of the Al Wakra & Wukair ISTPs) wish to take up majority stakes in PPPs will still need to run through an approval process, the outcomes of which remain relatively untested.

To this end, however, the Minister of Commerce and Industry issued executive resolutions on 8 June 2020 under No 44 of 2020 (published under the official gazette on 11 June 2020, with effectiveness from 11 July 2020). Pursuant to these regulations, the Minister is expected to issue a list of activities in which foreign investors will be entitled to take an equity stake in excess of 49%, presumably fast-tracking the required approval process and providing more certainty of outcome to future investors. Unsurprisingly, the continued development of the Law No 1 landscape has taken a slight back-seat in the context of the COVID-19 pandemic which seemed to instil a single goal priority across the world. But our expectation is that this enabling legislation will ultimately liberalise the Qatari market with respect to international investment, the only question being when.

Federal Decree

Whilst Law No 1 presents its unique positives and corresponding complications, it is strikingly similar in theme to the legal developments most recently introduced in the UAE, namely the Federal Decree Law No 26 of 2020 (Federal Decree 2020). My colleagues, Chris Williams and Shayan Najib, have written in length about this topic (see [Amendments Announced for Existing Foreign Ownership Rules of UAE Onshore Commercial Companies](#)), which I do not intend to repeat here. However, with Law No 1 in mind, there is an interesting convergence of thinking between the UAE and Qatari approach to foreign ownership.

- There is no longer a blanket requirement for UAE shareholders to hold at least 51% of shares in a UAE (onshore) entity. Instead, each Emirate will have the authority to determine a specific percentage of contribution of UAE national to capital and the board of directors in a UAE entity. However, similarly to Law No 1, entities carrying out activities with a “strategic impact” will fall outside the enabling amendments of the Federal Decree.
- The previous rule that required the chairman and majority of board of a PJSC to comprise UAE nationals has been removed, subject to any overlaying restrictions that the each Emirate may impose.

As with Law No 1, the Federal Decree anticipates further regulations and guidance, which will no doubt provide additional colour and context to what is or is not permitted. But, it certainly appears beyond doubt that the age old doctrine of majority local ownership, both in Qatar and the UAE, is being revolutionised with the intent to bring the world to the Middle East.

Regional Headquarters in Flux

Arguably, one of the major drivers behind internationalising the Qatari and the UAE markets is to create legal conditions which enable (as opposed to restrict) the domestication of international businesses. It is no secret that the Middle East has for decades suffered from sizeable leakage of value, particularly in the form of repatriation of locally sourced funds. Whilst this leakage has for years been ignored on the back of robust oil & gas revenues, the increasingly cyclical nature of that revenue, coupled with an overwhelming, global push for transition to green energy, capturing carbon-dollars in local development and markets is arguably critical to the long term financial stability of the Middle East. It therefore makes perfect business sense, if not serve an immediate economic need, to take steps to (firstly) attract top international talent and investment, and (secondly) retain that talent and investment in-country (without repatriation leakage).

UAE, and perhaps more specifically Dubai, has arguably been the most successful in that regard, creating a business environment which has progressively established itself to be the preferred spot for regional headquarters of multinationals and international investments.

Saudi Arabia, the GCC's largest economy, has historically benefitted from seemingly endless export revenue from its vast oil reserves. However, on the back of the latest COVID-19 worldwide recession and corresponding crash of the oil price, Saudi Arabia has begun to instil several prudent fiscal measures (namely in the form of tax reform) to shore up its finances. Moreover, on 15 February 2021 the Saudi government announced a policy decision to require all entities doing business with the Saudi government to be headquartered, as a regional office, in the Kingdom by no later than 2024. Whilst the specifics behind what constitutes regional headquarters is at this stage unclear, it has already been reported that at least 24 international firms (including Deloitte, Bechtel and PepsiCo) have undertaken to make the move, adding practical credibility to what could have been interpreted to be an aspirational announcement.

Competitive Convergence

As most would be aware, Saudi Arabia has historically not imposed blanket foreign ownership restrictions, making the equivalent of Law No 1 and the Federal Decree redundant in the Kingdom.

However, it is equally common knowledge that the Kingdom is undertaking some of the broadest liberalisation schemes ever to have been seen, if not some of the grandest and boldest projects ever conceived (Neom, Red Sea and Riyadh expansion, to name a few). This effectively converges Saudi Arabia towards the same trajectory of Qatar and the UAE, involving increased international participation and (critically) domestication of local and global investments.

Where exactly this new norm will fall is yet to be written, but there appears to be, perhaps for the first time in GCC's history, a three-horse race for regional economic supremacy. That competition is likely to give rise to innovative and increasingly foreign-friendly market environments, which will no doubt reflect in corresponding legislative changes and developments.