United Arab Emirates

Squeeze-out Guide

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INTRODUCTION

This guide sets out an overview of the current legal position in the United Arab Emirates (**UAE**) in respect of the availability of "squeeze-out" rights exercisable by a buyer in connection with the acquisition of a company incorporated in the UAE.

An understanding of the "squeeze-out" rights available in the UAE necessitates a brief outline of the legislative framework which forms the background of such rights.

UAE FEDERAL LAWS

The UAE is a federation of seven emirates comprising Dubai, Abu Dhabi, Ajman, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain and was formed in 1971. The UAE federal constitution provides for an allocation of powers between the federal government and the government of each emirate. Dubai, for example, is subject to the federal law of the UAE but retains the right to administer its own internal affairs and enjoys certain other exclusive rights.

The UAE Federal Law No. 8 of 1984 concerning Commercial Companies (**UAE Companies Law**) is of relevance to this topic as it is intended to be a comprehensive code on the regulation of companies in the UAE. As the UAE Companies Law is a federal statute, it is applicable in all of the seven emirates of the UAE and supersedes any local laws enacted by the individual emirates. In this regard, but subject to our comments in the following section regarding "Free Zones within the UAE", all commercial companies in the UAE must comply with its provisions.

Foreign ownership restrictions apply to UAE companies and in particular the UAE Companies Law requires nearly all types of foreign-owned companies to have at least 51% of their shares owned by a UAE national or a company wholly owned by UAE nationals (in the case of some activities, this threshold is even higher).

FREE ZONES WITHIN THE UAE

The UAE also hosts a significant number of free zones, which are areas within certain of the emirates of the UAE that permit 100% foreign ownership of companies. The free zones have primarily been established for the purpose of attracting foreign investment in the UAE.

The UAE free zones have their own laws and regulations which are different to those in non-free zone areas (often referred to as "onshore UAE"). In particular, companies established in the free zones are outside the ambit of the UAE Companies Law and have been expressly excluded from its operation.

One particular free zone, the Dubai International Financial Centre (**DIFC**), will be considered separately to the other free zones in this guide, as it is considered the most advanced of the UAE's free zones and is the location of one of the UAE's stock exchanges.

OFF MARKET COMPANIES

A UAE company which is not listed on an exchange in the UAE (an off market company) will only be subject to the laws and regulations of the jurisdiction in which is it incorporated (federal or free zone). Thus, a company incorporated onshore UAE under the UAE Companies Law will only be required to comply with the provisions contained in that law, whereas a company incorporated in a UAE free zone must only comply with the laws and regulations prescribed by that free zone authority (subject to certain exceptions depending on the relevant free zone).

ON MARKET COMPANIES

In addition to compliance with the laws as referred to in the previous section, a UAE company which is listed on an exchange in the UAE (an on market company) must also comply with the rules and regulations of the relevant exchange as well as the rules of the regulator.

The Emirates Securities and Commodities Authority (**SCA**) is the regulatory body that monitors and supervises securities markets that are considered to be onshore UAE. Any public company which is incorporated under the UAE Companies Law and listed on either of the two onshore UAE stock exchanges, the Dubai Financial Market (**DFM**) and the Abu Dhabi Securities Exchange (**ADX**), shall comply with various reporting and disclosure requirements set down by SCA, as well as the rules and regulations of the relevant exchange.

The Dubai Financial Services Authority (**DFSA**) (which was established with the assistance of the DIFC as the regulator) is the regulatory body that monitors and supervises the stock exchange located in the DIFC, namely Nasdaq Dubai (formerly called the "Dubai International Financial Exchange", or "DIFX"). Any public company which is incorporated in the DIFC and listed on Nasdaq Dubai shall comply with the rules prescribed by the DFSA, which include the Takeover Rules and the Offered Securities Rules, as well as the Nasdaq Dubai Listing Rules.

CONCEPT OF "SQUEEZE-OUT"

Onshore UAE, the concept of a "squeeze-out", in terms of which the minority shareholder(s) of a company is forced to sell their shares to an offeror purchasing the majority shareholding of the company, is not recognized in respect of both off market and on market companies.

Similarly, there are no takeover code or UAE federal laws which deal specifically with such rights of an acquiring party.

In the DIFC however, the laws of such free zone recognize the right of squeeze-out and prescribe the terms and conditions of such a right. This right is available in respect of both off market and on market companies.

In addition, the DFSA has produced Takeover Rules which apply to DIFC registered companies which are regulated by the DFSA.

OFF MARKET

UAE FEDERAL LAW

Under the UAE federal laws, the right of squeeze-out is not recognized, and thus not contemplated in any circumstances.

However, the UAE Companies Law contains provisions which deal with amalgamations of companies and also takeover transactions, particularly in respect of private transactions. If the transaction is by way of amalgamation, a minimum of 75% of approval of the shareholders is required together with local authority approval. The requisite shareholder approvals required for acquisitions is subject to the constitutional documents of the parties.

FREE ZONES WITHIN THE UAE

With the exception of the DIFC, which is discussed below, none of the laws and regulations of any of the free zones in the UAE recognize the concept of the right of squeeze-out.

DIFC

The DIFC came into existence in 2004 and has its own laws and regulations governing those entities which are incorporated in the DIFC and as such, the DIFC is independent of the civil and commercial laws of the UAE.

The DIFC Companies Law, Law No. 2 of 2009, provides that a right of squeeze-out may be exercised by an offeror in the event that, within 4 months from the date of the takeover offer, it has acquired or contracted to acquire 90% in value of the shares of the company. A takeover offer is defined as an offer to acquire all the shares, or all the shares of any class or classes, in a company being an offer on terms which are the same in relation to all the shares to which the offer relates.

The DIFC Companies Law further provides that if a takeover offer relates to shares of different classes, a right of squeeze-out may be exercised by an offeror in respect of a class to which the offer relates in the event that, within 4 months from the date of the takeover offer, it has acquired or contracted to acquire 90% in value of the shares of a particular class.

The offeror must exercise the right of squeeze-out by written notice within 120 days of the close of the takeover offer, provided that the notice is given within 2 months from the date on which the offeror has acquired or contracted to acquire 90% in value of the shares of the company.

If a notice is given in respect of the squeeze-out of the minority shareholders, the following shall apply:

1. The offeror shall be entitled and bound to acquire the relevant shares on the terms of the takeover offer;

2. If the takeover offer permits shareholders a choice of payment, the notice shall set out the relevant particulars in respect of payment and state:

   a. that the shareholder may, within 6 weeks from the date of the notice, indicate how it wishes to be paid by written communication sent to the offeror at the address specified in the notice; and

   b. which payment specified in the takeover offer will be applied in default.

3. At the expiration of 6 weeks from the date of the notice, the offeror shall:

   a. send a copy of the notice to the company together with an instrument of transfer executed on behalf of the shareholder by a person appointed by the offeror;

   b. make payment to the company on behalf of the shareholder(s) to which the notice relates; and

   c. if payment is to be made in shares or securities to be issued by the offeror, issue the shares or securities to the company on behalf of the shareholder(s).

ON MARKET

ONSHORE UAE

Emirates Securities and Commodities Authority

The SCA Regulations do not recognize the right of squeeze-out in respect of publicly listed companies. However, the SCA Regulations do provide that for a purchase of 20% or more of the shares of a publicly listed company, a buyer must obtain the approval of the relevant exchange before placing a purchase order. The existing regulations provide that the exchange may, after consultation with the SCA, prohibit the transaction if it would constitute a prejudice to the interests of the UAE economy.

Dubai Financial Market

The DFM, officially launched in 2000, is a stock exchange located in Dubai focused on domestic equity. The rules and regulations prescribed in respect of the DFM do not contain any squeeze-out rights.

Abu Dhabi Securities Exchange

The ADX, established in 2000 and located in Abu Dhabi, and similarly to the DFM does not prescribe any rules or regulations in respect of squeeze-out rights.

NASDAQ DUBAI

Nasdaq Dubai established in 2005 is focused on attracting foreign listings.

The right of squeeze-out as set out in paragraph 2.3 above applies to companies listed on Nasdaq Dubai.

The DFSA Takeover Rules, which also apply to companies listed on Nasdaq Dubai, set out the circumstances in which a mandatory bid for all of the shares of the company shall arise. The Takeover Rules specifically provide that the rules in respect of mandatory bids do not apply in relation to an acquisition of shares of a company which is the result of the exercise of a right of squeeze-out.

LIFECYCLE OF THE RIGHT OF SQUEEZE-OUT

Timeline	Action
A	Date of offer
B=A+4 months – 1 day	Maximum period of time during which the offeror must acquire or contract to acquire the minimum number of shares required to trigger the squeeze-out rights
C	Date of close of takeover offer

C+120 days	Maximum period for the offeror to exercise the right of squeeze-out by giving any non-accepting shareholders notice that it wishes to acquire their shares.
B+2 months	Deadline to exercise the right of squeeze-out
D	Date of squeeze-out notice(s)*
D	The offeror must send to the target company: • a copy of the first notice served; and • a declaration by the offeror (or a director thereof if it is a body corporate) stating that the conditions for the giving of the squeeze-out notice have been met
D+6 weeks	Deadline for the departing shareholder(s) to indicate its/their choice as to the method of payment of the consideration for its/their shares
D+6 weeks	The offeror must: • send to the target company a copy of the squeeze-out notice(s) together with instrument(s) of transfer executed on behalf of the departing shareholder(s) by a person appointed by the offeror; and • make payment to the target company on behalf of the holders of the shares to which the squeeze-out notice relates. On receipt of the documents listed above, the target company must register the offeror as the holder of the squeezed out shares.

* For the purpose of these tables it was assumed that all squeeze-out notices are served on the same date.