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NOMINAL SHAREHOLDING AND BENEFICIAL OWNERSHIP OF SHARES IN THE UAE COMPANIES: A RECENT UAE COURT DECISION

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This alert has been prepared to provide a brief overview of certain issues related to the judicial review of the nominee shareholding arrangements in companies in the United Arab Emirates (the '**UAE**'). It examines the circumstances of the dispute, the court's key findings, and the potential implications of this ruling for the structuring of corporate relationships in respect to companies registered in the UAE.

This material is based on information from public sources and is for reference purposes only. It does not constitute advice or a legal opinion. If you have any questions regarding this alert, please contact us at: info@whitesquarepartners.com.

1. Circumstances of the dispute

According to published reports¹, the Dubai Court of First Instance heard a corporate dispute concerning claims for the recovery of approximately 169 million UAE dirhams (approx. 46,049,000 US dollars) and the recognition of rights relating to an interest in a business. The claimant argued that he held a 51 per cent stake in the relevant entity and, consequently, was entitled to profits and other financial benefits arising from the business's operations. However, the defendants contended that the claimant's registered shareholding in the company was purely nominal and had been necessitated by regulatory requirements in force at the relevant time (for recap, before 2021 the UAE federal corporate law (Mainland jurisdiction) prescribed mandatory participation of the UAE nationals in companies with at least 51% interest). In their view, the business was in fact financed by other individuals, who were its actual (beneficial) owners. It is reported that, during the proceedings, the court examined a wide range of evidence, including corporate documents, information on the financing of the business, the powers of the parties, and documents reflecting the actual relationships between the parties. Following the proceedings, the claims were dismissed.

2. The court's approach to determining the true owner of a business

The key issue in this dispute was whether the formal registration of a person as a company shareholder was sufficient grounds for recognising them as the actual owner (beneficial shareholder) of the business.

The court concluded that it was necessary to analyse not only corporate registers and registration documents, but also the totality of factual circumstances characterising the actual relationships between the parties. In particular, according to the available information, significant weight was given to the following circumstances:

- the presence or absence of actual funding of the business by the respective shareholder;
- the distribution of business risks between the parties;
- the existence of documents confirming the genuine nature of the agreements between the shareholders;
- the parties' powers to manage the business and dispose of its assets;
- other evidence indicating who actually exercised control over the relevant company.

The court concluded that the mere fact that a person is listed in corporate documents as a shareholder does not in itself constitute unequivocal confirmation of their status as the actual owner (beneficial shareholder) of the business.

3. Significance of the ruling for nominee ownership structures

Although the full text of the court ruling is not publicly available, the published information allows for a number of practical conclusions to be drawn regarding the use of nominee ownership structures in the UAE.

First and foremost, the ruling demonstrates the court's willingness to examine the actual substance of the relationship between the parties, rather than limiting itself solely to formal registration details.

¹ Gulf News – "Dubai court dismisses Dh169 million claim in major ownership dispute"

Furthermore, the judgment may be regarded as further confirmation that, in the event of a dispute, the courts are capable of giving substantial consideration to issues concerning the origin of investments, the sources of business funding and the actual distribution of economic benefits amongst the parties involved in the corporate structure. Consequently, the mere existence of a formal status as a company shareholder does not in itself guarantee that the relevant person's rights to the business's assets will be recognized if other evidence suggests otherwise.

4. Practical implications for business

This ruling is of practical interest both to nominal shareholders and to persons who are the actual owners (beneficial shareholders) of the business. It is advisable for the parties to pay greater attention to the documentation of the ownership structure and the allocation of rights amongst the shareholders. In particular, it is recommended to:

- ensure that the sources of business funding are properly documented;
- set out in writing the actual distribution of economic interests and the agreements between the shareholders, including by drawing up shareholding, option agreements and other documents;
- ensure consistency between corporate documentation and the actual relationships between the parties;
- analyse the risks associated with the use of nominee ownership structures;
- assess in advance the potential evidential implications should a corporate dispute arise.

Depending on the structure of the business and the nature of the relationships between the parties, various corporate instruments

may be used to confirm the actual allocation of rights and economic benefits.

These issues may be of particular significance in relation to historically established structures created prior to the reforms of the UAE's corporate legislation and the liberalisation of foreign ownership requirements in certain sectors of the economy.

5. Limitations on the assessment of the decision

It should be noted that the conclusions set out in this alert are based solely on information published in open sources. Furthermore, the aforementioned decision was handed down by the Dubai Court of First Instance, which leaves room for appeal. For these reasons, the practical significance of this case should be assessed with a degree of caution until further official information becomes available.

6. Conclusion

The key conclusions that can be drawn from the dispute in question are as follows:

- the formal designation of a person as a shareholder does not guarantee that they will be recognised as the actual owner (beneficial shareholder) of the business;
- the UAE courts may examine the actual economic relationships between the parties and take into account a wide range of evidence extending beyond corporate registers;
- issues relating to the financing of the business and the distribution of economic benefits may play a significant role in the resolution of corporate disputes;
- the use of nominee ownership structures requires thorough documentation;

- the absence of adequate evidence of actual agreements between the parties may give rise to significant legal risks in the event of a dispute.

Regardless of the outcome of this dispute in the higher courts, the Dubai Court's ruling demonstrates the importance of properly structuring corporate relationships and documenting the actual (beneficial) ownership structure of a business.

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