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Corporate Structuring

Structuring businesses for growth and protection

HADEF & PARTNERS

Evolution of Corporate Structuring

The potential to use innovative corporate structuring techniques to further protect the interests of local and foreign investors is a specific practice area which has evolved significantly over the past decade, due to the licensing and structuring restrictions applicable under relevant UAE laws and regulations as well as their practical application.

We have been at the forefront of the market in our understanding of the relevant legislation and its practical interpretation by the relevant governmental officials and legal departments, to ensure that we can devise and implement optimal structures for our clients.

We have managed to work with the relevant licensing authorities to accept our various corporate structures on the principle that such structures are devised with the objective of attracting and facilitating foreign investment into the country.

Our objective is to allow our clients to focus on their business and have a corporate structure that they know is robust and flexible enough for their short, medium and long term objectives.

Innovative corporate structures developed by Hadef & Partners

For example, a substantial number of corporate structures in the market are devised in a manner under which a local UAE “sponsor” is registered as the holder of 51% of the shares in an operating onshore LLC (“Nominee Shares”) whilst the remaining 49% of shares are owned by a foreign investor. The major risks and issues associated with such structure are as follows:

- in Dubai, the accepted legal practice is for at least 20% of profits (although this can be as low as 10% in Abu Dhabi) to be allocated under the memorandum of association (MOA) to a UAE sponsor, provided the MOA is amended to reflect this;
- 51% of the share capital of the operating company is merely protected through private agreements (which could be deemed unenforceable by UAE courts);
- any share transfer or restructuring will require, in practice, the consent of the UAE sponsor;
- decisions that require shareholder approval pursuant to the UAE Companies Law may only be passed with the consent of the UAE sponsor; and
- there is a considerable risk that the legal heirs of the UAE sponsor, under Shariah, could become registered as direct shareholders of the operating company and possibly disrupt the management and operation of the company.

Although a UAE sponsor usually grants a power of attorney in favour of the foreign investor to deal with the Nominee Shares, this power of attorney can be revoked at any time, as the concept of an irrevocable power of attorney is not recognised in the UAE.

Based on the above, we have devised a range of corporate structures which would ensure that:

- all of the profits are protected through agreements which are attested by the relevant UAE governmental departments without having to rely on private agreements;
- the share capital comprising the Nominee Shares is protected, as the foreign investor would have full control over the decisions taken in respect of the share capital of the company;

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- share transfers and restructuring can occur without being required to obtain the consent of the UAE sponsor;
- decisions that require shareholder approval pursuant to the UAE Companies Law may be passed without the consent of the UAE sponsor; and
- the risks associated with the potential application of inheritance rules under Shariah, if the UAE sponsor dies or becomes incapacitated, are either entirely eliminated or severely mitigated.

As a result of our constant commitment to ensure that we provide the most effective legal protections for our clients, we have engineered a number of structures in the UAE which enable us to remain as a market leader with respect to corporate structuring.

We believe that the most effective way to devise corporate structures is to ensure that we add value to your business in such a way that your interests are further protected without disrupting the management and operation of the business.

Based on our extensive experience working with a wide range of businesses ranging from public listed companies, multinationals, expat and local business owners, we note that stakeholders are often surprised by the range of structuring options that we have to offer and the extent by which the interests of the group are further protected under such proposed structuring options.

How we add value

We are recognised in the market as experts on group restructuring and, as stated above, have engineered a number of innovative corporate structures in the UAE. We advise clients on how to replace existing extensive group structures with new structures designed to efficiently serve core business objectives and to improve the efficiency and profitability of the company as well as to minimise potential risks and issues.

We believe that we would be able to add value to your business in any of the following circumstances:

- if you are an owner that wishes to sell either all or part of your business (please refer to our “Structuring for Exit” section).
- if you wish to consolidate your financial statements for the purpose of creating leverage to obtain further financing from banks or financial institutions.
- if you wish to devise an optimal structure to either prepare for an IPO or to ensure a smooth family succession between generations.
- if you wish to substantially mitigate risk in terms of potential personal liability by converting certain entities such as sole establishments or civil companies into limited liability companies.
- if you wish to structure your operations in the UAE to enable maximum efficiency in terms of operations with a view to minimise the imposition of applicable customs duties.
- if you wish to mitigate any risk associated with any company or entity within your existing structure which does not appear to specifically carry out the activities noted in its licence.
- if you wish to mitigate the risks associated with the individual UAE national acting as your sponsor and who holds shares in any of your operating companies.
- if you wish to select the optimal jurisdiction in the UAE to establish your headquarters and also to benefit from any tax relief under relevant double tax treaties.

How we assess your objectives

Our approach to corporate structuring initially consists of assessing the relevant information regarding the key issues for each major concept. By approaching the key issues systematically in this way, we are able to ensure that all relevant considerations are discussed with you and addressed in our structuring advice.

For example, we examine a number of questions at the time of considering and determining the objectives of the proposed restructuring, such questions may be as follows:

1. where is the value of the business and what are the risks that may potentially affect such value?
2. how do you intend to carry out the relevant activities in the market and where will your employees be located?
3. is there any potential liability for the shareholders which may exceed their capital contributions?
4. are there any protections that could be inserted to further safeguard the interests of the shareholders?
5. how can the potential risks associated with the application of the inheritance rules under Shariah be mitigated?
6. which structure would benefit the business in terms of increasing financial leverage with banks, structuring for exit or reducing potential liability for shareholders and management?
7. does your UAE sponsor strategically contribute to your business?
8. do you intend to carry out business in various Emirates of the UAE?

Our aim is to go to the heart of your business so we can devise structuring options that will best achieve the relevant objectives.

The objectives for corporate restructurings may vary and can include the following:

- the foreign investor to own the entire legal and beneficial interest in the entire issued share capital of the relevant company or group of companies.
- the proposed corporate structure should minimise the effect of inheritance laws applicable upon the death or physical incapacity of the UAE sponsor (which could disrupt the control and management of the operating entities).
- the proposed structure should enable you as a matter of clear applicable law to:
  - secure and protect your legal and economic interest;
  - receive all of the profits of the company or group of companies; and
  - have sole control and management of the relevant company or group of companies.
- to ensure that the entity is able to carry out all of the intended activities.
- to ensure that the provisions of a shareholders' agreement can be enforced, in particular, with compulsory share transfer mechanisms such as call/put options and tag/drag along rights.
- the corporate structure should enable and facilitate an exit by any of the shareholders without negatively affecting the performance and success of the business.
- spin-offs or discontinuance of non-profitable entities.
- reduction of operating costs through downsizing while maintaining business by adding the activities previously performed by the discontinued companies to the licenses of the remaining group entities.
- reorganisation to avail of tax free status and benefit from repatriation of dividends to foreign parent company under any double taxation treaties.

Family Group Restructurings

We also have a strong track record in advising family groups in the UAE and the GCC in relation to group corporate restructurings. Our group restructuring options are tailored to meet the specific objectives of each family. These objectives generally relate to viable succession planning, separating ownership and management issues, mitigating the risks of family disputes and all other aspects of best family and corporate governance. We have an in-depth understanding of the issues and risks that can arise in large family groups and have created a range of options and methods to best manage and mitigate such issues and risks through comprehensive tailored plans and appropriate corporate structures adapted to the needs and requirements of each family group.

We believe that our role is to ensure that the corporate business and family restructuring dovetail with each other so that they:

1. are consistent with the family's strategy and objectives.
2. create a clear framework for operating the business.
3. are compliant with licensing and regulatory considerations.

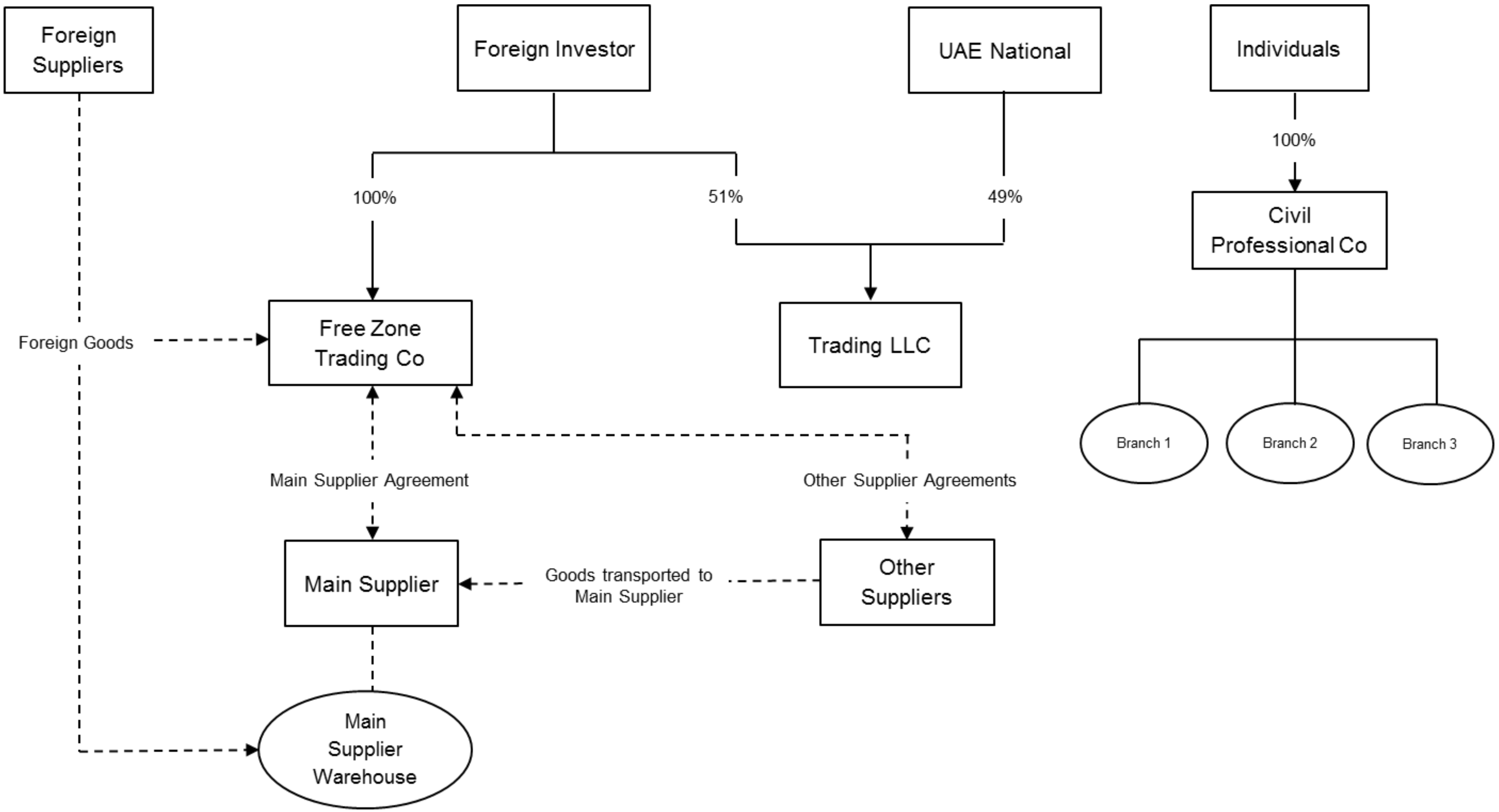
A well designed family group restructuring helps to position the group for optimum growth moving forward and enhances value and creates efficiencies in the event of a disposal, an IPO or the entry of an investor.

Case Study

We set out a case study on page 6 which involves a potential client that wishes to structure its current and future operations in the UAE which involves a number of sectors.

Pre-Completion Corporate Structure

We set out below the structure chart of the existing structure proposed by the client



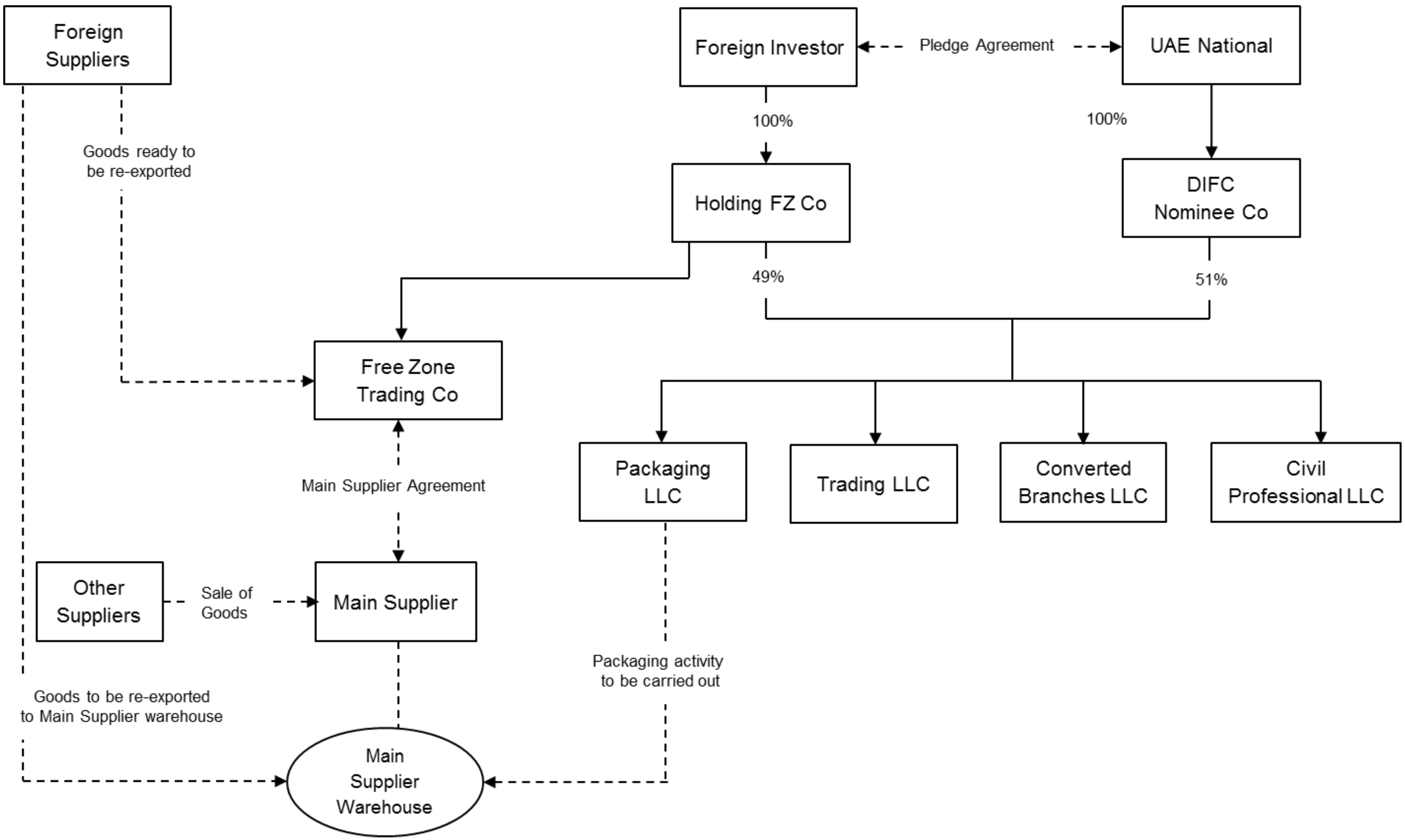
Case Study 1

Main Objectives

- Increase leverage in terms of obtaining debt financing for the purpose of expanding operations outside the UAE.
- Consolidate the activities of the group companies from a financial perspective.
- Protect against potential liability exposure, in particular with respect to Civil Professional Company (which is a civil company with unlimited liability).
- Ensure that the proposed structuring complies with the relevant licensing and regulatory restrictions.
- Mitigate the potential risks relating to the application of inheritance rules under Shariah.
- Streamline the operation to maximise profits for the client.

Upon carefully assessing the objectives with the client, we devised a proposed structure which achieved such objectives. The structure chart below reflects our proposed structure which was successfully adopted and implemented by our client.

Post-Completion Corporate Structure



Solutions provided by Hadef & Partners

We enabled the client to consolidate its various lines of business under a newly created holding structure and this new structure subsequently enabled the client to secure better financing terms.

We ensured that the client owns the entire legal and beneficial interest of the share capital of a new holding company established in one of the main free zones in Dubai; this enabled our client to minimise tax benefits in the foreign investor's country of origin based on a double tax treaty.

We established a nominee vehicle in the Dubai International Financial Centre in which the UAE sponsor would hold 51% of entire legal interest of the share capital. The UAE sponsor and the foreign investor would also execute a pledge agreement under which the UAE sponsor pledges all his shares in the nominee company to the foreign investor. This structure also has the benefit of mitigating the risk relating to the application of the inheritance rules under Shariah.

We also protected the client by converting the civil professional company and each of its branches into limited liability companies.

A civil company or branch does not have a separate legal identity from its owner, so the individual shareholder or parent company (as the case may be) could be held personally liable for any liabilities that arise from the operation and management of the civil company or any of the branches.

The assets owned by the civil company and the branches were not ring-fenced from the owner's personal liabilities, Therefore, a personal creditor of the individual shareholder could potentially obtain an attachment over assets.

We suggested that the client incorporate a new company licensed to package the relevant goods. We also ensured that the employees of such packaging company are located at the premises of the main supplier to comply with legal requirements.

From a licensing perspective, we advised the client that the other suppliers would need to enter into an agreement with the main supplier under which the main supplier would acquire the relevant goods at cost. This would mitigate the risk of the main supplier being in breach of the relevant licensing regulations as its licence did not authorise it to store products it did not own, as such activity requires a logistics licence.

Next steps – please feel free to get in touch with us

We are here to build trusted relationships with Sellers. We appreciate that an explanatory call or meeting should not be charged, and we are happy to accommodate this in all instances.

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