

UAE Family Businesses Law

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The much-anticipated Federal Decree-Law No. 37/2022 on Family Businesses was issued on 10 October 2022, which will come into effect three months after its publication in the Official Gazette.

Analysis

Federal Decree-Law No. 37/2022 seeks to continue the UAE's efforts to support the sustainability, growth and development of family businesses and add regulation to ensure their societal contribution can continue.

It is the first Federal law to provide regulation of family businesses, and as such provides family businesses in the UAE with a way to structure and plan their wealth management, while providing a long-awaited opportunity to hold family business within succession planning structures.

Importantly, Federal Decree-Law No. 37/2022 applies in all freezones, including the Dubai International Financial Centre and Abu Dhabi Global Market, but remains subject to the relevant companies' laws in force therein (to the extent that such matters are not set out in Federal Decree-Law No. 37/2022). This is of key importance given that Federal Decree-Law No. 37/2022 expressly confirms that the transfer and ownership of shares under Federal Decree-Law No. 37/2022 will not be in violation of Federal Law No. 28/2005 on Personal Status, giving families the opportunity to arrange their assets outside of the rules and restrictions of Federal Law No. 28/2005.

To qualify as a "family business" an entity can be owned by any number of partners, but must be:

- incorporated in accordance with the relevant companies' law, but not as a public joint stock company or general partnership);
- the majority of the shares in such entity must, at all times, be owned by persons belonging to a single family; and
- such entity must be registered in the unified register of family businesses (such register to be established by Federal Decree-Law No. 37/2022).

Article 12 of Federal Decree-Law No. 37/2022 provides family businesses the right to issue different classes of shares, including

- voting and profit bearing shares, and
- non-voting, profit bearing shares and other shares that differ in value, voting power, profits and priority.

The entity's articles of association can determine the rights attaching to the different classes of shares and any conditions of transferring voting shares to non-voting shares and vice versa (subject to further regulations to be issued in due course).

Federal Decree-Law No. 37/2022 contains a statutory pre-emption right on transfer, save where the transfer is to such family member's spouse or first-degree relatives. Any transfer to a third party must be approved by person representing at least 75% of the share capital.

At such time that a single family member holds 90% or more of the shares, the remaining shareholders will have the right to sell their shares to them at a price agreed between them or determined by a Committee established in accordance with Article 9 (2) of Federal Decree-Law No. 37/2022.

Article 11 of Federal Decree-Law No. 37/2022 now specifically allows for buy-back of shares by the company, up to a maximum cap of 30% of its shares, for the purpose of

- reducing its capital, or
- the purchase or redemption of a shareholder's shares in the event that such shareholder desires to sell, or in the event of their bankruptcy/insolvency (but where there are no buyers for such shares).

Family businesses are given the flexibility to manage their affairs within the business, including giving directors the right to distribute profit, and deciding how to organise the entity's governance and committees. The family can also choose how to deal with the settlement of disputes, such as reconciliation through a committee formed by the family.

Whilst this has not yet been tested, Federal Decree-Law No. 37/2022 has afforded family businesses a framework within which they can structure the management of their assets and entities, whilst remaining true to the nature of family businesses and their nuances compared to other business structures.

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Areas of expertise

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Biography

Piers acts for some of the firm's largest private clients and heads our Private Wealth Sector.

Piers acts for high net worth individuals from across the world, including US nationals living in the UK or with financial interests in the UK. He is very well known for his work with Middle Eastern clients, where he acts for many ruling family members and billionaires – many of whose families have US links. In addition he acts for a significant number of UK based clients including entrepreneurs and owners of landed estates.

Piers has extensive experience of providing joined up tax and immigration advice for clients looking to come to the UK under the Tier 1 (Investor) route, and works closely with our dedicated immigration team in this area. Piers is a Visiting Professor at the University of Law and a regular speaker in the UK and internationally on matters of private client interest.



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- Lawyer admitted in Minnesota, USA
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Biography

William has more than 20 years of experience advising on matters ranging from seed series investments for start-ups, to complex, multi-billion dollar matters across numerous jurisdictions. His experience includes advising on M&A, joint ventures, private equity and venture capital transactions, restructurings and compliance matters.

William's client base is very diverse and includes local and international clients across a broad range of industry sectors with a particular focus on technology, healthcare, retail, energy and real estate. He is regularly invited to speak at industry and legal events related to these sectors and various other areas.

Prior to moving to the Middle East, William was based in Moscow, Russia for ten years where he was a founding partner and head of the office of a major international firm. During his tenure in Russia, William advised on some of the largest and most complex M&A, joint venture and private equity investments and transactions in the Russian market. His international experience also includes work in Brussels, Belgium and Paris, France.

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Biography

Charlotte has worked in each of the Dubai and UK markets for a number years and has significant experience in a wide range of sectors, including private wealth, education, energy, healthcare, technology, retail and consumer goods.

Charlotte's focus is business, she specialises in M&A and corporate transactional work as well as large scale commercial contracts, regularly advising clients, both locally and internationally, on investments, shareholder and joint venture arrangements, mergers, corporate demergers, share sales/acquisitions, asset sales/purchases, corporate structuring, regulatory compliance, distribution arrangements and operation & management agreements.