

# UAE Federal Companies Law amended to allow 100% foreign ownership

## In Brief

Federal Decree-Law No. 26 of 2020 (the **Decree**) has been issued, introducing significant amendments to Federal Law No. 2 of 2015 on Commercial Companies (the **CCL**).

The Decree amends 51 articles of the CCL and introduces three new articles, with a view to encouraging further foreign direct investment into the UAE. The majority of the amendments apply to limited liability companies (**LLCs**) and joint stock companies (**JSCs**) and represent the most substantial changes to the UAE companies law regime since 2015. The Decree comes against the background of the UAE's introduction over recent years of a range of legislation aimed at aligning the country with international practices.

The most notable development is the removal of the general requirement for a UAE "onshore" company to have 51% UAE national ownership and replacing this with a regime allowing foreign investors to own 100% of certain UAE businesses, subject to certain conditions discussed below. This alert sets out certain of the most significant changes resulting from the Decree.

## Key Changes

### 100% foreign ownership

The long-standing requirement for a UAE "onshore" company to have 51% UAE national ownership has been removed. This means an onshore UAE company can be established with no local shareholder, provided that it does not carry on activities with a "strategic impact". The Council of Ministers will determine which activities have a strategic impact, taking into account proposals of a committee made up of representatives of the Department of Economic Development (the **DED**) in each emirate, and will issue a list of such activities.

Companies carrying on activities with a strategic impact will be subject to local ownership and board participation requirements to be determined by the DED of each emirate. This means that differing foreign ownership restrictions could apply across the same sector, depending on which emirate a company is established in.

It is not clear when the list of activities with a strategic impact will be released (the Decree is silent in this regard). In addition to such list, we expect further guidance and resolutions to be issued by each emirate.

### Foreign Direct Investment Law

Decree-Law No. 19 of 2018 on Foreign Direct Investment was issued to promote foreign direct investment into the UAE. The Decree repeals this law and we understand that all current applications for foreign ownership licences have now been suspended by the DED, pending these amendments coming into force.

### Local service agent

In the past, a local service agent has always been required for foreign companies establishing a branch or a representative office in the UAE. The Decree removes this requirement, so that local service agents are no longer required.

## Directors

For companies not undertaking activities which have a strategic impact, the Decree removes the requirement for the chairman of the board of a JSC, and for a majority of its board, to be UAE nationals. The cabinet or the competent authority is now empowered to determine specific percentages of UAE national involvement on the board of a JSC in each case. Opening up membership of the board in this way will allow companies to constitute more diverse boards.

## Single shareholder companies

The Decree permits foreign investors to incorporate a single shareholder company, provided it does not undertake activities which have a strategic impact. Whilst the CCL had previously introduced the concept of LLCs having a single shareholder, this had only applied to companies with local shareholders.

## Further Changes

Other noteworthy amendments set out in the Decree are summarised below. This is not an exhaustive list.

### Notice to call general assembly meeting

The notice period for calling a general meeting has been extended to 21 days. The CCL had provided for a 15 day notice period.

### General assembly meetings

General meetings can be held remotely, subject to controls set out by the Minister of Economy or the Securities and Commodities Authority (the **SCA**).

### Voting

Voting at general meetings may take place electronically.

### Quorum for general meeting

The quorum for a general meeting of an LLC has been reduced to 50%, unless the memorandum of association provides for a higher threshold.

### Regulated activities

The Decree creates the potential for companies other than JSCs to carry on banking and insurance activities, if specific laws or resolutions regulating those sectors permit this.

### Applicability of the provisions of joint stock companies

The Council of Ministers will issue a resolution regarding which provisions relating to JSCs will also apply to LLCs.

### Agenda at general meetings

One or more shareholders holding 5% of the share capital can request items to be added to the agenda at a general meeting. The previous requirement under the CCL was 10%.

### Strategic partner

The requirement for a strategic partner to conduct similar or complementary activities to the company in which it subscribes for shares, and to have issued financial statements for at least two financial years, has been removed. The Decree allows the SCA to set conditions and controls in relation to the issuance (on a non-preemptive basis) of shares to a strategic partner.

### Amending articles of association

The approval of the DED is no longer required to amend articles of association.

### Financial assistance

As an exception to the financial assistance provisions under the CCL, companies licensed by the UAE Central Bank may, subject to certain conditions, now offer loans to enable persons to acquire securities issued by those companies.

### IPOs

Selling shareholders can now sell up to 70% of their shares in an IPO where an existing company is converted into a PJSC. This had been capped at 30% under the CCL.

### Related Parties

The definition of Related Parties which appeared in the CCL has been deleted. The SCA will determine in regulations the definitions of related parties and related party transactions (this is currently set out in the SCA's Corporate Governance Guide).

### Mergers and acquisitions

The Decision of the Chairman of the SCA Board of Directors No (18/RM) of 2017 Concerning the Rules of Acquisition and Merger of Public Shareholding Companies (the **M&A Regulations**) contains a provision for a squeeze-out of minority shareholders in the event of a takeover offer. The Decree now gives a statutory basis for this squeeze-out procedure.

The Decree also includes a provision permitting a company, by special resolution, to issue shares in consideration for an acquisition. Such an issuance can be made without offering the shares to existing shareholders.

## Timing

The Decree states that the majority of the amendments will be effective from 2 January 2021. However, with respect to the amendments related to the removal of the requirement for local ownership, the removal of the requirement for a local service agent and those relating to board of director appointments, the Decree states that such amendments will come into force "*after six months from the date of publication in the Official Gazette*" (it also states that these dates may be extended by the Council of Ministers). The Decree was published in the September 2020 supplemental edition of the Official Gazette.

This means that for at least six months from this date, foreign investors will not be permitted to own more than 49% of UAE companies, even if the list of activities with a strategic impact has been released and the activity of the company that the foreign investor wishes to invest in does not appear on such list.

## Next steps

The amendments set out in the Decree apply to new companies and existing companies, and companies will have one year from the relevant effective date of the Decree within which to make changes in order to comply with the amendments.

With respect to foreign ownership, companies may want to consider their current arrangements and review their respective constitutional documents in light of the amendments set out in the Decree. Depending on the role of their local shareholder, companies may decide to terminate their arrangements with local sponsors and amend their constitutional documents to provide for 100% foreign ownership (provided that they do not undertake activities with a strategic impact and taking into account the timing of the implementation of these amendments).

These changes to local ownership requirements are likely to impact the role of free zones, and the environment to attract foreign companies looking to establish in the UAE may become increasingly competitive.

We would be pleased to discuss these amendments and their potential impact with you in more detail. Please reach out to your usual Allen & Overy contact.

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