

INSIGHTS

Amendments Announced for Existing Foreign Ownership Rules of UAE Onshore Commercial Companies

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On 23 November 2020, the UAE government announced that His Highness Sheikh Khalifa bin Zayed Al Nahyan, President of the UAE had issued a decree (the “**Decree**”), amending existing foreign ownership rules for onshore UAE commercial companies. To date the same has been principally regulated by: (i) UAE Federal Law No. 2 of 2015 on Commercial Companies (the “**CCL**”); and (ii) Federal Legislative Decree No. 19 of 2018 (the “**FDI Law**”).

Federal Decree Law No. 26 of 2020 (the “**Amendment Decree**”) was issued last week (with a publication date of 27 September 2020), amending certain provisions of the CCL and repealing the FDI Law.

Some of the key highlights of the Amendment Decree are as follows:

CCL Position	Amendment Decree Position
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Article (10)	An onshore entity was required to have one national partner holding at least 51 percent of the entity's shares.	There is no longer a blanket requirement for a UAE shareholder to hold at least 51 percent of shares.
		Albeit the government of each Emirate (each, a " Competent Authority ") will have the authority to determine a specific percentage of contribution of UAE nationals to: (i) the capital; and (ii) the board of directors for entities incorporated within their competence.
		Entities carrying out activities with a "strategic impact" will fall outside of amendments to the CCL. We await clarification of what activities will fall into the definition of "strategic impact".
Article (92)	One or more partners holding at least 25 percent of the share capital of an entity was able to request a general meeting to be called.	This threshold has been reduced and one or more partners holding at least 10 percent of the share capital of an entity can now request a general meeting to be called.
Article (93)	The notice period for convening a General Assembly meeting was at least 15 days (or such shorter period as agreed by all the partners).	The notice period has been increased to 21 days.
Article (93)	Notice for meetings was to be given by registered letters or by any other means as provided by an entity's Memorandum of Association.	Notification can now be by way of registered letters or through modern technological means stipulated in the Company's Memorandum of Association.

Article (151)	For a PJSC, it was required that the Chairman and the majority of the board of directors be UAE nationals.	This requirement has been removed, and is subject to any restrictions that may be introduced by the relevant Competent Authority.
Article (279)	A company proposing to be converted into a PJSC was permitted to sell by way of public subscription 30 percent of its capital.	The threshold has been increased to 70 percent (subject to parameters of the CCL).
Article (329)	It was required that an agent of a foreign company be a UAE national.	This provision has been repealed.

The Amendment Decree comes into force on 2 January 2021, save for amendments to Articles (10), (151) and (329) of the CCL, which come into force six months following the date of publication.

As per the Amendment Decree, existing entities are required to adjust their positions by 2 January 2022 (one year after the Amendment Decree coming into force). This may require adjustments to constitutional documents.

Whilst further regulations and guidance are anticipated, the Amendment Decree is a positive development in line with other significant steps that the UAE is taking to attract foreign investment into its economy, providing greater flexibility in terms of the business environment – in March, the UAE Cabinet passed Cabinet Resolution No. 16 of 2020 which clarified three broad sectors (agriculture, manufacturing and services), which could be 100 percent foreign owned onshore.

That said, it remains to be seen:

- what impact this has on free zones (where the same foreign ownership restrictions do not apply);
- the approach that each Emirate takes from an implementation perspective – and in particular what share capital and Emiratisation requirements might be applied in consideration of permitting 100 percent foreign ownership;
- the nature of the activities which will be considered to constitute a “strategic impact”; and
- how (in practice) the Amendment Decree will apply to already existing entities.

These are undoubtedly welcome changes to the regulatory landscape in the UAE that will provide foreign investors with further corporate structuring options to actively participate in the UAE economy.