UPDATE ON FOREIGN DIRECT OWNERSHIP AND INVESTMENT IN THE UAE

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UAE Corporate Alert

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INTRODUCTION

On 23 November 2020, Sheikh Khalifa bin Zayed Al Nahyan, President of the United Arab Emirates (UAE), issued a decree overhauling the rules relating to foreign ownership of companies in the UAE (the Decree) by introducing significant amendments to the UAE Commercial Companies Law No. 2 of 2015 (the Companies Law). This comes as part of the UAE government's efforts to attract foreign investors and boost the country's economy.

WHAT CHANGED?

Although an official copy of the Decree has not yet been published, we list below a few key changes that the Decree introduces:

1. The Decree removes the requirement under the Companies Law to have a UAE shareholder holding at least 51 percent of a company's issued share capital i.e., foreign nationals/companies can potentially own up to 100 percent of an onshore company's issued share capital;
2. A foreign parent company may no longer need to appoint a UAE national agent for its onshore branch as previously required by the Companies Law; and
3. The Decree repeals UAE Federal Law No. 19 of 2018 on Foreign Direct Investment, which previously allowed foreign investors to own up to 100 percent of an onshore company's issued share capital only in certain industries/sectors and subject to certain conditions.

We understand that the Decree also grants the local authorities certain powers to set conditions and requirements for onshore companies that are either wholly owned or majority owned by foreign investors. These may include, without limitation, setting minimum percentages for UAE ownership for onshore companies in certain sectors or industries, setting minimum share capital requirements, and allocating conditions in relation to the composition of an onshore company's board of directors.

The Decree also introduces changes that relate to the ownership and operation of public joint stock companies, issuing in-kind shares, and increasing or decreasing the share capital of onshore public companies.

It is important to note that the details of the changes introduced by the Decree are not available, as the official text of the Decree has not yet been published.

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ADDITIONAL POINTS TO CONSIDER

- It is our understanding that the changes relating to foreign ownership and investment are expected to take effect six months after the Decree is published in the UAE's Official Gazette.
- At the date of this article, Dubai Economy (the concerned licensing authority in the Emirate of Dubai) informed us that they have not yet received official communication in respect of the Decree, so it is unclear at this stage how the Decree will be implemented in practice in the Emirate of Dubai.
- In addition to the Decree, we expect further legislation and guidance to be issued on a Federal and Emirate level providing further details on the implementation of the Decree, which should hopefully shed more light on the practical aspects of the changes as well as their impact (e.g., with regards to existing relationships between foreign and UAE shareholders of onshore companies).
- We will continue to monitor this key development and will issue further updates as and when additional official information becomes available.

HOW WE CAN HELP

Our lawyers are available to advise on all legal aspects regarding the applicability of the Decree and the Companies Law. Please feel free to get in touch with your usual K&L Gates contact or anyone listed below.

KEY CONTACTS



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