

AMENDMENTS TO UAE COMPANIES LAW – UPDATE ON FOREIGN DIRECT OWNERSHIP AND INVESTMENT IN THE UAE

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UAE Corporate Alert

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In our previous client alert (which can be viewed [here](#)), we reported that certain key changes were introduced to the United Arab Emirates (UAE) Commercial Companies Law No. 2 of 2015 (Companies Law). The text of the Federal-Decree Law No. 26 of 2020 amending certain provisions of the Companies Law (the Federal Decree) has now been published in the Official Gazette on 27 September 2020.

This client alert provides a high-level summary of some of the key changes affecting foreign direct ownership and investment in the UAE, particularly in relation to onshore limited liability companies (LLCs) as well as onshore branches and representative offices of foreign companies.

Changes introduced by the Federal Decree in respect of public joint stock companies will be addressed in a separate client alert.

FOREIGN OWNERSHIP

The Federal Decree removed, with some exceptions, the long-standing requirement for UAE companies to have one or more UAE shareholders holding at least 51 percent of the issued share capital of the company. This policy change is a welcome development that will have a significant impact on inbound investments in the UAE.

Investors no longer need to be concerned with negotiating or entering into arrangements or schemes with UAE sponsors, to hold 51 percent of a new company's issued share capital. These arrangements and schemes have been historically used to document and safeguard the interests of foreign investors in the UAE.

The Federal Decree indicated that "Activities of Strategic Effect" will remain restricted, or subject to certain controls. The Cabinet of Ministers will issue a resolution listing these activities on which we will report once it is available.

NATIONAL SERVICE AGENT

The Federal Decree abolished the former requirement for appointing a UAE national service agent (NSA). The appointment of an NSA was a requirement for the registration of a foreign company's branch or representative office onshore in the UAE.

The above changes will come into effect six months after the publication date of the Federal Decree (i.e., by the end of March 2021). It is anticipated that local authorities in each Emirate will gradually issue a number of internal measures to adopt the Federal Decree's changes in order to achieve a seamless transition.

CORPORATE GOVERNANCE

The Federal Decree also provides that the UAE Minister of Economy will issue regulations for corporate governance. These regulations will provide rules, controls, and provisions that must be observed by companies incorporated under the Companies Law, except for public joint stock companies. The board of directors of a company (or its managers) will be responsible for implementing the corporate governance regulations.

We will issue a separate client alert once the UAE Minister of Economy issues the regulations for corporate governance.

RELATED PARTY TRANSACTIONS AND FINANCIAL ASSISTANCE

The Federal Decree introduces expanded provisions, limitations, and requirements in respect of related party transactions and other financial assistance arrangements, which apply to joint stock companies.

The provisions applicable to joint stock companies will apply to LLCs, to the extent that such provisions suit the nature of an LLC. The Cabinet of Ministers will issue a resolution containing the provisions to be applied to LLCs, in the case the provisions applicable to joint stock companies do not suit the nature of LLCs.

To that end, it is most likely that the provisions and limitations applicable to related party transactions in the Federal Decree would also apply to LLCs. The scope and definition of an LLC related parties' transactions is expected to be further clarified in the Cabinet of Ministers resolution to be issued.

ADDITIONAL CHANGES

- Foreign investors may be able to establish and own a single shareholder company (subject to any restrictions concerning Activities of Strategic Effect).
- It is now a statutory requirement to include, in an LLC's memorandum of association, dispute resolution provisions in respect of disputes that arise between the company and any of its directors or shareholders
- Directors of an LLC can call a general assembly meeting upon the request of one or more shareholders holding 10 percent or more of the company's issued share capital. The threshold was previously set at 25 percent.
- The notice period for calling a general assembly meeting of an LLC has changed to 21 days. The notice period used to be 15 days. Additionally, unless the LLC's memorandum of association provides for a greater percentage, the general assembly meeting is considered quorate if shareholders holding at 50 percent of the company's issued share capital are in attendance. The minimum requirement was previously set at 75 percent.
- The Federal Decree now expressly allows for general assembly meetings of an LLC to be held via "modern technology." Shareholders may remotely attend, participate, and vote using such modern technology.

TIMELINES AND NEXT STEPS

The Federal Decree provides that most of the changes to the Companies Law take effect from 2 January 2021. Changes relating to foreign ownership of onshore companies as well as those relating to NSAs of onshore branches and representative offices will take effect from end of March 2021.

Companies have until 1 January 2022 to make the necessary changes to their constitutional documents in light of the amendments introduced by the Federal Decree.

HOW WE CAN HELP

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

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