

## **Client Alert: New Amendments to the Companies Law and Lifting of Foreign Investment Restrictions**

**By Dr. Jochen Murach, Christopher Gunson and Jonathan P. Noble**

*The UAE government passed extensive amendments to the Companies Law that are set to ease 100% foreign shareholding in onshore LLCs and to permit UAE branches to operate without a national service agent.*

On 23 November 2020, the United Arab Emirates (UAE) government passed Federal Decree-Law No. 26 of 2020 (the “**Decree**”) amending Federal Law No. 2 of 2015 on Commercial Companies (the “**Companies Law**”).

The Decree introduced an array of significant changes to the Companies Law, modifying over fifty-one articles in total. The amendments to corporate governance, onshore set up, joint stock companies, and foreign branch management were most significant.

The major amendments concerning 100% foreign company ownership and the national service agent requirement for branch offices of foreign companies will not be effective until March.

We provide a brief overview of the most relevant changes below.

### **100% Foreign Ownership**

The Decree removed the longstanding requirement for onshore LLCs and joint stock companies to have 51% UAE national shareholding. This landmark decision is however dampened by the fact that 100% foreign ownership will not be permitted in certain strategic industries. The list of industries has not yet been published but is likely to include oil and gas, transport, and utilities.

While the language suggests broad applicability to any onshore activity, the practical implementation remains to be seen. In other words, it is not yet clear whether the Decree will amount to a “gamechanger” for foreign investment, in particular, whether onshore trading companies will be allowed to enjoy 100% foreign ownership.

The Decree provides that a committee shall be formed based on the proposal of the Minister of Economy. The committee will be comprised of representatives of the Departments of Economic Development (DED) of each emirate and will be tasked with suggesting activities of strategic effect as well as licensing requirements for companies interested in these activities. The UAE government will then issue a list of “Activities of Strategic Effect” based on the committee’s recommendations.

Emirate-level governing bodies such as Dubai Economy will stipulate the conditions required for companies to engage in activities with a strategic impact, including requirements related to local ownership and board participation. This is likely to result in a lack of uniform application in the various emirates.

The list of “Activities of Strategic Effect” and the DED requirements are not yet available, but we expect that they will be released shortly.

Importantly, the Decree has repealed the provisions of Decree Law No. 19 of 2018 on Foreign Direct Investment concerning the establishment of onshore entities with an Emirati shareholding of less than 51%.

### Local Service Agents

Another important amendment brought about by the Decree is the removal of the requirement for branches or representative offices of foreign companies to appoint a local service agent.

This change should decrease the cost of branch operation and is likely to incentivize foreign investment through these legal entity types.

It is not yet clear how existing service agent contracts can be terminated and removed from the licenses of existing branch offices.

### Other Changes

The Decree has introduced the right for foreign shareholders to set up single shareholder companies, subject to being able to hold 100% of the shares in a company. This was previously not possible given the 51% national shareholder requirements.

Companies should also be aware of amendments introduced by the Decree that affect key elements of corporate housekeeping, including:

- Extension of notice periods for calling a general meeting from 15 to 21 days.
- Permission to hold meetings remotely and vote electronically.
- Reduction of the quorum for a general meeting of an LLC to 50%, unless otherwise provided in the company articles of association.
- Reduction of the shareholding threshold for a minority shareholder to request that items be added to the agenda at a general meeting to 5%.

### Next Steps for Foreign Investors in the UAE

The Decree promises to greatly ease new foreign direct investment into the UAE and present opportunities to existing foreign investors to remove local sponsors and partners that are only nominally involved in their business. However, it is currently unclear to what extent the requirement of 51% UAE shareholding in local companies will be removed in practice. More information should become clear in the coming months and prior to the effective date of 2 January 2021.

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#### **If you would like more information about this topic please contact us.**

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