

UAE amends Federal Companies Law

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Executive summary

The United Arab Emirates (UAE) Federal Decree Law No. 26/2020 (Decree) will come into force on 2 January 2021. The Decree significantly amends Federal Law No. 2 of 2015 on Commercial Companies (Companies Law 2015).

This Alert summarizes how these changes will affect businesses operating in the UAE under the Companies Law 2015, as amended by the Decree (Companies Law 2020).

Detailed discussion

Overview

- ▶ While significant changes have been made to the framework surrounding limited liability companies (LLCs), most of the amendments relate to public joint-stock companies (PJSCs).
- ▶ The general requirement for 51% of the capital in an LLC to be owned by a UAE shareholder has been removed.
- ▶ A number of the amendments relate to corporate governance of both LLCs and PJSCs.

- ▶ The requirement for a local agent for a branch of a foreign company has been removed.
- ▶ Companies have one year from the date the Decree comes into force to adjust their status to bring them into line with the new law.
- ▶ The provisions of the Decree will come into force on 2 January 2021, with the exception of the provisions relating to foreign ownership, the nationality of board members and the requirement for branches to have a local agent, which will come into force on 30 March 2021.
- ▶ Certain matters prescribed by the Companies Law 2020 depend upon further resolutions being issued by various other regulators.

Key provisions of the new Companies Law 2020

On foreign ownership

Article 10 of the Companies Law 2020 removes the historic requirement for a mainland LLC to have 51% UAE ownership.

Going forward, the general position will be that an LLC can be up to 100% foreign-owned unless it is carrying on "Activities of Strategic Effect." Activities of Strategic Effect will be specified by Cabinet Resolution based on the recommendations of a cross-emirate committee, following which, each emirate will set the UAE shareholding requirements in companies undertaking those activities in that emirate. This means that different foreign ownership restrictions could apply in each emirate for businesses undertaking such activities.

The new law repeals in its entirety Decree Law No. 19 of 2018 on foreign direct investment, pursuant to which a positive list was issued confirming the sectors in which 100% foreign ownership was permitted.

On local agents

The Decree removes the requirement for foreign branches to appoint a local service agent, removing an administrative burden and reducing operating costs.

On the nationality of board members of PJSCs

The Decree removes the basic requirement for the chairman and the majority of directors to be UAE nationals. Instead, requirements relating to the constitution of the board of directors of a PJSC undertaking Activities of Strategic Effect shall be determined by the cabinet or at an emirate level.

On licensing activities

The Decree removes the requirement that Investment on behalf of third parties must be carried out by a joint stock company and paves the way for banking and insurance services to be carried out by legal entities other than a joint stock company, subject to further resolutions being issued.

On corporate governance

In due course, the Minister of Economy will issue corporate governance rules applicable to companies (with the exception of companies regulated by the Central Bank and PJSCs regulated by the Securities and Commodities Authority).

On LLCs

The Decree amends various provisions of the Companies Law 2015 in relation to LLCs, including the following:

- ▶ Going forward, a company's memorandum of association (MoA) must provide for the means of settling disputes between the company and its directors or as between the shareholders in the company. Companies will have one year to make any necessary amendment to the MoA.
- ▶ Provisions relating to shareholder meetings (General Assembly):
 - The holders of 10% of the share capital in a company may now convene a General Assembly, down from 25% under the Companies Law 2015.
 - At least 21 days (up from 15 days under the Companies Law 2015) notice of a General Assembly must be given to shareholders.
 - If the MoA permits, notice of a General Assembly may be given via electronic means.
 - Going forward, a copy of the invitation for the General Assembly must be sent to the relevant department in the relevant emirate.
 - More detailed content for the invitation to the General Assembly has been prescribed.
 - A General Assembly and voting may be held electronically in accordance with controls set out by the Minister of Economy.
 - The quorum for the General Assembly has been reduced from 75% to 50% of holders of the company's share capital.

- The period in which an adjourned meeting can be held, after an inquorate meeting, has been set at between 5 and 15 days after the date of the first inquorate meeting, and the quorum shall be the number of shareholders in attendance at the adjourned meeting unless the MoA states otherwise.
- Shareholders are now empowered to apply to the courts in an insolvency situation to increase the share capital of a company where the requisite 75% of the shareholders do not voluntarily agree to do so.

On PJSCs

The majority of the amendments to the Companies Law 2015 relate to PJSCs. Key amendments include:

- ▶ The liability of advisors to the Founders Committee for the accuracy and completion of all documents, studies and reports submitted in the process of the incorporation, licensing and registration of the PJSC has been removed. Going forward, the Founders Committee remains solely liable.
- ▶ Similarly, a valuer of in-kind contributions will no longer be liable for the accuracy of the valuations, but instead must perform the valuation with the *care exercised by a vigilant person*, removing another hurdle to an initial public offering (IPO). However, such in-kind contributions will be subject to further subsidiary legislation to be issued by the Securities and Commodities Authority.
- ▶ The provisions in the Companies Law 2015 relating to related party transactions have been expanded by the Decree to include additional disclosure and notification obligations.
- ▶ The provisions relating to the liability of the board of directors have been expanded to include members of the executive management and provide a mechanism for the immediate removal of a board member found guilty of fraud, misuse of power or conflict of interest.
- ▶ Shareholder protection has been enhanced by the expansion of the provisions relating to shareholder action against the company.
- ▶ The Decree contains provisions regarding the content and process for the calling of a General Assembly of a PJSC.
- ▶ Shareholders holding 10% of the share capital in a PJSC may now call a General Assembly, down from 20% under the Companies Law 2015.

- ▶ Shareholders representing 5%, down from 10%, of the share capital may add items to the agenda at a General Assembly.
- ▶ Voting at a General Assembly may now be via electronic means, in accordance with directions issued by the Securities and Commodities Authority.
- ▶ The concept of authorized share capital has been removed by the Decree but allows for shareholder approval for an increase in share capital to remain valid for up to three years.
- ▶ The provisions in the Companies Law 2015 prohibiting financial assistance have been expanded to include use of the company's reserves or funds or profits to pay the liabilities of a recipient. In addition, an exemption has been included in respect guarantees and undertakings provided by the company to any underwriter during an offering or subscription of the company's shares.

On private joint-stock companies

- ▶ The upper limit of 200 shareholders has been abolished for private joint-stock companies.

On IPO, mergers and acquisitions

- ▶ The founders of a private joint-stock company may now sell up to 70% of their capital by way of public offering, up from 30% under the Companies Law 2015. This upper limit may be exceeded with the approval of the Securities and Commodities Authority.
- ▶ The founders of a private joint-stock company will only be subject to a six-month lock-up period from the date of conversion to a PJSC.
- ▶ The Decree introduces a primary legislative foundation for the concept of "squeeze-out" already contained in the UAE Takeover Code.

Implications

Companies are required to adjust their status in line with the Companies Law 2020 by 2 January 2022. As noted above, various pieces of subsidiary legislation are expected, in particular, in connection with corporate governance matters.

The provisions relating to foreign ownership, local agents and Emirati representation on the boards of PJSCs will come into force on 30 March 2021.

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