

On 23 November 2020, the United Arab Emirates (UAE) announced certain changes to Federal Law No. 2 of 2015 on Commercial Companies (CCL), pursuant to which it has, inter alia, allowed 100% foreign ownership of UAE incorporated companies and repealed Federal Decree No. 19 of 2018 on Foreign Direct Investment.

Based on our review of the new decree, the investment process for investing in the UAE will be eased significantly, while also providing for greater participation in company management and boards, improved governance and transparency in management, and greater flexibility in share subscription. Coupled with the recent changes in visa requirements and residency rules for business people, the new decree is indicative of the UAE's continued commitment to encouraging international investment, and should stimulate even greater foreign direct investment in the coming years.

Save for changes to Article 10, Article 151 and Article 329 of the CCL (which will come into effect six months after publication of the decree in the official Gazette), the changes will come into effect on 2 January 2021.

Existing companies will have a period of one year from when the changes will be effective to ensure that they are compliant with the amended CCL. The period may be extended by the UAE Federal Cabinet pursuant to a recommendation by the Minister of Economy.

Comparison of Key Changes Introduced to the CCL

	Previous Position	What Has Changed?
Requirement to have a Local Shareholder (Article 10)	Foreign participation was limited to 49%, as a minimum of 51% of the share capital of companies incorporated pursuant to the CCL had to be owned by local shareholders.	The new Article 10 eliminates the requirement to have a local shareholder and, instead, calls for the formation of a committee by the Cabinet of Ministers to determine activities of a strategic nature and the minimum local participation required (as shareholder and board members) for companies engaged in strategic activities.
Practice of Activity (Article 11)	Engaging in activities relating to investment of money for the account of third parties was limited to joint stock companies.	The new Article 11 removes the restriction relating to the legal form a company must have in order to engage in activities relating to investment of money for the account of third parties.
Limited Liability Companies		
Single Person Limited Liability Company (Article 71)	Limited liability companies with one shareholder were limited to UAE nationals or companies wholly owned by UAE nationals.	The nationality restriction was removed and a "One Person Limited Liability Company" may be owned by a foreign shareholder.
Memorandum of Association (Article 73)	There was no requirement to include a dispute resolution mechanism.	The new Article 73 states that the memorandum of association of any company incorporated under the CCL must include a dispute mechanism provision for disputes: (i) between the company and any of its managers/directors, or (ii) between the shareholders of the company.
Calling for a General Assembly Meeting (Article 92)	A general assembly meeting may be called by the manager of a company upon the request of shareholders owning at least 25% of the share capital of the company.	A general assembly meeting may be called by the manager of a company upon the request of shareholders owning at least 10% of the share capital of the company.

	Previous Position	What Has Changed?
Notification of General Assembly Meetings (Article 93)	Invitations to a general assembly meeting may be given at least 15 days prior to the date of the meeting.	<p>Invitations to a general assembly meeting may be given at least 21 days prior to the date of the meeting.</p> <p>The invitations must be published in accordance with the guidelines issued by the Minister of Economy.</p> <p>The shareholders must be notified in writing or in accordance with modern technologies as set forth in the memorandum of association.</p> <p>The relevant authority must be notified in advance of convening any general assembly meeting alongside a copy of the meeting invitation.</p> <p>General assembly meetings may be conducted remotely, provided that this is stated in the company's memorandum of association.</p>
Quorum for General Assembly Meetings (Article 96)	<p>Quorum of general assembly meetings is the presence of shareholders owning at least 75% of the share capital of the company.</p> <p>If the quorum is not present, the general assembly meeting must be adjourned to another date within 14 days from the first meeting date provided that shareholders owning at least 50% of the share capital are present.</p>	<p>Quorum of general assembly meetings is the presence of shareholders owning at least 50% of the share capital of the company.</p> <p>If the quorum is not present, the meeting must be adjourned to another date at least five days after the first meeting's date and no later than 15 days, in which case there will be no quorum requirement unless the memorandum of association states otherwise.</p>
Altering the Share Capital of the Company (Article 101)	The old article does not include a mechanism to allow the shareholders to alter the share capital of the company in specific circumstances.	The amendment introduces a mechanism for any shareholder to obtain a court judgment to increase the share capital in specific circumstances.
Public Joint Stock Companies		
In-Kind Contributions (Article 118)	In-kind contributions are assessed by financial consultants elected and approved by the Securities and Commodities Authority.	In-kind contributions are assessed in accordance with the guidelines and procedures issued by the Securities and Commodities Authority.
Election of the Members of the Board (Article 144)	The general assembly may appoint a number of experienced persons in the board of directors other than the shareholders of the company, provided that such members shall not exceed one third of the number of members as determined in the bylaws of the company.	The amendment removes the maximum number of non-shareholder members of the board of directors.
Nationality of the Members of the Board (Article 151)	The chairman and majority of the board must be UAE nationals.	The board must be formed in accordance with the guidelines set by the committee formed as per Article 10.
Prohibition on Providing Loans to Members of the Board (Article 153)	All joint stock companies are restricted from providing loans to members of their boards.	The amendment removes the restriction and such restriction now applies only to financial institutions regulated by the Central Bank of the UAE.

	Previous Position	What Has Changed?
Conversion of Companies		
Sale of Shares Upon Conversion (Article 279)	A company proposing to convert into a public joint stock company may sell by way of public subscription a maximum of 30% of its share capital.	The amendment allows for a company to convert to a public joint stock company, subject to obtaining the necessary approvals, by: <ul style="list-style-type: none"> • Selling by way of public subscription a maximum of 70% of its share capital • Increasing its share capital and offering new shares for sale by way of public subscription
Foreign Companies		
Branches of Foreign Companies (Article 329)	A foreign company with a branch in the UAE is required to appoint a national agent. The national agent must be a UAE national or a company wholly owned by UAE nationals.	This article is repealed in its entirety and the requirement to have a national agent for foreign branches in the UAE is now eliminated.

How We Can Help

Our team is available to assist with practical implementation support of the revised CCL, and to advise further on how the new decree impacts clients' operations in the UAE.

Among the tasks with which we can assist are the following:

- Reviewing and redrafting corporate constitutional documents in a manner that is compliant with the amended CCL
- Reviewing existing agreements with local shareholders or national agents, and advising on mechanisms to terminate or amend such agreement in light of the new changes
- Assessing on current ownership structures in the UAE and advising clients on how best to restructure your companies to comply with and, where appropriate, leverage the amended CCL

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