Full foreign ownership of commercial companies in the United Arab Emirates : a new step forward

On the 23rd of November 2020, the UAE President, His Highness Sheikh Khalifa bin Zayed Al Nahyan, has issued the Federal Decree-Law No. (26) of 2020 ("New Decree") amending some provisions of Federal Law No. (2) of 2015 On Commercial Companies ("CCL") that will come into force on the 2nd of January 2021.Significant changes are introduced by the New Decree to provide a modern landscape, notably by abolishing foreign ownership restrictions for the vast majority of commercial companies. Further guidance and information from federal and local authorities is still expected with regard to those commercial activities that will be exempt from the New Decree. That being said, it appears that the move towards a full foreign ownership in UAE, initiated in 2018 with the promulgation of the Federal Decree-Law No.19 of 2018 on Foreign Direct Investment ("FDI Law"), seems now to have been taken to the next level through the New Decree and there is no doubt that it will be welcomed by existing foreign business owners operating onshore as well as by future foreign investors.We will highlight below some of the key changes introduced by the New Decree.**Background**Currently, foreign investors can hold up to 49% of the share-capital in an onshore company, while the remaining 51% must be held by a UAE national or a company wholly owned by UAE nationals.In September 2018, the FDI Law introduced, for the first time, a mechanism under which foreign investors could own up to 100% of the share-capital of an onshore company. While the FDI Law stipulated a "negative list" of commercial activities/sectors, where full foreign ownership would not be permitted, this was followed in March 2020 by Cabinet Resolution No. 16 of 2020 approving a "positive list" of commercial activities/sectors eligible to apply for 100% foreign ownership.The withdrawal of the 49-51% rule by the New Decree is a milestone towards the full foreign ownership that will have a wide impact. The key changes and exceptions are discussed below.**Key highlights**The New Decree amends fifty-one articles in the CCL, introduces three new articles and repeals one article. It also implements provisions of the FDI Law within the CCL and repeals the FDI Law.The major change is the abolition of the foreign ownership restrictions, meaning that foreign investors of any nationality will be allowed to hold 100% of the share-capital of their onshore companies, subject to exceptions for strategic commercial activities/sectors. The New Decree prescribes that companies carrying on activities with a "strategic impact" will continue to be subject to foreign ownership restrictions. A committee shall be set up to propose a list of corresponding activities that will have to be approved by a Cabinet Decision. Once established, local authorities such as the Department for Economic Development will be competent to:1. Regulate the specific percentage of participation of Emiratis in the capital and/or the board of directors;2. Approve the incorporation of these companies and determine the fees accordingly.Thus, activities deemed to have a "strategic impact" as well as the extent of the restrictions applying to them are still unknown.Other important changes are the:

- Abolition of the provision imposing onshore companies to have a UAE national or UAE company appointed as a registered agent ("UAE Agent");
- Removal of the general requirement for companies to be chaired by an Emirati and to have a majority of Emiratis on the companies' board, subject to the exception for companies having activities with strategic impact;
- Chair or senior executives of a company can now be removed if found guilty of fraud or abuse of authority;
- Shareholders can now sue a company in the civil courts for any failure of duty that results in damages;
- Introduction of changes to the process of convening and holding general meetings including:

1. Increase of the notice period to twenty-one days for holding general meetings;2. One or more shareholders holding not less than 10% of the share-capital may request a general meeting to be called;3. General meetings can be called and held using modern means of technology;4. Quorum has been decreased to the

attendance of the shareholder(s) holding at least 50% of the share-capital;5. Electronic voting at the general meetings is now permitted.

- Companies wishing to go public might sell up to 70% of their shares in an IPO, subject to approval of the relevant authorities, instead of the current 30%.

Potential impact on existing companies Although the New Decree will enter into force on the 2nd of January 2021, three of the most important provisions such as the abolition of the foreign ownership restrictions will take effect only six months after the publication of the New Decree in the Gazette. Existing companies will have one year to adjust their positions, notably by amending their Memorandums and Articles of Association and adapting their operations, to be in line with the changes promulgated by the New Decree. The question of the removal of the Emirati shareholder remains open and some companies might, for instance, prefer to maintain an Emirati shareholder to facilitate its operations.That being said, from a practical perspective, to what extent foreign ownership restrictions will be lifted still needs to be clarified as the list of activities with strategic impact has yet to be issued. The same applies to the procedures to withdraw the participation of Emirati shareholders in favour of foreign shareholders, as well as the removal of the UAE Agent. Further guidance is still expected.**Conclusion** The New Decree is part of the UAE’s efforts to further open up its economy by implementing a modern framework to enhance UAE’s competitiveness by creating new investment opportunities for foreigners. This long-awaited reform has the objective of creating a positive impact on existing and future businesses operating onshore. How federal and local authorities will implement these changes remains to be seen. ***The content of this document is intended to provide a general guidance to the subject matter. Specialist advice should be sought about your specific circumstances.*** December 2020.