UAE announces Overhaul of Companies Law to Permit 100% Foreign Ownership in Mainland (Non-Free zone) Companies.

The "Small Print" however yet to be published.

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On 23 November 2020, by a Presidential Decree, the United Arab Emirates ("UAE") has introduced extensive changes to Federal Law No. 2 of 2015 on Commercial Companies ("Companies Law"). The major change announced is the allowance of 100% foreign ownership in mainland/onshore (non-free zone) companies, therefore effectively annulling the need for a local Emirati majority shareholder. However, the important details have not been released yet.

This newsletter shall provide a first assessment of these announced changes and their potential impact on the local mainland businesses in the UAE.

1. The 49-51 Regime
Until recently, foreign shareholders (individual or corporate) could only own up to 49% of the shares in onshore mainland (non-freezone) companies in the UAE and 51% were mandatorily required to be held by Emirati nationals (or entities wholly held by Emiratis). This restriction for foreign investors has been at the centre of discussions in recent years.

With the implementation of Federal Law No.19 of 2018 on Foreign Direct Investment ("FDI Law") in September 2018 and the subsequent approval of the Positive List through Cabinet Resolution No. 16 of 2020, foreign investors were enabled to hold up to 100% in onshore companies (restricted however to certain sectors and industries only). Such 100% foreign investments remained subject to several conditions, including hefty "minimum share capital requirements".

The latest changes to the Companies Law as announced end of November 2020 seem to have a much wider effect. As for now, only strategically important sectors, including oil and gas exploration, utilities and transport, as well as state-owned entities shall be excluded from the scope.

2. Key Changes with the Amendment of the Companies Law – what we know so far
The Presidential Decree, in a major overhaul, will amend 51 Articles in the Companies law and introduce three new Articles. Besides the allowance of 100% foreign ownership in onshore companies, several other profound changes related to the operation of UAE companies were announced.

We want to highlight some of these changes below:
- Abolition of the requirement of a majority Emirati shareholder in UAE mainland companies;
- Annulment of the provision mandatorily mandating for a UAE national or a UAE owned company as an agent;
- Abolition of the requirement that companies are to be chaired by an Emirati and removal of the provision requiring Emirati majority in the company's board;
- Chair or senior executives of a company can be removed if found guilty of fraud or abuse of authority;
- Shareholders shall be able to sue a company in civil court over any failure of duty that results in damages; and
- Electronic voting at annual general meetings permitted.

3. Potential Impact on Companies

Most of the introduced changes took effect on 1 December 2020. The major changes however, related to foreign ownership, agency, and board of directors will take effect only six months after the publication of the decree in the official gazette. This publication is still pending.

The decree shall then also provide for a grace period of one year for companies to comply with the changes. Hence, existing companies in line with the aforementioned deadlines will have to amend their charter documents (such as the Memorandum and the Articles of Association) as well as their actual operations to comply with the changes.

Despite the announced generic 100% foreign ownership amendments, companies should also be aware that 100 % foreign ownership will still be subject to certain controls by local authorities on the respective Emirate-level, which shall retain the power to determine the level of participation of the Emiratis in any foreign owned company.
Hence, it is yet to be seen, once the respective laws and regulations are published and in place, how these “restrictions” and/or “exceptions” will be determined in detail, i.e. on a shareholder or a board level depending on the sector.

4. Conclusion

The announced changes offer benefits to both, existing and future investors in the UAE. While existing investors should consider restructuring their companies to take advantage these corporate update benefits, new interested parties considering to invest in the UAE market should take advantage of the ease of doing business. However, the final exception list and the important "small print" on the (remaining) mandatory involvement of Emiratis and other stipulations have not been announced and published yet.

Subject to further details and requirements to be announced, companies are well advised to assess the following:
- Revaluating existing contractual relationships with local Emirati partners (i.e. majority shareholder)/ service agents;
- Revising the existing structure to comply with changes; and
- Amending the charter documents to reflect the changes.

We keep monitoring the situation and will provide further information and updates on this development as they emerge.

We will gladly advise you regarding your corporate set-up in this regard.

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