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A MAJOR CHANGE OF APPROACH: UAE Introduces Fundamental Amendments to its Commercial Companies Law

In brief

Earlier last week, Sheikh Khalifa bin Zayed Al Nahyan, President of the United Arab Emirates (**UAE**), issued a decree introducing a number of fundamental changes to the UAE Commercial Companies Law (**CCL Amendment**) and to the UAE's approach towards foreign direct investment (**FDI**) in general. The CCL Amendment adopted a new general rule of, in principle, **allowing foreign investors to fully own certain types of companies in the mainland of the UAE**.

The current UAE Commercial Companies Law No. 2 of 2015 (as amended) (**CCL**) was issued in 2015 and was a long awaited development. The CCL, however, maintained many of the foreign investment restrictions of its predecessor.

In 2018, the Decree Law No. 19 of 2018 regulating Foreign Direct Investment (**FDI Law**) was issued with an aim to relax the investment restrictions and facilitate the establishment of companies with up to 100% foreign capital in certain strategic sectors. This was a welcome change and a milestone in the development of the UAE foreign investment rules.

The CCL Amendment has now repealed the FDI Law and replaced it with more substantial amendments to the FDI regime. The CCL Amendment further amends 51 articles in the CCL, mainly related to joint stock companies and limited liability companies (**LLC**), and introduces other new provisions. We have discussed this new approach to foreign investment in the UAE in a podcast, which you can listen into here.

The CCL Amendment will likely facilitate the ease of doing business in the UAE for both existing companies and foreign investors looking to set up in the UAE. The CCL Amendment, however, decentralizes the approach to company regulation and delegates key decision making to the relevant authorities. As such, investors and companies are advised to keep abreast of developments in the implementation of the amendments before strategizing on their approach. We are

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also closely following up on the developments as they emerge and are happy to provide further guidance on the application of the CCL Amendment to your individual business.

Key themes under the CCL Amendment

1. ***Amending the FDI approach***

   In keeping with the UAE government's intention to overhaul the approach to FDI, the CCL Amendment:

   - removes the general foreign investment restriction imposed under Article 10 of the CCL (which required at least 51% UAE ownership in any LLC or joint stock company incorporated onshore) to allow up to 100% foreign ownership except in strategic activities and business sectors;
   - provides for the creation of a committee (**Committee**) responsible for recommending the strategic sectors in which a percentage of UAE national ownership will be required, as well as the specific requirements and controls applicable to such companies;
   - delegates to the local authorities such as the Departments of Economic Development in each Emirate the responsibility of determining UAE nationals' percentage of participation in the share capital and board of directors of companies whose activities fall outside of the strategic activities list;
   - opens the ownership of one person LLCs to foreign investors; and
   - removes the requirement to appoint a UAE national as the local service agent for branches of foreign companies.

2. ***Introducing amendments to LLC's corporate governance***

   The LLC legal form is the most favorable and commonly used business form for companies in the UAE given its flexible nature and light regulation by the CCL. The CCL Amendment, however, imposes some amendments to the governance of LLC's that existing businesses should take note off. These amendments include:

   - a requirement for LLC's to introduce a clause governing the settlement of disputes in their Memorandum of Association;
   - a reduction of the ownership percentage required for shareholders to be able to call for general assembly meetings from 25% to 10%;
   - a detailed mechanism for calling general assembly meetings including steps for publishing the notice of meeting;
   - introduction of a provision related to calling, participating and voting at general assembly meetings by electronic means; and

- a reduction of the quorum percentages required to hold a general assembly meeting.

The CCL Amendment also permits LLC's to carry out the activity of investing funds of third parties, subject to sector regulatory approvals. This activity was previously reserved for joint stock companies.

3. ***Addressing various issues related to PJSC's corporate governance***

The regulation and governance of PJSC's in the UAE has been the subject of quite some reform with the introduction of the new Securities and Commodities Authority (**SCA**) Corporate Discipline and Governance Standards (**Governance Code**).

The CCL Amendment notably increases reference to the SCA regulations in a number of key articles and introduces certain changes to the corporate governance requirements of PJSC's which fall in line with the SCA Governance Code. In this regard, the CCL Amendment seeks to:

- remove the statutory requirement for one third of a PJSC's board of directors to be independent directors (the current Governance Code prescribes that two thirds of the directors should be independent and non-executive);
- remove the statutory requirement for the majority of the board and the chairman to be UAE nationals and delegating the responsibility for determining such thresholds to the Departments of Economic Development and the Committee;
- place additional controls on the board of directors and executive management, particularly with regards to conflicts of interest;
- reduce the ownership percentage required for shareholders to be able to call for general assembly meetings from 20% to 10%;
- provide for a detailed mechanism for calling general assembly meetings including steps for publishing the notice of meeting and explicitly allowing virtual meetings to be held; and
- allow companies that converted to a PJSC, after the SCA's approval, to sell up to 70% of the company's shares through initial public offerings (the CCL had prescribed a 30% cap).

The amendments related to foreign investment, local service agent requirements and board of director appointments will come into effect after six months from the date of publishing the CCL Amendment. The remaining amendments will be effective on the date that the law is published in the UAE Official Gazette. Companies will have one year (subject to any further extension) to rectify their situation, if needed.

For further information, please feel free to contact one of the lawyers above or your usual Baker McKenzie contact.