



NEW FOREIGN OWNERSHIP REGIME FOR UAE MAINLAND COMPANIES: 100% FOREIGN OWNERSHIP NOW PERMITTED, ALBEIT WITH NUANCES

31 MAY 2021

*The Federal Decree - Law No. 26/2020 On the amendment of certain provisions of Federal Law No. 2/2015 on Commercial Companies (the "**Federal Decree - Law No. 26/2020**") issued on 27 September 2020 now establishes as a default position the possibility of 100% foreign ownership in United Arab Emirates ("UAE") mainland private companies. But exceptions are not far away.*

This new regulation came into force on 2 January 2021, however the specific provisions relating to foreign ownership and management (articles 10, 151 and 329 detailed below) came into force on 30 March 2021.

BACKGROUND: THE FOREIGN OWNERSHIP REGIME PRIOR TO THE FEDERAL DECREE - LAW NO. 26/2020

The principle in force before the promulgation of the Federal Decree - Law No. 26/2020 was summarised by the very title itself of article 10 of the previous *Federal Law No. (2) of 2015 On Commercial Companies* (the "**Companies Law**"): "National Shareholding Percentage".

Indeed, according to the late article 10, at least 51 % of the share capital of every company established in mainland UAE, excluding free zones, had to be held by Emirati nationals, capping thus the level of foreign ownership at 49%.

A first step to encourage foreign direct investment in the UAE was taken with the Federal Decree - Law No. 19/2018 On Foreign Direct Investment (the "**Federal Decree - Law No. 19/2018**") which created two lists:

- A "Negative List" of 13 activities not available to foreign investors, i.e. requiring 100% of Emirati ownership.

Within the financial sector in particular, insurance services, banking and financing activities, and payment and cash handling systems were part of this Negative List.

- A "Positive List", detailed by the *Cabinet Decision No. 16/2020 On the Determination of the Positive List of the Economic Activities and Sectors in which Direct Foreign Investment is Permitted and Ownership Percentages Thereof* (the "**Cabinet Decision No. 16/2020**") issued on 17 March 2020, and listing 122 activities from the agricultural, industrial, and service sectors in which foreign ownership of up to 100% of the share capital was allowed.

THE NEW FOREIGN OWNERSHIP REGIME IMPLEMENTED BY THE FEDERAL DECREE - LAW NO. 26/2020: 100% FOREIGN OWNERSHIP IN UAE MAINLAND COMPANIES AS A PRINCIPLE, YET WITH EXCEPTIONS

The Federal Decree - Law No. 26/2020 has now removed the requirement of the 51% of UAE nationals' ownership from the new version of article 10 of the amended Companies Law. Going forward, the general default position is that a UAE mainland company may be entirely owned by non-UAE nationals, unless it undertakes an "Activity of Strategic Effect". Therefore, the restrictions on foreign ownership have not been abolished entirely.

Regarding the exact content of those "Activities of Strategic Effect", a Cabinet Resolution will be issued to define what they exactly entail, based on the recommendations of a Committee composed, among others, of at least two representatives of each Emirate.

At the time of writing, this Resolution has still not been promulgated, but we can wonder if those "Activities of Strategic Effect" will correspond to the activities from the "Negative List" from the Federal Decree - Law No. 19/2018.

It is understood that the "Activities of Strategic Effect" will be defined globally at the level of the UAE. However the Federal Decree - Law No. 26/2020 grants each Emirate the power to determine the required shareholding and director level participation of the companies established in their respective territory. This may lead to different foreign ownership policies for companies operating the same activity in a different Emirate.

Additionally, at the UAE level, we should not forget the traditional exceptions listed by article 4 of the amended Companies Law, which has not substantially changed. This specific provision keeps out of the scope of the amended Companies Law, and therefore outside the scope of the above provisions, the companies owned by the UAE government along with the companies partially owned by the UAE government with a shareholding of at least 25% and operating in the following strategic key sectors:

- oil exploration, drilling, refining, manufacturing, marketing and transportation;
- sector of energy of all kinds;
- electricity generation;
- gas production; and
- water desalination, transmission and distribution.

Finally, it is also important to note the new article 10.4 which authorises the Cabinet of the UAE to exclude, upon request and on a case by case basis, any company whose activities are regulated by special regulations from any condition or provision relating to the need of UAE nationals as shareholders or board members.



OTHER KEY CHANGES IN THE TREND TOWARDS LESS LOCAL CONTROL

Going in the same direction, the Federal Decree - Law No. 26/2020 also repealed article 329 of the Companies Law, which obliged UAE mainland branch offices of foreign companies to have an Emirati national as its agent. This may ease the administrative process and costs to set up a UAE branch.

Lastly, in relation to the management of public joint stock companies, the previous requirement to have a chairman and a majority of the board composed of UAE nationals has also been removed. The new article 151 of the Companies Law now refers to the requirements which will be determined by the Committee or by the competent authority in each Emirate according to the new article 10 discussed above.

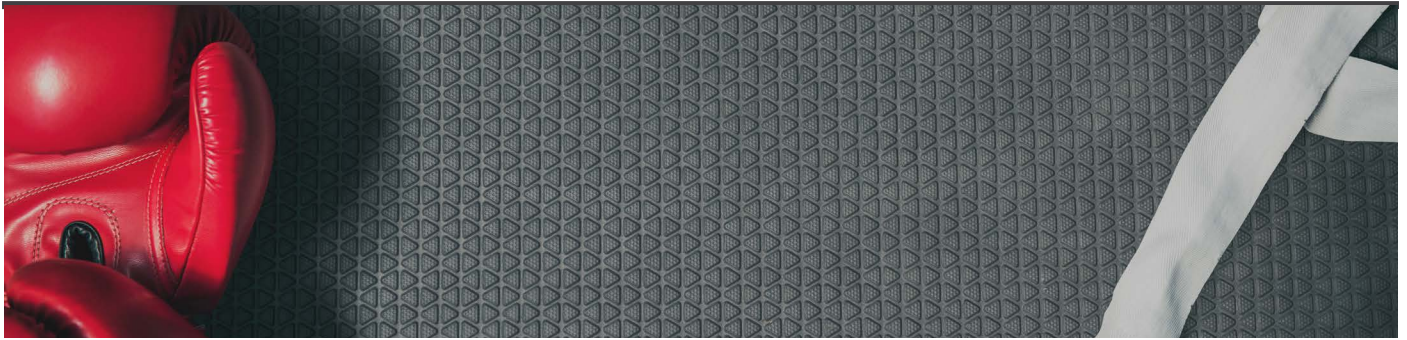


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Drafting of corporate documents, structuring and incorporation of financial and non-financial companies in DIFC, ADGM and other free zones in the UAE.





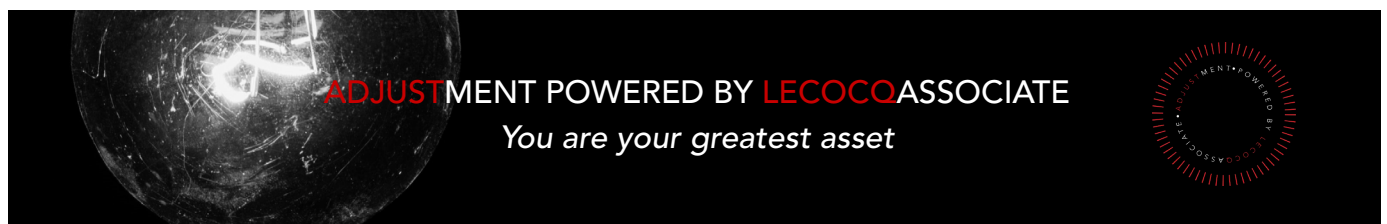
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