

UAE: Amended Commercial Companies Law (Federal Decree Law No. 26 of 2020), 49-51 Rule and FDI Law abolished

Legal Briefing (06 December 2020)

As announced in our previous [legal briefing from November 23, 2020](#), the government of the United Arab Emirates (UAE) has amended the Commercial Companies Law (Federal Law No. 2 of 2015, “CCL”) by issuing Federal Decree Law No. 26 of 2020 (“Decree Law”) and thereby overhauling the entire corporate landscape by removing the general requirement to have a majority Emirati shareholder/service agent. In this legal briefing we provide an overview of the most significant changes introduced by the Decree Law.

I. Emirati Participation

One of the most significant changes introduced by the Decree Law is the abolishment of the general requirement for Emirati majority participation in companies and branches of foreign companies in the UAE (so-called **49-51-rule**). The 49-51 rule was previously stipulated in Art. 10 of the CCL.

Art. 1 of the Decree Law amends Art. 10 of the CCL and the new **Article 10** introduces a **committee** which shall decide on activities with strategic importance for the UAE as well as the licensing requirements for companies engaging in such activities. One of the requirements for a company engaged in an activity with strategic importance is the determination of a specific percentage of Emirati participation in either the capital or management of that company. The capacity to decide on the activities with strategic importance as well as the respective licensing and corporate requirements for companies has been levied on the local licensing authorities – the Departments of Economic Development in each respective Emirate.

Moreover, Art. 6 of the Decree Law has also abolished Federal Decree Law No. 19 of 2018 on Foreign Direct Investment.

This means that there is no general requirement for an Emirati shareholder in a limited liability company (“LLC(s)”) anymore. However, the respective Department of Economic Development may decide on activities of strategic importance which would then again require a certain percentage of Emirati participation – either in the share capital or the management of the LLC.

Finally, the requirement of having a local service agent for a branch of a foreign company has been repealed by Art. 6 of the Decree Law by abolishing Art. 329 of the CCL.

II. Main Changes for Limited Liability Companies

The Decree Law introduces several other significant changes to the administration of LLCs.

a) One-Person LLC

Art. 1 of the Decree Law introduces a small albeit impactful change to Article 71 of the CCL:

The previous version of Art. 71 (2) of the CCL stipulated that an Emirati national can incorporate an LLC without the requirement of a second shareholder. The

new Art. 71 (2) of the CCL does not include the word “national” or “Emirati” (depending on the translation) anymore. Hence and against the background of the amendment of Art. 10 CCL, a one-person LLC can now also be established by a foreign investor – whether a natural or judicial person.

b) General Assembly

The Decree Law has also introduced several amendments to the implementation and formalities of an LLC’s general assembly.

Any partner holding at least **10%** of the LLC’s share capital can now request for the convention of the general assembly, new Art. 92 (2) of the CCL. The previous threshold for such a minority right was set at **25%**.

The timeframe for an **invitation to a general assembly** meeting has been extended from at least 15 days to at least 21 days, new Art. 93 (1) of the CCL. The invitation can now be sent out either by registered letter or through a means of modern technology as stipulated in the company’s Memorandum of Association (“**MoA**”), new Art. 93 (1) of the CCL).

Due to the abolishment of the mandatory majority Emirati participation, the **quorum** for the general assembly has been **reduced** from previously 75% to **50%** at the first meeting, new Art. 96 (1) of the CCL. Furthermore, the quorum at the adjourned meeting shall be valid irrespective of the number of partners attending, unless a higher quorum has been agreed upon in the LLC’s MoA, new Art. 96 (2) of the CCL.

An **adjourned meeting** of the general assembly shall now be held at least 5 days and not later than 15 days from the first meeting, new Art. 96 (3) of the CCL (previously the adjourned meeting had to

be held within 14 days after the first meeting).

The Decree Law introduces a new paragraph to Art. 93 of the CCL and thereby adding the possibility to attend and vote during a general assembly meeting by modern technological means (**virtual general assembly**).

c) Capital Increase

The Decree Law added a new paragraph to Art. 101 of the CCL, thereby adding the possibility to seek a court order for an (emergency) capital increase. The new Art. 101 (2) of the CCL now provides the opportunity for a shareholder to seek a court order to increase the LLC’s share capital in order to prevent the LLC’s dissolution or to pay the LLC’s debts. Once the court order has been granted, any partner may pay the increased share capital on behalf of the other partners in return for the respective number of shares (paid for himself and on behalf of the other partners).

III. Implementation

In accordance with Art. 8 of the Decree Law, all changes will come into effect on **January 2, 2021**, except for the abolishment of the general requirement for Emirati majority participation in companies and branches of foreign companies which shall come into effect **6 months after the publication** of the Decree Law in the official gazette (Art. 7 of the Decree Law). As of today, the publication date of the official gazette, and hence the Decree Law was unknown.

Pursuant to Art. 4 of the Decree Law, companies will have a **transition period** of 1 year – starting from January 2, 2021 – to adjust their MoAs in accordance with the new provisions of the Decree Law. This transitional period may be extended for a similar term by a cabinet decision.

IV. Summary

The Decree Law represents a long-awaited liberalization of the corporate landscape and is expected to significantly boost the UAE economy and attract foreign investors – and with that knowledge and investment – to the country.

The new provisions regarding the general assembly as well as the capital increase show that the UAE government is keen to adapt to new situations and provide companies with the much-needed flexibility and tools to do the same.

It remains to be seen how and to which extent the licensing authorities will make

use of the new Art. 10 of the CCL introduced by the Decree Law and which activities will be announced and determined as ones with strategic importance.

The deferred effective date for the abolishment of the 49-51 rule gives foreign investors the required time to discuss the development and changes with their Emirati partners and prepare the required changes to the MoA and the company itself.

For more information, please contact your usual contact person at SCHLÜTER GRAF or send an email to dubai@schlueter-graf.com.

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