



INCREASED FOREIGN OWNERSHIP IN MAINLAND ENTITIES PREPARING FOR THE TRANSITION

With effect 1st June 2021, foreigners are permitted to hold 100% of the share capital in an onshore limited liability company. In anticipation of final guidance being issued by UAE authorities on the practical mechanisms to implement foreign ownership changes, now is the time for business owners to reevaluate their corporate structures and put in place measures to mitigate against structural risk and business disruption while implementing enhanced corporate governance documentation and procedures.

Foreign direct investment – key changes

In December 2020, the UAE government announced Federal Decree-Law No. 26/2020 (the “Amendment”) amending key provisions of Federal Law No. 2/2015 on Commercial Companies (the “CCL”). Most significantly, the Amendment removed the requirement for a UAE national to hold 51% of the capital in an onshore company.

The relaxation of the UAE’s approach to foreign direct investment represents a significant policy shift, increasing the attractiveness of the UAE to foreign investment. The ability of a foreign investor to fully own a company in the UAE mainland will now become the de facto position rather than the exception. Only companies carrying out economic activities deemed by the UAE government to have a ‘strategic impact’ will remain subject to some level of Emirati capital requirements.

It remains to be seen which economic activities will be designated as having a ‘strategic impact’. A UAE federal government committee has been created for this purpose and to define the specific requirements and controls applicable to such companies. An updated list is expected to be made available in June 2021. Companies not undertaking economic activities of ‘strategic impact’ may nevertheless be subject to some degree of Emirati participation requirement in the share capital and/or the board of directors as determined by the Department of Economic Development in each Emirate.

Below is a chart summarizing the key changes to foreign ownership requirements, general assembly procedures and other notable amendments to the CCL introduced by the Amendment:

	CCL	Amended CCL
Foreign ownership changes		
Article 10	Required 51% of the shares in a limited liability company incorporated ‘onshore’ in an Emirate of the UAE to be owned by one or more UAE nationals.	Article 10 repealed and replaced with a provision providing for the formation of a committee to identify activities with a strategic impact and the controls necessary for licensing the companies which exercise any such activities.
Article 329	Required a UAE national to be appointed as a service agent for branches of foreign companies established in the UAE.	Article 329 repealed removing the requirement for a UAE national service agent to be appointed for branches of a foreign company.
Article 151	Required the majority of the board of directors of a public joint stock company to be UAE nationals.	Amended to remove majority UAE national requirement from board of directors and replaced with reliance on the composition requirements as determined by the committee appointed under Article 10 of the Amended CCL.
Changes to general assembly procedures		
Article 92	A general assembly may be convened at the request of one or more partners holding at least 25% of the share capital.	A general assembly may be convened at the request of one or more partners holding at least 10% of the share capital.
Article 93	Notice period for calling a general meeting was 15 days.	Notice period for calling a general assembly extended to 21 days. A general assembly may be conducted remotely using available technology.
Article 96	Quorum at a general assembly shall not be valid unless one or more partners holding at least 75% of the capital of the company are present.	Unless the memorandum of incorporation provides for a higher majority, quorum for a general assembly is attendance by partners holding at least 50% of the share capital of the company.
Other notable changes		
Article 6	Corporate governance regulations will be issued by the relevant authorities to apply to public and private joint stock companies.	Contemplates the issuance of governance regulations which will apply to all companies, not just joint stock companies.
Article 101(2)	No procedure available to limited liability companies facing financial distress	A shareholder of a limited liability company facing liquidation/inability to pay its debts, may apply to the courts “for an urgent judgement to increase the capital as necessary to save the company or settle the debts”.



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Foreign ownership subject to conditions?

While it remains uncertain how, when, and on what conditions increased foreign ownership will be permitted, there are several actions the UAE government may impose in connection with the relaxation of foreign ownership requirements. These include:

- i. greater minimum share capital investment and proof of deposit by the foreign investor in exchange for gradual reduction or complete removal of Emirati ownership;
- ii. increased Emirati participation in the board of directors;
- iii. increased regulatory oversight and reporting obligations including corporate governance controls and annual reporting obligations; and
- iv. (accelerated) substantive Emiratisation of workforce.

While these possibilities are not exhaustive, they are in line with trends in the MENA region and beyond to balance the need to attract foreign investment with protecting local interests.

Depending on the conditions attached to increased foreign ownership, it may be more practical and operationally preferable for business operators to maintain existing shareholding arrangements but with enhanced risk mitigation measures.

Corporate governance requirements

Alongside the changes to foreign ownership requirements, the Amendment introduces adjustments to the procedure for convening and conducting annual meetings. These are highlighted in the table above and include:

1. permitting a general meeting to be conducted through modern means of technology; and
2. requiring a 21-day notice period to hold a general meeting that may be requested to be convened by shareholders holding 10 per cent of the share capital.

The immediate effect of these changes is to require companies to review their constitutional documents and update them before 2 January 2022 to align their provisions with the Amendment. Failure to do so is likely to attract penalties.

While the ability for companies to now hold meetings remotely through video conferencing has significant practical benefits, companies falling within the scope of the economic substance regulations (Cabinet of Ministers Resolution No. (57) of 2020) should be aware that remote participation may affect their ability to demonstrate substance and in particular, satisfaction of the 'directed and managed test'.

The Amendment also refers to corporate governance regulations that will be issued by the UAE government and apply to all companies. To date, there has been no announcement or indication of the content of such regulations. However, the issuance of governance regulations is a logical next step in the increasing maturity of the regulatory environment that is pushing companies to be more accountable and transparent in their business conduct and decision making.

Companies should review their existing corporate governance practices and put in place clear corporate governance policies and procedures to enhance business efficiency, reduce risk and add value.

Companies are also advised to review and update their constitutional documents before 2 January 2022 to align their provisions with the Amendment. Failure to do so is likely to attract penalties.

What can you do?

Changes to the UAE's policy on foreign ownership together with regulatory changes over the last twelve months create a need and an opportunity for business owners to reevaluate their existing corporate structures, notably to:

1. **implement best practice tools to mitigate against risks prevalent in the traditional and out of date shareholder arrangements;** and
2. **ensure their corporate structures and corporate governance practices are compliant with current regulatory requirements and licensing conditions** (including updating their constitutional documents to reflect the new corporate governance requirements contained in the Amendment).

Simple structural changes – e.g. combining a DIFC prescribed company, ADGM SPV and/or foundation with an operational LLC – can provide businesses with immediate value by reducing shareholder risk, increasing attractiveness for private investment and ensuring business continuity.

For businesses currently owned by individual shareholders, one of the most value-adding adjustments is to corporatise the shareholding. An individual shareholder exposes the company to risk – i.e. creditors' attacks, shares being caught up in divorce proceedings, probate in the event of shareholder's passing. Ringfencing shares by using a DIFC prescribed company or an ADGM special purpose vehicle will reduce individual personal shareholder risk and minimize disruption to business that may result from the transition to increased foreign ownership. Further details on this risk minimization strategy can be found in our factsheet [here](#).

Such restructuring also provides shareholders the opportunity to:

1. review and refresh their existing shareholder relationship to clarify the procedure for adjusting ownership in anticipation of changes to foreign ownership requirements; and
2. put in place sophisticated and enforceable contractual arrangements to address their relationship in a common law jurisdiction (ADGM or the DIFC); providing added protection to the business and the foreign shareholder. For FAQs on our recommended contractual risk mitigation package, please refer to our factsheet [here](#); and
3. adopt corporate governance practices which are compliant with the Amendment and reflect best practice.

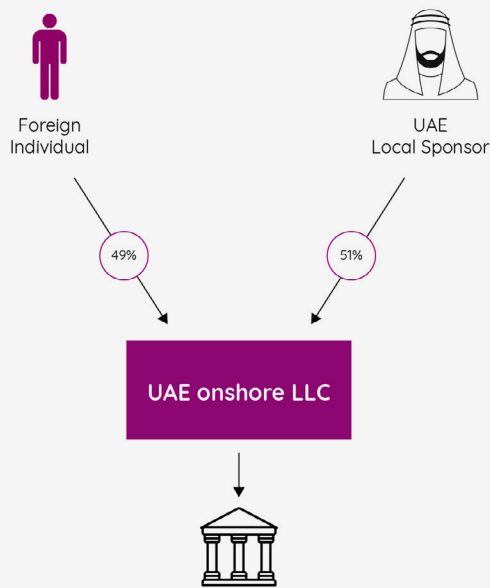


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The following diagrams illustrate the simple structural improvements that can be made to reduce risk and leverage new tools to enhance business continuity at a time of regulatory change:

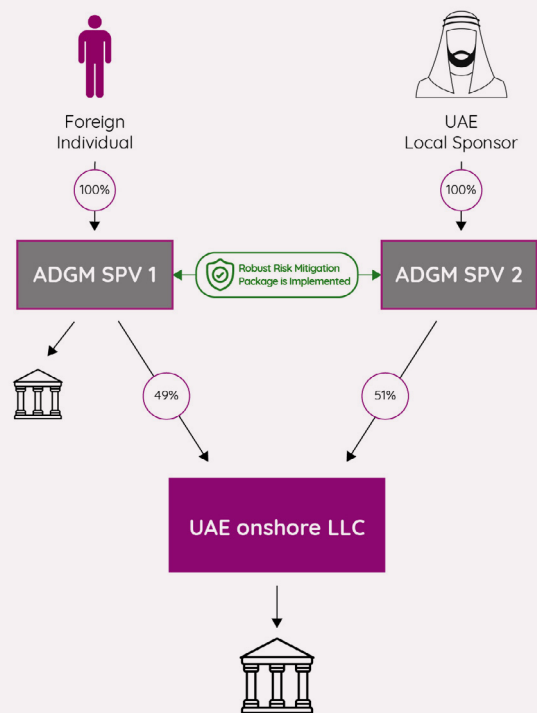
Traditional corporate structure

Exposed to individual shareholder risk and are often accompanied by outdated contractual arrangements



Optimised corporate structure

Use of ADGM SPVs to remove individual shareholder risk and refresh contractual arrangements which are robust and enforceable within a common law jurisdiction



How we can help

M/HQ can support you in reevaluating your existing corporate structure, reviewing your memorandum of association and recommending tools to increase value, reduce risk and assure business continuity at a time of regulatory change. We have extensive experience with corporate structuring and implementing sophisticated arrangements to provide enhanced protection to foreign investors and business operations.

Who we are

We are a multi-service platform catering to a broad spectrum of clients, from individual entrepreneurs, family run SMEs, through to multinational corporations. Our one-stop-shop offering is unique in the Middle East: a holistic and cross-disciplinary combination of a market leading corporate services firm with a law firm's specialist structuring expertise all on one single platform.

We have a substantial track-record delivering creative and results-oriented advice and support on a wide range of UAE structuring and re-structuring issues.

Headquartered in the UAE, we are an entrepreneurial firm for entrepreneurial clients.

Who will assist you



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