

AN OVERVIEW OF THE UAE'S NEW COMMERCIAL COMPANIES LAW

Following several years of discussions, considerations and preparations, the UAE's new Commercial Companies Law No. 2 of 2015 (the "**New Law**" – all the articles referred to hereinafter are of the New Law) was issued on the 25th of March 2015 and came into effect 3 months following its issuance date (the "**Effective Date**") repealing the old UAE's Commercial Companies Law No. 8 of 1984 (the "**Old Law**").

The UAE government intends that the New Law will provide up-to-date regulations for the corporate landscape and the investment community which will stimulate the investments and protect investors as clearly stipulated under Article 2.

Although the New Law maintains the cornerstones of the Old Law, it introduces some fundamental provisions that must be observed carefully by existing companies and investors as well as by those considering setting up companies or investing in the UAE. According to Article 374, all commercial companies operating in the UAE are required to adjust their positions in compliance with the provisions of the New Law within a maximum period of one year from the Effective Date.

This Article aims to provide an overview of the main provisions of the New Law and to set out the consequences which companies might face if they failed to comply with its provisions which are summarized as follows:

1) Exemptions:

With a view to granting flexibility to companies owned (either entirely or partially) by either the UAE federal government or the local government of any of the Emirates, the legislator has exempted from the provisions of the New Law companies that are fully owned by the government and companies operating in the oil and energy field in which the government's share is not less than 25% of its share capital.

Furthermore, the exemption provisions of the New Law include companies which were already exempted from the provisions of the Old Law, and companies that may be exempted pursuant to a resolution issued by the UAE Ministers' Cabinet (the "**Cabinet**"), provided that the Memorandums and Articles of Associations of such companies provide for such exemption.

Therefore, all such companies should ensure that their respective Memorandums and Articles of Association are amended to contain all the necessary provisions for such exemptions, and whether such exemptions are granted for the relevant company from the entire provisions of the New Law or from only some of them. Such amendments to the Memorandums and Articles of Associations must be executed within one year from the Effective Date in order to avoid being subject to any penalties.

2) Companies Forms:

The New Law eliminates two of the seven forms of commercial companies that may be registered in the UAE, namely Joint Venture Companies and Share Commandite Companies. The remaining five forms of commercial companies permitted in the UAE are: the Joint Liability Company, Simple Commandite Company, Public Joint Stock Company, Private Joint Stock Company and a Limited Liability Company. Any company that does not adopt one of these five forms will be null and void and the parties

contracting in the name of such companies will be personally and jointly liable for any and all of the liabilities deriving from such contracting (Article 9).

Notwithstanding the above, the elimination of the Joint Venture Company from the legal forms of commercial companies is unlikely to have any major negative impact on existing Joint Venture arrangements, because the majority of the incorporated Joint Ventures are incorporated as Limited Liability Companies.

3) Main provisions affecting Limited Liability Companies (“LLCs”):

The main provisions relating to LLCs in the Old Law are maintained by the New Law. However, the New Law makes several positive changes which can be summarized as follows:

- a) According to Article 71 of the New Law, an LLC can be incorporated in the UAE now by as few as one natural Emirati shareholder. We understand from the local authorities in the Emirate of Dubai that this is likely to apply also to GCC nationals, based on the treaties signed between the GCC countries;
- b) In the past, there was considerable debate as to whether the shares of an LLC can be pledged in the UAE. Article 79 of the New Law expressly permits the pledge of an LLC's shares although several critical matters remain unclear in connection with the pledge of shares, mainly relating to the actual registration process of the pledge. We understand that a specific committee is in the process of being incorporated for such purposes and will be responsible for examining all applications made for the pledge of shares. We also understand that the registration of such a pledge is still restricted to be in favor of banks and financing institutions;
- c) The provisions relating to the pre-emption rights have been slightly modified under the New Law. A shareholder intending to sell his shares in an LLC would be obliged under Article 80 to disclose the name of the intended purchaser of the shares, as well as the terms of the purchase (including the purchase price) to the other shareholders. Additionally, in the event of a dispute over the price or the value of the shares being sold, an expert (or more than one) will be appointed by the authorities (pursuant to a request made by the shareholder exercising such right) to determine the value of the shares;
- d) The restrictions imposed on the number of managers appointed for an LLC under the Old Law has been lifted pursuant to Article 83 of the New Law, and now shareholders can nominate one or more managers for the management of the company as they see appropriate;
- e) The required notice period for general meetings has been reduced under Article 93 from 21 days under the Old Law to only 15 days or even less provided that it is agreed by all the shareholders; and
- f) The statutory quorum required for general meetings has been increased from 50% to 75% (Article 96). However, if the quorum is not met, the shareholders should be called for a second meeting which shall be convened within 14 days from the date of the first meeting and the quorum required for this meeting would be met if shareholders holding not less than 50% of the shares of the company are present at the meeting. Failing this, a third meeting should be called for 30 days after the date of the second meeting which will be validly convened with the shareholders present at that meeting and the resolutions passed during it will be valid if approved by the majority of shareholders (or their authorized representatives) present at that meeting.

4) Provisions affecting Joint Stock Companies (the “JSCs”);

The New Law introduces key provisions affecting JSCs, include the following:

- a) A new type of resolution of the general assembly of JSCs has been introduced and referred to as a “Special Resolution”. It is defined in Article 1 as a “resolution issued by a majority of shareholders holding at least 75% of the shares represented in the general assembly”. Furthermore, the New Law has made several decisions issuable by the general assembly of a JSC strictly subject to such resolutions as: increasing or decreasing its share capital, altering the name of the company, amending its Memorandum of Association and Articles of Association, extending its term, the granting of certain authorities to its board and the issuing of bonds or Sukuks;
- b) The minimum founding partners required for Private Joint Stock Companies has been reduced from 3 to 2 partners (however, Article 255 listed an exemption to this by providing that a single corporate entity may incorporate a Private Joint Stock Company) and from 10 to 5 founding partners for Public Joint Stock Companies (the federal government, any of the local governments and any company fully owned by any of them are exempted from this pursuant to Article 107 – the exemption in this Article also included companies converting into Public Joint Stock Companies);
- c) According to Article 117 of the New Law, the minimum and the maximum limits for the subscription of the founders of a Public Joint Stock Company have been increased to 30% and 70% respectively;
- d) The New Law also gives the Securities and Commodities Authority in the UAE (the “Authority”) the right to issue a resolution to regulate the mechanism of subscription in new shares on the basis of book building (Article 129). This is based on supply and demand by effectively letting the market set the price for such new shares by assessing the demand at various price points, and then letting the issuer set the price for the IPO (Initial Public Offering) at a level where they are comfortable;
- e) The cap on the number of board members of JSCs has been reduced from 15 members to only 11 (Article 143);
- f) The minimum notice required for convening a general assembly meeting has been reduced from 21 days to 15 days (Article 172). However, a shorter notice period may be given if it is approved by shareholders holding not less than 95% of company’s share capital;
- g) The board of directors of a JSC is obliged to call for a general assembly meeting if requested by one or more shareholders holding 20% of the share capital of the company, or even a lesser percentage (if stipulated for under the Articles of Association of the company - Article 174). Under the Old Law, this obligation was subject to a request being made by at least 10 shareholders holding not less than 30% of the company’s capital. It is worth mentioning here that the New Law has eliminated the references to the ordinary and the extra ordinary general assembly meetings and referred to all the shareholders’ meetings as the general assembly;
- h) Although the New Law maintains the Old Law’s minimum statutory quorum requirement for a general meeting of a JSC (being shareholders holding not less than 50%), the period during which the second meeting shall be called for has been reduced from 30 days to 15 days (but not less than 5 days). If the quorum was not present during the first meeting, the second meeting

will be validly convened irrespective of the number of shareholders present at the first meeting (Article 183);

- i) The minimum share capital requirement has been increased from AED 2 Million to AED 5 Million for Private Joint Stock Companies and from AED 10 Million to 30 Million for Public Joint Stock Companies (Public Joint Stock Companies are now authorized, pursuant to Article 193, to have both issued share capital and authorized share capital provided that the authorized share capital does not exceed two times the issued share capital);
- j) The shareholders' pre-emption rights can now be sold to other shareholders or to third parties with a material consideration (Article 197). This Article also grants the Authority the right to issue a resolution to regulate the conditions and procedures of selling such rights;
- k) Although the restriction imposed on issuing different classes of shares remains unchanged, Article 206 of the New Law grants the Cabinet the right to issue a resolution determining other classes of shares issuable by Public Joint Stock Companies and the conditions required for issuing such shares, the rights and obligations arising from them and the rules and procedures regulating them;
- l) The New Law has prohibited Public Joint Stock Companies from providing any of its shareholders with financial assistance to enable them to hold any shares, bonds or Sukuk issued by the company whether in the form of a loan, gift, donation, security or guarantee (Article 222);
- m) The New Law also introduces a new term called the "strategic shareholder" defined in Article 1 as "such shareholder whose contribution to the company provides technical, operational or marketing support to the company. Article 223 provides that a company may, pursuant to a special resolution, increase its share capital by the entry of a strategic shareholder. The Authority has the right to issue a resolution with a view to determine the conditions and procedures required for the entry of such shareholder;
- n) The appointment of JSCs' auditors have been capped at only 3 consecutive years (Article 243); and
- o) Any party (whether individual or company) intending to take any action that may lead to acquiring shares or any securities that are convertible into stock in the shares of a Public Joint Stock Company which has offered its shares for public subscriptions or is already listed shall comply with the relevant resolution/s issued by the Authority regulating the rules, conditions and procedures for such acquisition (Article 292). However, we are unaware of any such resolutions issued by the Authority so far in this respect.

5) Sharia Board / Advisors:

Sharia controllers, committees or boards (which usually exist in companies operating or conducting their businesses in accordance with the Islamic Sharia principles) were never properly or sufficiently regulated in the UAE. As such, and with the rapid increase of the number of companies either being incorporated as Sharia compliant entities or converting their status into Sharia compliant entities, the UAE's legislator (through Article 11) gave the Cabinet the right to issue a resolution to determine the guidelines on which the members of the internal sharia control boards or committees shall operate for those entities incorporated or to be incorporated in the UAE with the view to conduct their businesses or to operate in accordance with the provisions of Islamic Sharia. The said resolution is also expected to set standards based upon which such boards or committees will operate.

The New Law restricts the appointment of the Sharia board or committee to the general assembly (this applies to both LLCs and JSCs, according to Articles 94 and 132 respectively. Such boards or committees are required to submit their reports to the annual general assembly of the company for ratification (Article 177/1). This will need to be carefully considered by all existing companies operating in accordance with the principles of the Islamic Sharia because we have seen several companies in the past granting their board of directors the right to appoint their Sharia board or committee members and to which the latter were also expected to report.

6) Penalties:

The New Law introduces several new penalties which all companies and their management operating in the UAE should consider and observe. These penalties include the following:

- a) A penalty of not less than AED 10,000 and not more than AED 50,000 if any company refuses to disclose to any shareholder or partner any of the minutes of the shareholders meetings, the company's records or documents (Article 342);
- b) A penalty of not less than AED 50,000 and not more than AED 100,000 on the chairman of any listed company if he fails to call for the annual general meeting within the period stipulated under the law (Article 343);
- c) A penalty of not less than AED 50,000 and not more than AED 1 million on the chairman of any listed or limited liability company if the losses of such companies reach half of its share capital and they failed to convene a general meeting (Article 344);
- d) A penalty of not less than AED 10,000 and not more than AED 50,000 will be imposed on the Sharia controller or on each member of the Sharia board or committee if they failed to comply with the provisions of the resolution to be issued by the Cabinet referred to above in point 5 (Article 351);
- e) A daily penalty of AED 2,000 on any company that fails to amend its Memorandum of Association and Articles of Association in compliance with the provisions of the New Law within the one year period from the Effective Date (Article 357);
- f) A penalty of not less than AED 10,000 and not more than AED 100,000 on anyone (or any company) who violates the provisions of the New Law (Article 360); and
- g) The New Law also increases the penalty imposed on any person who may, in bad faith, assess the value of the in kind shares provided by the founders or the shareholders in excess of their actual value. According to Article 362, the penalty will be between AED 500,000 and AED 1 Million and / or a term of imprisonment of between 6 months and 3 years.

In addition to the above penalties, the New Law has imposed imprisonment penalties in certain cases such as providing misleading information to the competent authorities, breaching confidentiality, overvaluing shares in kind, distributing profit in violation of the New Law or concealing the true financial position of the company.

There are only a few months left before the expiry of the period granted for companies incorporated and operating under the Old Law to comply with the provisions of the New Law. The period will expire at the end of June 2016, although it could be extended if a resolution is issued by the Cabinet based on a recommendation from the UAE Minister of Economy. Should any company fail to comply with the provisions of the New Law, that company would be considered as dissolved in accordance with the provisions of Article 374(2).

The significant amendments made by the New Law and the new provisions introduced relating to the legal framework governing commercial companies in the UAE are likely to assist the New Law to achieve its objectives. However, some provisions of the New Law will not achieve their objective until all the relevant regulations, rules and resolutions required to implement the new provisions are issued by the other relevant authorities, such as the Ministry of Economy and the Authority.

In the meantime, it is extremely important for all existing companies and their shareholders and managers in the UAE to review the provisions of the New Law and familiarize themselves with its provisions and the obligations imposed by it, and to take all necessary steps to amend their Memorandum of Associations and Articles of Associations appropriately within the stipulated timeframe.

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