

The United Arab Emirates (UAE) has a new *Commercial Companies Law* (Federal Law No. 2 of 2015), enacted on 1 April 2015, which came into force on 1 July 2015. The law completely replaces the *Commercial Companies Law* which had been in place since 1984 (Federal Law No. 4 of 1984).

While the new law was highly anticipated and expected by many market practitioners to usher in a complete overhaul of prevailing corporate governance and structuring regimes in the UAE, the change has been less dramatic than expected. However, there are a number of significant changes which market participants and potential market entrants should be aware of. The law does pave the way for a more flexible regime allowing for the authorities to pass supplemental regulations to provide for additional flexibility in the future, including in relation to the operation of free zone entities in the UAE and also the introduction of multiple share classes for UAE limited liability companies.

Here are a number of the key changes:

a. “Excluded Companies Register” and Exempted

Companies: The new law specifically excludes a number of companies from its application. These include companies formed by Resolution of the Federal Cabinet or companies owned wholly by the UAE Federal Government or the Government of any of the seven Emirates and any companies owned by such companies, provided that, in each case, a specific provision excluding the company from the application of the new law is included in its Articles of Association. The Article also makes mention of an “excluded companies registry” to be maintained by the Ministry of Economy, ESCA or local authorities in each Emirate, with whom exempted companies are required to register and periodically renew their registration (likely annually). We understand that no excluded registry has been established to date, however our discussions with Federal Authorities working closely on the implementation of the new law indicate that all procedural aspects of the implantation process will likely be available within one month of the new law becoming effective.

b. Changes in Rights of Preemption: The old law contained preemption rights pursuant to which, if a shareholder in a limited liability company wished to sell his shares, he needed to first offer them for sale to the existing shareholders at an agreed price and, failing agreement, at a price determined by valuation. The new law maintains this provision with a few refinements. The new law essentially repeats the rule but provides that in the event of disagreement over the preemption purchase price the price will be determined by one or more experts with proper technical and financial experience in valuation (under the old law the price was to be determined by the auditors of the company, arguably favoring the remaining shareholders). Further, the new law provides that where more than one remaining shareholder

takes up the offer, they are to purchase pro-rata to their existing shareholdings in the company (the old law was silent on what occurred in this contingency). Finally, the new law provides that the preemption right remains open to the remaining shareholders for a period of 30 days from the date on which the Manager of the company is notified of the price. The old law also specified a 30-day period but failed to indicate when it commenced, leading to some disputes.

In our view, these revised preemption provisions still fail to provide sufficient statutory clarity to shareholders as to how they will operate in practice. While the consensus is that parties cannot contract out of the law, they can enter into detailed shareholders agreements which augment the provisions of the law, and may address issues such as notice and time requirements and other terms relating to the preemption right designed to supplement the statutory rights and to offer certainty to the parties. This remains best practice, however care needs to be taken in the drafting of such agreements to ensure that no inadvertent contradiction arises between the new law and the terms of any supplemental shareholders agreement as any contradictory provision will be deemed void.

c. Decrease in “Public Float” for Public Joint Stock

Companies: Previously the founders of companies which wished to list on the Dubai Financial Market (DFM) or Abu Dhabi Stock Exchange (ASX) were required to give up not less than 55% of their shares to the public on any listing, i.e. to become minority shareholders. The new law reduces the minimum required public float to 30%, presumably with a view to encouraging listings.

d. Restrictions on Financial Assistance: The law formerly contained no specific prohibitions on the provision of financial assistance, and this was seen by many as a significant failing, as compared to international norms in corporate governance standards. This deficiency has been corrected under the new law which provides that neither a company nor its subsidiaries shall provide financial assistance to any person to enable them to purchase shares, bonds or sukuk issued by the company. This includes financial assistance by way of loan, gift, providing assets of the company as collateral security or providing a guarantee of the obligations of the prospective purchaser.

- e. Types of Companies:** The new law reduces the number of commercial entities which can be formed in the UAE from seven to five, namely: limited partnership company, partnership company, limited liability company, private joint stock company and public joint stock company. The limited liability company remains the most attractive option for foreign parties seeking to engage in joint venture arrangements in the UAE, however the preexisting restrictions on foreign ownership continue under the new law. Not less than 51% of the shares of a limited liability company must be owned by one or more UAE nationals or by a company wholly owned by UAE nationals. Our discussions with Federal Regulators indicate that a new foreign investment law is in the final stages of preparation and may address what many deem to be the hottest commercial topic of recent years, a relaxation of foreign ownership restrictions for foreign investors. If and when such changes are introduced they are likely to focus primarily on specific industry sectors identified as being key growth areas for foreign investment.
- f. Number of Managers:** The old law provided that the management of a company would be undertaken by one or more managers, not to exceed five. The new law has done away with that limit, now providing that management shall be undertaken by one or more managers, as stipulated in the company's Articles of Association.
- g. Pledge over Shares:** The new law recognizes and considerably simplifies the process of pledging shares to a third party. While it remains to be seen how this provision will be interpreted and implemented in practice, and how it will interplay with the taking of possessory pledges as provided for under the UAE Civil Code. However this advancement will likely pave the way for a clear procedure to ensure the enforceability of share pledges. The inability to register and perfect share pledges of UAE companies has long been identified as a significant deficiency under the old law and this change is a welcome advancement.
- h. New Classes of Shares:** The new law specifically provides that a company shall not issue more than one class of shares. It also provides that the Federal Cabinet may, on a proposal from the Emirates Securities and Commodities Authority (ESCA), issue a resolution determining other classes of shares and their characteristics. No such resolution has been issued to date and it remains to be seen how, and to which types of companies this provision will apply. Ideally, a much higher level of detail would have been provided on this issue as the current regime remains extremely restrictive when compared to international norms.
- i. Share Capital for Joint Stock Companies:** The minimum capital for a public joint stock company has been raised from AED10 million to AED30 million and that for private joint stock companies raised from AED2 million to AED5 million.
- j. "Takeovers":** The new law provides ESCA with the authority to issue regulations, rules, conditions and procedures for a "takeover." ESCA has neither published any such rules nor publically circulated them in draft form for review however it is possible that such regulations might include rules regarding the requirement for a mandatory offer in the context of a takeover. We are in regular contact with representatives of ESCA and anticipate further updates in this regard.
- k. Single Shareholder Companies:** Touted as one of the principal changes to the law, the new law allows a limited liability company to be formed and held by a single person or corporate shareholder. This similarly applies in the case of private joint stock companies although in that instance the sole shareholder must be a "corporate person." As noted above, the new law affirms the principle that not less than 51% of the shares of a company formed under the law must be UAE owned. Accordingly, where a company is formed by a sole shareholder, that shareholder would need, of course, to be a UAE national or a company wholly owned by UAE nationals. As of the time of writing, the Departments of Economic Development of Dubai and Abu Dhabi were rushing to accommodate this amendment in practice.

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