

## Company & Commercial - United Arab Emirates

### Overview (April 2008)

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### Author

Pier Terblanche



### Introduction

According to figures released by the United Nations Conference on Trade and Development, the United Arab Emirates and its fellow members of the Gulf Cooperation Council (GCC) attracted more than \$81 billion in foreign direct investment between 2001 and 2006. According to the Dubai Statistics Centre of the Dubai government, by the end of 2006 foreign direct investment in Dubai alone accounted for \$11.58 billion of this total. All indications are that this trend increased during 2007.

Amendments to the UAE Companies Law (8/1984) concerning commercial companies are expected during the course of 2008. According to published statements by government officials, including the minister of economy, these amendments will allow majority and 100% foreign ownership of companies outside the UAE free zone. No official details are currently available, but expectations are that such changes will not be across the board, but rather limited only to certain sectors. It is expected that the liberalization of restrictions on foreign ownership, in addition to other factors such as the negotiation of free trade agreements with certain key countries and the general improvement of the business environment in the country, will add further stimulus to foreign investment in the United Arab Emirates in 2008 and beyond.

For foreign companies looking to invest in Dubai, the limited liability company (LLC) remains one of the most popular vehicles to establish a business presence. This Overview highlights certain key practical aspects of the Companies Law applicable to LLCs of which foreign investors should take note, particularly since these may be unique to the Companies Law, or unusual for an investor which has experience in common law jurisdictions where the statutory requirements regarding private limited, or similar, companies may differ vastly from the provisions of the Companies Law.

However, the Companies Law does not apply to free zone companies, as Federal Law 13/1998, which amended the Companies Law, exempts companies established in any of the UAE free zones from the Companies Law if the free zone concerned has special provisions regulating these companies. In any event, companies established in a free zone are not entitled to carry on business "onshore" in Dubai merely by virtue of their free zone incorporation and licence.

### Corporate Personality and Shareholders' Liability

Pursuant to Article 12 of the Companies Law, once an LLC is registered in the Commercial Register maintained by the Dubai Department of Economic Development, it will be considered a separate legal entity with corporate personality which is distinct from the shareholders. Thus, once registered an LLC will:

- have separate financial capacity;
- have the capacity to conduct its business within statutory limits and the ambit of its

- memorandum of association; and
- be able to sue and be sued in its own name.

In addition, Article 218 provides that a shareholder will be liable only to the extent of its share in the capital of the LLC.

### **Required Number of Shareholders**

The Companies Law requires an LLC to have no less than two and no more than 50 shareholders (Articles 4 and 218). Thus, unlike in many other jurisdictions, it is not possible for a single shareholder to incorporate and own an LLC. If a foreign individual wishes to establish a business in Dubai, it would need to do so by registering an establishment and appointing a UAE service agent. In the case of a single foreign corporate entity, it must register a branch and also appoint a UAE service agent. However, a branch office is not permitted to conduct commercial activities (eg, trade in goods) in the United Arab Emirates; it may undertake either professional activities or marketing, promotional and advertising activities.

In the event that the number of shareholders of an LLC exceeds 50 and such contravention of the law is not rectified with six months of being notified by the Dubai government authorities, the LLC will be deemed dissolved and the shareholders will be personally jointly liable for the debts and liabilities incurred by the LLC from the date on which the number of shareholders exceeded 50 (Article 226).

### **UAE Ownership Requirement**

Each LLC must have a UAE national shareholder (either an individual who is a UAE citizen or a company wholly owned by UAE nationals) which holds at least 51% of the shares of such LLC (Article 22). However, certain permitted activities, such as conducting the business of real estate agents, are reserved for UAE nationals, and a licence for such activities will be issued only to an LLC which is entirely owned by UAE nationals. In this regard, although Articles 2 and 3 of the law provide that every company incorporated in the United Arab Emirates will have UAE domicile and nationality, Article 3 clearly states that this does not necessarily lead to such companies being entitled to privileges which are reserved for UAE nationals (eg, the right to acquire real property outside the designated freehold areas where foreigners may purchase real property).

The well-established use of side agreements to provide for UAE nationals to hold the required 51% shares for and on behalf of the foreign shareholder has recently come under scrutiny in light of the Law on the Combating of Commercial Concealment (17/2004), the effective date of which has been postponed to December 31 2009. Foreign investors should discuss with their UAE legal counsel the impact of this law and the alternatives available to safeguard their investment (for further details please see '[Postponement of Anti-concealment Law](#)').

### **Minimum Share Capital**

The Companies Law requires an LLC to have a minimum share capital of Dh150,000, divided into equal shares of no less than Dh1,000 each (Article 227). Article 149 of the Constitution permits each of the individual emirates to promulgate local orders to supplement the Companies Law, as long as such local orders do not contravene the law. Pursuant thereto, the Dubai government authorities require a minimum share capital of Dh300,000 for LLCs to be registered in such emirate.

The share capital must be fully paid up, and in partial fulfilment of the requirements of the Dubai government authorities for incorporation of the LLC, the founders of the LLC must submit a letter issued by a UAE bank confirming that the share capital has been deposited with such bank.

### **No Bearer Shares or Different Share Classes**

Shares of an LLC may not be bearer shares (Articles 218 and 221) and the Companies Law does not allow different classes of share to be issued. All shares must be fully paid up and distributed among the shareholders (Article 222). Thus, the law does not recognize the concept of authorized but unissued shares, which is the case in many other jurisdictions.

### **Division of Profits and Losses**

An LLC's memorandum of association may not contain provisions to the effect that a shareholder is not entitled to any profits (Article 17). However, the memorandum may allocate profits to shareholders in a different percentage to their shareholding. If the memorandum does not specify the percentage profits allocated to shareholders, the shareholders will be entitled to a share of the profits *pro rata* to their shareholding (Articles 19 and 227).

### **Management and Board**

An LLC must be managed by one or more managers, but no more than five (Article

235). If more than one manager is appointed, the memorandum of association may provide for a board of managers and the memorandum may contain provisions relating to the business of the board and the majority needed for the validity of their resolutions (ie, provisions similar to those which regulate proceedings of a board of directors in certain other jurisdictions) (Article 239). The manager(s) may be appointed in the memorandum or in a separate contract. If the memorandum appoints and lists the manager(s) by name, each time the manager is replaced an amendment of the memorandum would be required, which in turn would necessitate a foreign shareholder to designate a representative to appear in front of the Dubai notary public with a fully legalized power of attorney.

If an LLC has more than seven shareholders, Article 240 mandates the constitution of a supervisory board of managers which should comprise of at least three of the shareholders of the LLC.

### **Statutory Reserve**

The Companies Law requires 10% of the LLC's annual net profits to be set aside as a statutory reserve (Article 255). This allocation may be suspended by a shareholders' decision once the reserve has reached an amount equal to 50% of the share capital of the company (Article 255).

### **Pre-emption Rights**

The Companies Law provides for a shareholder's statutory right of pre-emption. Pursuant to Article 231, if a shareholder wishes to sell its shares to a third party, it must notify the other shareholders of such intended sale, and such other shareholders will have the right, within 30 days of receiving such notice, to acquire the shares which are intending to be sold. The price of the shares will either be agreed by the selling and purchasing shareholders or, failing such agreement being reached, valued by the auditor of the LLC. If no shareholder exercises its right within the 30-day period, the selling shareholder may proceed to sell the relevant shares to a third party. If more than one shareholder exercises its right to acquire the shares, the shares will be distributed *pro rata* to their respective existing shareholdings (Article 232).

An LLC must always have at least two shareholders and, by exercising its pre-emption rights, one shareholder will be unable to acquire in its own name the shares of the only other shareholder, thus leaving the LLC with only one shareholder.

### **Incorporation Documents**

In order for an LLC to acquire separate legal personality and to allow it to commence business, the Companies Law requires it to have its name entered in the Commercial Register maintained by the Department of Economic Development (Article 12). This in turn would require its memorandum of association to be written in Arabic, notarized by the Dubai notary public (Article 8) and submitted to the Department of Economic Development along with the following documents:

- a lease agreement for office premises, as no LLC may be incorporated without a physical office premises;
- a letter from auditors confirming their appointment; and
- a letter from a Dubai bank confirming that the share capital of the LLC has been deposited in an opened account.

The memorandum of association will be scrutinized by the notary public in order to establish its conformity with the Companies Law and any other applicable regulations. For instance, the notary public will not allow the memorandum of association to afford the 51% UAE national shareholder less than 20% of the LLC's profits. The notary public will accept a memorandum in dual English/Arabic format.

Article 224 provides that the Ministry of Economy may prepare a draft specimen for the memorandum of association and thus a fairly standardized form of memorandum of association exists, which the founding shareholders are not at liberty to amend to a large extent.

### **Foreign Documents Legalization**

The founding shareholders must appear in person, or be represented by a duly authorized attorney, at the Dubai notary public in order to execute the memorandum of association. A foreign corporate shareholder must present fully legalized copies of:

- its certificate of incorporation (or equivalent);
- its memorandum and articles of association;
- its board resolution authorizing the incorporation and subscription of shares; and
- the power of attorney issued to the representative which will be appearing in person in front of the notary public. Such legalization includes:
  - notarization by a notary public in the country of its jurisdiction of incorporation;
  - authentication by the Ministry of Foreign Affairs (or its equivalent) in the country of

- origin;
- certification by the UAE embassy or UAE consulate in the country of origin. In the absence of a UAE embassy or UAE consulate in such country, the authorities will accept certification by an embassy or consulate of another GCC country; and
  - legalization by the UAE Ministry of Foreign Affairs.

Following this, certain documents (ie, the board resolution and power of attorney) must be translated into Arabic by a sworn translator in Dubai, whereafter they must be certified by the UAE Ministry of Justice.

The time and cost involved in obtaining this legalized documentation must be considered by a foreign shareholder wishing to incorporate an LLC in Dubai.

### **LLC Details on Company Documentation**

All contracts, correspondence, receipts and announcements issued by an LLC must:

- bear the name of the LLC;
- bear the phrase 'limited liability company';
- bear details of its head office and its registration number in the Commercial Register; and
- state the amount of its share capital (Articles 21 and 219).

If the manager of the LLC fails to adhere to these requirements, he or she will be jointly liable with the shareholders of the LLC for the liabilities of the company.

*For further information on this topic please contact [Pier Terblanche](#) at Taylor Wessing (Middle East) LLP by telephone (+97 14 332 3324) or by fax (+97 14 332 3325) or by email ([p.terblanche@taylorwessing.com](mailto:p.terblanche@taylorwessing.com)).*

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