LATHAM&WATKINS

Client Alert

Commentary

Latham & Watkins Mergers & Acquisitions Practice

April 28, 2015 | Number 1824

UAE Issues New More Flexible 2015 Commercial Companies Law

The UAE continues to develop a more sophisticated corporate regulatory regime which has significant implications for government-owned companies, limited liability companies and joint stock companies. All companies are required to amend their memorandum to comply with the new law by 1 July 2016. Any companies that do not make the necessary amendments to their memorandum by 1 July 2016 will be deemed to be dissolved.

Introduction

UAE Federal Law No. (2) of 2015 Concerning Commercial Companies (the New CCL) was published in the Official Gazette on 31 March 2015 and comes into force on 1 July 2015. The New CCL is substantially similar to the 2013 draft of the Commercial Companies Law and represents an evolution of the UAE's existing Commercial Companies Law (the Existing CCL) rather than a revolution. The most controversial proposal — to abolish or reduce minimum UAE national participation — was rejected.

The most useful changes adopted in the New CCL are provisions:

- Allowing sole shareholder limited liability companies (LLCs) and private joint stock companies (PrJSC)
- Exempting government-owned companies from the New CCL if the company includes a provision in their memorandum to that effect
- Allowing partners in LLCs to pledge their interests in LLCs
- Allowing certain non-pre-emptive share issuances by joint stock companies (JSCs)
- Allowing founders to list their businesses yet retain 70% of the shares.

The most unhelpful change is a new article which provides that all the provisions of the New CCL concerning JSCs shall apply to LLCs. What law-makers intended or how this would work remains unclear, but this article potentially significantly increases the regulatory environment for LLCs and their managers. In addition, the New CCL contains a blunt new prohibition on JSCs providing financial assistance in connection with the holding of shares and bonds.

The table below compares the key changes made in the New CCL (as compared to the Existing CCL) for all companies, LLCs and JSCs.

Key changes for all companies

Subject matter	Existing CCL	New CCL
1. Excluded companies	Excludes only: (i) companies excluded by resolution of the UAE Federal Cabinet; and (ii) companies operating in certain oil, gas or power sectors	Excludes: • Companies excluded by resolution of the UAE Federal Cabinet • Companies wholly owned by federal or local governments and companies held in full by such companies, if a special provision to this effect is contained in the company's memorandum • Companies operating in certain oil, gas and power sectors in which the federal or local government directly or indirectly holds 25%, if the company's memorandum contains a special provision to this effect (art. 4)
2. UAE national participation	No provision invalidating share transfers in breach of 51/49	New provision which provides that any transfer of title to any share of a partner which may affect the minimum UAE national holding of 51% shall be invalid (art. 10)
3. Free zone companies	Does not apply to free zone companies	Free zone companies to be governed by the New CCL, if the laws of the free zone permit companies to operate outside of the free zones. The UAE Federal Cabinet shall issue a resolution determining the conditions to register free zone companies to operate outside of the free zone (art. 5)
4. Corporate structuring	1. *Sole shareholder companies* not allowed 2. *Holding companies* not recognised	1. One natural person or one company may be the sole shareholder of a LLC (art. 71). One company may be the sole shareholder of a PrJSC (art. 255) 2. LLCs and JSCs may be established as holding companies to conduct activities solely through subsidiaries (art. 266)

Subject matter	Existing CCL	New CCL
	3. *Investment funds* not recognised 4. *State-owned companies*: companies in which a state or public body has a shareholding must be JSCs 5. *Joint venture companies*: contains provisions dealing with joint venture companies	3. Investment funds shall have their own legal personality, legal form and financial position (art 272) 4. Requirement deleted 5. Provisions regulating joint venture companies deleted
5. Companies registrar	No companies registrar	The Minister of Economy shall issue a regulation for the activities of a companies registrar. In addition to activities assigned by the Minister of Economy, the companies registrar shall supervise the trade names registrar. The companies registrar will be required to hold company documents for a period of time which the Minister of Economy determines and concerned parties will have a right to inspect records kept by the registrar (arts. 33-37)
6. Directors'/managers' duties	Limited directors'/managers' obligations	New provision that directors and managers must preserve the rights and works of the company — for the benefit of the company — with the care of a precise person (art 23) New provision voiding any provision in a company's memorandum which authorises a company to exempt an officer from personal liability that they bear in their capacity as an officer (art. 24)
7. Accounting requirements	Limited accounting obligations on companies	Requires applying international standards to give a clear and accurate view of the profit and losses of a company (art. 27) All companies required to keep accounting records for five years (art. 26) New offence for failure to keep accounting

Subject matter	Existing CCL	New CCL
		records for the company to explain transactions — triggering fine up to AED100,000 (art. 349)
8. Compliance with New CCL	N/A	If a company fails to amend its memorandum to comply with the New CCL within one year of 1 July 2015, the company shall be deemed dissolved (art. 374)
9. Offences	Light on offences	Contains new offences and increased penalties for many existing offences and personal liability for directors (Part 11) Allows companies to reconcile certain less material offences before they go to court by paying at least double the minimum amount of the fine (art. 339)
10. Mergers	1. No merger contract required. 2. Shareholders have no rights to appeal a merger. 3. Objecting shareholders do not have any cash-out rights. 4. No provisions expressly govern mergers of holding companies and subsidiaries.	1. A draft merger contract setting out the terms and conditions of the merger must be presented to the general assemblies of merging companies (at. 285 (1)) 2. Any one or more shareholders holding at least 20% who object to the merger can appeal the merger before the UAE courts (art. 285(2)) 3. Except for JSCs, partners and shareholders who object to a merger resolution may demand to withdraw from the company and to recover the value of their shares — to be valued by a committee appointed by the regulator in the event of disagreement (art. 287) 4. A holding company may merge with one or more 100% subsidiaries without a merger contract (art. 286)

3. Key changes for LLCs

Subject	Existing CCL	New CCL
1. Share pledges	Does not expressly permit partners in LLCs to pledge their interests	Allows partners in LLCs to pledge their interests. Pledges must be made in accordance with the company's memorandum under an official notarised document and entered into a central commercial register (art. 79)
2. Valuation of non-cash consideration	Allows partners to agree to a valuation and reflect this valuation in the LLC's memorandum	Requires either: (i) agreement of partners and approval of DED or (ii) valuation by a financial adviser approved by the DED (art. 78)
3. Quorum for general assembly	50% of share capital represented	75% of share capital present (art. 96)
4. Maximum number of managers	Maximum of 5 managers	No maximum number of managers (art. 83)
5. Managers not competing with the company	No restriction on managers of LLCs managing competing businesses	Managers not permitted to manage any business in competition with the company without the consent of the general assembly (art. 86)
6. JSC provisions apply to LLCs	Provisions regulating JSCs not generally applicable to LLCs	Unless otherwise provided for, the provisions in the New CCL concerning JSCs shall apply to LLCs (art 104)

4. Key changes for JSCs

Subject	Existing CCL	New CCL
1. Directors	1. No preferred board appointment rights for government shareholders 2. Cumulative voting not required (although required by Securities and Commodities Authority for public joint stock companies (PJSCs))	1. If a federal or local government holds more than 5%, it may appoint a number of directors pro-rata to its shareholding (art 148) 2. Cumulative voting applies when shareholders are voting for directors (art. 144)

2. Share capital (general)	1. Minimum share capital of AED2m for PrJSC and AED10m for PJSCs 2. Authorised share capital not recognised 3. Only one class of shares permitted 4. Non-cash consideration for shares to be valued by a government-appointed valuation committee 5. No prohibition on financial assistance	1. Minimum share capital of AED5m for PrJSC and AED30m for a PJSC (arts. 256 and 193) 2. JSCs may have authorised share capital of up to 2x issued share capital (art. 193) 3. The UAE Federal Cabinet may issue a resolution determining rights of different classes of shares (art. 206) 4. Non-cash consideration for shares to be valued by a financial consultant approved by the relevant authority (art. 118) 5. JSCs and their subsidiaries may not provide financial aid to any shareholder to hold shares, bonds or deeds issued by the company. Financial aid includes loans, gifts, donations, provision of company assets as security, and providing security or a guarantee for the obligations of another person (art. 222)
3. Share capital (IPOs)	1. Minimum founder ownership of 20% and maximum of 45% 2. No provisions addressing underwriting 3. No provisions addressing book-building	1. Minimum founder ownership of 30% and maximum of 70% (art. 117) 2. Companies may use underwriters for share issuances. The Securities and Commodities Authority shall issue a resolution regulating underwriting activities. Underwriters must be certified by the Securities and Commodities Authority (art. 123) 3. The Securities and Commodities Authority may issue a resolution to regulate subscribing for shares on the basis of book-building of securities (art. 129)
4. Share capital (non-pre-emptive issuances)	Precludes absolutely non-pre-emptive issuances, although Securities and Commodities Authority	Allows non-pre-emptive issuances to strategic partners (partners whose contribution to the company provides technical, operational or marketing

	seems to have granted exceptions on some convertible issuances and mergers.	support for the benefit of the company), subject to certain conditions, including a 75% shareholder resolution (arts. 223 – 224) Allows for non-pre-emptive share issuances in connection with employee share scheme, subject to certain conditions, including a 75% shareholder resolution (art. 226) Allows for capitalisation of cash debts on a non-pre-emptive basis, subject to certain conditions, including a 75% shareholder resolution (art. 225) Allows shareholders of JSCs to sell pre-emption rights, subject to a yet to be issued resolution (art. 197)
5. Minority protection	Relatively little protection for minority rights	Transactions with related parties having a value exceeding 5% of share capital require shareholder approval (art 152) Shareholders holding 5% or more may apply to the Securities and Commodities Authority/court alleging that the affairs of the company have been or will be conducted to the detriment of any shareholders (art. 164) Any resolutions are invalid if passed for or against a certain class of shareholder or to bring a special benefit to a related party without consideration of the interests of the JSC (art. 170)
6. General assembly meetings	Higher quorum for extraordinary general assembly meetings and 21 days' notice required for both extraordinary and general assembly meetings	Abolishes distinction between general assembly meetings and extraordinary general assembly meetings; and reduced notice period from 21 to 15 days (art. 172)
7. Bonds	A company cannot issue bonds for a value exceeding the company's share capital.	Abolishes the requirement that a company cannot issue bonds for a value exceeding the company's share capital
8. Lock-up for PrJSCs	No share transfers prior to the publication of the balance	No share transfers prior to the publication of the balance sheet and profit and loss

	sheet and profit and loss statement for at least two fiscal years, commencing on the date of registration of the shares of the company	statement for at least one fiscal year. commencing on the date of registration of the shares of the company (art 264)
9. Takeovers	No provisions addressing takeovers	Any person desiring to act in any way that may lead to the takeover of shares or securities convertible into shares of a UAE PJSCs — which offered its shares for public subscription or is listed in the UAE — shall comply with the resolutions issued by the Securities and Commodities Authority (art. 292)
10. Corporate governance	No provisions concerning corporate governance	The Minister of Economy shall issue a resolution regarding corporate governance for PrJSCs with more than 75 shareholders; and Securities and Commodities Authority shall issue a resolution for corporate governance regarding PJSCs (other than PJSCs regulated by the UAE Central Bank) (art. 6) The board of directors shall be responsible for applying such corporate governance rules (art. 7)

Conclusion

While companies incorporating in the UAE will appreciate the evolution of the Commercial Companies Law, some areas remain ambiguous. We expect the government will issue clarification or guidance in due course. But both new and existing companies should ensure their memoranda reflect the updated law before the deadline, or risk dissolution.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

Christopher Lester
chris.lester@lw.com
+971.2.813.4825
UAE

Eyad F. Latif
eyad.latif@lw.com
+971.4.704.6318
UAE

Ali Almasaabi
ali.almasaabi@lw.com
+971.2.813.4870
UAE

You Might Also Be Interested In

UAE Merger Control Update: Implementing Regulations Now In Force

Abu Dhabi Global Market Issues First Wave of Draft Regulations and Related Consultation Papers

UAE Issues New Draft Commercial Companies Law

Briefing Series Issue No. 1 — Key Changes Applicable Under the Draft UAE Commercial Companies Law

Briefing Series Issue No. 2 — Key Changes for Limited Liability Companies (LLCs)

Briefing Series Issue No. 3 — Key Changes for Joint Stock Companies

Briefing Series Issue No. 4 — Key Changes Relating to Mergers in UAE

Briefing Series Issue No. 5 — Key Changes Relating to Penalties