
New UAE Commercial Companies Law: Legal reforms to strengthen the legal and regulatory landscape of doing business in the UAE

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In brief

After years of speculation regarding an overhaul of commercial companies law in the UAE, Federal Law No. 2 of 2015 concerning Commercial Companies (“New CCL”) will come into force on 1 July 2015, replacing the existing Federal Law No. 8 of 1984 concerning Commercial Companies (“Old CCL”).

All companies are required to amend their existing memoranda and articles of association to reflect, and comply with, the changes introduced by the New CCL, and any companies that fail to make the requisite amendments by 30 June 2016 will be automatically dissolved.

The stated objective of the New CCL is to continue the UAE’s development into a global standard market and business environment and, in particular, raise levels of good corporate governance, protection of shareholders and promotion of social responsibility of companies.

Notable features of the New CCL include the recognition of the concept of holding companies, procedures for pledging shares, expert valuation of shares in kind (i.e. non-cash) and the requirement to rotate auditors (for Public Joint Stock Companies) every three years.

By introducing specific and strategic amendments, the New CCL contains a number of helpful improvements and modifications on the Old CCL. This article provides an overview of the key changes which will affect all types of companies operating in the UAE.

A COMPARISON OF THE NEW AND OLD REGIMES

1. Key Changes for all UAE companies

New CCL	Old CCL	PwC Legal commentary
Foreign ownership restriction		
New provision explicitly invalidating any transfer of shares which may affect the minimum UAE national shareholding of 51% (article 10 of New CCL).	No provision explicitly invalidating any transfer of shares that will be in breach of the minimum UAE national shareholding of 51%. However, the Old CCL did prohibit any assignment of UAE national shareholding below the 51% threshold.	<p>Despite much speculation, the New CCL retains the same approach as the Old CCL in relation to the foreign ownership restriction, i.e. 51% (UAE national) / 49% (foreign), or 100% GCC nationals.</p> <p>However, the UAE government is considering relaxing the requirement of such restriction in certain industry sectors under a new Foreign Direct Investment Law regime (timing of which is unclear at this stage).</p>
Holding companies		
LLCs and JSCs are now permitted to be established as holding companies in order to conduct business activities solely through their relevant subsidiaries (article 266 of the New CCL).	The concept of a “holding company” was not recognised.	<p>In many other jurisdictions, setting-up holding companies is now a common practice for large corporate groups to achieve tax and/or other corporate benefits in their corporate structure.</p> <p>By recognising the concept of a “holding company” under the New CCL, the UAE will become more appealing, as a jurisdiction, to large corporate groups when they are considering restructuring or establishing a presence in the UAE.</p>
Director’s / manager’s duties		
A director / manager is a person authorised to manage the company and must preserve the rights and works of the company with care of a precise person (article 22 of the New CCL). In addition, any provision in the company’s memorandum and articles of association exempting any director / manager from personal liability (that he / she bears in his / her capacity as an officer) is voidable (article 24 of the New CCL).	Limited duties and obligations imposed on directors / managers.	<p>The New CCL introduces this explicit article:</p> <p>(a) stipulating that directors / managers must act for the benefits of the company; and</p> <p>(b) voiding any provision in the company’s memorandum and articles of association exempting a director / manager from personal liability.</p> <p>The intention is to bring directors’ / managers’ duties closer to international standards.</p>
Companies Registrar		
The Minister of Economy shall issue a regulation setting out the activities and functions of the Companies Registrar. In particular, the Companies Registrar shall supervise the trade name register (to avoid double registration), hold company records and enable concerned parties to inspect the relevant company records (articles 33 – 38 of New CCL).	No Companies Registrar.	<p>We await to see whether the establishment of the Companies Registrar will lend more coordination to the formation and dissolution of companies in the UAE.</p> <p>In theory, the Companies Registrar should provide better access to corporate records by registering the information that companies are legally required to supply. However, given that only “concerned parties” may request for information from the Companies Registrar, we do not expect the general public will have access to such information.</p>

Accounting requirements

All companies are required to keep accounting records at their relevant head offices for a minimum period of five years (article 26 of New CCL). In addition, all companies shall apply international accounting standards and practices when preparing their relevant accounts in order to give a clear and accurate view of the profit and loss of the relevant companies.

Limited accounting requirements imposed on companies.

The aim is to bring accountability and transparency of a company up to international standards. Consequently, a company should be able to accurately reveal, at any time, the financial position of the company, and enable shareholders to verify that the company's accounts are properly kept in accordance with the New CCL.

It is helpful that the New CCL does permit companies to retain electronic versions of their documents (provided that such documents will be saved in compliance with a decree to be issued by the Minister of Economy).

Free zone companies

Generally, the New CCL shall not be applicable to free zone companies. However, if the laws of the free zone permit certain free zone companies to operate outside the relevant free zone (i.e. onshore), then the New CCL shall be applicable to such free zone companies (article 5 of New CCL).

Not applicable to free zone companies.

Allowing certain free zone companies to operate onshore will provide greater business flexibility / mobility and, therefore, it is logical for such free zone companies to be subjected to the New CCL. However, it is unclear how this will work in practice, as the Federal Cabinet is yet to issue a resolution to determine the conditions and requirements to register free zone companies to operate outside of the relevant free zone.

Excluded companies

Companies exempt from the New CCL are:

- (a) companies excluded by resolution of the Federal Cabinet;
- (b) companies wholly owned by federal or local government and companies held in full by such companies (if a special provision to this effect is contained in the company's memorandum and articles of association); and
- (c) companies operating in certain oil, gas or power sectors in which the federal or local government directly, or indirectly, holds 25 per cent. (if a special provision to this effect is contained in the company's memorandum and articles of association) (article 4 of New CCL).

Only excluded companies by resolution of the Federal Cabinet and companies operating in certain oil, gas or power sectors.

Aside from excluded companies as set out above, it is important that all companies amend their memoranda and articles of association by no later than 30 June 2016 to comply with the New CCL. Any company that fails to do so shall be deemed to be dissolved (article 374 of New CCL).

2. Key changes for Limited Liability Companies

New CCL	Old CCL	PwC Legal commentary
Sole shareholder One natural person, or corporate entity, may be the sole shareholder of a LLC (article 71 of the New CCL), and one corporate entity may be a sole shareholder of a Private JSC (article 255 of the New CCL).	A company with sole shareholder is not permitted.	<i>Under the Old CCL, LLCs may only be established by a minimum of two shareholders. Allowing a sole shareholder to incorporate an LLC means that sole shareholders may enjoy the benefit of limited liability in their businesses by exercising their sole discretion.</i> <i>Given the continuing foreign ownership restriction, this change will primarily benefit Emirati and entrepreneurs from other GCC countries.</i>
Share pledges Allows shareholders in LLCs to pledge their shares, and such pledges must be made in accordance with the company's memorandum and articles of association, and be notarised. Such pledges shall only be valid (against the company and/or relevant third parties) from the date of its entry on the commercial register (article 79 of New CCL).	No provision permitting shareholders in LLCs to pledge their shares.	<i>The Old CCL was silent in respect of pledging of shares, and so it was questionable whether shares can be pledged legally under the old regime. By introducing a new provision for perfecting security by way of share pledge over shares in an LLC, it should improve access to debt financing as shareholders will now be able to grant security over their LLC shares.</i> <i>However, it remains unclear how the new provision will be interpreted as the New CCL is silent in respect of the concepts of "share certificate" or "number / registered shares" attributable to any shareholder in an LLC.</i>
Maximum number of directors / managers The management of an LLC can be undertaken by one or more directors / managers as determined by the company's memorandum and articles of association or the general assembly of the company (article 83 of New CCL).	A maximum of 5 directors / managers.	<i>Removing the cap on the number of directors / managers appointed to an LLC will allow for greater business flexibility and networking, and enable talented external advisers to sit on the board of directors / managers (particularly helpful to regional family businesses with a large group of companies).</i>
Non-compete by directors / managers Other than with the consent of the general assembly of the company, a director / manager is not permitted to manage another competing company (including another company with objects similar to the company) (article 86 of New CCL).	No provision explicitly restricting directors / managers from managing competing businesses.	<i>This new non-compete provision is consistent with the new director's / manager's duties provision (i.e. directors / managers have to act for the benefits of the company).</i> <i>Directors / managers should be mindful not to breach this new non-compete provision as, otherwise, such director / manager may be dismissed and required to compensate the company.</i>
Valuation of shares for non-cash consideration Valuation of shares can be assessed in kind either by:	Shareholders can agree to a valuation of shares in kind, and such valuation	<i>Whilst it has become slightly more onerous for the shareholders to agree to a valuation of their shares in kind (i.e. non-cash consideration) as such valuation has to be approved by the DED, the New CCL does allow professional financial advisers (pre-</i>

<p>(a) agreement with all of the shareholders, and subject to the approval of the DED; or (b) by a financial consultant approved by DED (article 78 of New CCL).</p>	<p>is prescribed in the company's memorandum and articles of association.</p>	<p><i>approved by the DED) to assist with such valuation (which could potentially expedite the valuation process especially in situation where there is a disagreement between the shareholders).</i> <i>Notwithstanding that the assistance of professional financial advisers will add certainty to the valuation process, such advisers should be mindful not to act negligently (or exaggerate the valuation), as this could, potentially, result in such advisers to be banned by the DED from future mandates.</i></p>
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3. Key changes for Joint Stock Companies (Public JSCs and / or Private JSCs)

New CCL	Old CCL	PwC Legal commentary
<p>Share capital (general)</p>		
<p>Key changes include:</p> <p>(a) only 30 per cent. of a Public JSC's share capital must be offered to the public in an IPO, and the New CCL also stipulates that the Securities & Commodities Authority may issue resolutions concerning underwriting and / or book-building activities (articles 117, 123 and 129 of New CCL);</p> <p>(b) minimum share capital of AED 30 million for a Public JSC (article 193 of New CCL), and minimum share capital of AED 5 million for a Private JSC (article 256 of New CCL);</p> <p>(c) a Public JSC may have an authorised share capital not in excess of twice the issued share capital (article 193 of New CCL);</p> <p>(d) more than one class of shares is now permitted as the Federal Cabinet may issue a resolution determining rights, obligations and conditions of different classes of shares (article 206 of New CCL); and</p> <p>(e) JSCs and their subsidiaries may not provide financial assistance to any shareholder to hold shares, bonds and sukuk issued by the company (financial assistance includes loan, gifts, donations, company's assets as security or provision of security / guarantee of the obligations of another person) (article 222 of New CCL).</p>	<p>Under the old regime:</p> <p>(a) 55 per cent. of a Public JSC's share capital was required to be offered to the public on an IPO, and there were no provisions concerning underwriting and / or book-building activities;</p> <p>(b) minimum share capital was AED 10 million for a Public JSC, and minimum share capital was AED 2 million for a Private JSC;</p> <p>(c) the concept of an authorised share capital was not recognised;</p> <p>(d) only a single class of shares is permitted; and</p> <p>(e) there was no prohibition on financial assistance.</p>	<p><i>In essence, the intention of these various changes (some of which are stricter than the Old CCL, and some of which are more relaxed) is to stimulate interest in companies wishing to grow their businesses through UAE capital market fund raising, whilst at the same time provide more comfort and transparency to potential investors (especially non-professional investors from the public at large).</i></p>

Protection of minority shareholders

New measures include:

(a) subject to the consent of board of directors / managers and general assembly of the company, a Public JSC may not undertake transactions, with related parties, of a value in excess of 5 per cent. of the share capital of such company (article 152 of New CCL);

(b) shareholders with 5 per cent. or more of a Public JSC may apply to the Securities & Commodities Authority and / or a competent court claiming that the affairs of the company are, or have been, conducted to the detriment of any of the shareholders (article 164 of New CCL); and

(c) voiding any resolutions passed for, or against, a certain class of shareholders, or to bring a special benefit to a related party, without consideration of the interests of the Public JSC as a whole (article 170).

Relatively limited protection of minority shareholders.

In light of recent financial uncertainty in the global markets, protection of minority shareholders has been very high on the agenda of companies wishing to promote good corporate governance and corporate social responsibilities in order to regain the confidence of small investors. The new measures under the New CCL are another step to bring the UAE corporate practice up to international standards.

Auditors rotation

All Public JSCs must have one or more auditors nominated by the board of directors / managers, and approved by the general assembly of the relevant company. In addition, the general assembly may appoint one or more auditors for one renewable year, provided that such term does not exceed three successive years (article 243).

No requirements to rotate the auditors every three years.

Public JSCs should be mindful not to breach this requirement of rotating auditors every three years (if the same auditors have been retained up to the statutory maximum appointment period under the New CCL).

Takeover regime

Any person, or group of associated persons, desiring to act in any way that may lead to the takeover of shares (or securities convertible to stocks) in the share capital of a Public JSC must comply with all resolutions issued by the Securities & Commodities Authority (article 292 of New CCL).

No explicit provisions concerning takeovers.

The New CCL includes a “placeholder” for the introduction of a takeover code by the Securities & Commodities Authority, and we await confirmation on the timeline for the development of the regulatory framework of the takeover code.

Corporate governance regime

For Private JSCs with more than 75 shareholders, the Minister of Economy shall issue resolutions concerning a corporate governance framework.

No explicit provisions concerning corporate governance.

Similar to the provisional takeover code mentioned above, the New CCL includes “placeholders” for the introduction of corporate governance frameworks for both Public JSC and Private JSC, and we await confirmation from the relevant authorities on the timeline for the development of such corporate governance

For Public JSCs, the Securities & Commodities Authority shall issue resolutions concerning a corporate governance framework.

The board of directors / managers of the relevant Private or Public JSC shall be responsible for compliance with the applicable corporate governance framework, and failure to do so may attract a statutory penalty up to a maximum of AED 10 million (articles 6 and 7 of New CCL).

frameworks.

The takeaway

There are, of course, various other changes that have been introduced in the New CCL that have not been discussed in this article. However, this article aims to provide an overview of the key provisions rather than an exhaustive list of all of the changes. Whilst the New CCL represents the first major overhaul of commercial companies law in the UAE since 1984, certain aspect remains ambiguous, and we await further guidance and clarifications from the relevant authorities in due course.

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Let's talk

For a deeper discussion of how this issue might affect your business, please contact one of our authors:

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