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THE NEW UAE COMMERCIAL COMPANIES LAW, 2015

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") came into force on 1 July 2015, replacing the existing Federal Law No. 8 of 1984 for 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. Any companies that fail to make the requisite amendments by 30 June 2016 will be 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 (ie non-cash) and the requirement to rotate auditors for public companies every 3 years.

Below is a summary of the key changes applicable to most companies:

- Unlike the Old CCL, the New CCL invalidates any transfer of title to any share of a partner which may affect the minimum UAE national holding of 51 percent. Though many were hoping for an abolition or reduction of the existing minimum national participation applicable to UAE mainland entities, it was not addressed
- The New CCL allows sole shareholder companies. This means that an LLC can be owned by one corporate entity or one individual
- The Old CCL does not cover free zone (FZ) companies. The New CCL will deal with FZ companies so long as these companies can operate outside of the FZ. A resolution is to be issued by the UAE Federal Cabinet to determine the conditions for FZ companies to operate in the mainland UAE
- Investment funds are not recognized in the Old CCL, but in the New CCL investment funds have their own legal personality, legal form and financial position
- The New CCL treats as void any provision in a company's memorandum which authorizes a company to exempt an officer from personal liability
- The New CCL has more accounting requirements than the Old CCL. International standards must be adhered to and companies must provide a clear and accurate view of their profit and losses. A fine of up to AED 100.000 (€25.000 equivalent) will be levied if the company does not keep proper accounting records
- The New CCL has increased the penalties for existing offences and personal liability for directors
- The New CCL deals with mergers in more detail

A COMPARISON OF THE NEW AND OLD CCL

1 Key Changes for all UAE Companies	
New CCL	**Old CCL**
Foreign ownership restriction New provision explicitly invaliding any transfer of shares which may affect the minimum UAE national shareholding of 51%	No provision explicitly invaliding 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
Holding companies LLCs and JSCs are now permitted to be established as holding companies in order to conduct business activities solely through their subsidiaries	The concept of a "holding company" was not recognized
Director's/manager's duties A director/manager is a person authorized to manage the company and must preserve the rights and activities of the company with care. 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	Limited duties and obligations imposed on directors /managers

New CCL	Old CCL
Companies Registrar The Ministry 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, hold company records and enable concerned parties to inspect the relevant company records	No Companies Registrar
Accounting requirements All companies are required to keep accounting records at their head offices for a minimum period of 5 years. In addition, they shall apply international accounting standards and practices when preparing their accounts in order to give a clear and accurate view of the profit and loss and balance sheet position	Limited accounting requirements imposed on companies
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 (ie onshore), then the New CCL shall be applicable to such free zone companies	Not applicable to free zone companies
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 (c) companies operating in certain oil, gas or power sectors in which the federal or local government directly, or indirectly, holds 25 percent	Only excluded companies by resolution of the Federal Cabinet and companies operating in certain oil, gas and power sectors
2 Key Changes for Limited Liability Companies	
Sole shareholder One natural person, or corporate entity, may be the sole shareholder of a LLC, and one corporate entity may be a sole shareholder of a private JSC	A company with sole shareholder is not permitted
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 notarized. Such pledges shall only be valid from the date of their entry on the commercial register	No provision permitting shareholders in LLCs to pledge their shares
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	A maximum of 5 directors/managers
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	No provision explicitly restricting directors / managers from managing competing businesses
Valuation of shares for non-cash consideration Valuation of shares can be assessed in kind either by: (a) agreement with all of the shareholders, and subject to the approval of the Ministry of Economy, or (b) by a financial consultant approved by the Ministry of Economy	Shareholders can agree to a valuation of shares in kind, and such valuation is prescribed in the company's memorandum and articles of association

3 Key Changes for Joint Stock Companies (Public and Private JSCs)

New CCL	Old CCL
Share capital Key changes include: (a) only 30% 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 and Commodities Authority may issue resolutions concerning underwriting and/or book-building activities (b) minimum share capital of AED 30 mn for a public JSC and minimum share capital of AED 5 mn for a private JSC (c) a public JSC may have an authorized share capital not in excess of twice the issued share capital (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, and (e) JSCs and their subsidiaries may not provide financial assistance to any shareholder to hold shares, bonds and sukuk issued by the company	Under the old regime: (a) 55% 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 (b) minimum share capital was AED 10 mn for a public JSC, and minimum share capital was AED 2 mn for a private JSC (c) the concept of an authorized share capital was not recognized (d) only a single class of shares is permitted, and (e) there was no prohibition on financial assistance
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% of the share capital of the company (b) shareholders with 5% or more of a public JSC may apply to the Securities and 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 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	Relatively limited protection of minority shareholders
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 3 successive years	No requirements to rotate the auditors every 3 years
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 and Commodities Authority	No explicit provisions concerning takeovers
Corporate governance regime For private JSCs with more than 75 shareholders, the Ministry of Economy shall issue resolutions concerning a corporate governance framework. For public JSCs, the Securities and Commodities Authority shall issue resolutions concerning a corporate governance framework. The board of directors/managers of relevant private or public JSC shall be responsible for compliance with the applicable corporate governance framework.	No explicit provisions concerning corporate governance

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