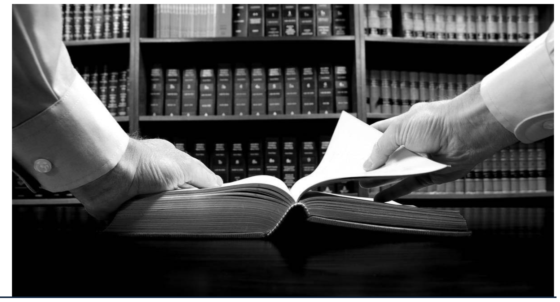
AFRIDI & ANGELL
LEGAL CONSULTANTS

1975 40 2015

inBrief



The New UAE Commercial Companies Law – A First Look

By James Bowden | May 2015

The much anticipated new UAE Commercial Companies Law (Federal Law No.2 of 2015) was issued on 1 April 2015 and comes into force three months from the date of its publication in the official gazette. The new law introduces many changes, some major and some minor, and for purposes of this Legal Bulletin we highlight some key themes.

(i) A focus on corporate governance and corporate social responsibility

The stated objectives of the new law are set out in Article 2, and among the very few included in the short article are governance, shareholder protection, and social responsibility. The provisions relating to corporate governance have been significantly enhanced. Proposed further regulations by the Ministry of Economy (the "**Ministry**") and by the Emirates Securities and Commodities Authority ("**ESCA**") will provide further focus on corporate governance. The role, responsibilities and liability of management have been enhanced and increased oversight functions are granted to concerned authorities. Minority shareholders holding at least 5% have also been granted the right to apply to ESCA for relief if they believe the company is being managed to the detriment of any shareholder, a potentially significant new shareholder protection which complements the existing provisions which were comparable to a derivative action.

ESCA has now finalized new governance rules that are to be gazetted shortly, and which are intended to raise the UAE's standing internationally in terms of governance and shareholder protection. We expect more governance developments to follow in the coming year.

(ii) Reforms and improvements to the regulation of public companies

Some of the most significant amendments relate to public companies and capital markets. The minimum free float permitted in an initial public offering ("**IPO**") has been reduced from 55% to 30%, the share price can now be determined by way of a book building process and shares can be issued at a premium. These steps will make it far more attractive for businesses to tap the local bourses for capital, as they can retain control and are less likely to end up leaving money on the table. The minority protection provisions are also of significance in this context given that many UAE businesses likely to list on the domestic exchanges will be family owned and controlled.

The Authors

James Bowden
Partner
jbowden@afridi-angell.com
Tel: +971 4 330 3900

James advises on a broad range of corporate, commercial, compliance and regulatory, technology outsourcing and employment matters. James joined Afridi & Angell in 2006. In addition to Afridi & Angell in the UAE, James also practiced in Canada, in the Toronto office of a large global law firm. He gained in-depth technology outsourcing experience while working as in-house counsel with one of Canada's leading technology outsourcing companies. He obtained a Bachelor of Laws from Queen's University in Ontario, Canada and is a member of the Ontario Bar.

(iii) Contemplation of important regulations to follow

The new law authorizes the concerned authorities to introduce subordinated legislation in a number of areas. These include the governance rules noted above, regulations on IPOs, rules on the formation and qualification of Shariah boards, the creation of different classes of shares and their rights, regulation of book building, and rules on free zone companies doing business onshore, among others. This adds much needed flexibility to the legal framework, and foreshadows the areas in which we can expect to see further developments in the near term. Some of these rules and regulations could prove to be extremely significant.

(iv) A variety of changes with immediate practical implications

The new law introduces some important changes that are likely to have an immediate impact on existing and new business structures. Examples include:

- Limited liability companies ("**LLCs**") may now have a single corporate or individual shareholder. There is also the creation of a new holding company vehicle.
- Shares in LLCs may be pledged to third parties as security provided this is permitted in the company's memorandum of association and the pledge is registered in the Commercial Register.
- New specialized regulatory authorities such as a companies registrar.
- Article 8 of the old companies law, which prohibited the government from owning shares in any company other than a public joint stock company has been done away with.
- The new law, oddly, alters the share capital requirements for companies, whereby the nominal or par value of a share must now be between AED 1 and AED 100. Shares of limited liability companies previously had to have a minimum par value of AED 1,000. If taken literally, this change would mean that every LLC in the UAE (and possibly other companies) would need to amend its share capital, which we expect is not the intention.
- Owners of shares in an LLC can now appoint non-partners as their proxy, which gives welcome flexibility to foreign shareholders, many of whom rely on proxies as part of their governance structure.
- Boards of public companies are subject to a maximum number of 11 members, down from 12 (which may also require amendments to PJSC constitutional documents).

Existing companies have been given a grace period of one year to amend their memorandum and articles to bring them into compliance with the new law.

Overall the new law is a step forward. Many foreign investors are likely to be disappointed, however, that foreign ownership limits under the new law remain unchanged. They will now have to wait for reform under the proposed Foreign Investment Law (drafts of which have not been made available at the date of writing).

The full impact of the changes introduced in the new law will take some time to be fully understood, as it will depend largely on the actual practice of implementation and enforcement of the law and subordinate legislation by the relevant authorities that develops. The relevant regulators will need to quickly adapt and build capacity if they are to succeed in effectively implementing the provisions of the new law. In particular the Ministry of Economy appears to have taken on several new or increased responsibilities, and its allocation of resources to implementing the new law will be key to the law's practical impact. ■

Afridi & Angell

Founded in 1975, Afridi & Angell is one of the leading and most established full-service law firms in the UAE. We provide comprehensive legal advice and innovative business solutions in banking and finance; corporate and commercial law; dispute resolution; projects; construction and real estate; employment; energy; project finance; transport; as well as doing business in the UAE and in the DIFC. We advise local and regional clients ranging in size and sophistication from start-ups to some of the region's largest public and private companies, governments and quasi-government institutions. We work extensively with entrepreneurs and investors from the region and beyond, and have attracted numerous international clients looking for the right counsel to protect and expand their interests in the UAE.

Afridi & Angell is the exclusive UAE member of top legal networks and associations, most notably Lex Mundi, the world's leading network of independent law firms.

www.afridi-angell.com