

Draft new Companies Law approved by the UAE Cabinet



By Iain Jones

The UAE Cabinet has approved a draft of the proposed new Companies Law (the Draft). According to sources in the Ministry of Presidential Affairs, it is expected that the new Companies Law will be published in the UAE Official Gazette in February or March 2012, but this time frame is by no means set in stone. Whilst we may still have to wait several months before the Draft becomes law, this announcement marks the first significant step in the passage of the Draft into law.

What are the key features of the Draft?

The Key features of the Draft, as contained in the translation into English from which we are working, appear to include:

- 1.1 corporate governance regulations will be issued for public joint stock companies and private joint stock companies with more than 75 shareholders;
- 1.2 abolition of the minimum share capital requirement for limited liability companies (LLC's). This requirement was, in fact, previously removed by virtue of Federal Law No. 1 of 2009;
- 1.3 private joint stock companies and LLC's may be established with one shareholder; the existing Companies Law requires a minimum of two shareholders;
- 1.4 Cabinet to be granted the authority to issue further legislation which will allow companies that carry out certain activities to have a foreign shareholding exceeding the current limit of 49 percent. This will be a major departure from the current restrictions on foreign shareholdings;
- 1.5 shareholders in an LLC may pledge their shares to third parties;
- 1.6 accounts must be prepared in accordance with International Accounting Standards;
- 1.7 the founders of a public joint stock company will be allowed to subscribe for not less than 30 percent and not more than

70 percent of the capital of the company. Under the existing companies law the founders can only subscribe for not less than 20 percent and not more than 45 percent of the capital of a public joint stock company. This amendment was, in fact, already implemented in relation to family companies by virtue of Federal Law No. 10 of 2007.

Commentary

The removal of the maximum foreign shareholding ceiling of 49 percent for some industries would be a major development and could well attract further foreign investment to the UAE. Potential foreign investors, who have hitherto been concerned at having a local partner owning a majority of the shares in their business, should take considerable comfort from this development. Lenders

may be more inclined to advance funds to LLC shareholders if they can take security over shares in an LLC by way of a pledge. Furthermore, the proposed increase in the maximum shareholding founders of public joint stock companies can subscribe for may encourage owners of closely held and family businesses to list their shares, safe in the knowledge that they can retain a 70 percent majority shareholding (although, as noted above, this amendment was implemented in 2007 in relation to family companies).

We cannot yet be certain that the final version of the new Companies Law will include all or any of the changes noted in this article, but it is encouraging that such fundamental developments in corporate law are being actively considered. If the Draft does become law it should cement the UAE's position as the jurisdiction of choice for businesses looking to establish a presence in the Middle East.

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