

Deadline to comply: 30 June 2016 - what you need to know

1. Introduction

The new Commercial Companies Law, Federal Law No.2 of 2015 (the New CCL), contains a number of welcome changes to the old Commercial Companies Law, Federal Law No.8 of 1984 (the Old CCL). The CCL was published in the Official Gazette on 1 April 2015 and came into force on 1 July 2015. **All UAE companies that fall within the scope of the New CCL must review and amend their constitutional documents to ensure they comply with the changes brought forward by the New CCL. Existing companies that fail to do so will be at risk of automatic dissolution.**

2. Penalties for failing to comply by 30 June 2016

Any entity governed by the New CCL (including a Limited Liability Company (LLC) registered with the Department of Economic Development) must comply with the New CCL by 30 June. **The penalties for breach include:**

- **Dissolution:** Existing companies that fail to comply with the changes will be deemed dissolved (Article 374).
- **Removal of officers:** A director, manager, auditor or officer of the company in breach could be held responsible for any failure to comply with the New CCL and subject to removal from office (Article 86, 177, 247, 248).
- **Personal liability and fines:** A daily fine of AED 2000 will be imposed on any company that fails to comply with the New CCL by 30 June, which may be deducted from the remuneration of board members.

3. What are the changes?

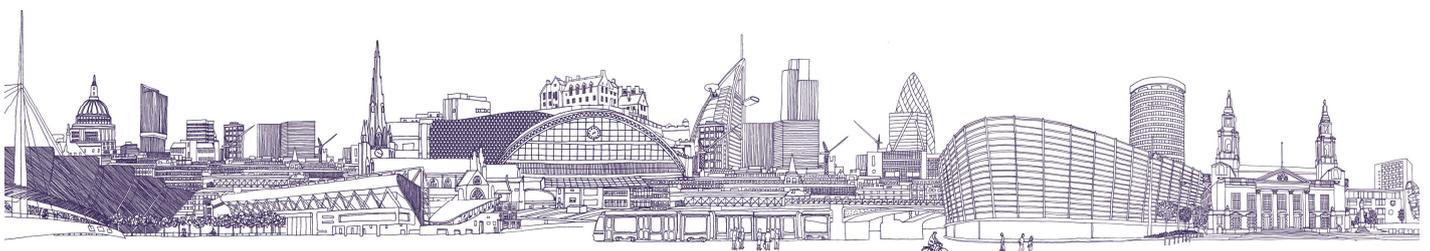
Matters for consideration and amendment are set out below. **Changes that require amendment within the memoranda and articles of association are highlighted.**

4. Types of entities

The New CCL governs the regulation of commercial entities incorporated and operating within the UAE, including certain free zone and foreign companies. There are 5 company forms under the New CCL namely: Joint Liability Company; Simple Commandite Company; LLC; and Public or Private Joint Stock Company (JSC). **For the purpose of this note we have provided an overview of some key changes under the New CCL to LLCs, free zone companies and foreign companies. Please note that there are changes to other company forms, including private and public JSCs. However, these changes have not been addressed in this note.**

Limited Liability Companies

- **Shareholders:** The maximum number of shareholders remains 50 in an LLC. The New CCL allows a UAE natural



New Commercial Companies Law

or corporate person to establish an LLC as a single shareholder (Article 71(1) and 71(2)). **This amendment would need to be reflected in the memoranda and articles of association of all existing companies before 30 June.**

- **Share pledges:** A pledge over shares in an LLC is now included under the New CCL, which further provides for requirement of registration for validity of this type of security (Article 79).
- **Pre-emption rights:** The New CCL retains the pre-emption rights on a transfer of shares in favour of existing partners, which cannot be waived (Article 80).
- **Attachment of shares:** Where a creditor proceeds with enforcements of rights but fails to agree with the debtor and the LLC on the conditions of sale of the pledged shares, such shares shall be disposed through public auction, further to the request of a competent court. The shareholder will have the right to buy back the shares on the same terms within 15 days of auction (Article 81).
- **Company director/managers:** The management of an LLC can be undertaken by one or more directors/managers, as determined by the memoranda and articles of the company (where previously the limit was five (Article 83)). **This amendment would need to be reflected in the memoranda and articles of association of all existing companies before 30 June.**
- **General assembly:** The invitation for the meeting can now be sent by registered post or by any means of communication agreed upon by the shareholders (Article 93). The minimum notice period is 15 days prior to general assembly (or a shorter period agreed between the shareholders). Resolutions are passed if a numerical majority of shareholders present at the meeting votes in favour (Article 93). **This amendment would need to be reflected in the memoranda and articles of association of all existing companies before 30 June.**
- **Quorum for General Assembly:** For a meeting to be quorate under the New CCL, partners representing at least 75% need to be present. Non-quorate meetings should be reconvened with 14 days from the date of the first meeting and will only be quorate if attended by shareholders representing 50% of the share capital. If the required quorum is not present then a third meeting should be held 30 days after the date of the adjourned meeting and such meeting will be quorate if at least one shareholder is in attendance (Article 96). **This amendment would need to be reflected in the memoranda and articles of association of all existing companies before 30 June.**
- **Application of provisions applying to a JSC:** Unless otherwise specified in the New CCL, the provisions of the law applicable to a JSC will also apply to an LLC. Note, given that there is a significant difference between a JSC and LLC it is not completely clear how this will apply in practice (Article 104).

Free Zone Companies

- Where the laws of the free zone permits certain free zone companies to operate outside the relevant free zone but inside the UAE, the New CCL shall apply to such companies (Article 5). Those conducting business outside the UAE will not have to comply with the New CCL. Note, free zone companies remain exempt where specified under the relevant free zone regulation and in general the New CCL shall not apply to free zone companies.

Foreign Companies

- The requirement that foreign companies appoint a UAE national agent i.e. a UAE incorporated company wholly owned by a UAE national is maintained (Article 329). The balance sheet/profit and loss account, auditor's report and copy of parent company accounts must be filed annually (Article 321). The New CCL formalises the ability to establish representative offices for marketing purposes (Article 332).

5. Are there any exemptions?

The New CCL exempts companies wholly owned by the Federal or Emirate Government (and their wholly owned subsidiaries), companies operating in the oil, power generation, gas production, water desalination and energy sector and whose capital is held directly or indirectly to at least 25% by the Federal or an Emirate Government. In both

New Commercial Companies Law

instances for the exemption to apply the company's memoranda or articles of association must include a special provision to this effect. Note: the exemption may cease to apply upon the sale or offer of any percentage of the company's capital in a public subscription of its shares on any stock exchange in the UAE. Companies may also be exempt pursuant to a Cabinet resolution or a special Federal Law (Article 4).

6. Corporate governance

Whilst the wider framework is anticipated, the New CCL provides for enhanced corporate transparency, which should encourage investor confidence and align the UAE corporate governance standards with those of other global jurisdictions. The New CCL introduces the following:

- **Social responsibility:** In line with obligations in other jurisdictions (though we still await the wider framework).
- **Transparency:** The requirement for a company to have one or more auditors and to apply international accounting standards, the keeping of accounting books in the company's head office for a minimum of 5 years from the end of the financial year and a shareholder's right to request a free copy of the last audited accounts.
- **Framework regulating corporate governance:** The New CCL empowers the Minister of Economy to issue resolutions regarding the general framework regulating corporate governance of a Private JSC with more than 75 shareholders and the Securities and Commodities Authority ("SCA") shall issue resolutions concerning a corporate governance framework.
- **Sanctions and personal liability:** Introducing prohibitions on offering financial assistance, potential liability of financial auditors that exaggerate or act negligently when valuing shares (Article 118-120 and 194) and potential dismissal and fines. Further, the board of directors of Public and Private JSCs shall be responsible for ensuring compliance with the applicable corporate governance framework. Failure to do so may attract a penalty.
- **Board meetings:** Requirement for an LLC, Public or Private JSC to have at least four board meetings a year.
- **Non-compete provision:** The director of an LLC is prohibited from holding a management position at a competitor or conducting competing business without the consent of the general assembly (Article 86).
- **Corporate benefit test:** The New CCL provides general prohibitions on related parties of JSCs improperly benefiting from information they possess for personal or third party interest (Article 152).
- **Prohibition of related party transactions:** Where a board resolution of a JSC is passed in contravention to the New CCL or the memoranda or articles of the company, either for or against a certain class of shareholder, or to bring special benefits against the interests of JSC, it shall be invalid (Article 170).

7. Conclusions

This note aims to provide an overview of the key changes introduced by the New CCL. The main objective of the New CCL is to continue the UAE's development within the business environment in accordance with international standards. The New CCL introduces various concepts and flexibility in some parts, which represents the first overhaul of commercial companies law in the UAE since 1984. Certain aspects remain uncertain and require clarification. However, there is clear development in relation to corporate governance, the protection of shareholders and the promotion of social responsibility of companies, whilst maintaining the essential framework and features of the Old CCL.

8. Who we are and how we can help

The Gateley Dubai team is one of the leading Corporate teams in the Middle East. We understand local laws and customs and can help our clients overcome any issues they might experience undertaking business in the UAE, as well as internationally. Companies will need to amend their memoranda and articles of association to bring them in line with the changes introduced by the New CCL before the deadline date of 30th June 2016.

Please get in touch with Jonathan Burton at JBurton@gateleyae.com or Tania Diab at TDiab@gateleyae.com for further assistance.