

## UAE Ministry of Economy Clarifies How UAE CCL Applies to LLCs

***Ministerial Resolution No. (272) of 2016 sets out which provisions applicable to joint stock companies also apply to limited liability companies.***

### Introduction

Since UAE Federal Law No. (2) of 2015 concerning Commercial Companies (CCL) came into force on 1 July 2015, Article 104 of the CCL has been the subject of much debate and commentary. Article 104 states that, unless the CCL provides otherwise, the provisions concerning joint stock companies (JSCs) apply equally to limited liability companies (LLCs). This has created significant uncertainty surrounding exactly which of those provisions applicable to JSCs also apply to LLCs. In particular, concerns have been raised over the application of the prohibition of financial assistance to LLCs.

On 29 April 2016, the UAE Ministry of Economy published Ministerial Resolution No. (272) of 2016 concerning the Application of Some Provisions of Public Shareholding Companies to Limited Liability Companies (the Resolution). The Resolution attempts to set out which provisions relating to JSCs also apply to LLCs and which do not. The Resolution also sets out additional provisions applicable to LLCs. Previously, companies were obligated to amend their memoranda and articles of association in accordance with the changes introduced in the CCL by 30 June 2016, or face dissolution. On 18 June 2016, the UAE Cabinet announced a one-year extension to this deadline. However, the decision to extend the deadline to 30 June 2017 has not yet been recorded formally in the official gazette.

### JSC Provisions Not Applicable to LLCs

The Resolution provides that the following provisions of the CCL do **not** apply to LLCs:

- **Financial Assistance**

Article 122 of the CCL, which prohibits a public JSC or any of its subsidiaries from providing financial assistance (for example, by way of a loan or grant of security) to a shareholder in order to allow the shareholder to hold company-issued shares, bonds or sukuk.

- **Related-Party Transactions**

Article 152 (1) and (2) of the CCL, which prohibit (i) related parties (including directors) from using inside information for their own interest or the interest of a third party as a result of dealing in the securities of a public JSC; and (ii) public JSCs from transacting with related parties without requisite

board or shareholder consent (as applicable) if the value of the transaction reaches or exceeds 5% of the company's share capital.

- **Powers of the Board of Directors**

Article 154 of the CCL, which restricts the powers of a public JSC's directors by preventing the directors from, among other things, (i) entering into loan agreements on the company's behalf for a period exceeding three years; (ii) discharging the company's debtors from their obligations; and (iii) making compromise agreements or agreeing to arbitration, unless such acts are authorized under the company's articles of association or are within the object of the company by nature, or are permitted by a special resolution issued by the company's shareholders.

- **General Provisions relating to Management**

Articles 143, 144, 145, 147, 149, 151 and 169 of the CCL, which generally relate to the formation and constitution of a public JSC's board of directors.

## **JSC Provisions Applicable to LLCs**

The Resolution provides that the following provisions of the CCL **apply** to LLCs:

- **Liability of the Board of Directors**

Article 162 of the CCL, which provides that directors of public JSCs can be held liable toward the company, the company's shareholders and third parties for damage arising from acts of fraud, misuse of authority and violation of the provisions of the CCL and the company's articles of association, or an error in management.

- **Acts by the Directors**

Article 163 of the CCL, which provides that an LLC will be bound by a director's acts against a bona fide third party, even if the procedures of the director's election or appointment are subsequently found invalid, or the applicable conditions for such election or appointment are not available.

- **Limitation of Liability**

Article 167 of the CCL, which provides that if the shareholders have approved an act a director commits that gives rise to liability, a liability claim can still be filed within the period of one year from the date of such shareholders meeting. However, if the act ascribed to the director is a criminal act, the claim can be filed within the period until which the public claim is time-barred.

- **Convening General Assembly Meetings**

Articles 174, 175 and 176 of the CCL, which set out who can demand that the directors call a general meeting. Under article 174, an LLC's directors can call a general meeting when requested to do so by shareholders holding shares representing at least 20% of the share capital. Article 175 requires an LLC's directors to call a general meeting when the auditor demands, and article 176 provides circumstances under which the Department of Economic Development (DED) can demand the chairman (or his nominee) to call a general meeting.

- **Suspension of Shareholder Resolutions**

Article 191 of the CCL, which permits shareholders who hold at least 5% of the company's share capital to request that the DED issue a resolution to suspend the enforcement of shareholder resolutions that are (i) passed to the shareholders' detriment; (ii) in favor of a certain class of the shareholders; or (iii) provide a special benefit to the directors or others.

- **No Election of the Board of Directors or the Auditor**

Article 192 of the CCL, which provides how the board of directors' election or the auditor's appointment are dealt with in circumstances in which the shareholders fail, in two successive meetings, to pass a resolution regarding such election or appointment.

- **Provisions relating to the Appointment of Auditors and Audited Accounts**

Articles 243, 245, 247, 248, 249, 250, 251, 252, 253 and 254 of the CCL, which relate to appointment of auditors, audit reports and various other matters relating to auditors.

## **New Provisions Applicable to LLCs**

The Resolution introduces the following new provisions that apply to LLCs:

- **Board of Directors**

Article 4 of the Resolution outlines the procedure for appointing a director or board of directors, including the appointment of the chairman and deputy chairman. Article 5 of the Resolution sets out the manner in which the directors must conduct their board meetings and vote upon board resolutions. Article 6 of the Resolution imposes an obligation on the directors and executive management to carry out their functions and duties in accordance with the company's articles of association and without prejudice to the company's or the shareholders' interests.

- **Appointment and Powers of the Auditor**

Article 7 of the Resolution provides that an LLC's auditor must be appointed for one renewable year. The auditor's powers and the requirement for the auditor to attend the general meeting to present his annual report are set out in articles 8 and 9 of the Resolution, respectively.

- **Company Accounts**

Article 10 of the Resolution requires the LLC to prepare regular accounts in accordance with international accounting principles and standards.

- **General Meetings**

Article 12 of the Resolution gives directors the power to call for a general meeting during the four months following the end of the fiscal year, or whenever necessary. They are also required to call for a general meeting within five days of receiving an application from the DED, the auditor or a shareholder holding more than 20% of the share capital. Shareholders holding 10% of the shares in an LLC have the right to call for an urgent general meeting by submitting an application to the DED. Shareholders can also add items to the general meeting agenda, either before or after the meeting, in accordance with article 14 of the Resolution.

- **Distribution of Profits**

Article 13 requires an LLC to deposit cash dividends to the shareholders within 30 days from the date of a resolution having been passed to approve the profit distribution.

- **Special Resolutions**

Article 15 of the Resolution provides that the assignment of voluntary contributions for community service purposes, and the sale of 51% or more of an LLC's assets by one or more transactions in any one-year period, must be passed by a special resolution of shareholders (in addition to the matters required to be passed by a special resolution prior to the date of the Resolution).

## **Conclusion**

The Resolution has provided much welcome certainty regarding a number of provisions in the CCL. However, there are still some provisions which the Resolution avoids, including whether the prohibition on providing loans to directors and their relatives under article 153 of the CCL applies to LLCs.

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