

UAE Issues New Draft Commercial Companies Law

The 2013 draft postpones consideration of increased foreign ownership of UAE companies, appears to confirm that limited liability companies will be subject to stricter regulation and allows “reconciliation” of certain offences.

International companies doing business in the UAE and existing UAE companies will want to pay particular attention to key changes in the 2013 draft of the UAE Commercial Companies Law (the 2013 Draft CCL). Based on Westlaw Gulf’s recent English translation, the law will not allow increased foreign ownership of UAE companies, appears to impose stricter regulation on limited liability companies and will allow for relatively easy “reconciliation” of certain offences. We expect the new UAE Commercial Companies Law to come into force later this year in substantially the same form as the 2013 Draft CCL.

The 2013 Draft CCL differs from the 2011 draft of the UAE Commercial Companies Law (the 2011 Draft CCL)¹ in the following key respects:

- ***Foreign ownership above 49 per cent postponed for consideration in a proposed new foreign investment law.*** The 2011 Draft CCL permitted the UAE Federal Cabinet to issue a resolution determining the form of companies and activities or classes of activities that may be held in full by a foreign partner, or where the share of the foreign partner may exceed 49 per cent of the share capital of the company. This provision has been deleted from the 2013 Draft CCL. Based on press reports at the time the Federal National Council (FNC) was debating the 2013 Draft CCL, we understand that foreign ownership above 49 per cent will now be considered in the context of a proposed new UAE foreign investment law to be circulated later this year.
- ***New provision allowing “reconciliation” of certain offences prior to offences being referred to court.*** A new provision has been added that allows companies which have committed offences specified in Chapter 1 of Part 11 to “reconcile” for such offences before the offence is referred to court. Reconciling can be accomplished by paying an amount of money not less than double the minimum amount of the fine and not less than the amount of the fine in the case of daily fines. Article 339 further provides that if the crime is repeated within a year of the “reconciliation” or after the issuance of a court judgment, the minimum and maximum amounts of the fines shall be doubled. Article 339 also requires the Minister or ESCA to issue regulations and procedures relating to “reconciliation”. Offences in Chapter 1 of Part 11 that may be “reconciled” include:
 - Failure of a public JSC to list
 - Refusal of a company to allow shareholders to inspect the minutes of general assembly
 - Failure of a company to hold an annual general meeting within the specified period
 - Failure of a joint stock company (JSC) to convene an extraordinary general meeting when its losses reach 50 per cent of its share capital

- Failure of a company to keep accounting records
- Failure of UAE nationals to hold at least 51 per cent of a company's share capital
- Disposing of shares in a company in breach of the law and performance of commercial activities by representative offices of foreign companies

The introductory wording in Chapter 2 of Part 11 indicates that "reconciliation" is not permitted for the offences set out in Chapter 2 of Part 11. Offences in Chapter 2 of Part 11 that may not be "reconciled" include:

- Overvaluing non-cash contributions for shares
 - Distributing profits in breach of the law
 - Concealing the true financial position of a company
 - Issuing shares in breach of the law
 - Entering into transactions for the purposes of influencing the price of securities
- ***New offence: failure to keep accounting records to explain transactions.*** A new offence has been introduced relating to accounting records. Under Article 348 of the 2013 Draft CCL, a fine of between AED50,000 and AED100,000 shall be imposed on a national or foreign company that fails to keep accounting records for the company to explain its transactions.
 - ***Provisions regulating joint venture companies deleted.*** The provisions in the 2011 Draft CCL relating to joint venture companies have been deleted. Apparently the FNC has taken the view that joint ventures are typically not regulated in company law statutes in other jurisdictions.
 - ***Chairman of JSCs must be a UAE national.*** The 2011 Draft CCL did not require the chairman of a JSC to be a UAE national. The 2013 Draft CCL requires the chairman of a JSC to be a UAE national.
 - ***Investment funds to have their own legal personality.*** New provisions have been added to address investment funds, albeit very briefly. Article 271 provides that investment funds shall be established in accordance with the conditions established by the Emirates Securities & Commodities Authority (ESCA) or the Central Bank in the case of investment funds licensed by the Central Bank. Article 272 provides that an investment fund shall have its own legal personality and legal form and a separate financial position.
 - ***Council of Ministers to promote social responsibility.*** Article 375 of the 2013 Draft CCL is a new clause which provides that the Council of Ministers shall issue the necessary controls to motivate companies to carry out their social responsibility and its implementation phases.
 - ***Objectives of the Commercial Companies Law specified.*** A new clause has been added which sets out the law's objectives. Article 2 of the 2013 Draft CCL provides that the law aims to contribute to the development of the business environment and the capacities of the state and its economic standing by organising companies in accordance with global variables, especially those related to organisation of governance rules and the protection of shareholders and partners, as well as supporting the flow of foreign investment and promoting the social responsibility of parties.
 - ***Government has improved director appointment right for JSCs.*** In the 2011 Draft CCL, the federal government or local government had the right to appoint representatives as directors pro rata to such percentage if the federal government or local government holds at least 10 per cent of the share capital of a JSC. The 2012 Draft CCL reduces the minimum holding requirement to 5 per cent for this right to apply.

- **Removal of right for JSC shareholders to object to mergers and recover the value of their shares.** In the 2011 Draft CCL, all partners and shareholders who object to a merger resolution approved by the requisite majority of shareholders have the right to withdraw from the company and to recover the value of their shares. The 2013 Draft CCL removes this right for shareholders of JSCs.
- **Removal of grievance procedures relating to corporate governance resolutions and fines.** The 2011 Draft CCL contained a provision which allowed grievances against resolutions of the Minster or ESCA relating to corporate governance to be filed with the Minster or ESCA, and then appealed to a court if rejected or not heard within a specified timeframe. This provision has been deleted in the 2013 Draft CCL.

The 2011 Draft CCL contained a provision which permitted grievances to be filed against the fines in Chapter 1 of Part 11, with an appeal right to the court if rejected or not heard within a specified timeframe. This provision has also been deleted in the 2013 Draft CCL.

In our 2012 briefing series, we highlighted that the 2011 Draft CCL contained an article providing that the provisions of the law concerning JSCs shall also apply to limited liability companies. Curiously, this provision was not deleted or amended in the 2013 Draft CCL. If not deleted or amended in the final version, this provision could cause material issues for limited liability companies as they will become subject to much greater regulation. For example, limited liability companies will be subject to the new prohibition of financial assistance applicable to JSCs.

Conclusion

Postponing consideration of foreign investment limits is likely to diminish much of the interest in the new UAE Commercial Companies Law. Existing UAE limited liability companies and foreign companies contemplating doing business in the UAE through limited liability companies need to be aware that limited liability companies may be subject to the same obligations as joint stock companies when the 2013 Draft CCL becomes law.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

Christopher Lester

chris.lester@lw.com

+971.2.813.4825

Abu Dhabi

Charles Fuller

charles.fuller@lw.com

+971.4.704.6328

Dubai

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. A complete list of Latham's *Client Alerts* can be found at www.lw.com. If you wish to update your contact details or customize the information you receive from Latham & Watkins, visit <http://events.lw.com/reaction/subscriptionpage.html> to subscribe to the firm's global client mailings program.

Endnotes

¹ Between May and July of 2012, Latham & Watkins published a five-part briefing series on the 2011 Draft CCL, also published by Westlaw Gulf. In our 2012 briefing notes we highlighted the key changes in the 2011 Draft CCL from the UAE Federal Law No. 8 of 1984 (as amended), which is the existing UAE Commercial Companies Law. These briefing notes are available at <http://www.al-mirsal.com/2012/08/26/key-expected-changes-to-the-uaes-draft-commercial-companies-law/>.