Enactment of DMCC Regulations 2020

Sherif Rahman - Partner - Corporate Structuring
s.rahman@tamimi.com - Dubai International Financial Centre

Khadija Hussain - Senior Associate - Corporate Structuring / Corporate Services
k.hussain@tamimi.com - Dubai International Financial Centre

Effective 2 January 2020, the new DMCC Company Regulations 2020 (‘Regulations’) were promulgated to replace the former DMCC Company Regulations 2003. This was the result of two years of continuous hard work and dedication, DMCC has successfully reformed its existing company regulations to match international legislation, the purpose of which was to simplify the interpretation of the Regulations and accommodate the growing needs and requirements of businesses.

The legislative changes are specifically aimed at:

1. easing the understanding of the Regulations;
2. the introduction of new corporate actions for ease of doing business operations; and
3. providing greater clarity on the role of company officers.

While there are broad changes introduced in the Regulations, the key highlights are as follows:

Classification of shares

Companies now have the option to structure their shareholdings in the way that best suits their requirements. Previously DMCC only allowed the option to subscribe to ordinary shares. Under the Regulations, a company may issue other share types as suggested by the guidance notes and these are:

1. **ordinary shares**: this class of shares does not carry any special rights or obligations;
2. **preference shares**: this category gives preferential treatment to the shareholders in respect of receiving dividends, along with voting rights;
3. **non-voting shares**: similar to ordinary shares, except that they carry no voting rights;
4. **bonus shares**: these are free additional shares offered to existing shareholders; and
5. **treasury shares**: these are shares purchased by the company.

We understand that the DMCC may be willing to allow the issuance of management shares which are not referenced in the guidance notes however, it cannot be assumed, unless a prior approval for this is obtained by DMCC. Also, the Company itself can determine the rights and obligations of each share type or class, as long as this is clearly set out in the company’s articles of association (‘Articles’). This is provided that at least 80 per cent of the total shares are ordinary while the remaining 20 per cent can be any other class of shares.

Each shareholder may choose to hold different types of shares as well opt for different modes of payment i.e. either in ‘cash’ or ‘in kind’.

Share capital

DMCC has eliminated the general requirement of a minimum amount of share capital, and this is now only required in the case of certain approved activities which are yet to be specified by DMCC.

Increase of share capital

Earlier, an increase of share capital and the addition of a new shareholder had to be undertaken in two separate processes, but under the new Regulations this can be done in one single step. Also, the new Regulations set out provisions for the contribution to capital to be in ‘cash’ or ‘in kind’. It is unclear if such a contribution will be applicable to initial capital or only in instances of increase in share capital.

It would appear that in case of a cash contribution, a deposit of such capital in the bank along with a bank confirmation letter in this regard continues to be a requirement.

In case of a contribution ‘in kind’, the Regulations prescribe that such a contribution be supported by an auditor’s and director’s confirmation. The auditor’s confirmation letter shall confirm the valuation of non-cash consideration; and the directors’ confirmation letter shall confirm the reasonableness and fairness of the non-cash consideration, as well as the fact that the cash value of the consideration is not less than the amount to be credited for the issuance of new shares.

Adoption of non-standard articles

The promulgation of the new Regulations requires existing DMCC companies to amend their articles of association in order to ensure they comply with the Regulations.

DMCC has also updated its existing draft articles and introduced new ‘Standard Articles’. That said, DMCC provides flexibility to companies to adopt their own articles, provided that they do not contravene or are inconsistent with the Regulations and the DMCC’s policies. This has been confirmed in a legal opinion issued by a Dubai based law firm.

Dormancy: voluntary suspension of licence

DMCC has introduced a new concept of voluntary suspension of a licence. Voluntary suspension allows a company to cease its operations for a minimum period of 12 months and a maximum (cumulative) period of 36 months, without the need to de-register. For the time being, this is applicable only to limited liability companies and not branches.

This measure addresses a long-standing expectation of companies wishing to discontinue business operations for a short term without the need to de-register in anticipation of recommencement of operation at an appropriate time. This avoids the potential cost and time associated with de-registration and then a re-incorporation of a new entity whilst, at the same time, maintaining the legacy of the company.

Conditions of Dormancy:

1. a company may apply for suspension of its licence on payment of the applicable DMCC fees (provided it has a valid licence for at least 12 months);
2. in case a company is holding more than one licence, suspension shall be applicable to all of its licenses;
3. during suspension the company must cancel existing visas and leases;
4. the manger can no longer continue his/her appointment; although director(s) and the company secretary shall be allowed continue as officers of the company; and
5. company bank accounts must be closed or suspended.

Registration of branches

Previously, the DMCC did not have comprehensive provisions for regulating branches and in particular, in the case of de-registration, which now requires the parent company to confirm that it will remain liable for the debts and liabilities of its branch on de-registration.

Further, in the past DMCC only issued a licence for the registration of a foreign branch. Under the new Regulations DMCC issues a certificate of establishment in addition to the licence. We understand from DMCC that for existing branches, a certificate of establishment will automatically be issued on the DMCC portal of the existing DMCC branches.

Roles and appointment of officers

The Regulations now have a separate section under ‘Officer Rules’ which separately addresses the roles and responsibilities of each director, manager and secretary. This has been introduced to ensure that the new rules will ensure high-quality corporate governance.

Unlike the old law, the Regulations do not stipulate a maximum number of directors but only a minimum which continues to be one. The appointment of a company secretary is now mandatory (but which was previously optional, except in the case of a branch, which will continue to be optional).

Also, in the case of a removal or change of any officeholder it is mandatory to notify the DMCC within 14 days.

Audited financials

The Regulations also provide for a more reasonable period for the submission of audited financial statements i.e. six months after the end of the financial year of the company as opposed to three months under the old regulations. A company must file a copy of the accounts and the auditor’s report with the Registrar within five business days of a general meeting.

Migration of companies

Migration is a process by which a company may transfer its domicile from one jurisdiction to another and even though this changes the laws which will govern the company, whilst at the same time allowing the company to maintain its corporate legacy. Until recently DMCC only allowed migration of companies ‘into’ DMCC, but not ‘out of’ DMCC. Under the new Regulations, DMCC now allows for companies to migrate ‘into’ as well as ‘out of’ DMCC, provided that the laws of the other jurisdiction recognises and permits foreign entities to migrate to that jurisdiction (in addition to other requirements also being fulfilled). This will allow the legal continuation of the entity by maintaining its legal identity, operations, assets, and contractual relationships with third parties.

Maintaining company registers

A company is now required to maintain:

1. a Shareholder Register;
2. an Officer Register;
3. a Security Register; and
4. a Minutes Register in a form capable of being reproduced within a reasonable time.

Participation in shareholder meetings

The DMCC has made participation in shareholder meetings extremely flexible, to the extent that any means of communication can be used for conducting a meeting such as video call, telephone or any other means of communication provided a shareholder at the meeting can hear what is said by the other shareholders present.

Winding-up

DMCC has introduced different methods of winding up a company, such as:

1. **Solvent Winding-Up**: when the shareholders unanimously resolve, at a general meeting, to wind-up and the company is able to discharge its liabilities within 12 months of the commencement of the winding-up;

2. **Summary Winding-Up**: when the shareholders unanimously resolve, at a general meeting, to wind-up and the company is able to wind-up its affairs within six months of commencement of the summary winding-up;
3. **Insolvent Winding-Up**: when the shareholders unanimously resolve, at a general meeting, to wind-up followed by a meeting with the creditors to settle their dues; and
4. **Involuntary Winding-Up by The Courts**: when the company is wound-up by a court order.

Currently, the preferred modes of winding-up require an auditor's report confirming that there are no debts, liabilities or receivables due or payable, in order to proceed with the winding-up process. Although new events for insolvency have been introduced, the implementation of the same are yet to be tried and tested.

Next Steps

Companies have 24 months to comply with the new Regulations or amend their articles to be in line with the new the Regulations, appoint a secretary (as applicable), and maintain company registers to name a few; failure to comply with such requirements may attract penalties and/or sanctions.

Conclusion

The increased flexibility of conducting business under the new Regulations is certainly a positive step forward by DMCC, and well-timed with the much-anticipated Dubai Expo 2020; the Regulations could play a pivotal role in attracting new investors.

Al Tamimi & Company's Corporate structuring team regularly advises on how to comply with the new Regulations. For further information please contact Sherif Rahman (s.rahman@tamimi.com) or Khadija Hussain (k.hussain@tamimi.com).