

The UAE Commercial Companies Law in its final stage

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The UAE Commercial Companies Law, which was enacted first in 1984 but only came into enforcement in 1991, has gone through a number of changes and amendments in the last 15 years.

There have also been several drafts available for discussion. One draft came in with aggressive changes whereby the entire law was revamped and a totally new draft was presented. Another draft had major amendments and the third draft had only a facelift to the existing law.

Currently the Commercial Companies Law provides all the legal rules for the establishment of commercial companies, public companies (in conjunction with ESCA), and branches of foreign companies (or representative offices) in the UAE.

We understand that the new Commercial Companies Law is now in its final stage prior to being enacted by the UAE Federal Government. It looks like the UAE, rather than having to go through the process of revamping the entire law (which would have taken too long to achieve) has settled on amending and adding new provisions. The new law seeks to remedy issues which were problematic in its implementation under the older law, and to introduce new ideas.

One of the new ideas that is likely to be introduced by the law is that of allowing one person to own a limited liability company ("LLC"). Currently a minimum of two persons are needed to own an LLC established in the UAE and it has not been possible, other than in some free zones, to establish an LLC owned by one individual or one entity.

My understanding is that the UAE National Assembly has raised a few concerns about the existing draft but it is likely that the law will be enacted and if any changes are to be made to the law, it will be made as further amendments in the future. The Federal Government is keen to enact this law to deal with a number of urgent issues that are present in the existing law.

As regards the implementation of the law, there will still need to be cooperation between the Ministry of Economy (representing the Federal Government) and the Department of Economic Development in the concerned Emirate.

However, almost the entire responsibility and jurisdiction for licensing and overseeing public companies, and to some extent private joint stock companies, has been given to ESCA. There will only need to be limited cooperation on the subject of trade name approval and activity approval with the Ministry of Economy and the Department of Economic Development in the concerned Emirate.

A key question which always comes up is whether the UAE will allow foreigners to own more than 49% of a company incorporated in the UAE. This however will remain unchanged. Currently under the UAE Commercial Companies Law a foreigner can only own maximum of 49% of locally incorporated company, apart from companies incorporated in a free zone in which they can own 100%. However, free zone companies cannot trade within the United Arab Emirates and are limited to the areas within the free zone or trading with other countries.

There has been discussion on whether to allow foreigners to own a percentage higher than 49%, however the general attitude of the Federal Government towards this is to leave this matter to be regulated by another law – the Investment Law – which is currently being discussed by the Federal Government and is available in draft. The law does however provide an article which entitles the Federal Cabinet Ministers to exempt certain companies from the 51:49 arrangement and so it may be foreigners, in certain circumstances and upon the approval of the Cabinet of Ministers, can be granted the ability to own more than 49%. This can be done by submitting an application to the Cabinet of Ministers and it is likely that in due course a process will be provided for such applications to be granted or rejected. It is likely permission will only be granted in exceptional limited circumstances.

There has not been much change in the setting up of branches of foreign companies or representative offices. Both still require a sponsor, or what they call a local agent, to license foreign companies to be established in the UAE. However the law emphasizes the exclusive jurisdiction of the Ministry of Economy and Commerce at the Federal level for license approval and renewal of branch of foreign companies. Currently most of the branch offices, unless given an exception from the Executive Office, are limited in their activities of promotion and representation, and no trading right is granted to branch offices. It is argued that from the new draft law it may be possible for the Ministry of Economy and the Executive Office at the relevant Emirates to grant certain branch offices the right to trade. This however, is not yet clear and if granted it is likely to be in very limited circumstances.

The law has provided more stringent and transparent requirements for accounting, corporate governance and the auditing process. This will apply to all companies, including limited liability companies. It is clear from the law that the legislator is intending to tighten the supervision and the accounting standards of companies throughout the UAE and provide for better corporate governance to an international level.

Of course, companies and branch of foreign companies continue to benefit from the UAE's no tax environment, and no tax or extra fees or charges will be levied on local companies or branches of foreign companies.

The law is expected to be enacted within the United Arab Emirates shortly and possibly before the summer of 2015. There are no major changes that current operating companies need to comply with or any deadlines to meet. It should prove to be a welcome revision of the UAE Commercial Companies Law.