

# The New UAE Commercial Companies Law

by Dipali Maldonado - d.maldonado@tamimi.com - Dubai International Financial Centre

May 2016

The new UAE Commercial Companies Law (Federal Law No. 2 of 2015) ("CCL") came into effect on 1 July 2015 and we reported on the principal amendments made by the CCL in our June/July 2015 edition of Law Update.

The following is a snapshot of the key developments brought about by the CCL in relation to LLCs:

- The pre-emption process remains the same save that in the event of a dispute as to price, the price will be determined by financial experts appointed by DED, rather than the company's auditor.
- As an exception to the minimum two shareholder rule for LLCs, the CCL permits an Emirati natural or legal entity to incorporate a single person LLC.
- Ordinary shareholder resolutions shall not be valid unless passed by a majority of the partners present in person (or represented) unless the MOA provides for a higher majority (previously it was absolute majority of shareholdings present).

## **The CCL removed the cap on the number of managers (previously 5)**

Notices to general assemblies can now be sent on 15 days notice or such shorter notice period as the shareholders agree and in addition, the CCL permits notices to be sent by whichever means of communication shareholders agree on, including email. Under the old law, notices had to be sent by registered mail.

The quorum for general assemblies has been raised to 75% of share capital from 50% previously.

The process relating to reconvening of inquorate meetings has been shortened such that inquorate general assemblies shall be reconvened within 14 days of the date of the first meeting and the quorum at the reconvened meeting shall be presence of shareholders representing 50% of the company's share capital. In the event the second meeting is inquorate, the meeting shall be adjourned to a date that is at least 30 days after the second reconvened meeting and such third reconvened meeting shall be quorate provided one shareholder attends.

Under the CCL, shares in an LLC may be pledged and the pledge can be registered in the Commercial Register. LLCs should anticipate that lenders may now require a pledge of shares as part of their security package and both lenders and borrowers alike should review existing powers of attorney and authorisations to ensure that they cover entry into and registration of share pledges

The CCL provides that the provisions relating to joint stock companies will apply to LLCs, unless otherwise stated; however, to apply this indiscriminately is an unsound approach given the technical differences in the form of these entities and the disparate objectives for which each is usually employed

Of critical importance is that fact that if a company does not comply with the new law by 1 July 2016, it will be deemed dissolved (Article 374). This is taken to mean that an LLC will need to have made necessary amendments to its Memorandum of Association to ensure compliance to continue to exist. In addition, Article 357 provides that a fine of AED 2000 per day of delay will be imposed on any company that fails to amend its Memorandum of Association and Articles of Association to

be compliant with the provisions of the Law.

The matters that may require consideration and amendment in an LLC's memorandum of association are set out in the table below.

Mandatory changes	Optional changes
<p><i>Quorum:</i> The CCL sets the quorum for the general assembly at shareholders representing 75% of the share capital of the LLC, as opposed to the previous threshold of 50%. Where the 75% quorum is not met at the first meeting, the meeting shall be adjourned and a second meeting will be held where the required quorum will be 50%. In the event such 50% quorum is not met at the second meeting, a third meeting shall be held where the quorum shall be valid irrespective of the shareholders present at the meeting. In the event the company's MOA stipulates a 50% quorum threshold for the first called general assembly, this will need to be amended to reflect the new position under the CCL.</p>	<p><i>Notice period:</i> Shareholders now have the option to reduce the previous 21 day notice period for general meetings to 15 days or such shorter notice period as agreed between the shareholders</p>
<p><i>Right of first refusal:</i> The selling shareholder must provide in its pre-emption notice to the continuing shareholders the name of the proposed purchaser in addition to the terms of sale, such as price. On a dispute as to price, the old law provided that the company's auditor would adjudicate on price. The new CCL requires value to be determined by a DED appointed financial expert.</p>	<p><i>Notice of meetings</i> The CCL permits invitations to general assemblies to be sent by any means of communication that the shareholders agree upon, as opposed to the previous position which required registered mail. This means that the MOA could be amended to permit email communications</p>
<p><i>Financial:</i> The CCL requires LLCs to use International Accounting Standards and this should be reflected in the MOA. The CCL requires that the MOA stipulate the commencement and expiry date of the fiscal year</p>	<p><i>Dismissal of manager:</i> The new CCL provides for the dismissal of managers by way of an ordinary resolution at a general meeting as opposed to the previous position under the old law requiring a special resolution if the MOA permitted dismissal of the manager, or unanimous resolution if the MOA was silent. In light of the fact that the manager can now be dismissed by an ordinary resolution, companies should consider including a higher threshold in their MOAs.</p>
<p><i>Shareholder details:</i> The name, nationality, date of birth and domicile of each shareholder must be provided in the MOA. If the managers/directors are named in the MOA, their full names, nationalities, places of residence and powers.</p>	<p><i>Share pledges:</i> Since the new CCL provides for shares to be pledged in accordance with the CCL and the company's MOA, shareholders are advised to consider whether to detail the terms upon which shares may be pledged in the MOA</p>

<p><i>Branches:</i> In addition to the head office, the MOA must also now list any branches that the company has (if any).</p>	
<p><i>References:</i> Any references to the old companies law in the MOA should be updated to refer to the applicable provisions contained in the CCL.</p>	

Once consideration has been given to the amendments to be made to a company's constitutional documents, the new memorandum and/or articles of association need to be drafted and executed by the shareholders before the notary public.

As explained above, if a company fails to make the necessary changes in order to comply with the CCL, the company will be deemed to be dissolved. Other than the obvious consequences of a dissolution, this could also potentially mean that since the company would no longer exist, the officers of the company, being the manager and/or directors, could be held personally liable for any liabilities of the company. This is in addition to the daily fine of AED 2,000 per day potentially being imposed on the company. Given these consequences and the fact that the clock is ticking, companies would be well advised to review their constitutional documents and make the necessary changes as soon as possible.

*With contributions from Omer Khan, Partner, Corporate Structuring*