

# UAE Companies Law: Ministry of Economy Acts to Clarify its Scope

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Although the new Commercial Companies Law (Federal Law no. 2 of 2015 on Commercial Companies) ("CCL") was highly anticipated, the changes were considered by many to be less sweeping than expected.

In addition, some provisions of the law served to create uncertainty in the minds of lawyers.

One such provision was Article 104 which states: *"In respect of matters not specifically provided herein, the provisions concerning Joint Stock Companies shall apply to the Limited Liability Company; and the words "Competent Authority" shall replace the term "Authority" wherever it appears."*

The precise operation of this provision was not spelled out in the CCL. Therefore, confusion developed in determining which provisions concerning public joint stock companies ("PJSCs") may or may not apply in respect of limited liability companies ("LLCs"). Even expert legal practitioners disagreed on the best and most feasible interpretations.

In order to assist the business and legal community the UAE Ministry of Economy recently issued Ministerial Resolution No. (272) of 2016 entitled 'Application of Some Provisions of Public Shareholding Companies to Limited Liability Companies' ("Resolution"). This Resolution serves to clarify the precise scope of operation of Article 104.

In this article, we have addressed key points the Resolution covers.

## **Which CCL provisions affecting PJSCs now apply to LLCs?**

The following PJSC provisions are now confirmed as applying to LLC's:

- The Articles of Association shall: (i) appoint the company directors and the Board members; (ii) fill vacant positions in the Board; and (iii) set the number, powers and term of office of directors. The General Meeting shall be in charge of any of these matters, if the Articles of Association remain silent (Article 4).
- A majority of votes by the Board is needed for a resolution to be passed. Before calling a General Meeting, the Board must hold its meeting at least 30 days earlier and must send all shareholders a notice with all relevant information of the General Meeting. Details of the General Meeting shall be noted in meeting minutes, which shall be signed by members attending the meeting and the rapporteur (Article 5).
- The Board and all relevant directors must put the interest of the company first and must act in line with what is authorized to them. The functions of the Board and executive management must be set in the Articles of Association (Article 6).
- The company shall appoint one or more auditors who shall comply with the CCL. These auditors shall be appointed for one renewable year. The auditors have the right of access to all Company books, registers and documents etc. and if the company's directors or management fail to enable the auditor to perform its duties, the auditor is required to send a copy of the report to the competent authority (Articles 7 & 8).

- The auditors shall present an annual report to the General Meeting, and shall be responsible for the correctness of all information presented (Article 9).
- The company shall prepare regular accounts in accordance with the international accounting principles and standards (Article 10).
- A shareholder holding 50% or more of the capital of the company may submit an offer to acquire the remaining shares of the company, which may be accepted or rejected by the shareholders (Article 11).
- Any shareholder holding more than 20% of the company capital may submit an application for the calling of the General Meeting, which must be called within 5 days. Any shareholder holding 10% of the company shares may submit an application for the calling of the General Meeting to an urgent meeting and shall accompany the application by supporting documents (Article 12).
- The company must deposit the cash dividends of the shareholders within 30 days from the date of issuance of a resolution approving the profit distribution (Article 13).
- The inclusion of an issue during the General Meeting must be made through an inclusion application, which must be made in writing, signed by shareholders representing 10% of the company and submitted to the chairperson who shall approve or reject it. The inclusion of an issue before the General Meeting can be made by shareholders holding 5% of the company profit within 5 business days from the date they are notified about the General Meeting. The issuance must include relevant documents and must be approved by the competent authority (Article 14).
- Under certain cases, such as an increase or decrease of the company capital, the General Meeting must issue a special resolution (Article 15).
- Any breach of the provisions shall be subject to penalties (Article 16).

### **Which provisions affecting PJSCs do not apply to LLC's?**

The key provisions affecting PJSCs which do not operate in the running of LLCs are provisions concerning the election of Board members, the number of members (minimum and maximum), or nationalities of the Board Chairman and members and their annual remuneration (Articles 143, 144, 145, 147, 149, 151 and 169), provisions governing related party transactions (Article 152) and restrictions concerning financial assistance (Article 222).

### **How has the Resolution served stakeholders in the UAE?**

The Resolution has provided the legal and business community with some much needed clarity particularly in clarifying that the restriction on companies providing financial assistance connected to the purchase of their own shares applies only to PJSC's and not to LLC's. This major clarification alone is a welcome development in resolving a key question in construing Article 104 of the new Law.