

An Overview of the New Jebel Ali Free Zone Company Regulations

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The Regulations came into force on 24 August 2016. According to a statement made by Sultan Ahmed Bin Sulayem, Group Chairman and Chief Executive Officer of DP World, Chairman of Ports, Customs and Free Zone Corporation, the Regulations “*reflect the needs of an ever evolving market in terms of providing facilities that are prompt, secure and form the best international practice*”.

Whilst JAFZA has previously had separate set of regulations governing free zone establishments and free zone companies, it varied this approach by bringing all types of company within JAFZA under one regulation. Thus, the Regulations repeal and replace the Free Zone Establishment Implementing Regulations No.1 of 1992 and the Free Zone Company Implementing Regulations No. 1 of 1999.

The Regulations constitute a major reform of the JAFZA company regulations and bring about some new principles and key legislative changes. This article provides an overview of the features and key changes that were introduced by the Regulations.

Application of the UAE Companies Law to companies within JAFZA

Although the federal laws of the UAE are stated in the Regulations to apply to a company and a branch within JAFZA, the Regulations have excluded Law No. 2 of 2015 concerning Commercial Companies from the application to a company or a branch in the free zone. However, according to the Regulations, the company registrar of JAFZA (“Registrar”) may apply certain provisions of the UAE Companies Law where the Regulations are silent on a certain matter.

Types of company recognised by the Regulations

The types of entity that were permitted prior to the enactment of the Regulations were the Free Zone Establishment (FZE), the Free Zone Company (FZCO) and the branch of a company. With the introduction of the Regulations, JAFZA has maintained these forms but also recognised Public Listed Companies (PLC) as a new type of company that can be established within JAFZA. A PLC within JAFZA can have two or more shareholders and may offer its shares to the public in accordance with the markets law of the relevant stock market. According to the Regulations, a PLC must list its shares on a stock exchange within nine months from the date of incorporation of the PLC, unless such time frame is extended by the Registrar.

As a further notable change in the Regulations, a civil company that is set up under the rules of the UAE Civil Transactions Law (Federal Law No. 5 of 1985) may be incorporated within the free zone. The regulations give the Registrar the authority to prescribe guidelines for the incorporation and operation of a civil company in the free zone in addition to the rules that are contained in the UAE Civil Transactions Law. Accordingly, the types of entity that are currently recognised by JAFZA are now expanded and comprise; the FZE, FZCO, PLC, civil partnership and the branch.

No minimum share capital requirement

Not too long ago, an FZE within JAFZA was required to have a minimum share capital of AED1,000,000 and

an FZCO AED500,000. This has changed under the Regulations as they do not prescribe a minimum share capital for an FZE or FZCO, but require that a company must have a share capital that is sufficient for the activities for which it is licensed. This is in line with the UAE Commercial Companies Law which also requires a limited liability company to have capital that is sufficient for fulfilling its activities, although the UAE Commercial Companies Law does give the UAE Cabinet the right to prescribe a minimum share capital based on a recommendation from the Minister of Economy.

As for a PLC, it is required to have an amount of a share capital that is either sufficient for the activities permitted under its licence or the amount of capital required under the relevant markets law.

Non-cash consideration for shares

Under the old JAFZA regulations for an FZE or FZCO, the contribution in kind for shares was not recognised and in practice it was not possible to subscribe in shares other than for cash. However, under the Regulations, it is now possible for shares to be issued in an FZE, FZCO (and PLC) for a non-cash consideration if a resolution is passed by the shareholders at a general meeting by more than 75% of the votes of shareholders or any greater majority as may be prescribed by the memorandum of association. The value of the consideration must be supported by an auditor's letter and the resolution and the auditor's letter must be filed with the registrar within four days from the date of passing the resolution. The introduction of this principle is beneficial to businesses as it gives them flexibility and options for subscription of shares or increasing the share capital of a company.

Different classes of shares

Other than in some free zones, such as the Dubai International Financial Centre and the Dubai Creative Clusters Free Zone, companies are generally not allowed to have different classes of shares in the UAE. As a result of the Regulations, different classes of shares are now available for businesses within JAFZA.

According to the Regulations, an FZCO may create different classes of shares subject to the approval of the Registrar. Rights attached to the shares may be varied by an amendment to the memorandum of association of the company if approved by a resolution of more than 75% of the votes of shareholders or by a resolution of all the shareholders holding the shares of the class whose share is being varied. A PLC may also have different classes of shares in accordance with its memorandum and articles of association.

Change of domicile and continuation of business

Pursuant to the Regulations, it is possible for a foreign company to apply to the Registrar for the continuation of the foreign company as a company within JAFZA, whether as an FZE or FZCO. In other words, companies may transfer operations in the free zone without having to establish a new entity.

The application must include certain information and supported by documents that are set out in the Regulations which include among other documents a resolution of the foreign company resolving to transfer the foreign company into JAFZA as an FZE or FZCO. On acceptance of the application, the free zone will issue the foreign company with a licence and a continuation certificate. The date of the incorporation that will be reflected in the continuation certificate is the date of incorporation of the foreign company in its jurisdiction.

The above are some of the key changes that were introduced by the Regulations. Other changes include the recognition of electronic documents and signature, giving an FZCO and PLC the right to purchase its own shares as treasury shares and prohibiting financial assistance to the directors of an FZCO and PLC.

Conclusion

The Regulations mark a step forward for JAFZA as they bring company legislation in the free zone in line with global best practices and standards. The modernisation of the company regulations will, in our view,

benefit JAFZA and enable it to attract further foreign business and investments. However, given that the Regulations are still in its infancy, it remains to be seen how certain aspects of the Regulations will be implemented in practice, particularly the incorporation of a PLC and change of domicile of companies.

Al Tamimi & Company's corporate structuring team regularly advises on corporate structuring and company set up matters. For further information please contact Samer Qudah (s.qudah@tamimi.com) or Samer Hamzeh (s.hamzeh@tamimi.com).