

New UAE Companies Law – Key Provisions

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New UAE Commercial Companies Law - Status

A revised form of the UAE Commercial Companies Law (the New CCL) has now been made available in Arabic, with an English translation issued by Westlaw Gulf. This draft has been approved by the UAE Federal National Council, as announced on 28 May 2013.

The final steps for bringing the New CCL into force are its ratification by the Supreme Council, signature by the President and publication in the UAE Federal Official Gazette. It will enter into full force on the date specified in the law (which is currently three months from the date of publication). Until then, the law remains as set out in UAE Federal Law No.8 of 1984, as amended (the Current CCL).

Whilst we cannot be certain of the final form of the New CCL until such time as it is gazetted, we would not anticipate any significant amendments at this stage of the legislative process.

Objective and Overview

The New CCL contains a number of helpful improvements and clarifications on the Current CCL, and is to be welcomed. However, it anticipates and relies on the later publication of regulations to implement and expand upon its operative provisions in a number of areas, and we have to wait for those

implementing regulations to be published before the New CCL can be considered to be comprehensive.

The stated objective of the New CCL is to continue the UAE's development into a global standard market and business environment, particularly in relation to corporate governance, the protection of the shareholders and promotion of social responsibility of companies.

Application of the New CCL and Exemptions

In the main, the New CCL remains applicable to UAE incorporated companies and certain foreign and free zone incorporated entities. The exemptions in the Current CCL have been retained and expanded, and the circumstances in which those exemptions are lost have been clarified.

- **Exemptions remain in effect (Article 4):** The applications and exemptions under the Current CCL remain in effect. These exemptions may be lost upon sale or public offer of any percentage of its share capital or listing of its shares on any stock exchange in the UAE.
- **Companies wholly owned by the Federal or Local Government (Article 4):** These companies are exempt from the New CCL if a special provision is contained in the company's memorandum or articles of

This note highlights some of the key changes that the New CCL introduces to the statutory regime applicable to commercial companies in the UAE. We have also included our initial view on the likely impact of some of these amendments. Our comments are grouped under the following headings:

- Application and Exemptions
- Foreign Ownership
- Limited Liability Companies
- Public Joint Stock Companies
- Private Joint Stock Companies
- Free Zone Companies
- Foreign Companies
- New Corporate Structures and Entities
- Fund Raisings and Listings
- Maintenance of Capital
- New Public Companies' Register
- Corporate Governance and Social Responsibility
- Compliance and Breach
- Conversion, Merger and Acquisition of Companies

This note is based on the current Westlaw Gulf English Translation

association. The exemption is lost upon the sale or public offer of any percentage of the company's share capital or listing

of its shares on any stock exchange in the UAE.

- **Specific industry exemptions (Article 4):** Companies which operate in oil exploration, drilling, refining, manufacturing, marketing and transmission or in the power industry or in power generation, gas production or in water desalination, transmission or distribution industries and whose share capital is held indirectly or directly as to at least 25% by the Federal or an Emirate Government are exempt from the New CCL. For the exemption to apply, the company's memorandum or articles of association must contain special exemption provisions. The exemption is lost upon sale or public offer of any percentage of the company's share capital or listing of its shares on any stock exchange in the UAE.
- **Free zone companies (Article 5):** There is no change and free zone companies remain exempt where specified under the regulations of the relevant free zone. The New CCL applies to the extent free zone companies are also operating inside the UAE. *See also "Free Zone Companies"*

Foreign Ownership

- It was widely anticipated that the New CCL would pave the way for relaxation of the existing requirement for UAE companies to be owned at least 51% by UAE nationals. A previous draft of the revised form of law circulated in April 2011 included a provision enabling the UAE Cabinet to issue a Resolution determining the forms of companies and

activities that may be held in full by a foreign person or where the share of the foreign partner may exceed 49% of the share capital of the company. However, this provision of the April 2011 draft was not included in the version that was approved by the Federal National Council and has not been retained in the New CCL. It appears that this subject remains under some discussion by policy makers and will now be addressed separately in the proposed new Foreign Investment Law (a draft of which has not, to our knowledge, been made available).

- We will therefore need to wait for the proposed Foreign Investment Law to be published to see whether a framework is going to be provided for the relaxation of the foreign ownership restrictions in certain market sectors. The New CCL does, however, include single shareholder structures, which may anticipate this development.

Limited Liability Companies (LLC(s))

The framework relating to LLCs remains largely unchanged. However, the New CCL does include some significant amendments aimed at both making LLCs simpler to manage and more attractive to investors.

- **Shareholders (Article 71):** The maximum number of shareholders has been increased from 50 to 75. Provision for one natural or corporate person to own an LLC.
- **Share capital (Article 76):** No minimum share capital position has been retained. Although not



Foreign Ownership

James McCarthy

"The status quo in relation to the foreign ownership threshold has been maintained. Although the provisions contained in early drafts of the New CCL relating to the issuance of Ministerial Resolutions relaxing the foreign ownership prohibition in certain industries have not been included in this draft, we still expect a Foreign Investment Law to be issued at some point in the future."

The wider debate by policy makers remains ongoing, and the New CCL's silence on the issue does not mean that majority holdings in UAE corporate vehicles will not be permitted in the future."

mandatory, historical practice of AED 300,000 in Dubai and AED 150,000 in Abu Dhabi is expected to continue to be followed.

- **Pledge over shares (Article 79):** A pledge over shares in an LLC is now specifically provided for. This clarification introduces more certainty in the utilisation of LLCs in financing structures and the granting of security over the shares in these entities rather than more burdensome private joint stock companies. However, it remains unclear how the process for taking and enforcing a pledge over shares in an LLC will operate in practice, given that there are no share certificates, no numbered or registered shares, and no identifiable "part" of the shares as a whole that is

attributable to any shareholder in an LLC, although the New CCL does now provide for this type of pledge to be registered.



Pledge over shares in an LLC

Robin Abraham

"The explicit provision for the creation and registration of a pledge over shares in an LLC is a positive clarification of what was an uncertain issue. The amendment will lead to the more common utilisation of LLCs as vehicles in secured lending structures, rather than more costly and burdensome private joint stock companies. It will also give banks a further cost effective route for taking a registered security interest, which is to be welcomed.

While challenges will likely remain in relation to the procedure for taking and enforcing a pledge over shares in an LLC, the framework for the registration of pledges with the registrar will provide additional comfort to the market."

- **Pre-emption rights and valuation on exit (Article 80):** Pre-emption rights on a transfer of shares in favour of the existing partners have been retained. Valuation of shares in the case of a dispute will now be assessed by one or more experts rather than by the company's auditors.
- **Removal of restriction on number of managers:** There is no maximum number of managers for an LLC under the

New CCL. Previously, the maximum was five.

- **General assembly (Part 3, Chapter 3):** A new requirement for partners representing at least 75 percent of the share capital to be present at a general assembly meeting for it to be quorate has been included. The form of the meeting invitation can now be by registered letter or as set out in the memorandum. Timeframe for dispatch of the invitation has been reduced from 21 days to 15 days.
- **Application of provisions applying to joint stock companies (Article 104):** There is a new requirement that unless otherwise provided by the New CCL, the provisions concerning joint stock companies shall apply to LLCs. It is unclear how the provisions relating to joint stock companies will apply to LLCs in practice.

Public Joint Stock Companies

There are some substantive amendments to the governance of Public Joint Stock Companies. The New CCL introduces a modified process for the valuation of shares in kind. It also appears to provide a degree of flexibility for the Cabinet to permit different classes of shares, including preference shares, although it remains to be seen how this is likely to operate in practice.

New provisions permitting the issuance of new shares to a "strategic partner" without pre-emption rights have also been introduced, which, taken with the potential for different classes of shares, may now offer new fund raising opportunities – although we have some reservations that the current definition of "strategic partner"

for these purposes is perhaps unnecessarily narrow.

- **Founders (Article 107):** Minimum number of non-governmental founders required reduced from ten to five.
- **Directors (Article 143):** The maximum number of directors on the board of a public joint stock company has been reduced from 12 to 11. At least two thirds of directors are required to be hold shares in the joint stock company.
- **General meetings (Article 172):** Notice period reduced from 21 days to 15 days. Introduction of shortened notice period for reconvened meetings. The distinction between ordinary general meetings and extraordinary general meetings is abolished.
- **Share capital (Article 193, 194):** AED10 million minimum share capital requirement has been increased to AED30 million. Concept of authorised (but not issued) share capital is introduced. Authorised share capital is determined in the company's articles of association and shall not exceed two times the issued share capital at any time. The time period from the date of the authorizing resolution within which the board of directors shall implement the increase of the issued share capital is reduced from five years to one year.
- **Valuation of shares in kind (Article 194):** Where a company wishes to issue shares paid up by non-cash consideration, independent financial advisors will still need to be appointed by SCA to perform an independent

valuation of the asset. A new provision has been included to stipulate that exaggeration or negligence in respect of such valuation could result in SCA banning the financial adviser from future mandates.

- **Increase in share capital (Article 195):** The share capital of the company may be increased by an issue of new shares; capitalizing the reserve or converting any bonds or "deeds" issued by the company into shares. No detail in relation to "deeds" is given, but the Arabic text refers to "sukuk".
- **Share premium permitted (Article 196):** Issuing shares at a premium to the nominal value of shares may be authorised and determined by special resolution, subject to the prior consent of SCA. Premium shall be added to the legal reserve; even if the reserve exceeds 50% of the share capital. The New CCL provides that the Chairman of SCA shall issue a resolution determining the method of calculation of the premium.
- **Classes of shares (Article 206):** General prohibition on different classes of shares for public joint stock companies retained. However, the Cabinet may, based on SCA recommendations, issue a decision determining other classes of shares and conditions of issuing shares, rights and obligations arising from such shares and rules and procedures regulating them. This therefore appears to provide a degree of flexibility for the Cabinet to permit different classes of shares, including preference shares.
- **Purchase of own shares (Articles 203, 219):** Purchases of own shares are now expressly permitted but only if such purchase is to decrease its share capital or extinguish these shares. As an exception, the company (after two financial years from incorporation as a public joint stock company) may purchase no more than 10% of its share capital for the purpose of re-selling such shares in accordance with the procedures prescribed by SCA. Shares acquired by the issuing company may not be voted in the general assembly or participate in the company's profit.
- **Issuances outside of pre-emption regime (Article 223, 224):** New provisions permitting issuance of new shares to a "strategic partner" (being a partner whose contribution to the company provides technical, operational or marketing support to the company for the good of the company) on such terms as are approved by a special resolution of the shareholders at a general meeting and by SCA. Provisions in the CCL relating to the means of increasing share capital and to pre-emption rights are disapplied from issuances to such a strategic partner.
- **Name:** Deletion of the express requirement for the name of a public joint stock company to be derived from its objects.
- **Shareholder unfair prejudice claims (Article 164):** A new procedure for an application to be filed by one or more shareholders (holding at least 5% of the shares of the company) to SCA to issue a resolution or, if SCA rejects the



Non-pre-emptive Share Issuance

Mike Taylor

"The statutory pre-emption right has always been a key restriction upon equity fund raising. The new concept of a strategic partner who provides technical, operational or marketing support to the company to issue shares on a non-pre-emptive basis is a positive step and may now offer new fund raising opportunities.

However, the definition of "strategic partner" is relatively narrow and limits the ability to raise capital to persons whose activities are similar or supplementary to the company.

The new mechanism may be applied in a takeover context, by enabling a bidder to acquire an equity stake, possibly at a price different to the prevailing market price, by way of a subscription for new shares in a public joint stock company where the target board is supportive."

application or does not review it within 30 days, the court, in the event that such shareholder considers that the affairs of the company have been or are going to be conducted to the detriment of all or any of the shareholders. Ultimately, the court may annul or require the taking of any act that is the subject of the application.

- **Pre-emption Right & Subscription to New Shares (Articles 197, 198):** A shareholder may sell the pre-emption right to another

shareholder or to third parties with material consideration.

- **Purchase of assets during first financial year (Article 142):**

Directors to notify SCA if the company purchases assets, companies or establishments for a total amount greater than 20% of the share capital of the company during the first financial year. SCA has powers to assess such acquisitions. We interpret this to mean that SCA may require an additional valuation exercise to be carried out.

Private Joint Stock Companies

As under the Current CCL, other than the provisions relating to the public



Implementation and Compliance

Graham Watt

"The New CCL provides for a one year period (which may be extended by Cabinet Resolution) from its implementation (which is currently unknown) for existing companies to amend their memorandum and articles of association to comply with the provisions New CCL. Failure to do so may result in the dissolution of the company, although we would expect this sanction only to be applied to significant breaches (such as the failure to increase share capital to the minimum level).

Although the majority of amendments will likely be minor (for example reflecting amended notice periods), existing companies should review their constitutional documents and consider what amendments may be required to comply with the New CCL."

subscription for shares and as expressly provided, the provisions in the New CCL relating to public joint stock companies also apply to private joint stock companies. In addition, there are a number of amendments specific to private joint stock companies.

- **Number of Shareholders (Article 255):** The minimum number of shareholders has been reduced from three to two and the maximum number of shareholders is now two hundred. Certain exceptions apply: (i) existing private joint stock companies, (ii) transfers by way of inheritance, legacy or court order; and (iii) one natural or corporate person may incorporate a private joint stock company. Minimum number of members required to form a Founders Committee has been reduced from three to two.
- **Minimum Share Capital (Article 256):** The minimum share capital has increased from AED 2 million to AED 5 million, to be paid up in full. Existing private joint stock companies exempt.
- **Limitation on transfer of shares following incorporation (Article 264):** There is a prohibition on transfer of shares prior to publication of accounts covering at least one financial year, except for share transfers to other founders, successors and upon bankruptcy of the founder.

Free Zone Companies

The New CCL seeks to bring further clarity to the application of the on-shore regime to free zone entities operating in the UAE.

- **Compliance with the New CCL (Article 5):** Free zone

companies conducting business exclusively outside the UAE will not have to comply with the New CCL. Those conducting business outside the free zone but inside the UAE will have to comply with the provisions of the New CCL.

Foreign Companies

The New CCL introduces additional requirements in relation to the operation of business activities in the UAE through a foreign registered vehicle. These include the filing of financial information in certain circumstances.

- **Agent (Article 329):** Foreign companies may elect to appoint a UAE national. The requirement that a company appointed as an agent be a UAE incorporated company wholly owned by UAE nationals has been retained.
- **Financial filings (Article 331):** Balance sheet and profit and loss account must be filed annually, together with an auditor's report and a copy of the holding company accounts.
- **Representative offices (Article 332):** The ability to establish representative offices for marketing purposes only has been formalised. Commercial activities remain prohibited.

New Corporate Structures and Entities

In addition to new provisions relating to existing corporate vehicles, the New CCL introduces certain new corporate structures and entities.

- **Holding Companies (Part 6, Chapter 1):** The concept of a "Holding Company" has been introduced and can be

incorporated as either a joint stock company or an LLC. Generally not permitted to conduct activities other than through their subsidiaries. Permitted objects limited to (i) holding shares or stocks of joint stock companies and LLCs and managing those companies, (ii) providing loans, guarantees and finance to its subsidiaries, (iii) acquiring the assets required to commence its group's activities, and (iv) acquiring certain industrial and IP rights for use by its subsidiaries. A subsidiary cannot hold shares in its Holding Company. *See also "Conversion, Merger and Acquisition of Companies"*.

- **Common Investment Companies (Part 6, Chapter 2):** Introduction of the concept of investment funds incorporated as separate legal personality. Specific conditions and regulations to be established by SCA.
- **Single shareholder structures:** Now permissible for a company to be held by a single person. *See also "Foreign ownership"*.
- **Form of company with governmental shareholders:** The requirement that a company in which a state or public body has a shareholding be a joint stock company has been abolished.

Fund Raisings and Listings

The basic premise that only shares in a public stock company may be listed and that securities cannot be offered to the public without SCA consent have been retained. Significantly, there have been reductions in the free float requirements that permit the

founders to retain control of the company.

There have also been some significant developments in the wider fund raising and listing frameworks, including in relation to bond issuances – although the wider bond regulatory framework remains subject to further regulations to be published by SCA. These amendments are designed to continue the UAE's emergence as an international market and a place to do business.

- **Bond issuances (Articles 32, 229, 230):** The prohibition on companies other than joint stock companies (both public and private) issuing bonds on a public offering basis has been retained, as has the requirement for a resolution at the general assembly of the company authorising the issuance unless separate regulations, to be published by the Central Bank or SCA, state otherwise. However, the requirement that the value of bonds issued must not exceed a company's capital has been removed.
- **Issuances of shares (Article 32):** SCA consent required for the publication of an advertisement in the UAE which invites public subscriptions in securities by any company, entity, natural person or corporate person incorporated or registered in the UAE or in free zones or abroad.
- **Reduced free float requirements (Article 117):** The minimum free float requirement on IPO has been reduced from 55% to 30%. Maximum decreased from 80% to 70%. There is also a prohibition on the



Bond Issues

Debashis Dey

"The removal of the requirement that the value of bonds issued by a company must not exceed a company's capital may expand the capital raising opportunities for issuers who wish to issue directly onshore and might offer the potential for more simple capital structures in their fund raising."

The New CCL also makes clear that the role of SCA and / or the Central Bank will be much more central to how regulated banks or UAE companies directly raise public debt in the capital markets as some of this regulation has now devolved to these entities and has been removed from commercial companies legislation."

founders subscribing for shares offered for public subscription.

- **Book builds (Article 129):** SCA may permit and regulate subscriptions by way of a book build.
- **Underwriters to be certified by SCA (Article 123):** Underwriters certified by SCA may be appointed on an IPO and subsequent capital raisings.

- **Issuances outside of pre-emption regime (Article 223):** New provisions have been included permitting issuance of new shares to a "strategic partner" (being a partner whose contribution to the company provides technical, operational or marketing support to the company for the good of the company) on such terms as are approved by a special resolution of the shareholders at a general meeting and by SCA. Provisions relating to the means of increasing share capital and pre-emption rights are disapplied.

Maintenance of Capital

The New CCL introduces the concept of and prohibits financial assistance for the first time. Although anticipated, its inclusion is surprising given the wider retreat from these prohibitions in certain other jurisdictions.

The New CCL also widens the prohibition on loans to directors of joint stock companies to include their family members, and the exemption for banks and credit companies has been deleted.

- **Prohibition on subscription for reputation or influence (Article 17):** The New CCL introduces a prohibition on the subscription for shares in consideration for reputation or influence.
- **Financial assistance prohibition (Article 222):** Joint stock companies may not provide financial assistance to any shareholder to enable them to hold any shares, bonds or "deeds" issued by the company. No detail in relation to "deeds" is given, but the Arabic text refers to "sukuk". The prohibition is broad and includes providing

loans, gifts or donations, assets of the company as security and a security or guarantee of the obligations of another person. There is no statutory "whitewash" regime of the type seen in other jurisdictions.

- **Prohibition on loans to directors (Article 153):** The new CCL widens the prohibition on loans to directors. Joint stock companies may not make loans to their directors, a director's spouse, children and any other relative to the second degree. The exemption for banks and credit companies has been deleted and will no longer apply.

New Public Companies' Register

The New CCL contemplates the creation and maintenance of a public companies' register. The public availability of companies' documentation is a significant development towards a more transparent market.

- **New public companies' register (Part 1, Chapter 3):** The public will be able to request copies of the constitutional documents held by the registrar. The New CCL provides for the future publication of a Ministerial resolution setting out how the register will be managed and operated in practice. It is anticipated that an electronic filing and request system familiar in certain other jurisdictions will be adopted.

Corporate Governance and Social Responsibility

The New CCL contains provisions which strengthen the Current CCL's corporate governance regime in line with wider developments in the UAE's

corporate governance framework, with a view to continuing the growth of investor confidence and the protection of market stakeholders.

However, it had been anticipated by some commentators that a new corporate governance regime would be introduced by the New CCL to regulate LLCs in addition to private and public joint stock companies. While no such regime has been included in the New CCL, certain corporate governance provisions



Financial Assistance

Nigel Wellings

"While perhaps surprising given the wider retreat from financial assistance prohibitions in certain other jurisdictions, the inclusion of a new financial assistance prohibition for joint stock companies forms part of the New CCL's stated wider goal of protecting shareholders through more robust maintenance of capital provisions. The prohibition is wide, and includes loans, gifts, donations, security over the assets of the company and guarantees, in each case given by the company or its subsidiaries, and relates to a range of securities issued by the company. There is no whitewash procedure (a statutory process by which the financial assistance can be authorised, which is seen in certain other jurisdictions).

The interpretation and implementation of the financial assistance prohibition in practice will be critical to the structuring of certain transactions and remains uncertain, with no precedent in the market."

relating to LLC's have been introduced. It is expected that more fulsome corporate governance legislation in relation to both public stock companies and LLCs may be published in the future.

The New CCL also introduces the concept of "social responsibility" in line with similar statutory obligations



Social Responsibility
Rupert Harper

"The New CCL lists the promotion of corporate social responsibility as one of its aims, a move consistent with developments in some other jurisdictions.

The Council of Ministers is tasked with responsibility for issuing controls to motivate companies on this front but so far there is no guidance as to the direction and pace of development or the anticipated nature and scope of these social responsibilities. We will watch for developments in this area with interest."

in other jurisdictions.

- **Inspection of companies (Part 10):** This provision introduces concept of "inspection" of companies by "Inspection Committees" (in relation to which no further details are provided). Shareholders representing at least 10% of the share capital may request an inspection. Ministry to provide regulations in relation of inspection of private joint stock companies, SCA to provide regulations in relation to public joint stock companies, with

those bodies also responsible for producing inspection reports.

- **Sanctions and personal liability:** Sanctions include potential dismissal of directors and auditors and personal liability for fines and other penalties. *Please see also "Penalties for Breach".*
- **Joint stock companies:**
 - *Corporate governance framework to be published (Article 152):* The New CCL anticipates new resolutions to lay the general framework regulating corporate governance in connection with private joint stock companies where the number of shareholders therein exceeds 75. The Chairman of the SCA shall issue the governance resolutions in relation to public joint stock companies. The board of directors of a company or, as applicable, its managers shall be responsible for the application of the rules and the criteria of the corporate governance regime.
 - *Prohibition of related party transactions (Article 170):* General prohibition on related parties and personnel of a joint stock company utilising the information in their possession to achieve any interest whatsoever. The joint stock company may not enter into transactions with related parties in excess of 5% of the share capital of the joint stock company or AED 10 million (whichever is less), without the consent of the General Assembly.

- *Corporate benefit test (Article 6):* Any board resolution of a joint stock company shall be invalid if it is passed in contravention of the CCL or the memorandum of association of the joint stock company, or for or against a certain class of shareholder or to bring a special benefit to a related party without consideration of the interests of the joint stock company.

- **LLC corporate governance regime.** No specific corporate governance regime has been introduced. However:
 - *(Article 86)* New non-compete provision prohibiting a director (without the consent of the general assembly) from holding a management position at a competitor or conducting any competing business for his own account.
 - Additional provisions regarding the management of an LLC and, in particular, the conduct of general assembly meetings have been added.
 - *(Article 84)* The provisions that apply to the directors of Joint Stock Companies apply to the managers of LLCs.
 - *(Article 104)* There is a new requirement that unless otherwise provided by the New CCL, the provisions concerning joint stock companies shall apply to LLCs. It is unclear how this will apply in practice.
- **Social responsibility (Articles 2, 375):** The New CCL introduces the concept of "social responsibility" in line with similar

statutory obligations in other jurisdictions. However, the wider social responsibility framework has not been set out in the New CCL, and will be implemented by future Ministerial resolutions.

Compliance and Penalties for Breach (Part 11)

The New CCL provides a one year period for existing companies to amend their constitutional documents, and contains strengthened penalties

for breach. These include personal liability of directors and auditors including significant fines and indictment.

- **Mandatory amendments to constitutional documents (Article 374):** One year period from implementation for existing companies to amend their memorandum and articles of association to comply with the provisions New CCL. Failure to do so may result in the dissolution of the company.
- **Removal of directors and / or auditors (Articles 86, 177, 247, 248):** Directors and auditors found in breach may be subject to removal from office. Please see also "Corporate Governance".
- **Personal liability and significant fines:** Significant fines may be levied on the officers of a company found to be in breach of the New CCL. Penalties imposed on the joint stock company due to contraventions of the New CCL or articles of association by the board of directors may be deducted from the board's remuneration.

Conversion, Merger and Acquisition of Companies

The Current CCL provides for the conversion and merger of corporate entities, but the provisions relating to these mechanics are limited. The New CCL seeks to bring further clarity to these processes, although implementing regulations are expected to complete the strengthened regulatory framework.

- **Conversion of the company into another legal form (Article 274):** The New CCL contemplates the future issuance of rules and regulations by the Ministry or SCA relating to the conversion of companies. It also introduces detailed provisions in respect of:
 - *The conversion of a public joint stock company to a private joint stock company:* Conversion requirements include: (i) the approval of a "Common Committee" formed by a resolution of the Minister of Economy including representatives from the Ministry, SCA and the competent authority, (ii) newspaper announcement of the proposed conversion, (iii) notification of the partners and creditors by registered letter, (iv) special resolution of the shareholders representing 90% of the share capital of the company. The New CCL contains both shareholder and creditor objection rights and procedures.
 - *The conversion of companies other than a joint stock company:* Conversion requirements include a resolution to amend the

memorandum of association and, in the event of conversion into a joint stock company, the unanimous consent of the shareholders.

- **Takeovers (Part 7, Chapter 3):** The Current CCL does not include a takeover regime. "Takeover" is not defined in the New CCL but the new provisions imply that a formal takeover regime may be introduced. The



Mergers and Takeovers

Mohammed Al-Shukairy

"The New CCL contains a similar framework for conducting a statutory merger, which will continue to be available as a tried and tested method of merging public joint stock companies.

The New CCL does not, however, contain additional mechanisms that would facilitate takeovers, such as a procedure to squeeze out minority shareholders once a bidder crosses a certain ownership threshold. As such, the methods by which takeovers can be executed from a practical perspective will still remain restricted.

It remains to be seen what may be included in this regard in future legislation, as there is a clear need to develop the legal and regulatory framework further to facilitate public company M&A, which will be important to keep senior management incentivised to look after their stakeholders and facilitate shareholder activism or consolidation where appropriate."

details of such regime have not been published, but SCA has been confirmed as the competent and issuing authority.

■ **Mergers:**

- *Procedure (Article 283):* The New CCL is not definitive on the procedure for and method of merger of two or more companies, and anticipates that the Minister of Economy will issue a resolution regulating the methods, conditions and procedures of mergers in respect of companies other than joint stock companies, where such regulations will be issued by SCA.
- *Merger contract (Article 284):* The New CCL removes specific references to merger by way of acquisition or merger of two companies into a new company and

simply states that a company may merge with another company by a contract made between the merged companies. The merger contract must set out (i) the draft memorandum and articles of association to be adopted upon completion, (ii) name and address of each proposed director; and (iii) method of conversion of the shares of the existing entity.

- *Shareholder and creditor objections (Article 289):* Shareholders holding at least 20% of the share capital of either existing company may appeal the merger before the court. The New CCL contains provisions for determining the value of capital to be returned to objecting (and exiting) shareholders. Merging companies must

notify their creditors within 10 days of the merger resolution notifying them of their right to object to the merger within 30 days from the date of such notice. Creditors may apply to the court to suspend the merger if their notification of an objection is not paid or settled within 30 days of the date of notice.

- *Holding Companies:* Mergers of a Holding Company with one or more of its subsidiaries and of subsidiaries of the same Holding Company are exempt from the merger contract requirement.

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