

# Perspectives on the new UAE Commercial Companies Law – What do you need to know?

The long awaited new UAE Commercial Companies Law (Federal Law No. 2 of 2015) (the New CCL) has been published in the UAE Federal Official Gazette (Issue 577) dated 31 March 2015. The New CCL will enter into full force three months after its publication, i.e. on 1 July 2015.

The New CCL contains a number of new concepts and clarifications to Federal Law No. 8 of 1984, as amended (the Current CCL), and is to be welcomed. However, the underlying framework of the Current CCL remains largely intact and the New CCL anticipates and relies on the later publication of certain regulations to implement and expand upon its operative provisions in a number of areas.

We will have to wait for the relevant implementing regulations to be published before the New CCL can be considered to be comprehensive and assessed in its entirety. In the interim, implementing regulations issued in connection with the Current CCL will continue to apply to the extent they do not conflict with the New CCL. How this will apply in practice remains to be seen.

## Objective

The stated objective of the New CCL is to continue the development of the UAE's business environment in accordance with international standards, particularly in relation to corporate governance, the protection of shareholders and the promotion of social responsibility of companies.

## Application of the New CCL and exemptions

The New CCL remains applicable to UAE incorporated commercial companies and certain foreign and free zone incorporated entities, subject to certain exemptions. The exemptions in the Current CCL have been retained and expanded, and the circumstances in which those exemptions cease to apply, have been clarified.

- **Companies exempt pursuant to a Cabinet resolution or special Federal Laws (Article 4):** Companies may be exempted from the New CCL pursuant to a Cabinet resolution or a special Federal Law. For the Cabinet exemption to apply the company's memorandum or articles of association must contain special exemption provisions in accordance with instructions issued by the Cabinet.

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:

- Objective
- 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 companies registrar
- 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

- **Companies wholly owned by the Federal or Emirate Government and specific industry exemptions (Article 4):** Companies wholly owned by the Federal or Emirate Government (including their wholly owned subsidiaries) and companies which operate in the oil, power generation, gas production or water desalination sectors and whose capital is held directly or indirectly 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 will cease to apply upon the sale or offer of any percentage of the company's capital in a public subscription or listing of its shares on any stock exchange in the UAE.
- **Companies exempted under the Current CCL (Article 4):** Exemptions under the Current CCL are grandfathered but may be lost upon the sale or offer of any percentage of the company's capital in a public subscription or listing of its shares on any stock exchange in the UAE.
- **Free zone companies (Article 5):** 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 in the UAE outside the relevant free zone. See also "Free zone companies" below.

## Foreign ownership

The requirement for UAE companies to be owned at least 51% by UAE nationals has been retained. In addition, the New CCL grants the Cabinet the right, upon the recommendation of the Minister of Economy, to limit certain sectors to UAE nationals only (Article 10).

At the Annual Investment Meeting held in Dubai on 30 March 2015 the UAE Minister of Economy reiterated the Government's intention to enact a new Foreign Direct Investment Law that would allow increased foreign ownership in certain (but as yet unspecified) sectors outside free zones. According to recent press articles, the law will be designed to encourage innovation and technology transfer. It will likely require companies that are granted higher foreign ownership rights to provide support or expertise to sectors identified by the Government as strategically important. To date, no timeline has been published for the introduction of the new Foreign Investment Law.

## Limited liability companies

The framework relating to limited liability companies (LLC(s)) remains largely unchanged. However, the New CCL does include some amendments aimed at making LLCs both simpler to manage and more attractive to investors.

- **Shareholders (Article 71):** The maximum number of shareholders remains 50, as opposed to 75, which was proposed in earlier drafts. The New CCL allows a single natural or corporate person to establish an LLC. How this will operate in practice remains to be seen.
- **Share capital (Article 76):** The requirement for a company to have adequate share capital in order to achieve the purpose of its incorporation (but with no specified minimum) has been retained. Although not mandatory, the historical practice of AED300,000 minimum in Dubai and AED150,000 in Abu Dhabi is expected to continue to be followed.



### 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, we still expect a Foreign Direct 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 foreign majority holdings in UAE corporate vehicles will not be permitted in the future."



### Pledge over shares in LLCs

**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."

- **Pledge over shares (Article 79):** A pledge over shares in an LLC is now specifically provided for, and the New CCL provides for this type of security to be registered. This clarification introduces some additional certainty with regard to the utilisation of LLCs in financing structures and the ability to grant security over the shares in these entities rather than using the 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. Pre-emption rights would still apply and 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 which, together, raise a number of practical challenges. It is unclear how the new provision will be interpreted in light of requirements relating to possessory pledges set out in the UAE Civil Code (Federal Law No. 5 of 1985, as amended) and the UAE Commercial Code (Federal Law No. 18 of 1993). See also "Attachment of shares" below.
- **Pre-emption rights and valuation on exit (Article 80):** Pre-emption rights on a transfer of shares in favour of the existing partners (which cannot be waived in advance) have been retained. Valuation of shares in the case of a dispute will now be assessed by one or more experts nominated by the competent authority rather than by the company's auditors.
- **Attachment of shares (Article 81):** The New CCL clarifies the provisions relating to the attachment of shares in an LLC. In the event that a creditor proceeds with the enforcement of its rights but fails to agree with the debtor and the LLC on the conditions and mechanics of sale of the pledged shares, such pledged shares shall be disposed of by public auction following a request to the competent court. The shareholders will have the right to buy back the shares from the winning bidder within 15 days of the public auction, on the same terms and conditions. The same rules apply in the event of bankruptcy of a shareholder. This clarification will assist with the enforcement of share pledges over LLC shares.
- **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% of the share capital to be present at a general assembly meeting for it to be quorate has been included (previously, it was 50%). The meeting invitation can now be sent by registered letter or as set out in the memorandum. The timeframe for dispatch of the invitation has been reduced from 21 days to 15 days. Resolutions are then passed by the majority of shareholders present at the meeting voting in favour, or such higher number as specified in the memorandum of association. This is a numerical majority of shareholders at the meeting, and not based on the percentage of the share capital held. It is unclear whether the memorandum of association may require for a certain percentage of the share capital (whether present or not) to vote in favour in addition to the numerical threshold.
- **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 apply to LLCs. It is unclear how this will be interpreted (for example, whether the prohibition on financial assistance will apply to LLCs).

## 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 will be implemented.

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):** The minimum number of non-governmental founders required has been reduced from 10 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. The total number of directors must be an odd number – an amendment that appears to be designed to guard against potential board deadlock. At least two-thirds of directors are required to hold shares in the joint stock company. Directors shall be elected by way of cumulative voting, i.e. each shareholder may distribute his votes (being equal to the number of shares held by him) among the candidates he prefers.
- **Powers of the board (Article 154):** The Current CCL provides that the board of directors may not sell the company's real estate properties or its places of business, nor mortgage such properties unless authorised by the articles of, or a resolution of, the general assembly of the company. The New CCL appears to expand this restriction, stating that the board of directors may not mortgage "movable and immovable property" of the company unless authorised by the articles or a special resolution. As many existing companies will not have the necessary authorisation in their articles, this will make it more burdensome for companies to provide this type of security to their lenders and will affect existing practices for corporate authorities on ordinary course financing transactions, unless companies are prepared to amend their articles to permit the directors to grant such security.
- **Board meetings and absences (Articles 156, 158):** The New CCL introduces a minimum requirement of four board meetings per year (the Corporate Governance Resolution (No. 518 of 2009) prescribes a minimum number of six meetings). The New CCL also hardens the provisions relating to absent directors: a director will be deemed resigned if he or she is absent, without acceptable excuse, from more than three consecutive or five non-consecutive meetings during the term of such director (under the Current CCL only unexcused absence from three consecutive meetings constitutes deemed resignation).
- **General meetings and resolutions (Article 172):** The notice period has been reduced from 21 days to 15 days. A shortened notice period for reconvened meetings has been introduced. The distinction between ordinary general meetings and extraordinary general meetings is abolished and substituted with the concept of a "special resolution" (a resolution approved by at least 75% of the shares represented at a general assembly). A special resolution is required to pass certain significant matters, including amendment of the articles of association.
- **Share capital (Articles 193, 194):** The AED10 million minimum share capital requirement has been increased to AED30 million. The New CCL does not exempt existing public joint stock companies from complying with the new minimum share capital requirement, unlike in the case of private joint stock companies (see below). This means that existing public joint stock companies that do not comply with the new minimum share capital requirement may need to increase their share capital unless the competent authorities otherwise permit – we will need to wait and see how the authorities apply this in practice. The New CCL also introduces the concept of authorised (but not issued) share capital. 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 authorising resolution within which the board of directors shall implement the increase of the issued share capital has been reduced from five years to one year.
- **Valuation of shares in kind (Articles 118-120, 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, 225):** The share capital of the company may be increased by an issue of new shares, capitalising the statutory reserve or converting any bonds or sukuk issued by the company into shares. The New CCL expressly permits companies to increase their share capital through conversion of debt into equity in accordance with procedures to be issued by SCA, a practice which was not previously permitted under the Current CCL in express terms. This development will provide greater clarity and flexibility in dealing with debt restructuring scenarios.
- **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. The premium shall be added to the legal reserve; even if the reserve exceeds 50% of the share capital. The New CCL provides that the Board of Directors of SCA will issue a resolution determining the method of calculation of the premium.
- **Classes of shares (Article 206):** The general prohibition on different classes of shares for public joint stock companies has been retained in the New CCL. However, the Cabinet may, based on SCA recommendations, issue a decision determining other permissible classes of shares, conditions of their issue and rules and procedures regulating them. There may be a greater degree of capital structure flexibility in future as a result.
- **Issuances outside the pre-emption regime (Articles 223, 224):** New provisions permit the issuance of new shares to a "strategic partner" on such terms as are approved by a special resolution of the shareholders at a general meeting and by SCA. A "strategic partner" is a partner who contributes technical, operational or marketing support to the company for the benefit of the company. Provisions in the New CCL relating to the procedural aspects of increasing share capital and to pre-emption rights are disapplied from issuances to such a strategic partner.
- **Name (Article 106):** 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):** The New CCL includes 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 where 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. Application may be made to the court if SCA rejects the application or does not review it within 30 days. Ultimately, the court may annul or require the taking of any act that is the subject of the application.
- **Pre-emption right and subscription to new shares (Articles 197, 198):** A shareholder may sell its pre-emptive right to another shareholder or to third parties for material consideration. Again, further SCA regulation will be required.
- **Purchase of assets during first fiscal year (Article 142):** Directors must notify SCA if the company purchases assets, companies or establishments for a total amount greater than 20% of its share capital during its first fiscal 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.



### Non-pre-emptive share issuances

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."

## Private joint stock companies

As under the Current CCL, the provisions in the New CCL relating to public joint stock companies also apply to private joint stock companies other than the provisions relating to the public subscription for shares and as expressly provided. 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 200. Certain exceptions apply: (i) existing private joint stock companies; (ii) transfers by way of inheritance or final court order; and (iii) one corporate person may incorporate a private joint stock company. The provision in the earlier draft of the New CCL for one natural person to incorporate a private joint stock company has not been retained. The 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 AED2 million to AED5 million, to be paid up in full. Existing private joint stock companies are exempt.
- **Limitation on transfer of shares following incorporation (Article 264):** Under the New CCL, the lock-up period for founders' shares has been reduced to one fiscal year from two fiscal years. This period may be increased to two years or reduced to six months by a Ministerial Resolution.
- **Share register secretariat (Article 260):** The New CCL introduces the concept of a "share register secretariat" which is defined as a body or bodies licensed by SCA to keep the share register of private joint stock companies. Share transfers shall only be effective from the date of their registration with the share register secretariat. We expect that once the requisite implementing regulations have been issued the share register secretariat will replace the function of the licensed share register keeper which was introduced pursuant to Ministerial Resolution No. (370) of 2009.
- **Listing of private joint stock companies:** The New CCL does not mention listing and trading of shares of private joint stock companies, which was permitted by SCA Decision No. (10) of 2014. We expect that private joint stock companies listed in the market would be exempted from the provisions relating to the share register secretariat as the relevant exchange would assume this role.

## Free zone companies

The New CCL seeks to bring further clarity to the application of the onshore 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. It is not clear how this will work in practice. The New CCL contemplates a Cabinet Resolution which would set out the procedure for onshore registration of such free zone companies. We anticipate that this will require registration as a branch.

## 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 must still appoint a UAE national agent. 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):** The balance sheet and profit and loss account of the branch must be filed annually, together with an auditor's report and a copy of the parent 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 either as a joint stock company or an LLC. A Holding Company is generally not permitted to conduct activities other than through its subsidiaries. Permitted objects are 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" below.



**Bonds  
issuances**  
**Stuart Ure**

"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 simpler capital structures.

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 and 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."

- **Common Investment Companies (Part 6, Chapter 2):** The New CCL introduces the concept of investment funds formed with a separate legal personality. Specific conditions and regulations are to be established by SCA.
- **Single shareholder structures (Articles 8, 71, 255):** LLCs and private joint stock companies may now be established by a single person.
- **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 a public stock company may offer securities for public subscription subject to SCA consent has 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.

- **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 is 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 an IPO has been reduced from 55% to 30% and the maximum from 80% to 70%. There is also a prohibition on the 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 pre-emption regime (Article 223):** New provisions have been included permitting issuance of new shares to a "strategic partner", as discussed above. Provisions relating to the means of increasing share capital and pre-emption rights are disapplied in relation to such issuances.

## 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.

- **Financial assistance prohibition (Article 222):** Joint stock companies may not provide financial assistance to any shareholder to enable such shareholder to hold any shares, bonds or sukuk issued by the company. 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 companies registrar

The New CCL introduces the concept of a company registrar. The role of the registrar appears limited and falls short of the public companies registers familiar in other jurisdictions: it is confined to supervising the Trade Names Register and keeping certain company documents. Further activities of the company registrar may be set out in a regulation to be issued by the Minister of Economy in coordination with the competent authorities in the individual Emirates. Only "concerned parties" may request the registrar to issue the particulars as set out in the records kept by the registrar. We therefore do not expect public access to the registrar's records.

## 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.

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, certain corporate governance provisions relating to LLCs 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.



### Financial assistance

Jan Knop

"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."



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

- **Inspection of companies (Part 10):** This provision introduces the 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. The Ministry is to provide regulations in relation to inspection of private joint stock companies, and SCA 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 "Compliance and penalties for breach" below.
- **Joint stock companies:**
  - *Corporate governance framework to be published (Article 6):* The New CCL anticipates new resolutions to establish the general framework regulating corporate governance in connection with private joint stock companies where the number of shareholders exceeds 75. The Board of Directors of 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 152):* There is a new general prohibition on related parties of a joint stock company utilising the information in their possession for the purpose of a personal interest or the interest of a third party. 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 without the consent of the board of directors and the General Assembly. The New CCL prescribes that such transactions shall be assessed by an assessor approved by SCA.
  - *Corporate benefit test (Article 170):* Any board resolution of a joint stock company shall be invalid if it is passed in contravention of the New CCL or the memorandum or articles 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. Under the New CCL, proceedings for annulment are time-barred after 60 days from the date of the challenged resolution.
- **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 or her 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 continue to 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 Cabinet resolutions.



### Corporate governance

Rupert Harper

"The New CCL includes some important new steps in the development of the UAE's corporate governance regime. New provisions relating to financial assistance, director loans, unfair prejudice and other matters provide more tools for shareholders to assert their interests. SCA is placed at the centre of many of these new developments and it will be interesting to see how it leads further development in this critical area."



### Implementation and compliance

Graham Watt

"The New CCL provides for a one-year period (which may be extended by Cabinet Resolution) from the date on which it enters into force for existing companies to comply with the provisions of the 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.

Although the majority of amendments to constitutional documents will likely be minor (for example, reflecting amended notice periods), amendments may include significant matters such as revisions to:

- (in the case of a public joint stock company) the minimum share capital if it is below the new minimum threshold of AED30 million;
- (in the case of a public or private joint stock company) the size of the board if it deviates from the new requirements; and
- (in the case of an LLC) the quorum requirement for the general assembly if it is below 75%.

Existing companies should review their constitutional documents and consider what amendments may be required to comply with the New CCL."

## 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 comply with the provisions of the 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 and social responsibility" above.
- **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) a newspaper announcement of the proposed conversion; (iii) notification of the partners and creditors by registered letter; and (iv) a 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 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) the name and address of each proposed director; and (iii) the 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.

## Conclusion

- While the New CCL introduces a number of new concepts and some increased flexibility, the essential features and framework of the Current CCL have been maintained.
- As with any new law, there is a degree of uncertainty around its interpretation. This issue is heightened in the case of the New CCL as it relies in many areas on unpublished implementing regulations. We will have to wait for these regulations and see how the new law is applied in practice.
- The New CCL has not brought about the long awaited relaxation of the foreign ownership restrictions. However, the Government has separately indicated its intention to enact a Foreign Direct Investment Law which will permit 100% foreign ownership in certain sectors.



### 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. It is noteworthy that SCA recently indicated it intends to introduce new regulations in this context, including a mandatory bid requirement once a person acquires shares representing 50% or more of a UAE listed company's share capital."

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