

# UAE Commercial Companies Law: What have we learned?

The UAE Commercial Companies Law (Federal Law No. 2 of 2015) (the CCL) entered into force on 1 July 2015, replacing Federal Law No. 8 of 1984 (the Old CCL). A number of key changes were brought about by the enactment of the CCL, which introduced new legal concepts into the UAE's corporate framework and impacted established market practices.

**This briefing note contains an update on legislative and practical developments in the UAE market following the introduction of the CCL. To read our introductory briefing on the CCL please click [here](#).**

## Single shareholder companies

Article 8(3) of the CCL introduced the ability to establish a single shareholder company onshore in the UAE, subject to certain provisions of the new law. Both the Abu Dhabi and Dubai Departments of Economic Development (DED) are now registering single shareholder entities (provided that the single shareholder is a UAE national or wholly-owned UAE national entity). In addition, it is possible to transfer shares from a multi-shareholder entity in order to convert it into a single shareholder entity. It remains to be seen whether GCC nationals will be permitted to register single shareholder entities.

## Share pledges

Article 79 of the CCL expressly provides for the taking of pledges over shares in a limited liability company (LLC). The Abu Dhabi and Dubai DEDs have been registering this type of security. The process in each Emirate differs however, and is still developing. In addition, in Abu Dhabi the prevailing view has been that an LLC's constitutional documents should

include express provisions allowing for pledges over shares, even though the LLC itself is not a party to the pledge. This has not been the approach in Dubai to date but it may change. If a pledge over shares is conceivable the more prudent approach would be to specifically provide for this in the relevant company's Memorandum of Association (MoA), regardless of which Emirate it is incorporated in, in order to avoid potential issues in later transactions.

## Updating constitutional documents

Since the implementation of the CCL companies have been updating their constitutional documents to comply with the new law. To this end the Dubai DED has published a short-form template MoA for both single and multi-shareholder LLCs. This template should be used, although can be added to, by all newly incorporating LLCs in Dubai. It is unclear to what extent existing companies will need to adapt their MoAs to adhere to the provisions in the new template when adjusting their articles in compliance with the CCL. The Abu Dhabi DED has not (at the date of publication of this article) published a similar standard form template. Similarly the Ministry of Economy (MoE) and UAE Securities and Commodities Exchange (the SCA) are yet to issue an updated set of constitutional documents for private and public joint stock companies (JSCs).

## Article 104

Article 104 of the CCL states that provisions that apply to JSCs will also apply to LLCs, unless provided otherwise. To date, no official guidance has been issued as to which provisions will (or will not) apply to LLCs, and interpretation of this provision remains problematic. This is particularly acute in the case of the newly introduced financial assistance prohibition (see below).

## Financial assistance (Article 222)

Market participants continue to debate the statutory reach of Article 222 of the CCL. Article 222 introduced a broad prohibition on financial assistance that could, on a literal application of Article 104 (discussed above), apply directly to LLCs. It is important to note that there is no "whitewash" procedure available under the CCL of the type seen in other jurisdictions. However, there are arguments to suggest that Article 222 should not be construed as applying directly to LLCs (except in instances where, for example, an LLC provides financial assistance to an investor acquiring shares, bonds or Sukuk in a parent JSC). In particular, the Arabic translation of the word "shares" as identifiable, tradable instruments appears to relate specifically to the shares of a JSC, as opposed to a shareholder's "quota" of share capital in an LLC (which aligns a share in the capital of an LLC more closely with a partnership interest). Additionally,

the wider context of the prohibition appears to relate to public companies capable of issuing shares and debt instruments. However, it is not possible to be definitive on this matter without formal guidance. The issue is yet to be tested in the UAE courts.

### Director loans

Article 153 of the CCL widens previous prohibitions on loans to directors and provides that JSCs may not make loans to their directors, a director's spouse, children and any other relative to the second degree. There is no longer an exemption for banks and credit companies. This provision may also be extendable to LLCs pursuant to Article 104 (see above). However, the UAE Central Bank has issued a Circular providing that Article 153 of the CCL does not apply to banks operating in the UAE. The Circular states that Article 91 of Union Law 10 of 1980 applies in this regard, as well as the decisions and circulars issued by the Central Bank. It is unclear whether the Circular takes precedence over the CCL, but it is likely that banks licensed by the Central Bank will rely on it in practice.

### Directors' powers

Article 154 requires directors to have express powers to enter into: i) loans for periods in excess of three years, ii) mortgages (over moveable and immovable property); and iii) arbitration agreements. Consequently, a separate shareholders' resolution will be required if such express powers are not already provided in, for instance, the company's constitutional documents. Given Article 104 (see above) and Article 84(2) (regarding liability of managers) of the CCL, it is likely that the scope of Article 154 extends to managers/directors of LLCs. In practice, where companies require their management to have the flexibility to enter into these types of

arrangement, both JSCs and LLCs are adding these express powers to their constitutional documents.

### Free zones exemption

Article 5 of the new CCL allows free zones to disapply the CCL, provided that there is a "special provision to this effect in the laws or the regulations of the relevant free zone". Whilst certain free zones do expressly disapply the CCL (or certain of its provisions) this is not the case in every instance. A number of free zones are in the process of reviewing/updating their regulations to clarify the position but this will need to be assessed on a case by case basis in the context of each free zone's regulations.

### Framework of secondary legislation

The CCL was enacted with reference to a body of unpublished secondary legislation. This underlying legislative framework is now beginning to take form with various authorities publishing supplementary regulations to the new law.

#### Corporate Governance for Private JSCs

The MoE was one of the first Federal authorities to contribute to the CCL's underlying legislative framework, with the publication of Ministerial Resolution No. 228 of 2015 related to corporate governance of Private JSCs (the Governance Regulations). The Governance Regulations were issued pursuant to Article 6 of the CCL, which sets out the requirement for a "general framework regulating governance" for Private JSCs where the number of shareholders in the company exceeds 75. However, the Governance Regulations appear to apply to all Private JSCs, regardless of the number of shareholders in the company. It is unclear whether the Governance Regulations will take precedence over the CCL such that all

Private JSCs should apply and implement the regulations' provisions. However, given that one of the primary objectives of the CCL relates to improved corporate governance within the UAE, in practice, the prudent approach would be for all Private JSCs to observe the provisions of the Governance Regulations.

#### Share buybacks

The SCA has also been active in publishing secondary legislation and this has included two recent publications affecting listed JSCs. The first is SCA Resolution No. 40 of 2015 regarding the "Conditions and Procedures of Companies' Purchasing their Own Shares for Resale". The Resolution supplements Article 219 of the CCL dealing with share buybacks and expands on the processes and requirements for such share purchases by listed JSCs.

#### Reconciliation procedure

The second resolution is SCA Resolution No. 42 of 2015 dealing with reconciliation procedures for offences committed under the CCL, issued pursuant to Article 339(1). Reconciliation is a settlement procedure allowing companies to avoid criminal proceedings by paying a prescribed fine for criminal offences committed in breach of the CCL. The Resolution doubles the penalties imposed for the relevant breaches of (or offences committed under) the CCL. Interestingly, however, the Resolution appears to go beyond the scope of breaches that attract criminal sanctions under the CCL, as it includes, for instance, a reconciliation fine for the sweeper offence of any violation of the CCL. Therefore, any breach of the CCL could infer criminal liability for the directors' of listed JSCs. This could include a breach of the financial assistance prohibition, which does not otherwise carry a criminal penalty under the CCL.

## Contacts



**Mo Al-Shukairy**  
Partner

T: +971 4 503 2707  
E: mo.al-shukairy  
@cliffordchance.com



**Rupert Harper**  
Partner

T: +971 2 613 2360  
E: rupert.harper  
@cliffordchance.com



**James McCarthy**  
Partner

T: +971 4 503 2628  
E: james.mccarthy  
@cliffordchance.com



**Mike Taylor**  
Partner

T: +971 4 503 2638  
E: mike.taylor  
@cliffordchance.com



**Katherine Nixon**  
Professional Support Lawyer

T: +971 4 503 2730  
E: katherine.nixon  
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Clifford Chance, Level 15, Burj Daman, Dubai International Financial Centre, P.O. Box 9380, Dubai, United Arab Emirates

© Clifford Chance 2016

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571. Registered office: 10 Upper Bank Street, London, E14 5JJ. We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications. Licensed by the DFSA.

[www.cliffordchance.com](http://www.cliffordchance.com)

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta\* ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

\*Linda Widyati & Partners in association with Clifford Chance.

107074-4-5895-v0.6

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

ME-8000-BD-PR