

# UAE Ministry of Economy issues guidance on application of the Commercial Companies Law to LLCs

Article 104 of the UAE Commercial Companies Law (Federal Law No. 2 of 2015) (the CCL) states that provisions relating to joint stock companies (JSCs) apply to limited liability companies (LLCs), unless the law states otherwise.

This provision has been the cause of ambiguity when looking to interpret the full application of the CCL's provisions to LLCs. The Ministry of Economy (the MoE) has now issued some much welcomed guidance on the application of Article 104 by issuing Ministerial Resolution No. 272 of 2016 (the Resolution).

**This briefing note explores the Resolution's impact on the CCL to LLCs. To read our last update briefing on the CCL "UAE Commercial Companies Law: What have we learned?" please [click here](#).**

## Article 104

No official guidance was issued as to which JSC provisions would (or would not) apply to LLCs when the CCL came into force on 1 July 2015.

Without any guidance, interpretation of Article 104 created a great deal of market debate, as there are a number of JSC provisions that typically would not be expected to apply to LLCs.

The Resolution came into effect on 29 April 2016 and provides some much needed clarity. Article 3(2) of the Resolution clarifies which JSC provisions will not apply to LLCs.

## Financial assistance prohibition

The Resolution clearly states that the financial assistance prohibition (Article 222) will not apply to LLCs.

This resolves the ongoing market debate as to the application of Article 222 to LLCs – a point which has dominated structuring and opinions discussions on a number of

transactions. This had been one of the most hotly debated topics in respect of Article 104.

However, the Resolution would not, in our view, enable use of an LLC to facilitate financial assistance which would otherwise be prohibited (e.g. where an LLC provides financial assistance to an investor acquiring shares, bonds or sukuk in a parent JSC).

## Board composition

The Resolution expressly excludes a number of JSC articles relating to board composition from application to LLCs (e.g. minimum and maximum numbers of directors, remuneration provisions, the nationality requirements, and the director investor requirements for two thirds of the board to hold shares in the company).

This offers useful clarification as one of the attractive features of an LLC is the greater flexibility afforded in the structuring of its board.

The provisions relating to providing written disclosure of acting for competing

## Key points

- The Ministry of Economy has taken steps to remove the ambiguity caused by Article 104's blanket application of JSC provisions to LLCs
- No prohibition on financial assistance for LLCs
- JSC board composition rules do not apply to LLCs
- Related party transactions provisions for JSCs do not apply to LLCs
- No further clarity on scope of director loans prohibition to LLCs
- However, no further guidance on the 1 July deadline for amending constitutional documents pursuant to Article 374

businesses when accepting nomination as a director (Article 147) and to the numerical thresholds for the number of board appointments an individual may hold (Article 149) have been carved out from Article 104's application to LLCs. This appears to allow LLC directors to act for a number of competing businesses, beyond the numerical thresholds for JSCs, provided shareholder consent has been obtained pursuant to Article 86 of the CCL.

### Related party prohibition

Articles 152(1) and (2), in respect of the prohibition on related party transactions (RPT), are also disapplied for LLCs.

This is another helpful clarification, as the trigger amount for an RPT is 5% of a company's share capital. LLCs could frequently find themselves requiring shareholder approval for day-to-day business transactions due to their customary low share capital (in practice, usually AED300,000 for Dubai LLCs and AED150,000 for Abu Dhabi LLCs), and given the breadth of the "Related Party" definition in the CCL.

Under the JSC provisions, RPTs require approval by an assessor of the relevant authority. It was unclear if or how the Departments of Economic Development (DED) would provide such assessment had the prohibition applied to LLCs.

### Directors' powers

The restrictions applicable to JSC directors' powers under Article 154 of the CCL are not intended to apply to LLC directors.

Article 154 requires JSC directors to have express powers to enter into:

- loans for periods in excess of three years;
- mortgages (over moveable and immoveable property); and
- arbitration agreements.

A separate shareholders' resolution is required if such express powers are not already provided in, for instance, the JSC's constitutional documents.

For those LLCs currently in the process of updating their constitutional documents to comply with the CCL, it may still be prudent to expressly set out the Article 154 powers in the company's articles if the company wishes to afford these powers to its directors, particularly in respect of a director's power to enter into arbitration agreements.

### Sweep-up provisions

Article 3(2) of the Resolution contains sweep-up provisions providing that JSC provisions will not apply to LLCs where the CCL otherwise expressly deals with a matter regarding LLCs, or a JSC provision would "contradict the nature" of an LLC, or resolutions or circulars issued by the MoE or DED in this regard.

Although there may remain some latent ambiguity as a result, in our view this provision gives further substance to the overall proposition that LLCs are being made more remote from the blanket application of the CCL provisions applicable to JSCs.

### Director loans restriction not disapplied

The Article 153 prohibition on a JSC offering loans to directors, a director's spouse, children and any other relative to the second degree has not been disapplied for LLCs.

LLCs frequently use such arrangements with their directors and it remains unclear whether this prohibition will apply to LLCs regardless of the general sweep-up provisions discussed above.

In the case of banks (all of which are JSCs) the UAE Central Bank issued a Circular to exempt banks from the application of Article 153. 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.

### What does Article 104 include?

Article 3(1) of the Resolution expressly sets out certain JSC provisions that will apply to LLCs, to the extent such inclusions do not conflict with the nature of LLCs. These provisions relate to certain procedural matters, for instance:

- the right of minority shareholders, the company's auditor or the competent authority to call AGMs (Article 174, 175 and 176 of the CCL)
- suspension of shareholder resolutions on demand by a 5% minority of shareholders (Article 191)
- non-election of the board or auditors (Article 192)

- appointment of auditors and certain related provisions (Articles 243, 245 and 247-254)
- filing audited accounts with the competent authority within seven days of the AGM (Article 236(2)).

Key corporate governance provisions are also expressly applied in relation to LLCs:

- company responsibility for acts of directors (Articles 162 and 163)
- the time-barring of liability claims in relation to directors (Article 167).

This approach reflects the stated objectives of the new law as improving UAE corporate governance standards (Article 2) as well as Article 84(2) of the CCL (discussed above in relation to directors' powers). The intended approach appears to be that the duties and standards of conduct established for directors under the JSC provisions will generally apply to the directors of LLCs.

The Resolution provides much needed clarity on a number of important topics, although it is likely that Article 104 will continue to present interpretation issues in respect of the full scope of the CCL's application to LLCs in practice.

### Deadline for amending constitutional documents - Article 374

We are fast approaching the 1 July deadline for companies to 'update their positions' in compliance with the CCL or else face being 'deemed void' (Article 374) and note that:

- neither the MoE or Cabinet has issued guidance on whether this deadline will be extended
- no further clarity has been provided as to what penalties will be levied in practice
- it is widely understood that a large number of LLCs (and other UAE companies incorporated under the CCL) are still in the process of updating their constitutional documents and internal procedures to comply with the new law.

Given this lack of clarity, it remains advisable for those entities that have not yet completed this process to act quickly before this deadline passes.

## 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

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

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