The new UAE Commercial Companies Law: Highlights

By James Bowden,
Afridi & Angell

AFRIDI & ANGELL
LEGAL CONSULTANTS

Jumeirah Emirates Towers
Office Tower, Level 35
Dubai, United Arab Emirates
Tel: +971 4 330 3900
Fax: +971 4 330 3800
Email: dubai@afridi-angell.com
www.afridi-angell.com

The much anticipated new UAE Commercial Companies Law (Federal Law No. 2 of 2015) was issued on 1 April 2015 and comes into force three months from the date of its publication in the official gazette. Some of the key themes and changes introduced by the new law are highlighted below.

Major amendments

Corporate governance, shareholder protection and corporate social responsibility (CSR) are highlights of the stated objectives of the new law, which are set out in article 2. The provisions relating to corporate governance have been significantly enhanced, and with the proposed issuance of further regulations by the Ministry of Economy and by the Emirates Securities and Commodities Authority (ESCA).

The role, responsibilities and liability of management have been strengthened and increased oversight functions are granted to concerned authorities. Minority shareholders holding at least 5% of a company's equity have been granted the right to apply to ESCA for relief if they believe the company is being managed to the detriment of any shareholder, which is a potentially significant new shareholder protection.

Some of the most significant amendments relate to public companies and capital markets. The minimum free float permitted in an initial public offering has been reduced from 55% to 30%. The share price can now be determined by way of a book building process and shares can be issued at a premium. These steps will make it far more attractive for businesses to tap the local bourses for capital, as they can retain control and are less likely to end up leaving money on the table.

Regulations to follow

The new law authorizes the concerned authorities to introduce subordinate legislation to be issued by ESCA, or by way of ministerial or cabinet resolution, in a number of areas. These include the governance rules noted above, regulations on IPOs, rules on the formation and qualification of Shari'a boards, the creation of different classes of shares and their rights, regulation of book building, and rules on free zone companies doing business onshore, among others. This adds much needed flexibility to the legal framework, and foreshadows the areas in which further developments can be expected in the near term.

Immediate implications

Some changes introduced by the new law that are likely to have an immediate impact on existing and new business structures include:

(1) Limited liability companies (LLCs) may now have a single corporate or individual shareholder. A new holding company vehicle has also been created (effectively a licence category, it appears), which may be a popular method of consolidation for local businesses in conjunction with the single shareholder structure.

(2) Shares in LLCs may be pledged to third parties as security provided this is permitted in the company's memorandum of association and the pledge is registered in the Commercial Register.

(3) New specialized regulatory authorities such as a companies registrar and secretariat of register keepers have been created, which will help streamline processes and procedures.

(4) Article 8 of the old companies law, which prohibited the government from owning shares in any company other than a public joint stock company, has been done away with.

(5) The new law alters the share capital requirements for companies, in that the nominal or par value of a share must now be between 1 and 100 Emirati dirhams. Shares of limited liability companies previously had to have a minimum par value of 1,000 dirhams.

(6) Owners of shares in an LLC can now appoint non-partners as their proxy, which gives flexibility to foreign shareholders, many of whom rely on proxies as part of their governance structure.

(7) Public companies' boards are subject to a maximum number of 11 directors, down from 12.

Existing companies are given a grace period of one year to amend their memorandum and articles to bring them into compliance with the new law. Failure to do so will result in the dissolution of the company, which could be alarming depending on how rigorously or literally the new law is enforced.

Conclusion

Overall the new law is an excellent step forward, but the full impact of the changes introduced will take some time to be fully understood, as it will depend largely on the implementation and enforcement of the law and on subordinate legislation developed by the relevant authorities. Many foreign investors are likely to be disappointed, however, that foreign ownership limits under the new law remain unchanged. They will now have to wait for reform under the proposed Foreign Investment Law.

James Bowden is a partner at Afridi & Angell, a UAE-based law firm with offices in Abu Dhabi, Dubai, the Dubai International Financial Centre and Sharjah.