

# Briefing Series on the Draft UAE Commercial Companies Law

Issue No. 1 | May 2012

## Issue No. 1 — Introduction to the *Briefing Series* and Key Changes Applicable to Most Forms of Companies

This is the first briefing in Latham & Watkins' five-part *Briefing Series on the Draft UAE Commercial Companies Law* (the Draft CCL). The Draft CCL introduces some significant changes to Federal Law No.8 of 1984 Concerning Commercial Companies (the Existing CCL), which will be repealed in its entirety when the Draft CCL comes into force. The purpose of this *Briefing Series* is to highlight some of the key changes to the Existing CCL contained in the Draft CCL.

The topics in our five-part briefing series are:

- this Issue No. 1 – Key changes applicable to most forms of companies
- Issue No. 2 – Key changes for limited liability companies (LLCs)
- Issue No. 3 – Key changes for joint stock companies (JSCs)
- Issue No. 4 – Key changes relating to mergers
- Issue No. 5 – Key changes relating to penalties

The Draft CCL has been approved by the UAE Cabinet and is expected to become law in the next few months, although the timing remains uncertain at this stage. The key changes to the Existing CCL contained in the Draft CCL, which are applicable to most forms of companies are:

- **Exempted companies.** The Draft CCL provides companies owned by the Federal government or the government of any Emirate, and any companies wholly owned by such companies, with the ability to exempt themselves from the Draft CCL by including a provision to this effect in their memorandum or articles (Art. 3). The exemption applies only so long as the companies do not sell their shares or offer them to the public. A conservative interpretation of the main exemption would require government owned companies wishing to use this right to include provisions in their memorandum and articles dis-applying specific provisions of Draft CCL rather than dis-applying the Draft CCL in its entirety.
- **Foreign ownership.** The Draft CCL provides that, following a proposal from the relevant Minister, the Cabinet may: (i) issue a resolution determining the class of activities limited to UAE nationals and (ii) issue a resolution determining the forms of companies or classes of companies that may be held in full by a foreign person or where the share of the foreign person may exceed 49 percent of the capital of the company (Art. 9). This is potentially the most significant change to the Existing CCL. However, the significance of this change depends upon the content of the Cabinet resolution. At this stage, we are not aware of the timing or content of the Cabinet resolution.
- **Free zone companies.** The Draft CCL provides that: (i) free zone companies shall be governed by the Draft CCL if the laws or regulations of the free zone permit such companies to operate outside their free zone and (ii) the Cabinet shall issue a resolution determining the applicable conditions to register such companies (Art. 4). Once again, we are not aware of the timing or content of the Cabinet resolution. The practical implication of this change is that it is now clear that free zone companies may only operate in the UAE and outside their free zone if they are permitted to do so by their free zone regulations and are registered to do so in accordance with the Cabinet resolution.
- **Sole shareholder companies.** The Draft CCL allows one natural person or one company to be the sole shareholder of a LLC or a private joint stock company (PrJSC) (Art. 75). This is a welcome change which enables individuals to benefit from limited liability without having to involve another shareholder in their business. In practice, only UAE nationals and companies wholly owned by UAE nationals will be able to be sole shareholders of LLCs and PrJSCs, subject to the Cabinet's resolution on foreign ownership discussed above.

- **Directors' duties and companies exempting directors from liability.** The Draft CCL introduces a new obligation on managers and directors of all companies to preserve the company's rights and to work honestly and faithfully for the benefit of the company (Art. 21). The Draft CCL also provides that any provision in the memorandum or articles authorising a company to agree to exempt any person from personal liability that such person bears in their capacity as a current or former officer of the company shall be void (Art. 23). It is not clear whether Article 23 also prohibits companies indemnifying directors from such liabilities - as is the case with the equivalent provision in the English Companies Law.
- **Accounting.** The Draft CCL introduces a number of important changes with respect to accounting, including obligations on all companies to keep accounting records for 5 years, to apply international accounting standards and practices in preparing accounts to give a clear and accurate view of the profits and losses of a company, and an obligation on LLCs to have their accounts audited annually by auditors (Arts. 25, 26, 27).
- **Compliance.** Existing companies are required to amend their memorandum and articles in compliance with the Draft CCL by no later than one year from the effective date of the law, subject to the Cabinet's right to grant an extension on proposal of the relevant Minister (Art. 380). If a company fails to amend its memorandum and articles as required, it shall be deemed to be dissolved (Art. 380). The Draft CCL will come into force three

months from the date of its publication in the Official Gazette (Art. 383). Accordingly, it would be advisable for companies to prepare to amend their articles and memorandum shortly after the Draft CCL is published in the Official Gazette in order to avoid inconsistencies between their memorandum and articles and the Draft CCL and in order to ensure their continued existence.

If you would like any further information on the matters covered in this Issue No. 1 or the Draft CCL, please contact one of the attorneys below.

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