LATHAM & WATKINS LLP

Briefing Series on the Draft UAE Commercial Companies Law

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Issue No. 2 — Key Changes for Limited Liability Companies (LLCs)

This is the second 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some significant changes to Federal Law No. 8 of 1984 Concerning Commercial Companies (the Existing CCL), which will be repealed in its entirety when the Draft CCL comes into force.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:

- Issue No. 1 – key changes applicable to most forms of companies
- This Issue No. 2 – key changes for 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 LLCs are:

- ***Share pledges.*** The Draft CCL allows shareholders to pledge their shares in LLCs. Pledges are required to be made under an official document and in accordance with the terms of the LLCs' memorandum, and will not be valid against the LLC or third parties until the pledge is entered in the commercial register with the competent authority (Art. 83). This is a major change to the Existing CCL, which does not expressly permit pledges of shares in LLCs. This change should facilitate financing transactions involving shares in LLCs as security.

- ***Valuation of non-cash consideration for shares in LLCs.*** The Draft CCL provides that non-cash consideration for shares in LLCs shall be valued at the cost of the contributing shareholder by: (i) one or more financial consultants approved by the competent authority (with the competent authority having the right to object to the financial consultant's assessment and appoint another assessor); or (ii) the agreement of all shareholders, provided that such value is approved by the competent authority (Art 82). The proposed valuation procedure for non-cash consideration for shares in LLCs is more cumbersome than the procedure in the Existing CCL, which allows shareholders to agree on a valuation and reflect that valuation in the articles of the LLC. In practice, the main form of non-cash consideration currently acceptable to the authorities in some Emirates is real property. Although the change makes valuation of non-cash consideration more cumbersome, the authorities may be more willing to accept non-cash consideration for shares in a LLC other than real property if a financial consultant or the competent authority has approved the valuation.

  Fiduciary-like obligations on managers of LLCs. The Draft CCL provides that managers of LLCs shall be liable to LLCs for any property of the LLC held by such manager as trustee or any profit or benefit made through the business or activities of the LLC, or by the use of the property, name or commercial relationships of the LLC (Art. 86). In addition, the Draft CCL provides that managers of LLCs may not without the consent of the general assembly undertake the management of a competing company or a company with objects similar to those of the company, or enter into for his own account or for the account of third parties, transactions in competition with, or similar to, the activities of the company (Art. 90). These changes appear to impose Western fiduciary-like obligations on managers of LLCs, making managers more accountable to the LLCs they manage.

- ***Application of provisions relating to JSCs to LLCs.*** The Draft CCL provides that, unless otherwise provided in the Draft CCL, the provisions in the Draft CCL concerning JSCs shall apply to LLCs (Art. 108). This change may be a drafting error. Unless broad exemptions are introduced, this change would make LLCs indistinguishable from JSCs, which is the subject matter of our forthcoming Issue No. 3.

If you would like any further information on the matters covered in this Issue No. 2, please contact one of the attorneys below.

Chris Lester
+971.2.813.4825
chris.lester@lw.com
Abu Dhabi

Charles Fuller
+971.4.704.6300
charles.fuller@lw.com
Dubai

Jade Laktineh
+971.2.813.4822
jade.laktineh@lw.com
Abu Dhabi

Saad Khanani
+971.2.813.4821
saad.khanani@lw.com
Abu Dhabi

Abu Dhabi
Barcelona
Beijing
Boston
Brussels
Chicago
Doha
Dubai
Frankfurt
Hamburg
Hong Kong
Houston
London
Los Angeles
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* In association with the Law Office of Mohammed A. Al-Sheikh