

The New Commercial Companies Law of the United Arab Emirates

The new Commercial Companies Law of the United Arab Emirates (Federal Law No. 2 of 2015; hereinafter referred to as “**CCL**”) has been published on March 25, 2015. The expectations of the new amendment of the CCL have been quite high for some key topics such as the cancellation of the local majority requirement, or the possibility of free zone companies carrying out their business in the mainland. Such topics have been discussed intensely and hoped for in the last few years. The following overview shall clear any ambiguities regarding the changes and will demonstrate the amendments which have been in fact implemented by the new CCL, coming into effect on July 1, 2015:

A. What has changed?

For limited liability companies (LLC) several changes have been introduced with regard to the **convention and holding of shareholder meetings**. Changes include, inter alia, shorter notice periods (at least 15 days instead of the previous 21 days; article 93 CCL), representation of shareholders by non-shareholders (article 95 CCL), valid quorum of the shareholder meeting in case of present shareholders and/or their representatives representing at least 75% of the LLC’s share capital (previously 50%; article 96 para. 1 CCL) and notice of a third shareholder meeting to be held in case the previous two could not be held due to an insufficient quorum (article 96 para. 3 CCL).

An interesting and promising amendment has been included in article 79 CCL: the explicit possibility to **pledge the shares of an LLC**. Pursuant to this article a pledge of shares will require a written contract which has to be in accordance with the LLC’s Memorandum of Association as well as the CCL. The pledge will only be effective once registered with the commercial register at the Department of Economic Development. We assume that in addition, the contract has to be attested by the notary public. However, it remains to be seen how the respective procedures will be implemented by

the concerned authorities. The possibility to pledge shares provides the shareholders with new options: depending on the business practice of the respective bank a pledge can be used as an additional security for borrowing. Furthermore, foreign shareholders can use the pledge as a security from the local majority partner in case they have paid up entire the share capital amount.

The new CCL provides the possibility of establishing **holding companies** in the form of a joint stock company or LLC (article 266 CCL). The purpose of such holding companies is limited to holding shares, property and intangible assets as well as managing their subsidiaries (article 267 para. 1 CCL). However, business activities can only be carried out through the subsidiaries and not the holding company itself (article 267 para. 2 CCL). The establishment of a holding company provides group companies the possibility of restructuring their companies in the UAE.

Another amendment concerns **free zone companies** and their activities in the mainland of the respective Emirate. Subject to an additional ministerial decree being issued, article 5 para. 2 CCL provides free zone companies the possibility of carrying out their business activities and/or their services beyond the borders of the respective free zone. Whether such a decree will be issued remains to be seen.

B. What will remain the same?

The local majority requirement remains unchanged. According to article 10 CCL all commercial companies require a local partner holding at least 51% of the company's shares. Any transfer of shares which can abolish the stake of the local partner and decrease it below 51% is void.

In this regard, it should also be noted that articles 8 and 71 para. 2 CCL allow the establishment of a **LLC with only one shareholder**. However, the local majority requirement is still applicable to an LLC with one shareholder; therefore, only Emirati nationals can establish such an LLC.

Furthermore, the requirement of a National Service Agent (NSA) for a **branch of foreign company** has not been changed or abolished. Article 329 CCL states that every branch has to appoint an NSA who shall have not any obligations – besides the one provided for in the National Service Agent Agreement – and/or any other (financial) responsibilities vis-à-vis the branch.

C. What should be done?

As per article 378 CCL the new CCL becomes effective 3 months after the publication in the official gazette. The CCL has been published on April 1, 2015 which means that it will come into effect on July 1, 2015 and replace the old commercial company law.

Upon the new CCL coming into effect, it shall become applicable for both existing companies and newly established companies. For existing companies, article 374 CCL provides a **transitional period of 1 year** – commencing on July 1, 2015 – during which all necessary amendments within the company, mainly affecting the company's Memorandum of Association, have to be implemented in order to comply with the new CCL.

Article 357 CCL also stipulates a fine of AED 2,000.00 per day for non-compliance with the CCL after the expiry of the transitional period of 1 year. It remains to be seen how the implementation of the CCL will be monitored by the concerned authorities, if at all. In order to avoid any risks, we recommend amending, attesting and registering the company's (amended) Memorandum and Articles of Association. This should also be done in light of article 374 para. 2 CCL which stipulates the dissolution of a company in case of non-compliance with the CCL in due time.

The legal consultants of SCHLÜTER GRAF Rechtsanwälte will gladly assist you with any queries or compliance matters regarding the new CCL.

Contact

SCHLÜTER GRAF Rechtsanwälte

The Citadel Tower

20th Floor, Offices 2001-2005

Business Bay

P.O. Box 29337

Dubai / United Arab Emirates

Tel.: +971 / 4 / 431 3060

Fax: +971 / 4 / 431 3050

Contact Persons

Ulf-Gregor Schulz (Rechtsanwalt & Legal Consultant)

Email: ulf-gregor.schulz@schlueter-graf.com

Andres Ring (Rechtsanwalt & Legal Consultant)

Email: andres.ring@schlueter-graf.com