

**THE NEW UAE COMMERCIAL COMPANIES LAW -
NO SIGNIFICANT CHANGES FOR FOREIGN INVESTORS**

After more than ten years of deliberations, the United Arab Emirates (“UAE”) has introduced the long awaited and much debated new Commercial Companies Law. UAE Federal Law No. 2 of 2015 (“New Commercial Companies Law”) was published in the Official Gazette on 31.03.2015 and comes into force on 01.07.2015. It will henceforth replace the existing law (UAE Federal Law No. 8 of 1984 as amended) in its entirety.

1. REGULATORY CONTENTS

The New Commercial Companies Law addresses a range of aspects mainly with regard to limited liability companies (“LLCs”) and joint stock companies and, thus, reacts to the demands of modern business life. Ultimately, however, it does not accomplish a profound change.

a. General Provisions

The following regulations, amongst others, apply to all corporate forms covered by the New Commercial Companies Law:

- The law holds on to the **mandatory minority shareholding** of foreign investors regarding companies registered in the territory of the UAE, i.e. outside of any free zone. Whereas an earlier draft of the law allowed for the cancellation of this requirement for certain industry sectors, such liberalization was eventually omitted entirely. Instead, 51% of the shares must still be held by Emirati nationals or companies that are wholly owned by Emiratis.
- **Single-shareholder companies** are now permitted for LLCs and private joint stock companies, which is, however, of no significance to foreign investors due to the aforementioned majority prerequisite for Emirati shareholders.
- **Holding companies**, i.e. enterprises whose sole purpose is to acquire interests in other businesses, are now expressly recognized by the New Commercial Companies Law. Such companies can be registered in the legal form of either a LLC or a joint stock company.
- Like the previous law, the New Commercial Companies Law does not allow **free zone companies** to conduct business in the territory of the UAE. Yet, it at least contains an opening clause insofar as respective conditions can be created through cabinet resolution in the future.

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Within the context of LLCs which are comparable to German GmbHs and which are the most common legal form chosen by foreign investors, the following innovations of the New Commercial Companies Law can be highlighted:

- To reach a **quorum** at a general assembly, representatives of 75% of the share capital are required to be present instead of the previous 50% only.
- The number of **managers** of a LLC can be chosen randomly and is no longer limited to five.
- The New Commercial Companies Law specifically prohibits managers to undertake the **management of a competing company** without the consent of the general assembly of the LLC.
- Whereas it remained uncertain according to the old law whether the **pledge of company shares** was indeed lawful and the recording thereof in the registry was declined by the competent authority, that option is now explicitly provided for by the New Commercial Companies Law.
- Finally, the **rules and regulations concerning joint stock companies** are generally applicable to LLCs.

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4**c. Transition Period**

Companies already established must adapt their memoranda and articles of association to the new legislation within one year after the New Commercial Companies Law coming into effect, i.e. latest by 30.06.2016. Through cabinet resolution, this transition period may be extended for another year. A company will be deemed as dissolved should it not have made the necessary adjustments on time.

It remains to be seen how the provisions of the New Commercial Companies Law are to be implemented in practice, particularly which rules are optional and can be divergently regulated by agreement of the parties.

2. CONCLUSION

Measured against the particularly long duration of the legislative procedure and the overall significance for the economy, the New Commercial Companies Law - mainly with regard

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to LLCs which are of peculiar interest to foreign investors - falls short of the expectations. However, considering the existing deeply ingrained socio-political structures of the UAE, a sensation, especially regarding a significant softening or even abolishment of the 51/49-rule, could realistically not be expected.

Yet, the liberalization of the company law should remain a topic of discussion. On the one hand, the New Commercial Companies Law - at least theoretically - allows for the possibility to expand the radius of operation of free zone companies into the territory of the UAE. On the other hand, a Foreign Direct Investment Law is currently being developed which shall make the location more attractive for strategically important investment projects and encourage technology transfer. The investment climate in the UAE should - if only one step at a time - improve steadily.

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