



Impacts of the New UAE Commercial Companies Law on Limited Liability Companies – What you should know

Today, we would like to inform you about specific impacts of the new United Arab Emirates' ("UAE") Commercial Companies Law on limited liability companies ("LLC").

Federal Law No. 2 of 2015 concerning Commercial Companies ("new CCL") came into force on 01.07.2015 and replaced Federal Law No. 8 of 1984 in its entirety. As an introduction to the topic, we recommend reading our article "The New UAE Commercial Companies Law" which is ready for download on our website www.anders.ae.

The new CCL is not only applicable to companies incorporated from 01.07.2015 onwards. Companies established before that date also need to observe the new regulations. A deadline until 30.06.2016 has been set out for such compliance. Hence, it has to be verified for each LLC whether the current memorandum and articles of association ("MoA and AoA") and any other agreements relating to the shareholders and managers of the LLC require amendments.

What are the key changes?

The objective of the new CCL is to align the market and business environment of the UAE with international standards. Therefore, principles pertaining to corporate governance and protection of shareholders have been introduced.

Amongst others, provisions regarding the company manager, the general assembly, the distribution of profits, pre-emption rights, accounting and auditing as well as the minimum information to be set out in the MoA and AoA concerning the company, the shareholders and the managers were updated. Furthermore, the CCL now explicitly provides for the pledging of shares of an LLC.

With which provisions of the new CCL does an LLC have to mandatorily comply?

From the perspective of a foreign shareholder, the following aspects of the new CCL are particularly important:

Manager

The new CCL stipulates that the provisions concerning joint stock companies are generally applicable to LLCs. Following this cross-reference, the manager of an LLC may now act on behalf of the company in a number of instances only if the MoA and AoA explicitly authorizes him to do so. This applies, for example, to discharging debtors of the company from their obligations or to agreeing to an arbitration clause.

In addition, stipulations in the MoA and AoA that exempt the manager from his liability are now invalid and must be deleted.

Further, the new CCL prohibits managers of an LLC to undertake the management of a competing company. It is advisable to include these rules and the legal consequences of a violation in the MoA and AoA in order to make the manager aware of the legal situation.

General Assembly

Provisions regarding the quorum for a general assembly have been amended as well. For the first meeting, shareholders holding at least 75% of the share capital need to be present as opposed to 50% previously. For the second meeting, at least 50% of the share capital of the LLC needs to be present whereas the old CCL did not set out any quorum. For the third meeting, no specified quorum is required by the new CCL. The company's MoA and AoA has to reflect these changes.

Consideration should also be given to the fact that the mandatory items on the agenda of the general assembly have been expanded.

Distribution of Profits

According to the new CCL, the MoA and AoA of an LLC is deemed to be void also in such cases it stipulates that a shareholder is entitled to receive a fixed fee instead of a percentage of profits. Due to this tightening of the law, any agreement on the distribution of profits should be reviewed.

Pre-emption Right

Furthermore, attention has to be paid to new legal requirements for the exercise of the pre-emption right. Should a shareholder wish to dispose of his shares, he needs to disclose the name of the prospective purchaser to the other shareholders.

In the event of a dispute between the shareholders concerning the price of the shares, one or more experts approved by the competent authority need to be appointed. The shareholder exercising the pre-emption right has to bear any arising costs. As the new CCL does not contain rules regarding the timeframe for preparing such expert report, the shareholders should be free to include deadlines in the MoA and AoA in order to ensure efficient procedures.

Accounting and Auditing

New requirements for accounting need to be implemented as well. According to the new CCL, all companies are required to maintain accurate accounting records in accordance with



international standards at any time. Accounting records must be kept by a company for five years and have to be audited every year. At least every three years new auditors need to be appointed.

Formal Details

With respect to formal details, the MoA and AoA now has to include the address of the LLC's head office and any of its branches. Along with the name, the nationality and the domicile, the date of birth of the shareholders shall be specified. The manager's full name, nationality, domicile and authority must be given provided his name is mentioned in the MoA and AoA. Furthermore, any other persons who may sign on behalf of the company and the extent of their authority need to be stated.

Are other amendments possible under the new CCL?

Although other provisions of the new CCL do not necessarily have to be implemented, they might be advantageous for a minority shareholder or useful to ease the exercise of shareholders' rights and, thus, could be worth to be included in the MoA and AoA.

Change of Manager

Under the old law, a unanimous vote of the shareholders was required for the dismissal of the manager, provided the MoA and AoA did not stipulate otherwise. According to the new CCL, the manager may be dismissed by (simple) majority vote unless the MoA and AoA provides for a higher majority. Therefore, in order to protect the minority shareholder it may be appropriate to specify a sufficient majority of votes in the MoA and AoA.

Number of Managers

The maximum number of managers appointed in the MoA and AoA is no longer limited to five but may be freely chosen.

Holding a General Assembly

The shareholders may agree on a reduction of the previously applicable twenty-one-day notice period for holding a general assembly. To facilitate communication among the shareholders, the MoA and AoA could now stipulate that the invitation for a general assembly may not (only) be sent by

registered mail - as set out in the old CCL - but (also) by other means, such as eMail.

Moreover, the new law introduces the possibility for shareholders not only to appoint other shareholders as proxies to attend the general assembly in their stead but also third parties.

Pledge of Shares

Finally, it is possible to lay down rules relating to the pledge of shares in the LLC's MoA and AoA.

Catch-All Clause

Given that the new CCL is a very young piece of legislation - whose interpretation and actual implementation remains to be seen - it may be appropriate to include a catch-all clause in favour of the legal requirements of the new CCL in the MoA and AoA.

What are the consequences of a late implementation of the new CCL?

Failing to comply with the new regulations until 30.06.2016 will result in the company being automatically deemed to be dissolved. This could mean that the company is no longer permitted to conduct business. In addition, the new CCL imposes fines ranging from AED 10,000 to AED 100,000 in case of violating its provisions.

In general, it is to be noted that the catalogue of punishable offences relating to a breach of the CCL has been considerably tightened.

Therefore, we explicitly recommend amending any existing MoA and AoA and any further agreements with regard to shareholders or managers in such way that they comply with the new CCL. For the sake of good order, we would like to draw attention to the fact that the aspects stated in this circular are only a selection of necessary and possible amendments based on our current interpretation of the new CCL and that they are not suitable to replace an individual advice.

Do you have questions? - We would be glad to answer them!

From our office located in the heart of Dubai, our team of German attorneys has been advising small and medium-sized companies, corporations and individuals on the laws of the United Arab Emirates for more than a decade. Our areas of expertise include business set ups, corporate and commercial law, commercial agency law, employment law as well as tenancy and real estate law. We would be happy to attend to your questions as well. Contact us!

ANDERS LEGAL CONSULTANCY
Sama Tower, Office 806
Sheikh Zayed Road
PO Box 333 558, Dubai, UAE

Telephone: +971 4 327 5888
Telefax: +971 4 327 5999
eMail: info@anders.ae
Web: www.anders.ae

Published: April 2016

The information provided in this article has been carefully perused. However, no legal responsibility or liability whatsoever, in particular for completeness, accuracy and topicality, can be assumed. Specialist advice should be sought for any individual case.