

## inBrief



### Companies Law Compliance

By Charles Laubach | April 2017

The new Commercial Companies Law was enacted as Federal Law No. 2 of 2015. It gave existing companies until 1 July 2016 to achieve compliance with its terms. Article 374 provides that a further one-year extension could be granted by Resolution of the Cabinet, and such an extension was in fact granted. Article 374 also provides that a company that fails to achieve compliance shall be deemed dissolved.

Many companies set about amending their constitutive documents (Contracts of Establishment for limited liability companies and Memoranda and Articles of Association for joint stock companies) to achieve compliance with the new requirements. Shareholders of limited liability companies were assisted somewhat by Ministerial Resolution No. 272 of 2016, which specified which provisions of the Commercial Companies Law on joint stock companies would also apply to limited liability companies.

A new resolution of the Minister of Economy, Ministerial Resolution No. 694 of 2016, now provides further relief. It states that Contracts of Establishment of existing limited liability companies that are not amended by the deadline shall be deemed amended to the extent necessary to achieve compliance. One could question whether the Commercial Companies Law gave the Ministry the power to grant this relief from compliance. Executive measures cannot modify legislative measures absent enabling legislation. Nevertheless, the practical result is that such companies no longer face the prospect of dissolution, fines or other sanctions for failure to comply.

The new measure applies to general partnerships and limited partnerships as well as limited liability companies. It does not apply to the other forms of companies that exist under the Commercial Companies Law, the private joint stock company and the public joint stock company.

Although sanctions relief is welcome, some uncertainty remains, and not only because of the inherent limitations on executive power noted above. The parties to a Contract of Establishment that

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is deemed amended could still be unsure of where they stand. The Contract of Establishment will no longer mean what it says, and an authoritative determination of its actual meaning may be elusive. Although major substantive problems would seem unlikely, it is not ideal for a corporate document not to mean what it says.

In contrast, the companies that have amended their Contracts of Establishment do not face this ambiguity. Their amended documents would have been notarized and filed with the authorities, making it unlikely that the new Resolution would impose further amendments.

To illustrate the issues that might arise, the new Commercial Companies Law requires that a register of shareholders be maintained by the company, including such particulars as the full name, nationality, date of birth and place of residence of each shareholder. The date of birth was not previously required. Even a company that does not amend its constitutive documents should amend its register of shareholders so as to include this new information.

As a further example, the new law slightly changes the requirements for exercise of preemption rights when a share transfer is contemplated. When a shareholder in an LLC wishes to sell its shares, it must first make an offer on the same terms to the other shareholders, or alternatively obtain a waiver of the preemption right from the other shareholders. In the event of a dispute over the price, the new Commercial Companies Law requires that the price be determined by one or more experts nominated by the Competent Authority in the relevant Emirate. The previous Commercial Companies Law (and many constitutive documents of companies formed in the UAE) provided that this value would be determined by the company auditor. An expert appointed by the Competent Authority will now play that role, whether or not the underlying constitutive documents are amended.

The new Commercial Companies Law contains an express prohibition against a manager of a limited liability company acting as manager of a competing enterprise without the consent of the company. This exposes a manager to liability even if the prohibition is not stated in the constitutive documents of the company.

As a final example, a shareholder in a limited liability company is now able to pledge its shares. However, this is possible to the extent that the constitutive documents enable the same. It is unlikely that a provision to this effect would be deemed included in the company's constitutive documents by virtue of the new Resolution.

The new Resolution was published in Issue No. 612 of the UAE Federal Official Gazette dated 28 February 2017, and it took effect on 1 March 2017. ■

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