AFRIDI & ANGELL
LEGAL CONSULTANTS

inBrief

New Ministerial Decision brings clarity to Private Joint Stock Companies

By James Bowden and Abdus Samad | September 2017

The private joint stock company is one of the forms of company contemplated by UAE Federal Law No. 2 of 2015 concerning commercial companies (the **Companies Law**). The UAE Federal Ministry of Economy has now promulgated Ministerial Decision No. 539 of 2017 (the **Ministerial Decision**) which was issued on 29 May 2017 and is now in force, and expressly abrogates Ministerial Decision No. 370 of 2009 on the Register of Shares of Private Joint Stock Companies (and all other contradictory decisions and circulars). The Ministerial Decision brings much awaited clarity on the process for setting up and operating a private joint stock company (a **PJSC**).

Unlike the provisions in the Companies Law concerning public joint stock companies, which are relatively more detailed, the provisions relating to PJSCs are general in nature and provide little by way of detailed guidance. Notably, article 265 of the Companies Law provides that save for those concerning public subscription, all provisions concerning public joint stock companies shall apply to PJSCs. It will be of interest to see how the authorities and the courts will reconcile article 265 with the detailed guidance contained in the Ministerial Decision, much of which addresses the same content as the relevant provisions of the Companies Law.

The Ministerial Decision is extensive and brings welcome clarity to many issues, and anyone owning, managing, acting as director of, or advising a PJSC should read it in full. For example, it deals with the following:

- Board of directors: guidance as to the process and preconditions for an appointment to the board of a PJSC. For example, any person wishing to be appointed to the board of a PJSC must submit an acknowledgment that he shall abide by the Companies Law, any supplementary legislation thereto and the provisions of the company's memorandum and articles of association. It also deals with conflicts of interests, related party transactions and

The Authors

James Bowden
Partner
jbowden@afridi-angell.com
Tel: +971 4 330 3900

James advises on a broad range of corporate, commercial, compliance and regulatory, technology outsourcing and employment matters. Prior to joining Afridi & Angell in 2006, James practiced in Canada, in the Toronto office of a large global law firm, and as in-house counsel with one of Canada's leading technology outsourcing companies. He is a member of the Ontario Bar.

Abdus Samad
Associate
asamad@afridi-angell.com
Tel: +971 4 330 3900

Abdus advises foreign and local clients on general corporate, commercial and other matters related to the conduct of business in the region including corporate investments, restructuring, setting up companies and joint ventures in the UAE, and the acquisition and sale of business. Abdus has also been involved in banking and finance transactions, and advises clients on banking related products and services.

director remuneration, and clear permission for participation in meetings by electronic means (previously subject to approval of the "Authority" per article 156 of the Companies Law), among other things.

- Capital: guidance on issued versus authorized share capital, share premiums, treasury shares and pre-emptive rights of shareholders and various exceptions to such rights.
- Employee share schemes: article 226 of the Companies Law contemplated the issuance of guidance to detail the methods by which a company could implement an employee share scheme. This guidance is contained in the Ministerial Decision (see articles 45 through 47 of the Ministerial Decision). Notably, directors are not permitted to participate in such a scheme and any shares held for the purposes of an award to employees shall not carry any right to vote or otherwise receive distributions from the company, until such time as such shares are transferred to an employee under the terms of the company's share scheme.

The Ministerial Decision may be a sign of further detail to come. Guidance on issues concerning the Companies Law is anticipated and will assist in further developing the corporate governance landscape in the United Arab Emirates. As an example, we expect further guidance on the form of memorandum and articles of association to be used for PJSCs (as alluded to in article 3 of the Ministerial Decision). In addition, article 5 of the Companies Law contemplates the issuance of guidance concerning the ability of a free zone entity to conduct business in the United Arab Emirates, but outside the relevant free zone. All guidance that helps clarify issues concerning the Companies Law will be welcomed. ■