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# The new company law landscape in the United Arab Emirates

## Key features of the Commercial Companies Law 2015

23 April 2015

## Overview.

The Federal Commercial Companies Law No.2 of 2015 (CCL 2015) will repeal and replace Federal Commercial Companies Law No. (8) of 1984 (CCL 1984), when it comes into force in the United Arab Emirates (UAE) in July.

Essentially, the CCL 2015 modifies the existing company law regime in the UAE. Many provisions simply restate or amend the provisions of the CCL 1984, albeit the layout and wording may have changed. The most wide-ranging changes apply to PJSCs. Discretion is retained for the Cabinet and UAE regulators to introduce further changes in key areas, including relating to different classes of shares, takeovers and underwriting and bookbuilding for IPOs.

While many changes in the CCL 2015 will be welcomed by the market, maintaining the existing position in some areas, such as foreign investment in UAE companies, may be regarded as a missed opportunity to modernise and liberalise the business environment across the emirates.

The CCL 2015 was published in the Federal Official Gazette on 31 March 2015 and made publicly available earlier this week.

## Key contacts.

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## At a glance guide to the CCL 2015.

### Application and exemptions

**Applies to broadly the same companies as the CCL 1984 (i.e. UAE incorporated companies and certain foreign companies)**

> CCL 1984 exemptions retained (i.e. companies excluded by the Cabinet, companies in certain sectors (e.g. oil and gas) which are 25% owned by the Federal or an Emirate Government, free zone companies)

> new exemption for companies wholly-owned by the Federal or an Emirate Government

> exemptions may now be lost where the company sells, publicly offers or lists its shares. Free zone company exemption may now be lost if operates onshore in the UAE, outside of the free zone (to be regulated by the Cabinet)

### Transitional provisions

**The CCL 2015 was published in the Federal Official Gazette (Issue No. 577) on 31 March 2015 and comes into force in July.**

> companies governed by the CCL 1984 have a one year transitional period to comply with the CCL 2015 (which may be extended)

> CCL 2015 anticipates secondary regulations will be issued by the Cabinet, Ministry of Economy, the Securities and Commodities Authority (SCA) or the UAE Central Bank on a range of issues. To the extent such issues are already regulated, the existing regulations will remain in force until new regulations are made under the CCL 2015 (provided they do not conflict with it).

### Corporate structures

**Broadly the same as under the CCL 1984 regime**

> concepts of LLC and PJSC are retained

> no longer a requirement that state-owned companies must be PJSCs

> new concept of holding company for certain limited purposes

"The new Commercial Companies Law makes reasonably conservative amendments to the existing regime, rather than creating a new legal framework for companies operating in the UAE. Many changes will be welcomed by the market and should make the UAE more investor-friendly, especially in relation to IPOs, though some ambiguities and challenges remain."

**Scott Campbell**, Managing Partner, Middle East

## Public joint stock company (PJSC) regime

**Evolution to a more flexible share structure and IPO regime**

### Shares

> AED 30m minimum issued share capital (previously AED 10m)
> new concept of authorised share capital not exceeding two times the issued share capital
> overall greater flexibility in share structure than under CCL 1984
> restriction on different classes of shares retained, but Cabinet may issue resolution to permit other classes of shares (e.g. preference shares)
> new issues of shares may now be issued at a premium
> pre-emption rights on new issue of shares are now tradable
> share capital can be increased to allow issue of shares to a strategic partner or employee as part of employee share scheme (no pre-emption)

### Establishment

> minimum five founders (previously 10)
> PJSCs may be wholly-owed by Federal or Emirate Government

### Management

> 3-11 directors (previously maximum 15)
> Chairman and majority of the board must be UAE nationals (as under CCL 1984)

### SCA

> in our view, need for ongoing dialogue with SCA remains
> further regulations expected

### IPOs

> reduced free float: 30-70% of shares must be offered to the public (previously 55-80%)
> two year founder lock-in retained
> new concepts of bookbuilding and underwriting introduced with specific SCA regulations to follow
> may allow different approaches to pre-funding for institutional and retail investors but note further guidance from SCA to be issued (as referred to above)
> shorter subscription period of 10-30 days (previously 10-90 days) and shorter extension period of 10 days (previously 30 days)
> new tighter timescales imposed for share allocation and repayment of excess

### Takeovers

> CCL 2015 anticipates SCA will establish a formal public takeover regime
> currently no formal UAE takeover code and public acquisitions are regulated by SCA on a case-by-case basis
> this will be a significant reform, building on recent incremental SCA measures to improve competitiveness and minority investor protection

### Bonds

> no longer a restriction on PJSCs issuing bonds with a value not exceeding the existing capital of the company
> regime for bond issuances otherwise unchanged

## Limited liability company (LLC) regime

**Regime similar to the CCL 1984 regime**

> single shareholder companies are now permitted (previously minimum two shareholders)
> maximum number of shareholders increased to 75 (previously 50)
> no maximum number of managers (previously five)
> new express permission for partners to pledge their 'shares' an LLC, though no clarification on the process
> general rule that PJSC provisions also apply to LLCs, unless otherwise stated. This is potentially wider than CCL 1984 and leads to uncertainty as to how it will be applied

## Foreign investment

**49/51 rule remains**

> LLCs and PJSCs must have one or more UAE partners holding at least 51% of the share capital (same as CCL 1984)
> speculation that limited relaxation of foreign investment restriction may be addressed in a separate draft law

## Corporate governance and directors' duties

> increased focus on corporate governance (to be the subject of further regulation). Breach of rules to be subject to penalties
> new concept of social responsibility (may be regulated by the Council of Ministers)
> new positive duty on directors of a PJSC and managers of an LLC towards the company to 'preserve its rights and work for the benefit of the company honestly and faithfully', building upon the existing positive duties on directors of listed PJSCs imposed by SCA. Previously, subject to negatively-drafted duties, e.g. not to mismanage the company

## Financial assistance

> new financial assistance prohibition prevents a company or any of its subsidiaries from providing assistance (in the form or loans, gifts, security or guarantees) to any shareholder to enable it to acquire/hold shares or bonds/sukuk issued by the company
> no whitewash procedure

## Shariah compliant companies

> Internal Shariah Control Committees and the Shariah Controller of companies incorporated in the UAE to be regulated by the Cabinet
> newly-established Shariah compliant companies must obtain the approval of the Internal Shariah Control Committee before doing business

## Penalties

> wider range of penalties (financial and/or imprisonment) for non-compliance with a range of provisions/specified activities (ranging from delay in listing to disclosure of confidential information about the company)

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