ALLEN & OVERY

New Federal Law By Decree No. 32 of 2021 on Commercial Companies

BACKGROUND

Federal Law By Decree No. 32 of 2021 on Commercial Companies (the **New Companies Law**) was issued yesterday, to replace Federal Law No. 2 of 2015 on Commercial Companies, as amended (the **2015 Law**). The New Companies Law introduces a number of amendments to the 2015 Law, most notable of which is the introduction of special purpose acquisition companies and special purpose vehicles. The New Companies Law removed the restriction that the nominal value of a share in a joint stock company must be no less than AED1 and left specifying the nominal value to the articles of association of the company.

The New Companies Law also makes certain changes to the provisions regulating limited liability companies (**LLC**s) and public joint stock companies (**PJSC**s), and introduces a new regime allowing the division of PJSCs.

The New Companies Law will come into force on 2 January 2022.

Key changes

Recognition of new corporate vehicles

The New Companies Law introduces two new corporate vehicles, being the special purpose acquisition company (**SPAC**) and the special purpose vehicle (**SPV**).

The New Companies Law defines a SPAC as a PJSC designated as such by the UAE Securities and Commodities Authority (**SCA**) and which is established for the sole purpose of acquiring or merging with another company. Whilst the SCA is required to issue resolutions providing further clarity on the manner in which SPACs may conduct such business combinations, the recognition of SPACs in the New Companies Law confirms the UAE Government's commitment to participating in the new trend of IPOs by SPACs. A draft of these regulations, which this firm assisted in developing, was the subject of a recent public consultation process carried out by the SCA.

The New Companies Law also introduces the concept of an SPV, which is defined as a company established for the purpose of separating the obligations and assets associated with a specific financing operation from the obligations and assets of its parent entity, and may be used in credit transactions, borrowings, securitizations, bond issuances and transfers of risks associated with insurance, reinsurance and derivative operations, in accordance with the resolutions issued by the SCA regulating such activity.

Extension of the list of exempt companies

The list of companies exempted from the provisions of the New Companies Law has been extended to include SPACs and SPVs, although such

vehicles are required to continue to regulate themselves in accordance with the provisions of the New Companies Law until such time that the SCA issues resolutions or regulations in this regard.

Powers of the managers of an LLC

If the term of the board of managers of an LLC has expired and no replacement board of managers has been appointed by the company's general assembly, the existing board of managers shall remain in office for a period not exceeding six months from the date of expiry of their term, until a new board of managers is appointed by the general assembly.

Provisions relating to general assembly meetings of an LLC

Pursuant to the New Companies Law:

- a person who is not a manager may now act as a proxy for a shareholder at a general assembly meeting; and
- in the event that the quorum requirements are not met at a meeting of the general assembly, a second meeting is to be convened which shall be validly constituted regardless of the number of attendees at such second meeting, and it is no longer possible for the memorandum of association of an LLC to provide for a specific quorum requirement for the purposes of a second meeting of the general assembly.

Statutory reserves of LLCs

The percentage of net profits which must be allocated each year to the statutory reserves of an LLC has been reduced from 10% to 5%.

Subscription to shares in a PJSC

The article of the New Companies Law that defines a PJSC provides that the Council of Ministers shall (upon submission of the Minister of Economy and following consultation with the local competent authorities) issue a resolution specifying the minimum and maximum limits to which the founders of a PJSC may subscribe. Rather than specify that founders must subscribe to no less than 30% and no more than 70% of the issued share capital of a PJSC, the New Companies Law provides that the founders must subscribe to the percentage specified in the prospectus but subject to the requirements of the SCA.

The New Companies Law also:

- no longer provides for a minimum period for the public to subscribe for shares (10 business days under the 2015 Law), and instead provides that the prospectus shall specify the minimum period, although the maximum period remains 30 business days;
- provides that the prospectus may also provide for an extension to the subscription period, the duration of which shall be specified in the prospectus. This varies the position under the 2015 Law, which provides that any such extension may be for an additional period of no more than 10 business days; and
- allows the founders to subscribe for any unsubscribed shares upon the expiry of the subscription period, but subject to the requirements of the SCA. This is different from the position in the 2015 Law, which provides that the founders may subscribe to up to 70% of the shares, and in the event that there remain any unsubscribed shares, then the incorporation shall be revoked.

Issuing shares at a discount

A PJSC is now permitted, with the approval of the SCA and after adopting a special resolution, to issue shares at a discount where the market price of its shares falls below the nominal value. Such company is further permitted to create a negative reserve, equal to the discounted amount, to be covered from future profits.

Operational profits prior to conversion

The stipulation that a company must have achieved an average of 10% operational profits over the past two financial years, prior to approving its conversion, has been dispensed with in the New Companies Law.

Sale of shares on conversion

Certain of the restrictions in the 2015 Law, relating to the sale of shares upon conversion of a company have been removed, including the maximum percentage of shares which may be sold in a public offering. Additionally, the New Companies Law removes the restriction on the founders (the shareholders prior to the conversion) on trading their shares once the converted company is listed.

Appointment of replacement directors

The New Companies Law provides that if a vacancy in the board of a PJSC arises, then such vacancy must be filled within 30 days and the new director shall complete the term of his predecessor. In the event that no appointment is made within such period, then the agenda for any subsequent general assembly meeting must include the election of a board member to fill the vacancy.

Director remuneration

The New Companies Law provides that where a PJSC fails to achieve profits in a financial year, it is possible for a member of the board of directors to be paid a lump sum fee not exceeding AED 200,000 as remuneration at the end of the relevant financial year, if this is permitted under the articles of association of the company and following the approval of the general assembly.

Convening general assembly meetings for a PJSC

The New Companies Law now expressly provides for SCA approval prior to convening a general assembly, a requirement which is expressly provided for in the SCA regulations but not the 2015 Law.

Nominal value of shares

The nominal value of shares in a joint stock company shall be equal to the amount specified in the articles of association of the company. There are no longer restrictions on such amount, which can therefore be lower than AED 1 and higher than AED 100.

Division of a PJSC

The New Companies Law introduces provisions governing the division of the assets, liabilities, rights and obligations of a joint stock company into two or more separate companies with independent legal personality. The division of such a company may occur either horizontally (where the shares of the resulting companies are owned by the same shareholders of the company before the division and with the same ownership ratios) or vertically (where it takes place by separating part of the assets or activities into a new subsidiary company owned by the company under division). The board of directors of the company being divided is entrusted with preparing the division plan, along with all statutory information and documents required for the purpose of the division.

The conditions and procedures required in connection with a division shall be issued by the Ministry of Economy or the SCA, as the case may be, each within its jurisdiction.

We would be happy to discuss the issues raised in this publication with you.

Please reach out to your usual Allen & Overy contact or email: marketing_middleeast@allenovery.com