

A horizontal collage of legal-related images including a scale of justice, a computer keyboard, and a gavel.

## JONES DAY COMMENTARY

# A NEW COMPANIES LAW FOR THE UNITED ARAB EMIRATES: A STEP CLOSER

The United Arab Emirates (the “UAE”) is in the midst of a set of legal reforms that are intended to greatly strengthen the legal and regulatory landscape of doing business in the country.

The draft Companies Law (the “Draft Commercial Companies Law”) is due to replace the existing Commercial Companies Law, which has been in place since 1984.

## A LONG-AWAITED NEW COMPANIES LAW

The Draft Commercial Companies Law is highly anticipated by the UAE business community and foreign investors and has been in gestation for almost 10 years.

The progress of the Draft Commercial Companies Law reached a major milestone at the end of May 2013 when it was finally passed by the Federal National Council (the “FNC”) following a record 28 sessions of debate. Although not yet at the end of the legislative process, this is one of the final steps before enactment. The Draft Commercial Companies Law will

now be referred to the President of the UAE for final approval and promulgation. Officials hope that it will be enacted in its final form within a matter of months.

The Draft Commercial Companies Law, when enacted, should provide a stronger, more modern, and more certain basis of companies regulation in the UAE.

## MAJORITY LOCAL OWNERSHIP RULES REMAIN (FOR NOW)

Foreign investors in the UAE have eagerly awaited a revision to the existing Commercial Companies Law in the hope that any such revision would introduce a relaxation, in certain industry sectors, of the general requirement (outside of designated free zones) that companies established in the UAE must be majority-owned by Emirati nationals or corporates owned by Emirati nationals.

The draft provisions that would have paved the way for this relaxation to occur were proposed in an earlier version of the Draft Commercial Companies Law

but have been rejected by the FNC on a number of grounds, including a possible threat to national security. A spokesperson has stated that this highly awaited topic will be addressed in a forthcoming separate draft "Investment Law." It is not yet known when this draft law will be considered and what provisions it might contain (although some officials have expressed hope that the issue will be addressed as early as next year).

As things stand, foreign investors must continue to rely on one of the existing legal structures available if they wish to achieve majority or complete ownership of a presence in the UAE. These include setting up operations in one of the UAE's many free zones (which allow for 100 percent foreign ownership of companies) or the establishment of a branch or representative office of a foreign company (instead of a subsidiary).

## A STRENGTHENING OF CORPORATE GOVERNANCE AND INVESTOR PROTECTION

The Draft Commercial Companies Law should, when enacted, substantially strengthen the existing corporate governance regime in the UAE and provide greater protection and peace of mind for investors.

Examples of areas in which existing regulation is set to be strengthened include:

- Closer scrutiny and accountability of publicly held companies;
- Strengthening of the directors' duties regime and the responsibilities of managers and auditors;
- Stiffer penalties for offenses such as misrepresentation of a company's financial position and illegal distribution of profits; and
- Possible adoption of unified accounting standards.

The Draft Commercial Companies Law is also likely to provide for the ability for companies to make voluntary financial

contributions (of up to two percent of profits averaged over the two previous fiscal years) in furtherance of corporate social responsibility goals and leaves the door open for further corporate social responsibility regulation to be issued by the UAE government in the future.

The Draft Commercial Companies Law may also impose requirements for a minimum number of Emirati nationals to be appointed to board positions in certain companies incorporated within the UAE.

## THE BIGGER PICTURE

The Draft Commercial Companies Law is part of a set of modernizing business laws in the UAE, which are at various stages of coming into effect. These also include:

- A draft Bankruptcy Law, currently making its way through the legislative process;
- The anticipated draft Investment Law referred to above, which is due to address foreign ownership restrictions of companies incorporated in the UAE; and
- The already enacted Competition Law (which is the subject of our February 2013 *Jones Day Commentary* "UAE Competition Law: A New Beginning").

## LAWYER CONTACT

For further information, please contact your principal Firm representative or the lawyer listed below. General email messages may be sent using our "Contact Us" form, which can be found at [www.jonesday.com](http://www.jonesday.com).

**Eric Milne**

Dubai

+971.4.709.8484

[emilne@jonesday.com](mailto:emilne@jonesday.com)

*Daniel Partovi of the Dubai Office assisted in the preparation of this Commentary.*

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