



## Legal Bulletin

Issue 6, July/August 2015

### New Companies Law In Effect

The new Commercial Companies Law is in effect as of 1 July 2015 (Federal Law No. 2 of 2015). The law does not contain the dramatic change that some expected - lifting or easing of the local ownership requirement for onshore companies. However, there are some noteworthy changes that deserve attention, particularly with respect to LLCs, which are briefly discussed below.

The changes address corporate governance, the regulation of public companies, and a variety of adjustments to the operations and documentation of existing companies, such as: (1) LLCs can now be owned by a single corporate or individual shareholder, and a new holding company vehicle has been introduced, (2) shares in LLCs may be pledged to third parties, (3) there is now a companies registrar (though the details are yet to be developed), (4) the government can now own shares in any type of company (not just a public joint stock company), and, curiously, the par value of a share in a company must now be between AED 1 and 100, instead of AED 1,000.

Investors in LLCs will have to consider the implications of the law on their existing documentation, and new companies formed will need their documentation to comply with the new law. In some cases, investors in existing LLCs may wish to change their documentation to take advantage of some of the new features of the law, such as, for example, the facility to pledge shares.

Even though the law has technically taken effect, it is unclear at this point what can and cannot be changed for existing companies, and what new

companies have to do. In Dubai, the Dubai Department of Economic Development and Notary Public has formed a committee to consider these issues and provide guidance to the public on acceptable and unacceptable changes to the standard form documents (such as an LLC's memorandum of association), in line with the new law. That guidance has yet to be released, but we will be providing updates as and when it is available, and can assist clients with navigating through the new law. ■

### DIFC Wills and Probate Registry Goes Live

In late April 2015, the Wills and Probate Registry (the "Registry") in the DIFC became operational. Up until the establishment of the Registry, wills in Dubai (foreign or local) by both Muslims and non-Muslims, covering property in Dubai, were subject to the jurisdiction of the Dubai Courts. Under the Dubai Courts system, depending on the circumstances and the presiding judge, the judge can apply Sharia law to the interpretation of the will. Now, there is an entirely separate judicial system in place, and wills in the Registry are subject to a common-law based DIFC wills legal regime (the laws are publicly available at <http://difcprobate.ae/>).

In order for the wills to be enforceable (for actions such as, for example, the transfer of a Title Deed in a property to an heir), they still must be stamped by the Dubai Courts. The DIFC has entered into a Memorandum of Understanding with the Dubai Courts to provide for this, however this mechanism remains untested.

Key points to note are (i) the Registry is for non-Muslims only (you can also never have been a Muslim, in other words, you

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cannot register even if you have converted from Islam to another religion), (ii) it is entirely separate from the previous regime, and therefore, you must register your will with the DIFC (and pay the fees of approximately AED 10,000) in order to be part of the system, (iii) the assets that are subject to the will must be in Dubai (there are ways to structure your assets so that they fall under Dubai's jurisdiction), and (iv) the testator must be 22 years old.

Since its opening, the Registry has become popular and well-received by foreigners in Dubai, as applicants are already experiencing wait times to procure an appointment for registration. Afridi & Angell has assisted multiple clients with drafting and registering their wills, and thus far, the service seems efficient and useful.

Nevertheless, enforcement of wills in the Registry has yet to be tested, so it remains to be seen how the system will evolve. It is however a welcome addition to the legal landscape in Dubai, and if successful, will allow foreigners to have an increased level of confidence in investing in the Emirate. ■

### **DFSA Imposes Record-Breaking Fine on Deutsche Bank**

The Dubai Financial Services Authority (DFSA) imposed a USD 10.5 million fine on Deutsche Bank AG Dubai (DIFC Branch) in the culmination of a three-year investigation, at the end of March 2015. The investigation targeted the bank's practice of not documenting some of their high net worth individual clients as clients of the DIFC branch. While these clients were often referred by the DIFC branch to other branches (in Geneva, Luxembourg, and other locations), the investigation indicated that the private wealth management team remained in touch with these clients, and the clients should therefore have been documented as such with the regulator.

The DFSA may have taken a strong stance against the bank in order to make an example. Sources close to the DFSA have said that the regulator would not have taken formal action against the bank if it had disclosed the initial breach, however, according to these sources, the bank did not cooperate to the extent the DFSA wanted. ■

### **Dubai Statistics Centre: Mandatory Information Disclosure**

Companies in the Emirate of Dubai have recently been receiving questionnaires requesting detailed information about their business, including financial information. These requests have come from the Dubai Statistics Center (the "DSC"), a Government body created pursuant to Dubai Law No. 23 of 2006 tasked with the compilation and dissemination of economic, social and demographic statistics for the Emirate of Dubai. The DSC is not the only statistics authority in the UAE; the National Bureau of Statistics, a federal body based in Abu Dhabi, and the Statistics Centers in the Emirates of Fujairah and Ras Al Khaimah, serve similar functions for those Emirates and the UAE as a whole.

Are companies obliged to provide information to the DSC?

In short, yes. The DSC law makes it mandatory for all individuals and companies in the Emirate (in addition to Government departments, federal agencies, public institutions and welfare organizations etc.) to provide information to the DSC to enable the DSC to carry out its functions.

The increased frequency and aggressive detail of the DSC information requests causes one to question the rationale behind dedicating such resources to an information gathering exercise. Some have speculated that it is a precursor to introducing value added or corporate taxes. It has also been reported that the UAE finance ministry is considering the imposition of a corporate tax in the UAE. With a number of GCC countries suffering from low oil prices, the imposition of additional taxes is perhaps not as remote a possibility as it once seemed.

The increasing assertiveness of the DSC may be linked to the possible introduction of tax, discussed below. ■

### **Taxes in Dubai?**

Indications are swirling that a corporate tax and VAT may be introduced in Dubai and the wider GCC.

News reports indicate that on July 2nd, 2015, a senior Ministry of Finance official said that the UAE will be passing a law introducing corporate taxation and VAT in the third quarter of this year.

In May of this year, a draft agreement on VAT was produced during the course of a meeting of the GCC's Financial and Economic Cooperation Committee in Doha. Reports indicated that the agreement is widely expected to be endorsed by member nations. ■

### **Abu Dhabi Global Market Up and Running**

The Abu Dhabi Global Market (ADGM) began its first phase of activities with effect from June 15th, 2015. It is now accepting license applications and has issued draft financial regulations for public comment. ADGM is a new financial free zone located on Maryah Island in Abu Dhabi.

The draft regulations cover issues such as takeovers, insurance, insolvency, marketing of funds and investment offerings, mandatory disclosure requirements, market conduct rules, disciplinary actions and enforcement powers, among other issues.

In May of this year, licenses were issued to non-financial services entities, and the free zone's stated aim is to begin processing its first financial services license applications in the final quarter of the year.

Al Maryah Island itself is part to the Abu Dhabi government's long-term development plans. The entire 114 hector island is a financial free zone, designated as the jurisdiction of Abu Dhabi Global Market and as a financial free zone by Cabinet Resolution Number 15 of 2013. Plans for the island include financial, commercial, leisure, entertainment and residential developments. ■

### **DTMFZ Is Now Dubai Creative Clusters**

The Dubai Technology and Media Free Zone (DTMFZ, a part of the TECOM Investments portfolio) is now called Dubai Creative Clusters, pursuant to Law No 15 of 2014. The re-branding and re-launch of the authority's website are pursuant to the authority's new objectives, which include the promotion of Dubai as a regional and international destination for creative production.

It is not clear if and how the internal regulatory procedures for free zones falling under the authority (which include Dubai Internet City, Dubai Outsource Zone, Dubai Media City, International Media Production Zone, Dubai Knowledge Village, Dubai International Academic City, Dubai Studio City, Enpark, DuBiotech, and Dubai Design District) will be affected. There will likely be changes, and we will keep you updated as and when they become available. ■

### **New Free Zone: Dubai World Trade Centre Free Zone**

There is a new free zone under the authority of the Dubai World Trade Centre Authority (DWTC), which is geared towards companies working in international exhibitions and conferences, and is established under Law No (9) of 2015.

The new free zone is designed to boost regional and international exhibitions and conferences in Dubai and to attract local and international investments and "hosting commercial and trade establishments," according to official statement. DWTC includes the Dubai International Convention and Exhibition Centre, which already hosts a number of regional exhibitions. ■

### **CORRECTION – Previous Issue of the Legal Bulletin (Issue 5, 2015)**

In our update on the new property transfer fee regime, we stated that the changes in the applicable fees for property transfers introduced by the Land Department include an 8% transfer fee, instead of the previous 4%, to be levied on a property being sold pursuant to a Power of Attorney granted by the seller. The correction here is "property" should have read "off plan property". ■

#### **Afridi & Angell**

Founded in 1975, Afridi & Angell is one of the leading and most established full-service law firms in the UAE. We provide comprehensive legal advice and innovative business solutions in banking and finance; corporate and commercial Law; dispute resolution; projects; construction and real estate; employment; energy; project finance; transport; as well as doing business in the UAE and in the DIFC. We advise local and regional clients ranging in size and sophistication from start-ups to some of the region's largest public and private companies, governments and quasi-government institutions. We work extensively with entrepreneurs and investors from the region and beyond, and have attracted numerous international clients looking for the right counsel to protect and expand their interests in the UAE.

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