

Federal Law No. (2) of 2015 on Commercial Companies in the United Arab Emirates (UAE)

This alert is designed to provide a brief synopsis of the Articles which have changed and maybe either applicable or relevant for your consideration.

Companies working in free zones (Article 5)

1. Provisions of this law shall not apply to companies established in free zones of the state, whenever a special provision is made in laws and regulations of a certain free zone. By way of exception from this provision, such companies shall be subject to provisions of law if their laws and regulations allow exercising **activities beyond the free zone in the state**.
2. Subject to provisions of item (1) of this Article, Cabinet shall issue a decision determining the conditions for entry and registration of companies operation in free zones of the State and wishing to exercise their activities in the State outside free zones.

Corporate governance (Article 6 and 7)

With the exception of banks, financing companies, financial investment companies, exchange and money brokerage companies, the Minister shall issue the decisions which set the general framework regulating **Governance in connection with private joint stock companies** where the number of the shareholders therein exceeds 75. As for the Public Joint Stock Companies, the Chairman of the Authority shall issue the relevant Governance Decisions.

The Decisions regulating Governance as mentioned above shall include fines to be imposed by the Ministry or, as applicable, the Authority to the companies and their Chairmen, Directors, managers and auditors in the event of contravention of such Decisions, provided that the fine amount shall not exceed AED ten million.

Local sponsor (Article 10)

Any company established in the Emirate shall have one or more UAE partners holding at least 51 per cent of the share capital of the company. **Any transfer of the title of any share** of a partner that may affect the percentage as set out above **shall be invalid**.

Memorandum of Association (MOAs) in Arabic (Article 14)

The Memorandum of Association of a company and each amendment thereto shall be made in **Arabic** and attested by the Notary Public, **failing which the Memorandum of Association or the amendment thereto shall be invalid**. If the Memorandum is issued in a foreign language in addition to Arabic, the Arabic text shall be the applicable text in the State (accordingly the companies may need to amend their MOAs).

Share can be in Cash or in Kind (Article 17)

The capital of the company shall be composed of either a contribution **in cash or equivalent in contribution in kind**. The partner may not contribute in work rendered, unless he is a joint partner. The contribution of the partner may not consist of his reputation or influence.

Accounting Records (Article 26)

1. Each company shall maintain accounting records showing transactions, provided that such records would accurately and at any time demonstrate the Company's financial standing, and through which partners and shareholders could verify that Company's accounts are maintained as per the provisions of this law.
2. Each company shall maintain its **accounting records at its head office for at least five (5) years** as from the company's fiscal year end date.
3. Company **may maintain an electronic copy of originals** of any documents and papers kept or deposited therewith as per the controls of which Minister's decision will be issued.

Company's accounts (Article 27)

Each Joint Stock Company or Limited Liability Company shall have one or more auditors to audit annually the books of accounts. The company shall apply the **International Accounting Standards** and Practices upon preparing its periodical and annual accounts, to give a clear and accurate view of the profits and losses of the company.

Company's fiscal year (Article 28)

1. Each company shall have a fiscal year determined in its MOA, provided that **first fiscal year may not exceed 18 months and may not be less than 6 months**, and shall be calculated as from the company's registration date in commercial register with the Competent Authority.
2. Following fiscal years shall be deemed as **successive periods, 12 months each**, commencing immediately from expiry date of the preceding fiscal year.

Distribution of profits and losses (Article 29)

1. If partner's share in profits and losses is not determined in Company's MOA, it shall be as per **percentage of his share in the capital**. If Company's MOA only provides for profit share, then partners share in loss shall be equivalent to profit share and vice versa.
2. If partner's share in company is limited to his work, then his **share in profits and losses must be determined in Company's MOA**. If, in addition to physical work, the partner contributes with cash or in-kind share, he shall have a share in profits and losses against physical work and another share against cash or in-kind share.
3. If it is agreed in the Company's MOA to deprive a partner from profits, exempt him from losses or grant him a fixed interest against his share in the Company, the MOA shall be null and void.
4. It may be agreed to **exempt from losses any partner who contributes only by effort**, provided that certain remuneration is determined against such effort.

Distribution of profits (Article 30)

1. **No fictitious profits may be distributed to partners or shareholders**, and the board of directors or any person so authorized shall be liable towards shareholders, partners and creditors for any such procedures.
2. If the company distributes any profits in violation of the provisions of this law and decisions issued by virtue of the same, **the partner or shareholder shall refund whatever profits he received in violation of such provisions**. Company's creditors may claim each partner or shareholder to refund any profits so received, even if in good faith.
3. Partners or shareholders may not be deprived from real profits they have received, even if the company sustains losses during the following years.

Definition of Limited Liability Company (Article 71)

1. Limited Liability Company is a company in which the number of partners is not less than two persons and no more than 50 persons, and each of them is held liable to the extent of his capital share.
2. **One citizen, whether natural or artificial person, may incorporate and own a limited liability company**, and owner of company's capital shall be held liable only to the extent of the capital stated in its MOA, and shall be subject to provisions of limited liability company enumerated in this law, without any contradictions with the nature of the company.

Responsibility of preparing the accounts (Article 87)

The Manager of the company shall prepare the annual budget and the profit and loss account, and shall also prepare an annual report on the affairs and financial position of the company and provide his recommendations on the distribution of the profits of the General Assembly, **within three months from the end of the financial year.**

General Assembly (Article 93 & 92)

The Limited Liability Company shall have a General Assembly consisting of all the partners. The General Assembly shall be convened by an invitation from the **Manager or the Board of Directors at least once in a year during the four months following the end of the financial year** of the company. Invitation to convene the General Assembly may be given by registered letters or by any other means as provided by the Memorandum of Association, at least 15 (fifteen) days prior to the date as scheduled to hold the General Assembly, or within any shorter period as agreed by all the partners.

Preparing the Accounts of the Financial Year (PJSC) (Article 235)

1. The Board of Directors in each Joint Stock Company shall prepare accounts of every financial year including the balance sheet as per the last day of the financial year and a statement of the profits and losses account.
2. The **accounts of the company shall be prepared in accordance with the International Accounting Practices and Standards.** Such accounts shall give a true and fair view of the profits or losses of the company for the financial year and the affairs of the company at the end of the financial year and shall comply with any other requirements in this Law and the relevant Decisions issued by the Authority.
3. The financial lists shall be approved by the execution thereof by the members of the Board or by the Chairman and the auditor.

Auditing fiscal year accounts (Article 236)

1. **Company's fiscal year accounts shall be audited** who shall submit a report on the same. Company's board of directors shall approve such accounts and forward the same to the General Assembly, together with auditor's report within 4 months from the end of each fiscal year.
2. Company shall deposit with SCA and competent authority a copy of accounts and auditors report within 7 days from the General Meeting at which accounts and auditors report was submitted.

Accounting standards- International Accounting Standards (Article 237)

Companies shall apply international accounting standards, when preparing interim or annual accounts and determining distributable profits. Such international accounting standards which are widely known as International Financial Reporting Standards (IFRS) will need to be applied by LLCs, PJSCs. (accordingly a conversion to IFRS will be needed by the users of local GAAP as defined in the financial statements.).

Optional Reserve (Article 240)

Articles of Association (AOA) of any joint stock company may provide for allocation of a certain percentage of net profits as an optional reserve for the purpose set out in AOA, and **such reserve may not be used for any other purposes**, save upon a resolution from the General Assembly of the company.

Distribution of Profits (Article 241)

1. Company's **General Assembly shall determine percentage of net profits** to be distributed to shareholders, after deducting statutory and operational reserves.
2. Shareholder shall be entitled to share in profit according to the controls issued under a decision from SCA.
3. Subject to provision of item (1) of this Article, company's AOA may provide for annual, semi-annual or quarterly distribution of profits.

Corporate social responsibility PJSCs (Article 242)

Upon the expiry of two financial years from the date of its incorporation and making profits, the company may, under a special Decision, give contributions. **Such contributions may not exceed two percent of the average net profits** of the company during two financial years preceding the year of contribution, provided that:

1. Such contributions shall be used for the purposes of serving the society;
2. To clearly state the beneficiary from such contributions in the auditor's report and the balance sheet of the company.

PJSCs auditors (Article 243)

The General Assembly may appoint one or more auditors for **one renewable year**, provided that such term **shall not exceed three successive years**, so that the auditor shall undertake his duties until the end of the next Annual General Assembly.

Issuance of Auditor's Report (Article 245)

1. Subject to provisions of Federal Law regulating Auditing Profession, as amended, auditors shall issue a report on audited accounts. If the company has more than one auditor, they shall distribute functions inter se, and each of them shall submit separate report addressing certain task entrusted thereto, and then they all shall submit **a joint report** for which they shall be jointly liable, and auditor shall state his name and affix his signature on such report.
2. Report must demonstrate whether company's accounts are maintained according to the provisions of this Law and whether they fairly reflect the company's financial standing.

Subsidiary's auditor (Article 246)

The subsidiary and its auditor shall provide such information and explanations as demanded by the auditor of the holding company for the purposes of audit.

Contents of auditor's report (Article 250)

1. The position of the company at the end of the financial year, particularly the balance sheet of the company;
2. The profits and losses account;
3. That the company keeps regular accounts;
4. Whether the company has purchased any shares or stocks during the financial year;
5. Whether the statements in the Board report are consistent with the books and records of the company;
6. A statement of the deals or financial transactions made between the company and any of the related parties and the procedures taken in that respect;

7. To state whether, within the limit of the information made available to the auditor, any contraventions of the provisions of this Law or the Articles of Association of the company have occurred during the financial year so as to adversely affect the activity or financial position of the company, whether such contraventions still exist or not and whether there are any penalties imposed on the company due to such
8. To state whether there are penalties imposed on the company due to contraventions of this Law or the Articles of Association of the company during the ending financial year and whether such contraventions still exist; and
9. In the events of accounts of any group, to state the financial position at the end of the financial year and the profits and losses account of the holding company and its subsidiaries, including the consolidated statements as a whole, in connection with the relevant parties in the holding company.

Joint audits (Article 254)

If the company has more than one auditor, they shall distribute the duties among themselves and each of them shall provide a separate report on the issues of the task assigned to such auditor, and then all the auditors shall prepare a common report for which they shall be jointly liable. The auditor shall state his name on the report and sign it.

Holding companies (Article 267)

1. The objectives of a Holding Company shall be limited to the following:
 - a. To hold shares or stocks in Joint Stock Companies and Limited Liability Companies;
 - b. To provide loans, guarantees and finance to its subsidiaries;
 - c. To acquire the movables and real estates required to commence its activity;
 - d. To manage its subsidiaries; and
 - e. To acquire industrial property rights from patents on invention, trademarks, industrial marks, royalties and other rights in kind and to utilize and lease the same to its subsidiaries or to other companies.

2. Holding Companies may not conduct their activities other than through their subsidiaries.

Failure to Invite the General Assembly in Case of Losses (Article 344)

A fine of **at least AED 50,000 (fifty thousand), but not more than AED 1,000,000 (one million)** shall be imposed on the Chairman of a Joint Stock Company or the Chairman of a Limited Liability Company if the losses of the company reach fifty percent of its capital and the Board fails to invite the Annual General Assembly of the company to convene in accordance with the provisions of this Law.

Failure to keep Accounting Records (Article 348)

A fine of **at least AED 50,000 (fifty thousand), but not more than AED 500,000 (five hundred thousand)** shall be imposed on the national or foreign company that fails to keep accounting records for the company to state its deals.



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