

## A NEW UAE COMMERCIAL COMPANIES LAW

### Introduction

To mark the occasion of the UAE's 50th anniversary, the UAE has embarked upon the largest legislative reform in the country's history, with the aim of advancing the country's legal framework and bolstering economic growth.

As part of this major reform, Federal Law by Decree No 32 of 2021 (the "**New Commercial Companies Law**") has been introduced. The New Commercial Companies Law is intended to repeal and replace the existing Federal Law No 2 of 2015 (as amended) (the "**Existing Commercial Companies Law**") and will come into force on 2 January 2022.

Clifford Chance has received early sight of the New Commercial Companies Law and we share some initial thoughts in this briefing on certain key changes that may result in greater scope for public mergers and acquisitions transactions and financings, as well as other changes that will provide greater flexibility in a number of contexts, including governance and corporate reorganisations.

We will continue to monitor developments of the law (including implementing regulations) and will provide a more detailed briefing in due course.

### Mergers and Acquisitions

The New Commercial Companies Law introduces two new entity types:

- a special purpose acquisition company ("**SPAC**"). The SPAC would be established as a public joint stock company (PJSC), designed for the sole purpose of acquiring or merging companies. The UAE is the first jurisdiction in the region to introduce SPACs (which we are seeing increasingly used in other jurisdictions such as the United States of America). We expect SPACs could provide an attractive option for facilitating M&A transactions (including for foreign investors), as well as to gaining access to capital markets in the UAE/

taking existing companies public (without an initial public offering). Further details will be required to assess how SPACs will work in practice (as well as how SPACs will be exempted/ treated under the New Commercial Companies Law). From an M&A deal structuring perspective, the introduction of SPACs will sit alongside tried and tested statutory mergers, which will continue to be available under the New Commercial Companies Law (and more relevant, for example, in the context of two existing public joint stock companies looking to merge). Similarly, the M&A regulations that govern tender offers for shares in public joint stock companies will also continue to apply in the context of takeovers of or partial share offers for public joint stock companies.

- a special purpose vehicle ("**SPV**"). The SPV is specifically recognised under the New Commercial Companies Law 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. Again, further details will follow but we would expect the availability of such SPVs to be helpful in the context of debt capital market transactions and perhaps more broadly.

The New Commercial Companies Law will also introduce new provisions that could further support M&A and financing transactions, including:

- Provisions that could provide the basis for spins offs and demergers. The New Commercial Companies Law contemplates the division of assets, liabilities, rights and obligations of a PJSC, into two or more separate companies with independent legal personalities.
- Nominal values of shares to be below AED 1 and above AED 100.
- PJSCs issuing shares at a discount (following approval from the SCA).

## **Other Notable Changes**

There are a number of other changes in the New Commercial Companies Law that should result in greater simplicity and flexibility, including in relation to the following matters:

### **PJSCs**

- Under the Existing Commercial Companies Law, there were limits to the percentages of shares the founders could subscribe to in PJSCs (no less than 30% and no more than 70% of issued share capital). These limitations have been lifted, including in instances where shares are unsubscribed to, upon the expiry of a subscription period.
- Public subscription periods can be adjusted (from minimum 10 days and maximum 30 days under the Existing Commercial Companies Law).
- There are certain corporate governance changes for PJSCs, certain of which reflect provisions already provided for in SCA Decision No 3 of 2020 (as amended). These include that the SCA must approve the convening of General Assembly meetings for PJSCs.
- New provisions relating to directors of PJSCs have been introduced, including that if a director leaves its position, prior to the expiry of its

term, a replacement must be found within thirty days and such new director shall complete the prior director's remaining term.

- New provisions relating to conversions are included. Previously, a company must have achieved an average of 10% operational profits for the previous two years, prior to approving a conversion. Interestingly, this has been dispensed with under the New Commercial Companies Law. The New Commercial Companies Law also removes certain restrictions on the sale of shares in a conversion.

### **LLCs**

- The percentage of net profits that must be allocated to statutory reserves has been reduced from 10% to 5%, a move that is likely to be popular with companies.
- A manager's term in office can be extended by up to six months, where no replacement is found (at the expiry of its term).
- A person (who is not a manager) may now act as a shareholder's proxy in general assemblies.
- Quorum requirements have been relaxed. Where a first meeting is inquorate, a second meeting is held. No quorum will be enforced in the second meeting (even if this is regulated in a Company's Memorandum of Association).

### **Conclusion**

The New Commercial Companies Law contains a number of significant provisions that we expect will deliver major changes in the way public companies conduct transactions and will enhance investment opportunities in UAE incorporated companies going forward. Further implementing regulations will be required but this is a positive step that will be welcomed by corporates and investors.

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