



LEGAL MEDIA GROUP

LEGAL ERA

BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

GIFT CITY IFSC

THE KEY TO UNLOCKING INDIA'S
BRIMMING POTENTIAL AS A
GLOBAL INVESTMENT AND
ARBITRATION HUB



THE GROWTH AND
EVOLUTION OF COMPETITION
LAW IN MALAYSIA

UAE WELCOMES FOREIGN
INVESTMENT AND
BOLSTERS M&A ACTIVITY

VALUATION OF BIOLOGICAL
RESOURCES IN INDIA FOR RESEARCH
AND PATENTING FOR COMMERCIAL

UAE WELCOMES FOREIGN INVESTMENT AND BOLSTERS M&A ACTIVITY

By way of recent amendments to company law, including the New Company Law, the UAE government has demonstrated a positive commitment to welcoming foreign corporations into mainland UAE while also simultaneously easing corporate governance and providing greater autonomy

The government of the United Arab Emirates (UAE) announced 2020 to be the year of preparation for the next 50 years for the UAE - 'Projects of the 50'. This is a series of projects to be undertaken with the aim of uplifting the UAE to a truly global jurisdiction with reforms across various sectors including foreign investment.

The reforms seek to address modern day issues in relation to corporate and commercial law, corporate governance, intellectual property, data privacy, labor law, etc. For this article, we focus on the amendments to the UAE Commercial Companies Law (as described below) for the purpose of facilitating foreign investment in the region.





MASAO MORISHITA

Partner



TAEKO SUZUKI

Partner

**NISHIMURA
& ASAHI**

Amendments to UAE Commercial Companies Law

Federal Law by Decree No. 32 of 2021 (New Company Law) was issued on 20 September 2021 which replaced Federal Law No. 2 of 2015 on Commercial Companies, as amended (Old Company Law).

Welcoming Foreign Cos

As per the Old Company Law, any company established in the UAE was required to have one or more UAE partners holding at least 51% of the share capital of the company (except in case of joint liability companies and simple commandite companies where all partners were required to be UAE nationals).

The above restriction was removed under the 2020 amendment to the Old Company Law (by Decree No. 26 of 2020) (**2020 Amendment**) and the New Company Law has codified these amendments. This has eased the concerns of foreign investors by reducing the complexity and limitations on investing in onshore UAE companies. However, this is subject to certain restrictions, including whether the business activities of the company are those having a 'strategic impact'. In consonance with the Old Company Law, the UAE cabinet issued a list of activities having a 'strategic impact' along with the rules for licensing for companies that proposed to engage in such activities. These included activities such as security and defense activities and activities of a military nature, money printing, telecommunications, etc. A similar list of activities is expected to be issued by the UAE cabinet in relation to the New Company law.

In addition to the above, some relief has also been provided to foreign companies operating through branches in mainland UAE. While the Old Company Law provided that foreign companies operating through a branch office will mandatorily be required to appoint a UAE national as a service agent, this requirement was removed under the 2020 Amendment and continues to be omitted under the New Company Law.

Investment vehicles to drive UAE's M&A

The New Company Law has introduced the concepts of Special Purpose Vehicles (SPVs) and Special Purpose Acquisition Companies (SPACs) which are commonly recognized in M&A friendly jurisdictions. Both SPVs and SPACs have been exempted from the provisions of New Company Law and will instead be governed by the regulations issued by the UAE Securities and Commodities Authority (SCA).

The SCA, through the Board Resolution No. 1 of 2022 issued the Regulations for Special Purpose Acquisition Companies (SPAC Regulations), a few key features of which have been summarized below:

- The issued capital of the SPAC, immediately upon the public

“ *The UAE officially announced the entry of the SPAC regime into the GCC with promulgation of the regulatory framework governing SPACs in January 2022* ”

offering, shall not be less than AED 100 million;

- The sponsoring entities shall not be insolvent, have sufficient experience to manage the SPAC, shall not have been convicted of a penalty or crime against honor, etc.;
- The total shareholding of the sponsors in the SPAC shall not be less than 3% and shall not exceed 20% of the issued share capital of the SPAC.

Relaxation of governance norms

The UAE company law domain is flexible with respect to corporate structures and recognizes five kinds of companies i.e., a joint liability company, a limited partnership company, a limited liability company, a public joint stock company, and a private joint stock company. A few examples of the recent relaxations brought in by the New Company Law to Public Joint Stock Companies (PJSCs) are as follows:

- The restrictions on the nominal value of shares of the PJSC (earlier a minimum of AED 1 and maximum of AED 1,000) have been done away with, and PJSCs are free to determine the nominal value, provided the same nominal value is included in the articles of association;
- A PJSC is now permitted to issue shares at a discount where the market price of the shares falls below the nominal value;
- The limit on the maximum percentage of shares that could be offered for sale upon conversion to a public joint stock company (30% under the Old Company Law) has been removed and such sale or offer for sale of shares shall be in accordance with regulations issued by the SCA.

Some relaxations have also been offered to limited liability companies, under the 2020 Amendment and the New Company Law, such as:

- A general assembly can now be convened by a shareholder holding 10% of the share capital of the Company (as against the earlier threshold of 25% under the Old Company Law);



AYUSH SHARMA
Foreign Attorney

“Recent company law amendments in 2021 and 2022 offer relief to public joint stock companies and LLCs in terms of providing greater flexibility and less stringent compliances



- An LLC is required to appoint a supervisory board in case the number of partners in the LLC exceeds 15 (as against the earlier threshold of 7 partners under the Old Company Law);
- An LLC is now required to set aside 5% of its net profits every year to form a statutory reserve (as against the earlier requirement of 10% under the Old Company Law).

By way of the recent amendments to company law, including the New Company Law, the UAE government has demonstrated a positive commitment to welcoming foreign corporations into mainland UAE while also simultaneously easing corporate governance and providing greater autonomy. A smooth

implementation of the above changes by the authorities will go a long way in attracting foreign investment to the UAE, and further strengthening the image of the UAE as a truly global jurisdiction. It is no surprise that the region's M&A deal volumes for FY 2021 were up by approximately 60% from 2020.

Author: Masao Morishita
Designation: Partner

Masao has been in Dubai since 2013 and specializes in legal matters relating to the Middle-East and Africa. He is admitted in Japan (2004), New York (2014) and Dubai (2018).

Author: Taeko Suzuki
Designation: Partner

Taeko heads the India desk of the firm and advises leading Japanese corporations on their investments into India, other South Asian countries and the Middle East.

Author: Ayush Sharma
Designation: Foreign Attorney

Having worked at a leading law firm in India, Ayush now handles a wide range of Indian business legal needs for Japanese clients, both at the India desk and the Middle East & Africa desk, at Nishimura & Asahi.

ABOUT
THE
AUTHOR



Disclaimer – The views expressed in this article are the personal views of the authors and are purely informative in nature.