

Federal National Council debates again about new UAE company law

Foreign investors are already waiting since quite some time for the often announced, but repeatedly postponed, introduction of a new UAE company law. Even though a new company law has been approved by the legislative bodies in December 2011, it never came into force. In February 2013, the Federal National Council in Abu Dhabi has again discussed possible amendments of the UAE company law which raises the hope of a soon introduction of a new Company Law. At this time, the focus of the controversial discussion was again on the question of possible foreign majority shareholding in limited liability companies in the national territory of the UAE.

Due to the existing legal situation, investors (outside Free Zones) can currently hold only the minority of the shares in local companies which means that at least 51% of the shares need to be held by either an UAE citizen or by a legal entity which is 100% emirate-owned. However, this provision could soon be loosened up, especially for the "Limited Liability Company" (LLC), by a new company law.

The company law, which has been approved in December 2011, was already a first step into the right direction. Even though it stipulated that the local majority requirement should be kept, the law also stated that the Cabinet – in coordination with the Minister of Economic Affairs and the individual emirates – should be entitled to specify by resolution, in which companies (based on its activity) foreigners can hold the majority or even up to 100 % of the shares. Unfortunately, further details to this law were never disclosed. However, it was assumed that such openings will happen in areas which are important for the UAE such as high technology, industry, medical sector etc.

During the debate of the Federal National Council in February this year, this aforementioned provision has been discussed controversially again. Beside other reasons, it was opined that this provision is not only absolutely necessary, but needs to be further loosened up in order to create more incentives for foreign investors. However, the opposite side argued that the further opening of the market would automatically lead to a more competitive market for Emirati companies which would then weaken their position in the market. As consent could not be found, the debate had been stopped and deferred for an unspecified period. Therefore, it remains to be seen when and in which way a corresponding decision will be made.

Besides the controversial debate on majority shareholding, the draft law of the year 2011 provided further significant changes to the UAE Company Law which most likely the Federal National Council will consensually agree on. According to the draft, it shall be possible in the future to establish a company only with a single shareholder. Corresponding regulations already exist in Qatar, and probably soon in Saudi Arabia. However, this option is probably only relevant for foreigners for whom the Cabinet allows a 100 % foreign ownership of a company. Other changes provided in the draft law, which will be relevant in practice, concern the obligation of annual accounting and the storage of the books for at least 5 years.

After review of the draft law of 2011, further questionable will be the legal position of "side agreements" between the shareholders of a LLC. Side agreements are often concluded to bypass the rights of the local majority shareholder. However, even though that a local court might, as the case may be, accept such side agreements as the real intention of the parties, the "Antisponsorship Law" from 2004 – probably in force, but as far as it can be seen, not yet applied – expressly prohibits such side agreements. Since the draft law does not explicitly state its legal relevance, it remains unclear how side agreements will be legally assessed in the future.

In summary, it can be said that there are still a number of outstanding issues which need to be discussed by the Federal National Council. This will further delay the introduction of a new company law. However, it should be considered as positive that the introduction of a new company law is progressing again after such a long time.

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