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Dubai’s Jebel Ali Free Zone: some noteworthy changes in company law

Over the last decades, in an effort to diversify their economies and to attract investments, the countries of the Persian Gulf have fostered the creation and development of free zones. These areas operate under their own laws, allowing for best practices in terms of ownership, taxation and regulations. As centres of gravity, they encourage the formation of clusters and specialised infrastructures. At the same time, free zones enhance the focus for regional activity as they supply goods and services for which there is local demand.Qatar and Bahrain have financial centres, Abu Dhabi has established industrial, airport and media free zones. Saudi Arabia is extending the concept to build entire urban centres housing industries such as pharmaceuticals, logistics and manufacturing. A case in point is King Abdullah Economic City, a USD 27bn development spread over 173 sq km on the Red Sea. It comprises inter alia an industrial valley, a science and research complex, universities, an environment protection centre, health care city, a media city, and a holiday resort.Dubai has created 22 free zones, more than anyone else in the region. The sector-specific areas, including the Dubai International Financial Centre (DIFC), have become hubs attracting more than 19,000 companies, from multinational banks to global media, generating over 200,000 jobs. When established in 1985, Jebel Ali Free Zone (JAFZA) was the first major area of its kind in the Middle East. Now the world’s largest, it accommodates more than a fifth of Dubai’s foreign direct investment, is responsible for over half of its total exports, and produces some 5 per cent of the United Arab Emirates’ GDP. On 23 May 2016, JAFZA issued new company regulations, entitled JAFZA Companies Implementing Regulations 2016 (‘Regulations’). In force since 24 August 2016, the Regulations replace two sets of rules, namely, the Free Zone Establishment Implementing Regulations No. 1 of 1992 and the Free Zone Company Implementing Regulations No. 1 of 1999.*Application of the UAE Companies Law to companies within JAFZA* The Regulations provide that the federal laws of the UAE apply to a company and a branch within JAFZA (except for Law No. 2 of 2015 concerning Commercial Companies). At the same time, they authorise JAFZA’s company registrar (‘Registrar’) to apply certain provisions of the UAE Companies Law where the Regulations are silent.*Types of company recognised by the Regulations*As under the previous rules, the Regulations admit the establishment of the following entities within JAFZA: the Free Zone Establishment (FZE), the Free Zone Company (FZCO), and the branch of a company. In addition, they recognise a new type of company in this jurisdiction, namely, the Public Listed Company (PLC). A PLC can have two or more shareholders and may offer its shares to the public in accordance with the markets law of the relevant stock market. Further, it must list its shares on a stock exchange within nine months from the date of incorporation of the PLC, unless the Registrar extends such time frame. Finally, a civil company set up under the UAE Civil Transactions Law (Federal Law No. 5 of 1985) may now be incorporated within the free zone. The Registrar has the authority to edict guidelines for the incorporation and operation of a civil company in the free zone in addition to the rules the UAE Civil Transactions Law contains.*No minimum share capital requirement* In line with the UAE Commercial Companies Law regarding limited liability companies, the Regulations no longer prescribe a minimum share capital for an FZE or FZCO, but merely require that a company must have a share capital that is sufficient for the activities for which it is licensed. With regard to a PLC, they impose an amount of a share capital that is either sufficient for the activities permitted under its licence or the amount of capital required under the relevant markets law.*Non-cash consideration for shares* Contrary to the former regime, shares may now be issued in an FZE, FZCO (and PLC) for a non-cash consideration, giving businesses more flexibility for subscription of shares or increasing the share capital. Non-cash considerations necessitate a resolution passed by the shareholders at a general meeting by more than 75% of the votes of shareholders, or any greater majority as stipulated in the memorandum of association. What is more, the resolution, as well as an auditor’s letter supporting the value of the consideration, must be filed with the Registrar within four days from the date of passing the resolution. *Different classes of shares*Unlike the rest of the UAE (except for some free zones such as the DIFC), different classes of shares are now available for businesses within JAFZA.Under the Regulations, an FZCO may issue different classes of shares provided it obtains the approval on the part of the Registrar. Rights associated with the shares may be varied by an amendment to the company's memorandum of association if approved by a resolution of more than 75% of the votes of shareholders or by a resolution of all the shareholders holding the shares of the class whose share is being varied. A PLC may also have different classes of shares in line with its memorandum and articles of association.*Change of domicile and continuation of business*The Regulations allow a foreign company to apply to the Registrar for the continuation of the foreign company as a company within JAFZA, whether as an FZE or FZCO. Put differently, companies may transfer operations in the free zone without having to create a new entity.The application must include certain information and be supported by documents that are detailed in the Regulations. If the Registrar accepts the application, the foreign company will receive a licence and a continuation certificate. The date of the incorporation indicated on the continuation certificate is the date of incorporation of the foreign company in its jurisdiction.*Other changes*Additional changes comprise the recognition of electronic documents and signature, the right of an FZCO and a PLC to purchase its own shares as treasury shares, and the prohibition for an FZCO and a PLC to provide financial assistance to the directors.*Modernised company law*To sum up, the Regulations bring company legislation in the free zone in line with best practices and standards that currently prevail on a global scale. Thus, the modernised rules are expected to benefit JAFZA in that they should attract more foreign businesses and investments.