



Levelling the UAE playing field

Sultan Sooud Al-Qassemi on what a revised version of the federal companies law will mean for the UAE.

The UAE federal government has been attempting to introduce a revised version of the 1984 companies law since 2005. The fact that it has taken so long is a major reflection of just how sensitive the issue is, since the UAE as a pragmatic and fast emerging nation is expected to update its laws periodically.

Just in the past year we have witnessed amendments to the media law, property law and residency law. These amendments and others, although controversial, were introduced without delay. In the UAE, the Dubai International Financial Centre (DIFC) has been carrying out test runs for the proposed changes in similar laws that it calls the DIFC Public Comment Policy. The latter invites the wider public to comment on draft versions of laws that are posted on the DIFC website. For instance, in November 2008, a new proposed DIFC companies law and insolvency law was made available for public consultation for one month and then presented to the ruler of Dubai for enactment.¹ Why isn't the same policy applied to the federal companies law, one might ask? Simply put, there are various elements that stand to lose should a drastically revised companies law be introduced.

Many UAE citizens operate small and medium size enterprises based on the current law and may be affected by a change in ownership structures in case they have an expatriate business partner. Also, if a new law is introduced that essentially flips the 51 per cent to 49 per cent local to foreign ownership ratio, it will affect major UAE national-owned businesses. Many of these giant corporations have enjoyed a monopoly status for the past four decades.

Recently, a friend of mine commented:

"Give me a monopoly and I will give you a great business." But it is unfair to say that these giant monopolies in the UAE have only grown as a result of their unfair competitive advantage. Some, in fact, were successful businesses that acquired agencies as they grew. Others can be expected to excel even in a competitive environment due to the relatively superior customer service they offer, which can be seen when GCC citizens opt to purchase goods from them rather than from their own agents back home. Despite the above, there is no doubt that the UAE will benefit from a revised companies law that levels the playing field. After all, why, for example, should there be only one agent for a specific brand of cars?

The UAE federal government had already started breaking down the iron grip that some exclusive importers held on staple goods when it introduced a so-called open import list for essential items such as rice and flour as inflation levels broke the one-digit ceiling during the last boom cycle.² However, it is easier to justify a loosening of import laws on necessity items such as food and medicine than on luxury items such as cars and high-end accessories.

So what do we know about the new law? The previous minister of economy stated that it would, in some cases, allow more than 49 per cent foreign ownership in UAE-based companies or when new firms that would attract cutting-edge technology and major economic benefits to the UAE were established.³ Also, the law will bring the UAE more in line with international and WTO regulations, but it will not duplicate them. The process of valuing companies was to be revised along

with IPO rules for companies wishing to go public. Finally, it was to be sent to the various emirates in the UAE, as well as to certain elements in the private sector and the justice ministry for comment before enactment.⁴

What we have seen in the past few years is that elements of the law have come into force without the entire draft being approved for the sake of expediency. For instance, firms wishing to offer an IPO must now have a three-year track record of profitability.⁵ This was expected to be part of the new comprehensive companies law, but the ministry of economy acted by banning start-ups from listing until the new law is approved.⁶

On one hand, it could be argued that the current UAE companies law has been serving the UAE well. After all, if it ain't broke, why fix it? UAE nationals big and small alike have been the major beneficiaries under this law. Foreign firms have had to find a UAE national entity to partner with to take advantage of the UAE's market and infrastructure outside free zones. On the other hand, it could be argued that the current UAE law has rendered many UAE nationals complacent, since the current laws work in their favour. Ultimately, this will remain a contentious issue that will attract controversy long after it is finally approved and implemented.

Footnotes

- 1 <http://www.ameinfo.com/175452.html>
- 2 <http://www.hindu.com/thehindu/holnus/006200803271216.htm>
- 3 <http://www.forbes.com/feeds/afx/2007/06/12/afx3811801.html>
- 4 http://www.khaleejtimes.com/DisplayArticle.asp?file=data/business/2005/April/business_April465.xml§ion=business
- 5 <http://www.zawya.com/story.cfm/sidZAWYA20060127064751?c&pass=1>
- 6 <http://archive.gulfnews.com/articles/05/08/19/177948.html>

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