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Facultad Experimental de Ciencias  
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# The implementation of the new developments under the new commercial companies' law

**Yasar Fawaz Alhnaiti<sup>1</sup>**

<sup>1</sup>Al Ain University of Science and Technology, Abu-Dhabi, UAE  
[yasar.alhnaiti@au.ac.ae](mailto:yasar.alhnaiti@au.ac.ae)

**Ammar Jreisat<sup>2</sup>**

<sup>2</sup>Al Ain University of Science and Technology, Abu-Dhabi, UAE  
[ammar.jreisat@au.ac.ae](mailto:ammar.jreisat@au.ac.ae)

**Ahmed Ali Al-Khassawneh<sup>3</sup>**

<sup>3</sup>Al Ain University of Science and Technology, Abu-Dhabi, UAE  
[ahmed.ali@dopa.ac](mailto:ahmed.ali@dopa.ac)

## Abstract

The aim of the study is to investigate the implementation of the new developments under the new commercial companies' law on the UAE economy via comparative qualitative research methods. As a result, the New Commercial Companies Law (CCL) provides a one-year period for existing companies to amend their constitutional documents, and contains strengthened penalties for breach. In conclusion, the new law introduces changes which will affect some of the structures used by foreign investors to establish businesses in the UAE. This gives greater guarantee and effectiveness to the companies in their approaches and helps avoid the obstacles they may encounter.

**Keywords:** Commercial, Economic, Governmental, Control, Legislative.

## La implementación de los nuevos desarrollos bajo la nueva ley de sociedades comerciales

### Resumen

El objetivo del estudio es investigar la implementación de los nuevos desarrollos en virtud de la nueva ley de compañías comerciales

sobre la economía de los EAU a través de métodos de investigación cualitativa comparativa. Como resultado, la Nueva Ley de Compañías Comerciales (CCL) proporciona un período de un año para que las compañías existentes modifiquen sus documentos constitucionales, y contiene sanciones más severas por incumplimiento. En conclusión, la nueva ley introduce cambios que afectarán algunas de las estructuras utilizadas por los inversores extranjeros para establecer negocios en los EAU. Esto brinda mayor garantía y efectividad a las empresas en sus enfoques y ayuda a evitar los obstáculos que puedan encontrar.

**Palabras clave:** comercial, económico, gubernamental, control, legislativo.

## 1. INTRODUCTION

The UAE is seeking, through the employment of competencies and take advantage of the efficiencies and expertise of professionals working in various sectors of the state, specifically in the economic sector to enhance and develop aspects of the national economy and development in line with local, regional and international developments in this area, and in order to reach an influential global competitive economy. The economic legislation system considered as a top priority for UAE government because of its impact in the economic and investment environment which will lead to be more attractive and to achieve tranquility and stability and strengthen the role of the public and private sectors to unite and sustain efforts to achieve unity of purpose toward a permanent continuous participatory check aspirations awaited competitively diverse and sustainable economic future and in accordance with UAE vision 2021.

The Commercial Companies Law of the first pillar of the economic and the backbone of the system of economic legislation to support and develop the investment environment to be more attractive and safe for both national and foreign investment. The new Federal Commercial Companies Law has been found due to the co-operation of the public and private sectors concluded response to their needs and their agreement towards the interest of the national economy and support business, it focuses on the regulatory side to establish the rules of governance and control of the registration of companies through the introduction of the Registrar of Companies in the organizational side to opens the door to a sole company as a practical application of the two forms of the five legal forms of companies after they canceled the two forms of the seven forms, it also means the promotion of social responsibility for companies and the protection of shareholders and partners' rights.

In addition, the new CCL will protect the companies to survive and to adjust the issues may affect companies' activities and the nature of its business without getting any crisis may affect them to get bankruptcy, which is reflected on the other commercial companies and may affect the economic development. Commercial Companies Law Federal will not be the last era to establish and develop a new reform and adjusted for the economic legislation system, the UAE government always seeks to develop and enhance their system by improving the (investment law, the Prevention Act competition, marine law, small and medium enterprises law, bankruptcy law, the Central Bank Act and other relevant laws) (Aleysh, 2015).

The stated objective of the New CCL is to continue the UAE's development into a global standard market and business environment and, in particular, raise levels of good corporate governance, protection of shareholders and promotion of social responsibility of companies. The UAE vision always aims to achieve the global standard to reach the level of their goal. In the case of economic perspective, by introducing specific and strategic amendments, the new CCL contains several helpful improvements and modifications on the old CLL. This will affect all types of companies operating in the UAE as well this will lead to enhance the economy as a whole. To the best of our knowledge, there is no literature conducted on the development of the new CCL.

This study fills the gap by highlighting the development in this CCL and the role should follow by all companies in UAE. The purpose of this study is to shed light on the UAE vision through the development of the new CCL and not to investigate the results from this new CCL as this new law introduced recently. The rest of the paper is organized as follows.

## **2. METHODOLOGY**

This article analyzes the system of corporate governance under UAE law. Documents for analysis are the Federal Law No. (2) of 2015 on Commercial Companies, and the Resolution No. (7/R.M) of 2016 Concerning Corporate Discipline and Governance Standards of Public

Joint Stock Companies (New Governance Rules). The analysis focuses on parties involved in corporate governance and on the characteristic of corporate governance under UAE law.

### **3. RESULTS AND DISCUSSION**

We will highlight the corporate governance system as one of the new law and its impact on both domestic and foreign investment aspects, and the impact of all this is broadly on the economic climate in the United Arab Emirates, the philosophy of the UAE based on the maintenance of the economic system and provide better ways in advancing economic development, and in the following manner (Alikhadr, 2012).

#### *3.1. Corporate governance system in the UAE law*

Governance system of the leading and aiming systems accelerated the application is considered within the scope of economic legislation in general, and businesses in particular, and despite the address legislator UAE for this system and legalize it as one of the innovations of Law No. (2) for the year 2015, but that was preceded by text the corporate governance officer in many of the decisions of the board of the Securities and Commodities Authority depending on the circumstances and rationale for issuance latest of which was resolution No. (7) For the year 2016 on the institutional discipline and corporate

governance of joint stock companies standards. Taking notes of the legislator heading the UAE governance obviously towards ensuring greater peace of mind to the investor activists and private sector system and thus contributing to the achievement of self and external oversight, and help stimulate and attract diversified investments (Abdel, 2013).

It seems the impact of governance on the economic and investment environment by observing the main objective in adopting any country for this system where the goal is extremely legislator achieve the interests and objectives of the funds invested in the corporate sector capital on the one hand, and to spare investors legitimate questions they might have about the safety of governing legislation for work companies on the other hand, since whenever legislation is surrounded by a lot of thoughtful guarantees greater the degree of confidence given to the state laws more closely and be the result motivation to invest in the largest. The disclosure and transparency are important as principles for the governance of a major and effective in protecting investors and enable them to monitor their investments and achieve additional protection for various investment activities.

And it estimates the UAE legislator from this side as well as enter the governance system in the work of the Commercial Companies as reported in its definition referred to earlier, the text on the general framework governing corporate governance, in addition to revenue sanctions ensue designed Emirati legislator from this side as well as enter the system governance in the work of the commercial

companies as reported in its definition referred to earlier, the text on the general framework governing corporate governance, in addition to revenue sanctions entail a breach of the rules of governance, which is instrumental interest legislator system of governance in order to achieve the desired end and the desired ones, which will crystallize the actual its image later. The corporate governance system in accordance with the provisions of the UAE Commercial Companies Law, and the decision on the basis of the Securities and Commodities Authority No. (7) for the year 2016 referred to earlier on three main aspects:

Firstly: - Institutional Discipline Criteria: the new Commercial Companies Law allow Securities and Commodities Authority issuing procedures to the companies listed in the financial market and they should follow these commitments:

1. The Board of Directors, Article 143 of the Law.
2. Voting mechanism in the election of members of the Board of Directors, Article 146 of the Law.
3. Conflict of interest, Article 150 of the Law.
4. Conclude transactions with related parties, Article 152 of the Law.
5. The minutes of meetings of the Board of Directors, Article 159 of the Law.

6. Conditions for the inclusion of a new item on the agenda of the AGM, Article 180 of the Law.

7. Special record the minutes of meetings of the General Assembly set up, Article 187 of the Law.

8. Implementation of General Assembly resolutions, Article 189 of the Law.

9. Distribution of shareholder dividends controls, Article 241 of the Law.

Secondly: - governance rules:

1. Candidacy for membership of the Board of Directors and its terms.

2. Tasks of Chairman of the Board.

3. The obligations of the Board of Directors.

4. Obligations board member is CEO.

5. Cases of absence recipe independence from the Board Member of the Standing Committees.

6. Inclusions governance report.

Thirdly: - it includes general rules, which cited the following controls: -

1. Compliance and penalties for breach
2. Cancel texts opposition to the decision.
3. Publication of the decision and the work done (Alalikhan, 2011).

According to paragraph (a) of Article (2) of the resolution, the application scope with respect to (institutional discipline standards and general provisions) applies to all local public shareholding companies listed on the market, and the heads and members of boards of directors and auditors subject to the provisions of the Companies Act. The texts of the decision in relation to (corporate governance) on companies and local public shareholding companies listed in the market and the heads and members of boards of directors and managers and auditors with the exception of banks, banks, finance companies and corporate financial investment and exchange companies and brokerage firms cash under the control of the Central Bank.

### *3.2. Parties involve in corporate governance in the UAE law system*

Understanding the provisions of the Commercial Companies Law that there are several parties to their business impact and vulnerability in the application of corporate governance rules properly, and determined through them the degree of success or failure of the application of the system of governance, namely:

1. Shareholders: - Those who provide the company's capital stock owners they get in return for profits that are appropriate to their investment, and the right to choose the board members who contribute their presence in the protection of shareholders' rights.

2. Board of Directors: - usually consisting of representatives of the shareholders and other parties (as bearers of interests), who takes the daily management of the company's business authority, and control over their performance, and policy-making of the company and how to maintain shareholders' equity.

3. Management: - and it bears the actual management of the company's responsibility, and the preparation of performance reports to the Board of Directors, and is considered the company's management is also responsible for the development of the company's profits and increase its value, as is the duty of disclosure and transparency regarding exposure of information to shareholders.

4. stakeholders: - all of his interest in the company, including (creditors, suppliers, workers, staff), does not require them agreement interest together, but it is conceivable interests opposed to the company, they care to ensure the company's ability to repay debt, and the workers and staff members shall be interested in ensuring the continuation of the company (Piteira et al, 2018).

*3.3. Characteristics Corporate Governance in the UAE law system*

Characterized governance, in general, the system in the Commercial Companies Law, in particular, it is a composite character, it affects the legal aspects of the performance of companies as a control tool and to protect the company and partners at the same time, and that directly affects the economic aspects as an effective means to attract investment, which highlights it requires as follows:

a) The governance system is an effective method for the control of the company and partners: is the financial distress which may sustain as a company and the consequent adverse effects on the national economy - on the one hand - and the company and its shareholders - the risk on the other hand - prominent in the emergence of the governance system causes and embraced in the scope of governance and access to legal and administrative applications sound to avoid bottlenecks and financial crises, and by following the same control over the company's policy and work to protect the public partners as the most affected party in any negative results wished by the company.

For the role of governance in the control of the company noted that the contents of the governance system of monitoring tools were more effective than what is provided for in the laws of the same companies. The philosophy of governance of the regulators on the company's business through impartially based on the company's

management of any interest with the company, which is pursued by the Companies Act in the text of the governance system, as stipulated in the formation of councils Legislators involvement of independent members or non-executive directors, which is an officer preventive prevent the exploitation of absolute power in the company's management.

Censorship extent does not stand on the company when those related to conduct its operations and make it possible all aspects, but also to rely on the legislative system collocated with the Companies Act, which would achieve regulatory integration on the company and this legislation: Legislative system collocated with the Companies Act, which would achieve regulatory integration on the company and this legislation: -

A. financial market on trading shares of companies laws.

B. the bankruptcy laws.

C. investment laws: - as contributing to the commercial companies are considered some sort of investment activities, noting that foreign investment in the country is also based on the form of commercial companies.

The impact of corporate governance to protect the partners it materialize significantly in the extent of safeguards achieved by the system of governance and its role in ensuring the protection of

shareholders' equity and avoid situations of conflict of interest between them and lead to negative effects on the company and partners alike, which affects the stability of the business environment and disorder investment case. Protect the partners as they appear by giving them the right to see the company's activities through the duty imposed on it in the disclosure and transparency for all important issues related to financial and legal company status and dividend policy and other guarantors of the issues of human partners and conservation under the company (Khosravani Farahani & Mahmodi Lafva, 2016).

b) The system of governance and an effective means to attract investment: represents businesses in the state safe for investment facade - domestic and foreign - is reflected in many of the advantages granted by the United Arab Emirates to attract foreign investment and to ensure the sustainability and stability, as reflected in the fact that the efficiency of investments in so that the state has become - rightly - the focus of the eyes of investors and their purpose and ambition, which is reflected positively on the economic environment in the country.

Governance system and ensures the legal climate in the country aiming to provide for maximum comfort and stability for investors, as directed towards creating a safe and attractive for investments and attract capital environment. The philosophy of the trade legislator in the United Arab Emirates to adopt corporate governance businesses system does not just stop at this point, but also to the confirmation of the contents of the philosophy of governance in various economic legislation as leading up to the signal, including, in particular, benefits

and incentives offered by the investment legislations in order attracting foreign capital and investments suitable climate for its continuation and formatted. We conclude from the above to say that the legislature directed the UAE to adopt a system of governance of commercial companies is an important milestone not only in the system of commercial companies, but in the scope of investment and economic laws and related legislation, and is reflected through:

A) Shall be regarded as a governance officer guarantor of investor funds and set aside financial business risks such as fraud, mismanagement and other obstacles that drive away investment.

B) It is a governance tool reassuring to investors in control of their money and set aside the risks and crises that may be exposed through pre-emptive censorship following the method of disclosure and transparency (Tambunan, 2019).

C) Governance leads to a legislative system through an equal economic pattern of dealing in such legislation under the umbrella of governance, which contributes to the preservation of property rights and the conclusion and implementation of contracts, and the unity of the application of the procedures related to the provisions month bankruptcy.

Compliance and penalties for breach under the CCL underline the following: The New CCL provides a one-year period for existing companies to amend their constitutional documents, and contains

strengthened penalties for breach. These include the personal liability of directors and auditors, including significant fines and indictment.

- Mandatory amendments to constitutional documents (Article 374): One year period from implementation for existing companies to comply with the provisions of the New CCL. Failure to do so may result in the dissolution of the company.

- Removal of directors and/or auditors (Articles 86, 177, 247, 248): Directors and auditors found in breach may be subject to removal from office. Please see also corporate governance and social responsibility above.

- Personal liability and significant fines: Significant fines may be levied on the officers of a company found to be in breach of the New CCL. Penalties imposed on the joint stock company due to contraventions of the New CCL or articles of association by the board of directors may be deducted from the board's remuneration.

#### **4. CONCLUSION**

Turning this paper to one of the most important innovations Federal Commercial Companies Law in the United Arab Emirates on the governance system that legislator within the material (1.6, 7), and rooting it and analyzed based on the provisions of Securities and Commodities Authority Resolution No. (7 / t. m) for the year 2016,

and the statement of the importance of this system to protect and preserve the economic and investment environment and stimulate investment, domestic and foreign. To our knowledge, this study the only one shed light to the new CCL in the UAE. The study was made to define the concept of this system and the statement of the controls is based, and then selecting the parties influencing and affected by this system relationship, and then clarify the properties of this system by addressing the impact on the company's partners.

It was derived from a supervisory officer on the agenda of companies and avoid excess and imbalance that may fall of the shareholders, as demonstrated by the impact of governance to stimulate and attract investment and economic climate in the country and stimulate the system. Despite taking the legislator Emirati governance system within the decisions that were issued by the Securities and Commodities Authority, however, stipulated under the Commercial Companies Law of materials makes him a effectiveness and impact in achieving the aspirations of the legislature of the UAE and the business sector, investment, and economists, especially since the legislator treatment texts of texts punitive provisions constitute a deterrent for those who violate its provisions. While the New CCL introduces a number of new concepts and some increased flexibility, the essential features and framework of the Current CCL have been maintained.

As with any new law, there is a degree of uncertainty around its interpretation. This issue is heightened in the case of the New CCL as it relies in many areas on unpublished implementing regulations. We

will have to wait for these regulations and see how the new law is applied in practice. The New CCL has not brought about the long-awaited relaxation of the foreign ownership restrictions. However, the Government has separately indicated its intention to enact a Foreign Direct Investment Law which will permit 100% foreign ownership in certain sectors.

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