

AMERELLER

6 February 2017

Client Alert: New Regulations Impact all Dubai Creative Cluster (DCC) Free Zone Entities

By Christopher Gunson and Jonathan P. Noble

Dubai Creative Clusters Authority (**DCCA**), the free zone authority with jurisdiction over nine Dubai Creative Cluster (**DCC**) free zones, issued the DCC Private Companies Regulations 2016 (the **New Regulations**) on 1 February 2017. The New Regulations are effective immediately and repeal and replace the Dubai Technology and Media Free Zone Private Companies Regulations issued on 9 April 2003 (the **Old Regulations**).

The New Regulations do not represent a major departure from existing practice, and largely modernize free zone company administration, while seeking to conform some DCC company aspects to the new UAE companies law passed in April 2015 (Federal Law No. 2 of 2015 on commercial companies). However, some corporate governance changes are required, and all businesses operating within DCC free zones must revise their corporate governance policies and constitutional documents to be in compliance with the New Regulation by 31 January 2018.

The nine DCC free zones are:

- Dubai Internet City
- Dubai Media City
- Dubai Knowledge Park (formerly Knowledge Village)
- Dubai Studio City
- Dubai Design District
- Dubai Outsource City (formerly Dubai Outsource Zone)
- Dubai Production City (formerly Dubai International Media Production Zone)
- Dubai International Academic City
- Dubai Science Park (formerly Energy & Environment Park (EnPark) and Dubai Biotechnology & Research Park (DuBiotech))

New Articles of Association for FZ-LLCs

The sole standalone corporate entity licensed in DCC free zones is the free zone limited liability company (**FZ-LLC**). There are some minor changes to the FZ-LLC entity, most notably with regards to the articles of association, governance structure, and director liability.

The Old Regulations provided for companies to have Bye-Laws and Articles of Association. In practice, in recent years the DCCA had companies execute Articles of Association and a Memorandum of Association; Bye-Laws were not required.

The New Regulations provide for “Standard Articles,” which must be signed and submitted to the DCCA registrar for approval. If a company chooses to deviate from the Standard Articles, articles filed with the application for registration must include provisions for a number of new issues not previously required.

The New Regulations continue to require the following be included in an FZ-LLC’s articles of association:

- the company name, including FZ-LLC as the last word of the name;
- that the liability of its shareholders (referred to as “members”) is limited;
- specific reference to the commercial activities of the company;
- the duration of the company;
- the amount of share capital in AED; the classes of shares; the method to alter share capital; the rights attached to shares; and the transfer of shares;
- signatures of all shareholders.

However, the New Regulations also require new information be included in the Articles of Association including:

- general meetings to be held at least once every year, including provisions on quorum, chairman appointment, voting proceedings, and what information on accounts and business plan must be provided before every annual general meeting;
- the maximum number of directors, and the mechanism for appointment, retirement, disqualification and removal of directors and other officers, including alternate directors;
- remuneration and powers of directors, and proceedings on director meetings and director resolutions; and
- appointment of a secretary (if appointed) and the method of keeping meeting minutes.

Company Governance

The Old Regulations provided for an FZ-LLC to have a director and a secretary. In practice, a general manager was listed on the commercial license issued by the DCCA as evidence of the authority, directors were also appointed, and secretaries were not required to be officially appointed.

The New Regulations codify recent practice, with a minimum of one director and one general manager, and continue to require that the general manager be listed on the FZ-LLC’s commercial license.

The powers of the manager are set by the directors which may be evidenced by a power of attorney or by a resolution executed by the directors.

Companies must keep a register of directors and officers listing their names, date of birth, nationality, and home address. The register must be filed with the registrar, and kept available for inspection by any shareholder or any other person, who is now entitled to request a list of the directors registrar.

Director Duties

The New Regulations also provide additional duties for directors and officers. They must:

- act honestly, in good faith and lawfully, with a view to the best interests of the company;
- exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- act in accordance with these Regulations, the company's articles, and the terms of any service contract entered into between the company and any officer (if any); and
- only exercise powers for the purposes for which they are conferred.

A director must also declare any conflict of interest with the company, either in writing or at a meeting of directors. A director shall not vote on any resolution concerning a matter in which he has a direct or indirect interest, nor be counted in the quorum at such meeting.

An FZ-LLC may not provide a loan or financial assistance to any director without approval of shareholders holding 90% of the share capital. The loan or financial assistance must be accompanied by a unanimous resolution of all other directors that the financial assistance does not materially prejudice interests of the company, its shareholders, and the company's ability to discharge its liabilities as they fall due. The scope of this restriction includes a spouse or child of a director, or a company in which a director, his spouse, or child owns or controls 20% or more of the share capital.

Execution of Documents – New Requirement to Confirm Signing Authority

Perhaps the biggest change in the New Regulations relates to the execution of documents on behalf of companies registered in the DCCA.

Article 21 of the New Regulations states that a person acting under express authority and subject to the articles of association of the company may contract on behalf of the FZ-LLC.

Previously, under Article 19 of the Old Regulations, contracts could be executed by anyone acting under authority of the company, express or implied.

This is a significant change. Companies doing business with a FZ-LLC can no longer rely on the doctrine of implied authority, and now have the burden of proof to show that the signatory of the contract was authorized to enter into the agreement on behalf of the FZ-LLC, such as referring to the articles of the company and the power of attorney to the signing party.

Obtaining proof of signing authority is always best practice due to the formalistic requirements of proving the existence of a contract in a UAE court. However, companies contracting with FZ-LLC's in the DCCA should now be on extra notice to ensure that purported authorized signatories are truly empowered to bind their relevant corporate body.

Pledge on FZ-LLC Shares

The 2015 Companies Law allow shareholders to set a pledge on the shares of a limited liability company incorporated onshore in the UAE for the benefit of creditors. An innovation in the New Regulations is that introduces a similar pledge for shareholders to create a registered pledge over their shares in a FZ-LLC for the benefit of a creditor as security for an obligation. If enforced, the pledge calls for the shares to be sold in a public auction and the proceeds used to cover costs, pay the debts owed to the pledgee. The DCC registrar is authorized to register this pledge. However, it has yet to be seen how this system will work in practice, and how the pledge will be enforced.

Branch Offices

There are no major changes in the registration and operation of branch offices of UAE companies and foreign companies with registered branch offices in the DCCA. The Old Regulations referred to a “principal representative,” but in practice such person was often referred to as a manager. The New Regulations require the appointment of at least one person who is authorized to accept service of any document or notice on behalf of the branch. It is anticipated that this person will also be deemed as the manager by practice.

Action Required for FZ-LLCs

All companies active in DCC free zones must take action to comply with the New Regulations, and should:

- review their existing articles of association and memorandum of association to consider if changes are required;
- review corporate governance procedures and best practices;
- check that the directors registrar is maintained and updated; and
- reiterate fiduciary duties and expectations for directors and officers.

Finally, companies doing business with a DCCA entity should confirm that contract signatories are expressly authorized to engage in such transactions.

If you would like more information about this topic then please contact us.

Christopher Gunson
Partner
Dubai
gunson@amereller.com

Jonathan P. Noble
Senior Associate
Dubai
jn@amereller.com

DUBAI | Amereller Legal Consultants | One at Business Bay, 14th Floor | P.O. Box 97706 | Business Bay | Dubai | UAE
t: +971 4 332 9686

RAS AL KHAIMAH | Amereller Legal Consultants FZE | P.O. Box 16462 | Ras Al Khaimah Free Zone | Ras Al Khaimah | UAE | t: +971 7 204 6255

This client alert is a public document for informational purposes only and should not be construed as legal advice. Readers should not act upon the information provided here without consulting with professional legal counsel. This material may be considered advertising under certain rules of professional conduct.

Copyright © 2017