UAE: Dubai Multi Commodities Centre (DMCC) New Company Regulations

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In brief

The Dubai Multi Commodities Centre (“**DMCC**”) Authority recently enacted new DMCC Company Regulations (the “**New Regulations**”), effective 2 January 2020 (the “**Effective Date**”) updating the DMCC Company Regulations 2003 (the “**Previous Regulations**”). The purpose of developing the New Regulations is with a view to increase the ‘ease of doing business’ for new and existing companies in the DMCC by providing greater flexibility and ease of operations. The New Regulations are a step in the direction to bring the DMCC’s company law framework in line with international best practice.

The New Regulations, specifically state that the provisions of the UAE Federal Commercial Companies Law No. 2 of 2015 shall not apply to DMCC companies.

In detail

Key enhancements effected by the New Regulations

Key enhancements to the framework include increased flexibility around a company’s Articles of Association, introduction of different share types, introduction of a new dormant status and an increased ability to transfer company incorporation into DMCC. These are further explained below.

A. Minimum share capital requirements

- The minimum share capital requirement of AED 50,000 in the previous Regulations has been removed and replaced with the requirement of the share capital to be ‘sufficient for the activities permitted under the license of the Company’ *(Regulation 6.2 (c) of the New Regulations)*. Therefore, further guidance should be sought from the DMCC Authority as to the minimum capital requirement based on individual activities.
- The power of the Registrar to prescribe a minimum share capital as may be required, has been retained *(Regulation 6.2 (c) of the New Regulations)*.

B. Articles of Association (“Articles”)

- The New Regulations will afford a certain degree of flexibility to companies in this regard. Companies are now able to either adopt the model ‘Standard Articles’ prescribed by the DMCC, to modify any clause/clauses within the ‘Standard Articles’ or to adopt an entirely bespoke set of articles for its use *(Regulation 8.3 of the New Regulations).*
- If a company chooses to adopt its own articles, it is required to provide the Registrar with a legal opinion stating that such articles do not contain any provision which is contrary to or inconsistent with the New Regulations *(Regulation 8.4 of the New Regulations).*

C. Share classification

- The Previous Regulations restricted the shares of a company to be of one class requiring all the shares to be of equal value, and holding the same rights as to voting, dividends, redemptions, and distributions. Under the New Regulations, different types or classes of shares can be issued, with differing rights particularly regarding voting and dividend entitlements *(Regulation 27.1 of the New Regulations)*.

- Where a company chooses to adopt different types or classes of shares, the rights associated with each type or class are required to be stipulated in the articles of the company *(Regulation 27.1 of the New Regulations)*.

D. Non-cash consideration for share subscription

- In a significant move away from the provisions of the Previous Regulations, the DMCC now allows companies to issue shares for considerations other than cash, provided that there is an independent valuation of the shares and the directors resolve that the share price is fair to the company and the existing shareholders *(Regulation 31.1 of the New Regulations)*.
- The New Regulations *(Regulation 31.3)* do however set out certain exclusions to this allowance as listed below:
  a. The allotment of shares in a company on the conversion of any convertible securities;
  b. the exercise of an option to acquire shares in a company;
  c. the allotment of shares that are fully paid-up from the reserves of the company to all shareholders in proportion to the number of shares held by each shareholder, and;
  d. the consolidation and division, or subdivision of shares, or any type or class of shares, in the Company in proportion to those shares or the shares in that type or class.

E. Buy-back of shares by a company and acquiring treasury shares

- Whilst the Previous Regulations allowed a company registered with the DMCC to purchase its own shares, the New Regulations lay out, in greater detail, the manner in which and the sources from which such buyback can be affected *(Regulations 33.1 to 33.4 of the New Regulations)*.
- In the normal course, a purchase by a company of its own shares leads to those shares being automatically cancelled resulting in the company's share capital being diminished by the nominal value of those shares. Under the New Regulations, a DMCC company can elect to hold shares that are bought back as treasury shares *(Regulations 33.5, 34.2, 34.3 and 34.4 of the New Regulations)*.

F. Dividend payments and unlawful distributions

- The New Regulations contain more onerous and detailed provisions regarding dividends and distributions, including a clear requirement of an ordinary resolution, by simple majority, made by the directors on reasonable grounds, that the company will be able to pay immediately after the payment of dividend or effecting the distribution, the debts that fall due in the normal course of business. The New Regulations also clarify what constitutes a 'distribution' and 'undistributable reserves' *(Regulations 46, 47.1, 47.4, 47.5 of the New Regulations)*.
- The New Regulations have also introduced specific provisions to address the consequences of an unlawful distribution *(Regulation 48 of the New Regulations)*.

G. Introduction of 'dormant' status

- The New Regulations will now allow a company to apply for voluntary suspension of license before the Registrar. Such voluntary suspension can be requested for up to 12 months or for a longer period, as approved by the Registrar *(Regulation 172.1 of the New Regulations)*.

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- Upon suspension of its license, the company must cease all its activities in or from the DMCC Free Zone pursuant to the suspended license until the time the license is reactivated by the Registrar *(Regulation 172.2 of the New Regulations).*

H. Migration or transfer of companies

- Whilst the DMCC have allowed companies to migrate and transfer into the DMCC on a case by case basis, it was not outlined in the Previous Regulations. The New Regulations contain provisions which make the transfer of companies from other jurisdictions to the DMCC easier and more streamlined. There are clear directives on what should constitute the ‘Continuation Application’ and the grounds on which such application may be refused *(Regulations 18.1 to 18.3 of the New Regulations)*.
- The New Regulations also make room for DMCC registered companies to transfer to another jurisdiction. This move is required to be authorised by a Special Resolution as well as the Registrar. The New Regulations also provide the prerequisites based on which an application for transfer from the DMCC may be made *(Regulations 23.1 and 23.2 of the New Regulations).*

I. Accounts and audit compliance

- There are much more detailed provisions on company accounts and auditors contained in the New Regulations. Companies are required to prepare their annual audited accounts in accordance with the International Financial Reporting Standards *(Regulation 71.2 of the New Regulations)*.
- There is now a requirement for auditors of DMCC companies to be approved and registered with the DMCC Authority *(Regulations 71.3 (b) and 76.3 (a) of the New Regulations).*

J. Corporate Governance

- One of the key changes is the introduction of the ‘Officer Rules’, which is intended to set out and govern the roles, responsibilities, duties, procedures, and arrangements related to named ‘officers’ *(Section 9 of the New Regulations)*.
- The New Regulations make it mandatory to appoint a Secretary for a DMCC company and this is included within the ‘officer’ definition (*Regulation 54.1 of the New Regulations).* The Secretary appointment was previously an optional appointment.
- A DMCC company may now appoint a corporate body as a Secretary *(Regulation 54.8 of the New Regulations)* rather than an individual.
- The New Regulations prohibit a DMCC company from providing any form of financial assistance to directors *(Regulation 52 of the New Regulations)*.
- In a departure from the Previous Regulations, the New Regulations do not prescribe the maximum number of directors that a DMCC company is allowed to appoint.
- Previously it was optional to appoint a Legal Representative for a DMCC company, this appointment will no longer be permitted under the New Regulations.

K. Winding up and insolvency

- The New Regulations include extensive provisions relating to the insolvency procedures and winding up of a DMCC company *(Sections 14 to 21 of the New Regulations)*.
- The modes of deregistering mentioned in the New Regulations include solvent winding up, summary winding up, insolvent winding up, and involuntary winding up. The modes of winding up cover the procedures, powers of directors and appointment of liquidators. However, the New Regulations also maintain the applicability of the provisions of the UAE Federal Bankruptcy Law No. 9 of 2016 (and any amendments) and the interplay of both legislations is still unclear (*Sections 14 to 21 of the New Regulations*).

What does this mean for existing and future DMCC companies?

Businesses already in the DMCC would need to focus on the following points amongst others, to ensure compliance with the New Regulations and to take advantage of the enhancements therein:

- Amend the existing articles of the DMCC company to comply with the New Regulations within 24 months of the effective date.
- Consider the appointment of a secretary within 24 months of the effective date. In cases where a secretary is already appointed, review the option of appointing a corporate secretary.
- Take any necessary action to remove an appointed legal representative.
- Review auditor arrangements to bring them in line with the new requirement of appointing DMCC approved auditors from the upcoming Annual General Meeting onwards.
- Consider the possibility of restructuring the DMCC company's shares in line with business needs.

New investors that are keen on expanding to the DMCC will find their establishment process supplemented by changes brought about by the New Regulations and should particularly focus on:

- Utilising the option of adopting bespoke articles which adhere to the New Regulations.
- Appointing a Secretary along with Manager and Directors for the proposed DMCC Company.
- Ensuring compliance with the updated audit and accounting requirements, including the appointment of a DMCC approved auditor.
- Availing the benefits of the newly embedded clause of no minimum share capital share capital requirement and classification of shares to suit business needs.
- If the business is already established in another jurisdiction, consider the possibility of 'continuing' the business under the DMCC's improved and more streamlined process of migration of companies.

The takeaway

The New Regulations are a welcome development for companies who are looking to establish their business in the DMCC, as well as the existing companies who can now benefit from a more robust legal and regulatory company law framework. While investors can enjoy a few of the changes such as potentially less onerous share capital requirements and greater flexibility around preparing the articles, the existing DMCC companies need to be aware of and carefully comply with the changes to auditing requirements and stricter dividend and distribution provisions, as well as the requirement to appoint a Secretary. The step towards making the articles more accommodating would be particularly useful when redomiciling entities into the DMCC as the existing articles can be used provided they comply with the new Regulations.

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Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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