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Year of the 50th
legislative amendments
– out with the old and in
with the new

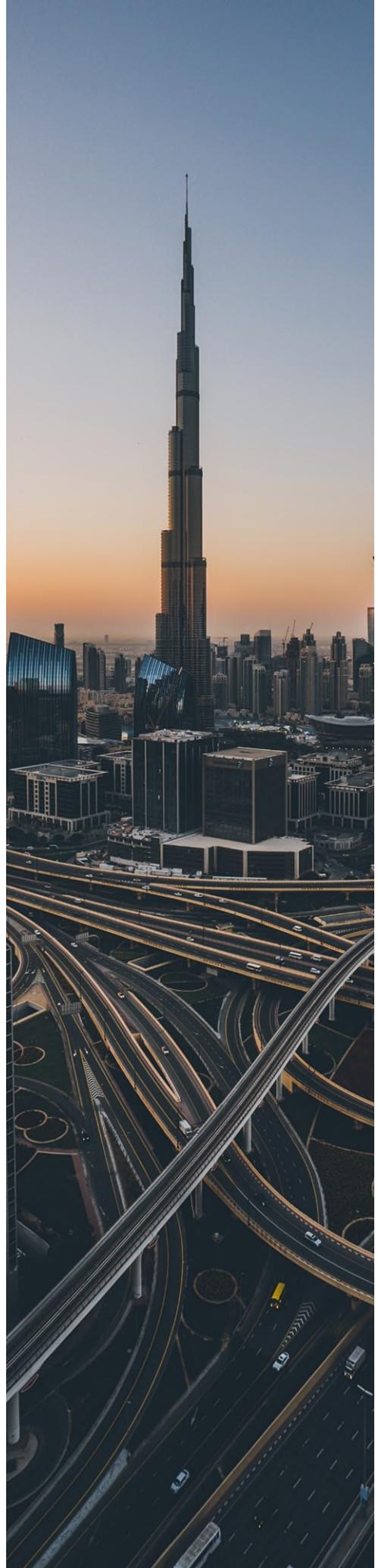
January 2022

Key considerations for directors of UAE companies

As part of the celebrations of the UAE's 50th anniversary, the government revealed significant legislative changes – the largest legal reforms in the country's history. Most of these changes came into effect on 2 January 2022. Taken together, they include important amendments for directors to be aware of across the legislative suite.

In this special briefing, we focus on three key areas within the amendments which are critical for directors to understand:

- **Personal liability** – changes which may affect the responsibility that directors bear for the acts of companies they manage, or for their conduct in office
- **Continuing obligations and corporate governance** – changes made to the management of companies which must be complied with by UAE incorporated entities
- **New risks and opportunities for corporates** – amendments which require important organisational change, or the introduction of new procedures, to minimise business risk, or to take advantage of new rights to protect their businesses



Personal liability – changes which affect individual responsibility

There are several amendments within the Year of 50th legislative changes which alter the scope or likelihood of personal liability being imposed on directors for their acts in office, or for the acts of the companies under their management.

The amendments affect:

- **criminal responsibility** borne by directors and managers for acts taken by companies they manage under the new Rumours and Cybercrime Law (Federal Decree Law No. 34 of 2021)
- **decriminalisation of liability for bounced cheques** – as a result of the repeal of the previous Penal Code and amendments made to the Commercial Code in 2020
- an amendment to personal liability of directors of **insolvent companies with low recoveries** amending the Bankruptcy Law (Federal Law No. 9 of 2016 amended by Federal Law No. 35 of 2021)

Personal criminal responsibility for corporate acts

The new Cybercrime Law includes an even wider range of offences than its predecessor, including, for example:

- unauthorised investment fund raising (Article 41)
- disclosure of secrets and privacy breach which includes illegal recordings and photographs, and comments which, even if true, harm a

person (Article 44)

- disclosure of confidential information in the course of a person's profession (Article 45)
- promotion of charitable fundraising without a licence (Article 46)
- promotion of misleading advertisements (Article 48)

Penalties for these offences include in some cases imprisonment, and fines ranging from AED250,000 to AED500,000 (AED1 million in the case of Article 45).

Article 58 of the Law contains a new provision setting out clearly the basis on which a director or manager may be held liable for breaches of its provision by the company he or she manages. This provision places liability on the de facto manager of a corporate entity so that he or she faces the same punishment as an individual committing the same offence if:

- the manager had knowledge of the act which constitutes the criminal offence; and
- a breach of duties assigned by management contributed in the commission of the crime.

This new provision imposes

additional risk on directors and managers of UAE companies for online or IT systems-based offences. However, the conditions for the application of this provision are an important limiting factor. Firstly, the requirement for knowledge of the act provides comfort that a manager will not be punished for actions taken without his or her authority and knowledge. Therefore, employees acting outside of the scope of their authority should not increase liability for their managers.

The second condition further restricts liability to circumstances in which the director has breached the limits of his or her own authority, and that breach has contributed to the offence. These provisions may capture acts taken by directors which also constitute a breach of duties under the Commercial Companies Law for which civil remedies may also be available.

The provisions also cover “de facto” managers and therefore may capture a breach by an employee acting outside of the scope of delegated authority from the board of directors.

Personal liability – changes which affect individual responsibility

Decriminalisation of bounced cheques

The decriminalisation of bounced cheques was already well publicised – these legislative changes were brought about in 2020 under Federal Decree Law No. 30 of 2020 amending the Commercial Code and Federal Decree Law No. 15 of 2020 amending the former Penal Code (which has now been repealed in the Year of the 50th changes).

The provisions on cheques only took effect on 2 January 2022. Acting on these changes in practice, the Dubai Public Prosecution issued Circular No. 9 of 2021 instructing:

- current police complaints in relation to bounced cheques to be dismissed
- defendants in cases pending before the Dubai courts to be acquitted
- prisoners convicted of bounced cheque cases to be released from custody.

From 2 January 2022, claims for bounced cheques are dealt with as civil enforcement cases under the Commercial Code. The process involves expedited enforcement, without the need to follow the payment order process. The cheque itself may be presented before an execution judge for forced execution.

The Commercial Code contains various related offences, all of which involve an element of bad faith on the part of the presenter of the cheque, such as requesting a bank to dishonour a cheque, or the deliberate withdrawal of funds before presentation of the cheque.

This is welcome news for directors who were often prosecuted as the individual who physically wrote and signed the bounced cheque drawn on a corporate account.

Bankruptcy Law amendments – personal liability for insolvent companies with low recoveries

Article 144 of the Bankruptcy Law (Federal Decree Law No. 9 of 2016) relates to the potential personal financial liability of directors if the company they manage is declared insolvent by the court and the company's funds are insufficient to meet at least 20% of its debts.

This provision has been amended by Federal Decree Law No. 35 of 2021. The amendment has changed the condition to the imposition of personal financial liability on directors by the court. The previous condition was that the director had breached his or her duties under the Commercial Companies Law. Under the amendment, however, the court may only consider the imposition of personal financial responsibility if the director has committed any of the acts under Article 147 of the Bankruptcy Law.

Article 147 restricts the possible application of personal liability to directors who have caused loss to creditors, for example by entering transactions at an undervalue, or granting special arrangements to certain categories of creditors only. From the board perspective, this is a helpful amendment: in practice, directors who are careful to follow court orders and instructions of the Trustee in Bankruptcy, and who comply with the Bankruptcy Law once a company is insolvent, are unlikely to be found personally liable for the failure of the company regardless of the degree of its financial loss. However, for creditors, it is more difficult to understand the rationale of the change: the fact that the company has low rates of financial recovery is just as likely to reflect the standard of care in its management, as it is linked to actions which specifically harm creditors, particularly once bankruptcy proceedings have started.

Continuing obligations and corporate governance

For the most part, the new Commercial Companies Law (Federal Decree Law No. 32 of 2021) represents a consolidation of the amendments to that Law since 2015, including the foreign investment reforms and other detailed amendments made by Federal Decree Law No. 26 of 2020. However, the new Law does incorporate a few additional amendments which affect the management of companies and the holding of general meetings.

It is important for boards to keep abreast of these changes: a failure to comply with the CCL may be grounds for a civil claim for breach of duty by shareholders, creditors and third parties. In addition, the company may be subject to administrative fines of between AED100 and AED 10 million (and doubled for repeat offences). A new list of these administrative infractions and fines is expected to be issued by the Ministry of Economy under Article 362.

LLC changes

- the new Companies Law now allows any person (other than the manager) to act as proxy for a partner at shareholder meetings (Article 95). The 2015 Law required a **proxy** to be another partner or a person specifically authorised under the LLC's Memorandum of Association. This widens the pool of substitute representatives and solves the issue that, in a contentious shareholder relationship, there could be no practical choice at all
- the **quorum requirements** have been amended in the situation where a general meeting has been called but was inquorate. Since the 2020 changes, LLCs have been able to prescribe their own quorum requirement for the reconvened meeting. However, it appears that this express flexibility has been removed: instead, the reconvened meeting will be validly held if any partner is present. This is a potentially significant amendment for joint venture companies, or companies which operate under a scheme of arrangement with a local UAE shareholder, for which higher quorum requirements are an important part of minority protection. It remains to be seen if the public notaries will in practice allow companies to specify a higher majority in their Memorandum of Association
- **continuity of boards** is now maintained under a new Article 85(4) – if the term of a board expires with no replacement, the existing board will continue in place for up to six months, subject to the general assembly appointing a new board (and failing which the power to do so rests with the local DED, to be chosen from amongst the partners, for a period of up to one year)
- the amount required to be placed in the **statutory reserve** annually has been reduced from 10% of the company's net profits to 5%.

Continuing obligations and corporate governance

PJSC changes

- Article 145 has been amended to provide a new deadline for the board to fill a **director vacancy** within 30 days of the vacancy arising
- Article 171(2) – if a PJSC has not made any profit from which to pay **director remuneration**, the shareholders in general meeting may approve the payment of a lump sum fee not exceeding AED 200,000 at the end of the fiscal year, subject to the Memorandum of Association expressly permitting this.
- This provision also applies where the director's share in the annual profit is less than AED200,000, although the director is restricted from claiming both the share of profit and remuneration (to take his or her overall remuneration to over AED200,000) if this provision is applied. Further regulations are expected on the application of this exemption from the general rule that a PJSC may not pay more than 10% of the company's annual profits in director remuneration. Companies may want to amend their constitutional documents accordingly.

Corporate governance reforms remain on the horizon. Article 6 refers to corporate governance resolutions to be issued by the Ministry of Economy for LLCs and by the SCA for PJSCs, to cover rules, controls, and provisions to be observed by UAE incorporated companies. These are likely to include important additional continuing obligations to be imposed on directors.



New risks and opportunities for corporates

The Year of the 50th legislative changes ushered in a range of laws relevant for businesses across the UAE. It is important for boards to understand which provisions of these Laws may require the introduction of new processes to mitigate the risk of claims or penalties or offer opportunities for boards to take positive action to take advantage of new rights.

Although not an exhaustive list, we have listed some of these legislative provisions below:

Labour Law

- **Anti-discrimination provisions (Article 4)** – the prohibition on discrimination based on race, colour, sex, religion, national origin, social origin, or disability – together with the right to equal pay between the sexes for the same work. Boards should consider a robust policy on anti-discrimination and training for managers to ensure that, as an organisation, these provisions are fully complied with.
- **Anti-harassment provisions (Article 14)** – the prohibition on sexual harassment, bullying, or any verbal, physical or psychological violence against employees includes liability for the acts of the employee's managers and colleagues. It is therefore advisable that workplace training of all employees is provided which covers non-acceptable behaviour and clear guidelines are issued as part of employment policies.

Breach of the Labour Law or the Implementing Regulations carries a fine of between AED 5,000 and 1 million (multiplied by the number of employees the breaches relate to, subject to a cap of AED 10 million). This presents a significant financial risk for businesses which can be mitigated by organisational awareness raising.

Our detailed briefing on the new Labour Law can be [accessed here](#).

Digital and data laws

Digital transformation and the adoption of new technology is at the heart of the UAE government's growth agenda. This has been reflected in the legal reform programme with some notable enhancements to the regulation of data and aspects of digital society:

- **Data Protection Law** – in a long-awaited development, a federal law regulating the processing of personal data has been implemented. The new legislation adopts a number of principles that can be found in data protection legislation elsewhere in the world and will create important new rights for individuals in relation to their personal information. All

organisations in the UAE will need to be aware of the additional compliance obligations that will result from this Law, including new record-keeping requirements, restrictions on transfers of personal data outside the UAE, and mandatory breach reporting. Data protection policies and new procedures to ensure compliance are strongly recommended.

- The Data Protection Law will be fully effective after the issuance of Executive Regulations, with businesses in the UAE given a six-month period to align to the new requirements once those Regulations have been published.
- A new authority – the UAE Data Office – has been established to monitor and enforce the implementation of the Law. Further guidance is expected from this new regulator in addition to the Executive Regulations, which should also clarify the sanctions for breach of the Law.

Our detailed briefing on the new Data Protection Law can be [accessed here](#).

New risks and opportunities for corporates

Enhanced focus on cybercrimes (Cybercrime Law)

- The new Cybercrime Law is the third significant update to the UAE's legislation on IT-related and IT-enabled offences since 2006. We cover the new director responsibility provision above. Otherwise, there has not been any substantive change to the majority of cyber offences, although the sanctions have increased in some cases – for example, the fine for circumventing an IP address for the purposes of committing a crime has been raised from AED 500,000 to AED 2,000,000.
- Offences relating to the spread of fake news have been upgraded with enhanced sanctions if they are committed during an epidemic or other crisis and denial-of-service or similar attacks on the systems of banking, media, health or scientific institutions are also subject to additional sanction.
- There are new offences relating to:
 - operating websites or online accounts that publish content or information which is inconsistent with relevant media content rules;
 - misleading online advertisements or promotions (as noted above);
 - unauthorised fundraising via cryptocurrency (as noted above); and
 - promoting or dealing in cryptocurrency or other forms of payment that are not officially recognised in the UAE.
- With more employers offering flexibility to workers to make use of technology to work remotely, and an acceleration in digital transformation activity across many business sectors, it is important to ensure that appropriate policies and other measures are in place to mitigate cyber-related risks and to avoid implicating the company in offences (for example, new recruits bringing confidential information from past employers). It is critical to educate staff on the applicable legal restrictions to manage such issues and avoid sanctions on the individual and the business.



New risks and opportunities for corporates

- Changes to electronic transactions rules (E-commerce Law) – while the UAE has recognised the validity of electronic signatures and transactions for some time, the longstanding e-commerce law has been replaced by Federal Decree Law No. 46 of 2021 on Electronic Transactions and Trust Services with some potentially significant changes.
- In particular, the previous exemptions for personal law issues, real estate transactions and certain other categories have been removed. In principle, this means that any type of transaction, document, service or procedure can be executed electronically, unless there is subsequent regulation to exclude a certain type of transaction or entity from the new Law. This may see new opportunities for doing business in certain sectors and incumbent companies will have to be alive to the challenge of potential disruption to existing business models.

Intellectual property laws

Both the Trade Mark Law and the Copyright Law have been updated. The changes are generally favourable to intellectual property rights holders and support the government drive for the UAE to be a jurisdiction in which innovation is supported by a robust legal framework which aligns with international standards.

Some notable changes are highlighted below:

- **Trade Mark Law (Federal Decree Law No. 36 of 2021)**
 - **Expansion of protection for non-traditional trade marks** – the definition of a trade mark under Article 2 has been expanded to provide express protection for holograms and 3D trade marks. This paves the way for businesses to protect their brand identity in more creative ways and will lead to more opportunity to build brand value. Conversely, the risks of infringing intellectual property rights may be greater, emphasising the need to ensure that brand clearance exercises are conducted prior to launch of new products or services.
 - **Protection for Geographical Indications** – a new and separate register will be formed for the protection of Geographical Indications (GIs). This will be of particular benefit to local businesses whose products are manufactured locally using clearly defined techniques or under specific conditions. Businesses in certain sectors will need to ensure that they have the right to use the GI before adopting its use in the marketing of its business. There are also likely to be stricter controls on making claims that products are

locally produced or manufactured.

- **Increased penalties for trade mark infringement** - in a bid to deter infringers, there are increased penalties for certain types of trade mark infringement to up to AED 1 million and/or imprisonment of up to one year.
- **Removal of requirement to record a trade mark licence** – The existing Trade Mark Law requires brand owners to record a licence at the Trade Mark Office, otherwise it will not be deemed effective against third parties. This requirement has now been removed.
- **Madrid Protocol** – in addition to the new Trade Mark Law, the UAE has acceded to the Madrid system for the international registration of marks. This will enable overseas businesses to protect their trade marks more easily in the UAE. Again, new product or brand launches must be preceded by appropriate brand clearance strategies. Conversely, local businesses will be able to protect their trade marks overseas more easily in jurisdictions which are also members of the system.

New risks and opportunities for corporates

- Copyright Law (Federal Decree Law No. 38 of 2001)

The new Copyright Law better defines the scope of rights which fall under the provisions of the Law.

- **Ownership** – historically, copyright works produced by employees did not automatically transfer to the employer as in many common law jurisdictions. The new Law includes provisions which improve this position for businesses: copyright will accrue to the employer where the work is produced during the course of employment and instructed, directly or indirectly, by the employer. However, businesses should still ensure they are familiar with the new laws and make provision to ensure that copyright ownership is clearly established, making contractual arrangements where necessary.
- **Increased penalties for copyright infringement** – as with the Trade Mark Law, the new Copyright Law provides for higher fines and longer imprisonment durations for various forms of infringement.

Which Law now?

Common name	Old Law	New Law	Effective Date
Penal Code	Federal Law No. 3 of 1987	Federal Decree Law No. 31 of 2021	2 January 2022
Commercial Companies Law	Federal Law No. 2 of 2015	Federal Decree Law No. 32 of 2021	2 January 2022
Labour Law	Federal Law No. 8 of 1980	Federal Decree Law No. 33 of 2021	2 February 2022
Cybercrime Law	Federal Law No. 5 of 2012	Federal Decree Law No. 34 of 2021	2 January 2022
Trademark Law	Federal Law No. 37 of 1992	Federal Decree Law No. 36 of 2021	2 January 2022
Copyright Law	Federal Law No. 7 of 2002	Federal Decree Law No. 38 of 2021	2 January 2022
Data Protection Law	-	Federal Decree Law No. 45 of 2021	2 January 2022
E-Commerce Law	Federal Law No. 1 of 2006	Federal Decree Law No. 46 of 2021	2 January 2022

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