Shareholders' rights in private and public companies in the United Arab Emirates: overview

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TYPES OF LIMITED COMPANIES AND SHARES

1. What are the main types of companies with limited liability and shareholders? Which is the most common? Which type do foreign investors most commonly use?

On 31 March 2015 UAE Federal Law No. 5 of 2015 concerning Commercial Companies (New CL) was issued, which will enter into full force on the date specified in the law (which is currently three months from the date of publication). Until then, the law remains as set out in UAE Federal Law No. 8 of 1984 (CL) (as amended). This article will address the position as under the CL, unless the provisions of the New CL are otherwise contradictory or have amended the CL, in which case, the provisions of the New CL will be discussed here in lieu of the position under the CL. The New CCL provides for a one-year period (which may be extended by Cabinet Resolution) from its implementation for existing companies to amend their memorandum and articles of association to comply with the provisions New CCL.

The following companies offer limited liability:

- Limited liability companies (LLCs).
- Public joint stock companies.
- Private joint stock companies.

Each of the above mentioned companies has shareholders. Limited liability companies are the most common corporate structure in the UAE and are also the most common corporate structure used by foreign investors. However, its shareholders do not hold share certificates. Instead, they own a percentage of the capital of the limited liability company which does not issue transferable share certificates.

It should be noted that aside from the types of companies prescribed in the CL, the UAE has a number of "free zones" which allow for the incorporation of other forms of limited liability companies, such as Free Zone Establishments, Free Zone Companies and Free Zone Limited Liability Companies. The answers set out here are only with respect to companies incorporated in the UAE outside of free zones.

2. What are the minimum share capital requirements for companies?

The following companies have the following minimum capital requirements:

- Limited liability companies (LLCs): AED150,000 or another amount adequate for the business of the company (the Emirate of Dubai has recently completely removed the minimum capital requirements for LLCs).
- Public joint stock companies: AED10 million, but under the New CL, the issued capital of public joint stock companies must be AED30 million. Authorised capital cannot exceed twice the value of the issued capital.
- Private joint stock companies: AED2 million.

3. Briefly set out the main types of shares typically issued by a company and the main rights they provide. Set out the other main financial instruments (for example, bonds) and participation instruments that can be issued by a company.

Limited liability companies

Shareholders of limited liability companies can have different rights in relation to profit participation and management of the company. A minority shareholder can be entitled to a majority of the profits and to complete control of the management of the company under the provisions agreed in the memorandum of association of the company. However, in practice the authorities will not allow a company's memorandum to grant a minority the right to more than 80% of the profits of the company. A limited liability company cannot issue public debentures.

Public joint stock companies

The share capital of a public joint stock company is comprised of shares of equal nominal value. All shares have equal rights and obligations.

The shares of a public joint stock company are freely transferable. 51% of the shares of all companies must be held by UAE nationals or companies wholly-owned by UAE nationals. Also, founders must hold their shares for a two-year period after listing.

The company cannot issue bearer shares. A public joint stock company can issue public debentures. The value of the debentures must not exceed the capital. All the rights of debenture holders in respect of a single issue must be equal. Debentures can be convertible into shares of the company if so stipulated in the conditions of issue.

Private joint stock companies

Except for provisions regarding the public subscription of shares and debentures, the provisions governing public joint stock companies are the same as those applicable to a private joint stock company.

4. What is the minimum number of shareholders in a company?

A minimum of two shareholders is required in an LLC, though the New CL contains provisions to allow single shareholder LLCs. The New CL has reduced the minimum number of shareholders in a private joint stock company from three to two. The number of founders of a public joint stock company has been reduced under the New CL from ten to five.

GENERAL SHAREHOLDERS' RIGHTS

5. What are the general rights of all shareholders? How can shareholders' rights be varied (for example, additional rights attaching to a class of shares, or limitations on shareholders' rights)? Are such variations generally provided in the company's bye-laws and shareholders' agreements?

Shareholders have the following basic rights:

- The right to vote in the annual general assembly in the election of directors.
- Subject to a minimum holding period for founders of public joint stock companies and pre-emption rights of other shareholders of limited liability companies, shareholders have the right to transfer their shares.
- Subject to certain statutory conditions and any restrictions in the memorandum and articles of association regarding reserves, shareholders have the right to share in the profits of the company.

Notwithstanding the provision that private and public joint stock companies cannot issue different classes of shares, the New CL (*Article 206, New CL*) provides that regulations can be issued by the Cabinet, on the proposal of the Chairman of the Securities and Commodities Authority (SCA), determining:

- Classes of shares and the conditions of issuing classes of shares.
- The rights and obligations arising from such shares.
- The rules and procedures regulating those shares.

Limited liability companies can have different rights under the memorandum of association of the company with regard to participation in management and the share of the profits.

6. Briefly set out the rights of minority shareholders and the shareholding required to exercise such rights.

Minority rights can be protected through shareholder agreements' and/or through the incorporation of such protections in the memorandum and articles of association of a company.

While shareholders' agreements are generally enforced in the UAE courts, these agreements are essentially private contracts among the shareholders. To be effective against all parties, the relevant provisions should be incorporated into the memorandum and articles of association.

Minority shareholders holding in excess of 25% of the capital of a limited liability company have a veto power in relation to the following shareholder decisions, which require a super-majority shareholder vote:

- Under Article 252 of the CL, the share capital of a limited liability company cannot be decreased or increased, and no amendment can be made to the memorandum of association of the company to record such increase or decrease, unless the shareholders representing 75% of the share capital consent. The memorandum of association can stipulate a higher numerical majority. Further, the liability of shareholders can be increased except with their unanimous consent.
- Under Article 236 of the CL, if a limited liability company's manager is appointed by the company's memorandum of association for an unspecified period of time, then he/she shall remain as the manager for the duration of the company unless the memorandum of association provides that he can be removed. If the memorandum of association provides for the manager's removal, then such removal requires the consent of shareholders holding at least 75% of the share capital of the company. If the company's memorandum of association does not provide for the removal of the manager, then he can be removed by a unanimous decision of the shareholders or by a court judgment.
- Under Article 281 of the CL, the dissolution of a company requires the unanimous consent of the shareholders unless the memorandum of association stipulates a specific majority.

7. How influential are institutional investors and other shareholder groups in monitoring the company's actions (for example, corporate governance compliance)? List any such groups with significant influence in this area.

Under the New CL, private joint stock companies will be subject to corporate governance rules issued by the Minister of Economy where the number of the shareholders in the company exceeds 75.

In the case of public joint stock companies, the Chairman of Securities and Commodities Authority (SCA) will issue the relevant corporate governance resolutions. The board of directors of such companies or, as applicable, its managers, will be responsible for the application of the rules and criteria of corporate governance.

GENERAL MEETING OF SHAREHOLDERS

Calling a general meeting

8. Does a company have to hold an annual shareholders' meeting? If so, when? What issues must be discussed and approved? Which decisions must be approved by the shareholders in a general meeting?

In respect of private and public joint stock companies, an ordinary general assembly of shareholders must meet at the invitation of the board of directors at least once a year during the four months following the end of the financial year, at the time and place specified in its bye-laws.

The board of directors must invite the general assembly to meet whenever it is asked to do so by the auditor. If the board fails to issue an invitation within 15 days from the date of the auditor's request, then the auditor can himself call the meeting.

In respect of limited liability companies, at least one meeting of the general assembly must be held annually, within four months following the end of the financial year. This meeting must be convened by the manager(s) of the company.

Under Article 246 of the CL, the agenda for the annual general assembly must include the following matters:

- Hearing the managers' report on the company's activities and financial position for the year, the auditor's report and the report of the supervisory board (if any).
- Discussing and endorsing the budget and profit and loss account.

- Determining the share of profits to be distributed among the shareholders.
- Appointing the managers or the members of the supervisory board and fixing their remuneration.
- Other matters as specified by law or by the articles of association.

Under exceptional circumstances, the general assembly can consider matters other than those listed on the agenda. If a shareholder requests a certain matter to be listed on the agenda, the managers must do so. Otherwise, the shareholder has the right to put his request to the general assembly (*Article 247, CL*).

A general assembly will be competent to consider all questions relating to the company, except for those questions reserved by statute or the memorandum and articles of association of the company as being within the competence of an extraordinary general assembly (*Article 129, CL*).

9. Can a general meeting be held by telecommunication means or written/electronic approval?

There are no statutory provisions prohibiting a general assembly of a limited liability company from being held via teleconference or correspondence. Its memorandum of association will typically specify the methods acceptable for conducting the general assembly. General meetings of public and private joint stock companies must be physically held.

10. What are the notice, information, and quorum requirements for holding general meetings and passing resolutions?

Under the New CL, shareholders representing at least 75% of the share capital of a limited liability company must be present at a general assembly meeting for it to be quorate. If the quorum is not satisfied in the first meeting, the second meeting must be called for within 14 days from date of the first meeting, which will not be valid unless attended by partners owning 50% of the capital of the company. If the quorum is not satisfied in the second meeting, a third meeting must be called for, which will be valid regardless of whether or not a quorum attended such meeting.

Resolutions of general assemblies will only be valid where they are approved by shareholders owning at least 50% of the capital of the company.

The form of the meeting invitation can now be by registered letter, or as prescribed in the memorandum. The timeframe for dispatch of the invitation has been reduced from 21 days to 15 days before the date of the meeting.

In respect of private and public joint stock companies, notice of the shareholders' general assembly meeting must be sent to each shareholder by registered mail at least 21 days before the date of the meeting (*Article 244, CL*). The invitation must contain the agenda and the time and place of the meeting (*Article 244, CL*). The requirement for notice can be waived if all shareholders are present and voting at a meeting.

Unless the Articles of Association determine a higher percentage, a quorum at a meeting of the general assembly will be present if shareholders holding or representing by proxy at least 50% of the share capital of a private joint stock company or a public joint stock company are present at the meeting. If a quorum is not present at the first meeting, the general assembly will be adjourned to another meeting to be held after at least five days, but not in excess of 15 days, from the date of the first meeting. A quorum at the adjourned meeting will be present irrespective of the number of the shareholders present (*Article 183, New CL*).

If any of the shareholders (or their representatives) withdraw from the meeting of the general assembly in order to prevent the quorum being reached, such withdrawal will not, irrespective of the number of the shares withdrawing, affect the validity of the general assembly, provided that the resolutions will be passed by the applicable majority under the CL (*Article 184, New CL*).

Voting

11. What are the voting requirements for passing resolutions at general meetings?

Voting rights in public and private joint stock companies are equivalent to the number of shares held by a shareholder. Public and private joint stock companies cannot currently issue different classes or series of shares, but under the New CL, regulations are expected to be issued permitting different classes of shares.

A shareholder having the right to attend the general assembly can delegate whom he chooses, other than a member of the board of directors, by special written proxy. Such proxy cannot in this capacity hold more than 5% of the company's capital (*Article 126, CL*).

There are no statutory provisions restricting shareholders from entering into voting agreements in respect of their shares.

The Resolutions of the General Assembly in public and private joint stock companies shall be passed by the majority of the shares present at the meeting, or such higher majority as determined by the Articles of Association of such company.

Under the New CL, a special resolution by the majority votes of shareholders holding at least 75% of the shares represented at the general assembly of public and private joint stock companies is required for the following:

- Amending its memorandum of association or Articles of Association.
- Increasing the authorised share capital of the company.
- Adding a premium to the nominal value of the share and determining the amount of such premium.
- The reserve may be merged in the share capital of the company by creating free shares to be distributed to the shareholders *pro rata* to the shares held by each of them, or by the increase of the nominal value of the shares *pro rata* to the percentage of urgent increase in the share capital of the company.
- Decreasing the authorised share capital of the company.
- Dividing the nominal value of its shares into a smaller value, provided that the new value will be at least one Dirham per share.
- Increasing its share capital by the entry of a strategic partner (that is, a partner whose contribution to the company provides technical, operational or marketing support to the company, for the good of the company).
- Increasing its share capital by the capitalisation of its cash debts.
- Increasing its share capital by the application of the scheme to encourage the personnel of the company to hold shares.
- Issuing bonds or deeds.
- Increasing or decreasing the share capital upon issuing bonds or deeds.

- Upon the expiry of two financial years from the date of its incorporation and making profits, the company can give contributions.

A public joint stock company can be converted to a private joint stock company provided that the approval of the conversion is gained by a majority shares representing 90% of the share capital of the company (*Article 274, New CL*).

Each shareholder of a limited liability company is entitled to attend the general assembly either personally or by proxy, regardless of the number of shares which he owns (*Article 245, CL*).

Resolutions of the general assembly of the shareholders of a limited liability company must be adopted by shareholders representing at least half of the capital. However, the Articles of Association can require a higher majority (*Article 249, CL*).

Dissolution of the LLC requires the approval of shareholders representing three quarters of the capital. Any increase or decrease to the capital of the LLC requires an amendment to the Articles of Association. Such amendments require the approval of shareholders representing three quarters of the capital, unless another numerical majority is also required by the Articles of Association. The obligations of the shareholders cannot be increased without the unanimous approval of the shareholders (*Article 252, CL*).

All companies can, by special resolution by the majority votes of shareholders holding at least 75% of the shares represented at the general assembly:

- Change the company's name to another name as approved by the competent authority.
- Even during the liquidation process, merge with another company under a contract made between the merged companies in this respect.

12. Are specific shareholder approvals/resolutions required by statute for certain corporate actions? What voting requirements and majorities apply?

The following matters are reserved by statute to the competence of an extraordinary general assembly, and are adopted by a majority of three quarters of the shares represented in that meeting, for private and public joint stock companies (*Article 137, CL*):

- Amending the memorandum and articles of association and the bye-laws.
- Increasing or reducing the capital.
- Dissolving the company or merging it into another.
- Selling or otherwise disposing of substantially all of the assets.
- Extending the duration of the company.

Shareholder rights relating to general meetings

13. Can a shareholder require a general meeting to be called? What level of shareholding is required to do this? Can a shareholder ask a court or government body to call or intervene in a general meeting?

If at least ten shareholders of a public or private joint stock company holding not less than 30% of the capital request that a general assembly be held, then the board of directors must issue an invitation to shareholders within 15 days from the date of the request. The invitation to all shareholders is communicated by publication in two local daily Arabic newspapers and by registered letter, with the notice period now reduced under the New CL from 21 days to 15 days before the date of the scheduled meeting (*Article 172, CL*). With respect to an LLC, shareholders owning at least 25% of the capital of the company can require a general assembly to be held (*Article 244, CL*).

Shareholders can obtain the assistance of the Ministry of Economy and the concerned local authority of the relevant Emirate (for example, the Dubai Department of Economic Development) to call a general assembly. If the shareholders requisition a general assembly and the board of directors fails to issue invitations to the shareholders in respect of such a meeting, then the Ministry of Economy, after consultation with the concerned local authorities, will issue an invitation to shareholders (*Article 121, CL*) to attend a general assembly. The Ministry of Economy and the concerned local authorities send representatives to attend the general assembly as observers.

14. Can a shareholder require an issue to be included and voted on at a general meeting? What level of shareholding is required to do this? Can a shareholder require information from the board about the meeting's agenda?

For private and public joint stock companies, a shareholder cannot raise matters which are not included in the agenda. However, a shareholder has the right to discuss important issues that come up in the course of the general assembly (*Article 129, CL*).

If a shareholder, or a number of shareholders, representing not less than one-tenth of the capital of a public or private joint stock company request(s) the inclusion of a new issue on the agenda, then the board of directors must grant such a request. If the board of directors does not grant the request, the general assembly will have the right to decide whether to include the issue on the agenda (*Article 129, CL*).

Each shareholder will have the right to discuss the subjects on the agenda of the general assembly and pose questions to the members of the board of directors. The members of the board must respond to the questions to the extent that such a response does not expose the company's interests to harm (*Article 130, CL*).

The shareholder can refer to the general assembly if he believes that the response to his question was insufficient. The resolution of the general assembly will be binding.

The shareholders are not generally entitled to information about the company's business outside the general assembly.

A shareholder can review the minutes of the general assembly. The review of the records and documents of the company by a shareholder is by permission of the board of directors or the general assembly in accordance with the bye-laws of the company (*Article 170, CL*).

If a shareholder of a limited liability company requests a certain matter to be listed on the agenda, the managers must do so. Otherwise, the shareholder has the right to put his request to the general assembly (*Article 247, CL*).

A shareholder of a limited liability company has the right to discuss subjects on the agenda. The managers must answer a shareholder's questions unless the company's interests would suffer as a result. A shareholder who feels that his questions have not been properly addressed has the right to appeal to the general assembly, whose decision will be binding in this regard (*Article 248, CL*).

15. Do shareholders have a right to resolve in a general meeting on matters which are not on the agenda?

The law is silent on whether shareholders must or have the right to vote on matters which were not on the agenda of the general

assembly. However, to the extent that these matters arise from issues on the agenda or are put on the agenda by the shareholders during the general assembly and are important, the Ministry of Economy will probably approve such a vote.

16. Can a shareholder challenge a resolution adopted by a general meeting? Is a certain shareholding level required to do this? What is the time limit and procedure to challenge a general meeting resolution?

Resolutions duly adopted by the general assembly are binding on all shareholders. However, any resolution adopted to further or to harm the interests of one group of shareholders over another, or to confer a special benefit upon any member of the board of directors without consideration for the interests of the company, may be void (*Articles 135 and 136, CL*).

The New CL allows shareholders of a public joint stock company holding at least 5% of the shares to petition the Securities and Commodities Authority (SCA) or a court to issue a resolution if the shareholder believes the affairs of the company are being conducted to the detriment of all or any shareholders. The court can annul such an act.

SHAREHOLDERS' RIGHTS AGAINST DIRECTORS

17. What is the procedure to appoint and remove a director?

The procedure for the appointment of directors of a public or private joint stock company is election by secret ballot at the general assembly of the shareholders. However, the founders can appoint from among themselves the members of the first board of directors, provided that the duration of such a first term does not exceed three years (*Article 96, CL*).

Unless the bye-laws provide otherwise, the board of directors can appoint a director to a vacant position, provided that the appointment is presented for approval to the shareholders at the next general assembly. The new member will complete the term of the predecessor. If the vacant positions reach one-quarter of the number of the members of the board of directors, then a general assembly must be called to meet within no more than three months from the date the last position became vacant to elect directors to fill the vacant positions (*Article 102, CL*).

The general assembly can dismiss any and all members of the board of directors, even if the bye-laws provide otherwise. The general assembly of the shareholders must then elect new members to the board of directors to replace those dismissed. The Ministry of Economy and the concerned local authority of the relevant Emirate must be notified of such actions (*Article 116, CL*).

The auditor is appointed by the general assembly for a one-year renewable term. The compensation of the auditor is also approved by the general assembly. The auditor can be removed by the general assembly.

If it is decided to dismiss a member of the board of directors, then such member cannot be re-nominated for membership of the board before the passing of three years from the date that the resolution for his dismissal was adopted (*Article 117, CL*).

The position is the same as that described above when appointing or removing directors/auditors for limited liability companies.

18. Can shareholders challenge a resolution of the board of directors? Is there a minimum shareholding required to do this?

Resolutions which are validly adopted by the general assembly are binding on all shareholders (*Article 135, CL*). However, any resolutions adopted to further or to harm the interests of certain groups of shareholders, or to confer a special benefit upon members of the board of directors or others without consideration of the interests of the company, may be void (*Article 136, CL*). Any shareholder can challenge such resolution (*see also Question 19*).

In respect of limited liability companies, any resolution violating the CL or the articles of association, or which has been adopted in the interest of some shareholders, or to the detriment of other shareholders, without consideration of the company's interests, is deemed void (without prejudice to the rights of third parties acting in good faith). Only shareholders who either objected to the resolution or were unable to object for reasonable cause can assert that the resolution is void. A claim challenging the validity of a resolution can no longer be heard one year after the resolution has been adopted. In the absence of a court order, filing a claim challenging the validity of a resolution will not suspend implementation of the resolution. A judgment that the resolution is void renders the resolution void with regard to all shareholders (*Article 254, CL*).

The New CL allows shareholders of a public joint stock company holding at least 5% of the shares to petition the Securities and Commodities Authority (SCA) or a court to issue a resolution if the shareholder believes the affairs of the company are being conducted to the detriment of all or any shareholders. The court can annul any such act.

19. Briefly set out the main directors' duties to the company and its shareholders. What is the potential liability of directors to the shareholders? Can their liability be limited or excluded? On what grounds can shareholders bring legal action against the directors?

Shareholders can commence a legal action against the directors of the company. Directors are liable to the company and the shareholders in respect of (*Article 111, CL*):

- Any fraud or abuse of power.
- All violations of applicable laws and the memorandum and articles of association.
- All errors in the management of the company.

Under Ministerial Resolution No. (518) of 2009 Concerning Governance Rules and Corporate Discipline Standards (Governance Rules), which apply to public joint stock companies, a board member must, when exercising his/her powers and duties, act honestly and faithfully, taking into consideration the interests of the company and its shareholders, make the utmost effort and adhere to applicable laws, regulations and resolutions as well as the articles of association and internal regulations of the company.

Each board member must, when assuming his/her office duties, disclose to the company the nature of positions he/she assumes in companies and public institutions, as well as other obligations, their set term, and any change to those obligations as soon such change takes place.

The duties of non-executive board members will, in particular, include:

- Participation in the board meetings to give an independent opinion in respect of strategic issues, policy, performance,

accounting, resources, basic appointments and standards of operation.

- Giving priority to the interests of the company and its shareholders upon a conflict of interest.
- Participating in the audit committees of the company.
- Following-up on the company's performance in order to achieve agreed objectives and purposes and oversee performance reports.
- Empowering the board of directors and different committees through the utilisation of their skills, experience, and the diversity of their competences and qualifications through regular attendance, effective participation, attendance at general assembly meetings and acquiring a balanced understanding of shareholders' views.

The company has a right of action against the board of directors due to errors causing loss or damage to the shareholders. A resolution must be passed by the general assembly appointing a person to initiate proceedings in the company's name (*Article 113, CL*). A shareholder will also have the right individually to make a claim in the event the company fails to do so if the mistake caused damage directly to the shareholder, provided the shareholder notifies the company (*Article 114, CL*).

In respect of limited liability companies, the managers are liable to the company, the shareholders and third parties for (*Article 237, CL*):

- Any acts of fraud or abuse of power.
- Any violations of the CL or its Implementing Regulations.
- Any "errors in management".

Any provisions to the contrary of this provision are considered void.

Additionally, Article 809 of Federal Law No. 18 of 1993 (Commercial Code) appears to make the managers liable to third party creditors of the LLC for such actions.

20. Are directors subject to specific rules when they have a conflict of interest relating to the company? Are there restrictions on particular transactions between a company and its directors? Do shareholders have specific rights to bring an action against directors if they breach these rules?

A member of the board of directors cannot participate, whether directly or indirectly, in any activity which competes with the company or its business without prior permission from the general assembly. This permission must be renewed annually (*Article 108, CL*).

If a member of the board of directors participates in a competing activity without obtaining prior permission from the general assembly, the company can request compensation or require that the transaction which the director entered into on their own behalf be considered as having been entered into on behalf of the company.

A member of the board of directors who has an interest which conflicts with the interests of the company in respect of a transaction duly brought before the board of directors is obliged to notify the board of such a conflict, and to not participate in the voting on the decision made in respect of that transaction (*Article 109, CL*).

Under Ministerial Resolution No. (518) of 2009 Concerning Governance Rules and Corporate Discipline Standards (Governance Rules), where a board member is a subject to a conflict of interest in an issue to be considered by the board of directors, and the board resolves that it is a material issue, the board resolution must be issued at the attendance of a majority of the board members, and such interested member cannot vote on the resolution. In exceptional cases, these issues can be handled through board subcommittees formed for this purpose (by a board resolution), and the committee's opinion will be referred to the board of directors to make a decision in this regard.

21. Does the board have to include a certain number of non-executive, supervisory or independent directors?

Under the Governance Rules, the members of the first board of directors of a public joint stock company must be elected by the founders, while the members of subsequent boards must be elected for a fixed term by the company's shareholders. The formation of the board of directors must take into consideration an appropriate balance between executive, non-executive and independent board members. At least one-third of members must be independent members, and majority members must be non-executive members that will have technical skills and experience for the good of the company. In all cases, when selecting non-executive members of the company, it must be taken into consideration that a member must be able to dedicate adequate time and effort to his/her membership, and that such membership is not in conflict with his/her other interests.

There any no particular requirements for the composition of the board of a limited liability company.

22. Do directors' remuneration and service contracts have to be disclosed? Is shareholder approval of directors' remuneration required?

Under Article 118 of the CL, the remuneration of board members must be a percentage of net profit. Moreover, the company can pay ancillary expenses or fees, or a monthly salary in the amount fixed by the board of directors to any member if such a member works in any committee, exerts special efforts or undertakes additional duties for the company beyond his/her normal duties as a member of the board of directors of the company. In all cases, the remuneration of all board members collectively cannot exceed 10% of net profits, having deducted redemptions, reserve and distribution of profits of at least 5% of capital to shareholders.

SHAREHOLDERS' RIGHTS AGAINST THE COMPANY'S AUDITORS

23. What is the procedure to appoint and remove the company's auditors? What restrictions and requirements apply to who can be the company's auditors?

The general assembly of the limited liability company is required to appoint one or more auditors for a renewable one-year term (*Article 253, CL*).

With joint stock companies, the founding general assembly will appoint the company's auditors (*Article 89, CL*). Thereafter, at the annual meeting of the general assembly, the appointment of the auditors and determination of their fees (when not determined by the bye-laws) will be resolved.

At the annual meeting of the general assembly, determinations can be made as to the release of the liability of, or resolving to file a claim for liability against, the auditors.

The following conditions will apply to the auditor:

- Its name must be entered in the accountants and auditors' registry in accordance with the provisions of Federal Law No. 9 of 1975 Regulating the Profession of Accountants and Auditors.

- The task of the auditor must not be combined with participation in the establishment of the company, membership on the board of directors, or retention by the company for any technical, administrative or consultative task.
- It must not be a partner of, agent for or relative within the fourth degree of a founder or member of the board of directors of the company.

24. What is the potential liability of auditors to the company and its shareholders if the audited accounts are inaccurate? Can their liability be limited or excluded?

The auditor will be liable to the company for the acts of supervision, for the truth of the information contained in his report and for compensation for harm suffered by the company because of an act committed by him in performance of his work. If there are multiple auditors, then each will be liable for his error that results in harm (*Article 151, CL*).

A claim for the liability set out above cannot be heard after one year from the date the general assembly was convened in which the accounts auditor's report was read. If the act attributed to the auditor constitutes a criminal felony, then the claim for liability will continue for as long as the public claim continues.

DISCLOSURE OF INFORMATION TO SHAREHOLDERS

25. What information about the company do the directors have to provide and disclose to its shareholders? What information and documents are shareholders entitled to receive?

At the annual meeting of the general assembly, the shareholders hear and endorse the report of the board of directors on the activities and financial position of the company during the year and the report of the auditor (*Article 124, CL*).

The report of the auditor must be read to the general assembly, and each shareholder will have the right to discuss the report and request clarifications on the facts appearing in the report (*Article 150, CL*).

The shareholders are not generally entitled to information about the company's business outside the general assembly.

A shareholder can review the minutes of the general assembly. The review of the records and documents of the company by a shareholder is by permission of the board of directors, or the general assembly, in accordance with the bye-laws of the company (*Article 170, CL*). The court can require the company to present particular information to the shareholders to the extent such disclosure is not in conflict with the company's interests.

26. What information about the company do the directors have to disclose under securities laws (where applicable)?

Securities & Commodities Authority Resolution No. (3) of 2000 Concerning Regulations on Disclosure and Transparency requires that public joint stock companies must notify the Securities and Commodities Authority (SCA) and the management of the relevant market (Market) on which its shares are is listed of any substantial developments affecting the rates of such securities upon becoming aware of the same, such as:

- Disasters.
- Fire.
- Merger.
- Issuance of new securities.
- Stoppage of a production line.
- Optional dissolution.
- Claims filed by or against the company which affect its financial position.

If requested to do so, a public joint stock company must publish any clarifications relating to its position and activities in a manner that secures the safety of any negotiations concerning the company or the rights of investors. Such company can decline from publishing a press notice concerning certain information if the senior management of the company has reasonable basis to believe that revealing such information will be seriously detrimental to its interests, and that no negotiation of its shares will be carried out by the members of its board of directors and its executive directors (and their first degree relatives) on the basis of the information not revealed to the public. In this case, the company must submit such information to the director of the Market and request him to consider the information confidential until the reasons calling for such confidentiality cease to exist.

Companies are also required to disclose to the SCA and the Market the following:

- All the information and statistics required by SCA or the Market.
- The transactions made on such securities outside the Market, prior to entry of the same in the shares register.
- The number of shares owned by the board of directors of the company within 15 days from taking their positions, and at the end of each financial year, and on all the negotiation transactions carried out by the members to the board of directors and the executive managers of the company.
- The details of the sale and purchase of some substantial assets affecting the position of the company.
- The documents relating to the amendments made to the articles of associations of the company, upon approval of those documents.
- Any changes relating to the management structure of the company at the board of directors and executive managers level.
- Annual, semi-annual and quarterly reports on its activity and the results of its business in a manner disclosing its financial position, immediately upon issuance of those reports, provided that they have been approved by its auditor and include all the information required by the Market or SCA from time to time.
- Copies of the publications issued for the shareholders of the company, immediately upon issuance of those publications.
- A resolution by the board of directors of the company concerning the distribution of dividends to shareholders, or announcing the profits and losses for the Market's approval of publication of those matters.
- Names of those whose ownership, by themselves or with their minor children, reach 5% or more of the shares of the company, observing this obligation in each case in which the shareholding reaches 1% of the shares of the company over the 5% threshold.

27. Is there a corporate governance code in your jurisdiction? Do directors have to explain to shareholders in the company's annual report if they have not complied with it (comply or explain approach)?

Ministerial Resolution No. (518) of 2009 Concerning Governance Rules and Corporate Discipline Standards (Governance Rules) is the corporate governance code in the United Arab Emirates, and

applies to public joint stock companies (but not public joint stock companies and institutions that are wholly-owned by the Federal Government or a local government).

Under the Governance Rules, the board of directors of public joint stock companies must prepare a corporate governance report, signed by the chairman, and provided to the Securities and Commodities Authority (SCA) on an annual basis or on a request [made] during the reporting period or for a subsequent period up to the publication date of the annual report, which must cover all the information and details in the form issued by the SCA, in particular:

- Requirements and principles of completion of corporate governance system and the method of their application.
- Violations committed during the financial year, reflecting their causes as well as method of remedy and avoidance of future occurrence.
- Method of formation of the board of directors by member classes, term of membership, means of remuneration determination, including the remunerations of the general manager, executive director or chief executive officer of the company as appointed by the board of directors.

The board of directors must make this report available to all the company's shareholders a sufficient time prior to the general assembly meeting.

Under the New CL, private joint stock companies will be subject to corporate governance rules issued by the Minister of Economy, where the number of the shareholders in the company exceeds 75.

28. What information can shareholders request from the board about the company? On what grounds can disclosure of company information be refused? Are shareholders entitled to inspect the company's books and similar company documents?

Each shareholder has the right to discuss subjects on the agenda of the general assembly and to pose questions to the members of the board of directors. The board members must answer the questions to the extent that the responses do not expose the company to harm (*Article 130, CL*). The shareholders are not generally entitled to information about the company's business outside the general assembly.

A shareholder can review the minutes of the general assembly. The review of the records and documents of the company by a shareholder is by permission of the board of directors or the general assembly in accordance with the bye-laws of the company (*Article 170, CL*).

Records and documents of the company can be made available following permission from the board of directors or the general assembly in accordance with the bye-laws of the company (*Article 170, CL*). A shareholder is not otherwise allowed to inspect the books and records of the company.

SHAREHOLDERS' AGREEMENTS

29. Briefly set out the main provisions of a typical shareholders' agreement.

A typical shareholders' agreement will include provisions related to:

Management (board structure and appointment, and so on).

- Capital contribution and optional equity contributions.
- The general assembly.
- Transfer and assignment of shares and pre-emptive rights relating to those shares.
- Auditors.
- Intellectual property rights.
- Term and termination.
- Change of control.
- Warranties.

30. Are there circumstances where shareholders' agreements can be enforceable against third parties?

Shareholders' rights can be enforceable against third parties if such rights are contained in the memorandum and articles of association of the company.

31. Do shareholders' agreements have to be publicly disclosed or registered?

Shareholders' agreements do not have to be disclosed to the public or registered.

DIVIDENDS

32. How can dividends be paid to shareholders and what procedures and restrictions apply? Is it possible to exclude or limit the right of certain shareholders to dividends? Is the payment of interim dividends allowed?

Shareholders are entitled to their share of net profits upon a resolution of the general assembly to distribute such net profits (*Article 194, CL*). All shareholders of a public or private joint stock company are entitled to share the profits of the company in proportion to their holding of shares of the company.

A company must allocate at least 10% of the company's net profit to a legal reserve. The general assembly can suspend such contributions once the legal reserve equals half of the capital. The legal reserve cannot be distributed to the shareholders. However, the portion that exceeds half of the paid up capital can be used in the distribution of the profits to the shareholders during years in which the company does not attain net profit sufficient to distribute the percentage specified in the bye-laws.

Shareholders of limited liability companies can agree in the memorandum of association of the company to distribute profits in a ratio other than that of the ownership of the company, provided that no shareholder is excluded from participation in profits. In practice, a minority shareholder can be entitled to a maximum of 80% of the profits.

FINANCING AND SHARE INTERESTS

33. Can shareholders grant security interests over their shares?

Under the CL, shares in LLCs could not be pledged. A pledge over shares in an LLC is now specifically provided for in the New CL (*Article 79, New CL*). However, although the New CCL now provides for this type of pledge to be registered, it remains unclear how the process for taking and enforcing a pledge over shares in an LLC will operate in practice, given that there are no share certificates or registered shares, and no identifiable "part" of the shares as a whole that is attributable to any shareholder in that LLC.

With joint stock companies, it is common practice in the market to register pledges over shares of such companies.

34. Are their restrictions on financial assistance for the purchase of a company's shares?

Under the New CL (*Article 222, New CL*), a company, or any of its subsidiaries, cannot provide financial aid to any shareholder to enable the shareholder to hold any shares, bonds or deeds issued by the company.

In particular, financial aid will include:

- To provide loans.
- To provide gifts or donations.
- To provide the assets of the company as security.
- To provide a security or guarantee of the obligations of another person.

New provisions are contained in the New CL permitting the issuance of new shares to a "strategic partner" (being a partner whose contribution to the company provides technical, operational or marketing support to the company for the good of the company) on such terms as are approved by a special resolution of the shareholders at a general meeting and by the Securities and Commodities Authority (SCA) (*Article 223, New CL*).

SHARE TRANSFERS AND EXIT

35. Are there any restrictions on the transfer of shares by law? Can the transfer of shares be restricted? What are the rights of shareholders in the case of an issue of new shares (pre-emption rights)?

Whether shares are freely transferable depends on the type of company:

- Shares of private and public joint stock companies are freely transferable (*Article 64, CL*).
- Shares of limited liability companies have restrictions on transfer (*Article 221, CL*).

The transfer of shares is also subject to minimum 51% national ownership requirement (*Article 22, CL*).

Shareholders have priority in the subscription of new shares (*Article 204, CL*). Any provision to the contrary in the memorandum and articles of association, or in the resolution adopted to increase the capital of the company, is void.

New shares are allocated to shareholders in proportion to their current shareholding, provided that the allocation does not exceed the amount each shareholder has subscribed for. Any unallocated shares are allocated to shareholders who applied for more than their proportionate number of shares, and any remaining shares are offered for public subscription (*Article 206, CL*).

With public joint stock companies there is a lock-up period of two years provided for, and for private joint stock companies there is a lock-up period under the New CL of one financial year (currently two financial years under the CL) for the founding members.

36. Can minority shareholders alter or restrict changes to the company's share capital structure?

Increases in capital can be vetoed by minority shareholders holding 25% or more of the shares of the company. As a practical matter on account of the requirement to amend the memorandum of association of a company to give effect to a change in capital, all shareholders have a veto on any change in the capital structure (75% of the vote is required to pass a resolution on amending the memorandum of association).

37. When are shareholders required to notify changes to their shareholding to a regulatory authority?

The capital of a public joint stock company may not be reduced without obtaining the prior approval of the Ministry of Economy (*Article 209, CL*). The Ministry of Economy and the concerned local authority of the relevant Emirate have broad rights to supervise public and private joint stock companies to verify that these companies are in compliance with the law (*Article 318, CL*).

38. Can companies buy back their shares? Which limitations apply?

Purchases of own shares are now expressly permitted under the New CL, but only if such purchase is to decrease its share capital or for the redemption of the shares. In such event, such shares shall have no vote in the deliberations of the general assembly or a share of the profits. As an exception, the company (after two financial years from incorporation as a public joint stock company) can purchase no more than 10% of its share capital for the purpose of re-selling such shares in accordance with the procedures prescribed by the Securities and Commodities Authority (SCA) (*Article 219, New CL*).

39. What are the main ways for a shareholder to exit from the company? Can shareholders require their shares to be repurchased by the company? Can shareholders be required to exit the company in certain circumstances? How are the shares valued in this case?

There is no right to withdraw from a company under the CL. Shareholders cannot require their shares to be repurchased by the company. In the ordinary course, shareholders cannot be required to exit the company.

MATERIAL TRANSACTIONS

40. What rights do shareholders have in the case of material transactions, such as a sale of all or substantially all of the company's assets, and a company reorganisation such as a merger or demerger?

The New CL cover both the scenarios of takeover and mergers. Any person, or group of associated persons or related parties, desiring to purchase or do any act that may lead to the takeover of shares or securities convertible to stocks in the share capital of a public joint stock company, will be required to comply with the resolutions to be issued by the Securities and Commodities Authority SCA regulating the rules, conditions and procedures of takeover (*Article 292, New CL*).

The New CL also anticipates that the Minister of Economy will issue a resolution regulating the methods, conditions and procedures of mergers in respect of companies other than joint stock companies, where such regulations will be issued by the SCA (*Article 283, New CL*).

The directors or managers of every merged and merging company must present the draft merger contract to the general assembly or any other similar body for approval by the applicable majority for the amendment of the memorandum of association of the

company. Shareholders holding at least 20% of the share capital of the company, who objected to the merger, can appeal the merger before the court within 30 working days from the date of approval of the merger contract by the general assembly or any other similar body (*Article 285, New CL*).

Except for joint stock companies, the shareholders who object to the merger resolution can demand to withdraw from the company and to recover the value of their shares or stocks, by providing a written request to the company within 15 days from the date of the merger resolution. The value of the shares or stocks (the subject matter of withdrawal) will be assessed by mutual agreement.

41. What rights do shareholders have if the company is converted into another type of company (consider if applicable, a European Company (SE))?

The new company will substitute such company (or companies) in all their rights and obligations, and the rights of the shareholders will continue in the merging company.

INSOLVENCY

42. What rights do shareholders have if the company is insolvent?

Shareholders have the right to receive their proportionate share of the company's assets following liquidation (*Article 169, CL*). Proceeds from the liquidation are distributed to the shareholders following payment of the company's debts (*Article 308, CL*). Upon distribution, each partner will obtain the sum equal to the value of the contribution which he made to the capital. The remainder of the company's property will be distributed to the partners according to the share of each of them in the profit.

In the case of limited liability companies, following payment of debt and return of the capital contributed by shareholders, the balance assets are distributed to shareholders in the proportion to which they are entitled to participate in the profits of the company, as stipulated in the company's memorandum.

43. Can shareholders put the company into liquidation? What is the procedure to do this?

A company can be liquidated by a resolution of shareholders representing at least three-quarters of the capital at an extraordinary general assembly of the company (*Articles 137 and 141, CL*).

If the losses of the limited liability company amount to half of the capital, then the managers must submit to the general assembly of the partners the matter of dissolution of the company, and the decision to dissolve will be by the majority vote necessary for an amendment of the company's articles of association. If the losses amount to three-quarters of the capital, then partners owning one quarter of the capital can demand dissolution (*Article 289, CL*).

CORPORATE GROUPS

44. Is the concept of a corporate group recognised under specific legislation?

Such a concept is not recognised.

45. Does a controlling company have any duties and liability to the shareholders of the company it controls? What are the rights of company shareholders if the controlling company carries out actions that are prejudicial to the shareholders?

Not applicable.

46. What are the limitations on owning reciprocal share interests in companies?

Not applicable.

ONLINE RESOURCES

Securities and Commodities Authority

W https://www.sca.gov.ae

Description. The Securities and Commodities Authority is the federal regulator of the capital markets in the UAE. As such, it issues all necessary legislation relating to public joint stock companies, as well as private joint stock companies. Original versions of its legislation can be found (in Arabic) on its website, with unofficial English translations.

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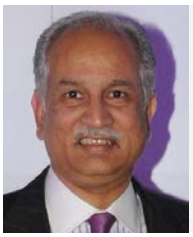

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