

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

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A Q&A guide to shareholders' rights in private and public companies law in the United Arab Emirates.

The Q&A gives an overview of types of limited companies and shares, general shareholders' rights, general meeting of shareholders (calling a general meeting; voting; shareholders' rights relating to general meetings), shareholders' rights against directors, shareholders' rights against the company's auditors, disclosure of information to shareholders, shareholders' agreements, dividends, financing and share interests, share transfers and exit, material transactions, insolvency and corporate groups.

To compare answers across multiple jurisdictions, visit the shareholders' rights in private and public companies *Country Q&A tool*.

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Types of companies with share ownership and limited liability

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

Under UAE Federal Law 2 of 2015 Concerning Commercial Companies (CCL), the following companies offer limited liability:

- Limited liability companies (LLCs). In accordance with Article 71 of the CCL, an LLC must have at least two and a maximum of 50 shareholders. Article 76 of the CCL requires the LLC to have “adequate capital”. The relevant licensing authority imposes a reasonable capital requirement which varies with the nature of the business of the LLC. Typically, the de facto minimum capital requirement is AED300,000. The interests of an LLC cannot be offered to the public.
- Public joint stock companies (PJSCs). Shares of a PJSC can be offered to the public. Five or more persons may form a PJSC and those founders are obliged, under the CCL, to subscribe for between 30% to 70% of the shares of the PJSC prior to the remaining shares being offered for public subscription.
- Private joint stock companies. In accordance with Article 255 of the CCL, a private joint stock company must have at least two shareholders and no more than 200 shareholders. The minimum issued capital of the private joint stock company must be at least AED5 million and must be paid in full in accordance with Article 256 of the CCL. The CCL prohibits a private joint stock company from offering any of its shares to the public.

Each of the above mentioned companies has shareholders. LLCs 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 LLC which does not issue transferable share certificates.

It should be noted that aside from the types of companies prescribed in the CCL, 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 the free zones.

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

The following companies have the following minimum capital requirements:

- LLCs: Article 76 of the CCL requires the LLC to have “adequate capital”. The relevant licensing authority imposes a reasonable capital requirement which varies with the nature of the business of the LLC. Typically, the de facto minimum capital requirement is AED300,000.
- PJSCs: the issued capital of PJSCs must be at least AED30 million. Authorised capital cannot exceed twice the value of the issued capital.
- Private joint stock companies: the issued capital of private joint stock companies must not be less than AED5 million and must be paid in full.

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 (LLCs)

LLCs do not have shares per se but ownership interests in the capital of the company. However, shareholders of LLCs 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 shareholder the right to more than 80% of the profits of the company. An LLC cannot have different classes of shares and cannot issue public debentures.

Public joint stock companies (PJSCs)

The share capital of a PJSC is comprised of shares of equal nominal value. All shares have equal rights and obligations.

The shares of a PJSC 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 PJSC 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 PJSCs are the same as those applicable to a private joint stock company.

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

The minimum number of shareholders is as follows:

- LLCs: a minimum of one shareholder is required in an LLC.
- PJSCs: a minimum number of five founders are required for a PJSC.
- Private joint stock companies: a minimum of two shareholders are required in a private joint stock company.

General shareholders' rights

5. At the formation of a company, what level of government defines the rights and obligations of the company?

The UAE is a federation of seven Emirates. These include the Emirates of Abu Dhabi, Dubai, Sharjah, Fujairah, Umm Al Quwain, Al Ain and Ras Al Khaimah.

The UAE is a civil law jurisdiction. The Federal Constitution apportions powers between the federal government (based in Abu Dhabi) and the seven constituent Emirates. Certain areas are regulated federally (such as immigration and labour), some at the emirate level (such as natural resources within each Emirate, including petroleum), and some are regulated at both the federal and emirate levels (such as company formation and registration).

Corporate structures are subject to different regulatory requirements depending on whether the business is formed onshore in the UAE (that is, in any one of the Emirates) or within one of the relevant Emirate's free zones.

In Dubai, onshore entities (that is, LLCs) are regulated and licensed by the Dubai Department of Economic Development (DDED) and the Ministry of Economy.

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

Shareholders have the following basic rights:

- The right to one vote in respect of each share held by them.
- Subject to a minimum holding period for founders of PJSCs and pre-emption rights of other shareholders of LLCs, 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, Article 206 of the CCL 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.

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

7. Briefly set out the rights of minority shareholders and the minimum 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 an LLC have a veto power in relation to the following shareholder decisions, which require approval of at least 75% of the share capital of the company:

- Under Article 101 of the CCL, the share capital of an LLC 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 of the company consent. However, in practice, the agreement of all shareholders is required for such actions, due to the procedural requirements from the notary public for the requisite notarised shareholders' resolution approving such actions. The memorandum of association can also stipulate a higher numerical majority. Further, the liability of shareholders cannot be increased except with their unanimous consent.
- Under Article 83 of the CCL, if an LLC's manager is not appointed by the company's memorandum of association or an independent contract, the manager will be appointed by the general assembly of the shareholders. In addition, under Article 85 of the CCL, a manager of an LLC can be dismissed by the general assembly of the LLC unless the memorandum of association of the company or the independent contract appointing the manager provides otherwise. Article 96 of the CCL sets the quorum for general assemblies of the shareholders as shareholders holding at least 75% of the share capital of the company (such percentage decreases if it is necessary to reconvene the meeting due to lack of quorum).
- Under Article 301 of the CCL, the dissolution of a company requires the consent of the shareholders representing 75% of the share capital of company. However, as discussed above, in practice, the agreement of all shareholders is required.

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

Private joint stock companies, except for banks and certain financial 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. Ministerial Resolution 228 of 2015 sets out a framework of governance regulations applicable to private joint stock companies. Ministerial Resolution 539 of 2017 sets out further provisions dealing with governance issues and takes precedence over conflicting provisions of previous legislation.

In the case of PJSCs, the Chairman of the Securities and Commodities Authority (SCA) will issue the relevant corporate governance resolutions from time to time. In February 2020, the SCA adopted a new corporate governance regime for PJSCs (*Resolution No. 3/RM of 2020 of the Chairman of the SCA Concerning Approval of Joint Stock Companies Governance Guide*) (Governance Rules). 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.

Meetings of shareholders

Calling a meeting

9. Does a company have to hold an annual shareholders' meeting? If so, when? What issues must be discussed and approved at a general meeting? 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 or the shareholders representing at least 20% of the capital of the company (unless the company's bye-laws sets out a lower percentage). If the board fails to issue an invitation within five days from the date of the auditor's request, the auditor can call the meeting.

Under Article 117 of the CCL, the agenda for the annual general assembly of private and public joint stock companies must include the following matters:

- Hearing the board of directors' report on the company's activities and financial position for the year, the auditor's report and the report of the internal sharia control committee (if the company conducts its activities in accordance with Islamic Sharia).

- Discussing and endorsing the budget and profit and loss account.
- Election of the members of the board, if necessary.
- If the company conducts its activities in accordance with Islamic Sharia, the appointment of the members of the Internal Sharia Control Committee.
- Appointing or removing the auditors and fixing their remuneration.
- Considering the board of directors' proposals regarding distribution of profits.
- Appointing or removing members of the board and fixing their remuneration.

Subject to the provisions of the CCL and the memorandum and articles of association of the company, a general assembly will be competent to consider all questions relating to the company (*Article 180, CCL*).

In respect of LLCs, 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 94 of the CCL, 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 memorandum 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 manager(s) must respond to such a request. Otherwise, the shareholder has the right to put his request to the general assembly (*Article 97, CCL*).

10. Can a company hold extraordinary or special meetings of shareholders? If so, when and how often? What issues can be discussed and approved by the shareholders in an extraordinary or special meeting?

The CCL does not distinguish between ordinary and extraordinary general assembly meetings and refers to all the shareholders' meetings as the general assembly.

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



There are no statutory provisions prohibiting a general assembly of an LLC 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.

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

Under the CCL, shareholders representing at least 75% of the share capital of an LLC must be present at a general assembly meeting for it to be quorate. If the quorum is not satisfied at the first meeting, the second meeting must be called within 14 days from the date of the first meeting. The second meeting 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. At the third meeting, the quorum will be deemed to be satisfied irrespective of the partners present at the meeting.

Resolutions of general assemblies will not be valid unless approved by a majority of shareholders present, or represented, at a general meeting provided that the memorandum of association of the company does not provide for a higher approval majority.

The form of the meeting invitation can be by registered letter, or as prescribed in the memorandum of association. The timeframe for dispatch of the invitation is at least 15 days before the date of the meeting.

In respect of private and public joint stock companies, the invitation of a shareholders' general assembly meeting must be published in two local daily newspapers, at least one of which should be in Arabic. The invitation must include the agenda, date, time and place of the first meeting and the second meeting, in case the first meeting is not quorate. Each shareholder should also be notified by way of registered letters. In case of private joint stock companies, shareholders who have consented to, and provided their phone numbers and email addresses, can be invited to the meetings by way of SMS or emails provided that this form of invitation is provided for in the memorandum of association of the company. The timeframe for dispatch of the invitation is at least 15 days before the date of the meeting. Under Article 173 of the CCL, shareholders representing 95% of the capital of the company can approve a shorter notice period.

Unless the articles of association of a company determine a higher percentage, a quorum at a general assembly of the shareholders shall be shareholders holding, or representing by proxy, at least 50% of the capital of a private or public joint stock company. If the quorum is not present at the first meeting, the meeting will be adjourned to another meeting to be held no earlier than five days and not later than 15 days from the date of the first meeting. Quorum at the adjourned meeting will be satisfied irrespective of the number of shareholders present.

If any of the shareholders or their representatives withdraw from the meeting of the general assembly upon the presence of quorum thereat, such withdrawal will not, irrespective of the number of the shares withdrawing, affect the validity of the general assembly, provided that the resolutions shall be passed by the applicable majority under the CCL.

Voting

13. What are the voting requirements for passing resolutions at general and special 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 CCL, regulations are expected to be issued permitting different classes of shares.

A shareholder having the right to attend the general assembly can delegate whom the shareholder chooses, other than a member of the board of directors, by special written proxy. A proxy of multiple shareholders cannot in this capacity hold more than 5% of the company's capital (*Article 178, CCL*).

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 the company.

A resolution of shareholders holding at least 75% of the shares 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.
- Merging the reserve 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 a 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 PJSC can be converted to a private joint stock company by a special resolution of the general assembly if approved by a majority of the shares representing 90% of the capital of the company. (*Article 274, CCL*). Under the CCL, the general

assembly of a PJSC will elect its board members by way of cumulative voting by secret ballot.

Each shareholder of an LLC, regardless of the number of shares which he owns, is entitled to attend the general assembly either personally or by proxy provided that the proxy holder is not the manager of the company. If a shareholder wishes to appoint a proxy who is not a shareholder of the company, the memorandum of association of the company must permit such party to be appointed to represent a shareholder at a general assembly (*Article 95, CCL*).

Unless the memorandum of association of an LLC provides for a higher majority, resolutions of the general assembly are not valid unless passed by the majority of the shareholders present at the general assembly, in person or by way of proxy; however, the memorandum of association can require a higher majority (*Article 96, CCL*).

Under the CCL, dissolution of the LLC requires approval of the shareholders representing three quarters of the capital. Any increase or decrease to the capital of an LLC requires an amendment to the memorandum of association. Such amendments require the approval of shareholders representing three quarters of the shares of the company, unless a higher numerical majority is also required by the memorandum of association. However, in practice, the agreement of all shareholders may be required for such actions due to the procedural requirements from the notary public for the requisite notarised documents for these actions. The obligations of the shareholders cannot be increased without the unanimous approval of the shareholders.

The CCL states that all companies can, by resolution of shareholders holding at least 75% shares:

- 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 to be made between the merged companies in this respect.

In practice though, the agreement of all shareholders is required for such actions due to the procedural requirements from the notary public for the requisite notarised shareholders' resolutions approving such actions.

14. Are specific shareholder approvals/resolutions required by statute or an applicable stock exchange for certain corporate actions? What voting requirements and majorities apply?

In respect of an LLC, the CCL prescribes that the following matters require approval of the shareholders holding at least three quarters of the capital, however, in practice, the agreement of all shareholders is required for these actions due to the procedural requirements from the notary public for the requisite notarised documents:

- An increase or decrease in the capital.
- Voluntary contributions towards community service.
- Dissolution or merger.
- Sale or disposition of the projects undertaken by the LLC.
- Sale of 51% or more of its assets, whether such sale is undertaken by way of a single transaction or multiple transactions within a period of one year from the date of the first sale.
- Extension of the term of the company.
- Amendment of the memorandum of association.

- Any other matter where the CCL requires a special resolution.

The following matters require approval of the shareholders holding at least three quarters of the capital of public and private joint stock companies:

- Amending the memorandum and articles of association and the bye-laws.
- Increasing or reducing the capital.
- Capitalisation of the reserve.
- Division of the nominal value of shares into a lower value provided that the new value is no lower than AED1 per share.
- Issuance of debt instruments.
- 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 meetings

15. Can a shareholder require a general or special 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?

One or more shareholders of an LLC owning at least 20% of the capital of the company can submit a request to the manager or the board to invite the general assembly to convene. Shareholders holding at least 10% shares in an LLC have the right to call the general assembly to an emergency meeting by submitting a request to the concerned local authority of the relevant Emirate (for example, the Dubai Department of Economic Development).

One or more shareholders holding shares representing at least 20% of the capital of a public or private joint stock company can require the board of directors to invite the general assembly to convene (*Article 174, CCL*). In the event that the board of directors fails to invite the general assembly to convene in accordance with Article 174 of the CCL, the concerned shareholders can request the Securities and Commodities Authority (SCA) to call the general assembly to convene.

16. 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. If one or more shareholders, representing not less than 10% of the capital of a private or public joint stock company at the start of the general assembly meeting request the inclusion of a new issue on the agenda, the chairman of the board of directors must grant such a request. If the chairman does not grant the request, the general assembly will have the right to decide whether or not to include the issue on the agenda (*Article 180, CCL*).

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. The shareholder can refer to the general assembly if he or she believes that the response to his question was insufficient. The resolution of the general assembly will be binding (*Article 185, CCL*).

The shareholders are not generally entitled to information about the company's business outside of 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 221, CCL*).

If a shareholder of an LLC 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 for a vote (*Article 97, CCL*).

A shareholder of an LLC 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 or her questions have not been properly addressed has the right to appeal to the general assembly, whose decision will be binding in this regard (*Article 98, CCL*).

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

The law does not permit shareholders 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 and are important, the Ministry of Economy is likely to approve such a vote.

18. Can a shareholder challenge a resolution passed at 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?

On request by one or more shareholders holding at least 5% shares of the company, the Securities and Commodities Authority (SCA) can suspend execution of a resolution adopted by the general assembly that is to the detriment of one or more shareholders, or in favour of a certain class of shareholders, or brings special benefit(s) to members of the board, or if the grounds of request are of a serious nature, provided that both the:

- Request for suspension is made within three working days of the resolution being adopted by the general assembly.
- Concerned shareholder files a suit with a competent court to annul the resolution within five days of its suspension by the SCA.

Shareholders' rights against directors

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

The articles of association of a public or a private joint stock company determine the method for formation of the board of directors, the number of its members and the term of membership, provided that the number of members shall be no less than three and no more than eleven and that the term of membership does not exceed three calendar years commencing from the date of appointment. Members can be re-elected for more than one term (*Article 143, CCL*). Subject to Article 143 of the CCL, the general assembly of the shareholders will elect the members of the board of directors by cumulative voting by secret ballot. However, the founders can appoint the members of the first board of directors in the articles of association of the company (*Article 144, CCL*).

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 30 days from the date the last position became vacant to elect directors to fill the vacant positions (*Article 145, CCL*).

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.

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 168, CCL*).

Under Articles 83 and 85 of the CCL, if an LLC's manager is not appointed by the company's memorandum of association or an independent contract, then the manager shall be appointed and dismissed by the general assembly of the shareholders.

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

Under Article 164 of the CCL, shareholders holding at least 5% of the shares of a company can petition to the competent authority 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.

Article 170 of the CCL also provides that, without prejudice to the rights of bona fide third parties, shareholders of a PJSC have the right to challenge the validity of any board resolution passed which:

- Is in violation of the law and the constitutional documents of the company.
- Acts in favour of, or against, a certain class of shareholders.
- Would provide a special benefit to a related party or other persons without consideration of the interests of the company.

The claim to render any such resolution invalid is time barred after 60 days from the date that the resolution is passed.

21. 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?

Under Resolution No. 3/RM of 2020 of the Chairman of the SCA Concerning Approval of Joint Stock Companies Governance Guide (Governance Rules), which applies to PJSCs, a board member must, when exercising his or 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 all interests and relationships that may affect his/her ability to perform his/her duties as a board member, partnerships, related employment or the main interests of relatives that may create a conflict or potential conflict in interests.

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 and operational performance.
- Giving priority to the interests of the company and its shareholders upon a conflict of interest.
- Participating in the board 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 creating a balanced understanding of shareholders' views.

The members of the board are liable towards the company, the shareholders and the third parties for all acts of fraud, misuse of power and violation of the provisions of the CCL or the articles of association of the company, or an error in management. Any provision in the bye-laws of the company to the contrary will be invalid (*Article 162, CCL*).

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*

165, CCL). 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. Every provision in the bye-laws of the company to the contrary will be invalid (*Article 166, CCL*).

In respect of LLCs, the managers are liable to the company, the shareholders and third parties for (*Article 84, CCL*):

- Any acts of fraud or abuse of power.
- Any violations of the provisions of the CCL, any other applicable law, the bye-laws of the company, or the contract appointing the manager.
- Any “gross error”.

Any provisions in the memorandum of association of the LLCs or the contract appointing the manager that are to the contrary are considered void.

Liability to third-party creditors for such actions on the part of directors of joint stock companies or managers of LLCs can also arise under the Bankruptcy Law (*Federal Decree-Law 9 of 2016*).

22. 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?

No person can be appointed or elected as a member of the board of a company until such person discloses, in writing, any activity conducted by him/her, directly or indirectly, that is competitive with the business of the company and names of the companies or establishments where such person works or is a member of the board (*Article 147, CCL*).

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. 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. (*Article 152, CCL*).

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. If a member of the board fails to notify the board, the company, or any of its shareholders, can apply to a competent court to annul the contract or require the contravening member to pay any profit or benefit made by him from such contract to the company (*Article 150, CCL*).

Managers of LLCs must not, without the consent of the general assembly of the shareholders, undertake management of a competing company, or a company with objects similar to those of the company, or make, of his own account, or for the account of third parties, deals in a trade that is competing with, or similar to, the trade of the company (*Article 86, CCL*). If a manager acts contrary to the provisions of Article 86, he or she can be dismissed and required to pay compensation.

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

Under Resolution No. 3/RM of 2020 of the Chairman of the SCA Concerning Approval of Joint Stock Companies Governance Guide (Governance Rules), members of the board should, collectively, have an appropriate balance of skills, knowledge, competencies, experience, diversity and independence. Board members must be appointed in accordance with the company's articles of association, which should also provide for the method of board formation, number of board members and term of membership. Females must represent at least 20% of the board membership. If not possible, the company must disclose the reasons for not achieving this threshold and disclose the percentage of female representation in its board in its annual governance report. Board members are also required to set policies on gender diversity and its objectives and actions to meet these objectives. The formation of the board of directors must take into consideration an appropriate balance between executive, non-executive and independent board members. 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 are no particular requirements for the composition of the board of an LLC.

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

Under Article 169 of the CCL, 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. The general assembly of the shareholders of the company can make deductions from the remuneration of the members of the board equivalent to the fines imposed on the company as result of the violations of the CCL, any other applicable laws, or the company's bye-laws, by the board of directors.

Shareholders' rights against a company's auditors

25. 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 an LLC and a joint stock company is required to appoint one or more auditors for a renewable

one-year term, provided that such appointment does not extend past three consecutive years. Subject to approval by the Securities and Commodities Authority (SCA), the founders can, at the time of incorporation of a joint stock company, appoint its auditors for a term ending at the time of convention of the first general assembly of the company (*Articles 102 and 243, CCL*).

A company can dismiss its auditor, by a shareholders' resolution passed at a general assembly, provided that the chairman of the board notifies the competent authority of such dismissal within seven days (*Article 251, CCL*).

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.

26. 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 253, CCL*).

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 (*Article 254, CCL*).

Disclosure of information to shareholders

27. What financial or other 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 177, CCL*).

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 250, CCL*).

The shareholders are not generally entitled to information about the company's business outside of 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 221, CCL*). 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.

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

PJSCs must notify the Securities and Commodities Authority (SCA) and the management of the relevant market (Market) on which its shares are listed of any material developments affecting the rates of such securities (*Securities & Commodities Authority Resolution No. (3) of 2000 Concerning Regulations on Disclosure and Transparency*), 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 PJSC 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.

29. 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)?

Resolution No. 3/RM of 2020 of the Chairman of the SCA Concerning Approval of Joint Stock Companies Governance Guide (Governance Rules) was passed on 27 February 2020 approving the Joint Stock Companies Governance Guide (Governance Rules). The Governance Rules came into effect on 27 April 2020 and repeal and replace the previous regime under Resolution 7/RM of 2016.

The Governance Rules expand the duties of the board of directors as a collective body. Among the responsibilities of the board of directors is the obligation to ensure the establishment of a compliance function to follow the compliance with applicable laws, regulations and decisions as well as regulatory requirements, internal policy, regulations and procedures established by the Board (*Article 14(22), Governance Rules*).

Moreover, the Governance Rules require that the company submit an annual corporate governance report, signed by the chairman in accordance with the form prepared by the SCA. Within the corporate governance report the directors must include a report on risk management and internal controls including the following:

- The applicable corporate governance rules.
- The self-evaluation approach of the board performance.
- Internal audit procedures and the scope of their full application by the board.

Interim reports must also be prepared when requested by the SCA. All such reports must cover the information and details stated in the form issued by the SCA, in particular:

- Compensation of the board members and all members of the company administrative body, including remuneration and any incentive programmes related to securities issued or guaranteed by the company.

- The names of the major shareholders who directly or indirectly own more than 5% of the shares of the company in addition to a brief summary of the changes in the company capital structure.
- A statement of the company directors and the first and second grades as stated in the organisational structure of the company and their function, dates of appointment, details of salaries, bonuses received by each of them separately and any other compensation received from the company, clarifying the consideration for this compensation.

The board of directors must make this report available to all the shareholders before submitting a request to the SCA for approval of conducting the annual meeting of the general assembly.

Under the CCL, 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.

30. 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 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 as long as the response does not expose the company's interests to harm. The shareholder can refer to the general assembly if he or she believes that the response to the question is insufficient. The resolution of the general assembly will be binding (*Article 185, CCL*).

The shareholders are not generally entitled to information about the company's business outside of 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 221, CCL*).

Shareholders' agreements

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

A typical shareholders' agreement will include provisions related to:

- The management (board structure and appointment).
- 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.

32. 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.

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

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

Dividends and distributions

34. What are the most common forms of distributions?

In practice, the most common forms of distributions in the UAE are generally cash dividends. The distribution of cash dividends for an LLC is required to be made within 30 days of a resolution approving such distribution.

35. 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 or special dividends allowed?

Shareholders are entitled to their share of net profits upon a resolution of the general assembly to distribute such net profits (*Article 241, CCL*). 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 LLCs 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. The distribution of cash dividends for an LLC is required to be made within 30 days of a resolution approving such distribution.

Financing and share interests

36. Can shareholders pledge or grant security interests over their shares? If so, what effect does it have on the shareholders' right to vote or receive dividends?

Article 79 of the CCL provides that shareholders can register a pledge over their shares subject to the pledging of the shares being authorised in the company's memorandum of association. However, in practice, it may be procedurally challenging to register a pledge over the shares of an LLC in certain Emirates. Generally, a notarised share pledge agreement will need to be presented to the relevant Economic Department, which will then enter the pledge in its securities register. In some cases, the existence of the pledge is also narrated on the licence of an LLC. The CCL does not stipulate any conditions with respect to the shareholder's right to vote or receive dividends where the shares are pledged.

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

37. Are there restrictions on loans or other financial assistance for the purchase of a company's shares?

A PJSC, 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 (*Article 222, CCL*).

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.

However, the CCL contains provisions permitting 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 terms approved by a special resolution of the shareholders at a general meeting and by the Securities and Commodities Authority (SCA) (*Article 223, CCL*).

Share transfers, issues of new shares and exit

38. 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)?

The shares of private joint stock company cannot be transferred by its shareholders prior to publication of the balance sheet and the profits and losses account for at least one financial year, commencing from the date of registration of the company in the commercial register. During such time, shares can be mortgaged or transferred by sale to another shareholder (*Article 264, CCL*).

The shares of PJSC cannot be transferred by its shareholders before publication of the balance sheet and the profits and losses account for at least two financial years, commencing from the date of listing of the company on a stock exchange or registration of the company in the commercial register. During such time, shares can be mortgaged or transferred by sale to another shareholder (*Article 215, CCL*).

The transfer of shares of an LLC by a shareholder is subject to the pre-emption rights of the other shareholders (*Article 80, CCL*).

The transfer of shares in LLCs and joint stock companies is also subject to a minimum 51% UAE national ownership requirement (*Article 10, CCL*). However, note that under Federal Decree- Law 19 of 2018 on Foreign Direct Investment, it may be possible to obtain a higher percentage of foreign ownership in certain specified sectors.

Shareholders have priority in the subscription of new shares (*Article 197, CCL*). 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. However, a shareholder can sell his/her pre-emption right to another shareholder or to third parties for material consideration. The SCA’s board of directors must issue a resolution regarding conditions and procedures for sale of pre-emption rights by the shareholders.

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 199, CCL*).

Despite the shareholders’ pre-emption rights, the CCL permits issuance of new shares of joint stock companies 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 terms approved by a special resolution of the shareholders at a general meeting and by the Securities and Commodities Authority (SCA) (*Articles 223 and 224, CCL*), as well as for debt conversion (*Article 225,*

CCL) and employee stock option schemes (*Article 226, CCL*).

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

Increases in capital can be vetoed by minority shareholders holding more than 25% 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, however, in practice, a 100% affirmative vote is required as a result of the procedural requirements from the notary public for amending the memorandum of association).

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

The capital of a PJSC cannot be reduced without obtaining the prior approval of the Securities and Commodities Authority (SCA) (*Article 202, CCL*). 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.

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

Purchases of own shares by a company are now expressly permitted, 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 PJSC) 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, CCL*).

42. 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 CCL. Shareholders cannot require their shares to be repurchased by the company. In the ordinary course, shareholders cannot be required to exit the company.

Share capital

43. Can shares be cancelled after issue?

The capital of a PJSC may be decreased by the cancellation of part of the share value equal to the loss incurred by the company (*Article 203, CCL*).

Material transactions

44. 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 CCL covers 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 can lead to the takeover of shares or securities convertible to stocks in the share capital of a PJSC, 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, CCL*).

The CCL 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, CCL*).

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, CCL*).

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.

45. 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

46. 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. Proceeds from the liquidation are distributed to the shareholders following payment of the company's debts. On 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 (*Article 325, CCL*).

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

A joint stock 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 (*Article 302, CCL*).

If the losses of the LLC amount to half of the capital, 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 301, CCL*).

Corporate groups

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

Entities under common control can choose to be grouped in a single tax group.

49. 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.

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

Not applicable.

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