



# ICLG

The International Comparative Legal Guide to:

## Corporate Governance 2015

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# United Arab Emirates

Afridi & Angell



Charles Laubach



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## 1 Setting the Scene – Sources and Overview

### 1.1 What are the main corporate entities to be discussed?

Federal Law No. 8 of 1984 on Commercial Companies (as amended) (the “CCL”) allows for a number of different forms of companies to be established in the United Arab Emirates (the “UAE”). The CCL is due to be repealed and replaced by Federal Law No. 2 of 2015 concerning Commercial Companies (the “2015 CCL”). The 2015 CCL will come into force on 30 June 2015. In the interim, the CCL will remain in force.

The most common form of company used for foreign direct investment into the UAE is the limited liability company (“LLC”) and publicly traded companies are incorporated as public joint stock companies (“PJSC”).

Within the Emirate of Dubai there is a free zone known as the Dubai International Financial Centre (the “DIFC”). Activities conducted in or from the DIFC are subject to regulation and supervision by the Dubai Financial Services Authority (the “DFSA”). The DIFC also has its own legal, regulatory and court system. This chapter will also discuss the DIFC limited liability company. The Companies Law (as hereinafter defined) does not generally make a distinction between private and public limited liability companies.

### 1.2 What are the main legislative, regulatory and other corporate governance sources?

The main legislative, regulatory and other corporate governance sources are:

- The CCL.
- Ministerial Resolution No. (518) of 2009 Concerning Governance Rules and Corporate Discipline Standards (the “Resolution”).
- The Regulations as to Disclosure and Transparency issued by the Securities and Commodities Authority (the “SCA”).
- The DIFC Companies Law (DIFC Law No.2 of 2009) (the “Companies Law”).
- The DIFC Markets Law of 2012.
- The DFSA Rulebook (Markets Rules) (the “Rulebook”).

### 1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

The publication of the 2015 CCL has brought corporate governance

into the spotlight in the UAE. The 2015 CCL states that the Minister of Economy must issue resolutions with respect to the general framework regulating governance in connection with private joint stock companies where the number of shareholders exceeds seventy-five. In addition, the 2015 CCL provides that the Chairman of the SCA shall issue resolutions relating to governance for PJSCs.

Under the 2015 CCL, the board of directors of a company or its managers shall be responsible for the application of the rules and criteria relating to corporate governance, and penalties (up to a maximum amount of 10 million Dirhams) shall be imposed by the Ministry of Economy or the SCA (as applicable) on the company, its chairman, directors, managers and auditors for contravention of any corporate governance rules.

## 2 Shareholders

### 2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/entities?

#### LLC

The shareholders (or partners (as they are referred to in the CCL)) of an LLC have the following rights and powers in relation to the operation and management of an LLC:

- to appoint and remove the manager(s) of an LLC and to specify the powers and duties of the manager(s) of the LLC;
- to call for the convening of a general assembly of the partners of the LLC;
- to request that a matter be placed on the agenda for the general assembly of the LLC, to discuss any matters on the agenda and to pose questions to the manager(s) of the LLC in relation to any such matters; and
- to nominate the auditors for the LLC.

#### PJSC

The shareholders of a PJSC have the following rights and powers in relation to the operation and management of a PJSC:

- to elect and dismiss the board of directors of the PJSC (save for the first directors of the PJSC who will be appointed by the founders);
- 10 of the shareholders of the PJSC owning a minimum of 30% of the capital of the PJSC may request that a general assembly of the shareholders is called with respect to an urgent matter (under the 2015 CCL, the board of directors must convene a general assembly when requested to do so by one or more shareholders who hold shares representing

- at least 20% of the share capital (unless the articles of association of the company provide for a lower percentage);
- to request the entry of a specific issue on the agenda for the annual general meeting of the shareholders, to discuss the matters on the agenda and to pose questions in relation to such matters to the board of directors of the PJSC;
- shareholders representing at least 40% of the capital of a PJSC may request that an extraordinary general assembly of the shareholders of the PJSC is called (note that under the 2015 CCL, the distinction between an ordinary and an extraordinary general assembly has been abolished and substituted with the concept of a special resolution which is required to be passed by shareholders holding at least 75% of the shares represented at a general assembly meeting); and
- to appoint the auditors of the PJSC.

In addition, the 2015 CCL now contains a concept of unfair prejudice by permitting one or more shareholders holding 5% of the share capital of the company to file an application with the SCA if they have been prejudiced by the company's actions, proposed actions or failure to take action. Such shareholders are entitled to escalate matters to the court if the SCA denies the application or fails to respond within thirty business days.

The Resolution also applies to all companies and institutions whose securities are listed on the Dubai Financial Market or the Abu Dhabi Securities Exchange. There are, however, a number of exceptions to the application of the Resolution: for example, the Resolution does not apply to companies and institutions that are wholly owned by the UAE Federal Government or a local government.

The Resolution contains a section on shareholders' rights which provides that shareholders shall (i) have access to sufficient information in order to exercise their rights, (ii) be provided with the opportunity to effectively take part in the deliberations of the general assembly meetings and voting, and (iii) be provided with a biography of nominees to the board of directors of the company prior to voting on such appointments to the board. The board is also obliged under the Resolution to disclose material events, significant resolutions and to clarify information with regard to the position and activities of the company.

#### DIFC

The shareholders of a DIFC company limited by shares have the following rights and powers in relation to the operation and management of a DIFC company limited by shares:

- the right to appoint and remove the directors of the company;
- shareholders holding (at the date of the request) not less than 5% of the share capital of the company have the right to request that a general meeting of the company be held; and
- the right to inspect minute books of general meetings of the company or class meetings, and to request copies of such minutes.

### **2.2 What responsibilities, if any, do shareholders have as regards the corporate governance of their corporate entity/entities?**

#### LLC

The CCL does not provide for any specific shareholder responsibilities with respect to corporate governance issues.

#### PJSC

Whilst the CCL does not provide for any specific shareholder responsibilities, the Resolution specifies that shareholders should be provided with the opportunity to take an effective part in the deliberations of the general assembly meetings and voting on resolutions.

#### DIFC

In the DIFC, the Rulebook applies to entities which have securities admitted to NASDAQ Dubai (a "Reporting Entity"). Under the Rulebook, the board of directors of a company must ensure that shareholders have the opportunity to exercise their rights effectively. The Rulebook also states that the board of directors should promote effective dialogue with shareholders and other key stakeholders and prevent any abuse or oppression of minority shareholders.

### **2.3 What shareholder meetings are commonly held and what rights do shareholders have as regards them?**

#### LLC

In the case of an LLC, the most common type of shareholder meeting is a general assembly, which must be convened at least once a year. Every partner of the LLC has the right to attend the general assembly regardless of the number of shares he holds, and partners holding no less than a quarter of the capital of the LLC also have the right to request that a general assembly be convened.

Partners of an LLC may also elect that other non-managing partners act as their proxies at a general assembly.

At the general assembly each partner has the number of votes equal to the shares held by him.

Partners may also request that certain matters be included on the agenda for the general assembly and may discuss and raise questions on such matters (please refer to the response to question 2.1).

Any partner also has the right to review the minutes of a general assembly.

Under the 2015 CCL, the partners of an LLC may elect another partner who is not a manager, or any other party that the memorandum of association permits to be appointed, to represent a partner at a general assembly.

#### PJSC

The two most common forms of shareholder meetings are: (i) the ordinary general assembly; and (ii) the extraordinary general assembly. The ordinary general assembly may be held to consider all issues related to the company except those issues which the CCL or the constitutional documents of the company reserve for the extraordinary general assembly. Please also refer to question 2.1 with respect to the removal of the distinction between the ordinary general assembly and the extraordinary general assembly under the 2015 CCL.

The shareholders of a PJSC have the right to request that an ordinary general assembly or an extraordinary general assembly be called; they may also request that matters be included on the agenda for the assembly, and can discuss and pose questions on such matters (please refer to the response to question 2.1).

Each shareholder shall have the right to attend the general assembly and shall have a number of votes equivalent to the number of shares held by him. Shareholders may also appoint a person to act as a proxy so long as that person is not a director of the PJSC. The proxy must also not hold more than 5% of the company's share capital.

#### DIFC

The most common forms of shareholder meeting for a company limited by shares are the annual general meeting and general meeting.

As discussed in the response to question 2.1 above, shareholders holding no less than 5% of the share capital of the company may request that a general meeting is called. At such meetings every shareholder has one vote for each share held by him.

Shareholders are also entitled to demand that a poll is taken, and any provision contained in the company's constitutional documents to the contrary will be void.

Shareholders are permitted to appoint another person (whether a shareholder or not) to act as a proxy at a general meeting. The proxy shall have the same rights as the shareholder including the right to (i) speak at the meeting, (ii) vote, and (iii) join in a demand for a poll.

Shareholders may also examine the books of the company containing the minutes of a general meeting or request a copy of such minutes.

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#### **2.4 Can shareholders be liable for acts or omissions of the corporate entity/entities?**

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In general, the shareholders of a company in the UAE or in the DIFC will not be held liable for the acts or omissions of corporate entities in which they hold shares. However, as in most jurisdictions, it is possible in certain circumstances for the separation of the personality of a company and its shareholders not to be maintained. The veil of incorporation is therefore said to be lifted. The Dubai Court of Cassation has held that where a shareholder has exploited the principle of the independent liability of the company as a means to conceal fraudulent acts or misappropriation of the funds of the company in order to cause harm to his partners or creditors, the protection bestowed by law for a shareholder in a limited liability company will not be upheld. In these circumstances, it may be possible for a shareholder to be held liable in his personal capacity for such dispositions, and such liability will extend to his personal assets.

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#### **2.5 Can shareholders be disenfranchised?**

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##### LLC

The CCL does not provide for the disenfranchisement of partners, however it does provide that managers (who may also be partners of an LLC) may not participate in voting on resolutions to release them of their management responsibilities.

##### PJSC

The CCL does not provide for the disenfranchisement of shareholders, however the CCL provides that directors of a PJSC may not participate in voting on resolutions of the general assembly relating to (i) the release of their liability for management, (ii) a benefit particular to them, or (iii) a dispute between a director and the company.

##### DIFC

The Companies Law does not provide for any circumstances whereby a shareholder will be disenfranchised.

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#### **2.6 Can shareholders seek enforcement action against members of the management body?**

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##### LLC and PJSC

The shareholders of a PJSC and the partners of an LLC may commence legal action against the directors (or manager(s), in the case of an LLC) of the company. Directors or managers are liable to the company and its shareholders or partners in respect of any fraud or abuse of power, for all violations of applicable laws and the memorandum and articles of association, and for all errors in the management of the company.

Under the CCL, a shareholder of a PJSC shall also have the right to make a claim if the error caused direct damage to the shareholder, and in the event that the company fails to do so. The shareholder must inform the company of such claim.

As discussed in the response to question 2.1, the 2015 CCL has now also introduced a concept of unfair prejudice.

##### DIFC

The Companies Law sets out a number of grounds on which an application may be made to court where there has been a breach of the Companies Law. It may therefore be permissible for an action to be raised against a director for breach of duties.

In addition, under Article 133 of the Companies Law, a director may be liable to pay compensation to anyone who has suffered loss or damage as a result of a breach of the Companies Law.

It may also be possible for a court to allow a company to bring an action against a director under Article 134 of the Companies Law if a shareholder claims that a breach by a director of his duties amounts to unfair prejudice towards the shareholders.

It is worth noting that Article 137 of the Companies Law provides a defence for directors in relation to breaches of the Companies Law. Under Article 137, if it appears to the court that the officer has acted honestly in carrying out his duties, the court may, having regard to the circumstances of the case, excuse the officer and relieve him from his liability.

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#### **2.7 Are there any limitations on, and disclosures required, in relation to interests in securities held by shareholders in the corporate entity/entities?**

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##### LLC

There are no disclosure requirements specified under the CCL for the partners of an LLC.

##### PJSC

The Regulations as to Disclosure and Transparency issued by the SCA (the "**Regulations**") primarily apply to shares in companies listed on the Dubai Financial Market or the Abu Dhabi Securities Exchange (a "**Market**").

Under the Regulations, a notification must be made in the event that (i) a natural person, whether alone or together with his minor children (a "**Natural Person**"), or (ii) a corporate person together with its affiliates (a "**Corporate Person**") own:

- 5% or more of the shares of a company listed on a Market; or
- 10% or more of the shares of a company associated with a company listed on a Market.

Each 1% change over the disclosure requirements set out above must be notified to the SCA.

A notification must also be made to the SCA where a Natural Person or a Corporate Person intends to buy a proportion of the shares of a listed company that would result in it owning 30% or more of the shares of that company. The notification must be made to the SCA prior to the submission of the purchase order and the SCA shall have the right to reject such order if, after consultation with the relevant Market, the SCA is of the belief that the transaction will be detrimental to the interests of that Market, or the economy of the UAE.

A bank or financial institution must also obtain the approval of the Central Bank of the UAE before entering into any transaction which will result in it acquiring 5% or more of the shares of any company listed on a Market.

##### DIFC

Under the Rulebook, a shareholder who owns securities carrying more than 5% of the voting rights attaching to all the voting securities of (i) a Reporting Entity, or (ii) an entity which controls the Reporting Entity, must file a report with the DFSA on the occurrence of any of the following events:

- upon acquiring or ceasing to hold voting securities carrying more than 5% of the voting rights attaching to all voting securities of either the Reporting Entity or a controller of the Reporting Entity; and
- upon an increase or decrease of at least 1% of the level of interest previously reported above.

### 3 Management Body and Management

#### 3.1 Who manages the corporate entity/entities and how?

##### LLC

Up to five managers may be appointed to manage the day-to-day business of an LLC. It is usual for the manager's powers to be set out in the memorandum of association of the LLC and in a power of attorney granted by the LLC to the managers. In all other cases, the CCL provides that the manager shall have full power to manage the company. In the event that there are multiple managers, the LLC's memorandum of association may also provide for a board of managers. The operation of the board of managers must be set out in the memorandum of association of the LLC. Under the 2015 CCL, the requirement for a maximum of five managers has been removed.

In addition, where the number of partners exceeds seven, a supervisory board (called a Control Council under the 2015 CCL) must be appointed. The supervisory board must consist of at least three partners. Under the CCL, the supervisory board is charged with acts such as examining the books and documents of the company, requesting reports from the managers of the company, and supervising the budget, the annual report and the distribution of profits.

##### PJSC

A PJSC is managed by a board of directors which shall comprise no less than three and no more than 15 directors. The majority of the members of the board of directors must be UAE nationals. The board of directors must also elect a chairman and a vice chairman from the members of the board, and the chairman of the board must be a UAE national.

The CCL prohibits an individual (or a corporate entity controlled by that individual) from (i) being a director of more than five PJSCs, (ii) being the chairman or vice chairman of the board of directors of more than two companies in the UAE, or (iii) being a managing director of more than one company in the UAE.

The CCL provides that the board of directors shall have all of the powers required for carrying out the activities necessary for achieving the company's objectives, save for those powers reserved by law or the company's constitutional documents to the general assembly.

Under the 2015 CCL, the board of directors must comprise more than eleven directors.

The Resolution specifies that at least one-third of the board members shall be independent members and the majority of the board members shall be non-executive members who shall have technical skills and experience relevant to the business of the company.

The Resolution also sets out the duties and responsibilities of the chairman of the board of directors.

Finally, the Resolution obliges the board of directors to form an audit committee and a nomination and remuneration committee.

##### DIFC

A company limited by shares must be managed by not less than two directors, and the directors of the company shall have all of the powers in relation to the management of the company.

The Rulebook provides that the role of chairman and chief executive of a Reporting Entity should not be held by the same individual. In the event that the same individual is chairman and chief executive of the Reporting Entity, there should be effective measures in place to ensure that the board can properly discharge its function of overseeing the management of the business of the Reporting Entity by its senior management.

The Rulebook also states that one-third of the board of directors shall comprise non-executive directors, of which at least two non-executive directors should be independent.

Under the Rulebook, the Board should also establish (i) a nomination committee to lead the process for the appointment of directors and to make recommendations to the board relating to the appointment of board members and senior management, and (ii) a remuneration committee to assess the remuneration of the directors.

#### 3.2 How are members of the management body appointed and removed?

##### LLC

The manager(s) of an LLC are appointed by the LLC's memorandum of association or by a separate contract for a specified or unspecified term.

Under the CCL, where the memorandum of association provides that a manager may be removed, the majority required for the removal of the manager is the same majority as is required to amend the LLC's memorandum of association (usually 75%) unless a higher majority is specified. However, where the LLC's memorandum of association does not provide for the removal of the manager, a manager must be removed by a unanimous decision of the partners of the LLC, or by a court judgment where serious reasons exist for the removal of the manager.

The 2015 CCL provides that unless the memorandum of association of the company or the contract appointing the manager states otherwise, the manager shall be dismissed under a resolution by the general assembly.

##### PJSC

Under the CCL, the ordinary general assembly is provided with the right to elect the board of directors of a PJSC. This election is carried out by secret ballot. An exception to the election of the directors by the ordinary general assembly is where the founders of the PJSC appoint directors from amongst themselves in the by-laws of the PJSC. In this case, the directors may not be appointed for a term in excess of three years.

The general assembly may dismiss the directors of a PJSC even if the by-laws stipulate otherwise. In the event that a director is dismissed, that individual may not be re-nominated as a director prior to the third anniversary of his dismissal.

##### DIFC

The first directors of a DIFC company limited by shares are elected by the incorporators of the company. Thereafter, the directors are appointed by the shareholders of the company for such term as the shareholders may determine.

The removal of a director of a DIFC company limited by shares is required to be approved by a simple majority of the shareholders of the company.

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### 3.3 What are the main legislative, regulatory and other sources impacting on contracts and remuneration of members of the management body?

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#### LLC

The CCL does not provide for any regulation on a manager's contract or remuneration. The terms of a manager's employment will be largely dependent on the commercial agreement reached between the manager and the LLC.

#### PJSC

The by-laws of a PJSC must stipulate the method for determining the remuneration of the members of the board of directors. The CCL also limits the remuneration that may be payable to the board of directors to 10% of the net profit of the PJSC following the deduction of depreciation, reserves and the distribution of profit of no less than 5% of the capital to shareholders of the PJSC (note that the 2015 CCL does not make reference to the distribution of profit of no less than 5% of the capital to shareholders of the PJSC).

Under the Resolution, a nomination and remuneration committee must be formed. This committee must formulate and review the remuneration policy for board members and employees of the company on an annual basis. The responsibilities of the committee also include verifying that the remuneration and benefits granted to the executive management of the company are reasonable and in line with the performance of the company.

#### DIFC

The Companies Law does not provide for the terms of a director's contract or remuneration. Again, this will be largely dependent on the commercial agreement between the company and the director.

The Rulebook provides a number of principles on directors' remuneration. Ultimately, the Rulebook states that there should be a formal and transparent procedure for developing policies on executive remuneration and for fixing remuneration packages of individual directors. No director should decide his own remuneration and ideally all directors' remuneration should be subject to the recommendations of the remuneration committee or an external consultant.

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### 3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

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#### LLC

The CCL does not stipulate any disclosure requirements with respect to the interests held by a manager in the LLC.

#### PJSC

The Regulation prohibits the chairman, board members, general manager and any other employee of a company listed on a Market (or an associated company which is listed) from effecting dealings in the securities of such company unless the proposed transaction has been disclosed to the Market. The information to be disclosed to the Market must include the quantities and the prices of the securities which are subject to the transaction.

#### DIFC

The Rulebook sets out the disclosure requirements for directors and individuals involved in the senior management of the Reporting Entity (or an entity which controls the Reporting Entity). Under the Rulebook, such person must make a notification:

- upon acquiring or ceasing to hold, either alone or with an associate, any securities or other investments in or relating to

the Reporting Entity or an entity which controls the Reporting Entity; or

- upon an increase or decrease of at least 1% of the level of interest previously reported.

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### 3.5 What is the process for meetings of members of the management body?

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#### LLC

As discussed in the response to question 3.1, in the event that the number of managers of an LLC exceeds five, the LLC's memorandum of association may provide for the formation of a board of managers. The means of operation of the board of managers of the LLC must be specified in the memorandum of association of the LLC. Under the 2015 CCL, the requirement for a maximum of five managers has been removed.

#### PJSC

A majority of the directors of the PJSC must attend a meeting of the board of directors of the PJSC, and resolutions of the board shall be adopted by a majority of the votes of those present and represented. In the event of a tie, the side with which the chairman voted shall prevail. In the event that a director fails to attend more than three successive board meetings without an acceptable reason, then it shall be deemed that he has resigned from the board.

Under the 2015 CCL, the board of directors must meet at least four times a year. In the event of parity, the chairman of the board shall have a casting vote.

The Resolution also prescribes that the board of directors shall meet at least once every two months, at the written notice of the chairman of the board of directors or at the request in writing of at least two members of the board. The meeting agenda must be served at least one week prior to the date of the meeting and each board member shall have the right to include any issue it deems necessary to be discussed at the meeting.

#### DIFC

The articles of association of a company limited by shares will usually provide for the process for directors' meetings. A director (or a secretary, at the request of a director) may call for a meeting of the board of directors. Any resolution to be decided on at a meeting of the directors shall be decided by a majority of votes, with the chairman having a second or casting vote. The quorum for a meeting of the directors shall be two directors (or such other number as fixed by the directors) and the directors shall appoint one of the directors to act as the chair of the meeting.

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### 3.6 What are the principal general legal duties and liabilities of members of the management body?

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Unlike many other jurisdictions, there is not a codified set of duties which governs the acts of managers of an LLC or directors of PJSCs. Set out below are a number of the duties imposed on managers of LLCs and directors of PJSCs.

#### LLC

The obligation of the manager(s) of an LLC is to undertake the management of the LLC, as set forth in the memorandum of association of the LLC. Notwithstanding the generality of the above, there are only a handful of express legal duties stipulated in the CCL. These include:

- preparation of the LLC's annual balance sheet and profit and loss account (and depositing the same with the Ministry of Economy after certification);

- preparation of an annual report on the activities and financial position of the LLC and a suggestion as to the distribution of the profits of the LLC;
- convening the general assembly of the partners of the LLC; and
- answering the questions of the partners of the LLC posed at the general assembly in relation to the business of the LLC.

### PJSC

The directors of a PJSC are responsible for the overall management of the PJSC. The CCL and the Resolution also prescribe certain specific duties, including:

- convening the annual general assembly of the shareholders, and extraordinary general meetings of the shareholders if requested to do so by shareholders, representing at least 40% of the capital of the PJSC. Please note the comments with respect to extraordinary general meetings set out in the response to question 2.1. Under the 2015 CCL, the board of directors must convene a general assembly when requested to do so by one or more shareholders who hold shares representing at least 20% of the share capital (unless the articles of association of the company provide for a lower percentage);
- preparing a report on the PJSC's budget, profit and loss account, activities and financial position;
- providing suggestions on the distribution of profits;
- chairing the general assembly and communicating resolutions passed there to the Ministry of Economy;
- developing procedural rules for corporate governance and supervising and controlling the application thereof;
- establishing development programmes to improve the knowledge and skill of the board of directors;
- developing rules relating to directors' and employees' dealings in the PJSC's (or its affiliates) securities;
- forming the audit committee and the nomination and remuneration committee;
- establishing an internal control system (to manage risk, apply corporate governance rules and ensure compliance with applicable law);
- conducting an annual review of the internal control system and providing a report thereon to the shareholders; and
- disclosing to shareholders material events, significant resolutions, positions and activities of the PJSC.

The Resolution also states that a director shall, when exercising his powers and duties, act honestly and loyally, taking into consideration the interests of the company and its shareholders.

The liability of the managers of an LLC or the directors of a PJSC is set out in Article 111 of the CCL, which states that directors/managers are liable to the company, the shareholders and third parties for "*acts of fraud or abuse of power, all violations of the law or bye-laws, and for all errors in management*". The CCL does not discuss the standard of care that directors or managers are responsible to provide and as such, whether or not directors or managers committed "*errors in management*" would be decided on a case-by-case basis. The liability of the managers of an LLC or directors of a PJSC is also replicated in article 162 of the 2015 CCL.

### DIFC

The duties of directors and officers of a DIFC company limited by shares are to:

- act honestly, in good faith and lawfully, with a view to the best interests of the company; and
- exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

The Rulebook also provides that a director of a Reporting Entity must act (i) on a fully informed basis, (ii) in good faith, (iii) honestly, (iv) with due diligence and care, and (v) in the best interests of the Reporting Entity and its shareholders.

Please refer to the response to question 2.6 in relation to the liability of directors and officers of a DIFC company limited by shares.

### **3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?**

Please refer to the duties discussed in the response to question 3.6.

The Resolution also prescribes that the chairman of the board of directors shall assume a number of duties and responsibilities including but not limited to adopting suitable procedures to secure efficient communication with shareholders and to communicate the views of shareholders to the board of directors.

Further, the Resolution states that the management body of a company must also provide the board of directors and its sub-committees with "*sufficient complete documented information on a timely basis*" to empower the board to adopt decisions on sound grounds and to allow the board to duly perform its duties and responsibilities.

The Rulebook sets out a number of corporate governance principles. One of these principles is that the directors are obliged to ensure that the Reporting Entity has an adequate, effective, well-defined and well-integrated risk management, internal control and compliance framework.

The challenges faced by the management body are adhering to and implementing these duties in a jurisdiction where corporate governance principles have only recently been developed.

### **3.8 What public disclosures concerning management body practices are required?**

#### LLC and PJSC

The CCL does not stipulate any specific public disclosure requirements with respect to the management body practices of an LLC or a PJSC.

#### DIFC

The Rulebook provides that the annual financial report of a Reporting Entity must detail whether the corporate governance best practice standards, as set out in the Rulebook, have been adopted by the Reporting Entity, along with reasons as to why they have not been fully adopted or partially adopted.

### **3.9 Are indemnities, or insurance, permitted in relation to members of the management body and others?**

Indemnities, and directors' and officers' insurance, are permitted in relation to the managers or directors of a company incorporated in the UAE or the DIFC. As with most other jurisdictions, insurance will not cover an individual where the conduct involves wilful breach of duty, improper use of information or improper use of position.

## **4 Transparency and Reporting**

### **4.1 Who is responsible for disclosure and transparency?**

The directors of a company are responsible for disclosure and transparency.

#### 4.2 What corporate governance related disclosures are required?

Under the Resolution, a corporate governance report (the “**Report**”) must be prepared by the Company and provided to the SCA on an annual basis or on the request of the SCA. The Report must cover a number of matters, including but not limited to the following:

- requirements and principles of the company’s corporate governance system;
- corporate governance violations committed during the financial year, including the cause of such violations as well as the method of remedy and the measures put in place to avoid any further violations; and
- the method of formation of the board of directors of the company and details on the remuneration of the general manager, executive director or chief executive officer of the company.

In relation to the DIFC, please refer to the response to question 3.8.

#### 4.3 What is the role of audit and auditors in such disclosures?

##### LLC and PJSC

The CCL provides that the auditor(s) shall be appointed for a one-year renewable term by the general assembly. Under the CCL, it is not possible to delegate the responsibility of appointing the auditor(s) to the directors (or the manager(s) in the case of an LLC). The CCL also provides that the auditor should not be connected to the board of directors of the company (or the manager(s) in the case of an LLC).

The auditor shall audit the accounts of the company and make observations on the application of the law. The auditor must then submit a report on the result of such examination to the general assembly and send a copy to the Ministry of Economy.

##### DIFC

A company must, at an annual general meeting, appoint a firm of auditors to examine and report upon the accounts of the company. The auditor will be appointed to hold office for a one-year term. The Companies Law provides that an auditor shall not consent to an appointment as an auditor if:

- the auditor has, or may reasonably be perceived to have, a conflict of interest; or
- the auditor does not have, or may reasonably be perceived not to have, the requisite degree of independence from the company.

#### 4.4 What corporate governance information should be published on websites?

There is currently no requirement in the UAE for corporate governance information to be published on company websites.

## 5 Miscellaneous

#### 5.1 What, if any, is the law, regulation and practice concerning corporate social responsibility?

There is no legislation or regulation in place which governs corporate social responsibility in the UAE or in the DIFC. However, in recent years, corporate social responsibility programmes have started to make an appearance in the UAE, although they are less prevalent than in many other jurisdictions.

#### 5.2 What, if any, is the role of employees in corporate governance?

Under the Resolution a company is required to approve a code of conduct along with other internal policies and principles, and these rules are intended to apply to board members, employees and the internal auditor of the company in the course of the fulfilment of their duties.

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Charles has been practising as a legal consultant in the UAE since 1986, and as a partner of Afridi & Angell for over 20 years. He has considerable experience advising on general corporate matters, contracts and government procurement, project finance and international trade controls. He has been associated with numerous high-monetary-value financing and re-financing transactions.

Since the late 1990s, Charles has been the author of the standard industry UAE law opinions on the various financial agreements used by the ICMA and the SLRC, enabling ICMA and SLRC members to enter into complex financial transactions with counterparties in the UAE.

Charles is consistently recognised by leading legal league tables Chambers Global and Legal 500 EMEA. *'Charles leaves an excellent impression with clients, who praise his pragmatic approach and deep local knowledge'*, Chambers Global 2014.

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Danielle joined Afridi & Angell in 2010. She practises corporate and commercial law and has a wealth of experience advising vendors, trade purchasers and management with both the acquisition and disposal of companies and international groups. Danielle also advises on private equity investments including advising on the funding of start-up companies and a number of oil and gas technology companies. Danielle has also advised clients on private placements. Prior to joining Afridi & Angell, Danielle was a solicitor with DLA Piper Scotland LLP.

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