# CORPORATE GOVERNANCE IN THE KINGDOM OF SAUDI ARABIA

By

Ahmad Abdulaziz Al-Zaid

Submitted to the graduate degree program in Law and the Graduate Faculty of the University of Kansas in partial fulfillment of the requirements for the degree of Doctor of Juridical Science (S.J.D)

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## Abstract

While in the past the Companies Act has been documented and there have been limited references to the proposed Companies Act, to the author's knowledge there has not been a comprehensive comparison of the existing Companies Act and the first and second proposed revisions thereto.

The author has examined these proposed revisions and highlighted the differences between the current Companies Act's provisions and the proposed ones. The author provides commentary on relevant, current and proposed, Companies Act's provisions which describe the function, effect, scope and what they fall short of by themselves and/or within other rules forming the system of corporate governance in Saudi Arabia.

In addition, there has been little to no treatment of the issuance of shares or the Corporate Governance regulations applicable to publicly-traded companies. In this work, the author attempts to fill the void left by previous legal authors and to discuss and comment on those topics in an insightful way. With regard to the discussion of the various articles of the Corporate Governance Regulations, this discussion marks the start of elaborate consideration of publicly held corporations in the context of dual regulation under both the Companies Act and the Corporate Governance Regulations.

In short, Saudi Arabia's recent reforms advanced its corporate governance structure. Through the adoption of the proposed Companies Act, further development will be achieved.

## Acknowledgment

Thanks to my father Dr. Abdulaziz Mohammad Al-Zaid and to my mother Hussah Abdullah Al-Zamil for their unlimited and unconditional love, guidance, and support. I would also like to take this opportunity to express my warm thanks to all who kindly remember me in their prayers, may they be accepted and receive the best of everything.

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# Summary of Content

# I. Introduction

## *A. Role of Corporate Governance*

Corporations, frequently referred to as joint stock companies as they are called in Saudi Arabia,[1] now play a huge role in the Saudi economy. Corporations have an advantage over other forms of companies by having limited liabilities of shareholders, enabling them raise large amounts of capital from outside investors. These investments by outside investors, however, are exposed to some risk of misuse by controlling shareholders or management (insiders). Thus, appropriate legal and regulatory protections embodied in carefully designed rules of corporate governance are essential to the protection of outside investors. In addition, there is evidence suggesting that proper corporate governance can most likely enable corporations to raise capital at a lower cost.[2]

The importance of corporate governance was recently commented upon as follows:

> "During the wave of financial crises in 1998 in Russia, Asia, and Brazil, the behavior of the corporate sector affected entire economies, and deficiencies in corporate governance endangered the stability of the global financial system. Just three years later

[1] A corporation in Saudi Arabia is called *Sharikat al-Musahamah*.
[2] Charles Oman & Daniel Blume, Corporate Governance: A Development Challenge,1, 1 (OECD, 2005), available at http://www.oecd.org

> confidence in the corporate sector was sapped by corporate governance scandals in the United States and Europe."[3]
>
> "Corporate governance issues were also raised during the recent financial crises.[4]"

The Corporate Governance Chapter in the Policy Framework for Investment issued in 2006 by the Organization for Economic Co-Operation and Development (OECD) describes many important benefits of corporate governance:[5] it helps in attracting long term investments,[6] in raising investors confidence,[7] in reducing the cost of capital,[8] in increasing the proper functioning of financial markets,[9] and in leading to more stable sources of financing.[10] Moreover, research conducted in different countries in the developing world demonstrates the significance of corporate governance in achieving growth in those countries.[11]

A major cause of the problems addressed by rules of corporate governance is the separation of ownership and management, now frequently referred to as an agency problem when shareholders/owners do not run the business

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[3] STIJN CLAESSENS, CORPORATE GOVERNANCE AND DEVELOPMENT IN GLOBAL CORPORATE GOVERNANCE FORUM FOCUS 1, 1(the International Bank for Reconstruction and Development/ The World Bank) (2003).
[4] In general see CORPORATE GOVERNANCE AND THE FINANCIAL CRISIS: KEY FINDINGS AND MAIN MESSAGES, Organization for Economic Co-Operation and Development (OECD 2009) available at http://www.oecd.org/dataoecd/3/10/43056196.pdf (last visited 11-09-2010).
[5] ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, CORPORATE GOVERNANCE, POLICY FRAMEWORK FOR INVESTMENT: A REVIEW OF GOOD PRACTICES, 125 (2006) available at http://www.oecd.org [Hereinafter OECD, CG Policy Framework].
[6] Id.at 127.
[7] Id.
[8] Id.
[9] Id.
[10] Id.
[11] Oman & Blume, *supra* note 2, at 1.

themselves, but elect a board of directors as agents to do so. Jensen and Meckling, two well known writers on the matter, defined this agency relationship as "a contract under which one or more persons (the principal(s)) engage another person (the agent) to perform some service on their behalf which involves delegating some decision making authority to the agents."[12]

Concerning the agency problem, it is important to note that ownership structures of corporations around the world vary considerably with respect to whether there is concentrated ownership among a few as contrasted to widely dispersed ownership, and that agency problems vary accordingly. This matter has been described as follows:

> " A corporation's ownership structure affects the nature of the agency problems between managers and outside shareholders, and among shareholders. When ownership is diffuse, as is typical for U.S. and UK corporations, agency problems stem from the conflicts of interests between outside shareholders and managers who own an insignificant amount of equity in the firm (Jensen and Meckling 1976). On the other hand, when ownership is concentrated to a degree that one owner (or a few owners acting in concert) has effective control of the firm, the nature of the agency problem shifts away from manager-shareholder conflicts. Controlling owner is often also the manager or can otherwise be assumed to be able and willing to closely monitor and discipline management. Information asymmetries can also be assumed to be less, as a controlling owner can invest the resources necessary to acquire necessary information.
>
> Correspondingly, the principal-agent problems will be less management versus owner and more minority-versus-controlling shareholder. In these countries, the protection of minority rights is more often key. Countries in which insider-held firms dominate

[12] Michael C., Jensen and William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305, 308 (1976).

will have different requirements in terms of corporate governance framework than those where widely held firms dominate."[13]

## *B. Corporate Governance in Saudi Arabia*

Rules of corporate governance in Saudi Arabia are derived primarily from two sources. The first is the Companies Act of 1965 and the second consists of the Capital Market Law of 2003 and regulations issued by the Board of the Capital Market Authority [14] established by the Capital Market Law. The Board of the Capital Market Authority has used the powers given to it and issued Corporate Governance Regulations governing issues concerning corporate governance.[15] The Saudi corporate governance framework has been subject to reforms and others are still pending.

This section introduces the legal and regulatory framework in Saudi Arabia and current efforts to reform corporate governance in Saudi Arabia. This section will show how Saudi corporate governance operates and will identify the key players in its development and enforcement.

The section begins with an overview of the legal system in Saudi Arabia followed by an introduction to the current Companies Act, the primary law from which corporate governance rules affecting all corporations are derived. This discussion will include the law's history and development. This section

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[13] CLAESSENS *supra* note 3 at 12.
[14] The list of regulations issued to date is discussed below in I.B.3.c.(1).
[15] Corporate Governance Regulation in the Kingdom of Saudi Arabia Issued by the Board of Capital Market Authority Pursuant to Resolution No. 1/212/2006 dated 10/21/1427H (corresponding to 11/12/2006) based on the Capital Market Law issued by Royal Decree No. M/30 dated 6/2/1424AH Amended by Resolution of the Board of the Capital Market Authority Number 1-1-2009 Dated 1/8/1430H Corresponding to 1/5/2009G.

will then address an important step in improving corporate governance of publicly held corporations and the Saudi capital market, the adoption of the Capital Market Law of 2003, which created the Capital Market Authority. Finally, this section will discuss current proposals for a new Companies Act.

## 1. The Legal System in Saudi Arabia

To understand corporate governance in Saudi Arabia, it is important to first understand the underlying structure of the country's legal system. The initial and most important part in the legal system comes from Shariah and its sources, the supreme law of the country. The second part consists of statutes, regulations and customs, not in conflict with Shariah.

### a. Shariah

Saudi Arabia is an Islamic country that applies Shariah, that is, Islamic Law, in all aspects of life, including its legal system.

Shariah is derived primarily from[16] the Qur'an, the Sunnah, Ijmaa, Qiyas and Almasaleh Almorsalah, each of which is discussed immediately below. The Qur'an and Sunnah are the primary Shariah sources, and when a divine ruling is found in them, it must be applied. Following that are sources which find their basis in the Qur'an and Sunnah.

[16] There are different Islamic jurisprudence schools. And there are four major Sunni Islamic law schools that are followed by the majority of Muslims around the world which are Maliki, Hanafi, Shafii and Hanbali. In general, Judges in Saudi Arabia follow the Hanbali Jurist School (Hanbali School). The Saudi Arabian General Investment Authority (SAGIA), http://www.sagia.gov.sa/innerpage.asp?ContentID=573&Lang=en (last visited 04/30/2007)).

### *(1) The Qur'an*

The Qur'an is believed by Muslims to be the book of God (Allah) which has been revealed to prophet Mohammad [PBUH].[17] Muslims must follow orders and refrain from doing acts as the Qur'an has revealed as the rule of God. It includes many verses that relate to worshiping (Ibadat) and to Muslims' dealings (Moiamlat).[18]

### *(2) Sunnah*

Sunnah is the second source for Shariah. The term Sunnah includes all the sayings, acts and approvals of Prophet Mohammad [PBUH], which are narrated and are found in Sunnah books. There are verses in the Qur'an that order Muslims to follow Sunnah and there is consensus among Muslim jurists that Sunnah is the second source for Shariah law. Scholars rank reported Sunnah, known as Hadith, based on the degree of certainty of attributing a particular Sunnah to Prophet Mohammad [PBUH]. The rank of Sunnah affects the validity and power of legal rules derived from a single Hadith.[19]

### *(3) Ijmaa*

The term Ijmaa refers to the recorded consensus of Muslim jurists in a particular age (period) on the answer to a question of law that arose after the

[17] It means Peace be upon him
[18] Some of the Quran's verses include detailed commands of God to some issues such as Inheritance. Some other commands are general and the Sunnah covers them in detail. An example are prayers which the Qur'an commands Muslims to perform. But there is no mention of the full way they are conducted. The Sunnah of the Prophet shows how the prayers are to be performed.
[19] A Hadith is a reported saying, doings and approval of Prophet Mohammad [PBUH]

death of Prophet Mohammad [PBUH]. Ijmaa is ranked third after the Qur'an and Sunnah as a source for law.

*(4) Qiyas*

The term Qiyas (analogy) refers to the application of the same ruling in a case that has been ruled upon in either the Qur'an or the Sunnah to an analogous case because the two cases share the same reasoning.

*(5) Almasaleh Almorsalah*

This term Almasaleh Almorsalah refers to laws adopted by the ruler of an Islamic country when a matter is neither prescribed nor forbidden by the Qur'an or Sunnah and when it is in the best interest of the country, and these laws must not contradict Shariah. Legislative rules regulating numerous matters in Saudi Arabia find their basis in Almasaleh Almorsalah because Shariah is sufficiently flexible to allow the adoption of rules governing matters necessary for the public welfare. Many provisions applicable to corporations under the Companies Act are issued based on Almasaleh Almorsalah, as are many other laws and regulations. Traffic regulations serve as another clear example of regulations issued based on Almasaleh Almorsalah, which regulations were required after the invention of the automobile.

### b. Statutes and Customs

#### *(1) Statutes*[20]

Almasaleh Almorsalah, as noted in the previous section, gives the King in Saudi Arabia the power to enact laws that do not conflict with Shariah, after following prescribed legislative steps.[21]These statutes in Saudi Arabia are issued and amended by Royal Decree[22].

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[20] Shariah is not codified and judges when applying Shariah return to Shariah resources such as books of Shariah jurisprudence and to sources of Shariah Laws. On the other hand, statutory laws in Saudi Arabia are passed by a Royal Decree and are made in the form of Articles, which are codified.

[21] Majlis Al-Shura "Shura Council" has the right to propose a new draft law or an amendment to a law already in force and submit it to the Chairman of the Council. The Chairman shall submit the proposal to the King. The Shura Council shall consist of a chairman and one hundred and fifty members chosen by the King from amongst scholars, experts and specialists. The Shura Council shall express its opinion on the general policies of the State referred to it by the President of the Council of Ministers. The Shura Council shall specifically have the right to exercise the following:

(a) Discuss the general plan for economic and social development and provide an opinion on it,
(b) Review laws and regulations, international treaties and conventions and concessions, and provide whatever suggestions it deems appropriate,
(c) Interpret laws,
(d) Discuss annual reports submitted by ministries and other governmental agencies, and provide whatever suggestions it deems appropriate.

Laws are proposed and enacted in Saudi Arabia in the following manner:

(1) The regulatory authority shall have the jurisdiction of formulating laws and rules conducive to the realization of the well-being or warding off harm to State affairs in accordance with the principles of the Islamic *Shari'ah*. It shall exercise its jurisdiction in accordance with this Law, and Laws of the Council of Ministers and the *Shura* Council. (Article 67 of BASIC LAW OF GOVERNANCE, Royal Order No. ( A/91), 27 Sha'ban 1412H- 1 March 1992, Published in Gazette No 3397, 2 Ramadan 1412H- 5 March 1992).
(2) Each minister shall have the right to propose a draft law or regulation related to the affairs of his ministry. (Article 22, LAW OF THE COUNCIL OF MINISTERS, Royal Order No. A/13 3 *Rabi'* I 1414H / 20 August 1993, Published in *Umm al-Qura* Gazette, No. 3468 10 *Rabi'* I 1414H / 27 August 1993 [hereinafter Law of the Council of Ministers].
(3) Any group of ten members of The *Shura* Council have the right to propose a new draft law or an amendment to a law already in force and submit it to the Chairman of the Council. The Chairman shall submit the proposal to the King. (Article 23 of

### *(2) Customs*

Customs are applied as long they do not contradict Shariah, statutes or regulations.

Although there are both customs and rules of usage that are an important part of the law of Saudi Arabia none of these are directly relevant to the matters of corporate governance discussed in this paper.

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LAW OF THE SHURA COUNCIL, issued by Royal Order No. A/91, 27 Sha'aban 1421 / 1 March 1992, published in Umm-al-Qura Gazette, No. 3397 2 Ramadan 1412 / 5 March 1992. [Hereinafter Law of the Shura Council].

(4) The *Shura* Council shall express its opinion on the general policies of the State referred to it by the President of the Council of Ministers. The Council shall specifically have the right to exercise the following: (Article 15 LAW OF THE SHURA COUNCIL)
   (a) Review laws and regulations, international treaties and conventions and concessions, and provide whatever suggestions it deems appropriate,
   (b) Interpret laws

(5) Laws, international treaties and conventions, and concessions shall be issued and amended by Royal Decrees after review by The *Shura* Council. (Article 18 LAW OF THE SHURA COUNCIL)

(6) A meeting of The *Shura* Council shall not be valid without a quorum of at least two-thirds of its members, including the Chairman or whomever he deputizes. Resolutions shall not be considered valid without the approval of the majority of the Council members. (Article 16 LAW OF THE SHURA COUNCIL)

(7) Subject to provisions of the *Shura* Council Law, laws, treaties, international agreements and concessions shall be issued and amended by Royal Decrees after being reviewed by the Council of Ministers. (Article 20 LAW OF THE COUNCIL OF MINISTERS) The *Shura* Council's resolutions shall be brought before the President of the Council of Ministers who shall refer them to the Council of Ministers for consideration. (Article 17 LAW OF THE SHURA COUNCIL)

(8) The Council of Ministers shall review draft laws and regulations before it and vote on them article by article and then as a whole in accordance with the procedures set forth in the Internal Regulations of the Council. (Article 21 LAW OF THE COUNCIL OF MINISTERS)

(9) If the views of both Councils concur, the resolutions shall come into force following the King's approval. If the views are at variance, then the subject matter will be returned to the Shura Council to show what it sees on it and then send it to the King, who may decide whatever he deems appropriate. (Article 17 LAW OFTHE SHURA COUNCIL)

[22] Article 20 (Law of The Council of Ministers)

### c. Summary

In conclusion, the legal system in Saudi Arabia is governed by Shariah, which allows the adoption of laws that do not contradict Shariah. Included in the many statutes so adopted, is the Companies Act of 1965; corporations are included among the covered business entities affected by the Companies Act.

Familiarity with the Saudi legal system is essential to understanding corporate governance and how disputes related to corporations are resolved. Depending on the nature of a dispute, a judge in Saudi Arabia in resolving cases concerning corporations will look first to the contract among the parties (the Articles of Incorporation) and will enforce that provided that it does not contradict Shariah, a statute or a regulation. For matters not covered in the corporation Articles of Incorporation or bylaws, a judge would look at the law governing the issue, which in the case of corporations will most likely be in the Companies Act. If no answer is found in the Articles of Incorporation, bylaws or the Companies Act, the judge must apply Customs.[23] The general principles of Shariah come into play after the judge has looked into the sources noted above.

[23]Article 2 of the Companies Act (Royal Decree No. M6 22 Rabi' I 1385 (20 July 1965), published in Umm al-Qura Gazette, No.2083, 16Rabi' II 1385H) provides in part:

> The provisions of the [Companies Act], as well as such (contractual) conditions laid down by the partners and such customary rules as are not inconsistent with [the provisions of the Companies Act], shall apply to the following companies: ***4) Corporations*** (alteration to the original in the quoted text)

## 2. The Companies Act of 1965

The Companies Act is the primary source of law governing corporations in Saudi Arabia. Section 5, Rules 48 through 148 govern matters from incorporation to dissolution. These Rules are applicable only to corporations as contrasted to other parts of the law that are applicable to all companies including corporations or that are applicable to other companies such as limited liability companies and partnerships. Any company, other than those recognized under Shariah, which does not take one of the specific forms is null, and persons forming it will be jointly and severally liable for any obligation arising from their contract.[24]

Knowledge of the history, applicability, and functions of the Companies Act is a critical step in understanding how this law affects corporate governance in Saudi Arabia and how reforming the Companies Act can play an important role in improving corporate governance.

### a. History of the Companies Act

#### *(1) Commercial Court Law of 1931*

The first statute in Saudi Arabia governing companies, including corporations, was the Commercial Court Law adopted by Royal Decree in 1931. During the following thirty to thirty five years, the few articles governing corporations under this law were seen as insufficient to deal with complex issues concerning corporations related to incorporation, control,

[24] Article 2 of the existing Companies Act.

dissolution and liquidation as will be discussed below. This was a period of many developments in all aspects of life in Saudi Arabia including rapid growth in the number of corporations.

*(2) The Need in 1965 for New Legislation*

The Companies Act was adopted by Royal Decree in 1965. This law superseded the Commercial Court Law provisions concerning companies. The Official Explanatory Memorandum of the Companies Act describes its background and goals and can be summarized as follows:

(a) "Since the enactment of the Commercial Court Law, rapid developments in the Kingdom in all aspects of life, especially trade and large development projects, led to the combination of individuals' efforts and resources in work and production through forming companies which in turn led to the formation of many companies having objects covering all aspects of financial, commercial and industrial activities which caused individuals forming businesses to utilize rules in force in other jurisdictions; this made it very difficult for the Ministry supervising and controlling tasks to preserve public interest."

(b) "The few articles set forth in the Commercial Court Law became inadequate to answer all questions related to companies' incorporation, management of its affairs, dissolution and liquidation."

(c) "After excluding any rules or provisions that would be inconsistent with Shariah in drafting this law, reliance was on well tested customary practices among individuals and borrowing suitable provisions from other countries in order to reach a degree of consistency with them, which was required because of international character of trade in order to lead to prosperity for all; with an exception for companies recognized under Islamic law, companies must take one of the forms stated in the Companies Act."

**b. Applicability to Various Entities Including Corporations**

The 234 Articles in the Companies Act are applicable to different forms of companies including corporations, limited liability companies and partnerships but not applicable to traditional partnerships under Shariah formed by contract among partners or to Waqf (similar to a trust) recognized by Shariah. Corporations are subject to both the general rules that apply to all companies governed by this act and to Rules 48-148 of chapter five of the act, which is dedicated to corporations. These rules govern matters from incorporation to dissolution of the corporation.

The Companies Act does not apply to a company that is founded or co-founded by the government of Saudi Arabia, its agencies, or other

governmental agencies and which is licensed by a Royal Decree that includes the provisions by which that company will be governed.[25]

### 3. Capital Market Law of 2003

#### a. Introduction

The Capital Market Law of 2003 was a critical step in improving corporate governance in Saudi Arabia. This law governs the Saudi capital market, in which shares of publicly held Saudi corporations are traded. The Capital Market Law created the Capital Market Authority, which was given powers to issue regulations that regulate the Saudi capital market.

Understanding of the Capital Market Authority, an important player in corporate governance in Saudi Arabia, and its powers and function is important to understanding Saudi corporate governance.

The following discussion of the Capital Market Law is divided into two parts. First is the discussion of the Saudi capital market, which will include how it developed into a formal market and the ownership structure of corporations listed on the market. This will be followed by a discussion of the enactment of the Capital Market Law, with attention to the Capital Market Authority, established by that law.

[25] Article 2 (b) of the existing Companies Act.

### b. Saudi Capital Market

#### *(1) Development of Formal Market*

The Saudi capital market, the mechanism for trading shares by public investors in Saudi Arabia, was informal until the early 1980's. In 1984, a ministerial committee composed of the Ministry of Finance and National Economy, the Ministry of Commerce, and the Saudi Arabian Monetary Agency[26] was formed to aid in the development and regulation of the market.[27] A year later, the Saudi Share Registration Company, which served as a centralized book-entry depository and was owned by Saudi banks,[28] was founded. Then, in 1990, the Electronic Security Information System was created. The Electronic Security Information System is an electronic integrated system for settlements and clearing.[29] Most importantly in 2001, a new securities trading, clearing and settlements system was launched with new technology features that added more to the trading system. Since 2006 phases of new generations of systems have been added.[30]

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[26] Similar to the Federal Reserve in the United States.
[27] Saudi Stock Exchange (Tadawul) website www.tadawul.com.sa last visited …. 12/07/2009
[28] Joseph W. Beach, *The Saudi Arabian Capital Market Law: A Practical Study of the Creation of Law in Developing Markets*, 41 STAN. J INT'L L. 307, 313 (2005).
[29] Tadawul, http://www.tadawul.com.sa/wps/portal/!ut/p/.cmd/cs/.ce/7_0_A/.s/7_0_4AF/_s.7_0_A/7_0_4AF/.cmd/ChangeLanguage/.l/en (last visited 4/09/2007).
[30] These systems employ new features that are comparable to those in the United States and Western Europe and on the 19th of March 2007, The Council of Ministers approved the formation of The Saudi Stock Exchange (Tadawul) corporation. Tadawul, http://www.tadawul.com.sa/wps/portal/!ut/p/.cmd/cs/.ce/7_0_A/.s/7_0_4AF/_s.7_0_A/7_0_4AF/.cmd/ChangeLanguage/.l/en (last visited 04/09/2007) and http://www.tadawul.com.sa/wps/portal/!ut/p/c1/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gDdwNHH0tLf1c3AzMPD0dnxzADKND388jPTdUPTizSL8h2VAQAgeJkxw!!/dl2/d1/L0lHSkovd0RNQUZrQUVnQSEhL1lCWncvZW4!/ (last visited 12/07/2009)

Until the Capital Market Authority was established in 2003, the Saudi Arabian Monetary Agency was the government body charged with regulating and monitoring market activities. The Capital Market Authority is now the sole regulator and supervisor of the Saudi capital market; it is charged with the issuance of the required rules and regulations to protect investors and ensure fairness and efficiency in the market.[31]

### *(2) Ownership Structure of Corporations Listed On the Market*[32]

The ownership of shares of corporations traded in the Saudi market generally fall into one of the following three categories:[33] (a) corporations in which the government or one or more of its agencies or entities own a controlling number of shares and the remainder are dispersed among other shareholders;[34] (b) corporations in which one or more non-government

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[31] Saudi Stock Exchange (Tadawul) website www.tadawul.com.sa (last visited 12/07/2009).

[32] Any person owning 5% or more of a corporation's stock is subject to disclosure requirements and this information is updated on a daily basis in the Saudi Stock Exchange (Tadawul) http://www.tadawul.com.sa (last visited 21/09/2009)

[33] Currently, the Capital Market Authority allows all resident foreigners to directly trade in the Saudi stock exchange, while providing non-resident foreigners with indirect access to the market through investment funds, exchange-traded funds (ETFs) and swap agreements. World Trade Organization, Trade Policy Review Report by the kingdom of Saudi Arabia, p17-18, WT/TPR/G/256, (14 December 2011), *available at* http://www.wto.org/english/tratop_e/tpr_e/tp356_e.htm (last visited 05/27/2012). [Hereinafter Saudi Report to WTO]

[34] The Public Investment Fund is one of the biggest investors in corporations in the Kingdom, and "[t]he motive behind the establishment of Public Investment Fund was to provide financing for certain productive projects that are of a commercial nature and are having a significant importance in developing the national economy, which the private sector lacks as the ability to undertake alone, either because of insufficient experience or inadequate capital or both." Saudi's Ministry of Finance website http://www.mof.gov.sa/en/docs/ests/sub_invbox.htm (last visited 21/09/2009). "The General Organization for Social Insurance (GOSI) is one of the biggest investors in the Saudi Market. "GOSI is a semi-state body that has its independent financial and administrative entity

shareholders own a controlling number of shares and the remainder are dispersed among other shareholders; and (c) corporations in which shares are dispersed among many shareholders, none of whom hold a controlling interest.

The existence of category (a) can be attributed to the country's participation in building its infrastructure and providing capital to the private sector that alone could not carry out the projects or did not want to due to different reasons.

In the late 1970's and early 1980's following the oil boom when prices sharply increased and after the country accumulated substantial hard currency, the government undertook the improvement of the standard of living through expenditures on building hospitals, roads, airports, schools, universities, electric plants and providing water through desalination of sea water. Later the government sold a significant number of shares in different corporations to public investors

The existence of category (b) can be primarily attributed to the practice of many previously privately owned businesses engaging in what is known in the United States as Initial Public Offering (IPO). As is the case in the United States, in some instances a controlling interest is retained by the original owners and the other shares are dispersed over many other investors who

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supervised by a board of directors consisting of eleven members. GOSI website http://www.gosi.gov.sa/intro.shtml?p=6 (last visited 21/09/2009). The Public Pension Agency is a government agency that invests in corporate stock in the Saudi market owning a large number of stocks. http://www.pension.gov.sa (last visited 21/09/2009).

bought shares during the Initial Public Offering (IPO) or from the secondary market.

The existence of category (c) can be attributed to different circumstances. For example, the controlling shareholders sold their shares to other smaller shareholders or the corporation itself sold additional shares to the public, diluting ownership of all shareholders.

### c. Enactment of the Capital Market Law of 2003

#### *(1) Introduction*

The Capital Market Law was enacted in 2003 to help sustain growth in the Saudi economy by attracting investors. To achieve this goal, the Capital Market Law furnishes investors with protections such as a required disclosure process and prohibition of manipulation of the market and insider trading. Required rules and regulations issued pursuant to the Capital Market Law are to protect investors and ensure fairness and efficiency in the market.[35]

Disclosure and transparency play a major rule in reducing the fraud, deception, and manipulation that may impede the Saudi market. For example, Chapter Seven of the Capital Market Law, which deals with disclosure, requires disclosure prior to an initial public offering and thereafter.[36] So long

[35] Tadawul, http://www.tadawul.com.sa/wps/portal/!ut/p/c1/04_SB8K8xLLM9MSSzPy8xBz9CP0os3g_A-ewIE8TIwMLj2AXA0_vQGNzY18g19kcKB JJO8eEGZq4GniE2wUHOBlbOBpRJJug2BTA5DusBBnH3djA3dCuoNT8_T9PPJzU_ULckMjyh0VFQELalba/dl2/d1/L2dJQSEvUUt3QS9ZQnB3LzZfTjBDVlJJNDIwOEhTRDBJS1EzNzNNNDIwODA!/ (last visited 11-13-2010)

[36] Beach, *supra* note 28, at 338.

as the corporations are listed, full and complete disclosure of their affairs is required.

The Capital Market Law created the following: (a) Capital Market Authority, (b) Securities market (Tadawul), (c) Securities Deposit Center, (d) Securities Settlement Committee, and (e) Appeals Committee.

*(2) The Capital Market Authority*

When the Capital Market Law was drafted, administrative independence and professionalism were the primary goals.[37] Hence, the Capital Market Authority is a separate government organization with financial, legal, and administrative independence.[38] It reports directly to the President of the Council of Ministers.[39] The Capital Market Authority was given the authority to develop and regulate the Saudi capital market through the issuance of needed regulations and rules and has the authority to accomplish this purpose.[40] To date, it has issued the following:

(a) The Resolution of Securities Disputes Proceedings Regulations;[41]

(b) Anti-Money Laundering and Counter-Terrorist Financing Rules;[42]

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[37] Id.at 320.
[38] Article 4 (a) of the Capital Market Law (the Capital Market Law, issued by Royal Decree No. M/30, dated 2/6/1424H).
[39] Id.
[40] Article 5 of the Capital Market Law, also the Capital Market Authority website http://www.cma.org.sa/cma_en/subpage.aspx?secserno=117&serno=117&mirrorid=271 last visited 12/07/2009
[41] The Resolution of Securities Disputes Proceedings Regulations were issued by the Board of the Capital Market Authority Pursuant to its Resolution Number 1-4-2011 Dated 2/19/1432 H Corresponding to 1/23/2011G; Arabic is the official language of the Capital Market Authority. The current version of Regulations issued by the Capital Market Authority, as may be amended, can be found in Arabic and in English at the Capital Market Authority website: www.cma.org.sa.

(c) Merger and Acquisition Regulations;[43]

(d) Investment Funds Regulations;[44]

(e) Corporate Governance Regulations;[45]

(f) Real Estate Investment Funds Regulations;[46]

(g) Securities Business Regulations;[47]

(h) Authorized Persons Regulations;[48]

(i) Market Conduct Regulations;[49]

(j) Offers of Securities Regulations;[50]

(k) Listing Rules;[51] and

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[42] Anti-Money Laundering and Counter-Terrorist Financing Rules were issued by the Board of the Capital Market Authority Pursuant to its Resolution Number 1-39-2008 Dated 12/3/1429 H Corresponding to 12/1/2008G.

[43] Merger and Acquisition Regulations were issued by the Board of the Capital Market Authority Pursuant to its Resolution Number 1-50-2007 Dated 9/21/1428 H corresponding to 10/3/2007G.

[44] Investment Funds Regulations were issued by the Board of the Capital Market Authority Pursuant to its Resolution Number 1 – 219 – 2006 Dated 12/3/1427H corresponding to 12/24/2006G.

[45] Corporate Governance Regulations were issued by the Board of Capital Market Authority Pursuant to Resolution No. 1/212/2006 dated 10/21/1427H corresponding to 11/12/2006 Amended by Resolution of the Board of the Capital Market Authority Number 1-10-2010 Dated 3/30/1431H corresponding to 3/16/2010G.

[46] Real Estate Investment Funds Regulations were issued by the Board of the Capital Market Authority Pursuant to its Resolution Number 1-193-2006 Dated 6/19/1427H Corresponding to 7/15/2006G.

[47] Securities Business Regulations were issued by the Board of the Capital Market Authority Pursuant to its Resolution Number 2-83-2005 dated 5/21/1426H corresponding to 6/28/2005G.

[48] Authorized Persons Regulations were issued by the Board of the Capital Market Authority pursuant to its resolution number 1-83-2005 dated 5/21/1426H corresponding to 6/28/2005G.

[49] Market Conduct Regulations were issued by the Board of the Capital Market Authority Pursuant to its Resolution Number 1-11-2004 Dated 8/20/1425H Corresponding to 10/4/2004G.

[50] Offers of Securities Regulations were issued by the Board of the Capital Market Authority pursuant to its resolution number 2-11-2004, dated 8/20/1425H corresponding to 10/4/2004G amended by resolution of the Board of the Capital Market Authority number 1-28-2008 dated 8/17/1429H corresponding to 8/18/2008G.

[51] Listing Rules were issued by the Board of the Capital Market Authority pursuant to its resolution number 3-11-2004 dated 8/20/1425H corresponding to 10/4/2004G amended by

(l) Glossary of Defined Terms Used in the Regulations and Rules of the Capital Market Authority.[52]

In service of the goal of transparency, the Capital Market Authority and the Saudi Stock Exchange provide various information about the Saudi market and the enforcement of the Capital Market Law such as useful information found in Appendix III.

### 4. **Current Proposal for a New Companies Act**

Saudi Arabia is the world's largest exporter of oil and one of the biggest producers of oil and natural gas,[53] resulting from the discovery of oil in commercial quantities in 1938.[54] By employing revenues of oil to physically develop the country and through many legislative reforms, at the present time Saudi Arabia has achieved huge advancements in all aspects of life. Moreover, Saudi Arabia seeks further progress to face current challenges related to high unemployment of Saudis.[55] According to the authorities this is

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resolution of the Board of the Capital Market Authority number 2-128-2006 dated 12/22/1426H corresponding to 1/22/2006G.

[52] Glossary Of Defined Terms Used In The Regulations And Rules Of The Capital Market Authority was issued by the Board Of The Capital Market Authority pursuant to its resolution number 4-11-2004 dated 8/20/1425H corresponding to 10/4/2004G amended by resolution of The Board Of The Capital Market Authority number 1-28-2008 dated 8/17/1429H corresponding to 8/18/2008G; (Hereinafter Glossary Of Defined Terms).

[53] Trade Policy Review, Report by the Secretariat, The Kingdom Of Saudi Arabia, P 1, WT/TPR/S/256, (21 December 2011), *available at* http://www.wto.org/english/tratop_e/tpr_e/tp356_e.htm (last visited 05/27/2012). [Hereinafter WTO Secretariat report on Saudi Arabia]

[54] Kingdom of Saudi Arabia Ministry of Petroleum and Mineral Resources website http://www.mopm.gov.sa

[55] Saudi Arabia has faced high unemployment since 1999; a contributing factor is burgeoning population growth. The size of the Saudi labor force is estimated to have increased by an average annual rate of about 3.3 percent between 1969 and 1999, Saudi Ministry of Foreign Affairs Website http://www.mofa.gov.sa/Detail.asp?InSecti

Saudi Arabia's main economic and social challenge.[56] Another challenge is having a hydrocarbon based economy.[57] The promotion of private-sector (foreign and domestic) investment is an important part of Saudi Arabia's economic program, in order to diversify its economy away from oil, foster GDP growth, and create job opportunities for its young labor force.[58]

Because of the critical role of corporate governance as discussed above in part I.A. on page 1, its reform is a matter of importance in all countries.[59] At the present time, Saudi Arabia is seeking new economic development that will lead to a stronger, more rapidly growing economy, which in turn would create new jobs and would deal with many of the challenges it faces. Saudi Arabia has recently enacted many legal reforms, one of the most important of which includes an attempt to improve its system of corporate governance, the Capital Market Law discussed above in part I.B.3. on page 14.

One reason for reforms was an attempt to improve Saudi Arabia's corporate governance structure and its competitiveness among other countries.

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onID=1726&InNewsItemID=34477 last visited 10-13-2010) causing a high rate of unemployment; See Appendix II for further information on Saudi unemployment and population growth.

[56] WTO Secretariat report on Saudi Arabia, *supra* note *53 at* 7, noting that the oil sector is not labor-intensive and that increasing public-sector employment is not sustainable in the long-run (id. *at12*)

[57] Reliance on hydrocarbon resources as a major source of income is a risk since oil and natural gas are scarce resources and revenues also may be subject to uncontrollable economic and non-economic factors affecting its price. Diversifying the economy provides the opportunity for rapid growth in non-oil sector to serve as a more effective way in creating jobs to help reduce high unemployment rates.

[58] WTO Secretariat report on Saudi Arabia, *supra* note *53 at* 19, 21. In this regard Saudi Arabia has become the eighth biggest recipient of foreign direct investment (FDI) in the world, about US$25,000 million over 2005-09 (WTO Secretariat report on Saudi Arabia, *supra* note *53 at* 9).

[59] In Saudi Arabia, this includes, among other things, the enhancement of investors' protection in general and those of minority shareholders in particular.

The 10x10 initiative was launched in 2006 to enact reforms and investments aimed at developing the Kingdom's private sector and to position Saudi Arabia among the world's top competitive economies.[60]

As a result of recent reforms improving Saudi Arabia's business environment, by 2010 Saudi Arabia's rank in the ease of doing business had risen rapidly to reach eleventh position.[61] The following table shows the Saudi rank among the top countries in the ease of doing business.[62]

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[60] Saudi Report to WTO, *supra* note 33, at 7 and 14.

[61] Doing Business website (administered by The International Bank for Reconstruction and Development / The World Bank) http://www.doingbusiness.org/ExploreEconomies/default.aspx?economyid=163 (last visited 09/29/2009).

[62] This information is available at http://www.doingbusiness.org/rankings (last visited 11-08-2010); Economies are ranked on their ease of doing business, from 1 – 183. A high ranking on the ease of doing business index means the regulatory environment is more conducive to the starting and operation of a local firm. This index averages the country's percentile rankings on 9 topics, made up of a variety of indicators, giving equal weight to each topic. The rankings are from the Doing Business 2011 report, covering the period June 2009 through May 2010. http://www.doingbusiness.org/rankings (last visited 11-08-2010)

| Economy | Ease of Doing Business Rank ▲ | Starting a Business | Dealing with Construction Permits | Registering Property | Getting Credit | Protecting Investors | Paying Taxes | Trading Across Borders | Enforcing Contracts | Closing a Business |
|---|---|---|---|---|---|---|---|---|---|---|
| Singapore | 1 | 4 | 2 | 15 | 6 | 2 | 4 | 1 | 13 | 2 |
| Hong Kong SAR, China | 2 | 6 | 1 | 56 | 2 | 3 | 3 | 2 | 2 | 15 |
| New Zealand | 3 | 1 | 5 | 3 | 2 | 1 | 26 | 28 | 9 | 16 |
| United Kingdom | 4 | 17 | 16 | 22 | 2 | 10 | 16 | 15 | 23 | 7 |
| United States | 5 | 9 | 27 | 12 | 6 | 5 | 62 | 20 | 8 | 14 |
| Denmark | 6 | 27 | 10 | 30 | 15 | 28 | 13 | 5 | 30 | 5 |
| Canada | 7 | 3 | 29 | 37 | 32 | 5 | 10 | 41 | 58 | 3 |

| Economy | Ease of Doing Business Rank ▲ | Starting a Business | Dealing with Construction Permits | Registering Property | Getting Credit | Protecting Investors | Paying Taxes | Trading Across Borders | Enforcing Contracts | Closing a Business |
|---|---|---|---|---|---|---|---|---|---|---|
| Norway | 8 | 33 | 65 | 8 | 46 | 20 | 18 | 9 | 4 | 4 |
| Ireland | 9 | 11 | 38 | 78 | 15 | 5 | 7 | 23 | 37 | 9 |
| Australia | 10 | 2 | 63 | 35 | 6 | 59 | 48 | 29 | 16 | 12 |
| Saudi Arabia | 11 | 13 | 14 | 1 | 46 | 16 | 6 | 18 | 140 | 65 |

The following table compares the investors' protection measurement indicator given to the following countries by Doing Business (administered by The International Bank for Reconstruction and Development / The World Bank). [63]

| Economy ▲ | This measure of the transparency of transactions has 5 components. Extent of disclosure index (0-10) | This measure of liability for self-dealing by directors has 7 components. Extent of director liability index (0-10) | This measure of shareholders' ability to sue officers and directors for misconduct has 6 components. Ease of shareholder suits index (0-10) | Strength of investor protection index (0-10) |
|---|---|---|---|---|
| Saudi Arabia | 9 | 8 | 4 | 7.0 |
| United States | 7 | 9 | 9 | 8.3 |

This table provides some indication of the degree of investor protections in these countries/economies by measuring the strength of minority shareholder protections concerning transparency of directors' transactions (Extent of Disclosure Index), liability for self-dealing (Extent of Director Liability Index), and shareholders' ability to sue officers and directors for misconduct (Ease of Shareholder Suits Index).[64]

While these matters do not encompass all legal tools that provide protection to minority shareholders or to other issues relating to corporate

[63] Information collected from Doing Business website (administered by The World Bank). This information is available at http://www.doingbusiness.org/data/exploretopics/protecting-investors (last visited 11-08-2010).

[64] Information about the methodology used in the measurement of investor protection can be found at http://www.doingbusiness.org/MethodologySurveys/ProtectingInvestors.aspx (last visited 11/09/2010).

governance, the table does clearly show that Saudi Arabia law and reforms to its law that have been made so far have improved its protection to shareholders on some important issues. However, shareholders' suits, as measured in the previous table, serves as an example of other issues in Saudi corporate governance that require further consideration to improve the corporate governance framework in Saudi Arabia.

Recently, a proposal for a new Companies Act has been introduced. As the relevant government agency, the Ministry of Commerce and Industry has submitted the proposal in 2007 "proposal to the Companies Act." A draft in such case is to be submitted to the Council of Ministers and to the Shura council for comments. Both bodies review such draft law and either agree with the text or propose changes or indicate disagreement to a part or the entire draft thereof. Under its process of revision to the draft, the Shura council has proposed changes to the draft submitted by the Ministry "second proposal." The Shura Council revised the text and made changes to the language beforehand and/or introduced new proposals. However, due to the nature of the overhaul and the ongoing revising process and because the production of this dissertation must be made in a timely fashion, which takes into consideration time constraint on a work of such nature, a cutoff date is necessary. However, by the conventional cutoff date for the material discussed from this point on, the proposal to the Companies Act has been subject to thorough revisions and, thus, it is believed that any further revisions following

the cutoff date will not be many in number, specifically those closely related to corporate governance.[65] At the 04/20/2012, the Shura council has concluded its discussion of the proposed Companies Act. In sum, as to what is to come to such proposal, if the Council of Ministers and the Shura Council have divergent views on the draft legislation, they will be communicated to the King who may decide whatever he deems appropriate. In short, the final outcome of this overhaul of the law cannot yet be completely determined and further revisions to the text examined by the author are not yet out of the question. The author's examination of the proposals up to now clearly points to a big change to the law governing corporations in Saudi Arabia. This, however, awaits a Royal decree signifying the approval of the King to a draft that is sought to hold a better return to Saudi Arabia.

### 5. Chapter Summary

The legal system in Saudi Arabia is different from those of Western countries due to Shariah laws with other enacted statutes that do not contradict it that together shape the Saudi legal system. The basics of this system must be known to take them in consideration in any statutory reform. The major statutory law affecting privately or publicly held corporations is the Companies Act. Therefore, the factors that made it necessary in the first place

[65] The cutoff date is 12/31/2010 for the proposed Companies Act and 12/31/2011 for the Corporate Governance Regulations. Although not included in the text, a list of new revisions following the cutoff date is included in Appendix I.

and the applicability of such law are important to evaluate the validity of its rules to meet current challenges facing corporate governance in Saudi Arabia.

Identifying weak aspects of the system and corporate governance requires understanding the Saudi Capital Market, its structure, listed corporations, entities and laws that affect it.

Current proposal to the Companies Act following the enactment of the Capital Market Law is evidence that the existing Companies Act falls short of meeting current challenges in corporate governance in Saudi Arabia. New legislation needs to be enacted to deal with those issues and to keep up with the Capital Market Law and the issuance of a continuous stream of regulations by the Capital Market Authority.

To improve corporate governance in Saudi Arabia, both laws must work in harmony and be aligned correctly so there will be no contradiction between them that causes flaws in the system or raises problems that undermine reaching the goals of having such laws in the first place.

While taking into account the effects of the Capital Market Law on corporate governance in Saudi Arabia, other necessary steps are also needed to change the Companies Act. Contemporary rules of corporate governance must be incorporated in the overhaul to address current needs for Saudi Arabia.

This chapter is an important foundation necessary before moving to the next chapter, which will deal with statutory regulation of corporations and will discuss some of the major proposals to the Companies Act.

## II. Statutory Regulation of Corporations

This chapter addresses statutory regulation of corporations. The provisions of the Companies Act apply to corporations together with any (contractual) conditions laid down by the shareholders and customary rules that are not inconsistent with the Companies Act.[66] When applicable, the Companies Act provisions are mandatory except those that expressly provide permission to differ.[67] The chapter concludes with statutory regulation of only publicly-traded corporations under the Corporate Governance Regulations. The chapter is divided into the following seven sections:

A- Legal Attributes;

B- Required Contractual Elements;

C- Corporate Formation;

D- Corporation's Securities Including Debt and Capital Changes;

E- Shareholders Powers;

F- Board of Directors; and

G- The Corporate Governance Regulations.

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[66] Article 2 of the existing Companies Act.
[67] AKTHAM AMĪN AL-KHŪLĪ, DURŪS FĪ AL-QĀNŪN AL-TTIJĀRĪ AL-SU'ŪDĪ [STUDY TO THE SAUDI COMMERCIAL LAW] 100 (Ma'had al-Idārah al-'Āmmah.1973) (Saudi Arabia).

## *A. Legal Attributes*

A corporation is a legal person from the date of the decision of the Minister of Commerce announcing its creation[68] until dissolution.[69] But the legal personality cannot be raised against a third person until completion of required publication,[70] in the Official Gazette for corporations.[71]

The fact that a corporation is recognized as a legal entity gives it rights and subjects it to innumerable obligations. This section is divided into five parts including, Corporate Name, Corporate Domicile, Corporate Nationality, Corporate Capacity and Limited Liability of Owners.

### 1. Corporate Name

A corporation is required to have a name that differentiates it from other persons.[72] Subject to the provisions of the Companies Act, the name of a corporation is its commercial name and this name may include an original name or data associated with the kind of business (Ttrad) of the corporation.[73]

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[68]Article 64 of the existing Companies Act; NĀYF SULTĀN AL-SHARĪF, ZĪĀD AHMAD AL-QURASHĪ, AL-QĀNŪN AL-TTIJĀRĪ [SAUDI COMMERCIAL LAW] 237 (Dār Ḥāfiẓ 2nd Ed. 2008) (Saudi Arabia).
[69]Article 216 of the existing Companies Act.
[70]Article 13 of the existing Companies Act.
[71]Um Alqura is the official gazette of Saudi Arabia where laws and other official publications such as articles of incorporation for Companies must be published.
[72] The proposed Companies Act states that a corporation's name must point to its object. In addition, the proposed Companies Act requires that if the corporation was owned by one shareholder, then its name must include something that shows this. (Article 53 of the proposed Companies Act.)
[73] Article 2 of the Commercial Names Law of 1999, Royal Decree M/15, 08/12/1420H Published in Umm-al-Qura Gazette, No. 3775, 09/02/1420H (12/10/1999).

The commercial name must consist of Arabic language or be Arabized. The name must not contain foreign words except in certain cases.[74]

Its name should not include a natural person's name except in two situations. The first is when the object of the corporation is to profit by a patent that is registered under a natural person's name and the second is when the corporation owns a commercial firm (operating business) that has a natural person's name, and the corporation adopts that name as its own.[75]

### 2. Corporate Domicile

The principal office must be stated in the corporation's bylaws[76] and it will usually be the domicile. This will be the place where legal notices and warnings are to be delivered. The corporation's domicile determines corporate nationality, as further discussed in item 3 below.

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[74] Article 3 of the Commercial Names Law; there are three exceptions to this rule stated in this same Article of the Commercial Names Law.

[75] Article 50 of the existing Companies Act; under the proposed Companies Act, the exception is expanded and includes when the person's name is a companies' name that has been converted into a corporation (Article 53 of the proposed Companies Act).

[76] The Minister of Commerce has issued model bylaws for corporations, required by Article 51 of the existing Companies Act, which must be followed unless the Minister approves changes to this model. Under this model, a corporation's principal office needs to be stated in its bylaws, which will most likely be its domicile. The model bylaws are discussed below in note 102 in II.C.1, Application to the Minister of Commerce for Authorization to Seek Incorporation—Documents Required.

### 3. Corporate Nationality

To be considered a Saudi corporation, a corporation must be formed pursuant to the Saudi Companies Act and must have its principal office in Saudi Arabia.[77]

### 4. Corporate Capacity

Because a corporation is recognized as a legal entity, it can exercise powers and has the rights that a natural person has in carrying out its business, but is subject to statutory law and limitations in its articles of incorporation and bylaws.

### 5. Limited Liability of Owners

A corporation is a legal entity separate from its shareholders and any losses will be limited to the amount of a shareholder's investment.[78] The shareholder will generally not be held liable for corporate obligation.

## *B. Required Contractual Elements*

A company, which includes a corporation, is viewed under Saudi law as a contract among its parties and therefore must satisfy the general elements of contracts under the Saudi law. In addition to those general elements, there are elements applicable to all companies, including corporations. Moreover, there are additional specific contractual elements that must be satisfied in the case of a corporation. This section is divided into four parts:

[77] Article 14 of the existing Companies Act.
[78] Article 48 of the existing Companies Act.

1- General Contractual Elements.

2- Specific Contractual Elements for Companies Including Corporations.

3- Specific Contractual Elements Applicable Only to Corporations.

4- Consequences of Failure to Satisfy the Contractual Elements.

## 1. General Contractual Elements

Under Saudi law, Article 1 of the existing Companies Act defines a company as

> a contract under which two or more persons undertake to participate in an enterprise for profit, with each contributing a share in the form of money or services, with a view to dividing any profits (realized) or losses (incurred) as a result of such enterprise. [79]

[79] Article 1 of the existing Companies Act:

> a partner's contribution may consist of a certain sum of money (a contribution in cash), or of a capital asset (a contribution in kind). It may also comprise services except in the cases where the provisions of [the Companies Act] imply otherwise; but it may not consist (solely) of the partner's reputation or influence.
>
> Only contributions in cash and in kind shall form the company's capital. Such capital may be modified only in accordance with [the Companies Act] and with such of the conditions set forth in the company's articles of incorporation or bylaws as are not inconsistent with [the Companies Act]". (Article 3 of the existing Companies Act) (alteration to the original in the quoted text).

If a person's service is his contribution, all earnings derived from his service belong to the company except that the shareholder is not obliged to surrender a patent right unless there was an agreement to the contrary (Article 4 of the existing Companies Act). A company's shares cannot be all labor shares because monetary shares and shares in kind are the only things that constitute the capital (Article 3 of the existing Companies Act), as used in this paper "shares in kind" is a term of arts that indicates shares issued for anything other than cash. Moreover, labor can not constitute a share in a corporation. This view is supported by standard model for bylaws for incorporations, discussed below in note 102 in II.C.1.0, Application to the Minister of Commerce for Authorization to Seek Incorporation--Documents Required, which has no reference to any labor shares ṢĀLIH IBN ZĀBIN AL-MARZŪQĪ AL-BUQAMĪ, SHARIKAT AL-MUSAHAMAH FĪ AL-NNIZĀM AL-SU'ŪDĪ, DIRĀSAH MUQĀRINAH BI-AL-FIQH AL-ISLĀMĪ, JĀMI'AT UMM AL-QURÁ [THE CORPORATION IN SAUDI LAW A COMPARATIVE STUDY WITH ISLAMIC FIQH, PH.D DISSERTATION, UMM ALQURA UNIVERSITY] 134 (Maṭābi' al-Ṣafā 1985) (Saudi Arabia)

It is a contract that must satisfy the basic elements of any contract under Saudi Law. For example, the initial requirement in forming any contract is the consent of the parties. Thus, offer and acceptance are required as in any legal contract and the following three general elements must be met.

### a. Capacity

An individual must have reached the age of majority, which is eighteen years old, and possess full mental faculties and not be subject to any form of guardianship.

### b. Consent

Parties to a contract must give their full consent to all the contract provisions. Absence of this consent by one or more parties may cause the contract to be null and void depending upon whether the circumstances implicate absolute nullity or relative nullity discussed below in II.B.4 on page 38. Moreover, this consent of the parties has to be without faults such as mistake, fraud or duress.[80]

### c. Object and Its purpose

The object and purpose of the contract must be lawful.

[80] 'MUHAMMAD UMRĀN ET AL., AL-MUQADIMAH FI DIRĀSAT AL-ANZIMAH, [INTRODUCTION TO LAWS STUDY] 455 (Dār Ḥāfiẓ 2nd ed. 2000) (Saudi Arabia).

## 2. Specific Contractual Elements for Companies Including Corporations

### a. Multiple Members

#### *(1) Under the Existing Companies Act*

All companies are required to have at least two owners.

#### *(2) Under the Proposed Companies Act*

Under the proposed Companies Act, there is an exception to the rule that all companies must have at least two owners by which the country, any governmental agency, corporations that are owned entirely by the country, or corporations with capital of 5,000,000 Saudi Riyal (SAR.) ($1=SAR. 3.75)[81] or more, may create a single shareholder corporation.[82]

### b. Capital Requirements

Members of all companies are required to contribute to the company, but only contributions in cash and in kind form the company's capital.[83] Therefore, at least one contribution to a company needs to be other than service.[84]

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[81] The Saudi Arabian riyal (SAR) has been pegged to the U.S. dollar (SAR 3.75 per US$)
[82] Article 55 of the proposed Companies Act.
[83] Article 3 of the existing Companies Act.
[84] AL-KHŪLĪ, *supra* note 67, at 110; A member's contribution "may consist of a certain sum of money (a contribution in cash), or of a capital asset (a contribution in kind). It may also comprise services except in the cases where the provisions of [the Companies Act] imply otherwise."

Only contributions in cash and in kind shall form the company's capital. (Article 3 of the existing Companies Act). Therefore, at least one contribution need to be other than service. AL-KHŪLĪ, *supra* note 67, at 110 "Such capital may be modified only in accordance with [the

### c. Sharing of Profits and Losses

Each owner/shareholder shares in both profits and losses of the company.[85] If it is agreed to immunize any owner/shareholder of any Company from losses or to deprive any member from profits of the corporation, any such clause is null and void.[86]If the company's contract (articles of incorporation)[87] does not state the owners' portion of profits or losses, then it will be based on his/her contribution percentage to the capital.[88]

## 3. Specific Contractual Elements Applicable Only to Corporations

There must be at least five owner shareholders.[89] Also, there are specified capital requirements that need to be satisfied which are discussed below in part II.C.4.a on Page 54.

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Companies Act] and with such of the conditions set forth in the company's memorandum of association or bylaws as are not inconsistent with [the Companies Act]" (Article 3 of the existing Companies Act) . In the case of corporations, there are minimum contribution requirements that are discussed below in II.C.4.a.

[85] Article 7 of the existing Companies Act.

[86] Id.

[87] The term memorandum of association is used in the Companies Act official translation to refer to a company's contract.

[88] Article 9 of the existing Companies Act, in general a partner will enter in a company where he receives no less profit than the percentage of his contribution to the capital but in some cases, particularly in some companies such as partnerships, there may be agreements to give one of the members more than his contribution to the company. The scholars also have stated additional specific contractual element for companies including a corporation which is a joining in intent element (participation) which has not been stated in the law but legal scholars have considered it as a special element of a company, see AL-SHARĪF & AL-QURASHĪ, *supra* note 68, at 134 ḤAMD ALLĀH MUHAMMAD ḤAMD ALLĀH, AL-NNIZĀM AL-TTIJĀRĪ AL-SU'ŪDĪ [SAUDI COMMERCIAL LAW] 174 (Ishrāqāt 2003-2004) (Saudi Arabia).

[89] Article 48 of the existing Companies Act; if one shareholder owns 100% of the corporation, the corporation will dissolve and he will be liable for the corporation's debt within the amount of its assets. (Article 147 of the existing Companies Act) If the number of shareholders drops below five members and a full year has passed without satisfying the minimum shareholder

### 4. Consequences of Failure to Satisfy the Contractual Elements

The general and specific elements for companies' contracts, including corporations, discussed above must be met. If one or more of these general and specific elements for companies' contracts, including corporations, are not satisfied, then the company will be either an absolute or relative nullity as discussed below.

#### a. Absolute Nullity

##### *(1) Circumstances Causing Absolute Nullity*

The absolute nullity of the contract of a corporation occurs in any of the following circumstances: (a) some forms of absence of full capacity; (b) absence of consent; (c) illegality of the object of the corporation;[90] or (d) absence of any of the specific contractual elements for companies including corporations discussed in part 2 above.

##### *(2) Who Can Assert Absolute Nullity*

Any interested person[91] can assert absolute nullity or the court can order it on its own initiative.[92]

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requirement, any interested person can request dissolution of the corporation. (Article 147 of the existing Companies Act)

[90] Also absence of joining in intent element (participation) as discussed above in note 88.

[91] The interested person is any person either natural or legal whose legal position is affected by the void contract. Any party to the contract has the right to raise nullification, their successors, their creditors or any third person who has a legal interest. UMRĀN ET AL., *supra* note 80, at 543-544

[92] The court can order absolute nullity when hearing cases that relate to the contract.

*(3) Effects of Absolute Nullity*

(a) **Among Members**

The contract between and among the owners/shareholders is deemed not to have existed and there will be restitution of consideration paid by them for their shares. If there have been profits or losses from operations, these will be divided based on their ownership interest.[93]

(b) **Concerning a Bona Fide Third Party Who Has Dealt with the Entity**

The nullity cannot be raised against a bona fide third party by owners/shareholders concerning any claim he may have against the entity's assets.[94]

**b. Relative Nullity**

*(1) Circumstances Causing Relative Nullity*

The relative nullity of the contract of a corporation occurs in the following circumstances: (a) some form of absence of full capacity; or (b) mistake, fraud or duress concerning the consent of one or more of the owners/members.

*(2) Who Can Raise Relative Nullity*

The person who has the right to assert relative nullity is the owner/shareholder who has deficient capacity or whose consent was caused

[93] Article 9 of Companies Act.
[94] AL-SHARĪF & AL-QURASHĪ, *supra* note 68, at 140

by mistake, fraud or duress. No other person may raise nullity in these cases nor may a court upon its own initiative.

### *(3) Effects of Relative Nullification*

#### (a) **Among Owners/Shareholders**

A court will nullify the contract with regard to the person who raises the nullity and he will be withdrawn from the corporation. This withdrawal will not affect the existence of the corporation[95] except in some very limited cases.[96]

#### (b) **Concerning a Bona Fide Third Party Who Has Dealt with the Entity**

A bona fide third party cannot assert relative nullity concerning a claim of the entity against him nor may the entity raise that nullity as a defense concerning a claim against it by a bona fide third party. The power to assert a claim of relative nullity only rests in the hands of a shareholder if one of the circumstances causing relative nullity occurred.

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[95] Since the corporation is considered an association of capital not a partnership

[96] The withdrawal of a person from the corporation based on relative nullification will not affect the existence of the corporation except in some very limited cases such as in the case where the share withdrawn is of great importance to the corporation, as in the case if the share given by the withdrawn shareholder was a patent to the only product the corporation produces. (ḤAMD ALLĀH, *supra* note 88, at 183).

## *C. Corporate Formation*

There are many steps and requirements that are part of the incorporation process in Saudi Arabia. This section addresses these steps and requirements and is divided into the following parts:

1- Application to the Minister of Commerce for Authorization to Seek Incorporation--Documents Required;

2- Grant of Authorization to Seek Incorporation;

3- Offering of Shares;

4- Subscription of Capital;

5- Founders Meeting (All Those Who Subscribed for Shares Upon Incorporation);

6- Application to the Minister of Commerce to Declare the Incorporation; and

7- Post Incorporation Requirements.

### 1. Application to the Minister of Commerce for Authorization to Seek Incorporation--Documents Required[97]

The Companies Act requires that an application to the Minister of Commerce to seek incorporation be accompanied by the following documents: a. Economic feasibility study demonstrating feasibility of corporation's business objectives;[98] b. application signed by at least five

[97] However, the proposed Companies Act requires that the incorporation's application be given to the Ministry of Commerce signed by the applicant(s) and is accompanied by the corporation's authenticated articles of incorporation (contract) and its bylaws. (Article 57 of the proposed Companies Act)

[98] Article 52 of the existing Companies Act.

prospective shareholders "Incorporators" of the corporation,[99] which must indicate how its capital will be subscribed, including the number of shares to be reserved by the incorporators to themselves and the amount of subscription by each;[100] c. proposed articles of incorporation;[101] and d. proposed bylaws.[102]

The application then will be recorded in a register maintained for that purpose by the General Department of Companies in the Ministry of Commerce.[103] The application then will be forwarded to the Capital Market Authority for approval.[104]

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[99] Id.; an incorporator of a corporation under Saudi law refers to a person who signs the corporation's Articles of incorporation, applied for authorization to incorporate it, or offered a contribution in kind upon its incorporation/organization or actually participated in its incorporation/organization (Article 53 of the existing Companies Act). The proposed Companies Act requires that when he does those acts, he must have the intention of being a founder (Article 56 of the proposed Companies Act); a corporation under the existing Companies Act must have at least five members as discussed above in II.B.3.0 and further discussed above in note 89.

[100] Article 52 of the existing Companies Act.

[101] Id.

[102] Id.; The Minister of Commerce has issued a model bylaws for corporations, pursuant to Article 51 of the existing Companies Act which provides as follows:

> The Minister of Commerce shall issue a decision incorporating standard bylaws for corporations, from which no departure shall be allowed except for reasons satisfactory to the said minister.

Article 52 of the existing Companies Act provides in part that the General Department of Companies "may request that alterations be made in the company's bylaws so as to be consistent with the provisions of [the Companies Act] or conformable to the standard from referred to in Article 51." (alteration to the original in the quoted text).

Moreover, Article 233 of the existing Companies Act provides that "The Minister of Commerce shall issue decisions and rules necessary for the implementation of the provisions of [this act]"; Article 224 of the proposed Companies Act would provide: [translation by author]

> 1- By a Minister decision guiding standards memorandums of association and bylaws shall be issued for each kind of the companies within one hundred and twenty days from the issuance date of this Act, and shall be published in the Official Gazette, and act upon them from the date of the application of this Act.
> 2- The Minister and the Chairman issue needed decisions to execute what is related to each of them of provisions in this Act.

[103] Article 52 of the existing Companies Act.

[104] Minister of Commerce decision number 4825 on the 04/22/1429 H (2008 AD).

To avoid confusion to the American reader it is important to note the difference of usage of the terms “articles of incorporation” (articles or memorandum of association) and “bylaws” in the Kingdom and in the United States. In America the articles of incorporation are not only filed with the Secretary of State but are also a superior document to the bylaws which are not publicly filed and which regulate internal affairs.

Both documents are publicly filed under the Saudi law but the primary function of the articles is mostly related to the incorporation process. After that, private regulation of corporate governance is via the bylaws, which unlike the articles, maybe altered and amended by the extraordinary general assembly as called for.

In American law the articles not only cause incorporation but they have an ongoing role in corporate governance of American corporations. Both the articles and the bylaws play a huge role in the ongoing life of American corporations because both are referenced throughout typical American corporation statutes as vehicles to alter default rules and both maybe amended. The process for amendment is different because shareholders may amend the bylaws without board initiation but the bylaws may not be inconsistent with the articles.

The corporation contract (articles of association) under Saudi law plays a significant role upon the incorporation process. Unlike the American counterpart there is no statutory procedure for amendments of the articles

under the Companies Act. Therefore, the primary corporate document regulating corporate governance is the bylaws.

### 2. Grant of Authorization to Seek Incorporation.

a. Royal Decree is required for the following categories of corporations:[105] a. corporations given a concession (franchise) from the country. b. corporations to run a public utility. c. corporations to engage in banking. d. corporations that will receive a subsidy from the country. e. corporations in which the country or a governmental agency will be a shareholder.[106] For all other corporations, an authorization must be issued by the Minister of Commerce, which must be published in the Official Gazette.[107]

Issuance of authorization to seek incorporation under the proposed Companies Act grants much wider authority to the Ministry of Commerce. Specifically, the Ministry of Commerce will have authority with respect to all corporations;[108] a Royal Decree will no longer be required for authorization to seek incorporation for any corporation. Thus, the proposed Companies Act provides: [translation by author]

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[105] Article 52 of the existing Companies Act.
[106] Except to the Public Pension Fund (Public Pension Establishment) and the General Organization for Social Insurance (Article 52 of the existing Companies Act).
[107] Article 52 of the existing Companies Act; Minister of Commerce decision number 4825 on 04/22/1429 H (2008 AD) states that the time from filing the application to the Minister's decision granting permission to incorporate take place in no more than twenty two working days.
[108] Article 60 of the proposed Companies Act. However, if the corporation's business requires prior approval by an authority with legal jurisdiction before giving the license to incorporate such corporation, the license must not be given except after the approval or license by the other authority (Article 60 of the proposed Companies Act).

> When an application for authorization to incorporate a corporation which is incorporated in whole or in part by the government or other public juridical persons include an exception from some of the provisions of this act, the application to incorporate and for the exception is raised to the Council of Ministers; to consider the approval of them.[109]

### 3. Offering of Shares

#### a. Registration Requirement

After the Royal Decree or ministerial decision issues the authorization to seek incorporation, the process of offering of shares may begin. This process is subject to regulations issued by the Capital Market Authority, which was given authority by the Capital Market Law to regulate all offering of shares whether by privately held or publicly held corporations.[110]

In 2004, the Capital Market Authority issued the Offers of Securities Regulations.[111] This regulation requires that every offer of securities must meet elaborate requirements applicable to a public offer, which are similar to those applicable to a registered offering in the United States, unless it falls into one of the defined categories of private placements.[112]

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[109] Article 60 (3) of the proposed Companies Act.
[110] Under Article 5 of the Capital Market Law; statutory authority for adoption of regulations by the Capital Market Authority is discussed below in II.G.1.
[111] Under Article 3 of the Offers of Securities Regulations, "Securities may not be offered in the Kingdom except in accordance with these Regulations." Under the Offers of Securities Regulations, offer means "issuing securities, inviting the public to subscribe therefore or the direct or indirect marketing thereof; or any statement, announcement or communication that has the effect of selling, issuing or offering securities, but does not include preliminary negotiations or contracts entered into with or among underwriters." (Article 1 of the Offers of Securities Regulations).
[112] Article 6 & 7 of Offers of Securities Regulations.

### b. Private Placement

#### *(1) Types of Private Placement*

The term private placement is defined to include an offer of securities that falls under any of the following four categories.[113] The first category relates to the identity of the issuer rather than the nature of the offeree. It consists of securities issued by the government of the Kingdom, or a non-Saudi authority recognized by the Capital Market Authority.[114]

The second category is an offer restricted to sophisticated investors,[115] which are defined to include:[116] (a) the government of the kingdom, a non-Saudi authority recognized by the Capital Market Authority, the Saudi Stock Exchange, and any other stock exchange recognized by the Capital Market Authority or the Depository Center;[117] (b) persons authorized by the Capital Market Authority to engage in the securities business (authorized persons) acting for their own account;[118] (c) clients of an authorized person who has the authority to conduct managing activities, defined to mean a person who

[113] Article 9 of the Offers of Securities Regulations.
[114] Article 9 (a) (1) of the Offers of Securities Regulations.
[115] Article 9 (a) (2) of the Offers of Securities Regulations.
[116] Article 10 of the Offers of Securities Regulations.
[117] Article 10 (3) of the Offers of Securities Regulations; Article 26 (a) of the Capital Market Law provides for the establishment of the Depository Center, which is to act as the sole entity in the Kingdom authorized to conduct operations of deposit, transfer, settlement, clearing and registering ownership of Saudi securities traded on the Saudi Exchange. The functions of the Depository Center are currently operated by The Saudi Stock Exchange (Tadawul). (Capital Market Authority website available at http://www.cma.org.sa/en/AboutCMA/Pages/Securities_Depository.aspx (last visited 12-30-2011).
[118] Article 10 (1) of Offers of Securities Regulations; authorized person is a person who is authorized and licensed pursuant to the Authorized Persons Regulations to carry on securities business by the Authority (Glossary Of Defined Terms and Article 1 of the Authorized Persons Regulations); *See generally* Authorized Persons Regulations.

manages a security belonging to another person in circumstances involving the exercise of complete discretion;[119] (d) institutions, as defined in the Glossary of Defined Terms,[120] acting for their own account;[121] (e) professional investors,[122] defined to include a natural person who fulfils at least two of the following three criteria:[123] (i) has carried out at least 10 transactions per quarter over the previous four quarters of a minimum total amount of SAR.40 million in securities markets; (ii) holds a securities portfolio exceeding SAR.10 million; or (iii) works or has worked for one or more years in the financial sector in a professional position which requires knowledge of securities investments; or (f) such other persons as may be determined by the Capital Market Authority.[124]

The third type of private placement is the limited offer, of which there are three kinds. The first is[125] an offer directed to no more than 60 ordinary investors and an unlimited number of sophisticated investors. If the offer exceeds SAR.5,000,000, a minimum of SAR.1,000,000 is required to be paid

[119] Article 10 (2) of the Offers of Securities Regulations and Article (2) (3) of the Securities Business Regulations. The offer must be made through the authorized person and all relevant communications are made through the authorized person (Article 10 (2) (a) of Offers of Securities Regulations); Article 10 (2) (b) of the Offers of Securities Regulations.

[120] Under the Glossary Of Defined Terms, Institution means

1) any company which owns, or which is a member of a group which owns, net assets of not less than 50 million Saudi Riyals;
2) any unincorporated body, partnership or other organisation which has net assets of not less than 50 million Saudi Riyals;
3) any person ("A") whilst acting in the capacity of director, officer or employee of a person ("B") falling within sub-paragraphs (1) or (2) where A is responsible for B undertaking any securities activity.

[121] Article 10 (4) of the Offers of Securities Regulations.

[122] Article 10 (5) of the Offers of Securities Regulations.

[123] Glossary of Defined Terms.

[124] Article 10 (6) of the Offers of Securities Regulations .

[125] Article 11 of the Offers of Securities Regulations.

by each offeree; otherwise, there is no minimum required amount to be purchased by any investor.[126] In addition securities of the same class may not be offered under the terms of this category more than once in a twelve month period following the ending date of the offer in question.[127] The second type of limited offer is one in which all offerees are employees of the issuer or an affiliate.[128] Finally, an offer in which all offerees are affiliates of the issuer is also deemed to be a limited offer. [129]

In addition, other than the three specific types of private placement discussed above, the Capital Market Authority may consider an offer a private placement upon the request of a person seeking to have an offering deemed to be a private placement after satisfaction of any requirements that the Capital Market Authority may impose.[130]

### *(2) Private Placement Procedure.*[131]

#### (a) **Notification Requirements Prior to the Offering**

The offering corporation must notify the Capital Market Authority in writing pursuant to the Offers of Securities Regulations at least ten days prior

[126] Article 11 (a) (1) (b) of the Offers of Securities Regulations.
[127] Article 11 (b) of the Offers of Securities Regulations.
[128] Article 11 (a) (2) of the Offers of Securities Regulations; Affiliate is defined to include a person who controls another person or is controlled by that other person, or who is under common control with that person by a third person.(Glossary of Defined Terms).
[129] Article 11(a) (3) of the Offers of Securities Regulations.
[130]Article (9) (b) of the Offers of Securities Regulations.
[131] Article 12 of the Offers of Securities Regulations.

to the offering,[132] providing copies of any offering disclosure documents (offering advertisement documents) to be used in the offer.[133]

### (b) The Offer May Be Made Only by Authorized Persons

The offer may be made only by a person authorized by the Capital Market Authority (authorized person) to carry on the activity of "arranging",[134] defined to include introducing parties in relation to the securities business, acting in any manner to bring about transaction in a security, or advising on

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[132] Article 12 (a) (2) of the Offers of Securities Regulations.
[133] Article 12 (a) (2) (c) of the Offers of Securities Regulations.
[134] Article 12 (a) (1) of the Offers of Securities Regulations. The corporation itself may in its offering make a private placement advertisement (Article 20 of the Securities Business Regulations) however a person must not make or communicate any securities advertisement to a person in the Kingdom unless: 1) the person making the advertisement is an authorised person; or 2) the contents of the securities advertisement have been approved for the purpose of this Part by an authorised person (Article 17 of the Securities Business Regulations). Article 3 the term Securities Business is defined to mean engaging by way of business in Dealing, Arranging, Managing, Advising or the Custody of Securities unless any of the exclusions specified in the Securities Business Regulations apply (Article 3 of the Securities Business Regulations.

The issuance by a person of its own shares, debt instruments or warrants and other instruments entitling the holder to subscribe for any shares or debt instrument is excluded from dealing. (Article 13 of the Securities Business Regulations and Glossary Of Defined Terms).

The following activities are excluded from arranging:
The Arranging by a person of a transaction to which it is a party or by a person of the issuance of its own shares, debt instruments or warrants and other instruments entitling the holder to subscribe for any shares or debt instruments. (Article 13 (e) of the Securities Business Regulations, Article 14 (1) and (3) of the Securities Business Regulations, and Glossary of Defined Terms).

The authorized person must ensure fulfillment of certain conditions and requirements, discussed below, which include ensuring that offeror provides the Capital Market Authority with notification prior to the offering and provides copies of any offering disclosure documents to be used in the offering. Moreover, the authorized person must ensure that offeror supplies investors with sufficient information about the private placement which must be true, clear and not misleading in order for the offerees to make informed decisions (Article 13 of the Offers of Securities Regulations).

corporate finance business.[135] "Corporate finance business," in turn, includes securities business carried on by an authorized person in connection with: (i) the offer, issue, underwriting, repurchase, exchange or redemption of, or the variation of the terms of, those securities, or any related matter; (ii) the manner in which, or the terms on which, or the persons by whom, any business activity is to be financed, structured, managed, controlled, regulated or reported upon.[136]

### (c) **Advertisements**

Private Placement advertisements may be directed only to persons to whom the Offers of Securities Regulations allows a private placement to be directed,[137] who are the same persons to whom private placement offers may be made.

### (d) **Disclosure Requirements**

Similar to the disclosure requirements applicable to many offerings under American law,[138] disclosure documents used in private placements under Saudi law are subject to extremely detailed and demanding requirements concerning their content.[139]

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[135] Article 2 (2) of the Securities Business Regulations.
[136] Glossary of Defined Terms.
[137] Article 15 (1) of the Offers of Securities Regulations.
[138] See e.g. Rule 502(b) of Regulation D to the Securities Act of 1933.
[139] See Article 14 of the Offers of Securities Regulations, Article 33 of the Authorized Persons Regulations and Article 34 (c) of the Authorized Persons Regulations.

The goal, of course, is to ensure that Saudi investors receive full and accurate information necessary to make an informed investment decision. Moreover, like the securities law applicable in the United States only to registered public offerings,[140] under Saudi law, authorized persons engaged in private placements are required to determine that all disclosure documents are in full compliance with requirements applicable to these documents.[141]

### (e) **Discretion to Deny Exemption**

If the Capital Market Authority concludes that the requirements of the Capital Market Law and its regulations have not been satisfied or that the proposed offering is not in the interests of Saudi investors, it may issue an order that the offering is not to be made.[142]

### (f) **Post-Offer Reporting Requirements**

After the offer has been completed, the offeror must provide the Authority within 10 days a list of all persons who have acquired the securities and information concerning the total proceeds of the offer.[143]

If the offer is not completed by the proposed offer end date specified in the private placement notification, within 10 days the offeror must provide the

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[140] See section 11 (a) (4) of the Securities Act of 1933.
[141] Article 13 of Offers of Securities Regulations.
[142] Article 12 (b) of the Offers of Securities Regulations; the Capital Market Authority may issue this order after providing an appropriate opportunity for the offeror to be heard (Article 12 (c) of the Offers of Securities Regulations). Moreover, the offeror has the right to appeal to the Committee for the Resolution of Securities Disputes the action or decision by the Capital Market Authority that the offering shall not be made (Article 12 (d) of the Offers of Securities Regulations.
[143] Article 12 (e) of the Offers of Securities Regulations.

Authority with a notification in writing signed by the offeror confirming that the offer failed to be completed.[144]

*(3) Resale of Securities Sold in a Private Placement.*[145]

If the purchasers of securities acquired in a private placement subsequently desire to sell the securities, the offer and sale of securities must be through an authorized person and meet one of the following conditions.

The selling price of the securities is at least SAR.1,000,000,[146] except that if this requirement cannot be met due to a decline in value of the securities since the original private placement, the offer and resale is permitted if the original price of securities at the time of the original offer was at least SAR.1,000,000.[147] If however, the original price of such securities was less than SAR.1,000,000, they may still be offered or sold if the owner is selling all of his securities of that issuer to one person.[148] Alternatively the securities may be offered or sold to a sophisticated investor.[149] If neither of the above conditions is satisfied, the securities may only be offered or sold in a manner permitted by the Capital Market Authority.[150] Purchasers of shares resold are subject to the same requirements for any further resale.[151] Of course, these

[144]Article 12 (f) of the Offers of Securities Regulations.
[145] Article 17 of the Offers of Securities Regulations.
[146]Article 17 (a) (1) the Offers of Securities Regulations.
[147] Article 17 (b) the Offers of Securities Regulations.
[148] Article 17 (c) of the Offers of Securities Regulations.
[149] Article 17 (a) (2) of the Offers of Securities Regulations.
[150] Article 17 (a) (3) of the Offers of Securities Regulations. (The specific offer or sale is done in a manner specified by the Capital Market Authority).
[151] *See* Article 17 (d) of the Offers of Securities Regulations.

restrictions on resale are not applicable to a class of securities listed on the Saudi Stock Exchange.[152]

### c. Public Offering

Any offer of securities will be regulated as a public offer if it does not fall within one of the categories of a private placement discussed above.[153] When so regulated, the offer of securities must meet all the requirements and conditions of what is known as the Listing Rules,[154] adopted by the Capital Market Authority in 2004.[155]

These Listing Rules initially include a requirement to file with the Capital Market Authority documents similar to those applicable when filing a registration pursuant to section 5 of the Securities Act of 1933. Moreover, also similar to the process in the United States, the actual offering of the shares may not proceed until approval of the Capital Market Authority is obtained.

In addition, the Listing Rules require continuous reporting obligations similar to those imposed by section 13 of the Securities Exchange Act of 1934. For further information about securities offering in the Kingdom see charts A, B, and C. in Appendix III.

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[152] Article 17 (e) of the Offers of Securities Regulations.
[153] Article 7 of the Offers of Securities Regulations.
[154] Article 8 of the Offers of Securities Regulations.
[155] Available at the Capital Market Authority website http://www.cma.org.sa/En/Pages/Implementing_Regulations.aspx (last visited 12-15-2010).

### 4. Subscription of Capital

#### a. Under the Existing Companies Act

For all corporations, there are minimum requirements concerning total subscription for shares that must be satisfied at the time of incorporation. These minimum requirements are at least SAR.10,000,000 in the case of publicly held corporations[156] and at least SAR.2,000,000 for those that will be privately held.[157]

Moreover, by the date of incorporation, at least one half of these amounts, respectively, must have been paid to the corporation in cash or in kind.[158] In addition, there is a further requirement that the corporation must have received at the time of the subscription of shares one quarter of the par value of shares to be issued for cash.[159] A notation of the amount paid from the par value must be made on each share.[160]

Every shareholder is liable to the corporation for contributions he has undertaken to make, so if he fails to make them, he is liable for damages to the corporation arising from this delay.[161] Successive owners will be jointly liable

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[156] Corporations which offer their shares to the public.
[157] Article 49 of the existing Companies Act; privately held corporations are those corporations that do not offer their shares to the public.
[158] A corporation's paid capital must not be less than half the minimum requirements (Article 49 of the existing Companies Act); "only contributions in cash and in kind shall form the company's capital. Such capital may be modified only in accordance with the existing Companies Act and with such conditions set forth in the corporation's articles of incorporation or bylaws as are not inconsistent with the existing Companies Act" (Article 3 of the existing Companies Act).
[159] Article 58 of the existing Companies Act.
[160] Id.
[161] Article 5 of the existing Companies Act.

with the prior owner for one year from registering the transfer of ownership of the share in the share register, after which time the prior owner is no longer liable.[162] If the shareholder fails to pay the price, the board of directors may notify him through registered mail and then sell the share in an auction.[163]

The amount collected from the subscription must be deposited in the name of the corporation in one of the banks designated by the Minister of Commerce and the funds may not be transferred other than by the board of directors, and only after the announcement of incorporation[164]by the Minister's decision.[165]

### b. Under the Proposed Companies Act

The minimum capital requirements for both publicly and privately held corporations will be subject to a new test under the proposed Companies Act. The test is that a corporation's capital on its incorporation needs to be sufficient to achieve its object.[166] Thus, a corporation's minimum capital requirement is more flexible and can be substantially reduced to not less than

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[162] Article 110 of the existing Companies Act; under the proposed Companies Act, there is no joint liability for the share price among successive shareholders and Article 117 (1) of the proposed Companies Act would read as "The shareholder must pay the share price in the specified dates and if he fails to pay the price in time, the board of directors after notifying him through the ways stated in the bylaws or through registered mail, may sell the share in an auction or in the stock exchange, according to the situation, based on the competent authority conditions."

[163] Article 110 of the existing Companies Act.

[164] Article 58 of the existing Companies Act; the proposed Companies Act states that all payments of share price subscriptions must be put under the name of the corporation that is under incorporation in one of the licensed banks in the Kingdom and no one can use the money except the board of directors of the corporation after the publication of the decision announcing the incorporation of the corporation (Article 59 of the proposed Companies Act).

[165] Discussed below in II.C.6.

[166] Article 54 of the proposed Companies Act.

SAR.500,000 if this amount satisfies the sufficiency test.[167] As noted above, this is from a minimum of at least SAR.10,000,000 in the case of publicly held corporations under the current Companies Act and at least SAR.2,000,000 for those that will be privately held.

In addition, at least one fourth of the corporation's capital must be paid upon incorporation.[168] This percentage is of the whole capital and not just a percentage of the minimum capital requirements. The remainder of the monetary shares price that has not been paid must be paid within five years from the shares' issuance date.[169]

### 5. Founders Meeting

Subscription to shares by incorporators or shareholders represents acceptance of the corporation's bylaws and agreement to resolutions of shareholders meetings, subject to the Companies Act and to the corporation's bylaws, whether the shareholder is present or absent in such meetings or he agrees or disagrees to such resolutions.[170]

Article 96 of the existing Companies Act provides:

> Subscription for or ownership of stock shall imply that the (subscriber or) stockholder accepts the company's bylaws and will abide by the resolutions adopted by stockholders meetings in conformity with the provisions of [this act] and the company's bylaws, whether in his presence or absence, and whether he has voted for or against them. (alteration to the original in the quoted text)

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[167] Id.
[168] Id.
[169] Article 106 (2) of the proposed Companies Act.
[170] Article 96 of the existing Companies Act.

### a. Notification of the Meeting

#### *(1) Under the Existing Companies Act*

The incorporators are required to call this meeting in the manner stated in the corporation's proposed bylaws.[171] The meeting may be held no earlier than fifteen days after the call date.[172]

Subject to the further requirements that if shares are to be issued for non-cash consideration,[173] or if there are to be special privileges for the incorporators or others,[174] the meeting must not convene until fifteen days after filing of a report by an expert appointed by the General Department of Companies,[175] verifying the valuation of the non-cash consideration and

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[171] Article 61 of the existing Companies Act.
[172] Id.
[173] Discussed below in D.1.b.(1). The proposed Companies Act provides that the incorporator who contributed a share in kind, such as contributing property, is responsible for the truthfulness of the evaluation of his share (Article 56 of the proposed Companies Act). Also Article 61 of the proposed Companies Act provides that: [translation by author]

1- If there are shares in kind, the application to incorporate must be accompanied by a report by one or more authorized experts or appraisers showing estimation to the fair value to such shares.
2- The incorporators must place a copy of this report at the head office of the corporation at least fifteen days before the founders assembly and any person with status has the right to access such report.
3- This report must be given to the founders assembly for deliberation. If the assembly decides to lower the value for shares in kind, the holders of such shares must agree to this reduction of the price of such shares in the meeting. If they refuse to accept this, the contract will be deemed not existing to all of its parties.

[174] Article 60 of the existing Companies Act. For example, Article 103 of the existing Companies Act provides in part:

> "Shares shall carry equal rights and obligations.
>
> Nevertheless, a general meeting may, in the absence of any restraining provision in the company's bylaws, resolve to issue preferred shares of stock or to convert common shares of stock.
>
> Preferred shares may vest their holders with priority in receiving a certain dividend and/or in recovering their paid- in capital upon liquidation, or with any other benefit, but no multiple-vote shares may be issued."

[175] Article 61 of the existing Companies Act.

appraising the justifications for the granting of the special privileges and the evaluation of factors thereof,[176] in the principal office of the corporation.[177]

*(2) Under the Proposed Companies Act*

For privately held corporations, the founders meeting must occur no later than forty five days after the Ministry of Commerce's authorization to seek incorporation.[178] In the case of publicly held corporations, the forty five day period begins on the date of the closing of the offering of shares, subject to the corporation's bylaws.[179]In addition, the time between the date of publication of the notice of meeting and the date of the meeting may not be less than three days for privately held corporations or less than ten days for publicly held corporations.[180]

**b. Quorum and Voting Requirements for the Meeting**

*(1) Under the Existing Companies Act*

The founders meeting must be attended by shareholders owning at least half of the shares of the corporation and resolutions may be adopted by the vote of the majority of shares represented in the meeting.[181] If a quorum is not present, another meeting must be called no sooner than fifteen days from the

[176] Article 60 of the existing Companies Act.
[177] Article 61 of the existing Companies Act.
[178] Article 62 (1) of the proposed Companies Act.
[179] Id.
[180] Id.
[181] Article 61 of the existing Companies Act.

call to the meeting date.[182] For that meeting, there is no quorum requirement.[183]

Minutes of the meeting must be signed by the chairperson of the meeting, the secretary, and the teller, and the incorporators must send a copy to the General Department of Companies.[184]

### *(2) Under the Proposed Companies Act*

#### (a) **First Proposal**

If a quorum is not present within one hour after the designated time of the meeting, a second meeting must be convened after one additional hour, for which meeting there is no quorum requirement.[185]

#### (b) **Second proposal**

If a quorum is not present, the second meeting will be subject to the same procedure for holding such meeting under the current Companies Act.[186] However, a second meeting may be held after an hour from expiration of the time specified for the first meeting to be convened[187] if permitted under the bylaws of the corporation and the notice of the meeting indicates that such

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[182] Id.
[183] Id.
[184] Id; under the proposed Companies Act, the founders assembly must select a chair to the assembly, a secretary and a person that collects votes. The decisions of the founders assembly are passed by simple majority to those votes represented in it. The chair, secretary and the person that collect votes must sign the meeting minutes. The incorporators must send a copy of the meeting's minutes to the Ministry and to the Capital Market Authority if it is a publicly held corporation (Article 62 (3) of the proposed Companies Act).
[185] Article 62 (2) of the proposed Companies Act.
[186] Id.
[187] A similar proposed language applies in II.E.2.h.(1).(b).ii) and II.E.2.h.(2).(b).ii).

second meeting might occur.[188] For that meeting, there is no quorum requirement.[189]

### c. Purpose[190]

The companies Act specifies six purposes for the founders meeting: (1) Ascertaining that the capital has been subscribed for in full and that the minimum capital has been paid up in full and to the extent of the amount payable on the value of each share;[191] (2) approval of bylaws[192] or drafting the final provisions of the company's bylaws;[193] (3) discussion and approval of pre-incorporation transactions;[194] (4) selection of board members, if not appointed in the articles of incorporation or bylaws, for terms which may not

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[188] Article 62 (2) of the proposed Companies Act.
[189] Id.
[190] Article 62 of the existing Companies Act; the purpose of the meeting under the proposed Companies Act is to do the following things:

(1) Verifying subscription of all the corporation's shares and payment of the minimum capital requirement including the required minimum price per share (quarter of the nominal value of the monetary share);
(2) Making deliberation on the shares in kind report;
(3) Approval of the bylaws of the corporation;
(4) Discussion and approval of the pre-incorporation transactions and any fees incurred;
(5) Selection of the board members, to terms which may not exceed five years, if the members have not been designated in either the articles of association or the bylaws; and
(6) Selection of the auditor for the corporation if not designated in either the articles of association or the bylaws. (Article 63 of the proposed Companies Act).

The Ministry may send to the founders meeting one or more representatives as observers to make sure that the law is followed (id.)

[191] Article 62 (1) of the existing Companies Act.
[192] Article 62 (2) of the existing Companies Act; except that it may not introduce fundamental alterations to the bylaws submitted to it except with the approval of all the subscraibers represented thereat.
[193] Id.
[194] Article 62 (4) of the existing Companies Act.

exceed five years;[195] (5) selection of an auditor, if not appointed in the articles of incorporation or bylaws;[196] and (6) approval of evaluation of shares issued for non-cash consideration or special privileges.[197]

If the capital includes shares for non-cash consideration or special privileges, the General Department of Companies must, at the request of the incorporators, appoint one or more experts.[198] The expert ascertains the correctness of the evaluation of non-cash consideration/contribution, appraises the justifications for the granting of the special privileges, and sets forth the evaluation factors thereof.[199]

The expert's report must be submitted within thirty days to the General Department of Companies unless extended another thirty days upon the request of the expert.[200]

The General Department of Companies must send a copy of the expert's report to the incorporators who must communicate it to the subscribers at least fifteen days prior to the holding of the founders meeting.[201] This report must also be filed at the corporation's principal office and every interested party is entitled to review it.[202]

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[195] Article 62 (3) of the existing Companies Act; the general assembly appoints board members for the period stated in the bylaws for a term of no more than three years (Article 66 of the existing Companies Act).
[196] Article 62 (3) of the existing Companies Act.
[197] Article 60 of the existing Companies Act.
[198] Id.
[199] Id.
[200] Id.
[201] Id.
[202] Id.

The report must be laid before the founders meeting for deliberation.[203] If the meeting resolves to reduce the value fixed for the shares issued for non-cash consideration, or to decrease the special privileges granted, such reduction must be approved during the meeting in two separate votes.

First, the reduction in value must be approved by the vote of a two-thirds majority subscribers other than those intending to pay for their shares with non-cash consideration or the beneficiaries of special privileges subject to that report.[204] If the report is approved, any reduction in valuation must then be agreed to by the subscribers of shares issued for non-cash consideration or the beneficiaries of such special privileges.[205] If they refuse to approve the reduction, the corporation's articles of incorporation are considered to be null and void with regard to all its members.[206]

### 6. Application to the Minister of Commerce to Declare the Incorporation[207]

Within 15 days after the founders meeting, the incorporators are required to submit an application to the Minister of Commerce requesting him to

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[203] Id.
[204] Article 61 of the existing Companies Act.
[205] Article 60 of the existing Companies Act.
[206] Id.
[207] Article 63 of the existing Companies Act. Under the proposed Companies Act, within 15 days after the founders meeting, the incorporators are required to submit an application to the Ministry requesting it to announce the incorporation and attach the following documents:

(1) Acknowledgment of the subscription of all the corporation's shares and the amount that has been paid from the shares price.
(2) Minutes of the founders meeting and its resolutions.
(3) The corporation's bylaws approved by the founders meeting. (Article 64 of the proposed Companies Act).

announce the incorporation and to attach the following documents: a. acknowledgment of the subscription of capital, including the names of subscribers and number of shares subscribed by each and the amount of subscription paid;[208] b. minutes of the founders assembly;[209] c. the corporation's bylaws approved by the founders assembly;[210] and d. resolutions adopted at the founders assembly concerning the incorporators report, evaluation of any non-cash subscription and special privileges, and appointment of board members and auditor if not designated in the articles of incorporation or bylaws.[211]

On the date of issuance of the Minister's decision declaring its incorporation, the corporation acquires its existence as a legal entity.[212] The corporation is then considered duly incorporated, will be bound by its incorporators' acts, and will be liable for all expenses incurred during the incorporation period.[213] From that day, any action to invalidate the company

[208] Article 63 (1) of the existing Companies Act.
[209] Article 63 (2) of the existing Companies Act.
[210] Article 63 (3) of the existing Companies Act.
[211] Article 63 (4) of the existing Companies Act.
[212] Article 64 of the existing Companies Act; AL-SHARĪF & AL-QURASHĪ, *supra* note 68, at.237; ḤAMD ALLĀH, *supra* note 88, at 279. Under the proposed Companies Act, this will take effect after publication of the Ministry's decision announcing its incorporation and registering it in the Commercial Register. The corporation is then considered lawfully incorporated, will be bound by its incorporators' acts on account and will be liable for all expenses incorporators have incurred during the incorporation period.

The corporation will validate and no contest to the validity of the corporation will be heard based on violation of the company law or on its contract or its bylaws (Article 66 of the proposed Companies Act)
[213] Article 64 of the existing Companies Act.

by reason of any violation of the provisions of the Companies Act or of its articles of incorporation or bylaws will be barred.[214]

In the case of a failure to properly incorporate, subscribers have the right to have their subscriptions returned and the incorporators will be jointly liable for returning the subscriptions and for damages, if necessary.[215] Moreover, incorporators are liable for all fees incurred in the incorporation process, and are jointly liable to any third person for obligations incurred during the incorporation period.[216]

[214] Id; under, Article 60 (2) of the proposed Companies Act removes any doubt that the corporation must not do its business except after the completion of the incorporation's procedures and receiving the final license to do business from the competent authority if required.
[215] Article 64 of the existing Companies Act; under the proposed Companies Act, in the case of a failure to properly incorporate, the subscribers have the right to have their payments returned. Banks which the incorporation was made through must urgently return to each subscriber the amount he paid. (Article 67 of the proposed Companies Act*)*
[216] Article 64 of the existing Companies Act.

## 7. Post-Incorporation Requirements

### a. Publication of the Minister's Decision Declaring Incorporation [217]

Publication in the Official Gazette of the Minister's decision announcing incorporation must include the articles of incorporation and the bylaws.[218]

### b. Registration in Commercial Register[219]

The corporation must be registered in the Commercial Register.

### c. Registration in the Register of Companies

No later than fifteen days after issuance of the Minister's decision, the board of directors must also separately register the corporation in the Register of Companies at the General Department Of Companies.[220] The registration

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[217] Under the proposed Companies Act, it is made easier (Article 65 of the proposed Companies Act)

(1) The Ministry issues the decision announcing the incorporation after making sure of completion of all requirements of this law as to incorporating a corporation and this decision must be published in the Ministry's website.
(2) No later than fifteen days after issuance of the Ministry's decision, the board of directors must also register the corporation in the Commercial Register. The application must include the following information:
(a) Name of the corporation, its objects, principal office, address and its duration;
(b) Name, address, occupation and nationality of incorporators;
(c) Share types, price, number and paid capital;
(d) The date and number of the Ministry's decision to license to permit incorporation of the corporation and
(e) The date and number of the Ministry's decision announcing incorporation of the corporation.

[218] Article 65 of the existing Companies Act, AL-SHARĪF & AL-QURASHĪ, *supra* note 68, at 238.

[219] Article 65 of the existing Companies Act. The corporation enters into Commercial Register following completion of the required forms and payment of the fees (i.e. 8000 Saudi Riyals every five years) levied on the corporation. Ministry of Commerce website, http://www.commerce.gov.sa/english/moci.aspx?Type=8&PageObjectId=819 (last visited 2009)

[220] Article 65 of the existing Companies Act.

application must include the following information:[221] (1) name of the corporation, its objects, principal office address and its term; (2) name, address, occupation and nationality of incorporators; (3) share classes, value, number of capital shares authorized, amount offered for public subscription, amount subscribed by incorporators, paid-in capital and negotiability restrictions; (4) method of sharing in profits and losses; (5) specific data of shares in kind, rights for these shares and special privileges for incorporators or other persons; (6) the date of Royal Decree authorizing seeking incorporation if the corporation was one of the corporations mentioned above in II.2.0 on page 44 and the number of the Official Gazette issue in which it was published; and (7) the date of the Minister's decision declaring incorporation of the corporation and the number of the Official Gazette issue in which it was published.[222]

## *D. Corporation's Securities Including Debt and Capital Changes*

### 1. Corporate Shares

#### a. Multiple Classes of Shares Permitted

Article 48 of the Companies Act provides that "the capital of a corporation shall be divided into negotiable shares of equal value." Nevertheless, a Saudi

[221] The registration information is provided in Article 65 of the existing Companies Act.
[222] This applies to all corporations because all corporations need a Minister's decision declaring them incorporated.

corporation is permitted to issue both common and preferred stock.[223] Moreover, there is a third category of interest in the corporation called founders shares, which are issued in exchange for a patent or a franchise received from a public entity. These shares differ than common and preferred shares. Article 113 provides that:

> Founders' shares shall not enter in the formation of the company's capital. Nor may their holders participate in the administration of the company, or in the preparation of accounts, or in stockholders meetings. They shall be subject to such resolutions as may be adopted by stockholders meeting in accordance with the provisions of [the Companies Act ] or of the company's bylaws, including those concerning depreciation and reserve funds, of whatever type and amount, extension of the company's term, dissolution of the company before the expiry of its specified term, increase or reduction of capital, redemption of capital stock, purchase of company stock, or the issue of shares with priority over profits.
>
> Nevertheless, if the resolutions adopted by stockholder meetings entail alteration or cancellation of the rights attached to founders' shares such resolutions shall be valid only if approved by the holders of such shares at a meeting convened in accordance with the provisions governing stockholders special meeting.
>
> The holders of founders' shares may, in accordance with the provisions of Article 97, contest the validity of resolutions of stockholders general or special meetings, if adopted in violation of the provisions of [the Companies Act ] or of the company's bylaws. (alteration to the original in the quoted text)

Founders Shares are discussed below at II.D.3 on page 88.

*(1) Rules Concerning Authorization of Preferred Shares:*

*Under the Existing Companies Act*

Article 103 of the Companies Act provides that:

> Shares shall carry equal rights and obligations.

[223] Article 103 of the existing Companies Act

> Nevertheless, a general meeting may, in the absence of any restraining provision in the company's bylaws, resolve to issue preferred shares of stock or to convert common shares to preferred shares of stock.
>
> Preferred shares may vest their holders with priority in receiving a certain dividend and/or in recovering their paid-in capital upon liquidation, or with any other benefit, but no multiple-vote shares may be issued.
>
> If the capital includes preferred sharres, [Sic] no new shares with prior preference to these may be issued except with the consent of a special meeting, formed in accordance with Article 86, of the holders of the preferred shares who would be injured by such issue, and with the consent of a general meeting representing all classes of stockholders, unless the company's bylaws provide otherwise. This rule shall also apply upon alteration or cancellation of the priorities established in favor of preferred stock in the bylaws of the company.

The general assembly[224] may issue classes of stock or convert the common stock into another class of stock if there is no restraining provision in the bylaws.[225] It is permissible to create a class of stock that gives its holders priority in receiving a particular source of profit or a priority in recovering paid-in capital upon liquidation, or both, or any other benefit.[226] However, it is not permissible to create shares giving multiple voting rights.[227]

The corporation may issue preferred shares that do not entitle holders to vote in shareholders meetings if provided in its bylaws and after approval of

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[224] Except for matters falling within the jurisdiction of the extraordinary general assembly, which are shareholders action concerning lawful amendments to the corporation's bylaws and must occur in an extraordinary general assembly, the regular general assembly is competent in all matters related to the corporation (Articles 84 and 85 of the existing Companies Act); shareholders meetings are further discussed below at II.E.2

[225] Article 103 of the existing Companies Act.

[226] Id.

[227] Id.

the Minister of Commerce subject to the grounds specified by him.[228] Non-voting preferred shares may not exceed 50% of the capital of the corporation.[229] The owners of non-voting preferred shares will have the right to share in the corporation's net profits that are distributed to common shares.[230] In addition, they will have: (a) the right to receive a certain percentage of the net profits of not less than 5% of the nominal value of shares, after putting aside a legal reserve and before any distribution of any corporate profits;[231] (b) the right also, to have a priority in the recovery of the value of their shares in the capital upon the liquidation of the corporation and to obtain a certain percentage of the residual.[232]

The corporation may purchase non-voting preferred shares in accordance with the manners and grounds stated in the corporation's bylaws, but the bylaws must not contain any provision forcing a shareholder to sell his shares.[233] Obviously, these shares are not included in the calculation of the required quorum for the general and extraordinary general assembly of the corporation.[234]

In the absence of dividends for any fiscal year, dividends may not be paid for the following years, until paying at least 5%, discussed immediately above, to those shareholders holding these non-voting preferred shares for that

[228] Article 108 (2) of the existing Companies Act.
[229] Id.
[230] Id.
[231] Article 108 (2) (a) of the existing Companies Act.
[232] Article 108 (2) (b) of the existing Companies Act.
[233] Article 108 (2) of the existing Companies Act.
[234] Id.

year (cumulative dividend).[235] If the corporation fails to pay that percentage mentioned above for a period of three consecutive years, it is permissible for a special assembly of owners of such shares, subject to the same meeting requirements of the extraordinary general assembly, to decide to take action.[236] They have the power under the existing Companies Act to decide whether to attend meetings of the general assembly of the corporation and participate in the general assembly's voting or to appoint their representatives on the corporation's board of directors in a number that reflects their share percentage in the corporation's capital until the corporation pays the entire priority share amount in the profits for the previous years.[237]

The amendment or elimination of the priority rights assigned to a class of preferred shares in the corporate bylaws, and issuance of a new class of stock that has priority over existing classes, is prohibited unless[238] consented to separately by the class adversely affected[239] and also at a general assembly at which all classes of shareholders are represented, unless the bylaws of the corporation state otherwise.[240]

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[235] Article 108 (3) of the existing Companies Act.
[236] Id.
[237] Id.
[238] Article 103 of the existing Companies Act.
[239] Id; under the same meeting requirement of the extraordinary general assembly. (Articles 103 and 86 of the existing Companies Act).
[240] Article 103 of the existing Companies Act.

### *(2) Rules Concerning Authorization of Preferred Shares: Under Both Proposals to the Companies Act*

There is no comparable provision to Article 103 of the existing Companies Act. The only provision, Article 114 of the proposed Companies Act, is comparable to Article 108 (2) of the existing Companies Act, which authorizes the issuance of nonvoting preferred shares. The extraordinary general assembly, based on a provision in the corporation's bylaws and subject to basis set forth by the competent authority, may issue classes of stock or convert the common stock into preferred stock and convert preferred stock to common stock and these preferred shares do not give the right to vote in general assemblies.[241]

### *(3) Under the Second Proposal to the Companies Act*

Preferred shares give holders the right to receive a larger percentage than those given to common stockholders in the corporation's net profits after setting aside the legal reserve.[242]

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[241] Article 114 of the proposed Companies Act.

[242]Id; 10% of the net profit must be put aside by the board of directors to create a legal reserve for the corporation. However, putting aside this percentage may be stopped by the general assembly if the reserve exceeds 50% of the corporation's capital (30% of paid capital under Article 128 of the proposed Companies Act) It is permissible to have a provision in the bylaws to put aside some percentage of the net profits to create a conventional reserve dedicated to the purposes stated in bylaws (Article 125 of the existing Companies Act). The general assembly, when determining the dividend out of the net profit, may resolve to create other reserves in the amount that serve the corporation interest or secure-as far as possible-distribution of steady dividend to the shareholders. The general assembly may deduct from the net profits sums to create social organizations to its workers and employees or to help those already created organizations. (Article 125 of the existing Companies Act);

The legal reserve is used to cover the corporation's losses or to increase its capital. When this reserve exceeds 50% of the corporation's capital (30% of paid capital under proposed Companies Act), then the general assembly may decide to distribute the excess amount to the

### b. Issuance of Shares

#### *(1) Cash or Non-Cash Consideration*[243]

##### (a) Under the Existing Companies Act

Cash shares are those paid in cash upon subscription. Shares in kind must have been paid in full before being delivered to shareholders.[244] Subscription of Capital is discussed in II.C.4.a above on page 54.

##### (b) Under the Proposed Companies Act

Shares in kind are issued only after receiving their full value and those shares are not delivered to their owner except after full transfer of the consideration to the corporation.[245]

#### *(2) Par (Nominal) Value*

The par value (nominal value) of a share can be no less than SAR.50.[246] Shares may not be issued at less than par value.[247]

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shareholders in years that the corporation does not make net profits sufficient to distribute to shareholders the amount assigned to them in the corporation's bylaws (Article 126 of the existing Companies Act). The conventional reserve may not be used except with a resolution from the extraordinary general assembly (Article 126 of the existing Companies Act). However, if this reserve is not dedicated (earmarked) for a specific purpose, then the general assembly based on a recommendation from the board of directors, may use it for what benefits the corporation (or its shareholders under Article 129 of the proposed Companies Act).

Under Article 129 (3) of the proposed Companies Act, the general assembly may use retained profits and the conventional reserves that are capable of being distributed to pay the unpaid remainder of the share's price or part of this price given that this will not violate the principle of equality between shareholders.

[243] Article 99 of the existing Companies Act.

[244] Article 60 of the existing Companies Act.

[245] Article 106 (3) of the proposed Companies Act.

[246] Article 49 of the existing Companies Act. Under Article 105 (2) of the proposed Companies Act the par value for shares is reduced to10 Saudi Riyals and the Minister may

*(3) Issuance for Greater Amount*

Shares are issued at a premium over par when the bylaws so provide or if approved by the general assembly. When so issued, the difference in value must be added to the statutory reserve, even if the reserve has reached the maximum limit prescribed in the Companies Act.[248]

*(4) Registered or Bearer Form*

(a) **Under The Existing Companies Act**

A corporation's shares may be issued to a registered holder or to bearer, and if they are issued to a registered holder they must remain registered until their value has been paid in full.[249]

Transfer of registered or bearer form shares for non-listed corporations is subject to Article102 of the Companies Act which provides as follows:

> Registered shares shall be transferred by means of an entry in the stockholders register kept by the company, which contains the stockholders' names, nationalities, residence addresses, and

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change this value after having an agreement with the Chairman of the Capital Market Authority Board. (Article 105 (2) of the proposed Companies Act).

[247] Article 98 of existing Companies Act.

[248] Id; These previous rules apply to interim certificates which are given to shareholders prior to the issuance of shares warrants. (id.); under the proposed Companies Act, the difference in value must be put under a separate item in shareholders equity rights and may not be distributed to shareholders as profits (roughly equivalent to capital in excess of par treatment of such in the United States). (Article 105 (3) of the proposed Companies Act); the legal/statutory reserve is discussed above in II.D.1.a.(3) and further in note 242 above.

[249] Article 99 of the existing Companies Act; Article 99 of the existing Companies Act provides in part:

> A share may be (issued) to a registered holder or to "bearer".(In the former case) it must remain registered to a holder until its value has been paid up in full.
>
> Share warrants shall state the amount paid up on the shares they comprise. Interim certificates shall remain registered in the holder's name until they are exchanged for share warrants.

> occupations; the (serial) numbers of the shares (held by them); and the amounts paid up on such shares. An annotation shall be made on the share warrant [stock certificate] to the effect that such entry was made. A transfer of title to any registered share shall be effective as far as the company or third parties are concerned only from the date of its entry in the said register. Shares to bearer are transferable by mere delivery. (Alteration to the original in the quoted text)

#### (b) **Under the Proposed Companies Act**

A corporation's shares must be registered shares.[250]

### c. Voting Rights

#### *(1) Under the Existing Companies Act*

Pursuant to Article 108 (1) of the existing Companies Act, the holders of every share of common stock has the right to attend and vote at shareholders meetings pursuant to any appropriate provision in its bylaws, subject however to the limitation in Article 83, that bylaws may not prevent persons holding at least twenty shares from attending such meeting. Specifically, these Articles provide as follows:

Article 108 (1)

> A stockholder shall be vested with all the rights attached to [the share], specifically * * *, the right to attend stockholders meeting and participate in the deliberation and vote on the resolutions (proposed) thereat, * * * * in accordance with the terms and restrictions set forth in [the Companies Act ] or in the company's bylaws. (alteration to the original in the quoted text).

In part Article 83

[250] Article 105 (1) of the proposed Companies Act.

> The bylaws of the company shall specify the (classes of) stockholders entitled to attend general meetings. Nevertheless, every stockholder who holds twenty shares shall have the right to attend, even if the bylaws of the company provide otherwise.
>
> A stockholder may, in writing, give proxy to another stockholder other than a director to attend the general meeting on his behalf.

Article 107 of the existing Companies Act provides that

> A stockholder shall exercise the right of voting at general or special meetings in accordance with the provisions of the company's bylaws. Any stockholder entitled to attend stockholders meetings shall have at least one vote. The company's bylaws may prescribe a maximum for the number of votes vested in the holder of several shares.[251]

The practical effect of these requirements is that a person holding at least twenty shares must have at least one vote. It appears to be that the bylaws may not set the voting right lower than twentieth of a vote per share. Conversely, as stated in Article 107 above, the corporation's bylaws may provide a limit on the number of votes given to a shareholder that holds several shares.[252]

### *(2) Under the Proposed Companies Act*

Revisions to current text of Article 107 of the existing Companies Act provide that each share will have one vote in general assemblies and that the bylaws may set a maximum number of votes with respect to a shareholder holding a proxy to vote several shares.[253]

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[251] It is unknown to author how frequently the last option is used.
[252] Article 107 of the existing Companies Act.
[253] Article 113 of the proposed Companies Act. It is unknown how frequently this option will be used.

Without including the twenty shares language, Article 86 (2) of the proposed Companies Act would provide that every stockholder shall have the right to attend general assemblies, even if the bylaws of the company provide otherwise.

### d. Dividends

Ownership of shares entitles a shareholder to the right to obtain a share in the profits declared for distribution.[254]

The corporation's bylaws must specify the percentage of net profits that must be distributed to shareholders after putting aside the corporation's legal and conventional reserves.[255] However, this percentage may not be less than 5% of the corporation's capital. The Companies Act requires shareholders to approve dividends.[256] "A stockholder shall be entitled to his share in the profits (i.e. dividends) as soon as the general assembly adopts a resolution on the allocation (of profits)."[257]

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[254] Article 108 (1) of the existing Companies Act.
[255] Article 127 of the existing Companies Act.
[256] Id.
[257] Id; under the proposed Companies Act, there is no 5% minimum. In addition, under the proposed Companies Act:

(1) The corporation's bylaws must state the percentage of net profits that must be distributed to shareholders after putting aside the corporation's legal and other reserves.
(2) The shareholders will earn their share in the profits in accordance with the general assembly's resolution in this regard. The resolution must state the maturity date and the date of distribution. The priority in profits is to recorded owners of shares in the shareholders' records at the end of the maturity date. The competent authority specifies the maximum period in which the board of directors must carry out the general assembly's resolution in this regard. (Article 130 of the proposed Companies Act)

### e. Negotiability of Shares

In general, shares are freely negotiable,[258] but restrictions may apply in certain cases.

#### *(1) Mandatory Restrictions*

##### (a) **Shares Subscribed for by the Incorporators or Non-Cash Shares**

(i) There are legal restrictions on transferability of shares issued for cash to incorporators or shares in kind, as those issued for consideration consisting of property, regardless of the identity of the purchaser. Such shares are nontransferable for two full twelve-month fiscal years after incorporation.[259] A notation must appear on the share certificate indicating its class, the date of incorporation and the restricted period. However, this restriction does not apply to transfers of incorporators' shares issued for cash to another incorporator, to a director to hold it as

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[258] Article 48 of the existing Companies Act; under Article 109 of the proposed Companies Act

(1) Transferability of shares of privately held corporations is made through marking this in the shareholders' registry made by the corporation or by someone contracted to prepare it

Transferability of corporations' shares which are listed on the exchange is subject to the rules of the Capital Market Law. Article 9 (d) of the Listing Rules, Conditions relating to securities, states that "The securities must be transferable and tradable. Any restriction on transferability must be approved by the Authority and all investors must be provided with appropriate information to enable dealings in such securities to take place on an open and fair basis."

[259] Article 100 of the existing Companies Act.

a qualification (guarantee) share,[260] or to a third person from an heir of a deceased incorporator.[261]

(ii) Under the Proposed Companies Act, the Capital Market Authority may increase or decrease the non-transferability period for incorporators shares for corporations that seek to list shares on the exchange.[262]

### (b) **Board Members' Shares**

Within thirty days after becoming a director, every member of the board of directors is required to own and deposit at one of the banks designated by the Minister of Commerce shares worth at least 10,000 (SAR.).[263] If he does not submit these shares in time, his directorship will be forfeited (null). These shares are held as a guarantee (bond) in the event the board member is held liable to the corporation based on claims for wrongful acts that cause prejudice to the body of shareholders.[264]

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[260] Board Members shares is discussed below in II.D.1.e.(1).(b)

[261] Article 100 of the existing Companies Act. Under the proposed Companies Act, it is also permissible in the case of having an execution on an incorporator's estate because of insolvency or bankruptcy. However, the other incorporators will have priority to buy those shares. (Article 107 of the proposed Companies Act).

[262] Article 107 (4) of the proposed Companies Act. The mandatory restriction on transferability of shares in kind is not found under comparable provisions of the proposed Companies Act.

Article 107 of the proposed Companies Act, which is comparable to Article 100 of the existing Companies Act, does not include restrictions on transferability of shares in kind. However, the shares in kind are not issued until the fulfillment off all its value and it is not handled except after they are fully transferred to the corporation. (Article 106 (3) of the proposed Companies Act).

[263] Article 68 of the existing Companies Act; as discussed below in II.F.2.a.(2).0, under the proposed Companies Act there would be no provision requiring directors to own shares or to deposit shares as guarantee against personal liability to the corporation.

[264] The shares are to be held to the later of the end of the period that a claim can be heard or until a verdict is rendered, Article 68 of the existing Companies Act.

*(2) Additional Permissible Restrictions*

The bylaws of the corporation may include additional restrictions on the negotiability of shares but these restrictions may not amount to total restraints on alienation.[265]

### f. Repurchase By Corporation

*(1) Under the Existing Companies Act*

Article 105 of the existing Companies Act governs repurchase by a corporation of its own shares.

The corporation may only purchase its shares to redeem them, reduce capital, or purchase them as part of an estate whose assets and liabilities are purchased as a whole by the corporation.[266]

*(2) Under the Proposed Companies Act*

Article 112 (1) of the proposed Companies Act, which also governs both repurchases by a corporation of its own shares and pledges to the corporation of its own stock, would provide as follows: [translation by author]

> The corporation (company) may purchase its shares or accept them as security subject to measures laid down (set) by the competent authority, and the shares which the corporation purchases do not have votes in shareholders meetings.

It appears to be the intent of Article 112 (1) that the competent authority may issue rules governing the matters within its scope as well as having the

[265] Article 101 of the existing Companies Act.
[266] Article 105 of the existing Companies Act.

authority to act on a case by case basis. Furthermore, the apparent policy of Article 112 (1) is to broadly liberalize the circumstances in which a corporation may purchase its own shares. In any case, on the basis of the plain meaning of the proposal, repurchased shares will not have the power to vote in shareholders meetings.

### g. Capital or Redeemed Shares

Capital shares are shares in their ordinary form. Article 104 of the Companies Act provides that a corporation's bylaws may provide that capital shares may be redeemed while the corporation is a going concern if its business involves wasting assets or it is otherwise based on temporary rights, such as patents.

Shares may be redeemed only out of profits or a reserve fund established for that purpose.[267] The redemption may be accomplished by purchasing the shares at par or at a discount from par, in either case by lot or by a procedure that ensures equal treatment among stockholders.[268] Once they are redeemed, the shares may be reissued. The bylaws may also provide for the issuance of "reimbursed shares", with such rights as the bylaws may provide, to the holders of shares redeemed by lot.[269] If this is done, the corporation must designate a percentage of its annual net profit for distribution to the holders of unredeemed shares, payable in priority to any payment due the reimbursed

[267] Article 104 of the existing Companies Act.
[268] Id.
[269] Id.

shares.[270] Similarly, upon dissolution, the unredeemed shares have priority over the reimbursed shares to the extent of the par value of the unredeemed shares.[271]

### h. Pledges of Shares

#### *(1) Under the Existing Companies Act*

The corporation may not accept its shares as security for any obligation owed to it except for any shares of a member of the board of directors given as a pledge to the corporation against liability to the corporation (i.e., directors' qualification shares).[272] Shares so pledged do not have the power to vote at shareholders meetings.[273]

The matter of a shareholder's right to pledge shares to any party other than the corporation is not addressed in the existing Companies Act.

#### *(2) Under the Proposed Companies Act*

Under paragraph (1) of Article 112 of the proposed Companies Act, a corporation may accept its own shares as security under any circumstances subject to any rules established by the Competent Authority. Moreover, paragraph (2) of Article 112 of the proposed Companies Act would regulate the matter of shareholders' pledges to parties other than the corporation. Under Article 112 (2), any share would be permitted to be pledged subject to

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[270] Id.
[271] Id.
[272] Article 105 of the existing Companies Act.
[273] Id.

conditions set by the Competent Authority, and the creditor would have the right to receive profits and exercise the rights of pledged shares unless the contract between the parties states otherwise, except that the creditor could not attend shareholders meetings or vote in those meetings.[274]

### i. Joint Ownership

If a share is owned jointly by multiple persons, they need to choose a person to represent them such as in the shareholders meeting as such shares are indivisible as far as the company is concerned.[275] Joint owners are jointly liable for all shareholder obligations.[276]

### j. Liquidation

Ownership of shares entitles a shareholder to the right to obtain an equity in the corporation's assets upon liquidation.[277]

### k. Inspection

#### *(1) General Right of Inspection*

Without elaboration, the Companies Act provides that shareholders have the right of access to the company's books and other documents.[278]

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[274] Article 112 (2) of the proposed Companies Act.
[275] Article 98 of the existing Companies Act.
[276] Id.
[277] Article 108 (1) of the existing Companies Act.
[278] Id. The translation should read as "request to peruse the corporation's books and documents".

*(2) Special Right to Seek Judicial Investigation*

(a) **Under the Existing Companies Act**

While there is no comparable provision in the American law, under Saudi law shareholders have the statutory right to seek judicial investigation of corporate affairs. Article 109 provides such right to shareholders owning at least 5% of a corporation's capital as follows:

"Stockholders representing at least 5% of the company's capital may request the [court] to investigate (the affairs of) the company if the acts performed by directors or auditors (in the conduct) of the company's affairs have aroused their suspicion. After hearing the directors and the auditors in camera, the said [court] may order an investigation of the company's management at the expense of the complainants, whom it may, if necessary require to submit a guarantee[.] [I]f it is proven that the complaint is valid, the [court] may order such precautionary measures as it deems fit and call a general meeting to adopt the necessary resolutions. In cases of extreme necessity, it may remove the directors and auditors, appoint a temporary manager, and specify his powers and the term of his commission."[279](alteration to the original in the quoted text).

(b) **Under the Proposed Companies Act**

Only the "extreme necessity" requirement was omitted.[280]

**l. Supervision of Directors**

Article 108 (1) of the existing Companies Act provides that shareholders have "the right to control [supervise][281] the acts of the board of directors * * *. This complex topic is discussed in greater detail in part II.F.1. on page 122.

[279] Article 109 of the existing Companies Act.
[280] Article 100 of the proposed Companies Act.
[281] "Supervise" is used to translate the same Arabic word used in the English translation of Article 3 of the Corporate Governance Regulations, which is primarily a restatement of shareholders rights provided in Articles 108 (1) of the Companies Act, discussed below in II.G.6.c.(1).(a)

### m. Suits Against Directors

Article 108 (1) also vests shareholders with the right "to institute the action in liability against the directors* * * *"[282]

### n. Contest of Resolutions of Shareholders Meetings.

Ownership of shares entitles a shareholder to the right to contest the validity of the resolutions adopted at shareholders assemblies.[283]

## 2. Debt

### a. Debt Securities (Bonds): Attributes

When a Saudi corporation raises capital by borrowing money through the issuance of bonds it will be subject to both the existing Companies Act and the Capital Market Law.

#### *(1) Under the Existing Companies Act*

Under the Existing Companies Act, bonds and issuance of bonds are subject to a few articles in Section III (Bonds). It is clear under Article 116 that any Saudi corporation may lawfully issue bonds:

> A corporation may issue against the loans contracted by it indivisible negotiable bonds of equal value.

[282] In distinction to American law, under the existing Companies Act, an explicit right to sue directors is provided.
[283] Article 108 (1) of the existing Companies Act; in addition, Article 108 (2 and 3) of the existing Companies Act addresses preferred shares rights and conditions as discussed above in II.D1.a.(1).(1).

The same Article also provides that:

> Bonds issued (in respect of) a single loan shall confer equal rights (upon the holder thereof). Any provision to the contrary shall be considered nonexistent.

Holders of debt securities have priority over equity holders.[284] As is typically true with American debt securities, these securities lack voting rights; in general, they do not allow the holders the right to vote in shareholders' meetings or to elect directors.

These bonds may be issued to a registered holder or to bearer, but a bond must remain registered to a holder until its value has been paid up in full to the corporation.[285]

### (a) **Substantive Requirements for Issuance**

The Companies Act contains detailed requirements that govern the issuance of bonds. First, the corporation's bylaws must permit the issuance of bonds.[286] Second, the general assembly must adopt a resolution authorizing issuance of the securities,[287] setting the specific terms of the issue or delegating to the board of directors authority to set the specific terms.[288] Third, the resolution must be recorded in the Commercial Register and

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[284] Equity holders are owners of the business and bond holders are creditors. Therefore debt holders have priority over shareholders. This treatment is applied in Article 114 when discussing founders shares attributes that "[u]pon liquidation, they may also be granted priority at the said percentage over the stockholder's equity in the company assets after payment of its debts."
[285] Article 116 of the existing Companies Act.
[286] Article 117 of the existing Companies Act.
[287] Id.
[288] Article 118 of the existing Companies Act.

published in the Official Gazette before it is implemented.[289] Fourth, the corporation's entire capital must be paid in full.[290] Fifth, the amount of bonds being issued may not exceed the corporation's paid-in capital.[291] Sixth, subscribers for any previous bond issue must have paid in full for such bonds.[292] Finally, with certain exceptions,[293] the value of new bonds plus the amount still due from the corporation under a previous bond issue may not exceed the paid-in capital.[294]

**b. Default in Payment of the Value of a Bond by Holders.**

Article 122 of the existing Companies Act specifically provides that Article 110, discussed above in II.C.4.a on page 54 is applicable to bondholders who default in payment for their bonds as well as to stockholders.[295]

Article110 provides:

> A stockholder is obligated to pay the value of (his) share on the dates set for such payment. Successive owners of a share shall be jointly liable for the payment of the value of such share. With the exception of the last holder, all of them shall be relieved of this liability after the lapse of one year from the date of registration of the transfer (transaction) in the stock register.
>
> If a stockholder defaults in payment (of a call) when it be[c]omes due the board of directors may, after giving him notice, by registered letter, sell the share at a public au[c]tion.

[289] Id.
[290] Article 117 of the existing Companies Act.
[291] Id.
[292] Id.
[293] Real estate lending companies, agricultural and industrial banks and other corporations' that are given license from the Minister of Commerce are not subject to this requirement. (id.).
[294] Id.
[295] Article 122 of the existing Companies Act.

> Nevertheless. A defaulting stockholder may, up to the date fixed for the (public) auction, pay the amou[n]t due from him plus (all) the expenses incurred by the company.
>
> The company shall recover from the proceeds of the sale such amounts as are due to it and shall refund the balance to the stockholder.
>
> If the proceeds of the sale fall short of the amounts (due), the company shall have a claim on the entire fortune of the stockholder for the unpaid. The company shall cancel the share so sold[,] issue the purchaser a new share (certificate) bearing the serial number of the cancelled share, and make a notation to this effect in the stock register. (alteration to the original in the quoted text).

### c. Rules Concerning Shareholders Resolutions Affecting Debt Holders

Shareholders resolutions applicable to bondholders may be adopted in either an extraordinary general assembly or a regular general assembly, except that resolutions that change the bondholders' rights must also be ratified in a special meeting of holders of the affected bonds.[296] That meeting will be subject to the same rules applicable to an extraordinary general assembly.[297]

#### *(1) Issuance Process Under the Capital Market Law*

The Capital Market Authority is the agency responsible for regulating the issuance of all instruments that fall under the definition of securities.[298] The

[296] See id.
[297] See Articles 122 and 86 of the existing Companies Act.
[298] Article 5 (a) (2) of the Capital Market Law; the term "Securities" includes among other things convertible and tradable shares of companies, tradable debt instruments issued by companies or public organizations and any instruments representing profit participation rights, any rights in the distribution of assets; or either of the foregoing. (Article 2 of the Capital Market Law)

term "securities" is defined to include, among other things, debt instruments,[299] defined as follows:

> [T]radeable instrument creating or acknowledging indebtedness issued by companies, the government, public institutions or public organisations, but excluding:
> 1) an instrument creating or acknowledging indebtedness for the consideration payable under a contract for the supply of goods or services, or for money borrowed to defray the consideration payable under a contract for the supply of goods or services;
> 2) a cheque, a bill of exchange, a banker's draft or a letter of credit;
> 3) a banknote, a statement showing a balance on a bank account, or a lease contract or any other evidence of disposition of property; and
> 4) a contract of insurance.

Under the definition of the term "securities", bonds, to the extent they are tradeable, will be subject to the Offers of Securities Regulation,[300] discussed above[301] in the same manner that the issuance of corporations' shares are subject to that regulation.

### 3. Interests in Profits Granted in Exchange for Patent or Franchise Rights, So-Called "Founders' Shares"

#### a. Definition and Requirements

A Saudi corporation may, if so authorized in its bylaws, issue shares to one or more persons in exchange for either patents or franchise rights which have

[299] Glossary of Defined Terms; see also Article 2 of the Capital Market Law.
[300] Article 3 of Offers of Securities Regulations.
[301] In II.C.3.

been received by that person from the government or a government agency.[302] Shared issued in these circumstances are known as founders' shares and will be referred to as such in this discussion. They are in fact different from ordinary common or preferred shares, as discussed below.

### b. Founders' Shares Attributes

In general, the attributes of founders' shares are required to be stated in either the corporation's bylaws or the resolution of an extraordinary or regular general assembly authorizing the transaction, in which they are issued.[303] Founders' shares are not considered as part of a corporation's capital,[304] and their holders do not have the right to participate in the administration of the corporation or in shareholders' meetings.[305] Holders of founders' shares typically are entitled to a specific percentage of net profits. This percentage, however, may not exceed 10% of annual net profits after distribution of a dividend of not less than 5% of the paid-in capital to all existing stockholders.[306] Holders of the shares may also be given a priority in liquidation after payment of all corporate debt.[307]

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[302] Article 112 of the existing Companies Act.
[303] Article 114 of the existing Companies Act.
[304] Article 113 of the existing Companies Act.
[305] Id.
[306] Article 114 of the existing Companies Act.
[307] Id.

*(1) Negotiability*

Founders' shares are negotiable, but they are subject to the same initial restrictions on transferability as shares subscribed to by incorporators, discussed above in part II.D.1.e.(1).(a) on page 77.[308] Also, the bylaws may impose additional restrictions on transferability, as discussed above in part II.D.1.e.(2) on page 79.[309]

**c. Registered Shares and Shares for Bearer**

Founders' shares may be issued in registered or bearer form.[310] Transfer of founders' shares is governed by Article 102 of the Companies Act, discussed above in part II.D.1.b.(4) on page 73.

**d. Joint Owners**

Founders' shares are subject to the same rules concerning joint ownership applicable to common and preferred shares, discussed above in part II.D.1.i on page 82.

**e. Protection Against Shareholder Resolutions Affecting the Rights of Founders' Shares**

Founders' shares are subject to resolutions lawfully adopted in shareholders' assemblies, including resolutions concerning depreciation, reserves, extending corporate life, dissolving a corporation before the time

[308] See Article 112 of the existing Companies Act.
[309] See Articles 112 and 100 of the existing Companies Act.
[310] Article 112 of the existing Companies Act.

stated in its bylaws, raising or lowering capital, redeeming or repurchasing corporate shares, and issuing preferred stock.[311] Nevertheless, if the resolution seeks to cancel or modify any rights of the founders' shares, the resolution will not be effective unless approved at a special meeting of holders of the shares.[312] Such meeting will be subject to the requirements of a shareholders' extraordinary general assembly.[313]

### f. Conversion to Other Shares

Founders' Shares may be converted into shares if conversion is approved by the holders of the founders' shares in an assembly that meets the requirements of an extraordinary general assembly.[314] Such conversion may not occur until after expiration of the two-year period of non-negotiability prescribed by Article 100 of the existing Companies Act. Once the conversion takes place, however, the shares into which the founders' shares were converted are freely negotiable.[315]

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[311] Article 113 of the existing Companies Act.
[312] Id.
[313] Articles 113 and 86 of the existing Companies Act. Holders of founders' shares have the right to raise nullification on shareholders resolutions not in accordance with the law or bylaws of the corporation. (Article 113 of the existing Companies Act).
[314] Article 140 of the existing Companies Act. The extraordinary general assembly is discussed below at II.E.2.b.
[315] Article 140 of the existing Companies Act.

### g. Repurchase by the Corporation

#### *(1) At Any Time*

A corporation may at any time from its net profits repurchase the founders' shares at market price, if available, or at a price approved by the holders of the shares at a special meeting.[316] That meeting is subject to the rules applicable to shareholders extraordinary general meetings.[317]

#### *(2) After Ten Years from Date of Issuance*

By a resolution adopted by either an extraordinary general assembly or a regular general assembly the founders' shares may be canceled upon the payment of fair compensation.[318] This step may not be taken, however, until ten years have elapsed from the date the shares were issued.

## 4. Capital Changes

### a. Capital Increases[319]

#### *(1) Authorization*

The initial capital of the corporation must be fully paid before making any further increase to capital by issuing additional shares.[320] After full payment

[316] Article 115 of the existing Companies Act.
[317] See Articles 115 and 86 of the existing Companies Act.
[318] Article 115 of the existing Companies Act.
[319] Articles 136 to 142 of the proposed Companies Act govern capital increase including among other things changes that allow preemptive rights to be sold to other than the shareholder who has this right.
[320] Article 134 of the existing Companies Act.

of the corporation's initial capital, an increase to capital may be authorized by an extraordinary general assembly.[321]

If it is necessary to first increase the number of authorized shares, a resolution to do so must be adopted in a shareholders' extraordinary general assembly.[322] An increase in the number of authorized shares may occur, provided the initial capital has been paid in full.

The determination whether to issue authorized but unissued shares will be stated in either the extraordinary general assembly's resolution authorizing the capital increase or by the board of directors if it is given that authority in the corporation's bylaws or by the resolution.

*(2) Consideration for Newly Issued Shares*

New shares may be issued in consideration of cash, non-cash consideration, or debt cancelation.[323]

(a) **Cash Consideration: Existing Shareholders' Preemptive Right**

Article 136 of the existing Companies Act provides in part:

> Stockholders shall have a pre-emptive right to subscribe for new cash shares, unless the company's bylaws provide for their waiver of this right or for its restriction. The Council of Ministers, on the recommendation of the Minister of Commerce, after agreement with the Minister of [F]inance and National Economy, may cancel or restrict the pre-emptive right in respect of the following companies:

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[321] Id.
[322] Id.
[323] Article 135 of the existing Companies Act.

(a) Concessionary companies
(b) Companies that manage a publis [sic] [public] utility.
(c) Companies that receive subsidy from the Government participates.
[(d) Companies in which the country is a shareholder.][324] [Sic]
(e) Companies that are engaged in banking activities.

* * * *

This article shall not apply to petroleum and mineral companies which operate under special agreements issued by Royal Decrees.
(alteration to the original in the quoted text).

Thus, the existing shareholders of most Saudi corporations will have priority at any time the corporation proposes to issue additional shares for cash consideration.

### i) Notification[325]

Notification to shareholders of their pre-emptive rights is through the publication in a daily newspaper of a notice describing the increase in the corporation's capital and the conditions of subscription.[326] However, notification can be made by registered letter if all of the corporation's shares are registered.[327]

[324] In an oversight in the official translation, (d) was omitted from translation although it is found under the original Arabic text of Article 136 of the existing Companies Act.
[325] Article 136 of the existing Companies Act.
[326] Id.
[327] Id.

ii) Required Shareholder Response

Shareholders wishing to exercise their pre-emptive rights must elect to do so in writing within fifteen days of the publication or notification noted above.[328]

iii) Nature of Right[329]

New shares must be allotted to the subscribing shareholders on a pro rata basis.[330] In the event not all shareholders fully exercise their preemptive rights, the unsubscribed shares must then be allocated on a pro rata basis to those shareholders who sought to subscribe to more than their initial allocations, provided that the number of shares allotted to any of them may not exceed the number of new shares for which he subscribed.[331] Any remaining new shares may then be offered and sold by the corporation, subject to the same rules that were applicable during the corporate formation process.[332]

[328] Id.
[329] Id.
[330] See id.
[331] See id.
[332] See id..

### (b) **Non-Cash Consideration:[333] Absence of Preemptive Rights**

Article 136, discussed above, only provides preemptive rights for new shares issued for cash and does not apply to shares which are issued for non-cash consideration.

The same rules would apply to the evaluation of non-cash consideration when increasing the corporation's capital as are applicable when the corporation initially issues shares for non-cash consideration in the formation process. These rules are discussed above in part II.C.5.c on page 61.[334] The existing shareholders acting in a regular general assembly play the role of the founders assembly (constituent general assembly) in applying these rules.[335]

### (c) **Shares Issued in Exchange For Cancelation of Corporate Debt Obligations**

#### i) Ordinary Debt Obligations

The corporation may issue new shares in exchange for the cancelation of debts of specific amounts due and payable by the corporation.[336] In this circumstance both the board of directors and the auditor must prepare and certify a statement about the origin of the debts and their amount. [337]

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[333] Article 137 of the existing Companies Act.
[334] Id.
[335] Id.
[336] Article 135 (3) of the existing Companies Act.
[337] Article 138 of the existing Companies Act.

ii) Outstanding Corporate Bonds[338]

An increase in capital can be made through the issuance of new shares in exchange for the cancelation of outstanding corporate bonds.[339]

### (d) In Exchange for the Cancelation of Founders' Shares

An increase in capital can be made through the issuance of new shares in exchange for the cancelation of founders' shares.[340]

### (e) Stock Dividends[341]

An additional way to increase capital is the capitalization of all or a portion of surplus reserve.[342] In this situation, the newly issued shares must be in the same form and have the same terms as the outstanding shares.[343] They must be distributed free of charge and in proportion to the number of original shares owned by each shareholder[344]

[338] Article 135 of the existing Companies Act.
[339] Article 135 (5) of the existing Companies Act.
[340] Id.
[341] Article 135 (4) of the existing Companies Act.
[342] Capitalization of the surplus could also be used to increase the par value of outstanding shares. (id.).
[343] Article 139 of the existing Companies Act.
[344] Id.

### b. Capital Decreases (Reduction of Capital)[345]

#### *(1) The Corporation's Capital Exceeds Minimum Capital Requirements*

If the corporation's capital exceeds the minimum capital requirement discussed in II.C.4.a above on page 54, it may reduce its capital to an amount not less than such requirement by a resolution adopted at a shareholders' extraordinary general assembly.[346] This resolution must, however, first be published in a daily newspaper that is distributed in the locality of the corporation's principal office[347] and offer creditors an opportunity to object within 60 days from the publication date.[348] If any creditor objects within this period and submits appropriate documents to substantiate its claim, the corporation then must pay the amount owed to the creditor if it is due and payable or guarantee the debt by providing adequate security if it has not yet matured.[349]

The Companies Act provides the methods by which a corporation's capital may be decreased. The first is a reduction in the par value of outstanding

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[345] Capital decrease under the proposed Companies Act is governed by rules 143-147. The ways to decrease (reduce) a corporation's capital is limited to two ways. These two ways are.
1- Canceling a number of shares that match the amount that needs to be reduced.
2- Buying a number of shares that match the amount that needs to be decreased and then cancelling those shares.

[346] See Article 142 of the existing Companies Act.
[347] Article 143 of the existing Companies Act.
[348] Id.
[349] Id.

shares and a return to the holder of each such share the amount of that reduction in par value.[350]

The second method is the purchase of a number of shares the par value of which equals the amount of the proposed reduction.[351] If this second method is employed three requirements must be met.[352] First, a notice to shareholders of the opportunity to sell their shares must be published in a daily newspaper distributed in the locality of the corporation's principal office or sent by registered mail when all the corporation's shares are registered.[353] Second, if the shares offered for sale exceed the number of shares the corporation seeks to purchase, the offers for sale must be accepted on a pro rata basis.[354] Finally, determination of the purchase price of the shares must be in accordance with the provisions of the corporation's bylaws.[355] In the absence of any such provision, the Companies Act requires that "the company must pay a fair price."[356]

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[350] Article 144 (2) of the existing Companies Act; in the event the holder has not fully paid for such share an appropriate reduction in the amount owed to the corporation may be made (Article 144 (1) of the existing Companies Act).
[351] Article 144 (4) of the existing Companies Act.
[352] Article 146 of the existing Companies Act.
[353] Id.
[354] See id.
[355] Id.
[356] Id.

*(2) The Corporation's Capital is Lower than Minimum Required Capital*

If a corporation has incurred losses, there is clear authority in the Companies Act permitting the reduction of capital to an amount less than the minimum capital requirement discussed in II.C.4.a above on page 54.[357]

The Companies Act provides two methods by which capital may be decreased in this circumstance.[358] The first is similar to that available when capital is reduced to an amount not less than the minimum requirements - a reduction in the par value of shares, discussed above at II.D.4.b.(1) on page 98.[359] The second method permits the cancelation of a number of shares the par value of which is equal to the amount of the reduction in capital.[360] In this case, any cancelation of shares must be done on a pro rata basis[361] with equal treatment of shareholders being observed.[362] The holders of shares to be cancelled must surrender their shares to the corporation within the period specified by the corporation or the corporation will have the right to consider (deem) them cancelled.[363]

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[357] See Article 142 of the existing Companies Act.
[358] There is more than one way to reduce the capital and there are four ways specified in Article 144 of the existing Companies Act.
[359] See Article 144 of the existing Companies Act.
[360] Id; however, when shares are issued with a premium (over par) then reduction in capital is taken from that value which is discussed above in II.D.1.b.(3).
[361] The condition to reducing capital by way of cancelation of a number of shares the par value of which is equal to the amount of the reduction in capital is that equality must be observed among shareholders. (Article 145 of the existing Companies Act).
[362] Id.
[363] Id.

*(3) Requirement of an Auditor Report*

The shareholder's resolution for reduction of capital may be adopted only after the reading of an auditor's report setting forth the reasons necessitating the reduction, the liabilities of the company, and the effect of the reduction on these liabilities.[364]

## *E. Shareholders Powers*

### 1. Allocation of Powers Between Shareholders and Directors

Article 84 of the existing Companies Act provides:

> Except for matters falling within the jurisdiction of the extraordinary general meeting [extraordinary general assembly], the regular meeting [regular general assembly] shall be competent in all matters related to the company and shall be convened at least once a year within six months of the end of the company's financial year.
>
> Other regular general meetings may be convened whenever the need arises. (alteration to the original in the quoted text). (emphasis added)

Article 73 of the existing Companies Act provides:

> With due regard to the prerogatives vested in the general meeting, the board of directors shall enjoy full powers in the administration of the company. It shall be entitled, within the scope of its competence, to delegate one or more of its members or others to perform an act or certain acts.
>
> Nevertheless, the board of directors may not contract loans for terms exceeding three years, or sell or mortgage the real property or the place of business of the company, or release the debtors of the company from their liabilities, unless so authorized in the bylaws of the company and subject to the terms set forth therein.

[364] Article 142 of the existing Companies Act.

> If the company's bylaws do not contain any provisions in this connection, the board may perform the above acts with an authori[z]ation f[ro]m the regular general meeting, unless such acts fall by virtue of their nature within the scope of the company's objects.[365]
> (alteration to the original in the quoted text). (emphasis added)

It is critical to note initially two matters concerning Article 84 (shareholders powers). First, the grant of powers to shareholders encompasses "all matters related to the company." Second, and equally important, there is no limitation on this grant of shareholders powers in Article 84. Concerning Article 73 (directors powers), it is also important to note initially two matters. First, the grant of powers to directors is limited to the "administration" of the corporation as contrasted to the grant to shareholders of power "in all matters related to the corporation." Second, and arguably of even greater importance, the initial clause of Article 73 provides "With due regard to the prerogatives vested in the general meeting * * * *"

On the basis of the language of Articles 73 and 84, it is the Author's view that, unlike the situation in the United States, under Saudi corporate law, the ultimate powers concerning corporate matters resides in the corporation's shareholders who have the power to override or reverse decisions reached by the corporation's board of directors. In this regard, Article 108 (1) of the existing Companies Act provides that shareholders have "the right to control

[365] A corporation must have a board of directors; Article 66 of the existing Companies Act provides in part

> A corporation shall be administered by a board of directors

[supervise][366] the acts of the board of directors * * * *"Unfortunately, the Author's research failed to reveal any Saudi case law that can be referred to for the purpose of testing the soundness of this view. Moreover, treatises and articles examined concerning Saudi corporate law which address the matter usually do so by way of limited reference to the general assembly as the higher authority in the corporation without providing further elaboration. They then discuss how shareholders do not usually practice their role as they should. The Author believes, however, that the limited nature of the discussion lends inferential support to his view.[367]

### a. Appointment and Removal of Auditors

Consistent with the broad grant of powers to shareholders under the Companies Act is the treatment of the matter of a corporation's auditors in Articles 129-133 of the Act.

Initially, is important to note that Article 130 explicitly calls for both the appointment and removal of auditors to be by shareholders and not directors, as is customarily the case in the United States. Not surprisingly, the

[366] "Supervise" as used to translate the same Arabic word used in the English translation of Article 3 of the Corporate Governance Regulations, which is primarily a restatement of shareholders rights provided in Articles 108 (1) of the Companies Act, discussed below in II.G.6.c.(1).(a).

[367] See MUHAMMAD ḤASAN AL-JABR, AL-QĀNŪN AL-TTIJĀRĪ [Saudi Commercial Law] 344 (Saudi Arabia), AL-KHŪLĪ, *supra* note 67, at 219, ḤAMZAH'ALĪ AL-MADANĪ, AL-QĀNŪN AL-TTIJĀRĪ AL-SU'ŪDĪ [SAUDI COMMERCIAL LAW] 279 (Dār Al-Madanī Bi-Jiddah 2001), AL-SHARĪF & AL-QURASHĪ, *supra* note 68, at 266, ḤAMD ALLĀH, *supra* note 88, at 318, SA'ĪD YAHYA, AL-WAJĪZ FI AL-NNIZĀM AL-TTIJĀRĪ AL-SU'ŪDĪ [THE COMPACT IN SAUDI COMMERCIAL LAW] 254 (Al-Maktab Al-'Arabī Al-Ḥadīth 2004).

Companies Act requires that the auditors be appropriately licensed and be totally independent.[368]

It is also important to note that Article 132 includes an express requirement that the auditor submit an annual report to the shareholders' regular general assembly that sets forth the attitude of the company's management in enabling him to obtain the particulars and clarifications requested by him, any violations of the provisions of the Companies Act or of the company's bylaws he may have discovered, and the extent, in his opinion, to which the company's accounts are in conformity with reality. Article 132 requires that the auditor's report be read at the general meeting. If the shareholders resolve to approve the board of directors' report without hearing the auditor's report, the resolution is considered null and void.

[368] Article 130 of the existing Companies Act. No person may hold the office of auditor and (at the same time) take part in organizing the company, be a director thereof, or perform any technical or administrative work for the company, even in an advisory capacity. Nor may an auditor be a partner or an employee of, or be related within four degrees of consanguinity to any founder or director of the company. (*id.*)

## 2. Shareholders' General Assemblies[369]

### a. Introduction

Shareholders meetings fall into three categories: the founders assembly; extraordinary general assemblies; and regular general assemblies.

The founders assembly was discussed above in II.C. 5 on page 56, in connection with a description of the steps necessary to corporate formation. After the corporation has been duly organized, general assemblies of its shareholders will be in what are known as either an extraordinary general assembly or a regular general assembly.

Article 84 of the Companies Act provides that, with the exception of matters falling within the jurisdiction of the extraordinary general assembly, the regular general assembly is competent in all matters related to the corporation.[370] Thus, shareholders' meetings will be in context of a regular general assembly unless they are specifically required to act upon a matter in an extraordinary general assembly. For this reason, the following discussion

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[369] In contrast to special meetings of specific class(es) of shareholders such as those meetings discussed above in II.D.1.a.(1); Article 95 of the existing Companies Act provides:

> Minutes shall be kept for every (general) meeting, Showing the names of stockholders present or represented (thereat), the number of shares held by (each of) them, whether personally or by proxy, the number of votes allotted thereto, the resolutions adopted, the number of consenting and dissenting votes, and a comprehensive summary of the debate conducted at the meeting.
>
> Following every meeting, the minutes shall be regularly entered in a special book, which shall be signed by the chairman, the secretary, and the teller of the meeting.

[370] Article 84 of the existing Companies Act.

begins with an examination of those matters that require action by an extraordinary general assembly

### b. Extraordinary General Assembly

#### *(1) Under the existing Companies Act*

Pursuant to Article 85 of the Companies Act, shareholders' action concerning lawful amendments to the corporation's bylaws must occur in an extraordinary general assembly.[371] Article 92 requires that resolutions amending a corporation's bylaws be published together with a copy of its articles of incorporation and bylaws in the Official Gazette. The directors must also register such changes in the Commercial Register in accordance with the provisions of the Commercial Register Law.

Article 85, however, further provides that even an extraordinary general assembly lacks the power to adopt certain bylaw amendments that would fundamentally alter shareholders' rights and liabilities or that would radically change the nature of the corporation. Specifically, Article 85 prohibits the following types of amendments: (a) amendments that would deprive a stockholder of his fundamental rights as a stockholder, as derived from the bylaws of the company and Articles107 and 108 of the Companies Act; (b)

[371] Article 85 of the existing Companies Act; the board of directors must publish resolutions adopted by an extraordinary general assembly if they provide for alteration to the corporation's bylaws, subject to provisions 65 of the existing Companies Act. (Article 92 of the existing Companies Act); it is noted that although variations from the Minister of Commerce's model bylaws discussed above in note 102 require the Minister's approval, such approval is not required for any shareholders approved bylaws amendments made during the life of the corporation.

amendments that would increase the financial liabilities of stockholders; (c) amendments that would alter the object of the company; (d) amendments that would transfer to a foreign country the head office of a company incorporated in the Kingdom; and (e) amendments that would change the nationality of the company.

The stockholders' rights found in Articles 107 and 108 of the Companies Act consist of the following: (a) the right to attend and vote at stockholders' meetings; (b) the right to receive a share of profits distributed and to participate in liquidation distributions; (c) the right to transfer one's shares; (d) the right of access to the corporation's books and records; (e) the right to participate in supervision of the board of directors; (f) the right to institute an action against the directors for breach of their duties; and (g) the right to contest the validity of stockholders' resolutions.[372]

In addition, shareholders at an extraordinary general assembly may act on matters that could be acted on at regular general assembly, in the same manner and subject to the same conditions as if the extraordinary general assembly were a regular general assembly [373]

*(2) Under The Proposed Companies Act*

Although Article 88 of the proposed Companies Act is generally similar to the existing Companies Act in regard to extraordinary general assemblies, it

[372] Articles 107 and 108 of the existing Companies Act; in addition to Article 108 (2 and 3) addresses nonvoting preferred shares as discussed in II.D.1.a.(1).
[373] Article 85 of the existing Companies Act.

differs in three significant respects regarding bylaws amendments that would alter shareholders' fundamental rights and liabilities. First, the right to share in distributions of profits language is extended to stock dividends, except those payable to employees of the corporation or its subsidiaries. Second, preemptive rights to subscribe to shares issued for cash are made a statutory right, unless otherwise provided in the bylaws, which is a much broader preemptive right than under the existing Companies Act. Finally, bylaw amendments that alter shareholders liability are permissible but only if adopted by unanimous vote.[374]

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[374] Article 88 of the proposed Companies Act; Article 88 of the proposed Companies Act would read [translation by author]

1. The extraordinary general assembly shall be competent to alter the bylaws of the company but those related to the following:
    a. altering or depriving a shareholder from his basic rights given to him as a shareholder specifically:
        1- obtaining a share in the profit declared for distribution, whether in cash or through issuance of free shares to other than the employees of the corporation and its subsidiaries
        2- obtaining an equity in the company's assets upon liquidation,
        3- attending general and special shareholders assemblies and participating in the deliberation and voting on the resolutions (proposed) thereat
        4- disposing of his shares in accordance with this Act.
        5- [(right of) accessing to the company's books and documents] (right of) requesting to peruse the companies documents and books, and the right to supervise the acts of the board of directors, to institute the action in liability against the directors, and to contest the validity of the resolutions adopted at General and special shareholders assemblies
        6- Priority (pre-emptive right) in subscribing in new shares that are issued for cash, unless the bylaws state otherwise.
    b. Alteration of a nature to increase the financial liabilities of stockholders if not approved by all shareholders.
    c. Transferring to a foreign country the head office of a company
    d. Changing the nationality of the company.
2. Shareholders acting in an extraordinary general assembly also have the power to adopt resolutions on matters primarily within the jurisdiction of a regular general assembly but subject to the same conditions and in the same manner for a regular general assembly.

### c. Regular General Assembly

*(1) Requirement to Hold Annual Regular General Assembly*

The regular general assembly must convene at least once a year within six months following the end of the corporation's fiscal year. Other regular general assemblies may occur as the need arises.[375] As noted in II.E.2.a above on page 105, shareholders may act on all matters in a regular general assembly except those which the Companies Act specifically restricts to extraordinary general assemblies.

### d. Power to Call

*(1) Under the Existing Companies Act*

Both shareholders' extraordinary and regular general assemblies are convened at the summons of the board of directors in the manner prescribed in the bylaws of the corporation.[376]

#### (a) Regular General Assemblies

In addition to vesting the board of directors with authority to call meetings, Article 87 of the Companies Act requires the board to call a regular general assembly if requested by the auditor or by stockholders representing at least 5% of the corporation's capital.

[375] Article 84 of the existing Companies Act.
[376] Article 87 of the existing Companies Act.

### (b) **Both Extraordinary and Regular General Assemblies**

The same Article further provides concerning both extraordinary and regular general assemblies that the General Department of Companies may, at the request of stockholders representing at least 2% of the corporation's capital, or pursuant to a decision by the Minister of Commerce, directly call a general meeting if such meeting is not called within one month from the date set therefor.

#### *(2) Under the Proposed Companies Act*

The proposed Companies Act significantly expands the circumstances in which persons or entities other than the board of directors may cause a regular general assembly to be convened. It should be noted how different this situation is than the law in the United States, in which, generally, shareholders' meetings may be called only by the board of directors or other persons designated by the certificate of incorporation or bylaws.[377] A brief synopsis of these innovations in the proposed Companies Act follows.

[377] See Delaware General Corporation Law section 211. As an exception to this rule section 211(c) of this law provides in part that "if there be a failure to hold the annual meeting or to take action by written consent to elect directors in lieu of an annual meeting, for a period of 30 days after the date designated for the annual meeting, or if no date has been designated, for a period of 13 months after the latest to occur of the organization of the corporation, its last annual meeting or the last action by written consent to elect directors in lieu of an annual meeting, the Court of Chancery may summarily order a meeting to be held upon the application of any stockholder or director."

First, the board of directors must call a regular general assembly if requested to do so by the corporation's audit committee.[378] In addition to the audit committee, the auditor itself may call a meeting if the board of directors fails to do so within thirty days after a request by the auditor.[379]

The Competent Authority[380] may also cause a regular general assembly to be held in several different situations. Thus, the Competent Authority may call a regular general assembly to convene when one has not been convened within six months following the end of the corporation's fiscal year.[381] If the number of directors falls below the quorum required for directors' meetings, the Competent Authority may call such a shareholders' meeting for the purpose of electing additional directors.[382] The Competent Authority also may call a regular general assembly if violations of the Companies Act or the corporation's bylaws are discovered, or if there has been a defect in administration of the corporation.[383] Finally, the Competent Authority may convene a regular general assembly when one has not been called within fifteen days following a request by the corporation's auditor, its audit

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[378] Article 90 (1) of the proposed Companies Act.
[379] Id.
[380] Under Article 1 of the proposed Companies Act, the Competent Authority refers to the Ministry of Commerce and Industry except references related to listed corporations, then the Competent Authority refers to the Capital Market Authority.
[381] See Article 90 (2) (a) of the proposed Companies Act.
[382] See Article 90 (2) (b) of the proposed Companies Act. As discussed below II.F.2.c.(2), under the proposed Companies Act, when there is resignation of entire board or failure of shareholders to elect a board of directors, the Minister of Commerce or the Chairman of the Capital Market Authority Board for those corporations listed on the Saudi exchange must appoint a committee charged with supervising the management of the corporation and calling a shareholders' general assembly to elect a new board of directors within three months from the date the committee was appointed.
[383] See Article 90 (2) (c) of the proposed Companies Act.

committee or shareholders representing at least 5% of the corporation's capital.[384] In the four circumstances described immediately above, shareholders representing at least 2% of the corporation's capital may request that the Competent Authority call a regular general assembly.[385] The Competent Authority is required to honor such a request within thirty days,[386] and the call must describe the matters to be acted upon in the meeting.[387]

### e. Notice Requirements

Notice of both extraordinary and regular general assemblies must be published in the Official Gazette and in a daily newspaper distributed in the locality of the principal office of the corporation at least twenty five days prior to the date set for the meeting.[388] If, however, all shares are registered, then it is permissible to send notice by registered mail,[389] which notice should contain the agenda for the meeting.[390] Presumably this requirement is also applicable to notices by publication. Copies of both documents must be sent to

[384] Article 90 (2) (d) of the proposed Companies Act; the capital is formed from contributions in cash and in kind (Article 3 of the existing Companies Act); when counting the quorums for Extraordinary and Regular General Assemblies, in general, the nonvoting preferred shares as discussed above in II.D.1.a.(1). are not counted towards satisfying the quorum and voting requirements (Article 108 (2) of the existing Companies Act). Moreover, the Founder's shares are also not considered as part of the formal capital, "shall not enter in the formation of the company's capital." (Article 113 of the existing Companies Act).
[385] See Article 90 (3) of the proposed Companies Act.
[386] Id.
[387] Id.
[388] Article 88 of the existing Companies Act.
[389] Id.
[390] Id.

the General Department for Companies within the period specified for publication.[391]

All corporations must coordinate with the General Department of Companies, which is a department in the Ministry of Commerce, about the text of the notice to shareholders general assemblies and the content of the agenda before being published.[392]

### f. Who May Attend

#### *(1) Under the Existing Companies Act*

The right of shareholders to attend extraordinary and regular general assemblies is specified in the corporation's bylaws,[393] subject to the provisions in Article 83 of the Companies Act that "every stockholder who holds twenty shares shall have the right to attend, even if the bylaws of the company provide otherwise."[394]

Moreover, Article 90 of the existing Companies Act provides for the registration of shareholders who intend to attend an assembly and for the preparation of a list of those actually attending as follows:

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[391] Id; under the proposed Companies Act, the notice of the general assembly meeting must be published only in a daily newspaper at least ten days before the meeting. It is permissible to only send invitations to all shareholders by registered mail. A copy of the invitation and the meeting schedule must be sent to the Ministry and to the Capital Market Authority for a publicly held corporation listed in the market within the publication period. (Article 91 of the proposed Companies Act).
[392] Article 2 of Minister of Commerce's decision number (959) on 04/27/1423H
[393] Article 83 of the existing Companies Act; the language of Article 83 which provides in part "The bylaws of the company shall specify the (classes of) stockholders entitled to attend general meetings." was omitted from the proposed Companies Act.
[394] Id.

> Stockholders wishing to attend a general or special meeting shall register their names at the head office of the company (and may do so) up to the time fixed for such meeting, unless the bylaws of the company provide otherwise.
>
> When the meeting convenes, a list shall be prepared of the names and residence addresses of the stockholders present or represented thereat, showing the number of shares held by each, whether personally or by proxy, and the number of votes allotted thereto. Any interested party shall be entitled to review this list.[395]

Notwithstanding any provision in the corporation's bylaws to the contrary each shareholder attending a meeting has the right to participate in the discussion of all matters and to address questions to both the board of directors and the corporation's auditor.[396] The directors and the auditor must answer such questions, except to the extent an answer would jeopardize the corporation's interests. If a shareholder is dissatisfied with an answer, the shareholder may appeal to the general assembly, whose decision is final.[397]

*(2) Under the proposed Companies Act*

Every shareholder, regardless of the number of shares held, has the right to attend extraordinary and regular general assemblies even if the bylaws state otherwise.[398]

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[395] The second paragraph of Article 90 of the existing Companies Act has been omitted from proposed Article 92 of the proposed Companies Act among other amendments to the language of existing Article 90 of the Companies Act, Article 95 of the existing Companies Act provides in part:

> Minutes shall be kept for every (general) meeting, Showing the names of stockholders present or represented (thereat), the number of shares held by (each of) them, whether personally or by proxy, the number of votes allotted thereto.

[396] Article 94 of the existing Companies Act.

[397] Id.

[398] Article 86 (2) of the proposed Companies Act.

### g. Proxies

For both extraordinary and regular general assemblies a shareholder may give a proxy in writing to another shareholder other than a director.[399]

### h. Quorum Requirements

#### *(1) Extraordinary General Assemblies*

##### (a) **Under the Existing Companies Act**

The quorum requirement for an extraordinary general assembly is the presence at the meeting of shareholders with the power to vote at least one-half of the corporation's capital, unless a greater number is required by the corporation's bylaws.[400] If the quorum requirement is not met at the initial meeting, a second meeting must be called in the same manner as the initial meeting.[401] This second meeting must be held within thirty days of the date of the initial meeting.[402] The quorum requirement for the second meeting requires the presence of shareholders with the power to vote only one quarter of the corporation's capital.[403]

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[399] Article 83 of the existing Companies Act; under the proposed Companies Act, a proxy may also not be given to an employee of the corporation. (Article 86 (2) of the proposed Companies Act).
[400] Article 92 of the existing Companies Act.
[401] See Articles 92, 91 and 88 of the existing Companies Act.
[402] Articles 92 and 91 of the existing Companies Act.
[403] Article 92 of the existing Companies Act.

### (b) **Under the Proposed Companies Act**

#### i) First Proposal

The quorum requirement for the initial meeting is unchanged other than a new provision that prohibits the corporation's bylaws from setting the quorum at greater than shareholders with the power to vote two-thirds of the corporation's capital.[404] However, under this First Proposal, if a quorum is not present at, or within one hour after the time set for the meeting, then a second attempt to convene the meeting must be made after an additional hour. In this circumstance, the quorum requirement is lowered to shareholders with the power to vote one quarter of the corporation's capital.[405] If the quorum requirement for the second meeting is not met, a new call for a third meeting must be made, subject to the same notice requirements as for the initial meeting. For this meeting there is no quorum requirement, after the approval of the Competent Authority.[406]

#### ii) Second Proposal

The Second Proposal is similar to the First but the second meeting is to be held one hour after expiration of the time specified for the first meeting to be convened.[407] The Second Proposal adds the further requirements that the

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[404] Article 94 (1) of the First Proposal to the Companies Act.
[405] Id.
[406] Id; under the proposed Companies Act, Competent Authority refers to the Ministry of Commerce and Industry but to those related to corporations listed on the Saudi Stock Market, it is the Capital Market Authority.
[407] Article 94 (2) of the Second Oroposal to the Companies Act.

notice of the meeting states this possibility.[408] Otherwise, a new call for the second meeting must be made subject to the same notice requirements as for the initial meeting. In either case, the quorum for the second meeting is shareholders with the power to vote one quarter of the corporation's capital.[409]

### *(2) Regular General Assemblies*

#### (a) **Under the Existing Companies Act**

The quorum requirement for regular general assembly is the presence at the meeting of shareholders with the power to vote shares representing at least one-half of the corporation's capital, unless a greater number is required by the corporation's bylaws. If a quorum is not present, a second meeting must be held within thirty days of the date of the initial meeting.[410] Because twenty five days prior notice is required, this meeting must be called five days after the date of the failed initial meeting.[411] The shares present or represented at this second meeting, no matter how many or few, will constitute a quorum.[412]

#### (b) **Under the Proposed Companies Act**

##### i) First Proposal

The quorum requirement for a regular general assembly would be the presence of shareholders representing 25% of the corporation's capital, unless

[408] See Article 94 (2) of the Second Proposal to the Companies Act.
[409] See Id.
[410] Article 91 of the existing Companies Act.
[411] See Articles 91 and 88 of the existing Companies Act.
[412] Article 91 of the existing Companies Act.

a greater percentage, not to exceed 50%, is required by the corporation's bylaws.[413] If a quorum is not present at, or within one hour after the time set for the initial meeting, a second meeting would be convened following an additional hour.[414] There will be no quorum requirement for that meeting.[415]

ii) Second Proposal

The Second Proposal is similar to the First, but the second meeting is to be held one hour after expiration of the time specified for the first meeting to be convened.[416] The Second Proposal adds the further requirements that the corporation's bylaws specify that a second meeting on the date of the initial meeting will occur if a quorum is not present for the initial meeting, and that the notice of the meeting states this possibility.[417] The second meeting also has no quorum requirement.[418]

### i. Voting Requirements

#### *(1) Manner of Voting*

A corporation's bylaws prescribe the manner of voting at shareholders' meetings.[419] As discussed above in II.D.1.c.(1) on page 74, as a result of requirements found in Articles of the Companies Act, It appears to be that the

[413] Article 93 (1) of the First Proposal to the Companies Act.
[414] Id.
[415] Id.
[416] Article 93 (2) of the Second Proposal to the Companies Act.
[417] See Article 93 (1 and 2) of the Second Proposal to the Companies Act.
[418] See Article 93 (2) of the Second Proposal to the Companies Act.
[419] Article 93 of the existing Companies Act.

bylaws may not set the voting right lower than twentieth of a vote per share which is the default minimum.

*(2) Extraordinary General Assemblies (Super Majority)*

Normally, resolutions at an extraordinary general assembly must be approved by the vote of at least two-thirds of the shares represented at the meeting.[420] However, a higher three-fourths majority is required for resolutions:[421] (a) increasing or decreasing the corporate capital;[422] (b) extending the term (life) of the corporation;[423] (c) dissolving the corporation before the end of its term;[424] and (d) approving a merger.[425]

*(3) Regular General Assemblies*

At a regular general assembly, resolutions are passed by the vote of a majority of the shares represented, unless a greater number is required by the corporation's bylaws.[426]

**j. Cumulative Voting**

Cumulative voting for directors is fundamental to the protection of minority shareholders. The importance of cumulative voting is that it increases minority shareholders' chances to have someone of their choice to

[420] Article 92 of the existing Companies Act.
[421] Id.
[422] Id.
[423] Id.
[424] Id.
[425] Id.
[426] Article 91 of the existing Companies Act.

serve on the board of directors, which in turn may help in preventing their exploitation.

*(1) Under the Existing Companies Act*

Although the existing Companies Act does not expressly provide for cumulative voting it is the author's view that it is permissible for a corporation's bylaws to provide that cumulative voting shall be employed in the election of directors.[427]

*(2) Under the Proposed Companies Act*

Cumulative voting would be required in the election of directors.[428] This will be a significant change in the corporate governance of all Saudi corporations, which will greatly serve as a tool for the protection of minority shareholders.

**k. Failure to Meet Shareholders Assemblies Requirements**

Resolutions adopted at shareholders' assemblies contrary to the provisions of the Companies Act or the corporation's bylaws are deemed to be null and void, except to the extent such a result would prejudice the rights of a third party who acted in good faith. An action to invalidate such a resolution may be brought by the General Department for Companies or by any shareholders who recorded a dissent from passage of the resolution in the assembly's minutes or who was absent from the assembly for good cause. Such an action

[427] See id.
[428] Article 95 (1) of the proposed Companies Act.

must be instituted within one year of the date of the resolution's passage. An adjudication of invalidity renders the resolution a complete nullity with respect to all shareholders.[429]

### l. Use of Modern Technology in Conducting Shareholders Assemblies

Under Article 86 (3) of the Second Proposal to the Companies Act, any doubt is removed concerning the lawfulness of conducting general shareholders assemblies through the use of modern technology. That Article would provide: [translation by author]

> General assemblies may convene and shareholders participate in their deliberations and vote on their resolutions by modern technology means, according to controls laid down by the Competent Authority.[430]

### m. Monitoring of Assemblies

#### *(1) Under the Existing Companies Act*

The Ministry of Commerce may delegate one or more representatives as observers to attend any general shareholders' assembly.[431]

#### *(2) Under the Proposed Companies Act*

In the case of listed corporations, the Capital Market Authority would also have the authority to delegate one or more such representatives to any general shareholders' assembly. Moreover, this proposal specifies that the function of

[429] Article 97 of the existing Companies Act.
[430] Article 86 (3) of the Second Proposal to the Companies Act.
[431] Article 83 of the existing Companies Act.

these observers is "to ensure application of the provisions of this law"[432] (translation by author). Thus, the Ministry and the Capital Market Authority in case of listed corporations may delegate to both extraordinary and regular general assemblies one or more representatives as observers to make sure that the provisions of the Companies Act are applied.[433]

## *F. Board of Directors*

### 1. Powers

#### a. Under the Existing Companies Act

Subject to the powers of shareholders, the board of directors has the broadest powers to manage the corporation.[434] Thus, Article 73 provides in part: "with due regard to the prerogatives vested in the [shareholders], the board of directors shall enjoy full powers in the administration of the company."[435] Article 73 also authorizes the board to delegate any of its powers and to operate through committees.[436]

Nevertheless, Article 73 of the Companies Act prohibits the board from unilaterally authorizing corporate loans with a maturity exceeding three years, selling or mortgaging real property or place of business, or releasing corporate

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[432] Article 86 (3) of the First Proposal to the Companies Act and Article 86 (4) of the Second Proposal to the Companies Act.
[433] Article 86 (3) of the First proposal to the Companies Act and Article 86 (4) of the Second proposal to the Companies Act.
[434] Article 73 of the existing Companies Act.
[435] (Alteration to the original in the quoted text) (emphasis added); Article 73 of the existing Companies Act.
[436] Id; Article 73 of the existing Companies Act provides in part

> It shall be entitled, within the scope of its competence, to delegate one or more of its members or others to perform an act or certain acts.

debtors except as permitted by and subject to the terms set forth in the bylaws.[437] If the bylaws do not contain any provision in this connection, the board of directors may authorize such transactions as permitted by a resolution of the regular general assembly, unless such acts otherwise, by virtue of their nature, fall within the scope of the company's objects.[438]

The corporation is bound by the acts of the board in the scope of its authority.[439]

### b. Under the Proposed Companies Act: In General

Article 75 of the proposed Companies Act provides as follows:

> 1- With due regard to the prerogatives vested in the general meeting, the board of directors shall enjoy full powers in the administration of the company with which to achieve its object, except for things that are excluded by a particular (special) provision in this act/law or in the corporation's bylaws of acts and actions that fall under the competence of the general meeting, the board is also entitled-within the scope of its competence-to delegate one or more of its members or others to perform an act or certain acts. (emphasis added)
>
> 2- The board of directors is permitted to contract loans with any maturity, sell or mortgage the real property, or the place of business of the company, or release the debtors of the company from their liabilities unless the bylaws or the regular general meeting [regular general assembly] limits the board of directors' authority in this regard.

The apparent purpose of the proposed Companies Act is to clarify the allocation of powers between shareholders and board of directors discussed

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[437] Id.
[438] Id.
[439] Article 75 of the existing Companies Act.

above, especially by reversing the statutory default rule regarding loans in excess of three years, sales or mortgage of real property or the place of business, or release of debtors

The proposed Companies Act also grants the board of directors broader powers to bind the corporation, including acts outside the scope of its authority[440] unless the affected third party acted in bad faith or knew that the board's acts were outside the scope its authority.[441]

### c. Under the Proposed Companies Act: Audit Committee Requirement

Proposals to the Companies Act would mandate an audit committee created by a shareholder resolution and composed of not fewer than three nor more than five members, none of whom may be executive directors. Thus, the committee must consist of outside directors, shareholders or other persons.[442] The resolution creating an audit committee must also define the tasks of the committee, its operation procedure, and the remuneration of its members.[443] A majority of the members of the committee constitutes a quorum, and resolutions are passed by a simple majority of votes of the members

[440] Article 77 of the proposed Companies Act.
[441] Id.
[442] Article 101 of the proposed Companies Act.
[443] Id.

present.[444] In case of a tie vote in a four member committee, the side with which the president of the committee votes prevails.[445]

The committee monitors the corporation's business and has a right of access to its records and documents.[446] The committee may request a clarification or statement from board members or executive management, and it also may request the board of directors to call a shareholders' meeting if the board impedes or precludes the committee's work, or if the corporation suffers damages or major losses.[447] The audit committee must review the corporation's financial statements, reports and notes supplied by the auditors and provide its responses and opinions, if any.[448] The committee also must prepare a report concerning the adequacy of the corporation's internal control system and other work completed by the committee within the scope of its authority.[449] The board of directors must place enough copies of this report in the corporation's principal office not less than ten days before the shareholders' meeting in order to facilitate any shareholder who wishes a copy.[450] In addition, the report must be read at the meeting.[451]

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[444] Article 102 of the proposed Companies Act.
[445] Id.
[446] Article 103 of the proposed Companies Act.
[447] Id.
[448] Article 104 of the proposed Companies Act.
[449] Id.
[450] Id.
[451] Id.

The provisions of the proposed Companies Act that call for an audit committee are of the highest importance to corporate governance in Saudi Arabia, and for that reason are reproduced here in full.

[translation by author]

> In Joint Stock Companies an audit committee must be composed by a resolution from the general assembly from shareholders or any other persons who are not executive board members. This committee must have no less than three members and no more than five members. The resolution must define the tasks of the committee, restraints on its work and the remuneration of its members. (Article 101 of the proposed Companies Act).
>
> For the audit committee to duly convene a majority of its members must attend. Its resolutions are passed by a majority of votes of present members, and in the case of a tie the side which receives the vote of the president of the committee prevails. (Article 102 of the proposed Companies Act).
>
> The audit committee shall specialize in supervising the company's activities/acts and in doing so it may peruse its records, documents and request any clarification or a statement from board members or executive management, and it may request from the board of directors to call to a general assembly if the board of directors precludes the committee from doing its work or if the corporation suffers damages or huge losses. (Article 103 of the second proposal to the Companies Act).
>
> The audit committee must look at the corporation's financial statements, reports and notes given by the auditor and give its responses and opinions toward them if any. The committee must prepare a report about its opinion on the adequacy of the corporation's internal control system and other work it has made under its competency. The board of directors must place enough copies of this report in the corporation's head office before at least ten days from the general assembly; in order to facilitate any shareholder who wishes with a copy. The report shall be read when the meeting is held. (Article 104 of the proposed Companies Act).

Under the existing Companies Act, there is no requirement for an independent audit committee.[452] The importance of an independent audit committee to help ensure accurate financial reporting requires little, if any, comment, although it is noted that one of the important provisions in the Sarbanes-Oxley Act of 2002 mandates the formation of such committees in publicly-held U.S. corporations.[453] Moreover, currently audit committees are mandatory on publicly-held Saudi corporations pursuant to Article 14 of the Corporate Governance Regulations, as discussed below in II.G.6.b.(2) on page 172. The proposed Companies Act extends this mandate to all Saudi corporations.

### 2. Qualifications, Number, Selection, Term, Removal

#### a. Qualifications

##### *(1) Under the Existing Companies Act*

###### (a) **Minimum Share Ownership Requirement**

The Companies Act requires that every board member own shares of the corporation the value of which is not less than SAR.10,000 ($1=3.75).[454] Within thirty days after the director's appointment, these shares must be deposited in one of the banks designated by the Minister of Commerce.[455] If

[452] However, the proposals to the Companies Act would mandate such a committee and set its rules as discussed above in II.F.1.b.c.
[453] Section 10A (m) of the Securities Exchange Act of 1934.
[454] See Article 68 of the existing Companies Act.
[455] Id.

the director does not submit these shares in time, he will forfeit his directorship.[456]

The shares are set aside as a guarantee against any liability of that director that might arise because of a breach of duty owed to the corporation.[457] It should be noted that shares deposited will not be returned to the member at the end of the member's term. The return to a member of his deposited shares is governed by Article 68, which provides that the shares are to be non-negotiable and held until the end of the specified period that a claim can be heard or until a verdict is rendered,[458] whichever is later.

### (b) Limitation on the Number of Boards of Directors on Which an Individual May Serve

A person may serve on an unlimited number of boards of directors subject, however, to any limitation that may be created by a resolution of the Council of the Ministers.[459] The Council of Ministers has invoked this power and issued a resolution under which a person may not be appointed to more than five corporations' boards at one time, with any excess over five being deemed a nullity.[460] This limitation, however, does not apply to the state, public

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[456] Id.
[457] Id; duties of directors are discussed starting from II.F.4.
[458] Article 68 of the existing Companies Act.
[459] Article 66 of the existing Companies Act. Under Article 12 (h) of the Corporate Governance Regulations, discussed below II.G.6.c.(2).(c) and subject to comply or disclose rule, discussed below in II.G.5.c:

> "A member of the Board of Directors shall not act as a member of the Board of Directors of more than five joint stock companies at the same time."

[460] Council of Ministers' resolution number (55) on 02/28/1419H, 06/22/1998 AD.

juridical persons, corporations, and persons appointed by the government.[461] For example, a parent corporation that own shares in more than five corporations may be represented on the boards of all corporations in which it holds shares.

*(2) Under The Proposed Companies Act*

Under the proposed Companies Act, there would be no provision requiring directors to own shares or to deposit shares as guarantee against personal liability to the corporation.[462] Nor would there be a provision limiting the number of boards of directors on which an individual could serve.[463]

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[461] Id.

[462] Having this as a mandate raise questions such as is this the best way to insure the recovery of the damages or penalties rendered by courts from the directors subject to the judgment, is this amount of share is enough or is insurance is a better alternative than the continuous holding of these shares requirement . The answer depends on corporations that exist and their business that the board is managing and on the average value of courts judgments. Also, continuous monitoring of these shares and legal problems that arises because of this requirement do not lean in favor of requiring such measure. In addition, the ownership requirement may prevent some qualified individuals from serving on the boards of corporations. Finally, the mandate of having these shares may not be the best way to reach the goal intended. A better approach from having it is to require insurance. Also, a better approach is to give each corporation the right to choose whether to have such mandate in its bylaw to the extent it sees fit or at least making this a default rule and giving the corporation the right to opt out.

[463] However, not having such limitation under the proposed Companies Act does not prevent imposing a limit on the number of boards of directors on which an individual could serve under the Capital Market Law or regulations issued pursuant to it by the Capital Market Authority for those corporations listed on the Saudi capital market or under another Saudi law or regulation.

### b. Number

#### *(1) Under the Existing Companies Act*

The number of directors must be specified in the bylaws,[464] which number may not be fewer than three.[465] There is no limitation on the maximum number of directors.[466] If the number of members drops below three, or below a greater number required by the corporation's bylaws, a shareholders' regular general assembly must be called to elect the required number.[467]

Because the bylaws determine the number of board members[468]any change in number must be approved in a shareholders' extraordinary general assembly.[469] See section II.E.2.b.(1) above on page 106 above, discussing the fact that bylaws may only be amended in this fashion.

#### *(2) Under The Proposed Companies Act*

Under the proposed Companies Act, the size of the board of directors would continue to be governed by the corporation's bylaws, subject to a minimum of three members. However, a maximum number of directors would be established by statute to be eleven.[470]

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[464] Article 66 of the existing Companies Act.
[465] Id.
[466] See id.
[467] Article 67 of the existing Companies Act; as discussed below in II.F.2.c.(1)
[468] Article 66 of the existing Companies Act.
[469] Article 85 of the existing Companies Act.
[470] Article 68 (a) of the proposed Companies Act.

### c. Election

#### *(1) Under the Existing Companies Act*

The initial board of directors may be designated in either the articles of incorporation or the bylaws. [471] In the absence of such designation the initial board of directors will be elected at the founders assembly.[472] The terms of members of the initial board of directors will be as provided in the articles of incorporation, bylaws or in the resolution electing them. These terms may not exceed five years.[473]

Members may be re-elected if not prohibited by the corporate bylaws.[474] Successor directors are elected by the shareholders at regular general assemblies for terms as provided in the bylaws, which terms may not exceed three years.[475]

If the number of board members falls below the number required by the bylaws (which may never be fewer than three) a shareholders' regular general assembly must be called as soon as possible to elect the required number of directors.[476] Unless a corporation's bylaws provide otherwise, the board of directors may temporarily fill any vacancy, which appointment must be

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[471] Article 62 (3) of the existing Companies Act as has been discussed in II.C.5.c.
[472] Id.
[473] Id.
[474] Article 66 of the existing Companies Act.
[475] Id; under Article 68 (2) of the proposed Companies Act, any shareholder may nominate himself or another person or more than one within his ownership percentage in the corporation's capital.
[476] See Article 67 of the existing Companies Act.

ratified by the next shareholders' regular general assembly. If ratified, the new director will serve the remaining term of his predecessor.[477]

*(2) Under the Proposed Companies Act*

In a situation in which directors are temporarily filling a vacancy on the board, the proposed Companies Act specifically requires the appointee to have the required "competence and expertise."[478] It further requires that within five days from the temporary filling of the vacancy, the Ministry of Commerce must be notified, and if the corporation is listed on the Saudi Exchange, the Capital Market Authority must also be notified.[479] The second proposal to the Companies Act adds that temporary vacancy-filling by the board of directors temporarily must be based on rank in receiving votes.[480]

If the number of directors falls below the required minimum, the remaining members of the board of directors must call a regular general assembly to elect new members within 60 days.[481] On the other hand, if the entire board of directors has resigned, or the shareholders have been unable to elect a new board of directors, the Minister of Commerce, or the Chairman of the Board of the Capital Market Authority for corporations listed on the Saudi Exchange, must appoint a temporary committee consisting of persons with

[477] Article 67 of the existing Companies Act.
[478] Article 70 (1) of the proposed Companies Act.
[479] Id.
[480] Article 70 (1) of the Second Proposal to the Companies Act.
[481] See Article 70 (2) of the proposed Companies Act.

"specialization and expertise."[482] This committee is charged with supervising the management of the corporation and calling a shareholders' general assembly to elect a new board of directors within three months from the date the committee was appointed.[483] A president and a vice president for the committee will also be appointed from the members of the committee by the Minister of Commerce, or the Chairman of the Board of the Capital Market Authority for corporations listed on the Saudi Exchange.[484]

### d. Terms of Board Members

The term of members of the initial board of directors may be for a period not to exceed five years.[485] The terms of their successors will be specified in the corporation's bylaws and may not exceed three years.[486] Unless prohibited by the corporation's bylaws, directors may be re-elected.[487]

### e. Removal of Directors

#### *(1) Under the Existing Companies Act*

Shareholders acting in a regular general assembly have the power at any time to remove a board member whether for cause or without cause even if the

[482] Article 69 of the proposed Companies Act.
[483] Id; under the existing Companies Act, a member who resigns his position at an "improper time" may be liable for the corporation for any damages this causes (Article 66 of the existing Companies Act).
[484] Article 69 of the proposed Companies Act.
[485] Article 62 of the existing Companies Act.
[486] Article 66 of the existing Companies Act.
[487] Id.

bylaws of the corporation provide otherwise.[488] However, the director may hold the company liable for any damages he may have suffered because of such removal if the removal is made without acceptable cause or at an improper time.[489]

As discussed in II E (2) Special Right to Seek Judicial Investigation discussed above on page 83, in cases of extreme necessity, the court may remove a corporation's directors and appoint a temporary manager.[490]

*(2) Under the Proposed Companies Act*

Article 76 (4) of the proposed Companies Act would also provide that a director who failed to attend three consecutive board meetings without a legitimate cause may be subject to removal by shareholders on the recommendation of the board of directors. This will be an acceptable cause for removal and the director who fails to attend will not be entitled to demand compensation as would be the case in removal without cause.

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[488] Id; The proposed Companies Act provides that the bylaws shall specify the board of director's membership manner of retirement (expiry) or termination by a request from the board of directors, yet the regular general assembly has the right at any time to remove a board member whether for cause or without cause even if the bylaws of the corporation states otherwise; the same Article states that a board of directors' member may resign under the condition that it is in a (proper) time or he will be liable to the corporation for damages resulting from his resignation (Article 68 (3) of the proposed Companies Act).

[489] Article 66 of the existing Companies Act.

[490] Article 109 of the existing Companies Act; under the Proposed Companies Act, the competent judicial authority may remove the board of directors and assign a temporary manager and state his powers and term, without including the absolutely necessary language.(Article 100 of the proposed Companies Act).

### f. Remuneration

#### *(1) Under the Existing Companies Act*

The bylaws of the corporation are required to set forth the manner of remunerating members of the board of directors, which remuneration may take the form of a specified director's fee, separate fees for attending meetings, a specified percentage of corporate profits, or any other material benefit. [491] Any two or more of these benefits may be paid.[492]

If the remuneration consists of a specified percentage of corporate profits, it may not be in excess of 10% of net profits after deduction of appropriate expenses, depreciation and reserves and only after payment of a dividend to shareholders of not less than 5% of the corporation's capital.[493]

Finally, Article 74 of the existing Companies Act requires that the board of directors' report to the regular general assembly include a comprehensive statement of all compensation received by directors in their capacity as directors during the financial year, as well as all the amounts received by directors in their capacity as officers or executives of the company, or in consideration of technical, administrative, or advisory services.[494]

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[491] Article 74 of the existing Companies Act.
[492] Id.
[493] Id.
[494] Concerning limitation on remuneration to board members of corporations that the state does not guarantee to them minimum profit or the state guarantees such minimum but they do not benefit of such guarantee, the Minister of Commerce's decision number 1071 on 11/02/1412H states in part [Translation by author]:

1- The maximum director's annual remuneration to those corporations' which its bylaws state that the remuneration of the members of the board of directors will be a percentage of the profit is (200,000) two hundred thousand Saudi Riyals. This

*(2) Under the Proposed Companies Act*

The proposed Companies Act affects two aspects of compensating directors by means of a share of the corporation's net profits. First, the dividend to shareholders must be not less than 5% of the paid-in capital.[495] Second, a director's right to a percentage of the net profits would be required to be limited by reference to the proportion of meetings actually attended by the board member.[496]

## 3. Meetings

### a. Location

The Companies Act contains no requirement concerning the location of meetings of the board of directors, this is a matter governed by the bylaws. Article 80 simply provides that "The board of directors shall meet at the summons of its chairman in the manner prescribed in the company's bylaws."[497]

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remuneration is to be paid out of profits after the distribution of a dividend of not less than 5% of the corporation's capital.

2- The maximum attendance fee ( for each member) is (3000) three thousand Saudi Riyals to each meeting of board of directors meeting.

[495] Article 76 (2) of the proposed Companies Act.
[496] Id.
[497] Article 80 of the existing Companies Act.

### b. Requirement to Hold Meetings or a Specific Number of Them

#### *(1) Under the Existing Companies Act*

There is no statutory requirement that the boards of directors meet regularly or meet any specific number of times during the year. This matter is left to the corporation's bylaws. The requirement that the board prepare an annual financial report for the annual general assembly[498] necessitates at least

[498] Article 89 of the existing Companies Act provides:

> The board of directors shall, at least sixty days prior to the date set for the holding of the annual general meeting, prepare for every financial year of the company a balance sheet, a profit and loss statement, and a report on the company's operations and financial position and on the method which it proposes for the distribution of net profits.
> The said documents shall be signed by the chairman of the board of directors, and copies thereof shall be placed at the disposal of stockholders [at] the head office of the company at least twenty-five days prior to the date set for such general meeting. The chairman of the board of directors must publish, in a newspaper distributed in the locality, in a newspaper distributed in the locality [sic] of the head office of the company, the balance sheet, the profit and loss statement, a comprehensive summary of the board of directors report, and the full text of the auditor's report, and must send a copy of each of these documents to the General[.] [sic] Administration for Companies at least twenty-five days prior to the date set for the general meeting[.]" [sic] (alteration to the original in the quoted text)

Moreover a separate Article, Article 123 requires in effect:

> At the end of every financial year the board of directors shall make an inventory of the value of the company assets and liabilities as of that date and shall prepare a balance sheet of the company, a profit and loss statement, and a report on its operations and financial position for the expired financial year, setting out the proposed method for the allocation of net profits. The board shall put the said documents at the disposal of the auditor at least fifty-five days prior to the date set for the general meeting.

A separate Article 128 of the existing Companies Act requires that these financial statements along with the auditor's report are subject to the following filing requirements:

> The directors must, within thirty days of the date of approval by the general meeting of the balance sheet, the profit and loss statement, the board of

one meeting, and there is also a statutory requirement that a meeting must be called if so requested by two or more directors.[499] Of course, as a practical matter a typical board of directors will have to meet multiple times during the course of a year in order to fulfill its managerial responsibilities.

*(2) Under the Proposed Companies Act*

Article 76 (3) of the proposed Companies Act requires that the board of directors' report to the shareholders "also includes a statement of the number of board meetings and the number of meetings attended by each member from the date of the last general Assembly."[500] In addition, Article 83 (1) of the second proposal to the Companies Act would require the board of directors to meet at least twice a year.

### c. Chairperson: Appointment and Rights

*(1) Under the Existing Companies Act*

Subject to the corporation's bylaws, the board of directors appoints from its members a chairperson and a managing director; one member may hold both positions.[501] The board also appoints a secretary who may, but is not

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> directors' report and the auditor's report file copies of the said documents with the Commercial Register office and with the General Department of Companies.

The matter of the auditor's report is discussed below at II.E.1.a.

There are however other matters included in the Companies Act that refers to actions taken by the board of directors in this regard (see Article 69 of the existing Companies Act).

[499] Article 80 of the existing Companies Act.

[500] Translation by author.

[501] Article 79 of the existing Companies Act.

required to be a director.[502] Their powers and remuneration are as stated in the bylaws; otherwise, the board of directors will determine these matters.[503]

The term of office for the chairperson, managing director and the secretary who is a board of directors' member each may not be longer than his term as member of the board of directors.[504]

*(2) Under the Proposed Companies Act*

Article 82 (1) of the proposed Companies Act provides that the chairperson of the board of directors represents the corporation in the courts, arbitration proceedings and other forums. The chairperson may delegate some of his powers to other members of the board of directors or to others.[505]

Under Article 81 (1) of the proposed Companies Act, the appointment of a managing director by the board of directors is optional.[506]

Finally, under Article 81 (1) of the second proposal to the Companies Act, there is a statutory prohibition against the same person serving as both the chairperson of the board of directors and in any executive position.[507]

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[502] Id.
[503] Id.
[504] Id.
[505] Article 82 (1) of the proposed Companies Act.
[506] The same Article would require a board of directors to appoint from its member a vice chairperson. (Article 81 (1) of the proposed Companies Act); in the absence of the chair person, his vice will take his place. (Article 82 (2) of the proposed Companies Act).
[507] As discussed below in II.G.6.c.(2).(c), an existent current elective rule, 12 (d) of the Corporate Governance Regulations, which is subject to comply or disclose as discussed in II.G.5.c would require that on corporation listed on the market. However, in the case that the proposed Companies Act gets adopted, imposing such rule would mandate such rules on both privately and publicly held corporations (listed corporation).

### d. Notice

Article 80 of the existing Companies Act provides that the chairperson of the board of directors has the authority to call and give notice of meetings in the manner provided for in the corporation's bylaws.[508]

### e. Quorum and Voting Requirements

Unless the company's bylaws provide for a larger proportion or number, the quorum for a board of directors' meeting is at least one half of the directors but in no event fewer than three.[509]

As a general rule, board of directors' resolutions must be approved by a majority vote of members present or represented at a meeting at which a quorum is present unless a higher proportion is otherwise required by the corporation's bylaws.[510] In the case of a tie vote, the chairperson's vote will determine the outcome. That is, the side which has the vote of the chairperson will prevail, unless otherwise provided in the bylaws.[511]

### f. Voting by Proxy

In contrast to the universal practice in the United States,[512] Article 80 permits board members to vote by proxy, but only if so provided for in the bylaws. Article 80 in part provides as follows:

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[508] Article 80 of the existing Companies Act.
[509] Id.
[510] Id.
[511] Id.
[512] ROBERT C. CLARK, CORPORATE LAW, 109-110 (1986).

> A director may not give proxy to any other director to attend the meeting on his behalf, unless this is authorized by the company's bylaws.

### g. Action in Lieu of a Meeting

#### *(1) Under the Existing Companies Act*

A resolution may be adopted without a meeting of directors by referring the matter "to the directors individually" unless any member makes a written request that the matter be considered in a meeting of the directors to deliberate on such resolution,[513] in which case the matter must be "laid before the board at the first following meeting."[514] When acting without a meeting, apparently the matter need be put to all directors but an affirmative response is required only from that number necessary to take the action at a meeting at which all were present.

Article 81 of the existing Companies Act, which governs this matter provides:

> The boa[r]d (of directors) may adopt resolutions by putting them to the directors individually, unless a director requests in writing that the board be convened to deliberate on such resolutions, in which case they shall be laid before the board at the first following meeting

[513] Article 81 of the existing Companies Act. In the United States unanimous consent is required for an action without meeting (section 141 (f) of Delaware General Corporation Law and section 8.21 of the Model Business Corporation Act).
[514] Id.

*(2) Under the Proposed Companies Act*

Not all matters could be addressed by written consent without a meeting of directors under the proposed Companies Act. Article 84 would provide:[515] [translation by author]

> The board (of directors) may adopt resolutions in urgent matters by putting them to the directors individually, unless a director requests in writing that the board be convened to deliberate on such resolutions, in which case they shall be laid before the board at the first following meeting. (emphasis added)

**h. Minutes**

*(1) Under the existing Companies Act*

Minutes recording deliberations and resolutions of the board of directors must be prepared and signed by the secretary and chairperson of the board of directors.[516]

*(2) Under the proposed Companies Act*

Under Article 85 of the proposed Companies Act, there will be a requirement that the minutes of the meeting be signed by each member present at the meeting.[517]

## 4. Duty of Care

Article 76 of the existing Companies Act provides in part:

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[515] Article 84 of the proposed Companies Act.
[516] Article 82 of existing Companies Act.
[517] Article 85 of the proposed Companies Act; under the same Article, minutes must be kept in a special book that is signed by the secretary and the chairman of the board of directors or his vice (Article 85 of the proposed Companies Act).

> Directors shall be jointly responsible for damages to the company, or the stockholders, or third parties, arising from their maladministration of the affairs of the company, or their violation of the provisions of [the Companies Act] or of the company's bylaws. Any stipulation contrary to this provision shall be considered nonexistent.(alteration to the original in the quoted text)

The obvious and difficult question raised by this provision is the substantive meaning of the term "maladministration." Unfortunately, the term is not defined in the Companies Act nor is there reported case law interpreting the term. As a consequence, because directors are agents of the corporation, the matter is apparently addressed in Saudi Arabia under relevant rules of agency law. If that is an accurate generalization, the degree of care that is owed by a corporate director is that of a reasonable person in a similar position.[518]

## 5. Duty of Loyalty

### a. Interested Party Transactions--General Rules[519]

#### *(1) Under the Existing Companies Act*

Article 69 of the existing Companies Act provides that:

> A director may not have any interest whether [directly] [520] or indirectly, in the transactions or contracts made for the account of the company, except with an authorization from the regular general meeting, to be renewed annually. Transactions made by way of public bidding shall, however, be excluded from this (restraint) if the director has submitted the best offer.

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[518] AL-JABR, *supra* note 367, at 339.
[519] Article 69 of the existing Companies Act.
[520] The word "directly" was apparently inadvertently omitted from the official translation.

> The director must declare to the board (of directors) any personal interest he may have in the transactions or contracts made for the account of the company. Such declaration must be recorded in the minutes of the (board) meeting, and the interested director shall not participate in voting on the resolution to be adopted in this respect.
>
> The chairman of the board of directors shall communicate to the regular general meeting when it convenes the transactions and contracts in which any director has a persom al [sic] interest. Such communication shall be accompanied by a special report from the auditor. (alteration to the original in the quoted text)

In view of the importance of this matter, it is unfortunate that Article 69 is not a model of clarity. As a result, there are multiple issues concerning interested party transactions that cannot be confidently resolved on the basis of the language of the Article and in the absence of relevant case law. These issues are discussed below.

### (a) Meaning of the Clause Requiring Authorization from the Regular General Meeting

Although there is clearly a requirement that an interested party transaction receive shareholder approval, the specific nature of this requirement is not determinable based on the language of the Article.

Although the first sentence of Article 69 might be read to require a transaction-by-transaction approval by shareholders, it is the author's view that the meaning of the sentence is that interested party transactions in a corporation are simply not permitted unless the corporation's shareholders have determined by resolutions generally that such transactions may occur.

Because of the importance of the subject matter of Article 69, requires an annual renewal of that authorization.

It is noted that on the basis of the language of that first sentence of the Article, authorization of interested party transactions could be given on either a director-by-director basis or for all directors of the corporation. It is also important to note, however, that the sentence fails to specify whether the required authorization must occur prior to a corporation entering into the transaction or whether after-the-fact ratification will suffice.

### (b) **Disclosure of a Transaction to Other Directors**

Consistent with American law, which requires full disclosure of all material facts concerning the director's interest and the transaction,[521] Article 69 of the existing Companies Act requires that the board member notify the board of directors of any personal interest he has in the proposed transactions.[522]

### (c) **Notification to Shareholders of Interested Party Transaction and Required Auditor Report**

Article 69 also provides that the chairperson of the board of directors must notify the regular general assembly, when it next convenes, of any interested

[521] E.g., section 144 of Delaware General Corporation Law.
[522] Article 69 of the existing Companies Act. This notification must be entered in the minutes of the meeting at which the matter is approved by the board of directors. (id.).

party transaction disclosed to the board of directors.[523] A special report prepared by the corporation's auditor must be attached to such notification.

#### (d) **Interested Director May Not Vote on Matter**

The board member who is an interested party is not permitted to vote on the resolution concerning the matter.[524] An existing Minister of Commerce decision provides in part that the board of directors' member who has a direct or indirect interest in the transactions or contracts made for the account of the company may not vote on the general meeting's resolution regarding this matter. Thus, this resolves an ambiguity on the issue under existing law concerning whether a director may vote on the matter as a shareholder.[525]

### *(2) Under the Proposed Companies Act*

#### (a) **Clarification Concerning "Prior Permission" From Shareholders**

Proposed Article 71 (1) would provide that the shareholders' authorization must occur prior to interested party transaction. Article 71(1) provides: [translation by author]

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[523] Id.
[524] Id.
[525] Commerce Ministers Decision number 5715 dated 05/16/1429 H corresponding to 05/21/2008 AD. This decision was issued based on the authority given to the Minister in Article 232 of the existing Companies Act. Article 71 (1) of the proposed Companies Act confirms the Minister of Commerce decision concerning the interested directors' right as a shareholder to vote on the matter. Article 18 of the Corporate Governance Regulation discussed below in II.G.6.c.(2).(f), which is subject to comply or disclose as discussed in II.G.5.c also states that the interested member must not vote on the board of directors' or the general assembly's resolutions regarding the interested transaction.

> A director may not have any interest whether directly or indirectly, in the transactions or contracts made for the account of the company, except with a prior authorization from the regular general meeting/assembly, to be renewed annually. The director must declare to the board (of directors) any interest whether directly or indirectly he may have in the transactions or contracts made for the account of the company, and such declaration must be recorded in the minutes of the (board) meeting. And the interested director shall not participate in voting on the resolution to be adopted in this respect in the board of directors and general meetings. The chairman of the board of directors shall communicate to the regular general meeting when it convenes the transactions and contracts in which any director has interest whether directly or indirectly, and such communication shall be accompanied by a special report from the company's[526] external auditor. (*emphasis added*).

### (b) **Clarification Concerning Disclosure**

While Article 69 of the existing Companies Act describes an interested party transaction as one in which a director has an interest "[directly] [527] or indirectly" later paragraphs in Article 69 describes the circumstances in which an interested director must make disclosures of his interest as situations in which he has "any personal interest." Although the non-parallel language of the existing Companies Act probably was not intended to convey a difference in meaning, any doubt is removed by Article 71 (1) of the proposed Companies Act, which would substitute a reference to a "direct or indirect interest" for "personal interest."

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[526] Corporation's.

[527] As noted in note 520 above, in an apparent oversight the word "directly" is not included in the official translation.

### (c) New Clause Concerning the Consequences of Nondisclosure to the Board of Directors

Article 71 (2) of the proposed Companies Act would provide: [translation by author]

> If the board member fails to disclose his interest as mentioned in clause (1) of this Article, the corporation and any interested person may request in front of the judicial authority that has jurisdiction to nullify the contract or oblige the member to surrender any profits or gain he made from this.

Under the existing Companies Act, there is no express authority in the courts to either nullify such contract or require any profit to be surrendered to the corporation.

## b. Competition with the Corporation/ Engaging in Any Commercial Activity Carried Out by the Corporation. [528]

### *(1) Under the Existing Companies Act*

Article 70 of the existing Companies Act provides that:

> A director may not, without authorization from the regular general meeting, to be renewed annually, participate in any business (enterprise) competitive with that of the company, or engage in any of the commercial activities carried on by the company; otherwise, the company shall have the right either to claim damages from him or to consider the operations he has conducted for his own account as having been conducted for the account of the company.

[528] Article 70 of the existing Companies Act.

Thus, a board member must not without authorization of the regular general assembly participate in any business (enterprise) competitive with that of the company, or engage in any of the commercial activities carried on by the company. Like Article 69 concerning interested party transactions, this Article constitutes an unequivocal prohibition against the competitive conduct described in the Article, unless there has been authorization for such conduct from the corporation's shareholders. This authorization must be renewed annually.[529]

It does not appear to the author that it is the legislature's expectation that such authorization or permission would be granted to a corporation's directors generally, as might be the case concerning interested party transactions, but would occur only on a case-by-case basis as a particular director might need such permission. For example, a corporation may find it desirable to have as a director a person with substantial experience in a competing business. In this circumstance, and in support of the author's view, there is no specific disclosure requirement to the board of directors as there is in the case of permission to engage in interested party transactions. Presumably, all appropriate disclosures would occur during the process of the authorization.

It is the author's view that the language in Article 70 of the existing Companies Act regulating a director's participation "in any of the commercial activities carried on by the company" would encompass most, if not all,

[529] Id.

commercial conduct by a director that falls within what is known in the United States as "corporate opportunity" doctrine. If any conduct would fall outside the scope of Article 70, such conduct would be regulated under general principles of Saudi agency law.

*(2) Under the Proposed Companies Act*

Article 72 of the proposed Companies Act would read: [translation by author]

> A director may not participate in any business (enterprise) competitive with that of the company, or compete with the company in any of the activities carried on by the company; or the corporation will have the right to demand adequate compensation from the violator in front of the judicial authority that has jurisdiction, unless he has a prior authorization from the regular general meeting-to be renewed annually-permitting him to do so.

In what might be viewed as an attempt to broaden the scope of existing Article 70, it is noted that in the proposed Companies Act the phrase "engage in any of the commercial activities carried on by the company" would be amended to read "compete with the corporation in any of the activities carried on by the company"[530] Thus, under Article 72 of the proposed Companies Act directors are barred from competing in non-commercial as well as commercial activities. On the other hand, by replacing "engage" with "compete" Article 72 may be narrower than Article 70 because it is possible to engage in an activity without competing with the corporation.

[530] Article 72 of the proposed Companies Act.

### c. Corporate Loans to Directors

#### *(1) Under the Existing Companies Act*

The corporation is prohibited from making any cash loan to a board member or from guaranteeing any loan contracted by a board member with a third party.[531] However, banks and other credit companies may extend credit to its board members under the same terms and conditions as they extend credit to members of the public.[532]

#### *(2) Under the Proposed Companies Act*

Article 73(1) of the proposed Companies Act extends the prohibition against loans and guarantees to shareholders.[533] However, loans and guarantees given by the corporation pursuant to a program to motivate its employees are excluded from the prohibition, provided the program was approved in accordance with the bylaws or pursuant to a resolution adopted by a regular general assembly.[534]

### d. Duty to Protect Confidential Information

#### *(1) Under the existing Companies Act*

Members of the board of directors are prohibited from disclosing to any person other than shareholders in general shareholders' assemblies any confidential information they may have learned by reason of their

[531] Article 71 of the existing Companies Act.
[532] Id.
[533] Article 73(1) of the proposed Companies Act.
[534] Article 73 (3) of the proposed Companies Act.

directorship.[535] Engaging in such conduct is ground for removal from office and for imposition of personal liability for any damages to the corporation.[536]

*(2) Under the proposed Companies Act*

Article 74 of the proposed Companies Act would extend the duty not to disclose confidential information to any such information learned by directors irrespective of whether the information was learned by reason of their directorship. Moreover, Article 74 would include a statutory prohibition against the use of confidential information the directors know of by reason of their directorship.[537]

**e. Duty Not to Vote on Exculpatory Shareholders' Resolutions.**

*(1) Under Existing Companies Act*

Article 93 of the existing Companies Act provides that directors may not vote on shareholder resolutions that would exculpate them from liability for their administration.

*(2) Under the Proposed Companies Act*

In addition to the prohibition of board members voting on exculpatory shareholders' resolutions, Article 95 (2) of the proposed Companies Act

[535] Article 72 of the existing Companies Act.
[536] Id.
[537] Article 74 of the proposed Companies Act.

provides that the corporation's board members may not vote on general assembly resolutions pertaining to a direct or indirect interest for them.[538] Thus, Article 95 (2) of the proposed Companies Act provides: [translation by author]

> Directors may not participate in voting on resolutions of a meeting pertaining to their relief from liability for their administration of the company or to a direct or indirect interest to them.

Although this prohibition against voting as a shareholder on matters in which the director has an interest is redundant of that in proposed Article 71 (1) pertaining to interested party transactions, it will have useful application in situations involving competition with the corporation, because proposed Article 72, which governs competition, has no such explicit prohibition.

### 6. Liability of Board Members

#### a. Article 76: Express Cause of Action for Directors' Wrongful Conduct

##### *(1) Under the Existing Companies Act--General Rule*

As discussed above, Article 76 of the existing Companies Act provides:

> Directors shall be jointly responsible for damages to the company, or the stockholders, or third parties, arising from their maladministration of the affairs of the company, or their violation of the provisions [the Companies Act] or of the company's bylaws. Any stipulation contrary to this provision shall be considered nonexistent.

[538] Article 95 (2) of the proposed Companies Act.

> (Joint) liability shall be assumed by all directors if the wrongful act arises from a resolution adopted by unanimous vote. But with respect to resolution adopted by majority vote, dissenting directors shall not be liable if they have expressly recorded their objection in the minutes of the meeting. Absence from the meeting at which such resolution is adopted shall not constitute cause for relief from liability, unless it is established that the absentee was not aware of the resolution, or, on becoming aware of it, was unable to object to it.
>
> A liability action shall not be barred by the regular general assembly's approval to exonerate the board of directors.
>
> The liability action shall not be heard after the passage of three years from the discovery of the wrongful act.[539] (alteration to the original in the quoted text)

Thus, Article 76 provides an express civil action that can be brought against directors. The board members are jointly liable for any harm caused to the corporation, its shareholders or to any third party resulting from their maladministration of corporate affairs,[540] or violation of any provision of the Companies Act or of the corporation's bylaws.[541] Although this liability is joint, dissenting directors are not liable if they have expressly recorded their objection in the minutes of the meeting.[542] An absent director is excused from such joint liability only if the director was unaware of the resolution or unable to object to the resolution after becoming aware of it.[543]

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[539] The last two sentences of the Article in the absence of an official translation are the author's translation. Although beyond the scope of this paper there is the possibility there could be a criminal consequences for a director who fails to meet the requirements of the Companies Act (see Article 229 of the existing Companies Act).
[540] Article 76 of the existing Companies Act.
[541] Id.
[542] Id.
[543] Id.

The statute of limitations for an action brought pursuant to Article 76 is three years from the discovery of the wrongful conduct.[544] Finally, Article 76 expressly provides that exoneration from the shareholders will not prevent a liability claim from being filed.

*(2) Under the Proposed Companies Act*

(a) **Changes to Statute of Limitations**

Article 78 (3) of the proposed Companies Act amends the language of the statute of limitations found under Article 76 of the existing Companies Act: [translation by author]

> The liability action shall not be heard after the passage of three years from discovery of the prejudicial act. And in other than the two cases of forgery and fraud, liability action shall not be heard in all cases after the passage of five years of from the end date of the fiscal year in which prejudicial act occurred or three years from the end of the membership of the interested board member whichever is later.

**b. Direct Corporate Cause of Action Based on Article 77**

Article 77 of the existing Companies Act provides as follows:

> The company may institute an action in liability against (its) directors for wrongful acts that cause prejudice to the body of stockholders. The resolution to institute this action shall be made by the regular general meeting, which shall appoint a person (or persons) to pursue the case on behalf of the company. If the company is adjudged bankrupt, the institution of this action shall rest with the receiver, and upon the dissolution of the company, the liquidator shall (institute and) pursue the case after obtaining the approval of the regular general meeting.

[544] Id.

The focus of Article 77 is on the corporation's right to bring a cause of action against its directors for any of the misconduct described in Article 76, referred to in Article 77 as "wrongful acts." Consistent with this focus of Article 77, it is the author's view that the clause in the first sentence-"that cause prejudice to the body of stockholders"- is referring to direct harm to the corporation that indirectly harms its shareholders. Use of term "body" is significant because it connotes the shareholders being joined together as a single entity, i.e., the corporation.

In addition, as clearly provided in the second sentence of Article 77, the power to institute this cause of action is with the corporation's shareholders rather than its directors as is customary in the United States. This procedure is, however, consistent with the shareholder primacy model of Saudi corporate law. In this regard, it is especially important to note that Article 93 of the existing Companies Act, as has been discussed above in II.F.5.e.(1) on page 152, clearly provides that the shares of an interested director-shareholder may not be voted in the matter. Thus, Article 93 provides in part:

> [D]irectors may not participate in voting on resolutions of a meeting pertaining to their relief from liability for their administration.

*(1) Matters Related To Duty of Care*

As has previously been discussed in II.F.6.a.(1), on page 153, Article 76 provides for joint liability to the corporation where "maladministration" of corporate affairs is present.

*(2) Matters Related To Duty of Loyalty*

(a) **Under the Existing Companies Act**

Because Article 69 of the existing Companies Act requires transactions in which directors have a personal interest to be disclosed to the board of directors and approved by the regular general assembly, such transactions generally will not be the subject of litigation. However, in the exceptional case, the provisions of Article 77 arguably would apply to authorize suits by the corporation for rescission or damages. The same presumably would be true in a case in which there is a violation of Article 71's prohibition of loans by non-banking corporations to their directors, which are simply a specific and inherently dangerous example of an interested director transaction.

Article 70 of the existing Companies Act, like Article 69, requires authorization from the regular general assembly before directors may engage in any commercial activities carried on by the corporation, whether or not directly competitive with the corporation. It expressly provides a cause of action for damages, or alternatively, the right to an accounting for any profits made by the director. The provisions of Article 77 should apply to a proceeding to enforce the corporation's rights.

Finally, Article 72 prohibits directors from disclosing confidential corporate information known to them by reason of their relationship to the corporation. Violation of Article 72 is cause for removal from the board and

subjects the directors to liability for damages. Once again, prosecution of the cause of action should be governed by Article 77.

### (b) **Under the Proposed Companies Act**

The accounting remedy in Article 70 of the Existing Companies Act concerning engaging in commercial activities carried on by the corporation has been omitted from proposed Article 72, but the corporation will still have the right to claim adequate damages from the violator.[545] In addition, the corporation's right to seek damages from directors who violate the prohibition against loans and guarantees is now stated expressly in Article 73 (4) of the proposed Companies Act.[546]

## c. Derivative Suits

### *(1) Under the Existing Companies Act*

Article 78 of the existing Companies Act provides as follows:

> Every stockholder shall have the right to institute the action in liability against directors on behalf of the company if the wrongful act committed by them is of a nature to cause him personal prejudice. However, the stockholder may institute such action only if the company's right to institute it is still valid and after notifying the company of his intention to do so. If a stockholder institutes such action, he shall be adjudged (compensation) only to the extent of the prejudice caused to him. (alteration to the original in the quoted text)

[545] Article 72 of the proposed Companies Act.
[546] Article 73 (4) of the proposed Companies Act.

The focus of Article 78 of the existing Companies Act is on the shareholders right to initiate litigation against directors for any of the misconduct specified in Article 76, discussed above.

Unfortunately, the nature of this cause of action is unclear. Although the first sentence of the Article specifies that the litigation is "on behalf of the company" that sentence continues by providing that this litigation may be instituted if the wrongful conduct "is of a nature to cause him personal prejudice." Moreover, the last sentence provides that in this litigation that the stockholder "shall be adjudged (compensation) only to the extent of the prejudice caused to him."

The language of the Article just noted suggests that a stockholder under Article 78 is limited to litigation instituted for the purpose of compensating that shareholder only for any harm he has directly suffered as a result of the wrongful conduct; i.e., what is known in the U.S. as a direct action

Such a reading ignores the competing language that the litigation is "on behalf of the company." Moreover, if this is the intended meaning of Article 78, a traditional American-style minority shareholder derivative cause of action on the corporation's behalf, for harm suffered by the corporation, is not provided for.

An alternative (and more sensible) reading of Article 78 is that to the extent any compensation is awarded other than to the corporation directly, the shareholder instituting the litigation shall only be awarded his allocable share

of such compensation. This interpretation of Article 78 is supported by the dual limitations that the shareholder may institute the action only if the corporation's right is still valid and only after notifying the corporation of his intent to do so.[547] Even under this reading, however, Article 78 would seem to authorize only suits asserting a combination of both derivative and direct claims. This Ambiguity will not deter investments because there is no need for derivative suits under Saudi law because of shareholders primacy and because of the general assembly's ability to sue under Article 77 discussed above in II.F.6.b on page 155

*(2) Under the Proposed Companies Act*

Article 80 of the proposed Companies Act provides as follows [translation by author]:

> Every stockholder shall have the right to institute the action in liability against directors on behalf of the company if the wrongful act committed by them is of a nature to cause him personal prejudice. However, the stockholder may institute such action only if the company's right to institute it is still valid and after notifying the company of his intention to do so. If a stockholder institutes such action, his right is restricted to only request compensation for the special prejudice caused to him.

Unfortunately, proposed Article 80 does not resolve the ambivalence found in Article 78. If anything, the change in focus of the last sentence, from the amount of damages the plaintiff may be awarded to the amount of damages the plaintiff may seek, seems to emphasize the direct nature of the litigation, and to that extent only increases the tension. Once again, however, this result

[547] Article 78 of the existing Companies Act.

may be seen as consistent with the Saudi Arabian corporate philosophy of shareholder primacy. After all, pure derivative suits are necessary in American law because of its directors' primacy model.

#### *d.* Direct Shareholders Cause of Action

Since the board members are agents of the corporation and not agents for individual shareholders, a direct injury to individual shareholders raises a cause of action which is separate and is distinct from a corporate cause of action.[548]

## *G. The Corporate Governance Regulations*[549]

### 1. Statutory Authority for Adoption by the Capital Market Authority.

Articles 5 and 6 of the Capital Market Law, discussed below, created and gave full authority to the Capital Market Authority, discussed above in I.B.3.c.(2) on page 19, to regulate the matters included within the scope of the law.

Article 5 defines the Capital Market Authority's responsibilities, its rule making authority, and its authority to conduct appropriate investigations as follows:

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[548] ḤAMD ALLĀH, *supra* note 88, at 313.

[549] Corporate Governance Regulations were issued by the Board of Capital Market Authority Pursuant to Resolution No. 1/212/2006 dated 10/21/1427AH (corresponding to 11/12/2006) Amended by Resolution of the Board of the Capital Market Authority Number 1-10-2010 Dated 3/30/1431H corresponding to 3/16/2010G.

a. The Authority shall be the agency responsible for issuing regulations, rules and instructions, and for applying the provisions of this Law. To achieve these objectives, the Authority shall:

1. Regulate and develop the Exchange, seek to develop and improve methods of systems and entities trading in Securities, and develop the procedures that would reduce the risks related to Securities transactions.
2. Regulate the issuance of Securities and monitor Securities and dealing in Securities.
3. Regulate and monitor the works and activities of parties subject to the control and supervision of the Authority.
4. Protect citizens and investors in Securities from unfair and unsound practices or practices involving fraud, deceit, cheating or manipulation.
5. Seek to achieve fairness, efficiency and transparency in Securities transactions.
6. Regulate and monitor the full disclosure of information regarding Securities and their issuers, the dealings of informed persons and major shareholders and investors, and define and make available information which the participants in the market should provide and disclose to shareholders and the public.
7. Regulate proxy and purchase requests and public offers of shares.

b. The Authority may publish a draft of regulations and rules before issuing or amending them. The regulations, rules and instructions issued by the Authority shall be effective in the manner prescribed under their provisions.

c. For the purpose of conducting all investigations which, in the opinion of the Board, are necessary for the enforcement of the provisions of this Law and other regulations and rules issued pursuant to this Law, the members of the Authority and its employees designated by the Board are empowered to subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Authority deems relevant or material to its investigation. The Authority shall have the power to carry out inspections of the records or any other materials, whoever the holder may be, to determine whether the person concerned has violated, or is about to violate any provision of this Law, the Implementing Regulations or the rules issued by the Authority.

Article 6 then describes in considerable detail the specific powers granted to the Capital Market Authority concerning the matters within its jurisdiction. Article 6, provides in part:

> a. The Authority shall have the power to carry out its functions under this Law as well as the regulations, rules and instructions issued pursuant thereto including, but not limited [to] the power to:
>
> 1. Set forth policies and plans, conduct studies and issue necessary rules to achieve the Authority's objectives.
> 2. Issue and amend the Implementing Regulations as may be necessary to enforce the provisions of this Law.
> 3. Approve the offering of Securities.
> 4. Give advice and make recommendations to government authorities in respect of matters that would contribute to the development of the Exchange and the protection of investors in Securities.
>
> * * * *
>
> 6. Approve the listing, cancel or suspend the listing, of any Saudi Security traded on the Exchange of any Saudi issuer, on any stock exchange outside the Kingdom.
> 7. Prohibit any Security or suspend the issuance or trading of any Securities on the Exchange, as the Authority may deem necessary.
>
> * * * *
>
> 9. In addition to other provisions of relevant regulations, the Authority shall have the right to establish standards and conditions required for the auditors who audit the books and records of the Exchange, the Depositary Center, brokerage companies, investment funds and joint stock companies listed on the Exchange….
> 10. Determine the contents of annual and periodical financial statements, reports and documents that should be submitted by issuers offering Securities for public subscription or the issuers whose Securities are listed on the Exchange.
> 11. Define and explain the terms and provisions set out in this Law.
> 12. Issue decisions, instructions and set the procedure as deemed necessary for the implementation of the provisions of this Law

and the Implementing Regulations, and conduct inquiries and investigations regarding violations of the provisions of this Law and the Implementing Regulations.

* * * *

15. Prepare the regulations and rules for the surveillance and supervision of entities subject to the provisions of this Law.

* * * *

18. Grant the necessary licenses to be issued in accordance with the provisions of this Law and its Implementing Regulations, including the licensing of rating companies and agencies and the conditions thereof.

* * * *

(alteration to the original in the quoted text)

### 2. **Applicability.**

The Corporate Governance Regulations are applicable only to publicly-traded corporations.[550]

### 3. **Adoption**

The Corporate Governance Regulations were initially adopted by the Capital Market Authority on November 12, 2006 and have been subject to a later amendment.[551]

### 4. **Subject Matter Included in the Corporate Governance Regulations**

For the convenience of the reader, the table of contents of the Corporate Governance Regulations is included in part below:

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[550] Article 1 (a) of the Corporate Governance Regulations.
[551] Amended by Resolution of the Board of the Capital Market Authority Number 1-10-2010 Dated 3/30/1431H corresponding to 3/16/2010G.

Part 2 : Rights of Shareholders and the General Assembly

Article 3. General Rights of Shareholders
Article 4. Facilitation of Shareholders' Exercise of Rights and Access to Information
Article 5. Shareholders Rights related to the General Assembly
Article 6. Voting Rights
Article 7. Dividends Rights of Shareholders

Part 3 : Disclosure and Transparency

Article 8. Policies and Procedures related to Disclosure
Article 9. Disclosure in the Board of Directors' Report

Part 4 : Board of Directors

Article 10. Main Functions of the Board
Article 11. Responsibilities of the Board
Article 12. Formation of the Board
Article 13. Committees of the Board
Article 14. Audit Committee
Article 15. Nomination and Remuneration Committee
Article 16. Meetings of the Board
Article 17. Remuneration and Indemnification of Board Members
Article 18. Conflict of Interest within the Board

## 5. Sources of Provisions Included in the Corporate Governance Regulations[552]

### a. Provisions "Borrowed" from Other Sources

Many matters included in the Corporate Governance Regulations when they were adopted in 2006 were previously recognized, regulated and mandated by "another law, regulation, rule or resolution of the Board of the Capital Market Authority." The sources of such material are as follows:

[552] It is noted that there are provisions included in the Corporate Governance Regulations that are also included in other laws and regulations, which provisions do not apply to all publicly-traded corporations, but are applicable only to corporations engaged in specified areas of business, for example, banking and insurance.

provisions included in the existing Companies Act of 1965; provisions of the Capital Market Law of 2003; and regulations and rules adopted by the Board of the Capital Market Authority Prior to 2006.[553] These provisions are mandatory, unless the terms of the provision expressly provide that the provision is elective.

The reader should understand that the translation of the Corporate Governance Regulations articles of association and bylaws is very different than the way those terms are used in the Companies Act translation. In Arabic the word that the Companies Act translates as bylaws is translated in the Corporate Governance Regulations as articles of association. In other words, when the Corporate Governance Regulations use the term "articles of association" the Companies Act would use the term "bylaws."[554] Thus, "bylaws" as used in the Corporate Governance Regulations is a translation of an Arabic term that refers to a document that is not mentioned in the Companies Act. The author believes that it would be equivalent, for example, to a code of ethics as required by the Sarbanes-Oxley Act.

**b. New Provisions**

Other matters were newly recognized in the Corporate Governance Regulations. The newly recognized matters are mandatory only if subsequently made mandatory by a resolution of the Board of the Capital

[553] A list of all regulations adopted by the Capital Market Authority is discussed above at I.B.3.c.(1).
[554] See Appendix III.

Market Authority.[555] The provisions that the Board has made mandatory are discussed below at II.G.6.b on page 171.

In addition, in Article 29 of the Listing Rules,[556] adopted in 2004, the Capital Market Authority is given broad express authority to require any particular listed corporation to treat as mandatory any provision that would otherwise be elective. Article 29 of the Listing Rules provides as follows:

> The Authority may, as it considers necessary for the protection of investors, require the issuer to comply with any * * * rules [regulating its management] that it deems appropriate whether in relation to the qualifications of the directors, senior management, audit committee or external auditor of the issuer, or the competency of any of them, or in relation to the responsibilities or powers of any of them or in relation to the decision making processes or otherwise. (alteration to the original in the quoted text) (emphasis added)

### c. Elective Provisions: "Comply or Disclose."

A critical matter concerning all elective provisions in the Corporate Governance Regulations are certain provisions with which publicly-traded corporations must comply or explain why they elect not to comply. This is

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[555] See Article 1 (b) of the Corporate Governance Regulations.

[556] Article 9 (b) states:

> To be admitted to the official list, there must be a sufficiently liquid and open market for the shares that are the subject of the application, as follows:
> 1) there must be at least 200 public shareholders; and
> 2) at least 30% of the class of shares that are the subject of the application are owned by the public.
> The Authority may permit a lower percentage or a lower number of shareholders if it considers that it is appropriate in view of the number of shares in the same class and the distribution to the public. For the purposes of this paragraph, "public" means persons who are not directors, senior executives or any substantial shareholder of the issuer or any of the directors or senior executives of a substantial shareholder of the issuer or a relative of any of them. A "substantial shareholder" means a person holding five per cent or more of the class of shares to be listed.

unique to Saudi corporate law, as contrasted to corporate law in the United States.[557] Paragraph (c) of Article 1 of the Corporate Governance Regulations states in part:

> "[A] company must disclose in the Board of Directors` report, the provisions that have been implemented and the provisions that have not been implemented as well as the reasons for not implementing them"[558] (emphasis added)

Concerning elective provisions, it is the apparent belief of the Capital Market Authority that the presence of this disclosure requirement will encourage listed corporations to comply with such provisions. This belief is apparently based on the assumption that all corporations wish for their shareholders and the public to hold a positive image of them. An image that applies best corporate governance practices is an important step to attain shareholder and public trust, which in turn leads to investment. In short, market discipline.

[557] There are exceptions to the statement in text. For example, section 407 (a) of the Sarbanes-Oxley Act directs the SEC to adopt rules that require publicly-traded companies to disclose whether their audit committee has at least one member who is a financial expert, and if not, the reasons why not. Similarly the SEC amended Regulation S-K to require issuers to disclose whether they have an internal procedure to monitor risk, and if not, the reasons why not.
[558] Paragraph (c) of Article 1of the Corporate Governance Regulations.

### 6. Disclosure Requirements, Mandatory Corporate Governance Requirements, and Elective Corporate Governance Requirements

Included in the Articles of Part 2, 3 and 4 of the Corporate Governance Regulations are provisions that will be divided into the following three categories, each of which will be separately discussed: Mandatory disclosure requirements, other mandatory corporate governance requirements, and elective corporate governance requirements.

#### a. Provisions Imposing Disclosure Obligations in Addition to Those Previously Existing

In Articles 8 and 9, the Corporate Governance Regulations impose disclosure and transparency requirements in addition to those previously existing under the Companies Act of 1965,[559] the Capital Market Law of 2003, and the Listing Rules.[560] As so supplemented, the disclosure requirements under Saudi law are similar to comparable provisions under federal securities laws in the United States, as discussed above at Public Offer, II.C.3.c on page 53.

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[559] See especially Articles 8 and 9 of the Corporate Governance Regulations. For example, Article 9 (b) provides that the content of the report of the board of directors shall include:

> Names of any joint stock company or companies in which the company Board of Directors member acts as a member of its Board of directors.

Where there are no similar requirements under the Companies Act and they are self explanatory.

[560] In Addition, the Listing Rules require continuous reporting obligations similar to those imposed by section 13 of the Securities Exchange Act of 1934.

Article 8 simply requires that listed corporations have written disclosure policies, procedures and supervisory rules. Article 9 of the Corporate Governance Regulations requires that the annual report of the board of directors must include the following: (1) the implemented elective provisions of the Regulations as well as the provisions which have not been implemented, and the justifications for not implementing them; (2) the names of other corporations in which a director acts as a member of its board of directors; (3) formation of the board of directors and classification of its members; (4) a brief description of the jurisdictions and duties of the board's main committees; (5) details of compensation and remuneration paid to each of the chairman and other members of the board of directors, the top five compensated executives and the CEO, and the chief finance officer if not included among the top five executives; (6) any punishment or penalty or preventive restriction imposed on the company by the Capital Market Authority or any other supervisory or regulatory or judiciary body; and (7) results of the annual audit of the effectiveness of the internal control procedures of the company.

The provisions of Article 9 were made mandatory with respect to listed companies, effective in 2009.[561]

[561] The Board of the Capital Market Authority issued resolution Number (1-36-2008) Dated 11/12/1429H corresponding to 11/10/2008G making Article 9 of the Corporate Governance Regulations mandatory on all companies listed on the Exchange effective from the first board report issued by the company following the date of the Board of the Capital Market Authority resolution mentioned above.

### b. New Mandatory Requirements

*(1) Paragraphs (c) and (e) of Article 12: Non-Executive and Independent Directors.*

The Board of the Capital Market Authority made paragraphs (c) and (e) of Article 12 mandatory with respect to all listed companies, effective in 2009.[562] Paragraph (c) provides that the "majority of the members of the Board of Directors shall be non-executive members," [563] a concept roughly equivalent to an outside director in the United States. Paragraph (e) goes farther and requires that the "independent members of the Board of Directors shall not be less than two members, or one-third of the members, whichever is greater." [564]

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[562] The Board of the Capital Market Authority issued resolution Number (1-36-2008) Dated 11/12/1429H corresponding to 11/10/2008G making paragraphs (c) and (e) of Article 12 of the Corporate Governance Regulations mandatory on all companies listed on the Exchange effective from year 2009.

[563] Under Article 2 (b) of the Corporate Governance Regulations, Non-executive director means:

> A member of the Board of Directors who does not have a full-time management position at the company, or who does not receive monthly or yearly salary.

[564] Under Article 2 (b) of the Corporate Governance Regulations, Independent Member means:

> A member of the Board of Directors who enjoys complete independence. By way of example, the following shall constitute an infringement of such independence:
> 1. he/she holds a five per cent or more of the issued shares of the company or any of its group.
> 2. Being a representative of a legal person that holds a five per cent or more of the issued shares of the company or any of its group.
> 3. he/she, during the preceding two years, has been a senior executive of the company or of any other company within that company's group.
> 4. he/she is a first-degree relative of any board member of the company or of any other company within that company's group.
> 5. he/she is first-degree relative of any of senior executives of the company or of any other company within that company's group.
> 6. he/she is a board member of any company within the group of the company which he is nominated to be a member of its board.

The clear purpose of these provisions is to reduce the influence of corporate management on the board of directors. Therefore, each represents a significant change in the governance of publicly-traded corporations in Saudi Arabia, and reflects the great importance of having boards of directors composed primarily of members who are less susceptible to being influenced by factors that might undermine the ability to always act in the best interest of the corporation and its shareholders. For further information about number of boards' seats in listed companies by membership type see chart D. in Appendix III.

*(2) Article 14: Audit Committee.*

Article 14, which was made mandatory with respect to listed companies by the Board of the Capital Market Authority, effective in 2009,[565] requires the board of directors to create an audit committee of at least three non-executive directors, at least one of whom is a specialist in accounting and financial matters. Rules concerning appointment of audit committee members, their term of office, and operating procedures are adopted by the general assembly upon recommendation of the board. For further information about number of

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7. If he/she, during the preceding two years, has been an employee with an affiliate of the company or an affiliate of any company of its group, such as external auditors or main suppliers; or if he/she, during the preceding two years, had a controlling interest in any such party.

In addition, under 2 (b) of the Corporate Governance Regulations, first-degree relatives means: "father, mother, spouse and children."

[565] The Board of the Capital Market Authority issued resolution Number (1-36-2008) Dated 11/12/1429H corresponding to 11/10/2008G making Article 14 of the Corporate Governance Regulations mandatory on all companies listed on the Exchange effective from year 2009.

audit committees' seats in listed companies by membership type see chart E. in Appendix III.

Under the Companies Act, there is no requirement for audit committees.[566] The importance of an independent audit committee in ensuring the integrity of a company's financial statements requires little, if any, comment. However, if comment is thought necessary, it need only be noted that one of the most significant provisions in the Sarbanes-Oxley Act of 2002 is a comparable provision in section 301 of that Act mandating the formation of such a committee. Unfortunately, Saudi law is less strict concerning audit committee membership than its American counterpart. That is, Article 14, unlike the Sarbanes-Oxley Act, requires only that members be other than corporate executives rather than that they be truly independent of management.

Nevertheless, Article 14 is of the highest importance to the governance of publicly-traded corporations in Saudi Arabia. Because of the importance of the subject matter, the full text of Article 14 is provided below with indications of the matters of greatest significance.

Article 14 of the Corporate Governance Regulations, Audit Committee, states:

> a) The Board of Directors shall set up a committee to be named the "Audit Committee". Its members shall not be less than three, including a specialist in financial and accounting matters. Executive board members are not eligible for Audit Committee membership.

[566] However, the proposals to the Companies Act would mandate such a committee and set its rules as discussed above in II.F.1.b.c.

b) The General Assembly of shareholders shall, upon a recommendation of the Board of Directors, issue rules for appointing the members of the Audit Committee and define the term of their office and the procedure to be followed by the Committee.

c) The duties and responsibilities of the Audit Committee include the following:
1. To supervise the company's internal audit department to ensure its effectiveness in executing the activities and duties specified by the Board of Directors.
2. To review the internal audit procedure and prepare a written report on such audit and its recommendations with respect to it.
3. To review the internal audit reports and pursue the implementation of the corrective measures in respect of the comments included in them.
4. To recommend to the Board of Directors the appointment, dismissal and the Remuneration of external auditors; upon any such recommendation, regard must be made to their independence.
5. To supervise the activities of the external auditors and approve any activity beyond the scope of the audit work assigned to them during the performance of their duties.
6. To review together with the external auditor the audit plan and make any comments thereon.
7. To review the external auditor's comments on the financial statements and follow up the actions taken about them.
8. To review the interim and annual financial statements prior to presentation to the Board of Directors; and to give opinion and recommendations with respect thereto.
9. To review the accounting policies in force and advise the Board of Directors of any recommendation regarding them.
(emphasis added)

*(3) Article 15: Nomination and Remuneration Committee*

The initial importance of Article 15, which was made mandatory by the Board of the Capital Market Authority, effective in 2011,[567] is the requirement, not found in the Companies Act, that every listed Saudi

[567] The Board of the Capital Market Authority issued resolution Number (1-10-2010) Dated 3/30/1431H corresponding to 3/16/2010G making Article 15 of the Corporate Governance Regulations mandatory on all companies listed on the Exchange effective from 1/1/2011.

corporation have a nomination and remuneration committee created by the full board in accordance with rules and policies set by the corporation's shareholders. In this connection it is important to note, as discussed above at II.G.6.b.(1) on page 171, that a majority of the full board must be composed of non-executive directors and that at least one-third of all directors must be independent directors. What is also important is that this committee is required, among other things, to both: (a) ensure on an annual basis the independence of the independent directors; and (b) establish clear policies concerning indemnification and remuneration of directors and top executives. It should be noted, however, that unlike the audit committee, the nomination and remuneration committee is not required to consist of non-executive directors. This deficiency is partially remedied by Article 13 (c), discussed in part II.G.6.c.(2) (d) on page 196. For further information about the number of listed companies having nomination and remuneration committees, see chart F. in Appendix III.

> Article 15 of the Corporate Governance Regulations, Nomination and Remuneration Committee, states in pertinent part:
>
> a) The Board of Directors shall set up a committee to be named "Nomination and Remuneration Committee".
>
> b) The General Assembly shall, upon a recommendation of the Board of Directors, issue rules for the appointment of the members of the Nomination and Remuneration Committee, their remunerations, and terms of office and the procedure to be followed by such committee.
>
> c) The duties and responsibilities of the Nomination and Remuneration Committee include the following:

1. Recommend to the Board of Directors appointments to membership of the Board in accordance with the approved policies and standards; the Committee shall ensure that no person who has been previously convicted of any offense affecting honor or honesty is nominated for such membership.

* * * *

5. Ensure on an annual basis the independence of the independent members and the absence of any conflict of interest in case a Board member also acts as a member of the Board of Directors of another company.

6. Draw clear policies regarding the indemnities and remunerations of the Board members and top executives; in laying down such policies, the standards related to performance shall be followed.

### c. New Elective Provisions Subject to the Comply or Disclose Rule[568]

The final part of this section II.G.6 covers corporate governance rules that technically are elective but which are mandatory in effect because, as discussed above at II.G.5.c on page 167, if a company chooses not to follow them, it must disclose that fact in its annual board of directors report and explain why it has not implemented them.

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[568] Article 1 (c) of the Corporate Governance Regulations provides:

> As an exception of paragraph (b) of this article, a company must disclose in the Board of Directors` report, the provisions that have been implemented and the provisions that have not been implemented as well as the reasons for not implementing them.

Article 9 (a) requires that the annual board of directors' report must include the following:

> The implemented provisions of these Regulations as well as the provisions which have not been implemented, and the justifications for not implementing them.

*(1) Shareholders Rights*

Articles 3 through 7 of Part 2 of the Corporate Governance Regulations, separately discussed below, deal with rights of shareholders.

(a) **Article 3: General Rights of Shareholders**

Except as discussed below, Article 3 of the Corporate Governance Regulations is primarily a restatement of the shareholders' rights provided in Article 108 (1) of the Companies Act. Article 3 states as follows:

> A Shareholder shall be entitled to all rights attached to the share, in particular, the right to a share of the distributable profits, the right to a share of the company's assets upon liquidation; the right to attend the General Assembly and participate in deliberations and vote on relevant decisions; the right of disposition with respect to shares; the right to supervise the Board of Directors activities, and file responsibility claims against board members; the right to inquire and have access to information without prejudice to the company's interests and in a manner that does not contradict the Capital Market Law and the Implementing Rules [Implementing Regulations].[569]
> (alteration to the original in the quoted text)

Note that express limitation on the right to inquire and have access to information that this right must not be used in a manner that is harmful or prejudice to the corporation's interests. Another express limitation on this right is that it be exercised in a manner that does not contradict the Capital Market Law and the Implementing Regulations. This states the fact that the

[569] The translation should read "Implementing Regulations." Under the Glossary Of Defined Terms, Implementing Regulations means:

> any regulations, rules, instructions, procedures and orders issued by the Authority relating to the implementation of the Capital Market Law.

right to information is subject to these provisions which include rules as to the timing of providing access to information.

### (b) Article 4: Facilitation of Shareholders' Exercise of Rights and Access to Information

Article 4 of the Corporate Governance Regulations, as discussed below is in some aspects broader than comparable provisions under the Companies Act.

Article 4 provides:

> a) The company in its Articles of Association and by-laws shall specify the procedures and precautions that are necessary for the shareholders' exercise of all their lawful rights.
>
> b) All information which enable shareholders to properly exercise their rights shall be made available and such information shall be comprehensive and accurate; it must be provided and updated regularly and within the prescribed times; the company shall use the most effective means in communicating with shareholders. No discrepancy shall be exercised with respect to shareholders in relation to providing information.

(alteration to the original in the quoted text)

The rule in paragraph (a), that "the procedures and precautions that are necessary for the shareholders' exercise of all their lawful rights" need to be specified in the bylaws of a corporation subject to the Corporate Governance Regulations is broader in scope and more general in coverage than comparable provisions under the Companies Act. Prior to the adoption of the Corporate Governance Regulations, some specific matters concerning attendance and voting at shareholders' meetings were required to be included

in the bylaws of a corporation under Articles 83 and 93 of the Companies Act. However, there was nothing comparable to Article 4 (a) in coverage and scope.

The rule under Article 4 (b) is also largely a broad, general provision which does not appear to impose any requirements not otherwise existing under the Companies Act. However, in some respect it is more specific. For example, Article 4 (b) affirmatively requires a corporation to use "the most effective means of communicating with shareholders." This terminology, while imposing a specific requirement, is sufficiently generic to be able to evolve with advances in technology.

In addition, the requirement to use "the most effective means in communicating with shareholders" would not appear to supersede any publication requirement in the Companies Act applicable to any specific matter. For example, the requirement of Companies Act Article 88 that notices of general assemblies be published in the Official Gazette and a daily newspaper in the locality of the corporation's main office continues to apply. Article 4 (b) simply imposes an additional requirement that the "most effective means" also be used.

Concerning the second sentence in Article 4 (b) prohibiting any "discrepancy" in information provided to shareholders, it is noted that Article

39 of the Listing Rules[570] imposes broader but inclusive requirement as follows:

> a. An issuer with listed shares must ensure equality of treatment for all holders of shares of the same class in respect of all rights attaching to such shares.
>
> b. An issuer with listed debt instruments must ensure equality of treatment for all holders of such securities of the same class in respect of all rights attaching to such securities.

### (c) Article 5: Shareholders Rights Related to the General Assembly Meeting

Article 5 of the Corporate Governance Regulations includes in paragraphs (a), (b) and (g) restatements of provisions in the Companies Act Articles 84, 87, and 94, respectively. On the other hand, the other paragraphs reflect matters either newly recognized or only partially covered by other provisions of the existing Companies Act.

> Article 5: Shareholders Rights related to the General Assembly
>
> a) A General Assembly shall convene once a year at least within the six months following the end of the company's financial year.
>
> b) The General Assembly shall convene upon a request of the Board of Directors. The Board of Directors shall invite a General Assembly to convene pursuant to a request of the auditor or a number of shareholders whose shareholdings represent at least 5% of the equity share capital.
>
> c) Date, place, and agenda of the General Assembly shall be specified and announced by a notice, at least 20 days prior to the date [of] the meeting; invitation for the meeting shall be published in the Exchange'[s] website, the company's website and in two newspapers of voluminous distribution in the Kingdom. Modern

[570] These Listing Rules are discussed above at I.B.3.c.(1).

high tech means shall be used in communicating with shareholders.

d) Shareholders shall be allowed the opportunity to effectively participate and vote in the General Assembly; they shall be informed about the rules governing the meetings and the voting procedure.

e) Arrangements shall be made for facilitating the participation of the greatest number of shareholders in the General Assembly, including inter alia determination of the appropriate place and time.

f) In preparing the General Assembly's agenda, the Board of Directors shall take into consideration matters shareholders require to be listed in that agenda; shareholders holding not less than 5% of the company's shares are entitled to add one or more items to the agenda upon its preparation.

g) Shareholders shall be entitled to discuss matters listed in the agenda of the General Assembly and raise relevant questions to the board members and to the external auditor. The Board of Directors or the external auditor shall answer the questions raised by shareholders in a manner that does not prejudice the company's interest.

h) Matters presented to the General Assembly shall be accompanied by sufficient information to enable shareholders to make decisions.

i) Shareholders shall be enabled to peruse the minutes of the General Assembly; the company shall provide the Authority with a copy of those minutes within 10 days of the convening date of any such meeting.

j) The Exchange shall be immediately informed of the results of the General Assembly.
(alteration to the original in the quoted text)

Article 5 (c) Provides that the "invitation for the meeting shall be published in the Exchange'[s] website, the company's website and in two newspapers of

voluminous distribution in the Kingdom. Modern high tech means shall be used in communicating with shareholders." These are simply additional appropriate rules required of publicly-held companies, in addition to notice requirements imposed on all corporations under Article 88 of the Companies Act.[571]

Article 5 (d) includes a restatement of the requirement of Article 108 (1) of the Companies Act, "the right to attend stockholders meeting and participate in the deliberation and vote on the resolutions (proposed) thereat." In addition, it specifies a newly recognized right to be informed of the rules governing meetings and voting procedures. This requirement is more specific than the current requirement in Article 93 of the Companies Act that "[t]he company's bylaws shall prescribe the manner of voting at stockholders meetings." It is also noted that paragraph (d) of Article 5 provides the affirmative right to "be informed" while the requirement in Article 93 is only that the bylaws contain the rules for the "manner of voting at stockholders meetings."

Article 5 (e) is at most an undefined best efforts requirement to enhance attendance at general assemblies.

Article 5 (f) is an important new shareholders' right, which requires the board of directors to include on the agenda for shareholders meetings "one or more items" requested to be so included by any shareholder holding at least

[571] Under Article 88 of the Companies Act, the invitation to the general assemblies must be published in the Official Gazette and in a daily newspaper distributed in the locality of the head office of the corporation at least twenty-five days prior to the date set for the meeting. On the other hand, paragraph (c) requires the general assembly's announcement and publication requirements to be made at least twenty days prior to the date of the meeting.

5% of the corporation's shares. It is important to note that under the Companies Act there is no comparable shareholder initiative provision of any nature whatsoever. However, Article 5 (f) may be seen as an extension of Article 87 of the Companies Act, under which the board of directors must call a regular general meeting, if so requested "by a number of stockholders representing at least 5% of the capital."

Unfortunately, it is not clear from the language of Article 5 (h) whether that paragraph is addressing the obligation of the board of directors to furnish the shareholders meeting information provided by a shareholder in support of a matter added to the agenda by that shareholder pursuant to paragraph (f) discussed above. On its face, Article 5 (h) is not so limited. Rather, it appears both literally and logically to require all items on the agenda, whether originating with the board of directors or shareholders, to be supported by sufficient material information to promote informed decision-making by shareholders.

While the right of a shareholder to review minutes of shareholders meetings is more specific than is the case under Article 108 (1) of the Companies Act [572]what is new in Article 5 (i) is the need to furnish the minutes to the Capital Market Authority within 10 days after any meeting.

[572] See inspection which is discussed above at II.D.1.k.(1).

The requirement of Article 5 (j) to immediately notify the Exchange of the result of a General Assembly is also new.[573]

### (d) **Article 6: Voting Rights**

Article 6 of the Corporate Governance Regulations includes both restatements of provisions in the Companies Act as well as newly recognized or partially recognized rules as discussed below. For the reader's convenience, significant differences are underlined below:

> a) Voting is deemed to be a fundamental right of a shareholder, which shall not, in any way, be denied. The company must avoid taking any action which might hamper the use of the voting right; a shareholder must be afforded all possible assistance as may facilitate the exercise of such right.
>
> b) In voting in the General Assembly for the nomination to the board members, the accumulative voting method shall be applied.
>
> c) A shareholder may, in writing, appoint any other shareholder who is not a board member and who is not an employee of the company to attend the General Assembly on his behalf.
>
> d) Investors who are judicial[574] persons and who act on behalf of others - e.g. investment funds- shall disclose in their annual reports their voting policies, actual voting, and ways of dealing with any material conflict of interests that may affect the practice of the fundamental rights in relation to their investments. (alteration to the original in the quoted text) (emphasis added)

Article 6 (a) is primarily a partial restatement of requirements in the Companies Act, Article 108 (1), namely, the requirement that a shareholder

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[573] Under Article 1 (c) of the Minister of Commerce's decision number (959), on 04/27/1423H, listed corporations must notify the management of Tadawul of the results of the general assembly, before on hour from the morning of the following day to the meeting.
[574] So in the original. Presumably should be "juridical," i.e., legal entities of any nature, as distinguished from natural persons.

must be vested with all the rights attached to shares, including specifically "the right to attend stockholders meetings and participate in the deliberations and vote on the resolutions (proposed) thereat." As previously discussed above at II.G.(1).(c) on page 182 and II.D.1.c.(1) on page 74, Articles 93 and 107 of the Companies Act require that the rules and requirements concerning voting at shareholders meetings be specified in the corporation's bylaws. The language in Article 6 (a) stating that "[t]he company must avoid taking any action which might hamper the use of the voting right; a shareholder must be afforded all possible assistance as may facilitate the exercise of such right" is more specific than anything in the Companies Act. However, it is the author's view that this language does not appear to create any new obligation. (other than the possible effect on proxy voting discussed above in II.D.1. c.(1) on page 74).

Article 6 (a) operates in conjunction with the requirements of Article 93 of the Companies Act that "[t]he company's bylaws shall prescribe the manner of voting at stockholders meetings" and Article 107, which provides:

> A stockholder shall exercise the right of voting at general or special meetings in accordance with the provisions of the company's bylaws. Any stockholder entitled to attend stockholders meeting shall have at least one vote. The company's bylaws may prescribe a maximum for the number of votes vested in the holder of several shares.

The accumulative voting rule found under Article 6 (b) is newly recognized. "Accumulative voting" is defined by Article 2 as follows:

> [A] method of voting for electing directors, which gives each shareholder a voting rights equivalent to the number of shares he/she holds. He/she has the right to use them all for one nominee or to divide them between his/her selected nominees without any duplication of these votes. This method increases the chances of the minority shareholders to appoint their representatives in the board through the right to accumulate votes for one nominee.[575]

It is noted that this newly recognized right is consistent with the proposed amendment to the Companies Act, discussed above at II.E.2. j.(2) on page 120, that would make the right to vote cumulatively mandatory in all Saudi corporations. Cumulative voting is fundamental to the protection of minority shareholders, because it increases minority shareholders' chances to have someone of their choice serve on the board of directors, which in turn may help in preventing their exploitation.

Article 6 (c) concerning the use of proxies, is primarily a partial restatement of Article 83 of the Companies Act, [576] but it is noteworthy that the prohibition against giving a proxy to directors is extended to also include employees.

The matters found in Article 6 (d), concerning disclosure of voting and possible conflicts of interest on the part of entities, such as investment funds, that invest on behalf of others, are not addressed in the Companies Act and are beyond the scope of this dissertation.

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[575] Article 2, Definitions of the Corporate Governance Regulations.
> Minority Shareholders: Those shareholders who represent a class of shareholders that does not control the company and hence they are unable to influence the company.

[576] See Article 83 of the Companies Act.

### (e) **Article 7: Dividends Rights of Shareholders**

Article 7 specifies the dividends rights of shareholders and provides as follows:

> a) The Board of Directors shall lay down a clear policy regarding dividends, in a manner that may realize the interests of shareholders and those of the company; shareholders shall be informed of that policy during the General Assembly and reference thereto shall be made in the report of the Board of Directors.
>
> b) The General Assembly shall approve the dividends and the date of distribution. These dividends, whether they be in cash or bonus shares shall be given, as of right, to the shareholders who are listed in the records kept at the Securities Depository Center as they appear at the end of trading session on the day on which the General Assembly is convened.[577]

While there are minimum dividend requirements of 5% of capital stated in Article 127 of the Companies Act, discussed above at II.D.1.d on page 76, there is no separate requirement that the board of directors adopt a "clear

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[577] The rules in paragraphs (a and b) go along those of Articles 89 of the Companies Act under which, "the board of directors shall, at sixty days prior to the date set for the holding of the annual general meeting, prepare for every financial year of the company*** a report on the method which it proposes for the distribution of net profits.

The said documents shall be signed by the chairman of the board of directors, and copies thereof shall be placed at the disposal of stockholders the head office of the company at least twenty-five days prior to the date set for such general meeting. The chairman of the board of directors must publish, in a newspaper distributed in the locality, in a newspaper distributed in the locality [sic] of the head office of the company***, a comprehensive summary of the board of directors report****," Article 123 of the Companies Act provides in part that at the end of every financial year the board of directors must prepare "a report on its operations and financial position for the expired financial year, setting out the proposed method for the allocation of net profits," and those of Article 127 of the Companies Act which provides:

The company's bylaws shall specify the percentage to be distributed among stockholders out of the net profits, after deduction of the statutory and the contractual reserves provided this percentage is not less than 5% of the capital.

A stockholder shall be entitled to his share in the profits (i.e. dividends) as soon as the general meeting adopts a resolution on the allocation (of profits).

policy" concerning dividends as found in paragraph (a). The closest provisions in the Companies Act are requirements in Article 89 and 123 that the board report the "method" proposed to be used in determining that year's dividend. It is the apparent intent of paragraph (a) of Article 7 that a corporation is required to have a "clear policy" concerning the possibility of distributing profits in excess of what are the minimum requirements. It is also noted that shareholders are to be informed of such policy during the general assembly, and there is to be reference to this policy in board of directors' report.

Shareholders, as the corporation's residual claimants, have keen interest in the success of the corporation and high returns on their investment. The Corporate Governance Regulations require the board of directors to lay down a clear policy regarding distribution of dividends in a way that serves both the interest of the corporation and its shareholders.[578] Moreover, shareholders must be informed about this policy in the General Assembly and reference to such policy must take place in the board of directors' report.[579] The general assembly must approve the dividend and date of distribution.[580] These dividends are to be given to the shareholders who are listed in the records kept at the Securities Depository Center as they appear at the end of trading session

[578] Article (7) (a) of the Corporate Governance Regulations.
[579] Id.
[580] Article (7) (b) of the Corporate Governance Regulations.

on the day on which the general assembly is convened.[581] This rule for determining the record date of distributions is new.[582]

*(2) Board of Directors*

Articles 10 through 18 of Part 4 of the Corporate Governance Regulations, separately discussed below, unless previously discussed in II.G.6.b, new mandatory requirement, on page 171, deal with the board of directors.

(a) **Article 10: Main Functions of the Board of Directors**

Article 10 of the Corporate Governance Regulations, Main Functions of the Board of Directors, provides:

> Among the main functions of the Board is the following:
>
> a) Approving the strategic plans and main objectives of the company and supervising their implementation; this includes:
>
> 1. Laying down a comprehensive strategy for the company, the main work plans and the policy related to risk management, reviewing and updating of such policy.

[581] Id.

[582] However, this rule operates along the same lines as that found under the Minister of Commerce's decision number (959), issued on 04/27/1423H, under which among the procedures a board of directors must take when proposing distribution of profits(dividend) or bonus shares, is to define the date of entitlement of profits to holders of shares as they appear at the end of trading session on the day on which the general assembly is to be convened and if no quorum is met at the first meeting, the date is changed to the end of trading session on the day on which the second general assembly is to be convened and in both cases, the invitation to the general assembly must include that. (Article 1 (b) of decision number (959) on 04/27/1423H).

2. Determining the most appropriate capital structure of the company, its strategies and financial objectives and approving its annual budgets.
3. Supervising the main capital expenses of the company and acquisition/disposal of assets.
4. Deciding the performance objectives to be achieved and supervising the implementation thereof and the overall performance of the company.
5. Reviewing and approving the organizational and functional structures of the company on a periodical basis.

b) Lay down rules for internal control systems and supervising them; this includes:

1. Developing a written policy that would regulates [sic] conflict of interest and remedy any possible cases of conflict by members of the Board of Directors, executive management and shareholders. This includes misuse of the company's assets and facilities and the arbitrary disposition resulting from dealings with the related parties.
2. Ensuring the integrity of the financial and accounting procedures including procedures related to the preparation of the financial reports.
3. Ensuring the implementation of control procedures appropriate for risk management by forecasting the risks that the company could encounter and disclosing them with transparency.
4. Reviewing annually the effectiveness of the internal control systems.

c) Drafting a Corporate Governance Code for the company that does not contradict the provisions of this regulation, supervising and monitoring in general the effectiveness of the code and amending it whenever necessary.

d) Laying down specific and explicit policies, standards and procedures, for the membership of the Board of Directors and implementing them after they have been approved by the General Assembly.

> e) Outlining a written policy that regulate [sic] the relationship with stakeholders[583] with a view to protecting their respective rights; in particular, such policy must cover the following:
>
> 1. Mechanisms for indemnifying the stakeholders in case of contravening their rights under the law and their respective contracts.
> 2. Mechanisms for settlement of complaints or disputes that might arise between the company and the stakeholders.
> 3. Suitable mechanisms for maintaining good relationships with customers and suppliers and protecting the confidentiality of information related to them.
> 4. A code of conduct for the company's executives and employees compatible with the proper professional and ethical standards, and regulate their relationship with the stakeholders. The Board of Directors lays down procedures for supervising this code and ensuring compliance there with.
> 5. The Company's social contributions.
>
> f) Deciding policies and procedures to ensure the company's compliance with the laws and regulations and the company's obligation to disclose material information to shareholders, creditors and other stakeholders.

Describing best practices of the board of directors without imposing substantive requirements, Article 10 of the Corporate Governance Regulations in general calls for the following: (a) approval of strategic plans and main objectives and supervision of their implementation; (b) adoption of rules for internal control systems and supervision of them; (c) drafting of a corporate governance code and supervision and monitoring of its effectiveness; (d) creation and implementation, after approval by the general assembly, of policies, procedures and standards for membership on the board of directors;

[583] Under Article 2 (b) of the Corporate Governance Regulations Stakeholders means: "Any person who has an interest in the company, such as shareholders, employees, creditors, customers, suppliers, community.

(e) outlining a written policy to regulate the relationship with stakeholders with a view to protecting their respective rights; and (f) deciding policies and procedures to ensure the company's compliance with the laws and regulations and the company's obligation to disclose material information to shareholders, creditors and other stakeholders.

### (b) **Article 11: Responsibilities of the Board**

Article 11 of the Corporate Governance Regulations, Responsibilities of the Board, provides as follows:

> a) Without prejudice to the competences of the General Assembly, the company's Board of Directors shall assume all the necessary powers for the company's management. The ultimate responsibility for the company rests with the Board even if it sets up committees or delegates some of its powers to a third party. The Board of Directors shall avoid issuing general or indefinite power of attorney.
>
> b) The responsibilities of the Board of Directors must be clearly stated in the company's Articles of Association.
>
> c) The Board of Directors must carry out its duties in a responsible manner, in good faith and with due diligence. Its decisions should be based on sufficient information from the executive management, or from any other reliable source.
>
> d) A member of the Board of Directors represents all shareholders; he undertakes to carry out whatever may be in the general interest of the company, but not the interests of the group he represents or that which voted in favor of his appointment to the Board of Directors.
>
> e) The Board of Directors shall determine the powers to be delegated to the executive management and the procedures for taking any action and the validity of such delegation. It shall also determine matters reserved for decision by the Board of Directors.

> The executive management shall submit to the Board of Directors periodic reports on the exercise of the delegated powers.
>
> f) The Board of Directors shall ensure that a procedure is laid down for orienting the new board members of the company's business and, in particular, the financial and legal aspects, in addition to their training, where necessary.
>
> g) The Board of Directors shall ensure that sufficient information about the company is made available to all members of the Board of Directors, generally, and, in particular, to the non-executive members, to enable them to discharge their duties and responsibilities in an effective manner.
>
> h) The Board of Directors shall not be entitled to enter into loans which spans [sic] more than three years, and shall not sell or mortgage real estate of the company, or drop the company's debts, unless it is authorized to do so by the company's Articles of Association. In the case where the company's Articles of Association includes no provisions to this respect, the Board should not act without the approval of the General Assembly, unless such acts fall within the normal scope of the company's business.

Paragraphs a)[584] through[585] g) of Article 11 of the Corporate Governance Regulations, with the possible exception of the last sentence of paragraph a),[586] simply describe the manner in which a board of directors that follows best practices would conduct its affairs. Paragraph h) is a restatement of requirements found in Article 73 of the Companies Act.

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[584] The first part of Article 73 of the existing Companies Act provides:

> With due regard to the prerogatives vested in the general meeting, the board of directors shall enjoy full powers in the administration of the company.

[585] Concerning paragraph b) of Article 11 of the Corporate Governance Regulations, it is noted that there are model bylaws upon the incorporation of the corporation as discussed above in note 102.

[586] Although there is no comparable provision in the Companies Act it is believed that lawyers in Saudi Arabia would consider general and indefinite powers of attorney to be inappropriate.

### (c) **Article 12: Formation of the Board**

Article 12 of the Corporate Governance Regulations, Formation of the Board, provides, in pertinent part:

> Formation of the Board of Directors shall be subject to the following:
>
> a) The Articles of Association of the company shall specify the number of the Board of Directors members, provided that such number shall not be less than three and not more than eleven.
>
> b) The General Assembly shall appoint the members of the Board of Directors for the duration provided for in the Articles of Association of the company, provided that such duration shall not exceed three years. Unless otherwise provided for in the Articles of Association of the company, members of the Board may be reappointed.
>
> * * * *
>
> d) It is prohibited to conjoin the position of the Chairman of the Board of Directors with any other executive position in the company, such as the Chief Executive Officer (CEO) or the managing director or the general manager.
>
> * * * *
>
> f) The Articles of Association of the company shall specify the manner in which membership of the Board of Directors terminates. At all times, the General Assembly may dismiss all or any of the members of the Board of Directors even though the Articles of Association provide otherwise.
>
> g) On termination of membership of a board member in any of the ways of termination, the company shall promptly notify the Authority and the Exchange and shall specify the reasons for such termination.
>
> h) A member of the Board of Directors shall not act as a member of the Board of Directors of more than five joint stock companies at the same time.

> i) Judicial[587] person who is entitled under the company's Articles of Association to appoint representatives in the Board of Directors, is not entitled to nomination vote of other members of the Board of Directors [sic].

Paragraphs (c) and (e) of Article 12, which are omitted here and which require a majority of the board of directors to be non-executives and at least one-third of the directors to be independent, are mandatory and have previously been discussed in part II.G.6.b.(1) on page 171.

With the exception of the provision in paragraph a) limiting the number of directors to no more than eleven, paragraphs (a), (b), and (f) are substantially the same as article 66 of the Companies Act.[588]

Paragraph (d), which prohibits the chairman of the board of directors from holding any other executive position, is new to the law of Saudi Arabia and reverses that portion of Article 79 of the Companies Act that permits the same person to act as chairman and managing director.[589] The apparent purpose of this rule is to reduce the influence of management on the board of directors.

Paragraph (g), complements the requirements of Article 25 of Listing Rules.

As discussed above at II.F.2.a.(1).(b) on page 128, the Council of Ministers has invoked Article 66 of the Companies Act and has made a limitation of five

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[587] So in the original. Presumably should be "juridical," i.e., legal entities of any nature, as distinguished from natural persons.
[588] See Article 66 of the existing Companies Act.
[589] Article 79 of the Companies Act provides in part

> With due regard to the provisions of the company's bylaws, the board of directors shall appoint from among its members a chairman and a managing director. A single director may hold the offices of chairman and managing director.

on the number of boards on which a director may serve. This limitation is identical to that in paragraph (h).

If a corporation's articles of association grant a juridical person the right to appoint one or more directors, presumably the intent of the parties is that such right is exclusive and that the person may not also nominate or vote for additional directors. Paragraph (i) of Article 12 reflects this intent.

### (d) **Article 13: Committees of the Board**

Article 13 of the Corporate Governance Regulations, Committees of the Board, provides as follows:

> a) A suitable number of committees shall be set up in accordance with the company's requirements and circumstances, in order to enable the Board of Directors to perform its duties in an effective manner.
>
> b) The formation of committees subordinate to the Board of Directors shall be according to general procedures laid down by the Board, indicating the duties, the duration and the powers of each committee, and the manner in which the Board monitors its activities. The committee shall notify the Board of its activities, findings or decisions with complete transparency. The Board shall periodically pursue the activities of such committees so as to ensure that the activities entrusted to those committees are duly performed. The Board shall approve the by-laws of all [permanent] committees of the Board, including, *inter alia*, the Audit Committee, Nomination and Remuneration Committee.
>
> c) A sufficient number of the non-executive members of the Board of Directors shall be appointed in committees that are concerned with activities that might involve a conflict of interest, such as ensuring the integrity of the financial and non-financial reports, reviewing the deals concluded by related parties, nomination to membership of the Board, appointment of executive directors, and determination of remuneration.
> (alteration to the original in the quoted text)

Paragraphs (a) and (b) simply describe the manner in which a board of directors following best practices would conduct its affairs. Moreover, it is noted that Article 73 of the Companies Act provides in part:

> With due regard to the prerogatives vested in the general meeting, the board of directors shall enjoy full powers in the administration of the company. It shall be entitled, within the scope of its competence, to delegate one or more of its members or others to perform an act or certain acts.

The high significance of the presence of non-executive board members, as discussed above in II.G.6.b.(1) on page 171, is to reduce the influence of management on the board of directors. This significance is codified in paragraphs (c) and (e) of Article 12, which require that a majority of the board consist of non-executive directors and that at least one-third of the directors be independent. It follows that such importance extends especially to the mandated audit and nomination and remuneration committees of the board of directors and also to others that are concerned with activities that might involve a conflict of interest. Article 13 (c) accomplishes this result.

### (e) **Article 16: Meetings of the Board**

Article 16 of the Corporate Governance Regulations, Meetings of the Board, provides:

> 1.The Board members shall allot ample time for performing their responsibilities, including the preparation for the meetings of the Board and the permanent and ad hoc committees, and shall endeavor to attend such meetings.

> 2. The Board shall convene its ordinary meetings regularly upon a request by the Chairman. The Chairman shall call the Board for an unforeseen meeting upon a written request by two of its members.
>
> 3. When preparing a specified agenda to be presented to the Board, the Chairman should consult the other members of the Board and the CEO. The agenda and other documentation should be sent to the members in a sufficient time prior to the meeting so that they may be able to consider such matters and prepare themselves for the meeting. Once convened, the Board shall approve the agenda; should any member of the Board raise any objection to this agenda, the details of such objection shall be entered in the minutes of the meeting.
>
> 4. The Board shall document its meetings and prepare records of the deliberations and the voting, and arrange for these records to be kept in chapters for ease of reference.

Paragraphs (1) and most of (3) of Article 16 describe the manner in which a board of directors following best practices would conduct its affairs. However, the rule in paragraph (3) that "[t]he agenda and other documentation should be sent to the members in a sufficient time prior to the meeting" is an undefined best efforts rule. The final clause in paragraph (3), that "should any member of the Board raise any objection to this agenda, the details of such objection shall be entered in the minutes of the meeting," operates alongside the provision of Article 76 of the Companies Act which provides in part, that "dissenting directors shall not be liable if they have expressly recorded their objection in the minutes of the meeting."

Paragraph (2) of Article 16 of the Corporate Governance Regulations calls for convening ordinary meetings regularly, upon a request by the Chairman, which is not precisely provided for under the Companies Act, as discussed

above in II.F.3.b, Requirement to Hold Meetings or a Specific Number of Them, on page 137. However, Article 80 of the Companies Act does state that the board of directors shall meet at the summons of the chairman as provided in the corporation's by-laws. Moreover, the rule in paragraph (2), which states that "[t]he Chairman shall call the Board for an unforeseen meeting upon a written request by two of its members," operates similarly to that of Article 80 of the Companies Act. Nevertheless, and notwithstanding any provision to the contrary in the company's bylaws, the chairman must convene the board if requested to do so by two directors.

Paragraph (4) calls for the board of directors to "document its meetings and prepare records of the deliberations and the voting, and arrange for these records to be kept in chapters for ease of reference." It operates alongside that of Article 82 of the Companies Act which provides:

> Deliberations and resolutions of the board shall be recorded in minutes to be signed by the chairman and the secretary. Such minutes shall be entered in a special register, which shall be signed by the chairman and the secretary.

Paragraph (4) states that this applies to voting that took place, a point that is implicit but not explicit in Article 82 and further that the board of directors is to arrange for these records to be kept in chapters for ease of reference.

### (f) Articles 17 and 18 of the Corporate Governance Regulations

Article 17 of the Corporate Governance Regulations is a restatement of part of Article 74 of the Companies Act as discussed in part II.F.2.f.(1) on page 135, and operates in conjunction with Article 36 of the Listing Rules, which requires shareholder approval of director and senior executive compensation of listed companies.[590]

Other than clarifying two matters that are ambiguous under the comparable provisions under the Companies Act, as discussed in part II.F.5 on page 143, Article 18 is a restatement of rules found under those provisions. Article 18 first clarifies that required authorization must occur prior to the conduct in question. In addition, this Article explicitly provides that the interested director may not vote on any relevant resolution as either a director or a shareholder.

## III. Conclusion

The aim of this work is to study recent proposals and reforms to improve corporate governance in Saudi Arabia and to explore how proposed amendments to the Companies Act, which are applicable to both privately-held and publicly-held corporations, in addition to those already in effect, would shape corporate governance in Saudi Arabia. In order to identify the

[590] Specifically see Articles 74 of the Companies Act and 36 of the Listing Rules.

issues of corporate governance emerging from such reforms, it would be useful to revisit a few of the most significant:

**A. Shareholders' Primacy.**

Shareholders' primacy is central to the Companies Act of 1965 which is significantly different than American law because of its directors' primacy model. For example, lately, there is some movement to give shareholders in the United States more powers which they have not had before. These new powers and more fall under the powers of shareholders in Saudi Arabia. The following recent reforms affecting corporate governance in the United States that are especially relevant here when compared to the law of corporate governance in Saudi Arabia.

1. The recent change applicable to proxy access. Now, Section 14 (a) (2) of the Securities Exchange Act of 1934 provides that the Securities and Exchange Commission may promulgate a proxy rule that includes "a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer." The SEC issued proposed rule 14a-11 which requires public companies to provide shareholders with information about, and their ability to vote for, shareholder-nominated candidates for the board of directors. However, the United States Court of Appeals, District of Columbia Circuit vacated this rule in July 22, 2011. This vacation was not related to the substance of the rule but mainly because the Commission failed

adequately to consider the rule's effect upon efficiency, competition, and capital formation, as required by Section 3(f) of the Exchange Act and Section 2(c) of the Investment Company Act of 1940. The Commission, however, may issue a similar rule after adherence to applicable administrative rules and procedures.

Under Article 66 of the Companies Act shareholders acting in a regular general assembly “shall appoint the directors for the term specified in the company bylaws" and Article 67 of the same law provides that:

> Unless the company bylaws provide otherwise, if the office of a director becomes vacant, the board may appoint a temporary director to fill the vacancy, provided that such appointment shall be laid before the first regular general meeting. The new director shall complete the unexpired term of his predecessor.
>
> If the number of directors falls below the minimum prescribed in [the Companies Act] or in the company's bylaws, the regular general meeting must be convened as soon as possible to appoint the required number of directors. (alteration to the original in the quoted text)

Article 5 (f) of the Corporate Governance Regulations, applicable to listed corporations, provides that “[i]n preparing the General Assembly’s agenda, the Board of Directors shall take into consideration matters shareholders require to be listed in that agenda; shareholders holding not less than 5% of the company’s shares are entitled to add one or more items to the agenda upon its preparation.” Article 5 (f) is an important new shareholders’ right, which requires the board of directors to include on the agenda for shareholders meetings “one or more items” requested to be so included by any shareholder holding at least 5% of the corporation’s shares. It is important to note that

under the Companies Act there is no comparable shareholder initiative provision of any nature whatsoever. Under Article 68 (2) of the proposed Companies Act, any shareholder may nominate himself or another person or more than one within his ownership percentage in the corporation's capital.

2. Section 951 of the Dodd-Frank Act amends the Securities Exchange Act of 1934 by adding Section 14A, which requires companies to conduct a separate shareholder advisory vote to approve the compensation of executives.

Under Article 74 of the Companies Act the company's bylaw "shall specify the manner of remunerating directors." Pursuant to Article 85 of the Companies Act, shareholders' action concerning lawful amendments to the corporation's bylaws must occur in an extraordinary general assembly by shareholders. Moreover Article 74 of the Companies Act requires that the board of directors' report to the regular general meeting must include "a comprehensive statement of all the amounts received by directors during the financial year in the way of emoluments, share in the profits, attendance fees, expenses, and other benefits, as well as of all the amounts received by the directors in their capacity as officers or executives of the company, or in consideration of technical, administrative, or advisory services."

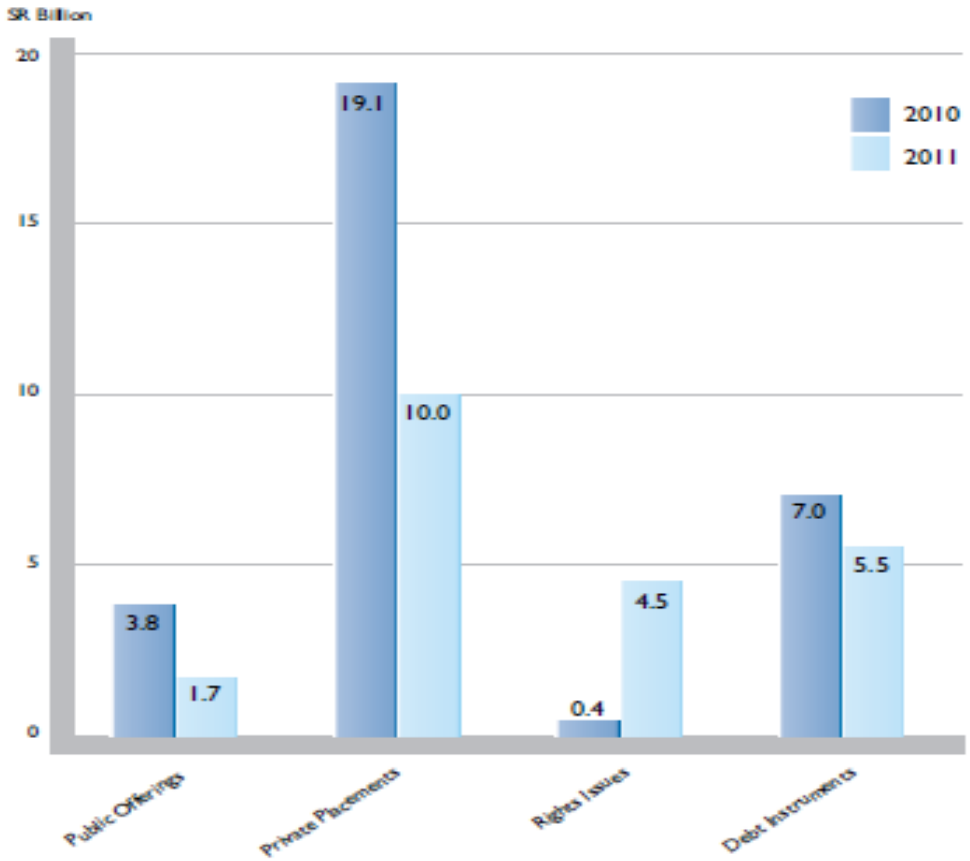
**B. Offers of Securities.**

Raising capital is critical to businesses. This process is subject to regulations issued by the Capital Market Authority, which was given authority

by the Capital Market Law to regulate all offering of shares, whether by privately held or publicly held corporations.

In 2004, the Capital Market Authority issued the Offers of Securities Regulations. These regulations require that every offer of securities must meet elaborate requirements applicable for a public offer, which are similar to those applicable to a registered offering in the United States, unless it falls into one of the defined categories of private placements.

The following chart shows the total amount of securities offerings by type in 2010 and 2011




Capital Market Authority, Annual Report 2011, P27 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

From the chart, although down from that of 2010, in 2011 public offerings reached 1.7 billion SAR and private placements which small businesses use extensively to raise capital reached 10 billion SAR.

**C. Make-up of the Board of Directors.**

The Board of the Capital Market Authority made paragraphs (c) and (e) of Article 12 mandatory with respect to all listed companies, effective in 2009. Paragraph (c) provides that the "majority of the members of the Board of Directors shall be non-executive members," a concept roughly equivalent to an outside director in the United States. Paragraph (e) goes farther and requires that the "independent members of the Board of Directors shall not be less than two members, or one-third of the members, whichever is greater."

The clear purpose of these provisions is to reduce the influence of corporate management on the board of directors. Therefore, each represents a significant change in the governance of publicly-traded corporations in Saudi Arabia, and reflects the great importance of having boards of directors composed primarily of members who are less susceptible to being influenced by factors that might undermine the ability to always act in the best interest of the corporation and its shareholders.

**D. Audit, Nomination and Remuneration Committees and Their Make-up.**

1. Audit Committee.

Article 14, which was made mandatory with respect to listed companies by the Board of the Capital Market Authority, effective in 2009, requires the board of directors to create an audit committee of at least three non-executive directors, at least one of whom is a specialist in accounting and financial matters. Rules concerning appointment of audit committee members, their term of office, and operating procedures are adopted by the general assembly upon recommendation of the board.

Under the Companies Act, there is no requirement for audit committees. However, the proposals to the Companies Act would mandate such a committee and set its rules as discussed above in II.F.1.b.c. on page 124 The importance of an independent audit committee in ensuring the integrity of a company's financial statements requires little, if any, comment. However, if comment is thought necessary, it need only be noted that one of the most significant provisions in the Sarbanes-Oxley Act of 2002 is a comparable provision in section 301 of that Act mandating the formation of such a committee.

Unfortunately, Saudi law is less strict concerning audit committee membership than its American counterpart. That is, Article 14, unlike the Sarbanes-Oxley Act, requires only that members be other than corporate executives rather than that they be truly independent of management.

Nevertheless, Article 14 is of the highest importance to the governance of publicly-traded corporations in Saudi Arabia.

2. Nomination and Remuneration Committee.

The initial importance of Article 15, which was made mandatory by the Board of the Capital Market Authority, effective in 2011, is the requirement, not found in the Companies Act, that every listed Saudi corporation have a nomination and remuneration committee created by the full board in accordance with rules and policies set by the corporation's shareholders. In this connection it is important to note, as discussed above at II.G.6.b.(1) on page 171, that a majority of the full board must be composed of non-executive directors and that at least one-third of all directors must be independent directors. What is also important is that this committee is required, among other things, to both: a. ensure on an annual basis the independence of the independent directors; and b. establish clear policies concerning indemnification and remuneration of directors and top executives. It should be noted, however, that unlike the audit committee, the nomination and remuneration committee is not required to consist of non-executive directors. This deficiency is partially remedied by Article 13 (c).

**E. Corporate Governance Regulations' New Elective Provisions: "Comply or Disclose."**

A critical matter concerning all elective provisions in the Corporate Governance Regulations are certain provisions with which publicly-traded corporations must comply or explain why they elect not to comply. This is

unique to Saudi corporate law, as contrasted to corporate law in the United States.[591]

Concerning elective provisions, it is the apparent belief of the Capital Market Authority that the presence of this disclosure requirement will encourage listed corporations to comply with such provisions. This belief is apparently based on the assumption that all corporations wish for their shareholders and the public to hold a positive image of them. An image that applies best corporate governance practices is an important step to attain shareholder and public trust, which in turn leads to investment. In short, market discipline.

The final part of section II.G.6 covers corporate governance rules that technically are elective but which are mandatory in effect because, as discussed above if a company chooses not to follow them, it must disclose that fact in its annual board of directors report and explain why it has not implemented them.

The followings are examples of important new rules in the Corporate Governance Regulations:

1. The rule under Article 4 (b) is largely a broad, general provision which does not appear to impose any requirements not otherwise existing under the Companies Act. However, in some respect it is more specific. For example,

[591] There are exceptions to the statement in text. For example, section 407 (a) of the Sarbanes-Oxley Act directs the SEC to adopt rules that require publicly-traded companies to disclose whether their audit committee has at least one member who is a financial expert, and if not, the reasons why not. Similarly the SEC amended Regulation S-K to require issuers to disclose whether they have an internal procedure to monitor risk, and if not, the reasons why not.

Article 4 (b) affirmatively requires a corporation to use "the most effective means of communicating with shareholders." This terminology, while imposing a specific requirement, is sufficiently generic to be able to evolve with advances in technology.

2. As discussed above in this Conclusion, Article 5 (f) is an important new shareholders' right, which requires the board of directors to include on the agenda for shareholders meetings "one or more items" requested to be so included by any shareholder holding at least 5% of the corporation's shares.

3. Article 5 (h) Requires that "Matters presented to the General Assembly shall be accompanied by sufficient information to enable shareholders to make decisions."

4. Article 6 (b) requires the use of accumulative voting for the nomination of board members in the general assembly. It is noted that this newly recognized right is consistent with the proposed amendment to the Companies Act that would make the right to vote cumulatively mandatory in all Saudi corporations. Cumulative voting is fundamental to the protection of minority shareholders, because it increases minority shareholders' chances to have someone of their choice serve on the board of directors, which in turn may help in preventing their exploitation.

5. It is the apparent intent of paragraph (a) of Article 7 that a corporation is required to have a "clear policy" concerning the possibility of distributing profits in excess of what are the minimum requirements. It is also noted that

shareholders are to be informed of such policy during the general assembly, and there is to be reference to this policy in board of directors' report.

Shareholders, as the corporation's residual claimants, have keen interest in the success of the corporation and high returns on their investment. The Corporate Governance Regulations require the board of directors to lay down a clear policy regarding distribution of dividends in a way that serves both the interest of the corporation and its shareholders.

6. Paragraph (d) of Article 12 which prohibits the chairman of the board of directors from holding any other executive position, is new to the law of Saudi Arabia and reverses that portion of Article 79 of the Companies Act that permits the same person to act as chairman and managing director. The apparent purpose of this rule is to reduce the influence of management on the board of directors.

7. Article 13 (c) provides that:

> A sufficient number of the non-executive members of the Board of Directors shall be appointed in committees that are concerned with activities that might involve a conflict of interest, such as ensuring the integrity of the financial and non-financial reports, reviewing the deals concluded by related parties, nomination to membership of the Board, appointment of executive directors, and determination of remuneration.

The high significance of the presence of non-executive board members, as discussed above in II.G.6.b.(1) on page 171, is to reduce the influence of management on the board of directors. This significance is codified in paragraphs (c) and (e) of Article 12, which require that a majority of the board

consist of non-executive directors and that at least one-third of the directors be independent. It follows that such importance extends especially to the mandated audit and nomination and remuneration committees of the board of directors and also to others that are concerned with activities that might involve a conflict of interest. Article 13 (c) accomplishes this result.

**F. Disclosure-Transparency.**

Articles 8 and 9 of the Corporate Governance Regulations impose disclosure and transparency requirements in addition to those previously existing under the Companies Act of 1965, the Capital Market Law of 2003 and the Listing Rules.[592] As so supplemented, the disclosure requirements under Saudi law are similar to comparable provisions under federal securities laws in the United States as discussed above at Public Offer, II.C.3.c on page 53.

**G. Major advancements.**

The reforms discussed in this paper are major advancements that will significantly bolster Saudi economic growth by increasing the attractiveness of its publicly- traded companies as investments while at the same time creating a favorable climate for the growth of privately-held businesses.

[592] In Addition, the Listing Rules require continuous reporting obligations similar to those imposed by section 13 of the Securities Exchange Act of 1934.

# BIBLIOGRAPHY

## *Books and Articles*

### English


Joseph W. **Beach**, *The Saudi Arabian Capital Market Law: A Practical Study of the Creation of Law in Developing Markets* (2005).

STIJN **CLAESSENS**, CORPORATE GOVERNANCE AND DEVELOPMENT IN GLOBAL CORPORATE GOVERNANCE FORUM FOCUS (the International Bank for Reconstruction and Development/ The World Bank) (2003).

ROBERT CHARLES **CLARK**, CORPORATE LAW, 109- 110 (1986).

Michael C., **Jensen** and William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure* (1976).

Charles **Oman** & Daniel Blume, corporate governance: a development challenge (OECD, 2005).


### Arabic


ṢĀLIH IBN ZĀBIN AL-MARZŪQĪ **AL-BUQAMĪ**, SHARIKAT AL-MUSAHAMAH FĪ AL-NNIZĀM AL-SU'ŪDĪ, DIRĀSAH MUQĀRINAH BI-AL-FIQH AL-ISLĀMĪ, JĀMI'AT UMM AL-QURÁ [THE CORPORATION IN SAUDI LAW A COMPARATIVE STUDY WITH ISLAMIC FIQH, PH.D DISSERTATION, UMM ALQURA UNIVERSITY] (Maṭābi' al-Ṣafā 1985) (Saudi Arabia).

MUHAMMAD ḤASAN **AL-JABR**, AL-QĀNŪN AL-TTIJĀRĪ [Saudi Commercial Law] (Saudi Arabia).

AKTHAM AMĪN **AL-KHŪLĪ**, DURŪS FĪ AL-QĀNŪN AL-TTIJĀRĪ AL-SU'ŪDĪ [STUDY TO THE SAUDI COMMERCIAL LAW] (Ma'had al-Idārah al-'Āmmah.1973) (Saudi Arabia).
HAMZAH'ALĪ **AL-MADANĪ**, AL-QĀNŪN AL-TTIJĀRĪ AL-SU'ŪDĪ [SAUDI COMMERCIAL LAW] (Dār Al-Madanī Bi-Jiddah 2001).

NĀYF SULTĀN **AL-SHARĪF**, ZĪĀD AHMAD AL-QURASHĪ, AL-QĀNŪN AL-TTIJĀRĪ [SAUDI COMMERCIAL LAW] (Dār Ḥāfiẓ 2nd Ed. 2008) (Saudi Arabia).

HAMD ALLĀH MUHAMMAD **HAMD ALLĀH**, AL-NNIZĀM AL-TTIJĀRĪ AL-SU'ŪDĪ [SAUDI COMMERCIAL LAW] (Ishrāqāt 2003-2004) (Saudi Arabia).

'MUHAMMAD **UMRĀN** ET AL., AL-MUQADIMAH FI DIRĀSAT AL-ANZIMAH, [INTRODUCTION TO LAWS STUDY] (Dār Ḥāfiẓ 2nd ed. 2000) (Saudi Arabia).

SA'ĪD **YAHYA**, AL-WAJĪZ FI AL-NNIZĀM AL-TTIJĀRĪ AL-SU'ŪDĪ [THE COMPACT IN SAUDI COMMERCIAL LAW] (Al-Maktab Al-'Arabī Al-Ḥadīth 2004).

## *WTO Documents*

Trade Policy Review, Report by the kingdom of Saudi Arabia, WT/TPR/G/256, (14 December 2011).

Trade Policy Review, Report by the Secretariat, the Kingdom of Saudi Arabia WT/TPR/S/256, (21 December 2011).

## *Saudi Arabia Statutes*

### Basic Laws

BASIC LAW OF GOVERNANCE, Royal Order No. (A/91), 27 Sha'ban 1412H – 1 March 1992, Published in Umm al-Qura Gazette No. 3397, 2 Ramadan 1412H - 5 March 1992.

LAW OF THE COUNCIL OF MINISTERS, Royal Order No. A/13, 3 Rabi' I 1414H / 20 August 1993, Published in Umm al-Qura Gazette, No. 3468, 10 Rabi' I 1414H / 27 August 1993.

LAW OF THE SHURA COUNCIL, Royal Order No. A/91, 27 Sha'aban 1421 / 1 March 1992, Published in Umm-al-Qura Gazette, No. 3397, 2 Ramadan 1412 / 5 March 1992.

### Other Statutes

CAPITAL MARKET LAW, issued by Royal Decree No. M/30, dated 6/2/1424H.

COMPANIES ACT (Royal Decree No. M6 22 Rabi' I 1385 (20 July 1965), Published in Umm al-Qura Gazette, No.2083, 16 Rabi' II 1385H (08/13/1965).

Commercial Names Law of 1999 Article 3 of the Commercial Names Law of 1999, Royal Decree M/15, 08/12/1420H Published in Umm-al-Qura Gazette, No. 3775, 09/02/1420H (12/10/1999).

## Proposed Companies Act

The proposed Companies Act (the initial version and the Shura Council's revisions to that proposal).

## Capital Market Regulations

ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING RULES were issued by the Board of the Capital Market Authority Pursuant to its Resolution Number 1-39-2008 Dated 12/3/1429 H Corresponding to 12/1/2008G; Arabic is the official language of the Capital Market Authority; The current version of these Regulations, as may be amended, can be found in Arabic and in English at the Capital Market Authority website: www.cma.org.sa.

AUTHORIZED PERSONS REGULATIONS were issued by the Board of the Capital Market Authority pursuant to its resolution number 1-83-2005 dated 5/21/1426H corresponding to 6/28/2005G.

CORPORATE GOVERNANCE REGULATION, issued by the Board of Capital Market Authority pursuant to Resolution No. 1/212/2006 dated 10/21/1427H (corresponding to 11/12/2006) based on the Capital Market Law issued by Royal Decree No. M/30 dated 6/2/1424AH Amended by Resolution of the Board of the Capital Market Authority Number 1-1-2009 Dated 1/8/1430H Corresponding to 1/5/2009G.

GLOSSARY OF DEFINED TERMS USED IN THE REGULATIONS AND RULES OF THE CAPITAL MARKET AUTHORITY was issued by the Board Of The Capital Market Authority pursuant to its resolution number 4-11-2004 dated 8/20/1425H corresponding to 10/4/2004G amended by resolution of The Board Of The Capital Market Authority number 1-28-2008 dated 8/17/1429H corresponding to 8/18/2008G.

INVESTMENT FUNDS REGULATIONS were issued by the Board of the Capital Market Authority Pursuant to its Resolution Number 1 – 219 – 2006 Dated 12/3/1427H corresponding to 12/24/2006G.

LISTING RULES were issued by the Board of the Capital Market Authority pursuant to its resolution number 3-11-2004 dated 8/20/1425H corresponding to 10/4/2004G amended by resolution of the Board of the Capital Market

Authority number 2-128-2006 dated 12/22/1426H corresponding to 1/22/2006G.

MARKET CONDUCT REGULATIONS were issued by the Board of the Capital Market Authority Pursuant to its Resolution Number 1-11-2004 Dated 8/20/1425H Corresponding to 10/4/2004G.

MERGER AND ACQUISITION REGULATIONS were issued by the Board of the Capital Market Authority Pursuant to its Resolution Number 1-50-2007 Dated 9/21/1428 H corresponding to 10/3/2007G.

OFFERS OF SECURITIES REGULATIONS were issued by the Board of the Capital Market Authority pursuant to its resolution number 2-11-2004, dated 8/20/1425H corresponding to 10/4/2004G amended by resolution of the Board of the Capital Market Authority number 1-28-2008 dated 8/17/1429H corresponding to 8/18/2008G.

REAL ESTATE INVESTMENT FUNDS REGULATIONS were issued by the Board of the Capital Market Authority Pursuant to its Resolution Number 1-193-2006 Dated 6/19/1427H Corresponding to 7/15/2006G.

SECURITIES BUSINESS REGULATIONS were issued by the Board of the Capital Market Authority Pursuant to its Resolution Number 2-83-2005 dated 5/21/1426H corresponding to 6/28/2005G.

THE RESOLUTION OF SECURITIES DISPUTES PROCEEDINGS REGULATIONS were issued by the Board of the Capital Market Authority Pursuant to its Resolution Number 1-4-2011 Dated 2/19/1432 H Corresponding to 1/23/2011G; Arabic is the official language of the Capital Market Authority.

## *Resolutions and Decisions*

Council of Ministers' resolution number (55) on 02/28/1419H, 06/22/1998 AD.

Minister of Commerce's decision number 959 on 04/27/1423H.

Minister of Commerce's decision number 1071 on 11/02/1412H

Minister of Commerce decision number 4825 on the 04/22/1429H.

Minister of Commerce Decision number 5715 dated 05/16/1429 H corresponding to 05/21/2008 AD.

Resolution of the Board of the Capital Market Authority Number (1-36-2008) Dated 11/12/1429H corresponding to 11/10/2008G.

Resolution of the Board of the Capital Market Authority Number 1-10-2010 Dated 3/30/1431H corresponding to 3/16/2010G.

## *United States Statutes and Regulations*

Delaware General Corporation Law. (Title 8, Chapter 1 of the Delaware Code)

Model Business Corporation Act. (Prepared by the Committee on Corporate Laws of the Section of Business Law of the American Bar Association)

Sarbanes-Oxley Act of 2002. (Pub. L. No. 107 to 204, 116 Stat. 745 (2002))

Securities Exchange Act of 1934. (15 U.S.C. § 78a et seq.)

Regulation D to the Securities Act of 1933. (17 C.F.R. §230.501 et seq.)

Regulation S-K to the Securities Act of 1933 and Securities Exchange Act of 1934. (17 C.F.R. §229.10 et seq.)

## *Official Websites*

Central Department of Statistics and Information available at http://www.cdsi.gov.sa/socandpub/resd

Doing Business (administered by The International Bank for Reconstruction and Development / The World Bank) available at http://www.doingbusiness.org

Doing Business, ranking, available at http://www.doingbusiness.org/rankings

Organization for Economic Co-Operation and Development available at http://www.oecd.org

Organization for Economic Co-Operation and Development (OECD 2009) Corporate Governance and the Financial Crisis: Key Findings and Main Messages, available at http://www.oecd.org/dataoecd/3/10/43056196.pdf

Organization for Economic Co-Operation and Development, Corporate Governance, Policy Framework for Investment: A Review of Good Practices (2006) available at http://www.oecd.org

Saudi Capital Market Authority website http://www.cma.org.sa

Saudi Capital Market Authority, implementing Regulations http://www.cma.org.sa/En/Pages/Implementing_Regulations.aspx

Saudi General Investment Authority (sagia) available at http://www.sagia.gov.sa/innerpage.asp?ContentID=573&Lang=en

Saudi Ministry of Commerce available at http://www.commerce.gov.sa

Saudi Ministry of Finance available at http://www.mof.gov.sa/en/docs/ests/sub_invbox.htm

Saudi Ministry of Foreign Affairs available at http://www.mofa.gov.sa/Detail.asp?InSectionID=1726&InNewsItemID=34477

Saudi Ministry of Petroleum and Mineral Resources available at http://www.mopm.gov.sa

Saudi Organization for Social Insurance (GOSI), Saudi Arabia, available at http://www.gosi.gov.sa/intro.shtml?p=6

Saudi Public Pension Agency, Saudi Arabia, available at http://www.pension.gov.sa

Saudi Stock Exchange (Tadawul) available at www.tadawul.com.sa

World Trade Organization available at http://www.wto.org

# APPENDIX I

A. **The following are an official translation to the existing Companies Act, which has been updated to a certain time, the Capital Market Law and the Corporate Governance Regulations.**

**Amendments to the existing Companies Act that are not included in the text of the official translation to the Companies Act and the translation of relative amendments that have taken place after the cutoff date for material discussed in the text of this dissertation; are included in B.**

Kingdom of Saudi Arabia
Ministry of Commerce

المملكة العربية السعودية
وزارة التجارة

# نظام الشركات

# REGULATIONS FOR COMPANIES

# COMPANIES ACT

المملكة العربية السعودية

وزارة التجـــارة

# نظام الشركات

وفقاً لآخر التعديلات التي أدخلت عليه

# *REGULATIONS FOR COMPANIES*

# *COMPANIES ACT*

**As updately amended**

# نظام الشركات

# REGULATIONS FOR COMPANIES

الصادر بالمرسوم الملكي رقم م/٦ وتاريخ ٢٢/ ٣/ ١٣٨٥ هـ
والمعدل بالمراسيم الملكية أرقام :
م / ٥ وتاريخ ١٢/ ٢/ ١٣٨٧ هـ
م / ٢٣ وتاريخ ٢٨/ ٦/ ١٤٠٢ هـ
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## تقسيم

## EXPLANATORY MEMORANDUM TO THE DRAFT REGULATIONS FOR COMPANIES

The modern renaissance on which the Kingdom has embarked in all walks of life since the reign of HM King 'Abd al-Aziz, may God have mercy upon him, has had a great effect in stimulating trade and increasing large development projects, such as the opening of roads and the construction of airports, dams, and Government and private establishments. In the face of the magnitude of these undertakings and of the risks they involve, a compelling need has been felt for the combination of individual efforts and resources in the field of work and production through the formation of companies which can provide such financial, technical, and administrative capabilities for coping with these responsibilities as are not available to the individual. Consequently, the number of companies has risen by leaps and bounds in a few years from a few score to several hundred, and is still constantly increasing due to the great benefits that such companies have in actual practice achieved in furtherance of the public interests and of the private interests of the people, individually as well as collectively.

Although the objects of the companies formed during this short period of time have covered all aspects of financial, commercial, and industrial activities and in spite of the fact that their aggregate capital has amounted to several hundred million riyals and of the large scale on which Government departments and individuals are dealing with such companies, the provisions of the regulations governing these companies to date have consisted merely of a few articles set forth in the Regulations for the Commercial Court. which were inadequate to cope with all the questions related to companies, whether upon their incorporation or dissolution and liquidation, or while they are conducting their business.

Confronted with this deficiency, individuals resorted to adopting the rules in force in other countries in incorporating and managing the affairs of their companies. Thus, different methods were adopted and matters became so complicated in many in stances that the Ministry's task of controlling and supervising companies became most difficult.

Hence there arose a pressing need for the drafting of comprehensive regulations for companies, to set forth the provisions to be observed upon their incorporation, dissolution, and liquidation and in connection with the conduct of their business; to determine the extent of the powers of the Ministry (of Commerce and Industry) in connection with their control and supervision so as to safeguard the public interest and protect the private funds put at their disposal; and to prescribe penalties for violations of such provisions.

These draft regulations deal in general with the organization of companies created by mutual agreement where one or more partners agree to conduct business for profit with a view to sharing profits and losses as agreed. This type of company is sanctioned by the Sunnah (traditions of the Prophet) and by Ijma' (the consensus of the authorities in Islam). In the Sunnah, it is supported by the holy tradition

## مذكرة تفسيرية لمشروع نظام الشركات

لقد كان للنهضة الحديثة التي أخذت المملكة باسبابها وشملت كافة نواحي الحياة منذ عهد جلالة الملك عبد العزيز رحمه الله أثرها الكبير في ازدهار التجارة وازدياد المشروعات العمرانية الكبير مثل شق الطرق وانشاء المطارات واقامة السدود والمنشآت الحكومية والاهلية. ومع كثرة هذه الاعمال وجسامة تبعاتها بدت حاجة الافراد ملحة الى تضافر جهودهم وتجميع طاقاتهم في العمل والانتاج بانشاء الشركات التي تتوفر لديها من الكفاءات المالية والفنية في مواجهة تلك التبعات، مالا يتوفر لدى كل فرد على حده وكان من نتيجة ذلك ان قفز عدد الشركات في بضع سنوات من بضع عشرات الى بضع مئات ، وهي لا تزال في ازدياد مضطرد لما حققته في العمل من فوائد جمة تحققت بها المصلحة العامة ومصلحة الافراد مجتمعين ومنفصلين.

وبالرغم من أن الشركات التي أسست في تلك الفترة القصيرة من الزمن قد شملت في أغراضها كافة أوجه النشاط المالي والتجاري والصناعي وبلغت رؤوس الاموال المملوكة لها عدة مئات من ملايين الريالات وزاد اقبال الدوائر الحكومية والافراد على التعامل معها، فان نصوص الانظمة التي تحكمها لاتزيد حتى الآن على بضع مواد وردت نظام في المحكمة التجارية لم تكن كافية لمواجهة كافة المسائل المتعلقة بالشركات سواء عند انشائها أم خلال مزاولة نشاطها أم عند تصفيتها وتصفيتها.

وازاء هذا القصور لجأ الافراد في تأسيس شركاتهم ومعالجة أمورها الى اقتباس القواعد المعمول بها في الدول الاخرى ، فاختلفت السبل واختلطت الأمور في كثير من الاحوال اختلاطا جعل مهمة الوزارة في مراقبتها والاشراف عليها عسيرة.

ومن هنا بدت الحاجة ملحة الى وضع نظام شامل للشركات يوضح الاحكام الواجبة الاتباع في تأسيسها وفي مزاولتها لنشاطها وعند انقضائها وتصفيتها ، و يبين مدى صلاحيات الوزارة في مراقبتها والاشراف عليها حفظا للصالح العام ومحافظة على ماتحت يد تلك الشركات من أموال الافراد و يفرض الجزاءات على مخالفة تلك الاحكام.

والنظام المعروض ، يتناول في عمومه تنظيم الشركات التي تنشأ عن طريق العقد ، و يتفق فيها اثنان أو أكثر على العمل للكسب ليكون الغنم والغرم بينهما حسب الاتفاق ، وهذا النوع من الشركة مشروع بالسنة والاجماع أما السنه فما روى في الحديث القدسي وهو (يقول

(ascribed to God), stating: "I am the third (partner) of every two partners, unless one of them deceives the other, in which case I shall disassociate Myself from them" and by the tradition relating that Usamah ibn Shurayk came to the Prophet, God bless him and grant him salvation, asking: "Do you know me?" The Prophet answered: "How can I not know you, when you were my partner and the best partner, never deceiving or quarrelsome!" Moreover, the Prophet was sent (to the people) at a time when they formed companies and he consented to what they were doing without any prohibition or objection, and consent constitutes one of the aspects of Sunnah. As for the consensus (of authorities in Islam), it is evidenced by Muslims' engaging in trade as partners from the advent of Islam to date wthout anyone's objecting thereto.

In drafting these Regulations, it was imperative to rely primarily on the rules that have proved their worth in actual practice and have become customary among individuals, and to borrow suitable provisions from the regulations of other countries, in order to promote the harmony dictated by the international character of trade, which has always called for the unification of commercial regulations as a means of achieving prosperity for all. Any suh rules or provisions as were inconsistent with the orthodox Shari'ah were excluded, and due regard was gived to the various forms of companies established by Muslims in the past. To this end, Article 2 of the Regulations, after enumerating the forms of companies subject to them, provides as follows: "Without prejudice to such companies as are recognized under the Islamic Shari'ah, any company that does not assume one of the above-mentioned forms shall be null and void...." They also provide in Articles 229 and 230 concerning penalties: "Without prejudice to the requirements of the provisions of the Islamic Shari'ah..." Thus, they assert the right of individuals to establish such traditional companies as were common in the past, if they so desire; confirm that no penalties may be imposed on them in these cases; and aver that the provisions of the Canonical Law of Islam are fundamental and that no departure from them is permissible.

In fact, all the kinds of companies mentioned in the draft regulations, in spite of the diversity of their forms and legal consequences, differ from the companies known in the past only in minor details which do not affect the general principles of legal transactions; they do not permit anything unlawful or prohibit anything lawful; nor do they contradict any (Quranic) text, tradition, or consensus (of authorities in Islam).

This difference is primarily due to the fact that transactions have become much wider in scope and more diversified in form and type than anything known or anticipated in the past. Moreover, the interest of the nation dictates now that the Government exercise supervision and control over companies, so as to insure through such supervision and

الله تعالى) أنا ثالث الشريكين مالم يخن أحدهما صاحبه ــ فان خانه خرجت من بينهما ، ومـاروى أن أسامة بن شريك جاء رسول الله صلى الله عليه وسلم فقال: أتعرفنى؟ فقال: عليه الصلاة والسلام : كيف لاأعرفك وكنت شريكى ونعم الشريك لا تدارى ولاتمارى وقد بعث صلى الله عليه وسلم والناس يتعاملون بهذه الشركة فاقرهم عليها حيث لم ينهـهم ولم ينـكر عليهم والتقرير أحد وجوه السنه . وأما الاجماع فما نراه من اشتراك المسلمين في التجارة من صدر الاسلام الى الآن بدون نكير.

ولم يكن لد عند وضع النظام من الاعتماد اساسا فيه على ماأستقر في العمل من القواعد التي أثبتت التجربة صلاحيتها وجرت بين الافراد مجرى العرف مع الاخذ بالصالح من أحكام أنظمة الدول الاخرى ــ تحقيقا للتقارب الذى تفرضه الصفة الدولية للتجارة التي دعت ولا تزال تدعو الى توحيد الانظمة التجارية كوسيلة من وسائل تحقيق الرخاء للجميع وذلك بعد استبعاد مايمكن أن يتعارض من هذه الاحكام وتلك القواعد مع الشرع الحنيف ودون المساس بالصور المختلفة للشركات التي جرى المسلمون في الماضى على انشائها وتحقيقا لذلك نص النظام في المادة (٢) منه بعد بيان أشكال الشركات التي يسرى عليها ، على ماياتي :ــ (مع عدم المساس بالشركات المعترف بها في الشريعة الاسلامية ، تكون باطلة كل شركة لا تتخذ أحد الاشكال المذكورة ،.الخ .. (كما نص في المادتين ٢٢٩ و ٢٣٠) الخاصتين بالعقوبات ، على عدم الاخلال بما تقتضيه أحكام الشريعة فاكد بذلك حق الافراد في تأسيس الشركات التي تعارف عليها الناس في الماضى ان هم شاؤوا وأكد عدم جواز تطبيق شيء من الجزاءات عليهم في مثل هذه الحالات واقر بان أحكام المشرع الحنيف أصل لايجوز الخروج عليه.

والواقع ان كافة أنواع الشركات التي تضمنها المشروع ، على تباين أشكالها وأحكامها ، لاتختلف عن الشركات التي كانت معروفة في الماضى الا في بعض التفاصيل الجزئيه التي لاتمس الأسس العامة في المعاملات المشروعة ودون أن تحلل حراما أو تحرم حلالا ، أو تعارض نصا أو سنة أو اجماعا.

أما علة الاختلاف فترجع في أساسها الى اتساع دائرة المعاملات عما كانت عليه في الماضى مع تنوع صورها وأشكالها على نحو لم يكن معروفا أو متوقعا ، هذا فضلا عن أن مصلحة الامة أصبحت تقتضى تحقيق اشراف الحكومة على الشركات ومراقبتها ، وبهذا الاشراف وتلك المراقبة تضمن الحكومة عدم خروج الناس على أحكام الشرع الحنيف سواء عند انشاء الشركات أم عند مباشرتها لنشاطها والله من وراء القصد.

## ROYAL DECREE ON THE REGULATIONS FOR COMPANIES

No. M6. DATED 22 RABI' I 1385 (20 July 1965)

With the help of God Almighty :

We, Faysal ivn Abd al-Aziz Al Saud, King of Saudi Arabia

After reviewing Council of Ministers Decision No. 185, dated 17 Rabi' I 1385 (15 July 1965); and

After revuewing Article 19 of the Regulations of the Council of Ministers, issued under Royal Decree No. 38, dated 22 Shawwal 1377 (11 May 1958);

Decree as follows :

1. The Regulations for Companies, in the form attached hereto, are hereby approved.
2. The Vice President of the Council of Minister and the Minister of Commerce and Industry shall put this Decree of ours into effect.

Faysal

لرقم م ٦ التاريخ ٨٥/٣/٢٢

عون الله تعالى

نحن فيصل بن عبد العزيز ملك المملكة العربية السعودية

بعد الاطلاع على قرار مجلس الوزراء رقم ١٨٥ وتاريخ ٨٥/٣/١٧

وبعد الاطلاع على المادة ١٩ من نظام مجلس الووزراء الصادر بالمرسوم الملكي رقم ٣٨/٢٢ شوال ٧٧.

نرسم بما هو آت :

١ — الموافقة على نظام الشركات بالصيغة المرافقة لهذا.

٢ — على نائب رئيس مجلس الوزراء ووزير والتجارة والصناعة تنفيذ مرسومنا هذا.

التوقيع

فيصل

## PART I
## GENERAL PROVISIONS

Article 1: A company is defined as a contract under which two or more persons undertake to participate in an enterprise for profit, with each contributing a share in the form of money or services, with a view to dividing any profits (realized) or losses (incurred) as a result of such enterprise.

Article 2:

The provisions of these Regulations, as well as such (contractual) conditions laid down by the partners and such customary rules as are not inconsistent with these Regulations, shall apply to the following companies:

1) General partnerships (Societes en nom collectif) 2) Limited partnerships (Societes en Commandite Simple); 3) Joint adventures; 4) Corporations; 5) Partnerships limited by shares (Societes en Commandite par Actions); 6) Limited liability partnerships (Societes a Responsabilite Limitee); 7) Companies with variable capital; and 8) Cooperative companies.

Without prejudice to such companies as are known in Islamic jurisprudence any company that does not assume one of the above-mentioned forms shall be (considered) null and void, and the persons who have made contracts in its name shall be personally and jointly liable for the obligations arising from such contracts.

The Council of Ministers may by decision amend the minimum and maximum limits of the capital of companies provided for in the Regulations.

(b) The provisions of these Regulations shall not apply to companies incorporated in whole or in part by the Government or by any other public juristic person, provided that a Royal Decree shall be issued authorizing its incorporation and containing the provisions which the company shall be subject to.
contracts in its name shall be personally and jointly liable for the obligations arising from such contracts.

Article 3: A partner's contribution may consist of a certain sum of money (a contribution in cash), or of a capital asset (a contribution in kind). It may also comprise services except in the cases where the provisions of these Regulations imply otherwise; but it may not consist (solely) of the partner's reputation or influence.

Only contributions in cash and in kind shall form the company's capital. Such sapital may be modified only in accordance with these Regulations and with such of the conditions set forth in the company's memorandum association or bylaws as are not inconsistent with these Regulations.

Article 4: If a partner's contribution consists of a right of ownership or of usufruct, or any other right ad rem, the partner shall, in accordance with the legal consequences of a

## الباب الاول
## احـــكام عامـــة

مادة (١) الشركة عقد يلتزم بمقتضاه شخصان أو اكثر بان يساهم كل منهم في مشروع يستهدف الربح بتقديم حصة من مال او عمل لاقتسام ماقد ينشأ عن هذا المشروع من ربح او من خسارة.

مادة (٢) تسري أحكام هذا النظام ومالا يتعارض معها من شروط الشركاء وقواعد العرف على الشركات الاتية:ـ

١ ـ شركة التضامن، ٢ ـ شركة التوصية البسيطة، ٣ ـ شركة المحاصة، ٤ ـ شركة المساهمة، ٥ ـ شركة التوصية بالاسهم، ٦ ـ الشركة ذات المسئولية المحدودة، ٧ ـ الشركة ذات رأس المال القابل للتغيير ٨ ـ الشركة التعاونية.

ومع عدم المساس بالشركات المعروفة في الفقه الاسلامي تكون باطلة كل شركة لا تتخذ أحد الاشكال المذكورة و يكون الاشخاص الذين تعاقدوا باسمها مسئولين شخصيا وبالتضامن عن الالتزامات الناشئة عن هذا التعاقد.

ويجوز لمجلس الوزراء بقرار منه أن يعدل الحدود الدنيا والقصوى لرأسمال الشركات المنصوص عليها في هذا النظام.

ب ـ ولا تسري أحكام هذا النظام على الشركات التي تؤسسها أو تشترك في تأسيسها الدولة أو غيرها من الاشخاص الاعتبارية العامة بشرط أن يصدر بترخيصها مرسوم ملكي يتضمن الاحكام التي تخضع لها الشركة.

مادة (٣) يجوز ان تكون حصة الشريك مبلغا معينا من النقود (حصة نقدية) ويجوز ان تكون عينا (حصة عينية) كما يجوز في غير الاحوال المستفادة من احكام هذا النظام ان تكون عملا ولكن لايجوز ان تكون حصة الشريك ماله من سمعة او نفوذ.

وتكون الحصص النقدية والحصص العينيه وحدها رأس مال الشركة ولايجوز تعديل رأس المال الا وفقاً لاحكام هذا النظام ومالايتعارض معها من الشروط الواردة في عقد الشركة او في نظامها.

مادة (٤) اذا كانت حصة الشريك حق ملكية او حق منفعة أو أى حق آخر من الحقوق التي ترد على المال كان الشريك مسئولا وفقا

bill of sale, be liable for warranty in case of loss or claim for recovery or the discovery of any defect or shortage therein.

If (a partner's) contribution merely covers a usufruct of property, the legal consequences of a lease shall apply to the abovementioned matters.

If a partner's contribution consists of claims against third parties, he shall be exonerated from liability to the company only after such claims have been collected by the latter.

If a partner's contribution consists of services, any earnings resulting from such services shall accrue to the company. Nevertheless, such a partner shall be under no obligation to surrender to the company any patent rights that may have obtained on any invention, unless it was so agreed.

Article 5: Every partner shall be considered indebted to the company for the contribution he has undertaken to make. If he fails to surrender it on the date set therefor he shall be liable to the company for any damages arising from such delay.

Article 6: A personal creditor of any partner may not seek satisfaction on his rights out of his debtor's interest in the company's capital; but he may do so out of the debtor's share in the profits in accordance with the company's balance sheet. Upon dissolution of the company, however the creditor's right shall transfer to his debtor's equity in the company's assets after payment of its debts.

If a partner's interest is represented by shares of stock, his personal creditor may, in addition to the rights mentioned in the preceding paragraph, request that such shares be sold so that he may collect what is due him from the proceeds of their sale. This provision, however, shall not apply to the shares of cooperative companies.

Article 7: All partners shall share the profits and losses. Hence, if it is agreed to deprive any partner of profits, or to exempt him from losses, such condition shall be mull and void, and the provisions of Article 9 shall be applied in this case.

However, a partner who contributes only his services may, by agreement, be exempted from sharing losses, provided that no remuneration shall have been allotted to him for his work.

Article 8: Without prejudice to the provisions of Articles 106 and 205, dividends may be distributed to the partners only out of net profits. If fictitious (unearned) profits are distributed to the partners, the company's creditors may request each partner, even though he may have acted bona fide, to refund such (fictitious) profits as he may have received. A partner shall not be obligated to refund the true (earned) profits he has received, even if the company incurs losses in subsequent years.

حكام عقد البيع عن ضمان الحصة في حالة الهلاك او لاستحقاق
ظهور عيب او نقص فيها.

فاذا كانت الحصة واردة على مجرد الانتفاع بالمال طبقت احكام
قد الايجار على الامور المذكورة.

واذا كانت حصة الشريك حقوقا له لدى الغير فلا تبرأ ذمته قبل
شركة الا بعد تحصيلها هذه الحقوق.

واذا كانت حصة الشريك عملا كان كل كسب ينتج عن هذا
عمل من حق الشركة ومع ذلك لايكون الشريك بالعمل ملزما بان
قدم للشركة مايكون قد حصل عليه من حق على براءة اختراع الا
ذا اتفق على ذلك.

مادة (٥) يعتبر كل شريك مدينا للشركة بالحصة التي تعد بها فان
أخر في تقديمها عن الاجل المحدد لذلك كان مسئولا في مواجهة
لشركة عن تعويض الضرر الذى يترتب على هذا التأخير.

مادة (٦) لايجوز للدائن الشخصي لاحد الشركاء ان يتقاضى حقه من
حصة مدينة في رأس مال الشركة وانما يجوز له ان يتقاضى حقه من
نصيب المدين المذكور في الارباح وفقا لميزانية الشركة فاذا انقضت
الشركة انتقل حساب الدائن الى نصيب مدينه فيما يفيض من اموالها
بعد سداد ديونها.

واذا كانت حصة الشريك ممثلة في اسهم كان لدائنه الشخصى
فضلا عن الحقوق المشار اليها في الفقرة السابقة ان يطلب بيع هذه
الاسهم ليتقاضى حقه من حصيلة البيع ومع ذلك لايسرى الحكم
المذكور على اسهم الشركة التعاونية.

مادة (٧) يتقاسم جميع الشركاء الارباح والخسائر فاذا اتفق على
حرمان احد الشركاء من الربح او على اعفائه من الخسارة كان هذا
لشرط باطلا وتطبق في هذه الحالة احكام المادة (٩).

ومع ذلك يجوز الاتفاق على اعفاء الشريك الذى لم يقدم ماله
ن المساهمة في الخسارة بشرط الا يكون قد تقرر له أجر عن عمله.

مادة (٨) مع عدم الاخلال باحكام المادتين (١٠٦ و ٢٠٥) لايجوز
توزيع أنصبه على الشركاء الا من صافي الربح فاذا وزعت ارباح
صورية على الشركاء جاز لدائني الشركة مطالبة كل شريك ولو كان
حسن النية برد ماقبضه منها ولايلزم الشريك برد الارباح الحقيقية
التي قبضها ولو منيت الشركة بخسائر في السنوات التالية.

Article 9: If a company's memorandum of association fails to specify a partner's share in the profits or losses, such share shall be in proportion to his interest in the capital.

If the memorandum (of association) only specifies a partner's share in the profits, his share in the losses shall be equal thereto, The same (rule) shall apply if the memorandum only specifies a partner's share in the losses.

"If a partner's contribution is limited to his services and the memorandum of association fails to specify his share in the profits or losses, such partner may request that his services be appraised, and such appraisal shall be the basis for determining his share in the profits or losses in accordance with the above general rules. If there are more than one partner rendering services and their individual shares are not appraised, these shares shall be considered equal unless proven otherwise. But if a partner has furnished, in addition to his services, a contribution in cash or in kind, he shall have a share in the profits or losses for his service contribution and another share for his contribution in cash or in kind".

Article 10: Save in the case of a joint adventure, a company's memorandum of association and any amendment thereto must br recorded in writing in the presence of a registrar. Otherwise, such memorandum or amendment shall not be valid vis-a-vis third parties.

The partners may not invoke the invalidity of the memorandum, or any amendment thereto that was not recorded in the above manner, against third parties, but the latter may invoke it against the partners.

The managers or the directors of a company shall be held jointly responsible for damages sustained by the company, or the partners, or third parties, as a result of failur to record the memorandum of association or any amendment thereto.

Article 11: Save in the case of a joint adventure, the managers or the directors of the company must publish its memorandum of associtaion anmd any amendment thereto in accordance with the provisions of these Regulations.

If the memorandum is not published in the aforementioned manner, it shall not be valid vis-a-vis third parties.

but, if the failure to publish is limited to one or more of the particulars which must be published, only such particulars shall be invalid vis-a-vis third parties.

The company's managers or directors shall be held jointly responsible for damages sustained by the company, or the partners, or third parties as a result of such non-publication.

Article 12: All contracts, receipts, notices, and other documents issued by the company must bear its name and state its kind and (the location of) its head office.

In addition to these particulars the amount of the company's (authorized) and paid-in capital must (save in the case of general and limited partnerships) be stated (on such documents).

Furthermore, upon dissolution of the company, there must be stated in such documents that the company is under liquidation.

مادة (٩) اذا لم يعين عقد الشركة نصيب الشريك في الارباح او في الخسائر كان نصيبه منها بنسبة حصته في رأس المال.

واذا اقتصر العقد على تعيين نصيب الشريك في الربح كان نصيبه في الخسارة معادلا لنصيبه فى اربح. وكذلك الحال اذا اقتصر العقد على تعيين نصيب الشريك في الخسارة.

واذا كانت حصة الشريك قاصرة على عمله ولم يعين في عقد الشركة نصيبه في الربح او في الخسارة كان له أن يطلب تقوم عمله ويكون هذا التقوم أساسا لتحديد حصته في الربح او في الخسارة وفقا للضوابط المتقدمة. واذا تعدد الشركاء بالعمل دون تقوم حصة كل منهم اعتبرت هذه الحصص متساوية مالم يثبت العكس. واذا قدم الشريك فضلا على عمله حصة نقدية أو عينية كان له نصيب في الربح أو في الخسارة عن حصته بالعمل ونصيب آخر عن حصته النقدية أو العينية.

مادة (١٠) باستثناء شركة المحاصة تثبت عقد الشركة وكذلك مايطرأ عليه من تعديل بالكتابة أمام كاتب عدل والا كان العقد او التعديل غير نافذ في مواجهة الغير.

ولايجوز للشركاء الاحتجاج على الغير بعدم نفاذ العقد او التعديل لذى لم يثبت على النحو المتقدم وانما يجوز للغير ان يحتج به في مواجهتهم.

ويسأل مديرو الشركة او اعضاء مجلس ادارتها بالتضامن عن تعويض الضرر الذي يصيب الشركة أو الشركاء او الغير بسبب عدم كتابة عقدها أو مايطرأ عليه من تعديل.

مادة (١١) بأستثناء شركة المحاصة ، يشهر المديرون او اعضاء مجلس الادارة عقد الشركة ومايطرأ عليه من تعديلات وفقا لاحكام هذا النظام.

فاذا لم يشهر العقد على النحو المذكور كان غير نافذ في مواجهة الغير.

واذا اقتصر عدم الشهر على بيان او اكثر من البيانات الواجب شهرها كانت هذه البيانات وحدها غير نافذه في مواجهة الغير.

ويسأل مديرو الشركة او اعضاء مجلس ادارتها بالتضامن عن تعويض الضرر الذي يصيب الشركة او الشركاء أو الغير بسبب عدم الشهر.

مادة (١٢) جميع العقود والمخالصات والاعلانات وغيرها من الاوراق التي تصدر عن الشركة يجب ان تحمل اسمها وبيانا عن نوعها ومركزها الرئيسي.

ويضاف الى هذه البيانات في غير شركة التضامن وشركة التوصية البسيطة بيان عن مقدار رأس مال الشركة ومقدار المدفوع منه.

واذا انقضت الشركة وجب ان يذكر في الاورق التي تصدر انها تحت التصفة.

Article 13: With the exception of joint adventures, a company shall from the time of its incorporation, be considered a juristic person. Such personality, however, may not be invoked vis-a-vis third parties except after completion of the publication formalities.

Article 14: With the exception of joint adventures, any company incorporated in accordance with these Regulations shall establish its head office in the Kingdom. It shall be deemed to have Saudi nationality, but this shall not necessarily entail its enjoyment of such rights as may be restricted to Saudis.

Article 15: With due regard to the special causes of dissolution particular to each kind of company, a company shall be dissolved for any of the following reasons:
1. Expiration of the term fixed for the company.
2. Realization of the object for which it was established, or the impossibility of (realizing) such object.
3. Transfer of all interests or shares to one partner (or stockholder).
4. Loss of all the company's assets, or the major part thereof, so that the remainder cannot be effectively utilized.
5. Agreement of the partners to dissolve the company before the expiry of its term, unless the memorandum of association stipulates othrwise.
6. Merger of the company into another.
7. If, at the request of one of the parties concerned and for serious reasons that justify such a step, a decision is issued by the Commission for the Settlement of Commercial Companies' Disputes to dissolve the company.

Upon dissolution the company shall be wound up in accordance with the provisions set forth in Part XI of these Regulations to the extent that they are not inconsistent with the company's memorandum of association or bylaws.

مادة (١٣) فيما عدا شركة المحاصة تعتبر الشركة من وقت تأسيسها شخصا اعتباريا ولكن لايحتج بهذه الشخصية في مواجهة الغير الا بعد استيفاء اجراءات الشهر.

مادة (١٤) باستثناء شركة المحاصة تتخذ كل شركة تؤسس وفقا لاحكام هذا النظام مركزها الرئيسي في المملكة وتعتبر هذه الشركة سعودية الجنسية ولكن لا تستتبع هذه الجنسية بالضرورة تمتع الشركة بالحقوق المقصورة على السعوديين.

مادة (١٥) مع مراعاة أسباب الانقضاء الخاصة بكل نوع من انواع الشركات ، تنقضي كل شركة بأحد الأسباب الآتية:ـ
١ ـ انقضاء المدة المحددة للشركة.
٢ ـ تحقق الغرض الذى أسست من أجله الشركة أو استحالة الغرض المذكور.
٣ ـ انتقال جميع الحصص أو جميع الأسهم الى شريك واحد.
٤ ـ هلاك جميع مال الشركة أو معظمه بحيث يتعذر استثمار الباقى استثمارا مجديا.
٥ ـ اتفاق الشركاء على حل الشركة قبل انقضاء مدتها ، مالم ينص عقد الشركة على غير ذلك.
٦ ـ اندماج الشركة في شركة أخرى.
٧ ـ صدور قرار بحل الشركة من هيئة حسم منازعات الشركات التجارية بناء على طلب أحد ذوى الشأن وبشرط وجود أسباب خطيرة تبرر ذلك.

وتتم تصفية الشركة عند انقضائها وفقاً للأحكام الواردة في الباب الحادي عشر من هذا النظام وذلك بالقدر الذي لا تتعارض فيه هذه الأحكام مع شروط عقد الشركة أو نظامها.

## PART II
## GENERAL PARTNERSHIPS
(Societes on Nom Collectif)

Article 16: A general partnership is an association of two or more persons who assume joint liability, to the extent of their entire fortune, for the partnership's debts.

Article 17: The general partnership's name shall consist of the name of one or more of the partners, combined with an indication that a partnership exists. The name of the partnership shall be conformable to reality, and if it includes the name of an outsider with the latter's due knowledge of such inclusion, he shall be jointly liable for the partnership's debts.

The partnership may, however, retain in its name the name of a retired or deceased partner, with consent of such retired partner or the heirs of such deceased partner.

Article 18: The partners' interests (in the partnership) may not be represented by negotiable warrants.

A partner may assign his interest only with the consent of all the partners or in accordance with the conditions set forth in the memorandum of association, in which case the assignment shall be published in the manner prescribed in Article 21.

Any agreement providing for unrestriced assignability of interests (in a partnership), shall be considered null and void. Neveryheless, a partner may assign to a third party the rights attached to his interest (in the partnership), but the effect of such assignment shall be restricted to the parties thereto.

Article 19: A partner who joins the partnership (after its formation) shall be liable, jointly with his co-partners and to the extent of his entire fortune, for the partnership's debts (incurred) before and after the date of his joining (the partnership). Any agreement to the contrary between the partners shall be of no effect in respect of third parties.

If a partner withdraws from the partnership he shall not be liable for such debts as the partnership may incur following the publication of his withdrawal. But if a partner assigns his interest he shall be exonerated from liability for the partnership's debts to creditors only if the latter consent to such assignment.

Article 20: A partner may not be required to satisfy a debt of the partnership out of his own money unless the partnership's liability for the debt has been established, either by virtue of the acknowledgment of those responsible for its management or by decision of the Commission for the Settlement of Commercial Companies' Dusputes, and after the partnership has been duly called upon to effect payment.

## الباب الثاني
## شركة التضـــــامن

مادة (١٦) شركة التضامن هي الشركة التي تتكون من شريكين أو أكثر مسئولين بالتضامن في جميع أموالهم عن ديون الشركة.

مادة (١٧) يتكون اسم شركة التضامن من اسم شريك واحد أو أكثر مقرونا بما ينبيء عن وجودشركة ، و يكون اسم الشركة مطابقا للحقيقة ، فاذا اشتمل على اسم شخص أجنبى عن الشركة مع علمه بذلك كان هذا الشخص مسئولا بالتضامن عن ديون الشركة.

ومع ذلك يجوز للشركة أن تبقى في اسمها اسم شريك انسحب منها أو توفي ، اذا قبل ذلك الشريك الذى انسحب أو ورثه الشريك الذى توفي.

مادة (١٨) لايجوز أن تكون حصص الشركاء ممثلة في صكوك قابلة للتداول.

ولايجوز للشريك أن يتنازل عن حصته الا بموافقة جميع الشركاء أو بمراعاة الشروط الواردة في عقد الشركة، وفي هذه الحالة يشهر التنازل بالطرق المنصوص عليها في المادة (٢١).

وكل اتفاق على جواز التنازل عن الحصص دون قيد يعتبر باطلا، ومع ذلك يجوز للشريك ان يتنازل الى الغير عن الحقوق المتصلة بحصته ولايكون لهذا التنازل أثر الا بين طرفيه.

مادة (١٩) اذا انضم شريك الى الشركة كان مسئولا بالتضامن مع باقى الشركاء في جميع أمواله عن ديون الشركة السابقة واللاحقة لانضمامه، وكل اتفاق على غير ذلك بين الشركاء لاينفذ في مواجهة الغير.

واذا انسحب شريك من الشركة فلا يكون مسئولا عن الديون التي تنشأ في ذمتها بعد شهر انسحابه واذا تنازل أحد الشركاء عن حصته فلا يبرأ من ديون الشركة قبل دائنيها الا اذا أقروا هذا التنازل.

مادة (٢٠) لاتجوز مطالبة الشريك بأن يؤدى من ماله دينا على الشركة الا بعد ثبوت هذا الدين في ذمتها، باقرار المسئولين عن ادارتهما أو بقرار من هيئة حسم منازعات الشركات التجارية، وبعد اعذار الشركة بالوفاء.

Artice 21: The managers of the partnership must, within thirty days of its formation, publish an abstract of its memorandum of association in a daily newspaper distributed in the loeality of its head office, and must simultaneously apply for the registration of the partnership apply for the registration of the partnership in the Companies' Register at the General Department of Companies. In addition, they must register the partnership in the Commercial Register in accordance with the Regulations for Commercial Registration. Any amendment to the particulars set forth in the above abstract shall be published in the preceding manner.

مادة (٢١) على مديري الشركة ، خلال ثلاثين يوما من تأسيسها، ان ينشروا ملخصاً من عقدها في جريدة يومية توزع في المركز الرئيسي للشركة، وأن يطلبوا في الميعاد المذكور قيد الشركة في سجل الشركات بالادارة العامه للشركات، وعليهم فضلاًعن ذلك قيد الشركة في السجل التجاري وفقا لأحكام نظام السجل التجاري، و يشهر بنفس الطرق السابقة كل تعديل يطرأ على بيانات الملخص المشار اليه.

Article 22: An abstract of the partnership's memorandum of association shall specifically contain the following particulars:

1. The partnership's name, object, head office, and branches if any.
2. The partners' names residence addresses occupations, and nationalities.
3. The amount of the partnership's capital with aufficient details concerning the contribution each partner has undertaken to make and the date on which it becomes payable.
4. The names of the mangers and the persons authorized to sign for the partnership.
5. The date of formation of the partnership and its term.
6. The beginning and end of the partnership's financial year.

مادة (٢٢) يشتمل ملخص عقد الشركة بصفة خاصة على البيانات الآتية:ـ

١ ـ اسم الشركة وغرضها ومركزها الرئيسي وفروعها ان وجدت.
٢ ـ أسماء الشركاء ومجال اقامتهم ومهنهم وجنسياتهم.
٣ ـ رأس مال الشركة وتعريف كاف بالحصة التي تعهد كل شريك بتقديمها وميعاد استحقاقها.
٤ ـ أسماء المديرين ومن لهم حق التوقيع نيابة عن الشركة.
٥ ـ تاريخ تأسيس الشركة ومدتها.
٦ ـ بدء السنة المالية وانتهاؤها.

Article 23: A partner may not, without the consent of his co-partners, engage for his own account or for the account of third parties in a (business) operation of the same type as that carried on by the partnership; nor may he be a partner in a rival partnership if the latter is a general, limited, or limited liability partnership.

If any partner fails to fulfill this obligation, the partnership may ether claim compensation from him, or consider the operations so conducted for his account as having been conducted for the partnership's account.

مادة (٢٣) لايجوز للشريك دون موافقة باقى الشركاء أن يمارس لحسابه أو لحساب الغير نشاطاً من نوع نشاط الشركة ولا أن يكون شريكا في شركة تنافسها اذا كانت هذه الشركة الأخرى شركة تضامن أو شركة توصية أو شركة ذات مسئولية محدودة.

واذا أخل أحد الشركاء بهذا الالتزام كان للشركة أن تطالبه بالتعويض او أن تعتبر العمليات التي قام بها لحسابه الخاص قد تمت لحساب الشركة.

Article 24: A partner who is not a manager may not interfere in the management of the partnership.

However, a partner ,may personally take cognizance of the conduct of the partnerhip's business at its head office, examine its books and records, personally extract therefrom a summary statement on the financial position of the partnership, and extend advice to its manager, Any agreement to the contrary shall be null and void.

مادة (٢٤) لايجوز للشريك غير المدير أن يتدخل في ادارة الشركة ولكن يجوز للشريك أن يطلع بنفسه في مركز الشركة على سير أعمالها وأن يفحص دفاترها ومستنداتها وأن يستخرج بنفسه بيانا. موجزاً عن حالة الشركة المالية من واقع دفاترها ومستنداتها وأن يوجه النصح لمديرها، وكل اتفاق على خلاف ذلك يعتبر باطلا.

Article 25: resolutions shall be adopted by a numerical majority of the partners' votes, unless the partnership's memoradum of association provides otherwise.

Nevertheless, resolutions concerning the amendment of the partnership's memorandum of association shall be valid only if adopted by unanimous vote.

مادة (٢٥) تصدر القرارات بالأغلبية العددية لآراء الشركاء مالم ينص عقد الشركة على خلاف ذلك.
ومع ذلك فلاتكون القرارات المتعلقة بتعديل عقد الشركة صحيحة او إلا اذا صدرت بالاجماع.

Article 26: Profits and losses and the share of every partner therein shall be determined at the end of the partnership's financial year on the basis of the balance sheet and the profit and loss statement.

Every partner shall be considered a creditor of the partnership for his share in the profits as soon as such share is determined. Any reduction in the partnership's capital as a result of losses shall be made up out of the profits of subsequent years, but a partner shall not be bound to make up any reduction in his share in the capital due to such losses unless he consents to do so.

مادة (٢٦) تعين الأرباح والخسائر ونصيب كل شريك فيها عند نهاية السنة المالية للشركة من واقع الميزانية وحساب الأرباح والخسائر ويعتبر كل شريك دائنا للشركة بنصيبه في الأرباح بمجرد تعيين هذا النصيب ويكمل مانقص من رأس مال الشركة بسبب الخسائر من أرباح السنوات التالية ولكن لايلتزم الشريك بتكملة مانقص من حصته في رأس المال بسبب الخسائر الا بموافقته.

Article 27: The partners may appoint, in the partnership's memorandum (of association) or in a separate contract, one manager or more (for the partnership) from among themselves or from third parties. If management is entrusted to several peresons, but the powers of each of them are not specified and none of them is precluded from assuming management alone, each manager may individually perform any act of management, provided that the remaining managers shall have the right to object to such act before it is completed, in which case the opinion of the majority of the managers shall prevail. In case of a tie, the matter must be submitted to the partners.

However, if it is provided that the resolutions of managers be adopted by unanimous or majority vote, such provision may not be violated except for an urgent matter whose postponement will entail substantial loss for the partnership.

مادة (٢٧) يجوز أن يعين الشركاء في عقد الشركة أو في عقد مستقل مديراً أو أكثر من بين الشركاء أو من غيرهم ، واذا تعدد المديرون دون أن يعين اختصاص كل منهم ودون أن ينص على عدم جواز انفراد أى منهم بالادارة ، كان لكل منهم أن يقوم منفرداً بأى عمل من أعمال الادارة على أن يكون لباقى المديرين الاعتراض على العمل قبل تمامه ، وفي هذه الحالة تكون العبرة بأغلبية آراء المديرين، فاذا تساوت الآراء وجب عرض الأمر على الشركاء.

واذا اشترط أن تكون قرارات المديرين بالاجماع أو بالأغلبية فلاتجوز مخالفة هذا الشرط الا لأمر عاجل يترتب على تفويته خسارة جسيمة للشركة.

Article 28: If the partners fail to specify the manner in which the partnership is to be managed, each individual partner shall have the right to manage the partnership alone, provided that all or any of the co-partners shall be entitled to object to any act before it is completed, and the majority of the partners shall have the right to reject such objection.

مادة (٢٨) اذا لم يحدد الشركاء طريقة ادارة الشركة ، كان لكل منهم أن ينفرد بالادارة على أن يكون لباقى الشركاء أو لأى منهم الاعتراض على أى عمل قبل تمامه، ولأغلبية الشركاء الحق في رفض هذا الاعتراض.

Article 29: The manager may perform all such regular acts of management as fall within the object of the partnership, unless the partnership's memorandum of association restricts his authority in this respect.

The manager may make compromises on the partnership's rights or request arbitration, if this is in the interest of the partnership.

The partnership shall be bound by any act performed by the manager in its name within the limits of his authority, even if the manager uses the partnership's signature for his own account, except if the other party to any contract is acting mala fide.

مادة (٢٩) للمدير أن يباشر جميع أعمال الادارة العادية التي تدخل في غرض الشركة، مالم ينص عقد الشركة على تقييد سلطته في هذا الخصوص.

وله أن يتصالح على حقوق الشركة أو أن يطلب التحكيم اذا كان في ذلك مصلحة للشركة.

وتلتزم الشركة بكل عمل يجريه المدير باسمها في حدود سلطته، ولو أستعمل المدير توقيع الشركة لحسابه الا اذا كان من تعاقد معه سيء النيه.

Article 30: The manager shall not undertake any acts beyond the scope of normal management, except with the consent of the partners or by virtue of an express provision (in the memorandum of association or) in the contract.

This prohibition shall specifically apply to the following acts:

مادة (٣٠) لايجوز للمدير أن يباشر الاعمال التي تجاوز الادارة العادية الا بموافقة الشركاء أو بنص صريح في العقد.

ويسرى هذا الحظر بصفة خاصة على الاعمال الآتية:ـ

1. (Making) donations, except for small and customary amounts.
2. Selling the partnership's real property unless such sale falls within the scope of the object of the partnership.
3. Mortgaging the partnership's real property, even if the partnership's memorandum of association authorizes him sell real property.
4. Selling or mortgaging the partnership's place of business.

Article 31: A manager may not conclude an agreement for his own account with the partnership, except with special permission from the partners to be granted for each case separately.

Nor may he conduct any (business) operation of the same type as that carried on by the partnership, except with the consent of all the partners.

Article 32: The manager shall be responsible for damages sustained by the partnership, or the partners, or third parties, as a result of his violation of the provisions of the partnership's memorandum (of association), or of any wrongful acts committed by him in the course of performance of his work. Any agreement to the contrary shall be considered nonexistent.

Article 33: If the manager is a partner appointed in the partnership's memorandum of association, he may be removed only by a decision issued by the Commission for the Settlement of Commercial Companies' Disputes at the request of a majority of the partners and on the strength of legal justification. Any agreement to the contrary shall be considered nonexistent.

The removal of the manager in the above case shall entail the dissolution of the partnership, unless the partnership's memorandum of association provides otherwise.

If the manager is a partner appointed in a separate contract (not the partnership's memorandum of association), or if he is a nonpartner appointed either in the partnership's memorandum of association or in a separate contract, he may be removed by a resolution of the partners, but his removal shall not entail the dissolution of the partnership.

Any manager receiving remuneration for his work who is removed at an improper time or without legal justification may claim damages from the partnership for the harm sustained by him.

Article 34: If the manager is a partner appointed in the partnership's memorandum of association, he may not resign from management, except for acceptable cause; otherwise, he shall be responsible for damages. Such resignation shall entail the dissolution of the partnership, unless the partnership's memorandum of association provides otherwise.

If the manager, whether a partner or a nonpartner, is one appointed in a contract separate from the partnership's memorandum of association, he may resign from management only at a proper time and after notifying the partners to that effect; otherwise, he shall be responsible for damages. Such resignation, however, shall not entail the dissolution of the partnership.

١ ــ التبرعات ــ ماعد التبرعات ــ الصغيرة المعتادة.
٢ ــ بيع عقارات الشركة الا اذا كان هذا البيع مما يدخل في غرض الشركة.
٣ ــ رهن عقارات الشركة ولو كان مصرحا في عقد الشركة ببيع العقارات.
٤ ــ بيع متجر الشركة أو رهنه.

مادة (٣١) لايجوز للمدير ان يتعاقد لحسابه الخاص مع الشركة الا باذن خاص من الشركاء يصدر في كل حالة على حده.
ولايجوز له أن يمارس نشاطا من نوع نشاط الشركة الا بموافقة جميع الشركاء.

مادة (٣٢) يسأل المدير عن تعويض الضرر الذى يصيب الشركة.. أو الشركاء أو الغير بسبب مخالفة شروط عقد الشركة أو بسبب مايصدر منه من أخطاء في اداء عمله وكل اتفاق على خلاف ذلك يعتبر كأن لم يكن.

مادة (٣٣) اذا كان المدير شريكا معينا في عقد الشركة فلايجوز عزله الا بقرار يصدر من هيئة حسم منازعات الشركات التجارية بناء على طلب أغلبية الشركاء وبشرط وجود مسوغ شرعى. وكل اتفاق على خلاف ذلك يعتبر كأن لم يكن.
و يترتب على عزل المدير في الحالة المذكورة حل الشركة مالم ينص العقد على خلاف ذلك.
واذا كان المدير شريكا معينا في عقد مستقل أو كان من غير الشركاء سواء كان معينا في عقد الشركة أو في عقد مستقل ، جاز عزله بقرار من الشركاء ولايترتب على هذا العزل حل الشركة.
واذا كان المدير بأجر وعزل في وقت غير لائق أو لغير مسوغ شرعى جاز له أن يطالب الشركة بتعويض ماأصابه من ضرر.

مادة (٣٤) اذا كان المدير شريكا معينا في عقد الشركة فلايجوز له أن يعتزل الادارة لغير سبب مقبول والا كان مسئولا عن التعويض و يترتب على اعتزال حل الشركة مالم ينص العقد على خلاف ذلك.
واذا كان المدير ، سواء كان شريكا او غير شريك ، معينا في عقد مستقل فله أن يعتزل الادارة بشرط أن يكون ذلك في وقت لائق وأن يخطر به الشركاء والا كان مسئولا عن التعويض ولايترتب على اعتزاله حل الشركة.

Article 35: A general partnership shall be dissolved by the death, adjudged legal incapacity or declaration of bankruptcy or insolvency of one of the partners, or by the withdrawal of any partner from the partnership, if its term is not specified. nevertheless, the partnership's memorandum of association may provide that, if any partner dies, the partnership shall continue to exist with his heirs even though they may be minors.

The partnership's memorandum of association may also provide that, upon the death, adjudged legal incapacity, declaration of bankruptcy or insolvency, or withdrawal of any partner, the partnership shall continue to exist among the surviving partners. However, in this case, such partner or his heirs shall be entitled only to his share in the partnership's assets, which shall be determined in accordance with the last inventory made, unless the partnership's memprandum of association prescribes another method for determinig (such share); and they shall not have a share in any subsequent rights, except to the extent that such rights may have resulted from previous transactions.

مادة (٣٥) تنقضى شركة التضامن بوفاة أحد الشركاء أو بالحجر عليه أو بشهر افلاسه أو اعساره أو بانسحابه من الشركة اذا كانت مدتها غير معينه ومع ذلك يجوز النص في عقد الشركة على انه اذا توفي أحد الشركاء تستمر الشركة مع ورثته ولو كانوا قصرا.

وكذلك يجوز النص في عقد الشركة على أنه ، اذا توفي أحد الشركاء أو حجز عليه أو شهر افلاسه أو اعساره أو انسحب ، تستمر الشركة بين الباقين من الشركاء . وفي هذه الحالة لايكون لهذا الشريك او ورثته الا نصيبه في أموال الشركة و يقدر هذا النصيب وفقا لاخر جرد مالم ينص عقد الشركة على طريقة أخرى للتقدير ولايكون للشريك او ورثته نصيب فيما يستجد بعد ذلك من حقوق الا بقدر ماتكون هذه الحقوق ناتجة عن عمليات سابقة على تلك الواقعة.

## PART III
## LIMITED PARTNERSHIPS

Article 36: A limited partnership consists of two categories of partners, one including at least one general partner who is responsible to the extent of his entire fortune for the partnership's debts, and the other including at least one limited partner who is responsible for the partnership's to the extent of his interest in the capital.

Article 37: With due regard to the provisions of paragraphs 2 and 3 of Article 17, the name of a limited partnership shall consist of the name of one or more of the general partners, combined with an indication that a partnership exists; but it may not include the name of any limited partner. If it includes the name of any limited partner with the latter's due knowledge of such inclusion, he shall be considered a general partner as regards third parties.

Article 38: A limited partner may not interfere in the external acts of management not even on basis of a power of attorney. He may however, participate in the internal acts of management, within the limits prescribed by the partnership's memorandum of association. Such participation shall not, however, entail any liability on his part.

If a limited partner violates the above restriction, he shall be jointly liable, to the extent of his entire fortune, for all the debts arising from such acts of management as he has performed. Moreover, if the acts performed by him are such as to give third parties the impression that he is a general partner, he shall be liable, to the extent of his entire fortune, for (all) the partnership's debts.

Article 39: With due regard to the preceding provisions, if a limited partnership includes several general partners, it shall be considered a general partnership as among these partners.

In addition to the above, the following provisions governing general partnerships shall apply to a limited partnership:

1. The provisions relating to the interest of each partner and its assignment, as set forth in Article 18.
2. The provisions relating to publication provided for in Articles 21 and 22. However, the abstract of the memorandum of association of a limited partnership need not include the names of the limited partners, but must contain an adequate description of the contributions which they have undertaken to make and their value.
3. The provisions governing the partners' relations (among themselves), set forth in Articles 23, 24, 25, and 26.
4. The provisions relation to the management of the partnership set forth in Articles 27 through 34.
5. The provisions relating to the reasons for dissolution set forth in Article 35.

## الباب الثالث
## شركة التوصية البسيطة

مادة (٣٦) تتكون شركة التوصية البسيطة من فريقين من الشركاء فريق يضم على الاقل شريكا متضامنا مسئولا في جميع أمواله عن ديون الشركة وفريق أخر يضم على الاقل شريكا موصيا مسئولا عن ديون الشركة بقدر حصته في رأس المال.

مادة (٣٧) مع مراعاة الفقرتين الثانية والثالثه من المادة (١٧)، يتكون اسم شركة التوصية البسيطة من اسم واحد أو اكثر من الشركاء المتضامين مقرونا بما ينبىء عن وجود شركة ولايجوز أن يتكون من اسم أحد الشركاء الموصين فاذا أشتمل اسم الشركة على اسم شريك موص مع عمله بذلك أعتبر في مواجهة الغير شريكا متضامنا.

مادة (٣٨) لايجوز للشريك الموصى التدخل في أعمال الادارة الخارجية ولوبناء على توكيل ، وانما يجوز له الاشتراك في أعمال الادارة الداخلية في الحدود التي ينص عليها عقد الشركة ولايرتب هذا الاشتراك أى التزام في ذمته.

واذا خالف الشريك الحظر المشار اليه كان مسئولا بالتضامن في جميع أمواله عن الديون التي تترتب على ماأجراه من أعمال الادارة. واذا كانت الاعمال التي قام بها الشريك الموصى من شأنها أن تدعو الغير الى الاعتقاد بانه شريك متضامن اعتبر الشريك الموصى مسئولا بالتضامن في جميع أمواله عن ديون الشركة.

مادة (٣٩) مع مراعاة الاحكام السابقة اذا تعدد الشركاء المتضامنون في شركة التوصية البسيطة أعتبرت الشركة بالنسبة لهم شركة تضامن.

وفضلا عن ذلك تسرى على شركة التوصية البسيطة من أحكام شركة التضامن الاحكام الآتية:ـ

١ ـ الاحكام المتعلقة بشكل الحصة وبالتنازل عنها المنصوص عليها في المادة (١٨).

٢ ـ أحكام الشهر المنصوص عليها في المادتين (٢١ و ٢٢) ولكن يلزم أن يشتمل ملخص شركة التوصية البسيطة على أسماء الشركاء الموصين وانما يجب أن يشتمل على تعريف كاف بالحصص التي تعهدوا بها وعلى بيان قيمتها.

٣ ـ الاحكام المنظمة لعلاقات الشركاء والمنصوص عليها في المواد (٢٣ و٢٤ و٢٥ و٢٦)

٤ ـ الاحكام المتعلقة بادارة الشركة والمنصوص عليها في المواد من (٢٧ الى ٣٤).

٥ ـ الأحكام المتعلقة باسباب الأنقضاء والمنصوص عليها في المادة (٣٥).

## PART IV
## JOINT ADVENTURE

Article 40: A joint adventure is an association of which third parties are not aware and which neither enjoys a juristic personality nor is subject to the publication formalities.

Article 41: A joint adventure may not issue negotiable warrants.

Article 42: Every partner shall continue to hold title to the contribution which he has undertaken to make, unless the memorandum of association provides otherwise.

If the contribution is a specific capital asset and the partner who holds it is declared bankrupt, the owner of such asset shall be entitled to recover it from the bankrupt's estate after payment of his share of the losses of the joint adventure.

But, if the contribution is in the form of cash or of tangible assets that are not set apart, the owner's sole remedy shall be to participate in the bankrupt's estate as a creditor for the value of such contribution, less his share in the losses of the joint adventure.

Article 43: The memorandum of association of a joint adventure shall specify its object, the rights and liabilities of the partners, and the manner of the division of profits and losses among them.

Article 44: No new partner may be permitted to participate in the operations of the adventure except with the consent of all the partners unless the memorandum of association of the adventure provides otherwise.

Article 45 : The existence of a joint adventure may be established by any means, including evidence (i.e. testimony).

Article 46 : A third party shall have recourse only against the partner with whom he has dealt. But if the partners have so conducted themselves as to disclose the existence of the adventure to a third party, the adventure shall be con sidered a de facto general partnership in regard to such third party.

Article 47 : The provisions of Articles 23 through 26 and the provisions of Article 35 shall apply to joint adventures.

## الباب الرابع
## شركة المحاصة

مادة (٤٠) شركة المحاصة هي الشركة التي تستتر عن الغير ولا تتمتع بشخصية اعتبارية ولاتخضع لآجراءات الشهر.

مادة (٤١) لايجوز لشركة المحاصة أن تصدر صكوكا قابلة للتداول.

مادة (٤٢) يبقى كل شريك مالكا للحصة التي تعهد بتقديمها مالم ينص عقد الشركة على خلاف ذلك.

واذا كانت الحصة عينا معينة بذاتها وشهر افلاس الشريك الذى يحرزها، كان لمالكها حق استردادها من التفليسة بعدأداء نصيبه في خسائر الشركة.

اما اذا كانت الحصة نقودا او مثليات غير مفرزه فلايكون لمالكها الا الاشتراك في التفليسة بوصفة دائنا بقيمة الحصة مخصوما منها نصيبه في خسائر الشركة.

مادة (٤٣) يحدد عقد الشركة المحاصة غرضها وحقوق والتزامات الشركاء وكيفية توزيع الارباح والخسائر بينهم.

مادة (٤٤) لايجوز اشراك محاص جديد في نفس نشاط الشركة الا بموافقة جميع الشركاء ، مالم ينص عقد الشركة على خلاف ذلك.

مادة (٤٥) يجوز اثبات شركة المحاصة بجميع الطرق ، بما في ذلك البينة.

مادة (٤٦) ليس للغير حق الرجوع الاعلى الشريك الذى تعامل معه اذا صدر من الشركاء عمل يكشف للغير عن وجود الشركة جاز اعتبارها بالنسبة اليه شركة تضامن واقعية.

مادة (٤٧) تسرى على شركة المحاصة احكام المواد من (٢٣) الى (٢٦) وكذلك احكام المادة (٣٥).

## PART V
## CORPORATIONS
## CHAPTER I
## GENERAL PROVISIONS

Article 48 : the capital of a corporation shall be divided into negotiable shares of equal value. The members thereof shall be responsible only to the extent of the value of their shares, and their number shall not be less than five.

Article 49 : "The capital of a corporation that offers its stock for public subscription shall not be less than ten million Saudi riyals. In all other cases, the capital of a corporation shall not be less than two million Saudi riyals.
The paid-in capital upon the incorporation of the company shall not be less than one half of the prescribed minimum, with due regard to the provision of Article 58. The (par) value of each share shall not be less than fifty Saudi riyals".

Article : 50 : The name of a corporation may not include the name of a natural person, unless the company's object is the utilization of a patent or an invention registered in the name of such person, or unless the company acquires a commercial firm and adopts the name of the latter as its own name.

Article 51 : The Minister of Commerce shall issue a decision incorporating standard bylaws for corporations, from which no departure shall be allowed except for reasons satisfactory to the said minister.

## الباب الخامس
## شركة المساهمة
## الفصل الأول
## احكام عامـــة

مادة (٤٨) ينقسم رأس مال الشركة المساهمة الى اسهم متساوية القيمة وقابلة للتداول - ولايسأل الشركاء فيها الا بقدر قيمة اسهمهم. ولايجوز ان يقل عدد الشركاء في الشركة المذكورة عن خمسة.

مادة (٤٩) لايقل رأس مال شركة المساهمة التي تطرح أسهمها للاكتتاب العام عن عشرة ملايين ريال سعودي وفيما عدا هذه الحالة لايقل رأس مال الشركة عن مليوني ريال سعودي.
ولايقل المدفوع من رأس المال عند تأسيس الشركة عن نصف الحد الادنى مع مراعاة ماتقضى به المادة ٥٨ ولا تقل قيمة السهم عن خمسين ريالا سعوديا.

مادة (٥٠) لايجوز ان يشتمل اسم الشركة المساهمة على اسم شخص طبيعي الا اذا كان غرض الشركة استثمار براءة اختراع مسجلة باسم هذا الشخص او الا اذا تملكت الشركة مؤسسة تجارية واتخذت اسمها إسماً لها.

مادة (٥١) يصدر وزير التجارة قراراً بنموذج لنظام شركة المساهمة ولاتجوز مخالفة هذا النموذج الا لاسباب يقرها الوزير المذكور.

## CHAPTER II
## INCORPORATION AND PUBLICATION OF A CORPORATION

Article 52 : "The following corporations may be incorporated only by virtue of an authorization issued in a royal decree based on the approval of the Council of Ministers and the recommendation of the Minister of Commerce, with due regard to the provisions of the Regulations:
(a) Concessionary companies.
(b) Companies managing a public utility.
(c) Companies receiving subsidy from the Government.
(d) Companies in which the Government or any other public juristic person participates.
(e) Companies engaged in banking activities.
Other corporations may be incorporated only by authorization to be issued by the Minister of Commerce and published in the Official Gazette. The Minister of Commerce Shall issue said authorization only after he has reviewed a study proving the economic feasibility of the company's objectives, unless the company has submitted such study to another competent government agency that has authorized the establishment of the enterprise".

The application for such authorization shall be signed by at least five members (of the company) and submitted in the manner to be prescribed by a decision of the Minister of Commerce

The application shall state the manner of subscription for the company's capital, the number of shares reserved by the founders to themselves and the amount subscribed by each founder. Annexed thereto shall be a copy of the company's memorandum of association and bylaws both signed by the incorporators and other founders.

The said application shall be recorded in the register kept for the purpose by the General Department of Companies.

The said General Department may request that alterations be made in the company's bylaws so as to be consistent with the provisions of these Regulations or conformable to the standard from referred to in Article 51.

Article 53 : A founder of a corporation shall be any person who has signed its memorandum of association, or applied for an authorization to incorporate it, or offered a contribution in kind upon its organization, or actually participated in its organization.

Article 54 : "If the founders do not limit subscription for all stock to themselves they must, within thirty days of the date of publication in the official Gazette of the Royal Decree or the Minister of Commerce's decision authorizing the incorporation of the company, offer for public subscription the shares of stock for which they did not subscribe. The Minister of Commerce may, if necessary, authorize the extension of such period by not more than ninety days."

## الفصـــل الثاني
## تأسيس شركة المساهمة وشهرها

مادة (٥٢) لايجوز تأسيس الشركات المساهمة الاتية الا بترخيص يصدر به مرسوم ملكي بناء على موافقة مجلس الوزراء وعرض وزير التجارة على أنه يراعى ماتقضى به الانظمة.

أ ـ ذات الامتياز

ب ـ التي تدير مرفقا عاما.

جـ ـ التي تقدم لها الدولة اعانة.

د ـ التي تشترك فيها الدولة أو غيرها من الاشخاص الاعتبارية العامة

هـ ـ التي تزاول الاعمال المصرفية.

أما غير ذلك من الشركات المساهمة فلايجوز تأسيسها الا بترخيص يصدره وزير التجارة ينشر في الجريدة الرسمية. ولايصدر وزير التجارة الترخيص المذكور الا بعد الأطلاع على دراسة تثبت الجدوى الاقتصادية لاغراض الشركة مالم تكن الشركة قد قدمت مثل هذه الدراسة لجهة حكومية أخرى مختصة رخصت باقامة المشروع.

ويقدم طلب الترخيص موقعا عليه من خمسة شركاء على الاقل وفقا للاوضاع التي يصدر بها قرار من وزير التجارة.

ويبين في الطلب كيفية الاكتتاب برأس مال الشركة وعدد الاسهم التي قصرها المؤسسون على انفسهم ومقدار مااكتتب به كل منهم ويرفق به صورة من عقد الشركة ونظامها، موقعا على كل صورة من الشركاء وغيرهم من المؤسسين.

ويقيد الطلب المذكور في السجل الذي تعده لذلك الادارة العامة للشركات.

وللادارة المذكورة ان تطلب ادخال تعديلات على نظام الشركة ليكون متفقا مع احكام هذا النظام او ليكون مطابقا للنموذج المشار اليه في المادة (٥١).

مادة (٥٣) يعتبر مؤسسا كل من وقع عقد شركة المساهمة او طلب الترخيص بتأسيسها أو قدم حصة عينية عند تأسيسها او اشترك اشتراكا فعليا في تأسيس الشركة.

مادة (٥٤) اذا لم يقصر المؤسسون على انفسهم الاكتتاب بجميع الاسهم كان عليهم ان يطرحوا للاكتتاب العام الاسهم التي لم يكتتبوا بها وذلك خلال ثلاثين يوما من تاريخ نشر المرسوم الملكي او قرار وزير التجارة المرخص بتأسيس الشركة في الجريدة الرسمية ولوزير التجارة ان يأذن عند الضرورة بعد هذا الميعاد فترة لا تتجاوز تسعين يوما.

Article 55 : If an invitation for subscription is made to the public,subscription must be effected through the banks designated by the Minister of Commerce.

The founders shall place a sufficient (number of) copies of the company's bylaws at the said banks.

Any interested party may, during the period of subscriprion, obtain a copy thereof at a reasonable price.

The invitation for public subscription shall be set out in a prospectus, specifically containing the following particulars:

1. The founders' names, residence addresses, occupations, and nationalities.
2. The company's name, object, and head office.
3. The amount of paid-in capital; the classes of stock, their value, number, the amount offered for public subscription, and the amount subscribed for by the founders; and the restrictions imposed on the negotiability of shares.
4. The particulars concerning the contributions in kind and the rights attached thereto.
5. The special privileges granted to the founders or others.
6. The method of distribution of profits.
7. The estimated amount of the company's preliminary expenses.
8. The dates set for opening and closing the subscription and the place and terms thereof.
9. The method (to be adopted) for the allotment of shares to subscribers, if the number of the shares subscribed for exceeds the number offered for subscription.
10. The date of issue of the royal decree authorizing the incorporation of the company and the number of the Official Gazette in which it was published. This prospectus shall be signed by the founders who have signed the application for authorization.

These shall be jointly responsible for the correctness of the particulars contained in it, and for setting forth (in the prospectus) all the particulars referred to in the third paragraph of this Article.

The prospectus shall be published in a daily newspaper distributed in the locality of the company's head office, at least five days prior to the date set for opening the subscriotion.

Article 56 : Subscription (lists) shall be open for a period of not less than ten but not more than ninety days. The company shall not be duly incorporated unless all the capital (stock) has been subscribed for.

If the entire capital has not been subscribed for within the said period, the period of subscription may, with permission from the Minister of Commerce and Industry, be extended for a period not exceeding ninety days.

Article 57 : The subsriber, or his representative, shall sign a document setting forth specifically the company's name, object, and capital; the conditions of subscription; the subscriber's name, address, occupation, and nationality; the number of shares subscribed by him; and a covenant to accept the company's bylaws as established by the constituent general meeting.

The subscription shall be final and unconditional. Any condition laid down by the subscriber shall be considered nonexistent.

مادة (٥٥) اذا وجهت الدعوة الى جمهور للاكتتاب العام وجب ان يتم ذلك عن طريق البنوك التي يعينها وزير التجارة.

و يودع المؤسسون لدى البنوك المذكورة نسخا كافية من نظام الشركة.

ويجوز لكل ذى شأن خلال مدة الاكتتاب ان يحصل على نسخة منها مقابل ثمن معقول.

وتكون الدعوة للاكتتاب العام بنشرة تشتمل بصفة خاصة على البيانات الاتية:ـ

١ ـ اسماء المؤسسين ومحل اقامتهم ومهنهم وجنسياتهم.

٢ ـ اسم الشركة وغرضها ومركزها الرئيسي.

٣ ـ مقدار رأس المال المدفوع ونوع الاسهم وقيمتها وعدها ومقدار ماطرح منها للاكتتاب العام وما اكتتب به المؤسسون والقيود المفروضة على تداول الاسهم.

٤ ـ المعلومات الخاصة بالحصص العينية والحقوق المقررة لها.

٥ ـ المزايا الخاصة الممنوحة للمؤسسين أو لغيرهم.

٦ ـ طريقة توزيع الارباح.

٧ ـ بيان تقديري لنفقات تأسيس الشركة.

٨ ـ تاريخ بدء الاكتتاب ونهايته ومكانه وشروطه.

٩ ـ طريقة توزيع الاسهم على المكتتبين اذا زاد عدد الاسهم المكتتب بها على العدد المطروح للاكتتاب.

١٠ ـ تاريخ صدور المرسوم الملكي المرخص بتأسيس الشركة ورقم عدد الجريدة الرسمية الذى نشر فيه . و يوقع هذه النشرة المؤسسون الذين وقعوا طلب الترخيص.

و يكونون مسئولين بالتضامن عن صحة البيانات الواردة فيها وعن استيفائها البيانات المشار اليها في الفقرة الثالثة من هذه المادة.

وتعلن نشرة الاكتتاب في جريدة يومية توزع في المركز الرئيسي قبل تاريخ بدء الاكتتاب بخمسة ايام على الاقل.

مادة (٥٦) يظل الاكتتاب مفتوحا مدة لاتقل عن عشرة ايام ولاتجاوز تسعين يوماً ولايتم تأسيس الشركة الا اذا اكتتب بكل رأس المال.

واذا لم يكتتب بكل رأس المال في المدة المذكورة جاز باذن من وزير التجارة والصناعة مد فترة الاكتتاب مدة لاتزيد على تسعين يوما.

مادة (٥٧) يوقع المكتتب او من ينوب عنه وثيقة تشتمل بصفة خاصة على اسم الشركة وغرضها ورأس مالها وشروط الاكتتاب واسم المكتتب وعنوانه ومهنته وجنسيته وعدد الاسهم التي يكتتب بها وتعهد المكتتب بقبول نظام الشركة كما تقررة الجمعية التأسيسية.

و يكون الاكتتاب منجزا غير معلق على شرط، و يعتبر اى شرط يضعه المكتتب كأن لم يكن.

Article 58 : The amount payable per cash share upon subscription shall not be less than one quarter of its par value; a notation of the amount paid from such value shall be made on each share.

The proceeds of the subscription shall be deposited in the name of the company under incorporation in one of the banks designated by the Minister of Commerce
They may be surrendered only to the board of directors, after publication of the company's incorporation in accordance with Article 63.

Article 59 : If the number of shares subscribed for exceeds the (total) number offered for subscription, shares shall be allotted to subscribers in proportion to their individual subscriptions.
"With due regard to what the Minister of Commerce may decide in each case in respect of minor subscribers"

Article 60 : If the capital includes contributions in kind or special privileges for the founders or others the Department of Companies shall, at the request of the founders, appoint one or more experts to ascertain the correctness of the evaluation of contributions in kind, to appraise the justifications (for the granting) of the special privileges, and to set forth the evaluation factors thereof.

The expert shall submit a report to the General Department of Companies within thirty days of the date of his assignment to perform the work. The Department may, however, upon the request of the expert, grant him a delay not exceeding thirty days.

The General Department (of Companies) shall send a copy of the report of the expert to the founders who must communicate it to the subscribers at least fifteen days prior to the holding of the constituent general meeting. The said report shall also be filed at the company's head office and every interested party shall be entitled to review it.

The report shall be laid befors the constituent general meeting for deliberation. If the meeting resolves to reduce the value fixed for the contributions in kind, or to decrease the special privileges (granted), such reduction must be approved during the meeting by the contributors in kind or by the beneficiaries of such special privileges. If they refuse to approve the reduction, the company's memorandum of association shall be considered null and void with regard to all its members.

Shares of stock representing contributions in kind shall be delivered to their holders only after the title to such contributions has been fully transferred to the company.

Article 61 : The founders shall summon subscribers to a constituent general meeting, to be held in the manner set forth in the company's bylaws, provided that the interval between the date of the summons and date of the meeting shall not be less than fifteen days, and provided further that in case there are any contributions in kind or privileges, the meeting shall not be held before the lapse of at least fifteen days from the date on which the report referred to in the preceding Article was filed at the company's head office. Any subscriber, regardless of the number of his shares, shall have

مادة (٥٨) لايقل المدفوع من قيمة كل سهم نقدى عند الاكتتاب عن ربع قيمته الاسمية و يؤشر على السهم بالقدر المدفوع من قيمته.

وتودع حصيلة الاكتتاب باسم الشركة تحت التأسيس أحد البنوك التي يعينها وزير التجارة ولايجوز تسليمها الا لمجلس الادارة بعد اعلان تأسيس الشركة وفقا للمادة (٦٣).

مادة (٥٩) اذا جاوز عدد الأسهم المكتتب بها العدد المطروح للاكتتاب، وزعت الأسهم على المكتتبين بنسبة ماأكتتب به كل منهم (مع مراعاة مايقرره وزير التجارة في كل حالة بالنسبة لصغار المكتتبين)

مادة (٦٠) اذا وجدت حصص عينية أو مزايا خاصة للمؤسسين أو لغيرهم ، عينت الادارة العامة للشركات بناء على طلب المؤسسين خبيرا أو أكثر تكون مهمتهم التحقق من صحة تقييم الحصص العينية وتقدير مبررات المزايا الخاصة و بيان عناصر تقييمها.

و يقدم الخبير تقريره الى الادارة العامة الشركات خلال ثلاثين يوما من تاريخ تكليفه بالعمل، ويجوز للادارة بناء على طلب الخبيران تمنحه مهلة أخرى لاتجاوز ثلاثين يوما.

وترسل الادارة صورة من تقرير الخبير الى المؤسسين، وعلى هؤلاء توزيعه على المكتتبين قبل انعقاد الجمعية التأسيسة بخمسة عشر يوما على الأقل كما يودع التقرير المذكور المركز الرئيسي للشركة ويحق لكل ذى شأن الاطلاع عليه.

و يعرض التقرير المذكور على الجمعية التأسيسية للمداولة فيه، فاذا قررت الجمعية تخفيض المقابل المحدد للحصص العينية أو تخفيض المزايا الخاصة وجب أن يوافق مقدمو الحصص العينية أو المستفيدون من المزايا الخاصة على هذا التخفيض في اثناء انعقاد الجمعية، واذا رفض هؤلاء الموافقة على التخفيض أعتبر عقد الشركة كأن لم يكن بالنسبة لجميع أطرافها.

ولا تسلم الأسهم التي تمثل الحصص العينية الى أصحابها الا بعد نقل ملكية هذه الحصص كاملة الى الشركه.

مادة (٦١) يدعو المؤسسون المكتتبين الى جمعية تأسيسيه تعقد وفقا للاوضاع المنصوص عليها في نظام الشركة ، على الا تقل الفترة بين تاريخ الدعوة وتاريخ الانعقاد عن خمسة عشر يوما، وعلى الا يتم الانعقاد في حالة وجود حصص عينية أو مزايا خاصة قبل مضى خمسة عشر يوما من تاريخ ايداع التقرير المشار اليه في المادة السابقة المركز الرئيسي للشركة ولكل مكتتب أيا كان عدد اسهمه حق حضور

the right to attend the constituent general meeting. The meeting shall be valid only if attended by a number of subscribers representing at least one half of the company's capital. If such majority does not obtain, a(single) summons shall be sent for a second meeting to be held at least fifteen days after the date of the summons. Such meeting shall be valid regardless of the number of subscribers represented thereat.

Resolutions at the constituent general meeting shall be adopted by absolute majority vote of the shares represented thereat. However, if such resolutions relate to the assessment of contributions in kind or special privileges, they must be adopted by two thirds' majority of the subscribers for cash shares, to the exclusion of the subscriptions made by the contributors in kind or the beneficiaries of special privileges. These shall have no vote on these resolutions, even if they are holders of cash shares.

The minutes of the meeting shall be signed by the chairman of the meeting, the secretary, and the teller, and the founders shall send a copy thereof to the Department of Companies.

Article 62 : With due regard to the provisions of Article 60, the constituent general meeting shall specifically be competent to do the following:

1. Ascertain that the capital has been subscribed for in full and that the minimum capital has been paid up in full in accordance with these Regulations and to the extent of the amount payable on the value of each share.
2. Draw up the final provisions of the company's bylaws. However, the (constituent general) meeting may not introduce fundamental alterations to the bylaws submitted to it, except with the approval of all the subscribers represented thereat.
3. To appoint the members of the first board of directors for a period not exceeding five years and the first auditor, if these have not been appointed in the memorandum of association or in the bylaws of the company.
4. To deliberate on the founders' report on the acts and expenses necessitated by the organization of the company.

Article 63 : The founders shall, within fifteen days of the date of conclusion of the constituent general meeting, submit to the Minister of Commerce and Industry an application (requesting him) to announce the incorporation of the company. The following documents shall be attached to the said application:

1. A statement that the (authorized) capitel has been subscribed for in full, showing the amount paid up by subscribers on the value of shares, the names of such subscribers, and the number of shares subscribed for by each.
2. The minutes of the (constituent) general meeting.
3. The bylaws of the company as approved by the (constituent) general meeting.
4. The resolutions adopted by the (constituent) general meeting in respect of the founders' report, the evaluation of the contributions in kind and the special privileges, and the appointment of the members of the board of directors and the auditor, if such appointment was not made in the memorandum of association or bylaws of the company.

الجمعية التأسيسية. ويشترط لصحة الاجتماع حضور عدد من المكتتبين يمثل نصف رأس المال على الأقل. فاذا لم تتوفر هذه الأغلبية ، وجهت دعوة الى اجتماع ثان يعقد بعد خمسة عشر يوما على الأقل من توجيه الدعوة اليه. ويكون هذا الاجتماع صحيحا أيا كان عدد المكتتبين الممثلين فيه.

وتصدر القرارات في الجمعية التأسيسية بالاغلبية المطلقة للاسهم الممثله فيها. ومع ذلك فاذا تعلقت هذه القرارات بتقويم الحصص العينية أو المزايا الخاصة لزمت موافقة أغلبية المكتتبين باسهم نقدية التي تمثل ثلثي الأسهم المذكورة بعد استبعاد ماأكتتب به مقدمو الحصص العينية أو المستفيدون من المزايا الخاصة ولايكون لهؤلاء رأى في هذه القرارات ولو كانوا من أصحاب الأسهم النقدية.

ويوقع رئيس الجمعية والسكرتير وجامع الأصوات محضر الأجتماع ويرسل المؤسسون صورة منه الى الادارة العامة للشركات.

مادة (٦٢) مع مراعاة أحكام المادة (٦٠) تختص الجمعية التأسيسية بالامور الآتية:ـ

١ ـ التحقق من الاكتتاب لكل رأس المال ومن الوفاء وفقا لأحكام هذا النظام بالحد الأدنى من رأس المال وبالقدر المستحق من قيمة الاسهم.

٢ ـ وضع النصوص النهائية لنظام الشركة ، ولكن لايجوز للجمعية ادخال تعديلات جوهرية على النظام المعروض عليها الا بموافقة جميع المكتتبين الممثلين فيها.

٣ ـ تعيين أعضاء أول مجلس ادارة لمدة لاتجاوز خمس سنوات وأول مراقب حسابات، اذا لم يكن قد تم تعيينهم في عقد الشركة أو في نظامها.

٤ ـ المداولة في تقرير المؤسسين عن الأعمال والنفقات التي اقتضاها تأسيس الشركة.

مادة (٦٣) يقدم المؤسسون خلال خمسة عشر يوما من تاريخ انتهاء اجتماع الجمعية التأسيسية طلبا الى وزير التجارة والصناعة باعلان تأسيس الشركة. وترفق الوثائق الآتية بالطلب المذكور.

١ ـ اقرار بحصول الأكتتاب بكل رأس المال ومادفعه المكتتبون من قيمة الأسهم وبيان باسمائهم وعدد الأسهم التي اكتتب بها كل منهم.

٢ ـ محضر اجتماع الجمعية.

٣ ـ نظام الشركة الذى أقرته الجمعية.

٤ ـ قرارات الجمعية بشأن تقرير المؤسسين وتقويم الحصص العينية والمزايا الخاصة وتعيين أعضاء مجلس الأدارة ومراقب الحسابات اذا لم يكن قد تم هذا التعيين في عقد الشركة أو نظامها.

Article 64 : The company shall be considered duly incorporated from the date of issue of the decision of the Minister (of Commerce and Industry) announcing its incorporation. There after, any action to invalidate the company by reason of any violation of the provisions of these Regulations or of its memorandum of association or bylaws shall be barred.

As a consequence of the decision announcing the incorporation of the company, liability for all the acts performed by the founders for the account of the company shall transfer to the latter and the company shall bear all the (preliminary) expenses incurred by the founders during the period of organization.

If the company is not incorporated in the manner prescribed in these Regulations, the subscribers may recover the amounts paid up or contributions in kind made by them; and the founders shall be jointly responsible for fulfillment of this obligation and for damages, if necessary. The responsible (founders) shall also bear all the (preliminary) expenses incurred for the organization of the company, and shall be jointly responsible to third parties for all acts performed by them during the period of organization.

Article 65 : The decision of the Minister of Commerce and Industry announcing the incorporation of the company shall, together with a copy of its memorandum of association and bylaws, be published in the Official Gazette at the expense of the company.

The directors must, within fifteen days of the date (of issue) of the above decision, apply for the registration of the company in the Register of Companies at the General Department of Companies. Such registration shall specifically contain the following particulars:

1. The company's name, object, head office, and term.
2. The founders' names, residence addresses, occupations, and nationalities.
3. The classes, value, and number of (capital) shares; the amount offered for public subscription; the amount subscribed by the founders; the amount of paid-in capital; and the restrictions imposed on the negotiability of shares.
4. Method of the division of profits and losses.
5. The particulars concerning contributions in kind and the rights attached thereto, and special privileges granted to the founders or others.
6. The date of the Royal Decree authorizing the incorporation of the company, and the number of the Official Gazette issue in which it was published.
7. The date of the decision issued by the Minister of Commerce announcing the incorporation of the company, and the number of the Official Gazette issue in which it was published.

The directors must also register the company in the Commercial Register in accordance with the provisions of the Regulations for the Commercial Register.

مادة (٦٤) تعتبر الشركة مؤسسة تأسيساً صحيحاً من تاريخ صدور قرار الوزير باعلان تأسيسها ولا تسمع بعد ذلك الدعوى ببطلان الشركة لأية مخالفة لأحكام هذا النظام أو لنصوص عقد الشركة أو نظامها.

ويترتب على قرار اعلان تأسيس الشركة انتقال جميع التصرفات التي أجراها المؤسسون لحسابها الى ذمتها كما يترتب عليه تحمل الشركة جميع المصاريف التي أنفقها المؤسسون خلال فترة التأسيس.

واذا لم يتم تأسيس الشركة على النحو المبين في هذا النظام، كان للمكتتبين أن يستردوا المبالغ التي دفعوها أو الحصص العينية التي قدموها وكان المؤسسون مسئولين بالتضامن عن الوفاء بهذا الالتزام وعن التعويض عند الأقتضاء، وكذلك يتحمل المسؤولون جميع المصاريف التي أنفقت في تأسيس الشركة، ويكونون مسئولين بالتضامن في مواجهة الغير عن الأفعال والتصرفات التي صدرت منهم خلال فترة التأسيس.

مادة (٦٥) ينشر في الجريدة الرسمية على نفقة الشركة قرار وزير التجارة والصناعة باعلان تأسيسها مرفقا بها صورة من عقدها ومن نظامها.

وعلى أعضاء مجلس الأدارة خلال خمسة عشر يوما من تاريخ القرار المذكور أن يطلبوا قيد الشركة في سجل الشركات بالادارة العامة للشركات ويشتمل هذا القيد بصفة خاصة على البيانات الآتية:ـ

١ ـ اسم الشركة وغرضها ومركزها الرئيسي ومدتها.
٢ ـ أسماء المؤسسين ومحال اقامتهم ومهنهم وجنسياتهم.
٣ ـ نوع الأسهم وقيمتها وعددها ومقدار ماطرح منها للاكتتاب العام وماكتتب به المؤسسون ومقدار رأس المال المدفوع والقيود المفروضة على تداول الأسهم.
٤ ـ طريقة توزيع الأرباح والخسائر.
٥ ـ البيانات الخاصة بالحصص العينية والحقوق المقررة لها والمزايا الخاصة للمؤسسين أو لغيرهم.
٦ ـ تاريخ المرسوم الملكي المرخص بتأسيس الشركة ورقم عدد الجريدة الرسمية الذى نشر فيه.
٧ ـ تاريخ قرار وزير التجارة باعلان تأسيس الشركة ورقم عدد الجريده الرسمية التي نشر فيها.

وعلى أعضاء مجلس الأدارة كذلك أن يقيدوا الشركة في السجل التجاري وفقا لأحكام نظام السجل التجاري.

## CHAPTER III
## ADMINISTRATION OF A CORPORATION
## SECTION I
## THE BOARD OF DIRECTORS

Article 66 : A corporation shall be administered by a board of directors whose number shall be specified by the bylaws of the company, provided it is not less than three.

The regular general meeting shall appoint the directors for the term specified in the company bylaws, which shall not exceed three years.

"The Council of Ministers may determine the number of boards of directors on which a director may serve"

Directors, however, shall always be eligible for re-appointment, unless the company bylaws provide otherwise.

The company bylaws shall specify the manner of retirement of directors; but the regular general meeting may, at any time, remove all or any of the directors even if the company's bylaws provide otherwise, without prejudice to the right of a removed director to hold the company liable if the removal is made without acceptable justification or at an improper time.

A director may resign, provided that such resignation is made at a proper time; otherwise, he shall be responsible to the company (for damages).

Article 67 : Unless the company bylaws provide otherwise, if the office of a director becomes vacant, the board may appoint a temporay director to fill the vacancy, provided that such appointment shall be laid before the first regular general meeting. The new director shall complete the unexpired term of his predecessor.

If the number of directors falls below the minimum prescribed in these Regulations or in the company's bylaws, the regular general meeting must be convened as soon as possible to appoint the required number of directors.

Article 68 : A director must own "whose value shall not be less than ten thousand riyals"

Shares of the company's stock Such shares shall, within thirty days of the date of appointment of a director, be deposited in one of the banks designated by the Minister of Commerce They shall be set aside as a guarantee for directors' lisbility, and shall remain non-negotitable until the lapse of the period specified for hearing the action in liability provided for in Article 77, or until a decision has been rendered on such action.

If a director fails to submit such guarantee shares within the period specified therefor, he shall forfeit his directorship.

The auditor must ascertain compliance with the provisions of this Article, and must incorporate in his report to the general meeting any violation in this respect.

## الفصل الثالث
## ادارة شركة المساهمة
## الفرع الأول
## مجلس الأدارة

مادة (٦٦) يدير شركة المساهمة مجلس ادارة يحدد نظام الشركة عدد أعضائه بشرط ألا يقل عن ثلاثة.

وتعين الجمعية العامة العادية أعضاء مجلس الادارة للمدة المنصوص عليها في نظام الشركة بشرط الا تجاوز ثلاث سنوات.

ويجوز لمجلس الوزراء أن يحدد عدد مجالس الادارة التي يجوز للعضو ان يعين بها.

ويجوز دائما اعادة تعيين أعضاء مجلس الأدارة مالم ينص نظام الشركة على غير ذلك.

و يبين نظام الشركة كيفية انتهاء عضوية المجلس وانما يجوز للجمعية العامة العادية في كل وقت عزل جميع أو بعض أعضاء مجلس الادارة، ولو نص نظام الشركة على خلاف ذلك دون اخلال بحق العضو المعزول في مساءلة الشركة اذا وقع العزل لغير مبرر مقبول أو في وقت غير لائق.

ولعضو مجلس الادارة أن يعتزل بشرط أن يكون ذلك في وقت لائق والا كان مسئولا قبل الشركة.

مادة (٦٧) مالم ينص نظام الشركة على خلاف ذلك، اذا شغر مركز أحد أعضاء مجلس الادارة كان للمجلس أن يعين مؤقتا عضواً في المركز الشاغر، على أن يعرض هذا التعيين على الجمعية العامة العادية في أول اجتماع لها. و يكمل العضو الجديد مدة سلفه.

واذا هبط عدد أعضاء مجلس الأدارة عن الحد الأدنى المنصوص عليه في هذا النظام أو في نظام الشركة وجبت دعوة الجمعية العامة العادية في أقرب وقت ممكن لتعيين العدد اللازم من الأعضاء.

مادة (٦٨) يجب أن يكون عضو مجلس الادارة مالكا لعدد من أسهم الشركة (لايقل قيمتها عن عشرة الاف ريال).

وتودع هذه الاسهم خلال ثلاثين يوما من تاريخ تعيين العضو أحد البنوك التي يعينها وزير التجارة، وتخصص هذه الأسهم لضمان مسئولية أعضاء الادارة وتظل غير قابلة للتداول الى أن تنقضى المدة المحددة لسماع دعوى المسئولية المنصوص عليها في المادة (٧٧) أو الى أن يفصل في الدعوى المذكورة.

واذا لم يقدم عضو مجلس الادارة أسهم الضمان في الميعاد المحدد لذلك بطلت عضويته.

وعلى مراقب الحسابات أن يتحقق من مراعاة حكم هذه المادة وأن يضمن تقريره الى الجمعية العامة أية مخالفة في هذا الشأن.

Article 69 : A director may not have any interest whether or indirectly, in the transactions or contracts made for the account of the company, except with an authorization from the regular general meeting, to be renewed annually. Transactions made by way of public bidding shall, however, be excluded from this (restraint) if the director has submitted the best offer.

The director must declare to the board (of directors) any personal interest he may have in the transactions or contracts made for the account of the company. Such declaration must be recorded in the minutes of the (board) meeting, and the interested director shall not participate in voting on the resolution to be adopted in this respect.

The chairman of the board of directors shall communicate to the regular general meeting when it convenes the transactions and contracts in which any director has a persom al interest Such communcation shall be accompanied by a special report from the auditor.

Article 70 : A director may not, without authorization from the regular general meeting, to be renewed annually, participate in any business (enterprise) competitive with that of the company, or engage in any of the commercial activities carried on by the company; otherwise, the company shall have the right either to claim damages from him or to consider the operations he has conducted for his own account as having been couducted for the account of the company.

Article 71 : A corporation may not grant any cash loan whatsoever to any of its directors; nor may it guarantee any loan contracted by a director with a third party. Banks and other credit companies shall be excepted from this provision, for these may, within the limits of their objects and under the same terms and conditions as they apply to their transactions with the public, grant loans to or open credits for their directors or guarantee loans contracted by them with third parties.

Any contract concluded in violation of the provisions of this Article shall be considered null and void-

Article 72 : Directors may not disclose to the stockholders outside a general meeting, or to third parties, such secrets of the company as may have come to their knowledge by reason of their directorship; otherwise, they must be removed and held liable for damages.

Article 73 : With due regard to the prerogatives vested in the general meeting, the board of directors shall enjoy full powers in the administration of the company. It shall be entitled, within the scope of its competence, to delegate one or more of its members or others to perform an act or certain acts.

Nevertheless, the board of directors may not contract loans for terms exceeding three years, or sell or mortgage the real property or the place of business of the company, or release the debtors of the company from their liabilites, unless so authorized in the bylaws of the company and subject to the terms set forth therein.

مادة (٦٩) لايجوز أن يكون لعضو مجلس الادارة أية مصلحة مباشرة أو غير مباشرة في الاعمال والعقود التي تتم لحساب الشركة الا بترخيص من الجمعية العامة العادية يجدد كل سنة و يستثنى من ذلك الأعمال التي تتم بطريق المناقصات العامة اذا كان عضو مجلس الادارة صاحب العرض الافضل.

وعلى عضو مجلس الادارة ان يبلغ المجلس بماله من مصلحة شخصية في الأعمال والعقود التي تتم لحساب الشركة، و يثبت هذا التبليغ في محضر الاجتماع ولايجوز للعضو ذى المصلحة الاشتراك في التصويت على القرار الذى يصدر في هذا الشأن.

و يبلغ رئيس مجلس الادارة الجمعية العامة العاديه عند انعقادها الاعمال والعقود التي يكون لاحد أعضاء مجلس الادارة مصلحة شخصية فيها و يرفق بهذا التبليغ تقرير خاص من مراقب الحسابات.

مادة (٧٠) لايجوز لعضو مجلس الادارة بغير ترخيص من الجمعية العامة العادية يجدد كل سنة، أن يشترك في أى عمل من شأنه منافسة الشركة أو أن يتجر في أحد فروع النشاط الذى تزاوله والا كان للشركة أن تطالبه بالتعويض أو أن تعتبر العمليات التي باشرها لحسابه الخاص قد أجريت لحسابها.

مادة (٧١) لايجوز لشركة المساهمة أن تقدم قرضا نقديا من أى نوع لأعضاء مجلس ادارتها أو أن تضمن أى قرض يعقده واحد منهم مع الغير و يستثنى من ذلك البنوك وغيرها من شركات الائتمان اذ يجوز لها في حدود أغراضها بالاوضاع وبالشروط التي تتبعها في معاملاتها مع الجمهور أن تقرض أحد أعضاء مجلس ادارتها أو أن تفتح له اعتماداً أو أن تضمنه في القروض التي يعقدها مع الغير.

و يعتبر باطلا كل عقد يتم بالمخالفة لأحكام هذه المادة.

مادة (٧٢) لايجوز لأعضاء مجلس الادارة أن يذيعوا الى المساهمين في غير اجتماعات الجمعية العامة أو الى الغير ماوقفوا عليه من اسرار الشركة بسبب مباشرتهم لادارتها والا وجب عزلهم ومساءلتهم عن التعويض.

مادة (٧٣) مع مراعاة الأختصاصات المقررة للجمعية العامة يكون لمجلس الادارة أوسع السلطات في ادارة الشركة كما يكون له في حدود اختصاصه أن يفوض واحداً أو أكثر من أعضائه أو من الغير في مباشرة عمل أو أعمال معينة.

على أنه لايجوز لمجلس الادارة عقد القروض التي تجاوز آجالها ثلاث سنوات أو بيع عقارات الشركة أو رهنها أو بيع متجر الشركة أو رهنه أو ابراء مدينى الشركة من التزاماتهم الا اذا كان مصرحا بذلك في نظام الشركة وبالشروط الواردة فيه.

If the company's bylaws do not contain any provisions in this connection, the board may perform the above acts with an authorisation form the regular general meeting, unless such acts fall by virtue of their nature within the scope of the company's objects.

Article 74 : The company's bylaws shall specify the manner of remunerating directors. Such remuneration may consist of a specified salary, or of an attendance fee for the meetings, or of material benefits, or of a certain percentage of the profits, or of a combination of two or more of these benefits.

If, however, such remuneration represents a certain percentage of the compay's profits, it must not exceed 10% of the net profits after deduction of expenses, depreciations, and such reserves as are determined by the general meeting pursuant to the provisions of these Regulations or of the company's bylaws, and after distribution of a dividend of not less than 5% of the company's capital to stockholders.
Any determination (of remuneration) made in violation of this (provision) shall be null and void.

The board of directors' report to the regular general meeting must include a comprehensive statement of all the amounts received by directors during the financial year in the way of emoluments. share in the profits, attendance fees, expenses, and other benefits, as well as of all the amounts received by the directors in their capacity as officers or executives of the company, or in consideration of technical, administrative, or advisory services.

Article 75 : The company shall be bound by (all) the acts performed by the board of directors within the limits of its competence, and shall also be responsible for damages arising from the unlawful acts committed by directors in the administration of the company.

Article 76 : Directors shall be jointly responsible for damages to the company, or the stockholders, or third parties, arising from their maladministration of the affairs of the company, or their violation of the provisions of these Regulations or of the company's bylaws. Any stipulation contrary to this provision shall be considered nonexistent.

(Joint) liability shall be assumed by all directors if the wrongful act arises from a resolution adopted by unanimous vote. But with respect to resolutions adopted by majority vote, dissenting directors shall not be liable if they have expressly recorded their objection in the minutes of the meeting. Absence from the meeting at which such resolution is adopted shall not constitute cause for relief from liability, unless it is established that the absentee was not aware of the resolution, or, on becoming aware of it, was unable to object to it.

واذا لم يتضمن نظام الشركة احكاما في هذا الخصوص فلايجوز لمجلس القيام بالتصرفات المذكورة الا باذن من الجمعية العامة لعادية وذلك مالم تكن تلك التصرفات داخله بطبيعتها في اغراض شركة.

مادة (٧٤) يبين نظام الشركة طريقة مكافأة اعضاء مجلس الادارة يجوز ان تكون هذه المكافأة راتبا معينا او بدل حضور عن الجلسات ر مزايا عينية او نسبة معينة من الارباح، ويجوز الجمع بين اثنين او كثر من هذه المزايا.

ومع ذلك اذا كانت المكافأة نسبة معينة من ارباح الشركة لايجوز لمن تزيد هذه النسبة على ١٠٪ من الارباح الصافية بعد خصم المصروفات والاستهلاكات والاحتياطات التي قررتها الجمعية لعامة تطبيقا لاحكام هذا النظام او لنصوص نظام الشركة وبعد توزيع ربح على المساهمين لايقل عن ٥٪ من رأس مال الشركة. كل تقدير يخالف ذلك يكون باطلا.

و يشتمل تقرير مجلس الادارة الى الجمعية العامة العادية على بيان شامل لكل ماحصل عليه اعضاء مجلس الادارة خلال السنة لمالية من رواتب ونصيب في الارباح وبدل حضور ومصروفات وغير لك من المزايا كما يشتمل التقرير المذكور على بيان ماقبضه اعضاء لمجلس بوصفهم موظفين او اداريين او ماقبضوه نظير اعمال فنية او دارية او استشارات.

مادة (٧٥) تلتزم الشركة بالاعمال التي يجريها مجلس الادارة في حدود اختصاصه كما تسأل عن تعويض ماينشأ من الضرر عن لافعال غير المشروعة التي تقع من اعضاء المجلس في ادارة الشركة.

مادة (٧٦) يسأل اعضاء مجلس الادارة بالتضامن عن تعويض لشركة او المساهمين او الغير عن الضرر الذى ينشأ عن اساءتهم تدبير شئون الشركة او مخالفتهم احكام هذا النظام او نصوص نظام لشركة وكل شرط يقضى بغير ذلك يعتبر كأن لم يكن.

وتقع المسئولية على جميع اعضاء مجلس الادارة اذ نشأ الخطأ عن قرار صدر باجماعهم اما القرارات التي تصدر باغلبية الآراء فلا يسأل عنها المعارضون متى أثبتوا اعتراضهم صراحة في محضر الاجتماع ولايعتبر الغياب عن حضور الاجتماع الذى يصدر فيه القرار سببا للاعفاء من المسئولية الا اذا ثبت عدم علم العضو الغائب بالقرار او عدم تمكنه من الاعتراض عليه بعد علمه به.

Article 77 : The company may institute an action in liability against (its) directors for wrongful acts that cause prejudice to the body of stockholders. The resolution to institute this action shall be made by the regular general meeting, which shall appoint a person (or persons) to pursue the case on behalf of the company. If the company is adjudged bankrupt, the institution of this action shall rest with the receiver, and upon the dissolution of the company, the liquidator shall (institute and) pursue the case after obtaining the approval of the regular general meeting.

Except in cases of fraud and forgery, (the right of) instituting the action in liability vested in the company shall be extinguished by the regular general meeting's exonerating the board of directors from responsibility for its administration. In all cases, such action shall be barred after the lapse of one year from the date of such exoneration.

مادة (٧٧) للشركة ان ترفع دعوى المسئولية على اعضاء مجلس الادارة بسبب الأخطاء التي تنشأ عنها اضرار لمجموع المساهمين وتقرر الجمعية العامة العادية رفع هذه الدعوى وتعين من ينوب عن الشركة في مباشرتها واذا حكم بشهر افلاس الشركة كان رفع الدعوى المذكورة من اختصاص ممثل التفليسة واذا انقضت الشركة تولى المصفى مباشرة الدعوى بعد الحصول على موافقة الجمعية العامة العادية.

وفيما عدا حالتى الغش والتزوير تنقضى دعوى المسئولية المقررة للشركة بموافقة الجمعية العامة العادية على ابراء ذمة اعضاء مجلس الادارة من مسئوليتهم وفي جميع الاحوال لا تسمع الدعوى المذكورة بعد انقضاء سنة على تلك الموافقة.

Article 78 : Every stockholder shall have the right to institute the action in liability against directors on behalf of the company if the wrongful act committed by them is of a nature to cause him personal prejudice. However, the stockholder may institute such action only if the company's right to institute it is still valid and after notifying the company of his intention to do so. If a stockholder institutes such action, he shall be adjudged (compensation) only to the extent of the prejudice caused to him.

مادة (٧٨) لكل مساهم الحق في رفع دعوى المسئولية المقررة للشركة على اعضاء مجلس الادارة اذا كان من شأن الخطأ الذى صدر منهم الحاق ضرر خاص به ولايجوز للمساهم رفع الدعوى المذكورة الا اذا كان حق الشركة في رفعها لازال قائما ويجب على المساهم ان يخطر الشركة بعزمه على رفع الدعوى. واذا رفع المساهم الدعوى المذكورة فلايحكم له الا بقدر ماالحقه من ضرر.

Article 79 : "With due regard to the provisions of the company's bylaws, the board of directors shall appoint from among its members a chairman and a managing director. A single director may hold the offices of chairman and managing director.

The company's bylaws shall specify the duties and powers of the chairman and of the managing director as well as the special emoluments to be received by each of them in addition to the remuneration prescribed for board members. In the absence of any provisions in this respect in the company's bylaws, the board of directors shall divide the duties and powers among them and specify their special emoluments.

The board of directors shall also appoint a secretary from among its members or others, and shall determine his duties and powers and fix his remuneration, if the company's bylaws do not contain any provisions in this respect.

The term of office of the chairman, the managing director, and the secretary who is a director shall not exceed the term of their respective directorships.

The managing director and the secretary who is a board director may always be re-appointed, unless the company's bylaws provide otherwise. However, the chairman's term of office may be renewed to another term.

The board may, at all times, remove all or any of them, withhout prejudice to their right to damages if the removal is made without acceptable justification or at an improper time".

مادة (٧٩) مع مراعاة نصوص نظام الشركة، يعين مجلس الادارة من بين اعضائه رئيسا وعضوا منتدبا ويجوز ان يجمع عضو واحد بين مركز رئيس المجلس ومركز العضو المنتدب.

ويبين نظام الشركة اختصاصات رئيس المجلس والعضو المنتدب والمكافأة الخاصة التي يحصل عليها كل منهما بالاضافة الى المكافأة المقررة لاعضاء المجلس واذا خلا نظام الشركة من أحكام في هذا الشأن تولى مجلس الادارة توزيع الاختصاصات وتحديد المكافأة الخاصة.

ويعين مجلس الادارة سكرتيرا يختاره من بين اعضائه أو من غيرهم ويحدد اختصاصاته ومكافأته اذا لم يتضمن نظام الشركة احكاما في هذا الخصوص.

ولا تزيد مدة رئيس المجلس والعضو المنتدب والسكرتير عضو مجلس الادارة عن مدة عضوية كل منهم في المجلس.

ويجوز دائما اعادة تعيين العضو المنتدب والسكرتير عضو مجلس الادارة مالم ينص نظام الشركة على غير ذلك أما رئيس المجلس فيجوز تجديد فترة رئاسته للمجلس لمدة واحدة فقط .

والمجلس في كل وقت ان يعزلهم جميعهم أو بعضهم دون اخلال بحقهم في التعويض اذا وقع العزل لغير مبرر مقبول أو في وقت غير لائق.

Article 80 : The board of directors shall meet at the summons of its chairman in the manner prescribed in the company's bylaws. Nevertheless, and notwithstanding any provision to the contrary in the company's bylaws, the chairman must convene the board if requested to do so by two directors.

A meeting of the board shall be valid only if attended by at least one half of the directors, provided that the number of those present shall not be less than three, unless the company's bylaws provide for a larger proportion or number.

A director may not give proxy to any other director to attend the meeting on his behalf, unless this is authorized by the company's bylaws.

Resolutions of the board shall be adopted by majority vote of the directors present or represented. In case of a tie the chairman's vote shall carry, unless the company's bylaws provide otherwise.

Article 81 : The boaed (of directors) may adopt resolutions by putting them to the directors individually, unless a director requests in writing that the board be convened to deliberate on such resolutions, in which case they shall be laid before the board at the first follwoing meeting.

Article 82 : Deliberations and resolutions of the board shall be recorded in minutes to be signed by the chairman and the secretary. Such minutes shall be entered in a special register, which shall be signed by the chairman and the secretary.

مادة (٨٠) يجتمع مجلس الادارة بدعوة من رئيسه وفقا للاوضاع المنصوص عليها في نظام الشركة ومع ذلك وبصرف النظر عن اى نص مخالف في نظام الشركة يجب على رئيس المجلس ان يدعوه الى الاجتماع متى طلب اليه ذلك اثنان من الأعضاء.

ولايكون اجتماع المجلس صحيحا الا اذا حضره نصف الاعضاء على الاقل بشرط الا يقل عدد الحاضرين عن ثلاثة مالم ينص نظام الشركة على نسبة او عدد اكبر.

ولايجوز لعضو مجلس الادارة ان ينيب عنه غيره من الاعضاء في حضور الاجتماع الا اذا نص على ذلك نظام الشركة.

وتصدر قرارات المجلس باغلبية آراء الاعضاء الحاضرين او الممثلين وعند تساوى الآراء يرجح الرأى الذى منه رئيس المجلس وذلك مالم ينص نظام الشركة على غير ذلك.

مادة (٨١) للمجلس ان يصدر قرارات بطريق عرضها على الاعضاء متفرقين مالم يطلب احد الاعضاء كتابة اجتماع المجلس للمداولة فيها وتعرض هذه القرارات على مجلس الادارة في اول اجتماع تال لها.

مادة (٨٢) تثبت مداولات المجلس وقراراته في محاضر يوقعها رئيس المجلس والسكرتير وتدون هذه المحاضر في سجل خاص يوقعه رئيس المجلس والسكرتير.

## SECTION II
## STOCKHOLDERS MEETINGS

Article 83 : The bylaws of the company shall specify the (classes of) stockholders entitled to attend general meetings. Nevertheless, every stockholder who holds twenty shares shall have the right to attend, even if the bylaws of the company provide otherwise.

A stockholder may, in writing, give proxy to another stockholder other than a director to attend the general meeting on his behalf.

"The ministry of Commerce may delegate one or more representatives to attend the general meetings as observers".

Article 84 : Except for matters falling within the jurisdiction of the extraordinary general meeting, the regular meeting shall be competent in all matters related to the company and shall be convened at least once a year within six months of the end of the company's financial year.

Other regular general meetings may be convened whenever the need arises.

Article 85 : The extraordinary general meeting shall be competent to alter the bylaws of the company except in respect of:

1. Alterations of a nature to deprive a stockholder of his fundamental rights in his capacity as a member of the company, derived from the provisions of these Regulations or from the bylaws of the company, which rights are set forth in Articles 107 and 108.
2. Alterations of a nature to increase the financial liabilities of stockholders.
3. Alteration of the object of the company.
4. Transferring to a foreign country the head office of a company incorporatated in the Kingdom.
5. Changing the nationality of the company.

Any provision to the contrary shall be considered nonexistent.

In addition to the prerogatives vested in it, an extraordinary general meeting may adopt resolutions on matters falling primarily within the jurisdiction of the regular general meeting, subject to the same conditions and in the same manner as prescribed for the latter.

Article 86 : If a resolution adopted by a general meeting entails the alteration of the rights of a certain class of stockholders, such resolution shall not be valid unless it is approved by those entitled to vote from among the stockholders of that class, at a special meeting of such stockholders convened in accordance with the rules prescribed for extraordinary general meetings.

Article 87 : Stockholders general or special meetings shall be convened at the summons of the board of directors in the manner prescribed in the bylaws of the company.

## الفرع الثاني
## جمعيات المســـاهمين

مادة (٨٣) يبين نظام الشركة من له حق حضور الجمعيات العامة من المساهمين ومع ذلك يكون لكل مساهم حائز لعشرين سهما حق الحضور ولو نص نظام الشركة على غير ذلك.

وللمساهم ان يوكل عنه كتابة مساهما آخر من غير اعضاء مجلس الادارة في حضور الجمعية العامة.

(ويجوز لوزارة التجارة ان توفد مندوبا او اكثر لحضور الجمعيات العامة كمراقبين).

مادة (٨٤) فيما عدا الامور التي تختص بها الجمعية العامة غير العادية، تختص الجمعية العامة العادية بجميع الامور المتعلقة بالشركة وتنعقد الجمعية الاخيرة مرة على الاقل في السنة خلال الستة الشهور التالية لانتهاء السنة المالية للشركة.

ويجوز دعوة جمعيات عامة عادية اخرى كلما دعت الحاجة الى ذلك.

مادة (٨٥) تختص الجمعية العامة غير العادية بتعديل نظام الشركة باستثناء الامور الآتية:ـ

١ ـ التعديلات التي من شأنها حرمان المساهم من حقوق الاساسية التي يستمدها بوصفه شريكا في الشركة من احكام هذا النظام او من نظام الشركة وهي الحقوق المنصوص عليها في المادتين (١٠٧ و١٠٨).

٢ ـ التعديلات التي من شأنها زيادة الاعباء المالية للمساهمين.

٣ ـ تعديل غرض الشركة.

٤ ـ نقل المركز الرئيسي للشركة المؤسسة في المملكة الى بلد اجنبى.

٥ ـ تعديل جنسية الشركة.

وكل نص على خلاف ذلك يعتبر كأن لم يكن.

وللجمعية العامة غير العادية، فضلا عن الاختصاصات المقررة لها، ان تصدر قرارات في الامور الداخلة اصلا في اختصاص الجمعية العامة العادية وذلك بنفس الشروط والاوضاع المقررة للجمعية الاخيرة.

مادة (٨٦) اذا كان من شأن قرار الجمعية العامة تعديل حقوق فئة معينة من المساهمين فلايكون القرار المذكور نافذا الا اذا صادق عليه من له حق التصويت من هؤلاء مجتمعين في جمعية خاصة بهم وفقا للاحكام المقررة للجمعية العامة غير العادية.

مادة (٨٧) تنعقد الجمعيات العامة أو الخاصة للمساهمين بدعوة من مجلس الادارة وفقا للاوضاع المنصوص عليها في نظام الشركة.

The board of directors must call a regular general meeting, if so requested by the auditor or by a number of stockholders representing at least 5% of the capital.

The General Department of Companies may, at the request of a number of stockholders representing at least 2% of the capital.

"Or pursuant to a decision by the Minister of Commerce" call a general meeting if such meeting is not called within one month from the date set therefor.

وعلى مجلس الادارة ان يدعو الجمعية العامة العادية اذا طلب ذلك مراقب الحسابات او عدد من المساهمين يمثل ٥٪ من رأس المال على الاقل.

وللادارة العامة للشركات بناءً على طلب عدد من المساهمين يمثل ٢٪ من رأس المال على الاقل (أو بناء على قرار من وزير التجارة). أن تدعو الجمعية العامة للانعقاد اذا مضى شهر على الموعد المحدد لانعقادها دون ان تدعى للانعقاد.

Article 88 : "Notices of general meetings shall be published in the Official Gazette and in a daily newspaper distributed in the locality of the head office of the company, at least twenty-five days prior to the date set for the meeting.

Nevertheless, if all the stock of the company is registered (nominative), a notice sent by registered mail at least twenty-five days before the date of the meeting shall suffice. The notice shall contain an agenda (of the meeting). A copy of both the notice and the agenda shall be sent to the General Administration for Companies at the Ministry of Commerce within the period specified for publication"-

مادة (٨٨) تنشر الدعوة لانعقاد الجمعية العامة في الجريدة الرسمية وصحيفة يومية توزع في المركز الرئيسي للشركة قبل الميعاد المحدد للانعقاد بخمسة وعشرين يوما على الاقل.

ومع ذلك يجوز اذا كانت جميع الاسهم اسمية الاكتفاء بتوجيه الدعوة في الميعاد المذكور بخطابات مسجلة وتشتمل الدعوة على جدول الاعمال وترسل صورة من الدعوة وجدول الاعمال الى الادارة العامة للشركة بوزارة التجارة خلال المدة المحددة للنشر.

Article 89 : "The board of directors shall, at least sixty days prior to the date set for the holding of the annual general meeting, prepare for every financial year of the company a balance sheet, a profit and loss statement, and a report on the company's operations and financial position and on the method which it proposes for the distribution of net profits. The said documents shall be signed by the chairman of the board of directors, and copies thereof shall be placed at the disposal of stockholders the head office of the company at least twenty-five days prior to the date set for such general meeting. The chairman of the board of directors must publish, in a newspaper distributed in the locality, in a newspaper distributed in the locality of the head office of the company, the balance sheet, the profit and loss statement, a comprehensive summary of the board of directors report, and the full text of the auditor's report, and must send a copy of each of these documents to the General. Administration for Companies at least twenty-five days prior to the date set for the general meeting"

مادة (٨٩) يعد مجلس الادارة عن كل سنة مالية ميزانية للشركة وحساب الارباح والخسائر وتقريرا عن نشاط الشركة ومركزها المالي والطريقة التي يقترحها لتوزيع الارباح الصافية وذلك قبل انعقاد الجمعية العامة العادية السنوية بستين يوما على الاقل. ويوقع رئيس مجلس الادارة الوثائق المشار اليها وتودع نسخ منها في المركز الرئيسي للشركة تحت تصرف المساهمين قبل الموعد المحدد لانعقاد الجمعية العامة بخمسة وعشرين يوما على الاقل. وعلى رئيس مجلس الادارة أن ينشر في صحيفة توزع في المركز الرئيسي للشركة الميزانية وحساب الارباح والخسائر وخلاصة وافية من تقرير مجلس الادارة والنص الكامل لتقرير مراقب الحسابات وأن يرسل صورة من هذه الوثائق الى الادارة العامة للشركات قبل تاريخ انعقاد الجمعية العامة بخمسة وعشرين يوما على الاقل.

Article 90 : Stockholders wishing to attend a general or special meeting shall register their names at the head office of the company (and may do so) up to the time fixed for such meeting, unless the bylaws of the company provide otherwise.

When the meeting convenes, a list shall be prepared of the names and residence addresses of the stockholders present or represented thereat, showing the number of shares held by each, whether personally or by proxy, and the number of votes allotted thereto. Any interested party shall be entitled to review this list.

مادة (٩٠) يسجل المساهمون الذين يرغبون في حضور الجمعية العامة أو الخاصة أسماءهم بمركز الشركة الى الوقت المحدد لانعقاد الجمعية مالم ينص نظام الشركة على غير ذلك.

ويحرر عند انعقاد الجمعية كشف بأسماء المساهمين الحاضرين والممثلين ومحال اقامتهم مع بيان عدد الأسهم التي في حيازتهم بالاصالة أو بالوكالة وعدد الأصوات المخصصة لها و يكون لكل ذى مصلحة الاطلاع على هذا الكشف.

Article 91 : The regular general meeting shall be valid only if attended by stockholders representing at least one half of the company's capital, unless the bylaws of the company provide for a higher proportion. If this quorum does not obtain at a first meeting, a notice shall be sent for a second meeting to be held within thirty days of the previous meeting. This notice shall be published in the manner prescribed in Article 88 The second meeting shall be considered valid, regardless of the number of shares representated thereat.

Resolutions of the regular general meeting shall be adopted by absolute majority vote of the shares represented thereat, unless the bylaws of the company provide for a higher proportion.

مادة (٩١) لايكون انعقاد الجمعية العامة العادية صحيحاً الا اذا حضره مساهمون يمثلون نصف رأس مال الشركة على الأقل، مالم ينص نظام الشركة على نسبة أعلى، فاذا لم يتوفر هذا النصاب في الاجتماع الأول، وجهت دعوة الى اجتماع ثان يعقد خلال الثلاثين يوما التالية للاجتماع السابق وتنشر هذه الدعوة بالطريقة المنصوص عليها في المادة (٨٨)، و يعتبر الاجتماع الثاني صحيحاً أيا كان عدد الأسهم الممثلة فيه.

وتصدر قرارات الجمعية العامة العادية بالأغلبية المطلقة للاسهم الممثلة في الاجتماع مالم ينص نظام الشركة على نسبة أعلى.

Article 92 : An extraordinary general meeting shall be valid only if attended by stockholders representing at least one half of the company's capital, unless the company's bylaws provide for a higher proportion. If this quorum does not obtain at the first meeting, a notice shall be sent for a second meeting in the manner prescribed in Article 91. The second meeting shall be valid if attended by a number of stockholders representing at least one quarter of the company's capital.

Resolutions of an extraordinary general meeting shall be adopted by a two-thirds majority vote of the shares represented thereat. But if a resolution pertains to an increase or a decrease in capital, or to extension of the term of the company, or to dissolution of the company prior to expiry of the term specified in its bylaws or to merger of the company into anouther company or firm, it shall be valid only if adopted by a three-fourths majority vote of the shares represented at the meeting.

The board of directors must publish, in accordance with the provisions of Article 65, the resolutions adopted by an extraordinary general meeting if these provide for alteration of the company's bylaws.

مادة (٩٢) لايكون اجتماع الجمعية العامة غير العادية صحيحاً الا اذا حضره مساهمون يمثلون نصف رأس المال على الأقل مالم ينص نظام الشركة على نسبة أعلى، فاذا لم يتوفر هذا النصاب في الاجتماع الأول وجهت دعوة الى اجتماع ثان بنفس الأوضاع المنصوص عليها في المادة (٩١)، و يكون الاجتماع الثاني صحيحاً اذا حضره عدد من المساهمين يمثل ربع رأس المال على الأقل.

وتصدر قرارات الجمعية العامة غير العادية بأغلبية ثلثي الأسهم الممثلة في الاجتماع الا اذا كان القرار متعلقا بزيادة أو بتخفيض رأس المال أو باطالة مدة الشركة أو بحل الشركة قبل انقضاء المدة المحددة في نظامها أو بادماج الشركة في شركة أو في مؤسسة أخرى فلايكون القرار صحيحاً الا اذا صدر بأغلبية ثلاثة أرباع الأسهم الممثلة في الاجتماع.

وعلى مجلس الادارة أن يشهر، وفقا لأحكام المادة (٦٥) قرارات الجمعية العامة غير العادية اذا تضمنت تعديل نظام الشركة.

Article 93 : The company's bylaws shall prescibe the manner of voting at stockholders meetings. Nevertheless, directors may not participate in voting on resolutions of a meeting pertaining to their relief from liability for their administration.

مادة (٩٣) يبين نظام الشركة طريقة التصويت في جمعيات المساهمين، ومع ذلك لايجوز لأعضاء مجلس الادارة الاشتراك في التصويت على قرارات الجمعية التي تتعلق بابراء ذمتهم من المسئولية عن ادارتهم.

Article 94 : Every stockholder shall have the right to discuss the matters listed in the agenda of a (general) meeting, and to address questions to the directors and the auditor in respect thereof. Any provision in the company's bylaws depriving a stockholder of this right shall be considered null and void. The directors or the auditor shall answer stockholders' quaestions to such an extent as would not jeopardize the company's interests. If a stockholder feels that the answer to a question put by him is unsatisfactory, he may appeal to the (general) meeting whose decision shall be final in this respect.

مادة (٩٤) لكل مساهم حق مناقشة الموضوعات المدرجة في جدول أعمال الجمعية وتوجيه الاسئلة بشأنها الى أعضاء مجلس الادارة ومراقب الحسابات، وكل نص في نظام الشركة يحرم المساهم من هذا الحق يكون باطلا ويجيب مجلس الادارة او مراقب الحسابات عن أسئلة المساهمين بالقدر الذي لايعرض مصلحة الشركة للضرر، واذا رأى المساهم أن الرد على سؤاله غير مقنع احتكم الى الجمعية وكان قرارها في هذا الشأن نافذاً.

Article 95 : Minutes shall be kept for every (general) meeting, showing the names of stockholders present or represented (thereat), the number of shares held by (each of) them, whether personally or by proxy, the number of votes allotted thereto, the resolutions adopted, the number of consenting and dissenting votes, and a comprehensive summary of the debate conducted at the meeting.

Following every meeting, the minutes shall be regularly entered in a special book, which shall be signed by the chairman, the secretary, and the teller of the meeting.

Article 96 : Subscription for or ownership of stock shall imply that the (subscriber or) stockholder accepts the company's bylaws and will abide by the resolutions adopted by stockholders meetings in conformity with the provisions of these Regulations and the company's bylaws, whether in his presence or absence, and whether he has voted for or against them.

Article 97 : "Without prejudice to the rights of any bona fide third party, all resolutions adopted by stockholders' meetings contrary to the provisions of these Regulations or of the company's bylaws shall be considered null and void. The General Administration for Companies and any stockholder who has recorded his objection to the resolution in the minutes of the meeting or who was absent from the meeting for acceptable reason, may request to invalidate a resolution. A resolution adjudged invalid shall be considered nonexistent as far as all stockholders are concerned. Nevertheless an action invalidation (of a resolution) shall be barred after the lapse of one year from the date of such resolution"

مادة (٩٥) يحرر باجتماع الجمعية محضر يتضمن أسماء المساهمين الحاضرين أو الممثلين وعدد الأسهم في حيازتهم بالاصالة أو بالوكالة وعدد الأصوات المقررة لها والقرارات التي اتخذت وعدد الأصوات التي وافقت عليها أو خالفتها وخلاصة وافية للمناقشات التي دارت في الاجتماع.

وتدون المحاضر بصفة منتظمة عقب كل اجتماع في سجل خاص يوقعه رئيس الجمعية وسكرتيرها وجامع الأصوات.

مادة (٩٦) الاكتتاب في الأسهم أو تملكها يفيد قبول المساهم لنظام الشركة، والتزامه بالقرارات التي تصدر من جمعيات المساهمين وفقا لأحكام هذا النظام ونظام الشركة سواء أكان حاضراً أو غائباً، وسواء أكان موافقا على هذه القرارات أو مخالفا لها.

مادة (٩٧) مع عدم الاخلال بحقوق الغير الحسن النية يقع باطلا كل قرار يصدر من جمعيات المساهمين بالمخالفة لاحكام هذا النظام أو لاحكام نظام الشركة وللادارة العامة للشركات ولكل مساهم اعترض في محضر الاجتماع على القرار او تغيب عن حضور الاجتماع بسبب مقبول ان يطلب البطلان ويترتب على القضاء بالبطلان اعتبار القرار كان لم يكن بالنسبة لجميع المساهمين ولا تسمع دعوى البطلان بعد انقضاء سنة من تاريخ القرار المذكور.

## CHAPTER IV
## WARRANTS ISSUED BY CORPORATIONS
## SECTION I - STOCK

Article 98 : Shares of stock of companies shall be indivisible as far as the company is concerned. If a share is jointly owned by several persons, these must elect one of their number to exercise the rights attached to such share on their behalf, but they shall be jointly liable for (all) the obligations arising from such ownership. Shares may not be issued at less than par value. But they may be issued at a premium if the company's bylaws so porovide or if this is approved by a general meeting, in which case the differential shall be added to the statutory reserve, even if it has reached the maximum limit prescribed in these Regulations.

The preceding provisions shall apply to interim certificates given stockholders before the issue of share warrants.

Article 99 : (The shares of ) the company may be (issued) either for cash or for contributions in kind. The class of the share shall be stated on the face of the relative warrant.

A share may be (issued) to a registered holder or to "bearer". (In the former case) it must remain registered to a holder until its value has been paid up in full.

Share warrants shall state the amount paid up on the shares they comprise. Interim certificates shall remain registered in the holder's name until they are exchanged for share warrants.

Article 100 : Cash shares subscribed for by the founders and shares for contributions in kind, as well as founders' shares shall not be negotiable before the publication of the balance sheet and the profit and loss, statement for two complete financial years, each consisting of at least twelve months as from the date of incorporation of the company. A notation shall be made on the respective share warrants, indicating their class, the date of incorporation of the company, and the period during which their negotility shall be suspended.

Nevertheless, during the period of suspension title to shares issued for cash may, in accordance with the legal provisions for the sale of rights, be transferred from one founder to another, or to a director who will submit them as qualification shares, or from the heirs of a deceased founder to a third party.

The provisions of this Article shall also apply to such shares as the founders may subscribe for in case of an increase of capital before the expiry of the period of suspension.

Article 101 : The Company's bylaws any Provide for (The imposition of) restrictions on the negotiability of shars provided these do not (Permanently) prohibit such negotiability.

## الفصل الرابع
## الصكوك التي تصدرها شركة المساهمة
## الفرع الأول ــ الأسهم

مادة (٩٨) تكون أسهم شركة المساهمة غير قابلة للتجزئة في مواجهة الشركة، فاذا تملك السهم أشخاص متعددون وجب عليهم أن يختاروا أحدهم لينوب عنهم في استعمال الحقوق المختصة بالسهم ويكون هؤلاء الاشخاص مسئولين بالتضامن عن الالتزامات الناشئة عن ملكية السهم، ولايجوز أن تصدر الأسهم بأقل من قيمتها الاسمية وانما يجوز أن تصدر بأعلى من هذه القيمة اذا نص نظام الشركة أو وافقت الجمعية العامة على ذلك، وفي هذه الحالة الأخيرة يضاف فرق القيمة الى الاحتياطى النظامى ولو بلغ الحد الأقصى المنصوص عليه في هذا النظام.

وتسرى الأحكام السابقة على الشهادات المؤقته التي تسلم الى المساهمين قبل اصدار الأسهم.

مادة (٩٩) يجوز أن تكون الشركة نقدية أو عينية، ويذكر نوع السهم في الصك المثبت له.

ويجوز أن يكون السهم اسمياً أو لحامله، ويبقى السهم اسمياً الى حين الوفاء بقيمته كاملة.

ويبين في صك السهم مقدار مادفع منه، وكذلك تبقى الشهادة المؤقته اسمية الى أن يستبدل بها صك السهم.

مادة (١٠٠) لايجوز تداول الأسهم النقدية التي يكتتب بها المؤسسون أو الأسهم العينية أو حصص التأسيس قبل نشر الميزانية وحساب الأرباح والخسائر عن سنتين ماليتين كاملتين لاتقل كل منهما عن اثنى عشر شهراً من تاريخ تأسيس الشركة، ويؤشر على هذه الصكوك بما يدل على نوعها وتاريخ تأسيس الشركة والمدة التي يمتنع فيها تداولها.

ومع ذلك يجوز خلال فترة الحظر نقل ملكية الأسهم النقدية وفقا لأحكام بيع الحقوق من أحد المؤسسين الى مؤسس آخر أو الى أحد أعضاء مجلس الادارة لتقديمها كضمان للادارة ، أم من ورثة أحد المؤسسين في حالة وفاته الى الغير.

وتسرى أحكام هذه المادة على مايكتتب به المؤسسون في حالة زيادة رأس المال قبل انقضاء فترة الحظر.

مادة (١٠١) يجوز أن ينص في نظام الشركة على قيود تتعلق بتداول الأسهم بشرط الا يكون من شأنها تحريم هذا التداول.

Article 102 : Registered shares shall be transferred by means of an entry in the stockholders register kept by the company, which contains the stockholders' names, nationalities, residence addresses, and occupations; the (serial) numbers of the shares (held by them); and the amounts paid up on such shares. An annotation shall be made on the share warrant to the effect that such entry was made. A transfer of title to any registered share shall be effective as far as the company or third parties are concerned only from the date of its entry in the said register. Shares to bearer are transferable by mere delivery.

مادة (١٠٢) تتداول الأسهم الأسمية بالقيد في سجل المساهمين الذى تعده الشركة والذى يتضمن أسماء المساهمين وجنسياتهم ومحل اقامتهم ومهنهم وأرقام الاسهم والقدر المدفوع منها و يؤثر بهذا القيد على السهم ولايعتمد بنقل ملكية السهم الأسمى في مواجهة الشركة أو الغير الامن تاريخ القيد في السجل المذكور تتداول الأسهم التي لحاملها بمجرد المناولة.

Article 103 : Shares shall carry equal rights and obligations.

Nevertheless, a general meeting may, in the absence of any restraining provision in the company's bylaws, resolve to issue preferred shares of stock or to convert common shares to preferred shares of stock.

Preferred shares may vest their holders with priority in receiving a certain dividend and/or in recovering their paid-in capital upon liquidation, or with any other benefit, but no multiple-vote shares may be issued.

If the capital includes preferred sharres, no new shares with prior preference to these may be issued except with the consent of a special meeting, formed in accordance with Article 86, of the holders of the preferred shares who would be injured by such issue, and with the consent of a general meeting representing all classes of stockholders, unless the company's bylaws provide otherwise. This rule shall also apply upon alteration or cancellation of the priorities established in favor of preferred stock in the bylaws of the company.

مادة (١٠٣) ترتب الأسهم حقوقا والتزامات متساوية.

ومع ذلك يجوز للجمعية العامة، اذا لم يوجد نص مانع في نظام الشركة، أن تقرر أصدار أسهم ممتازه أو أن تقرر تحويل الاسهم العادية الى أسهم ممتازة.

ويجوز أن ترتب الأسهم الممتازة لأصحابها أو لوية في قبض ربح معين أو اولوية في استرداد مادفع من رأس المال عند التصفية أو اولوية في الأمرين معا أو أية مزية أخرى ولكن لايجوز اصدار أسهم تعطى أصواتا متعددة.

واذا كانت هناك أسهم ممتازة فلايجوز اصدار أسهم جديدة تكون بها أولوية عليها الا بموافقة جمعية خاصة مكونة وفقا للمادة(٨٦) من أصحاب الأسهم الممتازة الذين يضارون من هذا الاصدار وبموافقة جمعية عامة مكونة من جميع فئات المساهمين وذلك مالم ينص نظام الشركة على غير ذلك. و يسرى هذا الحكم أيضا عند تعديل أو الغاء حقوق الاولوية المقررة للاسهم الممتازة في نظام الشركة.

Article 104 : The company's bylaws may provide for the redemption of shares while the company is a going concern, if the enterprise is (of the) gradually exhaustible (type) or is based on temporary rights.

Shares shall be redeemed only out of profits or of a disposable reserve fund. Redemption shall be effected successively, either by way of an annual draw, or by any other method insuring equality among stockholders. Redemption may be effected by the company's purchasing its own shares either at a discount or at par value. The company shall destroy the shares so obtained.

The company's bylaws may also provide for granting actions de jouyssance (reimbursed shares) to the holders of the shares redeemed by lot. The company's bylaws shall determine the rights which such shares vest in their holders.

Nevertheless, a certain percentage of the annual net profits must be set aside for distribution to (the holders of) unredeemed shares by priority over (the holders of) actions de jonissance. Upon the dissolution of the company, the holders of unredeemed shares shall have priority in receiving the par value of their shares out of the company assets.

مادة (١٠٤) يجوز أن ينص في نظام الشركة على استهلاك الأسهم اثناء قيام الشركة اذا كان مشروعا يهلك تدريجيا أو يقوم على حقوق مؤقته.

ولايكون استهلاك الأسهم الا من الارباح أو من الاحتياطى الذى يجوز التصرف فيه و يقع الاستهلاك تباعا بطريقة القرعة السنوية أو باية طريقة أخرى تحقق المساواة بين المساهمين ويجوز أن يكون الاستهلاك بشراء الشركة لاسهمها بشرط أن يكون سعرها أقل من قيمتها الاسمية أو مساويا لهذه القيمة. وتعدم الشركة الأسهم التي تحصل عليها بهذه الطريقة.

ويجوز أن ينص في نظام الشركة على اعطاء أسهم تمتع لأصحاب الأسهم التي تستهلك بالقرعة ويحدد نظام الشركة الحقوق التي ترتبها لاصحابها.

ومع ذلك يجب أن تخصص نسبة مئوية من صافي الربح السنوى للاسهم التي لم تستهلك لتوزع عليها بالأولوية على أسهم التمتع. وفي حالة انقضاء الشركة يكون لأصحاب الأسهم التي لم تستهلك أولوية الحصول من موجودات الشركة على مايعادل القيمة الاسمية لأسهمهم.

Article 105 : The company may purchase its own shares only in the following cases :

TRANSLATOR'S NOTE : A share on which the original capital contribution has been repaid. Normally, it differs from a capital share in that its holder has no further claim, upon liquidation, to a return of the capital contribution.

1. If the object of the purchase is to redeem the shares in accordance with the terms set forth in the preceding Article.
2. If the object of the purchase is to reduce the capital.
3. If the shares are part of an estate whose assets and liabilities are to be purchased (as a whole) by the company.

With the exception of the shares submitted as a pledge against directors' liability (i.e. the directors' qualification shares), the company may not accept its own stock as security, and the shares held by the company shall not have any votes in the deliberation of stockholders meetings.

مادة (١٠٥) لايجوز أن تشترى الشركة اسهمها الا في الأحوال الآتية:ـ

١ ـ اذا كان الغرض من الشراء استهلاك الأسهم بالشروط المبنية في المادة السابقة.

٢ ـ اذا كان الغرض من الشراء تخفيض رأس المال.

٣ ـ اذا كانت الأسهم ضمن مجموعة من الاموال التي تشتريها الشركة بمالها من أصول وماعليها من خصوم.

وفيما عدا الأسهم المقدمة لضمان مسئولية أعضاء مجلس الادارة لايجوز للشركة أن ترتهن اسهمها ، ولايكون للاسهم التي تحوزها الشركة أصوات في مداولات جمعيات المساهمين.

Article 106 : The company's bylaws may provide for the distribution to stockholders of a fixed rate (of dividend) not exceeding 5% of the capital for a period of not more than five years from the date of incorporation of the company. In the absence of net profits sufficient for payment of the said rate, any such dividends received by stockholders shall be considered part of the company's preliminary expenses and shall be deducted in the manner prescribed by the company's bylaws from the first profits (realized).

مادة (١٠٦) يجوز أن ينص في نظام الشركة على توزيع مبلغ ثابت على المساهمين لايجاوز ٥٪ من رأس المال وذلك لمدة لاتزيد على خمس سنوات من تاريخ تأسيس الشركة. وفي حالة عدم وجود أرباح صافية تكفى لدفع المبلغ المذكور يعتبر ماقبضه المساهمون من مصروفات تأسيس الشركة ويخصم من أول أرباح بالطريقة التي يعينها نظام الشركة.

Artcle 107 : A stockholder shall execise the right of voting at general or special meetings in accordance with the provisions of the company's bylaws. Any stockholder entitled to attend stockholders meetings shall have at least one vote. The company's bylaws may prescribe a maximum for the number of votes vested in the holder of several shares.

مادة (١٠٧) يباشر المساهم حق التصويت في الجمعيات العامة أو الخاصة وفقا لاحكام نظام الشركة و يكون للمساهم الذى له حق حضور جمعيات المساهمين صوت واحد على الأقل، ويجوز أن يحدد نظام الشركة حداً أقصى لعدد الأصوات التي تكون لمن يحوز عدة أسهم.

Article 108 : A stockholder shall be vested with all the rights attached to shares, specifically the right to obtain a share in the profits declared for distribution, the right to obtain an equity in the compay's assets upon liquidation, the right to attend stockholders meetings and participate in the deliberations and vote on the resolutions (proposed) thereat, the right to dispose of his shares the right of access to the company's books and documents, and the right to control the acts of the board of directors, to institute the action in liability against the directors, and to contest the validity of the resolutions adopted at stockholders meetings, in accordance with the terms and restrictions set forth in these Regulations or in the company's bylaws.

مادة (١٠٨) تثبت للمساهم جميع الحقوق المتصلة بالسهم وعلى وجه الخصوص الحق في الحصول على نصيب من الأرباح التي يتقرر توزيعها والحق في الحصول على نصيب من موجودات الشركة عند التصفية وحق حضور جمعيات المساهمين والاشتراك في مداولاتها والتصويت على قراراتها وحق التصرف في الأسهم وحق طلب الاطلاع على دفاتر الشركة ووثائقها ومراقبة أعمال مجلس الادارة ورفع دعوى المسئولية على أعضاء المجلس والطعن بالبطلان في قرار جمعيات المساهمين، وذلك بالشروط والقيود الواردة في هذا النظام أو في نظام الشركة.

Article 109 : Stockholders representing at least 5% of the company's capital may request the Commission for the Settlement of Commercial Companies' Disputes to

مادة (١٠٩) للمساهمين الذين يمثلون ٥٪ على الأقل من رأس المال أن يطلبوا الى هيئة حسم منازعات الشركات التجارية الأمر بالتفتيش على الشركة اذا تبين لهم من تصرفات أعضاء مجلس

investigate (the affairs of) the company if the acts performed by directors or auditors (in the conduct) of the company's affairs have aroused their suspicion. After hearing the directors and the auditors in camera, the said Commission may order an investigation of the company's management at the expense of the complainants, whom it may, if necessary require to submit aguarantec if it is proven that the complaint is valid, the Commission may order such precautionary measures as it deems fit and call a general meeting to adopt the necessary resolutions. In cases of extreme necessity, it may remove the directors and auditors, appoint a temporary manager, and specify his powers and the term of his commission.

الادارة أو مراقبى الحسابات في شئون الشركة مايدعو الى الريبه. وللهيئة المذكورة أن تأمر باجراء التفتيش على ادارة الشركة على نفقة الشاكين، وذلك بعد سماع أقوال أعضاء مجلس الادارة والمراقبين في جلسة خاصة، ولها عند الاقتضاء أن تفرض على الشاكين تقديم ضمان. واذا ثبت صحة الشكوى جاز للهيئة المشار اليها أن تأمر بما تراه من اجراءات تحفظية، وان تدعو الجمعية العامة لاتخاذ القرارات اللازمة، كما يجوز لها في حالة الضرورة القصوى أن تعزل أعضاء مجلس الادارة والمراقبين وأن تعين مديرا مؤقتا تحدد سلطته ومدة مهمته.

Article 110 : A stockholder is obligated to pay the value of (his) share on the dates set for such payment. Successive owners of a share shall be jointly liable for the payment of the value of such share. With the exception of the last holder, all of them shall be relieved of this liability after the lapse of one year from the date of registration of the transfer (transaction) in the stock register.

If a stockholder defaults in payment (of a call) when it besomes due the board of directors may, after giving him notice, by registered letter, sell the share at a public aution. Nevertheless, a defaulting stockolder may, up to the date fixed for the (public) auction, pay the amoumt due from him plus(all) the expenses incurred by the company.

The company shall recover from the proceeds of the sale such amounts as are due to it and shall refund the balance to the stockholder.

If the proceeds of the sale fall short of the amounts (due), the company shall have a claim on the entire fortune of the stockholder for the unpaid balance. The company shall cancel the share so sold issue the purchaser a new share (certificate) bearing the serial number of the cancelled share, and make a notation to this effect in the stock register.

مادة (١١٠) يلتزم المساهم بدفع قيمة السهم في المواعيد المعينة لذلك و يكون المالكون المتعاقدون للسهم مسئولين بالتضامن عن الوفاء بقيمته وفيما عدا المالك الأخير تبرأ ذمة كل مساهم من هذه المسئولية بانقضاء سنة من تاريخ قيد التصرف في سجل السهم.

واذا تخلف المساهم عن الوفاء في ميعاد الاستحقاق جاز له مجلس الادارة بعد انذار المساهم بخطاب مسجل بيع السهم في مزاد علنى ومع ذلك يجوز للمساهم المتخلف حتى اليوم المحدد للمزايده أن يدفع القيمة المستحقة عليه، مضافا اليها المصروفات التي أنفقتها الشركة.

وتستوفى الشركة من حصيلة البيع المبالغ المستحقة لها وترد الباقي لصاحب السهم.

واذا لم تكف حصيلة البيع للوفاء بهذه المبالغ جاز للشركة أن تستوفى الباقي من جميع أموال المساهم وتلغى الشركة السهم الذى بيع وتعطى المشترى سهما جديدا يحمل رقم السهم الملغى وتؤشر بذلك في سجل الأسهم.

Article 111 : The company shall not require any stockholder to pay sums in excess of the amount to which he has committed himself upon the issue of his share, even if the company's bylaws provide otherwise.

Nor may a stockholder recover his interest in the capital of the company.

The company may not release any stockholder from his liability for the unpaid balance of the value of his share. Nor may this liabilty be offset against any rights due to the stockholder from the company.

مادة (١١١) لايجوز للشركة أن تطالب المساهم بدفع مبالغ تزيد على مقدار ماالتزم به عند اصدار السهم ولو نص نظام الشركة على غير ذلك.

ولايجوز للمساهم أن يطلب استرداد حصته في رأس مال الشركة.

ولايجوز للشركة ابراء ذمة المساهم من الالتزام بدفع باقى قيمة السهم ، ولا تقع المقاصة بين هذا الالتزام ومايكون للمساهم من حقوق قبل الشركة.

## SECTION II - FOUNDERS' SHARES

Article 112 : A corporation may, on the basis of a provision in its bylaws, issue founders' shares to any person who, upon or after its incorporation, provides it with a patent right on an invention or with a franchise secured from a public juristic person. These shares may be (issued) to a registered holder or to bearer, and shall be negotiated in accordance with the provisions of Articles 100, 101, and 102. The shall not be divisible in the sense contemplated in Article 98.

Article 113 : Founders' shares shall not enter in the formation of the company's capital. Nor may their holders participate in the administration of the company, or in the prepartion of accounts, or in stockholders meetings. They shall be subject to such resolutions as may be adopted by stockholders meetings in accordance with the provisions of these Regulations or of the company's bylaws, including those concerning depreciation and reserve funds, of whatever type and amount, extension of the company's term, dissolution of the company before the expiry of its specified term, increase or reduction of capital, redemption of capital stock, purchase of company stock, or the issue of shares with priority over profits.

Nevertheless, if the resolutions adopted by stockholder meetings entail alteration or cancellation of the rights attached to founders' shares. such resolutions shall be valid only if approved by the holders of such shares at a meeting convened in accordance with the provisions governing stockholders special meetings.

The holders of founders' shares may, in accordance with the provisions of Article 97, contest the validity of resolutions of stockholders general or special meetings, if adopted in violation of the provisions of these Regulations or of the company's bylaws.

Article 114 : With due regard to the provisions of the preceding Article, the company's bylaws or the general meeting's resolution creating founders' shares shall specify the rights attached thereto. Such shares may be granted a proportion of the net profits not exceeding 10% after distribution of a dividend of not less than 5% of the paid-in capital to stock holders, Upon liquidation, they may also be granted priority at the said percentage over the stockholder's equity in the company assets after payment of its debts.

Article 115 : A stockholders general meeting may, by resolution and after the lapse of ten years from the date of their issue, cancel founders' shares in consideration of fair compensation.

The company may also at all times and out of its net profits purchase founders' shares, either at market price or at such price as may be agreed upon with the holders of this class of shares at a special meeting convened in accordance with the provisions of Article 86.

## الفرع الثاني
## حصص التأسيس

مادة (١١٢) للشركة المساهمة بناء على نص في نظامها أن تصدر حصص تأسيس لمن قدم اليها عند التأسيس أو بعد ذلك، براءة اختراع أو التزاماً حصل عليه من شخص اعتبارى عام وتكون هذه الحصص اسمية أو لحاملها وتتداول وفقا لاحكام المواد ١٠٠ و١٠١ و١٠٢ ولا تكون قابلة للتجزئه بالمعنى المنصوص عليه في المادة ٩٨.

مادة (١١٣) لاتدخل حصص التأسيس في تكوين رأس المال ولايشترك أصحابها في ادارة الشركة أو في اعداد الحسابات أو في جمعيات المساهمين. وتسرى على هذه الحصص قرارات جمعيات المساهمين الصادرة وفقا لأحكام هذا النظام أو نصوص نظام الشركة، بما في ذلك القرارات الخاصة بالاستهلاكات والاحتياطيات أيا كان نوعها وايا كانت مبالغها ومد مدة الشركة أو حل الشركة قبل مدتها المحددة أو زيادة رأس المال أو تخفيضه أو استهلاك اسهم رأس المال أو شراء أسهم الشركة أو اصدار أسهم لها أولوية في الارباح.

ومع ذلك اذا كان من شأن قرارات جمعيات المساهمين تعديل أو الغاء الحقوق ــ المقررة لحصص التأسيس فلا تكون هذه القرارات نافذة الا اذا وافقت عليها جمعية تعقد من أصحاب الحصص وفقا لأحكام الجمعيات الخاصة للمساهمين.

ولاصحاب حصص التأسيس الطعن بالبطلان في قرارات جمعيات المساهمين أو في قرارات الجمعيات الخاصة اذا صدرت على خلاف أحكام هذا النظام أو نصوص نظام الشركة وذلك وفقا لأحكام المادة (٩٧).

مادة (١١٤) مع مراعاة احكام المادة السابقة ، يحدد نظام الشركة أو قرار الجمعية العامة المنشىء لحصص التأسيس الحقوق المقررة لها. ويجوز أن تمنح هذه الحصص نسبة من الأرباح الصافية لاتزيد على ١٠٪ بعد توزيع نصيب على المساهمين لايقل من ٥٪ من رأس المال المدفوع كما يجوز أن تمنح عند التصفية أولوية بالنسبة المذكورة في استرداد الفائض من موجودات الشركة بعد سداد ماعليها من ديون.

مادة (١١٥) للجمعية العامة للمساهمين أن تقرر الغاء حصص التأسيس بعد عشر سنوات من تاريخ اصدارها مقابل تعويض عادل.

وللشركة في كل وقت أن تشترى من ارباحها الصافية حصص التأسيس بسعر السوق أوبالثمن الذى تتفق عليه مع أصحاب هذه الحصص مجتمعين في جمعية خاصة بهم تعقد وفقا لاحكام المادة ٨٦.

## SECTION THREE - BONDS

Article 116 : A corporation may issue against the loans contracted by it indivisible negotiable bonds of equal value.

These bonds may be (issued) to a registered holder or to bearer. But a bond must remain registere to a holder until its value has been paid up in full.

Bonds issued (in respect of) a single loan shall confer equal rights (upon the holder thereof). Any provision to the contrary shall be considered nonexistent.

Article 117 : Bonds may be issued only in accordance with the following conditions:

1. That the issuance of bonds be authorized in the company's bylaws.
2. That a regular general meeting adopts a resolution for their issuance.
3. That the company's capital be paid up in full.
4. That the value of the bond issue not exceed the value of the paid-in capital.

No new (series of) bonds may be issued unless the subscribers for the old bond issue have paid up the value of such bonds in full, and provided the value of the new bond issue plus the amount still due from the company under a previous bond issue shall not exceed the paid-in capital.

The provisions of the preceding paragraph shall not apply to real estate credit companies, to agricultural or industrial credit banks, or to companies so authorized by the Minister of Commerce.

Article 118 : The general meeting may authorize the board of directors to specify the amount and terms of the loan (to be secured by a bond issue). But a resolution of the (general) meeting authorizing a bond issue shall be valid only after it has been registered in the Commercial Register and published in the Official Gazette.

Article 119 : Bonds offered for public subscription must be so offered through one of the banks to be designated by the Minister of Commerce The invitation to the public for subscription shall be effected by means of a prospectus signed by the directors, specifically containing the following particulars:

1. The resolution adopted by the general meeting authorizing the bond issue, and the date of its publication.
2. The number of bonds authorized and their value.
3. The dates set for opening and closing the subscription.
4. The date of maturity of the bond series and the terms and securities for its payment.
5. The value of any bond series previously issued, the relative securities therefor, and the value of its bonds (remaining) outstanding at the time of issue of the new bond series.

TRANSLATOR'S NOTE : Articles 118 and 119 were published in Umm al-Qura No. 2083 as a single long article numbered 118, An announcement in Umm al-Qura No. 2084 drew attention to this error and indicated where two Articles were to be separated.

## الفرع الثالث
## السـنـدات

مادة (١١٦) لشركة المساهمة ان تصدر بالقروض التي تعقدها سندات متساوية القيمة وقابلة للتداول وغير قابلة للتجزئة.

ويجوز ان تكون هذه السندات اسمية او لحاملها .. ويجب ان يبقى السند اسميا الى حين سداد كامل قيمته.

وترتب السندات الصادرة في مناسبة قرض واحد حقوقا متساوية. ويعتبر كل شرط يقتضى بخلاف ذلك كأن لم يكن.

مادة (١١٧) لايجوز اصدار سندات قرض الا بالشروط الآتية:ـ

١ ـ ان يكون مصرحا بذلك في نظام الشركة.

٢ ـ ان تقرر ذلك الجمعية العامة العادية.

٣ ـ ان يكون رأس مال الشركة قد دفع باكمله.

٤ ـ الا تزيد قيمة السندات على قيمة رأس المال المدفوع.

ولايجوز إصدار سندات قرض جديدة الا اذا دفع المكتتبون بالسندات القديمة قيمتها كاملة وبشرط الا تزيد قيمة السندات الجديدة، ومضافا اليها الباقى في ذمة الشركة من السندات القديمة على رأس المال المدفوع.

ولا تسرى احكام الفقرة السابقة على شركات التسليف العقاري وبنوك التسليف الزراعى او الصناعى والشركات التي يرخص لها بذلك وزير التجارة.

مادة (١١٨) للجمعية العامة ان تفوض مجلس الادارة في تعيين مقدار القرض وشروطه ولاينفذ قرار الجمعية باصدار سندات قرض الا بعد قيده في السجل التجاري ونشرة في الجريدة الرسمية. واذا طرحت سندات قرض للاكتتاب العام وجب ان يتم ذلك عن طريق البنوك التي يعينها وزير التجارة والصناعة. وتكون دعوة الجمهور للاكتتاب بنشرة يوقعها اعضاء مجلس الادارة وتشتمل بصفة خاصة على البيانات الآتية:ـ

مادة (١١٩) اذا طرحت سندات قرض للاكتتاب العام وجب ان يتم ذلك عن طريق البنوك التي يعينها وزير التجارة. وتكون دعوة الجمهور للاكتتاب بنشر يوقعها اعضاء مجلس الادارة ، وتشتمل بصفة خاصة على البيانات الآتية:ـ

١ ـ قرار الجمعية العامة باصدار السندات وتاريخ شهر القرار.

٢ ـ عدد السندات التي تقرر اصدارها وقيمتها.

٣ ـ تاريخ بدء الاكتتاب ونهايته.

٤ ـ ميعاد استحقاق السندات وشروط وضمانات الوفاء.

٥ ـ قيمة السندات السابق اصدارها وضماناتها وقيمة مالم يدفع منها وقت اصدار السندات الجديدة.

6. The (authorized) and the paid-in capital of the company.
7. The head office of the company, the date of its incorporation, and its term.
8. The value of the contributions in kind.
9. A summary of the latest balance sheet of the company.

The prospectus shall be published in a daily newspaper distributed in the locality of the head office of the company, at least five days prior to the date set for opening the subscription.

The bond subscription document, (the bond warrants), and (all) the advertisements and notices related to the bond issue shall set out all the particulars stated in the prospectus and mention the newspaper in which it was published.

Article 120 : The directors must, within thirty days of the subscription closing date, submit to the General department of Companies a statement containing the number of bonds subscribed for, their value, and the amount paid up on them, and accompanied by a list of the names of subscribers and the number of bonds subscribed for by each.

Article 121 : Violation of Articles 116, 117, and 119 shall entail invalidity (of the bond issue), in which case the company shall be obligated to refund the value of the invalid bonds and to pay damages to the holders therof for the harm sustained.

Article 122 : Resolutions of stockholders meetings shall apply to bondholders. Nevertheless, such meetings may not alter the rights estsblished in favor of bondholders, except with their consent by a resolution adopted at a special meeting of such bondholders, held in accordance with the provisions of article 86. The provisions of Article 110 shall apply in case of any default in payment of the value of a bond.

٦ ــ رأس مال الشركة والقدر المدفوع منه.
٧ ــ المركز الرئيسي للشركة وتاريخ تأسيسها ومدتها.
٨ ــ قيمة الحصص العينية.
٩ ــ ملخص آخر ميزانية للشركة.

وتعلن نشرة الاكتتاب في جريدة يومية توزع في المركز الرئيسي للشركة قبل تاريخ بدء الاكتتاب بخمسة ايام على الاقل.

ويذكر في وثيقة الاكتتاب في صكوك السندات والاعلانات والنشرات المتصلة بعملية الاصدار جميع البيانات المذكورة في نشرة الاكتتاب مع الاشارة الى الجريدة التي تم فيها النشر.

مادة (١٢٠) على اعضاء مجلس الادارة ، خلال ثلاثين يوما من تاريخ قفل باب الاكتتاب، ان يقدموا الى الادارة العامة للشركات بيانا يتضمن عدد السندات المكتتب بها وقيمتها ومادفع منها، ويرفق بهذا البيان جدول باسماء المكتتبين وعدد السندات التي اكتتب بها كل منهم.

مادة (١٢١) يترتب البطلان على مخالفة احكام المواد ١١٦ و١١٧ و١١٩، وتلتزم الشركة برد قيمة السندات الباطلة فضلا عن تعويض الضرر الذى اصاب اصحابها.

مادة (١٢٢) تسرى قرارات جمعيات المساهمين على اصحاب السندات ومع ذلك لايجوز للجمعيات المذكورة ان تعدل الحقوق المقررة لهم الا بموافقة تصدر منهم في جمعية خاصة بهم تعقد وفقا لاحكام المادة ٨٦ وتسرى على عدم الوفاء بقيمة السند احكام المادة (١١٠).

## CHAPTER V
## FINANCES OF A CORPORATION
## SECTION I - COMPANY ACCOUNTS

Article 123 : At the end of every financial year the board of directors shall make an inventory of the value of the company assets and liabilities as of that date and shall prepare a balance sheet of the company, a profit and loss statement, and a report on its operations and financial position for the expired financial year, setting out the proposed method for the allocation of net profits. The board shall put the said documents at the disposal of the auditor at least fifty-five days prior to the date set for the general meeting.

Article 124 : In classifying the accounts in the balance sheet and the profit and loss statement in every (financial) year, the classification used in the previous years shall be observed, and the bases of evalustion of assets and liabilites shall remain unchanged, unless the general meeting resolves at the recomendation of the auditor to alter such classification or evaluation bases.

Article 125 : The board of directors shall in each up a set aside 10% of the net profits to build up a reserve fund to be called the statutory reserve. The regular general meeting may resolve to stop such deduction when the said reserve amounts to one half of the capital.

The company's bylaws may also provide for the setting aside of a certain percentage of the net profits to build up a reserve fund to be called the contractual reserve, which shall be used solely for such purposes as may be specified in the said bylaws.

The regular general meeting may, in determining the dividend (payable to stockholders) out of the net profits, resolve to create other reserves in such an amount as to insure continued prosperity for the company or the payment of as steady dividends as possible to stockholders.

The said (general) meeting may also withhold certain amounts from the net profits for the creation of social (service) organizations for the company's employees and workmen, or for supporting such organizations as may already be in existence.

If there are any such organizations financed (partly) by company contributions and (partly) by withholdings from the salaries and wages of employees and workmen, the latter may upon termination of their employment contracts recover the amounts so withheld from their pay, to the extent of such benefits provided for in the bylaws of the social organizations as they may be deprived of (as a result of such termination).

## الفصل الخامس
## مالية شركة المساهمة
## الفرع الأول
## حسابات الشركة

مادة (١٢٣) يعد مجلس الادارة في نهاية كل سنة مالية جرد القيمةاصول الشركة وخصومها في التاريخ المذكور، كما يعد ميزانية الشركة وحساب الارباح والخسائر وتقريرا عن نشاط الشركة ومركزها المالى عن السنة المالية المنقضية و يضمن هذا التقرير الطريقة المقترحة لتوزيع الارباح الصافية. و يضع المجلس هذه الوثائق تحت تصرف مراقب الحسابات قبل الموعد المحدد لانعقاد الجمعية العامة بخمسة وخمسون يوما على الاقل.

مادة (١٢٤) يراعى في تبويب الميزانية وحساب الارباح والخسائر كل سنة التبويب المتبع في السنوات السابقة ، وتبقى اسس تقييم الاصول والخصوم ثابته مالم تقرر الجمعية العامة، بناء على اقتراح مراقب الحسابات، تعديل ذلك التبويب او اسس التقييم.

مادة (١٢٥) يجنب مجلس الادارة كل سنة ١٠٪ من الارباح الصافية لتكوين احتياطي يسمى الاحتياطى النظامي. ويجوز ان تقرر الجمعية العامة العادية وقف هذا التجنيب متى بلغ الاحتياطى المذكور نصف رأس المال.

ويجوز النص في نظام الشركة على تجنيب نسبة معينة من الارباح الصافية لتكوين احتياطى يسمى الاحتياطى الاتفاقي يخصص للاغراض التي يحددها النظام المذكور.

وللجمعية العامة العادية ، عند تحديد نصيب الاسهم في الارباح الصافية ان تقرر تكوين احتياطيات اخرى وذلك بالقدر الذى يحقق دوام الرخاء للشركة او يكفل توزيع ارباح ثابتة بقدر الامكان على المساهمين.

وللجمعية المذكورة كذلك ان تقتطع من الارباح الصافية مبالغ لانشاء مؤسسات اجتماعية لموظفي الشركة وعمالها او لمعاونة مايكون قائما من هذه المؤسسات.

واذا وجدت مؤسسات من هذا القبيل واعتمدت في تكوين أموالها على ماتدفعه الشركة ومايقتطع من رواتب الموظفين وأجور العمال جاز لهؤلاء في حالة انهاء عقود عملهم أن يستردوا ماقتطع منهم بقدر حرمانهم من المزايا المنصوص عليها في نظام المؤسسة الاجتماعية.

Article 126 : The statutory reserve shall be used for meeting the company's losses or for increasing its capital. If the said reserve exceeds one half of the company's capital, the regular general meeting may resolve to distribute such excess (as dividends) among the stockholders in the years during which the company fails to realize sufficient net profits for disrtibution of the dividends prescribed in the company's bylaws.

The contractual reserve may be used only by resolution of an extraordinary general meeting. If such reserve is not earmarked for a spencific purpose, the regular general meeting may upon the recommendation of the board of directors resolve to spend it in any way beneficial to the company.

Article 127 : The company's bylaws shall specify the percentage to be distributed among stockholders out of the net profits, after deduction of the statutory and the contractual reserves provided this percentage is not less than 5% of the capital.

A stockholder shall be entitled to his share in the profits (i.e. dividends) as soon as the general meeting adopts a resolution on the allocation (of profits).

Article 128 : The directors must, within thirty days of the date of approval by the general meeting of the balance sheet, the profit and loss statement, the board of directors' report and the auditor's report file copies of the said documents with the Commercial Register office and with the General Department of Companies.

## SECTION II
## THE AUDITOR

Article 129 : Stockholders shall exercise control over the company's accounts, in accordance with the provisions of the company's bylaws and subject to the following provisions:

Article 130 : The regular general meeting shall appoint one or more auditors from among those licensed to operate in the Kingdom and shall specify their remuneration and term of office. It may re-appoint auditors or at any time remove them, without prejudice to their right to compansation if the removal is made at an improper time or without acceptable justification.

No person may hold the office of auditor and (at the same time) take part in organizing the company, be a director thereof, or perform any technical or administrative work for the company, even in an advisory capacity. Nor may an auditor be a partner or an employee of, or be related within four degrees of consanguinity to any founder or director of the company. Any act violating the provisions of this paragraph shall be null and void, and the violater shall be obligated to remit to the Ministry of Finance and National Economy whatever he may have received from the company.

مادة (١٢٦) يستخدم الاحتياطى النظامي في تغطية خسائر الشركة أو في زيادة رأس مالها، واذا جاوز الاحتياطي المذكور نصف رأس المال جاز للجمعية العامة العادية أن تقرر توزيع الزيادة على المساهمين وذلك في السنوات التي لاتحقق فيها الشركة أرباحا صافية تكفى لتوزيع التنصيب المقرر لهم في نظام الشركة.

ولايجوز أن يستخدم الاحتياطى الاتفاقي الا بقرار من الجمعية العامه غير العادية، واذا لم يكن الاحتياطي المذكور مخصصاً لغرض معين جاز للجمعية العامة العادية ، بناء على اقتراح مجلس الادارة، أن تقرر صرفه فيما يعود بالنفع على الشركة.

مادة (١٢٧) يبين نظام الشركة النسبة التي يجب توزيعها على المساهمين من الأرباح الصافية بعد تجنيب الاحتياطى النظامى والاحتياطى الاتفاق بشرط ألا تقل النسبة المذكورة عن ٥٪ من رأس المال.

ويستحق المساهم حصته في الأرباح بمجرد صدور قرار الجمعية العامة بالتوزيع.

مادة (١٢٨) على أعضاء مجلس الادارة خلال ثلاثين يوما من تاريخ موافقة الجمعية العامة على الميزانية وحساب الأرباح والخسائر وتقرير مجلس الادارة وتقرير مراقب الحسابات أن يودعوا مكتب السجل التجاري والادارة العامة للشركات صوراً من الوثائق المذكورة.

## الفرع الثاني
## مراقب الحسابات

مادة (١٢٩) يمارس المساهمون الرقابة على حسابات الشركة وفقا للاحكام المنصوص عليها في نظام الشركة مع مراعاة الأحكام الآتية:ـ

مادة (١٣٠) تعين الجمعية العامة العادية مراقب حسابات أو اكثر من بين المراقبين المصرح لهم بالعمل في المملكة وتحدد مكافآتهم ومدة عملهم، ويجوز لها اعادة تعيينهم، كما يجوز لها في كل وقت تغييرهم مع عدم الاخلال بحقهم في التعويض اذا وقع التغيير في وقت غير لائق أو لغير مبرر مقبول.

ولايجوز الجمع بين عمل مراقب الحسابات والاشتراك في تأسيس الشركة أو عضوية مجلس الادارة أو القيام بعمل فنى أو اداري في الشركة ولو على سبيل الاستشارة، كما لايجوز أن يكون المراقب شريكا لأحد مؤسسى الشركة أو لاحد أعضاء مجلس ادارتها أو موظفا لديه أو قريبا له الى الدرجة الرابعة بدخول الغاية، ويقع باطلا كل عمل مخالف لحكم هذه الفقرة ويلزم المخالف بأن يرد الى، وزارة المالية والاقتصاد الوطني ماقبضه من الشركة.

Article 131 : The auditor shall at any time have access to the company's books, records and other documents. He shall be entitled to request such particulars and clarifications as he may deem it necessary to obtain, and to verify the assets and liabilities of the company.

The chairman of the board of directors must enable the auditor to perform his duty as specifies in the preceding paragraph. If the auditor encounters any difficulty in this respect, he shall state that fact in a report to be submitted to the board of directors. If the board fails to facilitate his task, the auditor must call a regular general meeting to look into the matter.

مادة (١٣١) لمراقب الحسابات في كل وقت حق الاطلاع على دفاتر الشركة وسجلاتها وغيرذلك من الوثائق، وله طلب البيانات والايضاحات التي يرى ضرورة الحصول عليها، وله أيضا أن يحقق موجودات الشركة والتزاماتها.

وعلى رئيس مجلس الادارة أن يمكنه من أداء واجبه المحدد في الفقرة السابقة واذا صادف مراقب الحسابات صعوبة في هذا الشأن اثبت ذلك في تقرير يقدم الى مجلس الادارة، فاذا لم ييسر المجلس عمل مراقب الحسابات وجب على الأخير دعوة الجمعية العامة العادية للنظر في الأمر.

Artcile 132 : The auditor must submit a report to the annual regular general meeting, setting forth the attitude of the company's management in enabling him to obtain the particulares and clarifications requested by him, any violations of the provisions of these Regulations or of the company's bylaws he may have discovered, and the extent in his opinion to which the company's accounts are in conformity with reality.

The auditor's report shall be read at the general meeting. If the (general) meeting resolves to approve the board of directors' report without hearing the audiror's report, its resolution shall be considered null and void.

مادة (١٣٢) على مراقب الحسابات أن يقدم الى الجمعية العامة العادية السنوية تقريرا يضمنه موقف ادارة الشركة من تمكينه من الحصول على البيانات والايضاحات التي طلبها، ومايكون قد كشفه من مخالفات لأحكام هذا النظام أو أحكام نظام الشركة، ورأيه في مدى مطابقة حسابات الشركة للواقع.

ويتلى تقرير مراقب الحسابات في الجمعية العامة، واذا قررت الجمعية المصادقة على تقرير مجلس الادارة دون الاستماع الى تقرير مراقب الحسابات كان قرارها باطلا.

Article 133 : The auditor may not disclose to stockholders outside a general meeting, or to third parties, such secrets of the company as may have come to his knowledge by reason of the performance of his work; otherwise, he must be removed and shall be held liable for damages.

The auditor shall be liable for damages sustained by the company, the stockholders, or third parties as a result of mistakes he makes in the performance of his duties. If a mistake is attributable to more than one auditor, they shall (all) be jointly responsible (therefor).

مادة (١٣٣) لايجوز لمراقب الحسابات أن يذيع الى المساهمين في غير الجمعية العامة أو الى الغير ماوقف عليه من أسرار الشركة بسبب قيامه بعمله والا وجب تغييره فضلا عن مساءلته عن التعويض.

ويسأل مراقب الحسابات عن تعويض الضرر الذى يصيب الشركة أو المساهمين أو الغير بسبب الأخطاء التي تقع منه في أداء عمله ، واذا تعدد المراقبون المشتركون في الخطأ كانوا مسئولين بالتضامن.

## CHAPTER VI
## ALTERATION OF THE COMPANY'S CAPITAL
## SECTION I - INCREASE OF CAPITAL

Article 134 : An extraordinary general meeting may resolve to increase the company's capital one or more times, provided the initial capital has been paid up in full.

Article 135 : Capital shall be increased in one of the following ways:
1. Issue of new shares payable in cash.
2. Issue of new shares against contributions in kind.
3. Issue of new shares (as fully paid up) against debts of a specific amount due and payable by the company.
4. Issue of new shares in the amount of the surplus reserve which an extraordinary general meeting resolves to capitalize, or increase of the par value of the outstanding shares by the amount of such surplus (reserve).
5. Issue of new shares in lieu of founders' shares or outstanding bonds.

Article 136 : "Stockholders shall have a pre-emptive right to subscribe for new cash shares, unless the company's bylaws provide for their waiver of this right or for its restriction. The Council of Ministers, on the recommendation of the Minister of Commerce, after agreement with the Minister of finance and National Economy, may cancel or restricet the pre-emptive right in respect of the following companies:

(a) Concessionary companies
(b) Companies that manage a publis utility.
(c) Companies that receive subsidy from the Government participates.
(e) Companies that are engaged in banking activities.

The provision of this paragraph shall apply to cpmpanies even though they may have been established before its effective date.

This article shall not apply to petroleum and mineral companies which operate under special agreements issued by Royal Decrees"

The stockholders shall be advised of their preemptive right to subscribe. (This advice shall be given) by (means of) a notice (to be published) in a daily newspaper reporting the resolution to increase the capital and setting forth the conditions of subscription. But if all the company stock is registered, the notice may be served on the stockholders by registered letters.

Every stockholders wishing to exercise his precemptive right shall express his desire (to do so) in writing within fifteen days of the date of publication or service of the notice referred to in the preceding paragraph.

## الفصل السادس
## تعديل رأس مال الشركة
## الفرع الأول ــ زيادة رأس المال

مادة (١٣٤) للجمعية العامة غير العادية أن تقرر زيادة رأس مال الشركة مرة أو عدة مرات بشرط أن يكون رأس المال الأصلى قد دفع بأكمله.

مادة (١٣٥) تتم زيادة رأس المال باحدى الطرق الآتية:ــ
١ ــ اصدار أسهم جديدة تدفع قيمتها نقداً.
٢ ــ اصدار أسهم جديدة مقابل حصص عينيه.
٣ ــ اصدار أسهم جديدة مقابل ماعلى الشركة من ديون معينة المقدار حالة الاداء.
٤ ــ اصدار أسهم جديدة بمقدار فائض الاحتياطي الذى تقرر الجمعية العامة غير العادية ادماجه في رأس المال أو زيادة القيمة الاسمية للاسهم المتداولة بمقدار الفائض المذكور.
٥ ــ اصدار أسهم جديدة مقابل حصص التأسيس أو السندات المتداولة.

مادة (١٣٦) يكون للمساهمين اولوية الاكتتاب بالاسهم الجديدة النقدية مالم يتضمن نظام الشركة تنازلهم عن هذا الحق أو تقييده ويجوز لمجلس الوزراء بناء على اقتراح من وزير التجارة بعد الاتفاق مع وزير المالية والاقتصاد الوطني الغاء حق الاولوية أو تقييده بالنسبة للشركات الآتية:ــ
أ ــ ذات الامتياز.
ب ــ التي تدير مرفقا عاما.
جـ ــ التي تقدم لها الدولة اعانة.
د ــ التي تشترك فيها الدولة.
هـ ــ التي تزاول الاعمال المصرفية.

ويسرى حكم هذه الفقرة على الشركات ولو كانت مؤسسة قبيل نفاذها.

ولاتسرى هذه المادة على شركات البترول والمعادن التي تعمل بموجب اتفاقيات خاصة صدرت بمراسيم ملكية.

ويعلن المساهمون بأولويتهم في الاكتتاب بالنشر في جريدة يوميه عن قرار زيادة رأس المال وشروط الاكتتاب، ويجوز الاكتفاء باخطارهم بهذا البيان بخطابات مسجلة اذا كانت جميع أسهم الشركة اسمية.

ويبدى كل مساهم رغبته كتابة في استعمال حقه في الأولوية خلال خمسة عشر يوما من تاريخ النشر أو الاخطار المشار اليه في الفقرة السابقة.

The (new) shares shall be allotted to the subscribing original stockholders in proportion to the original shares held by each, provided that the number of shares allotted to (any of) them shall not exceed the number of new shares or which he has subscribed. The balance of the new share (issue) shall be allotted to the original stockholders who have subscribed for more than their share in proportion to the number of original shares held by each, provided that their total allotment shall not exceed the number of new shares for which they have subscribed.

The remainder of the new shares shall be offered for public subscription, in accordance with the provisions governing subscription for the capital of a company under formation.

When new shares are offered for public subscription, the chairman of the board of directors and the auditor shall sign the prospectus, which shall specifically include the following particulars:

1. The (text) and the date of the resolution of the extraordinary general meeting to increase the capital.
2. The company's capital on the date of issue of the new shares, the amount of the proposed increase, the number of new shares, and the issue premium, if any.
3. A description of the contributions in kind.
4. A statement of the average dividends distributed by the company during the two years preceding the resolution to increase the capital.

Artcile 137 : Shares representing contributions in kind that are issued on the occasion of a capital insrease shall be governed by the provisions for the evaluation of contributions in kind made at the time of organization of the company (except that) the regular general meeting shall act in place of the constituent general meeting.

Article 138 : If the new cash shares are issued in satisfaction of debts of a specific amount due and payable by the company, the board of directors and the auditor must prepare a statement on the origin and amount of such debts. The statements shall be signed and certified by the directors and the auditor.

Article 139 : If the capital increase is effected by the capitalization of surplus reserves, the new shares must be issued in the same form and under the same terms as the outstanding shares. They shall be distributed free to stockholders in proportion to the number of the original shares owned by each.

If the said surplus reserve includes amounts withheld from the dividends allocated to holders of founders' shares, the latter must be called to a special meeting, in accordance with the provisions of Article 86, to approve the capitalization of their share in the surplus reserve and to determine the number of new shares to be allotted to them. If such approval is withheld, the capital increase shall include only that part of the surplus reserve belonging to the holders of (common) stock.

وتوزع تلك الأسهم على المساهمين الأصليين الذين طلبوا الاكتتاب بنسبة مايملكونه من أسهم أصلية بشرط ألا يجاوز مايحصلون عليه ماطلبوه من الأسهم الجديده، و يوزع الباقي من الأسهم الجديدة على المساهمين الأصليين الذين طلبوا أكثر من نصيبهم بنسبة مايملكونه من أسهم أصلية على ألا يجاوز مايحصلون عليه ماطلبوه من الأسهم الجديدة.

و يطرح مايتبقى من الأسهم الجديدة للاكتتاب العام وتتبع في هذا الاكتتاب الأحكام المتعلقة بالاكتتاب برأس مال الشركة تحت التأسيس.

وفي حالة طرح الأسهم الجديدة للاكتتاب العام يوقع رئيس مجلس الادارة ومراقب الحسابات نشرة الاكتتاب التي تشتمل بصفة خاصة على البيانات الآتية:—

١ — قرار الجمعية العامة غير العادية بزيادة رأس المال وتاريخ القرار المذكور.

٢ — رأس مال الشركة عند اصدار الأسهم الجديدة ومقدار الزيادة المقترحة وعدد الأسهم الجديدة وعلاوة الاصدار ان وجدت.

٣ — تعريف بالحصص العينية.

٤ — بيان عن متوسط الارباح التي وزعتها الشركة خلال السنتين السابقتين على قرار زيادة رأس المال.

مادة (١٣٧) تسرى على الأسهم العينية التي تصدر في مناسبة زيادة رأس المال أحكام تقويم الحصص العينية المقدمة بمناسبة تأسيس الشركة وتقويم الجمعية العامة العادية مقام الجمعية التأسيسية.

مادة (١٣٨) اذا صدرت الأسهم الجديدة النقدية مقابل ماعلى الشركة من ديون معينة المقدار حالة الاداء، وجب أن يعد مجلس الادارة ومراقب الحسابات بيانا عن منشأ هذه الديون ومقدارها و يوقع أعضاء المجلس ومراقب الحسابات هذا البيان و يشهدون بصحته

مادة (١٣٩) اذا تمت زيادة رأس المال بادماج فائض الاحتياطى في رأس المال، وجب ان تصدر الاسهم الجديدة بنفس شكل وأوضاع الاسهم المتداولة ، وتوزع تلك الاسهم على المساهمين بدون مقابل بنسبة مايملكه كل منهم من الاسهم الاصلية.

واذا اشتمل فائض الاحتياطي المشار اليه على ارباح اقتطعت من أنصبه أصحاب حصص التأسيس وجبت دعوة هؤلاء الى الاجتماع في جمعية خاصة بهم تعقد وفقا للاحكام المقررة في المادة (٨٦) للموافقة على ادماج مايخصهم في فائض الاحتياطى المذكور في رأس المال وتحديد مايخصهم من الاسهم الجديدة فاذا لم تتم هذه الموافقة، اقتصرت زيادة رأس المال على ذلك الجزء من فائض الأحتياطى الذي يخص أصحاب الاسهم.

Article 140 : Capital may not be increased by the conversion of founders' shares to (common) stock, except after the lapse of the period prescribed in Article 100, and provided such concersion is approved by the holders of such shares in accordance with the provisions of Article 86.

The stock issued in lieu of such cancelled (founders') shares shall be negotiable as of the date of its issue.

Article 141 : Bonds may not be converted to chares, unless such conversion is provided for in the terms of their issue. Nevertheless, in such case, the bondholder shall have the option of either accepting the conversion or receiving the par value of the bond.

## SECTION II
## REDUCTION OF CAPITAL

Article 142 : An extraordinary general meeting may resolve to reduce the company's capital if it exceeds the company's needs or if the company incurs losses. In the latter case only, the capital may be reduced below the minimum specified in Article 49.

The resolution for reduction shall be adopted only after a reading of the auditor's report setting forth the reasons necessitating the reduction, the liabilities of the company, and the effect of the reduction on these liabilities.

Article 143 : If the reduction of capital is due to an excess in capital over the company's need, the creditors must be invited to express their objections within sixty days from the date of publication of the resolution for reduction in a daily newspaper distributed in the locality of the head office of the company. If any creditor objects (to the reduction) and submits to the company, within the said period, the documents substantiating his claim, the company must pay off his debt of it is due and payable or submit adequate security for its payment if it is payable at a future date.

Article 144 : Reduction of capital may be effected in one of the following ways:
1. Refunding a part of the par value per share to the stockholder, or releasing him from liability for all or part of the unpaid amount on such value.
2. Reducing the par value per share by the equivalent of the amount of the loss incurred by the company.
3. Cancelling a number of shares equivalent to the amount of the proposed reduction.
4. Purchasing a number of shares equivalent to the amount of the proposed reduction.

Artcile 145 : If reduction of capital is effected by the cancellation of a number of shares, equality must be observed among stockolders. Holders of the shares to be cancelled must surrender them to the company within the period specified by it; otherwise, the company shall have the right to consider them cancelled.

مادة (١٤٠) لاتجوز زيادة رأس المال بتحويل حصص التأسيس الى أسهم الا بعد انقضاء المدة المنصوص عليها في المادة (١٠٠) وبشرط موافقة أصحاب الحصص على هذا التحويل وفقا لأحكام المادة (٨٦).

وتكون الاسهم التي تحل محل الحصص الملغاة قابلة للتداول من تاريخ اصدارها.

مادة (١٤١) لايجوز تحويل سندات القرض الى اسهم الا اذا نص على ذلك في شروط اصدارها ومع ذلك يكون لمالك السند في هذه الحالة الخيار بين قبول التحويل أو قبض القيمة الاسمية للسند.

## الفرع الثاني
## تخفيض رأس المال

مادة (١٤٢) للجمعية العامة غير العادية أن تقرر تخفيض رأس المال اذا زاد عن حاجة الشركة او اذا منيت الشركة بخسائر . ويجوز في الحالة الاخيرة وحدها تخفيض رأس المال الى مادون الحد المنصوص عليه في المادة (٤٩).

ولايصدر قرار التخفيض الا بعد تلاوة تقرير مراقب الحسابات عن الاسباب الموجبة له وعن الالتزامات التي على الشركة وعن اثر التخفيض في هذه الالتزامات.

مادة (١٤٣) اذا كان تخفيض رأس المال نتيجة زيادة رأس المال عن حاجة الشركة ، وجبت دعوة الدائنين الى ابداء اعتراضاتهم عليه في خلال ستين يوما من تاريخ نشر قرار التخفيض في جريدة يومية توزع في المركز الرئيسي للشركة. فاذا اعترض أحد منهم وقدم الى الشركة مستنداته في الميعاد المذكور وجب على الشركة أن تؤدى اليه دينه اذا كان حالا أو ان تقدم ضمانا كافيا للوفاء به اذا كان آجلا.

مادلا (١٤٤) يتم تخفيض رأس المال باحدى الطرق الآتية:
١ ــ رد جزء من القيمة الاسمية للسهم الى المساهم او ابراء ذمته من كل أو بعض القدر غير المدفوع من قيمة السهم.
٢ ــ تخفيض القيمة الاسمية للسهم بما يعادل الخسارة التي أصابت الشركة.
٣ ــ الغاء عدد من الاسهم يعادل القدر المطلوب تخفيضه.
٤ ــ شراء عدد من الاسهم يعادل القدر المطلوب تخفيضه.

مادلا (١٤٥) اذا كان تخفيض رأس المال بالغاء عدد من الاسهم وجبت مراعاة المساواة بين المساهمين وعلى هؤلاء أن يقدموا الى الشركة، في الميعاد الذى تحدده، الاسهم التي تقرر الغاؤها والا كان من حق الشركة اعتبارها ملغاة.

Article 146 : If the reduction of capital is to be effected by way of purchase and cancellation of a number of the company's shares, the stockholders must be requested to offer their shares for sale. The request shall be published in a daily newspaper distributed in the locality of the company's head office. However, if all the company's shares are registered, the stockholders may be notified by registered letter of the company's desire to purchase the shares.

If the number of shares offered for sale exceeds that which the company has resolved to purchase, the offers for sale must be reduced proportionately to such excess.

The purchase price of shares shall be determined in accordance with the provisions of the company's bylaws. In the absence of any provisions in this respect in the bylaws, the company must pay a fair price.

## CHAPTER VII
## DISSOLUTION OF A CORPORATION

Article 147 : If a corporation is dissolved as a result of the transfer of all its stock to a single stockholders, the latter shall be responsible for the company's debts to the extent of its assets.

Upon the lapse of one complete year from the date on which the number of stockholders falls below the minimum specified in Article 48, any interested party may request the dissolution of the company.

Article 148 : If the losses of a corporation total three quarters of its capital, the directors must call an extraordinary general meeting to consider whether the company shall continue (to operate) or be dissolved before the expiry of the term specified in its bylaws. In all cases, the resolution shall be published in the manner prescribed in Article 65.

If the directors fail to call an extraordinary general meeting, or if such meeting is unable to adopt a resolution on the subject, any interested party may request the dissolution of the company.

## PART VI
## PARTNERSHIPS LIMITED BY SHARES

Article 149 : A partnership limited by shares is a partnership consisting of two categories (of partners), one including at least one general partner who is responsible to the extent of his entire fortune for the debts of the partnership, and the other including at least four shareholders who are responsible for the debts of the pertnership only to the extent of their shares in the capital.

مادة (١٤٦) اذا كان تخفيض رأس المال عن طريق شراء عدد من اسهم الشركة والغائه وجبت دعوة المساهمين الى عرض اسهمهم للبيع وتتم هذه الدعوة بالنشر في جريدة يومية توزع في المركز الرئيسى للشركة ويجوز الاكتفاء باخطار المساهمين بخطابات مسجلة برغبة الشركة في شراء الاسهم وذلك اذا كانت جميع اسهم الشركة اسمية.

واذا زاد عدد الاسهم المعروضة للبيع على العدد الذى قررت الشركة شراءه، وجب تخفيض طلبات البيع بنسبة هذه الزيادة.

و يقدر ثمن شراء الاسهم وفقا لاحكام نظام الشركة فاذا خلا النظام المذكور من احكام في هذا الشأن وجب على الشركة ان تدفع الثمن العادل.

## الفصل السابع
## انقضاء شركة المساهمة

مادة (١٤٧) اذا انقضت شركة المساهمة بسبب انتقال جميع اسهمها الى مساهم واحد، كان هذا المساهم مسئولا عن ديون الشركة في حدود موجوداتها.

واذا انقضت سنة كاملة على هبوط عدد المساهمين الى مادون الحد الادنى المنصوص عليه في المادة (٤٨) جاز لكل ذى مصلحة أن يطلب حل الشركة.

مادة (١٤٨) اذا بلغت خسائر شركة المساهمة ثلاثة ارباع رأس المال، وجب على أعضاء مجلس الادارة دعوة الجمعية العامة غير العادية للنظر في استمرار الشركة أو حلها قبل الاجل المعين في نظامها. و ينشر القرار في جميع الاحوال بالطرق المنصوص عليها في المادة (٦٥).

واذا اهمل اعضاء مجلس الادارة دعوة الجمعية العامة غير العادية أو اذا تعذر على هذه الجمعية اصدار قرار في الموضوع، جاز لكل ذى مصلحة ان يطلب حل الشركة.

## الباب السادس
## شركة التوصية بالاسهم

مادة (١٤٩) شركة التوصية بالاسهم هي الشركة التي تتكون من فريقين : فريق يضم على الاقل شريكا متضامنا مسئولا في جميع أمواله عن ديون الشركة، وفريق آخر يضم شركاء مساهمين لايقل عددهم عن أربعة ولايسألون عن ديون الشركة الا بقدر حصصهم في رأس المال.

Article 150 : "The capital of a partnership limited by shares shall not be less than one million Saudi riyals, and the paid.in capital upon the formation of the partnership shall not be less than one half of the minimum capital"

The capital shall be divided into negotiable shares of equal value which are not divisible. The value of each share shall not be less than fifty Saudi riyals.

مادة (١٥٠) لايقل رأس مال شركة التوصية بالاسهم عن مليون ريال سعودي ولايقل المدفوع منه عند تأسيس الشركة عن نصف الحد الادنى.

ويقسم رأس مال الشركة الى اسهم متساوية القيمة قابلة للتداول وغير قابلة للتجزئة ولا تقل قيمة السهم عن خمسين ريالا سعوديا.

Article 151 : All the general partners and other founders shall sign the memorandum of association and the bylaws if the partnership. The bylaws of the partnereship shall show the names, residence addresses, and nationalities of (all) the general partners, and the names of those appointed from among them as managers of the partnership.

The Minister of Commerce shall issue a decision incorporating a (standard) form the bylaws of a partnership limited by shares. No departure from such form shall be allowed except for reasons acceptable to the said Minister.

مادة (١٥١) يوقع جميع الشركاء المتضامنين وغيرهم من المؤسسين عقد الشركة ونظامها ويبين نظام الشركة اسماء الشركاء المتضامنين ومحال اقامتهم وجنسياتهم واسماء من عين منهم مديرين للشركة.

ويصدر وزير التجارة والصناعه قراراً بنموذج لنظام شركة التوصية بالاسهم ولاتجوز مخالفة هذا النموذج الا لاسباب يقرها الوزير المذكور.

Article 152 : A partnership limited by shares shall be managed by one or more general partners. Their powers, liability, and removal shall be subject to the provisions governing managers in a general partnership.

مادة (١٥٢) يدير شركة التوصية بالاسهم شريك متضامن او اكثر. وتسرى على سلطتهم ومسئوليتهم وعزلهم احكام المديرين في شركة التضامن.

Article 153 : Promptly upon the formation of the partnership, the shareholders general meeting shall appoint a board of controllers composed of at least three shareholders. The general partners shall have no part in making this appointment. The said meeting may reappoint or remove controllers in accordance with the provisions of the partnership's bylaws.

The board of controllers must exercise control over the operations of the partnership and express its opinion on matters referred to it by the partnership's manager and on such acts of disposition as require its prior permission under the partnership's bylaws.

The board of controllers may call a general meeting of the shareholders whenever it discovers that a serious violation has been committed in the management of the partnership. The board shall submit to the shareholders general meeting at the end of every financial year a report on the resultes of its control over the partnership's operations.

The controllers shall not be held responsible for the acts of managers or the consequence of them unless they were aware of the faulty actions committed but failed to notify the general meeting thereof.

مادة (١٥٣) تعين الجمعية العامة للمساهمين فور تأسيس الشركة مجلس رقابة من ثلاثة مساهمين على الاقل، ولايكون للشركاء المتضامنين رأى في هذا التعيين. وللجمعية المذكورة ان تجدد تعيين أعضاء مجلس الرقابة أو ان تعزلهم وفقا للاحكام المنصوص عليها في نظام الشركة.

وعلى مجلس الرقابة ان يراقب اعمال الشركة وان يبدىء الرأى في الامور التي يعرضها عليه مدير الشركة وفي التصرفات التي يعلق نظام الشركة مباشرتها على اذن سابق من المجلس المذكور.

ولمجلس الرقابة ان يدعو الجمعية العامة للمساهمين للانعقاد اذا تبين وقوع مخالفة جسيمة في ادارة الشركة. ويقدم المجلس الى الجمعية العامة للمساهمين في نهاية كل سنة مالية تقريراً عن نتائج رقابته على اعمال الشركة.

ولايسأل اعضاء مجلس الرقابة عن اعمال المديرين او نتائجها الا اذا علموا بما وقع من اخطاء واهملوا إخطار الجمعية العامة بها.

Article 154 : The general partners in a partnership limited by shares shall be subject to the same provisions as govern general partners in a general partnership.

The name of a partnership limited by shares shall be subject to the provisions of Article 37, and a sharedolder thereof shall be subject to the provisions set forth in Article 38.

مادة (١٥٤) تسرى على الشركاء المتضامنين في شركة التوصية بالاسهم نفس الأحكام التي تسرى على الشركاء المتضامنين في شركة التضامن.

ويسرى على عنوان شركة التوصية بالاسهم حكم المادة (٣٧) ويسرى على الشريك المساهم في الشركة المذكورة الاحكام الواردة في المادة (٣٨).

Article 155 : With due regard to the provisions set forth in this Part (VI), the provisions for corporations shall apply to a partnership limited by shares in respect of the following matters:

1. The provisions for the incorporation and publication of a corporation, except for those set forth in Article 52 concerning the Royal Decree authorizing its incorporation.
2. The provisions governing shares and the rights and liabilities attached thereto.
3. The provisions governing stockholders meetings. Nevertheless, in a partnership limited by shares, shareholders meetings may not deal with or approve acts in connection with the partnership's relations with third parties, nor may they alter the partnership's bylaws, except with the consent of all the general partners.
4. The provisions relating to the finances of the partnership.

Moreover, the term "managers" shall replace "directors" whenever the latter occurs in the Part on coporations.

Article 156 : A partnership limited by shares shall be dissolved by the withdrawal, death, edjudged legal incapacity, or declaration of bankruptcy or insolvency of one of the general partners, unless the partnership's bylaws provide otherwise.

It shall also be dissolved for the same reasons as apply to dissolution of a corporation, except that in applying the provisions of paragraph 1, Article 147, to a partnership limited by shares it must be observed that if the sole partner is a general partner he shall continue to be responsible for the debts of the partnership to the extent of his entire fortune.

## PART VII
## LIMITED LIABILITY PARTNERSHIPS

Article 157 : A limited liability partnership is a partnership consisting of two or more partners who are responsible for the debts of the partnership to the extent of their (respective) interests in the capital, and in which the number of partners shall not exceed fifty.

Article 158 : "The capital of a limited liability partnership shall not be less than five hundred thousand Saudi riyals. The capital shall be divided into shares of equal value, which may not be represented by negotiable warrants"

A share shall be indivisible. If a share is (jointly) owned by several persons, the partnership may suspend the exercise of the rights attached thereto until the owners select one of their number to be considered the sole owner thereof as far as (dealing with) the partnership is concerned. The partnership may fix a time limit for the holders to effect the selection, after which it shall be entitled to sell the share for the account of the owners, in which case the share shall be offered to the partners and then to third parties.

TRANSLATOR'S NOTE : Also known as "Limited Company" a form of commercial company similar to the English private company with ownership represented by shares with restricted transferability whose holders are liable for company debts only to the extent of their contributions to the company's capital.

مادة (١٥٥) مع مراعاة الاحكام الواردة في هذا الباب تسرى احكام شركة المساهمة على شركة التوصية بالاسهم في الامور الآتية:

١ ــ احكام تأسيس الشركة وشهرها باستثناء الاحكام الواردة في المادة (٥٢) الخاصة بالمرسوم الملكي المرخص بتأسيس شركة المساهمة.

٢ ــ احكام الاسهم والحقوق والالتزامات الخاصة بها.

٣ ــ الاحكام الخاصة بجمعيات المساهمين ومع ذلك فلا يجوز في شركة التوصية بالاسهم ان تباشر الجمعيات المذكورة او ان تصادق على تصرفات تتصل بعلاقة الشركة بالغير او ان تعدل نظام الشركة او بموافقة جميع الشركاء المتضامنين.

٤ ــ الاحكام الخاصة بمالية الشركة.

وتستبدل كلمة (المديرين) بعبارة (اعضاء مجلس الادارة) حيث ماوردت في باب شركة المساهمة.

مادة (١٥٦) تنقضي شركة التوصية بالاسهم بانسحاب احد الشركاء المتضامنين او وفاته او بالحجر عليه او بشهر افلاسه او اعساره مالم ينص نظام الشركة على غير ذلك.

وكذلك تنقضي الشركة المذكورة باسباب الانقضاء الخاصة بشركة المساهمة مع مراعاة انه في تطبيق الفقرة الاولى من المادة (١٤٧) على شركة التوصية بالاسهم اذا كان الشريك الوحيد شريكا متضامنا فانه يبقى مسئولا في جميع امواله عن ديون الشركة.

## الباب السابع
## الشركة ذات المسئولية المحدودة

مادة (١٥٧) الشركة ذات المسئولية المحدودة هي الشركة التي تتكون من شريكين او اكثر مسئولين عن ديون الشركة بقدر حصصهم في رأس المال ولايزيد عدد الشركاء في هذه الشركة عن خمسين.

مادة (١٥٨) لايقل رأس مال الشركة ذات المسئولية المحدودة عن خمسمائة الف ريال سعودي ويقسم رأس المال الى حصص متساوية القيمة ولايجوز ان تكون هذه الحصص ممثلة في صكوك قابلة للتداول.

وتكون الحصة غير قابلة للتجزئة فاذا تملك الحصة اشخاص متعددون جاز للشركة ان توقف استعمال الحقوق المتصلة بها الى ان يختار مالكو الحصة من بينهم من يعتبر مالكا منفردا لها في مواجهة الشركة ويجوز للشركة ان تحدد لهؤلاء ميعادا لاجراء هذا الاختيار والا كان من حقها بعد انقضاء الميعاد المذكور ان تبيع الحصة لحساب مالكيها وفي هذه الحالة تعرض الحصة على الشركاء ثم على الغير.

A limited liability partnership may not resort to public subscription in raising or increasing its capital, or for obtaining a loan.

ولايجوز للشركة ذات المسئولية المحدودة ان تلجأ الى الاكتتاب لتكوين رأسمالها أو زيادته أو للحصول على قرض.

Article 159 : A limited liability partnership may not have for object the conduct of insurance, savings, or banking operations.

مادة (١٥٩) لايجوز ان يكون غرض الشركة ذات المسئولية المحدود القيام باعمال التأمين او الادخار او البنوك.

Article 160 : The name of a limited liability partnership may consist of the name of one or more of the partners, or may be derived from its object.

مادة (١٦٠) يجوز ان يكون اسم الشركة ذات المسئولية المحدودة اسم شريك واحد او اكثر ويجوز ان يكون ذلك الاسم مشتقا من غرضها.

Article 161 : A limited liability partnership shall be formed by virtue of a memorandum of association to be signed by all the partners. The memorandum of association shall contain such particulares as may be prescribed by a decision of the Minister of Commerce and Industry, provided they include the following:

1. The kind, name, object, and head office of the partnership.
2. The partners' names, residence addresses, occupations, and nationalities.
3. The names of the managers, whether they are partners or nonpatners, if they are named in the company's memorandum of
4. The names of the members of the board of controllers, if any.
5. The amount of the capital and the amount of contributions in cash and in kind, as well as a detailed description of the contributions in kind, their value, and the names of contributors in kind.
6. A statement by the partners that all the capital shares have been allotted and paid up in full.
7. The method of distribution of profits.
8. The dates of the commencement and expiration of the partnership.
9. The form of the notices to be served by the partnership on the partners.

مادة (١٦١) تؤسس الشركة ذات المسئولية المحدودة بمقتضى عقد يوقعه جميع الشركاء و يشتمل العقد المذكور على البيانات التي يصدر بتحديدها قرار من وزير التجارة والصناعة على ان يكون من بينها البيانات الآتية:

١ ــ نوع الشركة واسمها وغرضها ومركزها الرئيسي.
٢ ــ اسماء الشركاء ومحال اقامتهم ومهنهم وجنسياتهم.
٣ ــ اسماء المديرين سواء كانوا من الشركاء او من غيرهم اذا سموا في عقد الشركة.
٤ ــ اسماء اعضاء مجلس الرقابة ان وجد.
٥ ــ مقدار رأس المال ومقدار الحصص النقدية والحصص العينية ووصف تفصيلي للحصص العينية وقيمتها واسماء مقدميها.
٦ ــ اقرار الشركاء بتوزيع جميع حصص رأس المال والوفاء بقيمة هذه الحصص كاملة.
٧ ــ طريقة توزيع الارباح.
٨ ــ تاريخ بدء الشركة وتاريخ انتهائها.
٩ ــ شكل التبليغات التي قد توجهها الشركة الى الشركاء.

Article 162 : The partnership shall be considered duly formed only after all the contributions in cash and in kind have been allotted to all the partners and paid up in full.

Contributions on cash shall be deposited in one of the banks to be designated by the Minister of Commerce Such bank shall remit them only to the managers of the partnership after submission of the documents evidencing that the publication (formalities) prescribed in Article 164 have been fulfilled.

The partners shall be jointly responsible, to the extent of their entire fortunes, to third parties for the correct evaluation of the contributions in kind. Nevertheless, an action in liability shall in this case be barred after the lapse of three years from the date of completion of the publication formalities prescribed in Article 164.

مادة (١٦٢) لاتؤسس الشركة بصفة نهائية الا اذا وزعت جميع الحصص النقدية والحصص العينية على جميع الشركاء وتم الوفاء الكامل بها.

وتودع الحصص النقدية احد البنوك التي يعينها وزير التجارة والصناعه ولايجوز للبنك صرفها الا لمديرى الشركة بعد تقديم الوثائق الدالة على شهر الشركة بالطرق المنصوص عليها في المادة ١٦٤.

و يكون الشركاء مسئولين بالتضامن في اموالهم الخاصة في مواجهة الغير عن صحة تقدير الحصص العينية ومع ذلك لاتسمع دعوى المسئولية في هذه الحالة بعد انقضاء ثلاث سنوات من تاريخ استيفاء اجراءات الشهر المنصوص عليها في المادة ١٦٤.

Article 163 : A limited liability partnership formed (in a manner) contrary to the provisions of Articles 157, 158, 159, 161, and 162 shall be considered null and void as regards any interested party. But the partners may not invoke such invalidity against third parties.

If invalidity is adjudged in application of the preceding Article, the partners who have caused such invalidity, as well as the first managers, shall be jointly responsible to the remaining partners and to third parties for damages resulting from such invalidity.

Article 164 : "The managers of the partnership must, within thirty days of the formation of the partnership, apply for the publication of an abstract of its memorandum of association in the Official Gazette at the partnership's expense. Said abstract must contain the provisions of the memorandum related to the items referred to in Article 161. Additionally, the managers must, within the same period, file an application for the registration of the partnership in the Companies register at the General Department for Companies. They must also register the partnership in the Commercial Register inaccordance with the provisions of the Regulations for the Commercial Register. Said provisions shall apply to any alteration made in the memorandum of association"

Article 165 : A partner may assign his share to a co-partner or to a third party in accordance with the terms of the partnership's memorandum of association. nevertheless, if a partner wishes to assign his share to a third party for valuable consideration, he must notify his co-partners through the manager of the partnership of the terms of such assignment, in which case every partner shall have the right to recover the share at its actual price.

If after the lapse of thirty days from the date of notification, none of the partners has exercised his right to recovery, the owner of such share shall have the right to dispose of it subject to the provisions of Article 157.

If the right of recovery is exercised by more than one partner and the assignment involves a number of shares, these shall be divided among the applicants for recovery in proportion to the interest of each of them in the capital.

If the assignment involves a single share, such share shall be allotted to the partners who have applied for its recovery, with due regard to the provisions of the second paragraph of Article 158.

If the assignment of the share is to be effected without valuable consideration, the partner applying for its recovery shall pay its value according to the last inventory made by the partnership.

The right of recovery provided for in this Article shall not apply to the transmission of shares by inheritance or bequest.

Article 166 : The partnership shall keep a special register showing the names of partners, the number of shares held by each, and the transactions affecting such shares. A transfer of title shall be effective as far as the partnership or third parties are concerned only after an entry of the reason for such transfer has been made in the said register.

مادة (١٦٣) تعتبر باطلة بالنسبة لكل ذى مصلحة الشركة ذات المسئولية المحدودة التي تؤسس بالمخالفة لاحكام المواد ١٥٧ و١٥٨ و١٥٩ و١٦١ و١٦٢ ولكن لايجوز للشركاء ان يحتجوا على الغير بهذا البطلان.

واذا تقرر البطلان تطبيقا للمادة السابقة كان الشركاء الذين تسببوا فيه مسئولين مع المديرين الاول بالتضامن في مواجهة باقى الشركاء والغير عن تعويض الضرر المترتب على ذلك البطلان.

مادة (١٦٤) على مديري الشركة خلال ثلاثين يوما من تأسيسها أن يطلبوا على نفقة الشركة نشر ملخص من عقدها في الجريدة الرسمية ويجب أن يشتمل الملخص المذكور على نصوص العقد المتعلقة بالبيانات المشار اليها في المادة ١٦١ وعلى المديرين كذلك أن يطلبوا في نفس الميعاد المذكور قيد الشركة في سجل الشركاء بالادارة العامة للشركات وعليهم أيضا ان يقيدوا الشركة في السجل التجاري وفقا لاحكام نظام السجل التجاري وتسري الاحكام المذكورة على كل تعديل يطرأ على عقد الشركة.

مادة (١٦٥) يجوز للشريك ان يتنازل عن حصته لاحد الشركاء او للغير وفقا لشروط عقد الشركة ومع ذلك اذا اراد الشريك التنازل عن حصته بعوض للغير وجب ان يخطر باقى الشركاء عن طريق مدير الشركة بشروط التنازل. وفي هذه الحالة يجوز لكل شريك ان يطلب استرداد الحصة بثمنها الحقيقي.

فاذا انقضت ثلاثون يوما من تاريخ الاخطار دون ان يستعمل احد الشركاء حقه في الاسترداد كان لصاحب الحصة الحق في التصرف فيها مع مراعاة حكم الفقرة الثانية من المادة ١٥٧.

واذا استعمل حق الاسترداد اكثر من شريك وكان التنازل يتعلق بجملة حصص قسمت هذه الحصص بين طالبى الاسترداد بنسبة حصة كل منهم في رأس المال.

واذا تعلق التنازل بحصة واحدة اعطيت هذه الحصة للشركاء الذين طلبوا الاسترداد مع مراعاة حكم الفقرة الثانية من المادة ١٥٨.

واذا كان التنازل عن الحصة بغير عوض، وجب على الشريك طالب الاسترداد دفع قيمتها وفقا لاخر جرد اجرته الشركة.

ولايسرى حق الاسترداد المنصوص عليه في هذه المادة على انتقال ملكية الحصص بالارث او بالتوصية.

مادة (١٦٦) تعد الشركة سجلا خاصا باسماء الشركاء وعدد الحصص التي يملكها كل منهم والتصرفات التي ترد على الحصص. ولاينفذ انتقال الملكية في مواجهة الشركة او الغير الا بقيد السبب الناقل للملكية في السجل المذكور.

Article 167 : The partnership shall be administered by one or more managers who may or may not be members of the partnership. The partners shall appoint the managers in the memorandum of association or in a separate contract for a specified or unspecified term and with or without remuneration.

The memorandum of association may provide for the formation of a board of managers if management is entrusted to several persons, in which case it shall specify the manner in which this board shall operate and the majority necessary for the adoption of its resolutions. The partnership shall be bound by the acts performed by the managers within the scope of their powers as published in accordance with the provisions of Article 164.

مادة (١٦٧) يدير الشركة مدير او اكثر من الشركاء او من غيرهم ويعين الشركاء المديرين في عقد الشركة او في عقد مستقل لمدة معينة او غير معينة بمقابل او بغير مقابل.

ويجوز ان ينص عقد الشركة على تكوين مجلس ادارة من المديرين اذا تعددوا، وفي هذه الحالة يحدد العقد طريقة العمل في هذا المجلس والاغلبية اللازمة لقراراته. وتلتزم الشركة باعمال المديرين التي تدخل في حدود سلطتهم المشهر عنها وفقا لاحكام المادة ١٦٤.

Article 168 : Managers appointed in the memorandum of association or in a separate contract may not be removed except with legal justification. The managers shall be jointly responsible for damages sustained by the partnership, or the partners, or third parties as a result of the managers' violating the provisions of these Regulations or of the partnership's memorandum of association, or of wrongful acts committed by them in the performance of their duties. Any provision to the contrary shall be considered nonexistent.

Except in the cases of fraud and forgery, the partners' consent to relieve the managers of liability for their management shall entail forfeiture of the right vested in the partnership to institute an action in liability. In all cases, such action shall be barred after the lapse of one year from the date of such consent.

مادة (١٦٨) لايجوز عزل المديرين المعينين في عقد الشركة او في عقد مستقل الا لسوغ شرعي . ويسأل المديرون بالتضامن عن تعويض الضرر الذي يصيب الشركة او الشركاء او الغير بسبب مخالفة احكام هذا النظام او نصوص عقد الشركة او بسبب مايصدر منهم من اخطاء في اداء عملهم وكل شرط يقضى بغير ذلك يعتبر كأن لم يكن.

وفيما عدا حالتى الغش والتزوير يترتب على موافقة الشركاء على ابراء ذمة المديرين من مسئولية ادارتهم انقضاء دعوى المسئولية المقررة للشركة. وفي جميع الاحوال لا تسمع الدعوى المذكورة بعد انقضاء سنة من تاريخ تلك الموافقة.

Article 169 : A limited liability partnership shall have one more auditors, in accordance with the provisions set fortth in the Part on corporations.

مادة (١٦٩) يكون للشركة ذات المسئولية المحدودة مراقب حسابات او اكثر وفقا للاحكام المقررة في باب شركة المساهمة.

Article 170 : If the number of partners exceeds twenty, the memoradum of association must provide for the appointment of a board of controllers consisting of at least three partners. If such excess occurs after the formation of the partnership, the partners must as soon as possible effect such appointment.

The board of controllers shall be subject to the provisions governing the board of controllers in a partnership limited by shares.

مادة (١٧٠) اذا زاد عدد الشركاء عن عشرين ، وجب النص في عقد الشركة على تعيين مجلس رقابة من ثلاثة شركاء على الاقل. واذا طرأت هذه الزيادة بعد تأسيس الشركة وجب على الشركاء ان يقوموا في أقرب وقت بهذا التعيين.

وتسرى على مجلس الرقابة احكام مجلس الرقابة في شركة التوصية بالاسهم.

Article 171 : Shares shall confer equal rights to the net profits and the partners' equity upon liquidation, unless the memorandum of associatiom provides otherwise.

Every partner shall have the right to participate in deliberations and in voting, and shall be entitled to a number of votes equal to the number of shares he owns. However, it is permissible to agree otherwise.

Every partner may give written proxy to another partner who is not a manager, to attend partners' meetings and vote on his behalf, unless the memorandum of association provides otherwise.

مادة (١٧١) ترتب الحصص حقوقا متساوية في الارباح الصافية وفي فائض التصفية مالم ينص عقد الشركة على غير ذلك.

ويكون لكل شريك حق الاشتراك في المداولات وفي التصويت وعدد من الاصوات يعادل عدد الحصص التي يملكها. ويجوز الاتفاق على غير ذلك.

ويجوز لكل شريك ان يوكل عنه كتابة شريكا اخر من غير المديرين في حضور اجتماعات الشركاء وفي التصويت، مالم ينص عقد الشركة على غير ذلك.

In a (limited liability) partnership which has no board of controllers, a partner who is not manager may extend advice to managers and may also ask to review the partnership's operations and examine its books and documents at its head office, within the fifteen days immediately preceding the date set for submitting the annual final accounts to the partners. Any provision to the contrary shall be considered nonexistent.

وللشريك غير المدير في الشركة التي لايوجد بها مجلس رقابة ان يوجه النصح للمديرين وله ايضا ان يطلب الاطلاع في مركز الشركة على اعمالهما وفحص دفاترها ووثائقها وذلك في خلال خمسة عشر يوما سابقة على التاريخ المحدد لعرض الحسابات الختامية السنوية على الشركاء وكل شرط مخالف لذلك يعتبر كأن لم يكن.

Article 172 : Resolutions of the partners shall be adopted at a general meeting. Nevertheless, partners may, in a partnership consisting of not more than twenty partners, express their opinions separately, in which case the manager of the partnership shall send each partner a registered letter in corporating the proposed resolutions, so that the partner may vote on them in writing.

In all cases, resolutions shall be valid only if adopted by a number of partners representing at least one half of the capital, unless the memorandum of association provides for a larger majority.

If this majority does not obtain during the first deliberation or consultation, the partners must be summoned by registered letters to a meeting. Resolutions at such meeting shall be adopted by majority vote of those present, regardless of the (amount of) capital they represent, unless the memorandum of association provides otherwise.

مادة (١٧٢) تصدر قرارات الشركاء في جمعية عامة. ومع ذلك يجوز في الشركة التي لايزيد عدد الشركاء فيها على عشرين أن يبدى الشركاء آرائهم متفرقين، وفي هذه الحالة يرسل مدير الشركة الى كل شريك خطابا مسجلا بالقرارات المقترحة ليصوت الشريك عليها كتابة.

وفي جميع الاحوال لاتكون القرارات صحيحة الا اذا وافق عليها عدد من الشركاء يمثل نصف رأس المال على الأقل مالم ينص عقد الشركة على أغلبية أكبر.

واذا لم تتوفر هذه الأغلبية في المداولة أو في المشاورة الأولى، وجبت دعوة الشركاء الى الاجتماع بخطابات مسجلة وتصدر القرارات في هذا الاجتماع بموافقة أغلبية الحاضرين أيا كان رأس المال الذى يمثله مالم ينص عقد الشركة على غير ذلك.

Article 173 : The nationality of the partnership may not be altered nor may the financial liabilities of the partners be increased without the consent of all the partners. In respect of all but these matters, the memorandum of association may be altered with the consent of a majority of the partners representing at least three quarters of the capital, unless the memorandum of association provides otherwise.

مادة (١٧٣) لايجوز تغيير جنسية الشركاء أو زيادة الاعباء المالية للشركاء الا بموافقة جميع الشركاء وفي غير هذين الأمرين يجوز تعديل عقد الشركة بموافقة أغلبية الشركاء الذين يمثلون ثلاثة أرباع رأس المال على الأقل مالم ينص عقد الشركة على غير ذلك.

Article 174 : The (regular) general meeting shall be called by the managers in the manner specified in the memorandum of association. It shall be convened at least once a year within six months after the closing date of the financial year of the partnership. A (regular general) meeting may, however, be called at any time at the request of the managers, or the board of controllers, or the auditor, or a number of partners representing at least one half of the capital (of the partnership).

Minutes shall be drawn up of the gist of the deliberations of the general meeting. The minutes and the resolutions of (general) meetings or of the partners shall be recorded in a special register kept for the purpose by the partnership.

مادة (١٧٤) تعقد الجمعية العامة بدعوة من المديرين وفقا للاوضاع التي يحددها عقد الشركة وتعقد مرة على الأقل في السنة خلال الشهور الستة التالية لنهاية السنة المالية للشركة. ويجوز دعوة الجمعية في كل وقت بناء على طلب المديرين أو مجلس الرقابة أو مراقب الحسابات أو عدد من الشركاء يمثل نصف رأس المال على الأقل.

ويحرر محضر بخلاصة مناقشات الجمعية العامة وتدون المحاضر وقرارات الجمعية او قرارات الشركاء في سجل خاص تعده الشركة لهذا الغرض.

Article 175 : The managers shall within four months of the closing date of every financial year, prepare a balance sheet for the partnership, a profit and loss statement, and a report on the operations and financial position of the partnership and on their proposals for the appropriation of net profits.

مادة (١٧٥) يعد المديرون عن كل سنة مالية ميزانية الشركة وحساب الأرباح والخسائر وتقريرا عن نشاط الشركة ومركزها المالى واقتراحاتهم بشأن توزيع الأرباح خلال اربعة أشهر من نهاية السنه المالية.

The managers must, within two months of the date of preparation of the above documents, send a copy of each of them to the General Department of Compamies and to every partner, together with a copy of the board of controllers' and the auditor's reports. In a partnership that does not hold a general meeting, every partner may request the man agers to call a meeting of the partners to deliberate on these documents.

وعلى المديرين أن يرسلوا صورة من هذه الوثائق وصورة من تقرير مجلس الرقابة وصورة من تقرير مراقب الحسابات الى الإدارة العامة للشركات والى كل شريك وذلك خلال شهرين من تاريخ اعداد الوثائق المذكورة ولكل شريك في الشركات التي لا توجد بها جمعية عامة أن يطلب من المديرين دعوة الشركاء الى الاجتماع للمداولة في تلك الوثائق.

Article 176 : Every partnership must set aside at least 10% of its net profits in each year to build up a reserve fund. The partners may resolve to discontinue such deduction when the reserve totals one half of the capital.

مادة (١٧٦) على كل شركة أن تجنب في كل سنة ١٠٪ على الأقل من أرباحها الصافية لتكوين احتياطي ويجوز للشركاء أن يقرروا وقف هذا التجنيب متى بلغ الاحتياطي نصف رأس المال.

Article 177 : Without prejudice to the rights of any bona fide third party, a resolution adopted by the general meeting or by the partners in violation of the provisions of these Regulations or of the memorandum of association shall be null and void.

Nevertheless, nullification may be requested only by the partners who objected to the resolution in writing, or who on becoming aware of it were unable to object thereto.

A resolution adjudged null shall be considered nonexistent as far as all the partners are concerned. A suit for nullification shall be barred after the lapse of one year from the date of the resolution involved.

مادة (١٧٧) مع عدم الاخلال بحقوق الغير الحسن النية ، يقع باطلا كل قرار يصدر من الجمعية العامة أو من الشركاء بالمخالفة لأحكام هذا النظام أو النصوص عقد الشركة . ومع ذلك لايجوز أن يطلب البطلان الا الشركاء الذين اعترضوا كتابة على القرار أو الذين لم يتمكنوا من الاعتراض عليه بعد علمهم به.

ويترتب على تقرير البطلان اعتبار القرار كأن لم يكن بالنسبة لجميع الشركاء ولا تسمع دعوى البطلان بعد انقضاء سنة من تاريخ القرار المذكور.

Article 178 : A limited liability partnership shall not be dissolved by the withdrawal, adjudged legal incapacity, or declaration of bankruptcy or insolvency of one of the partners, unless its memorandum of association provides otherwise.

مادة (١٧٨) لا تنقضي الشركة ذات المسئولية المحدودة بانسحاب أحد الشركاء أو بالحجر عليه أو بشهر افلاسه أو اعساره مالم ينص عقد الشركة على غير ذلك.

Article 179 : A limited liability partnership whose shares are transferred to a single partner shall be subject to the provisions of the first paragraph of Article 147.

مادة (١٧٩) تسرى على الشركة ذات المسئولية المحدودة التي تنتقل جميع الحصص فيها الى شريك واحد الفقرة الاولى من المادة (١٤٧).

Article 180 : If the losses of a limited liability partnership total three quarters of its capital, the managers thereof must summon the partners to a meeting in order to consider whether the partnership shall continue to exist or be dissolved before the expiry of the term specified in its memorandum of association.

The partners' resolution in this respect shall be valid only if adopted by the majority prescribed in Article 173. In all cases, however, such resolution must be published in the manner prescribed in Article 164. If the managers fail to call the partners (to a meeting) or if the partners are unable to adopt a resolution on the subject, any interested party may request the dissolution of the partnership.

مادة (١٨٠) اذا بلغت خسائر الشركة ذات المسئولية المحدودة ثلاثة أرباع رأس المال وجب على المديرين دعوة الشركاء للاجتماع للنظر في استمرار الشركاء أو في حلها قبل الأجل المعين في عقدها.

ولايكون قرار الشركاء في هذا الشأن صحيحا الا اذا وافقت عليه الأغلبية المنصوص عليها في المادة ١٧٣ ويجب في جميع الاحوال شهر هذا القرار بالطرق المنصوص عليها في المادة ١٦٤، واذا أهمل المديرون دعوة الشركاء او اذا تعذر على الشركاء الوصول الى قرار في الموضوع جاز لكل ذى مصلحة أن يطلب حل الشركة.

## PART VIII
## COMPANIES WITH VARIABLE CAPITAL

Article 181 : Every company may provide in its memorandum of association or its bylaws that its capital can be increased by way of new payments by the (original) partners or by the admission of new partners, or be reduced by the partners' recovering their shares in the capital.

If such provision is made, it must be published in the manner of publication prescribed for the form of company involved.

Article 182 : A company with variable capital shall be subject to the provisions set forth in this Part and to such general rules that are not inconistent therewith as are prescribed for its particular kind of company.

Articl 183 : Increase or reduction of capital of a company with variable capital shall not be subject to any special conditions or formalities, unless the memoradum of association or the bylaws of the company provide otherwise.

Article 184 : The capital of the company upon its formation shall not exceed fifty thousand Saudi riyals. It may, however, be increased from year to year by resolution of the partners, provided that any individual increase shall not exceed the above-mentioned amount.

Article 185 : If the partners interests are represented by shares of stock, such shares must remain registered even after payment of their value in full.

The said shares may be negotiated only after the company has been duly incorporated.

The memorandum of association or bylaws of the company may grant managers, directors, or the general meeting the right to object to the transfer of title to these shares.

Article 186 : The memorandum of association or bylaws of the company shall specify the minimum amount below which capital may not be reduced as a result of the partners' recovery of their interests. Such minimum shall not be less than one fifth of the (nominal) capital of the company. The relative provision shall be published in the manner prescribed for the form of company involved.

Article 187 : With due regard to the provisions of the preceding Article, each partner may at any time withdraw from the company, unless the memorandum of association or bylaws of the company provide otherwise.

The memorandum of association or bylaws of the company may empower the partners to expel one or more of their number by the majority (vote) prescribed for the alteration of the memorandum of association or bylaws of the company.

## الباب الثامن
## الشركة ذات رأس المال القابل للتغيير

مادة (١٨١) لكل شركة أن تنص في عقدها او في نظامها على ان رأس مالها قابل للزيادة بمدفوعات جديدة من الشركاء أو بانضمام شركاء جدد، أو قابل للتخفيض باسترداد الشركاء حصصهم في رأس المال.

ويجب في هذه الحالة شهر هذا النص بطرق الشهر المقررة لنوع الشركه.

مادة (١٨٢) تخضع الشركة ذات رأس المال القابل للتغير للاحكام الواردة في هذا الباب ومالا يتعارض معها من الأحكام العامة المقررة لنوع الشركة.

مادة (١٨٣) لاتخضع زيادة رأس المال أو تخفيضه في الشركة ذات رأس المال القابل للتغير لأية شروط أو اجراءات خاصة ، مالم ينص عقد الشركة أو نظامها على غير ذلك.

مادة (١٨٤) لايزيد رأس مال الشركة عند التأسيس عن خمسين ألف ريال سعودي ويجوز أن يزاد رأس المال بعد ذلك بقرار من الشركاء من سنة الى أخرى بشرط ألا تجاوز كل زيادة المبلغ المذكور.

مادة (١٨٥) اذا اتخذت حصص الشركاء شكل أسهم وجب أن تبقى هذه الأسهم اسمية حتى بعد سداد قيمتها كاملة.

ولايجوز تداول الأسهم المذكورة الا بعد التأسيس النهائي للشركة.

ويجوز أن يمنح عقد الشركة أو نظامها المديرين أو أعضاء مجلس الادارة أو الجمعية العامة حق الاعتراض على نقل ملكية تلك الأسهم.

مادة (١٨٦) يعين عقد الشركة أو نظامها المبلغ الذى لايجوز أن يهبط عنه رأس المال نتيجة استرداد الشركاء حصصهم ، ولايجوز أن يقل هذا المبلغ عن خمس رأس مال الشركة ، ويشهر هذا النص بطرق الشهر المقررة لنوع الشركة.

مادة (١٨٧) مع مراعاة حكم المادة السابقة، لكل شريك أن ينسحب من الشركة في أى وقت مالم ينص عقد الشركة أو نظامها على خلاف ذلك ويجوز أن يخول عقد الشركة أو نظامها الشركاء سلطة فصل شريك أو أكثر بالأغلبية المشروطة لتعديل العقد أو النظام.

A retiring or expelled partner shall remain liable to the partners and to third parties, for a period of two years from the date of withdrawal or expulsion, for satisfaction of all the liabilities existing at the time of his ceasing to be a partner.

Article 188 : A company (with variable capital), of whatever type, shall not be dissolved by the withdrawal, expulsion, death, adjudged legal incapacity, or declaration of bankruptcy or insolvency of any of the partners, but shall continue to exist among the surviving partners, unless its memorandum of association or bylaws provide otherwise.

## PART IX
## COOPERATIVE COMPANIES

Articel 189 : A corporation or a limited liability partnership may be formed in accordance with cooperative principles if it aims at (the attainment of) the following objects for the benefit and through the joint efforts of the members:
1. Reduction of the cost, purchase, or sale price of certain products or services, by engaging in producers' or brokers' business.
2. Improvement of the quality of products or the standard of services provided by the company to its members, or by the latter to consumers.

Article 190 : Special regulations may be promulgated for a particular) kind or kinds of cooperative companies, in which case the provisions of this Part shall apply to a (cooperative) company only as far as they are not inconsistent with the provisions of such special regulations.

Except for the provisions set forth in this Part, a cooperative company shall, depending on its form, remain subject to the provisions governing either corporations or limited liability partnerships.

Article 191 : A cooperative company shall have a variable capital and shall be subject to the provisions of Part VIII, with the exception of those set forth in Articles 184 and 186. Nevertheless, the capital of a cooperative company may not be reduced, as a result of members' recovery of their shares, below the maximum amount reashed after the formation of the company.

Article 192 : The memorandum of association or bylaws of the cooperative company may provide that in case the company is declared bankrupt or becomes insolvent the members shall be liable for its debts to the extent of twice the value of their (respective) shares.

Article 193 : The capital of a cooperative company shall be divided into interests or into registered shares of stock of equal value which shall be indivisible as regards the company.

ويبقى الشريك الذى انسحب أو فصل مسئولا في مواجهة الشركاء والغير مدة سنتين من وقت الانسحاب أو الفصل عن الوفاء بجميع الالتزامات التي كانت قائمة وقت زوال صفته كشريك.

مادة (١٨٨) لاتنقضى الشركة أيا كان نوعها بانسحاب أحد الشركاء أو فصلة أو وفاته أو بالحجر عليه أو بشهر افلاسه أو اعساره، بل تستمر قائمة بين سائر الشركاء، مالم ينص عقد الشركة أو نظامها على خلاف ذلك.

## الباب التاسع
## الشركة التعاونية

مادة (١٨٩) يجوز أن تؤسس شركة المساهمة أو الشركة ذات المسئولية المحدودة وفقا للمبادىء التعاونية اذا كانت تهدف لصالح جميع الشركاء وبجهودهم المشتركة الى الأغراض الآتية:ـ
١ ـ تخفيض ثمن تكلفة أو ثمن شراء أو ثمن بيع بعض المنتجات او الخدمات وذلك بمزاولة الشركة اعمال المنتجين او الوسطاء.
٢ ـ تحسين صنف المنتجات او مستوى الخدمات التي تقدمها الشركة الى الشركاء او التي يقدمها هؤلاء الى المستهلكين.

مادة (١٩٠) يجوز ان تصدر انظمة خاصة بنوع او اكثر الشركات التعاونية. وفي هذه الاحوال لاتسرى احكام هذا الباب على الشركة الا بقدر عدم التعارض بينها وبين احكام تلك الانظمة الخاصة.
وفيما عدا الأحكام الواردة في هذا الباب تبقى الشركة التعاونية خاضعة بحسب نوعها لاحكام شركة المساهمة او احكام الشركة ذات المسئولية المحدودة.

مادة (١٩١) تكون الشركة التعاونية ذات رأس مال قابل للتغيير وتسرى عليها احكام الباب الثامن فيما عدا احكام المادتين ١٨٤ و١٨٦ ومع ذلك لايجوز ان يهبط رأس مال الشركة التعاونية بسبب استرداد حصص الشركاء عن اعلى مبلغ وصل اليه بعد تأسيس الشركة.

مادة (١٩٢) يجوز النص في عقد الشركة التعاونية او في نظامها على مسئولية الشركاء في حالة شهر افلاس الشركة او اعسارها مسئولية اضافية عن ديونها في حدود ضعف قيمة حصص الشركاء.

مادة (١٩٣) يقسم رأس مال الشركة التعاونية الى حصص او اسهم اسمية متساوية القيمة وغير قابلة للتجزئة في مواجهة الشركة.

The value of each interest or share shall not be less than ten nor more than fifty Saudi riyals. The amount paid in on each share or interest upon the formation of the company shall not be less than one fourth (of its value). The balance must be paid up within a period not exceeding three years from the date on which the company is duly formed.

Article 194 : The company's memorandum of association or bylaws may permit non-members to draw benefit from the operations of the company, In this case, however, the company must accept as members those (outsiders) whom it has authorized to benefit from its operation or those from whose services it has benefited, if they so request and provided they qualify (for membership) under the memorandum of association or the bylaws of the company.

Article 195 : All the members of a cooperative company shall have equal rights, and no distinction shall be made between them by reason of the date of their joining the company.

Article 196 : Cooperative companies may, in pursuance of their common interests, form one or more cooperative federations in accordance with the provisions governing cooperative companies.

Article 197 : Cooperative companies shall (be entitled to) avail themselves of all the privileges established in favor of cooperative societies. The Ministry of Commerce shall, in respect of supervision and dissolution of cooperative companies, have the same powers as those vested in the Ministry of Labor and Social Affairs under the Regulations for Cooperative Societies.

Article 198 : A cooperative corporation shall not be subject to the requirement of seeking the issuance of a Royal Decree as provided for in Article 52. Nor shall cooperative partnership with limited liability be subject to the maximum number of partners specified in Article 157.

Article 199 : For the formation of a cooperative company in whatever form, an application for the issuance of an authorization to that effect must be filed with the Minister of Commerce in the manner to be prescribed by him. The application shall be accompanied by a copy of the company's memorandum of association and bylaws each signed by the members and other founders.

In addition to the requisite particulars for each particular form of company, the company's memorandum of association or bylaws must contain the following:

1. The conditions for the admission of new members, and for the withdrawal and expulsion of members.
2. The extent, if any, of the members' additional liability for the company's debts in the event that it is declared bankrupt or insolvent.
3. The percentage to be appropriated to the members out of the net profits and the method of distributing among them the returns on transactions.

ولاتقل قيمة الحصة او السهم عن عشرة ريالات سعودية ولاتزيد عن خمسين ريالا سعوديا ولايقل المدفوع من قيمة الحصة او السهم عند تأسيس الشركة عن الربع ويجب ان يسدد الباقي في ميعاد لايتجاوز ثلاث سنوات من تاريخ التأسيس النهائي للشركة.

مادة (١٩٤) يجوز ان يصرح عقد الشركة او نظامها لغير الشركاء بالاستفادة من نشاطها ولكن يجب في هذه الحالة ان تقبل الشركة كشركاء فيها هؤلاء الذين صرحت لهم بالاستفادة من نشاطها او الذين افادت هى من خدماتهم متى طلبوا ذلك واستوفوا الشروط المنصوص عليها في عقد الشركة او في نظامها.

مادة (١٩٥) تكون لجميع الشركاء في الشركة التعاونية حقوق متشاوية ولاتجوز التفرقة بينهم بسبب تاريخ انضمامهم اليها.

مادة (١٩٦) يجوز للشركات التعاونية خدمة لمصالحها المشتركة ان تكون اتحاداً تعاونيا او اكثر وفقا لاحكام الشركات التعاونية.

مادة (١٩٧) تفيد الشركات التعاونية من جميع المزايا المقررة للجمعيات التعاونية. وتكون لوزارة التجارة والصناعه في الرقابة على الشركات التعاونية وحلها مالوزارة العمل والشئون الاجتماعية من سلطات في الامور المذكورة بمقتضى نظام الجمعيات التعاونية.

مادة (١٩٨) لاتخضع شركة المساهمة التعاونية لشرط استصدار مرسوم ملكى المنصوص عليه في المادة (٥٢) ولاتخضع الشركة التعاونية ذات المسئولية المحدودة للحد الاقصى لعدد الشركاء المنصوص عليه في المادة (١٥٧).

مادة (١٩٩) يلزم لتأسيس الشركة التعاونية ايا كان نوعها استصدار ترخيص بذلك من وزير التجارة والصناعه وفقا للاوضاع التي يحددها ويرفق بطلب الترخيص صورة من عقد الشركة ومن نظامها موقعا على كل صورة من الشركاء وغيرهم من المؤسسين.

ويتضمن عقد الشركة او نظامها فضلا عن البيانات اللازمة بحسب نوع الشركة البيانات الآتية:ـ

١ ـ شروط قبول الشركاء الجدد وشروط انسحاب الشركاء وفصلهم.

٢ ـ المسئولية الاضافية للشركاء عن دين الشركة في حالة شهر إفلاسها او اعسارها ان كان لها محل.

٣ ـ تحديد النسبة المئوية التي توزع على الشركاء من الارباح الصافية وطريقة توزيع عائد المعاملات عليهم.

When the company has fulfilled the requirements for its formation, the board of directors must, within fifteen days of such fulfillment, file with the Minister of Commerce, in the manner to be prescribed by the Minister, an application for (the issuance of a decision) announcing the formation of the company.

The company shall be considered duly formed as of the date of issuance of the said decision, and any suit in nullity tending to invalidate the company for any violation of the rules of formation prescribed in these Regulations or in the memorandum of association or the bylaws of the company shall thereafter be barred.

Article 200 : The decision of the Minister of Commerce announcing the formation of the company, together with a copy each of its memorandum of association and bylaws, shall be published in the official Gazette at the expense of the company. The board of directors must, within fifteen days of the date of the said decision, apply for the registration of the company in the Companies' Register at the General Department of Companies, and must, within the same period, register it in the Commercial Register in accordance with the provisions of the Regulations for the Commercial Register.

Any alteration made in the company's memorandum of association or bylaws shall be published in the same manner.

Article 201 : A cooperative company shall be managed by a board of directors consisting of such number (of members), but not less than three as may be specified in the company's memorandum of association or bylaws. The directors shall not receive remuneration for their work.

The company's memorandum of association or bylaws shall specify the term of office of the board of directors, which shall not exceed five years. The general meeting may, at any time, remove all or any of the members of the board of directors.

Article 202 : The management of a cooperative company must submit to the representatives of the Ministry of Commerce upon their request (all) the books, records, and documents of the company and all particulars and clarifications that prove that the company abides by the provisions of these regulations.

Article 203 : Partners' resolutions shall be adopted at a general meeting, which each member shall be entitled to attend and wherein each shall have one vote in the deliberations, regardless of the number of his shares. Nevertheless, the company's memorandum of association of asociation or bylaws may provide for the division of the members into classes, each meeting and deliberating separately, and each electing members from its' number to attend the general meeting on its behalf.

A provision may be made in the memorandum of association or bylaws of a cooperative federation whereby each member company is given a number of votes proportionate to the actual number of its members or to the importance of its dealings with the federation.

ومتى استوفت الشركة شروط تأسيسها كان على اعضاء مجلس الادارة ان يقدموا خلال خمسة عشر يوما من الوقت المذكور طلبا الى وزير التجارة والصناعه باعلان تأسيس الشركة وفقا للاوضاع التي يحددهما الوزير المذكور.

وتعتبر الشركة مؤسسة تأسيسا صحيحا من تاريخ صدور القرار المشار اليه ولا تسمع بعد ذلك دعوى بطلان الشركة لاية مخالفة لاحكام التأسيس المنصوص عليها في هذا النظام او في عقد الشركة او في نظامها.

مادة (٢٠٠) ينشر في الجريدة الرسمية على نفقة الشركة قرار وزير التجارة باعلان تأسيسها مرفقا به صورة من عقدها ونظامها وعلى اعضاء مجلس الادارة خلال خمسة عشر يوما من تاريخ القرار المذكور ان يطلبوا قيد الشركة في سجل الشركات الادارة العامة للشركات وعليهم ايضا خلال نفس الميعاد ان يقيدوا الشركة في السجل التجاري وفقا لاحكام نظام السجل التجاري.

ويشهر بنفس الطرق كل تعديل يطرأ على عقد الشركة او نظامها.

مادة (٢٠١) يدير الشركة التعاونية مجلس ادارة يتكون من العدد الذى يحدده عقد الشركة او نظامها بشرط الا يقل عن ثلاثة ولايتقاضى اعضاء مجلس الادارة مقابلا عن عملهم.

ويحدد عقد الشركة او نظامها مدة عضوية مجلس الادارة بشرط الا تجاوز خمس سنوات ويجوز للجمعية العامة في كل وقت عزل جميع أعضاء مجلس الادارة او بعضهم.

مادة (٢٠٢) على ادارة الشركة التعاونية ان تقدم الى مندوبي وزارة التجارة بناء على طلبهم دفاترها وسجلاتها ووثائقها وان تقدم اليهم كافة البيانات والايضاحات التي تثبت التزام الشركة لاحكام هذا النظام.

مادة (٢٠٣) تصدر قرارات الشركاء في جمعية عامة ويكون لكل شريك حق الحضور فيها ويكون له صوت واحد في مداولتها ايا كان عدد حصصه او اسهمه. ومع ذلك يجوز ان ينص عقد الشركة او نظامها على تقسيم الشركاء اقساما يجتمع كل قسم منها ويتداول اعضاؤه على حدة ويختار كل قسم من بين اعضائه من يحضرون عنه الجمعية العامة.

ويجوز النص في عقد تأسيس الاتحاد التعاونى او في نظامه على منح الشركات الاعضاء فيه عدداً من الاصوات يتناسب مع عدد اعضائها الفعليين او مع اهمية معاملاتها مع الاتحاد.

Except for the provisions set forth in this Article, the general meeting of the members of a cooperative company shall be subject to the provisions governing stockholders (general) meetings in a corporation.

Article 204 : Members' interests in a cooperative partnership with limited liability may be represented by shares of stock. Such interests or shares may be assigned only with the consent of the board of directors or the general meeting in accordance with the terms of the memorandum of association or bylaws of the partnership. Nevertheless the memorandum of association or the bylaws may prohibit such assignment, without prejudice to a member's right to withdraw from the partnership.

The company may waive its claim against any member for sums due from him, but such waiver shall entail expulsion of the member from the company after he has been summoned to pay the sums due within at least sixty days of the date of such summons.

Upon the withdrawal, expulsion, or death of any member entitled to recover his interest in the capital, such member or his heirs may recover only the value of such interest as estimated on the basis of the balance sheet of the financial year during which the withdrawal, expulsion, or death occurred, less, if need be, the member's share in the capital losses.

Article 205 : A percentage of the net profits not exceeding 6% of the paid-up capital shall be appropriated for distribution to the be appropriated for distribution to the members. This percentage shall be determined in the memorandum of association or bylaws of the company.

The company's memorandum of association or bylaws may provide that, should the net profits be insufficient for the appropriation of the said percentage to the members, the amount required for this purpose shall be deducted from the reserves or from the profits of the next four years.

Apart from the percentage referred to in the first paragraph of this Article, profits may be appropriated to the members only to the extent of the amounts that may be allocable to them out of the returns on transactions in the manner prescribed in the memorandum of association or bylaws of the company. Such appropriation may not include the profits realized on the company's transactions with the public.

Article 206 : The company must in every financial year set aside at least 10% of the profits remaining - after appropriation of the amounts specified in the first and third paragraphs of the preceding Article - to build up a reserve, until such reserve equals the (company's) capital.

Article 207 : After setting aside the amounts specified in the two preceding Articles, surplus profits shall either be added to the reserve, or allocated for assisting other cooperative companies or federations, or directed towards services of public benefit.

وفيما عدا الاحكام الواردة في هذه المادة تسرى على الجمعية العامة للشركاء في الشركة التعاونية احكام جمعيات المساهمين في شركة المساهمة.

مادة (٢٠٤) يجوز ان تتخذ حصص الشركاء في الشركة التعاونية ذات المسئولية المحدودة شكل الاسهم. ولايجوز التنازل عن الحصص او الاسهم الا بموافقة مجلس الادارة او الجمعية العامة وفقا لشروط عقد الشركة او نظامها. ويجوز ان يمنع عقد الشركة او نظامها هذا التنازل وذلك دون اخلال بحق الشريك في الانسحاب من الشركة.

وللشركة أن تتنازل عن مطالبة أحد الشركاء بالمبالغ المستحقة في ذمته وانما يترتب على ذلك فصل الشريك من الشركة بعد اعذاره بسداد تلك المبالغ خلال ستين يوما على الأقل من تاريخ الاعذار المذكور.

واذا أنسحب أحد الشركاء أو فصل من الشركة أو توفي وكان يستحق استرداد حصته فلايجوز أن يحصل هو أو ورثته على أكثر من قيمة هذه الحصة مقدرة على أساس ميزانية السنة المالية التي تم فيها الانسحاب او الفصل أو الوفاة مخصوما منها عند الاقتضاء نصيبه في خسارة رأس المال.

مادة (٢٠٥) يوزع على الشركاء نسبة مئوية من الأرباح الصافية يحددها عقد الشركة أو نظامها بشرط الا تزيد على ٦٪ من رأس المال المدفوع.

ويجوز أن ينص عقد الشركة أو نظامها على أنه في حالة عدم كفاية الأرباح الصافية لتوزيع النسبة المذكورة على الشركاء تقتطع المبالغ اللازمة لذلك من الاحتياطات أو من أرباح السنوات الأربع التالية.

وفيما عدا النسبة المشار اليها في الفقرة الأولى من هذه المادة لايجوز توزيع أرباح على الشركاء الا بقدر مايخصم في عائدة المعاملات وفقا للاوضاع التي يحددها عقد الشركة أو نظامها ولايجوز أن يشمل هذا التوزيع الأرباح الناتجة من معاملات الشركة مع الجمهور.

مادة (٢٠٦) على الشركة أن تجنب في كل سنة مالية ١٠٪ على الأقل من أرباحها المتبقية بعد توزيع المبالغ المنصوص عليها في الفقرتين الأولى والثالثة من المادة السابقة لتكوين احتياطى حتى يبلغ الاحتياطى المذكورة مقدار رأس المال.

مادة (٢٠٧) بعد تجنيب المبالغ المنصوص عليها في المادتين السابقتين يرحل فائض الربح الى الاحتياطى أو يخصص لاعانة شركات أو اتحادات تعاونية أخرى أو يوجه لخدمات ذات نفع عام.

Article 208 : The capital of a cooperative company may not be increased by way of capitalization of the reserve (fund) or by the waiver of unpaid capital.

The cooperative quality of the company may not be cancelled.

Article 209 : Upon the dissolution of a cooperative company, the balance of the realization account shall, by a resolution of the general meeting, be transferred to other cooperative companies or federations or allocated for services of public benefit.

مادة (٢٠٨) لايجوز زيادة رأس مال الشركة التعاونية بادماج الاحتياطى في رأس المال أو بابراء الحصص من باقى قيمتها.

ولايجوز الغاء الصفة التعاونية للشركة.

مادة (٢٠٩) في حالة انقضاء الشركة التعاونية يحول فائض التصفية بقرار من الجمعية العامة الى شركات أو اتحادات تعاونية أخرى أو يخصص لخدمات ذات نفع عام.

## PART X
## CONVERSION AND MERGER OF COMPANIES
## CHAPTER I
## CONVERSION OF COMPANIES

Article 210 : A company may covert into any of the other kinds of companies by virtue of a resolution adopted in the manner prescribed for the alteration of the company's memorandum of association or bylaws, and subject to fulfillement of the formation and publication requirements (prescribed) for the particular kind of company into which it has been concerted. However, a cooperative company may not convert into another kind of company, but any other (kind of) company may convert into a cooperative company.

Article 211 : The conversion of a company shall not entail the creation of a new legal entity; the company shall continue to retain any rights and liabilities it may have had prior to such conversion.

Article 212 : The conversion of a general partnership or a limited partnership shall not entail reliving general partners of their liability for the debts/ of/ the partnership, except with the consent of the creditors. Such consent shall be presumed if none of the creditors has objected to the conversion resolution within thirty days of the date on which each of them was notified thereof by a registered letter.

## CHAPTER II
## MERGER OF COMPANIES

Article 213 : A company, may even during the liquidation stage, merge with another company of the same or of a different kind. However, a cooperative company may not merge with a company of a different kind.

Article 214 : Mereger shall be effected by the combination of one or more companies into another existing company, or by the consolidation of two or more companies into a new company under formation. The merger agreement shall specify the terms of merger and shall specifically set out the manner of evaluating the net worth of the merged company, and the number of shares to be allotted to it in the capital of the absorbing company.

The merger shall be valid only if authorized by a resolution adopted by every one of the constituent companies in the manner prescribed for the alteration of its memorandum of association or bylaws.

The resolution shall be published in the manner prescribed for the publication of alterations in the memorandum of association or the bylaws of the merging company.

## الباب العاشر
## تحول الشركات واندماجها
## الفصل الأول
## تحول الشركة

مادة (٢١٠) يجوز تحول الشركة الى نوع آخر من الشركات بقرار يصدر وفقا للاوضاع المقررة لتعديل عقد الشركة أو نظامها و بشرط استيفاء شروط التأسيس والشهر المقررة للنوع الذى حولت اليه الشركة مع ذلك فلا يجوز للشركة التعاونية أن تتحول الى نوع آخر وانما يجوز للشركة الاخرى أن تتحول الى شركات تعاونية.

مادة (٢١١) لايترتب على تحول الشركة نشوء شخص اعتبارى جديد وتظل الشركة محتفظة بحقوقها والتزاماتها السابقة على التحول المذكور.

مادة (٢١٢) لايترتب على تحول شركة التضامن او شركة التوصية براء ذمة الشركاء المتضامنين من مسئوليتهم عن ديون الشركة الا اذا قبل ذلك الدائنون و يفترض هذا القبول اذا لم يعترض احد من الدائنين على قرار التحول خلال ثلاثين يوما من تاريخ اخطاره به بخطاب مسجل.

## الفصل الثاني
## اندماج الشركات

مادة (٢١٣) يجوز للشركة ولو كانت في دور التصفية ان تندمج في شركة اخرى من نوعها او من نوع آخر ولكن لايجوز للشركة التعاونية ان تندمج في شركة من نوع آخر.

مادة (٢١٤) يكون الاندماج بضم شركة او اكثر الى شركة اخرى قائمة او بمزج شركتين او اكثر في شركة جديدة تحت التأسيس ويحدد عقد الاندماج شروطه و يبين بصفة خاصة تقوم ذمة الشركة المندمجة وعدد الحصص او الأسهم التي تخصها في رأس مال الشركة الدامجة.

ولايكون الاندماج صحيحا الا اذا صدر قرار به من كل شركة طرف فيه وفقا للاوضاع المقررة لتبديل عقد الشركة او نظامها.

و يشهر هذا القرار بطرق الشهر المقررة لما يطرأ على عقد الشركة المندمجة او نظامها من تعديلات.

مادة (٢١٥) لاينفذ قرار الاندماج الا بعد انقضاء تسعين يوما من تاريخ شهره و يكون لدائنى الشركة المندمجة خلال الميعاد المذكور ان يعارضوا في الاندماج بخطاب مسجل الى الشركة. وفي هذه الحالة يظل الاندماج موقوفا الى ان يتنازل الدائن من معارضته او الى ان تقضى هيئة حسم منازعات الشركات للتجارة بناء على طلب الشركة بعدم صحة الاعتراض المذكور او الى ان تقدم الشركة ضمانا كافيا للوفاء بدين المعترض ان كان آجلا واذا لم يتقدم معارض خلال الميعاد المذكور اعتبر الاندماج نافذا.

Article 215 : The merger resolution shall take effect only after the lapse of ninety days from the date of its publication. The creditors of the merged company may, within the said period, object to the merger by registered letters addressed to the company, in which case the merger shall be suspended until the oreditors have waived their objection, or until the Commission for the Settlement of Commercial Companies' Disputes has ruled at the request of the company that the objection is unfounded, or until the company has offered sufficient security for the satisfaction of the debt of the objecting creditor if it is not then due and payable. If no objection is made within the said period, the merger shall be considered valid.

## PART XI
## LIQUIDATION OF COMPANIES

Article 216 : Promptly upon its dissolution, a company shall enter into the stage of liquidation, but it shall retain its legal entity to the extent required for winding up its affairs and until liquidation is completed.

Article 217 : The powers of the managers or the board of directors shall cease upon the dissolution of the company. However, these shall continue to manage the company and shall be deemed, as regards third parties, as liquidators until a liquidator has been appointed.

Article 218 : Liquidation shall be effected by one or more liquidators who may or may not be members of the company. The partners or the general meeting shall appoint or replace liquidators and shall determine their powers and remunerations.

If the decision to dissolve or invalidate the company is made by the Commission for the Settlement of Commercial Companies' Disputes, the latter shall appoint the liquidators and determine their powers and remunerations.

Article 219 : If two or more liquidators are appointed, they must act jointly, unless the authority that has appointed them permits them to act individually.

They shall be jointly responsible for damages sustained by the company, the members, and third parties as a result of their ultra vires acts, or of the errors committed by them in the performance of their duties.

Article 220 : With due regard to the limitations set forth in the instrument appointing the liquidators, the latter shall have full powers to realize the assets of the company, including the sale of movable and immovable property, whether by private treaty or at auction. However. liquidators may neither sell the company's property in one lot nor offer it as a contribution (in kind) in another company, unless so authorized by the party that has appointed them.

Nor may liquidators commence new operations unless such operations are necessary for the conclusion of old business.

Article 221 : Liquidators must publish the text of the resolution adopted for their appointment and the limitations placed upon their powers, in the manner prescribed for publication of alterations in the company's memorandum of association or bylaws.

Article 222 : Liquidators must pay off the debts of the company if these are due and payable, and set aside the necessary sums for the satisfaction of such debts as are payable in the future or contested.

## الباب الحادى عشر
## تصفية الشركات

مادة (٢١٦) تدخل الشركة بمجرد انقضائها في دور التصفية وتحتفظ بالشخصية الاعتبارية بالقدر اللازم للتصفية والغ ان تنتهى التصفية.

مادة (٢١٧) تنتهى سلطة المديرين او مجلس الادارة بانقضاء الشركة. ومع ذلك يظل هؤلاء قائمين على ادارة الشركة و يعتبرون بالنسبة للغير في حكم المصفين إلى ان يتم تعيين المصفى.

مادة (٢١٨) يقوم بالتصفية مصف واحد او اكثر من الشركاء او من غيرهم و يتولى الشركاء او الجمعية العامة تعيين المصفين أو استبدالهم وتحديد سلطاتهم ومكافآتهم.

واذا قررت هيئة حسم منازعات الشركات التجارية حل الشركة او بطلانها عينت المصفين وحددت سلطاتهم ومكافآتهم.

مادة (٢١٩) اذا تعدد المصفون وجب عليهم ان يعملوا مجتمعين مالم تصرح لهم الجهة التي عينتهم بالانفراد.

و يكونون مسئولين بالتضامن عن تعويض الضرر الذى يصيب الشركة والشركاء والغير نتيجة تجاوزهم حدود سلطاتهم أو نتيجة الأخطاء التي يرتكبونها في أداء أعمالهم.

مادة (٢٢٠) مع مراعاة القيود الواردة في وثيقة تعيين المصفين يكون لهؤلاء أوسع السلطات في تحويل موجودات الشركة الى نقود بما في ذلك بيع المنقولات والعقارات بالممارسة أو المزاد ولكن لايكون للمصفين أن يبيعوا أموال الشركة جلة أو أن يقدموها حصة في شركة أخرى الا إذا صرحت لهم بذلك الجهة التي عينتهم.

ولايجوز للمصفين أن يبدأوا أعمالا جديدة إلا أن تكون لازمة لاتمام أعمال سابقة.

مادة (٢٢١) على المصفين أن يشهروا القرار الصادر بتعيينهم والقيود المفروضة على سلطاتهم بطرق الشهر المقرر لتعديل عقد الشركة أو نظامها.

مادة (٢٢٢) على المصفين سداد ديون الشركة ان كانت حالة وتجنيب المبالغ اللازمة لسدادها إن كانت آجلة أو متنازعا عليها.

وتكون للديون الناشئة عن التصفية أولوية على الديون الأخرى.

وعلى المصفين بعد سداد الديون على الوجه السابق أن يردوا الى

Debts resulting from the liquidation shall have priority over other debts.

The liquidators must, after satisfaction of debts in the aforementioned manner, refund to the members the value of their shares in the capital and then distribute among them any surplus in accoedance with the terms of the company's memorandum of association. If the memorandum does not contain any provisions in this respect, the surplus shall be distributed among the members in proportion to their respective shares in the capital. If the net worth of the company's assets is insuffioient for repayment of the members shares the loss shall be divided among them in accordance with the rate prescribed for the division of losses.

الشركاء قيمة حصصهم في رأس المال وأن يوزعزا عليهم الفائض بعد ذلك وفقا لنصوص عقد الشركة فاذا لم يتضمن العقد نصوصاً في هذا الشأن وزع الفائض على الشركاء بنسبة حصصهم في رأس المال ، واذا لم يكف صافي موجودات الشركة للوفاء بحصص الشركاء وزعت الخسارة بينهم بحسب النسبة المقررة في توزيع الخسائر.

Article 223 : Within three months of taking office the liquidators shall, in conjunction with the company's auditor, if any make an inventory of all the company's assets and liabilities. The managers or directors (of the company) must thereupon submit to the liquidators the company's books, records, and documents, as well as such particulars and clarifications as the latter may require.

At the end of every financial year the liquidators shall prepare a balance sheet, a profit and loss statement, and a report on the liquidation operations. These documents shall be laid before the members or the general meeting for approval in accordance with the provisions of the company's memorandum of association or bylaws.

Upon completion of liquidation, the liquidators shall present a final account of their operations, but the liquidation shall be considered completed only after approval of the said account by the members or by the general meeting. The liquidators shall give notice of the completion of the liquidation in the manner prescribed in Article 221.

مادة (٢٢٣) يعد المصفون، خلال ثلاثة شهور من مباشرتهم أعمالهم وبالاشتراك مع مراقب حسابات الشركة إن وجد، جرداً بجميع مالالشركة من أصول وماعليها من خصوم وعلى المديرون أو أعضاء مجلس الادارة أن يقدموا الى المصفين في هذه المناسبة دفاتر الشركة وسجلاتها ووثائقها والايضاحات والبيانات التي يطلبونها.

وفي نهاية كل سنة مالية يعد المصفون ميزانية وحساب أرباح وخسائر وتقريراً عن أعمال التصفية وتعرض هذه الوثائق على الشركاء أو الجمعية العامة للموافقة عليها وفقا لنصوص عقد الشركة أو نظامها.

وعند انتهاء التصفية يقدم المؤسسون حسابا ختامياً عن أعمالهم ولا تنتهي التصفية الا بتصديق الشركاء أو الجمعية العامة على الحساب المذكور و يشهر المصفون انتهاء التصفية بالطرق المشار اليها في المادة ٢٢١.

Article 224 : The company shall be bound by all the acts performed by the liquidators within the scope of their powers, and liquidators shall not incur any (personal) liability by reason of the performance of such acts.

مادة (٢٢٤) تلتزم الشركة بأعمال المصفين الداخلة في حدود سلطاتهم ولا تترتب أية مسئولية في ذمة المصفين بسبب مباشرة الأعمال المذكورة.

Article 225 : The instrumentalities of the company shall retain their prerogatives, as prescribed in these Regulations or in the company's memorandum of association or bylaws, to the extent that such prerogatives do not conflict with those of the liquidators.

Every member shall retain the right established in his favor in these Regulations. or in the memorandum of association or the bylaws to have access to the company's records.

TRANSLATOR'S NOTE : The published text has "founders".

مادة (٢٢٥) تبقى لاجهزة الشركة اختصاصاتها المقررة لها في هذا النظام او في عقد الشركة او في نظامها بالقدر الذى لايتعارض مع اختصاصات المصفين.

و يبقى للشريك حق الاطلاع على وثائق الشركة المقرر له في هذا النظام أو في عقد الشركة أو في نظامها.

Article 226 : A suit against liquidators on account of acts of liquidation shall be barred after the lapse of three years from the date on which notice of completion of the liquidation is published in accordance with the provisions of Article 223. After the lapse of the said period, suit against the members on account of the operations of the company, or against the managers, directors, or auditors on account of (the performance of the) duties of their respective offices, shall be barred.

مادة (٢٢٦) لاتسمع الدعوى ضد المصفين بسبب اعمال التصفية بعد انقضاء ثلاث سنوات على شهر انتهاء التصفية وفقا لاحكام المادة ٢٢٣ ولاتسمع الدعوى بعد انقضاء المدة المذكورة ضد الشركاء بسبب اعمال الشركة او ضد المديرين او اعضاء مجلس الادارة او مراقبى الحسابات بسبب اعمال وظائفهم.

## الباب الثاني عشر
## الشركات الأجنبية

مادة (٢٢٧) مع عدم الاخلال باحكام نظام استثمار رؤوس الاموال الاجنبية او بالاتفاقات الخاصة المعقودة مع بعض الشركات تسرى على الشركات الاجنبية التي تزاول نشاطها في المملكة احكام هذا النظام فيما عدا الاحكام المتعلقة بتأسيس الشركات.

مادة (٢٢٨) لايجوز للشركات الاجنبية ان تنشىء فروعا او وكالات او مكاتب تمثلها او ان تصدر او تعرض اوراقا مالية للاكتتاب او البيع في المملكة الا بترخيص من وزير التجارة وتخضع هذه الفروع او الوكالات او المكاتب لاحكام الانظمة المعمول بها في المملكة فيما يتعلق بنوع النشاط الذى تزاوله.

واذا زاول الفرع او الوكالة او المكتب اعمالا قبل استيفاء الشروط المنصوص عليها في هذا النظام او في غيره من الانظمة كان الاشخاص الذين اجروا هذه الاعمال مسئولين عنها شخصيا وعلى وجه التضامن.

## الباب الثالث عشر
## العقـــــوبات

مادة (٢٢٩) مع عدم الاخلال بما تقتضيه احكام الشريعة الاسلامية يعاقب بالحبس مدة لاتقل عن ثلاثة شهور ولا تتجاوز سنة وبغرامة لاتقل عن خمسة الاف ريال سعودى ولا تتجاوز عشرين الف ريال سعودي او باحدى هاتين العقوبتين.

١ ــ كل من يثبت عمداً في عقد الشركة او نظامها او في نشرات الاكتتاب او في غير ذلك من وثائق الشركة او في طلب الترخيص بتأسيس الشركة بيانات كاذبة او مخالفة لاحكام هذا النظام وكل من وقع هذه الوثائق او وزعها مع علمه بذلك.

٢ ــ كل مؤسس او مدير او عضو مجلس ادارة وجه دعوة للاكتتاب العام في اسهم او سندات على خلاف احكام هذا النظام وكل من عرض هذه الاسهم او السندات للاكتتاب لحساب الشركة مع علمه بما وقع من مخالفة.

٣ ــ كل من بالغ بسوء قصد من الشركاء او من غيرهم في تقييم الحصص العينية او المزايا الخاصة.

٤ ــ كل من اسس شركة تعاونية على خلاف احكام هذا النظام وكل عضو مجلس ادارة او مراقب حسابات باشر عمله فيها مع علمه بما وقع من مخالفة.

٥ ــ كل مدير او عضو مجلس ادارة حصل او وزع على الشركاء او غيرهم ارباحا صورية.

## PART XII
## FOREIGN COMPANIES

Article 227 : Without prejudice to the provisions of the Regulations for the Investment of Foreign Capital or to the special agreements concluded with certain companies, foreign companies operating in the Kingdom shall be subject to the provisions of these Regulations, except for those relating to the incorporation of companies.

Article 228 : Foreign companies may not establish branches, agencies, or offices to represent them, nor may they issue securities or offer them for subscription or sale within the Kingdom except with permission from the Minister of Commerce. These branches, agencies, or offices shall be subject to the Regulations in force within the Kingdom applicable to the particular activity in which they engage.

If such branch, agency or office conducts business before fulfilling the requirements specified in these or other Regulations, the persons who have conducted such business shall be held personally and jointly responsible therefor.

## PART XIII
## PENALTIES

Article 229 : Without prejudice to the requirements of the provisions of the Islamic Shari'ah the following offenders shall be liable to imprisonment for a period of not less than three months and not more than one year and/or to a fine of not less than five thousand and not more than twenty thousand Saudi riyals:

1. Anyone who willfully inserts in the memorandum of association, bylaws, prospectus, or other documents of a company, or in the application for authorization to incorporate it, particulars which are false or contrary to the provisions of these Regulations; and anyone who knowingly signs or distributes such documents.
2. Any founder, manager, or director who invites public subscripation for shares of stock or bonds in contravention of the provisions of these Regulations; and anyone who offers such shares or bonds for subscription for the account of the company, if he is aware of the contravention committed.
3. Anyone, whether a partner or a nonpartner, who maliciously overestimates the value of contributions in kind or of the special privileges (granted to founders).
4. Anyone who forms a cooperative company in violation of the provisions of these Regulations, and any director or auditor who works therein if he is aware of the contravention committed.
5. Any manager or director who receives or distributes among the partners or third parties fictitious (unearned) profits.

6. Any manager, director, auditor, or liquidator who knowingly includes false information in the balance sheet or the profit and loss statement, or in the reports prepared by him for the partners or the general meeting; or who omits essential facts from such reports with the intention of concealing the financial position of the company from the partners or third parties.
7. Any Government official who divulges to other than the authorities conserned such company secrets as may have come to his knowledge by reason of his office.
8. "Any company official who fails to observe the mandatory rules issued under the regulations or decisions"
9. "Any company official who, without any justifiable cause, fails to comply with the instructions issued by the Ministry of Commerce regarding the obligations of such company or (its being, required) to show the Ministry's representatives such documents and records, or submit such statements and information, as may be required by the Ministry".

٦ ــ كل مدير او عضو مجلس ادارة او مراقب حسابات او مصف ذكر عمدا بيانات كاذبة في الميزانية او في حساب الارباح او الخسائر او فيما يعد من تقارير للشركاء او للجمعية العامة او اغفل تضمين هذه التقارير وقائع جوهرية بقصد اخفاء المركز المالى للشركه عن الشركاء او عن غيرهم.
٧ ــ كل موظف حكومى أفشى لغير الجهات المختصة اسرار الشركة التي أطلع عليها بحكم وظيفته.
٨ ــ كل مسئول في شركة لايراعى تطبيق القواعد الالزامية التي تصدر بها الانظمة أو القرارات.
٩ ــ (كل مسئول في شركة لايمتثل للتعليمات التي تصدرها وزارة التجارة بغير سبب معقول فيما يتعلق بالتزامات الشركة أو باطلاع مندوبي الوزارة على المستندات والسجلات أو بتقديم البيانات والمعلومات التي تحتاجها الوزارة).
١٠ ــ تستحصل الغرامات المقررة في الفقرتين السابقتين ٨ و٩ من مكافأة أعضاء مجلس ادارة الشركة وفقاً لنص المادة ٧٦ من هذا النظام. (١)

Article 230 : Without prejudice to the requirements of the provisions of the Islamic Shari'ah, the following offenders shall be liable to a fine of not less than one thousand and not more than five thousand Saudi riyalas:
1. Anyone who violates the provisions of Article 12.
2. Anyone who issues shares of stock or bonds, subscription receipts, or interim certificates, or offers them for circulation in violation of the provisions of these Regulations.
3. Any manager or director who fails to submit to the Department of Companies the documents prescribed in these Regulations.
4. Any manager or director who obstructs the work of the auditor.

Article 231 : In cases of repetition (of an offense), the penalties prescribed in the preceding two Articles shall be doubled.

مادة (٢٣٠) مع عدم الاخلال بما تقتضيه أحكام الشريعة الاسلامية يعاقب بغرامة لاتقل عن الف ريال سعودى ولا تزيد على خمسة آلاف ريال سعودي.
١ ــ كل من خالف أحكام المادة (١٢).
٢ ــ كل من يصدر اسهما أو سندات قرض أو ايصالات اكتتاب أو شهادات مؤقته أو يعرضها للتداول على خلاف أحكام هذا النظام.
٣ ــ كل مدير أو عضو مجلس ادارة أهمل في موافات مصلحة الشركات بالوثائق المنصوص عليها في هذا النظام.
٤ ــ كل مدير أو عضو مجلس ادارة عوق عمل مراقب الحسابات.

مادة (٢٣١) في حالة العود تضاعف العقوبة المنصوص عليها في المادتين السابقتين.

## PART XIV
## COMMISSION FOR THE SETTLEMENT OF COMMERCIAL COMPANIES DISPUTES

Article 232 : There shall be established pursuant to these Regulations a commission to be called the "Commission for the Settlement of Commercial Companies' Disputes". The Commission shall be composed of three specialist members, and shall be competent to settle disputes arising from the application of these Regulations and to impose the penalties prescribed herein.

This Commission shall be formed by a decision of the Council of Ministers on the basis of a recommedation by the Minister of Commerce. Its rules of procedure shall be determined by the Council (of Ministers) and it shall be provided with an adequate technical and administrative staff.

## PART XV
## FINAL PROVISIONS

Article 233 : "The Minister of Commerce shall issue decisions and rules necessary for the implementation of the provisions of these Regulations".

Article 234 : All provisions inconsistent with these Regulations are hereby abrogated.

## الباب الرابع عشر
## هيئة حسم منازعات الشركات التجارية

مادة (٢٣٢) تنشأ بمقتضى هذا النظام هيئة تسمى (هيئة حسم منازعات الشركات التجارية) وتتكون من ثلاثة أعضاء من المتخصصين وتختص الهيئة المذكورة بحسم المنازعات المتفرعة عن تطبيق هذا النظام وتوقيع العقوبات المنصوص عليها فيه.

و يصدر قرار من مجلس الوزراء بتشكيل هذه الهيئة بناء على اقتراح وزير التجارة كما يحدد المجلس الاجراءات الخاصة بها وتزود الهيئة بالعدد الكافي من الموظفين الفنيين والاداريين.

## الباب الخامس عشر
## أحكام ختامية

(يصدر وزير التجارة القرارات واللوائح اللازمة لتنفيذ أحكام هذا النظام).

مادة (٢٣٣) تلغى جميع الأحكام التي تتعارض مع أحكام هذا النظام.

## (COUNCIL OF MINISTERS') DECISION NO. 185, DATED
17 RABI' I 1385 (15 July 1965)

The Council of Ministers,

After reviewing the file attached hereto, concerning the draft Regulations for Companies; and

After reviewing the minutes of the committee composed of HE the Minister of Petroleum and Mineral Resources, HE the Minister of Education, HE the Miniter of Agriculture and Water, and HE Minister of Commerce and Industry, (and set up) for the purpose of studying the draft Regulations for Companies, on the basis of the decision made by the Council at its session held on Saturday, 12 Rabi' I 1385 (10 July 1965);

Decides (as follows) :

1. The draft Regulations for Companies, in the form attached hereto, are hereby approved.
2. A draft Royal Decree, of which a copy is attached hereto, has been prepared (in this regard).

In witness whereof

President of the Council of Ministers

## قرار رقم ١٨٥ وتاريخ ٨٥/٣/١٧

ان مجلس الوزراء :

بعد اطلاعه على المعاملة المرافقة لهذا المتعلقة بمشروع نظام الشركات.

وبعد اطلاعه على محضر اللجنة المكونة من كل من معالى وزير البترول والثروة المعدنية ومعالي وزير المعارف ومعالي وزير الزراعة والمياه ومعالى وزير التجارة والصناعة لدراسة مشروع نظام الشركات ، وذلك بناء على ماقرره المجلس في جلسته المنعقدة يوم السبت ١٣٨٥/٣/١٢هـ.

( يقـــرر )

١ ــ الموافقة على مشروع نظام الشركات بالصيغة المرافقة لهذا

٢ ــ وقد نظم مشروع مرسوم ملكى صورته مرافقة لهذا

ولما ذكر حـــرر.

رئيس مجلس الوزراء

## Royal Decree

Royal Decree No. M/5
Dated 12/3/1387

With the help of Allah the Almighty
In the name of His Majesty the King, We Khalid Ibn Abdul Aziz Al-Saud Viceroy of the Kingdom of Saudi Arabia.
Having reviewed the Royal Order No. 5 - 5/1/33 dated 27/1/87 H, the Article No. 20 of the Cabinet's Rules issued by the Royal Decree No 38 of 22/1/1377 H, the Regulations for Companies issued by the Royal Decree No. M/6 of 22/3/85 H. and the Council of Ministers' Resolution No. 218 of 8/2/87 H,

We have decreed the following Firstly - The hereunder paragraphs are to be subjoined to Article no 229 of the Regulations for Companies issued by the Royal Decree no M/6 of 22/3/1385 H.

8. Each company which does not comply with the obligatory rules issued in accordance with regulations or decisions.

9. Each company which does not unjutifiably, abide by the instructions of the Ministry of Commerce and Industry with regard to the company's obligations.

10. Fines, under above 8 and 9 Shall be Collected from the compensation of the board of directors in accordance with article 76 of these regulations.

Secondly : This decree Shall be enforced by Deputy Premier and Minister of Commerce and Industry

## مرسوم ملكي كـــريم

مرسوم ملكي الرقم م/٥
التاريخ ١٣٨٧/٢/١٢هـ
بعون الله تعالى ــ باسم جلالة الملك نحن خالد بن عبد العزيز آل سعود نائب ملك المملكة العربية السعودية.
بعد الاطلاع على الامر الملكي رقم ٥ــ٣٣/١/٥ تاريخ ٨٧/١/٢٧ وبعد الاطلاع على المادة ٢٠ من نظام مجلس الوزراء الصادر بالمرسوم الملكي رقم ٣٨ وتاريخ ٢٢ شوال عام ١٣٧٧
وبعد الاطلاع على نظام الشركات الصادر بالمرسوم الملكي رقم م/٦ وتاريخ ٨٥/٣/٢٢هـ وبعد الاطلاع على قرار مجلس الوزراء رقم ٢١٨ وتاريخ ٨٧/٢/٨ رسمنا بما هو آت.
أولا ــ تضاف الى اخر المادة (٢٢٩) من نظام الشركات الصادر بالمرسوم الملكي رقم م/٦ وتاريخ ١٣٨٥/٣/٢٢هـ.
الفقرات الآتية :
٨ ــ كل شركة لا تراعى تطبيق القواعد الالزامية التي تصدر بها الانظمة او القرارات
٩ ــ كل شركة لاتمتثل للتعليمات التي تصدرها وزارة التجارة والصناعة بغير سبب معقول فيما يتعلق بالتزامات الشركه او باطلاع مندوبي الوزارة على المستندات والسجلات او بتقديم البيانات والمعلومات التي تحتاجها الوزاره.
١٠ ــ تستحصل الغرامات المقررة في الفقرتين السابقتين ٨/٩ من مكافأة اعضاء مجلس ادارة الشركة وفقا لنص المادة ٧٦ من هذا النظام.
ثانيا ــ على نائب رئيس مجلس الوزراء ووزير التجارة والصناعة تنفيذ مرسومنا هذا.

التوقيع
خالـــد

Royal Decree No. M/23
28 Jumada II 1402 (22 April 1982)
Amending the Regulations for Companies

Umm al-Qura No. 2918
28 Rajab 1402 (21 May 1982)

With the help of God Almighty :
We, Khalid ibn 'Abd Al-Aziz Al saud, King of Saudi Arabia;
After reviewing Articles 19 and 20 of the Regulations of the Council of Ministers issued under Royal Decree No. 38, dated 22 Shawwal 1377 (11 May 1958); and

After reviewing the Regulations for Companies issued under Royal Decree No. M/6, dated 22 Rabi' I 1385 (20 July 1965), and amended by Royal Decree No. M/5, dated 12 Safar 1387 (21 May 1967); and

After reviewing the Council of Ministers Decision No. 17, dated 20 Muharram 1402 (16 November 1981),

Have decreed as follows :

First : The following amendments shall be made to the Regulations for Companies issued under Royal Decree No. M/6, dated 22 Rabi' I 1385 (20 July 1965), and amended by Royal Decree No. M/5, dated 12 Safar 1387 (21 May 1967):

1. The term "General Administration for Companies" shall replace the term "Department of Companies" wherever the latter term occurs in the Regulations.

2. Article 2 under Part I, "General Provisions", shall be amended to read as follows:

(a) The provisions of these Regultions, as well as such (contractual) conditions laid down by the partners and such customary rules as are not inconsistent with these Regulations, shall apply to the following companies:
1) General partnerships (Societes en nom collectif);
2) Limited partnerships (Societes en Commandite Simple);
3) Joint adventures;
4) Corporations;
5) Partnerships limited by shares (Societes en Commandite par Actions);
6) Limited liability partnerships (Societes a Responsabilite Limitee);
7) Companies with variable capital; and
8) Cooperative companies.
Without prejudice to such companies as are known in Islamic jurisprudence, any company that does not assume one of the above-mentioned forms shall be (considered) null and void, and the persons who have made, contracts in its name shall be personally and jointly liable for the obligations arising from such contracts. The Council of Ministers may by decision amend the minimum and maximum limits of the capital of companies provided for in the Regulations.

ام القرى رقم ٢٩١٨
٢٨ رجب ١٤٠٢ الموافق ٢١ مايو ١٩٨٢

الرقم ــ م/٢٣ ــ التاريخ ١٤٠٢/٦/٢٨هـ
بعون الله تعالى

نحن خالد بن عبد العزيز آل سعود
ملك المملكة العربية السعودية

بعد الاطلاع على المادة التاسعة عشرة والمادة العشرين من نظام مجلس الوزراء الصادر بالمرسوم الملكي رقم (٣٨) وتاريخ ٢٢ شوال عام ١٣٧٧هـ.

وبعد الاطلاع على نظام الشركات الصادر بالمرسوم الملكي رقم (م/٦) وتاريخ ١٣٨٥/٣/٢٢هـ والمعدل بالمرسوم الملكي رقم (م/٥) وتاريخ ١٣٨٧/٢/١٢هـ.

وبعد الاطلاع على قرار مجلس الوزراء رقم ١٧ وتاريخ ١٤٠٢/١/٢٠هـ.

رسمنا بما هو آت

أولا : ادخال التعديلات الاتية على نظام الشركات الصادر بالمرسوم الملكي رقم م/٦ وتاريخ ١٣٨٥/٣/٢٢هـ والمعدل بالمرسوم الملكي رقم م/٥ وتاريخ ١٣٨٧/٢/١٢هـ.

١ ــ تحل عبارة (الادارة العامة للشركات) محل عبارة (مصلحة الشركات) حيثما وردت في النظام وتعدل كلمة (تقيم أو تقييمها) أينما وردت في النظام الى كلمة (تقوم أو تقويمها).

٢ ــ تعدل المادة الثانية الواردة في باب الاحكام العامة الى النص التالي :ــ

أ ــ تسري أحكام هذا النظام ومالا يتعارض معها من شروط الشركاء وقواعد العرف على الشركات الاتية:ــ
١ ــ شركة التضامن
٢ ــ شركة التوصية البسيطة
٣ ــ شركة المحاصة
٤ ــ شركة المساهمة
٥ ــ شركة التوصية بالاسهم
٦ ــ الشركة ذات المسئولية المحدودة
٧ ــ الشركات ذات رأس المال القابل للتغير
٨ ــ الشركة التعاونية.

ومع عدم المساس بالشركات المعروفة في الفقه الاسلامي تكون باطلة كل شركة لاتتخذ أحد الاشكال المذكورة ويكون الاشخاص الذين تعاقدوا باسمها مسئولين شخصيا وبالتضامن عن الالتزامات الناشئة عن هذا التعاقد.

ويجوز لمجلس الوزراء بقرار منه ان يعدل الحدود الدنيا والقصوى لرأسمال الشركات المنصوص عليها في هذا النظام.

(b) The provisions of these Regulations shall not apply to companies incorporated in whole or in part by the Government or by any other public juristic person, provided that a Royal Decree shall be issued authorizing its incorporation and containing the provisions which the company shall be subject to.

(c) The second paragraph of Article 51 shall be cancelled.

3. The text of the last paragraph of Article 9 shall be amended to read as follows:
"If a partner's contribution is limited to his services and the memorandum of association fails to specify his share in the profits or losses, such partner may request that his services be appraised, and such appraisal shall be the basis for determining his share in the profits or losses in accordance with the above general rules. If there are more than one partner rendering services and their individual shares are not appraised, these shares shall be considered equal unless proven otherwise. But if a partner has furnished, in addition to his services, a contribution in cash or in kind, he shall have a share in the profits or losses for his service contribution and another share for his contribution in cash or in kind".

4. Article 49 shall be amended to read as follows:
"The capital of a corporation that offers its stock for public subscription shall not be less than ten million Saudi riyals. In all other cases, the capital of a corporation shall not be less than two million Saudi riyals.
The paid-in capital upon the incorporation of the company shall not be less than one half of the prescribed minimum, with due regard to the provision of Article 58. The (par) value of each share shall not be less than fifty Saudi riyals".

5. The first paragraph of Article 52 shall be amended to read as follows:
"The following corporations may be incorporated only by virtue of an authorization issued in a royal decree based on the approval of the Council of Ministers and the recommendation of the Minister of Commerce, with due regard to the provisions of the Regulations:
(a) Concessionary companies.
(b) Companies managing a public utility.
(c) Companies receiving subsidy from the Government.
(d) Companies in which the Government or any other public juristic person participates.
(e) Companies engaged in banking activities.
Other corporations may be incorporated only by authorization to be issued by the Minister of Commerce and published in the Official Gazette. The Minister of Commerce shall issue said authorization only after he has reviewed a study proving the economic feasibility of the company's objectives, unless the company has submitted such study to another competent government agency that has authorized the establishment of the enterprise".

ب ــ ولا تسري أحكام هذا النظام على الشركات التي تؤسسها أو تشترك في تأسيسها الدولة أو غيرها من الاشخاص الاعتبارية العامة بشرط ان يصدر بترخيصها مرسوم ملكي يتضمن الاحكام التي تخضع لها الشركة.

جـ ــ تلغى الفقرة الثانية من المادة (٥١).

٣ ــ تعدل عبارة الفقرة الاخيرة من المادة ٩ الى النص التالي:ــ

واذا كانت حصة الشريك قاصرة على عمله ولم يعين في عقد الشركة نصيبه في الربح او في الخسارة كان له أن يطلب تقويم عمله ويكون هذا التقويم أساسا لتحديد حصته في الربح أو في الخسارة وفقا للضوابط المتقدمة. واذا تعدد الشركاء بالعمل دون تقويم حصة كل منهم اعتبرت هذه الحصص متساوية مالم يثبت العكس. واذا قدم الشريك فضلا على عمله حصة نقدية أو عينية كان له نصيب في الربح أو في الخسارة عن حصته بالعمل ونصيب آخر عن حصته النقدية أو العينية.

٤ ــ تعدل المادة ٤٩ الى النص التالي :ــ

لايقل رأس مال شركة المساهمة التي تطرح أسهمها للاكتتاب العام عن عشرة ملايين ريال سعودي وفيما عدا هذه الحالة لايقل رأس مال الشركة عن مليوني ريال سعودي.

ولايقل المدفوع من رأس المال عند تأسيس الشركة عن نصف الحد الادنى مع مراعاة ماتقضي به المادة ٥٨ ولا تقل قيمة السهم عن خمسين ريالا سعوديا.

٥ ــ تعدل الفقرة الاولى من المادة ٥٢ الى النص التالى :ــ

لايجوز تأسيس الشركات المساهمة الاتية الا بترخيص يصدر به مرسوم ملكي بناء على موافقة مجلس الوزراء وعرض وزير التجارة على أن يراعى ماتقضي به الانظمة.

أ ــ ذات الامتياز.

ب ــ التي تدير مرفقا عاما.

جـ ــ التي تقدم لها الدولة اعانة.

د ــ التي تشترك فيها الدولة أو غيرها من الاشخاص الاعتبارية العامة.

هـ ــ التي تزاول الاعمال المصرفية.

أما غير ذلك من الشركات المساهمة فلا يجوز تأسيسها الا بترخيص يصدره وزير التجارة ينشر في الجريدة الرسمية. ولايصدر وزير التجارة الترخيص المذكور الا بعد الاطلاع على دراسة تثبت الجدوى الاقتصادية لاغراض الشركة مالم تكن الشركة قد قدمت مثل هذه الدراسة لجهة حكومية أخرى مختصة رخصت باقامة المشروع.

6. Article 54 shall be amended to read as follows:
"If the founders do not limit subscription for all stock to themselves they must, within thirty days of the date of publication in the Official Gazette of the Royal Decree or the Minister of Commerce's decision authorizing the incorporation of the company, offer for public subscription the shares of stock for which they did not subscribe. The Minister of Commerce may, if necessary, authorize the extension of such period by not more than ninety days".

7. The following statement shall be added at the end of Article 59: "With due regard to what the Minister of Commerce may decide in each case in respect of minor subscribers"

8. The following statement shall be added at the end of paragraph 2 of Article 66:
"The Council of Ministers may determine the number of boards of directors on which a director may serve"

9. The term "not less than two hundred" contained in Article 68 shall be amended to read: "whose value shall not be less than ten thousand riyals"

10. Article 79 shall be amended to read as follows:
"With due regard to the provisions of the company's bylaws the board of directors shall appoint from among its members a chairman and a managing director. A single director may hold the offices of chairman and managing director.
The company's bylaws shall specify the duties and powers of the chairman and of the managing director as well as the special emoluments to be received by each of them in addition to the remuneration prescribed for board members. In the absence of any orovisions in this respect in the company's bylaws, the board of directors shall divide the duties and powers among them and specify their special emoluments.
The board of directors shall also appoint a secretary from among its members or others, and shall determine his duties and powers and fix his remuneration, if the company's bylaws do not contain any provisions in this respect.
The term of office of the chairman, the managing director, and the secretary who is a director shall not exceed the term of their erspective directorships.
The managing director and the secretary who is a board director may always be re-appointed, unless the company's bylaws provide otherwise. However, the chairman's term of office shall be limited to one session.
The board may, at all times, remove all or any of them, without prejudice to their right to damages if the removal is made without acceptable justification or at an improper time".

11. A third paragraph reading as follows shall be added at the end of Article 83:

٦ ــ تعدل المادة ٥٤ الى النص التالي :ــ
اذا لم يقصر المؤسسون على انفسهم الاكتتاب بجميع الاسهم كان عليهم ان يطرحوا للاكتتاب العام الاسهم التي لم يكتتبوا بها وذلك خلال ثلاثين يوما من تاريخ نشر المرسوم الملكي أو قرار وزير التجارة المرخص بتأسيس الشركة في الجريدة الرسمية ولوزير التجارة أن يأذن عند الضرورة بعد هذا الميعاد فترة لا تتجاوز تسعين يوما.

٧ ــ تضاف العبارة التالية لنهاية المادة ٥٩ (مع مراعاة مايقرره وزير التجارة في كل حالة بالنسبة لصغار المكتتبين).

٨ ــ يضاف لنهاية الفقرة ٢ من المادة ٦٦ مايلي:ــ
ويجوز لمجلس الوزراء أن يحدد عدد مجالس الادارة التي يجوز للعضو أن يعين بها.

٩ ــ تعدل عبارة (لايقل عن مائتين) الواردة في المادة ٦٨ الى عبارة (لا تقل قيمتها عن عشرة آلاف ريال).

١٠ ــ تعدل المادة ٧٩ الى النص التالي:ــ
مع مراعاة نصوص نظام الشركة ، يعين مجلس الادارة من بين اعضائه رئيسا وعضوا منتدبا ويجوز أن يجمع عضو واحد بين مركز رئيس المجلس ومركز العضو المنتدب.
و يبين نظام الشركة اختصاصات رئيس المجلس والعضو المنتدب والمكافأة الخاصة التي يحصل عليها كل منهما بالاضافة الى المكافأة المقررة لاعضاء المجلس واذا خلا نظام الشركة من أحكام في هذا الشأن تولى مجلس الادارة توزيع الاختصاصات وتحديد المكافأة الخاصة.
و يعين مجلس الادارة سكرتيرا يختاره من بين أعضائه أو من غيرهم ويحدد اختصاصاته ومكافأته اذا لم يتضمن نظام الشركة أحكاما في هذا الخصوص.
ولا تزيد مدة رئيس المجلس والعضو المنتدب والسكرتير عضو مجلس الادارة عن مدة عضوية كل منهم في المجلس.
ويجوز دائما اعادة تعيين العضو المنتدب والسكرتير عضو مجلس الادارة مالم ينص نظام الشركة على غير ذلك أما رئيس المجلس فتقتصر فترة رئاسته للمجلس على دورة واحدة.
وللمجلس في كل وقت أن يعزل لهم جميعهم أو بعضهم دون اخلال بحقهم في التعويض اذا وقع العزل لغير مبرر مقبول او في وقت غير لائق.

١١ ــ يضاف الى نهاية المادة ٨٣ فقرة ثالثة تنص على مايلي:ــ

"The Ministry of Commerce may delegate one or more representatives to attend the general meetings as observers".

12. The following statement shall be added to the last paragraph of Article 87 after the expression "a number of stockholders representing at least 2% of the capital":
"Or pursuant to a decision by the Minister of Commerce".

13. Article 88 shall be amended to read as follows:
"Notices of general meetings shall be published in the Official Gazette and in a daily newspaper distributed in the locality of the head office of the company, at least twenty-five days prior to the date set for the meeting. Nevertheless, if all the stock of the company is registered (Nomunative), a notice sent by registered mail at least twenty-five days before the date of the meeting shall suffice. The notice shall contain an agenda (of the meeting). A copy of both the notice and the agenda shall be sent to the General Administration for Companies at the Ministry of Commerce within the period specified for publication".

14. Article 89 shall be amended to read as follows:
"The board of directors shall, at least sixty days prior to the date set for thr holding of the annual general meeting, prepare for every financial year of the company a balance sheet, a profit and loss statement, and a report on the company's operations and financial position and on the method which it proposes for the distribution of net profits. The said documents shall be signed by the chairman of the board of directors, and copies thereof shall be placed at the disposal of stockholders at the head office of the company at least twenty-five days prior to the date set for such general meeting. The chairman of the board of directors must publish, in a newspaper distributed in the locality of the head office of the company, the balance sheet, the profit and loss statement, a comprehensive summary of the board of directors' report, and the full text of the auditor's report, and must send a copy of each of these documents to the General.
Administration for Companies at least twenty-five days prior to the date set for the general meeting"

15. Article 97 shall be amended to read as follows:
"Without prejudice to the rights of any bona fide third party, all resolutions adopted by stockholders' meetings contrary to the provisions of these Regulations or of the company's bylaws shall be considered null and void. The general Administration for Companies and any stockholder who has recorded his objection to the resolution in the minutes of the meeting, or who was absent from the meeting for acceptable reason, may request to invalidate a resolution. A resolution adjudged invalid shall be considered nonexistent as far as all stockholders are concerned.

(ويجوز لوزارة التجارة أن توفد مندوبا او أكثر لحضور الجمعيات العامة كمراقبين).

١٢ ــ يضاف الى الفقرة الاخيرة من المادة ٨٧ بعد عبارة (عدد من المساهمين يمثل ٢٪ من رأس المال على الاقل) العبارة الاتية:ــ
(أو بناء على قرار من وزير التجارة).

١٣ ــ تعدل المادة ٨٨ الى النص التالي :ــ
تنشر الدعوة لانعقاد الجمعية العامة في الجريدة الرسمية وصحيفة يومية توزع في المركز الرئيسي للشركة قبل الميعاد المحدد للانعقاد بخمسة وعشرين يوما على الاقل.
ومع ذلك يجوز اذا كانت جميع الاسهم اسمية الاكتفاء بتوجيه الدعوة في الميعاد المذكور بخطابات مسجلة وتشتمل الدعوة على جدول الاعمال وترسل صورة من الدعوة وجدول الاعمال الى الادارة العامة للشركات بوزارة التجارة خلال المدة المحددة للنشر.

١٤ ــ تعدل المادة ٨٩ الى النص الاتي:ــ
يعد مجلس الادارة عن كل سنة مالية ميزانية للشركة وحساب الارباح والخسائر وتقريرا عن نشاط الشركة ومركزها المالي والطريقة التي يقترحها لتوزيع الارباح الصافية وذلك قبل انعقاد الجمعية العامة العادية السنوية بستين يوما على الاقل. و يوقع رئيس مجلس الادارة الوثائق المشار اليها وتودع نسخ منها في المركز الرئيسي للشركة تحت تصرف المساهمين قبل الموعد المحدد لانعقاد الجمعية العامة بخمسة وعشرين يوما على الاقل. وعلى رئيس مجلس الادارة أن ينشر في صحيفة توزع في المركز الرئيسي للشركة الميزانية وحساب الارباح والخسائر وخلاصة وافية من تقرير مجلس الادارة والنص الكامل لتقرير مراقب الحسابات وأن يرسل صورة من هذه الوثائق الى الادارة العامة للشركات قبل تاريخ انعقاد الجمعية العامة بخمسة وعشرين يوما على الاقل.

١٥ ــ تعدل المادة ٩٧ الى النص التالي :ــ
مع عدم الاخلال بحقوق الغير الحسن النية يقع باطلا كل قرار يصدر من جمعيات المساهمين بالمخالفة لاحكام هذا النظام أو لاحكام نظام الشركة وللادارة العامة للشركات ولكل مساهم اعترض في محضر الاجتماع على القرار أو تغيب عن حضور الاجتماع بسبب

Nevertheless an action in invalidation (of a resolution) shall be barred after the lapse of one year from the date of such resolution".

مقبول أن يطلب إبطلان و يترتب على القضاء بالبطلان اعتبار القرار كأن لم يكن بالنسبة لجميع المساهمين ولا تسمع دعوى البطلان بعد انقضاء سنة من تاريخ القرار المذكور.

16. The period specified in Article 123 shall be amended to read "at least fifty-five days instead of at least twenty-five days".

١٦ ــ تعدل المدة الواردة فب المادة ١٢٣ بحيث تكون خمسة وخمسين يوما على الاقل بدلا من خمسة وعشرين يوما على الاقل.

17. The first paragraph of Article 136 shall be amended to read as follows:
"Stockholders shall have a pre-emptive right to subscribe for new cash shares, unless the company's bylaws provide for their waiver of this right or for its restriction. The Council of Ministers, on the recommendation of the Minister of Commerce, after agreement with the Minister of Finance and National Economy, may cancel or restrict the pre-emptive right in respect of the following companies:

(a) Concessionary companies
(b) Companies that manage a public utility.
(c) Companies that receive subsidy from the Government
(d) Companies in which the Governemnt participates.
(e) Companies that are engaged in banking activities.
The provision of this paragraph shall apply to companies even though they may have been established before its effective date.
This article shall not apply to petroleum and mineral companies which operate under special agreements issued Royal Decrees"

١٧ ــ تعدل الفقرة الاولى من المادة ١٣٦ لتكون بالصيغة الاتية:ــ
يكون للمساهمين أولوية الاكتتاب بالاسهم الجديدة النقدية مالم يتضمن نظام الشركة تنازلهم عن هذا الحق أو تقييده ويجوز لمجلس الوزراء بناء على اقتراح من وزير التجارة بعد الاتفاق مع وزير المالية والاقتصاد الوطني الغاء حق الاولوية او تقييده بالنسبة للشركات الاتية:ــ

أ ــ ذات الامتياز.
ب ــ التي تدير مرفقا عاما.
جـ ــ التي تقدم لها الدولة اعانة.
د ــ التي تشترك فيها الدولة.
هـ ــ التي تزاول الاعمال المصرفية.
و يسرى حكم هذه الفقرة على الشركات ولو كانت مؤسسة قبيل نفاذها.
ولا تسري هذه المادة على شركات البترول والمعادن التي تعمل بموجب اتفاقيات خاصة صدرت بمراسيم ملكية.

8. The text of the first paragraph of Article 150 shall be amended to read as follows:
"The capital of a partnership limited by shares shall not be less than one million Saudi riyals, and the paid-in capital upon the formation of the partnership shall not be less than one half of the minimum capital"

١٨ ــ تعدل صيغة الفقرة الاولى من المادة ١٥٠ الى النص التالي:ــ
لايقل رأس مال شركة التوصية بالاسهم عن مليون ريال سعودي ولايقل المدفوع منه عند تأسيس الشركة عن نصف الحد الادنى.

9. The first paragraph of Article 158 shall be amended to read as follows:
"The capital of a limited liability partnership shall not be less than five hundred thousand Saudi riyals. The capital shall be divided into shares of equal value, which may not be represented by negotiable warrants"

١٩ ــ تعدل الفقرة الاولى من المادة ١٥٨ لتكون كما يلي :ــ
لايقل رأس مال الشركة ذات المسئولية المحدودة عن خمسمائة الف ريال سعودي و يقسم رأس المال الى حصص متساوية القيمة ولايجوز أن تكون هذه الحصص ممثلة في صكوك قابلة للتداول.

20. The expression "If they are named in the company's memorandum of association" shall be added at the end of item 3 in Article 161, and the new text shall read as follows:
"The names of the managers, whether they are partners or nonpartners, if they are named in the company's memorandum of association".

٢٠ ــ تضاف عبارة (اذا سموا في عقد الشركة) الى نهاية البيان رقم (٣) من المادة ١٦١ بحيث يقرأ كما يلي :
أسماء المديرين سواء كانوا من الشركاء أو من غيرهم اذا سموا في عقد الشركة.

٢١ ــ تعدل المادة ١٦٤ الى النص التالي :ــ

على مديري الشركة خلال ثلاثين يوما من تأسيسها أن يطلبوا على نفقة الشركة نشر ملخص من عقدها في الجريدة الرسمية ويجب أن يشتمل الملخص المذكور على نصوص العقد المتعلقة بالبيانات المشار اليها في المادة ١٦١ وعلى المديرين كذلك أن يطلبوا في نفس الميعاد المذكور قيد الشركة في سجل الشركات بالادارة العامة للشركات وعليهم أيضا أن يقيدوا الشركة في السجل التجاري وفقا لاحكام نظام السجل التجاري وتسري الاحكام المذكورة على كل تعديل يطرأ على عقد الشركة.

٢٢ ــ تعدل مدة (الشهور الثلاثة) المنصوص عليها في المادة ١٧٤ الى مدة (الشهور السته).

٢٣ ــ أ ــ تعدل عبارة (خلال شهرين) الواردة في الفقرة الاولى من المادة ١٧٥ الى عبارة (خلال اربعة أشهر) ب ــ تعدل عبارة (خلال خمسة عشر يوما) الواردة في الفقرة الثانية من المادة ١٧٥ الى عبارة (خلال شهرين).

٢٤ ــ أ ــ تعدل الفقرة ٨ من المادة ٢٢٩ الى النص الآتى :ــ

كل مسئول في شركة لايراعى تطبيق القواعد الالزامية التي تصدر بها الانظمة أو القرارات.

ب ــ تعدل الفقرة ٩ من المادة ٢٢٩ الى النص الاتي :ــ

(كل مسئول في شركة لايمتثل للتعليمات التي تصدرها وزارة التجارة بغير سبب معقول فيما يتعلق بالتزامات الشركة أو باطلاع مندوبي الوزارة على المستندات والسجلات او بتقديم البيانات والمعلومات التي تحتاجها الوزارة).

٢٥ ــ تضاف مادة رقم ٢٣٣ الى النظام و يكون نصها كما يلي :ــ

(يصدر وزير التجارة القرارات واللوائح اللازمة لتنفيذ أحكام هذا النظام).

و يعدل رقم المادة ٢٣٣ الاصلية الى رقم ٢٣٤.

ثانيا : تسري هذه التعديلات على الشركات القائمة ولو كانت مؤسسة قبل نفاذها عدا الاحكام الواردة في البنود رقم ٤ــ١٨ــ١٩ من أولا في هذه التعديلات.

ثالثا : على نائب رئيس مجلس الوزراء والوزراء كل فيما يخصه تنفيذ مرسومنا هذا.

رابعا : ينشر هذا المرسوم في الجريدة الرسمية و يعمل به اعتبارا من تاريخ نشره.

21. Article 164 shall be amended to read as follows:
"The managers of the partnership must, within thirty days of the formation of the partnership, apply for the publication of an abstract of its memorandum of association in the Official Gazette at the partnership's expense. Said abstract must contain the provisions of the memorandum related to the items referred to in Article 161. Additionally, the mangers must, within the same period, file an application for the registration of the partnership in the Companies Register at the General Administration for Companies. They must also register the partnership in the Commercial Register in accordance with the provisions of the Regulations for the Commercial Register. Said provisions shall apply to any alteration made in the memorandum of association"

22. The period "three months" provided for in Article 174 shall be changed to "six months".

23. (a) The term "within two months" stated in the first paragraph of Article 175 shall be changed to "within four months"-
(b) The term "within fifteen days" stated in the second paragraph of Article 175 shall be changed to "within two months".

24. (a) Paragraph 8 of Article 229 shall be amended to read as follows:
"Any company official who fails to observe the mandatory rules issued under the regulations or decisions"
(b) Paragraph 9 of Article 229 shall be amended to read as follows:
"Any company official who, without any justifiable cause, fails to comply with the instructions issued by the Ministry of Commerce regarding the obligations of such company or (its being required) to show the Ministry's representatives such documents and records, or submit such statements and information, as may be required by the Ministry".

25. An Article numbered 233 shall be added to the Regulations, and it shall read as follows:
"The Minister of Commerce shall issue decisions and rules necessary for the implementation of the provisions of these Regulations".
The original Article 233 shall be re-numbered as Article 234.
Second : These amendments shall apply to the existing companies, even though they may have been established before the effective date of said amendments, with the exception of the provisions contained in items 4, 18 and 19 under First of these amendments.
Third : The Vice-President of the Council of Ministers and the Ministers shall, each within his jurisdiction, put this Decree of ours into effect.
Fourth : This Decree shall be published in the Official Gazette and shall be effective as of the date of its publication.

Khalid

## Decision No. 17
## 20 Muharram 1402 (16 November 1981)

The Council of Ministers;
After reviewing the attached file received from the Bureau of the Presidency of the Council of Ministers under cover of letter No. 4699, dated 3 Rabi' I 1397 (21 February 1977) in respect of a request by HE the Minister of Commerce contained in his letter No. 3090, dated 5 Safar 1397 (24 January 1977), for amending certain Articles of the Regulations for Companies and adding new Articles thereto; and

After reviewing the minutes of the Ministerial Committee formed by Decision No. 373, dated 4 Rabi II 1398 (13 March 1978), of the Council of Ministers; and

After reviewing the Regulations for Companies sanctioned by Royal Decree No. M/6, dated 22 Rabi' I 1385 (20 July 1965), and amended by Royal Decree No. M/5, dated 12 Safar 1387 (21 May 1967); and

After reviewing the special paragraph contained in the Council of Ministers Decision No. 753, dated 11 Jumada II 1397 (29 May 1977), on facilitating the notarization of the memoranda of association of companies; and

After reviewing minutes No. 112, dated 21 Ramadan 1402 (sic) (12 July 1982), prepared by the Experts Section,

Decides as follows:

First : The following amendments shall be made to the Regulations for Companies issued under Royal Decree No. M/6, dated 22 Rabi' I 1385 (20 July 1965), and amended by Royal Decree No. M/5, dated 12 Safar 1387 (21 May 1967):

1. The term "General Administration for Companies" shall replace the term "Department of Companies" wherever the latter term occurs in the Regulations.

2. Article 2 under Part I, "General Provisions", shall be amended to read as follows:

"(a) The provisions of these Regulations, as well as such (contractual) conditions laid down by the partneres and such customary rules as are not inconsistent with these Regulations, shall apply to the following companies:
1) General paetnerships (Societes en nom collectif);
2) Limited partnerships (Societes en Commandite Simple);
3) Joint adventures;
4) Corporations;
5) Partnerships limited by shares (Societes en Commandite par Actions),
6) Limited liability partnerships (Societes a Responsabilite Limitee);
7) Companies with variable capital; and
8) Cooperative Companies.

## قرار رقم ١٧ وتاريخ ١٤٠٢/١/٢٠هـ

ان مجلس الـــــوزراء

بعد الاطلاع على المعاملة المرافقة الواردة من ديوان رئاسة مجلس الوزراء برقم ٤٦٩٩ وتاريخ ١٣٩٧/٣/٣هـ . بشأن مارفعه معالي وزير التجارة بخطابه رقم ٣٠٩٠ وتاريخ ١٣٩٧/٢/٥هـ. والمتعلقة بطلب ادخال تعديلات على بعض مواد نظام الشركات واضافة مواد جديدة لهذا النظام.

وبعد الاطلاع على محضر اللجنة الوزارية المشكلة بقرار مجلس الوزراء رقم ٣٧٣ وتاريخ ١٣٩٨/٤/٤هـ.

وبعد الاطلاع على نظام الشركات الصادر بالمرسوم الملكي رقم م/٦ وتاريخ ١٣٨٥/٣/٢٢هـ والمعدل بالمرسوم الملكي رقم م/٥ وتاريخ ١٣٨٧/٣/١٢هـ.

وبعد الاطلاع على الفقرة الخاصة من قرار مجلس الوزراء رقم ٧٥٣ وتاريخ ١٣٩٧/٦/١١هـ الخاص بتسهيل اثبات عقود الشركات.

وبعد الاطلاع على المحضر المتخذ في شعبة الخبراء برقم ١١٢ وتاريخ ١٤٠٢/٩/٢١هـ.

يقـــــــرر مايلي :

أولا : ادخال التعديلات الاتية على نظام الشركات الصادر بالمرسوم الملكي رقم م/٦ وتاريخ ١٣٨٥/٣/٢٢هـ والمعدل بالمرسوم الملكي رقم م/٥ وتاريخ ١٣٨٧/٣/١٢هـ.

١ ــ تحل عبارة (الادارة العامة للشركات) محل عبارة (مصلحة الشركات) حيثما وردت في النظام وتعدل كلمة (تقيم أو تقييمها) أينما وردت في النظام الى كلمة (تقوم أو تقومها).

٢ ــ تعدل المادة الثانية الواردة في باب الاحكام العامة الى النص التالي :ــ

أ ــ تسري أحكام هذا النظام ومالايتعارض معها من شروط الشركاء وقواعد العرف على الشركات الاتية :ــ

١ ــ شركة التضامن.
٢ ــ شركة التوصيه البسيطة
٣ ــ شركة المحاصه
٤ ــ شركة المساهمة.
٥ ــ شركة التوصية بالاسهم.
٦ ــ الشركة ذات المسئولية المحدودة.
٧ ــ الشركة ذات رأس المال القابل للتغيير.
٨ ــ الشركة التعاونية.

ومع عدم المساس بالشركات المعروفة في الفقه الاسلامي تكون باطلة كل شركة لا تتخذ أحد الاشكال المذكورة و يكون الاشخاص الذين تعاقدوا باسمها مسئولين شخصيا و بالتضامن عن الالتزامات الناشئة عن هذا التعاقد.

ويجوز لمجلس الوزراء بقرار منه أن يعدل الحدود الدنيا والقصوى لرأسمال الشركات المنصوص عليها في هذا النظام.

ب ــ وتسري أحكام هذا النظام على الشركات التي تؤسسها أو تشترك في تأسيسها الدولة أو غيرها من الاشخاص الاعتبارية العامة بشرط أن يصدر بترخيصها مرسوم ملكي يتضمن الاحكام التي تخضع لها الشركة.

جـ ــ تلغى الفقرة الثانية من المادة (٥١).

٣ ــ تعدل عبارة الفقرة الاخيرة من المادة ٩ الى النص التالي :ــ

واذا كانت حصة الشريك قاصره على عمله ولم يعين في عقد الشركة نصيبه في الربح أو في الخسارة كان له أن يطلب تقويم عمله و يكون هذا التقويم أساسا لتحديد حصته في الربح أو في الخسارة وفقا للضوابط المتقدمة. واذا تعدد الشركاء بالعمل دون تقويم حصة كل منهم اعتبرت هذه الحصص متساوية مالم يثبت العكس. واذا قدم الشريك فضلا على عمله حصة نقدية أو عينية كان له نصيب في الربح أو في الخسارة عن حصته بالعمل ونصيب آخر عن حصته النقدية أو العينية.

٤ ــ تعدل المادة ٤٩ الى النص التالي :ــ

لايقل رأس مال شركة المساهمة التي تطرح أسهمها للاكتتاب العام عن عشرة ملايين ريال سعودي وفيما عدا هذه الحالة لايقل رأس مال الشركة عن مليوني ريال سعودي.

ولايقل المدفوع من رأس المال عند تأسيس الشركة عن نصف الحد الادنى مع مراعاة ماتقضى به المادة ٥٨ ولا تقل قيمة السهم عن خمسين ريالا سعوديا.

٥ ــ تعدل الفقرة الاولى من المادة ٥٢ الى النص التالي :ــ

لايجوز تأسيس الشركات المساهمة الاتية الا بترخيص يصدر به مرسوم ملكي بناء على موافقة مجلس الوزراء وعرض وزير التجارة على أن يراعى ماتقضى به الانظمة.

Without prejudice to such companies as are known in Islamic jurisprudence, any company that does not assume one of the above-mentioned forms shall be (considered) null and void, and the persons who have made contracts in its name shall be personally and jointly liable for the obligations arising from such contracts.

The Council of Ministers may by decision amend the minimum and maximum limits of the capital of companies provided for in the Regulations.

(b) The provisions of these Regulations shall not apply to companies incorporated in whole or in part by the Government or by any other public juristic person, provided that a Royal Decree shall be issued authorizing its incorporation and containing the provisions which the company shall be subject to.

(c) The second paragraph of Article 51 shall be cancelled.

3. The text of the last paragraph of Article 9 shall be amended to read as follows:
"If a partner's contribution is limited to his services and the memorandum of association fails to specify his share in the profits or losses, such partner may request that his services be appraised, and such appraisal shall be the basis for determining his share in the profits or losses in accordance with the above general rules. If there are more than one partner rendering services and their individual shares are not appraised, these shares shall be considered equal unless proven otherwise. But if a partner has furnished, in addition to his services, a contribution in cash or in kind, he shall have a share in the profits or losses for his service contribution and another share for his contribution in cash or in kind".

4. Article 49 shall be amended to read as follows:
"The capital of a corporation that offers its stock for public subscription shall not be less than ten million Saudi riyals. In all other cases, the capital of a corporation shall not be less than two million Saudi riyals.

The paid-in capital upon the incorporation of the company shall not be less than one half of the prescribed minimum, with due regard to the provision of Article 58. The (par) value of each share shall not be less than fifty Saudi riyals".

5. The first paragraph of Article 52 shall be amended to read as follows:
"The following corporations may be incorporated only by virtue of an authorization issued in a royal decree based on the approval of the Council of Ministers and the recommendation of the Minister of Commerce, with due regard to the provisions of the Regulations:

(a) Concessionary companies
(b) Companies managing a public utility.
(c) Companies receiving subsidy from the Government.
(d) Companies in which the Government or any other public juristic person participates.
(e) Companies engaged in banking activities.
Other corporations may be incorporated only by authorization to be issued by the Minister of Commerce and published in the Official Gazette. The Minister of Commerce shall issue said authorization only after he has reviewed a study proving the economic feasibility of the company's objectives, unless the company has submitted such study to another competent government agency that has authorized the establishment of the enterprise".

Article 54 shall be amended to read as follows:
"If the founders do not limit subscription for all stock to themselves they must, wthin thirty days of the date of publication in the Official Gazette of the Royal Decree or the Minister of Commerce's decision outhorizing the incorporation of the company, offer for public subscription the shares of stock for which they did not subscribe. The Minister of Commerce may, if necessary, authorize the extension of such period by not more than ninety days."

The following statement shall be added at the end of Article 59; "With due regard to what the Minister of Commerce may decide in each case in respect of minor subscribers"

The following statement shall be added at the end of paragraph 2 of Article 66:
"The Council of Ministers may determine the number of boards of directors on which a director may serve".

The term "not less than two hundred" contained in Article 68 shall be amended to read: "whose value shall not be less than ten thousand riyals"

Article 79 shall be amended to read as follows:
"With due regard to the provisions of the company's bylaws, the board of directors shall appoint from among its members a chairman and a managing director. A single director may hold the offices of chairman and managing director.
The company's bylaws shall specify the duties and powers of the chairman and of the managing director as well as the special emoluments to be received by each of them in addition to the remuneration prescribed for board members. In the absence of any provisions in this respect in the company's bylaws, the board of directors shall divide the duties and powers among them and specify their special emoluments.

أ ــ ذات الامتيـاز.
ب ــ التي تدير مرفقا عاما.
جـ ــ التي تقدم لها الدولة اعانة.
د ــ التي تشترك فيها الدولة أو غيرها من الاشخاص الاعتبارية العامة.
هـ ــ التي تزاول الاعمال المصرفية.

أما غير ذلك من الشركات المساهمة فلايجوز تأسيسها الابترخيص يصدره وزير التجارة ينشر في الجريدة الرسمية. ولايصدر وزير التجارة الترخيص المذكور الا بعد الاطلاع على دراسة تثبت الجدوى الاقتصادية لاغراض الشركة مالم تكن الشركة قد قدمت مثل هذه الدراسة لجهة حكومية أخرى مختصة رخصت باقامة المشروع.

٦ ــ تعدل المادة ٥٤ الى النص التالي :ــ
اذا لم يقصر المؤسسون على أنفسهم الاكتتاب بجميع الاسهم كان عليهم أن يطرحوا للاكتتاب العام الاسهم التي لم يكتتبوا بها وذلك خلال ثلاثين يوما من تاريخ نشر المرسوم الملكي أو قرار وزير التجارة المرخص بتأسيس الشركة في الجريدة الرسمية ولوزير التجارة أن يأذن عند الضرورة بعد هذا الميعاد فترة لا تتجاوز تسعين يوما.

٧ ــ تضاف العبارة التالية لنهاية المادة ٥٩ (مع مراعاة مايقرره وزير التجارة في كل حالة بالنسبة لصغار المكتتبين).

٨ ــ يضاف لنهاية الفقرة ٢ من المادة ٦٦ مايلي :ــ
ويجوز لمجلس الوزراء أن يحدد عدد مجالس الادارة التي يجوز للعضو أن يعين بها.

٩ ــ تعدل عبارة (لايقل عن مائتين) الواردة في المادة ٦٨ الى عبارة (لا تقل قيمتها عن عشرة آلاف ريال).

١٠ ــ تعدل المادة ٧٩ الى النص التالي :ــ
مع مراعاة نصوص نظام الشركة ، يعين مجلس الادارة من بين اعضائه رئيسا وعضوا منتدبا ويجوز أن يجمع عضو واحد بين مركز رئيس المجلس ومركز العضو المنتدب.
و يبين نظام الشركة اختصاصات رئيس المجلس والعضو المنتدب والمكافأة الخاصة التي يحصل عليها كل منهما بالاضافة الى المكافأة المقررة لاعضاء المجلس واذا خلا نظام الشركة من أحكام في هذا الشأن تولى مجلس الادارة توزيع الاختصاصات وتحديد المكافأة الخاصة.

The board of directors shall also appoint a secretary from among its members or others, and shall determine his duties and powers and fix his remuneration, if the company's bylaws do not contain any provisions in this respect.

The term of office of the chairman, the managing director, and the secretary who is a director shall not exceed the term of their respective directorships.

The managing director and the secretary who is a board director may always be re-appointed, unless the company's bylaws provide otherwise. However, the chairman's term of office shall be limited to one session.

The board may, at all times, remove all or any of them, without prejudice to their right to damages if the removal is made without acceptable justification or at an improper time".

و يعين مجلس الادارة سكرتيرا يختاره من بين أعضائه أو من غيرهم ويحدد اختصاصاته ومكافأته اذا لم يتضمن نظام الشركة أحكاما في هذا الخصوص.

ولا تزيد مدة رئيس المجلس والعضو المنتدب والسكرتير عضو مجلس الادارة عن مدة عضوية كل منهم في المجلس.

ويجوز دائما اعادة تعيين العضو المنتدب والسكرتير عضو مجلس الادارة مالم ينص نظام الشركة على غير ذلك أما رئيس المجلس فتقتصر فترة رئاسته للمجلس على دورة واحدة.

وللمجلس في كل وقت أن يعزلهم جميعهم أو بعضهم دون اخلال بحقهم في التعويض اذا وقع العزل لغير مبرر مقبول أو في وقت غير لائق.

11. A third paragraph reading as follows shall be added at the end of Article 83:
"The Ministry of Commerce may delegate one or more representatives to attend the general meetings as observers"

١١ ــ يضاف الى نهاية المادة ٨٣ فقرة ثالثة تنص على مايلي :ــ
(ويجوز لوزارة التجارة ان توفد مندوبا او اكثر لحضور الجمعيات العامة كمراقبين).

12. The following statement shall be added to the last paragraph of Article 87 after the expression "a number of stockholders representing at least 2% of the capital".
"Or pursuant to a decision by the Minister of Commerce".

١٢ ــ يضاف الى الفقرة الاخيرة من المادة ٨٧ بعد عبارة (عدد من المساهمين يمثل ٢٪ من رأس المال على الاقل) العبارة الاتية:ــ
(أو بناء على قرار من وزير التجارة)

13. Article 88 shall be amended to read as follows:
"Notices of general meetings shall be published in the Official Gazette and in a daily newspaper distributed in the locality of the head office of the company, at least twenty-five days prior to the date set for the meeting. invalidation (of a resolution) shall be barred after the lapse of one year from the date of such resolution".

١٣ ــ تعدل المادة ٨٨ الى النص التالي :ــ
تنشر الدعوة لانعقاد الجمعية العامة في الجريدة الرسمية وصحيفة يومية توزع في المركز الرئيسي للشركة قبل الميعاد المحدد للانعقاد بخمسة وعشرين يوما على الاقل.

16. The period specified in Article 123 shall be amended to read "at least fifty-five days instead of "at least twenty-five days".

١٦ ــ تعدل المدة الواردة في المادة ١٢٣ بحيث تكون خمسة وخمسين يوما على الاقل بدلا من خمسة وعشرين يوما على الاقل.

17. The first paragraph of Article 136 shall be amended to read as follows:

"Stockholders shall have a pre-emptive right to subscribe for new cash shares, unless the company's bylaws provide for their waiver of this right or for its restriction. The Council of Ministers, on the recommendation of the Minister of Commerce, after agreement with the Minister of Finance and National Economy, may cancel or restrict the pre-emptive right in rspect of the following companies:

١٧ ــ تعدل الفقرة الاولى من المادة ١٣٦ لتكون بالصيغة الاتية:ــ
يكون للمساهمين أولوية الاكتتاب بالاسهم الجديدة النقدية مالم يتضمن نظام الشركة تنازلهم عن هذا الحق أو تقييده ويجوز لمجلس الوزراء بناء على اقتراح من وزير التجارة بعد الاتفاق مع وزير المالية والاقتصاد الوطني الغاء حق الاولوية او تقييده بالنسبة للشركات الاتية:ــ

(a) Concessionary companies
(b) Companies that manage a public utility.
(c) Companies that receive subsidy from the Government
(d) Companies in which the Governemnt participates.
(e) Companies that are engaged in banking activities.
The provision of this paragraph shall apply to companies even though they may have been established before its effective date.
This article shall not apply to petroleum and mineral companies which operate under special agreements issued by Royal Decrees"

18. The text of the first paragraph of Article 150 shall be amended to read as follows:

"The capital of a partnership limited by shares shall not be less than one million Saudi riyals, and the paid-in capital upon the formation of the partnership shall not be less than one half of the minimum capital"

19. The first paragraph of Article 158 shall be amended to read as follows:
"The capital of a limited liability partnership shall not be less than five hundred thousand Saudi riyals. The capital shall be divided into shares of equal value, which may not be represented by negotiable warrants"

20. The expression "if they are named in the company's memorandum of association" shall be added at the end of item 3 in Article 161, and the new text shall read as follows:
"The names of the managers, whether they are partners or nonpartners, if they are named in the company's memorandum of association"

21. Article 164 shall be amended to read as follows:
"The managers of the partnership must, within thirty days of the formation of the partnership, apply for the publication of an abstract of its memorandum of association in the Official Gazette at the partnership's expense. Said abstract must contain the provisions of the memorandum related to the items referred to in Article 161. Additionally, the managers must, within the same period, file an application for the registration of the partnership in the Companies Register at the General Administration for Companies. They must also register the partnership in the Commercial Register in accordance with the provisions of the
Regulations for the Commercial
Register. Said provisions shall apply to any alteration made in the memorandum of association"

22. The period "three months" provided for in Article 174 shall be changed to "six months".

أ ــ ذات الامتياز.
ب ــ التي تدير مرفقا عاما.
جـ ــ التي تقدم لها الدولة اعانة.
د ــ التي تشترك فيها الدولة.
هـ ــ التي تزاول الاعمال المصرفية.
ويسري حكم هذه الفقرة على الشركات ولو كانت مؤسسة قبيل نفاذها.
ولا تسري هذه المادة على شركات البترول والمعادن التي تعمل بموجب اتفاقيات خاصة صدرت بمراسيم ملكية.

١٨ ــ تعدل صيغة الفقرة الاولى من المادة ١٥٠ الى النص التالي :ــ
ولايقل رأس مال شركة التوصية بالاسهم عن مليون ريال سعودي ولايقل المدفوع منه عند تأسيس الشركة عن نصف الحد الادنى.

١٩ ــ تعدل الفقرة الاولى من المادة ١٥٨ لتكون كما يلي :ــ
لايقل رأس مال الشركة ذات المسئولية المحدودة عن خمسمائة الف ريال سعودي ويقسم رأس المال الى حصص متساوية القيمة ولايجوز ان تكون هذه الحصص ممثلة في صكوك قابلة للتداول.

٢٠ ــ تضاف عبارة (اذا سموا في عقد الشركة) الى نهاية البيان رقم (٣) من المادة ١٦١ بحيث يقرأ كما يلي :ــ
أسماء المديرين سواء كانوا من الشركاء او من غيرهم اذا سموا في عقد الشركة.

٢١ ــ تعدل المادة ١٦٤ الى النص التالي :ــ
على مديري الشركة خلال ثلاثين يوما من تأسيسها أن يطلبوا على نفقة الشركة نشر ملخص من عقدها في الجريدة الرسمية ويجب أن يشتمل الملخص المذكور على نصوص العقد المتعلقة بالبيانات المشار اليها في المادة ١٦١ وعلى المديرين كذلك أن يطلبوا في نفس الميعاد المذكور قيد الشركة في سجل الشركات بالادارة العامة للشركات وعليهم أيضا أن يقيدوا الشركة في السجل التجاري وفقا لاحكام نظام السجل التجاري وتسري الاحكام المذكورة على كل تعديل يطرأ على عقد الشركة.

٢٢ ــ تعدل مدة (الشهور الثلاثة) المنصوص عليها في المادة ١٧٤ الى مدة (الشهور الستة).

23. (a) The term "within two months" stated in the first paragraph of Article 175 shall be changed to "within four months"
(b) The term "within fifteen days" stated in the second paragraph of Article 175 shall be changed to "within two months".

24. (a) Paragraph 8 of Article 229 shall be amended to read as follows:
"Any company official who fails to observe the mandatory rules issued under the regulations or decisions"
(b) Paragraph 9 of Article 229 shall be amended to read as follows:
"Any company official who, without any justifiable cause, fails to comply with the instructions issued by the Ministry of Commerce regarding the obligations of such company or (its being required) to show the Ministry's representatives such documents and records, or submit such statements and information, as may be required by the Ministry".

25. An Article numbered 233 shall be added to the Regulations, and it shall read as follows:
"The Minister of Commerce shall issue decisions and rules necessary for the implementation of the provisions of these Regulations".
The original Article 233 shall be re-numbered as Article 234.

Second : These amendments shall apply to the existing companies, even though they may have been established before the effective date of said amendments, with the exception of the provisions contained in items 4, 18 and 19 under First of these amendments.

Third : A draft Royal Decree has been prepared in the form attached hereto.

Fourth : In the application of the Regulations for Companies, interpretation of said Regulations shall be made in accordance with the following rules:

1. If the partner's contribution is limited to his services, and he becomes afflicted with a disease or disability that permanently prevents him from performing the work agreed upon, the company shall be considered as dissolved as far as he is concerned.

2. If the partner's contribution is technical work, such work must be non-manual.

3. The general partner in any company must be a natural person.

4. (a) Professionals who meet the prescribed conditions for practising the profession may, after obtaining the licenses necessary for their practice, form professional general partnerships in accordance with the provisions of the Regulations for Companies.

٢٣ ــ أ ــ تعدل عبارة (خلال شهرين) الواردة في الفقرة الاولى من المادة ١٧٥ الى عبارة (خلال أربعة أشهر) ب ــ تعدل عبارة (خلال خمسة عشر يوما) الواردة في الفقرة الثانية من المادة ١٧٥ الى عبارة (خلال شهرين).

٢٤ ــ أ ــ تعدل الفقرة ٨ من المادة ٢٢٩ الى النص الاتي :ــ
كل مسئول في شركة لايراعى تطبيق القواعد الالزامية التي تصدر بها الانظمة أو القرارات.
ب ــ تعدل الفقرة ٩ من المادة ٢٢٩ الى النص الاتي :ــ
(كل مسئول في شركة لايمتثل للتعليمات التي تصدرها وزارة التجارة بغير سبب معقول فيما يتعلق بالتزامات الشركة او باطلاع مندوبي الوزارة على المستندات والسجلات أو بتقديم البيانات والمعلومات التي تحتاجها الوزارة).

٢٥ ــ تضاف مادة رقم ٢٣٣ الى النظام و يكون نصها كما يلي :ــ
(يصدر وزير التجارة القرارات واللوائح اللازمة لتنفيذ أحكام هذا النظام).
و يعدل رقم المادة ٢٣٣ الاصلية الى رقم ٢٣٤.

ثانيا : تسري هذه التعديلات على الشركات القائمة ولو كانت مؤسسة قبل نفاذها عدا الاحكام الواردة في البنود رقم ٤ــ١٨ــ١٩ من أولا في هذه التعديلات.
ثالثا : نظم مشروع مرسوم ملكي بذلك صورته مرافقة لهذا.
رابعا : يراعى في تطبيق نظام الشركات تفسيره وفقا للقواعد الاتية:ــ

١ ــ اذا كانت حصة الشريك في الشركة قاصرة على عمله وأصيب بمرض او عاهة تمنعه من أداء العمل المتفق عليه بصورة دائمة فتعتبر الشركة منحلة بالنسبة اليه.
٢ ــ اذا كانت حصة الشريك عملا فنيا فيجب أن يكون هذا العمل غير يدوي.
٣ ــ يجب أن يكون الشريك المتضامن في أية شركة شخصا طبيعيا.
٤ ــ أ ــ للمهنيين الذين تتوافر لديهم الشروط المقررة لمزاولة المهنة بعد حصول كل منهم على الترخيص اللازم لمزاولتها أن يكونوا شركات تضامن مهنية وفقا لاحكام نظام الشركات.

(b) Professional partnerships need not be registered in the Commercial Register. The Ministry of Commerce shall prepare a special Register to be called Register for Professional Companies for registering this kind of partnerships. Such Register shall be used in lieu of the Commercial Register provided for in the Regulations for Companies.

(c) The Ministry of Commerce shall study the status of professional companies and submit recommendations on their organization to the Council of Ministers.

5. No one person may simultaneously serve on more than two boards of directors of corporations. This restriction shall not apply to the government, or public juristic perrsons, or corporations or persons appointed by the Government. With regard to those who, at the time this Decision becomes effective serve as members of more than two boards,they shall continue to serve as directors, provided that they shall not be Re-appointed in a manner inconsistent with this provision.

6. A committee shall be formed of representatives from both the Ministry of Finance and National Economy and the Ministry of Commerce to study all aspects of the subject of offering securties issued by foreign companies for subscription or sale in the Kingdom. Until such time as the above study is completed, authorization for offering securities by foreign companies for subscription or sail in the Kingdom shall be made by the Minister of Commerce, after agreement with the Minister of Finance and National Economy.

Fifth : The fifth paragraph of the Council of Ministers Decision No. 753, dated 11 Muharram 1397 (1 January 1977), shall be amended to read as follows:

"Both the Minister of Justice and the Minister of Commerce shall make the proper arrangement for facilitating the notarization of the memoranda of association of companies, including the appointment of registrars to work at the Ministry of Commerce and its branches on a permanent basis"

Sixth : A committee shall be formed of the following: Minister of Higher Education, Minister of Finance and National Economy, Minister of Petroleum and Mineral Resources, Minister of Commerce and President of the Grievance Board, to study the provisions governing the bonds issued by companies.

Seventh : A committee shall be formed at the Experts Section consisting of representatives from the Ministry of Interior, Ministry of Finance and National Economy, Ministry of Commerce, Ministry of Petroleum and Mineral Resources and other agencies concerned, to study the status of foreign companies operating in the Kingdom.

Vice-President of the
Council of Ministers

ب ـ لايلزم قيد الشركات المهنية في السجل التجاري وعلى وزارة التجارة اعداد سجل خاص يسمى سجل الشركات المهنية لقيد هذا النوع من الشركات ويقوم هذا السجل مقام السجل التجاري ـ المنصوص عليه في نظام الشركات.

جـ ـ على وزارة التجارة دراسة وضع الشركات المهنية واقتراح التنظيم اللازم لها ورفعه الى مجلس الوزراء.

٥ ـ لايجوز تعيين الشخص الواحد في اكثر من مجلسين من مجالس ادارات الشركات المساهمة في وقت واحد. ولايسري هذا القيد على الدولة والاشخاص الاعتبارية العامة وشركات المساهمة والاشخاص الذين تعينهم الحكومة. وبالنسبة للذين يشغلون وقت العمل بهذا القرار أكثر من مجلسين يستمرون في عضويتهم على أن لايعاد تعيينهم بما يخالف هذا النص.

٦ ـ تشكل لجنة من وزارة المالية والاقتصاد الوطني ووزارة التجارة لدراسة موضوع طرح الاوراق المالية التي تصدرها الشركات الاجنبية للاكتتاب او البيع في المملكة من جميع جوانبه وحتى الانتهاء من هذه الدراسة يكون الترخيص بطرح الاوراق المالية من قبل الشركات الاجنبية للاكتتاب او البيع في المملكة لوزير التجارة بعد الاتفاق مع وزير المالية والاقتصاد الوطني.

خامسا ـ تعدل الفقرة الخامسة من قرار مجلس الوزراء رقم ٧٥٣ وتاريخ ١٣٩٧/١/١١هـ الى النص التالي:ـ

على وزير العدل ووزير التجارة وضع الترتيب الملائم الذي يسهل اثبات عقود الشركات بما في ذلك تعيين كتاب عدل يعملون لدى وزارة التجارة وفروعها بصفة دائمة.

سادسا ـ تشكل لجنة من كل من :ـ

وزير التعليم العالي ووزير المالية والاقتصاد الوطني ووزير البترول والثروة المعدنية ووزير التجارة ورئيس ديوان المظالم.

وذلك لدراسة احكام السندات التي تصدرها الشركات.

سابعا ـ تشكل لجنة في شعبة الخبراء يشترك فيها ممثلون عن وزارة الداخلية ووزارة المالية والاقتصاد الوطني ووزارة التجارة ووزارة البترول والثروة المعدنية وغيرها من الجهات ذات العلاقة لدراسة وضع الشركات الاجنبية العاملة في المملكة.

ولما ذكر حـــر ،،،

**نائب رئيس مجلس الوزراء**

هيئة السوق المالية
Capital Market Authority

# Capital Market Law

# Capital Market Authority

## Kingdom of Saudi Arabia

# Capital Market Law

هيئة السوق المالية
Capital Market Authority

Capital Market Law

Chapter One

Definitions

*Article One*

Unless the context otherwise indicates, the following words and phrases, wherever they appear in this Law, shall have the meaning herein specified:

- **Kingdom:** the Kingdom of Saudi Arabia.
- **The Authority:** the Capital Market Authority.
- **The Board:** the Board of the Capital Market Authority.
- **The Chairman:** the Chairman of the Board of the Capital Market Authority.
- **Person:** any natural or legal person that is recognized as such under the laws of the Kingdom.
- **The Exchange:** the Saudi Stock Exchange.
- **Trading:** buying and selling of securities.
- **Issuer:** a person who is issuing or intending to issue securities.
- **Affiliate:** a person who controls another person or is controlled by that other person, or who is jointly being controlled with that person by a third person.
- **Control:** the direct or indirect ability or power to exercise effective influence over the actions and decisions of another person.
- **Underwriter:** a person who buys securities from the issuer or an affiliate of the issuer for the purpose of offering, placing and marketing such securities to the public, or a person who sells securities on behalf of the issuer or an affiliate of the issuer for the purpose of making a public offering and placement of such securities.
- **Relatives:** husband, wife and minor children.
- **Placement or offering of securities:** issuing securities, inviting the public to subscribe therefor or the direct or indirect marketing thereof; or any statement, announcement or communication that has the effect of selling, issuing or offering securities, but does not include preliminary negotiations or contracts entered into with or among underwriters.
- **Investment Adviser:** an adviser who provides, offers or agrees to provide, advice to others in their capacity as investors or potential investors, in relation to purchasing, selling, subscribing or underwriting a security, or exercising any right conferred by a security to acquire, dispose of, underwrite or convert a security.
- **The Center:** the Securities Depositary Center.
- **The Committee:** the Committee for the Resolution of Securities Disputes.
- **The Implementing Regulations:** the rules, instructions and procedures issued by the Authority for the implementation of the provisions of this Law.

- **Internal Regulations:** the regulations issued by the Authority in relation to the Authority's administrative and financial affairs and its personnel and staff affairs.

*Article Two*

Subject to the provisions of Article three hereof, for the purposes of this Law, the term "Securities" shall mean:

a. convertible and tradeable shares of companies;

b. Tradeable debt instruments issued by companies, the government, public institutions or public organisations;

c. investment units issued by investment funds;

d. any instruments representing profit participation rights, any rights in the distribution of assets; or either or the foregoing;

e. any other rights or instruments which the Board determines should be included or treated as Securities if the Board believes that this would further the safety of the market or the protection of investors. The Board can exercise its power to exempt from the definition of Securities rights or instruments that otherwise would be treated as Securities under paragraphs (a, b, c, d) of this Article if it believes that it is not necessary to treat them as Securities, based on the requirements of the safety of the market and the protection of investors.

*Article Three*

Commercial bills such as cheques, bills of exchange, order notes, documentary credits, money transfers, instruments exclusively traded among banks, and insurance policies shall not be considered Securities.

## Chapter Two
## The Capital Market Authority

***Article Four***

a. An Authority to be named "The Capital Market Authority" is hereby established in the Kingdom and shall directly report to the President of the Council of Ministers. It shall have a legal personality and financial and administrative autonomy. It shall be vested with all authorities as may be necessary to discharge its responsibilities and functions under this Law. The Authority shall enjoy exemptions and facilities enjoyed by public organisations. Its personnel shall be subject to the Labour Law.

b. The Authority shall not have the right to engage in any commercial activities, to have a special interest in any project intended for profit, to borrow or lend any funds, or to acquire, own or issue any Securities.

***Article Five***

a. The Authority shall be the agency responsible for issuing regulations, rules and instructions, and for applying the provisions of this Law.

   To achieve these objectives, the Authority shall:

   1. Regulate and develop the Exchange, seek to develop and improve methods of systems and entities trading in Securities, and develop the procedures that would reduce the risks related to Securities transactions.

   2. Regulate the issuance of Securities and monitor Securities and dealing in Securities.

   3. Regulate and monitor the works and activities of parties subject to the control and supervision of the Authority.

   4. Protect citizens and investors in Securities from unfair and unsound practices or practices involving fraud, deceit, cheating or manipulation.

   5. Seek to achieve fairness, efficiency and transparency in Securities transactions.

   6. Regulate and monitor the full disclosure of information regarding Securities and their issuers, the dealings of informed persons and major shareholders and investors, and define and make available information which the participants in the market should provide and disclose to shareholders and the public.

   7. Regulate proxy and purchase requests and public offers of shares.

b. The Authority may publish a draft of regulations and rules before issuing or amending them. The regulations, rules and instructions issued by the Authority shall be effective in the manner prescribed under their provisions.

c. For the purpose of conducting all investigations which, in the opinion of the Board, are necessary for the enforcement of the provisions of this Law and other regulations and rules issued pursuant to this Law, the members of the Authority and its employees designated by the Board are empowered to subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Authority deems relevant or material to its investigation.

The Authority shall have the power to carry out inspections of the records or any other materials, whoever the holder may be, to determine whether the person concerned has violated, or is about to violate any provision of this Law, the Implementing Regulations or the rules issued by the Authority.

*Article Six*

a. The Authority shall have the power to carry out its functions under this Law as well as the regulations, rules and instructions issued pursuant thereto including, but not limited the power to:

1. Set forth policies and plans, conduct studies and issue necessary rules to achieve the Authority's objectives.

2. Issue and amend the Implementing Regulations as may be necessary to enforce the provisions of this Law.

3. Approve the offering of Securities.

4. Give advice and make recommendations to government authorities in respect of matters that would contribute to the development of the Exchange and the protection of investors in Securities.

5. Suspend the Exchange's activities for a period of not more than one day; and in cases where the Authority or the Minister of Finance deems it necessary to suspend the Exchange's activity for more than one day, the approval of this decision must be issued by the Minister of Finance.

6. Approve the listing, cancel or suspend the listing, of any Saudi Security traded on the Exchange of any Saudi issuer, on any stock exchange outside the Kingdom.

7. Prohibit any Security or suspend the issuance or trading of any Securities on the Exchange, as the Authority may deem necessary.

8. Determine the maximum or the minimum commissions to be charged by brokers to their clients if the Board deems it appropriate, and approve the fees and other commissions to be charged by the Exchange and the Depositary Center.

9. In addition to other provisions of relevant regulations, the Authority shall have the right to establish standards and conditions required for the auditors who audit the books and records of the Exchange, the Depositary Center, brokerage companies, investment funds and joint stock companies listed on the Exchange. The Authority, subject to its supervisory responsibilities, shall have the right to delegate this responsibility to the Saudi Organization for Certified Public Accountants.

10. Determine the contents of annual and periodical financial statements, reports and documents that should be submitted by issuers offering Securities for public subscription or the issuers whose Securities are listed on the Exchange.

11. Define and explain the terms and provisions set out in this Law.

12. Issue decisions, instructions and set the procedure as deemed necessary for the implementation of the provisions of this Law and the Implementing Regulations, and conduct inquiries and investigations regarding violations of the provisions of this Law and the Implementing Regulations.

13. Set Internal Regulations and issue instructions and set the procedures as necessary for the management of the Authority.

14. Approve the regulations, rules and policies of the Exchange and the Depositary Center.

15. Prepare the regulations and rules for the surveillance and supervision of entities subject to the provisions of this Law.

16. Approve the establishment, merger and liquidation of investment funds and their related operating rules in accordance with the provisions of Article Thirty-nine of this Law.

17. Appoint a licensed auditor to audit the Authority's financial statements and final accounts.

18. Grant the necessary licenses to be issued in accordance with the provisions of this Law and its Implementing Regulations, including the licensing of rating companies and agencies and the conditions thereof.

19. Prepare the Authority's annual budget.

b. Upon starting to exercise its powers in accordance with this Law and its Implementing Regulations, the Authority shall coordinate with the Saudi Arabian Monetary Agency in connection with the procedures that it intends to undertake and which may have an impact on the monetary situation.

***Article Seven***

a. The Authority shall have a board known as the "Board of the Capital Market Authority" comprising five members, who shall be natural Saudi Arabian persons working on a full time basis, and shall be professionally qualified. The Board members shall be appointed, and their salaries and financial benefits determined, by Royal Order. The Royal Order shall specify from the Board members the chairman and deputy chairman who will replace the chairman in his absence.

b. The term of membership of the Board shall be five years, renewable once. The member shall remain in his office on the termination of his membership term until a successor is appointed.

c. The Board shall set forth the Internal Regulations of the Authority and the manner in which the personnel, advisors, auditors and any other experts shall be appointed as may be necessary for carrying out the responsibilities and functions entrusted to the Authority. The Board shall determine their salaries and remunerations.

d. The Board shall exercise all authorities entrusted to the Authority in accordance with the provisions of this Law. The Board will specify how the Authority's functions, responsibilities and operations will be organized among its divisions and departments. The Internal Regulations of the Authority will set forth the requirements for the operation of these departments and divisions. Except for the powers conferred by this Law exclusively upon the Board, the Board may delegate, by a published resolution, any of its functions. The Board shall, however, at its discretion, retain the power to review the actions and decisions made by those who had been delegated with such powers. Such a review will be made at the Board's initiative, upon the request of one of its members, or upon the request of a party to a lawsuit arising under the provisions of this Law and in compliance with the rules issued by the Authority.

***Article Eight***

Any person who becomes an employee or a member of the Board of the Authority must, immediately upon accepting its functions, disclose to the Authority, in the manner set forth in the regulations of the Authority, the Securities he owns or has at his disposal or the disposal of one of his relatives, and thereafter declare any change thereon, within three days of becoming aware of such change. Any of those who become agents for the Authority must also make this disclosure in connection to what is related to the work entrusted to them, in the manner specified in the regulations of the Authority.

*Article Nine*

The members of the Board and the employees of the Authority shall not engage in any other profession or job, including occupying a position or a post in any company, in the government, or public or private institutions. Furthermore, they shall not provide advice to companies and private institutions.

*Article Ten*

a. The Board shall hold its meetings at the request of its chairman. Meetings should be attended by at least three of its members including the chairman or vice chairman. Its decisions shall be made upon a vote of a majority of the members attending the meeting. In case of equal votes, the chairman of the meeting will have a casting vote.

b. The Internal Regulations will set forth the conditions and requirements with respect to convening meetings of the Board, including the notice for a meeting. The rules issued by the Authority may provide that it is permitted to vote for resolutions to be passed by the Board in emergency situations by telephone or by any other means of communication.

*Article Eleven*

The chairman of the Board shall be the Authority's chief executive officer who shall implement the Authority's policy and shall be responsible for the management of its affairs, including the following:

a. Implementing the decisions taken by the Board.

b. Signing, alone or jointly with others, reports, accounting statements, financial statements, correspondence and the Authority's documents.

c. The Authority's administrative and financial affairs.

*Article Twelve*

a. The vice chairman shall carry out the tasks and duties of the chairman if the chairman is absent, is unable to carry out his duties, or if his position becomes vacant.

b. The chairman may delegate to another member of the Board or to any employee of the Authority some of the powers entrusted to him provided that such delegation shall be specific and in writing.

*Article Thirteen*

a. The financial resources of the Authority shall consist of the following:

1. Fees for services and commissions charged by the Authority in accordance with the provisions of this Law and the regulations and instructions issued in pursuance thereof.
2. Charges against using its facilities, return on its funds, and proceeds of the sale of its assets.
3. Fines and financial penalties imposed on violators of the provisions of this Law.
4. Funds provided by the government to the Authority.
5. Any other resources determined by the Board.

b. The Board shall determine the fees to be paid to the Authority for the following matters:

1. Registration of Securities with the Authority.
2. Listing of Securities on the Exchange.
3. Trading of Securities.
4. Licensing and renewal of licenses of brokerage companies or investment advisers.
5. Registration of investment funds.

***Article Fourteen***

The Authority shall have a separate annual budget that will be submitted to the Minister of Finance and will be approved in accordance with applicable regulations. Surplus funds collected by the Authority under Article 13 of this Law and under the provisions, rules and instructions issued thereunder, shall be remitted to the Ministry of Finance after deducting all current and capital expenses or other expenses needed by the Authority. However, the Authority shall maintain a general reserve equal to the double of its expenditures as reported in its previous annual budget.

***Article Fifteen***

Any sums owed to the Authority by third parties shall be considered as public funds and enjoy the same treatment as debts owed to the Public Treasury and shall be collected in accordance with the procedures for the collection of debts due to the Public Treasury.

***Article Sixteen***

The chairman of the Board shall present to the President of the Council of Ministers an annual report on the Authority's activities and its financial position during the preceding year within ninety days from the end of the year.

***Article Seventeen***

Any undisclosed information obtained by the Authority is considered confidential. The Authority may disclose any part of this information as the Board deems necessary for the protection of investors.

***Article Eighteen***

Government agencies and other persons must provide the Authority with the documents and information it requires for the purposes of carrying out its duties in accordance with the provisions of this Law.

***Article Nineteen***

The internal regulations issued pursuant to this Law will define the rules, instructions and procedures relating to the Authority's administrative and financial affairs and the Authority's personnel affairs, including rules of professional conduct and the means of development of the Authority's operations, realization of its objectives and the enhancement of the performance and professional and academic standards of its staff.

## Chapter Three

## The Stock Exchange

***Article Twenty***

a. A market shall be established in the Kingdom for the trading in Securities which shall be known as the "Saudi Stock Exchange", and will have the legal status of a joint stock company in accordance with the provisions of this Law. This Exchange shall be the sole entity authorized to carry out trading in Securities in the Kingdom.

b. Securities listed or traded in a regulated market outside the Kingdom are not subject to the provisions of this Law even though trading in such a market originates by orders transmitted telephonically or electronically from within the Kingdom, with the exception of what may be agreed upon by the Authority with other foreign authorities.

c. The objectives of the Exchange include the following:

1. Ensuring fair, efficient and transparent listing requirements, trading rules and technical mechanisms and information for Securities listed on the Exchange;
2. Providing sound and rapid settlement and clearance rules and procedures through its Securities Depositary Center;
3. Establishing and enforcing professional standards for brokers and their agents;
4. Ensuring the financial strength and soundness of brokers through the periodic review of their compliance with capital adequacy requirements, and setting such arrangements to protect the funds and Securities in the custody of brokerage companies.

d. The Exchange shall not distribute to its members any cash or in kind distributions by way of a dividend without the approval of the Board.

***Article Twenty One***

Securities listed on the Exchange shall be traded through transactions among brokers, each on behalf of its client, and shall be evidenced by entries in the Exchange records, in accordance with the provisions of Chapter Four of this Law, unless such transactions are excluded from trading pursuant to the rules and instructions issued by the Authority.

***Article Twenty Two***

a. The regulations and rules of the Exchange shall specify the terms and requirements of the membership of the Exchange.

b. The Exchange shall be managed by a Board of Directors comprising nine members who shall be appointed by a Council of Ministers Resolution upon nomination by the chairman of the Board of the Authority and who will choose from among them a chairman and a vice chairman. The membership will be as follows:

1. A representative of the Ministry of Finance.
2. A representative of the Ministry of Commerce and Industry.
3. A representative of the Saudi Arabian Monetary Agency.
4. Four members representing licensed brokerage companies.
5. Two members representing the joint stock companies listed on the Exchange.

c. The term of the membership at the board of directors of the Exchange shall be three years renewable one or more times.

d. The regulations and instructions issued by the Board of the Authority shall specify the procedures related to convening the meetings of the Board of Directors of the Exchange, the decisions making process at the board of directors, the plans for conducting the affairs of the board of directors, the powers and responsibilities entrusted to each of the board of directors and the executive manager and all other related administrative and financial affairs.

e. The board of directors of the Exchange shall appoint an executive manager with the approval of the Board of the Authority. The manager appointed shall not have the right to perform any other governmental or commercial work or to have any interest or ownership in any brokerage company on the Exchange. The executive manager may be removed from his position by decision of the board of directors of the Exchange.

***Article Twenty Three***

a. The Board of Directors of the Exchange shall propose the necessary regulations, rules and instructions for the operation of the Exchange including the following matters:

1. Conditions for the listing of and the trading in Securities.
2. The minimum capital required for brokerage companies and the financial assurances required from such companies or their employees.
3. The immediate and timely publication of information regarding transactions executed in Securities traded on the Exchange, and the obligations of issuers of Securities, shareholders and members to disclose such information to the Exchange as the Exchange deems necessary.
4. Standards of professional conduct applicable to the Exchange's members and their employees, the members of the board of directors, the Exchange's executive manager and employees, including the procedures and disciplinary sanctions applicable against those who violate such standards or any other conditions or requirements set forth in the regulations and instructions.
5. Settling disputes among members of the Exchange and between the members and their clients.
6. Conditions and requirements for membership of the Exchange and the appropriate limitations and procedures that permit licensed brokerage companies but not members of the Exchange to execute their transactions on the Exchange.
7. The determination of the fees and commissions that brokers charge for their services.
8. Any other rules and instructions that the Exchange deems necessary for the protection of investors through ensuring fairness, efficiency and transparency in all of the Exchange's related affairs.

b. The Exchange shall submit to the Authority the regulations, rules and instructions for the operation of the Exchange and the amendments thereof for approval by the Board.

***Article Twenty Four***

The Exchange may charge fees on its members, on issuers of Securities listed on the Exchange and others for services it provides to them.

***Article Twenty Five***

a. The Authority shall establish a committee known as the "Committee for the Resolution of Securities Disputes" which shall have jurisdiction over the disputes falling under the provisions of this Law, its Implementing Regulations, and the regulations, rules and instructions issued by the Authority and the Exchange, with respect to the public and private actions. The Committee shall have all necessary powers to investigate and settle complaints and suits, including the power to issue subpoenas, issue decisions, impose sanctions and order the production of evidence and documents.

b. The Committee will consist of legal advisors specialized in the doctrine of transactions and capital markets, and experts in commercial and financial affairs and Securities. The members of the Committee shall be appointed by a Board decision for a three-year term renewable. The members of the Committee must not have any direct or indirect financial or commercial interest or have a family relationship up to the fourth degree with the parties to the complaint or the suit brought before the Committee. The Committee must start considering the complaint or the suit within a period not to exceed fourteen days from the date of filing of the complaint or the suit with the Committee.

c. The Committee's jurisdiction shall include claims against decisions and actions taken by the Authority or the Exchange and the Committee shall have the right to issue a decision awarding damages and request to revert to the original status or issue another decision as appropriate and that would guarantee the rights of the aggrieved.

d. The regulations and rules of the Authority shall specify the procedures that the Committee must follow regarding the complaints and the suits presented to it.

e. No complaint or statement of claim may be filed with the Committee without being filed first with the Authority and a 90 day period has passed from the filing date, unless the Authority notifies the grievant otherwise of the permissibility of submitting before the expiration of this period.

f. The Committee's decision may be appealed before the Appeal Panel within thirty days from their notification date.

g. An Appeal Panel is to be formed by a Council of Ministers' decision, and it shall have three members representing the Ministry of Finance, the Ministry of Commerce and Industry and the Bureau of Experts at the Council of Ministers. The members of the Appeal Panel shall be appointed for a three-year term renewable. The Appeal Panel shall have the discretion to refuse to review the decisions of the Committee for the Resolution of Securities Disputes, to affirm such decisions, to undertake a de novo review of the complaint or suit based on the record developed at the hearing before the Committee and to issue such decision as it deems appropriate in relation to the complaint or the suit. The decisions of the Appeal Panel shall be final.

h. At the Authority or the Exchange's request, final decisions shall be enforced through the government agency responsible for the enforcement of judicial judgments. Decisions issued in favor of the parties pursuant to Articles 55, 56 and 57 of Chapter 10 of this Law shall be enforced by such parties in accordance with the procedure for enforcement of judicial judgment in civil proceedings.

i. Evidence in Securities cases shall be admissible in all forms including electronic or computer data, telephone recordings, facsimile messages and electronic mail.

## Chapter Four

## The Securities Depositary Center

***Article Twenty Six***

a. The Board of Directors of the Exchange shall establish a department to be known as the "Securities Depositary Center" which shall be the sole entity in the Kingdom authorized to practice the operations of deposit, transfer, settlement, clearing and registering ownership of Saudi Securities traded on the Exchange. The Exchange's Board of Directors may convert the Securities Depositary Center into a company after obtaining the approval of the Authority's Board for the conversion. The Board may give its approval indicating the requirements of the company's structure and its operations, as it deems appropriate and necessary for the safety of the market and the protection of investors.

b. The Depositary Center's operating rules shall specify the sound and efficient procedures which shall ensure the efficient operations for registration, settlement and clearance of Securities traded on the Exchange in a regulatory manner, including the procedures to be followed for the disbursement of funds to investors following settlement. The Depositary Center may maintain cash accounts for settlement and clearance purposes of transactions in the context of its operations. The Authority has the power to adopt, amend, repeal or suspend any of the Depositary Center's operating regulations or rules if it deems appropriate.

***Article Twenty Seven***

a. The registration of ownership of Securities traded on the Exchange and the settlement and clearance of Securities shall be made by entries in the Depositary Center's records. Ownership of Securities traded on the Exchange must be registered with the Depositary Center in order to be protected against third party claims. The Depositary Center's records will also report pledges or other claims related to the Securities traded on the Exchange.

b. The Depositary Center shall be the sole entity to register all property rights in Securities traded on the Exchange. The final mentions reported in the records of the Depositary Center shall serve as conclusive evidence and proof of ownership of the Securities indicated therein together with the encumbrances and rights associated therewith, subject to the provisions of paragraph (d) of this Article.

c. Registration of ownership of Securities shall be effective from the time of final verification by the Depositary Center of the authenticity of the ownership documents. The Depositary Center shall promptly register all transactions effected upon being reported to and received by the Depositary Center with no delay. If the Depositary Center has reason to doubt actual or legal facts or consequences related to the registration of ownership or if the Depositary Center receives any notice that registration will cause damages to third parties, the Depositary Center may make a preliminary registration and, if it does so, it shall immediately commence an appropriate process to decide how the final registration for such Security shall be effected.

d. A person who believes that there is an error in the information entered into the registry so that the registry needs to be corrected or otherwise amended should make a written request to the manager of the Depositary Center or the person appointed by the manager to receive such requests. The Depositary Center shall correct or amend the registry after confirming the validity of the comments and information that are requested to be corrected or amended in the registry. Such correction or amendment can only be effected after notice and opportunity to comment by the person or persons the registry identifies as owning the Security, and giving them a reasonable opportunity to comment on the required correction or amendment.

e. The Depositary Center shall issue a certificate of registration upon request by the investor. The operating rules of the Depositary Center will specify the manner in which periodic reports to all the owners of

Securities registered on the Depositary Center's records on the Securities owned by each owner and which are recorded with the Depositary Center's records.

f. Complaints about decisions with respect to the registration of Securities listed on the Exchange shall be brought before the Committee.

g. The Depositary Center shall be liable for any monetary damage suffered by an investor and resulting from the proven negligence or misconduct of the Depositary Center's employees that causes an error in the registration process.

h. The compensation due for the damage under paragraph (g) of this Article may be reduced or even eliminated if the claimant has contributed to causing the error in registration or if the error could have been avoided.

***Article Twenty Eight***

The employees of the Depositary Center and the Exchange and their independent auditors, advisors and consultants may not disclose any information about owners of Securities registered in the records except as set forth in the operating rules issued by the Depositary Center in this regard.

***Article Twenty Nine***

The Board of Directors of the Exchange, with the approval of Board of the Authority, shall establish the necessary instructions for managing the Depositary Center's affairs, including the standards of professional conduct applicable to the Depositary Center's manager and personnel, to assure efficient and trustworthy operations of the Depositary Center.

***Article Thirty***

The Depositary Center may charge fees and commissions for the provision of its services as may be provided for in the Implementing Regulations and the Depositary Center's operating rules.

## Chapter Five

## Brokers Regulation

***Article Thirty One***

Brokerage business is restricted to a person holding a valid license and who is an agent of a joint stock company that is licensed to perform brokerage activities, unless such person is exempt from these requirements in accordance with paragraph (c) of Article 32.

***Article Thirty Two***

a. Broker means a joint stock company that carries on brokerage activities and the broker agent who is working at the brokerage company and carries out all or part the following activities:

   1. acts in a commercial capacity as an intermediary in the trading of Securities, other than persons working on the basis of a contractual arrangement as defined in paragraph (b) of this Article, including any person who commercially acts as a custodian for Securities;

   2. presents in a commercial capacity an offer to others for obtaining financial assets in the form of Securities by opening an account through which transactions in Securities may be effected;

   3. effects in a commercial capacity Securities transactions for its own account other than by way of issuing Securities, in order to create a market in Securities and make a profit out of the difference between offer prices for Securities and demand;

   4. acquires or places Securities in a commercial capacity for an issuer or a person who controls an issuer;

   5. acts as an intermediary in a commercial capacity - other than persons who act on the basis of a contractual arrangement as defined in paragraph (b) of this Article - including in arranging currency or Securities swaps.

b. A portfolio manager means:

   1. Any person acting in a commercial capacity who, on the basis of a contractual arrangement or otherwise, manages either Securities owned by a person or investment funds owned by a natural or judicial person which are intended for investment in Securities, and whose activities may include transactions in Securities or ordering Securities transactions to be effected for the account of the person with whom the contractual arrangements have been made;

   2. Any person acting in a commercial capacity who, on the basis of a contractual arrangement, carries on the works mentioned in paragraph (a.5) of this Article.

c. The Authority may specify, in the rules that it issues, such exemptions from the provisions of paragraphs (a) and (b) of this Article as it considers will achieve the safety of the market and the protection of the investor.

***Article Thirty Three***

a. The Authority shall grant the license referred to under Article 31 within thirty days of receiving from the Exchange the information and documents that are required by the rules issued by the Authority and which demonstrate that the applicant satisfies the conditions and requirements necessary for obtaining a license for

working as a broker or a broker's agent. The term of validity of the licenses must be defined and their holder must be subject to periodic qualification examination as set forth by the Implementing Regulations.

b. The regulations and rules of the Exchange shall set forth the requirements and conditions that must be met by applicants for obtaining a brokerage license. In addition to the requirements under the Exchange's regulations, the conditions for licensing or renewal of a license must include the following:

1. Criteria pertaining to an applicant's competence to act as a broker or a broker's agent;

2. Criteria of integrity or suitability for persons to conduct brokerage activities;

3. Minimum capital requirements that brokerage companies must continually meet, which must not be less than SR 50 million.

***Article Thirty Four***

A broker and a broker's agent must observe the Exchange's regulations and rules pertaining to the regulation of brokers' business.

***Article Thirty Five***

The Exchange may carry out investigations and inspections in connection with any licensed broker or broker's agent to verify whether that person or another person has violated, is violating or there is evidence substantiating that it is about to violate the regulations and instructions of the Exchange. The Exchange's investigation and inspection powers shall include the power to require the production of any person's testimony, papers, books and documents which the Exchange deems necessary or relevant to its inquiry. The Exchange may require the attendance of witnesses or the submission of documents and evidence. Inspection may take place wherever the records are situated. The Exchange can exercise its power to carry out such investigations and inspections by obtaining a subpoena or an order for interrogation or inspection or such other order from the Committee for Resolution of Securities Disputes. The Committee shall accept the Exchange's request for a subpoena or other order unless it is established to the Committee that the Exchange's request is arbitrary or involves abuse of power.

***Article Thirty Six***

Any broker or broker's agent may relinquish its license by filing a written notice of withdrawal with the Authority in accordance with such terms and conditions as the Authority may deem necessary or appropriate for the safety of the market or the protection of the investor.

***Article Thirty Seven***

Licensed brokers or broker's agents must file with the Authority and the Exchange such reports as required by the regulations and rules of the Authority and the Exchange.

***Article Thirty Eight***

The Authority shall supervise the compulsory and voluntary liquidation of the broker's business.

## Chapter Six

## Investment Funds and Collective Investment Schemes

*Article Thirty Nine*

a. An investment fund is a collective investment scheme aimed at providing investors therein with an opportunity to participate collectively in the profits of the scheme which is managed by a portfolio manager for specified fees.

b. The Authority shall assume the power to regulate the activities of investment funds managed by banks within two years from the enactment of this Law.

c. The Authority shall regulate portfolio managers and investment advisers and supervise them. This shall include setting the regulations, rules and instructions that pertain to the following:

1. The organizational structure;
2. Accounting systems and operational rules;
3. Investment fund governance and decision making;
4. Securities custody procedures and efficient provision of services to clients;
5. Services fees and commissions and management remuneration;
6. Entering into transactions with related parties;
7. Performance reports and the calculation of asset values and unit prices and advertisement;
8. Conditions and requirements for the approval of establishing new funds;
9. Financial and periodic reporting requirements of funds;
10. Liquidity requirements and risk limits;
11. Professional qualifications, personal suitability, financial responsibility and licensing requirements.

## Chapter Seven

## Disclosure

*Article Forty*

a. The contents of the prospectus set forth under Article 42 of this Law, or portions thereof, shall be published in such a manner and for such duration as required by the regulations and rules of the Authority.

b. An issuer or an affiliate of an issuer or an underwriter may not offer Securities of the issuer or the issuer's affiliate unless he has submitted a prospectus to the Authority, published the prospectus in the manner set forth in paragraph (a) of this Article, and has paid the requisite fees. The Authority may exempt the issuer from some requirements based on the manner of the offering, the amount of the offering, the number of investors and their characteristics, or the characteristic of the issuer of the Security or the Security itself.

c. Upon satisfying the requirements of paragraphs (a) and (b) of this Article, offers may be made in any of the forms listed below:

   1. Verbally;

   2. Through a prospectus satisfying the conditions of Article 42 of this Law;

   3. Through an announcement containing a summary of the prospectus and any other information required by the Authority or authorized by it in accordance with the rules specified by the Authority;

   4. Through other means, including electronic media, provided that such mean has been approved by the Authority.

*Article Forty One*

An issuer, an affiliate of the issuer or an underwriter may not sell any Security owned by that issuer before the prospectus is approved by the Authority and becomes effective, provided that the approved prospectus shall be sent to the buyer prior to the sale date in accordance with such rules as the Authority may issue.

*Article Forty Two*

The prospectus must contain the following information and statements:

a. Information required by the Authority's rules which give an adequate description of the issuer, the nature of its business, the individuals in charge of its management such as members of the board of directors, executive officers, senior staff and its major shareholders.

b. Information required by the Authority's rules which give an adequate description of the Securities to be issued, their number, price, and related rights, preferences or privileges of the issuer's other Securities, if any. The description will set forth how the issue proceeds will be disbursed, and the commissions levied by persons connected with the issue.

c. A clear statement of the financial position of the issuer and any significant financial data including the audited financial balance sheet, profit and loss account and cash flow statement as the rules of the Authority may require.

d. Any other information required or authorized by the Authority in accordance with rules issued by the Authority which it deems necessary to assist investors and their advisers in making decisions about investing in the Securities to be issued.

***Article Forty Three***

a. After its review of the prospectus, the Authority shall announce its approval or rejection of the prospectus. If it approves the prospectus, the Authority may define a period of time during which the prospectus remains valid.

b. Every issuer offering Securities to the public through a prospectus must notify the Authority in writing of any material change to the statements set forth in the prospectus immediately upon becoming aware of such change provided such change may affect the price or value of the Security. The issuer should also prepare and publish a press release to disclose such change. The Authority's regulations and rules shall set forth the information to be disclosed and the conditions applicable regarding the press release.

***Article Forty Four***

The Board of the Authority may reject a prospectus in any of the following cases:

a. If the prospectus does not contain the information required by Article 42 of this Law.

b. If the prospectus contains incorrect information pertaining to material matters, false or misleading statements or omits to state material information or statements that would under the circumstances render the prospectus misleading or incorrect.

c. The prospectus issuance fees have not been paid in full to the Authority.

d. The issuer has failed to provide any of the reports stipulated in Article 45 of this Law.

***Article Forty Five***

a. Every issuer offering Securities to the public or whose Securities are traded on the Exchange must submit to the Authority quarterly and annual reports. Annual reports must be audited as required by the rules of the Authority. These reports shall contain the following:

    1. The balance sheet;
    2. The profit and loss account;
    3. The cash flow statement; and
    4. Any other information as required by the rules of the Authority.

b. In addition to the information required in paragraph (a) of this Article, the annual report must contain the following:

    1. An adequate description of the issuing company, the nature of its business and its activities as required under the rules of the Authority;

    2. Information regarding the members of its board of directors, executive officers, senior staff and major investors or shareholders as required under the rules of the Authority;

    3. An evaluation of the issuing company management of current and future developments and any future possibilities that may have significant effect on the business results or financial position of the company as required under the rules of the Authority.

4. Any other information as may be required by the rules of the Authority as it deems necessary to assist investors and their advisers in making a decision to invest in the issuer's Securities.

c. All information and data described in paragraphs (a – l, 2, 3) and (b.3) of this Article shall be deemed confidential. Before providing and disclosing such information and data to the Authority, the issuing company shall be prohibited from disclosing such information to parties not bound by a confidentiality obligation and an obligation to protect such information.

***Article Forty Six***

a. A party who issues Securities must inform the Authority in writing upon becoming aware of any material developments which may affect the prices of the Securities issued by such party. If such party has a Security traded on the Exchange, the Exchange must be informed of such developments in writing.

b. The Authority or the Exchange may request the party issuing Securities to provide any information or data pertaining to such party and the issuing party shall provide the same within the period of time specified in the request.

c. The Board of the Authority or the Exchange may, after reviewing the facts, require the issuing party to disclose any information or data related to that party. The Board or the Exchange shall also have the right to publish such information and data at the expense of the issuing party.

***Article Forty Seven***

The public shall be allowed, in return for fees to be determined by the Authority, to review and make copies of the prospectuses, periodical reports, and information and data which have been filed with the Authority, made public and obtained.

***Article Forty Eight***

a. The Authority shall specify the disclosure forms and instructions, including the information which must be included in the prospectuses and periodical reports which must be provided to the Authority by the parties that are subject to its control and supervision or which must be announced to the public, as the case may be.

b. The Authority shall have no responsibility for the omission in prospectuses, periodical reports, advertisements, or any other document filed with it by any party of any important information or data or for including misleading information or data.

c. The publisher of the advertisement shall be responsible for any errors committed by it in publishing the contents of the advertisement pursuant to the regulations applicable in the Kingdom.

## Chapter Eight

## Manipulation and Insider Trading

*Article Forty Nine*

a. Any person shall be considered in violation of this Law if he intentionally does any act or engages in any action which creates a false or misleading impression as to the market, the prices or the value of any Security for the purpose of creating that impression or thereby inducing third parties to buy, sell or subscribe for such Security or to refrain from doing so or to induce them to exercise, or refrain from exercising, any rights conferred by such Security.

b. The Authority shall set out rules determining the acts and practices which shall constitute violations of paragraph (a) of this Article. These rules shall specify the acts and practices excluded from the application of the provisions of paragraph (a) of this Article. The powers of the Authority provided for in this paragraph shall include the power to set forth the rules, define the circumstances and procedures aiming at stabilizing the prices of Securities offered to the public, and the manner in which and the period during which these actions must be taken.

c. The following acts and practices shall be among those which shall be considered types of manipulation that are prohibited by paragraph (a) of this Article:

   1. To perform any act or practice aiming at creating a false or misleading impression of an existing active trading in a Security as may be contrary to the reality. These acts and practices shall include, but not be limited to the following:

      a. Undertaking transactions in Securities which do not involve a true transfer of ownership thereof.

      b. Entering an order or orders for the purchase of a particular Security with prior knowledge that an order or orders of substantially the same size, price and timing for the sale of the same Security has been or will be entered by a different party or parties.

      c. Entering an order or orders for the sale of a particular Security with prior knowledge that an order or orders of substantially the same size, price and timing for the purchase of the same Security has been or will be entered by the same party or different parties.

   2. To affect, alone or with others, the price of a particular Security or Securities traded on the Exchange through executing a series of transactions in such Security or Securities creating actual or apparent active trading or causing an increase or decrease in the prices of such Securities, for the purpose of inducing third parties to buy or sell such Securities as the case may be.

   3. To affect, alone or with others through any series of transactions such as buying or selling or buying and selling a Security traded on the Exchange for the purpose of pegging or stabilizing the price of such Security in violation of the rules set forth by the Authority for the safety of the market and the protection of investors.

*Article Fifty*

a. Any person who obtains, through family, business or contractual relationship, inside information (hereinafter an "insider") is prohibited from directly or indirectly trading in the Security related to such information, or to disclose such information to another person with the expectation that such person will trade in such Security.

Insider information means information obtained by the insider and which is not available to the general public, has not been disclosed, and such information is of the type that a normal person would realize that in view of the nature and content of this information, its release and availability would have a material effect on the price or value of a Security related to such information, and the insider knows that such information is not generally available and that, if it were available, it would have a material effect on the price or value of such Security.

b. No person may purchase or sell a Security based on information obtained from an insider while knowing that such person, by disclosing such insider information related to the Security, has violated paragraph (a) of this Article.

c. The Authority has the power to establish the rules for specifying and defining the terms provided for under paragraphs (a) and (b) of this Article, and such acts or practices which the Authority deems appropriate to exempt them from their application, as may be required for the safety of the market and the protection of investors.

## Chapter Nine

## Regulation of Proxy Solicitations, Restricted Purchase and Restricted Offer for Shares

***Article Fifty One***

The Authority shall issue rules for the regulation of disclosure of information and other practices in connection with the solicitation of proxies if such solicitation pertains to any Security listed on the Exchange.

***Article Fifty Two***

The Authority shall issue rules for the regulation of restricted purchase of shares transactions and restricted offer for shares transactions. For the purpose of application of the provisions of this Law, these two terms mean the following:

a. A restricted purchase of shares is the purchase of voting shares listed on the Exchange when as a consequence of such purchase ten percent (10%) or more of such class of the relevant company shares is owned by, or under control of, the purchaser or those acting in concert with the purchaser.

b. A restricted offer for shares is making a public announcement by which the announcer offers to purchase voting shares of a particular class of shares listed on the Exchange if the amount of shares sought to be acquired by the offering party would increase its ownership or the ownership of those acting in concert with the offering party, or the shares under their control, to ten percent (10%) or more of the shares of the relevant company.

***Article Fifty Three***

The Authority's powers to issue rules for the regulation of restricted purchases of shares and restricted offers for shares shall include, without limitation, the power to issue rules in connection with the following:

a. Amending the percentages prescribed under Article 52 of this Law and approving exceptions to the definitions of restricted purchases of shares and restricted offers for shares;
b. Specifying the timing, form and manner for announcements in connection with restricted purchases of shares and restricted offers for shares;
c. Setting forth the information which party purchasing the shares or offering party must disclose, and the manner for its disclosure, including any requirements for the continuous disclosure with respect to changes in share ownership;
d. Imposing any conditions or requirements on the company the shares of which are subject or target of a restricted purchase of shares or a restricted offer for shares that it announces its position or viewpoint regarding such restricted purchase or restricted offer;
e. Any other rules pertaining to restricted purchases of shares or restricted offers for shares as may be necessary for the safety of the market and the protection of investors.

***Article Fifty Four***

If any person increases its ownership of shares in a given company through a restricted purchase of shares or restricted offer for shares so that such person or those with whom such person is acting in concert become the owner of (50%) fifty percent or more of a given class of voting shares listed on the Exchange, the Board shall have the right, within sixty (60) days, if it believes it would achieve the safety of the market and the protection of

shareholders, to order such person to offer to purchase the shares of the same class it does not own on such terms and conditions as the Board shall determine. In no case will the prospective purchaser be compelled to offer to purchase the remaining shares at a price exceeding the highest price he paid to purchase any of the shares of that company during the 12 months preceding the date of the Board order.

## Chapter Ten

## Sanctions and Penalties for Violations

*Article Fifty Five*

a. In case a prospectus, when approved by the Authority, contained incorrect statements of material matters or omitted material facts required to be stated in the prospectus, the person purchasing the Security that was the subject of such prospectus shall be entitled to compensation for the damages incurred by him as a result thereof. A statement or omission shall be considered material for the purposes of this paragraph if it is proven to the Committee that had the investor been aware of the truth when making such purchase it would have affected the purchase price.

b. The following persons shall be liable under paragraph (a) of this Article:

1. The party issuing the Security. The issuer shall be liable irrespective of whether it had acted reasonably, or it was not aware of the incorrect statements in connection with material matters, or of the omission of material facts that should have been disclosed in the prospectus.

2. The senior officers of the issuing party of the Security in accordance with the definition provided in the rules issued by the Authority. Such liability could be relieved according to paragraph (c.1 and 2) of this Article.

3. The members of the board of directors of the issuing party, or persons performing similar functions, as of the date on which the prospectus was approved by the Authority. Such liability could be relieved in accordance with paragraph (c.1 and 2) of this Article.

4. The underwriters who have undertaken to offer on behalf of the issuer the Security for sale to the public, provided that an underwriter shall not be liable for more than the total price of the Securities underwritten or amount of Securities distributed by him (whichever amount is greater).

5. The accountant, engineer or appraiser and others identified in the prospectus, who have consented in writing to be so identified, as having certified the accuracy and truthfulness of the information stated in the prospectus; however, such person's liability shall not extend to information in parts of the prospectus which are not so certified by him. That person shall be responsible for any part of the prospectus understood to have been prepared according to his statement and approval in his capacity defined under this paragraph, unless he proves that he was convinced after conducting reasonable investigations and on the basis of reasonable grounds, that that part of the prospectus is not in violation of paragraph (a) of this Article.

c. Any of the persons mentioned in paragraph (b.2, 3 and 4) of this Article shall be liable as provided for in the provisions of paragraph (a) of this Article unless it is proven that:

1. As to any part of the prospectus not certified by the person described in paragraph (b.5) of this Article that, after reasonable investigation, and on the basis of reasonable grounds, he was convinced that such part of the prospectus was not in violation of paragraph (a) of this Article;

2. As to any part of the prospectus purporting to have been made based on the statement of a person set forth in paragraph (b.5) of this Article, and the person invoking the defense is identified in paragraphs (b.2, 3, 4) of this Article, he had no reasonable ground at that time to believe that such part of the prospectus contained what could be deemed a violation of paragraph (a) of this Article.

d. In determining that investigation shall be deemed reasonable or what shall constitute reasonable ground for belief for the purposes of paragraph (c) of this Article, the standard of reasonableness for the purpose of this Article shall be that of the prudent man in the management of his property.

e. Damages may be obtained through a claim brought on the basis of paragraph (a) of this Article, which damages shall represent the difference between the price actually paid for purchasing the Security (not to exceed the price at which it was offered to the public) and the value thereof as of the date of bringing the legal action or the price which such Security could have been disposed of on the Exchange prior to filing the complaint with the Committee, provided that if the defendant proves that any portion in the decline in value of the Security is due to causes which are not related to the omission or the incorrect statement which is the substance of the suit, such portion shall be excluded from the damages for which the defendant is responsible. The defendants are individually and jointly and severally liable for damages for which they are responsible under this Article. The amount of indemnification shall be subject to the provisions of the contract or agreement entered into between the parties identified in paragraph (b) of this Article or as the Committee believes is equitable and does not harm the interest of investors or otherwise contravene the spirit of this Law.

***Article Fifty Six***

a. Any person who makes, or is responsible for another making, orally or in writing an untrue statement of material fact or omits to state that material fact, if it causes another person to be misled in relation to the sale or the purchase of a Security, shall be liable for compensation of the damages. For establishing responsibility for damages in pursuance of the provisions of this Article, it is not required that a relationship exists between the claimant and the defendant and the claimant should prove:

   1. That he was not aware that the statement was omitted or untrue.

   2. That either he would not have purchased or sold the Security in question had he known that information was omitted or untrue, or that he would not have purchased or sold such Security at the price at which such Security was purchased or sold.

   3. That the person responsible for the disclosure of the statements or the giving of such incorrect information knew of the said untruthfulness or was aware that there was a substantial likelihood that the information disclosed omitted or misstated a material fact.

b. The damages recoverable under this Article from any defendant, and the rights of indemnity and contribution among the persons responsible shall be as provided in paragraph (e) of Article 55 of this Law.

c. For the purpose of this Article, a statement or omission shall be considered related to an important material fact in accordance with the standard provided for in paragraph (a) of Article 55 of this Law.

***Article Fifty Seven***

a. Any person who violates Article 49 of this Law or any of the regulations or the rules issued by the Authority pursuant to the said Article by engaging in an act or transaction for the purpose of intentionally manipulating the price of a Security, or participating in such act or transaction, or is responsible for a person who undertakes such act or transaction shall be liable for damages to any person who purchases or sells the Security whose price has been significantly adversely affected by such manipulation for the amount such person's purchase or sale price was so affected.

b. The damages recoverable under this Article from any defendant, and the rights of indemnity and contribution among the persons responsible shall be measured in a manner that is consistent with the provisions of paragraph (e) of Article 55 of this Law.

c. In addition to the penalties and financial compensation provided for under this Law, the Committee may, based on a claim filed by the Authority, punish the persons who violate Articles 49 and 50 with imprisonment terms not exceeding five years.

*Article Fifty Eight*

A suit under Articles 55, 56 and 57 of this Law shall not be heard if the complaint is filed with the Authority after the elapse of one year from the date when the claimant should reasonably have been aware of facts causing him to believe he had been the victim of a violation, and in no case may such complaint be heard by the Committee after five years from the occurrence of the violation subject of the claim.

*Article Fifty Nine*

a. If it appears to the Authority that any person has engaged, is engaging, or is about to engage in acts or practices constituting a violation of any provisions of this Law, or the regulations or rules issued by the Authority, or the regulations of the Exchange, the Authority shall have the right to bring a legal action before the Committee to seek an order for the appropriate sanction. The sanctions include the following:

    1. Warning the person concerned.

    2. Obliging the person concerned to cease or refrain from carrying out the act which is the subject of the suit.

    3. Obliging the person concerned to take the necessary steps to avert the violation, or to take such necessary corrective steps to address the results of the violation.

    4. Indemnifying the persons who have suffered damages as a consequence of a violation that has occurred, or obliging the violator to pay to the Authority's account the gains realized as a consequence of such violation.

    5. Suspending the trading in the Security.

    6. Barring the violating person from acting as a broker, portfolio manager or investment adviser for such period of time as is necessary for the safety of the market and the protection of investors.

    7. Seizing and executing on property.

    8. Travel ban.

    9. Barring from working with companies whose Securities are traded on the Exchange.

b. The Authority may, in addition to taking the actions provided for under paragraph (a) of this Article, request the Committee to impose a financial fine upon the persons responsible for an intentional violation of the provisions of this Law, its Implementing Regulations, the rules of the Authority and the regulations of the Exchange. As an alternative to the foregoing, the Board may impose a financial fine upon any person responsible for the violation of this Law, its Implementing Regulations, the rules of the Authority and the regulations of the Exchange. The fine that the Committee or the Board can impose shall not be less than SR 10,000 and shall not exceed SR 100,000 for each violation committed by the defendant.

*Article Sixty*

a. Any person who carries on, or purports to carry on, brokerage activities without a license shall be considered violating the provisions of Article 31 of this Law and shall be subject to any of the two following sanctions or both:

    1. A fine of not less than SR 10,000 and not to exceed SR 100,000 for each violation.

2. Imprisonment for a term not to exceed nine (9) months.

b. Any agreement or contract which is entered into in relation to a Security related transaction that is in violation of Article 31 of this Law shall be void and the violating broker may not complain on basis of such agreement or contract against the other party and that party shall be entitled to request the rescission of the agreement or contract and the recovery of any money or other property paid or transferred by him under the agreement or contract, provided the rescinding party restitutes any money or other property received through such agreement or contract. The Committee shall have jurisdiction over the suits brought pursuant to this provision.

***Article Sixty One***

a. The failure of a licensed broker or his agent to comply with any regulations and rules of the Exchange pertaining to the regulation of the work of brokers can give rise to disciplinary proceedings pursuant to the procedures established in the regulations of the Exchange. Upon discovering a violation of its regulations, the Exchange may file a claim with the Committee to impose a suitable sanction against the violator which may include the revocation of the license granted to it, suspension of said license, the imposition of a financial fine or obliging the broker to restitute the sums due to clients. A broker or his agent sanctioned may request the review of the decision by the Appeal Panel of the Committee.

b. The Authority may, pursuant to its powers under Article 59 of Chapter 10 of this Law, take necessary actions against brokers or their agents who fail to comply with the rules of operation of the Exchange.

***Article Sixty Two***

a. The Board may issue a decision providing for a reprimand to the violator broker or broker's agent, or may, pursuant to the decision, place restrictions on the licensed activities, functions or operations of the broker or the broker's agent, suspend those activities for a period not exceeding twelve months, or revoke the license of any broker or his agent if the Board finds, after giving notice to the concerned broker or the broker's agent and giving it an opportunity for a hearing, that such broker or the broker's agent, whether prior or subsequent to obtaining a license has committed any of the following:

1. he deliberately gave or caused to be given materially false or misleading statements in the broker's or the broker agent's application to obtain a license, in any document or report submitted to the Exchange or to the Authority.

2. he deliberately violated, or assisted another person to violate any provision of this Law and its regulations.

3. the broker or the broker's agent violated a judgment or decision issued by any court of the Kingdom or by the Committee for Resolution of Securities Disputes prohibiting him permanently or temporarily from carrying on brokerage or portfolio manager business.

4. the Authority has formally been notified by a Securities regulator in another country that the broker or his agent willfully violated the Securities laws of that country or provided false and misleading information in the reports required to be submitted in such foreign jurisdiction.

b. The Board may issue a decision suspending the brokerage license pending the issuance of a final determination in relation to the revocation of the license, if such suspension appears to the Board, after giving the broker or the broker's agent concerned notice and an opportunity to be heard on an urgent basis, to be necessary for the safety of the market and the protection of investors.

c. The Board may, in urgent cases, and without prior notice or hearing being granted to the concerned party to the decision, issue a decision suspending the license of a broker or barring the broker from performing such functions as a broker for a period not to exceed 60 days. Issuing such a decision does not prevent the Authority or the Exchange from taking such other actions against the broker or his agent as provided by this Law.

***Article Sixty Three***

The license of the broker or the broker's agent may be suspended by order of the Board upon discovering that the broker ceases to exist or has for a period of twelve months ceased to carry out brokerage activities.

***Article Sixty Four***

A person charged with violation of Article 50 of this Law may avoid proceedings before the Committee by reaching an agreement with the Authority pursuant to which he agrees to pay the Authority a sum not exceeding three times the profits he has realized, or three times the losses he has averted by committing the violation. Such arrangement shall be without prejudice to any compensation awardable as a result of the violation.

***Article Sixty Five***

This Law shall repeal all provisions that are contrary hereto.

***Article Sixty Six***

The Implementing Regulations to this Law shall be issued 150 days after the publication of the date of publication of the Law and shall come into effect with the Law.

***Article Sixty Seven***

This Law shall be published in the Official Gazette and shall be effective 180 days after the date of the publication thereof.

# CAPITAL MARKET AUTHORITY

## CORPORATE GOVERNANCE REGULATIONS IN THE KINGDOM OF SAUDI ARABIA

Issued by the Board of Capital Market Authority
Pursuant to Resolution No. 1/212/2006
dated 21/10/1427AH (corresponding to 12/11/2006)
based on the Capital Market Law
issued by Royal Decree No. M/30
dated 2/6/1424AH

**Amended by Resolution of the Board**
**of the Capital Market Authority Number 1-10-2010**
**Dated 30/3/1431H corresponding to 16/3/2010G**

**English Translation of the Official Arabic Text**

**Arabic is the official language of the Capital Market Authority**

**The current version of these Rules, as may be amended, can be found aton the CMA website: www.cma.org.sa**

CONTENTS

## PART 1
## PRELIMINARY PROVISIONS

### Article 1: Preamble

a) These Regulations include the rules and standards that regulate the management of joint stock companies listed in the Exchange to ensure their compliance with the best governance practices that would ensure the protection of shareholders' rights as well as the rights of stakeholders.

b) These Regulations constitute the guiding principles for all companies listed in the Exchange unless any other regulations, rules or resolutions of the Board of the Authority provide for the binding effect of some of the provisions herein contained.

c) As an exception of paragraph (b) of this article, a company must disclose in the Board of Directors` report, the provisions that have been implemented and the provisions that have not been implemented as well as the reasons for not implementing them.

### Article 2: Definitions

a) Expression and terms in these regulations have the meanings they bear in the Capital Market Law and in the glossary of defined terms used in the regulations and the rules of the Capital Market Authority unless otherwise stated in these regulations.

b) For the purpose of implementing these regulations, the following expressions and terms shall have the meaning they bear as follows unless the contrary intention appears:

**Independent Member:** A member of the Board of Directors who enjoys complete independence. By way of example, the following shall constitute an infringement of such independence:

1. he/she holds a five per cent or more of the issued shares of the company or any of its group.
2. Being a representative of a legal person that holds a five per cent or more of the issued shares of the company or any of its group.

3. he/she, during the preceding two years, has been a senior executive of the company or of any other company within that company's group.
4. he/she is a first-degree relative of any board member of the company or of any other company within that company's group.

5. he/she is first-degree relative of any of senior executives of the company or of any other company within that company's group.

6. he/she is a board member of any company within the group of the company which he is nominated to be a member of its board.

7. If he/she, during the preceding two years, has been an employee with an affiliate of the company or an affiliate of any company of its group, such as external auditors or main suppliers; or if he/she, during the preceding two years, had a controlling interest in any such party.

**Non-executive director**: A member of the Board of Directors who does not have a full-time management position at the company, or who does not receive monthly or yearly salary.

**First-degree relatives:** father, mother, spouse and children.

**Stakeholders**: Any person who has an interest in the company, such as shareholders, employees, creditors, customers, suppliers, community.

**Accumulative Voting**: a method of voting for electing directors, which gives each shareholder a voting rights equivalent to the number of shares he/she holds. He/she has the right to use them all for one nominee or to divide them between his/her selected nominees without any duplication of these votes. This method increases the chances of the minority shareholders to appoint their representatives in the board through the right to accumulate votes for one nominee.

**Minority Shareholders**: Those shareholders who represent a class of shareholders that does not control the company and hence they are unable to influence the company.

## PART 2
## RIGHTS OF SHAREHOLDERS AND THE GENERAL ASSEMBLY

**Article 3: General Rights of Shareholders**

A Shareholder shall be entitled to all rights attached to the share, in particular, the right to a share of the distributable profits, the right to a share of the company's assets upon liquidation; the right to attend the General Assembly and participate in deliberations and vote on relevant decisions; the right of disposition with respect to shares; the right to supervise the Board of Directors activities, and file responsibility claims against board members; the right to inquire and have access to information without prejudice to the company's interests and in a manner that does not contradict the Capital Market Law and the Implementing Rules.

**Article 4: Facilitation of Shareholders Exercise of Rights and Access to Information**

a) The company in its Articles of Association and by-laws shall specify the procedures and precautions that are necessary for the shareholders' exercise of all their lawful rights.

b) All information which enable shareholders to properly exercise their rights shall be made available and such information shall be comprehensive and accurate; it must be provided and updated regularly and within the prescribed times; the company shall use the most effective means in communicating with shareholders. No discrepancy shall be exercised with respect to shareholders in relation to providing information.

**Article 5: Shareholders Rights related to the General Assembly**

a) A General Assembly shall convene once a year at least within the six months following the end of the company's financial year.

b) The General Assembly shall convene upon a request of the Board of Directors. The Board of Directors shall invite a General Assembly to convene pursuant to a request of the auditor or a number of shareholders whose shareholdings represent at least 5% of the equity share capital.

c) Date, place, and agenda of the General Assembly shall be specified and announced by a notice, at least 20 days prior to the date the meeting;

invitation for the meeting shall be published in the Exchange' website, the company's website and in two newspapers of voluminous distribution in the Kingdom. Modern high tech means shall be used in communicating with shareholders.

d) Shareholders shall be allowed the opportunity to effectively participate and vote in the General Assembly; they shall be informed about the rules governing the meetings and the voting procedure.

e) Arrangements shall be made for facilitating the participation of the greatest number of shareholders in the General Assembly, including *inter alia* determination of the appropriate place and time.

f) In preparing the General Assembly's agenda, the Board of Directors shall take into consideration matters shareholders require to be listed in that agenda; shareholders holding not less than 5% of the company's shares are entitled to add one or more items to the agenda. upon its preparation.

g) Shareholders shall be entitled to discuss matters listed in the agenda of the General Assembly and raise relevant questions to the board members and to the external auditor. The Board of Directors or the external auditor shall answer the questions raised by shareholders in a manner that does not prejudice the company's interest.

h) Matters presented to the General Assembly shall be accompanied by sufficient information to enable shareholders to make decisions.

i) Shareholders shall be enabled to peruse the minutes of the General Assembly; the company shall provide the Authority with a copy of those minutes within 10 days of the convening date of any such meeting.

j) The Exchange shall be immediately informed of the results of the General Assembly.

**Article 6: Voting Rights**

a) Voting is deemed to be a fundamental right of a shareholder, which shall not, in any way, be denied. The company must avoid taking any action which might hamper the use of the voting right; a shareholder

must be afforded all possible assistance as may facilitate the exercise of such right.

b) In voting in the General Assembly for the nomination to the board members, the accumulative voting method shall be applied.

c) A shareholder may, in writing, appoint any other shareholder who is not a board member and who is not an employee of the company to attend the General Assembly on his behalf.

d) Investors who are judicial persons and who act on behalf of others - e.g. investment funds- shall disclose in their annual reports their voting policies, actual voting, and ways of dealing with any material conflict of interests that may affect the practice of the fundamental rights in relation to their investments.

**Article 7: Dividends Rights of Shareholders**

a) The Board of Directors shall lay down a clear policy regarding dividends, in a manner that may realize the interests of shareholders and those of the company; shareholders shall be informed of that policy during the General Assembly and reference thereto shall be made in the report of the Board of Directors.

b) The General Assembly shall approve the dividends and the date of distribution. These dividends, whether they be in cash or bonus shares shall be given, as of right, to the shareholders who are listed in the records kept at the Securities Depository Center as they appear at the end of trading session on the day on which the General Assembly is convened.

## PART 3

## DISCLOSURE AND TRANSPARENCY

### Article 8:Policies and Procedure related to Disclosure

The company shall lay down in writing the policies, procedures and supervisory rules related to disclosure, pursuant to law.

### Article 9 [1]: Disclosure in the Board of Directors' Report

In addition to what is required in the Listing Rules in connection with the content of the report of the Board of Directors, which is appended to the annual financial statements of the company, such report shall include the following:

a) The implemented provisions of these Regulations as well as the provisions which have not been implemented, and the justifications for not implementing them.

b) Names of any joint stock company or companies in which the company Board of Directors member acts as a member of its Board of directors.

c) Formation of the Board of Directors and classification of its members as follows: executive board member, non-executive board member, or independent board member.

d) A brief description of the jurisdictions and duties of the Board's main committees such as the Audit Committee, the Nomination and Remuneration Committee; indicating their names, names of their chairmen, names of their members, and the aggregate of their respective meetings.

e) Details of compensation and remuneration paid to each of the following:

[1] The Board of the Capital Market Authority issued resolution Number (1-36-2008) Dated 12/11/1429H corresponding to 10/11/2008G making Article 9 of the Corporate Governance Regulations mandatory on all companies listed on the Exchange effective from the first board report issued by the company following the date of the Board of the Capital Market Authority resolution mentioned above.

1. The Chairman and members of the Board of Directors.
2. The Top Five executives who have received the highest compensation and remuneration from the company. The CEO and the chief finance officer shall be included if they are not within the top five.

   For the purpose of this paragraph, "compensation and remuneration" means salaries, allowances, profits and any of the same; annual and periodic bonuses related to performance; long or short- term incentive schemes; and any other rights *in rem*.

f) Any punishment or penalty or preventive restriction imposed on the company by the Authority or any other supervisory or regulatory or judiciary body.
g) Results of the annual audit of the effectiveness of the internal control procedures of the company.

## PART 4

## BOARD OF DIRECTORS

### Article 10: Main Functions of the Board of Directors

Among the main functions of the Board is the fallowing:

a) Approving the strategic plans and main objectives of the company and supervising their implementation; this includes:

    1. Laying down a comprehensive strategy for the company, the main work plans and the policy related to risk management, reviewing and updating of such policy.

    2. Determining the most appropriate capital structure of the company, its strategies and financial objectives and approving its annual budgets.

    3. Supervising the main capital expenses of the company and acquisition/disposal of assets.

    4. Deciding the performance objectives to be achieved and supervising the implementation thereof and the overall performance of the company.

    5. Reviewing and approving the organizational and functional structures of the company on a periodical basis.

b) Lay down rules for internal control systems and supervising them; this includes:

    1. Developing a written policy that would regulates conflict of interest and remedy any possible cases of conflict by members of the Board of Directors, executive management and shareholders. This includes misuse of the company's assets and facilities and the arbitrary disposition resulting from dealings with the related parties.

    2. Ensuring the integrity of the financial and accounting procedures including procedures related to the preparation of the financial reports.

3. Ensuring the implementation of control procedures appropriate for risk management by forecasting the risks that the company could encounter and disclosing them with transparency.

4. Reviewing annually the effectiveness of the internal control systems.

c) Drafting a Corporate Governance Code for the company that does not contradict the provisions of this regulation, supervising and monitoring in general the effectiveness of the code and amending it whenever necessary.

d) Laying down specific and explicit policies, standards and procedures, for the membership of the Board of Directors and implementing them after they have been approved by the General Assembly.

e) Outlining a written policy that regulate the relationship with stakeholders with a view to protecting their respective rights; in particular, such policy must cover the following:

1. Mechanisms for indemnifying the stakeholders in case of contravening their rights under the law and their respective contracts.

2. Mechanisms for settlement of complaints or disputes that might arise between the company and the stakeholders.

3. Suitable mechanisms for maintaining good relationships with customers and suppliers and protecting the confidentiality of information related to them.

4. A code of conduct for the company's executives and employees compatible with the proper professional and ethical standards, and regulate their relationship with the stakeholders. The Board of Directors lays down procedures for supervising this code and ensuring compliance there with.

5. The Company's social contributions.

f) Deciding policies and procedures to ensure the company's compliance with the laws and regulations and the company's obligation to disclose material information to shareholders, creditors and other stakeholders.

**Article 11 : Responsibilities of the Board**

a) Without prejudice to the competences of the General Assembly, the company's Board of Directors shall assume all the necessary powers for the company's management. The ultimate responsibility for the company rests with the Board even if it sets up committees or delegates some of its powers to a third party. The Board of Directors shall avoid issuing general or indefinite power of attorney.

b) The responsibilities of the Board of Directors must be clearly stated in the company's Articles of Association.

c) The Board of Directors must carry out its duties in a responsible manner, in good faith and with due diligence. Its decisions should be based on sufficient information from the executive management, or from any other reliable source.

d) A member of the Board of Directors represents all shareholders; he undertakes to carry out whatever may be in the general interest of the company, but not the interests of the group he represents or that which voted in favor of his appointment to the Board of Directors.

e) The Board of Directors shall determine the powers to be delegated to the executive management and the procedures for taking any action and the validity of such delegation. It shall also determine matters reserved for decision by the Board of Directors. The executive management shall submit to the Board of Directors periodic reports on the exercise of the delegated powers.

f) The Board of Directors shall ensure that a procedure is laid down for orienting the new board members of the company's business and, in particular, the financial and legal aspects, in addition to their training, where necessary.

g) The Board of Directors shall ensure that sufficient information about the company is made available to all members of the Board of Directors, generally, and, in particular, to the non-executive members, to enable them to discharge their duties and responsibilities in an effective manner.

h) The Board of Directors shall not be entitled to enter into loans which spans more than three years, and shall not sell or mortgage real estate of the company, or drop the company's debts, unless it is authorized to do so by the company's Articles of Association. In the case where the company's Articles of Association includes no provisions to this respect, the Board should not act without the approval of the General Assembly, unless such acts fall within the normal scope of the company's business.

**Article 12 [2]: Formation of the Board**

Formation of the Board of Directors shall be subject to the following:

a) The Articles of Association of the company shall specify the number of the Board of Directors members, provided that such number shall not be less than three and not more than eleven.

b) The General Assembly shall appoint the members of the Board of Directors for the duration provided for in the Articles of Association of the company, provided that such duration shall not exceed three years. Unless otherwise provided for in the Articles of Association of the company, members of the Board may be reappointed.

c) The majority of the members of the Board of Directors shall be non-executive members.

d) It is prohibited to conjoin the position of the Chairman of the Board of Directors with any other executive position in the company, such as the Chief Executive Officer (CEO) or the managing director or the general manager.

e) The independent members of the Board of Directors shall not be less than two members, or one-third of the members, whichever is greater.

f) The Articles of Association of the company shall specify the manner in which membership of the Board of Directors terminates. At all times, the General Assembly may dismiss all or any of the members

[2] The Board of the Capital Market Authority issued resolution Number (1-36-2008) Dated 12/11/1429H corresponding to 10/11/2008G making paragraphs (c) and (e) of Article 12 of the Corporate Governance Regulations mandatory on all companies listed on the Exchange effective from year 2009.

of the Board of Directors even though the Articles of Association provide otherwise.

g) On termination of membership of a board member in any of the ways of termination, the company shall promptly notify the Authority and the Exchange and shall specify the reasons for such termination.

h) A member of the Board of Directors shall not act as a member of the Board of Directors of more than five joint stock companies at the same time.

i) Judicial person who is entitled under the company's Articles of Association to appoint representatives in the Board of Directors, is not entitled to nomination vote of other members of the Board of Directors.

**Article 13: Committees of the Board**

a) A suitable number of committees shall be set up in accordance with the company's requirements and circumstances, in order to enable the Board of Directors to perform its duties in an effective manner.

b) The formation of committees subordinate to the Board of Directors shall be according to general procedures laid down by the Board, indicating the duties, the duration and the powers of each committee, and the manner in which the Board monitors its activities. The committee shall notify the Board of its activities, findings or decisions with complete transparency. The Board shall periodically pursue the activities of such committees so as to ensure that the activities entrusted to those committees are duly performed. The Board shall approve the by-laws of all committees of the Board, including, *inter alia*, the Audit Committee, Nomination and Remuneration Committee.

c) A sufficient number of the non-executive members of the Board of Directors shall be appointed in committees that are concerned with activities that might involve a conflict of interest, such as ensuring the integrity of the financial and non-financial reports, reviewing the deals concluded by related parties, nomination to membership of the Board, appointment of executive directors, and determination of remuneration.

**Article 14 [3]: Audit Committee**

a) The Board of Directors shall set up a committee to be named the "Audit Committee". Its members shall not be less than three, including a specialist in financial and accounting matters. Executive board members are not eligible for Audit Committee membership.

b) The General Assembly of shareholders shall, upon a recommendation of the Board of Directors, issue rules for appointing the members of the Audit Committee and define the term of their office and the procedure to be followed by the Committee.

c) The duties and responsibilities of the Audit Committee include the following:

1. To supervise the company's internal audit department to ensure its effectiveness in executing the activities and duties specified by the Board of Directors.
2. To review the internal audit procedure and prepare a written report on such audit and its recommendations with respect to it.
3. To review the internal audit reports and pursue the implementation of the corrective measures in respect of the comments included in them.
4. To recommend to the Board of Directors the appointment, dismissal and the Remuneration of external auditors; upon any such recommendation, regard must be made to their independence.
5. To supervise the activities of the external auditors and approve any activity beyond the scope of the audit work assigned to them during the performance of their duties.
6. To review together with the external auditor the audit plan and make any comments thereon.

[3] The Board of the Capital Market Authority issued resolution Number (1-36-2008) Dated 12/11/1429H corresponding to 10/11/2008G making Article 14 of the Corporate Governance Regulations mandatory on all companies listed on the Exchange effective from year 2009.

7. To review the external auditor's comments on the financial statements and follow up the actions taken about them.

8. To review the interim and annual financial statements prior to presentation to the Board of Directors; and to give opinion and recommendations with respect thereto.

9. To review the accounting policies in force and advise the Board of Directors of any recommendation regarding them.

**Article 15[4]: Nomination and Remuneration Committee**

a) The Board of Directors shall set up a committee to be named "Nomination and Remuneration Committee".

b) The General Assembly shall, upon a recommendation of the Board of Directors, issue rules for the appointment of the members of the Nomination and Remuneration Committee, their remunerations, and terms of office and the procedure to be followed by such committee.

c) The duties and responsibilities of the Nomination and Remuneration Committee include the following:

1. Recommend to the Board of Directors appointments to membership of the Board in accordance with the approved policies and standards; the Committee shall ensure that no person who has been previously convicted of any offense affecting honor or honesty is nominated for such membership.

2. Annual review of the requirement of suitable skills for membership of the Board of Directors and the preparation of a description of the required capabilities and qualifications for such membership, including, *inter alia*, the time that a Board member should reserve for the activities of the Board.

3. Review the structure of the Board of Directors and recommend changes.

[4] The Board of the Capital Market Authority issued resolution Number (1-10-2010) Dated 30/3/1431H corresponding to 16/3/2010G making Article 15 of the Corporate Governance Regulations mandatory on all companies listed on the Exchange effective from 1/1/2011

4. Determine the points of strength and weakness in the Board of Directors and recommend remedies that are compatible with the company's interest.

5. Ensure on an annual basis the independence of the independent members and the absence of any conflict of interest in case a Board member also acts as a member of the Board of Directors of another company.

6. Draw clear policies regarding the indemnities and remunerations of the Board members and top executives; in laying down such policies, the standards related to performance shall be followed.

**Article 16: Meetings of the Board**

1. The Board members shall allot ample time for performing their responsibilities, including the preparation for the meetings of the Board and the permanent and ad hoc committees, and shall endeavor to attend such meetings.

2. The Board shall convene its ordinary meetings regularly upon a request by the Chairman. The Chairman shall call the Board for an unforeseen meeting upon a written request by two of its members.

3. When preparing a specified agenda to be presented to the Board, the Chairman should consult the other members of the Board and the CEO. The agenda and other documentation should be sent to the members in a sufficient time prior to the meeting so that they may be able to consider such matters and prepare themselves for the meeting. Once convened, the Board shall approve the agenda; should any member of the Board raise any objection to this agenda, the details of such objection shall be entered in the minutes of the meeting.

4. The Board shall document its meetings and prepare records of the deliberations and the voting, and arrange for these records to be kept in chapters for ease of reference.

**Article 17: Remuneration and Indemnification of Board Members**

The Articles of Association of the company shall set forth the manner of remunerating the Board members; such remuneration may take the form of a

lump sum amount, attendance allowance, rights *in rem* or a certain percentage of the profits. Any two or more of these privileges may be conjoined.

**Article 18. Conflict of Interest within the Board**

a) A Board member shall not, without a prior authorization from the General Assembly, to be renewed each year, have any interest (whether directly or indirectly) in the company's business and contracts. The activities to be performed through general bidding shall constitute an exception where a Board member is the best bidder. A Board member shall notify the Board of Directors of any personal interest he/she may have in the business and contracts that are completed for the company's account. Such notification shall be entered in the minutes of the meeting. A Board member who is an interested party shall not be entitled to vote on the resolution to be adopted in this regard neither in the General Assembly nor in the Board of Directors. The Chairman of the Board of Directors shall notify the General Assembly, when convened, of the activities and contracts in respect of which a Board member may have a personal interest and shall attach to such notification a special report prepared by the company's auditor.

b) A Board member shall not, without a prior authorization of the General Assembly, to be renewed annually, participate in any activity which may likely compete with the activities of the company, or trade in any branch of the activities carried out by the company.

c) The company shall not grant cash loan whatsoever to any of its Board members or render guarantee in respect of any loan entered into by a Board member with third parties, excluding banks and other fiduciary companies.

## PART 5
## CLOSING PROVISIONS

### Article 19: Publication and Entry into Force

These regulations shall be effective upon the date of their publication.

## *B. Relative Updates to Saudi Law*

**The following are later amendments to the existing Companies Act that are not included in the text of the official translation to the Companies Act and translation of relative amendments that have taken place after the cutoff date for material discussed in the text of this dissertation;**

**1. The following are later amendments to the existing Companies Act that are not included in the text of the official translation to the Companies Act; however, minor or out of the scope of this paper amendment, will not be subject to translation by author.**

*Amendment based on Royal Decree number M/22 7/20/1412H ( January1992) G), Articles 10, 52, 76, 77,168,180 210, 231 and 108; However, Amendment to Articles 168 and 180, relates specifically to limited liability partnership and, therefore, are out of the scope of this paper.*

Current Article 10 would be translated as follows [translation by author]

> Save in the case of a joint adventure, a company's memorandum of association must be recorded in writing in the presence of a registrar. Otherwise, such memorandum or amendment shall not be valid vis-à-vis third parties.
>
> The partners may not invoke the invalidity of the memorandum, or any amendment thereto that was not recorded in the above manner, against third parties, but the latter may invoke it against the partners.
>
> The managers or the directors of a company shall be held jointly responsible for damages sustained by the company, or the partners, or third parties, as a result of failure to record the memorandum of association.

Article 52 has also been previously amended by Royal Decree M/23 on 6/28/1402 H (21 May 1982); current Article 52 would be translated as follows [translation by author]:

> The following corporations may be incorporated only by virtue of an authorization issued in a Royal Decree based on the approval of the Council of Ministers and the recommendation of the Minister of Commerce, with due regard to the provisions of the Regulations:
> (a) Concessionary companies.
> (b) Companies managing a public utility.
> (c) Companies receiving subsidy from the Government.
> (d) Companies in which the Government or any other public juristic person participates with exception to the Public Pension fund (Public Pension Establishment) and the General Organization for Social Insurance.
> (e) Companies engaged in banking activities.
>
> Other corporations may be incorporated only by authorization to be issued by the Minister of Commerce and published in the Official Gazette. The Minister of Commerce Shall issue said authorization only after he has reviewed a study proving the economic feasibility of the company's objectives, unless the company has submitted such study to another competent government agency that has authorized the establishment of the enterprise.
>
> The application for such authorization shall be signed by at least five members (of the company) and submitted in the manner to be prescribed by a decision of the Minister of Commerce
>
> The application shall state the manner of subscription for the company's capital, the number of shares reserved by the founders to themselves and the amount subscribed by each founder. Annexed thereto shall be a copy of the company's memorandum of association and bylaws both signed by the- incorporators and other founders.
>
> The said application shall be recorded in the register kept for the purpose by the General Department of Companies.
>
> The said General Department may request that alterations be made in the company's bylaws so as to be consistent with the provisions of [this Act/ the Companies Act] or conformable to the standard from referred to in Article 51. (alteration to the original in the quoted text) (emphasis added).

Article 76 of the existing Companies Act provides:

> Directors shall be jointly responsible for damages to the company, or the stockholders, or third parties, arising from their maladministration of the affairs of the company, or their violation of the provisions [this Act/ the Companies Act] or of the company's bylaws. Any stipulation contrary to this provision shall be considered nonexistent.
>
> (Joint) Liability shall be assumed by all directors if the wrongful act arises from a resolution adopted by unanimous vote. But with respect to resolution adopted by majority vote, dissenting directors shall not be liable if they have expressly recorded their objection in the minutes of the meeting. Absence from the meeting at which such resolution is adopted shall not constitute cause for relief from liability, unless it is established that the absentee was not aware of the resolution, or, on becoming aware of it, was unable to object to it.
>
> A liability action shall not be barred by regular meeting's [regular general assembly's] approval to exonerate the board of directors.
>
> The liability action shall not be heard after the end of three years from the discovery of the wrongful act. (alteration to the original in the quoted text). (emphasis added)

Current Article 77, [last paragraph in previous Article 77 was omitted], the Article would read:

> The company may institute an action in liability against (its) directors for wrongful acts that cause prejudice to the body of stockholders. The resolution to institute this action shall be made by the regular general meeting, which shall appoint a person (or persons) to pursue the case on behalf of the company.
>
> If the company is adjudged bankrupt, the institution of this action shall rest with the receiver, and upon the dissolution of the company, the liquidator shall (institute and) pursue the case after obtaining the approval of the regular general meeting.

Current Article 210 would provide as follows [translation by author]:

> A company may convert into any of the other kinds of companies by virtue of a resolution adopted in the manner prescribed for the alteration of the company's memorandum of association or bylaws, and subject to fulfillment of the formation and publication requirements (prescribed) for the particular kind

of company into which it has been converted. However, a cooperative company may not convert into another kind of company, but any other (kind of) company may convert into a cooperative company. The Article 100 provision shall apply to the company's stockholders when converted to a corporation or a partnership limited by shares, nevertheless, the period of suspension shall start from the date of the approval to convert the company but if the conversion is accompanied by an increase in its capital by way of public subscription, the suspension does not apply to those shares subscribed to by this way (public subscription). (emphasis added)

Current Article 231 [translation by author]

When inability to institute a liability action on who has committed one of the violations prescribed in the two preceding Articles and the competent authority filed an action on the company, it is permissible to rule against the company the fine prescribed for the violation.

In cases of repetition (of an offense), the penalties prescribed in the preceding two Articles shall be doubled.

Current Article 108 [previous Article 108 is now considered 108 (1) and two additional new paragraphs, (2) and (3), are added. Article 108 would be translated as follows [translation by author]:

1- A stockholder shall be vested with all the rights attached to shares, specifically the right to obtain a share in the profits declared for distribution, the right to obtain an equity in the company's assets upon liquidation, the right to attend stockholders meetings and participate in the deliberations and vote on the resolutions (proposed) thereat, the right to dispose of his shares, the right of access to the company's books and documents, and the right to supervise the acts of the board of directors, to institute the action in liability against the directors, and to contest the validity of the resolutions adopted at stockholders meetings, in accordance with the terms and restrictions set forth in [this act/ the Companies Act] or in the company's bylaws.

2- The corporation based on a provision in its bylaws and after approval of the Minister of Commerce and subject to the grounds specified by him may issue preferred shares that do not entitle holders to vote (in

shareholders meetings) and may not exceed 50% of its capital and those mentioned shares entitles holders in addition to the right to share in the net profits distributed to common shares what follows:-

(a) the right to receive a certain percentage of the net profits of not less than 5% of the nominal value of shares (par value), after putting aside statutory reserve (legal reserve) and before any distribution to corporation's profits.

(b) (the right to have) a priority in the recovery of the value of their shares in the capital upon the liquidation of the corporation and to obtain a certain percentage in the result of liquidation.

The corporation may purchase those shares in accordance with the manner and grounds stated in its bylaws but the bylaws must not contain any provision forcing a shareholder to sell his/her shares, these shares do not count towards calculating the required quorum for the corporation's general assembly prescribed in Articles "91,92."

3- In the absence of distribution of dividends for any fiscal year, dividends are not permitted to be distributed for the following years, until payment of the percentage mentioned in paragraph "2" above, to shareholders holding the non-voting shares for this year and if the corporation fails to pay this percentage of profits for a period of three consecutive years, it is permissible for the special assembly of holders of such shares convened in accordance with the provisions of Article "86", to decide whether they attend meetings of the corporation general assembly and participate in the voting or to appoint representatives of them on the board of directors which in agreement with their shares value in the capital until the corporation is able to pay the entire amount of priority profits allotted to holders of those shares for the preceding years. (alteration to the original in the quoted text).

*Amendment based on Royal Decree number M/29 on 9/16/1418H (January 1998), Article 79*

Current Article 79 [which Article has been previously amended, the latter of which is by Royal Decree M/46 on 7/04/1405 H (March 1985); current Article 79 would be translated as follows [translation by author]

Subject to the provisions of the company's bylaws, the board of directors shall appoint from among its members a chairperson and a managing director. A single director may hold the offices of

chairperson and managing director. The company's bylaws shall specify the duties and powers of the chairperson and of the managing director as well as the special remuneration to be received by each of them in addition to the remuneration prescribed for board members. In the absence of any provisions in this respect in the company's bylaws, the board of directors shall divide the duties and powers and their special remuneration.

The board of directors shall appoint a secretary from among its members or others, and shall determine his duties and powers and fix his remuneration, if the company's bylaws do not contain any provisions in this respect. The term of office of the chairperson, the managing director, and the secretary who is a director shall not exceed the term of their respective directorships. They may be re-appointed, unless the company's bylaws provide otherwise. The board may, at all times, remove all or any of them, without prejudice to their right to damages if the removal is made without acceptable justification or at improper time.

*Latter Amendment based on Royal Decree number M/60 on 7/03/1428H (July 2007), Articles 158 and 180, and Royal Decree number M/32 on 06/20/1429H (June 2008), Article 157, relates specifically to limited liability partnership and, therefore, are out of the scope of this paper.*

The Council of Ministers has issued a resolution under which a person may not be appointed to more than five listed corporations' boards at one time, with any excess serving on over five listed corporations being deemed a nullity.[593]

Similar to the previous limitation, the limitation does not apply to the state, public judicial persons [entities], corporations and those persons appointed by the government) under which there is no limitation on the number of board of directors where these entities may be represented on.

[593] In 8/22/2011 to amend the applicability of Council of Ministers' resolution number (55) on 02/28/1419H, 06/22/1998 AD

**2. Revisions to the second proposal to the Companies Act included in the Shura Council's proposal which proposal has been ratified by the Shura Council in session number13/10 on 04/15/1432H (04/20/2011); however, minor or out of the scope of this paper changes, which are also not many, are not noted here.**

a. [New] Article 76 (3), additional number is added to previous Article 76 (3) and (4), would provide as follows [translation by author]:

> in all cases, the total of remuneration and material and financial benefits received by a member of the board of directors must not annually exceed 500,000 Saudi Arabian Riyal (SAR).

b. Article 86 (2) would provide as follows [translation by author]:

> Every stockholder shall have the right to attend shareholders' general assemblies, even if the bylaws of the company provide otherwise, a stockholder may give proxy to another person other than a director or the company's employees to attend the general meeting on his behalf. (emphasis added).

c. [New] Article 105 (4), additional number is added to previous Article 105 (4),

> the Chairman [Chairman of the Board of the Capital Market Authority] after agreement with the Minister [Minister of Commerce and Industry] must lay down a regulation that specify criterion for estimating the issuance premium [the issuance of shares for greater than the par value]. (alteration to the original in the quoted text).

d. Article 121, a new Article, an additional number is added to each previous numbering of Articles of the second proposal to the Companies Act as

follows, starting with previous Article 121, now number 122, this also lead to changes in reference to these Articles by other provisions of Articles of the the same proposal.]

the company must consider the Shariah rules on debt when issuing and when trading debt instruments.

**3. On 12/3/1432H (10 /30/2011), the Board of the Capital Market Authority issued Resolution No.(1-33-2011) making paragraph (b) in Article Ten of the Corporate Governance Regulations (laying down rules for internal control systems and supervising them as part of the main functions of the board of directors) mandatory as of 1/1/2012.**

# APPENDIX II

## *tables*

The following tables show respectively estimates of Saudi population by gender in Saudi Arabia during the years 2004-2009, the total fertility rate in Saudi Arabia during the years 2004-2009, Saudi Labor Force ( 15 Years and Over ) by gender (1999-2008) and the Saudi unemployed rate by gender (1999 - 2008).

| سعوديون SAUDI | | | السنة |
|---|---|---|---|
| جملة TOTAL | اناث FEMALE | ذكور MALE | YEAR |
| 16443987 | 8198412 | 8245575 | 2004 |
| 16854157 | 8401060 | 8453097 | 2005 |
| 17270181 | 8606584 | 8663597 | 2006 |
| 17691336 | 8814670 | 8876666 | 2007 |
| 18115550 | 9024301 | 9091249 | 2008 |
| 18543246 | 9235696 | 9307550 | 2009 |

This information is available at Saudi Arabia's Central Department of Statistics and Information website http://www.cdsi.gov.sa/socandpub/resd (last visited 11-08-2010); the Central Department of Statistics (CDS) is subordinated to the Ministry of Economy & Planning. CDS is considered the sole official statistical reference in the Kingdom for implementing and applying the General Statistics System as well as providing governmental agencies, public and private organizations and individuals with official statistical information and data. A translation of Article 2 of the General Statistics law is available at http://www.cdsi.gov.sa/english/index.php?option=com_content&view=article&id=30&Itemid=29(last visited 11-08-2010);

> Sector of statistics and information in the Kingdom of Saudi Arabia consists of the Central Department of Statistics and Information (Central Agency for Statistics) and multi Suit of statistical centers and units formed within the administrative structures of government agencies and some private sector institutions under a technical supervision done by the Department of Statistics and Information (CDSI). CDSI (Central Agency for Statistics) draws out its statistical information from two main sources representing the core of national statistics system, namely:
> 1. General statistics of censuses, field surveys, research and statistical studies conducted by the CDSI.
> 2. Administrative records (administrative data) derived from the records, bulletins and statistical reports issued by the statistical units and information centers in government agencies and institutions in its capacity as responsible for providing the service concerned.
> http://www.cdsi.gov.sa/english/index.php?option=com_content&view=article&id=82&Itemid=29 (last visited 11-08-2010)

| معدل الخصوبة الكلي TOTAL FERTILITY RATE | | | السنة YEAR |
|---|---|---|---|
| جملة TOTAL | غير سعوديين NON-SAUDI | سعوديون SAUDI | |
| 3.32 | 2.4 | 3.6 | 2004 |
| 3.28 | 2.39 | 3.53 | 2005 |
| 3.22 | 2.37 | 3.46 | 2006 |
| 3.17 | 2.36 | 3.39 | 2007 |
| 3.1 | 2.34 | 3.31 | 2008 |
| 3.04 | 2.33 | 3.24 | 2009 |

This information is available at Saudi Arabia's Central Department of Statistics and Information website http://www.cdsi.gov.sa/socandpub/facomunty (last visited 11-08-2010).

قوة العمل السعودية ( ١٥سنة فأكثر ) حسب الجنس للسنوات ١٤٢٠-١٤٢٩ هـ ( ١٩٩٩-٢٠٠٨ م )

Saudi Labour Force ( 15 Years and Over ) By Sex (1999-2008)

| Total الجملة | | | Unemployees متعطلون | | | Employees مشتغلون | | | السنة |
|---|---|---|---|---|---|---|---|---|---|
| Total جملة | Famle اناث | Male ذكور | Total جملة | Famle اناث | Male ذكور | Total جملة | Famle اناث | Male ذكور | |
| 2823715 | 412709 | 2411006 | 228625 | 65339 | 163286 | 2595090 | 347370 | 2247720 | (1999)1420 |
| 2943222 | 426524 | 2516698 | 239851 | 75245 | 164606 | 2703371 | 351279 | 2352092 | (2000)1421 |
| 3029672 | 439276 | 2590396 | 252699 | 76083 | 176616 | 2776973 | 363193 | 2413780 | (2001)1422 |
| 3148718 | 465338 | 2683380 | 304127 | 100972 | 203155 | 2844591 | 364366 | 2480225 | (2002)1423 |
| 3336687 | 516601 | 2820085 | 345350 | 119757 | 225593 | 2991337 | 396844 | 2594493 | (2003)1424 |
| 3524655 | 567865 | 2956791 | 386573 | 138542 | 248031 | 3138083 | 429323 | 2708760 | (2004)1425 |
| 3712624 | 619128 | 3093496 | 427795 | 157327 | 270468 | 3284828 | 461801 | 2823028 | (2005)1426 |
| 3900592 | 670391 | 3230201 | 469018 | 176112 | 292906 | 3431574 | 494279 | 2937295 | (2006)1427 |
| 4029955 | 667243 | 3362712 | 445198 | 164787 | 280411 | 3584757 | 502456 | 3082301 | (2007)1-1428 |
| 4054845 | 686866 | 3367979 | 453994 | 182987 | 271007 | 3600851 | 503879 | 3096972 | (2007) 1428-2 |
| 4078619 | 656972 | 3421647 | 400019 | 163789 | 236230 | 3678600 | 493183 | 3185417 | (2008) 1429-1 |
| 4173019 | 659487 | 3513532 | 416350 | 177174 | 239176 | 3756669 | 482313 | 3274356 | (2008) 1429-2 |

This information is available at Saudi Arabia's Central Department of Statistics and Information website http://www.cdsi.gov.sa/english/index.php?option=com_docman&task=cat_view&gid=85&Itemid=113 (last visited 11-08-2010)

| Saudis سعوديون | | | السنة |
|---|---|---|---|
| Total جملة | Famle اناث | Male ذكور | |
| 8.1 | 15.8 | 6.8 | (1999)1420 |
| 8.1 | 17.6 | 6.5 | (2000)1421 |
| 8.3 | 17.3 | 6.8 | (2001)1422 |
| 9.7 | 21.7 | 7.6 | (2002)1423 |
| 10.4 | 23.2 | 8.0 | (2003)1424 |
| 11.0 | 24.4 | 8.4 | (2004)1425 |
| 11.5 | 25.4 | 8.7 | (2005)1426 |
| 12.0 | 26.3 | 9.1 | (2006)1427 |
| 11.0 | 24.7 | 8.3 | (2007) 1428-1 |
| 11.2 | 26.6 | 8.0 | (2007)(1428-2 |
| 9.8 | 24.9 | 6.9 | (2008) 1429-1 |
| 10.0 | 26.9 | 6.8 | (2008) 1429-2 |

This information is available at Saudi Arabia's Central Department of Statistics and Information website http://www.cdsi.gov.sa/english/index.php?option=com_docman&task=cat_view&gid=85&Itemid=113 (last visited 11-08-2010).

# APPENDIX III

The following tables and bar graphs about the Saudi Capital Market illustrate various information related to topics discussed in this paper.

A. Total Amount of Securities Offerings by Type in 2010 and 2011.

| Type | 2010 | | 2011 | | Change (%) |
|---|---|---|---|---|---|
| | Amount (SR Million) | Percentage out of Total (%) | Amount (SR Million) | Percentage out of Total (%) | |
| Public Offerings[5] | 3,832.6 | 12.6% | 1,727.0 | 7.9% | - 54.9% |
| Private Placements[6] | 19,120.6 | 63.0% | 10,042.0 | 46.1% | - 47.5% |
| Rights Issues[7] | 420.0 | 1.4% | 4,458.0 | 20.5% | 961.4% |
| Debt Instruments | 7,000.0 | 23.0% | 5,549.9 | 25.5% | - 20.7% |
| Total | 30,373.2 | 100% | 21,776.9 | 100% | - 28.3% |

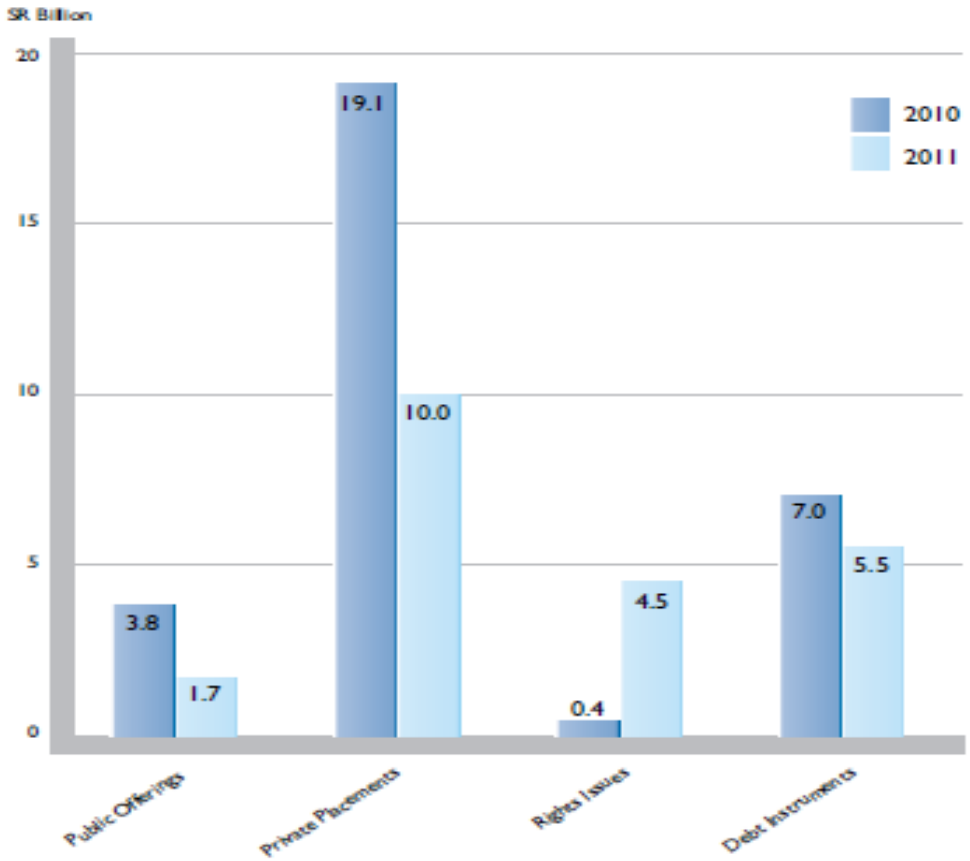
5- Not including Takween Advanced Industries Co. It was approved in 2011, but did not go public in the same year.

6- The amount represents only the completed private placements.

7- Not including Etihad Atheeb Telecommunication Co. It was approved in 2011, but not offered in the same year.

Capital Market Authority, Annual Report 2011, P26 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

B. Total Amount of Securities Offerings by Type in 2010 and 2011 (Bar Graph.)




Capital Market Authority, Annual Report 2011, P27 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

C. Number of Individual Subscribers to IPOs by Subscription Channel in 2010 and 2011.

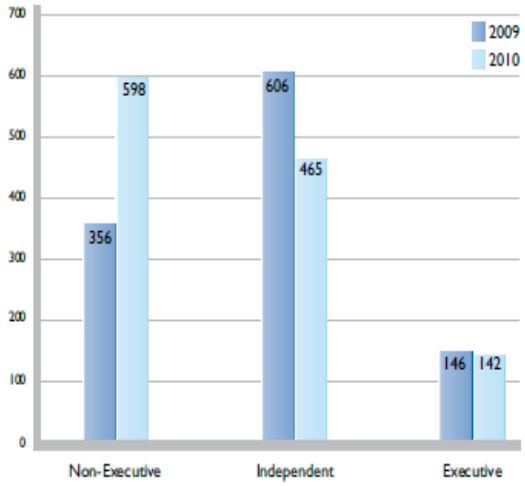
| Subscription Channel | 2010 | | 2011 | |
|---|---|---|---|---|
| | Number (Thousand Subscribers) | Percentage out of Total (%) | Number (Thousand Subscribers) | Percentage out of Total (%) |
| Phone Banking | 2,125.8 | 20.6% | 582.2 | 19.6% |
| Internet Banking | 2,023.8 | 19.6% | 907.5 | 30.6% |
| Bank Branches | 827.9 | 8.0% | 178.9 | 6.0% |
| ATMs | 5,329.4 | 51.7% | 1,295.6 | 43.7% |
| Total | 10,306.9 | 100% | 2,964.2 | 100% |

Capital Market Authority, Annual Report 2011, P35 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

D. Number of Boards' Seats in Listed Companies by Membership Type as in Boards of Directors' Reports for 2009 and 2010.

| Membership Type | 2009 | | 2010 | | Change (%) |
|---|---|---|---|---|---|
| | Number | Percentage out of Total (%) | Number | Percentage out of Total (%) | |
| Non-Executive | 356 | 32.1% | 598 | 49.6% | 68.0% |
| Independent | 606 | 54.7% | 465 | 38.6% | - 23.3% |
| Executive | 146 | 13.2% | 142 | 11.8% | - 2.7% |
| Total | 1,108 | 100% | 1,205 | 100% | 8.8% |

Chart (25): Number of Boards' Seats in Listed Companies by Membership Type as in Boards of Directors' Reports for 2009 and 2010




Capital Market Authority, Annual Report 2011, P82 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

E. Number of Audit Committees' Seats in Listed Companies by Membership Type as in Boards of Directors' Reports for 2009 and 2010.

## Board of Directors' Main Committees

### - Audit Committees

Article Fourteen of the Corporate Governance Regulations came into effect on 1/1/2009; it stipulates that the board of directors should set up an audit committee, issue rules for appointing the members of that committee, define its work procedure, and identify duties and responsibilities thereof. The Article also states that the committee's members should not be less than three, including a specialist in financial and accounting matters. Executive board members are not eligible for audit committee membership.

Table (34) reflects the number of audit committees' seats in listed companies by membership type in 2009 and 2010:

- Total number of audit committees' seats in listed companies increased by 12.9% to 473 in 2010 compared to 2009.
- The number of seats for "outside" members ranked first in 2010, followed by the seats for "independent" members, and the seats for "non-executive" members with 38.7%, 38.3% and 23.0% respectively.
- The number of seats for "non-executive" members rose in 2010 by 47.3% compared to 2009.

Table (34): Number of Audit Committees' Seats in Listed Companies by Membership Type as in Board Reports for 2009 and 2010

| Membership Type | 2009 | | 2010 | | Change (%) |
|---|---|---|---|---|---|
| | Number | Percentage out of Total (%) | Number | Percentage out of Total (%) | |
| Non-Executive | 74 | 17.7% | 109 | 23.0% | 47.3% |
| Independent | 181 | 43.2% | 181 | 38.3% | 0.0% |
| Outside the Board | 164 | 39.1% | 183 | 38.7% | 11.6% |
| Total | 419 | 100% | 473 | 100% | 12.9% |

Capital Market Authority, Annual Report 2011, P85 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

F. Number of Listed Companies Having Nomination and Remuneration Committees as in Board Reports for 2009 and 2010.

| Category | 2009 | | 2010 | |
|---|---|---|---|---|
| | Number | Percentage out of Total (%) | Number[19] | Percentage out of Total (%) |
| Companies with Nomination and Remuneration Committees | 95 | 72.5% | 143 | 100% |
| Companies with no Nomination and Remuneration Committees | 36 | 27.5% | 0 | 0.0% |
| Total Listed Companies | 131 | 100% | 143 | 100% |

Capital Market Authority, Annual Report 2011, P87 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

G. Condensed and Detailed Financial Statements Reviewed and Posted in Tadawul Website in 2010 and 2011.

| Category | Number | | Change (%) |
|---|---|---|---|
| | 2010 | 2011 | |
| Condensed Financial Statements | 676 | 724 | 7.1% |
| Detailed Financial Statements | 665 | 714 | 7.4% |

Capital Market Authority, Annual Report 2011, P70 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

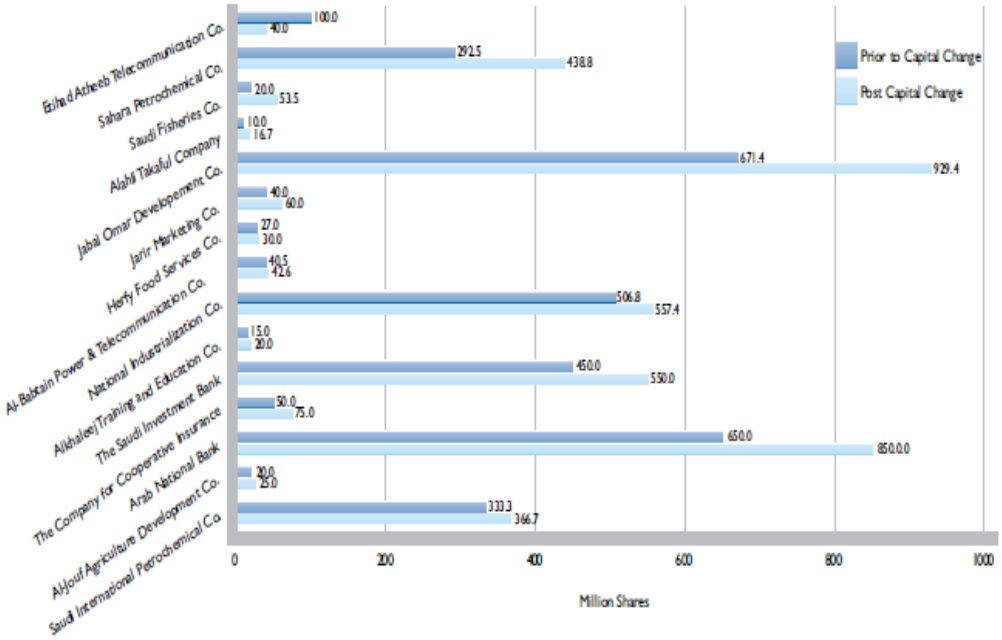
H. List of Companies that Increased/Decreased their Capital during 2011.

| No. | Company[13] | Total Number of Shares (Million) | | Increase/Decrease in Capital (%) |
|---|---|---|---|---|
| | | Prior to Capital Change | Post Capital Change | |
| 1 | Saudi International Petrochemical Co. | 333.3 | 366.7 | 10.0% |
| 2 | Al-Jouf Agriculture Development Co. | 20.0 | 25.0 | 25.0% |
| 3 | Arab National Bank | 650.0 | 850.0 | 30.8% |
| 4 | The Company for Cooperative Insurance | 50.0 | 75.0 | 50.0% |
| 5 | The Saudi Investment Bank | 450.0 | 550.0 | 22.2% |
| 6 | AlKhaleej Training and Education Co. | 15.0 | 20.0 | 33.3% |
| 7 | National Industrialization Co. | 506.8 | 557.4 | 10.0% |
| 8 | AL-Babtain Power &Telecommunication Co. | 40.5 | 42.6 | 5.2% |
| 9 | Herfy Food Services Co. | 27.0 | 30.0 | 11.1% |
| 10 | Jarir Marketing Co. | 40.0 | 60.0 | 50.0% |
| 11 | Jabal Omar Development Co. | 671.4 | 929.4 | 38.4% |
| 12 | Alahli Takaful Company | 10.0 | 16.7 | 67.0% |
| 13 | Saudi Fisheries Co. | 20.0 | 53.5 | 167.5% |
| 14 | Sahara Petrochemical Co. | 292.5 | 438.8 | 50.0% |
| 15 | Etihad Atheeb Telecommunication Co. | 100.0 | 40.0 | - 60.0% |
| Total | | 3,226.5 | 4,055.1 | 25.7% |

13- Not including the Saudi Hotels & Resorts Co. which had the CMA's approval on increasing its capital in 2011. The company did not hold the extraordinary general assembly to get the approval on capital increase in the same year; this also excludes the capital increase of Etihad Atheeb Telecommunication Co. that was approved in 2011, but not effected in the same year.

Capital Market Authority, Annual Report 2011, P33 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

I. Number of Shares of Companies that Increased/Decreased their Capital during 2011.




Capital Market Authority, Annual Report 2011, P34 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

J. Stock Market Trading Statistics in 2011 vs. 2010.

| Trading Information | 2010 | 2011 | Change (%) |
|---|---|---|---|
| Number of Listed Companies[14] | 146 | 150 | 2.7% |
| Number of Executed Trades (Million) | 19.5 | 25.5 | 30.8% |
| Number of Issued Shares (Million) | 39,605.4 | 40,688.4 | 2.8% |
| Market Capitalization of Outstanding Shares (SR Billion) | 1,325.4 | 1,270.8 | - 4.1% |
| Number of Traded Shares (Billion) | 33.3 | 48.5 | 45.6% |
| Value of Traded Shares (SR Billion) | 759.2 | 1,098.8 | 44.7% |
| Number of Trading Days | 249 | 248 | - 0.4% |
| Average Daily Executed Trades (Thousand) | 78.4 | 103.0 | 31.3% |
| Average Daily Traded Shares (Million) | 132.6 | 195.7 | 47.6% |
| Average Daily Value of Traded Shares (SR Million) | 3,048.9 | 4,430.8 | 45.3% |
| Tadawul All-Share Index (Points) | 6,620.8 | 6,417.7 | - 3.1% |

14- Not including Takween Advanced Industries Co. which was approved in 2011, but not offered in the same year. Also, this excludes the Saudi Enaya Cooperative Insurance Co. which went public in 2011, but was not listed on the exchange in the same year.

Capital Market Authority, Annual Report 2011, P41 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

K. Number of Announcements Posted on the Saudi Stock Exchange (Tadawul) Website Classified by Type in 2010 and 2011.

| Type of Announcement | 2010 | | 2011 | | Change (%) |
|---|---|---|---|---|---|
| | Number | Percentage out of Total (%) | Number | Percentage out of Total (%) | |
| Financial Results | 767 | 30.0% | 900 | 30.0% | 17.3% |
| Corporate Board of Directors Recommending Capital Increase through Rights Issue | 9 | 0.4% | 8 | 0.3% | - 11.11% |
| Corporate Board of Directors Recommending Capital Increase through Bonus Shares Issue | 4 | 0.2% | 19 | 0.6% | 375.0% |
| Corporate Board of Directors Recommending Capital Decrease | 2 | 0.1% | 5 | 0.2% | 150.0% |
| Invitation to Attend General Assemblies, and the Announcements Related to their Outcomes | 640 | 25.1% | 708 | 23.8% | 10.6% |
| Dividends | 163 | 6.4% | 125 | 4.2% | - 23.3% |
| Explanatory Announcement | 124 | 4.9% | 174 | 5.8% | 40.3% |
| Any Change in the Composition of Corporate Board of Directors and Top Management | 135 | 5.3% | 87 | 2.9% | - 35.6% |
| Approval on New Product | 93 | 3.6% | 16 | 0.5% | - 82.8% |
| Other Material Developments or Events | 617 | 24.2% | 933 | 31.4% | 51.2% |
| Total | 2,554 | 100% | 2,975 | 100% | 16.5% |

Capital Market Authority, Annual Report 2011, P74 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

L. Total Number of Supervisory Visits to Listed Companies in 2010 and 2011.

## Supervisory Visits:

Pursuant to paragraph (c) of Article Five of the CML stating: "For the purpose of conducting all investigations which, in the opinion of the Board, are necessary for the enforcement of the provisions of this Law and other regulations and rules issued pursuant to this Law, the members of the Authority and its employees designated by the Board are empowered to subpoena witness, take evidence, and require the production of any books, papers, or other documents which the Authority deems relevant or material to its investigation. The Authority shall have the power to carry out inspections of the records or any other materials, whoever the holder may be, to determine whether the person concerned has violated, or is about to violate any provision of this Law, the Implementing Regulations or the rules issued by the Authority". The CMA conducts supervisory visits to listed companies to ensure their compliance with the CMA's Law, Rules and Regulations. Table (28) presents the total number of supervisory visits to listed companies in 2010 and 2011; those visits grew by 75% to 7 in 2011.

Table (28): Total Number of Supervisory Visits to Listed Companies in 2010 and 2011

| Element | Number | | Change (%) |
|---|---|---|---|
| | 2010 | 2011 | |
| Supervisory Visits to Listed Companies | 4 | 7 | 75% |

Capital Market Authority, Annual Report 2011, P76 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

M. Status of Complaints Received by the Capital Market Authority at the End of 2010 and 2011.

### Handling Investor Complaints

Paragraph (e) of Article Twenty Five of the CML states that "No complaint or statement of claim may be filed with the Committee without being filed first with the Authority, and a 90-day period has passed from the filing date, unless the Authority notifies the grievant otherwise of the permissibility of submitting before the expiration of this period". In the event that no amicable settlement could be reached between the conflicting parties, and 90 days from filing of the complaint have passed, a notice shall be given to the complainant. The complainant may then file a case with the Committee for the Resolution of Securities Disputes (CRSD) to look into it. As such, the CMA issues notices and notifications to complainants when a complaint is not settled between the concerned parties. Below are the definitions of notices and notifications:

**Notice:** is a receipt served to a complainant after 90 days have passed from the original filing of the case with the CMA to allow the complainant to file his/her case with the CRSD.

**Notification:** a document that permits a complainant to file a complaint with the CRSD before 90 days have passed from the original filing of the case with the CMA.

Tables (38) and (39) indicate the status of complaints received by the CMA and the notices/notifications prepared at the end of 2010 and 2011 as follows:

- 169 complaints (54.3%), out of a total of 311, were resolved at the end of 2011.
- 64 complaints are under examination at the end of 2011, accounting for 20.6% of total complaints.
- The percentage of notifications/notices served to complainants in 2011 increased by 62.8% of the total.

Table (38): Status of Complaints Received by the CMA at the End of 2010 and 2011

| Complaint Status | At the End of 2010 | | At the End of 2011[21] | |
|---|---|---|---|---|
| | Number | Percentage (%) | Number | Percentage (%) |
| Under Examination | 64 | 15.8% | 64 | 20.6% |
| Resolved | 215 | 53.1% | 169 | 54.3% |
| Notifications/Notices Prepared | 126 | 31.1% | 78 | 25.1% |
| Total | 405 | 100% | 311 | 100% |

21- All cases under examination at the end of 2010 were finalized at the end of 2011 as 38 cases were resolved and 26 notifications/notices were prepared.

Market Authority, Annual Report 2011, P93 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

N. Number of Violation Cases of the Capital Market Law Classified by Type at the End of 2010 and 2011.

## Finalized Violation Cases of the CML by Type

Table (43) indicates the number of finalized violation cases, classified by type, as in 2010 and 2011. Most significant highlights of this table are:

- In 2011, the number of finalized violation cases of "disclosure" ranked first with 73 (24.1%) for the second consecutive year.
- Finalized violation cases of the "Investment/Real Estate Funds Regulations" rose by 285.7% in 2011 compared to 2010.
- Finalized cases of "other violations of the Listing Rules" declined by 87.5% in 2011 compared to 2010.
- Cases related to "violation of the CMA Board resolutions" and "other violations of the Listing Rules" accounted for the lowest figures in 2011 with one case (0.3%) for each.

Table (43): Number of Finalized Violation Cases of the CML Classified by Type at the End of 2010 and 2011

| Type | 2010 | | 2011 | | Change (%) |
|---|---|---|---|---|---|
| | Number | Percentage out of Total (%) | Number | Percentage out of Total (%) | |
| Manipulation and Misleading Information | 44 | 20.0% | 29 | 9.6% | - 34.1% |
| Disclosure Violation | 49 | 22.3% | 73 | 24.1% | 49.0% |
| Insider Trading | 4 | 1.8% | 4 | 1.3% | 0.0% |
| Violation of the "Authorized Persons Regulations" | 25 | 11.4% | 45 | 14.9% | 80.0% |
| Ownership/Disposal of Percentages without Notifying the CMA | 12 | 5.5% | 4 | 1.3% | - 66.7% |
| Conducting Securities Business and Investment of Funds without License | 37 | 16.8% | 69 | 22.8% | 86.5% |
| Violation of the CMA Board Resolutions | 0 | -- | 1 | 0.3% | -- |
| Violation of the "Offers of Securities Regulation" | 3 | 1.4% | 2 | 0.7% | - 33.3% |
| Other Violations of the Listing Rules | 8 | 3.6% | 1 | 0.3% | - 87.5% |
| Trading During Prohibited Period | 19 | 8.6% | 21 | 6.9% | 10.5% |
| Violation of the "Corporate Governance Regulations" | 12 | 5.5% | 27 | 8.9% | 125.0% |
| Violation of the "Investment/Real Estate Funds Regulations" | 7 | 3.2% | 27 | 8.9% | 285.7% |
| Total | 220 | 100% | 303 | 100% | 37.7% |

Capital Market Authority, Annual Report 2011, P102 Available at http://www.cma.org.sa/en/Publicationsreports/Pages/AnnualReport.aspx (last visited 09/23/2012)

# APPENDIX IV

## ***Some Articles to illustrate the different in reference to the Articles and bylaws between the translation to the Companies Act and that of the Corporate Governance Regulations***

## Under the Corporate Governance Regulations:

### Article 4: Facilitation of Shareholders Exercise of Rights and Access to Information

a) The company in its Articles of Association and by-laws ( النظام الأساس للشركة ولوائحها الداخلية) shall specify the procedures and precautions that are necessary for the shareholders' exercise of all their lawful rights. (alteration to the original in the quoted text). (emphasis added)

### Article 11: Responsibilities of the Board

a) Without prejudice to the competences of the General Assembly, the company's Board of Directors shall assume all the necessary powers for the company's management. The ultimate responsibility for the company rests with the Board even if it sets up committees or delegates some of its powers to a third party. The Board of Directors shall avoid issuing general or indefinite power of attorney.
b) The responsibilities of the Board of Directors must be clearly stated in the company's Articles of Association. (نظام الشركة الأساس)

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h) The Board of Directors shall not be entitled to enter into loans which spans more than three years, and shall not sell or mortgage real estate of the company, or drop the company's debts, unless it is authorized to do so by the company's Articles of Association(نظام الشركة). In the case where the company's Articles of Association (نظام الشركة)includes no provisions to this respect, the Board should not act without the approval of the General Assembly, unless such acts fall within the normal scope of the company's business. (alteration to the original in the quoted text). (emphasis added)

## Under the Companies Act:

Article73 of the Companies Act provides:

With due regard to the prerogatives vested in the general meeting, the board of directors shall enjoy full powers in the administration of the company. It shall be entitled, within the scope of its competence, to delegate one or more of its members or others to perform an act or certain acts.

Nevertheless, the board of directors may not contract loans for terms exceeding three years, or sell or mortgage the real property or the place of business of the company, or release the debtors of the company from their liabilities, unless so authorized in the bylaws of the company(نظام الشركة) and subject to the terms set forth therein.

If the company's bylaws (نظام الشركة) do not contain any provisions in this connection, the board may perform the above acts with an authorisation form the regular general meeting, unless such acts fall by virtue of their nature within the scope of the company's objects. (alteration to the original in the quoted text). (emphasis added)

## Under the Corporate Governance Regulations:

**Article 12 (a): Formation of the Board**

Formation of the Board of Directors shall be subject to the following:
a) The Articles of Association (نظام الشركة) of the company shall specify the number of the Board of Directors members, provided that such number shall not be less than three and not more than eleven. (alteration to the original in the quoted text). (emphasis added)

## Under the companies Act with some differences:

Article 66 of the Companies Act provides in part:
A corporation shall be administered by a board of directors whose number shall be specified by the bylaws (نظام الشركة) of the company, provided it is not less than three. (alteration to the original in the quoted text). (emphasis added)

## Under the Corporate Governance Regulations:

**Article 12 (b): Formation of the Board**

b) The General Assembly shall appoint the members of the Board of Directors for the duration provided for in the Articles of Association (نظام الشركة) of the company, provided that such duration shall not exceed three

years. Unless otherwise provided for in the Articles of Association( نظام الشركة) of the company, members of the Board may be reappointed. (alteration to the original in the quoted text). (emphasis added)

## Under the Companies Act with some differences:

Article 66 of the Companies Act provides in part:
A corporation shall be administered by a board of directors whose number shall be specified by the bylaws (نظام الشركة) of the company, provided it is not less than three.

The regular general meeting shall appoint the directors for the term specified in the company bylaw's, which shall not exceed three years.
" [sic] The Council of Ministers may determine the number of boards of directors on which a director may serve" [sic]
Directors, however, shall always be eligible for re-appointment, unless the company bylaws (نظام الشركة) provide otherwise. (alteration to the original in the quoted text). (emphasis added)

## Under the Corporate Governance Regulations:

**Article 12 (f): Formation of the Board**

f) The Articles of Association (نظام الشركة) of the company shall specify the manner in which membership of the Board of Directors terminates. At all times, the General Assembly may dismiss all or any of the members of the Board of Directors even though the Articles of Association(نظام الشركة) provide otherwise. (alteration to the original in the quoted text). (emphasis added)

## Under the Companies Act:

Article 66 of the Companies Act provides in part:
The company bylaws (نظام الشركة) shall specify the manner of retirement of directors; but the regular general meeting may, at any time, remove all or any of the directors even if the company's bylaws(نظام الشركة) provide otherwise (alteration to the original in the quoted text). (emphasis added)

## Under the Corporate Governance Regulations:

**Article 12 (i): Formation of the Board**

i) Judicial person who is entitled under the company's Articles of Association(نظام الشركة) to appoint representatives in the Board of Directors, is not entitled to nomination vote of other members of the Board of Directors. (alteration to the original in the quoted text). (emphasis added)

**Article 17 provides as follows:**

The Articles of Association of the company (نظام الشركة) shall set forth the manner of remunerating the Board members; such remuneration may take the form of a lump sum amount, attendance allowance, rights *in rem* or a certain percentage of the profits. Any two or more of these privileges may be conjoined.

## Under the Companies Act:

Article 74 of the Companies Act provides:

The company's bylaws (نظام الشركة) shall specify the manner of remunerating directors. Such remuneration may consist of a specified salary, or of an attendance fee for the meetings, or of material benefits, or of a certain percentage of the profits, or of a combination of two or more of these benefits.

If, however, such remuneration represents a certain percentage of the company's profits, it must not exceed 10% of the net profits after deduction of expenses, depreciations, and such reserves as are determined by the general meeting pursuant to the provisions of [this act] or of the company's bylaws, and after distribution of a dividend of not less than 5% of the company's capital to stockholders. Any determination ( of remuneration ) made in violation of this (provision) shall be null and void.

The board of directors' report to the regular general meeting must include a comprehensive statement of all the amounts received by directors during the financial year in the way of emoluments, share in the profits, attendance fees, expenses, and other benefits, as well as of all the amounts received by the directors in their capacity as officers or executives of the company, or in consideration of technical, administrative, or advisory services. (alteration to the original in the quoted text). (emphasis added)

## Under the Corporate Governance Regulations:
## Another usage of the word by-laws in the Corporate Governance Regulations

Article 13 provides in part:

a) A suitable number of committees shall be set up in accordance with the company’s requirements and circumstances, in order to enable the Board of Directors to perform its duties in an effective manner.

b) The formation of committees subordinate to the Board of Directors shall be according to general procedures laid down by the Board, indicating the duties, the duration and the powers of each committee, and the manner in which the Board monitors its activities. The committee shall notify the Board of its activities, findings or decisions with complete transparency. The Board shall periodically pursue the activities of such committees so as to ensure that the activities entrusted to those committees are duly performed. The Board shall

approve the by-laws (لوائح عمل) of all committees of the Board, including, *inter alia*, the Audit Committee, Nomination and Remuneration Committee. (alteration to the original in the quoted text). (emphasis added)