

Management in LLCs and PJSCs: Key differences under UAE law

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In the UAE, LLCs are run by a manager or a panel of managers that are responsible to the partners of the company. Managers in LLCs carry out a number of obligations and responsibilities within a certain scope of authority. As a general rule, unless it is indicated in the company's memorandum of association that a manager has limited authority, then they have the necessary authority to act on behalf of the LCC provided that they clarify to third parties that they are acting in their capacity as a manager.

The PJSC is a more complex structure where the management is carried out by a collegial body of directors. The directors act as trustees for the shareholders, and define the management structure of the firm, delegating to that management structure those administrative matters the board itself chooses.

We will now highlight some of the key differences between the managers of LLCs and the board of directors of PJSCs.

1. The method of composition

LLCs

The management on LLC is taken up by one or more managers, who are selected from either the partners or from third parties provided that their number does not exceed five. In general, the managers of LLCs are appointed in the company's memorandum of association or by a separate contract for a limited or an unlimited period. The partner's general assembly may appoint the managers only in the event of failure to appoint the managers in the above mentioned manner.

In the event of more than one manager, the memorandum of association may provide for the formation of a panel of managers.

In this regard, it is worth noting that a new commercial companies law has been issued and shall become in force three months following the date of publication in the official gazette ("**New CCL**"). The New CCL has removed the number of managers limit. Therefore, under the New CCL there will be no limit for the number of managers.

PJSCs

The management of PJSCs is vested in a board of directors, consisting of three to fifteen directors. The articles of association will state their term of office which should not exceed three years.

The ordinary general assembly will elect members of the board of directors. As an exception, the founders may appoint the first board of directors for a maximum period of three years. Moreover, the majority of the directors including the chairman must be UAE nationals. If the number of the UAE directors fall below this threshold, the board shall within a maximum period of three months take the necessary measures to comply with this requirement; otherwise, the board resolutions adopted after the lapse of the period shall be null and void.

In addition, at least one-third of the board of directors of PJSCs must be independent members and subject

to the Ministerial Resolution No. 518 of 2009 concerning Governance Rules and Corporate Discipline Standards (as amended); and the majority of members must be non-executive members. Such board members shall be elected by cumulative voting.

2. Requirements

LLCs

There are no requirements to be elected as a manager in an LLC other than having the relevant experience and qualifications in certain domains, Such as in construction companies the manager should have experience in such domain.

PJSCs

In general, the director must not be convicted of a crime relating to honour and honesty unless he has been reinstated or granted amnesty by the concerned authorities. Furthermore, no director, either in his personal capacity or as a representative of a corporate body, can be a director in more than five joint-stock companies having their head offices within UAE. Nor shall he be a chairman or a vice-chairman of more than two companies having their head offices within UAE, nor a managing director of more than one company located in UAE.

In addition, non-executive members must have the necessary technical skills and experience to be used for the good of the company.

3. Powers of directors

LLCs

As a general rule, unless the powers of the manager are fixed in the company's memorandum of association, the company's manager has full powers to carry out the affairs of the company, and his actions shall be binding on the company.

However, in practice, if the powers of the manager are not specifically enumerated in the company's memorandum of association, the manager may not be considered as authorized to exercise these powers by some public authorities such as the Notary Public.

PJSCs

The board of directors will assume all the powers necessary to execute the business required in satisfaction of the company objectives, save such powers as may be vested by the law or the company's articles of association in the general assembly. However, it is not permitted for the board directors to enter into loan agreements whose term exceeds three years, nor to dispose of the company's property or place of business, or to mortgage the same, release company's debtors from their commitments, compromise claims or refer to arbitration, unless the same are expressly granted by the company's articles of association or embodied by nature thereof in the company objectives. Save these two cases, it is a condition for the conclusion of such actions to obtain the approval of the general assembly.

4. Corporate governance

LLCs

With the exception of the relevant provisions under the CCL (Article 235-255), there are no specific corporate governance rules applicable to LLCs.

PJSCs

PJSCs are subject to Ministerial Resolution No. 518 of 2009 concerning Governance Rules and Corporate Discipline Standards (as amended). These Rules contain a number of positive directors' duties that echo those in other jurisdictions. Amongst those duties, there are duties of honesty and loyalty and the requirement to consider the company's and shareholders' interests. Particular duties are set out in relation to non-executive board members including the duty to participate in Board meetings and to give an independent opinion.

It is worth noting that the Rules do not apply to all PJSCs as some of them have been exempted, such as Banks.

5. Meetings and resolutions

LLCs

The memorandum of association should contain provisions organizing the meeting of managers in case of there being a panel. The provisions will explain the business of the said panel and the majority needed for the validity of their resolutions.

PJSCs

In general, the board meetings of PJSCs will be attended by the majority of directors and the resolutions in such meetings must be adopted by a majority of votes of those present or represented. In case of a tie, the chairman shall have a casting vote.

6. Remuneration

LLC

In LLCs, the company may enter into a management agreement with its manager which sets out the manager's remuneration. The remuneration paid to the manager may be based on a percentage of the annual profits of the LLC or it may be a fixed amount. In all cases the remuneration awarded to a manager must be agreed upon by the partners of the LLC.

PJSCs

The articles of association shall explain the methods adopted to determine the directors' remuneration, which may not exceed 10% of the net profit after depreciation and reserve are deducted and dividends of not less than 5% of the capital were distributed among shareholders.

In conclusion, it is worth noting that while the rules governing the management of an LLC are briefly provided for in the CCL (as the articles of association customarily provide for most of the detailed requirements and rules to be observed), those governing PJSCs are part of a more elaborated and sophisticated legal framework. In the process of converting an LLC into a PJSC, the partners should take this into account and comply with this comprehensive regulatory framework after the completion of the conversion process. More specifically, the mandatory rules governing the management of PJSCs, specifically those related to the corporate governance requirements and the conflict of interest limitations, should be observed when the Board of Directors is elected and throughout its term.