

Conducting Shareholder Meetings in the UAE

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Each of the company and the shareholders have interests which they wish to see protected and an agenda to pursue. From the company's perspective, holding general meetings of shareholders is a legal requirement, necessary for the company to ensure compliance within the relevant regulatory framework and its corporate policies. For an individual shareholder, attendance at the general meeting is, particularly for shareholders representing a minority interest, often their only chance to question management and hold them to account, and to inform themselves as to the company's policies and prospects.

Whilst certain listed companies occasionally have widely publicised reports of acrimonious shareholder meetings, the vast majority of shareholder meetings are mundane and not at all controversial. However, even in private companies with a disparate shareholder base, the potential for difficulties at meetings is always present, especially if management find themselves confronted with shareholders prepared to act in a concerted manner to attempt to frustrate management or the majority shareholders from pursuing a direction with which the minority does not agree.

More often than not, a shareholder looking to disrupt the process of shareholder meetings will question the legality of the process of calling and convening a meeting, and the conduct of the meeting itself. In this article I address certain of the legal requirements arising from the Commercial Companies Law (Federal Law No. 2 of 2015) ("CCL") in relation to Limited Liability Companies (not Joint Stock Companies), along with practical steps for management to consider when convening and conducting shareholder meetings.

Notice of Meetings

Article 92 of the Commercial Companies Law (Federal Law No. 2 of 2015) ("CCL") provides that at least once in a year, within four months after the end of the fiscal year of the company, the general assembly shall convene at such time and place as set out in an invitation letter from the general manager which should stipulate where the meeting should be convened and at what time. This letter is in effect the notice of meeting, an integral part of any properly convened meeting under the CCL and other statutory regimes.

The CCL does allow for flexibility by providing for any alternative means of invitation that are provided for in the Memorandum of Association which could potentially enable notice to be delivered by electronic means. Given the often used tactic by disgruntled shareholders of claiming that no notice of meeting was received, a notice delivered in hard copy by the relevant form of registered delivery or courier should be employed to enable management to evidence delivery.

The CCL provides that notice must be given at least 15 days prior to the date for the meeting. Whilst specific references in other provisions in the law refer to 'working' days, in respect of notice of meetings for limited liability companies and joint stock companies under the CCL working day is not utilised and so this provision should be read to mean that 15 calendar days, (i.e. not the day of the meeting itself) should be allowed for due delivery of any notice. As the relevant article of the CCL refers to notice being given 15 days prior to the meeting this indicates that the 15 day period does not begin with the date of the notice

but rather the date of delivery to the recipient. In our view, given the lack of commentary or precedent to rely upon, the prudent course of action would be to ensure that there are at least 15 days between the date of the delivery of the notice to the recipient and the date of the meeting itself.

The Contents of the Notice

The CLL provides that a shareholder meeting may only discuss matters included in the agenda; unless a decision to include any item proposed at the meeting itself is the subject of a separate shareholder vote. For this reason it is necessary for the agenda of the meeting to be included with the notice so that shareholders have advance warning of the subject matter of the meeting.

Role of the Chairman

In any shareholder meeting the role of chairman is critical. As the Chairman's appointment is made by the shareholders themselves and the appointee would come from amongst them, the Chairman has an implicit authority to bind the shareholders in matters relating to the conduct of the meeting which may not necessarily be obvious from the provisions of the law or available precedent.

In any well run meeting, the Chairman will ensure that the meeting proceeds smoothly, that it has been properly constituted and that a quorum is present, that shareholders are able to exercise their legal right to voice opinions and discuss any matters set out in the agenda prior to any formal vote in a reasonable manner. The Chairman would also be responsible for permitting people who are not shareholders, or entitled to exercise the rights of shareholders (i.e. proxies), e.g. auditors and other professional advisors to the company, from attending and speaking at a meeting. Finally the Chairman should be cognisant of the time allotted for the meeting and ensure that proceedings proceed in an orderly fashion, in particular by cutting short protracted debates which have, or may be about to, descend into argument. With this in mind the ultimate aim of the meeting would be to move forward to a formal vote on the issues to be debated, and the Chairman should ensure that this happens with the consent of the meeting.

In all matters, including points of order as well as more general questions, the Chairman's decision should be considered final. In order to ensure that this decision is properly informed, and therefore more likely to be accepted, shareholders and others present should have the opportunity to put their opinion on any matter and the Chairman should take these opinions into account when making any final determination.

The Chairman's Script

The best way for management to assist the Chairman in this complicated task, especially if the Chairman may not have had prior experience of running meetings, is to ensure that the Chairman is fully briefed on the agenda and the procedure for conducting the meeting in line with the Company's constitutional documents. It is common practice for the company secretary (or the general manager or in-house lawyer), to prepare a chairman's script. This would include opening and closing statements, a statement of the resolutions to be proposed, as well as a summary of the voting process.

Votes of Shareholders

The CCL provides that for an LLC, votes on resolutions are valid if passed by the majority of shareholders present in person and those represented at the meeting (subject to the memorandum of association providing for a higher majority). Consequentially for a chairman of the meeting resolutions should be taken by way of a show of hands. In all cases, the Chairman's declaration as to whether a resolution has been passed is conclusive evidence that it has been passed. The record of the shareholders' vote should be the subject of a clear record in the minutes of meeting which should set out the shareholders present and represented and those that voted in favour of the resolution, as well as shareholders who voted against or abstained.

Adjournment of a Meeting

The CCL provides that an adjournment of a meeting may only take place if the originally convened meeting is not quorate. For an LLC this requires 75% or more of the share capital to be present or represented. At the adjourned meeting this requirement drops to 50% or more of the share capital and at any further reconvened meeting following a second adjournment the quorum will be whatever members are present.

Crucially, at any meeting, the votes of those members present will be valid and consequentially shareholders with a significant interest in a company, represented by a relatively large proportion of the share capital, should ensure that their interests are at least represented at any meetings of shareholders, to ensure that those interests are not compromised by resolutions being passed in their absence.

Formalisation of Process in the Memorandum of Association

The processes set out above expand on, and are informed by, the provisions of the CCL which are relatively brief when it comes to this important topic.

In our view the best and most effective way of ensuring good corporate governance at shareholder level, as well as ensuring shareholder meetings are conducted efficiently, is to embed more comprehensive and suitable provisions into the memorandum of association of the company. A well drafted and comprehensive set of provisions detailing how meetings should be held and run will ensure that an accurate point of reference is available which will assist the Chairman in ensuring that meetings can be conducted with the minimum of disruption arising from questions as to the validity of a decision or point of order.

The level of detail will depend on the number, and interests, of stakeholders in the business, but in every case those interests are best served by clarity.