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**Ministry of Industry, Commerce and Tourism**

**Decision No. (64) of 2021 Amending Certain Provisions of the Implementing Regulation of the Commercial Companies Law Promulgated by Legislative Decree No. (21) of 2001 promulgated by Decision No. (6) of 2002**

Minister of Industry, Commerce and Tourism:

Having reviewed the Commercial Companies Law promulgated by Legislative Decree No. (21) of 2001, as amended;

Law No. (18) of 2012 regarding Brand Names;

And Implementing Regulation of the Commercial Companies Law promulgated by Legislative Decree No. (21) of 2001 promulgated by Decision No. (6) of 2002, as amended;

And upon the submission of the Undersecretary;

**Hereby Decides:**

**Article One**

Texts of Articles (8), (9), (10), (42), (58), (62), (105), (106), (129) third paragraph, (142), (215), (240) and (255) bis (1) of the Implementing Regulation of the Commercial Companies Law promulgated by Decision No. (21) of 2001 promulgated by Decision No. (6) of 2002, shall be replaced with the following texts:

**Article (8):**

If the formation of the company’s capital included in rem shares at the time of incorporation, or when the capital is increased, the incorporators or the Board of Directors – as the case may be – shall estimate the in rem shares by one of the audit offices or expert offices approved by the official authorities, provided that the approval of the Ministry to estimate the in rem shares shall be obtained before this estimate is approved by the company.

The estimation of the in rem shares shall not be assigned to the auditor of the company.

**Article (9):**

The incorporators, the Board of Directors, or the share provider – as the case may be – shall be obligated to provide all information to the auditing firm or the expert office in charge of the process of estimating in rem shares, and they shall be held accountable for withholding any information or providing inaccurate information in this regard.

The company managers shall also notify the Ministry with a copy of the report approved by the auditing office or the expert office regarding the estimation of in rem shares. The procedures for transferring ownership of the in rem share to the company shall be completed after its approval in accordance with the Law.

**Article (10):**

If the auditing office’s or expert office’s estimation of the in rem shares falls short by more than one-tenth of the value for which they were submitted, the incorporators or the General Assembly – as the case may be – shall, within ten working days from the date of receiving the report, submit to the competent directorate any of the following:

A- The in rem share provider paying the difference in cash into the company’s account.

B- Their approval of the in rem share provider to provide another in rem share with the value of the difference. In this case, a statement of the new share and a summary of the company’s benefit from it shall be attached. The accuracy of this share’s estimation shall be verified by the auditing firm or expert office.

C- The incorporators paying the estimated value of the in rem shares in cash in the company’s account, if withdrawn by its provider.

D- The incorporators reducing the capital by the equivalent of this shortfall.

**Article (42): Determination of Certain Privileges/Powers for Shares:**

It shall be permissible for the company’s Statute to state that the company, in addition to common shares, may have preferred shares with certain rights and advantages in voting, profits, or other rights and advantages. It shall also be permissible for the Statute to stipulate that the company may have several categories of preferred shares, provided that shares of the same category shall be equal in rights and advantages.

**Article (58) Extent of the Rights Issue/Pre-emptive Rights of Shareholders to Subscribe for New Shares:**

The shareholders shall have the priority/pre-emptive right to subscribe to the new shares, and every condition contrary to that shall be deemed null and void. Exceptionally, shareholders shall not have the priority/pre-emptive rights to subscribe to any of the following:

A- Shares issued by the company for the purposes of the employee share programme.

B- Shares issued by the company to include a strategic partner in accordance with the provisions of Article (127 bis) of the Law.

C- Shares issued by the company in exchange for a debt in accordance with the provisions of Article (127 bis 1) of the Law.

**Article (62) Publishing the Decision issued Increasing the Capital:**

The Decision issued increasing the capital shall be published on the Ministry’s website after noting the increase in the Commercial Register.

**Article (105) Invitation Data of the General Assembly Meeting and the Required Attached Documents:**

The invitation to the meeting of the General Assembly shall include, in particular, the following data:

A- The company’s name and the address of its headquarters.

B- The company’s registration number in the Commercial Register.

C- The date, time, and place of the General Assembly meeting.

D- A statement as to whether the meeting is an Ordinary or Extraordinary General Assembly.

E- Agenda.

F- A statement of the date, time, and place of the second or third meeting in the absence of a quorum.

G- A statement of the shareholder right to delegate a third-party shareholders or others to attend and vote, and a statement on the method of exercising this right in detail, with the necessary form attached.

H- A detailed statement on the method of on-line digital voting, if available.

I- Drafts of the Decisions to be put for voting, indicating the percentage of the vote necessary for their approval, and providing sufficient information to enable the shareholder to determine his position regarding the vote on the Draft Decision

It shall also be attached to the invitation the company’s financial and administrative report, and any other documents necessary to indicate and clarify any clause of the agenda.

**Article (106) General Assembly Invitation Announcement:**

The shareholders’ invitation to convene the General Assembly shall be announced in at least two local daily newspapers, one of which shall be issued in Arabic and the other in English, at least twenty-one days before the date set for the meeting. Advertising expenses – in all cases – shall be at the expense of the company.

**Article (129) third paragraph:**

Subject to the provisions and rules issued by the Central Bank of Bahrain, the reserve requirement shall be used to increase the company’s capital or cover its losses that cause a decrease in its capital. If this reserve exceeds 50% of the issued capital, the General Assembly shall have the right to decide to distribute the excess to the shareholders in the years in which the company does not make a net profit sufficient to distribute a profits to shareholders.

**Article (142) Company Management:**

The company shall be managed by a Board of Directors whose composition and term shall be specified in the company’s Statute. The number of its members shall not be less than three, and the term of membership shall not exceed three renewable years. It shall be taken into account that the Board of Directors shall include a number of independent and non-executive members, for closed joint stock companies listed on the stock exchange, and other Closed Joint Stock Companies whose categories are determined by a Decision from the Minister or the Central Bank of Bahrain, as the case may be.

**Article (215):**

The Ministry shall verify whether the assets and liabilities of the companies wishing to merge have been properly estimated, through one of the auditing offices or expert offices approved by the official authorities.

**Article (240):**

Each branch, office, or agency of a foreign company established in the Kingdom of Bahrain shall have a brand name. This name shall be identical to the brand name of the original company.

Subject to the provisions of Law No. (18) of 2012 regarding Brand Names, in case the brand name of the original company cannot be matched, the branch, office, or agency shall have the right to take a different brand name, provided that the name shall be followed by the phrase (Branch of a Foreign Company), (Office of a Foreign Company) or (Agency of a Foreign Company) – as the case may be – and that this shall be mentioned in all of the company’s contracts, invoices, notices, papers, and publications.

**Article (255 bis 1) Dormant Companies:**

Subject to the provisions of Article (345 bis) of the Law, it shall be permitted to incorporate companies whose purpose is initially to be ready to carry out purposes decided by the company and licensed to practice them at any later time after the incorporation. These companies shall be called (Dormant Companies) until they become operational and licensed to practice their activities, in accordance with the following controls:

A- Incorporation Requests of dormant companies shall be submitted by law firms or the licensed firms for this purpose by the Ministry.

B- The dormant company shall take the form of a Limited Liability Company.

C- It shall not be permitted for the dormant company to practice any activity without the approval of the competent authorities, and to register the licensed activity in the Commercial Register.

D- The name of the dormant company and the phrase indicating its form shall be followed by the phrase (Dormant Company), until it becomes operational and licensed to practice the activity. The dormant company shall not be licensed to practice any activity until its capital has been paid in full.

E- The registration of the dormant company shall not be struck off for the reason of not practising in any activity.

F- The dormant company shall have the right to change its name, and it shall not be subject to the provisions of Article (15) of Law No. (18) of 2012 regarding Brand Names.

**Article Two**

Two new Articles numbered (141 bis) and (176 bis) shall be added to the Implementing Regulation of the Commercial Companies Law promulgated by Legislative Decree No. (21) of 2001 promulgated by Decision No. (6) of 2002, which shall read as follows:

**Article (141 bis): Purchasing the Company for its Shares:**

A Closed Joint Stock Company shall have the right to, in accordance with the following conditions and controls, purchase a percentage of its shares not exceeding 10% of the company’s capital for the purpose of transferring its ownership later:

1- The company shall obtain the prior approval of the Ministry.

2- The company shall have sufficient cash surpluses, enabling it to purchase the shares.

3- The company shall have paid up all of its issued capital.

The purchased shares in this case shall lose all of their rights in the company, until they are transferred back.

**Article (176 bis) Company Management:**

The company shall be managed by one or more Directors from among the partners or others appointed for the first time by the incorporators, and they shall be appointed thereafter by a Decision of its General Assembly.

In all cases, it shall be permitted to terminate the duties of the Director(s), with the approval of the partners holding the majority of the capital.

The status of the Director(s) in terms of duties, obligations, and liability shall be that of the members of the Board of Directors of the Joint Stock Company.

It shall permitted to stipulate, in the company’s establishment contract, the formation of a Board of Directors, and the establishment contract shall specify the method of work in this Board, the number of its members by not less than three, and the majority by which its Decisions shall be issued.

**Article Three**

It shall be added to the Implementing Regulation of the Commercial Companies Law promulgated by Legislative Decree No. (21) of 2001 promulgated by Decision No. (6) of 2002, a new Part, namely Part Seven bis, entitled (Non-Profit Company), which shall include the following Articles:

**Article (206 bis):**

The company shall be managed by one or more Directors, appointed for the first time by the incorporators, and thereafter by a Decision of its General Assembly. The company may be managed by a Board of Directors whose composition and term shall be specified by the company’s Statute. The number of its members shall not be less than three, and the term of membership shall not exceed three renewable years.

The company manager shall meet the following conditions:

A- Shall have the capacity to act.

B- He shall not have previously been sentenced in a crime related to negligence or fraud, a crime involving a breach of honour or trust, or a crime due to his violation of the provisions of the Law, unless he has been rehabilitated.

C- Any other conditions stipulated in the company’s establishment contract.

None of the company’s managers shall have the right to have any direct or indirect interest in any other company implementing projects for the company.

**Article (206 bis 1):**

The Board of Directors shall convene at the invitation of the President of the Board or one of its members, and the quorum shall be achieved in the presence of half of the members, provided that the number of attendees shall not be less than two.

**Article (206 bis 2):**

The company managers shall undertake the necessary powers and actions to manage the company based on its purposes, except for what is excluded by a provision in the Law, the company’s establishment contract, or the decisions of the general assembly.

The Company's establishment contract shall specify the extent of the authority for the company’s managers in executing loans of more than three years of term, selling the company’s property/real estate or stores, mortgaging the funds, providing guarantees for third-parties, discharging the company’s debtors of their obligations, reconcile with them therefor, or donating/gifting the company’s funds. If the company’s establishment contract does not contain provisions in this regard, the Board shall refrain from carrying out the aforesaid actions, except after the approval of the General Assembly, unless such actions naturally fall within the company’s purposes.

**Article (206 bis 3):**

In cases where the company is managed by a Board of Directors, the President of the Board of Directors shall be the President of the company, and shall represent it before third-parties. His signature shall be considered as that of the Board of Directors in the relationship of the company with third-parties, and he shall implement the Decisions of the Board of Directors and abide by its recommendations.

**Article (206 bis 4):**

An Audit Committee shall be formed by a Decision from the company’s managers, in order to review the accounting and financial practices of the company, conducting accounting audits and related matters, and the extent of compliance with the provisions of the Law and the company’s regulations and policies.

The Audit Committee – in order to carry out its duties – shall have the right to access the company’s registers, documents, papers, and accounts, and request any clarification or statement from the company’s Director.

A statement of the Audit Committee’s work shall be included in the annual report.

**Article Four**

Part Six and Chapter One of Part Eight of the Implementing Regulation of the Commercial Companies Law promulgated by Legislative Decree No. (21) of 2001 promulgated by Decision No. (6) of 2002, shall be repealed, and the Articles (160), (161), (162), (167), (178), (182), clause (C) of Article (195), and clause (4) of Article (235) of the same Regulation, shall also be repealed.

**Article Five**

The Undersecretary shall implement the provisions of this Decision, and it shall come into force from the day following the date of its publication in the Official Gazette.

**Minister of Industry, Commerce and Tourism**

**Zayed bin Rashid Al Zayani**

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