



Ministry of Industry and Commerce Resolution No.(91) of 2022

Concerning the amendments to
Certain Provisions of the Corporate
Governance Code Issued by Resolution
No.(19) of 2018



 +973 17008944 + 973 33160433

 info@gspubahrain.com

 www.gspubahrain.com

Ministry of Industry and Commerce

Resolution No. (91) of 2022 Concerning the Amendments to Certain Provisions of the Corporate Governance Code Issued by Resolution No. (19) of 2018

Minister of Industry and Commerce:

Having perused the Commercial Companies Law promulgated by Legislative Decree No. (21) of the year 2001, as amended, the executive regulations of the Commercial Companies Law promulgated by Resolution No. (6) of 2002, as amended,

And the Corporate Governance Code issued by Resolution No. (19) of 2018,

And Resolution No. (63) of 2021 concerning the procedures for meetings by electronic means and terms and conditions of the electronic voting system in the general assembly of the shareholding company,

And based on the presentation of the Undersecretary,

It has been decided the follows:

Article (1)

It shall be replaced with Paragraph (ninth) Section (Two) of Chapter (One), Sub-clause (1) of Clause (A) Paragraph (First) of Principle (One) Section (One) Chapter (Two), Clause (A) Paragraph (Fourth) of principle (Two) section (Two) Chapter (Two), the introduction of Paragraph (First) of Principle (Three) Section (Three) Chapter (Two), Clause (A) Paragraph (Second) of Principle (Four) Section (Four) Chapter (Two), the introduction of Paragraph (Second) Principle (Seven) Section (Seven) Chapter (Two), Clause (C) of Paragraph (Second) Principle (Seven) Section (Seven) Chapter (Two), Clauses (E) and (F) of Paragraph (First) Principle (Ten) Section (Ten) Chapter (Two) and Sub-clause (2) item (a) of Paragraph (Second) Principle (Ten) Section (Ten) Chapter (Two), the following texts:

Paragraph (Ninth) Section (Two) Chapter (One):

Nineth: Documents Retention:

The company shall keep all records, minutes, paper and electronic documents, reports, and other documents required to be retained by the Code at the company's head office for a period of time not less than ten years, including minutes of the meetings, reports of the board of directors, reports of committees and corporate governance reports.

Without prejudice to the period referred to in the first paragraph, the company shall keep those records, minutes, documents, reports, or documents related to litigation or claims or any existing investigation procedures until the completion of these procedures.

Sub-clause (1) of Clause (A) Paragraph (First) Principle (One) Section (One) Chapter (Two):

1. The company shall have a board of directors consisting of at least five (5) directors for public shareholding companies and not less than three directors for closed shareholding companies. The directors shall include persons with experience so that the rest of the directors can benefit from their expertise and experience. The BOD shall have no more than Fifteen (15) members in all cases.

The representation of women is considered within the formation of the board of directors of the public shareholding company. The company is committed to disclosing the membership statistics of its board of directors in the annual corporate governance report and disaggregating these statistics by gender.

Clause (A) of Paragraph (Fourth) Principle (Two) Section (Two) Chapter (Two):

A- Each officer or member of its BOD in the company, who himself or the party he represents in the BOD, has a joint or conflicting interest in matters presented to the Board for a resolution, shall disclose it to the Board and prove it in the minutes of the meeting. He shall not be entitled to participate in the deliberation, meeting, discussion, and voting on a resolution on these transactions. The disclosure shall include the essence of the transaction and its impact on the integrity of the company's resolutions and transactions, rather than the legal form only.

In addition, no officer in the company and any member of its board of directors may have any direct or indirect personal interest in the contracts and actions to which the company is a party without the board of directors' approval. If a member of the board of directors fails to disclose to the BOD that the contract's terms or action are unfair or harmful to the shareholders' interests, the company or any of its shareholders may apply to the competent court to annul the contract or action or oblige the violating member to pay any profit or benefit that he achieved from the contract and return it to the company.

Introduction of Paragraph (First) Principle (Three) Section (Three) Chapter (Two):

The board of directors shall form an (Audit Committee) consisting entirely of its members for public shareholding companies, consisting of at least three directors, the majority of whom shall be independent members, and the chairman of the committee shall be an independent director. As for the closed shareholding companies, one or more directors may be appointed from the independent board members or from outside the company in case of an insufficient number of non-executive directors.

Clause (A) of Paragraph (Second) Principle (Four) Section (Four) Chapter (Two):

A- Nominations proposed by the Board to the shareholders for the election or re-election of directors shall be accompanied by a recommendation from the Board and a summary of the nomination committee report on these nominations.

The company shall provide the following information regarding each candidate for membership of the Board of Directors on its website or send it to the shareholders in person by any approved means, starting from the date of the invitation to hold the general assembly meeting. It is also obligated to include it in its annual report, in addition to the following information:

- 1- The term of directorship shall not exceed three years, and it is not required to limit the re-election to a further term.
- 2- Curriculum vitae, including academic and professional qualifications=
- 3- A statement shall be prepared that the Board has determined that the criteria in Appendix (1) of the code have been met, for the independent director.
- 4- Disclosure of the companies and institutions' names in which the candidate is engaged in a transaction or is a member of their boards of directors.
- 5- Any transaction he undertakes, directly or indirectly that constitutes competition to the company.
- 6- Details of other positions which involve significant time commitments.
- 7- Details of the relationships between the candidate and the company, and between the candidate and the other directors.
- 8- Any other details set by the executive regulations.

The Introduction of Paragraph (Second) Principle (Seven) Section (Seven) Chapter (Two):

The BOD shall observe the requirements of the commercial companies' law and its executive regulations in respect of convening the general assemblies for the shareholders. In organizing such meetings, the company shall observe the following:

Clause (C) of Paragraph (Second) Principle (Seven) Section (Seven) Chapter (Two):

- C- The Company shall allow the shareholders to vote without discrimination, keep them informed of all the rules governing the voting procedures and the information relating to voting rights regularly, and avoid any action that hinders the use of this right. The companies may convene the general assemblies' meetings of shareholders and the shareholder may participate in their deliberations and vote on their resolutions using the electronic voting system and modern technology in accordance with the regulatory controls stipulated in the Commercial Companies Law and its executive regulations and the resolutions regulating this matter, the summons to the general assembly meeting shall include the shareholder's right to authorize in writing another person from the shareholders or others to attend the general assembly meeting, with the necessary form attached to that with the summons. The agent shall be treated as the principal in the discussion and voting. The agent's power of attorney shall list all agenda items and shall specify the shareholder's vote (such as "Yes," "No" or "Abstain").

Clauses (E) and (F) of Paragraph (First) Principle (Ten) Section (Ten) Chapter (Two):

- E- The external auditor shall be appointed for a term of one financial year to be renewed for similar periods not exceeding five (5) consecutive financial years. The external auditor may not be appointed thereafter except after the lapse of two consecutive financial years; and
- F- The partner responsible for auditing the company's accounts shall be changed once every three years maximum.

Sub-clause (2) Item (A) of Paragraph (Second) Principle (Ten) Section (Ten) Chapter (Two):

2- Ensure that the company complies with the regulatory governance requirements, taking into consideration the "Comply or Explain" principle.

The auditor must prove the above in a special paragraph within his professional opinion in all financial reports or signed and sealed letters issued by him regarding the company's financial position, as the case may be.

Article (2)

It shall be replaced with Resolution No. (19) of 2018 the introduction Paragraph (Second) of Appendix (2), and Clauses (L) and (O) of Paragraph (Second) of Appendix (5) of the Appendices to the Management and Corporate Governance Code, by the following texts:

Introduction Paragraph (Second) of Appendix No. (2) of the Appendices of the Code:

Second: Committee's Membership and Qualifications:

The committee shall have at least three members, and it is formed entirely from among the board members for public shareholding companies. A majority of the committee members, including the chairman shall be independent directors under the criteria stated in Appendix (1) to the Code. Such members shall have no conflict of interest with any other obligations they have for the company. The committee members for closed shareholding companies shall be non-executive in the event that the board of directors desires to appoint committee members who are not members of the board as experts in the committee.

The Board must ensure that the majority of the committee members have the appropriate financial ability and experience to enable them to:

Clauses (L) and (O) of Paragraph (Second) of Appendix (5) of the Appendices of the Code:

(L)- In the annual corporate governance report, the total remunerations, fees, and privileges paid to the chairman and members of the board of directors for the relevant year are disclosed.

In the annual report of the Board of Directors to the General Assembly, a comprehensive statement is disclosed of all the remunerations received by the Chairman and members of the Board of Directors, each separately, during the financial year, including any benefits, privileges, share of profits, attendance allowance, representation allowance, expenses and others, and a statement of what they received as employees, administrators, or in return for technical, administrative, consulting, or any other works, according to the forms prepared by the Ministry.

(O)- In the company's annual corporate governance report, the total amount received by the company's executive management members is disclosed.

In the annual report of the Board of Directors to the General Assembly, a statement is disclosed of the total amount received by the members of the executive management of the company, which is represented by all members who received during the financial year the top six remunerations, including any salaries, benefits, privileges, and a share in the profits, provided that the CEO and the highest financial officer in the company (the CFO) are among them in all cases, in accordance to the forms prepared by the Ministry.

Article (3)

A new paragraph No. (tenth) is added to section (Two) of Chapter (One), and a new paragraph number (fifth) to the Principle (seven) of Section (Seven) of Chapter (Two) of the Corporate Governance Code issued by Resolution No. (19) of 2018, by the following texts:

Paragraph (tenth) Section (Two) Chapter (One):

Tenth: Breach of the Provisions of the Code:

Any violation of the provisions of this code shall be subjected to the penalties stipulated in Article (362 bis) of the Commercial Companies Law.

Paragraph (fifth) of Principle (seven) of Section (Seven) of Chapter (Two):

Fifth: Shareholders' Rights:

A- All shares issued by the company of the same type shall have equal rights, benefits, and obligations.

B- The shareholder shall have all rights attached to the share in accordance with the provisions of the Commercial Companies Law, in particular, the following:

- 1- Obtain his share of the net profits to be distributed in cash or by issuing shares.
- 2- Obtain his share of all the company's funds and assets upon liquidation.
- 3- Contributing to the management of the company's business, including attending the company's ordinary and extraordinary general assemblies, participating in its deliberations, and voting on its resolutions in accordance with the company's statute.
- 4- Disposing of the shares owned by him and priority in subscribing to the new shares, in accordance with the provisions of the Commercial Companies Law and considering the provisions and resolutions regulating the rules, conditions, and procedures for acquisitions and mergers issued by the Minister concerned with Commerce Affairs.
- 5- Examining the company's records, books, and documents in a manner that does not harm the company's interests or its financial position or others and does not conflict with the Commercial Companies Law and its executive regulations.

6- Obtaining a printed brochure that includes the balance sheet for the previous financial year, the profit and loss account, and the reports of the board of directors and the auditors.

7- To hold the members of the board of directors accountable and to file a liability claim against them. To challenge the invalidity of every resolution issued by the company's general assembly or the board of directors that violates the Commercial Companies Law, the memorandum of association, or the company's articles of association, all in accordance with the conditions and restrictions contained in the Commercial Companies Law.

8- A shareholder who files a lawsuit against the company, its chairman, or a member of its board of directors or executive management before the competent court may request that the defendant be obligated to do the following:

a) Provide the information that the defendant referred to as the basis for his defense in front of the court, and provide information that directly proves facts in the claim filed by the shareholder with the court, and any information related to the subject matter of the case.

b) Submission of documents or their categories in his possession that are relevant to the case without the need to identify each document separately, and he may request that others be obligated to submit them.

9- Election of the members of the Board of Directors.

Article (4)

A new clause No. (P) is added to Paragraph (Second) of Appendix (5) of the Appendices of the Corporate Governance Code issued by Resolution No (19) of 2018, the text of which is as follows:

P- A statement of the membership statistics by gender in the Board of Directors, including the percentage of representation of both genders on the Board of Directors for each financial year (in the event that there is no representation of either gender in the Board of Directors either for women or for men kindly state that there is no representation).

Article (5)

The Undersecretary of the Ministry and those concerned - each within his jurisdiction - shall implement the provisions of this resolution, and it shall come into force from the day following the date of its publication in the Official Gazette.

Minister of Industry and Commerce
H.E. Zayed R. Alzayani

Issued on: Issued on Safar 23, 1444 AH

Corresponding to: September 19, 2022 AD