

## **How to manage and censorship a public joint-stock company in accordance with the Bahraini Companies Law No. 21 of 2021**

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### **Abstract:**

Commercial companies legally considered in the Kingdom of Bahrain and designated as six forms, and these forms are related to public order in the sense that if they are formed in other forms, they are considered invalid, and these companies are so-called money companies and others are called companies of persons. Through this research, we will address the most important money company, the Public Joint Stock Company, for its importance to the country's economy and its inclusion in one of the largest and largest projects in our kingdom.

Joint-stock companies are the company whose capital is divided into equal shares and the shares are subject to public offering in the case of a public shareholder company or closed subscription limited to a certain number or category of people in the case of a closed joint-stock company. Therefore, this company has an auditor and inspectors from the procedures it performs and must be informed of matters related to the audit available to the auditor, where he must be aware of all the requirements of the audit rules and the auditor must take into account this rule in advance and there is a tape for their appointment, and the conditions that they must have and isolate them and their duties, powers, and responsibilities.

The subject of research on management is the public joint stock companies from the perspective of the Bahraini legislator, and enables the problem through this research will be clarified who is represented by the administration and who has the right to manage and procedural conditions to form that administration and to show its money rights, duties and responsibilities. Many important economic institutions do not have an effective oversight tool, and if they do, they are not followed by the attention that qualifies them to perform their effective function. The descriptive approach was used in the research paper, in a statement of what the Bahraini legislator followed in the management of the company contributing to the explanation and clarification of these articles and the statement of some of the judicial rulings.

**Keywords:** Company, Joint Stock, Bonds, Financial Market, Securities, General Assembly.

## Introduction

The General Joint Stock Company is managed by a board of directors that shows the company's statutes as structured and extended, and we can define the Board of Directors: it is the main body that manages the joint stock company and dominates its activity and makes the necessary decisions to achieve the purpose for which it was established.<sup>1</sup>

In other things, it is the executive body that manages the affairs of the joint stock company and implements the decisions and recommendations of the General Assembly. The administration is made up of a certain number of members, appointed in accordance with the specific law controls and the company's statutes, who manage the company for the purpose to which it was created and to achieve profits. The Board is chaired by a appointed chairman and a member may be assigned as Vice Chairman of the Board of Directors.

I will therefore divide this requirement into two branches: first: the formation of the Board of Directors. Secondly, membership of the Board of Directors.

### **First: The formation of the Board of Directors:**

#### **1- The formation of the Council:**

- The board of directors is managed by a number of members, with a membership of at least five people and there is no maximum number of members unless otherwise specified in the company's statutes. They are elected by the General Assembly of the

company by cumulative secret ballot, which means that each shareholder has a vote after the shares he owns and the shareholder has the right to use them all or distribute them without repeating these votes in accordance with the provisions of this law and statute.

What is clear from the provisions of the law are Bahraini companies that have set a minimum limit for council members, i.e. if a member dies or is removed or any of the reasons for the termination of membership and the count has not been reduced below the minimum, no new appointment or election may be made unless the statute stipulates otherwise.

- Excluding from traditional methods, bahrain's legislature has given the right to those who have 10 percent of the capital or more the right to appoint board members and drop their right to vote in the percentage that is assigned, i.e. the statute can determine in its texts how the board of directors is formed and how they are appointed, elected, elected or appointed together, taking into account the regulations stipulated in the law.<sup>2</sup>

- The availability of the so-called value of the shares of the quorum, in which a certain share is required equal to the amount of money in order to enable the candidate to submit to the board membership and meet the required legal requirements.

- However, the Bahraini legislator repealed this requirement law No. (50) of 2014 by amending some provisions of the Law on

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<sup>1</sup> - Dr. Mustafa Kamal Taha, Commercial Companies, 2018 Edition, p. 280

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<sup>2</sup> Decree of Law No. (21) of 2001 to issue the Commercial Companies Act and its amendments, Article 175

Commercial Companies by Decree No. (21) of 2001 and replacing the article by giving the right to 10% of the shares the right to appoint a board member or vote if he does not use his right to appoint in full or in any of the specified percentage.

This is wise not to monopolize the positions of board of directors in public joint stock companies only on those who own 10% or more, but to make the entitlement of any shareholder in the company meet the conditions stipulated by law and in line with what is stipulated in the statute the right to nomination and membership.

#### **The duration of the Council's membership:**

The board member performs the functions and responsibilities of managing its business for a renewable three years, and the term of the Board of Directors can be exceeded by a maximum of six months and not more than if necessary by submitting the Board of Directors to an advisory request addressed to the minister concerned for companies or with the Central Bank of Bahrain for companies licensed by him explaining it and justifying their request for reasons that required them to extend the Board beyond the legal or agreed period in the statute.

When the quorum is not completed, the Board is often required to re-announce a general assembly until the quorum is completed, thereby requiring them to encroach on the Board of Directors.

#### **Transparency and disclosure of the Board of Directors:**

The latest amendment was decreed by Law No. (28) of 2020 amending some provisions of the Commercial Companies Act issued by

Decree No. (21) of 2001 to mandatory disclosure of all information concerning board members, from their resumes, their membership in other boards of directors, or any other requirement mentioned in the company system that is limited to transparency and the interest of the company from acts of competition, fraud or fraud that may be issued by a member of the Board of Directors, whether it is Towards the company or towards others, the declaration in this case, which is stipulated in the previous term, is an official declaration in the face of others.

#### **Second: Membership of the Board of Directors:**

Conditions to be met by a board member: For the validity of membership in the Board of Directors, a number of conditions stipulated by Bahraini law are required and are often provided for in the company's statutes, which must be adhered to:

1) Provided that the employee accepts the nomination and discloses, the member must submit a wretch of acceptance of his candidacy, and he must disclose any work he or she is a board member of, which may constitute competition for the company.<sup>3</sup>

"The Bahraini legislator stressed the importance and seriousness of not disclosing or giving important information that would affect the interests of the company, concealing information or providing false information in his candidacy papers in criminalizing this act with a penalty of up to 10,000 and a fine of at least 10,000 or more than 100,000 or one of these sentences.

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<sup>3</sup> Previous reference article 193

The wisdom of the previous requirement is to ensure that the conditions for applying for the board of directors are observed and that they comply with the statute and the applicable law.

2) The requirement of eligibility, the Bahraini legislator not only met the requirement of eligibility with the board member, but must be competent to act, which means the person's authority to enjoy rights and assume duties.

3) The requirement of integrity, since the membership of the Board of Directors may not be given to a person who has been sentenced to a judicial decision for the crime of negligence or negligence by fraud, whose concept and punishment are defined by the Bahraini Penal Code in articles 402 and 403.

Whether he was sentenced for a crime after hiding his money from his creditors, or sentencing a person to a crime after he made excessive payments on his personal life or home and then went to the bankruptcy to shorten him.

4) He is not allowed to become a member of the Board of Directors of a joint stock company in accordance with the laws applicable in the Kingdom of Bahrain. Bahrain's companies law limits both: the public servant and any member of one of the councils representing government institutions or bodies in his personal capacity or as a deputy to others.<sup>4</sup>

**This is confirmed by the Bahraini Court of Excellence in its ruling:**

It is the same as the constitution prohibits the combination of the position of ministry and the membership of the board of

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<sup>4</sup> Previous reference article 361

directors of any company as a representative of the government, as stipulated in article 68 of the Commercial Companies Act 21 of 2001 and Article 65 of the former Commercial Companies Act No. 28 of 1975 prohibiting the combination of membership of the board of directors of the joint stock company or participation in its establishment with a public function. This results in the nullity of the composition of the Council and requires that it be corrected by removing the combination of the two positions. If the provision of the law is a penalty for this violation, the offender must be obliged to perform what he has received from the company to the State Treasury as well as administrative sanctions that there is no effect of this violation on the validity of the decisions taken by the Council before correcting its composition.<sup>5</sup>

**(170) Appeal No. 490 of 2009**

The wisdom of outlawing membership for government employers or members of councils representing government institutions and bodies is to devote themselves and not to influence or exploit influence for the private benefit.

The legislator has prepared and identified positions of administrative importance, whether he is a public servant, a member of another board of directors or an institution, and did not include technicians in other companies or lower-ranking positions than the previous one. It is

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<sup>5</sup> - Dr. Zala Saeed Yahya - Legal System of Investment Banks Comparative Analytical Study - Legal Book HousePage 213

better to include these functions and determine them in the statute because the law does not comply with them, that in the absence of restrictions on indirect functions the emergence of a kind of problem of the subordinate and the follower and whether the member who violates the law who holds a technical job in another company is questioned about his or her own actions or will be extended to the other company by association.

5) Positions must be separated, i.e. the position of chairman or vice president and the position of the highest-ranking director of the company, i.e. he may not be the head of the decision-making of the Board and he is the president of the company, his decisions will be undemocratic, contrary to the democratization of this law in decision-making.

6) It must meet the conditions set by the Minister of Trade concerning the percentage of independent, non-executive and executive members on the boards of directors of companies not licensed by the Central Bank of Bahrain.

This is stipulated in the ministerial decision on the conditions to be met by the board members of non-founders or shareholders of joint stock companies, Resolution 10 of 2020.

Which came in line with the same conditions stipulated in the Bahraini

Companies Act and its amendments adding to it

Two technical or competent conditions for the member:

- To be an experienced and competent board member.
- The recruitment should be motivated by the interest of the company and for the purpose of providing elements of competence and technical, administrative, scientific and practical expertise.

The purpose of the competent authority in this decision is to improve the interest of the company, in introducing the element of competence and expertise of the members of the Board of Directors in order to ensure the safety of decision-making in the interest of the company.

The joint stock company licensed by the Central Bank of Bahrain is the public joint stock company listed 7 securities on the stock market in accordance with article (86) of 1 of the Central Bank of Bahrain And Financial Institutions Act ( 64) of 2006.

2. Membership of the Chairman of the Board of Directors:

7 The Board of Directors of the Public Joint Stock Company elects a president and a deputy from among its members by secret ballot

With the functions and powers of the President in his absence and he is the one who represents it among the third 5 as he is elected among its members one

Or more, he or she has the right to sign the company individually or collectively as

determined by the Board in this regard and within the powers it delegates to them.<sup>6</sup>

**This confirmed the ruling of the Bahraini Court of Cassation in its ruling no. 86:**

The original joint stock companies are entrusted with the Board of Directors, which has to elect one of its members as its chairman.

To act on his behalf and to represent her before the judiciary and to others. The law allowed the Council to elect a member other than the President.

To participate with him in the management of the company.

The text in the basic system of the appellant company that the one who represents it before the judiciary and the third party has the right to sign it

Chairman and Managing Director. Each has this power without the subscription of them combined.

Ruling after accepting the case to be filed without full status on the basis that the lawyer who was set up by a client

So from the chairman of the board of directors of the appellant alone without the Managing Director. Misinterpretation of the text basically contained in the company.

**"Appeal No. 333 of 2005"**

In doing so, it considered the authorization of a person or the involvement of a member in carrying out the work and directing the same powers as the president

The Board of Directors or a valid deputy and a list and window towards others and the principle of the Court of Cassation was established in amending the law

The latter has cut off any doubt in this regard or any difference in the interpretation of the company's statutes or the provisions of the law.

Here, the next question is whether the Managing Director is paid for the work assigned to him? Is the relationship dependency or a contract relationship?

The Board of Directors may assign one or more members to carry out the work of management or to perform any technical work of the company in supervision

Or the administration and others, the other shall be paid for his work at a specific fee and the legislators differed in implementing the nature of the relationship on which it is based in the event of receiving a wage for his membership.

**3. Expiry of board of directors:**

The company's statutes often provide for the policy or the criterion of termination of membership of the board member.

Bahraini law complements this in giving the power of isolation in case the member violates any condition of

Conditions for the General Assembly, thereby terminating the membership of the Board of Directors:

- Resignation or death, and it is required that the resignation not be at an inappropriate time that would affect the status of the company or its decisions and the General Assembly must approve that resignation.

The membership of the Board of Directors shall be terminated by the end of the term, i.e. the term of the Board of Directors and not nominated for the second time.

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<sup>6</sup> Previous reference article 181

Drop, in case the member violates one of the conditions and requirements of the board of directors membership and is held in an extraordinary meeting within 45 days of the discovery of the violation in order to make the decision.<sup>7</sup>

**The powers of the Board of Directors and the end of the Board:**

The Board of Directors has a number of powers that are influenced as the Board considers the representative face of the company and as the executive branch of the company and its decisions shall be effective and thus address the powers entrusted by Bahraini law to the companies to the Board of Directors and the responsibility arising from their violation or overriding those powers.

First, the powers of the Board of Directors:

- The Board of Directors shall handle all the work related to the management of the company crisis to conduct the company and achieve its purpose except with a provision in the law or the statute of the company or general assembly resolutions.
- Bahrain's legislature restricted some of the actions or removed them from the powers of the board of directors and required the approval of the General Assembly or a text authorizing those powers in the company's asay system. These include: conduct related to the

proof of the company's funds or its gift, i.e. a contract that increases its duration more than three years, i.e. the sale of the company's property or any lease to it, discharge of the disclaimer, reconciliation and bail for the benefit of others.

- It is noteworthy that all these restrictions of powers are in actions that would destroy the capital or increase financial obligations and burdens on the company, the wisdom of referring it to approval by a decision of the General Assembly is to study the decision and take into account the burdens and obligations taken from the sale of a property or the conclusion of a loan contract and ultimately the interest of the company.
- Some of these powers have extended to the members of the Board of Directors in giving them loans for themselves or their relatives, excluding companies whose activity is bank or credit, members of the Board of Directors and their relatives may be given loans as it falls within the purpose for which the company was established, and must comply with the directives of the Central Bank of Bahrain, and abide by the treatment of board members and the general customer with the same treatment, conditions and procedures in case you lend to a member of the Board of Directors or open a credit to him or guarantee Loans he's making with third parties.

The legislator organized loans or credit and equalized any member of the Board of Directors to any natural person applying for a loan service or any service from credit companies and did not give any priority or

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<sup>7</sup> - Dr. Mustafa Kamal Taha - Commercial Company - National Center for Legal Issues - Edition 2018 - Page 126

privilege between the board member and his counterpart. The wisdom in doing so is not to exceed or exploit the Board of Directors for their authority or to engage in wrong practices that harm the company or benefit the member as a result of its membership.<sup>8</sup>

Second: The responsibility of the Board of Directors:

The responsibility of the Board of Directors is either personal or shared responsibility among the members of the Board of Directors, or criminal or civil when the Board of Directors makes a wrong behavior, dismissal or negligence that may result in harm to a shareholder, class, company or third party.

In the case of shared responsibility among the members of the Board of Directors, they are solidarity officials and any member has the right to object to this, and the objection is established in the minutes of the meeting, and the responsibility for the absence of the member from the meetings is dropped only because of a rewarding<sup>9</sup>

Article 187 of the Bahrain Companies Act regulates those who have the right to file a claim of responsibility and the text of the article, who has the right to:

1- General Assembly: Filing a claim of responsibility against the Board of Directors by decision of the Association on the Chairman of the Board of Directors to file the case, and if the case belongs to him or

the Board of Directors, the appointees of the person who appoints him.

2- By shareholders: - In the event that the General Assembly fails to file a lawsuit or if the mistake is caused by a personal shareholder.

The company is therefore entitled to file a claim of liability and the individual has the right to file a lawsuit and no association between the two claims, so that one does not depend on the other, and if the individual is awarded compensation, he reserves a pure right to him that does not extend to the company because the compensation is personal for damages suffered without the company. Example: Changing the profits of some shareholders or not enabling the shareholder to access books, accounts, etc.<sup>10</sup>

It is a problem that arises in the event that the board member has been appointed by another company that owns a number of shares in the current company that are allowed to appoint and elect, and a lawsuit has been filed against the appointed member for liability in a wrong manner that would have harmed the company. Orders he received from the company that appointed him. In considering these forms, the Bahraini legislator did not regulate or address this type of responsibility in companies, but rather the responsibility of the member, whether he is assigned or elected for his wrong actions and did not refer to the reason behind it or the intention of the member. In reference to the Bahraini

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<sup>8</sup>-Dr. Yusra Abdul Jalil - Broker in Bahrain's Commercial Companies Law- P , 213.

<sup>9</sup>- Chancellor Ezzedine Nassouri - Civil Responsibility in light of jurisprudence and the judiciary - First Dza - 2015 Edition- P108)

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<sup>10</sup>Mohamed Farid Al-Arini - Commercial Companies Business Project between the Legal Framework Unit and Polymorphism - Edition 2018 - New University House P , 251



judiciary and the ruling of the Third Civil Supreme Court of Appeal, issued on 2019/01/31 AD, the court considered in the same regard to carry out acts or decisions contrary to the contract of the Founding Council and the purpose of the company and the transfer of funds, namely the president and member of the Board of Directors does not deny responsibility because the excuse of dependency under the circumstances referred to means making companies, economy, finance, shareholders and victims victims of complicity and fraud from the boards of directors of sham and formal administrations have nothing to do with its decision.

The researcher sees yes there is a responsibility of the follower and followed and agrees to what came from the previous ruling and be of the opinion whenever the chairman of the board of directors or the elected member or appointee takes office, that relationship is interrupted and the member assumes his full responsibility since the decision signed by him before or after the appointment and he does not carry after him and he does not hold membership of another company and there are no external interests in that he denies any external relationship and any responsibility for any decision issued by him even if and if He had an external influence.

#### Third: Bonus board of directors:

The Bahraini legislator organized the percentage of the bonus member of the board of directors and the procedures to be followed in disclosing any amounts received by the member of the Board of Directors and gave the authority of the General Assembly

to give the reward in non-prescribed cases. After the legal reserves are deducted, the total amount of these rewards cannot be estimated at more than 10% of the net profit, which will be at least 5% of the company's paid-up capital.

In the event of no profits in the company or years in which profits are not distributed to shareholders, the General Assembly may decide on its decision and after the approval of the President of Trade Affairs to pay the bonus to the members of the Board of Directors.

The Board of Directors shall disclose all the rewards received, assignment, work, mobility and others in their annual report to the General Assembly, and the report shall be detailed to each member individually.

In order to avoid inaccuracies in financial reports on the bonus and what is spent for each member for one work or another, and in the inaccuracy that the company distributes profits in inaccurate numbers and concludes the fiscal year with a budget other than affecting the company's liquidity. It is noticeable in the new amendment to the decree of the law to give authority to the General Assembly and the minister competent in the disbursement of the reward even if the company did not make profits and that is wise, it is not reasonable for the member of the Board of Directors to take the risk to take responsibility for the role dictated by the membership of the Board and to be deprived of the reward if the company does not achieve positive results, in not paying the reward may lead to the negative of the member of the Board of Directors in the performance of his work on

the one hand and on the other hand may not. The company's failure to achieve profits is a failure of the performance of the Board of Directors but for reasons beyond their control, and thus according to the legislator in the previous article between the protection of the company and not to harm the rights of the Board of Directors.<sup>11</sup>

- General Assembly

The association, which is called a meeting once a year after the fiscal year, and all shareholders have the right to attend in which decisions are discussed and made according to the topic to which the meeting was held. The other kind is the Ordinary General Assembly and the extraordinary General Assembly.

. AGM: The meeting, which is held at least periodically at least once a year, is called by the Board of Directors of all shareholders of the company in the sentence. The AGM is held at least once a year, and bahrain's legislator has stipulated that it be held in The Khedon three months after the end of the company's fiscal year.

First: Cases of call by the Ordinary General Assembly:

To the Chairman of the Board of Directors to the need to convene a general assembly to discuss a topic, and to be held in the place and time mentioned in the invitation or what the company's statutes organized.<sup>12</sup>

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<sup>11</sup> - Chancellor Ezzedine Al-Danasouri - Civil Responsibility in light of jurisprudence and the judiciary - 2015 edition P. 198.

<sup>12</sup> - Corporate governance is a doctrinal study,

Ahmed bin Mohammed al-Razin, 2012 AM 13.

Auditors have the power to apply to the Board of Directors to convene a regular general assembly.

The legislator gave the authority to those who own 10% of the company's capital in the request for a regular general assembly.

In article 198 of the Companies Act, bahrain's legislator specified cases where the Ministry of Commerce could call the AGM:

1. If one month passes the deadline for the General Assembly without being invited to convene. This is in the event that the Board of Directors fails to invite the meeting three months after the end of the company's fiscal year.

2. If the members of the Board of Directors are below the minimum necessary for the validity of its convening.

3. If the Board of Directors does not invite the General Assembly to convene within a month of the day after the date of the application in accordance with paragraph (b) of this article.

4. If the Minister for Trade Affairs decides what should be called by the General Assembly to convene, and issues a decision causing it.

5. If the competent authority requests to control the company's activity in cases where the ministry concerned with trade is not the competent authority.

Second: Convening:

- Shareholders are invited to convene the General Assembly by publishing in two daily newspapers, both local and one of these newspapers must be published in Arabic and the other in English, and the publication shall be within the legal period

specified, at least 21 days before the general assembly, and includes the declaration on the agenda and should be detailed and included in the necessary information as specified in the executive regulations.<sup>13</sup>

- In doing so, he specified and restricted the Bahraini legislator and merely called for the General Assembly to be convened by announcing once in two daily newspapers, one in English and the other in Arabic, and the place, dates and agenda of the work to be discussed in detail must be determined. It should be noted that in this amendment the declaration was added in the daily english newspaper this would cut the certainty of foreign shareholders and assume that they knew of the assembly from the date of the invitation.
- Contrary to Egyptian law, bahrain's legislators only called for the General Assembly to be published in the daily newspaper once. He did not think it necessary to invite twice, as the reality of the situation and the usual situation in joint stock companies is that shareholders are invited by means of communication.
- The original of the statute regulates the meeting place of the General Assembly or the venue

and time of the meeting is determined by the Board of Directors or its advocates, but excluding this has allowed the circumstances and health crisis of the country to the disease "Covid 19" and the safety of citizens and the boat of precautions and safe and health procedures, the Minister of Industry, Trade and Tourism issued a decision to hear the commercial companies contributing and listed on the Bahrain Stock Exchange to hold their meetings through electronic and telephone communications exceptionally; For the spread of the Karuna Covid 19 virus .

### **Third: The validity of the AGM:**

A number of procedures must be followed and some of the conditions that have been adhered to by the Bahraini legislature must be met, including:

- The General Assembly meeting is chaired by a chairman or deputy chairman, and the Board of Directors has a member assigned to do the job.
- The availability of a quorum for the validity of the Assembly: more than half of the capital is required by a number of shareholders who have the right to vote.

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<sup>13</sup>Dr. Yusra Abdul Jalil - Broker in Bahrain's Commercial Companies Law Previous reference, p. 198

- Immediately, the quorum failed at the first meeting, and the meeting was called for a second time, on the same agenda.
- The meeting is invited at least seven days from the first meeting and not more than fifteen days.
- The second meeting requires the presence of a number of shareholders who have the right to vote and represent at least 30% of the capital.
- If the quorum is not completed for the second time, a third meeting will be held and it is not conditioned to be announced in order to force the attendees to know when the third meeting will be held in order to determine the different meeting.
- No quorum was required at the third meeting, but anyone present was promised.
- Publication requires that neither of these meetings be held in at least two daily newspapers, one in Arabic and the other in English.

The chairman of the board of directors, his representatives or those assigned by the General Assembly or the Council shall the presidency of the General Assembly, and here the Bahraini legislator limited the presidency to the previous one. But immediately, if the meeting was invited by the trade agency or by the auditors, is it the head of the

board of directors or who invited the meeting?

It is noted in determining the presidency of the assembly and limiting it to the president or his representatives or those who are assigned by the competent authority and to be able to decide who heads the General Assembly in the event of an invitation without the Board of Directors, indicating that it is supposed to be headed by the Chairman of the Board of Directors as elected by the General Assembly and other provisions of the law.

Fourth: The terms of reference of the General Assembly:

The general assembly has the competence to consider all matters of the company except the maximum of the legislator and what falls within the purview of the extraordinary General Assembly and has specifically identified a number of things, including:

- Election and removal of board members: This is what the law stipulates in how to appoint and elect board members and those who have researched into the appointment and how to calculate votes, where the right to appoint those who own 10% of the shares is limited to the extent of the percentage of capital owned with

- the number fractions rounded to the nearest correct number.
- Determine the reward of board members.
  - Discuss and approve the Board's report on the company's activity and financial position during the fiscal year ended.
  - Discharge or refusal of board members.
  - appoint one or more auditors for the next fiscal year and determine a fair or authorize the Board of Directors to determine that wage.
  - Hear and discuss the auditor's report on the company's financial statements for the fiscal year ended.
  - Certify the calculation of profits and losses and balance sheet and show how to allocate net profits and determine the share of profits.
  - Consider proposals for issuing bonds, borrowing, mortgages, giving guarantees, and deciding on them.

The board of directors has all the powers relating to the management of the company and all the necessary actions to achieve its purpose in it except the law, where it gave the Bahraini legislator the right to approve the acquittals of the disclaimers, mortgages, and assumptions and to give guarantees to the Ordinary General Assembly after the approval of the Ministry for Trade Affairs.

The General Assembly of Shareholders may increase the shareholder's financial burden

or increase the value of shares only within the provisions of the Law. Reduce the sperm to be distributed from net profits to shareholders specified in the company's platform. Imposing new conditions other than those mentioned in the Statute relating to his right to attend and vote in public assemblies restricting the shareholder's right to sue board members or some of them in claiming compensation for damages. Any decision taken by the General Assembly to restrict shareholders' rights to make compensatory claims against boardroom ing, cannot be placed absolute immunity, not the board's members.<sup>14</sup>

#### **Second: The Extraordinary General Assembly:**

Definition of the Extraordinary General Assembly: The meeting held by a company shareholder at the invitation of its Board of Directors to discuss matters that the Board of Directors considers should be presented to the Assembly outside the jurisdiction of the Ordinary Assembly, especially the extraordinary General Assembly.

#### **First: the cases of the extraordinary call of the General Assembly:**

Each of the following may call for an extraordinary general assembly:

- The board of directors of the company.
- A number of shareholders represent at least 10% of the company's shares. In such cases, the Administration must invite

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<sup>14</sup> Mohammed Farid Al-Arini - Commercial companies business project between the legal framework unit and the multiplicity of forms Previous reference, p. 165

the General Assembly to meet unusually within one month of the date of arrival of the application, and the Ministry designated for Trade Affairs shall invite the meeting within 15 days of the expiry date of that period, taking into account the provisions of article (199) of the Act.

**Second: the validity tapes of the extraordinary general assembly:**

- The quorum must be completed and the estimated number of shareholders representing at least two-thirds of the company's capital must be completed.
- If the quorum is not completed, a second meeting should be called within 15 days of the first meeting. At the second meeting, the legislator only attended more than a third of the company's capital.
- Bahrain's legislator has authorized that the meeting should not be invited for a second or third time if a meeting is scheduled for the first meeting.
- If the quorum is not completed for the second time, the meeting will be called for a third time and only a quarter of the shareholders will be present.
- As in the ordinary General Assembly, it was stipulated that neither meeting would be held in at least two local daily

newspapers, one in Arabic and the other in English.

- We see this trend supported in the recent amendment of the 2020 Law on Companies, in articles on publishing methods and a requirement in English and Arabic, and this is a new trend to confront third parties or shareholders and impose them with science.
- Decisions must be issued with the approval of a two-thirds majority of the shares estimated at 66 percent.
- If the decision is related to increasing or reducing the company's capital, prolonging the company's term, dissolving, transferring or merging it, a majority of three-quarters of the shares of the attendees must be available. The association's extraordinary decisions are effective only with the approval of the Ministry of Commerce and Industry.

**Third: The terms of reference of the Extraordinary General Assembly:**

The Extraordinary General Assembly is another way to preserve the rights of shareholders to participate in the management of the company by contributing to the decisions affecting either the amendment of the contract of incorporation or the sale of the whole project or the dissolution of the company.

1. Modify the establishment

- contract or statute or prolong the duration of the company.
2. Reducing or increasing capital, including the issuance of new shares.
  3. Its disposal exceeded half of the company's assets, taking into account the provisions of article (194 bis) of this Act.
  4. Selling or acting on all the project for which the company has conducted it in any other way.
  5. Dissolve, transform or integrate the company into another company.
  6. What other things are provided for in this law?

The Extraordinary General Assembly may not make amendments to the founding contract or the company's statutes, which would be the business of changing its nationality, transferring its main position outside the Kingdom or increasing shareholder burdens other than raising capital. Every text that requires otherwise is

invalid. This is not permissible for the General Assembly, understood from the previous article, to make amendments to the founding contract or statute that would increase the financial obligations and burdens on it, and if it violates this, any decision made in this regard is invalid. Or obliging them to subscribe immediately to increase the number of shares or commit them to the difference in the value of the shares when raising the value of the shares, this would create new obligations and burdens on the shareholders that have not been approved by them<sup>15</sup>.

- **Appointment of auditors:**

As we have mentioned earlier, it is the General Assembly that has sovereignty over the joint stock company that is responsible for managing the company and controlling its business, but in practice it is different because it is rare for shareholders to attend general assembly meetings and the aspect they care about is speculating on their shares and getting more profits than their intention to participate in the management of the company, so real or actual control has been transferred to the Board of Directors, which has become the general assembly with limited effectiveness. The Bahraini project gave this task to the auditor or more of an accountant who meets the requirements of professionalism, technical expertise and the process of the General Assembly to assist it in the supervision and supervision of the work of the Board of Directors. The drafted a special law in the auditors of articles 217-

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<sup>15</sup>Dr. Yusra Abdul Jalil - Broker in Bahrain's Commercial Companies Law Previous reference, p. 231

222 of the Bahrain Commercial Companies Act, which dealt with these articles: Decree-Law No. 26 of 1996. Determining the audit process is a comprehensive examination of records, accounts, and procedures completed by a specially trained and qualified person to do such work, and an audit to determine whether the amounts received and the expenses spent were recorded through auditing. This person is particularly tasked with carrying out this task and the main objective of auditing the normal business of companies is to find a report on whether the company maintains its accounts and data and records in accordance with the generally approved accounting principles and to see if these accounts and data have been recorded in the books and records in line with the company's correct financial situation. In Article 217 of the Bahrain Commercial Companies Act, the Bahraini legislator must have an auditor, which means that each joint-stock company must have a commanding and binding auditor. The auditor must have a license to practice the profession appointed by the General Assembly and determine the equipment and wages and the founders of the company may also appoint an auditor until the General Assembly if they are more than one auditor each of them is conducting a unilateral review and if the task is not carried out for any reason the Board of Directors may, if necessary, appoint the replacement person to submit the matter to the first meeting of the General Assembly to decide on it and in some countries, the purpose and scope of the audit and the responsibilities of the auditors are determined in accordance with the law.

The auditor that the waiver letter is useful to him and his clients because it is in the interest of both management and auditor to send the auditor the waiver letter and prefers to send it before the start of the task in order to help avoid any misunderstanding related to the task of audit documenting the task book and confirming the audited approval of the letter he appoints, the purpose and scope of the audit, and the extent of the auditor's responsibilities towards management, the auditor also refers to include reporting to shareholders about the credibility and fairness of the financial statements and whether these statements represent the results as an activity for the year Expired on that date and whether it was prepared in accordance with GAAP or in accordance with international accounting standards and in accordance with the provisions of the law the appointment of the auditor allows it to exert some pressure on it because it is proposed to appoint and what appointment to the living of an auditor it is worth noting that the English Companies Act, from which most of the laws were derived from companies in the world, entrusted the appointment of the auditor by decision of the General Assembly of shareholders in order to give the auditor greater independence but follow-up practical application indicates that The authority of the public authority is a theoretical authority, as is the administration that attaches to the references and agrees with it when determining its fees, which is proposed to the General Assembly to appoint him and determine his fees.

#### **Conditions to be met in the auditor**



- 1- To be a Bahraini national and excluded non-Bahraini affiliates of internationally recognized chartered accountants associations
- 2- to be fully e-civil
- 3- To be of good reputation and not sentenced to criminal punishment or honor or honesty
- 4- To have a certificate dedicated in accounting the certificate of bacalros - excluding workers at the time of work this law has been working this task for 10 years without interruption also the members of the associations of legal accountants recognized internationally
- 5- To have practical experience in an audit office inside or outside the Kingdom of Bahrain on condition of at least 7 years, as the legislator excludes members of internationally recognized law accountants' associations.
- 6- To be free to practice the profession i.e. he may not work a government job or in the private sector or in any business
- 7- He is required to be a member of an internationally recognized chartered accountants' association.
- 8- This profession may only be practiced through a check-up machine.
- 9- To be registered in the auditors' register.
- 10- He is not a chairman or member of the Board of Directors of the company that audits its accounts or even relative to the second degree of

the person who oversees the management of the company may not buy or sell the company's shares.

- Isolating the account-streamer and resigning him

The General Assembly alone has its own removal and the legislator authorized the Board of Directors and a number of shareholders representing at least twenty-five percent of the capital to request the replacement of the auditor during the fiscal year. The Board of Directors invites the AGM to a meeting to consider the application 15 days after the date of submission the application must be sent to the auditor to prepare a response in writing and the reply must be sent to the company at least five days before the meeting of the General Assembly and the chairman of the board of directors of the company or his acting members of the board of directors shall read out the request and its reasons and the auditor responded to the General Assembly to make a decision that the auditor can receive but at a time Suitable writes a request to the Board of Directors and may not abuse his right to resign, resulting in damages to the company, and he was responsible for compensation for the damage suffered by the company.

**First, the terms of reference of the auditors.**

- 1- The auditor has the right to access all books belonging to the company, its records and documents, and has the right to verify the company's assets and obligations.

- 2- In any case, a auditor must notify the Ministry of Commerce of a copy of his reports and observations, whether financial or administrative, or the existence of irregularities.
- 3- The auditor should attend the General Assembly and be able to have his opinion in the meeting about his work and the company's budget and the report shall be prepared according to the approved standards and standards

**Second, I've responsible the auditors.**

- To be responsible for the validity of the statements he prepared in his report because as he is a question for shareholders and for each shareholder to discuss the auditor's report and to clarify what is in it
- Responsible for compensating for the damage he causes from mistakes he made in carrying out his work knowing that if they are more than one auditor who participated in the mistake they become collectively responsible

The company's financial situation report and its attaché to the company's profits

The legislator gave him responsibility for any mistake, negligence or negligence in the performance of his work because his task has a great deal of importance or not to follow the standards to be followed may be civil responsibility and may be criminal or perverse according to the mistake committed

**Civil liability**

He must take care of the usual man so that he is responsible for the company and the unfaithful and shareholders for compensation for the damages caused by his harmful actions the victims can sue the auditor when the error and damage and the relationship of the spy does not hear the civil suit one year from the date of the general assembly meeting in which the report of the auditor was read asking the civil auditor about the other controlled entity for the mistakes that occur from him determine his civil responsibility towards the controlled entity On the basis of the legal position held by the relationship that connects the auditor to the audited establishment is a contractual relationship arising from the employment contract, however, the auditor is not considered an employee of the audited entity because he borrows the task of monitoring and auditing the accounts independently and without receiving any learnings in her performance that the auditor should be considered an agent of the auditing authority to audit the audit so that his civil liability is determined in light of the general rules of the establishment, however, this opinion is criticized For the absence of the basic elements of the agency, where the agent performs legal procedures on behalf of the client, so that their effects are exhausted in the custody of the client, while the auditor monitors and audits. These procedures are of a material nature and are not legal, and this is to submit a report that presents its opinion on the outcome of the review, and the author

of the subject remains, to the reviewer the freedom to rely on or reject this opinion, the auditor does not carry out his duties in the name and account of the authority subject to scrutiny, but monitors the accounts and reviews them independently and fully neutrally and without receiving any comments. Joule how to perform the task as is the case, one of the components of the legal structure. The company is tasked with monitoring and auditing even if it is appointed by the general authority, but it does not lose its independence in confronting it or facing the management of the company, which is why he was called the judge of the general assembly numbers and the reality of the company's accounts and the behavior of the administration in this regard. The errors attributed to him are a violation of legal obligations, so the liability of the civil auditor is determined in the light of the general rules of liability for damage. The Companies Act considered the auditor as an agent of the company and not an agent of the public body assigned to it, as in some legislation so that there is only one consideration affecting the performance of its mission, which is that the company and those who deal with it should play provided that the disciplinary board decides on the disciplinary case, after the auditor announced tomorrow about appearing before the Board, with a registered book with the knowledge of access with a summary statement of it. From the charge against him, the date and venue of the hearing, and the Disciplinary Council shall hold its meeting at the headquarters of the Ministry of Commerce or elsewhere, the president of the

council, to consider the issues of blame in a public meeting unless the Council considers that it is held in a public meeting. The board's decision must also include reasons, and the auditor may appeal to the Supreme Civil Appeal Against the Decision of the Disciplinary Board, within forty-five days of the date of the decision, if the decision is issued in his presence or the date of notification in a book registered with the knowledge of access if the decision was issued in his absence.

#### Criminal liability:

The auditor is criminally questioned whether the mistakes he made during the task of auditing censorship constitute crimes punishable by law, and the responsibility of the auditor is mentioned in several legislative texts if the act of the auditor of fraud or fraud or an act punishable by the legislator was placed in section 16 of the Bahrain Commercial Companies Act in article 361.

#### Polite responsibility

The responsibility shall be carried out if it is found to be contrary to the provisions of the Auditors Act or the origins of the profession, committing gross negligence, an act that violates honor, harms the dignity of employees, professions, etc. In this case, the Disciplinary Council will sign one of the disciplinary sanctions.

- 1- The predictor
- 2- Warning
- 3- Suspension from work for a period of not more than 3 years
- 4- Remove the name permanently from the auditors' register.

The disciplinary action will be filed by decision of the Minister of Commerce, with the disciplinary board to decide on the case after the auditor announced the attendance, but the board at least 15 days before the meeting.

The hearing will be public if the hearing is not to be confidential and the decision of the Disciplinary Council shall be included on reasons that the auditor may appeal within 45 days of the decision before the High Civil Appeal Court.<sup>16</sup>

- Inspection of the company

The inspection system, as we know in practice, is that the management of a joint stock company in the hands of the Board of Directors and a few shareholders with the majority of capital and undoubtedly harms the interests of the numerical majority of shareholders, which is a minority at the moment of making any decisions of the company, especially since the lesson in voting shares and their types not the number of owners and there is no way for the majority numerical (and minority votes) to preserve their interests and rights and to provide them to the legislator to protect the majority of shareholders so that they can protect the majority of shareholders Interests.

Inspection conditions

1. The Minister of Commerce and Industry or <sup>16</sup> must be repelled by the administration at the request of partners who own at least the capital

as stipulated in Article 351 and Article 352 of the Bahrain Companies Act.

2. They must have reason to justify this request and the reasons must be supported by evidence and documents after paying the fee set by the Minister of Commerce and Industry.

- Inspection procedures

The inspection committee submits the inspection request to the Minister of Commerce and Industry if it responds, it assigns an employee. This employee inspects the company's work and accounts until the completion of the inspection. The Ministry of Commerce and Industry notifies the company with the result. If the Ministry of Commerce and Industry refuses to request an inspection, they must request an expert within 30 days of submitting the application. It has to authorize one of the employees or others assigned to inspect and is entitled to the same rights and obligations in the inspection as the inspector.

- **Breach of inspection entails**

Article 361 of the Bahraini legislature provides for a penalty punishable by imprisonment and a fine of less than 10,000 dinars and not more than BD 100,000 or one of these penalties if a person who has pledged to inspect the partners discloses his or her duties by virtue of his work of company secrets or uses these secrets to bring special benefit to him or others or after reporting incorrect results or neglecting important facts that affect the outcome of the inspection, either If the inspector neglects and does not mention substantial

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<sup>16</sup> - Dr. Yusra Abdul Jalil - Broker in Bahrain's Commercial Companies Law Previous reference, p. 213

facts affecting the outcome of the inspection, he shall be fined BD 5,000.<sup>17</sup>

### Conclusion:

The partnership contract, considering that the contribution to capital through the purchase of shares, makes the shareholder a right to the company and makes him a partner in profit and loss with an estimated contribution to the capital, which is a consensual contract, which requires full satisfaction, which is linked to a partnership contract, but this contract was concluded and the legal status of the shareholder changed in accordance with the text of the article of law without reference to the shareholder. Without any consent from it, and thus null and void, because there is no original element of the contract, which is consent, judicial application, and therefore if the issue of transfer arises in accordance with the text of this article in its current form, it will disrupt the work of this provision, as jurisprudence and jurisprudence agree that the absence of a corner of contracts invalidates the contract. From this I reached the last point in the research paper, in which I addressed with an explanation about the management of public joint stock companies and the responsibility of the administration to manage the shareholders' funds, whether it is civil or criminal responsibility from the perspective of the Bahraini legislator

### Conclusion

- The most important topics that have occurred in the subject of the

research paper updates that occurred in the latest amendment to the Companies Act decreed by the Law (28) of 2020, which as we show in the introduction that the companies considered and stipulated by law have decreased and exited both the one-person company and the holding company.

- What is included in the responsibility of the members of the administration has been clearly separated in the latest amendment, and one of the most important developments is that the company system may provide for the authorization or involvement of another member of the Board of Directors or executive management in the directing of the powers of the Chairman of the Board, which was not the previous law and preceded the amendment a number of judicial principles.

### Recommendations:

- Encourage research into the responsibility of the affiliate and the follow-up regarding the members of the Board of Directors or the Chairman of the Board of Directors.
- Amending the Bahraini Companies Act by adding a clear and explicit text explaining the end of any subordinate or follow-up relationship or any external relationship that would affect its decisions, even if it exists, the responsibility is full to the member.

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<sup>17</sup> Bahrain Companies Law Authority P , 361

- To determine the scope of the review in accordance with the company's circumstances and to determine the best offer in the light of efficiency and experience.
  - It should be borne in mind that the selection of members of these committees from outside the board members can adversely affect the business and projects of companies due to the possibility of leaking confidential information and data to competing companies and projects.
- 8- Decree of Law No. (7) of 1987 to issue the Trade Act and its amendments.

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- 5- Dr. Yusra Abdul Jalil, Broker in Bahrain's Commercial Companies Law, University of Applied Sciences
- 6- Decree of the Law (21) in 2001 to issue the Commercial Companies Act and its amendments.
- 7- Ministerial Decision No. 26 for 2020.