

**ELITE PARS**

Law Firm

*At a Glance Series*

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# AN OVERVIEW OF CORPORATE GOVERNANCE IN IRAN

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In recent years, corporate governance has become a top priority for companies, CEOs, boards of directors, investors and regulators. Corporate governance may involve several aspects of direction, management and control of an entity, mainly in order to provide a system according to which decisions are made and implemented on the one hand, and interests of shareholders and managers are balanced.

Accordingly, an important aspect of corporate governance concerns questions of decision-making and supervision. In this edition of our At a Glance Series, we have sought to introduce founding blocks of corporate governance in Iran with a focus on limited liability companies ('LLC') and private joint stock companies ('PJSC').

## *Corporate Governance in LLCs*

- **What is an LLC?**

According to the Iranian Commercial Code, an LLC is formed between two or more persons whether an individual natural person or a legal entity for the purpose of commercial operations. An LLC can be registered with 100% foreign ownership. The distinguishing fact about such companies which differentiates them from other companies under the Iranian Commercial Code, is that each shareholder is held responsible merely in proportion of their share/partnership portion in the company's capital. To be strictly technical, one should note that the capital of such companies is not divided into shares but partnership portions.

Generally, governance structure of LLCs is formed of a Shareholders' General Meeting, Directors and in the situations mentioned later, an Inspector Board.

- **Official Name of an LLC**

The term "LLC" shall be mentioned in the official name of the company, otherwise the company would be considered as a general partnership towards third parties which creates unlimited responsibility for the shareholders.

Furthermore, in case the name of any of the shareholders is mentioned anywhere in the company's name, that certain shareholder shall be considered as a general partner and therefore would have unlimited liability towards third parties.

- **Managers/ Directors**

LLCs are managed and run by one or more directors that can be among or outside of the shareholders of the company. These directors can be both paid or unpaid. Moreover, there is no obligation to determine the exact time of the management period of the aforementioned directors. Therefore, a director may be assigned on an unlimited basis.

This is unlike PJSC's that require the appointment of a director merely from the shareholders of the company.

- **Inspector Board**

Unlike PJSCs, presence of inspectors is not mandatory on a general basis. LLCs can be formed with merely two shareholders, however, if the number of such shareholders is more than twelve then the formation of an Inspector Board is required under the law. Immediately, after its formation the Board shall start its investigation whether the provisions of Articles 96 and 97 of the Commercial Code regarding the partnership portions have been duly executed. This Board shall call a Shareholders' General Meeting at least once a year.

This Board can also call on the shareholders to hold an Extraordinary General Meeting if it deems so necessary.

- **Shareholders' Relationship**

Relations between the shareholders is governed based on the company's article of association. In case there is no specific provision regarding the profit and loss of the company, it shall be allocated based on the partnership portion's ratio. In no case, shareholders may force any other shareholder to increase his partnership portions. Each shareholder has the right to vote according to their share of the capital. Transfer of partnership portions is merely possible through official deed.

Generally speaking, any change in the article of association shall be made with the numerical majority of the shareholders whom also own more than three forth of the capital, unless another provision is made according to the article of association.

## Corporate Governance in PJSCs

### ▪ **What is a PJSC?**

Under Iranian laws and regulations, a private joint stock company (PJSC) is a legal entity in which capital is divided to shares. PJSC may be established by at least three shareholders, which may be legal entities or natural persons. Non-Iranian natural persons and legal entities can also be shareholders in PJSC and can hold even up to 100 per cent of its capital.

The main law governing companies in Iran is the Commercial Code of Iran of 1932 (the “Code”) and its amendment of 1968 (the “Amendment”).

PJSC Companies in Iran has different governing bodies each of which has its own specific functions and duties. General meetings (founders, ordinary and extraordinary), board of directors, managing director and inspectors are corporate governing bodies of companies in Iran.

### ▪ **General Meetings of Shareholders**

The main corporate body of PJSCs in Iran is the general meetings which is held with the presence of all or majority of shareholders to make decisions with respect to important issues of the company. The provisions concerning the quorum of general meetings and the required number of affirmative votes for passing a resolution shall be determined in the articles of association of the company, unless otherwise is provided for in the Code.

Based on the provisions of the Amendment to the Commercial Code of Iran, general meetings are divided into three categories namely the founders meeting, the ordinary general meeting and extraordinary general meeting of shareholders.

### ▪ **Founders’ Meeting**

The founders meeting is formed at the time of establishment of the company and is competent to approve the articles of association of the company, elect the first directors and inspectors and select the widely circulated newspaper in which all the company’s notices will be published.

### ▪ **Ordinary General Meeting**

The ordinary general meeting has a vast authority in companies in Iran and has the authority to make decisions about all the affairs of the company with the exception of those falling under the jurisdiction of the founders and extraordinary general meeting. The ordinary general meeting must convene once a year at the time specified in the articles of association for reviewing the balance sheet and profit and

loss account of the previous year, claims and debts of the company, report of directors, report of the inspector(s) and other matters related to the accounts of that fiscal year.

In the ordinary general meeting, presence of holders of more than fifty per cent of the shares entitled to vote is required. All the resolutions shall be passed by the affirmative vote of fifty per cent plus one vote of shareholders present at the meeting.

The ordinary general meeting may be called in an extraordinary manner by the board of directors of the company or the inspector(s). In this case the agenda of the meeting shall be indicated in the notice of invitation.

#### ▪ **Board of Directors**

A PJSC is managed by a board of directors, appointed from among the shareholders. Legal entities can be elected as members of board of directors. In this case, an individual representative shall be introduced to discharge the directorship functions. Term of office of the directors are indicated in the articles of association however it cannot exceed two years.

The directors of the company shall have all the necessary authorities to manage the company except those matters which, in accordance with the provisions of the Amendment fall under the exclusive jurisdiction of general meetings of the company. The board of directors in a joint stock company shall be convened by the presence of more than fifty per cent of its members. Resolutions of the board of directors are valid when passed by the affirmative vote of the majority of directors present at the meeting, unless a higher majority is provided for by the articles of association

#### ▪ **Extraordinary General Meeting**

Any change in the articles of association of the company or the share capital or in the manner of premature dissolution of the company shall fall under the exclusive jurisdiction of the extraordinary general meeting.

In the extraordinary general meeting, presence of holders of more than fifty per cent of the shares entitled to vote is required. Resolutions at the extraordinary general meeting shall be passed by the affirmative vote of two-thirds of shareholders present at the meeting.

#### ▪ **Inspector**

The ordinary general meeting in joint stock companies will each year elect one or more inspectors to discharge their duties in compliance with the Code. The inspectors shall review the list of assets, the statement of operation of the company for the fiscal year, profit and loss account and the balance sheet which the directors have prepared for submission to the general meeting and on other matters and information which the directors have made available to the general meeting. The report of the

inspectors in this regard must be made available for the reference of shareholders at the principal office of the company not later than ten days before convening of the ordinary general meeting.

- **Managing Director**

The board of directors of a PJSC must appoint a natural person as the managing director of the company and specify the scope of his/her authorities, term of office and remuneration. In case the managing director is also a member of board of directors, his term of office must not exceed the period of his directorship in the board. The managing director within the scope of authorities, is considered company's representative and is authorized to sign on behalf of the company.

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