

Editorial:

Fair Treatment and Protection of the Rights of Shareholders under Saudi Law

Article (1) of the Corporate Governance Regulations ("the Regulations"), issued by the Board of the Saudi Capital Market Authority, pursuant to Resolution Number (8/16/2017), dated 16/5/1438H, corresponding to 13/2/2017, defines corporate governance as the rules to guide a Company in regulating the relationship among its Board, Executive Directors, and Shareholders.

Article (3) of the Regulations requires transparency, fairness and competitiveness in the business environment. The necessary tools to realize these objectives include concepts relevant to corporate stock; e.g., obtaining the shareholder's portion of the net distributable profits; obtaining the shareholder's share of the Company's assets upon liquidation; attending the General or Special Shareholders Assemblies, taking part in their deliberations and voting on their decisions; and disposing of the shareholder's shares in accordance with Saudi law.

Article (5) of the Regulations determine many rights granted to the shareholders that contribute to securing perfect governance, such as: to inquire and request access to the books and documents of the Company, including the data and information related to the activities of the Company, its operational and investment strategy without prejudice to the interests of the Company; to monitor the performance of the Company and the activities of the Board; to hold Board members accountable; to file liability lawsuits against them and appeal for nullification of the resolutions of the General and Special Shareholders Assemblies in accordance with the conditions and restrictions provided in the Companies Law and the Bylaws of the Company.

In short, Article (3) of the Regulations improves the role of the Company's shareholders and facilitates the exercise of their rights through stating the competencies and responsibilities of the Board and Executive Management; enhancing accountability and control mechanisms for the Company's employees; establishing the general framework for dealing with shareholders and protecting their rights; supporting the effectiveness of the system for overseeing Companies; and raising the awareness of Companies to encourage them to adopt and develop professional and ethical concepts.

Legal Guidelines:

Aspects Necessary for Making Valid Checks

A check is deemed a significant negotiable instrument. The Saudi Legislature regulates the conditions and particulars for issuing a legally effective check. Article (91) of the Saudi Negotiable Instruments Law states that a check shall contain the following basic elements: the word check written in the text of the instrument in the same language in which the check is written; an unconditional order to pay a specific sum of money; the name of the drawee; place of payment; date and place of making the check; and the signature of the drawer.



Article (92) of the Saudi Negotiable Instruments Law states that an instrument which does not contain any one of the above particulars shall not be considered to be a valid check except in the following two cases:

First: When the place of payment is not stated, the check shall be deemed due for payment at the place shown next to the drawee's name; and when multiple places are shown next to the drawee's name, the check shall be deemed to be payable at the place first stated; when these or any other particulars are not stated in the check, it shall be payable at the place where the drawee's head office is located; and

Second: When the place of drawing is not stated, the check shall be deemed the place shown next to the drawer's name.

Legal Highlights:

Matters Outside the Power of an Execution Judge

The execution judge shall have the authority to decide on execution disputes whatever their value in accordance with the provisions of the summary court. The execution judge has the authority to take decisions and issue orders related to execution and may ban travel and lift travel restrictions, order detainment and release, order disclosure of assets, and hear claims of insolvency. (Article 3 of the Execution Law).

The Saudi Legislature, pursuant to Article (2/3) in Executive Regulations to Execution Law ("the Executive Regulations") 1439H, defines certain matters outside the scope of the execution judge's jurisdiction. The execution judge shall have no jurisdiction over matters that do not require forcible execution, such as annotations for transfer of title for the ownership of real estate deeds in respect of which a judgment was rendered by the subject matter judge on the transfer of ownership.

Every dispute relating to a right is subject to the jurisdiction of the subject matter judge, such as disputes concerning ownership title on the property subject to enforcement, disputes related to a title of the property subject to execution, or disputes related to breach by the contracting parties, such as construction and supply contracts. Article (3/4) in Executive Regulations to Execution Law 1439H).

Every dispute that may occur after the lapse of execution which does not arise from the authority of the subject judge like a pre-emption (shuf'ah) claim, and entitlement to the sold items or usufruct, or disputes over entitlement in bequests and endowments remains the authority of the subject judge. (Article 3/7 and 8, Executive Regulations to Execution Law 1439H).

Judicial Applications:

Dismissal of Claimant's Demand for Reinstitution of a Company's Shares

A Company's capital is composed of cash and in kind shares contributed by the partners of the company. The shareholding of a partner may also be compensation for some work (work share) if accepted as shares; however, it shall not be deemed to constitute the capital of the company under Article (5) of the Saudi Company Law.

The Saudi Legislature regulates the capital of a company issue with many conditions in terms of amendment, disposal, redemption or reinstatement thereto. In applying this approach a court having jurisdiction in a company dispute issue recently provided the following reasoning: Whereas Claimant specified its demand for the Defendant to reinstate the capital in addition to the amount which the Claimant paid as an increase in the capital; whereas the relationship between the Claimant and the Defendant was a quasi-company relationship, dated 5/10/1422H; whereas the legal entity subject to such partnership was evidently involved in business activities by an admission made by the parties, therefore, neither partner was entitled to claim reinstatement of the capital for the reason that all partners are liable for the consequences of such relationship in terms of a profit or loss. The court further stated that the Claimant, if the latter was not interested in continuation of the partnership, may exit from the company or claim liquidation of the account between the partners but cannot claim reinstatement of the capital.

(Please refer to the first instance case no. 31085/2/Gaf,1425H, first instance judgement no. 148/Dal/Ta Jeem/10, for the year 1431H, appeal judgement no. 400/Seen/8, 1432H, hearing 22/06/1432H, Commercial Judgements & Principles, 1432H, Technical Affairs Office, Board of Grievances, Riyadh, 1436H, page 1209)



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