

KHOSHAIM & ASSOCIATES

Client Bulletin: Suspension of Companies Law Articles

3 December 2020



Introduction

The Ministry of Commerce (**MOC**) announced on 2 December 2020 that a number of provisions of the Companies Law have been temporarily suspended with respect to joint stock companies (**JSCs**) and limited liability companies (**LLCs**).

International and local investors, and creditors of all types, should be aware of these developments as they introduce new rights and afford some flexibility to JSCs, LLCs, and their respective shareholders.

Snapshot of the Suspensions

1. LLCs will have one full year to hold their general assemblies to approve their financial statements as opposed to four months.
2. LLCs will also have one full year to file their financial reports with the MOC and shareholders as opposed to one month from preparation.
3. LLCs may pass shareholders' resolutions by circulation regardless of the number of their shareholders.
4. Governing bodies will have longer time periods to take the necessary actions when losses of JSCs or LLCs reach 50% of their respective capital amounts.
5. Neither JSCs nor LLCs will automatically dissolve under Articles 150 or 181, respectively.
6. Reappointment of auditors can now extend to seven consecutive years, for both JSCs and LLCs.

These suspensions are a welcome respite for many companies that may have been suffering from the effects of the COVID-19 Pandemic. K&A will continue to analyze the impact of these suspensions and advise our clients accordingly. More details can be found below. References to articles are to those in the Companies Law.

K&A has setup a COVID-19 Pandemic Legal Response Team that can be reached at Covid19@khoshaim.com

Time Period for General Assemblies of LLCs

The statutory period to convene the general assembly of an LLC has been extended from four months to 12 months, following the end of the LLC's financial year (Article 167(2)).

The statutory period to send copies of the below listed documents to the MOC and the LLC's shareholder(s) has been extended from one month following the date of preparation of the documents, to 12 months following the end of the LLC's financial year:

1. auditor's report;
2. financial statements;
3. report regarding the business of the LLC and its financial position;
4. recommendations regarding the distribution of dividends; and
5. report of the supervisory board (if applicable), (Article 175).

These suspensions will expire on 31 December 2020.

Shareholders' Resolution by Circulation

Article 168(1) prohibits shareholders of LLCs, where such LLCs are owned by more than 20 shareholders, from passing shareholders' resolutions by circulation.

This prohibition has been suspended, thereby allowing shareholders to pass resolutions by circulation regardless of the number of shareholders in an LLC. However, in order to make use of this suspension, the LLC's manager(s) must use registered mail to communicate the resolutions to be passed by circulation.

This suspension will expire on 21 October 2021.

Articles 150 and 181

Most welcome perhaps are the suspensions concerning Articles 150 and 181.

Article 150

The statutory period for a JSC's board of directors (the **Board**) to invite the extraordinary general assembly, to decide to either increase or decrease the capital or dissolve the JSC, has been extended from 15 days to 60 days from the date of the Board's knowledge of the JSC's losses reaching 50% of its capital. Additionally, the statutory period for the extraordinary general assembly to meet has been extended from 45 days to 180 days.

In addition, no JSC shall be deemed to be dissolved by force of law as a result of the shareholders failing to meet, agree, or fund the JSC as a result of an Article 150 situation.

However, closed JSCs must comply with the below measures (the **Measures**) to disclose Article 150 situations.

Article 181

The statutory period for an LLC's manager(s) to invite the shareholders, to decide to either continue or dissolve the LLC, has been extended from 90 days to 180 days, from the date of the manager(s) knowledge of the LLC's losses reaching 50% of its capital.

In addition, no LLC shall be deemed to be dissolved by force of law if its manager(s) fail to invite the shareholders, or if the shareholders fail to issue a resolution to continue or dissolve the LLC as a result of an Article 181 situation.

However, an LLC must comply with the Measures to disclose its Article 181 situation.

Measures:

A closed JSC's Board and an LLC's board or manager(s) (each a **Governing Body**) must comply with the following, if the losses of the closed JSC or LLC reach 50% of its respective capital (the **Incident**):

1. The Governing Body must, as soon as it becomes aware of the Incident, submit an application to the MOC to publish an announcement of the Incident on the MOC's website. The announcement must include:
 - a. the amount of the losses;
 - b. the percentage of the losses relative to the company's capital; and
 - c. the main reasons behind the losses reaching such percentage.
2. The Governing Body must also update the MOC on a quarterly basis on developments concerning the losses.
3. The Governing Body must publish the announcement and developments on the MOC's website.
4. As soon as the Governing Body becomes aware that the losses of the company had decreased to less than 50% of its capital, the Governing Body must submit an application to the MOC to publish an announcement to that effect. The announcement must include the measures adopted by the company to decrease its losses.

These suspensions will expire on 3 March 2022.

Appointment Period of the External Auditor

LLCs and JSCs are now allowed to reappoint an external auditor that has served the company for five consecutive years for a period that does not exceed two more years. Meaning, the appointment of the auditor should not exceed seven consecutive years. However, the maximum is five consecutive years for the natural person partner supervising the audit process. (Articles 133(1) and 166).

These suspensions will expire on 3 March 2022.

About the Firm

Khoshaim & Associates is a full-service Saudi Arabian law firm with international reach that delivers first class, efficient and multidisciplinary legal services.

Our 55+ member firm includes a team of veteran Saudi Arabian and internationally qualified lawyers who advise on a wide range of practice areas, including equity and debt capital markets, local and cross-border M&A, litigation and arbitration, regulatory, corporate, projects, privatization, banking and Islamic finance transactions.

The Khoshaim & Associates' team has an unparalleled understanding of the Saudi Arabian commercial landscape, legal framework and cultural issues, and routinely handles all aspects of sophisticated transactions and litigation.

The firm won KSA Law Firm of the Year from the IFLR, and its partners have consistently been ranked as Band 1 and Tier 1 for their practice areas by Chambers Global, IFLR1000 and Legal 500.

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Saudi Arabia 2020

Corporate/Regulatory/M&A – Band 1
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Dispute Resolution – Band 1
Capital Markets – Band 1

IFLR 1000

Saudi Arabia 2020

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Banking – Tier 1
Capital Markets – Tier 1
M&A – Tier 1
Project Development – Tier 1

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