


Subject : MAN - SHAREHOLDERS' MANUAL		 APM TERMINALS
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SHAREHOLDERS'MANUAL

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GLOSSARY

Abbreviation	Term
Articles	Memorandum of Association and Articles of Association of the Company
Board	The Board of Directors of the Company
CBB	The Central Bank of Bahrain
CBB Rulebook or CBB Rule Book	High Level Controls Module of the CBB Rulebook Volume 6 for Capital Markets
CEO	Chief Executive Officer
CFO	Chief Financial Officer
Charters	Board and its Committee charters
Committees	Sub-committees of the Board
Company Law	The Commercial Companies Law (Decree Law No. (21)) of 2001 as amended
Controlling Shareholders	As described in HC - B.3.8 of the CBB Rulebook, "Controlling Shareholder means any shareholder who holds 10% or more of the share capital or is able to exercise (or control the exercise of) 10% or more of the voting power in the company"
Corporate Governance Code	The Corporate Governance Code, issued by virtue of Ministerial Order no. 19 of the year 2018
Corporate Governance Disclosure Report	As described in Rule HC - 8.3.1 of the CBB Rulebook
Corporate Governance Manual	The manual in relation to Corporate Governance issued by the Company
Disclosure Standards	Disclosure Standards issued by the Central Bank of Bahrain
Directors	Members of the Board
EGA	Extraordinary General Assembly
Executive Management	Management team of the Company, comprising of Chief Executive Officer, Chief Operations Officer, Chief Financial Officer, Chief Commercial Officer and General Manager of Human Resources, including department managers and functions heads, where relevant
External Auditor/auditor	External auditor of the Company
General Assembly	OGA or EGA meetings of the Company
Manual	This Shareholders' Manual
MOICT	Ministry of Industry, Commerce and Tourism
OGA	Ordinary General Assembly of the Company
Secretary	Company Secretary
Shareholders	Shareholders of the Company

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1. INTRODUCTION

- 1.1 This Shareholders' Manual (**Manual**) is prepared in relation to APM Terminals Bahrain B.S.C., established under the laws of Bahrain (**Company**).
- 1.2 This Manual is an overall governing document laying out the rights and obligations of the Shareholders.
- 1.3 This Manual together with the Articles, Corporate Governance Manual and Charters define the authority and practices of good governance for the Company, drawn in compliance with the Corporate Governance Code, Company Law and the CBB Rulebook.
- 1.4 This Manual is approved by the Shareholders by means of resolutions passed at a meeting of the Constituent General Assembly held on 13 December 2018.
- 1.5 This Manual is approved by the Board by means of resolutions passed on 17 September 2018 and is further subject to annual review and approval of the Board.

2. SHAREHOLDERS

2.1 Introduction


- (i) The Manual lays out in detail the rights and authorities of the Shareholders as prescribed under the applicable laws, rules, regulations and the Articles
- (ii) The Corporate Governance Code draws the overall broad principle that the "Company shall communicate with shareholders, encourage their participation and respect their rights"
- (iii) In line with the spirit of the above principle, the Company Law and the CBB Rulebook further expounds and elaborates on the various aspects pertaining to the Shareholders, powers of the General Assembly, the protection of interests of the minority Shareholders and other relevant aspects as fully discussed herein below

2.2 Governing Rules and Provisions

- (i) Various articles stipulated in Part V of the Commercial Companies Law prescribe the requirements that are to be met by the Company in relation to its Shareholders including (but not limited to) the following:
 - o Obligation to hold OGA's and EGA's annually and/or as per business requirements along with the key provisions setting out the various requirements that need to be complied with while holding the General Assemblies¹
 - o The provision to increase or decrease the capital of the Company with the consent of the Shareholders and approval of MOICT and other relevant regulatory agencies in Bahrain²

¹ Articles 198 to 216 of the Commercial Companies Law of Bahrain

² Articles 125 to 137 of the Commercial Companies Law of Bahrain


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- The Company's ability to borrow loans, issue bonds and shares, with due approval of the Shareholders and in accordance with the Articles.³
- Shareholders' right to nominate, appoint and in certain instances, terminate the services of a Director or the Board in accordance with the Articles and the Board's disclosure obligations towards the Shareholders⁴
- (ii) Principle 7 of the Corporate Governance Code emphasises on the Company conducting Shareholders' meetings, while complying with the letter and the intent of the Company Law's requirements, specifically and without limitation in relation to the following:
 - Notices of meeting must be honest, accurate and not misleading, They should clearly state and where necessary, explain the nature of business of the meeting
 - Meetings should be held during the normal business hours and at a place convenient for the greatest number of Shareholders to attend
 - Notices of meetings should encourage Shareholders to participate by proxy and should refer to procedures for appointing a proxy and for directing the proxy how to vote on a particular resolution. The proxy agreement shall list the agenda items and shall specify the vote (such as "yes", "no", or "abstain")
 - Prior to the meetings, all material information and documentation shall be provided to Shareholders on each agenda item for any Shareholder meeting, particularly the Board's report, auditors' report, financial statements and the corporate governance report.
 - The Board should propose a separate resolution at any meeting on each substantially separate issue, so that unrelated issues are not "bundled" together, and shall not put the transactions and contracts in which directors have a direct or indirect interest in one item to ensure that each item is voted separately.
 - In meetings where Directors are to be elected or removed the Board should ensure that each person is voted on separately, so that the Shareholders can evaluate each person individually
 - The chairman of the meeting should encourage questions from Shareholders to the directors and external auditors, including questions regarding the Company's corporate governance guidelines, to the extent that answering these questions shall not jeopardize the Company's interests.
 - The minutes of the meeting must be made available to Shareholders upon their request as soon as possible within 15 days from the date of the meeting, and
 - All facts which are material and relevant shall be disclosed to the Shareholders by the chairman of the meeting prior to any vote by the Shareholders⁵

³ Article 138 to 166 of the Commercial Companies Law of Bahrain

⁴ Articles 172 to 197 of the Commercial Companies Law of Bahrain

⁵ Principle 7, Corporate Governance Code of Bahrain

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(iii) Various rules and guidance notes stipulated under the CBB Rule Book Volume 6, that further elaborate on the relevant provisions of the Company Law and Principle 7 of the Corporate Governance Code, shed clarity specifically in relation to the following:

- Distinguishing and determining the various aspects pertaining to the distinct roles of the Directors as compared to the Shareholders and other key stakeholders of the Company⁶
- The fiduciary duties of care and loyalty and personal accountability that is owed by the Directors towards the Company and its Shareholders⁷
- The obligation of the Company and the Board to treat equally, the Shareholders subscribing to the same type, class and series⁸
- The rights of the Shareholders in relation to the Company⁹
- The requirements and provisions that are to be complied with while holding or conducting the Shareholders' meetings¹⁰
- Provisions dealing with the communication and disclosure matters that are to be complied with, by the Board and the Company towards the Shareholders¹¹

3 RIGHTS AND OBLIGATIONS OF THE SHAREHOLDERS

3.1 Basic Rights

The corporate governance framework of the Company must ensure that the rights and privileges of the Shareholders are facilitated and protected, including but not limited to the following basic rights¹²:

- Secure methods of ownership registration
- The transfer of shares or disposing of shares owned or held and having a priority in subscribing for new shares in accordance with the provisions of laws
- Obtaining relevant and material information pertaining to the Company on a timely and regular basis including the receipt of a copy of the Company's balance sheet for the past financial year, profit and loss account and reports of the Board and External Auditors in accordance to the manner specified in the Articles and Article 168 (VII) of the Company Law.
- Participating and voting in General Assemblies

⁶ Rule HC - 1.2.1 of the CBB Rule Book Volume 6

⁷ Rule HC - 2 of the CBB Rule Book Volume 6


⁸ Rule HC - 7.2 of the CBB Rule Book Volume 6

⁹ Rule HC - 7.3 of the CBB Rule Book Volume 6

¹⁰ Rule HC - 7.4 of the CBB Rule Book Volume 6

¹¹ Rules HC - 7.5, HC - 8.1 to HC - 8.3 of the CBB Rulebook Volume 6

¹² Rule HC - 7.3.2 of the CBB Rulebook Volume 6 and Article 168 of the Commercial Companies Law

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- Electing and removing the members of the Board
- Sharing in the profits of the Company and receiving the portion of dividends allocated to or decided for each of the Shareholders
- Presentation by independent advisers
- Participation in the corporate events organised in relation to the Company
- Receiving a share of the Company's total property/assets on liquidation in accordance with the insolvency laws of Bahrain.

3.2 Right to Information

- (i) The Shareholders have the right to participate and sufficiently be informed about any fundamental corporate changes being effected in relation to the Company. To this extent, the Shareholders shall have the right to participate in the decision making process pertaining, but not limited to the following key matters¹³:
 - Amendment to the incorporation documents such as the Articles
 - The issuance of additional shares or new shares of the Company
 - Extraordinary transactions pertaining to the Company, such as the transfer of all or substantial assets of the Company, sale of the Company and such other relevant matters
- (ii) Each Shareholder shall have the right to access the Company's shareholder register, free of charge, which the Company is obligated to maintain as per the requirements of the Company Law¹⁴
- (iii) Each Shareholder shall have the right to examine the Company's records and to obtain copies thereof according to the conditions and procedures defined (if any) in the Articles, provided that the use thereof shall not prejudice the Company's interests or financial position or third parties¹⁵

3.3 Right to Direct Communication and Disclosures

- (i) The Shareholders have the right to direct communication with the Company via its Board, whereby the Chairman of the Board (and other Directors as appropriate) must maintain continuing personal contact in writing with the majority Shareholders of the Company¹⁶

The Shareholders have the right to seek disclosures from the Company in relation to its corporate governance matters¹⁷


¹³ Rule HC – 7.3.3 of the CBB Rule Book Volume 6

¹⁴ Article 171 of the Commercial Companies Law

¹⁵ Article 168 of the Commercial Companies Law

¹⁶ Rule HC – 7.5 of the CBB Rule Book Volume 6

¹⁷ Rules HC – 8.1 to HC – 8.3 of the CBB Rule Book Volume 6

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- (ii) The Shareholders (via OGA) are vested with the right to receive certain information pertaining to the financial status and corporate governance matters of the Company in accordance with the requirements laid out in the Corporate Governance Code¹⁸
- (iii) Certain disclosures in relation to Shareholders will be made to the Bahrain Bourse and/or the CBB, in line with the requirements laid out in the Disclosure Standards, specifically in relation to the following:
 - A statement in the Company's annual audited financial statements shall disclose the names and nationalities of the major Shareholders and the number of the equity securities of each class held in which they have an interest of 5% or more of the outstanding shares, as reflected in the Company's register of shareholders
 - The number of Shareholders in each class of equity security and the voting rights attached to each such class
 - A distribution schedule of each class of equity security, setting out the number of Shareholders and percentage in the format prescribed under the Disclosure Standards.¹⁹
 - The Shareholders are obliged to disclose information to the Company in relation to changes in their substantial shareholding or changes specifically in relation to the acquisition of 5% or more of the Company's issued and paid up capital by a beneficial owner reaching 5% or more, or if ownership of a beneficial owner reaches 10% or more or if the ownership of a beneficial owner reaches 10% or more of the Company's issued and paid up capital and wishes to purchase or own up to 20% of the Company's shares
 - The acquisition and disposal of 10% or more of the Company's paid up capital by any of the Shareholders, is subject to the prior approval of the CBB²⁰

3.4 Right to Equal Treatment²¹


- (i) The Company must ensure that all the Shareholders subscribing to the same type, class and series of shares must be treated equally. Within any type, series or class, all the shares must carry the same rights
- (ii) Investors must be able to procure information on the rights associated with the specific type, class or series of shares prior to the purchase
- (iii) Any changes in the voting rights of the Shareholders must be subject to the prior approval of the Shareholders that are negatively affected

¹⁸ Rules HC – 8.2 and HC – 8.3 of the CBB Rule Book Volume 6

¹⁹ Article 35 of the Disclosure Standards

²⁰ Article 32 of the Disclosure Standards

²¹ Article 168 of the Commercial Companies Law and Rule HC – 7.2 of the CBB Rule Book Volume 6

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- (iv) The interests of the minority Shareholders must be protected from the abusive actions by or in the interest of Controlling Shareholders, whether being caused directly or indirectly. There must be effective means of redressal in such situations for the minority Shareholders
- (v) Processes and procedures of conducting the General Assemblies must facilitate and ensure equitable treatment of all the Shareholders

3.5 Right to Replace the External Auditor

The Board or Shareholders representing at least 25% of the Company's capital may request the replacement of the External Auditor of the Company, in accordance with the provisions of Company Law²²

3.6 Right of Priority²³

- (i) The Shareholders have the priority right to subscribe for convertible bonds, issued subsequent to an EGA, if they express their desire to do so within fifteen (15) days from the date of calling them to exercise such right
- (ii) Each Shareholder may use his/her right to subscribe for bonds not in excess of his/her share in the Company's capital if the bond so offered allows this

3.7 Right to Initiate Legal Action

- (i) Shareholders have the right to initiate law suits to invalidate any of the resolutions passed in the General Assembly or by the Board in contravention of the laws, public order or the Articles²⁴
- (ii) The Shareholders via OGA may pass a resolution authorising the Chairman of the Board to file an action by the Company of liability against the Directors whose wrong doings have caused damages to the Shareholders. If the Chairman is among those litigated by the Company, the OGA shall appoint another Director to file or initiate the necessary legal action. However, if the action is against all the Directors (i.e., the entire Board), the OGA shall appoint a non-director to file or initiate the necessary legal action²⁵
- (iii) The shareholder may file a claim against the Company for the Court to judge as it deems appropriate, if the Company's operations are conducted or being conducted in an unfair manner prejudicial to the interests of the Shareholders in general or to the interests of one or more Shareholders, including the Shareholder who files the claim, or if the company did or intends to do or refrain from doing any act, which harms or is likely to cause damage as referred to above, including the acts of third parties or their refusal or intention to do any of the foregoing on behalf of the Company.²⁶


²² Article 221 of the Commercial Companies Law

²³ Article 150 of the Commercial Companies Law

²⁴ Article 168 of the Commercial Companies Law

²⁵ Article 187 of the Commercial Companies Law

²⁶ Article 168(bis) of the Commercial Companies Law

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3.8 Obligations

- (i) All Shareholders in particular shall have the following obligations²⁷:
 - Payment of due installments and delay interests to the Company following the expiration of the date thereof without the need to serve a notice
 - Payment of expenses incurred by the Company in the process of collecting the unpaid installment and sale of shares
 - Exhortation from doing any act that might harm the Company
 - Execution of any resolutions adopted by the General Assembly in a legal manner
- (ii) Institutional Shareholders (acting in their fiduciary capacity) are obligated to disclose their overall corporate governance and voting policies with respect to their investments, including the procedures that they have in place to decide on the use of their voting rights
- (iii) Institutional Shareholders must also disclose how their material conflicts of interest are managed which may affect the exercise of their key ownership rights in terms of their investments²⁸

4 MEETINGS

The provisions of the Company Law applicable to the OGA shall apply to the EGA unless otherwise stated in the Company Law. Accordingly General Assembly means both OGA as well as EGA²⁹

4.1 Ordinary General Assembly and its Powers

Except for the matters for the EGA, the OGA shall be competent to consider all matters pertaining to the Company and pass the appropriate resolutions thereon. In particular, it shall have the authority to resolve on matters pertaining to the Company, specifically in relation to the following³⁰:


- Election and dismissal of Directors
- Determination of a Director's remuneration
- Consideration and approval of the Company's annual report on the Company's activities and financial position during the ended financial year
- Discharging or refusing to discharge the Directors from any liability

²⁷ Article 169 of the Commercial Companies Law

²⁸ Rules HC 7.5.2 and HC 7.5.3 of the CBB Rule Book

²⁹ Article 209 of the Commercial Companies Law

³⁰ Article 206 of the Commercial Companies Law

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- Appointment of one External Auditor or more for the following financial year and determination of the fees or authorising the Board to do the same
- Consideration of the auditor's report on the financial statements of the Company for the ended financial year
- Approval of the profit and loss account and the balance sheet as well as the statement allocating the net profits and determining dividends
- Consideration of recommendations relating to bond issue, borrowing, mortgaging and issuing guarantees as well as deciding thereon

4.2 Extraordinary General Assembly and its Powers


- (i) The following matters shall be reserved for the EGA³¹:
 - Amending the Articles and extending the Company's term
 - Increasing or decreasing the Company's capital, including issuing new shares
 - Selling the entire project for which the Company has been established or disposing of it in any other matter
 - Winding up the Company, conversion of the Company or merging it with another company
 - The disposal of more than half of the assets of the company, subject to the provisions of Article 194 (bis) of the Company Law.
- (ii) Changing the name of the Company³²

4.3 Invitation

- (i) The OGA of the Shareholders shall convene at an invitation by the Chairman of the Board at the designated time and place. The General assembly shall convene at least once a year during the 3 months following the end of the Company's financial year
- (ii) The Board may invite the OGA to convene upon a request by the auditor or by a number of Shareholders representing at least 10% of the Company's capital provided that they have serious reasons justifying the summons
- (iii) The auditor may invite the OGA to convene if the Board does not facilitate the task of the auditor, in order for the OGA to look into the matter
- (iv) The MOICT may invite the OGA to convene if a period of one month has elapsed from the date appointed for its meeting without it convening or if the number of members on the Board becomes less than the minimum number required for the meeting to be valid

³¹ Article 210 of the Commercial Companies Law

³² Article 67 of the Commercial Companies Law

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- (v) The MOICT may invite the General Assembly to convene if he/she deems the meeting necessary³³
- (vi) The invitation to the Shareholders shall be published in at least 2 daily Arabic newspapers; one of them at least must be local. The publication must be made at least 21 days prior to the General Assembly and must include the agenda of the meeting. Copies of invitation documents shall be sent to the MOICT at least 10 days prior to the General Assembly meeting³⁴
- (vii) In case of an EGA, the meeting shall convene at an invitation by the Board or a written request to the Board by a number of Shareholders representing at least 10% of the Company's shares. In such cases the Board is required to invite the EGA to convene within 1 month from the date of request, Otherwise, the MOICT shall send the invitation within 15 days from the date of expiry of that period, subject to the provisions of Article 199 of the Company Law³⁵

4.4 Notice

- (i) As per the requirements laid out in the Corporate Governance Code³⁶:
 - o The notices of the General Assembly shall be honest, accurate and not misleading. These notices shall clearly state and, where necessary, explain, the nature of the business of the General Assembly
 - o The notice of General Assembly shall encourage Shareholders to attend the General Assembly and if not possible, to participate by a "proxy". These notices should refer to procedures for appointing a proxy and for directing the proxy on how to vote on a particular resolution. The proxy agreement shall list the General Assembly agenda items and shall specify the vote, such as "yes", "no" or "abstain"
 - o Notices shall ensure that all "material information" and documentation are provided to Shareholders on each General Assembly agenda item, including but not limited to any recommendation or dissent of Directors

4.5 Agenda


- (i) The Board shall prepare the agenda for the General Assembly
- (ii) In cases where the General Assembly is convened at the request of the Shareholders, auditors of the Company or the MOICT, the agenda shall be prepared by whoever requested the convening of the General Assembly

³³ Article 198 of the Commercial Companies Law

³⁴ Article 199 of the Commercial Companies Law

³⁵ Article 211 of the Commercial Companies Law

³⁶ Principle 7 of the Corporate Governance Code

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- (iii) The General Assembly shall not consider any matter not listed on the agenda³⁷, unless in the cases provided for under Article 207 of the Company Law, which are generally of an urgent nature.³⁸
- (iv) If in the course of the discussion, it becomes clear that the information relating to some agenda items is inadequate, the meeting shall be adjourned for no more than 10 days if so requested by a number of Shareholders representing 1/4th of the shares which represented the quorum of the meeting³⁹
- (v) The Board of Directors shall submit the resolutions adopted by the General Assembly on the urgent matters for approval of the MOICT, or the CBB, as applicable, within five working days from the day following the date of the meeting.

4.6 Attendance and Voting Rights

(i) Attendance

Every Shareholder, regardless of the number of shares held in the Company, has the right to attend the General Assembly and exercise voting rights. The Shareholder shall have a number of votes equal to the number of shares he/she owns in the Company⁴⁰

(ii) Voting Rights

- Voting at the General Assembly shall be in the manner specified in the Articles⁴¹
- Voting must take place via secret ballot if the resolution is related to the election or dismissal of the Directors, or for filing a legal action against any Directors or if so requested by the Chairman of the Board or any Director representing at least 1/10th of the present votes at the relevant General Assembly⁴²

(iii) Delegation of Voting Rights⁴³

- A Shareholder may choose to appoint or delegate his/her right to vote to a person, (from among the other Shareholders or a non-shareholder but not the Chairman, any other members of the Board or an employee of the Company) to attend the relevant General Assembly and vote in accordance with the provisions of the Company Law
- The delegation of voting rights by a Shareholder should be notified to the Company at least 24 hours prior to the commencement of the General Assembly

(iv) Other Attendees

³⁷ Article 200 of the Commercial Companies Law

³⁸ Article 207 of the Commercial Companies Law


³⁹ Article 207 of the Commercial Companies Law

⁴⁰ Article 203 of the Commercial Companies Law

⁴¹ Article 204 of the Commercial Companies Law

⁴² Article 204 of the Commercial Companies Law

⁴³ Article 203 of the Commercial Companies Law

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- The Chairman of the Board or his/her deputy or whoever is delegated by the Board or General Assembly shall preside over the General Assembly proceedings⁴⁴
- The secretary shall also be given general responsibility for reviewing the Company's procedures and advising the Board directly on such matters. Whenever practical, the secretary shall be a person with legal or similar professional experience and training.⁴⁵
- The MOICT may appoint a representative to attend the General Assembly meetings. Such representative shall not have the right to vote on deliberations and shall be obligated to submit a report thereon to the MOICT⁴⁶
- The CBB may appoint one of its employees to attend the General Assemblies of the Company, the representative shall not have the right to vote of the deliberation.⁴⁷

4.7 Quorum

- (i) An OGA shall not be held valid unless it is attended by a number of Shareholders representing more than half the share capital of the Company. If the required quorum is not present, an invitation shall be sent to the Shareholders for a second meeting to be held within 7 to 15 days from the date fixed for the first meeting. The second meeting if attended by Shareholders representing at least 30% of the share capital shall be deemed valid. In case of quorum not being present during the second meeting, an invitation to the third meeting will be sent to the Shareholders, and will be deemed valid irrespective of the number of attendees⁴⁸
- (ii) An EGM shall not be valid unless attended by a number of Shareholders representing at least 2/3rd of the share capital of the Company. If the required quorum is not present, an invitation shall be sent to the Shareholder for a second meeting to be held within 15 days from the date fixed for the first meeting. The second meeting if attended by Shareholders representing at least 1/3rd of the share capital of the Company shall be deemed valid. In case of quorum not being present during the second meeting, an invitation to the third meeting will be sent to the Shareholders within 15 days from the date fixed for the second meeting. The third meeting if attended by Shareholders representing 1/4th of the share capital of the Company shall be deemed valid⁴⁹
- (iii) An EGM can pass a resolution with a 2/3rd majority of the Shareholders present in the meeting. However, at least a 3/4th majority of the Shareholders present in the meeting shall be required for passing resolutions in relation to increasing or reducing the Company's capital, extending the term of the Company, winding up process or converting or merging the Company with another company⁵⁰

⁴⁴ Article 201 of the Commercial Companies Law

⁴⁵ Principle 6 of the Corporate Governance Code


⁴⁶ Article 202 of the Commercial Companies Law

⁴⁷ Article 202 of the Commercial Companies Law

⁴⁸ Article 201 of the Commercial Companies Law

⁴⁹ Article 212 of the Commercial Companies Law

⁵⁰ Article 212 of the Commercial Companies Law


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4.8 Resolutions

- (i) The minutes of the General Assembly shall be prepared, including the reporting deliberations, the proceedings, quorum, the resolutions adopted (including the number of 'yes' and 'no' votes) and such other matters that the Shareholders may request to be included in the minutes⁵¹
- (ii) Along with the minutes, the register comprising of the details as to the names of the attendees (whether by self or proxy), and all the documents supporting the contents of the minutes are maintained by the Company and a copy of the minutes is also submitted to the relevant government authority with 15 days from the date of such General Assembly.⁵² Further, resolutions passed by the EGM shall not become effective unless approved by the MOICT⁵³
- (iii) The General Assembly is required to resolve on the matters specified in the agenda only, unless there are urgent matters that are included in the agenda as per the provisions specified in section 4.6 above. In all such instances, a resolution passed by the General Assembly on such urgent matter(s) must be submitted to the MOICT for due approval as provided for under 4.6(V) above, failing which such resolution shall be held null and void⁵⁴
- (iv) In addition to the above, an EGM may pass resolutions in relation to matters falling within the scope of the OGA, provided the quorum and majority required for the OGA is available or present during such EGM and that such OGA matter has been included or been part of the agenda⁵⁵
- (v) The resolutions passed by the General Assembly in accordance with the provisions of the Company Law and the Articles shall be binding on all the Shareholders, irrespective of whether they attended the concerned General Assembly or not or whether they voted for or against such resolutions⁵⁶
- (vi) The Board is responsible for ensuring the implementation of any resolutions passed by the General Assembly⁵⁷
- (vii) A shareholder may file a claim for invalidity and claim compensation if necessary, for any resolution passed in the OGA and EGA in contravention of the provisions of the law, public order or the Articles, in accordance with the provisions of articles 215 and 215(bis) of the Company Law.⁵⁸

4.9 Conduct of General Assembly Meeting

⁵¹ Article 208 of the Commercial Companies Law
⁵² Article 208 of the Commercial Companies Law
⁵³ Article 212 of the Commercial Companies Law
⁵⁴ Article 207 of the Commercial Companies Law
⁵⁵ Article 213 of the Commercial Companies Law
⁵⁶ Article 214 of the Commercial Companies Law
⁵⁷ Article 214 of the Commercial Companies Law
⁵⁸ Article 215 of the Commercial Companies Law

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While conducting a meeting of the General Assembly the Board must observe the letter and the intent of the Company Law's requirements for holding General Assemblies, mainly in relation to the following⁵⁹:

- (i) The Board must propose a separate resolution at any meeting on each substantially separate issue, so that each item is voted on separately, and so that unrelated issues are not 'bundled' together
- (ii) In a meeting where Directors are to be elected or removed the Board must ensure that each person is voted on separately, so that the Shareholders can evaluate each person individually
- (iii) The Chairman of the meeting must encourage questions from Shareholders, including questions regarding the Company's corporate governance guidelines
- (iv) The minutes of the meeting must be made available to Shareholders upon their request as soon as possible, but not later than 30 days after the meeting
- (v) Disclosures of all material facts must be made to the Shareholders by the Chairman of the Company prior to any vote by the Shareholders
- (vi) Disclosure must be made of the attendance of the Board at Board meetings, as well as Committee meetings, on an individual basis, including the outcome and any decisions taken at such meetings, together with any objections or reservations raised item by item
- (vii) As General Assemblies/Shareholder meetings are public meetings, the Board and the senior management must permit on request for members of the media to attend and report on Shareholder meetings of the Company
- (viii) Any commercial material or notices to stakeholders shall also be provided to Shareholders, particularly in relation to topics to be discussed at OGAs


5 SHAREHOLDERS' ROLE AND RESPONSIBILITIES

5.1 Dividends and Appropriations

- (i) It is the right of the Shareholders to receive the profit dividends decided for or in relation to each such Shareholder. The Company when distributing the dividends to the Shareholders shall distribute such dividends to such Shareholders whose names are registered as the last owners of the shares on the Company's register, when the General Assembly approved the financial statements and profit distribution⁶⁰
- (ii) Dividends are approved by the Shareholders during the OGA's, while acting upon the recommendations of the Board and specific provisions stipulated in the Articles, including the provision that states that every share in the Company, without discrimination, entitles its holder to a proportionate share in the Company's assets and

⁵⁹ Rule HC-7.4 of the CBB Rulebook Volume 6

⁶⁰ Article 168 of the Commercial Companies Law

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dividends, which shall be distributed in accordance with the conditions laid out in the Articles⁶¹

- (iii) The distribution of dividends usually takes place subsequent to the appropriation of funds (among other things) towards 'legal/compulsory reserves'. The Company notes that the legal reserve may not be distributed to the Shareholders, but may be utilised to facilitate distribution of dividends not exceeding 5% of the share capital in years when the Company's profits would not support such a distribution
- (iv) Yearly appropriation of funds up to 10% of the net profits will be made towards the legal/statutory reserve maintained by the Company. Such deduction may be suspended if the reserve amounts to 50% of the paid up capital of the Company. Such deductions shall be resumed until the reserve reaches the said percentage⁶²
- (v) The remuneration payable to the Board should not exceed more than 10% of the net profits after deducting the legal reserves and distributing a profit of not less than 5% of the Company's paid up capital⁶³
- (vi) The General Assembly may, upon recommendations from the Board, decide to appropriate or deduct a part of the net profits for building a 'voluntary reserve'. The voluntary reserve is used for the depreciation of the Company's assets or for compensation of the fall in its value or for such purposes as may be determined and approved by the General Assembly⁶⁴

5.2 Increase of Capital⁶⁵

- (i) An increase in the capital of the Company can be effected in the following manner:
 - o Via EGA, in case on effecting or approving increase in the authorised share capital of the Company
 - o Via OGA, in case of effecting or approving increase in the issued capital, but within the limits of the authorised share capital of the Company
- (ii) In the latter case (above), the approved increase in the issued capital may take place provided the issued capital is paid in full before the increase, and that such increase takes place within 3 years from the date authorising the decision of the General Assembly approving such increase
- (iii) In cases specified in the Executive Regulations, the Company may proceed with the issue of new shares before the full payment of the value of the previous shares subject to the approval of the OGA and MOICT


⁶¹ Article 10 of the Articles of Association

⁶² Article 224 of the Commercial Companies Law

⁶³ Article 188 of the Commercial Companies Law

⁶⁴ Article 225 of the Commercial Companies Law

⁶⁵ Articles 125 to 131 of the Commercial Companies Law


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- (iv) In each case of an increase in the capital, the Company is obligated to notify the MOICT and the Bahrain Bourse along with a description of the reason and required reports justifying such increase
- (v) The EGA or OGA (as relevant) may pass resolutions approving the increase in the capital of the Company by the following means:
 - o Issuing new shares up to the amount of increase
 - o Transferring the reserves into capital by either increasing the nominal value of the original shares without requesting payment of the difference in share value from the Shareholders, but by utilising the reserve funds, or issuing the new shares for the amount of increase and distributing them free of charge to the original Shareholders in proportion to their current holding/ownership in the Company
- (vi) The nominal value of the newly issued shares must be equal to the nominal value of the originally issued shares. However, the Shareholders via EGA may choose to add a premium to the nominal value of the shares and determine its amount. The net proceeds of this premium shall be added to the statutory reserves even if it exceeds half the capital
- (vii) The Shareholders shall have the priority right to subscribe to the newly issued shares, (be in privately held companies or public listings), as per the provisions of Articles 128, 129 and 130 of the Company Law and any condition to the contrary shall be null and void

5.3 Reducing the Capital⁶⁶

- (i) The Shareholders may choose to reduce the capital of the Company via an EGA, to reduce its capital if it is more than what the Company needs and/or if the Company has sustained a loss and decides to reduce the capital to the actual value that exists
- (ii) The Shareholders may choose to exercise this right provided the appropriate reports from the Board as well as External Auditors detailing the reason or rationale for effecting such a reduction are submitted. A copy of these reports should be submitted to the MOICT as well
- (iii) The Shareholders' right to reduce the capital of the Company may take place in one of the following manners:
 - o Reducing the nominal value of the shares
 - o Cancelling the number of shares equal to the amount of the decided reduction
- (iv) In the former case (above), the reduced capital amount will either be returned to the Shareholders equal to the decided portion or percentage of reduction; or by discharging the Shareholders of the unpaid installments of the shares' value, in proportion to the decided percentage of reduction in capital. If the reduction is to be effected due to the Company's losses, a number of shares equal to the decided amount of the reduction

⁶⁶ Articles 132 of the Commercial Companies Law

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shall be cancelled. In all such cases the nominal value of the shares must not be less than the minimum value specified by law

5.4 Nomination, Election, Remuneration, Termination and Dissolution of the Board

- (i) Without prejudice to the provisions of the Articles, the Shareholders shall have the right to nominate and/or vote at an election to elect the Board in accordance with law. Any Shareholder exercising the right to nominate member(s) of the Board shall lose his/her right to vote for the percentage which he/she used to nominate and retain his/her right to vote for the unused percentage. Any Shareholder not exercising the right to nominate or who does not own a percentage qualifying him to nominate member(s) of the Board will be entitled to vote for the relevant percentage not used to nominate, to elect the Board⁶⁷

The General Assembly (OGA) shall elect the Directors by cumulative vote through secret ballot, in accordance with Article 176 of the Company Law.⁶⁸

- (ii) Via OGA, the Shareholder may decide to pay an annual remuneration to the Chairman and Directors of the Board. Such remuneration shall not exceed 10% of the net profits after deducting the legal reserves and distributing a profit of not less than 5% of the Company's paid up capital. In case of non-payment of dividends to the Shareholders or no profit being posted, in any given year, the Shareholders may with the approval of MOICT proceed to remunerate the Board⁶⁹

The annual report from the Board to the Shareholders (submitted via OGA) shall include a comprehensive account of all payments to the Board members during the financial year, including salaries, profits and shares, representation allowances, attendance allowances and expenses and the like. The report must also include any payment made to the Board member(s) while acting in his/her capacity as an employee/administrator or in relation to any provision of technical, administrative or consulting services to, or such other business with, the Company⁷⁰

Any performance based incentives to be adopted by the Company must be approved by its Shareholders. However, the approval should only be of the plan and not of the grant received or awarded to specific individuals under such approved plan⁷¹

- (iii) Via the OGA, the Shareholders may dismiss all or some of the members of the Board even if the Articles provide otherwise. Apart from this, the Articles may lay out the various instances or cases in which board membership may be terminated. A request for termination of all or some members of the Board shall be submitted by Shareholders representing at least 10% of the Company's capital. The Board is obligated to refer such request within one month from the date of submission to the OGA; failing which the MOICT may initiate the required invitation for the commencement of the OGA⁷²

⁶⁷ Article 19 of the Articles of Association and Article 175 of the Commercial Companies Law


⁶⁸ Article 176 of the Commercial Companies Law

⁶⁹ Article 188 of the Commercial Companies Law

⁷⁰ Article 188 of the Commercial Companies Law

⁷¹ Principle 5 of the Corporate Governance Code

⁷² Article 178 of the Commercial Companies Law

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- (iv) The Board is deemed dissolved if the vacant offices on the Board exceed more than half the number of the Board members. In all such cases fresh elections shall be called for to elect a new Board for the Company⁷³

The MOICT may take action to dissolve the Board if the Company has encountered severe financial and administrative difficulties or has been mismanaged, if it has sustained heavy losses prejudicing the rights of the Shareholders or its creditors, in case of gross violation of the provisions of the Company Law, or if the Board has lost its quorum rendering it impossible to convene, or if the general assembly is unable to elect a new board of directors⁷⁴

The Shareholders (via OGA) shall consider terminating the services or membership of a Director, should it be discovered that such Director's appointment has been effected in contravention of the provisions of applicable laws, rules, regulations (including the ones specified in the Articles), or if there is a misuse of membership by the concerned Director, by conducting business that (directly or indirectly) competes with the Company, causing damage thereby. Such action and resolution to terminate the services of a Director shall take place via the OGA to be held within 45 (forty five) days from the date of discovering the violation⁷⁵

5.5 Appointment of Experts

The General Assembly may choose to appoint or permit the appointment of a number of advisers on the Board, other than the Shareholders. The MOICT shall decree the necessary conditions thereof

5.6 Loans and Bonds

- (i) The Company shall not extend cash loans to any of the members of its Board or guarantee any loan contracted by any of them with third parties. Excluded from this ban are banks and other credit companies, which can extend loans to members of its board in compliance with and under the supervision of the CBB and subject to certain other requirements⁷⁶
- (ii) The Company, if comprising of Shareholders including the government or a public entity owning 30% of the capital, may decide (by means of resolutions at an OGA) to borrow by issuing loan bonds. Such resolutions will be passed upon receipt of relevant recommendations from the Board, showing the extent to which the Company needs to borrow and conditions of issuing bonds. Any such loan bond issuance will be subject to the approval of the CBB and relevant provisions of the law⁷⁷


⁷³ Article 179 of the Commercial Companies Law

⁷⁴ Article 197 of the Commercial Companies Law

⁷⁵ Article 193 of the Commercial Companies Law

⁷⁶ Article 192 of the Commercial Companies Law

⁷⁷ Article 138 of the Commercial Companies Law

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Apart from the above, the Company may issue convertible bonds by a resolution passed via EGA, and upon receipt of justified recommendations from the Board and in accordance with the following provisions⁷⁸:

- The rules of converting bonds into shares, especially the value of the shares on the basis of which the conversion shall be made, shall be specified
- The bond's issue value shall not be less than the nominal value of the shares
- The value of the convertible bonds in addition to the value of the Company's shares must not exceed the authorised capital of the Company
- The period during which the conversion of the bonds into shares may be requested
- The right of the bond owner to refund its value if he/she does not want to convert them into shares

5.7 Dissolution of Company

- (i) The dissolution of the company may occur in accordance with part XII of the Company Law and the Articles.
- (ii) The Articles further state that the Company can be dissolved in case of occurrence of one or more of the following reasons⁷⁹:
 - By EGA resolution on a merger or termination of the Company
 - Upon completion of the objectives for which the Company was established
 - Upon loss of the capital of the Company or a sizeable proportion thereof rendering it unfeasible for Company to continue
 - By EGA resolution
 - Upon adjudication of its bankruptcy
 - By a court order
- (iii) Apart from the above, the Chairman of the Board may summon an EGA to resolve whether the Company should be dissolved prior to the expiry of its term (if any specified), in circumstances where the Company has lost its reserves and 75% of its share capital. If the EGA refuses to wind up the Company, each Shareholder shall have the right to refer the matter to the court

⁷⁸ Article 149 of the Commercial Companies Law

⁷⁹ Article 57 of the Articles of Association