

## inBrief



### Ministerial Decision No. (272) of 2016

June 2016

Federal Law No.2 of 2015 on Commercial Companies (the “**New Law**”) came into force on 1 July 2015, replacing Federal Law No.8 of 1984. The New Law, similar to its predecessor, contains sections relating to various forms of companies, including public and private joint stock companies (“**PJSCs**”) and limited liability companies (“**LLCs**”).

While the New Law is divided into sections which expressly apply to a particular type of company, Article 104 of the New Law relates specifically to LLCs and states that “the provisions concerning Joint Stock Companies shall apply to Limited Liability Companies”.

The recently enacted Ministerial Decision No. (272) of 2016 (the “**Decision**”) addresses the scope of Article 104 by stating which articles relating to PJSCs apply to LLCs.

Article 3 of the Decision sets forth the articles of the New Law relating to PJSCs which also apply to LLCs. The articles listed are:

- Article 162 - This article states, inter alia, that members of the board shall be liable to the PJSC, its shareholders and third parties for acts of fraud, violations of law or the PJSC’s articles or for errors in management. As applied to an LLC, this would mean that the manager or manager(s) of an LLC would also be so liable to the LLC and its partners for fraud, violations of law, breach of the articles and mismanagement.
- Article 163 - This article states that a PJSC will be bound by acts of a director vis-à-vis a third party, even if it is later found that the director was not properly elected or appointed. Again, with respect to LLCs this would apply to acts of its manager(s).
- Article 167 - This article relates to a waiver by the general assembly of a PJSC of the liability of its directors. A general waiver will not prevent a claim against the directors. However if the act giving rise to the claim was presented to and approved by the general assembly, the claim shall be discharged after one year. Again, with respect to LLCs this would apply to acts of its manager(s).

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- Articles 174, 175 and 176 - These articles state, respectively, that shareholders holding 20% of the shares of a PJSC, the PJSC's auditor, or the Securities and Commodities Authority (the "SCA"), may require the PJSC's board to convene a meeting of the general assembly. It also stipulates deadlines within which to do so. Applied to LLCs, this would mean that partners owning at least 20% of the capital of the LLC, the LLC's auditor, or the Economic Department of the relevant Emirate, may require the manager(s) to convene a meeting of the general assembly.
- Article 191 - This article stipulates that shareholders holding at least a 5% shareholding in a PJSC may apply to the SCA to have decisions of the general assembly annulled if such decision is prejudicial to a certain class of shareholders or are of particular benefit to the directors of the PJSC. Article 191 also states that the decision of the SCA may be appealed to a court of law. Thus partners of an LLC that hold at least 5% of the LLC's capital may make a similar application to the relevant Economic Department for a decision to annul a resolution of the general assembly.
- Article 192 - Section 1 of this article states that in the event a PJSC's general assembly fails to elect a board in two successive meetings, the SCA's Chairman may appoint a temporary board for not more than one financial year. After such period the general assembly will be asked once again to elect a board, failing which the SCA's Chairman will decide a course of action which may include dissolving the PJSC. Section 2 states that if the general assembly fails to appoint an auditor, the SCA may do so on its behalf for a period of one year. Applied to an LLC, Section 1 of Article 192 would mean that if the partners fail to appoint a manager after two successive meetings, the relevant Economic Department may do so. Section 2 would mean that if the partners cannot decide on an auditor, the Economic Department may do so.
- Chapter 7 (Dealing with Auditors) - Provisions relating to the requirement for appointment of an auditor (though for no longer than three consecutive years) (Article 243); requirement for the auditor to issue a report (Article 245); confidentiality of the report (Article 247); prohibition on the auditor from trading in the company's securities (Article 248); requirement that the auditor report violations of law it may uncover (Article 249); required contents of the auditor's report (Article 250); dismissal of an auditor (Article 251); resignation of an auditor (Article 252); liability of an auditor and limitation periods for such liability (Article 253 and 254). With the respective replacement of directors for managers and the SCA with the Economic Department, the above provisions apply virtually verbatim to LLCs.
- Article 236 - This article requires a PJSC to provide the SCA and the relevant Economic Department with a copy of the auditor's report within seven days of the submission of the report to the general assembly. Thus an LLC will need to provide its audited financial statements to the Economic Department within the same time frame.

Article 3 of the Decision also sets forth provisions of the New Law which apply to PJSCs but do not apply to LLCs. ■