

United Arab Emirates

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BASIC INFORMATION ON THE TYPES OF LIMITED LIABILITY COMPANIES AND ON THE RIGHTS OF SHAREHOLDERS

1. What types of companies enjoy limited liability? If more than one, which ones have shareholders, ie holders of share certificates? Which one is the most common? Which one is mostly used by foreign investors?

The following companies offer limited liability:

- limited liability companies;
- public joint stock companies; and
- private joint stock companies.

Each of the abovementioned companies has shareholders. Limited liability companies are the most common corporate structure in the UAE and are also the most common corporate structure used by foreign investors. However, its shareholders do not hold share certificates. Instead they own a percentage of the capital of the limited liability company which does not issue transferable share certificates.

2. Are there minimum capital requirements and/or thin capitalisation rules in force?

The following companies have the following minimum capital requirements:

- limited liability companies: AED 150,000 (AED 300,000 in the Emirate of Dubai) or other amount adequate for the business of the company;
- public joint stock companies: AED 10 million; and
- private joint stock companies: AED 2 million.

3. Describe the types of shares that can be issued by a company and the different rights that they attribute to their owners, as well as any other financial instruments (bonds or other) and other instruments of a participatory nature in the company's capital that can also be issued by the company.

Limited liability companies

Shareholders of limited liability companies can have different rights in relation to profit participation and management of the company. A minority shareholder can be entitled to a majority of the profits and to complete

control of the management of the company pursuant to the provisions agreed in the memorandum of association of the company.

Public joint stock companies

The share capital of a public joint stock company is comprised of shares of equal nominal value. All shares have equal rights and obligations.

The shares of a public joint stock company are freely transferable. Fifty-one per cent of the shares of all companies must be held by UAE nationals or companies wholly owned by UAE nationals. Also, founders must hold their shares for a two-year period after listing.

The company may not issue bearer shares.

A public joint stock company may issue public debentures. The value of the debentures must not exceed the capital. All the rights of debenture holders in respect of a single issue must be equal. Debentures may be convertible into shares of the company if so stipulated in the conditions of issue.

A limited liability company may not issue public debentures.

Private joint stock companies

Except for provisions regarding the public subscription of shares and debentures, the provisions governing public joint stock companies are applicable to a private joint stock company.

4. Can a company have only one shareholder and still enjoy limited liability?

All companies must have at least two shareholders. A minimum of two shareholders is required in a limited liability company and three in a private joint stock company. There must be at least 10 founders of a public joint stock company.

5. Are the rights of shareholders the same in any type of company?

Shareholders have limited liability in the three types of limited companies. Shareholders in limited liability companies have a statutory right of pre-emption and can agree to different profit and management rights attaching to different shares.

6. What are the basic rights of any shareholder? Describe briefly the rights of minority shareholders and indicate which thresholds, if any, are required to allow the minority shareholders to exercise any such rights.

Shareholders have the following basic rights:

- the right to vote in the annual general assembly in the election of directors;
- subject to a minimum holding period for founders of public joint stock companies and pre-emption rights of other shareholders of limited liability companies, shareholders have the right to transfer their shares; and
- subject to certain statutory conditions and any restrictions in

the memorandum and articles of association regarding reserves, shareholders have the right to share in the profits of the company.

There are no explicit statutory protections for minority shareholders. Minority rights may be protected through shareholders' agreements' and/or through the incorporation of such protections in the memorandum and articles of association of a company.

While shareholders' agreements are generally enforced in the UAE courts, these agreements are essentially private contracts among the shareholders. To be effective against all parties, the relevant provisions should be incorporated into the memorandum and articles of association.

Minority shareholders holding in excess of 25 per cent of the capital of the company have veto power in relation to various shareholder decisions which require the approval of shareholders representing three-quarters of the capital of the company.

7. Do all shareholders enjoy the same rights or can some shareholders be attributed specific rights, whether by reason of the particular class of stock owned or other? Are such rights generally provided for at the level of the company's by-laws and/or in shareholders' agreements?

The Companies Law (CL) does not permit the issuance of different classes or series of shares in private and public joint stock companies. All shareholders in such companies must have the same rights and obligations. Shares in limited liability companies can have different rights pursuant to the memorandum of association of the company with regard to participation in management and share of profits.

8. May the rights of shareholders, generally speaking, be limited, modified, suppressed or waived in any way? If so, how? Are such modifications or limitations provided for in the company's by-laws and/or in shareholders' agreements?

It is possible to modify certain rights of shareholders of limited liability companies through amendments to the memorandum of association of such companies. Such amendments require a minimum approval of shareholders representing three-quarters of the capital of the company. However, practically (on account of the procedure for amendment of the memorandum of association) it requires the consent of all shareholders.

Shareholders may enter into a shareholders' agreement to modify their rights and obligations. However, as noted above, this is a private contract and therefore, to be effective against all parties, the relevant provisions of the shareholders' agreement should be incorporated into the memorandum of association of a limited liability company.

GENERAL MEETING OF SHAREHOLDERS (GM) AND VOTING RIGHTS

9. Which decisions are reserved to the competence of the GM?

A GM shall be competent to consider all questions relating to the company

except for those questions reserved by statute or the memorandum and articles of association of the company as being within the competence of an extraordinary GM (Article 129, CL).

The following matters are reserved by statute to the competence of an extraordinary GM (Article 137, CL):

- to amend the memorandum and articles of association and the by-laws;
- to increase or reduce the capital;
- to dissolve the company or merge it into another;
- to sell or otherwise dispose of substantially all of the assets; and
- to extend the duration of the company.

10. How does a shareholder participate in a GM? Are there any limitations to having a minimum number of shares? May a shareholder delegate attendance to another shareholder or to the board? May a shareholder obtain assistance from the courts or any other governmental body to intervene in a GM or to cause one to be held in some particular cases?

Every shareholder has the right to attend the GM (Article 125, CL).

Shareholders must register their names in a special register prior to the scheduled GM. The register should include the names of the shareholders and the number of shares held, together with the submission of any proxies (Article 142, CL).

A shareholder of a public or private joint stock company may delegate its right to attend by special proxy to any person it chooses, other than a member of the board of directors. The person appointed must not in this capacity hold more than five per cent of the capital of the company (Article 126, CL). A shareholder of a limited liability company may only appoint another shareholder as its proxy. A shareholder who is a director of the limited liability company may not be a proxy.

Shareholders may obtain the assistance of the Ministry of Economy and the concerned local authority of the relevant Emirate (eg the Dubai Department of Economic Development) to call a GM. If the shareholders requisition a GM and the board of directors fails to issue invitations to the shareholders in respect of such a meeting, then the Ministry of Economy, after consultation with the concerned local authorities, will issue an invitation to shareholders (Article 121, EL) to attend a GM. The Ministry of Economy and the concerned local authorities send representatives to attend the GM as observers.

11. May a GM be called and held at the request of any shareholder? Is there a threshold regarding the percentage of the stock interest owned in the company that may entitle a shareholder to such a right?

If at least 10 shareholders of a public or private joint stock company holding not less than 30 per cent of the capital request that a GM be held, then the board of directors must issue an invitation to shareholders within 15 days from the date of the requisition. The invitation to all shareholders is communicated by publication in two local daily Arabic newspapers and by

registered letter at least 21 days before the date of the scheduled meeting (Article 121, CL).

12. May a shareholder bring up an issue to be resolved upon and put it to a vote if it is not included on the agenda? May a shareholder require more information from the GM and/or the board, concerning the agenda of the GM, to be put in a better position to exercise their vote?

A shareholder may not raise matters which are not included in the agenda. However, a shareholder has the right to discuss important issues that come up in the course of the GM (Article 129, CL).

If a shareholder or a number of shareholders representing not less than one-tenth of the capital request(s) the inclusion of a new issue in the agenda, then the board of directors must grant such a request. If the board of directors does not grant the request, the GM shall have the right to decide whether to include the issue on the agenda (Article 129, CL).

13. May a GM be held by telecommunication means and/or by correspondence (ie by written consent)?

There are no statutory provisions prohibiting a GM of a limited liability company from being held via teleconference or correspondence. Its memorandum of association will typically specify the methods acceptable for conducting the GM. General meetings of public and private joint stock companies must be physically held.

14. Are voting rights always proportionate to the stock held by each shareholder or can they vary by share class?

Voting rights in public and private joint stock companies are equivalent to the number of shares held by a shareholder. Public and private joint stock companies may not issue different classes or series of shares.

15. Are there non-voting shares? Is there a maximum percentage of capital represented by non-voting shares?

All shares of public and private joint stock companies have voting rights. In relation to limited liability companies, shares can be made practically non-voting in relation to management issues by giving certain shareholders all management rights.

16. Can shareholders group their shares in order to exercise their voting rights (eg, by trust, shareholders' agreement or otherwise)?

There are no statutory provisions restricting shareholders from entering into voting agreements in respect of their shares.

17. Under what circumstances can a shareholder challenge the resolutions adopted by the GM? Are there thresholds concerning the stock interest owned to be able to bring such a claim?

Resolutions duly adopted by the GM are binding on all shareholders. However, any resolution adopted to further or to harm the interests of one

group of shareholders over another or to confer a special benefit upon any member of the board of directors without consideration for the interests of the company may be void (Articles 135/136, CL).

18. What are the terms and procedures to challenge a resolution of the GM?

The law is silent on the procedure for challenging resolutions passed at the GM. In practice a complaint can be made with the Ministry of Economy, the regulator, and if the Ministry fails to resolve the issue, an action can be filed in the civil courts.

SHAREHOLDERS' RIGHTS VERSUS DIRECTORS AND DUTIES OF OTHER CORPORATE BODIES IN THE COMPANY

19. What is the procedure for the appointment/replacement/revocation of directors and of statutory auditors, if any?

The procedure for the appointment of directors of a public or private joint stock company is election by secret ballot at the GM of the shareholders. However, the founders may appoint from among themselves the members of the first board of directors, provided that the duration of such a first term does not exceed three years (Article 96, CL).

Unless the by-laws provide otherwise, the board of directors may appoint a director to a vacant position, provided that the appointment is presented for approval to the shareholders at the next GM. The new member shall complete the term of the predecessor. If the vacant positions reach one-quarter of the number of the members of the board of directors, then a GM must be called to meet within no more than three months from the date the last position became vacant to elect directors to fill the vacant positions (Article 102, CL).

The GM may dismiss any and all members of the board of directors, even if the by-laws provide otherwise. The GM of the shareholders must then elect new members to the board of directors to replace those dismissed. The Ministry of Economy and the concerned local authority of the relevant Emirate must be notified of such actions (Article 116, CL).

The auditor is appointed by the GM for a one-year renewable term. The compensation of the auditor is also approved by the GM.

20. May shareholders challenge the resolutions of the board of directors? Is there a minimum percentage of capital required to challenge a board resolution?

Resolutions which are validly adopted by the GM are binding on all shareholders (Article 135, CL). However, any resolutions adopted to further or to harm the interests of certain groups of shareholders or to confer a special benefit upon members of the board of directors or others without consideration of the interests of the company may be void (Article 136, CL). Any shareholder may challenge such resolution but see question 21 below.

21. Are shareholders entitled to bring a legal action against the directors of the company? In which circumstances? Please describe briefly the principles of directors' liability.

Shareholders may commence legal action against the directors of the company. Directors are liable to the company and the shareholders in respect of any fraud or abuse of power, for all violations of applicable laws and the memorandum and articles of association, and for all errors in the management of the company (Article 111, CL).

The company has a right of action against the board of directors due to errors causing loss or damage to the shareholders. A resolution must be passed by the GM appointing a person to initiate proceedings in the company's name (Article 113, CL). A shareholder shall also have the right individually to make a claim in the event the company fails to do so if the mistake caused damage directly to the shareholder, provided the shareholder notifies the company (Article 114, CL).

22. What are the rights in connection with transactions where the directors have a conflict of interest situation?

A member of the board of directors may not participate, whether directly or indirectly, in any activity which competes with the company or its business without prior permission from the GM. This permission must be renewed annually (Article 108, CL).

If a member of the board of directors participates in a competing activity without obtaining prior permission from the GM, the company may request compensation or require that the transaction which the director entered into on their own behalf be considered as having been entered into on behalf of the company.

A member of the board of directors who has an interest which conflicts with the interests of the company in respect of a transaction duly brought before the board of directors, is obligated to notify the board of such a conflict and to not participate in the voting on the decision made in respect of the said transaction (Article 109, CL).

INFORMATION RIGHTS ON THE COMPANY'S BUSINESS

23. What information may be requested by the shareholders from the board concerning the general state of the company's business or any specific transaction? Are information rights different depending on the number of shares owned? Are shareholders entitled to receive written information before, during or after the GM about the meeting agenda and to what extent? Is it possible for a shareholder to obtain a copy of the minutes of the GM?

Each shareholder has the right to discuss subjects on the agenda of the GM and to pose questions to the members of the board of directors. The board members must answer the questions to the extent that the responses do not expose the company to harm (Article 130, CL). The shareholders are not generally entitled to information about the company's business outside the GM.

A shareholder may review the minutes of the GM. The review of the records and documents of the company by a shareholder is by permission of the board of directors or the GM in accordance with the by-laws of the company (Article 170, CL).

24. Do shareholders have the right/duty to resolve in the GM upon matters which were not on the agenda?

The law is silent on whether shareholders must or have the right to vote on matters which were not on the agenda of the GM. However, to the extent that these matters arise from issues on the agenda or are put on the agenda by the shareholders during the GM and are important, the Ministry of Economy will probably approve such a vote.

25. Are shareholders entitled to inspect the corporate books and/or any other corporate or accounting documents? To what extent? Can they do it through external counsel or advisors?

Records and documents of the company can be made available following permission from the board of directors or the GM in accordance with the by-laws of the company (Article 170, CL). A shareholder is not otherwise allowed to inspect the books and records of the company.

SHAREHOLDERS' AGREEMENTS

26. Are shareholders' agreements validly enforceable? What are their typical contents and term of duration? Are they enforceable by or against third parties and, if so, to what extent?

Shareholders' agreements are enforceable in the UAE courts as private contracts. It is difficult to insist on the rights contained therein in dealings with government authorities or third parties.

Shareholders' rights may be enforceable against third parties if such rights are contained in the memorandum and articles of association of the company.

27. Do shareholders' agreements have to be disclosed to the public or registered in any public registry?

Shareholders' agreements do not have to be disclosed to the public or registered.

ECONOMIC RIGHTS AND RIGHTS OVER THE STOCK

28. Is the stock always freely transferable? Are there any legal limitations? Are there any restrictions on contractual limitations?

Whether shares are freely transferable depends on the type of company: eg, shares of public joint stock companies (Article 64, CL) are freely transferable; shares of limited liability companies have restrictions on transfer (Article 221, CL).

The transfer of shares is also subject to minimum national ownership requirements (Article 22, CL).

29. Are shareholders entitled to pledge their stock?

Shareholders in public and private joint stock companies may pledge shares by delivering them to the pledgor (Article 164, CL). As indicated above, limited liability companies do not issue transferable share certificates.

30. Are there financial assistance issues to be considered and other prohibitions to be evaluated in the context of a leveraged buyout transaction?

No. A parent or subsidiary company may provide assistance to the other.

31. May a company buy back its own stock and, if so, under what circumstances and subject to which limitations?

Generally a company may not purchase its own shares except when this is done for the reduction of the capital (Article 168, CL).

It is permissible for a company to purchase a portion of its shares not exceeding 10 per cent for the purpose of reselling, provided:

- (a) the company obtains the prior consent of the Securities and Commodities Authority;
- (b) the board of directors carries out the purchase transaction within one year from the date of obtaining approval from the Securities and Commodities Authority; and
- (c) the company has surplus funds to meet the purchase requirements (the capital or the legal reserve must not be used to purchase the shares).

32. Is there a legal right to withdraw from the company and, if so, under what circumstances? How is the shareholders' stock valued and paid in such a case?

There is no right to withdraw from a company under the Companies Law.

33. In which circumstances can dividends be distributed among shareholders? Is it possible to exclude or limit the right of certain shareholders to dividends? Does a certain portion of the profits need to be set aside in a reserve fund where it cannot be distributed to the shareholders? Are advances on dividends allowed and, if so, under which circumstances? Can advances on dividends be reclaimed by the company?

Shareholders are entitled to their share of net profits upon a resolution of the GM to distribute such net profits (Article 194, CL).

All shareholders of a public or private joint stock company are entitled to share the profits of the company in proportion to their holding of shares of the company.

A company must allocate at least 10 per cent of the company's net profit to a legal reserve. The GM may suspend such contributions once the legal reserve equals half of the capital. The legal reserve may not be distributed to the shareholders. However, the portion that exceeds half of the paid up capital may be used in the distribution of the profits to the shareholders during years in which the company does not attain net

profit sufficient to distribute the percentage specified in the by-laws.

Shareholders of limited liability companies can agree in the memorandum of association of the company to distribute profits in a ratio other than that of the ownership of the company provided no shareholder is excluded from participation in profits.

34. What are the rights of shareholders in the case of an issue of new stock (increase of the company's corporate capital) (pre-emption rights)?

Shareholders have priority in the subscription of new shares (Article 204, CL). Any provision to the contrary in the memorandum and articles of association, or in the resolution adopted to increase the capital of the company, is void.

New shares are allocated to shareholders in proportion to their current shareholding, provided that the allocation does not exceed the amount each shareholder has subscribed for. Any unallocated shares are allocated to shareholders who applied for more than their proportionate number of shares, and any remaining shares are offered for public subscription (Article 206, CL).

35. May minority shareholders ban or limit the company's capital structure in any manner?

Increases in capital may be vetoed by minority shareholders holding 25 per cent or more of the shares of the company. As a practical matter on account of the requirement to amend the memorandum of association of a company to give effect to a change in capital, all shareholders have a veto on any change in the capital structure.

36. Which are the financial assistance prohibitions in force?

There are none.

37. Apart from publicly listed companies, in which cases (if any) are shareholders obligated to obtain an authorisation from, or provide information to, a public authority about events that have an impact on their stock interest in the company?

The capital of a company may not be reduced without obtaining the prior approval of the Ministry of Economy (Article 209, CL). The Ministry of Economy and the concerned local authority of the relevant Emirate have broad rights to supervise public and private joint stock companies to verify that these companies are in compliance with the law (Article 318, CL).

SHAREHOLDERS' RIGHTS IN THE CASE OF EXTRAORDINARY TRANSACTIONS AND/OR WINDING-UP

38. What rights are available to shareholders in the case of a sale of all or a substantial portion of the company's assets? In the case of a merger or de-merger?

There are no special rights available to shareholders in the case of the sale

of all or a substantial portion of the assets of the company. The merger of a company with another will require the consent of shareholders representing three-quarters of the capital of the company.

39. Which rights are available to shareholders in the case of conversion of the company into a European Company (SE) or into another type of company?

A company may be converted from one form to another by a resolution of at least three-quarters of the shares represented at an extraordinary GM of the company (Articles 143; 273, CL).

40. Which rights are available to shareholders of a company in liquidation?

Shareholders have the right to receive their proportionate share of the company's assets following liquidation (Article 169, CL). Proceeds from the liquidation are distributed to the shareholders following payment of the company's debts (Article 308, CL). In the case of limited liability companies, following payment of debt and return of the capital contributed by shareholders, the balance assets are distributed to shareholders in the proportion to which they are entitled to participate in the profits of the company.

41. Can shareholders cause the liquidation of the company? How?

A company may be liquidated by a resolution of shareholders representing at least three-quarters of the capital at an extraordinary GM of the company (Articles 137; 141, CL).

COMPANY GROUPS

42. Is the concept of 'group' recognised as such under specific legislation? What are the implications?

Such a concept is not recognised.

43. Does a controlling company have any particular duties *vis-à-vis* its controlled company shareholders?

Not applicable.

44. What are the rights of company shareholders when the controlling company puts in place actions and/or transactions that can be prejudicial to the shareholders?

Not applicable.

45. What are the limitations, if any, to the possibility of owning reciprocal stock interests in companies?

Not applicable.

