

Law no. 22 of 1997 on commercial companies

1- The law consists of 299 articles which are in six parts.

In order to carry on any kind of business, trade, or other related activity , a person concerned has to choose the right institutional device through which the proposed business can be conducted.

The law provides for two categories of companies –partnerships and corporations. Company law states six types of companies as follows –

1. general partnership;
2. limited partnership;
3. particular partnership;
4. joint-stock company;
5. partnership limited by shares; and
6. limited Liability Company.

However, all types of companies, except for particular partnership, must be evidenced in writing and registered.

After settling the issue of the type of institutional device required, the next step is to form the company. The authority concerned will require certain documents-such as memorandum of association, articles of association, etc. to be filed in order to form the company duly. The company is deemed to be established only from the date of its registration, when it has its own legal personality. Any contracts, obligations, or liabilities before establishment are not enforceable by or against the company, but they are enforceable by or against the persons who purport to act on the company's behalf.

2-General partnership

General partnership is a firm in which all partners are jointly and severally liable for the rights and obligations of the firm. A general partnership must be established and registered in accordance with the provisions of the company law, and other existing related laws and regulations.

Such a kind of partnership is a closed firm, no person can be a partner without the consent of all partners, and the same also is true as to the fact that no partner can assign his share to third party. However, in case if a partner withdrew from the partnership, he is still liable for all debts and obligations of the partnership before his withdrawal, unless otherwise agreed between the partners.

Management of the partnership lies with all partners, if there is nothing to the contrary stated in the documents of the partnership.

General partnership may be resolved either for any of the general reasons or for any of the following –

- death of any of the partners;
- bankruptcy;
- withdrawal;
- incapacity ; or
- occurrence of an event which makes it impossible to continue the partnership's business.

However, the remaining partners may decide to continue partnership.

3- Limited partnership

Limited partnership is a firm which includes two types of partners:

- Joint partners who are personally liable for the partnership's debts; and
- limited partners who only provide financial contributions and are only liable according to such contributions.

Management of the firm is limited to joint partners, either all of them or one. A limited partner has no right to interfere in management; however, it is not interference by the limited partner to monitor the manner in which the directors of the firm conduct business activities or to give advice to them.

Limited partnership is governed by the same provisions which govern general partnership.

4- Particular partnership

A particular partnership is a partnership in which the partners provide money and do business in order to share the benefits of a single transaction or more.

Particular partnership is invisible firm which has no legal personality and is not necessary to be established and registered. Therefore, such a kind of firms is not allowed to any negotiable financial papers such as shares or debentures.

5- Joint-stock company

A joint-stock company is a company in which the capital is divided into equal value shares that are transferable without the express consent of partners. The number of partners must not be less than five persons.

The capital of the company needed to commence the business must be enough to achieve its objectives and be made available; however, it must not be less than Yemeni Rials 5,000,000, provided that the paid up capital at establishing the company or at the date of subscription to the shares is 20 per cent of the capital.

A joint-stock company which sells its shares to the public on the stock market shall be established only after obtaining a resolution of the Cabinet of Ministers. However, any joint-stock company which is not intending to sell its shares to the public shall be established by a resolution of the Minister.

The promoters have to start the process of inviting the public for subscription to the company's shares within 15 days from the date of publishing in the official gazette the license to establish the company, but the Minister may, if necessary, extend such a term for a period not exceeding 30 days.

The promoters of a company which sell its shares for the public shall not, directly or indirectly, subscribe to such shares, though they may only cover the remaining unsold shares after two weeks from the date of closing the subscription in accordance with the period specified in the Minister's resolution.

The paid up value of each share must be not less than 20 per cent of its nominal value upon subscription, and provided that the outstanding price of each share must be paid within four years from the date of establishing the company at the dates specified in the articles of association or specified by the board of directors. Each payment of the price of the share must be recorded on the share itself.

Where there are contributions of capital in property, the promoters must make agreement with the contributors as to the value of such contributions. The promoters have to apply to the minister for the purpose of appointing an expert or more to examine the appraisal given by the contributors. The expert has to present a report of his examination. Franchise, inventions and all moral rights are to be deemed capital in property.

The promoters have to call all shareholders for the meeting of constituent assembly. The meeting shall be valid only if it was attended by shareholders who at least are holding 50 per cent of the company's capital. Decisions are to be made by the absolute majority of shares represented in the meeting, unless the articles of association do not provide for a higher percentage.

Within 10 days from the date of the meeting of the constituent assembly, the promoters shall apply to the Minister for publicizing the establishment of the company. A company is to be legally deemed established from that date when the Minister makes his decision concerning the establishment.

A joint-stock company may issue shares and debentures, i.e. bonds.

Management of joint-stock company shall lie with a board of directors which is made up of not less than three and not more than seven members, but in case the capital of the company is more than Yemeni Rials 20,000,000 the number of members of the board of directors may be increased up to eleven.

To be eligible for membership of board of directors, a candidate must be a shareholder. Though, majority of the members of the board of directors are to be of Yemeni nationality, yet if there are foreign shareholders the Cabinet of Ministers may, in exception to the previous provision, issue a resolution permitting the election of foreign shareholders for the board of directors, provided that their percentage representation in the board is not exceeding their percentage share of the capital.

Meeting of the board of directors is valid when it is attended by half of its members, unless the articles of association provide for more than that. Resolutions of the board shall be passed by the majority of members present in the meeting, and when the votes are equal, the chairman shall have casting vote. Each member of the board shall vote in person and is not allowed to vote in proxy on behalf of another member or voting via correspondence.

The Ministry of Industry and Trade shall monitor the compliance of companies with the law on companies and the articles of association.

The extraordinary general assembly has the right to amend, alter, modify or change the articles of association. It may also decide to consolidate or merge the company with another company.

Joint-stock company may be terminated or liquidated for any of the following reasons –

- 1- Expiry of the term stated in the articles of association; or upon the completion of the project for which it was established; or impossibility of executing and completing the project;
- 2- By resolution made by the extraordinary general assembly;
- 3- Merger of the company with another company;
- 4- Other cases where stated by this law or by the articles of association.

6-Partnership limited by shares

Partnership limited by shares is a company which consists of two categories of partners, i.e. joint partners who are liable in person and shareholders who are liable only for their own shares.

Partners of such a company may be one joint partner and at least five shareholders. Partnership limited by shares is subject to the provisions governing joint-stock companies.

To establish partnership limited by shares, partners have to apply to the Minister for license. The capital of such a company must not be less than Yemeni Rials 3,000,000.00. Partnership limited by shares is not entitled to issue any commercial papers.

7- Limited liability company

A limited liability company is a company in which a partner is only liable for his own share.

The number of partners must not be less than two and not more than twenty-five.

Limited Liability Company can not do business in the field of insurance, savings or banking. Such a company has no right to issue bonds.

The establishment of the company shall be by a Minister's resolution.

The capital of the company must be sufficient to achieve its objects. The articles of association shall state the minimum of the said capital, provided that it is not less than Yemeni Rials 1,000,000 and it is fully paid up by the establishment of the company.

They must be divided into equal and/or non-equal shares.

A partner may wholly or partially assign his share to a third party, but other partners are entitled to purchase such a share on the same conditions.

Management of the company shall be vested with one director or more as prescribed by the articles, provided that the number is not exceeding seven.

Articles of association shall determine the powers and authorities of directors.

The general meeting consists of all partners.

There are several ways in which a limited liability company may be dissolved which mostly are the same as those of the joint-stock company.

8- Change, consolidation and merger of companies

Change- a company may change its institutional form as follows-

- a general partnership may change its form into a limited partnership, also a limited partnership may change its form into a general company, provided, in both cases, that all partners consent and all procedures concerning registration and recording changes were taken;

- a general partnership or limited partnership may change into a limited liability company or partnership limited by shares;

a limited liability company and partnership limited by shares may change into a joint-stock company which sell its shares for public subscription.

A company may change its form only after completing all procedures for registration and publicizing.

The change of the form of the company shall not affect the previous legal personality of the company until entirely settling all its outstanding liabilities and debts and joint partners shall remain in person liable for all such liabilities and debts.

Consolidation- a company is united with other companies in order to create a new company.

Merger- a company may merge into another company.

The result of change, consolidation, or merger is that the company be the successor of the previous companies. Usually, an application for change, consolidation or merger shall be presented to the Minister who has the right either to accept or refuse such an application.

9- Penalties

The law provides for penalties stated in articles 287 through 295. Penalties include fines and imprisonment and also the invalidity of the company which violates the provisions of the law or regulations.