



Business & Investment Services Provider

| SMART Business Guides

Establishing a Legal Presence

in Iran Incorporating a Local Entity

### 1. Definition

The Joint Stock company is defined by the law as a company whose capital is divided into shares and the liability for the shareholders is limited to the par value of their shares. As mentioned earlier, the Joint Stock Company may be either a public company (Sherkat Sahami Am) or a private company (Sherkat Sahami Khass). The main difference between these two is that the public company may offer its shares and debt securities to the public while the private company may not.

### 2. Other Forms of Business Association in Iran

In addition to the Joint Stock Company, the Iranian Commercial Code provides for the following types of business association:

- a. Limited liability company (Sherkat ba Masouliyat Mahdoud)
- b. General partnership (Sherkat Tazamoni)
- c. Limited partnership (Sherkat Mokhtalet Gheyr Sahami)
- d. Mixed joint stock partnership (Sherkat Mokhtalet Sahami)
- e. Proportional liability partnership (Sherkat Nesbi)
- f. Production and consumption cooperative (Sherkat Ta'avoni Towlid va Masraf)

from the mentioned companies, the Limited Liability Company and the Joint Stock partnership provide for a limitation of shareholders' liability to the value of their shares. In the case of the Mixed Joint Stock partnership, the law provides for both shareholders and unlimited liability partners.

The principal difference between the Joint Stock and the Limited Liability company is that in the latter type, the capital may not be divided into shares and the participants may not transfer their interests therein without the approval of a majority of the participants representing three-fourth (4/3) of the company's capital.

### 3. General Features

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### 4. Number of Shareholders

The law specifies that a joint-stock company must have a minimum of three shareholders.

### 5. Nationality of Shareholders

There are no legal restrictions with respect to the nationality of persons who may form Joint Stock companies. As a matter of policy, however, the Iranian Government generally requires Iranian shareholder participation in fields of activity deemed important to the nation's development programs.



## 6. Shares

A Joint Stock company may issue both ordinary and preferred shares in either bearer or registered form. While the law does not specifically state what privileges may be accorded to preferred shares, it is understood that priorities as to dividends and distribution of assets in liquidation, and multiple voting power will be honored under the law. The principal differences between registered and bearer shares relate to the manner of transfer and tax implications.

## 7. Management

Management of a Joint Stock company is the responsibility of the board of directors which must be elected by cumulative voting of the shareholders at least once every two years. See Pan IV below for additional information concerning the board of directors.

## 8. Dissolution and Liquidation

General provisions governing the dissolution and liquidation of a Joint Stock company are provided in the law and companies are authorized to specify any particular provisions they may desire in their Articles of Association provided that they are not inconsistent with the law. Since the provisions of the law on this subject are general in nature, it is advisable to include procedures for dissolution and liquidation when drafting Articles of Association.

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### 1. Share Capital

The minimum required capital to form a company is 1,000,000 Rls for a private company and 5,000,000 Rls for a public company.

Payment for shares may be either in cash or in kind. If payment is made in kind, the value of the property involved must be appraised by an official appraiser of the Ministry of Justice. In case of payments in cash, only %35 of the payment need to be paid in at the time of formation and the remainder within five years upon the call of the board of directors or shareholders. In the case of payments in kind, the full amount of the property must be transferred to the company at the time of formation.

The share capital may be increased at any time by a two-third (3/2) vote taken at an extraordinary general meeting. A Decrease in the capital may also be effected at any time by a two-third (3/2) vote taken at an extraordinary general meeting and there is a legal requirement for the reduction of capital whenever half of the company's capital is lost.

### 2. Subscriptions

Although only %35 of the company's capital need to be paid in at the time of formation, %100 of the capital must be subscribed. Notwithstanding the %100 subscription requirement, a procedure has been developed in practice for "authorized but un-issued stock" enabling the use of such desirable arrangements as employee stock purchase plans. In general, the procedure involves holding an extraordinary general meeting at which the shareholders approve to implement the increase in such amounts and such times determined by the board.

### 3. Par Value

A Par Value, or nominal Value, is required to be assigned to the shares of a Joint Stock company. For the public company, the law prescribes a maximum par value of 10,000 per share. There is no minimum or maximum par value fixed for the shares of a private Joint Stock company.

There is a requirement applicable to the both public and private companies in which all shares must be of equal par value. This requirement is apparently applicable to the both ordinary and preferred shares. The ordinary and preferred shares must have the same par value where they are issued. There is also a related requirement and that is all calls of the unpaid portion of shares must be made without any discrimination. If provision for the issue of fractional shares is made, the par value of each fraction must also be equal.

### 4. Share Certificates

Specific requirements for the form and content of share certificates are provided in the law. They must be uniform, printed, bearing a serial number and be signed by at least two authorized persons. Each certificate must contain the following information:

1. Name and style of the company as well as the number under which it is registered at the Companies Registration Office
2. Registered share capital and paid-up portion
3. Type of shares
4. Par value of the shares and paid-up portion both in words and figures
5. Number of shares represented by the certificate

### 5. Provisional Share Certificates

The law provides that when share certificates have not been issued, the company must issue provisional certificates to the shareholders indicating the number of shares and the paid up amount. The law also provides that until the full par value is paid on bearer shares, issuance of bearer certificates is prohibited. However, the registered certificates may be issued to the subscribers of such shares before the full par value has been paid. In this case the provisions of law regarding the transfer of registered shares will be applicable to such shares.



## 6. Transfer of Shares

Bearer shares may be transferred by physical delivery while transferring of the registered shares is not complete until it is recorded in the share register of the company. In case of the registered shares, at least restrictions on transfer may be written into the Articles of Association.

## 7. Reserves

A legal reserve should be established by transferring of %5 of the net profit of a Joint Stock company each year until the fund reaches ten percent (%10) of the capital. The net profit is defined as income earned during the year minus the expenses, depreciation and any transfers to reserves (apart from the Legal Reserve of five percent (%5) of the net profit).

## 8. Dividend

Dividends must be authorized by the shareholders at a general meeting and may be made only out of "distributed profit" which is defined as the net profit earned during the year minus (i) losses incurred during the preceding years, (ii) other optional reserves plus distributed profit of the preceding years not previously distributed.

## 9. Preemptive Rights

Shareholders have the preemptive right to subscribe to new shares. This right may be rescinded, however, by a two-third (3/2) vote taken at an extraordinary general meeting.



### 1. Articles of Association

The constitutional document of a Joint Stock company is called the Articles of Association which is roughly equivalent to the combination of the charter and by-laws of a corporation formed in other countries. The subscribing shareholders or founders must approve the Articles of Association and affix their signatures thereto before the company formation may be registered. See Annex B for a checklist of matters to be covered in the Articles of Association.

### 2. Payment of Subscriptions

Subscriptions in the required amount must be paid in a bank account opened in the name of the company before establishing it. A bank receipt is required as one of the documents to be filed with the Companies Registration Office when the company is registered.

### 3. Founders Meeting

A meeting of the subscribing shareholders or founders is required by law for the public company but not for the private company. Even with the private company, however, it is advisable to hold such a meeting as the simplest means of accomplishing all of the actions required for establishing the company. All of the founding shareholders must:

- a. Approve and sign the Articles of Association
- b. Confirm the required subscriptions and payments thereon have been made
- c. Elect directors and inspectors
- d. Receive acceptance of directors and inspectors
- e. Designate a general circulation newspaper for publication of the company's legal notices

### 4. First Meeting of the Board of Directors

Before a Joint Stock company may begin doing business, the Board of Directors must hold a meeting to:

- a. Elect a chairman and a vice chairman
- b. Appoint the managing director and specify his duties
- c. Approve the form of share certificates and designate the company officers to sign them
- d. Designate the officers authorized to sign on behalf of the company as well as designating the bank or banks to serve as the depository of the company funds at the first meeting of the Board of Directors.

### 5. Registration

In order to establish a private company, the following documents are required to be filed out with the Companies Registration Office:

- a. Draft Articles of Association signed by all shareholders
- b. A statement that the shares have been subscribed together with a bank certification that the required amounts have been paid in
- c. A document signed by all shareholders evidencing the election of directors and inspectors
- d. Signed acceptance of the directors and inspectors
- e. Statement designating the general circulation newspaper in which the legal notices of the company will be published
- f. A declaration (on a form furnished by the Companies Registration Office)

...  
A public company is formed when its Articles of Association has been approved by the shareholders at the founders (or statutory) meeting and filed with the Companies Registration Office together with a minute showing the election of directors and inspectors and their signed acceptance of their position. The public company's promoters who must subscribe to at least %20 of the company's capital, begin the process of formation by submitting draft articles, a draft prospectus and a declaration to the Companies Registration Office in Tehran. The documents must state:

1. Name of the company
  2. Identity and domicile of promoters
  3. Objectives of the company
  4. Capitalization, including separate identification of stock paid in kind and in cash
  5. The number of registered and bearer shares together with their par value and the number of preferred shares together with a description of the rights of preferred shareholders
  6. Contributions, cash and kind of the promoters
  7. Principal office, and
  8. Duration
- When the Companies Registration Office is satisfied with the information furnished by the promoters, will permit publication of the prospectus which must include information and instructions regarding how and where interested investors may subscribe for shares of the company's stock. When the total capital of the company has been subscribed and at least %35 has been paid in, the promoters are required to allot the shares to the subscribing shareholders and then call the founders (or statutory) meeting. At this meeting, the subscribing shareholders review the Articles of Association, elect the first directors and inspectors and designate a newspaper for publication of the company's legal notices. Upon approval of the Articles by the subscribing shareholders, they must be submitted to the Companies Registration Office together with the minute of the meeting.

## 6. Publication

A notice of the company formation is required to be published both in the Official Gazette and the general circulation newspaper designated by the founding shareholders. Publication of this notice is paid for by the company and usually contains the following information:

1. Name and style
2. Objects
3. Location of the head office
4. Duration and date of formation
5. Nationality
6. Share capital, par value of shares and type of shares
7. paid-up portion of the share capital and number of bank receipt or receipts evidencing the payments
8. Identity of founders and number of shares held by them
9. Names of first board members and managing director
10. Managing director's authorities
11. Persons authorized to sign on behalf of the company
12. General circulation newspaper in which legal notices will be published
13. Names of the first statutory inspector and alternate inspector.
14. Manner of liquidation

## 7. Commencement of Legal Existence

Although the registration and publication requirements must be met to complete the formation process, the legal existence of the company commences on the date the directors and inspectors accept their positions in writing.



## 8. Costs

The following charges and fees will be incurred dealing with the formation of the Company:

- a. Registration fee based on the capitalization of the company payable to the Companies Registration Office
- b. Charges for publication of the notice of registration in the Official Gazette payable to the Official Gazette at current rates
- c. Charges for publication in a general circulation newspaper at current rates
- d. Stamp taxes on share certificates

## 9. Liability of Promoters

The law provides that the promoters of the company are jointly liable for all acts and functions which they perform regarding formation of the company





## D- Board of Directors

### 1. Number

Although the law prescribes that a public Joint Stock company must have a minimum of five directors, there is no minimum prescribed for private Joint Stock companies. However, since the board of a private company as well as that of a public company are required to elect a Chairman, a Vice Chairman and a board which is required by law, the board of a private company must consist of at least two directors.

### 2. Election and Removal

Directors must be elected from the shareholders at least every two years. It is mandatory that the election hold by using a cumulative voting system and it takes place at an ordinary general meeting. Anyone or more of the directors are subject to removal by the shareholders. Directors are also eligible for re-election. Legal entities may be elected as directors.

### 3. Duration of Office

The term of office for directors must be fixed in the Articles of Association and may not be for more than two years. However, if the term expires before successor directors are elected, the existing directors are responsible for the affairs and management of the company until the new directors are elected.

### 4. Security Shares

Directors are required to possess the number of shares specified by the Articles of Association and this may not be less than the number required for voting at general meetings. Each director must place the required number of shares in the custody of the company during his term of office to serve as security against losses which may result from directors' violation of their duties. These shares must be registered shares. The law provides that failure to comply with the requirements will result in resigning the offending director from his office.

### 5. Authority

The law specifically provides the board with all necessary authorities for the management of the company within the limits of the company's objectives as stated in the Articles of Association. However, the board may not exercise any power which has been expressly reserved to the shareholders acting in general meetings and limitations on the board's authority which will be valid between the directors and shareholders but with respect to the third parties it may be written into the Articles of Association

### 6. Liability

Directors not only are subject to the ordinary rules of fair play in respect of the company, its shareholders and third parties dealing with the company, and thus they are liable for any violations of these rules but they are also individually and jointly subject to criminal prosecution for specified acts and omissions.

### 7. Meetings

The board is expected to act in a meeting with a quorum of majority of the directors. The manner of calling board meetings including any notice requirement should be specified in the Articles of Association. In any event, the law provides the board chairman and any group of directors constituting one-third (1/3) of the board with authority to call meetings. Resolutions will be adopted when being passed by the favorable votes of the majority of directors present at the meeting unless a higher vote requirement is specified in the Articles of Association. Minutes for each meeting must be kept and signed by the majority of the directors who attended the meeting. The minutes must show the names of the directors who attended and who were absent, a summary of the deliberations and actions taken and the date of the meeting.



## D- Board of Directors

### 8. Actions without Meeting

Actions of the board are valid without a meeting if approved in writing by all of the directors.

### 9. Proxies

Although there is no specific authority in the 1969 amendments to the Commercial Code for the directors' proxies, they have been recognized in practice. The Code prior to the amendments provided for proxies with the caveat that the director remained responsible for his proxy's acts.

### 10. Alternate Directors

Alternate directors are authorized but are not mandatory.

### 11. Managing Director

The law requires that at least one person be appointed by the board as the managing director to manage the daily operations of the company. This person may or may not be a member of the board but he may not also hold the position of chairman of the board unless the shareholders meet and approve the arrangement by a three-fourths (4/3) vote. The scope of the managing director's authority should be specified by the board at the time of his appointment and he is then considered to be the company's legal representative with authority to sign on behalf of the company.

### 12. Compensation

Directors as such may not be paid by the company except reasonable fees for attending meetings and a "bonus" voted by the shareholders out of company profits. For the private company this bonus is limited to %10 of dividends and for the public company to %5 of dividends. Directors may serve as officers or employees of the company, however, and be compensated in such capacities.

### 13. Doing Business with the Company

A director (and the managing director) may not enter into an enforceable business transaction with the company unless the transaction is approved by the board without the interested director participating in the vote and the matter is reported both to the company inspectors and the shareholders. Even where this is done, if the transaction results in the company's losses the directors who approved may be held liable. The law specifically provides that loans and guarantees provided by the company to the directors are void except where the director is a legal entity.

### 14. Competing with the Company

If any director (or the managing director) concludes transactions in competition with the company and the company suffers a loss of profits as a result, the director will be liable to indemnify the company for the loss.



## E- Shareholders Meetings

### 1. Types

Shareholders meetings are called general meetings and the law provides three types. The first is the statutory or founders meeting which is mandatory only for the public company. The second is the ordinary (annual) meeting which must be held once a year and the third is the extraordinary meeting which is held on call. In addition, there are two other types of meetings involving the shareholders. One is a "special meeting" which must be called whenever the rights of holders of preferred shares should be altered to enable these shareholders to vote on the intended alteration. The other is called an "extraordinary session of the ordinary general meeting" and may be called by the board of directors, inspectors or holders of 20 percent of the company's shares whenever action is required on a matter within the competence of the ordinary meeting at times other than those times the ordinary meeting is scheduled to be held.

### 2. Competence of Ordinary Meeting

The ordinary meeting is competent to deal with all of the affairs of the company except those which are expressly within the competence of the statutory and extraordinary meetings. It is expressly required to take action on the following matters:

- a. Review and approval of the balance sheet and profit and loss account and other financial reports
- b. Review and approval of the director's annual report
- c. Review and approval of the inspector's annual report
- d. Election of directors (if their term has expired) (5) Election of inspector(s) and alternate inspector(s)
- e. Designation of general circulation newspaper in which the company's legal notices will be appeared

### 3. Competence of Extraordinary Meeting

The extraordinary meeting is competent to deal with any changes in the Articles of Association or the share capital and dissolution of the company.

### 4. Directorate

The law provides for management of general meetings by a directorate composed of a chairman, a secretary and two observers. Unless the Articles of Association provides otherwise, the chairman will be the chairman of the board of directors. The secretary need not be a shareholder but the observers must be a shareholder.

### 5. Notice

Written notice for general meetings must be given to the shareholders not less than 10 days and not more than forty days before the date of the meeting. Moreover, such notice must be published in the general circulation newspaper designated for the company's legal notices. The notice must state the agenda and the date, hour and the place of meeting. Waiver of these requirements is authorized whenever all of the shareholders attend the meeting.

### 6. Quorum

The quorum requirement for both the ordinary and extraordinary meetings entitled to vote is more than 50 percent of the shares.

### 7. Minutes

Written minutes of all general meetings are required to be made by the secretary of the meeting providing a record of the deliberations and actions taken. The minutes must be signed by the directorate and a copy thereof must be kept at the principal office of the company.



## 8. Filing and Registration of Minutes

Whenever a general meeting takes action on any of following matters, a copy of the relevant resolution must be filed with the Companies of the Registration Office for registration in a register (book) maintained by that office:

- a. Election of directors or inspectors
- b. Approval of the balance sheet
- c. Decrease or increase in the capital and any changes in the Articles of Association.
- d. Winding up of the company and the manner of liquidation.

## 9. Publication of Minutes

In addition to the filing and registration requirements mentioned in Section 6.12 , the notice of action taken by a general meeting (or by the board) on the following matters is required to be published in the general Circulation newspaper designated by the shareholders and in the Official Gazette:

- a. Election of directors or inspectors
- b. Decrease or increase in the capital and any changes in the Articles of Association
- c. Windup of the company and name and particulars of the liquidators
- d. Name and power of the Managing Director
- e. Designation of the newspaper in which all the legal notices of the company will be published

## 10. Adjournment

A general meeting may be adjourned for a period of two weeks by the directorate with the approval of the meeting. In such a case, no new notice is required and the quorum requirement for the adjourned session will be the same as for the original session

## 11. Minority Shareholders Calls

Minority shareholders owning to the aggregate of one-fifth ( $1/5$ ) of the company's shares are entitled to request the board and the inspectors to call a general meeting at any time. If the board and the inspectors fail to call the requested meeting, then the shareholders themselves are entitled to call the meeting.



## F-Miscellaneous

### 1. Statutory Inspectors (Auditors)

The law requires the election by the shareholders of a statutory inspector and the alternate inspector once a year at the ordinary general meeting. The election of more than one inspector and alternate inspector is optional. In general, the role of the inspector is to supervise the shareholders and third party's interests as a watchdog and he may be prosecuted criminally for violation of his duties. Certain categories of people such as criminals, the directors and their relatives as well as persons doing business with the company are disqualified from serving in this post. Among other things, the inspector is required to submit a report of the ordinary general meeting each year.

### 2. Books of Account

Both the public and private joint stock companies are required to maintain in the journal of Persian language, ledger, inventory and the copy book of merchants. These books serve as the basis for determining the company's tax liability and failure to keep them strictly in accordance with the legal requirements may result in the tax authorities making their own determination of what the company's tax liability should be.

### 3. Company Name

The law specifies that a joint-stock company must have a minimum of three shareholders.

## G-Some Differences between Public and Private Joint Stock Companies

1. A private company may be formed with a minimum capital of one million Rials (Rls. 1.000.000). The public company must start with a minimum capital of five million Rials (Rls. 5.000.000).
2. The founding shareholders of a public company are required to subscribe at least 20 percent of the initial capital and to pay in at least 35 percent of the subscription. The founding members of a private company must secure subscriptions to 100 percent of the capital and pay in a minimum of 35 percent of the cash capital and 100 percent of the non-cash capital.
3. The board of directors of a public company must consist of a minimum of five directors. A private company may operate with a board consist of two directors.
4. Directors of a private company are permitted a bonus of %10 of dividends. Directors of a public company may be voted a bonus of only %5 of dividends.
5. When a public company is organized, a founders meeting is required at which a number of formalities must be observed. This meeting is not required for the founders of private companies, although it is desirable to hold such a meeting.
6. The annual financial reports of public companies must be certified by officially recognized accountants. This requirement is not strictly applicable to private companies.
7. The public company is limited to the maximum nominal value which it may assign to each share of stock to Rls. 10.000. The private company is not so limited.
8. The raising of additional capital by a public company requires the preparation and filing of a prospectus with the Companies Registration Office. A private company needs to only submit a resolution and declaration to the Companies Registration Office when raising its capital.



## G-Checklists of matters should be covered in most cases in the Articles of Association

1. Name of the company
2. Style of the company
3. Duration of the company
4. Expressed and defined objectives of the company expressed and defined
5. Location of the head office and branch offices, if any
6. Details of the share capital of the company specifying the amount paid in cash and the amount paid in kind separately
7. Number of bearer shares and of registered shares and the par value thereof as well as the number of preferred shares, if any, particulars and the privileges attached thereto
8. Details of the amount of the shares which is paid up . Those who will sign the share certificates
9. The manner of call of the par value of shares and the period over which the balance should be paid
10. The manner of transfer of registered shares
11. The manner of conversion of registered shares into bearer shares and Vice-Versa
12. The manner and conditions of increasing or decreasing the capital of the company
13. Period and manner of calling general meetings
14. Regulations governing the quorum for general meetings and the manner of running such meetings
15. The manner of transacting business and the number of votes required to give validity to the actions taken by general meetings
16. Number of directors, the manner of their election, their term of office, the manner of election of the successors of such directors who die or resign or become incapacitated or have been removed from their office or otherwise deprived of their office by any legal impediment
17. Details of the scope of the functions and authorities of the board of directors
18. Time and the manner of calling the meetings of the board of directors
19. Regulations governing the quorum for the meetings of board of directors
20. The manner of election of chairman and vice chairman of the board and their term of office
21. The manner of transacting business and the number of votes required to give validity to the actions taken by the board of directors
22. Number of directors' security shares to be deposited with the company
23. Whether the company shall have one or several legal inspectors and the manner of their election and their terms of office
24. Whether the company shall have one or several managing directors and their terms of office
25. Date of commencement and end of the fiscal year of the company, the time limit for preparing the balance sheet and profit and loss account and the submission thereof to the legal inspectors and to the annual general meeting
26. The manner of voluntary windup of the company and the proceedings for liquidating its affairs
27. The manner of making alterations to the Articles of Association

