
United Arab Emirates
Minority Shareholder Rights
IBA Corporate and M&A Law Committee 2022

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SOURCES OF PROTECTION AND ENFORCEMENT

Please provide an overview of the sources of protection for minority shareholders in your jurisdiction. Who enforces these rights?

There are three main types of companies in the United Arab Emirates under Federal Decree Law No. 32 of 2021 on commercial companies (the Companies Law) that comprise multiple shareholders:

- the limited liability company, which is a private company comprised of a maximum of 50 shareholders;
- the public joint stock company, which is comprised of five or more founders who must subscribe to such percentage of shares as specified in the prospectus and subject to any requirements of the UAE Securities and Commodities Authority; and
- the private joint stock company, which is comprised of at least two shareholders; this is a private company in which no shares are offered to the public, but is generally subject to the same rules that govern public joint stock companies.

The Companies Law, which came into force on 2 January 2022, is the main legislation that governs companies in the UAE.

The Companies Law affords minority shareholders rights to participate in the affairs of a company. For example, the quorum for general meetings of a limited liability company is shareholders representing at least 50 per cent of the share capital of a company (unless a company's memorandum provides for a greater quorum). If this quorum is not achieved, the meeting will be adjourned and the quorum at the reconvened meeting can be attained irrespective of the number of shareholders present.

Furthermore, shareholders that together hold more than 25 per cent of the share capital of a limited liability company have veto rights in relation to certain shareholder decisions that require the approval of shareholders representing at least three-quarters of the share capital of a company. These include decisions to amend a company's constitutional documents and to increase or reduce its share capital. Notwithstanding the provisions described above regarding quorum requirements for meetings of a general assembly and increased voting thresholds for certain decisions, there are no explicit statutory protections in the UAE that are specifically granted to minority shareholders.

As binding legal precedents do not exist in the UAE, there are no minority shareholder protections under case law that have noteworthy effect. However, minority shareholder rights may still be protected through shareholders' agreements and by including protections in a company's constitutional documents, namely, its memorandum and articles of association.

While shareholders' agreements are generally enforced by the UAE courts, they are private contracts between shareholders. As such, in order to be effective against third parties, the relevant provisions must be incorporated into a company's memorandum of association. However, some minority protections cannot be included in a company's memorandum of association as they may breach the Companies Law. For example, a put option should not be included in a company's memorandum of association as it would generally involve shareholders expressly waiving their pre-exemption rights on a transfer of shares, which is not permissible.

PROTECTION AGAINST DILUTION

Are there any mechanisms in your jurisdiction to protect against dilution of shareholdings? For example, are existing shareholders granted any rights on the issue of new shares in a company?

Shareholders in limited liability companies have a right of pre-emption regarding any sale of shares in their company to third parties; existing shareholders can purchase the shares that have been offered to a third party in proportion to their existing shareholdings.

All shareholders have a priority right to subscribe for new shares. Any provision to the contrary, whether in a company's memorandum and articles of association, or in a resolution adopted to increase a company's capital, is void.

New shares are allocated to shareholders in proportion to their existing shareholdings provided that the allocation does not exceed the amount for which each shareholder has subscribed.

Any unallocated shares are allocated to shareholders who applied for more than their proportionate number of shares, and only then are any remaining shares offered for public subscription.

RIGHTS TO APPOINT DIRECTORS

Do minority shareholders have any special rights to appoint directors to safeguard their interests? Are other protections available to minority shareholders in this context (such as general duties of directors)?

Minority shareholders do not have any special rights to appoint directors to safeguard their interests, nor do directors have any explicit or general duties to safeguard the interests of minority shareholders.

Managers of limited liability companies are liable to shareholders (amongst others) for any fraudulent acts, losses or expenses resulting from the improper exercise of their powers, and acts that contravene the law, the relevant company's memorandum of association, or the contract/resolution under which they were appointed and for any gross errors.

Directors are liable to shareholders for any fraud or abuse of power, violations of applicable laws and the relevant company's memorandum and articles of association.

PROTECTION AGAINST TAKEOVER BIDS FOR THE COMPANY

Do minority shareholders have any protection in your jurisdiction where the company is the subject of a takeover bid?

UAE Securities and Commodities Authority Resolution No (18/RM) of 2017, regarding the rules of merger and acquisition for public joint stock companies, came into force 1 August 2017 and introduced a new codified takeover regime that sets out the framework for implementing tender offers. This takeover regime contains customary provisions relating to the equal treatment of shareholders upon a tender offer being made.

It also includes 'squeeze-out' and 'sell-out' procedures, the latter of which allows for minority shareholders holding at least 3 per cent of the shares in a public joint stock company to apply for the purchase of their shares following a tender offer.

ACTIONS AND SEEKING REMEDIES ON BEHALF OF THE COMPANY

Are shareholders in your jurisdiction able to bring actions and seek remedies on behalf of the company? For example, is there any mechanism for a judicial or other official representative to oversee or intervene in the management of the company?

If the affairs of a company have been conducted in a manner detrimental to the interests of any of its shareholders, or a company intends to carry out such an act or omission, shareholders holding at least 5 per cent of the company's share capital can appeal to the relevant authority (depending on the type of company in question). If the relevant authority accepts the appeal, it will refer the matter to the courts, which have the power to intervene in the management of the company.

A company has a right of action against its board of directors for errors that cause losses or damages to all its shareholders. The general assembly must pass a resolution appointing a representative to initiate proceedings in the company's name.

If a company fails to bring a claim, any shareholder individually has the right to make a claim against the board of directors if it is directly affected by the error of the board, provided that the company has been notified.

Any resolution of the board of directors that is deemed by the courts to have been passed in favour of, or without regard to, a certain class of shareholders, in order to confer benefits on related parties, or without consideration of the company's interests is void *ab initio*.

The relevant authorities can send their representatives to attend meetings of the general assembly as observers.

RIGHTS TO PARTICIPATE IN DECISION-MAKING

To what extent do minority shareholders have rights to participate in the decision-making of companies in your jurisdiction?

Shareholders in a limited liability company can have different rights to participate in a company's management pursuant to its memorandum of association. Shareholders holding different proportions of the share capital of a company could be granted equivalent rights to participate in the company's management. For example, a minority shareholder may be granted the right to appoint the same number of representatives to the board of directors as a majority shareholder.

All shareholders have the right to attend meetings of a general assembly or to appoint a proxy to attend on their behalf.

Voting rights are equivalent to the number of shares held by a shareholder. Companies may not issue different classes or series of shares.

One or more shareholders holding at least 10 per cent of the share capital of a limited liability company can requisition a meeting of the general assembly.

Any shareholder in a limited liability company can request, at the beginning of a general assembly meeting, that a particular issue be included on the agenda. The shareholder may appeal to the general assembly if the manager fails to respond to their request.

In a public or private joint stock company, shareholders holding at least 10 per cent of the share capital can requisition a meeting of the general assembly by submitting a request to the board of directors. The board must then issue an invitation to shareholders within five days of the date of the requisition, to convene the general assembly within 30 days of the date of the invitation.

If the board of directors fails to issue invitations to convene the general assembly, the shareholders can appeal to the relevant authority, which will issue invitations to the shareholders on behalf of the board. Shareholders of public and private joint stock companies that together hold 5 per cent or more of the share capital can request that the board of directors include certain issues on the agenda of a general assembly meeting. Should the board fail to respond to such a request, the general assembly can resolve to discuss the issues.

Any shareholder has the right to discuss subjects included on the agenda of a meeting of the general assembly and to pose questions to the managers, directors or auditor of a company, each of whom must respond to the questions provided that doing so will not harm the interests of the company. If a response is regarded to be inadequate, shareholders may appeal to the general assembly, which can resolve to compel a more adequate response.

RIGHTS WHEN A COMPANY IS EXPERIENCING FINANCIAL DIFFICULTIES

Do minority shareholders have any particular rights or protections when a company is experiencing financial difficulties? For example, are they able to demand that the company be wound up?

No such rights exist. Minority shareholders cannot demand that a company be wound up when it is experiencing financial difficulties.

RIGHTS ENFORCEABLE AGAINST OTHER SHAREHOLDERS

Do minority shareholders have any rights or protections which are enforceable against other shareholders; for example, where the majority of shareholders act in contravention of the company's articles of association?

Any resolution of the general assembly adopted to further or 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 of the company's interests, may be challenged by one or more shareholders holding at least 5 per cent of the share capital.

Under the Companies Law, shareholders holding at least 5 per cent of the share capital have three working days from the date a resolution was passed to submit a request to the relevant authority (depending on the type of company in question) to have the resolution suspended. They must then file a claim with the courts to annul the resolution within five days of the date the suspension takes effect, otherwise the suspension will lapse. Once the suit has been filed, the court has the power to extend the suspension until it has ruled on the merits of the claim.

SUMMARY OF RIGHTS

Below is a table providing a brief summary of the rights of minority shareholders in the UAE, organised according to the percentage threshold at which the various protections become available.

Shareholding (per cent)	Description	Reference
25	A resolution at a general meeting to approve an amendment to the memorandum or articles of a company must be passed by a special resolution (which requires at least 75 per cent of the eligible shareholders present and voting at the meeting to vote in favour). Therefore, a proposed amendment can be blocked by shareholders representing more than 25 per cent of the eligible shareholders present and voting.	Article 101, Companies Law
	A resolution at a general meeting to approve an increase or decrease in the capital of a company must be passed by a special resolution.	Article 101, Companies Law
10	Shareholders holding at least 10 per cent of the share capital of a limited liability company can requisition a meeting of a general assembly.	Article 92, Companies Law
	In a public or private joint stock company, shareholders holding at least 10 per cent of the share capital can requisition a meeting of the general assembly by submitting a request to the board of directors.	Article 176, Companies Law
5	Shareholders of public and private joint stock companies that together hold 5 per cent or more of the share capital can request that certain issues are included on the agenda of the general assembly meeting.	Article 182, Companies Law
	Shareholders holding at least 5 per cent of the share capital of a company can appeal to the relevant authority (depending on the type of company in question) if they believe that the affairs of the company have been conducted in a manner detrimental to the interests of any of its shareholders, or that the company intends to carry out such an act or omission.	Article 164, Companies Law
	Shareholders holding at least 5 per cent of the share capital may challenge any resolution of the general assembly adopted to further or 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 of the company's interests.	Article 193, Companies Law