

Business law

Lecture 8

MGM412
Business law

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Lecture goals

- 1- Quick revision of the previous lecture .**
- 2- Our educational goals today**
- 3- Conclusion**
- 4- References**



1- quick revision of the previous lecture

**Definition,
advantages
and
disadvantage
s of franchise**

**Franchise
granting
methods and
types**

**Definition
and general
types**

**General
substantive
elements of
company
contract**

2- educational goal today



PART 5: business acts.

A- Companies

4- to continue elements of company contract.

5- kinds of companies according to the Saudi companies' law.

4- Elements of company contract

I- Substantive elements of company contract

a- General substantive elements

consent

Legality of the object

Legality of cause

b- Special substantive elements

the association of two or more companies

The intention to share profit and losses

Contribution in money kind or in service

II- Formal elements of company contract

a- Contract must be written

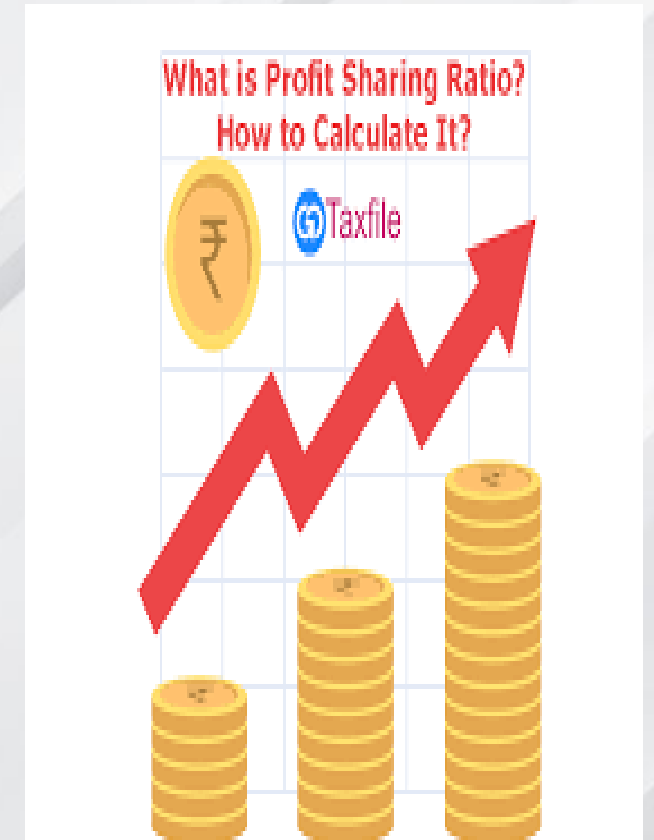
b- Contract must be publicized

- **b- the special substantive elements:**
- **- the association of two or more persons :**
- Persons who may conclude company contract are either natural or even juristic. So a company may contribute in making new company.
- But partners in any company must be **at least two persons**. Thus if for any reason a company is left with only one member it should be terminated and liquidated.
- It is to be noted that **law allow one person company** as an exceptional form with certain conditions as we shall see



- - **contributions in money, in kind or service:**
- Each member in the company must **make a contribution either in money, kind or service**. These contribution are not required to be of equal value. but it is prohibited to present all contribution in service.
- The capital of company is only constituted from money and contributions in kind so contributions in **services are not considered a part of the capital**.
- Shares of profit are usually given according to the share of the contribution of each member (unless otherwise agreed by the members).
- And contributions of members are considered of equal value unless otherwise defined by the members of the company.

- - the intention to cooperate actively and to share the profits and losses of the business:
- Sharing the losses and profits is an essential feature contract but this does not mean that all members should have equal shares of profits and losses, **members are free to distribute the profits and losses as they want**. If the contract did not define the share of each member profits and losses will be distributed according to the percentage of the contribution of each member.



- But the company contract will be void if one of the members will take almost all the profit or exempted almost from all losses (it is what is called the lion clause:)
- However, a member who has made a contribution in services may be exempted from losses provided that he is not paid separately for his service.

- According to the Saudi law Profit and Loss Share of Service-Contributing Partner shall be defined as follows
- If the partner's only contribution is his service, and the Company's establishing agreement does not determine his profit or loss share, **his share shall be the same as the share of the partner making the lowest capital contribution.** If the partner provides - in addition to his service - a cash or in-kind contribution, he shall be entitled to a profit or loss share for his service contribution in addition to another profit or loss share for his cash or in-kind contribution.

- **li- the formal elements:**
- **a- the contract should be in writing:**
- Contract should be in **writing otherwise it will be void** also modifications of such contract will be void if not made in the same form.
- It is noted that the legislator did not require the writing of the al Mohasa company, considering that it does not have a legal personality; therefore, it can be proven by all means of proof.



- The wisdom behind requiring writing in the company contract is to achieve the interests of partners and of those concerned in the transactions carried out by the company, i.e third parties.
- **A- For partners** :Reducing **disputes arising from the company contract**, since this contract includes many details, it is difficult to rely on memory or witness testimony to remember or prove them, if a dispute arises between partners, especially since the company contract is one of the ongoing contracts that require a long period to implement.

- **B- For third parties:** The obligation to inform third parties of the content of the contract on the basis of which they deal, and this is not possible unless the company contract is registered, and there is no doubt that registration is not achieved unless the contract is written; since writing is the first step to registration, and without writing, registration cannot be completed in practice.

- **b- the contract should be publicized:**
- The company is **not considered as a juristic person vis a vis third party unless the proceedings of publicity** defined by civil law are fulfilled.

5- Company form in the new Saudi law

I- Partnership

II-Limited
partnership

III-Joint stock

IV-Simple
joint stock

V-Limited
liability
company

- **I- General Partnership**

- **a-Definition of the General Partnership:**
- The General Partnership is a business venture established **by two or more** natural or legal persons, so that they become **personally and jointly liable** for the company's debts and obligations. The partner of a General Partnership shall acquire the capacity of a trader.



- **b-Details of the establishing agreement:**
- it shall, in particular, include the following details:
 - a. Partners' names and particulars;
 - b. The company's name;
 - c. The company's headquarters;
 - d. The Company's objects;
 - e. The Company's capital and method of dividing the same among partners;
 - f. The company's term, if any.
 - g. The management of the company;
 - h. Partners' decisions and the quorum required for their issuance;
 - i. The method of distributing the profits and losses among the partners;
 - j. Details of commencement and end dates of the fiscal year;
 - k. The termination of the company.

- **C- management of the partnership**
- The General Partnership shall be managed by its partners. the parties may agree either in the establishing agreement of independent contract upon the appointment of one or more managers from among the partners or others.
- The manager[s] shall perform all management activities that fall within the purpose of the company, and shall represent it before the courts, arbitral tribunals and third parties, unless the company's Memorandum of Association explicitly restricts their powers. In all cases, the company shall be liable for every act carried out by the manager thereof in its name and within the limits of its purpose, unless the person, with whom the manager deals, has been acting in bad faith.



- **d-Prohibited Acts of the Manager:**

- 1. The Manager shall be prohibited from handling business activities that go beyond the Company's objects, without a resolution of the partners or an explicit provision in the Memorandum of Association.
- This prohibition shall apply, in particular, to the following matters:
 - a. Establishment or closure of one of the Company's branches;
 - b. Donations, except for the usual small donations;
 - c. The Company's sponsorship of third parties;
 - d. Reconciliation on the Company's rights;
 - e. Sale or mortgage of the Company's real property, unless the sale transaction falls within the objects of the company;
 - f. Sale or mortgage of the company's business premises [store];
 - and f. Borrowing funds on behalf of the Company;

- **E- decisions of Partners**
- Resolutions of partners shall be adopted with **the numerical majority** of their opinions, unless the resolution in question is related to the amendment of the General Partnership's Memorandum of Association, as, in the latter case, it shall be adopted with the **unanimous consent** of all partners, unless otherwise stipulated in the Memorandum of Association.



- **F- Competing Against the Company**
- No partner may, without obtaining the consent of all partners, get involved, for his own benefit or for the benefit of third parties, in activities similar to that of the company, nor to be a partner, manager or board member of a competing company, or an owner of shares or equity stakes representing an influential interest in another company that engages in the same business activity.
- If the partner fails to abide by this prohibition, the company shall have the right to request that the Competent Judicial Body decide that the actions carried out by the partner concerned for his own benefit as being performed for the company's benefit, and, in addition, the company may claim compensation from him.

- **G- Partners' shares and their Transfer :**
- - The shares of partners shall not be represented by negotiable instruments.
- - The partner may transfer his share or part thereof only in compliance with the restrictions stipulated in the Memorandum of Association or based upon the approval of all partners. Other wise the transfer agreement shall be null and void.
- In addition, the transfer shall be registered with the commercial register.
- - The partner may transfer to third parties any rights relating to his share, and such assignment shall become legally effective only between the parties involved.

- **H - Partner's Joining:**

- . If a partner joins the General Partnership based on a new contribution, he shall be held personally and jointly liable with the remaining partners in all his own property for the General Partnership's **debts both preceding and subsequent to his joining**.
- However, an agreement may be made to relieve him of the liability for the former debts by unanimous agreement of the partners. Such agreement shall become effective vis-à-vis the creditors following the date of being recorded with the commercial register.



- 3. If a partner transfers his share , the assignee- the person who received the share- shall be liable vis-à-vis the company's creditors for its debts both preceding and subsequent to his joining. The assignor shall not be liable for the debts vis-à-vis the creditors of the company unless they object to his relief of liability within [thirty] days following the date of the company's notification to them. In the event of an objection, the assignor shall be jointly liable for the debts arising prior to his assignment-

- **I- partner withdrawal:**

- If a partner withdraws or is removed from the company, he shall **not be liable for the debts and obligations arising after his withdrawal** or removal takes place, but shall remain liable for the debts and obligations arising prior to any of such cases, unless he is relieved of the same based on the consent of the creditors and all partners of company.

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- **j- Withdrawal and Removal Procedures:**
- 1. Unless the Company's Memorandum of Association provides otherwise, **the partner may withdraw from the company unilaterally**, provided that the other partners are notified of the same at least [sixty] days prior to the scheduled date of withdrawal.
- 2. The partners may agree, under the Memorandum of Association, on the procedures for removing the partners from the company, and in case the Memorandum of Association does not include any provisions to that effect, **the numerical majority of partners may resort to the Competent Judicial Body for removing one or more partners** from the company if there are lawful reasons so requiring. In addition, the company shall continue to practice its business activities by the remaining partners.

- 3. The partner withdrawing from the company, or the rest of the partners in the event of a partner being removed, shall register this change in the commercial register. Withdrawal or removal shall become effective vis-à-vis the third parties after the date of its registration and publication.

- **K-The unlimited liability of all partners:**
- All **partners are jointly liable** for the debts of the partnership as if they were his own debts (unlimited liability of partners).
- Consequently any debtor of the company can claim the payment of the whole debt from any of the partners.

- The partner may be required to pay off any debt of the company from his own property only after such a **debt is proven to be owed by the company by virtue of a final court judgment or a writ of execution**, and after a notice for payment is served upon the company but the debt cannot be collected from it.
- 2. The partner may, upon paying off the company's debt, have the right a recourse against the remaining partners to retribute the debt amount paid by him by the share of each of them.

- **L- Cases of Termination of partnership:**
- Unless the company's Memorandum of Association provides otherwise, the General Partnership shall not be terminated when any partner passes away or undergoes interdiction, when any liquidation proceedings are initiated against him according to the bankruptcy law, or when the partner withdraws or is removed from the General Partnership.
- In which case, the company shall continue to exist among the remaining partners, and the aforementioned partner or his heirs shall only have his share in the company's property, and such a share shall be valued in accordance with Article [49] of the Law.

- If, in any of the previous cases lead to leaving the company with a single partner, such a surviving partner shall be granted a time limit of ninety [90] days to adjust the company's affairs, either by engaging a new partner or by getting the General Partnership converted into any other legal form in accordance with the provisions of the Law; otherwise, the company shall be deemed terminated by operation of law upon the lapse of such a time limit.

II- Limited Partnership company:

a- Definition of Limited Partnership:

- 1. The Limited Partnership is a business venture made up of two categories of partners; a team that comprises at least one natural or legal partner who is held personally and jointly liable in all his own property for the Limited Partnership's debts and liabilities, and a second team that comprises at least one natural or legal Silent Partner who is held liable for the Limited Partnership's debts and liabilities only within the limits of his contribution to the Limited Partnership's capital. The Silent Partner shall not acquire the capacity of a trader.



. The joint Partners of a Limited Partnership shall be subject to the **same provisions applicable to partners of the General Partnership.**

. All the previously mentioned provisions of General Partnership shall also apply to the Limited Partnership where no specific provision.



- **b-Data of the establishing agreement:**

- It shall, in particular, include the following details:
 - a. Name and data of the partners;
 - b. Name of the company;
 - c. Headquarters of the company;
 - d. The Company's objects;
 - e. The Company's capital, the method of dividing the same among partners
 - f. The company's term, if any;
 - g. The management of the company;
 - h. Partners' decision and the quorum required for their issuance;
 - i. The method of dividing the profits and losses among partners;
 - j. Details of commencement and end dates of the fiscal year;
 - k. The termination of the company;

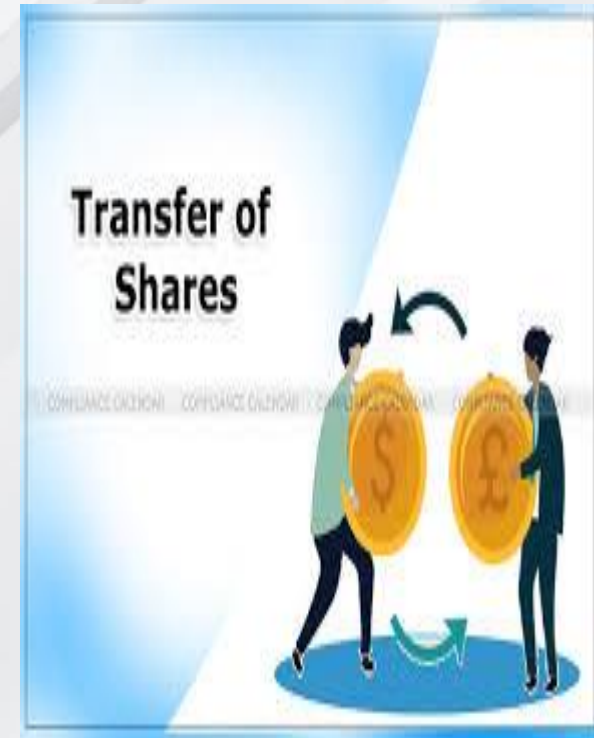
- **d-Powers of Silent Partner**

- 1. The Silent Partner – or his representative - may, during the fiscal year, twice [review the progress of the company's business](#), examine its records and documents, and obtain a brief statement on the company's financial position based on such records and documents.
- 2. The Silent Partner [may not get involved in the external management activities](#), even if based on a power of agency. If, however, the Silent Partner gets involved, he shall be held personally and jointly liable in all his own property for the Limited Partnership's debts and liabilities arising from his involvement.

- However, the Silent Partner [may get involved in the internal management activities](#) in accordance with the provisions of its Memorandum of Association, and such involvement shall not give rise to any obligation on his / her part unless the activities performed by him / her would cause Third Parties to believe that he / she is an joint Partner in this case he shall be personally and jointly liable in all his / her own property for the Limited Partnership's debts and liabilities

- **e-decisions of Partners:**
- 1. Unless the company's MOA stipulate otherwise, the partners' decisions shall be issued as follows:
 - a. decisions in connection with the amendment of the Memorandum of Association: based on the **unanimous consent** of the joint Partners and the approval of the owners of majority of the capital of the Silent Partners.
 - b. Other decisions: Based on the approval of **the numerical majority** of the Active Partners' opinions.
- 2. The Silent Partner may neither request dissolution of the company nor get involved in voting on matters relating to the appointment or dismissal of its Manager.

- **f-Transfer of shares:**
- 1. The Partner may transfer all or part of his share to any of the other partner of the Limited Partnership.
- 2. The Partner may assign all or party of his shares to a third party subject to prior approval of all the joint Partners and the owners of the majority of the capital of the Silent Partners, unless the Limited Partnership's MOA stipulates otherwise.



joint or Silent Partners may join the company **subject to prior approval of all the joint Partners, with no need to obtain the approval of the Silent Partners**, unless the Limited Partnership's MOA stipulates otherwise

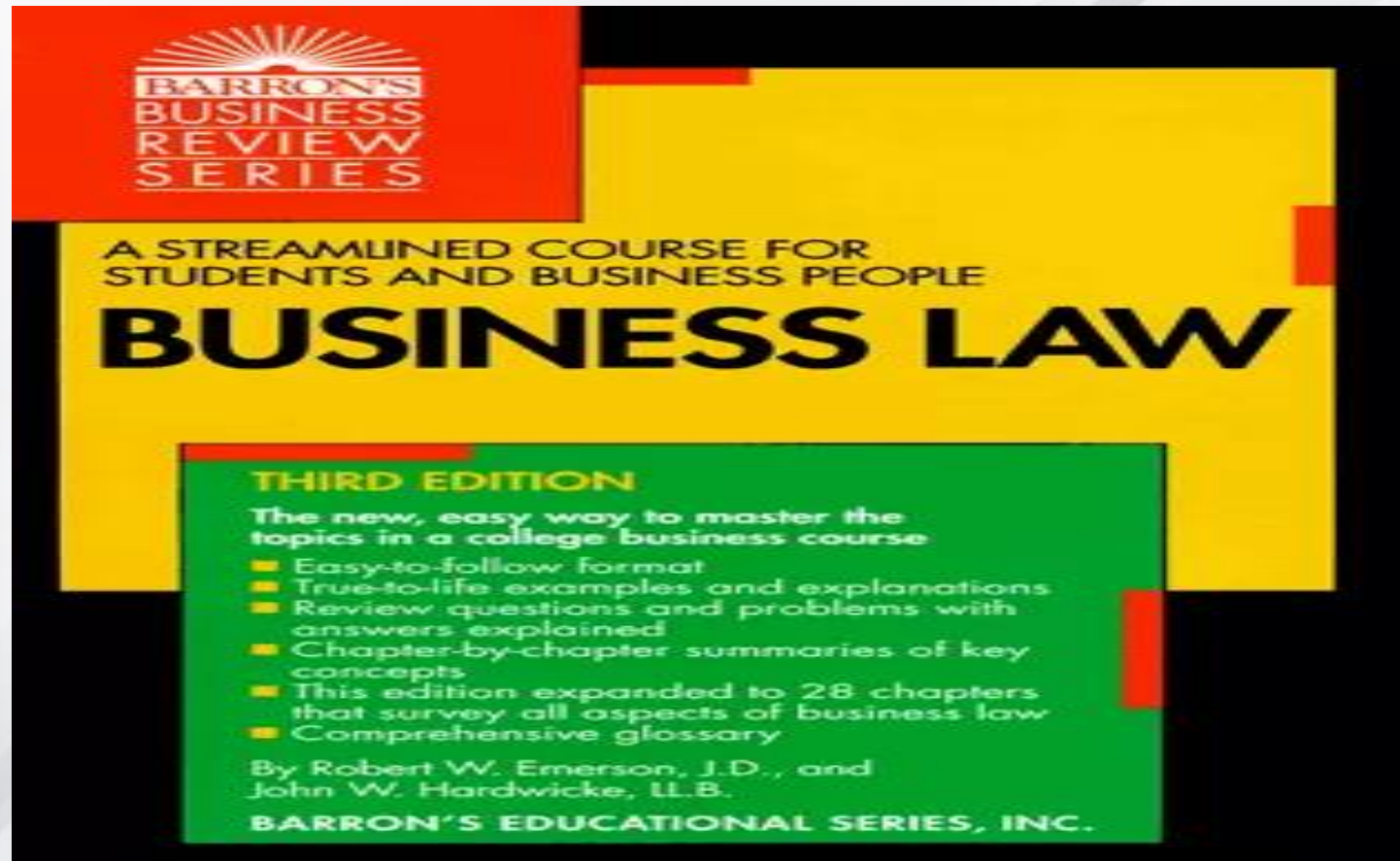


3- Conclusion



4- References

Business Law (Barron's
Business Review) by
Robert W. Emerson J.D.





Thank You