

Lebanon

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Randa Baladi Abousleiman & Partners Beirut

In accordance with the provisions of the Lebanese Code of Commerce, Lebanese joint-stock companies can issue shares that benefit from certain preferences over common shares, including preferences in the payment of dividends, the reimbursement of the share capital, or a combination of both, as well as other financial benefits. However, the Lebanese Code of Commerce specifically provides that holders of preferred shares are entitled to the same voting rights as the holders of common shares. Such a requirement might be deemed to constitute a deterrent to shareholders of joint-stock companies wanting to issue preferred shares for the purpose of attracting new investors for mere financing purposes, because they would have to consider foregoing the control of their companies as a result of such issuances.

Governing laws

The use of preferred shares as financing instruments was introduced by Law 308 dated April 3 2001 governing the issue and transfer of shares of Lebanese banks, the issue of bonds by Lebanese banks, and the acquisition of real property by Lebanese banks.

General framework

Law 308 allows banks to issue preferred shares benefiting from financial preferences over common shares, but in respect of which voting rights are excluded, except in certain limited circumstances. As such, preferred shares issued under Law 308 can be a good way to obtain medium- or long-term direct financing, and to increase equity, while allowing existing shareholders to maintain control of the issuing bank.

The holders of preferred shares have preference over common shares in the payment of dividends and in the liquidation of assets in the event the issuing bank is or becomes bankrupt.

Although not specifically addressed by Law 308, an issue of preferred shares can include a call option in favour of the issuing bank. The holders of the preferred shares might also be entitled to a fixed dividend amount in respect of their shares. This was the case in most of the issues that have been made pursuant to Law 308.

Law 308 provides that holders of preferred shares benefit

from preferential rights, as determined by the extraordinary general assembly of the issuing bank.

Voting rights

Pursuant to Law 308, holders of preferred shares do not have voting rights, except in the limited circumstances described below.

Holders of preferred shares have the right to vote (on a *pro rata* basis with the holders of common shares) in respect of the following:

- an amendment to the object or the legal form of the issuing bank;
- a capital increase by way of a contribution in kind of assets; and
- the dissolution, liquidation or merger of the issuing bank.

Pursuant to Law 308, holders of preferred shares also have the right to participate in the vote (on a *pro rata* basis with all holders of the shares of the bank, irrespective of their class, on all matters in the event the issuing bank is in default with respect to any rights or benefits attached to the preferred shares. Such voting rights remain in effect for as long as the default persists.

Moreover, in the event the issuing bank has provided for a minimum annual dividend to be paid to the holders of the preferred shares, the holders have the right to vote on all matters in the event no distributions are made for three consecutive years, and such voting rights remain in effect until the end of the financial year during which distributions for that year and the previous years are made.

Types of preferred shares and accounting treatment

Preferred shares issued under Law 308 can be cumulative or non-cumulative, perpetual or redeemable. In accordance with the Basel requirements, and pursuant to the Lebanese Central Bank's regulations governing the banks' capital adequacy requirements, perpetual non-cumulative preferred shares are considered as part of the issuing bank's Tier 1 capital. All other forms of preferred shares issued under Law 308 are considered as part of the bank's Tier 2 capital.

Currency

Although pursuant to Lebanese Law, the nominal value of shares must be in Lebanese pounds, preferred shares can be issued at

a premium payable in foreign currencies substantially higher than the nominal value of such shares, circumventing the risk of currency devaluation.

Taxation

Distributions to holders of preferred shares are subject to withholding tax in the Lebanese Republic, at the rate of 10% (subject to reduction to 5% in the event the payer is a company whose shares are listed on the Beirut Stock Exchange). In principle, this tax is due irrespective of the nationality or domicile of the beneficiary of the dividends. However, the application of tax treaties aimed at avoiding double taxation between Lebanon and other countries, when applicable, can reduce this tax.

Use

Since the enactment of Law 308, six Lebanese banks have undertaken one or more issuances of preferred shares in an aggregate amount equal to \$620 million. These banks are BLOM Bank, Bank Audi, Banque Byblos, Bank of Beirut, Crédit Libanais and Lebanese Canadian Bank.

Limitation

Law 308 applies only to Lebanese banks, to the exclusion of other Lebanese joint-stock companies, which can resort to traditional means of financing.

Banking

Recommended firms

Tier 1

Abouhamad Merheb Nohra Chamoun Chedid
Abousleiman & Partners
Moghaizel Law Offices
Raphaël & Associés

Tier 2

Badri and Salim el Meouchi Law Firm
Baroudi & Associates
Nabil Abdel-Malek's Law Offices
Tyan & Zgheib

Capital markets

Recommended firms

Tier 1

Abousleiman & Partners

Tier 2

Abouhamad Merheb Nohra Chamoun Chedid
Moghaizel Law Offices
Nabil Abdel-Malek's Law Offices

Tier 3

Baroudi & Associates
Raphaël & Associés
Tyan & Zgheib

Mergers and acquisitions

Recommended firms

Tier 1

Abouhamad Merheb Nohra Chamoun Chedid
Moghaizel Law Offices
Raphaël & Associés
Tyan & Zgheib

Tier 2

Badri and Salim el Meouchi Law Firm
Baroudi & Associates
Khattar Associates

Project finance

Recommended firms

Tier 1

Abousleiman & Partners
Raphaël & Associés

Tier 2

Abouhamad Merheb Nohra Chamoun Chedid
Badri and Salim el Meouchi Law Firm

Tier 3

Ghaleb S Mahmassani Law Firm
Ramzi Joreige & Partners
Sami S Nahas Law Offices

Abouhamad Merheb Nohra Chamoun Chedid

The consistent quality of Abouhamad Merheb Nohra Chamoun Chedid's practice is revealed by its top-tier ranking both for banking and for mergers and acquisitions. One peer noted that it "expects the firm to have a role on the lion's share of any large acquisitions" in the jurisdiction, and another stressed that the firm is "equally well equipped to advise on financing matters." Abouhamad Merheb Nohra Chamoun Chedid, led by leading practitioner Elie Chamoun, advised on one of the country's biggest deals in recent years. The firm acted for Byblos Bank on its \$36 million acquisition of the Lebanon branch of ABN Amro.

It is rare to find a dissenting voice in the market when concerning the firm's top-tier status – the practice wins plaudits all-round for its "breadth of experience," "quality of lawyers" and "expertise in corporate law." The market regards Abouhamad Merheb Nohra Chamoun Chedid partners Elie Chamoun, Nassib Chedid and Antoine Merheb as three of Lebanon's leading corporate finance specialists.

Founded in 1900, Abouhamad Merheb Nohra Chamoun Chedid is one of Lebanon's oldest and best-established law firms.

Leading lawyers

Elie Chamoun
 Nassib Chedid
 Antoine Merheb

Abouseleiman & Partners

Although Abouseleiman & Partners is considered a market leader for all types of corporate and financial law advice, respondents to *IFLR1000*'s researchers focussed on the "unrivaled" quality of the firm's capital markets capability: one commentator stating that "Abouseleiman is definitely number one in this practice area, and certainly justifies [its] ranking alone in the first tier". Some commentators considered that Abouseleiman is "a good, comprehensive overall firm," while others ventured that perhaps the practice is more focused on capital markets and project finance than the banking side of its business – but this is a minor quibble over what is without doubt one of Lebanon's best operations.

Practice head Randa Baladi, who leads a two-partner and four-associate capital markets team at the firm, is regarded by his peers as one of the country's leading practitioners. Abouseleiman's clients read like a who's who of the country's most active capital markets intermediaries, and include Credit Suisse First Boston, Banque Audi, BNP Paribas and Byblos Bank.

Outside the firm's capital markets group, Joelle Maalouf heads Abouseleiman's banking practice, which can always be relied on to win its fair share of work. Abouseleiman & Partners has developed strong referral relationships with US firm Dewey Ballantine and UK firm Norton Rose.

Leading lawyer

Randa Baladi

Badri and Salim el Meouchi Law Firm

Founded in the nineteenth century, Badri and Salim el Meouchi Law Firm is one of the oldest, largest, and most distinguished law firms in Lebanon. Clients of the firm include multinational corporations, international and local banks, financial institutions and domestic corporates. The firm also maintains a private client practice, advising entrepreneurs, investors and other persons seeking advice regarding their domestic and international affairs, including in respect of cross-border transactions and inward or outward investment activities. Commentators see banking as the core of Badri and Salim el Meouchi Law Firm's practice, and point out that the firm has just been involved in the biggest banking merger ever done in the Lebanese market.

Salim Badri El Meouchi heads the firm's team of 26 associate lawyers, a number of whom are French- and US-law educated and qualified.

In one standout instruction for the firm over the past year, Badri and Salim el Meouchi advised Banque Saradar on its \$168 million acquisition by Bank Audi. The deal forms the largest group in the Lebanese banking sector.

Other clients of the firm include HSBC, Bank Audi, Fransabank, the National Bank of Canada and Bank Mir Lebanon. The firm is a member of Interleges, an international association of independent law firms with offices across the countries of the EU, eastern Europe, North America and the Middle East. Founded in 1989, Interleges was one of the original international law networks, and one of the first legal associations of its kind.

Key contact partner

Salim Badri el Meouchi

Nabil Abdel-Malek's Law Offices

Nabil Abdel-Malek's Law Offices has been active in the Lebanese market since 1993, advising a broad client base across Lebanon, the UK, the US, France and the Gulf states on banking, capital markets, mergers and acquisitions, corporate, commercial and tax matters. The firm also offers consulting services in international investment banking and capital markets, and counts the Central Bank of Lebanon and the Ministry of Finance as clients in this area. Market commentators report that the firm regularly represents the two largest investment banks in Lebanon.

Nabil Abdel-Malek's Law Offices' client list evidences the strength, and cross-border capability, of the firm's banking and capital markets practice: clients of the firm include ABN Amro, Standard Chartered Bank, Al-Mawarid Bank, Credit Suisse First Boston, Deutsche Bank and Bank of America.

Mazen Tajeddine, who joined the practice in October 2002, is particularly well regarded among peers.

Leading lawyer

Mazen Tajeddine

Key contact partner

Nabil Abdel-Malek

Raphaël & Associés

Raphaël & Associés is tipped for big things in the Lebanese market, and managing partner M Raphaël is reportedly the "main reason for the firm's continuing success, not just in banking but across all of its practice areas." Other commentators praised Adel Nassar of for his work on the privatization of Lebanese telecommunications, an instruction from HSBC in London.

Leading lawyer

M Raphaël

Key contact partner

M Raphaël

Tyan & Zgheib

Tyan & Zgheib's two-partner, 18-associate practice is much recommended for general corporate and commercial matters both of a domestic and cross-border nature. Tyan & Associés' recent transaction list is testament to the firm's international experience. Over the last few years the firm has advised British American Tobacco, Coca-Cola and France Télécom. On the banking side, clients of the firm include ING Bank, the Swiss branch of BNP Paribas.

In December 2004 the firm advised World Business Capital (WBC) on a \$10 million credit agreement entered into between WBC and a Lebanese company, using the Overseas Private Investment Corporation guarantee programme.

Tyan & Zgheib is a member of TerraLex, a worldwide network of independent law firms. Name partner Nady Tyan is regarded as a leading practitioner, and an excellent lawyer to turn to for corporate and financial law advice.

Key contact partners

Claudia Karam

Romy Rahmeh

Nady Tyan