

Non-Bank Financial Institutions' Legal Structures And The Factors Influencing Their Selection: A Theoretical And Practical Analysis

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ABSTRACT

This study examines the organizational and legal structures of non-bank financial institutions (NBFIs) in Uzbekistan and analyzes the factors influencing their selection, with a particular focus on housing finance under Islamic finance principles. Using a comparative theoretical and practical approach, the research evaluates limited partnerships (Kommanditgesellschaft), limited liability companies (LLCs), and joint-stock companies (JSCs) in terms of participant composition, liability, investor participation in management, profit and risk distribution, compliance with Islamic finance, and suitability for small and medium housing projects. The findings indicate that limited partnerships are the most appropriate legal structure for Sharia-compliant housing finance due to their alignment with Mudaraba contracts, flexibility in investor participation, and effective risk-sharing mechanisms. The study provides practical insights for policymakers, investors, and practitioners in designing legal frameworks that support Islamic housing finance while ensuring financial stability and compliance with national legislation.

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Introduction and methods.

The legal structures of non-bank institutions can be understood as the organizational and legal forms through which they conduct their activities. The significance of the organizational and legal forms of business entities can be explained by referring to theoretical principles.

In civil transactions, a legal entity has a unique character. It exists in a certain legal form. Form is the way an object, process, or phenomenon is organized and exists. It represents an internally regulated structure, determined by the functional tasks of the legal entity's activities and the specifics of its substantive activities. Traditionally, in the theory of civil law, this phenomenon is called the legal form of a legal entity. This concept represents the external, organizational expression of the activities of a legal entity in civil transactions. This form is a legal model for organizing the activities of a legal entity, which embodies the main and important features of this entity and ensures its existence in the legal environment. Thus, a legal entity, depending on the goals of its activities, the legal regime applicable to its property, the forms of

participation of participants (founders) in its activities, has the corresponding possibilities of legal activity, and the totality of these possibilities is ultimately enshrined in a specially defined legal form.¹

From this point of view, E.R. Kibenko notes that the legal parameters inherent in the legal forms of a legal entity include: the procedure for establishing an enterprise; restrictions established by law on the circle of participants; the composition of constituent documents; the procedure for making changes to them; legislative requirements for capital (its minimum amount, the procedure for its formation, types of contributions, requirements for maintaining the size of equity capital); the legal regime of property (the possibility of allocating a participant's share); the legal status of a participant in the company (rights, obligations, liability for the obligations of the company); transparency of activities, the procedure for reorganization and liquidation, and other issues.² Thus, the organizational and legal form (legal structure) of a legal entity or non-banking organizations is a systematic set of legal norms that ensure the existence and functioning of a legal entity in civil circulation, defining the procedure for its creation, legal status, property regime, rights and obligations of participants, management, responsibility, as well as the procedure for reorganization and liquidation. The legal structure of a legal entity determines its goals of activity, economic functions, and place in the legal environment. It also creates specific legal opportunities necessary for a legal entity to exercise its rights and obligations.

Discussion.

Practically every type of legal entity engaged in a particular sphere of economic activity is created in a certain legal form. As is known, banks are organized as joint-stock companies based on any form of ownership. In terms of organizational and legal form, the creation of banks in the form of joint-stock companies is a requirement established by law (Law of the Republic of Uzbekistan dated 05.11.2024 No. 580 "On Amendments and Additions to the Law of the Republic of Uzbekistan "On Banks and Banking Activities"). According to the Law of the Republic of Uzbekistan dated 20.04.2022 No. 765 "On Non-Banking Credit Organizations and Microfinance Activities," microfinance organizations, factoring organizations and pawnshops are formed in the form of joint-stock companies or limited liability companies, mortgage refinancing organizations and guarantee organizations are formed in the form of joint-stock companies.

Leasing companies in Uzbekistan are mainly organized in the form of joint-stock companies and limited liability companies. Sometimes they operate as structures under banks or as independent financial institutions, the organizational and legal form of which depends on how the leased asset is financed and its relationship with the bank.

The organizational and legal form of some of the above non-bank financial organizations is clearly defined by law (the Mortgage Refinancing Organization should be established in the form of JSC). Organizational and legal forms of LLCs or JSCs for microfinance organizations, pawnshops, and leasing companies are indicated. According to the Law of the Republic of Uzbekistan "On Insurance Activities" No. 730 of November 23, 2021, insurers (reinsurers) are created in the form of a joint-stock company. Other professional participants of the insurance market, which are legal entities, are created in the organizational and legal forms provided for by law. Also, in accordance with the Law "On Investment and Mutual Funds" No. 392 of August 25, 2015, investment funds carrying out the issuance of shares in order to attract investors' funds and invest them in investment assets are created in the form of joint-stock companies.

Theoretically, business entities have the right to freely choose any of the organizational and legal forms provided for by law. However, for some professional participants of the financial market, this freedom is limited by law, and their organization in a certain organizational and legal form, mainly in the form of a joint-stock company, is mandatory. Such an approach is explained, first of all, by the fact that the activities of these entities are directly related to the public interest and have an impact on the stability of the financial system.

¹ Kostruba A., Karagussov F. S. Legal form of activity of legal entities of corporation type //Journal of the National Academy of Legal Sciences of Ukraine. – 2019. – T. 26. – №. 2. Available at SSRN: <https://ssrn.com/abstract=3539955>

² Kibenko E. R. Corporate law Ukraine. – 1999.

Financial institutions, such as banks, insurance organizations, investment funds, and mortgage refinancing organizations, attract a wide range of funds from the population and economic entities, assume long-term financial obligations, and are a source of high systemic risk. Therefore, in their activities, public interest takes precedence over private interests. The state's strict definition of the organizational and legal form is aimed at implementing effective prudential supervision over these institutions, ensuring financial stability, and preventing systemic risks.

The mandatory determination of the form of a joint-stock company is also justified by its advantages in terms of corporate governance, financial transparency, and capital adequacy. In particular, the possibility of increasing the authorized capital through the issuance of shares, the presence of a supervisory board and an internal audit system, and the transparency of financial reporting serve to protect the interests of creditors and consumers of financial services. In particular, the presence of long-term liabilities in the insurance and mortgage markets demonstrates the form of a joint-stock company as the most optimal organizational and legal model.

The application of a differentiated approach to non-bank financial institutions in the legislation is also noteworthy. For microfinance organizations, pawnshops, and leasing companies with relatively low scope of activity and level of financial risk, the admission of a limited liability company also corresponds to the principle of proportionality. At the same time, for entities of systemic importance in the financial market, the establishment of only the form of a joint-stock company is legally justified and appropriate.

Results and conclusion.

The restriction of freedom of choice of organizational and legal form for individual professional participants of the financial market is not a violation of entrepreneurial freedom, but a legal mechanism aimed at protecting public interests, ensuring the stability of the financial system, and guaranteeing the rights of consumers of financial services.

Some of the discussed types of non-banking organizations financing housing in the conditions of Uzbekistan operate in the organizational and legal form of a limited partnership of entrepreneurship. At this point, it is advisable to dwell on the theory of partnership in business law. According to Cahn A., Donald D. C., the main differences between a corporation and a partnership are manifested in their legal nature, liability mechanism, management structure, and economic consequences. The Corporation is an independent legal entity, separate from its participants, and has its own rights and obligations. Shareholders are liable only within the limits of their contribution to the company. The Corporation can continue its activities regardless of changes in its members, its shares can be freely traded, and it operates through separate governing bodies. A partnership is an organizational and legal form based on mutual trust between the partners and their direct participation, in which ownership and management are not separated. Each partner may act as an agent on behalf of the other partners, and the obligations of the partnership are considered the personal obligations of the partners, meaning that they are jointly liable with their personal property. The entry or withdrawal of partners typically leads to the dissolution of the partnership or requires compliance with specific legal procedures.

There is also an important difference from an economic perspective: corporate income is taxed in two stages at the level of the corporation and at the level of shareholders, whereas partnership income is taxed only once, at the level of the partners.

Thus, a corporation is characterized as a capital-based, stable, and institutional structure, while a partnership is described as a flexible organizational and legal form grounded in personal participation and mutual trust, but involving a higher degree of liability.

According to the foregoing, joint-stock companies and limited liability companies are legal entities, and in these companies, the founders have limited liability. The partnership or partnership form of entrepreneurship in our country is an agreement concluded between partners, regulating joint management of jointly owned assets of partners and providing for joint liability of partners for arising obligations.

Thus, according to the theoretical rule, the partnership form of entrepreneurship is not a legal entity, but an association based on the agreement of partners, and the founders of the company bear unlimited liability for the obligations of the partnership. In this regard, when determining the civil-legal status of a

business partnership, a proposal has been put forward to legislatively strengthen the status of a business partnership as an association of legally competent persons.³

Despite the above proposal, at present general partnerships and limited partnerships, which are considered forms of business partnerships, operate as legal entities upon state registration. According to the Law of the Republic of Uzbekistan “On Business Partnerships,” participants in a partnership bear subsidiary liability for the partnership’s obligations with their own property on a joint and several basis. This rule applies to general partnerships and also governs the liability of general partners in a limited partnership for the obligations of the partnership.

In the event of liquidation or insolvency, the partnership itself is primarily liable for its obligations. If the partnership’s assets are insufficient to cover its debts, the participants bear subsidiary liability. In such cases, participants are jointly and severally liable with their personal property, meaning that a creditor has the right to recover the full amount of the debt from any one of them. In a limited partnership, however, limited partners (contributors) are liable for losses related to the partnership’s activities only within the limits of their contributions.

The limited partnership form was adopted from German practice. The Kommanditgesellschaft (KG), regulated by the provisions of the German Commercial Code (§§ 161–177a HGB), traces its origins to the medieval “commenda” trading arrangement. Under this structure, a silent partner provided capital to an active partner (typically a ship captain) to conduct a trading voyage. The KG represented an important step toward corporate forms, as it introduced a category of investors who do not participate in management and whose liability is limited to their share in the company.

A limited partnership consists of two types of partners: general partners (Komplementäre), who have management authority and bear unlimited liability, and limited partners (Kommanditisten), who are excluded from management and are liable for the partnership’s obligations only up to the amount of their contribution.⁴

At present, there are several business entities in Uzbekistan operating in the form of limited partnerships. Among them are limited partnerships that finance housing in accordance with Islamic finance principles, where the source of financing is the funds contributed by participants (investors).

It is important to examine why these entities choose the limited partnership form among the available organizational and legal structures of business activity. Several factors can be considered in this regard:

Firstly, the choice of the limited partnership as the organizational and legal form for financing housing in accordance with Islamic finance by some entrepreneurs aligns with the operation of the Mudaraba contract within Islamic finance. Mudharaba is a partnership agreement in which the capital is provided by the Rabb ul-Mal (capital owner), while the management of the capital is carried out by the Mudarib (manager). The purpose of this partnership is profit generation.

The Mudharaba contract also contemplates cooperation with a “sleeping” or passive partner. Under this arrangement, the Rabb ul-Mal provides the funds but does not participate in the management of the business or in decision-making processes. The Mudarib actively manages the business, contributing their managerial expertise and efforts to achieve the objectives. The Mudarib always acts as the agent (Wakil) of the Rabb ul-Mal, because, under Mudharaba, the manager has the authority to perform all necessary actions on the owner’s property.

The aim of the Mudharaba contract is profit-making, and the profits of the parties must be agreed upon in advance. According to the rules of the Mudharaba institution, the capital contributed by the Rabb ul-Mal is not guaranteed, in compliance with Sharia principles. This feature is analogous to the situation in limited partnerships, where the contributions of limited partners (Kommanditists) are likewise not guaranteed.

³ Djumanov A.X. Civil-Legal Status of Business Partnerships: Theoretical and Practical Issues. Abstract of the dissertation for the degree of Doctor of Philosophy (PhD) in Legal Sciences. Tashkent, 2024.

⁴ Cahn A., Donald D. C. Comparative company law: text and cases on the laws governing corporations in Germany, the UK and the USA. – Cambridge University Press, 2010. P. 31.

Secondly, there are several reasons why the widely used organizational and legal forms of business in Uzbekistan—limited liability companies (LLCs) and joint-stock companies (JSCs)—are not applied in certain cases.

The LLC model is primarily designed for a closed and stable composition of participants, with profit distribution often proportional to shares and largely predictable in advance. This does not fully reflect the active risk-sharing mechanism required in Islamic finance. Additionally, in an LLC, the admission of new participants requires the approval of the general meeting, which limits the ability to quickly and flexibly attract passive investors.

While a JSC is suitable for raising public capital, it is distinguished by high requirements for corporate governance, transparency, and regulation. In a JSC, shareholders have limited control over the composition of participants, and the element of personal trust between investors and managers is almost absent. This situation makes the JSC form economically and legally inefficient for small and medium-sized Islamic housing finance projects.

Table

Comparative Table of Limited Partnership, Limited Liability Company, and Joint-Stock Company

Criterion	Limited Partnership	Limited Liability Company (LLC)	Joint-Stock Company (JSC)
Composition of Participants	General Partners and Limited (Passive) Partners	Shareholders (Participants)	Shareholders
Investors' Participation in Management	Limited partners do not participate	Participants are indirectly involved	Usually do not participate
Level of Liability	General partners unlimited, limited partners limited	Limited	Limited
Admission of New Investors	Relatively flexible as limited partners	With the approval of the general meeting	Freely through the purchase of shares
Profit and Risk Distribution	Outcome-based, contractual	Proportional to shares	Through dividends
Compliance with Islamic Finance	High	Medium	Low–Medium
Suitability for Small and Medium Housing Projects	High	Medium	Low

The comparative analysis conducted indicates that, for financing housing in accordance with Islamic finance, the limited partnership organizational and legal form is preferable to LLCs and JSCs in terms of both economic substance and legal mechanism alignment.

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