

Provisions of the simple corporation company in the Algerian Legislation

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Abstract---The corporation company is an up to date sort of commercial company which is inserted into the Algerian law with the sake of promoting the ventures and start-up foundations. These companies are characterized by resilience in dealing with procedures and facileness of establishment compared to the traditional corporation ones. According to the law no: 09/22, which comprises the commercial code, the Algerian legislation has added the simple corporation company as a new sort as a kind of economic reforms which the Algerian state witnessed. Also, as push for supporting the start-up foundations inside the commercial and financial center.

Keywords---Simple corporation company, Capital, Foundation, Commercial code, Responsibility.

1. Introduction

Companies are considered among the most significant economic tools for both individuals and state in Algeria which is the reason that they present the focus of interest and development thanks to the support that they provide to the Algerian economy's development. And this cannot be achieved except through the updating of the legal regulations that are related to them.

It is not limited to legislation alone, but extends to the diversification and multiplicity of commercial companies' sorts in the laws regulating them. These include personal companies like the general company, simple recommendation company, capital company like limited responsibility, and the corporation one which is varried in many types, including the corporation company, recommended-share company, and simple corporation company.

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The concept of a simple corporation company originates from the French code, which defined it as a simplified share-company according to the law 94-01 that was issued on January 3, 1994. Nevertheless, the Algerian legislator did not stipulate or regulate it except in the latest legal amendment to the commercial code according to Law 22-09 amending and supplementing to the decree 75-59 that includes the commercial code.

Therefore, the following problematic has been arisen: To what extent are the legal provisions pertaining to the corporation companies clear enough for judges to apply them in the commercial contentions that might be proposed in front of the body of the commercial courts, particularly in the midst of the existence of a legal system that interferes and contradicts at the same time with this sort of newly established companies in Algeria?

To answer this problematic, we have depended upon the inductive approach as the primary method for the reason of interpreting the provisions of the articles governing this sort of commercial company, namely the simple corporation company as they are new provisions in the legal field. Besides to the comparative approach to compare these texts with the ones that are related to corporation company to stand on the provisions that have been referred to regulate this company, the provisions that are contradicted with and the ones that are organizing the classical corporation company.

Given to the following plan, we discussed in the first axis the provisions related to orporation company and the simple corporation one, in which we have dealt with two parties: the first covers the provisions governing the corporation company and those rejected by the simple corporation one, and the second is concerned the particular provisions of the simple corporation company in the Algerian legislation.

However, the second axis, which is entitled A critical reading, addresses the provisions governing the simple corporation company in the Algerian legislation. Where in the first part we have concentrated upon the conceptual provisions of a simple corporation company, whereas the second part concerns the provisions that are related to founding and managing the company, and the third part which deals with the legal responsibility's provisions of the simple corporation company.

2. Provisions correlated to the corporation company and the simple corporation one

The corporation company as well as the simple corporation one are considered among the most significant forms of the commercial companies, and each of which has its own specific legal characteristics that differentiate it from the other. And accordingly, we will deal with the most significant provisions that are related to both of them.

2.1 Provisions regulating the corporation company and which are rejected by the simple corporation one

In respect to the articles' provisions 715 bis 135 that are sited according to the article 03 of the law 22-09 amending and supplementing order 75-59 that includes the commercial code, the Algerian legislator referred the simple corporation company's regulation to the provisions that are correlated to a corporation company excepting the articles 594 paragraph 1, article 601 paragraph 1, and the articles 607, 610, 619, and 715 bis 15. As well as it has eliminated the provisions that are correlated to the corporation company and that are contradicted with the ones of the simple corporation companies.¹ Including the rejected provisions, which are:

2.1.1 Provisions that are disagreed with the legal system of a simple corporation company

In respect to the text of the article 715 bis 135 we find that the Algerian legislator has eliminated the provisions which are related to the corporation company that are contradicted with the ones of the simple corporation companies. Where it is realized from the text of article already aforesaid that the

contradiction is related with the nature of the simple corporation company that stands upon the personal consideration, and this disagrees with the classical corporation company which stands only upon the financial consideration.

As well as the persons of the simple corporation company are among the foundations that have obtained the startup label, and it is a new method for the state to push these foundations that are based on creative ideas in the economic field. The matter that contradicts with the classical corporation companies which aim to benefit from the funds for the sake of achieving the profit.

2.2.2 Legal texts that are rejected according to the article 715 bis 135

Which are represented in the following texts:

- **Articles 594, Paragraph 1 of the Algerian commercial code:**

This text concerns the minimum capital that the classical corporation company should provide. And it was rejected according to the provisions of the law 22-09 amending of the order 75-59 which is related to the Algerian commercial code that is amended and supplemented.²

- **Article 601, paragraph 1 of the Algerian commercial code:**

Article 601, paragraph 1, stipulates on the obligation of appointing an in-kind shares representative by a judicial decision relying upon the request of the founders or one of them³. Nevertheless, in the simple corporation company the partners are free to appoint or not the shares representative which is considered as an act of leaving the provisions of the classical corporation company.

- **Article 607 of the Algerian commercial code:**

According to this text, the Algerian legislator has prescribed the classical corporation company to insert its basic code or in the appendix the estimation of the in-kind shares that are prepared by the shares representative and under his liability.⁴

- **Article 610 of the Algerian commercial code:**

According to this article the matter is concerned the classical corporation company's management, however, the management of the simple corporation company has been reorganized according to the provisions of the law 22-09, which we will deal with in the coming lines.

- **Article 619 of the Algerian commercial code:**

It is concerned the condition that the chairman of the board of directors in a simple corporation company must hold a certain percentage of the company's capital, otherwise, he or she will automatically resign. And this condition contradicts the administration's new rulings of the simple corporation company according to the code 22-09 which is amending the order 75-59 that concerns the Algerian commercial code which is amended and supplemented.⁵

- **Article 715 bis 15 of the Algerian commercial code:**

It concerns the conditions of transmitting the corporation company, and this does not suit the provisions of transforming the simple corporation company which precised according to the provisions of the code 22-09 that is amending the order of 75-59 that is related to the Algerian commercial code which is amended and supplemented.⁶

- **Formality must be provided:**

The formality of a simple corporation company is contingent on the formality provisions of commercial companies. This includes participation in business activities, as stipulated in the article 418 of the civil code and also the article 548 of the Algerian commercial code⁷, besides to its submission to the recording and advertising⁸, and the Algerian legislator did not except it with specific provisions according to the latest amendment.

2.2 Specific provisions for the simple corporation company in the Algerian legislature

In the Algerian legislature, the simple corporation company is ruled by set of specific provisions which differentiate it from the rest of the other companies; and among these significant specific provisions in the Algerian law, we find:

2.2.1 Provisions that are concerned the pillars of the simple corporation company in Algerian legislature

- **Not to openly resort to saving or offering shares on the stock exchange:**

The Algerian legislator banned according to the article 715 bis 139 the simple corporation company to resort openly to saving⁹, and this is for the sake of setting a closed legal framework to this company, and of organizing a limited number of enterprises of a certain size on the purpose of achieving the aim of the legislator which is structuring the groups and not the technique of financing the enterprises. And accordingly, besides to the financial consideration, the simple corporation company depends also upon the personal one.

- **Not determining a minimum capital for the simple corporation company:**

As well as the Algerian legislature did not put a condition to determine a minimum capital limit for the simple corporation company according to the article 715 bis 134 of the commercial code¹⁰. However, the Algerian legislator obliged to determine it in its basic law according to the text of the article 715 bis 133 of the commercial code.¹¹

- **Not putting a condition for a given number of partners:**

Also, the Algerian legislation turned away of putting a condition concerning a given number of partners, where the corporation company can stand on one person or more.

And if a simple corporation company comprises only one person, in this case the Algerian legislature defines it as a single person simple corporation company. Where this person who is called the sole shareholder¹² rules the powers of the chairman and makes the decisions granted to the partners' assembly.

However, if the simple corporation company comprises it is called a simple corporation company¹³. And the president of the simple corporation company or the chairman who is appointed in its basic law, as a general director authorized to exercise the powers of the board of direction and make decisions that are granted to the partners' assembly.¹⁴

- **allowing presenting a work share:**

Through inducting the text of the article 715 bis 140 of the Algerian commercial code we realize that the Algerian legislator allows that the presented share may be a work share, and estimated in shares according to its basic law, non-negotiable, and not included in the company's capital, although it inserts in the profits and losses.

2.2.2 The Special Provisions on Special Conditions to Establish a Joint-Stock Company under Algerian Legislation

- **Setting up a Joint-Stock Company from a Company holding Startup Status:**

This type of company was employed to support startups¹⁵, which may struggle to either establish a viable business model and dissolve, or succeed and transition into a large, traditional company.

The restrictions imposed by the Algerian legislator on the establishment of a joint-stock company exclusively for startups reflects a deliberate intent to promote, support and oversee these enterprises through business incubators. This approach aims to foster innovative projects and ideas within the framework of strengthening the creation of small and medium-sized enterprises movement and enhancing their operational environment, thereby contributing to the expansion of their economic presence¹⁶. Furthermore, it seeks to encourage private initiative and entrepreneurship in Algeria, ultimately serving the national economy.

2.2.3 Special provisions on privileges for Joint-Stock company

These may be summarized as follows

- **Personalized Joint-Stock Company:**

The joint-stock company is founded on personal considerations, distinguishing it from the traditional shareholding company, which is primarily based on financial interests. This distinction is evident in two key aspects:

First aspect: The decisions of the simple shareholding company that require the unanimous approval of all shareholders must be explicitly outlined in its articles of association¹⁷.

Second aspect: It pertains to resolutions adopted during the Ordinary and Extraordinary General Assembly concerning the increase, depreciation, or reduction of capital, as well as matters related to merger, separation, dissolution, and the conversion of the company into a different legal entity. Additionally, the appointment of auditors, approval of annual accounts, and distribution of dividends are subject to collective approval by the shareholders, in compliance with the procedures specified in the company's Articles of Association¹⁸.

– **Predominance of the company's interest over those of the shareholders:**

Within the legal framework governing the simple joint-stock company, the Algerian legislator stipulates that company decisions must receive the full consent from all partners. This framework prevents a majority of capital owners from independently controlling decision-making in both ordinary and extraordinary general assemblies, as well as in matters requiring the consent of all partners. Consequently, this regulation reinforces the personal nature of the simple joint-stock company, prioritizing partnership dynamics over the financial considerations that typically underpin joint-stock companies.

– **The Supremacy of Contractual Principles over Formal Principles in the Simple Joint-Stock Company:**

This is evident in the principle that decision-making within the contractual collective serves as the standard for governing the operation of the simple joint-stock company, whereas the formal structuring of decision-making remains an exception.

3. A Critical Analysis of the Regulatory Framework Governing the Simple Joint-Stock Company in Algerian Legislation

3.1 Regarding the Legal Provisions Governing the Establishment and Operation of the Company:

- Ambiguity in its provisions, mainly due to the brevity of the introduced texts, which complicates the determination of potential conflicts in applying regulations for joint-stock companies¹⁹.
- The legal provisions governing the simple joint-stock company are scattered across commercial law and startup legislation, making their application, particularly in judicial proceedings, more challenging.
- The simple joint-stock company is established based on personal considerations, whereas the traditional joint-stock company is primarily founded on financial interests. This raises the question: Are the provisions regulating both the traditional and simple joint-stock companies misaligned with the legal framework of the simple joint-stock company? Such inconsistency creates challenges for judges in applying these rules. This issue persists despite the Algerian legislator establishing a specialized and comprehensive legal framework for the simple joint-stock company, based on personal considerations²⁰.
- The Algerian legislator has limited the simple joint-stock company to commercial entities with startup status. Consequently, the members of a simple shareholding company must be commercial companies holding this designation. This restriction raises two key questions:
 - Can an individual join a simple joint-stock company as a partner if they own a startup business?
 - Can a craftsman or professional join a simple joint-stock company as the owner of a startup craft business?

3.2 Regarding the provisions governing liability in a simple joint stock company

The article does not clearly delineate the nature of the collective decisions that must be set forth in the company's articles of association, nor does it establish a specific penalty for failure to comply with the requirement to include such decisions therein.

- The simple joint-stock company is exempt from criminal liability, which instead falls upon its manager.
- The use of a public offering leads to the nullification of this procedure without attributing criminal liability to the legal entity²¹.

3.3 Regarding the conceptual framework of a simple joint stock company

The definition outlined in Article 715 bis 133 lacks sufficient depth and precision. Consequently, we propose the following revised definition:

Article 715 bis 133: "A simple joint stock company is a legally recognized corporate entity established by one or more organizations formally designated as startups. The financial liability of its members is strictly limited to the value of their respective shareholdings, and its capital structure is divided into transferable shares.

In instances where a simple joint stock company is constituted by a single startup organization, it shall be classified as a single-person simple joint stock company."²²

4. Conclusion

In conclusion, this study on the legal provisions governing the simple joint stock company under Algerian legislation highlights the pronounced disparity between the comprehensive regulatory framework applicable to the classical joint stock company and the comparatively succinct legal framework governing the simple joint stock company. Its brevity, with a limited number of statutory provisions, resulting in numerous legal ambiguities, characterizes the latter. Consequently, the resolution of these uncertainties frequently necessitates recourse to the legal provisions governing the classical joint stock company.

Furthermore, the simple joint stock company is characterized by a degree of legal ambiguity, primarily stemming from the extensive flexibility it offers. This lack of regulatory clarity not only creates interpretative uncertainties but also fosters a general hesitation among stakeholders to adopt this corporate structure.

With respect to its capital structure, the simple joint stock company encounters substantial challenges in securing sustainable funding sources for its operations. In contrast to the classical joint stock company, which is founded on the principle of capital consolidation, the simple joint stock company predominantly relies on self-financing and debt-based funding mechanisms. This financial model often exposes partners to heightened risks of excessive indebtedness, which may ultimately compromise the company's financial stability and lead to its dissolution. Therefore, the recommendations presented in this study:

- Reassess the regulatory conditions governing the establishment of a simple joint stock company in accordance with the amendments introduced by the new legislation, with particular emphasis on provisions designed to promote startup development.
- Optimize the procedural framework for establishing a simple joint stock company to foster a more conducive entrepreneurial environment.
- Integrate digitalization across all phases of the establishment and governance of simple joint stock companies to enhance operational efficiency and accessibility.
- Establish dedicated investment funds to facilitate financial support and tailored funding mechanisms for simple joint stock companies, thereby enhancing their sustainability and growth potential.
- Develop comprehensive regulatory frameworks and well-defined legal provisions to govern the administration of simple joint stock companies, thereby establishing precise delineation of responsibilities among partners and managers.

5. Endnotes

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² Order no: 75-59, which was issued on September 26th, 1975, including the Algerian commercial code, amended and supplemented, issue 101, on December 19th, 1975.

³ See Article 601, Paragraph 01 of the commercial code, *ibid*.

⁴ See article 607 of the commercial code, *ibid*.

⁵ See Article 609 of the commercial code, *ibid*.

⁶ Article 715 bis 15 of the commercial code, *ibid*.

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