

The simple joint stock company is a new legal category to support Startups

شركة المساهمة البسيطة صنف قانوني جديد لدعم المؤسسات الناشئة

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RECEIVED
04 – 15 - 2024

ACCEPTED
09 – 16 - 2024

PUBLISHED
10 – 10 - 2024

Abstract:

startups companies are an important mechanism for economic diversification and an effective development alternative to economic restructuring. In recent years, the concept of development has changed from one based on giant institutions to another based on creativity and innovation. In keeping with this new concept, Algerian legislation introduced a new legal form of business under Act No. 22-09, which is created exclusively by start-up companies. This new orientation enshrines the principles of simplicity and flexibility to improve the business climate.

key words: Simple joint stock company, start-up, contractual freedom, flexibility, simplicity.

الملخص:

تعتبر المؤسسات الناشئة آلية هامة لتحقيق التنوع الاقتصادي، وبديل تنموي فعال لإعادة هيكلة الاقتصاد، حيث تغير مفهوم التنمية خلال السنوات الأخيرة من المفهوم القائم على المؤسسات العملاقة إلى مفهوم آخر يعتمد على الإبداع والابتكار. ولما سائر هذا المفهوم الجديد، استحدثت المشرع الجزائري شكل قانوني جديد من الشركات التجارية بموجب القانون 22-09 ينشأ حصريا من طرف الشركات الحاصلة على علامة مؤسسة ناشئة، إذ كرس هذا التوجه الجديد مبادئ البساطة والمرونة لتحسين مناخ الأعمال.

الكلمات المفتاحية: شركة مساهمة بسيطة، مؤسسة ناشئة، الحرية التعاقدية، المرونة، البساطة.



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Introduction:

In the context of the development of economic enterprises and the promotion of innovative ideas, Algeria's legislature has set up its own business system and has thus created a new form of business. By Act No. 22-09 of 05 May 2022¹ amending the provisions of Ordinance 75-59 containing the Commercial Code He called it the Simple Joint Stock Company (SSC). This amendment is likely to lead the State to achieve economic diversification and benefit from scientific efficiency in order to improve the country's economy and drive development.

This new version is devoted exclusively to startups. This new legal form is a suitable environment for their work, especially after the recent increased interest in startups, with a view to diversifying the sources of the national economy and moving to a knowledge-based economy, which depends primarily on technological development. In addition, this new form is the appropriate legal framework for such enterprises.

The problem here is: What legal developments have been made by the legislator with regard to this type of company that constitute support for startups?

To answer this problem, we have addressed this paper to highlight the specificities of this new type of company in terms of its establishment (**Section I**), organization and management (**Section II**).

Section I:

Legal updates on the establishment of the Simple Joint Stock Company.

In order to encourage innovative ideas and projects and assist them in obtaining the necessary funding to reflect them, Algerian legislator has introduced the Simple Joint Stock Company as one of the legal forms available in the field of investment and for investors whose projects bear the name of a start-up, with the aim of establishing the principles of simplicity and transparency to improve the business climate. This new legal formula contains provisions that are different from those entrusted to ordinary Joint stock companies.

The Simple Joint Stock Company is defined as the company whose capital is divided into shares and consists of partners that bear losses only within the limits of their quotas, as well as originating exclusively from start-up companies².

A) Legal updates on the company's simple funds

In order to give flexibility to the establishment of a simple Joint Stock company, the legislator introduced rules regarding the procedures for the establishment of this type of company where the public use of savings is prohibited (1), and no minimum capital requirement was made for the company (2).

1- simple joint stock company is a closed trading company.

In commercial legislation, there are two ways of establishing joint stock companies, where they are established either by public resource to savings³ or by

immediate establishment⁴, However, this differs in the establishment of a simple shareholding company, where the legislator in this type of company prohibited public resource to savings, To make it closed to public exchange, article 715 bis 139 of the Algerian Commercial Code affirms the prohibition of public asylum for the company to save or put the company's shares on the stock exchange. That is, this company cannot resort in its financing to the methods of subscription in its shares but stays closed and the lawmaker's objective behind this ban is to establish a closed legal framework regulating cooperation between partners who know each other, Protecting them from adopting an approach that may lose control of the company's funds and loss of control over them. public ", where the underwriting was initially open to the public with the potential to threaten the authority held by the majority.

The company's prohibition of public invitation to subscription could be interpreted as a counterpart to the contractual freedom granted to partners in the organization and management of the Simple Joint Stock Company to intervene to prevent it from inviting the public to subscribe, as a prerequisite for the company to pursue such a prohibition, resulting in the invalidity of its subscription contracts with the public for breaching a *jus cogens* rule⁵.

2- Waiver of the establishment of the minimum company's capital:

Following the amendment of the provisions of the Commercial Code under the aforementioned Act 22 - 09 We find that the legislator has abandoned setting the minimum capital of the Simple Joint Stock Company, With the extrapolation of articles 715 bis 134 and 715 bis 138 of the same Act, it is clear that the legislator left shareholders free to determine the company's capital in its Basic Law without imposing a minimum. and thus subordinate the company's capital assessment to the discretion of the partners or the desire of the sole contributing partner, as the case may be, in the Basic Law. This reflects the flexibility and possibility of being established by any investor even as a novice, since the biggest obstacle for junior investors is the issue of financing their projects.

The legislator left the founders free to determine the company's capital in the Basic Law, with a view to creating a legal template for cooperation between founders in start-up enterprises while giving them contractual freedom to regulate it⁶.

The purpose of adopting these financial facilities is to support startups institutions and encourage them to contribute to the development of the national economy.

B) Legal updates concerning the persons of the Simple Shareholding Company.

By introducing the Simple Joint Stock Company, the legislator has given flexibility and simplicity in the establishment of the company, the reason for adding the simple term for the Joint Stock Company in the name of this new legal form⁷.

Simplicity is reflected in the absence of a minimum requirement for partners (1) and the limitation of their establishment to startups institutions (2).

1- No minimum requirement for partners

One of the advantages of the new legal template is that there is no minimum requirement for partners other than the ordinary Joint Stock company, which is required to establish at least seven partners. Therefore, a simple shareholding company can be established by one or several natural and/or moral persons. It is due to the will and desire of the partners without legally determining the number of such partners. They are created by one or more contributors, which has led the legislator to abandon the idea of a contract in the company's definition.

It is noted that the legislator has opened the company's establishment to both natural and moral persons.

As a departure from the general rules in the establishment of commercial companies, which are considered a contract applying the contractual theory at its inception, the legislator authorized the establishment of a simple Joint Stock company by a person alone, whether natural or moral, in which case the simple Joint Stock company is called the sole person. Thus, a simple Joint Stock company with the sole person is established under a system established by the legislator and the contract does not exist, thereby introducing the institutional theory in the company's establishment⁸.

It should be noted that the shareholders of this company are liable for limited liability. They are not liable for the company's debts or the rights of others except within the limits of contributions as an interest in the company⁹, they are based on financial consideration as other money companies. The shareholder of a share of work is determined by its responsibility as agreed in the company's Basic Law.

2- Start-ups are the foundation of the Simple Joint Stock Company.

The legislature has made the establishment of this new type of company the preserve of institutions marked by start-up institution in order to devote increased attention to the State to support innovative and creative enterprises and to support the youth potential involved in building Algeria's new economy.

This type of enterprise is regarded as a junior investor, young holders of new and innovative economic enterprises, who find it difficult to establish institutions in the legal forms available in commercial law because they do not have significant capital, or because they fear being held accountable for the company's debts even from their own funds.

The start-up is a small-scale enterprise that is easy to create and does not require massive funding, creating a creative idea that helps to rapidly grow the market and increase profits. The start-up include all newly established enterprises in the business world, small capital, that have never existed before whatever the nature of their activity¹⁰. One of the prerequisites for the start-up is innovation and invention, thus replacing the capital economy with the knowledge economy¹¹.

As the startup's most important objection problem is its financing, the Simple Joint Stock Company was selected as an appropriate legal tool for the exercise of its activity by

junior investors. It should be noted that the decision to grant the "start-up" mark¹² is a basic document to be submitted for the establishment of a simple Joint Stock company, as can be seen from the text of Article 715 bis 133 of the Algerian Commercial Code "Corporations", which are marked as start-up rather than enterprises, because in their definition the enterprise is a natural person or a moral person, but the company is only a moral person. In turn, it allowed the company to be founded by a natural or moral person¹³.

Section II:

Legal updates on the management of the Simple Joint Stock Company.

Contractual in nature is an important place in the organization and management of the Simple Joint Stock Company. The legislator has put the management and organization of this company at the disposal of the partners, who are the main drivers of the company's activity through the management of its affairs.

Through the above-mentioned Act No. 22-09, the legislator reneged on the idea of regulation and introduced the idea of a contract in the Simple Joint Stock Company in order to activate cooperation among its members, The legislator did not impose on it a certain legal regime, neither in its establishment nor in its pattern of administration, nor even in its conduct, leaving room for the authority of the founders' will to regulate and structure it¹⁴. Matters relating to the company's organization (A), as well as the management of the company (B), are defined in the Basic Law of the Simple Joint Stock Company.

A) Agreement organization of the Simple Shareh Joint Stock olding Company.

The Algerian legislator introduced the idea of a contract in this type of business company, and the partners had broad freedom to organize the company. The status that overshadows the organization of a simple Joint Stock company is of a contractual nature, reflected in the free choice of the nature of the company's funds (1) and the sharing of profits and losses (2).

1- Partners' freedom to choose the nature of the company's funds

The most important characteristic of the Simple Joint Stock Company is that the legislator has left broad freedom for shareholder partners to organize and management under the Basic Law, the founders' agreement on the most important issues related to its establishment and management. They are free to draft their Basic Law in accordance with their will and interests, noting that this contractual freedom is found in persons' companies. Money companies are characterized by the interference of the law in the organization and management of the company.

The legislator left the full freedom of the partners to choose the nature of the cash or in kind funds that should have been provided for the establishment of the company. The Simple Joint Stock Company is characterized by the diversity of the funds provided

in its establishment. The partners have the power to choose between the cash or in kind funds. They are also entitled to submit even the work or idea unlike the Joint Stock company that does not accept a job share in its establishment. This facility is one of the driving causes for the development of this type of company.

The employer acquires shares in exchange for the work provided, but these shares are inalienable unlike the cash or in kind shares that the owner may dispose of, provided that such trading is outside the financial market and the exchange.

The shares corresponding to the work are also not included in the establishment of the company's capital. the company's capital consists of cash and in kind shares only without the shares resulting from the submission of the work, but the latter intervenes in the sharing of profits, the bearing of losses and net funds, and specifies in the Basic Law of the company how it is valued and the corresponding profits.

It should be noted that, with respect to cash advances, we apply the same provisions of Joint Stock Company, which require that cash payments be proved under the shareholder's authorization in a notarized contract that includes that the amount of the authorized payments corresponds to the amount of the deposited amounts¹⁵. Capital must be fully subscribed, and cash shares must be paid at least 1/4 of their nominal value.

The funds in kind result from the submission of shares in kind, the full amount of which must be paid at the time of their issuance. However, in order to simplify the procedures for the incorporation of the company, the legislator did not require the cash assessment of the in kind filings by the quota representative, if the value of the cash shares did not exceed half of the company's capital.

However, this exception is subject to the unanimity of the shareholders or the sole person's decision in the event that the company is made up of it only. Shareholders or only persons shall be liable in solidarity to others for a period of five years for the true value of the contributions in kind.

2- Contribution to profits and losses

The requirement to contribute to the profits and to bear the losses is one of the fundamental conditions of validity of the company's contract. The intention must be to make a profit and bear the losses that may result from the company's project. The division of profits and losses is governed by the company's Basic Law. Pursuant to the principle of *pacta sunt servanda*, profits and losses are shared in accordance with the agreement of the partners in the Basic Law.

If the share of each of the partners is not shown, each of them has a share in the company's capital¹⁶.

No partner may be deprived of profits or exempted from losses, as any agreement to exclude or exempt a partner from profits is null and void¹⁷, which is known as the lion's clause¹⁸.

Since the lion's clause contravenes article 426 of the Commercial Code, if he is found in the companies of the persons, the clause and the contract with him shall be

invalidated, and his presence in the companies of the funds shall not result in the invalidity of the contract of the company, but the clause alone¹⁹.

Inventory and dividend distribution are made at the end of each financial year at periodic dates²⁰.

In the Simple Joint Stock Company, pursuant to the principle of *pacta sunt servanda*, profits and losses are shared in accordance with the shareholders' agreement in the Basic Law of the Company. The legislator is also obliged to indicate the employer's share of the profits in the Basic Law. If this is not indicated, the solution contained in the General Provisions is applied, by assessing the company's cash use of its work with judicial expertise.

It should be noted that the legislator has not referred to the employer's contribution to the losses, but, by reference to the general provisions²¹, the employer can be exempted from contributing to the losses if he is not remunerated for his work, and if he is remunerated, the losses can be borne like all shareholders.

B) The privacy of the management of a simple Joint Stock company.

The partners of the Simple Joint Stock Company are free to administer and distribute their powers according to their wishes. Therefore, the management methods vary from company to company due to the flexibility of the legal system of the Simple Joint Stock Company²².

The most important area in which the legislator leaves the partners' contractual freedom is management, as they are free to appoint the head of the company (1), even in decisions to be taken collectively (2).

1- The position of the President of the Simple Joint Stock Company.

The legislator did not subject the Simple Joint Stock Company to the complexities of the Normal Joint Stock Company's structures, but rather left the partners free to management and regulate the company in the Basic Law.

In the face of the partners' contractual freedom, the appointment of the President shall be their party. the President shall wish the partners, as set out in the Basic Law the conditions to be met for his selection or appointment, such as the required expertise and scientific competence, the manner of his appointment if he is appointed unanimously or by majority, as well as the removal, his term of office and other matters estimated by the partners.

Partners can also frame the President's powers under contractual freedom by subjecting some important decisions to their authorization. The Algerian legislator has acknowledged that the company is bound by the actions of the President who is not affiliated with the company's subject matter in front of others of age of intent, unless the knowledge of the third party is established and this is based on general rules and provisions²³.

President of the Simple Joint Stock Company or the administrator appointed in the Basic Law as a General Manager or Commissioner who exercises the functions and

powers of the Board of Directors and its Chairman, enjoys the broad powers to act on behalf of the Company in all circumstances and within the limits of the Company's subject matter and in its relationship with others.

In the case of a simple single-person shareholder, the sole shareholder exercises the powers of the President and of the Partners' Association alone²⁴.

The rules of liability applicable to the Head of the Joint Stock Company and the administrators shall apply to the Head or Director²⁵.

2- Terms of reference of the company's General Assembly.

In view of the dominance of the contractual nature of the authority to administer and administer, the law empowers partners freely to determine decision-making procedures within the framework of the General Assembly, subject to the principle of the authority of the will of the partners. Article 715 bis 137 of the Algerian Commercial Code establishes general principles regarding partners' freedom to determine decisions to be taken collectively in the Basic Law their will occupies an important place in determining the scope of collective decisions, Here we find that the legislator has decided to reverse many provisions in favour of the will and desire of the partners s contractual nature for their agreement.

Nor has the Algerian legislature set a specific quorum for the adoption of resolutions within the framework of the General Assembly, thereby empowering partners freely to determine which quorum meets their requirements, based on the principle of their own will.

However, this freedom is restricted, as the Algerian legislature makes an exception to this asset, namely the legal framework for collective decisions. The law sets forth decisions to be taken collectively by shareholders in accordance with the qualifications specified in the Basic Law under article 715 bis 137, paragraph 2, of the Commercial Code.

This exception is the General Assembly's regular and extraordinary resolutions concerning:

Increase, consume and reduce capital, disconnect, dissolve the company, convert the company into another form, designation commissary account, as well as annual accounts and profits.

Conclusion:

Extrapolation of legal materials related to the Simple Joint Stock Company allowed us to see the specificities of the legal regulation enjoyed by this type of company, as it was easy to establish on the one hand and simple to management on the other .The legislator has moved to extinguish a flexible nature in order to reduce the obstacles faced by start-up, highlighting the State's intention to promote innovative and creative actions to support the role of the knowledge economy and economic diversification.

Our study of the company shows that the contractual nature is clearly and manifestly prominent, since the overriding principle of the company's life is the principle

of intervention in the life of a simple Joint Stock company is diminished, so that the freedom of partners is extremely broad.

In the light of this study, we have concluded a series of suggestions that we hope will be correct, outlined below:

The legislator is requested not to neglect commissary account as a necessary in commercial companies.

In order to avoid contradiction between the paragraphs of article 715 bis 133, the term "corporations" should be reviewed and replaced by enterprises in the last paragraph of the same article, based on the broad concept of the term "enterprise".

We go further and call on the legislator to include a chapter for the Simple Joint Stock Company, as it is an independent company that should be included in its own chapter like other companies.

Bibliography.

¹ - Act No. 22-09 of 05 May 2033 amends and supplements Ordinance No. 75-59 of 26 September 1975 containing the Commercial Code, Official newspaper No. 32 of 14 May 2022.

² - Article 715 bis 133 of the Algerian Commercial Code.

³ - It is called sequential incorporation, and is intended to relay the stages of the formation of the company by resorting to the public for the formation of the company's capital. Mohammed Al Taher BELAISSAOUI, *Commercial Companies, Part II*, Dar Al-Science for Publishing and Distribution, Annaba, 2014, p. 16.

⁴ - Instant incorporation or incorporation without public use of savings, where subscription is limited to the founders without inviting the public to subscribe to the shares of the company. Fatiha YOUSSEF born AMARI, *Commercial Companies' Provisions in Accordance with Recent Legislative Acts and Executive Decrees*, 2nd Edition, West Publishing and Distribution House, Oran, Algiers, 2007, p. 137.

⁵ - See in this sense Harbil Khaled AHRABIL, **Legal Nature of the Simplified Joint Stock Company in Moroccan Law**, *Journal of Researcher for in-depth Legal Studies*, Ibn Zahr Akadir University, Morocco, No. 7, p. 198.

⁶ - George RIPERT and René ROBLOT, by M.GERMAIN. *Treaty of commercial law*, volume 1, volume 2, *Les sociétés commerciales*, 18th edition, L.G.D.J, 2002, P1188.

⁷ - Yves GUYON, *Business Law, Volume, General Commercial and Corporate Law*, 12 Edition, Economica and Delat, 2003, P518.

⁸ - Said BOUKROUR, **legal system to establish the Simple Joint Stock Company**, *Journal of Law and Political Science*, University of Oran, Algeria, vol. 15, No. 03, 2022, p. 563.

⁹ - Article 715 bis 133 of the Algerian Commercial Code.

¹⁰ - Abdelmadjid LAMINE and Salma HASSAIN, **Measures to Support Algeria's startups and Innovation, read in the provisions of Executive Decree 20-254**, *Journal of Research in Contracts and Business Law*, vol. 5, No. 2, 2020, p. 4.

¹¹ - The name of the Ministry of Small and Medium Enterprises has been amended to the Ministry of Small Enterprises, start up, knowledge economy.

¹² - An application for a start up marking shall be submitted to a National Marking Commission, established by Executive Decree 20-254 of 15 September 2020, through the national portal of the start up. The tag is granted for 4 years renewable once.

¹³ - Article 715 bis 133, paragraph 2, of the Algerian Commercial Code.

¹⁴ - Philippe MERLE, *Commercial law, commercial companies*, 15th edition, Dalloz, Paris, 2002, P 793.

¹⁵ - Article 606 of the Algerian Commercial Code.

¹⁶ - Article 425 of the Algerian Commercial Code.

¹⁷ - Article 426 of the Algerian Commercial Code

¹⁸ - This name is based on the superstition of the lion, who engaged the rest of the monsters of the forest in a fishing company and then accounted for all the quotas. See Sami ABDELBAKI, *Business Law, World Theory of Companies - Persons' Companies According to the New Trade Law*, No. 17 of 1999, Arab Renaissance House, 2003-2004, p. 62.

¹⁹ - Amar AMOURA, *Explanation of Algerian Commercial Law (Business, Merchant, Business)*, No Edition, Dar al-Marefa, Algeria, 2009. p. 141.

²⁰ - Samiha Al-KILOBI, *Commercial Companies, General Theory of Companies and People's Companies*, Edition 4, Arab Renaissance House, 1992, p. 60, and Mohamed Farid Al-ARINI and Mohammed Al-Sayed ALFAQUI, *Commercial Law, Business, Merchants, Commercial Companies*. Al-Halabi Rights Publications, Beirut, 2010, p. 392.

²¹ - Article 426, paragraph 2, of the Algerian Commercial Code, which allows an agreement to exempt a partner who has only provided work from contributing to the losses provided that he has not been paid for his work.

²² - Khalid AHRABIL, *ibid.*, p. 92.

²³ - Article 715 bis 135 of the Algerian Commercial Code.

²⁴ - Article 715 bis 136 of the Algerian Commercial Code.

²⁵ - Article 715 bis 142 of the Algerian Commercial Code.