

The legal system of Commercial Sports Companies in Algerian Legislation and Regulation

النظام القانوني للشركات الرياضية التجارية في التشريع والتنظيم الجزائري

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Abstract:

We often hear about commercial sports companies in the sports community as the largest artery in the promotion and development of any sport in the world, the idea of the commercial sports company, which has generated hundreds of billions of dollars for clubs and people in particular and the country in general, and entered as a natural result of market changes, supply and demand, and the consolidation of the principles of a free market economy, and despite the delay of the Algerian state in entering it, which dates back to 1995, it was able to apply it to on the ground in 2010, this is in order to keep pace with global developments in the field of professionalism, in the hope of achieving an economic, commercial and financial vision, which is in the interest of the state and the advancement of the individual or the athlete in his field of specialization and the development of his level by raising him to the top of mastery and sporting achievement.

Keywords: commercial sports company, professional sports club, Legislation and Regulation.

الملخص:

كثيرا ما نسمع بالشركات الرياضية التجارية في الوسط الرياضي باعتبارها الشريان الأكبر في ترقية وتطوير أي منظومة رياضية في العالم، فهي تعتبر أحد أهم الوسائل الهامة في الوصول للمستوى الرياضي العالمي التي تطمح لتحقيقه كثير من الدول ومنها الجزائر حيث تم التوصل أن نظام الاحتراف المبلور الذي يتجسد في فكرة الشركة الرياضية التجارية الذي أصبح يدر مئات المليارات من الدولارات على الأندية والأشخاص بشكل خاص وعلى البلد بشكل عام ودخل كنتيجة طبيعية لمتغيرات السوق والعرض والطلب وترسيخ مبادئ اقتصاد السوق الحر، وعلى الرغم من تأخر الدولة الجزائرية في الإشارة له سنة 1995 إلا أنها استطاعت تطبيقه

♦ Author Sent

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على أرض الواقع سنة 2010 هذا من أجل مواكبة التطورات العالمية في مجال الاحتراف أملا في تحقيق رؤية اقتصادية، التجارية والمالية تصب في فائدة الدولة و الرقي بالفرد أو الرياضي في مجال تخصصه وتطوير مستواه من خلال الوصول إلى قمة الإتقان والإنجاز الرياضي الرياضة .
الكلمات المفتاحية: الشركة الرياضية التجارية، النادي الرياضي المحترف، التشريع والتنظيم.

Introduction:

Improving the level of economic competitiveness and achieving high-level sports performance require professional sports clubs to participate in major paid sporting events and competitions, to employ coaches and athletes in return for remuneration, and to engage in all commercial activities related to their purpose within the framework of the applicable legislation and regulations. This necessarily compels club managers to seek substantial capital to finance their various operations. In this regard, the solution has been found in the establishment of commercial sports companies, which are based on pooling the capital necessary to undertake and finance projects that individuals are unable to carry out on an individual basis ¹.

In Algeria, when we speak of a professional sports club, we are in fact referring to a commercial sports company, whereas the converse is not necessarily true. This is in accordance with the provisions of Article 78 of Law No. 13/05 relating to the organization and development of physical and sports activities ².

“A professional sports club is considered a commercial company ... etc.” The Algerian State opened the door to this system for the first time in 1995 through Ordinance No. 95/09 relating to the orientation, organization, and development of the national system of physical and sports education³.

However, the experience failed. With the passage of time, and on the one hand the desire of the Algerian State to reach a high level of performance, and on the other hand the increasing external pressures related to sports globalization, Algerian sport consequently entered the world of

¹ بلعيساوي محمد الطاهر، الشركات التجارية " شركات الأموال "، الجزء الثاني، دار العلوم للنشر والتوزيع، عناية، 2014، ص4.

² قانون رقم 05-13 المتعلق بتنظيم الانشطة البدنية و الرياضية و تطويرها المؤرخ في 23 يوليو سنة 2013، ج ر عدد 39 ، الصادرة بتاريخ 31 يوليو 2013.

³ الأمر 09/95 مؤرخ في 25 فبراير سنة 1995 يتعلق بتوجيه المنظومة الوطنية للتربية البدنية والرياضية وتنظيمها وتطويرها، ج ر، عدد17، صادر بتاريخ 29 مارس 1995.

professionalism in a realistic manner through Law No. 04/10 relating to physical and sports education .¹.

The legal system governing sports companies is considered the beating heart of the management and administration of the professional sports club, enabling it to progress to higher sporting levels without encountering legal obstacles. It consists of a set of legal rules that regulate and manage the life of the professional sports club from the stage of establishment to dissolution. Commercial companies in general can only grow and prosper within a legal environment that is compatible with national and global economic and social realities.

The importance of this topic lies in the sensitivity of the legal system governing sports companies in guiding professional sports clubs toward achieving high sporting levels and effective economic returns related to their objectives. Moreover, it seeks to enlighten sports stakeholders in general, and professional sports clubs in particular, about the legislative and regulatory framework governing commercial sports companies, especially in the absence of a specific codification regulating commercial sports companies in Algeria. This highlights the relevance of the subject addressed in this article, which adopts a descriptive–analytical approach. This field is governed by several provisions of Algerian sports legislation and regulations and intersects with other laws, such as commercial law, civil law, the Code of Civil and Administrative Procedures, and the Law on Associations, among others.

Within this framework, the following question arises:

What is the legal system governing sports companies under Algerian legislation?

In order to shed light on the various aspects of this topic, the following outline will be adopted:

Chapter One: The Concept of the Commercial Sports Company under Algerian Legislation

Section One: Definition, Characteristics, and Objectives of the Commercial Sports Company

Subsection One: Definition of the Commercial Sports Company

Subsection Two: Characteristics of the Commercial Sports Company

Subsection Three: Objectives of the Commercial Sports Company

¹ القانون 10/04 ، مؤرخ في 14 غشت سنة 2004، يتعلق بالتربية البدنية والرياضية، ج ر ، عدد52، صادرة بتاريخ 18 غشت سنة 2004.

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Section Two: Forms of the Commercial Sports Company

Chapter Two: Conditions Required for the Establishment of a Commercial Sports Company

Section One: General Substantive Conditions

Subsection One: Consent and Legal Capacity

Subsection Two: Cause and Object

Section Two: Special Substantive Conditions and Formal Conditions

Subsection One: Special Substantive Conditions

Subsection Two: Formal Conditions

Conclusion

Chapter One: The Concept of the Commercial Sports Company under Algerian Legislation

The commercial sports company is a relatively recent concept in Algerian law. Prior to 1989, Algerian legislation did not recognize the idea of such companies, as evidenced by Decree No. 63/254 regulating sports and sports associations¹. Nor was it addressed by Ordinance No. 76/81 dated 29 Shawwal 1396, corresponding to 23 October 1976, which contained the Law on Physical Education and Sports². The first recognition by the Algerian legislator came with Law No. 89/03 dated 8 Rajab 1409, corresponding to 14 February 1989, relating to physical education and sports and their development³.

It is noted that the term “professional sports club” was not used; instead, the designation “institutions of a commercial nature with sporting objectives” was employed. This appeared in Article 23 of the said law, which provides that “institutions of a commercial nature with sporting objectives may be established after consultation with the National Sports Council.” The same article explained the rationale for establishing such institutions by stating that “when the nature, intensity, and diversity of the organized activities require a mode of organization and management different from that of an association, it may be...”. It should be noted in this regard that the establishment of these

¹ المرسوم رقم 254-63 ، المؤرخ في 10 جويلية 1963 ، المنظم للرياضة والجمعيات الرياضية ، ملغى .

² الأمر 81/76 المؤرخ في 29 شوال 1396 الموافق 23 أكتوبر 1976 المتضمن قانون التربية البدنية والرياضية ، ملغى .

³ القانون 03/89 المؤرخ في 08 رجب 1409 الموافق 14 فبراير 1989 المتعلق بالتربية البدنية والرياضية وتطويرها ، ج ر عدد 07 ، الصادرة بتاريخ 15 فبراير 1989 .

institutions is subject to consultation with the National Sports Council as well as authorization from the minister in charge of sports.¹

If Law No. 89/03 relating to physical education and sports and their development did not clearly define the legal regime governing these di² ... institutions, Ordinance No. 95/09 relating to the orientation, organization, and development of the national system of physical education and sports³ explicitly referred to professional sports clubs in Article 15, as well as in Articles 20 to 22 thereof.

Professionalism was first adopted in the field of football during the 1999/2000 sports season; however, the experiment failed and this system was abandoned. It was later reinstated in an effective and permanent manner in 2010 following the promulgation of Law No. 10/04 relating to the organization of physical and sports activities⁴.

It repealed the provisions of Law No. 10/04 relating to the organization of physical and sports activities insofar as they were inconsistent with it, and it was more explicit with regard to professionalism, in order to keep pace with global developments whereby sport has become an economic sector that contributes to economic growth and encourages both domestic and foreign investment through various incentives. This is clearly reflected in Article 80, which provides that “the State encourages, through incentive measures and accompanying support measures, every professional sports club that establishes a training center for young talents.” The same law also defines the procedures for establishing a professional club and for participation in the company’s capital by Algerian and foreign nationals

The commercial sports company system is considered the key for Algerian sports clubs—particularly football clubs—to enter the professional sphere and to participate in various professional sports competitions and events, especially continental and international championships and leagues. In international sport, professionalism is directly associated with the commercial sports company.

¹ عبد العزيز اوس ، نظام التربية البدنية والرياضية من خلال التشريع الرياضي الجزائري في المنظومة التربوية الوطنية دراسة لمرحلة ما بعد استرجاع السيادة الوطنية من 1962 – 2004 ، رسالة ماجستير ، قسم التربية البدنية والرياضية ، سيدي عبد الله ، السنة الجامعية 2008/2009 ص 40.

² القانون 03/89 ، مرجع سابق.

³ الامر رقم 09/95 ، مرجع سابق.

⁴ قانون رقم 05-13 ، مرجع سابق.

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Section One: Definition, Characteristics, and Objectives of the Commercial Sports Company

Commercial sports companies are a form of commercial companies familiar to the public, but they are primarily distinguished by their sporting and commercial activities, which must comply with the applicable legislation and regulations. Paragraph 3 of Article 1 of Executive Decree No. 15/73, which regulates the provisions applicable to professional sports clubs and specifies the model statutes for commercial sports companies, provides that ¹...The forms of commercial sports companies... are those provided for in the provisions of commercial law... etc.” Therefore, the study will examine the commercial sports company, aiming to establish a precise legal definition, identify the characteristics that distinguish it from other companies, and clarify the objectives it seeks to achieve.

Subsection One: Definition of the Commercial Sports Company

It should be noted that Algerian legislation and regulations, particularly those governing the sports sector and commercial sports companies, have not explicitly defined the commercial sports company. Therefore, the definition will rely on Algerian commercial law as a reference.

Firstly, Paragraph 3 of Article 1 of Executive Decree No. 15/73, which regulates the provisions applicable to professional sports clubs and specifies the model statutes for commercial sports companies²... companies are “a form of commercial companies recognized under Algerian commercial law.” Reference will also be made to laws related to sports activities and commercial sports companies.

Paragraph 1 of Article 1 of the aforementioned Executive Decree No. 15/73 identifies three types of commercial sports companies:

*Single-member sports establishments with limited liability (EURL SPORTIVE)

*Multi-member limited liability sports companies SARL SPORTIVE

*Joint-stock sports companies SPA SPORTIVE

¹ المرسوم التنفيذي رقم 73/15 يضبط الأحكام المطبقة على النادي الرياضي المحترف ويحدد القوانين الأساسية النموذجية للشركات الرياضية التجارية، ج ر عدد 11، الصادرة بتاريخ 25 فبراير 2015.

² المرسوم التنفيذي رقم 73/15، مرجع سابق.

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From this paragraph, it is clear that the classification of commercial sports companies falls under commercial companies, specifically “capital companies,” distinguishing them from “partnership companies”.

The general concept of a company is provided in Article 416 of the Algerian Civil Code¹.

It is defined as “a contract by which two or more natural or legal persons agree to contribute to a joint activity by providing a share of labor, property, or money, with the aim of sharing any resulting profits, achieving an economic benefit, or attaining a common economic objective, while bearing any losses that may arise”.

According to Article 416 of the aforementioned law, a company is a contract, and the very nature of a contract requires plurality; it cannot be concluded by a single person alone. Therefore, under Article 416, a company contract must be concluded between two or more persons, whether natural or legal.

It is worth noting here the concept of a “single-member sports establishment” as a special form of a multi-member limited liability sports company .²

Since commercial sports companies are classified as capital companies, they can be defined as follows: “They are commercial sports companies governed by financial considerations, not by the personal considerations that characterize partnership companies. What matters is the contribution of each partner in terms of money and capital, and in many cases, the partners in large commercial sports companies do not even know each other”.

****Definition of Single-Member Limited Liability Sports Establishments _EURL SPORTIVE_**

These are capital companies established under Order No. 96/27 dated 09/12/1996, which incorporates the Algerian Commercial Code. They are commercial companies in form, resulting from the aggregation of all shares of a multi-member limited liability sports company into the hands of a single person. The liability of this single partner is limited to the amount of capital they allocate to the sports company, without acquiring the status of a trader. The legal framework for a single partner is the same as that for partners in a multi-member limited liability company, with the particularity that the single partner holds many powers that, in a multi-member company, would be reserved for the general assembly.

¹ أمر رقم 58/75 مؤرخ في 26 سبتمبر 1975، يتضمن القانون المدني، المعدل والمتمم.

² بلعيساوي محمد الطاهر، الشركات التجارية " شركات الأموال "، مرجع سابق، ص 155.

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Therefore, the single partner must be legally capable of conducting commercial activities, as they are the one responsible for managing and running the company.¹

****Definition of Multi-Member Limited Liability Sports Companies (SARL SPORTIVE)**

These are commercial sports companies classified as capital companies, consisting of partners who do not acquire the status of traders and whose liability is limited to the amount of their shares. Article 564 of the Algerian Commercial Code states: "A limited liability company is established by one or more persons who are only liable for losses to the extent of the contributions they have made".

**** *Definition of Joint-Stock Sports Companies (SPA SPORTIVE)**

These are commercial sports companies, also classified as capital companies, which are relatively rare in the sports sector. They consist of two categories of partners:

**** 1. General partners (solidary partners) **** who acquire the status of traders, manage the company, and whose names appear in the company's title.

**** 2. Shareholding partners (investors)**** whose shares can be traded commercially. They are only liable for the company's debts up to the amount of their shares, cannot participate in management, and their names do not appear in the company title.

The limited establishment of such companies is largely due to a lack of familiarity with their advantages or neglect by businesspeople. Article 715 of the Algerian Commercial Code states: "A joint-stock limited partnership is established with its capital divided into shares, among one or more general partners who hold the status of traders and are jointly and permanently liable for the company's debts, and limited partners who are only liable up to the value of their shares.²

Based on these definitions, a legally established amateur sports club whose revenues and wages amount to at least fifty (50) million dinars for the last financial year may establish a commercial sports company and thus enter the realm of professionalism. This is achieved through a meeting contract of its executive committee members or managers, whereby each contributes a share in cash or in kind for the purpose of establishing a commercial company,

¹ بلعيساوي محمد الطاهر، الشركات التجارية " شركات الأموال "، مرجع سابق، ص 108 و156.

² بلعيساوي محمد الطاهر، الشركات التجارية " شركات الأموال "، مرجع سابق، ص 162 و163.

generating profits or losses, which are then shared among them in proportion to the value of their contributions, in accordance with the provisions set forth by the Algerian legislator in the Algerian Commercial Code.¹.

Likewise, any legal or natural person of Algerian nationality may establish a commercial sports company (a professional sport club) by contributing, in the form of shares in the company's capital, a sports facility that complies with the applicable standards, provided that such a facility is owned by them and operated in accordance with the forms prescribed by the laws and regulations in force.².

In addition, any amateur sports club, as well as any natural or legal person, may establish a professional sports club or participate in it as a shareholder or partner.³.

What can be concluded is that a commercial sports company is nothing more than a professional sports club that the law requires to adopt one of the legally prescribed forms of commercial sports companies, for the purpose of engaging in professional sports and participating in various sports events and competitions, whether international, continental, or global.

Section Two: Characteristics of the Commercial Sports Company

As previously indicated in defining commercial sports companies, the Algerian legislation and regulations governing the sports sector and commercial sports companies do not expressly define the commercial sports company. Therefore, in determining the characteristics that distinguish commercial sports companies, reference will be made to the Algerian Commercial Code as a primary source, as well as to Article 78 of Law No. 13/05 relating to the organization and development of physical and sports activities, in addition to Executive Decree No. 15/73 previously mentioned. These characteristics are as follows:

****General characteristics of commercial sports companies from the perspective of Law No. 13/05 relating to the organization and development of physical and sports activities and Executive Decree No. 15/73, which lays down the rules applicable to professional sports clubs and determines the model articles of association of commercial sports companies**:**

***Commercial sports companies are companies with a sporting purpose.**

¹ المادة 5 من المرسوم التنفيذي رقم 73/15، مرجع سابق.

² المادة 9 من المرسوم التنفيذي رقم 73/15، مرجع سابق.

³ المادة 12 من المرسوم التنفيذي رقم 73/15، مرجع سابق.

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*Commercial sports companies are companies by form, regardless of the subject of their activity.

*Commercial sports companies are exhaustively defined as follows:

- * Single-member sports enterprises with limited liability;
- * Sports limited liability companies;
- * Sports joint-stock companies.

*Commercial sports companies are governed by the provisions of the following laws:

- * The Algerian Commercial Code;
- * Law No. 13/05 relating to the organization and development of physical and sports activities;
- * The model articles of association of commercial sports companies, specific to each company, annexed to Executive Decree No. 15/73 mentioned above.

*Commercial sports companies participate in various paid sports events and competitions.

*Commercial sports companies employ coaches and athletes in return for remuneration.

*Commercial sports companies are subject to local and international sports regulations.

*Commercial sports companies are commercial entities subject to the supervision of the relevant national sports federation.

*The single-member sports enterprise with limited liability allocates all the profits it achieves to the establishment of a reserve fund.¹

Characteristics of Commercial Sports Companies from the Perspective of Commercial Law:

****Single-Member Sports Enterprises with Limited Liability _EURL SPORTIVE_:**

*They are enterprises established by a single person, where the sole partner personally exercises all the powers of the general meeting of partners in a multi-member limited liability company.

*The sole partner may act as a guarantor for the single-member sports enterprise with limited liability.

*The sole partner may serve as the manager, or the manager may be a third party.

¹ المواد من 1 إلى 4 من المرسوم التنفيذي رقم 73/15، والمواد من 78 إلى 82 قانون رقم 05-13، مرجع سابق.

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*The sole partner may, at any time, transfer all or part of the company's shares in the single-member sports enterprise with limited liability.

*The single-member sports enterprise with limited liability is not subject to the provisions of the Algerian Civil Code with regard to the powers of the general meeting of partners in multi-member limited liability companies¹.

Multi-Partner Sports Limited Liability Companies _SARL SPORTIVE_ :

*Sports limited liability companies are companies with multiple partners.

*Sports limited liability companies are medium-sized entities, suitable for medium-scale projects and needs.

*Sports limited liability companies are companies in which liability is limited.

*In sports limited liability companies, the personal consideration of the partner plays a significant role, as this type of company is formed between partners who know one another and are bound by mutual trust; however, this personal element is less pronounced than in partnerships.

*Sports limited liability companies are hybrid companies, positioned between partnerships and capital companies.².

Sports Joint-Stock Companies _SPA SPORTIVE :**

- *Sports joint-stock companies are companies with multiple partners.
- *Sports joint-stock companies are of a hybrid nature, combining the rules governing partnerships and those governing capital companies, and they include two categories of partners: general partners and shareholder partners.
- *Sports joint-stock companies are characterized by being subject to more than one set of legal rules.
- *The company name consists of the name of one or more of the general partners, or of all the general partners.
- *The transfer of the shares of general partners is subject to the rules and provisions governing general partnerships, as these companies are based on the personal consideration of partners.
- *Sports joint-stock companies are distinguished by the existence of a fair balance between general partners and shareholder partners³.

¹ بلعيساوي محمد الطاهر، الشركات التجارية " شركات الأموال "، مرجع سابق، ص 159 و 160.

² بلعيساوي محمد الطاهر، الشركات التجارية " شركات الأموال "، مرجع سابق، ص 110 و 111.

³ بلعيساوي محمد الطاهر، الشركات التجارية " شركات الأموال "، مرجع سابق، ص 165، 166 و 167.

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Section Three: Objectives of the Commercial Sports Company

The Algerian sports legislator stipulated, in Article 2 of Executive Decree No. 15/73 laying down the rules applicable to professional sports clubs and determining the model articles of association of commercial sports companies, the main sporting objectives that a commercial sports company (professional sports club) seeks to achieve throughout its existence, whether it takes the form of a single-member limited liability enterprise, a multi-partner limited liability company, or a joint-stock company. These objectives are as follows:

- *Participation in various national and international sports competitions.
- *Carrying out training activities for the benefit of athletes and coaches, and establishing sports talent training centers.
- *Ensuring the training, supervision, preparation, and assembly of the club's athletes, or those of any other team.
- *Participating in the selection, identification, and guidance of young sporting talents.
- *Working toward the education and promotion of the club's members and contributing to the promotion of sportsmanship.
- *Organizing paid sports events, exhibitions, and competitions.
- *Establishing or operating sports facilities in accordance with the applicable regulations, and managing and maintaining the club's assets.
- *Paying salaries to the club's athletes and coaches in compliance with the legislation and regulations in force.
- *Carrying out advertising, sponsorship, and support activities that contribute to the development of its financial resources.
- *Engaging in all commercial and investment activities that contribute to the development of its resources and ensure its sustainability.
- *Organizing leisure and recreational activities for the benefit of youth and the public.

All these objectives pursued by the professional sports club have been specified by the Algerian sports legislator by way of example and not limitation. The same applies to other sporting objectives that help the

professional sports club to emerge and develop, enhance and increase its financial resources, and ensure its continuity ¹.

Second Requirement: Forms of the Commercial Sports Company

Article 82 of Law No. 13/05 provides as follows:

“Any amateur sports club that regularly participates in the organization of paid sports events and activities, and whose revenues, as well as the wages of the coaches and athletes it employs, have, during the previous financial year, reached an amount exceeding a ceiling determined by regulation, may establish a commercial sports company as provided for in this law”.

Accordingly, a professional sports club may take one of the following commercial forms:

*Single-Member Sports Enterprise with Limited Liability _EURL SPORTIVE_

*Multi-Partner Sports Limited Liability Company _SARL SPORTIVE_

*Sports Joint-Stock Company _SPA SPORTIVE_².

Article 1 of Executive Decree No. 15/73 also provides that:

[...]“This decree aims to lay down the rules applicable to the professional sports club and to determine the model articles of association of the single-member sports enterprise with limited liability, the sports limited liability company, and the sports joint-stock company.³

It becomes clear from the provisions of the aforementioned articles that these forms of commercial sports companies are exhaustive; a commercial sports company may not take any form other than those previously mentioned. Otherwise, it would be deemed null and void, as this pertains to public order.

Chapter Two: Conditions Required for Establishing a Commercial Sports Company

To establish a valid commercial sports company that enjoys all its legal effects, and with reference to the provisions of Article 416 of the Algerian Civil Code, “A company is a contract ⁴. It is necessary to meet **general substantive conditions**, which are required for all commercial companies,

¹ المادة 2 من المرسوم التنفيذي رقم 73/15، مرجع سابق.

² المادة 82 من القانون رقم 05.13، مرجع سابق.

³ المادة 1 من المرسوم التنفيذي رقم 73/15، مرجع سابق.

⁴ المادة 416 من القانون المدني، مرجع سابق.

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as well as ****specific substantive conditions****, which must be met depending on the form of the commercial company. This is because, for commercial sports companies, the legislator has required that, in order to be valid, they must take a specific form, i.e., one of the forms mentioned above. In addition to these, ****formal requirements**** must also be fulfilled. The fulfillment of the general and specific substantive conditions, along with the formal requirements, results in the creation of a legal entity that enjoys legal personality.

With reference to the provisions of Article 81 of Law No. 13/05 relating to the organization and development of physical and sports activities"¹.

“Any amateur sports club, as well as any natural or legal person, may establish a professional sports club...” From this, it can be concluded that the persons eligible to establish a commercial sports company are the same as those qualified to establish a professional sports club, and they are as follows:

**** *Natural persons:**** A commercial sports company may be established by two or more natural persons (Article 416 of the Algerian Civil Code), except for the single-member sports enterprise with limited liability.

**** *Legal persons:**** A commercial sports company may be established by two or more legal persons (Article 416 of the Algerian Civil Code), except for the single-member sports enterprise with limited liability.

**** *Amateur sports clubs:**** Those that regularly participate in paid sports events and competitions.

According to Article 82 of Law No. 13/05 mentioned above:

“Any amateur sports club that regularly participates in the organization of paid sports events and activities, whose revenues and wages reach fifty (50) million dinars for the last financial year, may establish a commercial sports company in accordance with the forms provided by the legislation in force”.

As stipulated in Article 5 of Executive Decree No. 15/73, this decree lays down the rules applicable to professional sports clubs and determines the model articles of association of commercial sports companies².

As clarified in Article 6 of the same decree, “revenues and wages” are defined.

¹ المادة 81 من القانون 05/13، مرجع سابق.

² المرسوم التنفيذي رقم 73/15، مرجع سابق.

****First Requirement: General Substantive Conditions****

Since a company is a contract, it must meet the substantive conditions required for the formation of a contract, namely ****consent, capacity, cause, and subject matter.****

Section One: Consent and Capacity

A company is a contract under which two or more persons (except in the case of the single-member sports enterprise with limited liability) commit themselves. This means there must be a convergence of the partners' (contracting parties') wills to establish a reciprocal relationship between them.

Consent, as is well known, constitutes the alignment (agreement) between the contracting parties' wills to establish a reciprocal relationship in light of what they agree upon regarding the subject, nature, terms, obligations, and rights of each party. The absence of proper consent leads to the nullity of the company contract.

The consent of the parties must be sound and free from defects such as:

**** *Error: **** The error must be material, such that the partner would have refrained from contracting had they known of it.

**** *Fraud (misrepresentation): **** Fraud constitutes a defect when committed by all partners or by one of them with bad intent, and with the knowledge of the others.

****Coercion**** is generally excluded by the judiciary, as it is inconceivable for a person to be forced to join a company without their consent.¹

Consent is linked to ****capacity****. Capacity here refers to ****legal capacity****, meaning the person's ability to assume obligations and acquire rights. Therefore, legal capacity is required to enter into a company (19 years old according to Article 40 of the Algerian Civil Code.)

For capacity to be valid, it must not be affected by any of the conditions listed in Article 42 of the Algerian Civil Code, which include ****insanity, mental infirmity, and imbecility****. Insanity, mental infirmity, and being underage completely negate capacity, while imbecility results in limited capacity, as stipulated in Articles 42 and 43 of the Algerian Civil Code.

Thus, a person who has reached the age of majority (19 years), enjoys full mental faculties, and is not under guardianship, is eligible to participate in all

¹ أبو زيد رضوان، مرجع سابق، ص 38.

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forms of commercial sports companies. As for a minor under guardianship, Article 5 of the Algerian Commercial Code applies ¹ If a minor wishes to participate in commercial sports companies, the guardian or legal representative may invest the minor's funds by subscribing to the shares of these companies ².

This consent must be present for all partners in the commercial sports company. However, regarding the members of the amateur sports club that establishes the commercial sports company, it is not required that every member give consent; it is sufficient that consent is given by two-thirds of its members.³.

As for the ****capacity of a legal person**** (the commercial sports company), Article 50 of the Algerian Civil Code states:

“Capacity is limited to the extent defined by its founding contract or as determined by law

Section Two: Subject Matter and Cause

The ****subject matter**** of the company is the purpose for which it was established, or the project that the partners intended to achieve, namely entering the realm of professional sports, in addition to other activities that may be carried out alongside its primary objective. Examples include: establishing training centers, creating club-owned hotels, organizing leisure and recreational activities for the club members, and exporting sports equipment. The subject matter must meet several conditions:

*It must be lawful and not contrary to public order or public morals.

The ****cause**** is the motive that prompted the partner to join the company, i.e., the aim of achieving a sporting objective. The cause must meet the same requirements as the subject matter:

*It must be lawful and not contrary to public order⁴.

¹ الأمر رقم 59-75 المؤرخ في 20 رمضان عام 1395 الموافق 26 سبتمبر سنة 1975 المتضمن القانون التجاري، المعدل والمتمم، ج ر عدد 27 ، سنة 1993.

² Yves Guyon, objet social des sociétés, juris classeursociétés 2 (1 a 23), fascicule 9 .

³ عباس فريد، خصوصية النوادي الرياضية ذات الطابع التجاري، رسالة لنيل شهادة الدكتوراه في العلوم، جامعة مولود معمري تيزي وزو، 2015 ص 211.

⁴ بلعيساوي محمد الطاهر، الشركات التجارية " شركات الأموال "، مرجع سابق، ص 20 و 21.

****Second Requirement: Specific Substantive Conditions and Formal Requirements****

In this requirement, we will examine each type of commercial sports company separately in terms of its ****specific substantive conditions**** as well as its ****formal requirements****, divided into two sections.

Section One: Specific Substantive Conditions

****Single-Member Sports Enterprise with Limited Liability _EURL SPORTIVE_**

****Regarding multiple partners:**** The single-member enterprise consists of one partner. The sole partner must be fully capable of engaging in commercial activities, as they will manage and run the company. While some argue that a minor may act as the sole partner, considering the responsibility arising from management and administration, the sole partner should have full legal capacity, starting from the establishment procedures, which may create liability toward third parties.

****Regarding contributions:**** Initially, the sole partner provides a cash contribution to the company's capital, with no minimum cash amount specified, according to the amendment of Law No. 15-20 dated December 30, 2015. In the case of a contribution in kind, a delegate appointed by the sole partner evaluates the contribution. Both the delegate and the sole partner are responsible for this evaluation for a period of five years, in accordance with Article 568 of the Algerian Commercial Code.

****Regarding profit and loss distribution:**** All profits earned are allocated to forming a reserve fund.

**** *Regarding the intention to participate in the enterprise:**** There is no scope for discussion, as there is no other partner¹.

Multi-Partner Sports Limited Liability Company (SARL SPORTIVE):

*****Regarding multiple partners:**** Generally, the company consists of two or more partners, like other commercial companies. These partners may be natural or legal persons. According to the amendment of Law No. 15-20 dated December 30, 2015, the number of partners may not exceed 50; otherwise, the commercial sports company is automatically dissolved by law.

**** *Regarding contributions:**** Partners must provide either ****contributions in kind**** (valued to indicate each partner's share of the social shares or

¹ Geroge ripert René roblot, traité élémentaire de droit commercial, tome2, édition economica ,p742 .

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capital) or ****cash contributions****, which enter the company's capital without a minimum amount specified, leaving it to the partners to determine in the articles of association, according to the amendment of Law No. 15-20 dated December 30, 2015, as reflected in Article 567 of the Algerian Commercial Code. Regarding ****contributions in labor****, partners are allowed to provide a labor contribution explicitly under Article 567 bis of the Algerian Commercial Code, which states:

“ A contribution to a limited liability company may consist of work, with the method of valuing its worth and the profit it generates determined in the company's articles of association; it does not contribute to the company's capital formation”.

**** *Regarding profit and loss distribution:**** Profits are allocated according to each partner's contribution to the company's capital, and losses are similarly apportioned based on the capital contribution.

**** *Regarding the intention to participate:**** The partners' wills must align in positive cooperation to achieve the purpose for which the commercial sports company was established, namely achieving a sporting objective.¹.

Sports Joint-Stock Company _SPA SPORTIVE:

After the appointment of the manager or managers (natural or legal persons), Article 715 of the Algerian Commercial Code states:

“The first manager or the first managers are appointed in accordance with the articles of association and carry out the procedures for establishing the joint-stock company”.

**** *Regarding multiple partners: **** The company must consist of at least one general partner and three shareholder partners, with no maximum limit specified (i.e., four or more partners), according to Article 715 of the Algerian Commercial Code.

**** *Regarding contributions: **** The capital of a joint-stock company is divided into shares, which subjects it to the rules governing joint-stock companies in this regard. Partners may provide ****cash contributions**** (no minimum capital requirement is specified by the legislator) or ****contributions in kind**** (valued by a share delegate appointed for this purpose; in case of disagreement, the valuation is submitted to a vote by the general assembly). Additionally, a partner who is both a general partner and a shareholder may, in addition to their cash or in-kind contribution, provide a

¹ Yves Guyon, droit des affaires, tome 1, édition economica .1994, p 507.

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labor contribution; however, this labor contribution does not form part of the company's capital.

**** Regarding profit and loss distribution: **** Profits are allocated according to each partner's contribution to the company's capital, and losses are similarly apportioned based on the capital contribution.

**** Regarding the intention to participate:**** The partners' wills must align in positive cooperation to achieve the purpose for which the commercial sports company was established, namely achieving a sporting objective.¹.

Section Two: Formal Requirements

Article 418 of the Algerian Civil Code provides:

“The company contract must be in writing; otherwise, it is null and void. Likewise, any amendments to the contract are null if they do not comply with the same form required for the original contract, etc”.

According to this provision, the mere consent of the parties (or of the party, as the case may be) is not sufficient for the formation of a commercial sports company. The consent must be formalized in a written document, prepared by a ****notary****, and signed by the partner(s). The company contract must therefore be ****written and sealed by the notary****. Moreover, the company does not legally exist unless the contract is ****filed with the National Center of the Commercial Register**** and registered according to the legally prescribed conditions, in order for the company to fully enjoy its rights and assume its obligations.

****Single-Member Sports Enterprise with Limited Liability _EURL SPORTIVE _**

The sole partner must either write the constitutive contract themselves or delegate a third party to do so before a public officer (notary). If a limited liability company already exists and all shares are concentrated in the hands of a single partner, only the articles of association need to be amended; it is not necessary to re-register the company in the commercial register, unlike when establishing a single-member limited liability company from scratch.

Regarding the ****publication of the company contract****, Article 548 of the Algerian Commercial Code requires that the constitutive contracts and any amendments be filed with the National Center of the Commercial Register and published according to the specific regulations for a single-member limited liability company; otherwise, the contract is null. The sole founding

¹ George ripert René robolot,OP .cit,p 662,663.

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partner must initiate the publication of the company contract in the ****Official Bulletin of Legal Announcements**** in accordance with Executive Decree No. 92/70 dated February 18, 1992.

Additionally, a ****summary of the constitutive contract**** must be published by the notary, stating the company's name, capital, and registered office, in a daily newspaper specialized in legal announcements. Finally, for the commercial sports company to be properly established, it must be ****registered in the commercial register****, as commercial companies acquire legal personality only from the date of their registration¹.

Multi-Partner Sports Limited Liability Company _SARL SPORTIVE_

Article 545 of the Algerian Commercial Code requires that the company contract be formalized as a ****notarial deed****; otherwise, it is null and void.

Regarding the ****publication of the company contract****, Article 548 of the Algerian Commercial Code provides that the constitutive contracts and any amendments must be filed with the ****National Center of the Commercial Register**** and published according to the specific rules applicable to multi-partner limited liability companies; otherwise, they are null and void.

The founding partners of the commercial sports company must also initiate the publication of the constitutive contract in the ****Official Bulletin of Legal Announcements****, in accordance with Executive Decree No. 92/70 dated February 18, 1992, which governs the official bulletin of legal announcements.

Additionally, a ****summary of the constitutive contract**** must be published by the notary, including the company's name, capital, and registered office, in a daily newspaper specialized in legal announcements.

Finally, for the commercial sports company to be properly established, it must be ****registered in the commercial register****, as commercial companies acquire legal personality only from the date of their registration².

Sports Joint-Stock Company _SPA SPORTIVE_

The founders must draft the company contract before a ****notary****, ensure it is signed by all partners, and complete all procedures for registration with the ****Commercial Register**** so that the company acquires legal

¹ George ripert René robolot, OP .cit,p 74,aussi Paul le cannu,Droit des sociétés, 2eme édition, montchrestien, 2003, p742.

² George ripert René robolot, OP .cit,p 637.

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personality. Additionally, the founders must comply with the legal publication requirements, including publication in the ****Official Bulletin of Legal Announcements**** as well as in newspapers specialized in legal announcements. These steps are necessary for the proper establishment of the company, culminating in the creation of a new legal entity: the ****sports joint-stock company¹** .

Conclusion:

Based on the study of the legal system of commercial sports companies under Algerian legislation and regulations, it can be concluded that, under the sports legislation and regulations in Algeria, a professional sports club is considered a commercial company with a sporting purpose. Regardless of its specific form in practice, commercial sports companies include:

**** *Single-Member Sports Enterprises with Limited Liability (EURL SPORTIVE)**

**** *Multi-Partner Sports Limited Liability Companies (SARL SPORTIVE)**

**** *Sports Joint-Stock Companies (SPA SPORTIVE)**

These companies are commercial in nature according to their form, regardless of the subject of their activity. They are governed primarily by financial considerations, rather than personal factors, meaning what matters is the capital or cash contributed by the partner. Each type of commercial sports company has distinctive characteristics compared to other commercial sports companies in general, as well as clearly defined sporting objectives, as specified in Article 2 of Executive Decree No. 15/73, which governs the rules applicable to professional sports clubs and sets out the model articles of association of commercial sports companies.

The legislator has explicitly determined the persons eligible to establish this type of commercial sports company: amateur sports clubs, as well as natural or legal persons.

According to Article 416 of the Algerian Civil Code, a company is, in general, a contract, and the very nature of a contract implies multiplicity; a contract cannot be concluded by a single person alone. Therefore, according to Article 416, a company contract must be concluded between two or more persons, whether natural or legal.

¹ Paul le cannu,OP .cit,p 703.

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It is worth noting the ****single-member sports enterprise****, which is a special form of the multi-partner sports limited liability company.

Commercial sports companies, from the day of their establishment until their dissolution, are subject to the applicable sports legislation and regulations, including the model articles of association annexed to Executive Decree No. 15/73, which govern professional sports clubs and set the model rules for commercial sports companies. These model articles serve as the “soul” of the commercial sports company, providing specific regulations regarding the company’s form, purpose, duration, capital, management and administration (both moral and financial), disputes, and dissolution.

In cases where the sports legislation and regulations are incomplete or silent, reference is made to the ****Algerian Commercial Code****, or to the ****Algerian Civil Code****, which serves as the general legal framework for all laws .

Based on our study of the topic, we can draw a set of conclusions as follows:

- ✓ ***When discussing a professional sports club under Algerian sports legislation, this directly refers to ****commercial sports companies****, whereas the reverse is not necessarily true.**
- ✓ ***The Algerian legislator has ****recently adopted commercial sports companies****, which means the related legislative and regulatory texts are also recent.**
- ✓ ***The Algerian sports legislator has ****not addressed the legal system of commercial sports companies in a single law.******
- ✓ ***The legislator has ****explicitly defined three forms of commercial sports companies:******
- ✓ *** Single-Member Sports Enterprises with Limited Liability (EURL SPORTIVE(**
- ✓ *** Multi-Partner Sports Limited Liability Companies (SARL SPORTIVE(**
- ✓ *** Sports Joint-Stock Companies (SPA SPORTIVE(**
- ✓ ***Commercial sports companies are ****sports companies by form****, regardless of the type of activity they practice.**
- ✓ ***Commercial sports companies are classified among the generally recognized ****commercial companies****, specifically ****capital companies****, but with sporting objectives.**
- ✓ ***A company is a contract, and the nature of a contract implies multiplicity; a contract cannot be concluded by a single person alone. Therefore, a company contract must be concluded between ****two or more****

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persons**, whether natural or legal, except for the **single-member sports enterprise**, which is established by a single person who performs all the related operations; it is a special form of the multi-partner sports limited liability company.

✓ *Each commercial sports company has **general characteristics and specific characteristics**, the latter distinguishing it from other companies.

✓ *The Algerian sports legislator has outlined the **main sporting objectives** pursued by a commercial sports company (professional sports club), which are specified, for example, in Article 2 of Executive Decree No. 15/73, governing professional sports clubs and defining the model articles of association of commercial sports companies.

✓ *The persons eligible to establish a commercial sports company are the same as those eligible to establish a professional sports club, namely:

✓ * Natural persons

✓ * Legal persons

✓ * Amateur sports clubs

✓ *To establish a valid commercial sports company (professional sports club) with full legal effects, it is necessary to meet **general substantive conditions** applicable to all commercial companies, **specific substantive conditions** according to the company form, and **formal requirements**. When these conditions are met, a **legal entity** is created that enjoys legal personality and can exercise its rights and assume its obligations.

✓ *According to Article 78 of Law No. 13/05 on the organization and development of physical and sports activities, Algerian commercial sports companies are subject to **sports legislation**; in the absence of a relevant provision, the **Algerian Commercial Code** applies, and if that is silent, the **Algerian Civil Code** applies as the general legal framework.

✓ *There is a **lack of alignment between legislation and the reality of professional sports**, in addition to the complexity and dispersion of legislative and regulatory texts governing the field, making it difficult for observers of professional sports in Algeria to fully understand and navigate them.

Based on our study of the topic, we have developed a set of **proposals and recommendations, which we hope will be taken into consideration. These are as follows:**

** *Issuance of all implementing texts** related to Law No. 13/05 on the organization and development of physical and sports activities, as the deadline set in Law 13/05 (one year from its enactment) has been exceeded and most of these texts have not yet been issued.

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**** *Dedicated legislative and regulatory provisions**** should be established to regulate specific aspects of professionalism for each commercial sports company, including: establishment, management and administration, stakeholders, clubs, activities, and dissolution.

**** *Enrichment of Executive Decree No. 15/73****, which governs professional sports clubs and sets out the model articles of association for commercial sports companies, by adding clear and precise definitions and amendments, for example:

- * Clearly defining the relationship between an amateur sports club and a professional sports club (commercial sports company).

- * Defining the sporting objectives intended to be communicated to the public.

- * Specifying human resources requirements for the professional sports club (commercial sports company) from the general manager to the lowest-level managers, as well as the scientific, ethical, and financial criteria for recruitment.

- * Structuring the professional sports club to provide an organizational framework that allows smooth execution of responsibilities and improves club management performance by clearly assigning duties and responsibilities based on administrative competencies.

- * Establishing a permanent official media and communications unit to inform the public about all activities related to the commercial sports company.

- * Setting a fixed number of agreements with commercial companies and institutions, with defined performance thresholds, both financially and technically/logistically.

- * Giving importance to ****sports marketing**** and following its methods to generate revenue for the club through advertising, television broadcasting, promotion of tournaments and matches, and marketing of player contracts.

- * Organizing and capping player contracts in line with the club's budget and Algeria's economic and social conditions.

**** *Enrichment of the model articles of association annexed to Executive Decree No. 15/73**** in several areas, including:

- * Shares and their trading procedures.

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* Protection of creditors of commercial sports companies in case of financial difficulties to ensure investor confidence.

* Establishing monitoring, follow-up, and evaluation procedures to ensure compliance with professional requirements, identify shortcomings, and address challenges.

* Setting the duration of the articles of association at **four years** to align with national or global developments in professionalism, with periodic review and updating according to the state's professional sports framework.

Development of a specific sports commercial code to regulate and organize commercial sports operations.

Creation of a dedicated electronic platform for issuing and disseminating professional legislation and regulations across all sports disciplines, in line with global professional developments.

Providing greater support for amateur sports clubs to enter the world of professionalism, including funding from major national institutions, and ensuring that these institutions do not favor only a few clubs.

Implementing the true concept of professional management through evaluation and monitoring of the professional pathway, identifying appropriate solutions to challenges, and fostering a professional mindset, as professionalism is a way of thinking.

Conducting training and knowledge renewal programs, particularly in legal matters, for managers of commercial sports companies.

Encouraging investment companies and commercial institutions to sponsor clubs through agreements and incentives

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