

The role of corporate governance in strengthening
the shareholder minority's oversight

دور حوكمة الشركات في تعزيز رقابة الأقلية المساهمة

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Abstract:

This research paper seeks to illustrate the role of principles included in corporate governance in enhancing the control of minority shareholders in joint stock Company on the actions that the board of directors is conducting, by exposure to its effects on the legal centers of shareholders, and its ability to achieve a balance between the stakeholders in the company. The study concluded that the application of these principles contributes to reducing the dominance of majority shareholders, and it greatly reduces the conflict of interests between the board of directors and the company, which is reflected in enabling the minority shareholders to exercising their supervisory role more effectively.

Keywords: Joint stock Company; Minority shareholders; Board of directors; Oversight; Corporate governance.

ملخص:

تسعى هذه الورقة البحثية إلى بيان دور المبادئ التي تضمنتها حوكمة الشركات في تعزيز رقابة الأقلية في شركة المساهمة على الأعمال التي يقوم بها مجلس الإدارة، من خلال التعرض لآثارها على المراكز القانونية للمساهمين، وقدرتها على تحقيق التوازن بين أصحاب المصلحة في الشركة، وخلصت الدراسة إلى أن تطبيق هذه المبادئ يساهم في الحد من هيمنة أغلبية المساهمين، ويقلل بشكل كبير من تضارب المصالح بين مجلس الإدارة والشركة، مما ينعكس على تمكين الأقلية المساهمة من ممارسة دورهم الرقابي بشكل أكثر فاعلية.

الكلمات المفتاحية: شركة المساهمة؛ الأقلية المساهمة؛ مجلس الإدارة؛ رقابة؛ حوكمة الشركات.

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Introduction:

The management of a joint stock company is originally the prerogative of shareholders who provided their capital with the intention of achieving a specific goal, which is to participate in the success of the project, but due to the inability to manage the company by all shareholders - especially in large companies - most of the legislation approved for shareholders to choose from among them who manages the company, where each shareholder votes on the list of candidates for membership of the administrative board according to the number of shares he owns in the company's capital, after which the board of directors is formed from the shareholders who obtained the highest number of votes, as they are collectively agents of the company in its dealings with others.

This mechanism in the management of joint stock companies resulted in several imbalances, most notably the problem of the acquisition of majority shareholders on the membership of the board of directors, in addition to the conflict of interest between the company and the Directors, and from this point of view, most of the legislation sought to enable minority shareholders to extend their control over the actions of the board of directors, such as the Algerian legislator, which granted each shareholder the authority to view the company's documents and submit written questions, while some comparative legislation added the minority authority to summon the general assembly to convene, And the possibility of requesting an inspection to audit management operations, or to resort to the judiciary to request independent expertise.

However, despite the adoption of these protective mechanisms, the issue of minority shareholders control over the work of Directors has remained the subject of several developments, given the importance of the role of the minority at the economic level of countries as a source of financing for companies that wish to expand by offering their shares for trading, which contributes to increasing the injection of capital into the national economy.

Therefore, some have advocated the need to apply the principles of corporate governance in order to ensure that the minority has a better chance of protecting its interests in proportion to the broad powers enjoyed by the board of directors, who have a comfortable majority to control the general assembly¹.

This study seeks to show the effectiveness of the traditional mechanisms granted by the Algerian legislator and comparative legislation to minority shareholders in monitoring the work of the board of directors, compared to what is achieved by the modern trends included in the principles of corporate governance, and to achieve this goal, we ask the following problem:

To what extent do corporate governance principles contribute to strengthening the control mechanisms of the minority shareholders over the work of directors in a joint stock company?

To answer this problem, it was necessary to use the comparative approach to see the findings of comparative legislation in the field of supervisory authorities of the minority shareholders to the board of directors, in addition to adopting the methodology of description and analysis in showing the impact of governance principles on the activation of these authorities.

To take note of all aspects of the subject, the study was divided into two Sections, we try in the first Section to address the powers granted by the legal systems to the minority to contribute within the field of monitoring the work of the board of directors, while the second Section addresses the impact of applying the principles of corporate governance in strengthening this control.

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Section I: Supervisory authorities of minority shareholders

The positions of shareholders within the general assembly vary according to their shares in the company's capital, so that the largest shareholder enjoys most of the powers related to decision-making, through its control over the appointment of members to the board of directors, ratifying the results of their work, discharging them, as well as renewing their election, and the minority shareholders cannot reject these decisions unless they are proven in front judiciary that it's not in the interest of the company.

To reduce this disparity in legal status, the minority had to be empowered by some authorities to control the actions of Directors, in this section, we will try to highlight the authority of minority shareholders in the investigation (A) and in the intervene (B).

A) Investigation authority

Each shareholder has the right to investigate the work carried out by Directors in the name of the company, but this authority must be exercised within the framework of the law, as most legislations agreed to enable shareholders, whether they are individuals or groups, to have the authority to view the company's documents and inquire by submitting written questions to the board of directors, but they differed about the minority authority to use an external party to investigate the operations conducted by the board of directors, as these legislations were divided into two teams, one of them one adopting the management expertise system, and the other with the administrative inspection system.

1 - Mechanism of viewing and inquiry

The right to information is one of the most important mechanisms on which shareholders base their decisions within the general assembly, and to ensure the most effective exercise of this right, most legislations have allowed the minority shareholder to view the company's documents, and ask written questions to the board of directors and its Chairman.

1-1 View the company's documents

The exercise of the power of the shareholders to inform takes two forms, either temporary or permanent, as the first relates to the period preceding the convening of the general assembly, and the second is throughout the year.

The temporary access to the company's documents is a very important mechanism in crystallizing a clear picture for shareholders of what will be presented at the general assembly meeting², so the laws of many countries stipulated this right, and made it available to all shareholders without discrimination, as it enabled the shareholder to view the documents inside the company's headquarters, or to be sent to him in the form of a parcel or by e-mail³.

However, the necessity of preserving the company's secrets and ensuring the confidentiality of its business requires specifying the documents and information that shareholders may view, and setting certain controls to exercise this right so as not to result in damage to the company's interest⁴.

In this context, the Algerian legislator has approved the power of shareholders to be given temporary access, as it obliges the board of directors to notify or place at the disposal of shareholders into thirty (30) days before the general assembly the necessary documents, but does not mention them, which may be used by the board of directors to claim their insignificance.

On the contrary, the French legislator was explicit that the report of the board of directors contained in article L.225-100 of the Commercial code⁵ must include an accurate disclosure of the activity of the company and its subsidiaries during the closed fiscal year, the results of the activity and development that took place or the difficulties faced by the company as well as the future prospects that the company aims to reach.

Moreover, article 678 of the Algerian Commercial code details the nature of the information that the company must communicate to shareholders in order for them to be aware of it, such as the names, titles and domiciles of the directors and general Directors, with an indication of the other companies in which they practice management, directorate or management business, as well as the text of the draft resolutions submitted by the board of directors or shareholders with a statement of their reasons.

In addition to the report of the board of directors submitted to the Assembly, article 680 of the Commercial code also includes some documents that the board of directors is not obliged to notify the shareholders, but are placed at their disposal for review at the company's headquarters due to their confidential nature, fifteen (15) days before the date of the Assembly, such as reviewing the inventory, results accounts, summary documents, results and reports, and reports of the auditor representatives that are submitted to the Assembly, especially the lists of administrators and shareholders, this position was adopted by the French legislator, who added in its amendment to article L.225-115 of the Commercial code in 2004 the right of the shareholder to access the ordinary agreements concluded between the directors and the joint stock company without being subject to prior authorization from the board of directors⁶, but he retracted this gain and abolished this control in the amendment of 2011⁷.

As for the constant access to the information contained in the reports and documents issued by the board of directors and the auditor, and the records that the law obliges the company to keep, it is the most effective way to monitor the work of the board of directors⁸.

The reason for most legislations approving this type of control is due to the insufficient temporary access to inform shareholders of all matters and conditions of the company, because it is linked to a specific time and specific information and documents, while the shareholder needs to know the company's conditions at all times, to be aware of its management and the progress of its business⁹, the Algerian legislator explicitly stipulated in article 819 of the commercial code this right when he used the phrase 'at any time of the year', and the access according to article 819 above focuses on the total documents mentioned in article 678 in addition to inventory bonds, the general exploitation account, results and budgets, as well as the reports of the board of directors and auditors, as well as minutes and papers of attendance at general assemblies, However, this right does not mean the shareholder's authority to access all the company's documents, as the Algerian legislator, like its French counterpart¹⁰, limits this authority to the documents submitted to the general assembly within the limits of the last three fiscal years, the wisdom of setting this period is that it is sufficient for shareholders to control the work of Directors by comparing the results achieved throughout this period, Also, increasing this period may lead to a violation of the principle of confidentiality of these documents, and therefore limiting access to them to certain deadlines aims mainly to preserve the interests of the company and protect it from the abuse of shareholders in the use of this power, in addition to that this condition does not affect the effectiveness of the minority authority in the process of access¹¹.

1-2 The inquiry (Ask questions)

The shareholder's authority to view the company's documents is the starting point in extending its control over the work of Directors, but sometimes it is insufficient due to the large number of documents and their ambiguity, which requires explanations about their content, It is noteworthy that the Algerian legislator did not address this type of control, despite its approval of this authority for the partners in a limited partnership company, but it did not apply it in joint stock companies, unlike the french commercial code, in article L.225-108, which stipulates the authority of the shareholder to ask written questions to the board of directors from the day of its review of the company's documents until the convening of the general assembly, this article did not specify the number of questions that the shareholder may ask, but it limited them to matters related to the business schedule¹², as article L.225-232 of the same law was authorized to the shareholders of the minority the possibility of asking the written questions to the Chairman, but the minority must has at least five percent (5%) of the company's capital.

As for the nature of the questions, they revolve around the actions issued by Directors that would threaten the continuity of the company's business, and the board of directors must answer the questions addressed to it within a month, and it must also inform the auditor of all questions and answers provided to shareholders, despite the importance of this procedure in activating the supervisory role of the shareholder in terms of discussing with Directors the details of the documents submitted, the large number of shareholders may lead to disrupting the good functioning of the general assembly meeting, especially if the questions are frequent, in addition to the problem of evasion of administrators from answering questions, or providing unconvincing answers far from what the shareholders put forward, Therefore, the French legislator resorted to amending the text of the aforementioned article L.225-108, where he added the possibility of answering questions jointly as long as they contain the same concern, and considered that the answer to the written question was provided as soon as they appeared on the company's website in a section dedicated to questions and answers¹³.

2 - Expertise and Inspection System

In order to enhance the power of minority shareholders in control, some comparative legislations have adopted special regulations that allow the use of external bodies to investigate in actions of the board of directors, but they differed, some of them approved the expertise system as an independent body appointed by the judiciary, and others relied on administrative inspection committees.

2-1 The expertise system (Minority Expert)

In this regard, it should be noted that the Algerian legislator did not address this type of control, unlike its French counterpart, which introduced this mechanism under article 226 of the law of 24 July 1966 on commercial companies, where it allowed minority shareholders representing at least one tenth of the capital, either individually or by aggregation in any way, to resort to the judiciary to appoint one or more experts who would be responsible for submitting a report on one or more of the operations carried out by the board of directors¹⁴, but French jurists¹⁵ has criticized this provision for failing to address cases in which a minority may resort to expertise, which could lead to the minority abusing power in order to serve personal interests that would negatively affect the economic and commercial reputation of the company¹⁶, therefore, the French legislator amended it under article 114 of the Law of May 16, 2001 on new economic regulations¹⁷ reducing the percentage required in the request for expertise to (5%) of the company's capital, and stipulating that management expertise should not be resorted to until after the minority addressed a written question to the Chairman of the board of directors, and it specified the period for responding to the question within one month from the date of its receipt¹⁸, If the deadlines have elapsed and the minority has not received a response to their questions or the response is not convincing, they may request the assignment of an expert¹⁹, and the president of the court shall have the discretion to accept or reject the request of the minority shareholders, In addition to the requirement to submit written questions and the expiry of the deadline without a response, the judge ascertains the seriousness of the request and the availability of evidence of irregular management operations²⁰.

It should be noted that the management expert does not play the role of the auditor²¹, but its task is embodied in the detection of violations committed and the extent of their impact on the interest of the company and shareholders, as its work is a complement to the control initiated by the auditor, because the latter carries out the accounting control process without giving its opinion on its feasibility, because he is legally prohibited from interfering in management operations²², unlike the expert, who gives its opinion by virtue of its experience and qualifications in all the actions carried out by the Directors, such as the agreements concluded between them and the company, and comparing the company's budget with the invoices drawn and the amounts withdrawn²³.

The expert prepares a detailed report on all that he has observed and the violations he has observed, and submits it to the applicant from the minority shareholders, and the auditor and the board of directors.

And the board of directors must attach the report prepared by the auditor with the expert's report to be presented at the next meeting to the general assembly²⁴.

2-2 The inspection system

Unlike the French legislator, which adopted the expertise system, some Arab legislations²⁵ adopted the inspection system, which appeared for the first time in Britain after the escalation of the wave of recognition of the rights of the minority contributing to the control of the company's management in 1929²⁶, this system is similar to the management expertise, but it differs in terms of the procedures followed and the competent authority, as it is a preventive measure that prevents damage before it occurs without the need to file a lawsuit before the judiciary²⁷, and this type of control has been adopted by the Egyptian legislator within articles 158, 159 and 160 of the Joint Stock Companies Law, the application must be issued by the shareholders holding at least (10%) of the company's capital, and that it must include evidence that the minority has serious reasons to take this action, as this request is addressed to the minister of economy, who forms a committee to consider it, and the minority must deposit with the submitted application the shares it owns at the company's headquarters or a bank, to remain deposited until it is decided by the committee, to remain deposited until the dismissal is made by the committee, and the latter shall issue its decision after hearing the statements of the inspection applicants, the Directors and the auditors in a secret session, and if it deems that there is a suspicion, it shall order an inspection of the company's business and books, and it may also delegate for this purpose one or more experts.

It is the responsibility of the minority to pay the amount determined by the committee for its services, as shareholders who have requested inspection are obliged to deposit it in the expense account before the general assembly, and the inspection is carried out only after such amount has been deposited²⁸, if the committee finds that the claims of the minority shareholders are incorrect, it may order the publication of all or part of the report or the publication of its result in a daily newspaper, and the inspection applicants shall bear its expenses without prejudice to their responsibility for compensation²⁹, in the event that the committee discovers the validity of the abuses attributed to Directors, it orders the urgent measures to be taken and calls the general assembly to convene immediately, where its meeting in this case is chaired by the head of the competent administrative authority or one of its employees, and the company bears the expenses of the inspection instead of the minority, and it may refer to the person who caused the violation the value of these expenses, in addition to the possibility of dismissing the general assembly of the Directors and demanding compensation for the damages caused to the company³⁰.

B) Intervention authority

The minority's exercise of its powers in the investigation is the basic rule at the beginning of following up the actions of the board of directors, but this control cannot be effective if it is not accompanied by other authorities that authorize the minority to intervene in the event that it discovers abuses that contradict the general interest of the company, so some legislations have resorted to approving the authority of the minority in summoning the general assembly, as well as the possibility of rejecting or dismissing the auditor, due to the danger it may pose to the interests of this category of shareholders.

1 - Calling the general assembly

The power to summon the general assembly in a joint stock company is at the heart of the competencies of the board of directors, but the latter may fail to perform its duties in order to avoid exposing its members to accountability or dismissal, especially in the event of proven violations on their part, so most legislation has resorted to empowering shareholders with the authority to summon the general assembly as an exception to the original, and this is what the Algerian legislator adopted in article 644 of the commercial code before the amendment of 1993.

According to article 644, one or more shareholders holding one tenth of the capital may resort to the judiciary to request the appointment of a judicial agent to conduct the procedures for convening the general assembly, and the legislator drew inspiration from its French counterpart, who approved it in article 158 of Law n°66-537 on commercial companies.

However, after the issuance of legislative decree n°93-08 amending the Algerian commercial code, the legislator neglected to address the parties that have the power to summon the general assembly, and jurists criticized this step as a retreat from gains, as it came contrary to the modern trend followed by most legislations in the field of strengthening the supervisory role of the minority shareholders to the performance of Directors³¹, the French legislator, in its amendment of the Commercial Code in 2001 under the Law of new economic regulations (NER) reduced the percentage of shares to (5%) of the company's capital in accordance with article L.225-103, and the Tunisian legislator adopted the same position when amending the text of article 277 code of companies by Law n°16 of 2009, and otherwise, the Moroccan legislator retained (10%) in article 116 of law n°95-17 on Joint Stock Companies and did not reduce it, and it also added the condition of urgency and the failure of the board of directors to summon the general assembly.

Although most legislations agree with the rule that a minority shareholder may be summoned general assembly, but they differed in how they were applied, as the French legislator relied – as previously mentioned – on the discretionary power of the judge in determining the seriousness of the minority's request to summon the general assembly, while we find that the Egyptian legislator did not involve the judiciary in this matter, as according to article 61, paragraph 03 of Law n°159 of 1981, minority shareholders who represent at least (5%) of the capital were obliged to direct the request related to the convening of the general assembly to the company's Board of directors, and they must explain the reasons that led to this procedure, with the need to deposit the shares at the company's center or one of the accredited banks, and these shares may not be withdrawn until after the work of the assembly concludes³², and the Jordanian legislator followed this trend when it stipulated in article 172 of the Companies Law that the convening of the general assembly of the company shall be by a written request addressed to the board of directors by the shareholders who own at least a quarter of the subscribed shares of the company, but unlike its Egyptian counterpart, it did not give the board of directors discretion in responding to the request of the minority, but obligated it to summon the assembly within a period of 15 days from the date of being informed of the request, and in the event of failure to If or refusing to respond, the auditor automatically summons the assembly at the company's expense³³.

2 - Refusal or dismissal of the auditor

The Algerian legislature empowered minority shareholders to resort to the judiciary to demand the termination of the functions of the auditor, limiting the use of this power to two methods: the first is the rejection by the minority of the auditor appointed by the general assembly, and the second is by demanding the application of impeachment procedures.

2-1 Refusal of the auditor

The reports and documents issued by the auditor are considered as a mirror reflecting the reality of the financial situation of the company, as the shareholder cannot follow up all the operations conducted by the board of directors during the period between the general assemblies due to their abundance and complexity sometimes, so the good selection of the auditor is very important, especially in terms of efficiency and impartiality, as well as independence from Directors, since the procedures for appointing the auditor are subject to the voting mechanism of the majority of shareholders, it was necessary to protect the interests of the minority shareholders by empowering it with the power to refuse the auditor appointed by the general assembly, as the Algerian legislator in article 715 bis 8 of commercial code allowed to joint stock companies established by public resort to savings, that one or several shareholders representing at least one tenth of the company's capital file a lawsuit before the court based on a justified reason demanding refusal of the auditor that appointed by the general assembly, if their request is met, the judge appoints a temporary auditor who exercises the functions of its predecessor until the general assembly appoints a new auditor, but what is noticeable on the Algerian legislator is its omission to determine the legal deadlines in which he must submit a request to reject the appointment, unlike its French counterpart³⁴, who specified issues related to the parties and deadlines, where he adopted only (5%) for minority shareholders as a condition for submitting a request for a judicial order to disqualify the accounts representative, and specified the period for submitting the application to

thirty days from the date of the general assembly that appointed the auditor³⁵, it also did not limit this measure to joint stock companies that were established by public resort to savings, as did its Algerian counterpart, but expanded it and made it include all joint stock companies regardless of the way they were established³⁶.

It should be noted that both legislators - Algerian and French - did not specify the reasons on which the minority shareholders can rely in its request to reject the appointment, and left the matter to the discretion of the judge, and the French jurists and judiciary agreed in this context that the lack of independence of the auditor is among the most important legitimate reasons that entitle the minority to submit a request to reject the auditor³⁷.

However, the French legislator did not grant the judge the freedom to choose the temporary auditor, but obligated him to assign the deputy auditor who was rejected, until the general assembly meets to choose a new auditor, and also adopted in its amendment to the commercial code in 2016 as an exception to the judge's discretionary power to accept the minority's request to reject the appointment, as it explicitly indicated that the difference in evaluation on the accounting treatment or the control procedure cannot constitute a justifiable reason for rejecting the appointment, and this is logical because the procedures mentioned are considered is the core competence of the auditor, and cannot be interfered with in any way, because they weaken his independence and impartiality³⁸.

2-2 dismissal of the auditor

The origin of the appointment of the auditor is due to the general assembly as the supreme authority in the company and expressing its interest, but the requirements of the auditor's independence require a degree of controls when initiating the procedures for its dismissal, so the legislator required that it be subject to judicial control, and although the general principle is that the appointing authority represented by the general assembly is the only one who has the right to take dismissal procedures, but the Algerian legislator allowed the minority shareholders to resort to the judiciary to demand the dismissal of the auditor, and each shareholder or more representing at least one tenth of the company's capital has the right to submit a request before the judiciary to obtain an order to dismiss the auditor before the end of its term of office, but it is required according to article 715 bis 9 Algerian commercial code, that the request be based on an error issued by the auditor or the occurrence of an impediment to it, and examples of the auditor's error include its interference in the process of running the company or disclosing its secrets, it also included incompatibilities, such as holding the auditor an executive position in one of the subsidiaries of the company that he oversees³⁹.

Some jurists⁴⁰ believe that the error does not require intentionality or significant, but it is sufficient just for the auditor to neglect its work until the reason for its dismissal is achieved, and this is what the French judiciary has taken in the case of the auditor's failure to inform the Public Prosecution about the crime of misuse of the company's assets carried out by the Chairman of the board of directors, in which the auditor was considered an accomplice in the crime, because reporting the incident falls within its duties as a competent person and cannot claim lack of knowledge⁴¹.

The Algerian legislator omitted to mention the judicial authority competent to decide on the dismissal request, and only mentioned the phrase 'the competent authority', unlike its French counterpart, who specified the competent authority in the commercial court for the headquarters of the company, and if the request for dismissal is approved, the President of the Court shall replace it with the reserve auditor, who shall exercise his duties until the General Assembly convenes and decides to appoint a new auditor⁴².

It is clear from the foregoing that the most of legislations tried to enhance the status of the minority shareholders by granting them supervisory powers over the work of the boards of directors in joint stock companies, but the reality proved the ineffectiveness of these traditional mechanisms in achieving a balance between the majority and the minority, especially at the level of representation in boards of directors and decision-making at the level of general assemblies.

Therefore, it was necessary to develop new mechanisms that contribute to reducing the disparity in legal positions among shareholders and give the minority a greater opportunity to preserve its interests.

Section II: The impact of governance principles in enhancing minority shareholders' control

Despite the powers enjoyed by the minority shareholders in exercising its control over the company's business, it remains limited due to the broad powers of the board of directors on the one hand, and the majority shareholding at the level of the general assembly on the other hand, because the latter is an umbrella that provides cover for the Directors they appointed, by renewing their membership and approving the actions they conclude in the name of the company.

Therefore, it was necessary to resort to the principles of corporate governance as a modern mechanism to address the imbalance of representation between the majority and minority in the membership of the board of directors **(A)**. And the consequent reduction of conflict of interest between the company and its Directors **(B)**.

A) Achieving representative balance in the board of directors

The composition of the board of directors in a joint stock company is always in favor of the shareholders who represent the largest percentage of the company's capital, so the governance regulations in many countries have sought to reduce the dominance of the majority shareholders on the membership of the board of directors, by relying on the principle of membership of the independent director, as well as the cumulative voting mechanism in an attempt to enable the minority to appoint its representatives at the board level and thus strengthen its oversight role on the work of Directors.

1 - Independent director membership

Modern corporate governance is based on the principle of the independence of the board of directors, the more the Directors are far from the tensions of shareholders, their performance were neutral and in the framework of the general interest of the company, independence is seen as a guarantee to ensure that the board of directors is not subject to one category of shareholders at the expense of another⁴³, especially with the reluctance of some shareholders to attend general assemblies and focus only on achieving and distributing profits⁴⁴, and to achieve this goal, the governance regulations approved the principle of the membership of the independent director within the composition of the board of directors, as a mechanism to maintain a balance of representation in a way that guarantees the interests of all shareholders without discrimination.

The idea of diversifying the composition of the board of directors originates from countries with common law systems, where the American Institute of Law issued recommendations regarding the need to integrate independent directors into the boards of directors of joint stock companies to deal with problems arising from the nature of the relationship between shareholders and the board of directors⁴⁵.

And in its report issued on September 20, 2002, the International Finance Corporation (IFC) took the initiative to define the indicative definition of an independent director by presenting the characteristics that must be available in it, such as not being associated with any company that carries out business for the company of which he is a member, whether advisory or commercial, and that he does not have an executive position in another company, or a kinship with any employee during the past five years with the company, and this applies to his relationship with former and current auditors for the company⁴⁶.

Most countries have adopted this definition and integrated it into their corporate governance system, and the independent director has become one of the postulates in the composition of the board of directors, as the French (Afp-Medef) regulation for the year 2022- according to its last update considered that «A director is independent when he or she has no relationship of any kind with the company, its group or its management, which would harm the exercise of his or her freedom to make decisions, and is considered an independent when does not hold an executive position in the company or one of its groups, and does not have relationships of particular importance, such as being a major shareholder or employee of the company⁴⁷.

This regulation also suggested that the percentage of independent directors should be half ($\frac{1}{2}$) of the number of board members in companies with scattered capital and without the control of shareholders, while in companies subject to supervision, the percentage of independents should not be less than one third of the members, and the Directors who represent workers are not taken into account when determining these percentages⁴⁸, and many studies have shown that companies that depend on the membership of independent directors have witnessed a remarkable development in increasing the transparency of information provided to shareholders⁴⁹, in addition to greater control over the performance of executive directors, this reflected positively on the interests of the minority shareholders through the contribution of the independent director in strengthening internal control and ensuring that the majority does not control the decisions issued by the board of directors.

As for Algeria, the good governance charter of the institution included a reference to the need to adopt standards of experience and skill in the selection of directors, but it did not address the issue of independence, and only submitted a different proposal related to the inclusion of external administrative persons to the composition of the board of directors, in addition to leaving it up to the discretion of the company⁵⁰, unlike what is in force in most governance regulations in the countries of the world⁵¹.

2 - Cumulative voting effect

Voting is the main pillar that enables shareholders to participate in deliberations and take important decisions in general assemblies, as the Algerian legislator, similar to comparative legislation, empowers each shareholder to exercise his right to vote according to the number of shares he/she holds⁵², in this context, the principle of proportionality of votes with the capital was relied upon, as each share is given at least one vote⁵³, and therefore the shareholder who owns the majority of the shares is always in control of the company's management, which was reflected in the inability of the minority shareholding to participate in the management of the company, as the appointment of Directors is according to the majority of votes according to the traditional voting mechanism.

Thus, the chances of the minority in choosing their representatives within the board of directors will be very small, because the majority will decide the result, and this is what led to the need to search for a modern mechanism to enhance the chances of the minority in appointing their representatives, and the US state of Illinois was the first to adopt the cumulative voting mechanism in 1870 and followed during the next eighty years more than 22 US states, and the reason for the rapid spread of this system is due to the issuance of the banking Law in 1933, which imposed on national banks to elect the directors by cumulative voting⁵⁴, the latter is a procedural system within the meetings of the general assembly of companies with regard to the election of board's members only, so that the shareholder is allowed to grant the voting block represented by the shares owned by him in the company's capital to one candidate or distribute it to more than one candidate, and this block is calculated for each shareholder by multiplying the number of shares he/she owns by the number of seats required to be filled by the candidates⁵⁵.

So according to the cumulative voting mechanism, if the company, for exemple has three (03) vacant seats on the board of directors and five (05) candidates for membership, the votes of each shareholder shall be multiplied by the number of seats as follows:

- Shareholder (A) owns 30.000 shares $\times$ 03 (seats) 90.000 votes (majority)
- Shareholder (B) owns 12.000 shares $\times$ 03 (seats) 36.000 votes (minority)
- Shareholder (C) owns 5.000 shares $\times$ 03 (seats) 15.000 votes (minority)

But if we take the ordinary vote, shareholder (A) will have only 30,000 votes, but he/she still has the right to repeat the vote for each candidate, and the same applies to shareholders (B) and (C).

Illustrative table of the voting process according to the ordinary and cumulative method (01)

Candidates	Ordinary voting			Cumulative voting		
	shareholder	shareholder	shareholder	shareholder	shareholder	shareholder

	(A)	(B)	(C)	(A)	(B)	(C)
First	30.000			30.000		
Second		12.000	5.000		36.000	15.000
Third	30.000			30.000		
Fourth		12.000	5.000			
Fifth	30.000			30.000		
Total votes	30.000	12.000	5.000	90.000	36.000	15.000

Prepared by the researcher based on the example above.

We note from extrapolating the illustrative table, that the minority represented by the shareholder (B) and (C) were unable to appoint their candidate to the board of directors by ordinary voting despite their union in voting in favor of the second and fourth candidates, as their votes combined amounted to 17.000 votes for each candidate, but it was not enough, because the majority represented by shareholder (A) has 30.000 votes that enabled him to control the three vacant seats.

However, the situation is different if the cumulative voting formula is adopted, where the minority can win a seat because their votes increased from 12,000 to 36,000 for shareholder (B) and from 5,000 to 15,000 for shareholder (C), a total of 51,000 votes in favor of the second candidate, and in no case can the majority win all the positions no matter how much their votes are distributed to the other candidates.

The application of this system has led to a rebalance between the majority and minority in the joint stock companies, where the minority can impose its presence in the composition of the board of directors, so it was adopted in most legislations and embodied in the decisions issued by the capital market authorities, but it differed in the extent to which it is mandatory for companies to adopt this system⁵⁶.

B) Reducing conflicts of interest

The application of the principle of diversifying the composition of the board of directors is one of the most important principles of corporate governance that aims to enhance the control of the minority shareholder over the work of directors, but this principle cannot achieve effective results without supporting it with other mechanisms, as joint stock companies around the world have been exposed to financial crises that hit the funds of minority shareholders due to the lack of discipline of the directors and their preference their personal interests at the expense of the interests of the company, so most legislation and governance regulations sought to reduce this conflict by adopting the principle of forming independent commissions, in addition to the principle of dismantling the position of the chairman and the chief executive officer.

1 - Role of independent commissions

Independent committees are very important in enhancing the independence of the board of directors through their role in monitoring the work of directors from the moment they are nominated for membership of the board until the end of their term, and due to the many tasks exercised by the board of directors⁵⁷, it was necessary to diversify these committees in order to be able to perform its tasks more effectively, but we will focus in this part on the nomination and review committees as the most important committees that have a major role in enhancing the control of minority contributors.

1-1 Nomination Committee

The Nomination Committee plays a key role in determining the composition of the board of directors, as it is responsible for the future composition of the boards of directors, as this committee works to select the best competencies from directors and executive officers for their candidacy to the board of directors, which in turn prepares a report on the recommendations submitted to it by the committee and presents them to the general assembly for voting on their appointment, and also works to follow up on the procedures for temporary appointments carried out by the board of

directors when the positions of the directors become vacant between the two sessions of the ordinary general assembly⁵⁸.

According to the French Governance Regulation (AFEP), this committee must be formed by a majority of independent directors, and no executive director is involved in it⁵⁹, but the chairman of the board of directors can be exempted from this ban, if the company adopts a system of separation between the position of chairman and executive officer⁶⁰, and it is noted that despite the wide spread of this regulation in France, it did not address the ideal number of directors in the nomination committee or annual meetings, unlike the French Institute of Administrators (IFA), which has proposed that three to four members collectively have the necessary skills, it must be ensured that at least one member has real experience in human resource management, particularly with regard to the formation and development of management teams and the implementation of succession plans, and that the majority of the members of the nominating committee are independent directors of unsupervised companies.

The Chairman of the Committee must always be independent, and its meetings should not be less than three times a year, in order to be able to conduct a full examination and discuss all the items on the agenda, and to carry out the various tasks entrusted to it by setting a detailed schedule under the responsibility of the Chairman of the Nominating Committee, to facilitate the implementation process and to ensure once a year that all tasks contained in the annual program are covered⁶¹.

2-1 Audit Committee

The Algerian Commercial Code does not contain an explicit provision on audit committees, but with reference to special laws, we find that the legislator stipulates in article 97 bis of Ordinance N° 03-11 on cash and loans⁶² that an internal supervisory body must be established in banks and financial institutions to verify the correctness of the financial information provided, and the Bank of Algeria has issued in this area Regulation N° 11-08 on the internal control of banks and financial institutions⁶³, In the first paragraph of Article 02, it defined an audit committee as "a committee that may be established by a deliberative body to assist it in the exercise of its functions. The deliberative body shall determine the composition, functions and modalities of the functioning of the Audit Committee and the conditions under which the auditors or any other person affiliated with the bank or financial institution concerned shall participate in the work of this committee".

It is clear from this text that the Algerian legislator has retracted his position on the obligation to establish the Audit Committee in Banks and Financial Institutions contained in the text of article 97 bis mentioned above, so that the formation of the committee is optional for the deliberation body, and did not specify the method of its formation and the rules for its organization, and he only referred in the second paragraph of article 02 of this system to prohibit the participation of members of the executive branch in the membership of the audit committee, while article 70 of the same system specified the oversight functions of the audit committee in once formed, which was based on verifying the clarity of the information provided, and assessing the regularity and importance of the accounting methods used in the preparation of accounts, and also estimates the effectiveness of internal control, especially with regard to the consistency of control and risk control systems, and despite the reference of the good governance charter of the institution to the possibility that the board of directors establish specialized committees that carry out the task of enlightening the directors and assisting the Board in making its decisions⁶⁴, but it did not work to organize its composition and tasks, and this is considered a negligence on the part of the Algerian legislator, because the global crises that occurred to major banks were due to the lack of interest in strengthen the role of the internal supervision in controlling the acts of managers⁶⁵.

Otherwise, the French legislator included the Audit Committee in the Commercial Code⁶⁶ and he defined its powers in following up on matters related to the preparation and control of accounting and financial information, the effectiveness of internal control and risk management systems, and the task of auditors, including recommending his appointment, but he did not control it with a certain number of members, as he authorized the Board of Directors to estimate them according to the size of the company⁶⁷.

The jurists⁶⁸ believe that the effectiveness of the committee in performing its oversight mission and the benefit of the minority contributing to it, depends largely on the independence of its

chairman, and recommendations have been issued in this regard by KPMG experts stressing the need for the chairman of the committee to be an independent member, preferably a maximum of three to eight members to be able to play their full role in serving the quality of financial information provided to stakeholders⁶⁹, and this was confirmed by the French Governance Regulation (AFEP) when it recommended that the members of the committee must have financial or accounting skills, and that the percentage of independent directors in it should not be less than two-thirds, and the appointment or reappointment the chairman of the audit committee subject to special follow-up by the board of directors⁷⁰, as for the powers vested in it by law, the audit committee is obliged to ensure the adequacy and consistency of accounting methods, in particular business transactions that may give rise to conflicts of interest, within the framework of its task of monitoring the effectiveness of internal control and risk management systems, and to listen to internal accountants and give its opinion on the organization of their departments⁷¹.

The French legislator⁷² noted that the board of directors is responsible for the decisions it takes based on the reports submitted to it by the audit committee, and the board cannot invoke the errors of the committee, because it is obliged to follow up the work of the committee, but it remains the right to prosecute the members of the committee on the basis of negligence if this is proven⁷³.

2 - The impact of dismantling the position of the Chairman and the chief executive officer

According to article 638 of the algerian commercial code, the chairman of the board of directors assumes the task of general management of the company and represents it in its relations with the others, and in this context he has broad powers to act in all circumstances on behalf of the company, and the latter is obliged to bear the results of his actions concluded with the others in good faith, even if he exceed the limits of his agency.

On the other hand, article 639 of the same law allows the board of directors to appoint one or two natural persons as general managers to assist the chairman, if he so proposes.

A closer look at the above shows that the Algerian legislator adopted the concentration of powers in the hands of the chairman of the board as president and chief executive officer, so that no one else has the authority to manage the company or deal on behalf of the company with others, while the general managers who are appointed at his suggestion are merely assistants.

However, referring to the text of Article 641 paragraph 02, of the Algerian commercial code this characterization changes, as the legislator considered that general managers enjoy the same powers vested in the chairman towards the others, which means that they are authorized to act in the name of the company and conclude transactions that are the exclusive competence of the chairman.

This contradiction in the texts leads to the intertwining of powers and weakening control over the person responsible for managing the company, so how can an assistant manager whose powers have been predetermined by the board and its chairman have the same powers as the first official in the company towards others?.

Examining the source of this problem, it is clear that it stems from the old French legislation of companies of July 24, 1867, which stipulated in article 22, paragraph 01, that joint stock companies may be managed by one or more representatives from among the partners, and added in paragraph 2 the possibility of these agents appointing a director from among them or if the statute permits appointing a foreign person as executive officer to manage the company under their responsibility, and this was transferred to the corporate laws of the French colonies⁷⁴.

However, due to criticism of this law for confusing the powers of the chairman of the Board and the executive officers, and the division of responsibility resulting from the management of the company, it was repealed by the law of November 16, 1940, this latter included the model of concentration of powers in the position of the chief executive officer (CEO), followed by the law of March 4, 1943, which first came up with the idea that the chief executive officer could use an assistant executive officer⁷⁵, the matter continued even after the issuance of the law of July 24, 1966, which changed the nomenclature and did not change the content of the concentration of power⁷⁶, and introduced the idea of the Assistant executive officer having the same powers as the chief executive officer⁷⁷.

This matter changed after the issuance of the New Economic Regulations Law (NER) on May 15, 2001, which came with a new trend to adopt the principles of governance and create a balance between the powers of the company's management organs by adopting the principle of separation between the position of chairman and executive officer, and although it was not mandatory, it gave shareholders the freedom to choose -within the company's statute- in the application between the system of concentration or dismantling⁷⁸, in the latter, the authority of the chairman of the board is limited to the task of supervising the proper functioning of the board of directors only, without the possibility of carrying out the daily management of the company and representing it with others, which has become one of the tasks of the executive officer⁷⁹, and this amendment also gave the executive officer in the event of dismantling the position of the chairman of the board of directors a better position in terms of his appointment and removal be from the board of directors without a proposal from the chairman, which gives him greater independence, especially since the general assembly also cannot remove him because he is from outside the company, in the event that the board of directors dismisses him without serious justification, he shall have the right to claim compensation on the basis of abuse of the right⁸⁰.

Despite the positivity brought by the NER law in terms of separating the position of the chairman from the executive officer, the French legislator allowed the chief executive officer to propose to the board of directors to use delegate officers to assist him, and decided for them the same powers enjoyed by the chief executive officer with the others⁸¹, and it may seem at first glance that the French legislator repeat the same mistake that occurred in the 1966 law, and that the result will be the same in terms of the division of responsibility between the chairman and the executive officers assigned. However, this is not true, in the past, the concentration of powers was in the hands of the chairman of the board as president and executive officers, which complicated the process of monitoring his actions, as he is responsible for the meeting of the board and the preparation of the agenda and his vote is weighted for each voting process and has an impact on the course of things, all these powers make him able to impose his perceptions, but in the case of a executive officers from outside the board of directors, the president will act as an observer of the executive officers's work without complications, because dismantling the position will achieve a balance of powers between them, each according to his competence, which will force them to cooperate to achieve the company's goals, and thus maintain their privilege⁸², and this will serve the minority group and ensure that they obtain accurate data that enhance their supervisory powers.

The Tunisian legislator had the courage to adopt this position since the 1985 law, thus preceding his French counterpart⁸³, and remained dependent on the option of separating the powers of the chairman and executive officers even after the issuance of Law N° 93 of 2000, but it did not oblige companies to apply it, leaving them free to choose the way the company is managed within the statute⁸⁴.

It should be noted that most of the legislation and governance regulations did not adopt the French proposal, which remains flawed because it does not oblige the separation of the two positions, as most of them adopt preventing the combination of the functions of the general administration and the presidency of the board, it is unreasonable, according to professor Guyon's opinion, to leave the choice in an issue that all studies have proven bad results and negative effects on the interest of the company, especially on the minority in the case of companies listed on the stock exchange, whose management requires the availability of elements of disclosure, transparency and independence of the managers, all these factors make the company obligated to achieve the greatest protection for investors and shareholders⁸⁵.

Stemming from the above, that the Algerian legislator did not keep pace with the developments that took place in the French commercial law and maintained the concentration of powers in the hands of the chairman, without enabling shareholders to choose the management system that suits the company, and did not provide mechanisms to ensure that there is no conflict of interest resulting from this concentration, and the charter of good governance of the institution in Algeria did not specify its position on this principle, referring only to the inadmissibility of one person assuming the functions of the directorate (executive branch), and calling for the need for an

executive team placed under the responsibility of a director-general assisted by cadres who constitute the members of the directorate⁸⁶.

Conclusion

The issue of the minority shareholding and its supervisory powers has always been the subject of wide controversy at the level of jurisprudence and the judiciary due to the imbalances witnessed by the theory of agency, and its inability to keep pace with the rapid changes that have occurred in joint stock companies, as the traditional authorities approved by comparative legislation with the aim of enabling the minority to extend its control over the work of the board of directors have become useless, and have caused judicial disputes that led to the disruption of the company's interests and damage to its reputation, In order to avoid these complications, it was necessary to adopt the principles of governance that have proven effective in achieving a balance between the legal positions of shareholders, reducing abuse of power, in addition to its ability to control the actions of the directors to ensure the transparency of the transactions they conduct in the name of the company.

The accreditation of independent administrators has proven effective in ensuring the independence of the Board of Directors from the dominance of the majority shareholders, and their role in forming the Audit Committee and enhancing its role in monitoring the work of executive directors, in addition to adopting cumulative voting as an effective method that enables minority representation within the Board of Directors, as well as the principle of separating the position of chairman of the board of directors from the executive officer, which reduced conflicts of interest and strengthened control over the work of the executive officer.

Based on the above, we propose the following recommendations:

- The need to amend the Algerian commercial code and support it with provisions that give the minority shareholder the authority to conduct investigations that help them develop a clear picture of the results achieved by the board of directors.
- Adopting the principles of corporate governance, especially those related to the need to form an audit committee, and making them mandatory for companies listed on the stock exchange, as well as public economic institutions, as a start to circulate them later to all companies.
- Amending the commercial law and including the possibility of choosing the system of separating the position of the chairman of the board of directors from the executive officer, and making this separation mandatory for public economic institutions.

¹ Rapport du groupe de travail présidé par Daniel Bouton, **"Pour un meilleur gouvernement des entreprises cotées"**, 23/09/2002, P03. <https://bit.ly/3pdXR9L> . Accessed on: 24/06/2023.

² G. Ripert et R. Roblot, Commercial Law Treaty; Commercial Corporations, T1, V2, 18th ed, L.G.D.J, By M. Germain, Paris, 2002. P348.

³ Y. Guyon, **"Dispositions of the decree of 03 May 2002 relating to shareholders' general meetings"**, Companies review, Juillet 2002, P422.

⁴ Kamel Abd Elhussein al-Baldawi, Rawa Younis Mahmoud al-Najjar, **"Introducing the Shareholder's Right in Joint Stock Company to Access Its Documents and Photographs"** Rafidain Law Review, Mosul University, Iraq, V 1, N° 18, 2003, P59.

⁵ Amended by Ordinance, N° 2020-1142 of 16 September 2020. Article 3.

⁶ Art51 Ordinance N° 2004-604 of 24 June 2004 reforming the regime of securities issued by commercial companies and extending to overseas territories provisions amending commercial legislation. French.

⁷ Art58 French Law N° 2011-525 of 17 May 2011 on the simplification and improvement of the quality of law.

⁸ Y. Chartier, Business Law, V 2, commercial companies, University Press, French, 1988, P119.

⁹ Kamel Abd Elhussein al-Baldawi, Rawa Younis Mahmoud al-Najjar, op.cit, P66.

¹⁰ ArtL225-117 French commercial code.

¹¹ Asma Ben Wirad, Protection of shareholder in Joint Stock Company, Doctoral thesis, Specialization: Business Law, University of Tlemcan 2016/2017, Algeria, P117.

¹² G. Ripert et R. Roblot, op.cit, P356.

¹³ Art18 French law N° 2019-744 of 19 July 2019 on the simplification, clarification and updating of company law.

¹⁴ Laura Brunouw, The Financial year of control in public companies, Thesis introduced in the doctoral school Faculty of political and social juridical Sciences, University of Right and of Health, Lille II, Octobre 2003, P62.

¹⁵ M. Salah, **"Management expertise: a useful institution in commercial company law"**, company and Commerce Review, University of Oran 2 Algeria, N° 1, 2005, P15.

¹⁶ Asma Ben Wirad, Chuar Djillali, **"The arbitrariness of the minority is a stumbling block to the prosperity of Joint Stock Companies"**, Algerian Journal of Legal Sciences, Political and Economic, Benyoucef Benkhedda University, Faculty of Law, Algeria, V53, N°2, Jan 2016, P 416.

¹⁷ French Law N° 2001-420 of May 15th, 2001 relating to new economic regulations, gazette N° 113 of May 16th, 2001.

¹⁸ ArtL225-231 Pa 02 French commercial code.

¹⁹ Paul Le Cannu, **"Management expertise following the NRE law: from chicane to dialogue?"** General review of online law, N° 822, 2012, P4. <https://bit.ly/3CPAoyF>. Accessed on: 28/06/2023.

²⁰ G. Ripert et R. Roblot, op.cit, P501.

²¹ Asma Ben Wirad, Protection of shareholder in Joint Stock Company, op.cit, P284.

²² Art23 Algerian law N° 10-01 of June 29, 2010 on the functions of expert accountant, the auditor and certified accountant. Art715 bis 04 Algerian Commercial Code.

²³ M. Salah, **"Management expertise: a useful institution in commercial company law"**, op.cit.P25.

²⁴ Manuel Fernandez, Control of the company by its credit providers in French and English law, Thesis for the Doctorate in Private Law of Panthéon-Assas University (Paris II), France, 2007, P181.

²⁵ Art100 Saudi Companies Code/ Art275 Jordanian Companies Code.

²⁶ Mustapha Kamal Taha, Commercial Companies, New University Publishing House, Alexandria, 1997, P373.

²⁷ Samiha al-Kilobi, Commercial Companies, Arab Renaissance House, Cairo, 2008, P1021.

²⁸ Turki Musaleh Hamdan, the mediator in the legal system of the boards of directors of public shareholding companies - comparative study, Gulf publishing and distribution house, Amman, 2014, P303.

²⁹ Art160 of the Egyptian Code on shareholding companies and partnership limited by shares companies and limited liability companies.

³⁰ Saleh Awad Al Balawi, Oversight of Board Members in Joint Stock Companies - Comparative Study, Riyadh Law and Economics Library, 2012, P128.

³¹ M. Salah, **"The convening of general meetings of commercial companies: a regulation to be rewritten"**, review enterprise and trade, University of Oran 2, Algeria, N° 8, 2012, P64.

³² Turki Musaleh Hamdan, op.cit, P117.

³³ Elias Nassif, Encyclopedia of Commercial Companies: Public Shareholders' Associations, Part 12, Distribution of Halabi Library, 2010, P100.

³⁴ ArtL823-06 Pa 01 French commercial code.

³⁵ Ph. Merle, Commercial Law, Commercial Companies, Dalloz, Paris, 12th ed, 2008, P411.

³⁶ Y. Guyon, Business Law, General Commercial Law and Corporate, Economica, 12th ed, 2003, P388.

³⁷ Saïd Bouqrour, **"Legal System for the Response of the Auditor of the Joint Stock Company, Comparative Study"**, Foundation and Commerce Journal, Enterprise and Commerce Informant, University of Oran, Algeria, Issue II, 2006, P36.

³⁸ Art34 French Order N° 2016-315 of 17 March 2016 relating to the Auditors, Gazette N° 0066.

³⁹ Ph. Merle, op.cit. P540.

⁴⁰ Y. Guyon, Business Law, General Commercial Law and Corporate, op.cit, P398.

- ⁴¹ Cass.Crim, 26 May 2010 N°10-80.392, Bulletin of judgments chambre criminelle N°05, Monthly publication May 2010, editions of official journals, PP397-398. <https://bit.ly/3ppYFsb>. Accessed on: 29/06/2023.
- ⁴² G. Ripert et R. Roblot, op.cit, P488.
- ⁴³ Latifa Boraas, **"Legal Concept of the Governance of the Economic Institution"**, The journal of Algerian legal and political sciences, Benyoucef Benkhedda University, Algeria, V 54, N° 3, P524.
- ⁴⁴ Hassan Mahi, **"Governance of Joint Stock Companies as a Bankruptcy Measure"**, 4th International Conference of Dubai Police Academy, United Arab Emirates, 15-17 March 2009, P96.
- ⁴⁵ Ivan Tchotourian, **"low hand on power in Canadian societies. Lighting on the purposes and methods of shareholder decisions"**, Review General of Law, Wilson Lafleur editions, Inc., University of Ottawa, Montreal-Québec, Canada, V 43, N 1, 2013, P184.
- ⁴⁶ Ridwan Hisham Hamdoun Otman, Legal Organization of Corporate Governance in Arab Legislation, Center for Arab Studies for Publishing and Distribution, Egypt, 2017, P174.
- ⁴⁷ Clause 10.2 Corporate Governance Code of Listed Corporations, French Association of Private Enterprises (AFEP), Paris, December 2022. P14. <https://bit.ly/3JDZJiY> Accessed on: 30/06/2023.
- ⁴⁸ Clause 10.3 Corporate Governance Code of Listed Corporations, op.cit, P14.
- ⁴⁹ Alam Mohammed Musa Hamdan, **"The relationship between the independence of the Board of Directors and the performance of the Company: a guide from Bahrain"**, Jordanian Journal in Business Administration, Deanship of Scientific Research and Quality Assurance, University of Jordan, V 12, N° 3, 2016, P484.
- ⁵⁰ The Charter of Good Governance of the Foundation in Algeria, 2009, P40.
- ⁵¹ Mohammed Mustafa Suleiman, Corporate Governance and the Role of Board Members and Executives, University House, Alexandria 2008, P38.
- ⁵² Nadia Fodil, Financial Companies in Algerian Law, University Publications Office, Algeria, 2008, P287.
- ⁵³ Paul Le Cannu, Companies Law, 2nd ed, Montchrestien LGDJ, Paris, 2003, p557.
- ⁵⁴ Jeffrey N. Gordon, **"Institutions as Relational Investors: A New Look at Cumulative Voting"**, Columbia Law Review, Columbia Law School, New York, V.94, Issue.1, (January 1994), p145.
- ⁵⁵ John F. Coyle, **"Altering Rules, Cumulative Voting, and Venture Capital"**, Utah Law Review, University of Utah's S.J.Quinney College of Law, V.2016, Issue.4, (February 2016), p597.
- ⁵⁶ Corporate Finance Institute (CFI Team), **"Cumulative Voting"**, Published June 30, 2020, Updated June 28, 2023. <https://bit.ly/449tRuF>. Accessed on: 05/07/2023.
- ⁵⁷ Nasser Mourad, **"The effectiveness of cooperative insurance through corporate governance"**, Algerian Journal of Legal Sciences, Political and Economic Sciences, Benyoucef Benkhedda University, Algeria, V 52, N° 2, Juan 2015, P400.
- ⁵⁸ Anthi Kitsou, Corporate Governance in Family Companies not Associated, Doctoral Thesis in Business Law, University of Strasbourg, 2014, P111.
- ⁵⁹ Clause 18.1 Corporate Governance Code of Listed Corporations, op.cit, P21.
- ⁶⁰ Candice Bouchareine, **"What is the Nominating Committee? Role and Membership"**, Diligent Boards, 12/09/2019. <https://bit.ly/43e9rj9> . Accessed on: 05/07/2023.
- ⁶¹ French Institute of Administrators (IFA), **"Nominating Committee: Governance & Best Practices"**, September 2011, pp 9-10. <https://bit.ly/3XDi7OB>. Accessed on: 05/07/2023.
- ⁶² Art97 bis was created by Order N° 10-04 of 26/08/2010 amending and supplementing Order N° 11-03 on Cash and Loan. Substituted by the article 107 of the Monetary and Banking Law dated 21 June 2023 which repealed the Law N° 11-03 on Cash and Loan.
- ⁶³ Regulation N° 11-08 of 28/11/2011 on the internal control of banks and financial institutions.
- ⁶⁴ The Charter of Good Governance of the Foundation in Algeria, 2009, P43.
- ⁶⁵ Mouain Amine El-sayed, Mohammed Taher Jalab, **"The reality of the Algerian banking system's governance in the light of global economic transformations"**, The journal of Algerian legal and political sciences, V 48, N° 3, P285.

- ⁶⁶ Art43 French Order N° 2016-315 of 17 March 2016 relating to the Auditors.
- ⁶⁷ Dominique Mangenet, Jean-Yves Martin, David Robine, "Audit Committees: A consecration surrounded by uncertainties", review of banking and financial law, Bimestrielle Lexisnexis jurisclasseur, n°06, December 2009, P07. <https://bit.ly/3PHP0Yw> . Accessed on: 05/07/2023
- ⁶⁸ Mohammed Mustafa Suleiman, corporate governance and the role of board members and executives, op.cit, P255.
- ⁶⁹ Good Practice Guide for Audit Committees & Modus Operandi, IFA-KMPG, June 2015, P09. <https://bit.ly/44uzLXg> . Accessed on: 05/07/2023.
- ⁷⁰ Clause 17.1 Corporate Governance Code of Listed Corporations, op.cit, P20.
- ⁷¹ Clause 17.2, ibidem.
- ⁷² Art L823-19 Pa 01 French commercial code.
- ⁷³ Good Practice Guide for Audit Committees & Modus operandi, op.cit, P08.
- ⁷⁴ Alain Fénéon, Company law in Africa Ohada, 2nd ed, L.G.D.J, Paris, 2017, p754.
- ⁷⁵ Ph. Merle, op.cit, P451.
- ⁷⁶ Art 115 French Law N° 66-537: "On the proposal of the President, the Board of Directors may give a mandate to a natural person to assist the President as Chief Executive Officer..."
- ⁷⁷ Art 117 Pa02 French Law N° 66-537 "The Directors General have the same powers with respect to third parties as the President"
- ⁷⁸ Paul Didier, Philippe Didier, Commercial Companies, Tome2, Economica, Paris, 2011, P235.
- ⁷⁹ Art L225-51-1 Pa 02 French commercial code.
- ⁸⁰ Ph. Merle, op-cit, P453.
- ⁸¹ Art L225-56-II French commercial code.
- ⁸² Nedra Abdelmoumen, Hierarchy and separation of power in traditional public limited companies, Thesis for the title of Doctor of Laws, University Pantheon-Sorbonne I, 2013, Paris, P330.
- ⁸³ Nedra Abdelmoumen, "Tunisian law and the separation of the powers of the CEO and the executive officer", online article published on 24/05/2023, <https://bit.ly/3PQICzo>, Accessed on: 08/07/2023.
- ⁸⁴ Art 215 of the Code of Tunisian commercial companies.
- ⁸⁵ Y. Guyon, Business Law, General Commercial Law and Corporate, op.cit, p375.
- ⁸⁶ The Charter of Good Governance of the Foundation in Algeria, 2009, P41.

Bibliography:

A- Books:

- Al Balawi Saleh Awad, Oversight of Board Members in Joint Stock Companies - Comparative Study, Riyadh Law and Economics Library, 2012.
- al-Kilobi Samiha, Commercial Companies, Arab Renaissance House, Cairo, 2008.
- Chartier Yves, Business Law, Tome 2, Commercial companies, University Press, French, 1988.
- Didier Paul, Didier Philippe, Commercial Companies, Tome2, Economica, Paris, 2011.
- Feneon Alain, Company Law in Africa Ohada, 2nd ed, L.G.D.J, Paris, 2017.
- Fodil Nadia, Financial Companies in Algerian Law, University Publications Office, Algeria, 2008.
- Guyon Yves, Business Law, General Commercial Law and Corporate, Economica, 12thed, 2003.
- Hamdan Turki Musaleh, the mediator in the legal system of the boards of directors of public shareholding companies - comparative study, Gulf publishing and distribution house, Amman, 2014.
- Hamdoun Otman Ridwan Hisham, Legal Organization of Corporate Governance in Arab Legislation, Center for Arab Studies for Publishing and Distribution, Egypt, 2017.
- Le Canu Paul, Companies Law, 2nd ed, Montchrestien L.G.D.J, Paris, 2003.
- Merle Philippe, Commercial Law, Commercial Companies, Dalloz, Paris, 12th ed, 2008.

- Nassif Elias, Encyclopedia of Commercial Companies: Public Shareholders' Associations, Part 12, Distribution of Halabi Library, 2010.
- Ripert Georges, Roblot René, Commercial Law Treaty; Commercial Corporations, Tome 1 Volume 2, 18th ed, L.G.D.J, By M. Germain, Paris, 2002.
- Suleiman Mohammed Mustafa, Corporate Governance and the Role of Board Members and Executives, University House, Alexandria 2008.
- Taha Mustapha Kamal, Commercial Companies, New University Publishing House, Alexandria, 1997.

B – Theses:

- Kitsou Anthi, Corporate Governance in Family Companies not Associated, Doctoral Thesis in Business Law, University of Strasbourg, 2014.
- Ben Wirad Asma, Protection of shareholder in Joint Stock Company, Doctoral thesis, Specialization: Business Law, University of Tlemcan 2016/2017, Algeria.
- Brunouw Laura, The Financial year of control in public companies, Thesis introduced in the doctoral school Faculty of political and social juridical Sciences, University of Right and of Health, Lille II, Octobre 2003.
- Fernandez Manuel, Control of the company by its credit providers in French and English law, Thesis for the Doctorate in Private Law of Panthéon-Assas University (Paris II), France, 2007.
- Abdelmoumen Nedra, Hierarchy and separation of powers in traditional public limited companies, Thesis for the title of Doctor of Laws, University Pantheon-Sorbonne I, Paris, 2013.

C - Newspaper articles:

- Amine El-sayed Mouain, Taher Jalab Mohammed, **"The reality of the Algerian banking system's governance in the light of global economic transformations"**, The journal of Algerian legal and political sciences, V 48, N° 3.
- Ben Wirad Asma, Djillali Chuar, **"The arbitrariness of the minority is a stumbling block to the prosperity of Joint Stock Companies"**, Algerian Journal of Legal Sciences, Political and Economic, Benyoucef Benkhedda University, Faculty of Law, Algeria, V53, N°2, Juan 2016.
- Bouqrour Saïd, **"Legal System for the Response of the Auditor of the Joint Stock Company, Comparative Study"**, Foundation and Commerce Journal, Enterprise and Commerce Informant, University of Oran, Algeria, Issue II, 2006.
- F. Coyle John, **"Altering Rules, Cumulative Voting, and Venture Capital"**, Utah Law Review, University of Utah's S.J.Quinney College of Law, V.2016, Issue.4, (February 2016).
- Guyon Yves, **"Dispositions of the decree of 03 May 2002 relating to shareholders' general meetings"**, Companies review, Juillet 2002.
- Kamel Abd Elhoussein al-Baldawi, Rawa Younis Mahmoud al-Najjar, **"Introducing the Shareholder's Right in Joint Stock Company to Access Its Documents and Photographs"** Rafidain Law Review, Mosul University, Iraq, V 1, N° 18, 2003.
- Latifa Boraas, **"Legal Concept of the Governance of the Economic Institution"**, The journal of Algerian legal and political sciences, Benyoucef Benkhedda University, Algeria, V 54, N° 3.
- Mangenet Dominique, Jean-Yves Martin, David Robine, **"Audit Committees: A consecration surrounded by uncertainties"**, review of banking and financial law, Bimestrielle Lexisnexis jurisclasseur, n°06, December 2009.
- Mourad Nasser, **"The effectiveness of cooperative insurance through corporate governance"**, Algerian Journal of Legal Sciences, Political and Economic Sciences, Benyoucef Benkhedda University, Algeria, V 52, N° 2, Juan 2015.
- Musa Hamdan Alam Mohammed, **"The relationship between the independence of the Board of Directors and the performance of the Company: a guide from Bahrain"**, Jordanian

Journal in Business Administration, Deanship of Scientific Research and Quality Assurance, University of Jordan, V 12, N° 3, 2016.

- Salah Mohamed, "**Management expertise: a useful institution in commercial company law**", Company and Commerce Review, University of Oran 2 Algeria, N° 1, 2005.
- Salah Mohamed, "**The convening of general meetings of commercial companies: a regulation to be rewritten**", review enterprise and trade, University of Oran 2, Algeria, N° 8, 2012.
- Tchotourian Ivan, "**low hand on power in Canadian societies. Lighting on the purposes and methods of shareholder decisions**", Review General of Law, Wilson Lafleur editions, Inc., University of Ottawa, Montreal-Québec, Canada, V 43, N 1, 2013.

D - Seminar papers:

- Hassan Mahi, "**Governance of Joint Stock Companies as a Bankruptcy Measure**", 4th International Conference of Dubai Police Academy, United Arab Emirates, 15-17 March 2009.

E-Legal Texts:

E-1 Algerian Legal Texts

- Order N° 75-59 dated 26 September 1975 containing the Commercial Code, gazette N° 101 of December 19, 1975.
- Law N° 10-01 of June 29, 2010 on the functions of expert accountant, the auditor and certified accountant, gazette N° 42 of 11 July 2010.
- Order N° 10-04 of 26/08/2010 amending and supplementing Order N° 11-03 on Cash and Loan. Repealed by Law N° 23-09 dated 21 June 2023 containing the Monetary and Banking Law, gazette N° 43 of 27 June 2023.
- Regulation N° 11-08 of 28/11/2011 on internal control of banks and financial institutions, Official Gazette N° 74 of 29/08/2012.
- The Charter of Good Governance of the Foundation in Algeria, 2009.

E-2 Foreign legal texts

- French Law N° 66-537 on commercial companies.
- French Law N° 2001-420 of May 15th, 2001 relating to new economic regulations, gazette N° 113 of May 16th, 2001.
- French Law N° 2011-525 of 17 May 2011 on the simplification and improvement of the quality of law.
- French law N° 2019-744 of 19 July 2019 on the simplification, clarification and updating of company law.
- French Order N° 2016-315 of 17 March 2016 relating to the Auditors, Gazette N° 0066.
- French Ordinance, N° 2020-1142 of 16 September 2020.
- Regulation N° 11-08 of 28/11/2011 on the internal control of banks and financial institutions.
- Corporate Governance Code of Listed Corporations, French Association of Private Enterprises (AFEP), Paris, December 2022
- Saudi Companies Code.
- Jordanian Companies Code.
- Egyptian Code on shareholding companies and partnership limited by shares companies and limited liability companies.
- Tunisian commercial companies Code.

F - Websites:

- Report of the working group chaired by Daniel Bouton, "**For Better Governance of Listed Companies**", 23/09/2002, P03. <https://bit.ly/3pdXR9L> . Accessed on: 24/06/2023.
- Le Cannu Paul, "**Management expertise following the NRE law: from chicane to dialogue?**" General review of online law, N° 822, 2012. <https://bit.ly/3CPAoyF>. Accessed on: 28/06/2023.

- Cass.Crim, 26 May 2010 N°10-80.392, Bulletin of judgments chambre criminelle N°05, Monthly publication May 2010, editions of official journals, PP397-398. <https://bit.ly/3ppYFsb>. Accessed on: 29/06/2023.
- Corporate Governance Code of Listed Corporations, French Association of Private Enterprises (AFEP), Paris, December 2022. P14. <https://bit.ly/3JDZJiY> Accessed on: 30/06/2023.
- N.Gordon Jeffrey, "Institutions as Relational Investors: A New Look at Cumulative Voting", Columbia Law Review, Columbia Law School, New York, V.94, Issue.1, (January 1994). <https://bit.ly/3NGIezT> . Accessed on: 04/07/2023.
- Candice Bouchareine, "What is the Nominating Committee? Role and Membership", Diligent Boards, 12/09/2019. <https://bit.ly/43e9rj9> . Accessed on: 05/07/2023.
- Corporate Finance Institute (CFI Team), "Cumulative Voting", Published June 30, 2020, Updated June 28, 2023. <https://bit.ly/449tRuF>. Accessed on: 05/07/2023.
- Dominique Mangenet, Jean-Yves Martin, David Robine, "Audit Committees: A consecration surrounded by uncertainties", review of banking and financial law, Bimestrielle Lexisnexis jurisclasseur, n°06, December 2009, P07. <https://bit.ly/3PHP0Yw> . Accessed on: 05/07/2023.
- French Institute of Administrators (IFA), "Nominating Committee: Governance & Best Practices", September 2011, pp 9-10. <https://bit.ly/3XDi7OB>. Accessed on: 05/07/2023.
- Good Practice Guide for Audit Committees & Modus Operandi, IFA-KMPG, June 2015, P09. <https://bit.ly/44uzLXg> . Accessed on: 05/07/2023.
- Nedra Abdelmoumen, "Tunisian law and the separation of the powers of the CEO and the executive officer", online article published on 24/05/2023, <https://bit.ly/3PQlCzo>, Accessed on: 08/07/2023.