

Transformation of Commercial Companies : a Legal Necessity and an Economic Inevitability

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Abstract:

Companies are considered one of the most important phenomena of economic life, and among the oldest contracts in history known to ancient civilizations to fill the gaps that surrounded that life. There is no better evidence of this than the code of Hammurabi, which is one of the oldest legal documents still known to this day. It established eight articles (100-107) in the legal regulation of companies out of a total of 44 articles dedicated to contracts, some of which are still relevant up until now, as most of the modern legislations adopt its provisions. As a result of market openness policy, and as a way of facilitating and encouraging different types of investments, many developing countries have focused on establishing a mechanism to encourage companies and small and medium-sized institutions to transform into other forms capable of implementing bigger projects. Therefore, this research paper came to clarify the conceptual framework of the transformation process through defining this mechanism, stating similarities and differences with some terms, and finally explaining the legitimate reasons and motives for changing the legal form of commercial companies.

Keywords :Change of legal form ; commercial company ; transformation ; company re-registration.

Jel Classification Codes: K20, P12, L 33.

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1. INTRODUCTION

Introduction:

As a result of market openness policy, and as a way of facilitating and encouraging different types of investments, many developing countries have focused on establishing a mechanism to encourage companies and small and medium-sized institutions to transform into other forms capable of implementing bigger projects than those they are currently engaged in. Consequently, it was imperative to regulate the legal rules governing and overseeing the transformation, giving it utmost care due to the sensitivity and importance of the matter, as a matter of fact, transformation is among the methods adopted by the legislations to address changes that occur in the economic conditions of the company, after its establishment and the commencement of its

activity. This requires the company to change its legal form to align with these conditions, which is what is meant by the process of commercial company transformation.¹

It is worth mentioning that legal legislations have differed in labeling and establishing a legal terminology for the process of transformation. Some have referred to it as 'company transformation,' as seen in Algerian, Emirati, Kuwaiti, French, and Iraqi legislations. The Egyptian legislation refers to it as 'company form change,' while the legislature in the United Kingdom (Britain) employs the term 'company re-registration'. In Italy, it's termed as 'company reorganization,' and the same goes for Spain². However, despite the variation in terminology, the concept remains the same.

Transformation has two concepts, one narrow and the other broad. The latter pertains to changing the system that controls the life of the company, whether associated with changing its form or not³. As for the narrow concept, it implies transforming the whole company. This is achieved through abandoning the old form of the company and taking a new form, and this is what the Algerian legislature adopted.

The aim of the transformation is to maintain the legal personality of the company and not to establish a new legal entity. This is different from mergers⁴, because a merger necessarily involves the termination and dissolution of the legal personality of the merged company. Therefore, the process of transforming the company may impact the rights of both partners and third parties alike, resulting in a modification of the relationships that bind them, either by increase or decrease⁵. This is conceivable only in existing companies, even if they are subject to dissolution. It is evident that it does not arise in joint ventures due to their lack of legal personality⁶. **Thus, the following question arises: what is meant by the process of changing the legal form of commercial companies? And what are the reasons and motives behind it?**

To answer this question in this research paper, we will address the following elements:

Chapter One: the Meaning of Company Transformation

Chapter Two: Reasons and Motives of Company Transformation

Chapter One: the Meaning of the Company Transformation Process

In this regard, the legal jurisprudence emphasizes that addressing any legal idea requires understanding its concept and determinants, which compels us to attempt researching the definition of the transformation process before delving into its scope.

Firstly. Defining the Company Transformation Process and Distinguishing it from What Resembles it:

¹ Sabry Mustafa Hassan Sabak, *The Legal System of Company Transformation (A Comparative Study)*, 1st Edition, Al-Wafa Legal Library, Alexandria, 2012.

² Yasser Hussein Ali Al-Marsoumi, *The Legal Effects of Transforming Partnerships into Public Joint-Stock Companies*, Magister's Thesis, Al-Isra University, Jordan, 2015, p. 09.

³ Khalil Victor Tadros, *Division of the Company from a Legal Perspective*, Al Nahda Al Arabiya Publishing House, Egypt, 2007, p. 19.

⁴ Murad Fahim, *Company Transformation (Change of Company Form)*, Manshurat Al-Ma'arif Publishing House, Alexandria, Second Edition, 1986, p. 12.

⁵ Hasnaoui Rouabhia Fatma, *Formality in Commercial Law*, Doctoral Thesis, Faculty of Law, University of Algiers 1 Benyoucef Benkhedda, Algeria, 2019. P. 88.

⁶ Mohamed Fareed El-Areiny, *Commercial Companies: The Joint Commercial Project, between Legal Framework Unity and Multiple Forms*, No Edition Number, Al-Jamiah Al-Jadidah Publishing House, Cairo, 2019, p. 403.

In order to address the concept of company transformation, we have to first define what it meant by it, and then differentiate and clarify the differences and overlaps between the transformation and some similar terms.

1. Transformation Process:

Linguistically, 'transformation' refers to moving from a place to another, or from a state to another⁷, as for its legal contextual meaning, it differs from a context to another. For instance, in civil law, in case of a void contract or a revocable contract that contains all the elements of another valid contract, it transforms into this valid contract that has its elements and conditions, provided that the potential intention of the contracting parties was oriented towards concluding the contract. This is what the legislature stipulates in Article 105 of the Algerian Civil Code⁸, which indicates that transformation is related to the characterization imposed by the contracting parties on their legal action⁹. This definition was considered incomplete given that it does not include some special forms of transformation that fall within the current legal scope of the concept¹⁰.

As for company transformation -which is our topic-, company law jurists defined it as: (a process by which a company changes its form into another form of the commercial companies.)¹¹

Commercial company transformation also refers to: (the process that a company undergoes during its lifetime, where it changes the legal form upon which it was established into another company form without this leading to the end of its legal personality)¹². Based on the

⁷ Ibrahim Anis and others, *Al-Mu'jam Al-Wasit*, Part One, Arabic Language Academy in Cairo, Egypt, Second Edition, p. 209.

⁸ Order No. 75-58 dated 20 Ramadan 1395 corresponding to September 26, 1975, includes the Civil Law, Algeria, Official Journal, Issue No. 78 issued on 24 Ramadan 1395 corresponding to September 30, 1975, p. 990. Amended and supplemented.

⁹ Sabry Mustafa Hassan Sabak, Previously Cited Reference, p. 62.

One of the prominent examples and applications of this rule in commercial law is the transformation of a void bill of exchange due to the absence of some formal data into a promissory note, a bearer bond, or an ordinary bond according to the necessary conditions for each bond.

¹⁰ Murad Fahim, *Company Transformation (Change of Company Form)*, Manshurat Al-Ma'arif Publishing House, Alexandria, Second Edition, 1986, p. 18.

¹¹ Mahmoud Samir Al-Sharqawi, *Commercial Companies*, Al-Nahda Al-Arabiya Publishing House, Egypt, 1986, p. 274. Also refer to: Sameeha Al-Qalyoubi, *Commercial Companies*, Al-Nahda Al-Arabiya Publishing House, Egypt, no edition number, 2018, p. 10. Also see: Ali Younes, *Commercial Companies*, Al-Fikr Al-Arabi Publishing House, Egypt, no edition date, p. 145. Also refer to: Mahmoud Mukhtar Breeery, *Commercial Transactions Law (Commercial Companies)*, Al-Fikr Al-Arabi Publishing House, Egypt, first edition, 1983, p. 87.

¹² Mohamed Tawfik Saudi, *Changing the Legal Form of Limited Liability Companies*, Magister's Thesis, Faculty of Law, Cairo University, Egypt, 1988, p. 9.

aforementioned, it can be said that the commercial company transformation process means amending the company's legal system¹³.

As for the compulsory transformation, it refers to (the commercial company being compelled by the law to carry out the transformation in the cases and situations specified by the law, and under certain conditions)¹⁴. On the other hand, we find permissive transformation, which means (leaving the freedom for the partners to carry it out according to their circumstances, without compelling them to do so)¹⁵.

The importance of distinguishing between compulsory transformation and permissive transformation appears in terms of the violation penalty. In case of compulsory transformation, the penalty is terminating the company, given that this legal process originally aims to avoid termination and dissolution due to the presence of one of its causes, consequently, nullity does not arise concerning it because its result leads to the continuation of the company in a new form¹⁶.

2. Distinguishing Between Transformation and Some Similar Terms:

• Transformation and Mergers:

The phenomenon of mergers started spreading, and it became a refuge for the companies aspiring to rise and continue to face giant companies, company merging was always considered one of the most significant aspects of capital concentration, viewed as a practical tool for accumulating large funds, it serves as a method of providing an effective means of control exercised by the holding company over other companies. Through this, the holding company eliminates competition, and increases its dominance over the other companies, even if it is legally independent of them, it may also prevent the holding company or any of its subsidiaries from the specter of bankruptcy¹⁷. A merger is defined as: (the agreement by which at least two existing companies merge into a single entity with a new legal personality after taking new establishment procedures), a merger takes three forms: either merger by inclusion, known by some as amalgamation or absorption; or by way of commingling, also known as union; and the last type, merger by division, which is recognized by French law¹⁸.

While transformation or changing the form of a commercial company takes place in one company, the same company that undertakes the process, which indicates that transformation is a one-sided self-process, on the other hand, merger is a multiparty process. Moreover, one of the most important aspects that distinguishes the process of transformation is the continuity of the legal personality of the company, as opposed to the process of merger, where a new legal person is created in case of merger by way of commingling. Therefore, merger is considered one of the reasons of terminating a company, while transformation cannot be

¹³ Sabry Mustafa Hassan Sabak, p.71.

¹⁴ Same Reference, p. 242,

¹⁵ Murad Fahim, Previously Cited Reference, p. 38. Also refer to: Mahmoud Mukhtar Breeery, Previously Cited Reference, p. 170.

¹⁶ Murad Fahim, p. 39.

¹⁷ Hussni El Masry, Mergers and Divisions of Companies, no edition number, Law Book Shop, Cairo, 2007, p. 08. Also refer to: Fayez Ismail Bassbous, Mergers of Public Joint-Stock Companies and the Legal Consequences Thereof, no edition number, Dar al Thaqafa - Publishing and Distribution, Amman, 2010, p. 58.

¹⁸ Ben Nola Zarzour, The Legal Nature of Company Mergers (A Comparative Study), Al-Wafa Law Library, Alexandria, Egypt, 2017, p. 16.

regarded in the same light¹⁹. Also, in a merger process, it is sufficient to obtain the approval of the majority owning the authority to amend the company's system, while the transformation process necessitates collective approval, especially if it involves increasing the obligations of the partners²⁰.

- **Transformation and Nationalization:**

Nationalization is considered a compulsory means and tool that systems use to combat the capitalist control, which gained strength in the past century. This is done to emphasize the role that the state plays in directing the economy towards achieving public interest, as well as having all the industrial and economic activities fall under its absolute control. Nationalization refers to the process of transferring complete or partial ownership of private productive projects to the state, which then manages them with the aim of achieving public interest, in exchange for compensating the owners of these projects for the rights expropriated²¹. Nationalization can take two forms, the first one is transferring the whole project to public ownership, which results in terminating the legal personality, dissolving into a new legal form, while the second one is transferring the ownership of all or part of the shares and stakes of the nationalized project to the state while the project continues to maintain its legal form²².

Perhaps the difference between nationalization and transformation is evident in that the latter may be a voluntary process, as in permissive transformation, or it may be obligatory or compulsory, unlike nationalization, which is mandated by law as it falls under sovereign acts. Moreover, transformation aims to avoid the process of termination in many cases, additionally, the traditional form of the transformation process maintains the legal personality of the project, unlike nationalization, which confers a public character to the project²³.

- **Transformation and Amendment:**

Amendment refers to a change in one of the constituent elements of something. Therefore, the amendments that may occur in a commercial company can't be limited, as it is possible to increase or decrease the company's capital. Additionally, it is possible to extend the duration of the company, as well as increase the number of partners according to the legally specified quorum, and other issues that are regulated in the basic law²⁴. In this context, the amendment

¹⁹ Murad Fahim, Previously Cited Reference, p. 26.

²⁰ Refer, for example, to Articles: 590/591/594/715 bis 15 / 715 bis 16 / 715 bis 17 / 715 ter 10 / 746 A.C.C.

²¹ Ali Sayid Qasim, Lessons in Business Law (The Legal Organization of Collective Commercial Projects), Part Two, Al-Nahda Al-Arabiya Publishing House, Cairo, Egypt, no edition date, p. 155.

²² Sabry Mustafa Hassan Sabak, Previously Cited Reference, p. 187.

²³ Mahmoud Mukhtar Breeery, Previously Cited Reference, p. 161.

²⁴ The Algerian legislature has strengthened the basic law, which is evident through its transition and elevation to the category of formal contracts that require written documentation. Writing here is a condition for conclusion and proof. For further details, refer to: Mansour Daoued, Saaed Elaggoune, Commercial Evidence between Speed and Credit, **Journal of Law and Humanities**, Faculty of Law and Political Science, Ziane Achour University, Djelfa, Volume 10, Issue 03, 2017, p. 12. Also refer to: Ben Salem Ahmed Abderrahmane, Hashi Mohammed Al-Amin, **The Evidence System in Civil and**

does not actually affect the provisions to which it is subject during its existence as a legal entity, rather, it refers to amending the company's system concerning certain elements that fall within the scope of the creator's management of the company²⁵. It is worth mentioning that any process or procedure to amend the elements of the company must be in accordance with the form required by the legislature.

Thus, the process of transformation and changing the company's form shares many aspects with the process of amendment to an extent that modern French jurisprudence tends to consider transformation, in terms of legal nature, akin to amendment²⁶.

Secondly. Compulsory Transformation Scope:

In order to address the scope of commercial company transformation, it is necessary to discuss the companies undergoing the transformation process, known as the substantive scope, and subsequently move on to the temporal scope of the transformation process.

1. Substantive Scope:

The company transformation process or legal change of the company's form, in essence, aims to ensure the continuity of the economic project embodied by the legal entity, thereby ensuring the continuity of the company's legal personality. That is to say, the legal entity continues, along with the establishment of a new one. To achieve this objective, this legal process is generally applicable to all companies enjoying legal personality, which are classified into partnerships²⁷, capital companies²⁸, and companies of a specific nature²⁹, as a general principle³⁰.

The legal personality³¹ was not recognized for the company until the twelfth century, as a result of the development and prosperity of commerce in Europe. However, it did not

Commercial Matters in Light of Algerian Legislation and Islamic Jurisprudence, Dar El Moudjadid Printing Shop, Sétif, 2018, p. 37 and thereafter.

²⁵ Murad Fahim, Previously Cited Reference, p. 32.

²⁶ Same Reference, p. 30.

²⁷ Joint Liability Company (Articles 551 to 563 of the A.C.C) Limited Shared Company (Articles 563 bis to Article 563 bis 10 of the A.C.C)

²⁸ Joint-Stock Company (Articles 592 to 715 bis 132 of the A.C.C), Limited Shares Company (Articles 715 ter to 715 ter of the A.C.C), Limited Liability Company (Articles 564 to 591 of the A.C.C).

²⁹ Example of Variable Capital Companies or associations (Refer to Article 796 and Article 799 bis 4 of the A.C.C).

³⁰ This principle has only one exception that applies exclusively to the Joint-Venture Company, as it does not acquire legal personality due to its nature. This is stipulated in Article 795 bis 2 of the Algerian Commercial Code: "(The Join-Venture Company only exists in relationships between partners and is not disclosed to third parties. It does not possess legal personality, is not subject to publicity, and can be proven by all means)." For more details, refer to: Ben Zeraa Rabeh, **The Joint-Venture Company "Legally, Jurisprudentially, and Judicially,"** Part One, Dar Al-'Uloom for Publishing and Distribution, Annaba, 2014, page 90 and thereafter.

³¹ The legal person is a legal entity composed of a group of individuals and assets, upon which legal personality is conferred. It serves as a means of comparison to natural persons' legal personality. Consequently, it has the right to acquire rights and bear obligations,

complete its legal formulation and acquire the value of legal theories until the last two centuries,³² which implies that concluding the company's contract results in a new legal and completely independent entity of the founding individuals of the commercial company³³. The impact of this had an effect on the conceptualization of the contractual notion of the commercial company, where the company contract became unique among other contracts³⁴. It creates and generates a legal entity that enjoys independent autonomy and distinctive personality, enabling it to perform the same role that a natural person could play in the legal sphere. In this sense, it transcends being a legal entity addressed by its provisions, similar to natural individuals³⁵.

2. Temporal Scope:

The legal change of the company's form is the only way to rescue the commercial company from a termination penalty, as it targets the continuity of legal personality of the economic and commercial project. The French legislature, upon enacting the commercial company law of 1966, moved towards the elimination of the termination of companies by the force of law. This was done to expand the process of transformation and pave the way for companies at risk of termination to undergo a legal change in their form, given that companies are among the most important aspects of economic life, serving as a legal tool to concentrate capital³⁶.

However, it is worth mentioning that this judgment is not taken unequivocally, but the legislature has conditioned it with a temporal scope. Therefore, The company that has received a judgment or reached an agreement among its partners for its dissolution and has been terminated cannot proceed with its transformation process and change of its legal form, even during the liquidation process, the continuation of the legal personality is associated with the liquidation's objectives and is slated to cease upon its conclusion. This principle has been affirmed by several judgments of the Egyptian Court of Cassation and the French Court of Cassation in a famous ruling dated July 11, 1988, where the text of the judgment stated:

enabling it to perform all legal actions. It also incurs contractual and non-contractual liabilities and, within the limits of its conceptual identity, can be held criminally responsible.

³² Aziz Al-Akili, **Al Wasit in Commercial Companies (A Comparative Judicial Jurisprudential Study in General and Special Provisions)**, Dar Al-Thaqafah for Publishing and Distribution, Jordan, 2007, p. 59.

³³ Mahmoud Mukhtar Ahmed Breeery, **The Legal Personality of Commercial Companies (Conditions for Acquisition and Limits of Objection)**, Al-Nahda Al-Arabiya Publishing House, Cairo, Egypt, 2013, p. 23.

³⁴ Tabaa Nadjjet, **Lectures on Commercial Companies**, Commercial Companies Module, 3rd Year (Bachelor's Degree), Private Law, Faculty of Law and Political Science, University of Béjaia, 2017/2018, p. 31.

³⁵ Mohamed Fareed El-Areiny, **Commercial Companies: 'The Joint Commercial Project, Between Legal Framework Unity and Multiple Forms'**, No Edition Number, El Gamaa Elgadida Publishing House, Cairo, 2019, p. 53.

³⁶ Sherif Mohammed Ghanem and Saleh Rashid Al-Hamrani, **Commercial Companies**, No edition number, Dubai Police Academy, Dubai, 2016, p. 37.

""If obligations of a social nature are not liquidated at the time of the removal of the company from the commercial register, creditors have an interest in obtaining the appointment of an administrator (ad hoc) to represent the company in the response action initiated against She "³⁷
And also in a famous judgment by the French Court of Cassation dated 12/11/1992, the judgment stated the following:

The arrival of the term provided for by statutes entails the automatic dissolution of the company whose legal personality can no longer exist except for the purposes of liquidation. It follows that in a company dissolved by the occurrence of the statutory term no longer has - on this date neither the right to use nor the key to transmit its corporate name to another company.

In the absence of the appointment of a liquidator, a dissolved company no longer has a legal representative, from this date so that the subsequent renewal of a trademark is void by having been made by a person without a dissolved company. is not capable of being transformed, it follows that the transformation carried out after the dissolution cannot determine the maintenance of the moral personality. For operations not subject to liquidation on purely legal grounds.³⁸

Topic Two. Reasons and Motives of Transformation:

The necessities imposed by the importance of entities and commercial companies and their role in various aspects of life necessitated the creation of a legal tool that alters their legal framework, through which their existence or non-existence can be determined. This tool is the process of transformation.

Transformation can be used as a political tool to implement a specific policy, as was the case in totalitarian regimes, when the Nazi regime employed numerous transformation processes to coordinate German commercial law with political directives³⁹.

Sometimes, commercial companies have motives, according to their circumstances and requirements that force them to change their legal form by adopting another one, which is known as internal reasons. On the other hand, there may be reasons and factors beyond the will of commercial companies, compelling them to change their legal form and adopt a specific form. In some cases, the commercial company has the right to choose the form. This is known as external reasons.

1. Internal Reasons:

The company may have serious reasons, making it change the legal form adopted when the company was established, given that when the company was first established, it formed in light of specific circumstances and possessed certain capabilities, aiming to achieve a goal and implement a specific economic project. However, internal changes may occur thereafter, including changes within the commercial project, requiring the company to change its legal form, as the old one doesn't align with its new circumstances⁴⁰.

These circumstances may be negative or positive, an example of negative circumstances is the change of financial economic circumstances of the company to the worse, where the company has to reduce the size and activity of the company, which can negatively affect its capital, making it decrease and fall below the minimum required initial capital. As for the positive circumstances, they can be an expansion of the size of activity and an increase in the number of partners, an

³⁷ - Revue des Sociétés J.d.s, 1988, P521.

³⁸ - Revue des Sociétés J.d.s, 1993, P571.

³⁹ Sabry Mustafa Hassan Sabak, Previous Reference, p. 152.

⁴⁰ Mohamed Tawfik Saudi, Previous Reference, p. 140.

increase of capital, and an establishment of new branches of the commercial company. All of this may lead the company to change its legal form, as is the case, for example, when increasing the number of partners beyond the legal quorum permitted in a limited liability company, resulting in a change of its legal form to a joint-stock company, for instance.

All of this can lead the commercial company to transform, adopting a new legal form that aligns with these circumstances. Realistically, in these cases, the transformation often involves evolving from a simple structure to a more advanced one for the commercial project⁴¹.

2. External Reasons:

The motive behind the change of legal form of a commercial company can be beyond the will and scope of the company and the partners, which can lead the company to transform into a specific legal form. This is known as external reasons.

After establishing the commercial company and adopting a specific form, the legislature may add a new type and form of commercial companies. This new form may have more advantages, aligning with the economic project because of which the company was established. This creates a strong desire to adopt this form by initiating the procedures for transformation and transitioning to this new legal framework.

As is the case when the Algerian legislature added a new type and form of commercial companies, namely the Simple Joint Stock Company, recently adopted by the Algerian legislature under Law No. 22-09, amending and supplementing the Commercial Code, which completed the third section of the first chapter of the fifth book with a new segment titled 'Simple Joint Stock Company,' Despite the fact that the French legislature was the first to introduce this form through Law No. 1994 dated January 3, 1994⁴², commonly referred to as the Simplified Joint Stock Company⁴³, characterized by flexibility. The legislature attempted, despite it being a type of financial companies, to maintain its financial character at times and, at other times, enhance its personal nature.

As usual, the Algerian legislature explained its characteristics, without precisely defining it, leaving it to jurisprudence and the judiciary. Whereby Article 715 bis 133 stipulates: "The

⁴¹ Sabry Mustafa Hassan Sabak, Previous Reference, p. 148.

⁴² Law No. 94-1 of January 3, 1994, establishing the simplified joint-stock company, published in the Official Journal of the French Republic (JORF) No. 2 on January 4, 1994.

⁴³ The creation of this type of companies in French law can be traced back to a report by the National Center for Employers, which drew attention to the needs of large industrial enterprises seeking modern legal frameworks to facilitate collaboration between contracting activities. The originality of the joint-stock company lies in its inflexibility in terms of establishment and its strict and imperative rules that do not grant partners the freedom in management. This has led to two phenomena known as "legal evasion," where the majority of French and foreign companies evade the provisions of the French Commercial Code of 1966. They often resort to countries with flexible legal regulations for companies, such as Luxembourg, the Netherlands, and others known for "independent shareholder agreements." Refer to: Dherifa Mousaoui, **On the Specificity of the Simplified Joint-Stock Company: A Comparative Study with French Law**, The Critical Journal of Law and Political Sciences, Tizi Ouzou University, Algeria, Volume 17, Issue 01, 2022, p. 872.

simplified joint-stock company is a company whose capital is divided into shares and consists of partners who are not liable for losses except within the limits of the stakes they have contributed." The simplified joint-stock company can be established by one person or several natural and/or legal persons.

If the simplified joint-stock company has only one person, it is called a "Single-Member Simplified Joint-Stock Company."

The simplified joint-stock company is exclusively established by companies that have obtained the startup enterprise label.

An example of this is what happened in France, where the legislature established a legal form of commercial companies, which is the limited liability company, by virtue of the law of March 7th, 1925. This new form brought with it several advantages, leading many companies at that time to transform into this type. Additionally, it attracted a number of businessmen to invest their funds in such a structure⁴⁴.

Among the reasons that led commercial companies to transform into another legal form was what happened in French law when the law of March 4, 1937, concerning joint-stock companies, was issued. This law introduced the principle known as the 'Principle of the President,' signifying that the chairman of the board is a guarantor under joint and several liability. Additionally, the law threatened to declare his bankruptcy and impose restrictions on his personal actions. All of these factors led many joint-stock companies to transform into limited liability companies. The latter are characterized by advantages not present in joint-stock companies, such as limited liability within the limits of the partner's stake, which does not extend to his personal financial liability⁴⁵.

Moreover, among the reasons that may lead a company to change its legal form is tax reasons. In such cases, the company is compelled to change its legal form to one that offers tax incentives and benefits that align with the economic project for which the company was originally established⁴⁶.

Conclusion:

The process of transforming a commercial company, or as commonly referred to, changing its legal form, is one of the most important and successful legal mechanisms that work to enhance and ensure the continuity of economic and commercial projects. It also aims to preserve various legal positions arising from the commercial company contract.

The process of transformation refers to that process that a company undergoes during its lifetime, by changing the legal form that it adopted upon its establishment into another form of companies, without this leading to the termination of its legal personality. There are many types of transformation, including: compulsory transformation, permissive transformation, legal transformation and contractual transformation. In principle, any company can change its legal form while maintaining its juridical personality. This is achieved through a decision issued according to the established procedures to amend the company contract and its articles of association, completing the required establishment procedures for the new legal form adopted by the company.

⁴⁴ Sayid Ali Abdel Rahim, *Limited Liability Companies and Their Subjection to General Income Tax in Egypt (Comparative Study)*, Abna Wahaba Mohamed Hassan Printing House, Cairo, 1990, p. 45.

⁴⁵ Sabry Mustafa Hassan Sabak, *Previous Reference*, p. 150.

⁴⁶ Tawfik Mohamed Saudi, *Previous Reference*, p. 141.

The principle of the continuity of legal personality of the transformed company results in the preservation of the legal features acquired by the company since its inception for the new form. As a consequence of this principle, the company remains committed to all obligations undertaken towards third parties, with no legal repercussions affecting the rights of others due to the change in its legal form.

Among the suggested recommendation:

- The Algerian legislature should clarify different legal procedures that govern the commercial company transformation process in the texts of commercial code, this is because there is a dire need for such provisions, given that the transformation process has become an important mechanism and occupies a notable position in modern legislation for commercial companies.
- Algeria should establish an independent Algerian law –away from the phenomenon of importing laws- that pertains to commercial companies, this has become one of the fundamental requirements, especially in the context of global openness and the need for Algerian commercial companies to have a specific legal framework that enables them to compete, taking into account all modern jurisprudential theories, and the legislature should address various fundamental concepts in commercial companies, attempting to define these concepts and set their boundaries.

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