

The Simplified Joint-Stock Company - Comparative Study

شركة المساهمة البسيطة - دراسة مقارنة

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Abstract:

A new legal form of companies, under the name "Simplified Joint Stock Company", was created by Law No. 22-09 amending and supplementing Ordinance No. 75-59 on the Commercial Code. It is a commercial company by form, according to Article 544, paragraph 2 in its new version after its amendment by Article 2 of Law No. 22-09. The share capital of this company is divided into shares and it is constituted between partners who only bear losses up to the amount of their contributions according to Article 715 bis 133 of the Commercial Code. This company may be formed by one or more partners, natural or legal persons, and if it has only one partner, it is called a single-member simplified joint-stock company. This form of company has existed in French law since the adoption of the law of January 3, 1994.

Key words: Simplified Joint Stock Company, partner, share capital, contributions, start-up.

Introduction:

According to Article 416 of the Algerian Civil Code¹, a company is "a contract by which two or more natural or legal persons agree to contribute to a common activity by providing contributions in industry, in kind, or in cash with the aim of sharing the resulting profit, achieving an economy, or pursuing an economic objective of common interest. They bear the losses that may result."

The Algerian legislator organized the provisions related to commercial companies in articles 544 and following of the Commercial Code².

The difference between the various types of commercial companies in terms of formation, management methods, and reasons for dissolution has forced the legislator to organize each type of company through specific provisions.

Legislative Decree No. 93-08 of April 25, 1993³ added simple and joint-stock limited partnerships. Subsequently, the single-member limited liability company was established with the promulgation of Ordinance No. 96-27 of December 9, 1996⁴, which is inspired by the French law of July 11, 1985.

The efforts of the legislator to create new types of commercial companies have continued. Thus, a new legal form of companies, under the name "Simplified Joint Stock Company", was created by Law No. 22-09 amending and completing Ordinance No. 75-59 bearing Commercial Code⁵. It is a commercial company by its form, as article 544, paragraph 2 in its new version after amendment by article 2 of law No. 22-09, states: "Are commercial, by reason of their form and regardless of their purpose, the general partnerships, limited partnerships, limited liability companies, joint stock companies and simplified joint stock companies."

The share capital of this company is divided into shares and is formed among partners who bear losses only up to the amount of their contributions according to Article 715 bis 133 of the Commercial Code. This company may be formed by one or more partners, natural or legal persons, and if it has only one partner, it is called a single-member simplified joint-stock company. This

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form of company has existed in French law since the adoption of the law of January 3, 1994. A part of French doctrine defines this company as "a commercial company in form, which can issue shares or any other type of securities, and in which the liability of the partners is limited to the amount of their contributions. It cannot offer its securities to the public" ⁶ . It is a company of prime importance in the French legal landscape. Indeed, it is the only one to offer its users a degree of freedom unmatched in the arrangement of the rules of organization and internal functioning. This is also the reason for its success. Today, it is the largest in number of joint-stock companies, as in 2024, the number of companies of this type reached 1,637,074 in France ⁷ . But the simplified joint-stock company has some specificities in Algerian law that we will try to clarify. In so doing, we raise the following research question, " What are the characteristics and conditions for establishing a simple joint-stock company"?. To answer this research question, we use the analytical and descriptive methods because they suit our study. Besides, we divide the study into two topics; the 1st revolves around the study of The characteristics of the simplified joint-stock company, while the 2nd is about The conditions for establishment

1-The characteristics of the simplified joint-stock company

The simplified joint stock company is distinguished by two fundamental characteristics: contractual freedom in its establishment and management on the one hand, and the fact that it is the legal framework for start-ups on the other hand.

1.1- Contractual Freedom

The simplified joint-stock company is distinguished by the contractual freedom enjoyed by the shareholders in its formation and management ⁸ . Indeed, the French legislator authorized the creation of this type of company in order to curb the relocation of large French companies abroad, which complained about the "sometimes excessive French legalism, supported by a tax system considered too rigid." In reality, this is not the only company in which partners enjoy contractual freedom; rather, we find this freedom in partnerships, especially in general partnerships. On the other hand, this contractual freedom is less present in capital societies, especially in the joint-stock company, which is much more subject to institutional theory than to contractual theory. The application of contractual freedom is limited to the will of the partners to create a joint-stock company. Once their decision is made, the way is open to the institutional regime provided for by the legislator concerning the organization of the management bodies, the management and control of the company, the procedures for holding meetings and making decisions in the assemblies, and even the procedures for incorporation.

Regarding the simplified joint-stock company, although it is considered a joint-stock company, since its share capital is divided into shares and its associates are called "shareholders" and the provisions of the joint-stock company are applicable to them in the absence of specific provisions, the legislator has allowed for contractual freedom in this company, in order to facilitate cooperation among its associates, given that the members of this form are emerging companies, the objective was to bring them together within a legal framework, while allowing them the contractual freedom to organize themselves.

Thus, the legislator has left the founding members the freedom to determine the amount of the company's capital in the bylaws, the nominal value of the shares, as well as the freedom to determine the terms of valuation of the shares resulting from contributions in kind and the profits allocated to them ⁹ .

Contractual freedom also allows the founders to unanimously decide that the use of a The contribution commissioner will not be mandatory, when the conditions are met, which is not possible in all other companies ¹⁰ .

The most important area in which the legislator has left contractual freedom to the partners is the area of administration and management. Indeed, the simplified joint stock company is not subject to the complexity of the joint stock company in the field of management. The partners have

" The simplified joint-stock company - comparative study "

the right to choose between appointing the president of the simplified joint stock company or a person in charge of management designated in the articles of association as a general manager or deputy general manager, and even regarding decisions that must be made collectively, it is the partners who determine them in the articles of association, except for a few that have particular importance.

In this regard, article 715 bis 137 of the Commercial Code provides that: "The articles of association of the company determine the decisions that must be taken collectively by the shareholders. However, the decisions devolved to the ordinary and extraordinary general meetings, in matters of increase, amortization or reduction of capital, merger, division, dissolution, transformation into a company of another form, appointment of statutory auditors, annual accounts and profits, must be taken collectively by the partners in accordance with the modalities set by the company's articles of association."

The partners can be consulted at any time. The bylaws may provide that one or more partners convene the community of partners. French doctrine believes that it is not prohibited for the bylaws to authorize others to do so, and they may attend decisions with consultative voice, if the bylaws allow this option¹¹.

Contractual freedom is the origin of flexibility in the establishment of this new type of commercial company, as well as in the organization of its management and control, which led the legislator to add the term "simplified" to the expression "joint-stock company" in the name of this company.

French doctrine believes that the possibility of inserting certain provisions "highlights the contractual origin of the company and makes the simplified joint-stock company a company in which members choose each other based on a strong *intuitu personae*."¹²

1.2 The Simplified Joint-Stock Company; The Legal Framework For Start-ups

The Algerian legislator specified in the last paragraph of article 715 bis 133 of the commercial code that this type of company can only be formed by companies that have been certified as "start-ups".

The term "start-up" comes from the United States. It began to be widely used in the 1990s. However, while the use of the term start-up is accepted, its definition is not universally agreed upon. Indeed, many definitions can be found. According to the Larousse dictionary, start-up means "Young innovative company in the field of new technologies."¹³ Other definitions can be proposed: "A start-up is generally defined as a new business that entrepreneurs launch by combining business ideas and resources," "a temporary organization designed to search for a replicable and scalable economic model."¹⁴ According to Article 11 of Executive Decree No. 20-254 of September 15, 2020, establishing the National Committee for the labeling of "Start-ups," "Innovative Projects," and "Incubators," and defining its missions, composition, and functioning¹⁵. To be certified as a "start-up," the company must meet certain conditions:

- The company must have been established for a maximum of eight years;
- Its business model must be based on an innovative concept;
- Its annual turnover cannot exceed the amount set by the national committee, and its share capital must be held by at least 50% by individuals, approved investment funds, or other companies with the start-up label.

- On the other hand, the company cannot employ more than 250 people.

The company wishing to obtain the "Start-up" label must submit an application via the national electronic start-up portal accompanied by the following documents:¹⁶

- An extract from the commercial register and tax identification (NIF) and statistical (NIS) cards;
- A copy of the company's articles of association;
- A certificate of membership in the national social security fund (CNAS) with a list of employees;

- A certificate of membership in the national social security fund for non-salaried individuals (CASNOS);
- A copy of the financial statements for the current year;
- A detailed business plan;
- The scientific and technical qualifications and experience of the company's personnel.
- If applicable, any intellectual property rights and any awards or prizes obtained.

The designation of "start-up" is granted to the establishment whose application has been accepted for a period of four years, renewable, and if the National Committee responds negatively to the application, it must justify the decision of rejection and notify the person concerned electronically. This decision may be appealed to the same committee, which must review the application and notify its final decision, always electronically, within a period not exceeding 30 days from the date of the application.

Furthermore, a public industrial and commercial establishment has been created to promote and manage the support structures for start-ups, by executive decree No. 20-356 of November 30, 2020 establishing the establishment for the promotion and management of support structures for start-ups and defining its missions, organization, and functioning¹⁷.

This type of company was chosen by the Algerian legislator to be the legal framework for start-ups due to its use in many countries, and its effectiveness in giving a new impetus to these companies.

In accordance with the provisions of the aforementioned law, specifically Article 715 bis 133 of the commercial code, the simplified joint-stock company is established exclusively by establishments that have obtained the "start-up" label. Consequently, the decision to grant this label is a basic document that must be presented to establish this type of company.

Despite the legislator's use of the term "companies," it is more likely that it refers to businesses, as this includes individual enterprises. The question cannot be limited to the requirement that the shareholder be a company, as the aforementioned law allows for the establishment of a simplified joint-stock company by one or more natural and/or legal persons in the second paragraph of the aforementioned text¹⁸.

2 The Conditions for Establishment a Simplified Joint-Stock Company

In its constitution, the simplified joint-stock company, like all other commercial companies, is subject to conditions of both substance and form. These conditions are called validity conditions, meaning that the company contract is not valid if any of them are missing, which results in its nullity. This nullity is either absolute if the condition is of public order, or relative, when it can be corrected. Therefore, it is necessary to clarify the substantive conditions first, and then the formal conditions.

2.1 Substantive Conditions

To establish a simplified joint stock company, substantive conditions necessary for the validity of the company contract are required, in addition to the specific substantive conditions for this type of company.

2.1.1 General Substantive Conditions for The Establishment of a Simplified Joint-Stock Company

The general substantive conditions for the establishment of a simplified joint stock company are the necessary substantive conditions for the conclusion of any contract. These include consent, object, and cause.

a- Consent

The provisions of commercial companies in commercial law did not include the general conditions for the conclusion of the company contract, while based on the provisions of contract theory in civil law, consent is an essential and fundamental condition for the validity of any

contract. The parties must express their concurring will. The expression of will must also be sound, not tainted by any defect of will such as error, coercion, fraud, or exploitation. Therefore, when consent is expressed but is tainted by the aforementioned vices, the contract is null and void ¹⁹ .

With reference to the provisions of civil law, a natural person is fully qualified to exercise their civil rights if they reach the age of majority, which is nineteen years old, enjoy their mental faculties, and have not been declared incapable ²⁰ .

A minor who has reached the age of discernment (13 years) and has not reached the age of majority, while not being prodigal or mentally incapacitated, may enter into a simplified joint stock company contract because, on the one hand, they do not acquire commercial status by becoming a member of this company, and on the other hand, because their liability is limited to the extent of their contributions. The conclusion of the contract is done through their legal representative, since investment in commercial companies is considered an act involving uncertainty between profit and loss ²¹ .

b-Object

The object of the contract, in general, is the legal transaction as a whole that the parties wish to carry out ²² . The object of the partnership contract is the activity that the partners will carry out, called the corporate purpose of the company. The object of the partnership contract is subject to the general conditions usually stipulated in the object, so it must be determined by specifying it in the company's bylaws. It must also be possible and not prohibited by law and not contrary to public policy and good morals, otherwise the contract is null and void ²³ .

c-Cause

The cause is represented in the realization of profits and financial returns related to the partner's share in commercial companies, the reason that motivates the contract is intentional, so it is stipulated that it is a project that does not violate public order or public morality, otherwise the contract is null and void.

Since the parties are not required to mention the cause of their contract, unlike the object, the cause is presumed to be lawful unless proven otherwise, and when it is mentioned, it is presumed to be real until proven otherwise, and the burden of proof lies with the party claiming the fictitiousness of the cause ²⁴ .

2.1.2 Special substantive conditions for the formation of the simplified joint stock company

Regarding the special substantive conditions for the formation of the simplified joint stock company, those related to the formation of the joint stock company are applicable, as referred to in article 715 bis 134 of the commercial code. However, the referral only concerns the joint stock company that is formed without a public offering, since the legislator prohibits it from resorting to this technique of formation or listing its shares on the stock exchange. Nevertheless, despite the mentioned referral, the legislator has excluded certain provisions of the formation of the joint stock company from being applied to the simplified joint stock company, in order to simplify its creation.

a- Minimum number of shareholders

Unlike the joint stock company, whose formation requires at least seven shareholders ²⁵ , the legislator has not set a limit on the number of shareholders for the formation of the simplified joint stock company. It can be formed by two or more individuals or legal entities.

It should be noted that the legislator allows the formation of this type of company by a single individual, whether natural or legal person, in which case it is called "single-member simplified joint stock company" ²⁶ . This provision allows for the creation of a true company without the need for association. The single-member simplified joint stock company is formed according to a regime established by the legislator, which means that the institutional theory has been implemented in the creation of this company. In French law, this type of company was adopted by Law No. 94-01 of January 3, 1994 ²⁷ , which only allowed its creation by legal entities. However, since Law No. 99-587 of July 12, 1999 ²⁸ , the French legislature allows the formation of this

company by natural or legal persons without limitation. It even allows the formation of the simplified joint-stock company by a single person, natural or legal. It is called "simplified single-member joint-stock company." It appears that the Algerian legislature, like its French counterpart, wanted to open the way to all investors, regardless of their nature, so that a simplified joint-stock company can be formed from several natural persons, several legal persons, or a combination of these two types of persons, and even by a single natural or legal person ²⁹.

b- Formation of the share capital

The share capital is the set of cash and in-kind contributions made by the partners allowing the company to carry out its activities and also represents the minimum guarantee for the rights of creditors ³⁰.

The simplified joint stock company is distinguished by the freedom offered to the partners to choose the type of their contributions for the formation, although it is a capital company. Thus, the partners can make contributions in cash or in kind, and even contributions in industry to establish a simplified joint stock company ³¹, unlike what is provided for joint stock companies and partnership limited by shares, where partners can make any type of contribution, except for contributions in industry. This provision marks a mix between the consideration of the partners' person and the consideration of capital ³².

According to the provisions of Law No. 22-09, the partner who makes contributions in industry acquires shares in exchange for his work, but these are non-transferable shares, unlike cash or in-kind shares, of which the owner can dispose freely. Contributions in industry are not included in the formation of the company's capital, but give the right to participate in profits and net assets and obligate the partner to bear the losses. The company's bylaws determine the value of these contributions and the profits they generate according to Article 715 bis 140 of the Commercial Code.

As for cash contributions, the provisions of the joint-stock company will apply, which require that payments must be evidenced by a declaration of one or more shareholders in a notarial deed. The notary, upon presentation of the list of shareholders stating the amounts paid by each of them, affirms in the deed that the amount of the payments declared by the founders is consistent with the amounts deposited either in his hands or with legally authorized financial institutions ³³.

According to Article 715 bis 134 of the Commercial Code, which refers to Article 596 of the same code, the capital must be fully subscribed. Cash shares are released upon subscription, with a quarter less than their nominal value. The release of the surplus occurs once or several times at the decision of the president of the company or its general manager within a period not exceeding five (5) years from the registration of the company in the commercial register. As for shares of contributions in kind, they must be fully released upon their issuance, as is the case for the joint-stock company. However, the legislator, in order to simplify the formation of the simplified joint-stock company, has allowed shareholders to unanimously decide that the appointment of a contribution auditor will not be mandatory when the total value of all contributions in kind does not exceed half of the capital. This option also applies to the single-person simplified joint-stock company, where the contribution auditor is appointed by the sole shareholder³⁴.

When there has been no appointment of a contributions commissioner or when the value retained is different from that proposed by the contributions commissioner, the shareholders (or the sole shareholder) are jointly liable to third parties for five (5) years for the value attributed to contributions in kind in the company's bylaws ³⁵.

Unlike the joint-stock company, where the legislator stipulates a minimum share capital ³⁶, the simplified joint-stock company can be established with the share capital deemed sufficient by the shareholders and determined by them in the bylaws. This freedom is considered one of the characteristics of the simplified joint-stock company, representing flexibility and the possibility of being established by any investor, even if they are a beginner.

This position also aligns with the goal of encouraging the creation of emerging businesses, especially since they are generally founded by young people who do not have sufficient resources and rely more on their creative ideas. These are businesses whose market value is not measured by the value of their capital but rather by their ability to launch an innovative project capable of developing. Furthermore, emerging companies have the opportunity to resort to other means of financing, notably through numerous measures and facilities approved by the state to support the ecosystem of emerging businesses as a business model for achieving development, in addition to traditional financing mechanisms through bank loans ³⁷.

Compared to French law, the minimum share capital to establish a simplified joint-stock company was 37,000 euros, before it was abolished with the adoption of law n°2008-776 of August 4, 2008, relating to the modernization of the economy to facilitate the establishment of this type of company. Since then, this company can be established with the share capital determined in the statutes.

It should be noted that the simplified joint-stock company, under Algerian ³⁸ and French law³⁹, is not allowed to publicly solicit savings or to list its shares on the stock exchange.

c- The Contribution to Profits

The condition of contributing to profits and bearing losses is one of the essential validity conditions of a partnership contract. Any agreement aimed at excluding one of the partners from profits or exempting them from losses is considered null, which leads to the nullity of the partnership contract ⁴⁰. Nevertheless, the legislator has made an exception for limited liability companies and joint-stock companies regarding this rule, and since the provisions of the latter apply to simplified joint-stock companies, the latter is not rendered null when its contract contains a leonine clause, but the clause has no effect and will be deemed unwritten ⁴¹. However, an exception is made for the partner who only contributes their labor. This partner may be exempt from bearing losses, provided they have not been compensated for their work, in accordance with general provisions ⁴²; whereas if they have been compensated, they would bear losses on the same basis as the other partners.

2.2. The Formal Conditions

The simplified joint-stock company is subject to the same formal conditions applicable to all companies in general, in addition to those related to the joint-stock company that is established without public offering. Therefore, it is necessary to start by drafting the articles of association, then register it in the commercial register, and finally, proceed to publish the articles of association.

2.2.1 The Drafting of the Company's Articles of Association

The company's contract must be drafted in authentic form by a notary, under penalty of nullity. However, the existence of the company can be proven to third parties by any means, in order to protect the rights of good faith third parties who may have dealt with the company.

The articles of association must include the general and specific information necessary for their drafting. It is important to specify the form of the company, that is to say, to specify that the form of the company is a simplified joint-stock company or a single-member simplified joint-stock company. The duration of the company must also be specified, as is the case in all commercial companies, which cannot exceed ninety-nine (99) years ⁴³. The contract must also indicate the commercial name of the company chosen by the partners.

One of the most important pieces of information that must be mentioned in the articles of incorporation is the purpose of the company, that is to say, the activity that the company will carry out. The purpose of the company requires the conditions of validity as in all contracts. If it is necessary to obtain an approval or prior authorization to carry out the activity specified in the contract, it must then be obtained from the competent authority based on a request from the founders or one of them. The simplified joint-stock company is a commercial company by its form, regardless of the nature of the activity carried out by it ⁴⁴.

" The simplified joint-stock company - comparative study "

The registered office of the company must also be mentioned in the bylaws. This requires the presentation of the deed of ownership or the lease agreement for the premises housing this registered office. There is no doubt that the registered office is important for the execution of judicial and extrajudicial notifications and for determining the territorially competent judicial authority in the event of a dispute.

Sometimes, it is the criterion used to determine the applicable law if the relationship contains a foreign element.

Among the information that must be mentioned in the company's bylaws is the decision to appoint the president of the company or the person in charge of its management. A statutory auditor or more must also be appointed, as this body is mandatory in this type of company. The list of decisions that must be made collectively by the shareholders must also be specified in the bylaws by determining the procedures for making these decisions. When it comes to a single-member simplified joint-stock company, the sole partner makes all decisions concerning this company and is automatically appointed as the president of the company.

Regarding the special data that must be mentioned in the bylaws of the simplified joint-stock company, those related to the decision to grant the start-up label issued by the competent national committee. Therefore, it is necessary to provide the notary with a copy of the decision published on the national electronic portal for start-ups.

After completing these procedures, the partners (or the sole partner in the case of a single-member simplified joint-stock company) sign the bylaws themselves or through an agent with a special notarized power of attorney⁴⁵.

2.2.2. Registration and publication of the company's bylaws at the national trade register center

The legislator has required the filing of the bylaws of commercial companies with the national trade register center in order to complete the registration process of the company⁴⁶ and to publish the company contract in the official legal announcements bulletin. The failure to register the company in the trade register or the failure to fulfill the publicity formalities results in the nullity of the company. Registration and publication are considered as an announcement of the company's creation to inform others of its establishment. Furthermore, the company only acquires legal personality from the date of its registration in the trade register⁴⁷, and from that moment, it is assigned a name and a distinct patrimony from that of the partners, legal capacity, a domicile, and the right to take legal action, provided that a representative is designated to express its will⁴⁸. The legal representative of a simplified joint-stock company is its president or the person in charge of management designated in the bylaws as the general director or deputy general director.

As for the simplified single-member joint-stock company, it is represented by its president, who is the sole partner, but nothing prevents him from delegating these prerogatives or some of them to the manager designated in the articles of association as general director or delegated general director⁴⁹.

In the event that the founders have committed on behalf of the company and for its account before completing the procedure for registering the articles of association with the commercial register, they will be jointly and indefinitely liable with their assets for these commitments and obligations, unless the company, after its incorporation, agrees to assume these commitments and obligations, which will be deemed to have been subscribed from the outset by the company⁵⁰.

Conclusion:

It can be concluded that the simplified joint-stock company represents the legal framework for emerging businesses; the legislator included it among the forms of commercial companies through law no. 22-09 so that these businesses can realize their projects. As emerging commercial companies, the legislator has granted founders considerable freedom in the establishment of the company, the choice of its management mode, and the determination of its capital amount, and

" The simplified joint-stock company - comparative study "

even added the word "simplified" to the expression "joint-stock company" to clearly indicate that it is a company characterized by flexibility in its formation, management, and decision-making. Thus, this new form of commercial companies will be a refuge for shareholders, provided they do not publicly resort to savings and do not speculate with their shares on the stock market, due to the contractual freedom offered to the partners, even though it is considered a joint-stock company

Nevertheless, the intervention of the legislator is necessary in order to correct the status of the legal provisions of the simplified joint-stock company by assigning it a distinct chapter separate from Chapter III of Book V of the Commercial Code, since the simplified joint-stock company is an independent entity, its provisions cannot remain as a subsection of the divisions of the joint-stock company.

Another anomaly that the legislator is called to correct is related to the possibility of establishing a simplified joint-stock company by a single natural or legal person, pursuant to paragraph 2 of Article 715 bis 133 of the Commercial Code, whereas in paragraph 4 of the same article, the legislator states that this type of company can only be established "by companies that have been certified as start-ups." There is thus a contradiction between paragraph 2, which allows a natural person to establish a simplified joint-stock company, and paragraph 4, which grants this right only to start-up companies, given that the company still acquires legal personality! It would be preferable for the legislator to intervene to remove paragraph 4 of Article 715 bis 133 and to settle for applying a favorable tax regime to simplified joint-stock companies to encourage the establishment of this type of company.

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³⁸ Article 715 bis 139 of the Algerian Commercial Code.

³⁹ Article L.227-2 of the French Commercial Code.

⁴⁰ Article 426 Paragraph 1 of the Algerian Civil Code.

⁴¹ Article 733 of the Algerian Commercial Code.

⁴² Article 426 Paragraph 2 of the Algerian Civil Code.

⁴³ Article 546 of the Algerian Commercial Code.

⁴⁴ Article 544 of the Algerian Commercial Code after its amendment by Law No. 22-09.

⁴⁵ Article 715 bis 135 which refers to Article 608 of the Algerian Commercial Code.

⁴⁶ Article 548 of the Algerian Commercial Code.

⁴⁷ Article 549 of the Algerian Commercial Code.

⁴⁸ Article 50 of the Algerian Civil Code.

⁴⁹ Article 715 bis 136 of the Algerian Commercial Code.

⁵⁰ Article 549 of the Algerian Commercial Code.