

General Provisions for the Joint Liability Company in Algerian Law

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Abstract: The joint liability company is characterized by a basic characteristic, which is that the responsibility of the partner is a personal responsibility, meaning that the partner is responsible for the company's debts as if they were his own debts, in addition to the fact that his responsibility is joint, meaning that each partner guarantees the other partner, while all partners guarantee the company's debts. In view of this unlimited liability, some modern legislation has resorted to a legal prohibition according to which spouses are prohibited from being partners in one company of this type for fear of the consequences that may result if this company stops paying its debts and thus is exposed to the process of declaring bankruptcy, although the Algerian legislator did not bend. In this direction, by referring to the extrapolation of commercial legal texts, it is permissible for a joint-liability company to consist of both spouses, due to the absence of legal texts prohibiting this. In fact, there are modern legislations that prevent a wife from engaging in business except after obtaining permission from her husband, since joining a joint-liability company gives the partner the status of a trader. Likewise, the Algerian legislator did not address this situation, which makes it permissible for a married woman to join a joint-liability company without obtaining permission. Who is her husband.

Keywords: Solidarity Company ; - Bankruptcy process ; Partner

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Introduction:

The Algerian legislator did not address the definition of a joint-liability company, leaving room for the jurisprudence of jurisprudence, unlike the Egyptian legislator, who defined it in Article 20 of the Trade Law as: “a company concluded by two or more with the intention of trading in the form of a partnership between them with a specific title that is its name, and the partners are asked to

In a joint liability company, the company’s debts are unlimited and joint liability. Some jurisprudence believes that the provisions of the joint liability company are the general principle in...

Legal regulation of companies

When the contract specifies the nature of the company, or when there is no company contract at all, the judiciary tends to describe the company as a joint liability company, because this type of company provides the necessary guarantees to protect others, and because joint liability It is the general rule in commercial matters.¹

In implementation of this, the Egyptian Court of Cassation ruled on 04/27/ 1994 Appeal No. 14 of 13 states: “If the company that proved..

The court’s establishment between the two brothers is not hidden, but rather apparent, and has a specific name.

Its transactions with others are not conducted in the name of one partner, but rather in the name of both partners a joint stock company, not a private company.²

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The first requirement: characteristics of the joint liability company

A joint liability company is established based on personal consideration. This type of company is characterized by the fact that the partners’ share in it is non-negotiable, in addition to the fact that the partner’s responsibility in it is an unlimited personal joint liability. The company also has an address consisting of all the partners in it, and finally the partners acquire this company has the status of a merchant.

¹ Dr. Ali Sayed Qasim, Business Law, Part Two (Commercial Companies), Al Nahda Arab Press, third edition, p. 207

² Nadia Muhammad Moawad, Commercial Companies, Dar Al-Nahda Al-Arabiya Press 2002-2003, p. 140.

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The first section: The non-tradability of shares

The joint liability company is based on personal consideration, as each partner knows and trusts the other. On this basis, the company's shares are linked to the partners and are therefore not acceptable for trading through commercial means such as registration in the company's books or by endorsement, the purpose of this prevention is not to surprise the partner

With the withdrawal of a partner from them and at the same time a partner joining them, it may be strange to them, this may lead to shaking the necessary trust between partners.

As a general principle, the joint partner is not permitted to transfer his share to another person without the consent of all partners as well as their acceptance of the person the assignee is an exception. This assignment is permissible if it is stipulated in the law the basic principle of the company.

Some jurisprudents believe that he may not be able to dispose of his share in accordance with the restrictions contained in the company's contract, so he resorts to involving another person in his share or transferring it to him completely without the need to include him directly in the company. Thus, this third party becomes a hidden partner behind the apparent partner, and this hidden partner is called the auxiliary and remains The relationship between the partner and the partner is without the latter having any relationship between him and the company, and therefore he may not exercise any of the rights of the partners in the company, and the company may not demand from him any share of the losses, as it remains a foreigner to the company.³

If one of the partners dies, as a general rule, his heirs do not take his place in the company. Rather, it is considered one of the reasons for the dissolution of the company. As an exception, the partners may agree in the basic law to continue the company without the deceased partner or to continue until his heirs take his place

The general principle is that it is not permissible to assign shares in a joint-liability company. However, as an exception, the partners may agree in the basic law on the assignment, and it may be without restriction or it may be with conditions, for example, requiring that it be on an official paper or once it is registered in the company's registers, or that the partners require the approval of a number certain partners.⁴

³ -Dr. Nadia Muhammad Moawad, op. cit., p. 142.

⁴ Article 551 of the Code stipulates that "joint partners have the capacity of a merchant and are liable without limitation and jointly for the company's debts..."

Corresponding to Article 22 of the Code. Egyptian, which stipulates that: "The partners in a joint-liability company are jointly responsible for all of its undertakings, and unless they are signed by only one of them, it is required that this signature be in the name of the company."

Section Two: Partner's Responsibility

The partners in the joint liability company are liable for personal and joint liability company debts.

-1- Personal responsibility

That is to say, each partner is responsible for the company's debts in his own funds as if these debts were his personal debts. Unlike partners in capital companies, their liability is limited to the share they contributed. A partner in a joint-liability company is responsible even if it exceeds the company's debts.

The share he contributed to the company's capital.

Some jurisprudence believes that the company's creditors have their own guarantee the company, and an additional guarantee on the partners' personal receivables, crowd it with creditors of the partners. Any agreement relieving the partner from this responsibility shall be null and void divorced from the company's debts or determining his responsibility for them.⁵

Solidarity liability:

What we mean by this is that each partner guarantees the other partner, while all partners guarantee the company's obligations, as if the partner and the company are one person.

Therefore, the company's creditor may demand that any partner pay the debts owed by the company, or claim them together, or demand that the company do so without partners.

Some jurists believe that "it is not permissible to protest against others under any stated condition in the joint liability company contract or in its statute, this would be specified the partner's responsibility or exempts him from joint liability, even if this has been done publicize it legally, but this is to protect the company's creditor, so the creditor may on the occasion of a specific act, he may waive this protection with respect to all partners or some of them."⁶

The joint partner is in the position of the joint sponsor and is deprived the defenses that the ordinary guarantor can uphold before the creditor are:

⁵ Dr. Nadia Muhammad Moawad, op. cit., p. 143

⁶ -Dr. Ali Sayed Qasim, previous reference, p. 213.

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Payment by stripping, by which we mean the guarantor's request to the creditor to strip the debtor of his money before the sponsor's claim, especially if the owner owns movable property or owns real estate.

Payment by division in a regular guarantee. The guarantor may ask the creditor to divide the debt among all the guarantors in the event that there are multiple guarantors and there is no money. It can be enforced by the debtor.

The joint partner is deprived of these defenses and is not permitted to adhere to them facing the creditor.

Some jurisprudence believes that the judiciary is accustomed to mitigate the effects of solidarity

B - As for the partners, he stipulated that the company's creditors must claim the latter first before returning to the joint partners. The intention of this is to reassure the partner.

When requested based on the nature of the claimed debt and the fact that it relates to the partners solidarity activists, especially since they assume the status of a merchant and deal on a stage commercial life in cases where they may resort to implementation on partners' money despite the company not objecting to the payment and its solvency and its funds are sufficient to fulfill it.”⁷

A-This is what the legislator did, as he obligated the creditor, before claiming the joint partners, to claim the company first, as this procedure is considered essential and must be followed. Article 551 of the Algerian Commercial Code, paragraph 2, stipulates that: “The creditors of the company may not demand from one of the joint partners in it, or from some of them, or with them.” There is no recourse against him when he demands the company or the other partners for the company's debts, and the evidence for this is that the law allows the creditor to take action or "solidarity.”⁸

It is not possible to imagine that there would be an agreement between a creditor and a debtor in order for the creditor not to obtain his debt. The debt, as is known, is required and not a product. Therefore, the more creditors there are, the more guarantees there will be to obtain his religion.

Some jurisprudence tends to restrict the creditor's right to recourse against the partner solidarity with two conditions

-1- The creditor must first obtain a valid judgment against the company's representative the debt and its proof are owed by the company.

⁷ Dr. Ahmed Hamad Mahrez, Commercial Companies, Golden Eagle Printing, 2000 edition, p. 298.

⁸ Dr. Salama Fares Arab, Commercial Companies, first edition, Dar Al-Nahda Al-Arabiya, 2004 edition, p. 132.

-02- The creditor begins to warn the company and demand payment. This is sufficient to issue a warning to the company, write a report against it, or take any other action similar.

When the creditor fulfills these two conditions, he may enforce payment on funds his partner⁹

However, the question arises: Will the partner remain responsible for the company's debts even if he withdraws from it? Likewise, regarding the responsibility of the new partner is he responsible for the debts of the company before he joined?

The principle is that the new partner is asked about the debts of the company he joined, meaning that the debts prior to his joining are a personal and joint liability, since these debts were incurred by the company as a legal entity independent of other persons partners.

Some jurisprudence believes that a partner joining the company and accepting him by his own choice and participation in it in its current state and with its money and rights of obligations.¹⁰

However, the new partner may stipulate that he be exempted from responsibility for his debts prior to joining the company, provided that he declares this legally so that he can use this secret as evidence from the other party.

In the event that the partner withdraws from the joint liability company, liability remains a list of debts prior to his withdrawal as for the responsibility for debts subsequent to his withdrawal, the basic principle is that with the loss of the status of a partner, his responsibility ends. However, some jurisprudence believes that "to implement this the rule requires two conditions to be met

The first condition: that this withdrawal be announced.

The second condition: Delete the name of the withdrawing partner from the company address. The wisdom behind this is to announce to others his departure so that he does not remain dependent It is present in it because the title is considered a type of month.

Failure to comply with one or both conditions will result in continued liability the personal and joint partner will pay the company's debts even after he leaves it.¹¹

Section Three: Company Address:

The joint liability company is a title that is its trade name and is formed from the name of a person

⁹ Dr. Ali Sayed Qasim, previous reference, p. 215

¹⁰ Dr. Ahmed Muhammad Mahrez, previous reference, p. 300.

¹¹ Dr. Nadia Muhammad Moawad, previous reference, p. 147.

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one or more partners, such as Zaid and Muhammad Company or Zaid and Partners Company, and in case the company is formed from members of one family whose address may be limited to a name family, mentioning the degree of kinship, such as the company of Muhammad and his sons or the company of Abdul Qadir and his brothers.

Some jurists believe that the purpose of the company's title is so that others can know the personality of the partners in the company.¹²

because the partner's personality is of special consideration at those dealing with the company so that the title of the company may not include the name of a person who is not a partner in it. If a name is mentioned with his knowledge of that, he becomes liable for the company's debts as a personal and joint liability moreover, he can be held criminally accountable for the debts of the company fraud crime.

The company's address must be identical to the truth, so if a withdrawal is made a partner or in the event of the death of one of the partners, his name must be deleted from its address. However, in the event of the death of one of the partners, his name can be kept with an explanation by adding the phrase successor or heirs of so-and-so¹³

. Some jurisprudence believes, "If the company adopts an innovative name, such as Elegance Clothes or Al-Firdaws Perfumes, then it is added to the commercial title to distinguish the company from others." in order for it to be permissible to sign this innovative name on the company's transactions."¹⁴

Section Four: The joint partner acquires the status of a merchant

The Algerian legislator considered the company contract to be a commercial act according to the form, regardless of the nature of the purpose of the joint liability company, whether commercial or civil.

This was influenced by the French legislator who stipulated this. A partner in a joint-liability company acquires the status of a trader even if he has not acquired this status before or has never been professional in commercial business and whether he manages the company or not. If he is one of the persons prohibited from practicing trade, such as employees and lawyers, then his practice of commercial business in his capacity Regular and continuous, the ban does not prevent them from gaining status merchant as a result of their acquisition of the status of a trader, a set of results are as follows:

-1- The partner must have full capacity to practice business, which is 19 years of age, or he must be a guide to practice business in accordance with the text of Article 5 of the

¹² - Dr. Muhammad Tawfiq Saudi, Commercial Law, Part Two (Commercial Companies), Al-Isra Press, without mentioning the date of publication year, p. 120.

¹³ - Dr. Muhammad Tawfiq Saudi, Commercial Law, Part Two (Commercial Companies), Al-Isra Press, without mentioning the date of publication year, p. 120.

¹⁴ Muhammad Ahmed Mahrez, previous reference, p. 294.

Commercial Code, meaning that he must have reached 18 years of age he obtained permission to conduct business.

-2-The partner is bound by all obligations incurred by merchants the most important of which is the obligation to maintain commercial books and the obligation to register in the register commercial.

The bankruptcy of the joint-liability company results in this bankruptcy being extended to the partners due to their acquisition of the status of a merchant. If the company stops paying its debts, this cessation of payment is considered to have come from the partners, because the partners' liability guarantees the company's debts and they are responsible for its debts as if they were their own debts.

If the company is declared bankrupt, its creditors may advance its debts the bankruptcy of the company, in addition to the bankruptcy of each partner individually.

The bankruptcy of the general partner does not lead to the bankruptcy of the general partnership this entails its dissolution unless the partners stipulate in the company's basic law its continuity.

The second requirement: management of the joint liability company

The Commercial Code does not include provisions for the management of a joint-liability company, unlike the Civil Code, which sets special rules for managing the company from Articles 427 to 431. However, the partners often agree on the method of managing the company in the basic law as a method of appointment, dismissal, and responsibility before the company and partners.

First: appointing a director

The basic law may stipulate the method of appointing the manager, so he shall be appointed in the same manner stipulated in the company's basic contract. If the method of appointment is not stipulated in the basic law, the partners may agree on how to appoint him to a later contract.

However, the partners may choose one or more managers from among themselves, as is permissible they may appoint a person foreign to the company to be entrusted with the management of the company.

The director appointed in the basic law is called the statutory director the contractual manager, as for the manager appointed by a subsequent contract and independent of the law the principal is called the non-consensual or irregular principal.

The importance of distinguishing between the consensual manager and the non-consensual manager appears to be that the position of the consensual manager is considered part of the basic law of the company, and when he is removed or changed, the basic law of

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the company must be amended. This is in contrast to the non-consensual manager, who may be removed or changed without making any amendment to the basic law, as he determined by a subsequent and independent agreement, they are the law the basic principle of the company.

The principle is that the appointment of the manager, whether regular or irregular, is with the approval of all partners, except that the basic law of the company may stipulate:

A certain majority to appoint him and this majority included a numerical majority of the partners or a majority in the share contributed by each partner in the company's capital.

Some jurisprudence believes that if the manager of the joint-liability company is not a partner, then no it is required that he be fully qualified or licensed to trade, so he is not acquired the status of a trader, and it is not permissible to declare his bankruptcy in accordance with the declaration of bankruptcy of the company that "manage it."¹⁵

In the event that a manager is appointed as a consensual partner, he is considered part of the founding contract of the company and therefore he may not be removed except with the consensus of the partners, including the managing partner himself. However, this manager may be removed without the unanimous consent of the partners in the matter two cases

1 - If the company's basic law stipulates a certain majority to remove the director.

2- If the dismissal was based on a judicial ruling, based on the request of any of the partners, for reasons that the court deems sufficient for dismissal, such as if he committed fraud towards the partner, was grossly negligent in her affairs, or became incompetent to manage it.¹⁶

If the director does not agree, he may be dismissed according to the stipulated conditions it is stipulated in the basic law of the company, i.e. in the same manner as his appointment.

Each partner has the right to resort to the judiciary to demand the dismissal of the manager if there are reasons that demonstrate this however, if this is the purpose of this lawsuit if it is malicious; he is obligated to compensate for the subsequent damage.

There may be multiple managers in a joint-liability company, which poses a problem¹⁷ as to how distribution of jurisdiction among them?

¹⁵ Dr. Ali Sayed Qasim, previous reference, p. 232

¹⁶ Dr. Muhammad Tawfiq Saudi, previous reference, p. 132.

¹⁷ Muhammad Ahmed Mahrez, previous reference, p. 307

The competence of each director is determined according to three assumptions stipulated in it Article 428 of the Algerian Civil Code:

The first case: The jurisdiction of each manager is determined in the basic law, such as one manager being responsible for purchasing, another manager for sales, and another manager for the department users...etc.

The responsibility of each director is determined according to the specialty he exercises.

The second case: If the basic law of the company does not address the distribution of powers to each manager, each of them may undertake management work alone, provided that any partner has the right to object to this work, and thus this issue is referred to the all directors meet to decide by majority vote.

The third case: The company's basic law may provide for management collectively, decisions are taken by the Board of Directors by the stipulated majority in the basic law or consensus, each director is obligated to present his decision to board of Directors to vote on it.

However, Article 428, Paragraph 2 of the Civil Code allows every manager 58 deviation from these cases, especially if the matter is urgent and there is no time for a Board of Directors meeting, and this is all in order to avoid a serious loss make up for it.

Third: The authority of the director

The manager's powers are determined in the basic law of the joint liability company, which specifies his powers that he takes without referring to the partners, and those actions for which he is required to refer to the partners to obtain their approval before proceeding with it the job.

In the event that his powers are not specified in the basic law, the manager of the joint liability company may carry out all management work without referring to the partners. This is what is stipulated in Article 554, paragraph 1, of the Commercial Code. In the relations between partners, and when his powers are not specified in the basic law, the manager may carry out all management work for the benefit of the partners "company".

Some jurisprudence believes that if the manager misuses his powers to represent the company, he contracts for himself, but signs with the company's title, such as purchasing For his own account, but he signs the company's title exactly as if he were contracting on its be. In this assumption, the company is responsible for all the manager's actions as long as they fall within its purpose and are carried out within the scope of the authority delegated to him, even if he concluded them for his own account, provided that the person dealing with him is in good faith, that is, he does not know. That the manager contracts for himself and

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not for the company and in good faith it is presumed that the burden of proof falls on anyone who claims otherwise.”¹⁸

in the event that the director exceeds his jurisdiction stipulated in the basic law of the company and carries out actions that would harm the company, in this the situation: Any partner may resort to the judiciary to demand his dismissal.

The Algerian legislator stipulated in Article 555 of the Commercial Code that: “The company is bound by the manager's actions related to the matter the company in its relationship with others.

The specific terms of directors' powers resulting from these shall not be used against third parties through this article¹⁹, it is clear that if the director exceeds his powers specified in the basic law of the company, the partners cannot protest this before third parties in good faith, which has made some jurists believe that the legislator has decided to provide special protection for third parties in good faith, who deal with the company and do not find time It is sufficient to review the company's founding contract or the contract in which the manager improves his ability to exceed the limits of his authority. On the other hand, it burdens the company and burdens it with more than it can bear, and it would have been more appropriate for the manager to bear his mistake in the event of whether he abused or exceeded his authority.” however, we see that if his powers are exceeded, this does not prevent the emergence of his intentional or negligent liability for damages that he may cause to the company.

Conclusion

The joint liability company is characterized by a basic characteristic, which is that the partner's responsibility is a personal responsibility, meaning that the partner is responsible for the company's debts as if they were his own debts, in addition to the fact that his responsibility is joint, meaning that each partner guarantees the other partner, while all partners guarantee the debts company in view of this unlimited liability, some modern legislation has resorted to a legal prohibition according to which spouses are prohibited from being partners in one company of this type for fear of the consequences that may result if this company stops paying its debts and thus is exposed to the bankruptcy process. However, the Algerian legislator did not bend. In this direction, by referring to the extrapolation of commercial legal texts, it may be formed a joint liability company between spouses. This is due to the absence of legal provisions prohibiting this.

¹⁸ Dr. Ali Sayed Qasim, previous reference, p. 235.

¹⁹ Dr. Nadia Faudel, Company Provisions in accordance with the Algerian Commercial Law, Houma Printing and Publishing House, deposit number 1417-97, p. 130.

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In fact, there are modern legislations that prevent a wife from engaging in business except after obtaining permission from her husband, since joining a joint-liability company gives the partner the status of a trader. Likewise, the Algerian legislator did not address this situation, which makes it permissible for a married woman to join a business solidarity company without obtaining permission from her husband.