ASPECTS OF PERSONAL CONSIDERATION IN THE DISPOSITIONS RELATED TO THE SHAREHOLDING COMPANY MANAGER

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Abstract:
The shareholding company is the ideal model for financial companies because of the predominance of the regulatory aspect, which is embodied in a lot of jus-cogens legal texts governing its various stages, which deal with the financial aspect of the shareholder. However, a careful reading of these texts shows that the Algerian legislator- to protect public savings- has retained a lot of personal considerations aspects, which appear more clearly about the judgments related to the manager, whether by determining the controls of his membership inside the management bodies or by determining his civil liability. This is due to the important and effective role he plays at the company, considering that he is the one who conducts its management, expresses its will, and represents it before others, acting in its behalf and on its account.
***Keywords**: Personal consideration; financial consideration; manager; Shareholding company.*

INTRODUCTION

The shareholding company is the ideal model for capital companies, as one of the most effective investment instruments of the modern age, aiming to collect and attract the largest amount of capital and to invest it in embodying the great economic projects for which it was created, regardless of any personal consideration of its shareholders.

As we have noticed without exaggeration, the predominance of the organizational aspect of the shareholding company, which is embodied in a large number of mandatory legal texts, as if it were a "system", and this has affected its legal nature by classifying it as a capital company, but rather as a model for this type of company, considering that the legal judgments are concerned only with the financial aspect of the shareholder. Although this classification has a lot of validity and credibility, this doesn't negate any role of personal consideration for this type of careful reading of the legal texts regulating the various stages of the life of this company, which shows that the Algerian legislator -to protect public savings - has retained some aspects of personal consideration, which are more evident in the judgments relating to the manager, because of the important and effective role he plays in the life of the company, as the one who manages it, expresses its will and represents it before others, acting in its name and on its account.

This study aims to answer an important question: The most important areas of personal consideration in the judgments related to the manager in the shareholding company out of the financial consideration, which are the most important pillars of this type of company?

The answer to this problem passes through an extrapolative approach to the legal texts, which leads us first to deal with the determination of membership controls in the shareholding company governing bodies (the first part), as well as determining limits of civil liability for the manager in the company (the second requirement).

The first part: Controls on membership in the shareholding company management bodies

With a view to candidacy for membership of the management bodies within a shareholding company, the legislator has imposed several controls directly related to the personality of the managers, it reflected the features of personal consideration in the shareholding company at the

stage of practicing its activity, where you request legislator sentence of conditions (section I) and restrictions (section II) duty availability in wishes membership of governing bodies this company.

Section I: Conditions for membership in the governing bodies of a shareholding company

This means these conditions, must be met before running for membership in the boards of directors of shareholding companies, as they are conditions related to the form of essential with a membership of the board of directors, its year National Legislation - Like the Algerian Legislator- to ensure good management of the company, its continuity and the success of its objectives, and these conditions are:

1- Status of shareholders: Article 619 stipulates that the members of the Board of Directors own several shares representing at least 20% of the company's capital, and the same is the case for the members of the Board of Directors in the modern management model[1]. Therefore, it is required that the members of the Board of Directors and the Board of Supervisors be among the shareholders of the company in the application of the rule of linking project management to capital ownership[2].

The reason for this condition is that the shareholders are more concerned than others about the interests of the company because of their ownership of its shares, the relationship of the fate of their investments with the company's activity, and as a guarantee of management errors[3], and that other than in companies of persons where it can be non-partner directors, it should be noted that escrow shares realized when the board of directors (management or control) owns at least 20% of the shares of the company, leaving it to the articles of association to determine the minimum number of shares to be owned by each member.

For reference, the French legislator has abolished this condition since 2001[4], and left it to the company's by-laws to impose it or not[5], as stipulated in the General Directorate case of the solo-management system on his appointment date, the required number of shares, which is often symbolic in the statute he ceases to own them during his term of office, he shall be deemed to have resigned automatically if he hasn't resolved the situation within the six months[6], perhaps the purpose is not to deprive qualified persons for management because they don't own shares in the company[7].

2- The condition for the acquisition of commercial eligibility: The principle is the six months the shareholding company is based on financial consideration, that is, the shareholder responsibility is limited to his financial contribution, therefore, the shareholder doesn't acquire the status of a merchant, the bankruptcy of the company doesn't necessarily lead to the bankruptcy of the shareholders[8], hence, it is possible to exceed the condition of commercial eligibility at the shareholder, so that the minor can use his money in a shareholding company[9].

However, on the other hand, comparative legislation requires availability of commercial eligibility condition in the managers, although they are shareholders in deviation from the general rules of the company, given their important position, to ensure the availability of a certain amount of experience in the beginning and keenness to take care of the company interests, as well as the legal responsibility imposed on their actions in the event of committing administrative errors harmful to the company, which is considered an embodiment of the personal consideration of the manager at the shareholding company.

That's what the Algerian legislator enshrined in its recognition of the acquisition of the status of trader in a shareholding company in Article 31 of Law No. 90-22 of August 18 on the Commercial Register, amended and supplemented by Ordinance No. 96-07[10], granting the status of trader to the board of directors members, the executive committee members and the supervisory board of shareholding companies members, under the legal entity title that they legally manage and administer.

Then required the way that reach the age of majority according to the rules of civil law or 18 with rationalization according to the rules of commercial law[11], with the necessity of registration in the Commercial Register and Commercial Books, and must not be the subject of any measure that prevents him from practicing commercial activity, that is to say, he is subject to cases of incompatibility or conflict with the capacity of administrator as a merchant.

In addition, Professor Y. GUYON considers that the manager must have competence and professionalism, considering that the manager differs from the agent and his role is not limited to the execution of the orders given by the company (the principal), since he takes the necessary decisions for the company and by which he bears the legal responsibility[12], although the law does not expressly provide for this condition[13].

3- Number of managers: Setting a maximum number of managers is another manifestation of personal consideration in the dispositions related to managers, and this limitation aims to ensure the seriousness of managers while performing their duties at the company, so that they become a sign of the company, to grant more confidence to its clients, in order to enhance the personal character of the manager in the joint stock company, which is reflected in Algerian law when it determined the maximum number of managers both for the classical and modern system of management[14].

4- Natural Entity Condition: The commercial legislator stipulated that the managers (Chairman of the Board of Directors and General Manager in the classical management system, and members of the Board of Directors in the modern management system) are natural persons, a condition that confirms the personal consideration of these as management bodies[15], which means the exclusion of the legal person who is a member of the Board of Directors permanently from the chairmanship of the Board[16,] which confirms the importance of personal consideration for this mission.

The same is true for the General Director[17] and members of the Board of Directors[18]. The legislator stressed the need to be natural persons. That means to keep back the nature of their job, considering that the legislator granted them the status of the legal representative of the company before others, on the powers and the prerogatives they enjoy at the management of the company so that they become a sign of the company indicating and expressing their capacity in front of others.

5- National majority requirement: Some comparative legislations require that the majority of the directors should be of their nationality[19], to emphasize that the percentage of foreigners on the board of directors should not be higher than the percentage of foreign shareholders participating in the company's capital.

As for the Algerian legislator, text on this condition in general in the laws of finance[20], where the total shareholders, whether subscribers, founders, or members of the governing bodies are subject to it, where the Algerian legislator sought to impose a certain limit representing a capital percentage of more than 50% to be owned by shareholders holding Algerian nationality and resident in Algeria ‹The requirement of nationality is always linked to the requirement of residence in the homeland, in other side appeared clearly as one of the manifestations of the personal consideration in shareholding companies, which has been activated for the requirements of imposing control on mixed companies[21] and to ensure effectiveness and seriousness in management. It seems this judgment aims to enable national elements to control companies in which foreigners participate so that they can obtain a majority of votes to avoid issuing decisions that may harm the national economic interest.

6- The condition of acceptance of the appointment: This is one of the required conditions for elected members of the governing bodies, since they can only be appointed by French commercial law after their written and explicit acceptance of this appointment, which confirms the need to embody the express will of the member to accept the appointment[22], this is - without a doubt - a manifestation of personal consideration.

Some argue that it is not possible to impose on the shareholder of the company the burdens and responsibilities of membership of the board of directors against his will, as well as to block the possibility of circumvention, so that the member cannot later claim that he didn’t accept the imposed appointment, some others believe that the requirement of acceptance is also useful to ascertain the nationality of the member, whether he holds a position in another company, this condition allows the imposition of prior control over the members of the management board[23].

Section II: Restrictions on Membership of Governing Bodies

It is not sufficient to meet the above conditions to accept the candidacy in governing bodies, but in addition, the restrictions imposed by law must be taken into account on the person of the march represented in:

1- Restriction on the combination of multiple boards of directors or control:

Articles 612 and 664 of the law limit the maximum number of boards of directors or control in a shareholding company, of which a natural entity may be a member, to five directors, with the established condition in Algeria, this condition applies on the member's capacity and on the representative of the legal person, this limitation is considered part of the public order so that it is considered null and void for each of them. Any interested party, such as the other members, shareholders, or even third parties, may declare such nullity, without such nullity affecting the validity of the deliberations held[24].

The wisdom lies in this restriction, in the heavy burdens of membership of the boards of directors of shareholding companies, as well as, however, such a provision would allow shareholders others to mention preventing this member and the companies in which he works from unfair competition by exploiting his activity and influence[25].

Whatever the case, this restriction has been consecrated considerations of the public interest, to break the monopoly of only one group of people to be members of the boards of directors of several companies, and thus to acquire the wheels of the economy[26].

Whatever the purpose of this restriction, its imposition is only the embodiment of the personal aspect of the manager and a departure from the financial principle on which these companies are based.

2- **Restriction of combining membership of boards of governing bodies with a public function**:

Article 31 of Law 90-22 on those above amended and supplemented Commercial Register stipulates this restriction, which considers the chairman and members of boards of directors and supervisory boards as merchants, and therefore the combination of the capacity of merchant (as chairman or member of the board of directors) with the capacity of a public official or any other position, makes them subject to the judgments of incompatibility and thus covered by the ban from practicing trade in general and acquiring the status of merchant according to their membership in the board of directors[27], This prohibition is also included in a general provision also contained in article 43 of Ordinance 03-06 on the General Organic Law of the Civil Service[28], which states: "Employees shall devote all their professional activity to the tasks entrusted to them, and they shall not engage in a profitable activity in a private framework of any kind."

The reason for this restriction lies in the fact that civil servants should be dedicated to their work and should be protected from the influence of companies on them and the exploitation of their influence for their benefit[29].

3- Registration of obtaining a professional card for members of foreign management bodies:

This restriction is provided for in Decree No. 454-06 on the professional card issued to foreigners exercising a commercial, industrial, craft, or liberal activity on the national territory[30].

According to the first article of this decree, foreign members of the board of directors or supervisory board of commercial companies domiciled in Algeria and of other management and administrative bodies that they direct and manage by the organic laws, must receive a professional card specifying its conditions to be delivered within the framework of this Decree[31].

This card represents a legal entry that constitutes a mechanism of control exercised by the competent authorities, represented initially by the Governor of the State in which the company's headquarters are located, as well as the competent administrative services, which can at any time require the holder to submit it for control, in addition to the judiciary, through the register that keeps each State with the names of the beneficiaries of this card, numbered and indicated by the President of the regional competent court, with access to this register by the concerned authorities of the commercial activities monitoring; in particular, the commercial registry services[32].

This card is a signifier of another dedication to personal consideration in the judgments related to the management of shareholding companies, aims to impose control on those who

manage commercial companies operating in Algeria and to establish economic projects that must be protected because of their direct relationship with the national economy[33].

4- Restriction on combining directorship with an employment contract: Article 615 of the Algerian Code stipulates that "an employee who is a shareholder in a company may not be appointed as a director unless his employment contract has been in force for at least one year before the appointment and is identical to the actual employment position. Without losing the benefit of the employment contract, any appointment contrary to the provisions of this paragraph shall be considered null and void, and such nullity shall not cancel the deliberations to which the appointed administrator has contributed to a violation of the law. In the case of a merger, the employment contract may have been concluded with one of the incorporated companies".

The Algerian legislator, through the text of Article 615 CT, suspended the combination of the capacity of a hired shareholder and the membership of the Board of Directors in a shareholding company with the availability of two conditions: the first is: precedence of the actual employment contract by a full year[34]. The second is that his work as a manager is identical to his position as an employee in the company[35].

Noteworthy that the Algerian legislator has not expressly regulated the dispositions for combining the employment contract with the membership of the Board of Directors and the Supervisory Board. However, what is concluded from the text of Article 645 CT, which decided that in the event of removal of a member of the Board of Directors, it doesn't entail the termination of his employment contract, which confirms the permissibility of combining the membership of the Board of Directors with the employment contract, provided that the employment contract suspends its implementation during the term of office of this member in the Board, as for the members of the board of control and, in the absence of explicit dispositions preventing them from entering into an employment contract with the company, it can be said that the employee can be a member of the Board of Directors Monitoring, assuming that the employment contract is suspended for the duration of the agency by logic and to avoid abuse of influence[36].

Second part: Civil liability of the manager in a shareholding company

The members of the board of managers of a shareholding company are obliged to perform the tasks entrusted to them diligently and sincerely and to act in the best interest of the company, under penalty of both types of civil liability[37] and even criminal liability[38] for the damage caused to the company as a legal entity.

The scope of the manager's civil liability may extend to the possibility of holding him personally liable, although the origin of the responsibility for the manager's actions towards third parties is borne by the company as an agent acting in its name and on its account[39], but the exaggeration of the implementation of this asset may lead to the negligence of the manager, which may inevitably lead to damage to the company and waste of its funds, and perhaps this is what prompted the legislator to devote personal consideration to managers and determine their responsibility in the event of a violation of the law or committing management errors (Section I), and this limitation of responsibility may go even further, when the legislator decided to withdraw the bankruptcy to the manager personally, if he caused the bankruptcy of the company (Section II), all in dedication to the personal consideration of the manager as a penalty for his misconduct.

Section I: Personal liability of the manager of the shareholding company

The Algerian legislator specified - through the text of article 715 bis 23 BCT[40] - the personal (first) and objective (second) scope of this responsibility.

First: Personal scope of personal responsibility

Article 715 bis 23 of the Civil Code contains a definition of the personal scope of civil liability of the manager, which can be individual or joint, and it should be noted at the outset that the legislator in the framework of determining the personal scope of civil liability of managers has called them "administrators". What is meant here are managers who have the legal legitimacy to carry out management work (legal managers), accordingly, outside the circle of this responsibility is the manager who does not have legal legitimacy (the actual manager), and that's what significantly reduces the guarantee, whether for the company or third parties dealing with it, especially since

practice appears broad in the concept of the way and its In the same context, especially since the practical reality shows a breadth in the concept of the manager and its ramification, many people from inside or outside the company may interfere in the management work.[41]

It is also noted that the Algerian legislator has excluded the "general manager" from the personal scope of this responsibility, which is an unjustified exclusion, especially if we take into account that recent trends in the management of joint-stock companies give the latter wide powers in the management and administration of a joint-stock company compared to the honorary role played by the chairman of the board of directors.[42]

1- The manager's responsibility: The manager's responsibility can be individual if it is borne by only one manager, or it can be borne by all the managers in the case of their multiplicity[43], and as a result of this responsibility, they must ensure the payment of the compensation awarded by the judge, if all the elements of civil liability are reached[44], and often this compensation is required from the security shares[45] that the manager must possess to be a member of the board of directors, the judgment awarding compensation is a judgment that determines the right but doesn't create it, which means that if the manager goes bankrupt after the error before the issuance of the judgment, the injured party's right to compensation is not affected[46], which is considered as a dedication to the personal consideration of the manager whose primary objective is to protect the Company's assets and interests, also to encourage the manager to exercise due diligence in the performance of his duties.

2- Managers' joint responsibility: The joint responsibility of the managers is raised when the managers participate in the occurrence of the damage through the committed fault, or in the event that their fault can't be appointed, so that all managers are jointly responsible for compensating the caused damage, for example, if a wrong decision is issued and approved by the majority, all members are responsible for the resulting damage, in this case the issue of determining the share of each member in compensating the damages is up to the judge, the basis of solidarity in responsibility is the principle of "unity of authority", only the members who have objected to the actions of their colleagues have proved this objection at the time of the meeting from which the decision causing the error requiring compensation is issued[47], taking into account that the manager's absence can't avoid the establishment of the responsibility, without an acceptable excuse, but it is considered a negligence that gives rise to responsibility, since absence without excuse is considered an evasion of decisions or avoidance of objection, therefore it doesn't exempt a member of the board of directors from joint responsibility[48].

It is worth noting that the French legislator decides on the joint liability against managers in case of mismanagement leading to a shortage of assets, as stipulated in the Commercial Code No. 2022-1722 of February 14, 2022, under article text L651-2[49] which amended article 05 of the French Commercial Code issued in 1966.

Second: The objective scope of the civil liability of the manager.

In addition to the personal scope, article 715 bis 23 of the Code defines the material scope of this responsibility, which is mainly represented by:

1- Violation of legislative or regulatory judgments relating to the shareholding company: It means all the mandatory legal dispositions contained in the Commercial Code or in Decree No. 95-438[50], which regulate the statute of the company from date to its creation, through the exercise of its activity, until its extinction, which reflect the statutory nature of the public limited company.

2- Violation of the dispositions of the statute: Which constitutes the legal basis that determines the nature of the company's activity, we can't talk about the manager responsibility unless the violation falls on explicit and clear provisions in the statute, but if the texts are ambiguous, there is no field for the manager's responsibility[51], the latter arises if he violates any item included in the statute, especially those related to the powers granted to him in the management of the affairs of the company, and this responsibility is determined by the general rules in the Civil Code. This responsibility is often raised by partners because it is difficult for them to understand it.

Otherwise, they are often unaware of the conditions contained in the articles of association and specific to the powers of the managers, while they can do so if the purpose of the company is exceeded[52].

3- Errors committed during the management: This case is considered as one of the most important and exciting reasons for the managers civil responsibility towards the company or the shareholders and more towards others, it is generally based on the case of a failure by the manager in carrying out his functions towards the company or a lack of caution while performing his duties[53], this fault is different from a fault committed by the manager in connection with the violation of legal and regulatory texts, as the mere existence of the violation is sufficient to establish and confirm the manager's fault[54].

If the origin of the fault that requires compensation is borne by the company, as a responsible to the shareholders or third parties, even for the job outside the subject of the company, considering that the manager's job is carried out in the name of the company and on its account, it is protected under the cover of legal personality, but as an exception, the manager can be called upon personally through tort liability towards others, if it is proven that he committed a personal fault.

To this end, within the framework of the distinction between the company's fault and the manager's fault, the French both jurisprudence and judiciary have adopted the concept of the separated faults, inspired by the administrative judiciary, which, by the implementation of the responsibility of a civil employee, decides between the personal fault and the service's fault [55], the decision of the French Court of Cassation of May 20, 2003[56] includes three conditions for the consideration of the separated faults which leads to the personal responsibility of the managers which are:

- The error is intentional: This means that the manager is aware about the harm he caused to others, partners, or the company[57], it may be easy to prove this when the fault in question is the result of a positive act, for example, the creation of a company that competes with his job's company, the positive act always reflects the intention, unlike when the fault is resulted from mere negligence[58].

- The error has reached a particular level of seriousness: A phrase that has been regularly repeated by the Court of Cassation since the issuance of this ruling[59] this means that it is necessary to invoke the concept of serious fault, which, according to the definition of the French jurist Pothier, "consists in the lack of care and prudence while performing the others affairs, to the extent that the least careful or least intelligent people can't overlook it in their affairs[60]", or is it "the fault that doesn't come from the least cautious people"[61].

It should be noted that the assessment of the fault seriousness is left to the discretion of the court, but the question arises whether the nature of the "seriousness" is linked to the nature of the error itself or to the resulted consequences[62].

- The fault is inconsistent with the normal practice of the manager's function: this presupposes that the manager's error is separated from his duties and management functions within the company, in the sense that the manager didn't act as a governing body within the company, but in a personal capacity[63].

Section II: Withdrawal of bankruptcy by the manager

The withdrawal of bankruptcy is one of the most important legal effects that indicate the personal consideration of the manager as a result of his practice of the wrong act of management, which is a civil effect on the administrator upon the bankruptcy of the company, although you have to In bankruptcy, it only affects the company by its legal personality and commercial capacity on the one hand, and the other hand, its capital is the general guarantee for its creditors, While the liquidator is an agent of the company who only manages its affairs and deals with others in its name and for its account, the Algerian legislator has held him liable under certain circumstance, this is even though a joint stock company is a capital company based on financial consideration and the shareholder in it bears responsibility only within the limits of his shares in the company's capital.

Since the way must be a shareholder, the principle of determining liability for the debts of the company in the event of bankruptcy is applied to it as a general principle, but as an exception

to the general rules, the legislator specified in the text of Article 224[64]. Special conditions for the extension of bankruptcy (first) and certain specific actions that are exclusively carried out by the manager may be withdrawn to him (second).

First: Conditions for the withdrawal of bankruptcy to the manager

Article 224 BCE stipulated the availability of several conditions to extend or withdraw bankruptcy to the manager in a shareholding company:

1- The necessity of the existence of the company in a state of bankruptcy: The extension of the bankruptcy month of the manager is considered one of the effects of the bankruptcy of the joint stock company, and therefore, to withdraw the bankruptcy to the manager, a judgment must be issued to declare the bankruptcy of the company first[65], as a prerequisite for determining the responsibility of the manager The company must be bankrupt, and for this to happen, it must have legal personality, acquire the status of merchant, cease payment, and issue a judgment declaring it bankrupt[66].

The bankruptcy judgment is what creates the bankruptcy. It is allowed to apply the rules of the bankruptcy system, through collective execution on the funds of the company that has stopped paying its commercial debts, so that it is reluctant to dispose of its funds and liquidate them and divide the output between creditors divided by fines, unless he finds a right advantage acquired by the law[67].

2- The condition of the capacity of the responsible entity: Article 224 of the Code allows the withdrawal of bankruptcy or judicial settlement on the manager, and does not limit this to a specific type of company or a specific type of management, provided that it directly defines the persons on whom this responsibility is imposed by saying: "any legal or factual manager, apparent or mystical, hired or not".

The legal way means the manager who has the legal legitimacy to carry out the management job as mentioned above, they are the governing bodies of a shareholding company in both types, while the actual or factual way means one who interferes in the management without legal legitimacy, all of this increasing the guarantee awarded to the company or third parties dealing with it.

Second: Cases of withdrawal of bankruptcy

Article 224/1 of the Code defines cases and actions when the manager comes to it and his responsibility is realized with it therefore bankruptcy can be withdrawn from him.

1- The manager carries out business on his account under the legal person: The manager's bankruptcy can be extended if he conducts business on his account and exploits the company.

2- The manager disposes of the company's funds as if they were his own: As an example of this case, the manager makes the company a guarantor of his debts or those of one of his relatives to the bank. In this case, he considers the company's funds as his funds and creates an overlap between his financial liability and the company's financial liability, this overlap is what obliges the manager to pay the company's financial debts and makes him responsible for them, which is a violation of what the legislator has approved regarding the principle of limited liability in joint stock companies.

3. If he arbitrarily engages in his interest to exploit a loser, it can only lead to the legal person stopping payment.

The legislator, confirming the issue of extending bankruptcy to the manager in the previous cases, added the penalty of bankruptcy by default in Article 380[68] The managers of a joint stock company, which provides for the application of the penalty of bankruptcy by default to These If they intend to conceal all or part of their financial liabilities from being pursued by the company that has stopped paying. In this regard, the penalties prescribed in Article 383 of the Algerian Penal Code shall be applied to them[69].

However, the current trend in modern legislation is to reduce the penalties imposed on the managers of companies in general, within the framework of encouraging the free and bold exercise

of the management profession and paving the way for free individual or even joint management and perhaps this prompted the French legislator to make numerous amendments to the laws relating to bankruptcy and judicial settlement[70].

These amendments led to the complete abolition of bankruptcy in Article L651-2 of Law No. 172-2022 of 14/02/2022, which is the article corresponding to Article 224 of the CTC, as mentioned above, and even to the establishment of personal liability (individual or joint) for the company's debts if the judicial liquidation of a legal person shows AM in the assets is permissible, that is, the court may rule on them against the legal or actual managers if the causal link is established between the miss-management and the lack of assets[71], on the one hand, on the other hand, the Algerian legislator by stating the cases of extension of bankruptcy to the march, but they came to name a few as examples, unlike the French legislator, which exclusively enumerated the cases, therefore the Algerian legislator remained immune to these amendments keeping the traditional bankruptcy system inherited from France, whose provisions are still prevalent in Algeria despite the transition from a directed economic system to free one, which raises many questions about the effectiveness of this system.

CONCLUSION:

We conclude from the above that the shareholding company, despite its existence on the financial consideration embodied by the sovereignty of the systemic concept, which was reflected in the totality of its characteristics, then the same organizational aspect is the act of the personal aspect of the governing bodies in the shareholding company, embodying that by imposing a series of controls on those who wish to run for membership in the boards of directors of this company within the framework of directing the shareholders in matter of managers election, although they may be shareholders the provisions applicable to shareholders are applicable on managers, due to their distinguished position compared to the rest of the shareholders, this led to them being briefed on special provisions that took them beyond the limits of financial consideration, to address their personal side.

In addition to dedicating the same consideration on the occasion of the managers civil liability if they commit miss-management that harm the company, the great danger that involved management, which can often be the cause of the weakness and the collapse of the company, has led the Algerian legislator, similar to most comparative legislation, to deviate from the general principles of the company, from the limited liability of the shareholder to the realization of the personal responsibility of the managers, which, at the end, is another manifestation of the embodiment of the personal consideration in the management stage as a means aimed at tightening and pushing the manager to commitment and care while performing his tasks, because the management of this type of companies must be taken seriously for the reasons of protection of others dealing with the company, protection of subscribers and protection of the company as well.

However, in the latter context, we propose that revision of the text of Article 715 bis 27 Q.T.C, that is by determining the joint responsibility on the shortage in origins as a responsibility, especially in case it shows filter the company is short of assets.

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[1] See: Article 658 of the Algerian Commercial Code.

[2] Ibrahim Ben Mokhtar, Controls for the establishment and management of joint stock companies in Algerian law, Algerian Journal of Law, and Political Science, Tismsilt, Algeria, 2019, p. 32.

[3] For this reason, these shares are called guarantee shares, which are defined as shares that the legislator requires to be owned by the members of the board of directors and members of the supervisory board, as the case may be, and they are inalienable for the duration of a person's membership in the boards of management, as a guarantee of his responsibility for the mistakes he may commit during his management of the company, see:
G. Ripert, R. Roblot, **Treatise on Commercial Law, Commercial Companies,** t1; v2,18th edition L.G.D.J DELTA,2002 by Michel Germain, p408, N°1637.

[4] Loi no° 2001-420 15 May 2001.

[5] Yves GUYON, **Droit des affaires**, Volume 1, Droit commercial général et Sociétés12th edition aut2003, p ، 333 N°318.

[6] See: Article **L225-25.**
[7] Yves GUYON, op-ed, p ‹333 N°318.
[8] Nadia Fodil, Money Companies in Algerian Law, Diwan of University Publications, Third Edition, Algeria, 2008, p. 148.
[9] Ibrahim ben Mokhtar, op. cit., p. 26.
[10] Ordinance No. 96-07 of 10/01/1996 amending and supplementing Law No. 90-22 of 18/08/1990 on the Commercial Register (Official Journal of the People's Democratic Republic of Algeria No. 03 of 10/01/1996).
[11] See article 05 of the Algerian Commercial Code.
[12] Yves GUYON, op-ed, p ‹334 N°318.
[13] G. Ripert, R. Roblot, op, cit, p406, N°1634.
[14] See Articles 610, 634, 639 for the classical system of management, and Articles 643 and 657 for the modern system of management.
[15] See Article 635 of the Algerian Commercial Code.
[16] The Algerian legislator allowed the shareholder legal person to be a member of the board of directors, provided that he appoints a permanent representative on the board who is a natural person, and accordingly the permanent representative is not considered a member of the board of directors in a personal capacity, but the membership is attributed to the legal person contributing to the capital of the institution, provided that he is jointly liable with him in legal liability when the representative commits a mistake in management (article 612 of the law).
[17] See Article 639 of the Algerian Commercial Code.
[18] See Article 644 of the Algerian Commercial Code.
[19] An example of this is the Egyptian legislator in Article (92) of Law No. (159) of 1981, as amended and supplemented by the law issued in 2016, where stipulates that "the majority of the members of the board of directors in any joint stock company must be of the nationality of the Arab Republic of Egypt. If, for any reason, the percentage of Egyptians in the Board of Directors decreases from what is required by the application of this Article, this percentage shall be completed within three months at most, provided that the General Assembly approves this at its first meeting. The foregoing shall not prejudice the provisions of the Arab and Foreign Capital Investment Law."
[20] Ibrahim ben Mokhtar, previous reference, p. 27.
[21] Ibid., p. 28.
[22] See Article 600 of the Algerian Commercial Code.
[23] Hamdi Mahmoud Baroud, Membership in the Board of Directors of the Joint Stock Company, A Study in the Traditional and Modern Construction of a Joint Stock Company in the Light of the Rules of Governance, Journal of Al-Azhar University in Gaza, Humanities Series, Volume 13, Issue 2, Faculty of Law, Al-Azhar University, Gaza, Palestine, 2010, p. 17.
[24] G. Ripert, R. Roblot, op, cit, p 410, N°1638.
[25] ilyas Nassif, Encyclopedia of Commercial Companies, Part 11, The Foolish Company (Joint Stock Company), Chairman of the Board of Directors, General Manager and Control Commissioners, First Edition, Distribution of Al-Halabi Law Library, Bairout, Lebanon, 2009, p. 106.
[26] Ibrahim ben Mokhtar, previous reference, p. 35.
[27] G. Ripert, R, Roblot, op, cit, p416, N°1645
[28] Ordinance No. 03-06 of 15.07.2006 on the General Organic Law of the Civil Service (G.R. No. 46 of July 16, 2006).
[29] Ibrahim ben Mokhtar, previous reference, p. 36.
[30] Executive Decree No. 06-454 of 11/12/2006 on the professional card issued to foreigners who practice commercial, industrial, and craft activity or liberal profession on the national territory (G.R. No. 80-2006).
[31] See Article 01 of the same executive decree.
[32] See Articles 05, 15 and 16 of the same executive decree.
[33] Ibrahim ben Mokhtar, previous reference, p. 37.
[34] Contrary to the Algerian legislator, the French legislator no longer stipulates a specific period of time for the precedence of the employment contract over appointment to the Council, after abolishing the two-year precedence stipulated in article 93 of Law No. 66-537 on commercial companies, in article L225-22.
[35] The French legislator adds a third condition, which is that the number of managers committed to the company under an employment contract should not exceed one third of the number of managers in the management bodies, which is stated in the text of Article L225-23, and that when the workers in the company have more than 3% of the company's capital, the election of a manager to represent them in the management bodies becomes mandatory L225-23-1.

[36] The French legislator stipulated that the manager can combine his salary with the remuneration paid to managers in Article L225-22-1 repealed, but left it to the articles of association of a company, and professors Ripert, Robot believe that "the worker can assume the position of manager even if his work contract is for a specific period and is renewed during his position, see: G. Ripert, R. Roblot, op, cit, p416, N°1645.
[37] Civil liability is defined as means being held accountable for errors that harm others, by obliging the wrongdoer to pay compensation to the injured party according to the method and size determined by law", see: Abdelkader Al-Arari, Sources of Obligation, Book Two, Civil Liability, A Comparative Study in the Light of the New Legislative Texts, Third Depression, Dar Al-Aman, Rabat, 2014, p. 11.
[38] On the criminal responsibility of the founders of the joint stock company, see Boukhors Abdelaziz, The criminal responsibility of the founders of the joint stock company, Journal of Notebooks of Politics and Law, Faculty of Law and Political Science, Kasdi Merbah University of Ouergla, issue, January 18, 2018, pp. - 353.360.
[39] Abubakr Abdelaziz Mustafa Abdel Moneim, Joint Liability in the Joint Stock Company, Center for Arab Studies for Publishing and Distribution, 1st Edition, Egypt, 2016., p. 277.
[40] See article 715 bis 21 of the Algerian Commercial Code.
[41] Boukhaos Abdelaziz, Bouamar Sabrina, Joint Liability in a Joint Stock Company, Journal of Legal and Political Research, Faculty of Law and Political Science, University of Mohamed Siddiq Ben Yahia, Jijel, Algeria, Volume 7, Issue 1, 2022, p. 698.
[42] In fact, this is what the French legislator stipulates in article L225-251
[43] Belaissaoui Mohamed Al-Taher, The Responsibility of the Managers of Commercial Companies: A Comparative Study, dar houma, Alegria, 2020, p. 117.
[44] The civil liability of the manager is based if its three elements are present: fault, the existence of damage to third parties, and finally a causal relationship between the fault and the damage caused to others.
[45] Belaissaoui Muhammad al-Taher, op. cit., p. 117.
[46] Ibid., p. 118.
[47] Cass.com.30 March 2010.N° 08-17.841 **www.legifrance.gouv.fr**
[48] G. Ripert -R. Roblot; On cit; p514, N°1759.
[49] See article: Article L651-2. Amended by Law No. 2022-172 of February 14, 2022 - art. 5.
[50] Executive Decree 95-438 of December 23, 1995, implementing the provisions of the Commercial Code relating to joint stock companies and associations, G.R. No. 80 of December 22, 1995.
[51] Belaissaoui Mohamed alTaher, previous reference, p. 71
[52] Ibid., pp. 70, 71.
[53] Al-Marha' al-Ibid, p. 75
[54] Ibid., p. 112.
[55] Y. GUYON, Droit des affaires, Op, Cit, p503, n°459.
[56] Cass. com., May 20, 2003, n°99-17.092, **www.legifrance.gouv.fr**
This defines the separate error "Arrêt Seusse" as "cannot take the personal responsibility of the managers in the face of others only if they commit a mistake separate from their jobs, and the situation is so when the manager committed a deliberate error of the magnitude of a special extent incompatible with the normal exercise of social functions", and this decision is one of the most famous decisions of the French Court Cassation in the field of responsibility of managers, in which it provided for the first time a definition of a separate error and set through it three conditions to consider the positive error for the personal responsibility of managers, see:
Van Tinh VU, **The Civil Liability of Directors of Public Limited Companies in Vietnamese Law. Regards croisés avec le doit Français**, Thèses de doctorat en droit privé, Université Panthéon-Assas, April 2015, p 212, n°439.
[57] Cass. Civ 3e.10 March 2016, n°14-15.326. And 5 Cass.com., 23 November 2010, n° 09-15.339 **www.legifrance.gouv.fr**
[58] Boukhors Abdelaziz, Bouamar Sabrina, previous reference, p 699.
[59] Cass. Com., 4 July 2006, n°05-13.930, www.legifrance.gouv.fr
[60] That which consists in not giving to the affairs of others the care which the least careful and the most stupid persons do not fail to give to their affairs" (WORKS OF POTHIER, **Traité des obligations.de La presentation des fautes**, parM. PUGNET t 2 Paris 1848, p 489.
[61] Ramadan Abu Al-Saud, **The General Theory of Commitment: Sources of Commitment**, Alexandria, University Press, 2002, p. 237.
[62] Boukhors Abdelaziz, Bouamar Sabrina, op. cit., p. 700.
[63] Belaissaoui Mohamed alTaher, op. cit., pp. 101, 102.
[64] See article 224 of the Algerian Commercial Code.

[65] Ali djamal El-Din Awad, The **Impact of the Company's Bankruptcy on Partners**, Journal of Law and Economics, Faculty of Law, Cairo University, Egypt, Vol. 34, No. 03, 1960, p. 286.
[66] According to the law, article 549 of the law acquires legal personality from the day of its registration in the commercial register, which is the same provision established by the French legislator in the first paragraph of article L210-6 of the French Commercial Code.
[67] Abbas Helmi Al-Manzalaoui**, Bankruptcy and Judicial Settlement**, 2nd Edition, University Publications Office, Algeria, 1987, p 06.
[68] See Article 380 of the Algerian Commercial Code.
[69] See article 383 of the Algerian Penal Code.
[70] In order to save stalled projects, the French legislator issued a new legislation No. 2005-845 dated 26/07/2005, which is considered a breakthrough in the French legislative reform related to bankruptcy, which opened the door for subsequent and successive legislative reforms, the latest of which is Law No. 2022-172 of 14/02/2022, which stipulated Article L651-2.
For more details see the article:
Stéphanie Chatelon, Marie Waechter, Hermine Robert, Arnaud Raynouard, Modification of the French Commercial Code: what are the key points of the reform of insolvency proceedings? 30 September 2021, available on the website:
https://blog.avocats.deloitte.fr/modification-du-code-du-commerce-quels-sont-les-points-cles-de-la-reforme-des-procedures-collectives
[71] Boukhors Abdelaziz, Bouamar Sabrina, op. cit., pp. 700-701.

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