CHARACTERISTICS OF SHARES IN ALGERIAN COMMERCIAL LAW
ОСОБЕННОСТИ АКЦИЙ В АЛЖИРСКОМ КОММЕРЧЕСКОМ ПРАВЕ

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***Abstract*:**
Joint-stock companies depend for their existence and throughout their lifetime on providing capital by issuing securities, of which shares are one of the most important. This importance stems from their role in financing the necessary capital for establishing a joint-stock company. Shares are considered a permanent source of financing for the company as they are securities without a fixed term and extend throughout the company's life. A share represents a shareholder's stake in the company, i.e., the portion he contributes either at its establishment or when increasing its capital. The Algerian commercial legislator has classified shares into several types and forms. However, the common characteristic among all these shares listed by the legislator is their tradability.
***Keywords*:** Transferred values, Stocks, Tradability, Joint-stock company, Capital, Shareholder, Financial security, Financing, Bond.
Аннотация:
Акционерные общества зависят от предоставления капитала путем выпуска ценных бумаг на протяжении всего своего существования, среди которых акции являются одними из наиболее важных. Эта важность проистекает из их роли в финансировании необходимого капитала для создания акционерного общества. Акции считаются постоянным источником финансирования для компании, поскольку они являются ценными бумагами без фиксированного срока и действуют на протяжении всей жизни компании. Акция представляет собой долю акционера в компании, то есть часть, которую он вносит либо при ее создании, либо при увеличении ее капитала. Алжирский коммерческий законодатель классифицировал акции на несколько типов и форм. Однако общей характеристикой всех этих акций, перечисленных законодателем, является их торгуемость.
***Ключевые слова*:** Передаваемые значения, Акции, Торгуемость, Акционерное общество, Капитал, Акционер, Финансовая безопасность, Финансирование, Облигация.

Introduction

Joint-stock companies depend on their existence and throughout their lifecycle on providing capital by issuing securities, among which shares are one of the most important. This is due to their role in financing the necessary capital for establishing a joint-stock company. For the company, shares are considered a permanent source of financing as they are indefinite-term securities and extend throughout the company's life (Georges, René, & Germain Michel, 2002, p. 523).

Shares have the characteristic of being tradable, which makes them a subject of speculation in the stock market, where their financial value may differ from the value at which they are issued, based on the realized return and interest rate.

Through this topic, we aim to address and tackle the following issue:

What are the legal provisions specific to shares of different types in a joint-stock company according to Algerian commercial legislation?

To answer this issue, we will attempt to explore the nature of the share in (the first section), and then its types in (the second section).

1. The Nature of the Share

The need to distinguish the share from other types of securities necessitates examining its essence as a portion of the company's capital, through its definition, and understanding its distinctive characteristics.

1.1 Definition of the Share

We will attempt to define the share from a legislative perspective, and then from a jurisprudential standpoint.

1.1.1 Legislative Definition of the Share

The Algerian legislator defined the share in Article 715 bis 40 of the Commercial Law as: "A share is a tradable security issued by a joint-stock company representing a portion of its capital"[1].

Therefore, a share is a document representing a stake in the capital of a joint-stock company. The term "share" signifies the partner's right in the company as well as the document that certifies this right (Taha, 2005, p. 222).

1.1.2 Jurisprudential Definition of the Share

Some jurisprudence has adopted the traditional definition of the share, describing it as a security that represents the portion that can only be a partner's share in the company (Jamal El-Din, 1984, p. 46). Others have considered it a financial paper proving the holder's ownership of a part of the capital of the issuing company, all rights associated with it, and all obligations arising from owning this paper (Cheiha, 1985, p. 455). Some others consider it to be the instrument that the company grants to the shareholder as a result of his subscription in it (Al-Qalyoubi, 1993, p. 242), while another aspect of jurisprudence views the share as the portion provided by the partners, whether in cash or in kind (Shafiq, 1957, p. 451). The liability of the shareholder is limited to the amount of shares he owns (Hammad, 2002, p. 20).

In reality, from a substantive perspective, a share means the shareholder's stake in the company, i.e., the portion he contributes either at its establishment or when increasing its capital. From a formal perspective, it also means the written document given to the shareholder as a means of proving his right in the company (Mahrez, 2004, p. 426).

Based on this definition, a share is the certificate issued by a joint-stock company to prove a shareholder's rights within it, entitling him, in this capacity, to exercise his rights in the company. Collectively, they represent the company's capital and are of equal value (Al-Marzouqi, 1985, p. 333).

1.2 Characteristics of the Share

The characteristics of the share are of great importance in defining its general concept, as these characteristics distinguish it from the portions that make up the capital of partnerships. These characteristics are the equality of share value, the indivisibility of the share, and the tradability of the share, which we will discuss sequentially.

1.2.1 Equality of Share Value

Shares must be issued at their nominal value, which must be fully subscribed to (Article 596 of the Algerian Commercial Code). They cannot be issued for less or more than their nominal value (Rahim, 2004, p. 573). Equality is not limited to the nominal value of the share but also extends to the rights and obligations granted by the shares to the shareholders (Mahrez, 2004, p. 436).

Article 715 bis 30 of the Commercial Law states, "Securities... grant similar rights according to the category..." Additionally, Article 715 bis 42 of the Commercial Law in its last paragraph states, "All ordinary shares enjoy the same rights and obligations".

What can be inferred from these texts is that the Algerian legislator has established the principle of equality in the rights and obligations that are similar to each other.

The nominal value of the share is written on the document issued for it, but the share also has a real value and a market value that may differ from its nominal value.

The real value of the share is the value of the share from the net assets of the company after deducting its debts (Al-Manzlawi, 1988, p. 92). This value may be higher than its nominal value

1- Order No. 75-59, containing the amended and supplemented Commercial Law (September 26, 1975).

if the company has made profits that have bolstered its capital reserves. If the company has suffered losses, then the real value of the share will be less than its nominal value.

The market value refers to its value in the stock market among traders, and this value may be higher or lower than the nominal value depending on the company's success, economic conditions, and supply and demand (Al-Akili, 2008, p. 229).

1.2.2 Indivisibility of the Share

It is acknowledged that a shareholder in a joint-stock company has rights conferred by his shares, among the most important of which are the right to management, attendance at general meetings, and voting on decisions. Therefore, the indivisibility of the share is an inherent characteristic, dictating that more than one person cannot jointly purchase a single share, and this characteristic also includes the rights resulting from the share.

As a general rule, but with every rule, there are exceptions. Due to practical necessities that led legislation to keep up with developments, it has become possible to convert the share into an investment certificate or a voting rights certificate. Thus, the rule is that a share is owned by one person, and the exception is in the case of conflicting rights on a single share, meaning that the share is either owned in common or subject to usufruct or bare ownership rights. Article 715 bis 32 of the Commercial Law states: "Securities towards the issuer are considered indivisible bonds, with respect to the application of articles related to usufruct and bare ownership".

This article indicates that usufruct can apply to the share, and the original owner retains bare ownership, such as when usufruct is granted to another person, while the owner retains the ownership of his share without benefiting from it. In such cases, profits are the right of the usufructuary, while the return of the share's value is for the bare owner, and usually, voting in ordinary general meetings is the right of the usufructuary, whereas in extraordinary meetings, it is the right of the bare owner (Karim, 2012, p. 27).

If the ownership of the share passes to several people due to death or other reasons such as a gift or will, then the share does not get divided among them, and not each of them has a vote in the general shareholders' meeting. Instead, they must appoint one person to exercise the rights related to the share towards the company because the company recognizes the share more than it recognizes the shareholder (Taha, 2005, p. 225).

1.2.3 Tradability of the Share

Freedom as a principle means that a shareholder has the right to freely dispose of his certificate. Any restriction or condition imposed on this principle is considered an exception to it and must be interpreted narrowly so as not to affect its essence or diminish its value (Matlawi, 2016, p. 38).

The tradability of shares through commercial means is considered one of the most distinctive characteristics of shares in capital companies. However, this characteristic may have exceptions, which can be legal or contractual, making a share non-tradable, thus imposing an absolute prohibition on the trading of shares.

Article 715 bis 40 of the Commercial Law states: "A share is a tradable security issued by a joint-stock company representing a part of its capital." This text implies that shares can be transferred without restrictions, unlike in partnerships, ensuring that a shareholder can obtain the value of his shares at the time of transfer without causing harm to the company or its dealings. In this case, the company does not return the amount contributed by the shareholder to its capital but accepts a new shareholder in place of the one who transferred his shares. (Mahrez, 2004, p. 499)

The tradability process explains the possibility of pricing shares on the stock exchange, allowing them to be traded easily and quickly through buying and selling (Karim, 2012, p. 32). The method of share trading depends on the form in which they are issued, where Article 715 bis 38 of the Commercial Law states: "The bearer bond is transferred by mere delivery or by entry in accounts. The registered bond is transferred to third parties and against the issuing legal entity by transfer in the records by regulation".

From this text, it can be concluded that the freedom to trade is not absolute but is subject to legal or contractual exceptions to protect the public interest, shareholders, and third parties.

A. Legal Restrictions

The aim of these restrictions is to achieve higher interests that ultimately protect the rights of the company and shareholders, generally including (Zahra, 2008, p. 59):

a. The case of the company not registered in the commercial registry

Article 715 bis 51 of the Commercial Law states: "Shares are not tradable until the company is registered in the commercial registry. In the case of an increase in the company's capital, shares are not tradable until the full payment of this increase".

This text indicates that once the company is registered in the commercial registry and its capital is increased[2], shares become tradable.

b. Promises of shares[3]

The Algerian legislator explicitly prohibited trading in promises of shares unless they are issued due to an increase in the capital of a company whose old shares were registered in the stock exchange. In this case, trading is only valid if it occurs under a suspensive condition to realize the capital increase, and this condition is presumed in the absence of any explicit statement[4].

The term "promise of shares" refers to the temporary certificates given to subscribers until the nominal shares are prepared for their holder and distributed among the shareholders. It is not permissible to trade subscription certificates during the period before the company is registered in the commercial register (Widad, 2017, p. 109).

The aim of prohibiting the trading of share promises or provisional certificates is to prevent shareholders from exploiting the company's formation processes by selling shares immediately after establishment to maximize profit. Therefore, legislations protect savers by allowing anyone interested in dealing with these shares to have sufficient knowledge and awareness of the company's financial position (Karim, 2012, p. 34).

c. Guarantee shares

Article 619 of the Commercial Law states: "The board of directors must own a number of shares representing at least 20% of the company's capital, and the statutes specify the minimum number of shares each manager must hold, and these shares are entirely allocated to guarantee all management activities including those specific to one of the managers".

It follows that trading shares of board members is not permissible, and their shares remain nominal and are marked to indicate that they cannot be disposed of. They are deposited in the company's fund and allocated to guarantee their depositors against management and administration errors, whether the responsibility is personal, individual, or joint and several (Zahra, 2008, p. 65).

The wisdom behind prohibiting the trading of these shares is to protect shareholders from harmful actions by board members to the company's position and reputation, and on the other hand, to protect third parties from the company's creditors in case they seek compensation through civil liability claims against board members for wrongful actions during the management of the company. (Al-Baroudi & El-Fiqi, 1999, p. 409)

However, a former manager or his right holders may regain the freedom to dispose of the guarantee shares once the ordinary general meeting approves the accounts for the last financial year related to his management (Article 620 of the Commercial Law).

2- The legal personality of the commercial company is established only from the date of its registration in the commercial registry, according to Article 549 of the Commercial Law.

3- This refers to the certificates granted by the company to subscribers after completing the subscription process at the company's establishment. Subscribers are entitled, thereby, to pay the value of the original shares when the company issues them.

4- Paragraph three of Article 715 bis 51 of the Commercial Law.

d. Non-tradability of in-kind shares[5]

Both the French and Egyptian legislators have stipulated that in-kind shares are not tradable before the publication of the balance sheet and the profit and loss account for two full years, each not less than 12 months, from the date of the decision authorizing the establishment of the joint-stock company offering its shares for public subscription.

The goal is to protect the interest of the company and third parties. This condition serves as a means to keep in-kind shareholders in the company for a period of no less than two years, allowing the company to stabilize and secure its financial position, thereby preventing the trading of shares by sale as a means for unlawful enrichment through overvaluation of in-kind contributions (Karim, 2012, p. 35).

However, the French legislator quickly revised its previous position, making both in-kind and cash shares tradable immediately after issuance, once the issuing company is registered in the commercial registry, eliminating any distinction between cash and in-kind contributions (Karim, 2012, p. 35). The Algerian legislator adopted the same stance through Article 715 bis 51 of the Algerian Commercial Law.

Algerian jurisprudence criticizes the legislator for subjecting the shares of the members of the supervisory board to this prohibition of disposal. This is because the supervisory board is considered a body overseeing the management conducted by the board of directors, and not a management body itself; it is forbidden for it to intervene in management (Khadija, 2013-2014, p. 50).

B. Contractual Restrictions

Contractual restrictions are those included in the company's statutes, Conventional restrictions are those restrictions included in the company's bylaws and apply to registered shares but do not practically apply to bearer shares (Nassif, 2004, p. 24). It primarily aimed at limiting the right to transfer shares to others for various reasons. Founders may wish to prevent foreigners or individuals they do not trust from owning shares in the company, especially when they want to maintain a national character or prevent the sale of shares to competitors (Al-Akili, 2008, p. 249). However, these contractual restrictions on a shareholder's right to dispose of their shares should not lead to the absolute deprivation of their right to do so, as that would be invalid. Such restrictions could infringe upon the fundamental rights of the shareholder, which should not be denied. Any clause in the company's statutes that absolutely prohibits a shareholder from disposing of their shares is considered invalid (Al-Akili, 2008, p. 249).

Contractual restrictions introduce a personal element into joint-stock companies. If the company's statutes lack these restrictions, the extraordinary general meeting may not amend its statutes to introduce such restrictions, as this would increase the obligations of shareholders (Taha, 2005, p. 248).

The Algerian legislator allows shareholders the freedom to include these conditions in the company's statutes, which can take various forms, such as:

a. Pre-emptive Rights

The Algerian legislator addressed the right of preemption in Article 694 of the Commercial Law, which stipulates that the right of preemption here concerns the subscription of new shares issued by the company as long as it relates to an increase in capital and not to existing shares intended to be transferred (Khadija, 2013-2014, p. 71).

The company's statutes may contain a clause granting shareholders the pre-emptive right to purchase shares intended for sale by their owner. If such a clause exists, a shareholder wishing to dispose of their shares must notify the company of the sale terms, which are then communicated to the shareholders through the company. If notified, each shareholder has the right to inform the company of their desire to purchase within the period specified by the

5- In-kind shares are those issued by the company in exchange for in-kind contributions that form part of the capital. They are characterized by being fully paid in value by their nature. See Article 715 bis 41 of the Commercial Law.

company's statutes and at the price offered to the owner. The price in this case is determined according to the share's value on the stock exchange or, alternatively, by the board of directors through an expert. If more than one shareholder wishes to buy the shares within this specified period, the shares must be divided among them in proportion to their shareholding in the company. If the specified period expires without any shareholder expressing interest in buying, the

shareholder is free to dispose of them, and such disposal becomes effective against the company and the shareholders once the ownership transfer procedures are completed (Al-Akili, 2008, p. 249).

Allowing new shareholders to subscribe to capital increase shares results in their participation in the reserve funds, which means they benefit from funds they did not contribute to creating. On this basis, the value of the old shares increases at the expense of the new shares without right (Nassif, 2004, p. 369).

b. Board of Directors' Approval

The company's statutes may require the board of directors' approval for the buyer of shares, aiming to prevent certain individuals from entering the company or to control the balance of share distribution among shareholders. If such a condition exists, the shareholder must notify the board of directors of the buyer's name. The board must then inform the shareholder of its approval or disapproval within the period specified in the company's statutes. Generally, a condition requiring approval is considered invalid if it is absolute, i.e., if it gives the company the right to reject any buyer without a legitimate reason, as it would render the shareholder a prisoner to their share, stripping the share of one of its essential characteristics. A share that cannot be traded is not considered a share but a stake in a partnership.

However, a condition prohibiting the sale of company shares to specified individuals, such as foreigners or entities competing with the company, remains valid because its purpose is to protect the company and its shareholders.

The condition requiring the board of directors' approval for the buyer may be coupled with the board purchasing the shares on behalf of the company or offering them to another buyer instead of the rejected buyer who did not receive the board's approval. If the board purchases the shares on behalf of the company, the purchase must be at the share's value, provided it is not financed from the company's capital and is within the percentage allowed by law or the company's statutes (Al-Akili, 2008, p. 250).

The purpose of these restrictions is to monitor shareholders or individuals wishing to join the company. They are only effective if the shares are registered.

In all cases, restrictions on share trading must be specific to the purposes for which they were established, should not absolutely prevent trading, and should not be used as a means to unduly restrict a shareholder's right to dispose of their shares (Taha, 2005, p. 247).

2. Types of Shares

Commercial law scholars classify shares into various types based on the perspective taken as the basis for classification (Mahrez, 2004, p. 464). In terms of the form of shares, they are divided into registered shares and bearer shares. Looking at the nature of the contributions, they are divided into cash shares and in-kind shares, and in terms of the rights they confer on the partner, into ordinary shares and preferred shares. Regarding redemption, i.e., the repayment of the share's value to the partner, they are divided into capital shares and enjoyment shares.

2.1 Shares by Their Form

According to Article 715 bis 34 of the Commercial Law, the securities issued by a joint-stock company take the form of either bearer or registered bonds. This difference in form leads to different legal regulations applicable to each, making it necessary to initially address these two categories of shares, starting with registered shares and moving to bearer shares.

2.1.1 Registered Shares

The Algerian legislator did not provide a clear and precise definition of the nominal share, but jurisprudence defines it as: "The share issued in the name of a specific person, and its ownership is confirmed by registering the shareholder's name in the company's register" (Al-Arifi, 2002, p. 270).

A registered share is one that bears the shareholder's name, and its ownership is evidenced by the registration of the shareholder's name in the company's records (Taha, 2005, p. 238).

The registration process helps in summoning shareholders to the general assembly or demanding any obligations they may have. Registered shares also facilitate identifying the owner in case of loss or theft since the company is aware of its shareholders' identities. This knowledge helps in dealing with them, such as notifying and summoning them to meetings and distributing profits. It also aids shareholders in tracking changes in the company's capital (Al-Baroudi & El-Fiqi, 1999, p. 405).

According to Article 715 bis 37 of the Commercial Law, registered shares may take a physical form through the delivery of a bond or may be subject to registration in an account maintained by the issuing company. The physical bond in this context refers to the certificate given to the owner of registered shares (Zahra, 2008, p. 128). However, it does not represent ownership of the shares, as ownership is proven by registration in the company's records[6]. If a shareholder loses it, this does not mean they lose ownership status, unlike the bond delivered to the owner of bearer shares.

The system adopted by the Algerian legislator is somewhat complicated and hinders operations involving registered shares. Any transaction requires the previous owner's name to be deleted from the company's records and the new owner's name to be added. This situation does not facilitate investments because it contradicts the speed characteristic of commercial transactions.

The situation is completely different under French legislation, where the transfer and conveyance of share ownership are done by transferring them from one account to another through a movement order signed by the transferor. By this order, the company directly transfers the ownership of the share to the transferee's account. (Karim, 2012, p. 06)

The Algerian legislator, by virtue of Article 715 bis 37 of the Commercial Law, grants the shareholder the right to convert their registered shares into bearer shares. However, this right is not absolute due to the existence of shares that mandatorily take a registered form[7].

2.1.2 Bearer Shares

The bearer share is that share which does not bear the name of the shareholder, but instead states that the share belongs to the bearer and is issued with serial numbers (Abbas Marzouk, 1998, p. 79). Instead, it indicates that the share belongs to its bearer, making the holder of the share the owner in the eyes of the company (Taha, 2005, p. 238). Thus, merely possessing the share physically makes the possessor its owner without any further procedures required. Therefore, the principle "possession in movable property constitutes proof of ownership" applies, and it is transferred by handing it from the seller to the buyer (Mahrez, 2004, p. 466).

Therefore, a bearer share is a share that is not issued in the name of a specific person, but can be owned by anyone through purchasing it from its original owner. It is traded by handover or delivery from one

person to another without referring back to the company, meaning it occurs outside its scope (Emad Mohamed, 2007, p. 329).

6- The term "company records" here refers to the registers of registered bonds prepared by the issuing company, which are formed by compiling all similar documents used on one side in chronological order according to their preparation. See Article 15 of the Executive Decree No. 95-438 dated December 23, 1995, concerning the implementation of the Commercial Law provisions related to joint-stock companies and consortia.

7- For example, unpaid cash shares are registered and cannot be converted into bearer shares unless their value is fully paid. This is stipulated in Article 715 bis 52 of the Commercial Law.

The trading of bearer shares is done by delivery only, as stated in the first paragraph of Article 715 bis 38 of the Commercial Law: "The bond to the bearer is transferred by mere delivery or by entry in accounts".

It is noticeable that the Algerian legislator was influenced by the French legislator's stance regarding bearer shares before adopting the principle of the dematerialization of securities[8].

Bearer shares represented in the form of physical bonds pose a significant risk to their owners in cases of theft, loss, or damage, leading to the loss of ownership as long as it is proven by possession of the document. Therefore, the right of the shareholder to collect dividends transfers to the possessor based on the intention behind the lost or stolen shares (Article 836 of the Commercial Law). To protect the owner of these shares, the Algerian legislator has given the right to the shareholder to recover their bond from whoever possessed it in good faith, within a three-year period starting from the time of loss or theft, according to the first paragraph of Article 836 of the Commercial Law.

However, the possessor who bought the bond from the market or at public auction or from a trader who deals in such securities has the right to recover the price paid from the shareholder who reclaimed their share[9].

The Algerian legislator has allowed the owner of bearer bonds to request their conversion into registered bonds (Article 715 bis 36 of the Commercial Law). Therefore, the company must maintain registered records from its establishment, even if all its shares are represented by bearer bonds, due to the possibility of these share owners requesting their conversion into registered shares at any time (Zahra, 2008, p. 135).

2.2 Shares by the Nature of the Contribution Provided and the Rights Conferred to the Partner

Shares are divided based on the nature of the contribution provided by the partner into cash and in-kind shares, which we will discuss. In terms of the rights, they confer to the partner, shares are further divided into ordinary and preferred shares.

2.2.1 Shares by the Nature of the Contribution Provided

Shares are divided into cash and in-kind shares based on the nature of the contribution provided by the partner.

A. Cash Shares

A cash share is a share for which the shareholder commits to pay in cash (Mahrez, 2004, p. 466), representing cash contributions to the company's capital that the shareholder agreed to provide at the time of subscription (Al-Akili, 2008, p. 231). The cash contribution involves providing a sum of money either by paying in cash, writing a check, or transferring from the partner's bank account to the company's bank account.

The Algerian legislator, in the first paragraph of Article 715 bis 41 of the Commercial Law, stipulates the following: "Cash shares are considered to be (Zahra, 2008, p. 113):

- Shares that have been paid for in cash or through settlement.
- Shares issued after being added to the company's reserve capital, profits, or issue premium.
- Shares whose amount is partly formed by being added to reserves, interests, or issue premiums and partly by cash payment. These must be fully paid at the time of subscription".

From the above, it can be inferred that the Algerian legislator enumerated cases considered as cash shares, which are as follows:

a. Shares paid for in cash or through settlement

Settlement occurs when a person is a creditor to the company and wants to subscribe to its shares. Instead of receiving his debt and then paying the subscription amount to it, he directly

8- This principle means that these securities, including the bearer share, are no longer represented by a physical document but are now recorded in an account maintained by a financial intermediary, such as a bank or any other financial institution.

9- The second paragraph of Article 836 of the Civil Code.

receives shares equal to the amount of his debt. Thus, settlement can only be discussed in the case of capital increase, not at the company's establishment.

b. Shares issued as a result of adding reserves, profits, or issue premiums to the capital

Adding reserves to the capital means using reserves, represented by undistributed profits from previous years, to strengthen the financial position instead of distributing them as dividends. They are distributed to shareholders as free shares proportionate to the old shares they hold. Adding reserves can only be discussed when increasing the company's capital, not at its establishment, because they can only be formed during the company's life.

Issuing shares as a result of adding profits to the capital means the company may decide not to distribute profits for a financial year and add its amount to the capital by issuing new shares, given free to shareholders in proportion to the number of shares they hold (Zahra, 2008, p. 114).

As for adding issue premiums to the capital, the extraordinary general meeting, having the freedom to dispose of issue premiums, can add them to the capital and distribute free shares to shareholders. These shares are considered cash shares (Zahra, 2008, p. 115).

c. Shares whose amount is partly formed by adding reserves, interests, or issue premiums and partly by cash payment must be fully paid at subscription

According to Article 596 of the Commercial Law, one-quarter (1/4) of the nominal value of cash shares must be paid at subscription. The remaining increase must be paid at once or in several installments based on a decision from the board of directors or the management board, depending on the case, within a maximum period of five (5) years from the date the company is registered in the commercial registry.

The cash share remains nominally compulsory until fully paid (Article 715 bis 52 of the Commercial Law). This ensures the legislator's intent to enable the company to follow up on the shareholder who fails to pay the amounts associated with the share. If the deadline for paying the due installments passes without payment, these shares cease to grant the right to admission and voting in general assemblies, are not counted when calculating the legal quorum, and the right to dividends and the preferential right to subscribe in capital increases related to them are suspended (Paragraphs 01 and 02 of Article 715 bis 49 of the Commercial Law). If the company, based on a decision by the board of directors or the management board, demands payment of the amounts related to the subscribed shares and the shareholder does not comply with its request, the company proceeds to sell these shares (Zahra, 2008, p. 118).

B. In-kind Shares

In-kind shares are those that represent in-kind contributions to the company's capital. The shareholder has committed to providing these in exchange for the shares they receive (Al-Akili, 2008, p. 231). Examples of in-kind contributions include a piece of land with facilities or an entire building that the company acquires for its operations, as well as tangible movable assets like cars or merchandise, or intangible movable assets like patents or industrial designs. These in-kind contributions, alongside cash contributions, form part of the company's capital (Mahrez, 2004, p. 467), with a requirement that their value be fully paid upon issuance or when increasing the capital of the issuing joint-stock company.

In-kind contributions are provided either during the company's establishment or when increasing its capital. This can be done either as a transfer of ownership, meaning the transfer of the real right represented by the ownership from the contributor to the company, or for use and exploitation, which is a division of the ownership right where the contributor remains the owner of the property and the company has the right to use and exploit it without the right to dispose of it, or as a usufruct where the company only has a personal right to the property without ownership rights (Zahra, 2008, p. 121).

The issuance of shares requires the valuation of in-kind contributions before any in-kind share is granted. The task of estimating the value of in-kind contributions falls on a contribution's representative, and the valuation process differs between the company's establishment phase and the capital increase phase:

a. **Valuation at the company's establishment phase**

It's necessary to differentiate whether the company was established without public solicitation of savings or with it.

In the case of establishment without public solicitation of savings, the contributions representative estimates the in-kind contributions and prepares a report under his responsibility, which is annexed to the company's statutes and made available to future shareholders at the company's headquarters[10]. They can obtain a copy of it at least 03 days before signing the company's statutes[11], where the valuation is approved as soon as the shareholders sign the statutes.

In the case of establishment with public solicitation of savings, the contributions representative estimates the in-kind contributions under his responsibility, prepares a report, and deposits it at the National Center for the Commercial Registry along with the company's statutes[12]. The report is made available to subscribers at the company's headquarters, and the constitutive general meeting mandatorily decides on the valuation of in-kind contributions. It's not bound by the representative's valuation; the decision is made by a quorum and majority of the ordinary general assembly, represented by two-thirds (2/3) of the votes expressed[13]. Additionally, Article 603 of the Commercial Law adds that the contributor's shares are not considered in the majority calculation, and the contributor does not have a vote, neither for himself nor as a representative.

However, the constitutive general assembly can only reduce this valuation unanimously by the subscribers. If the contributors do not expressly agree to the valuation, the company does not come into existence. If the constitutive general assembly approves the valuation of in-kind contributions and the contributors agree, then the company is established, and the in-kind contributions enter the company's financial patrimony, and in-kind shares are issued (Zahra, 2008, p. 124).

b. **Valuation of in-kind contributions when raising capital**

According to Article 707 of the Commercial Law, the contributions representative is appointed by a judicial decision upon request by the chairman of the board of directors or the management board, as the case may be. These representative values the in-kind contributions under his responsibility and makes his report available to shareholders at least eight (08) days before the extraordinary general assembly. If the

general assembly approves the valuation of contributions, it confirms the capital increase. If it reduces it, the contributors must expressly agree to this, or the capital increase does not occur, knowing that the in-kind contribution provider does not participate in deliberations, and his shares are not counted in the majority calculation, as per Article 603 of the Commercial Law.

The purpose of these procedures is to prevent founders from overvaluing in-kind contributions, as they are often the ones providing such contributions in exchange for receiving shares. Therefore, overvaluation of an in-kind contribution by a founder not only affects the general guarantee of creditors' debts but also the interests of shareholders, as this situation allows in-kind contributors to receive shares from the company that do not match the real value of the in-kind assets provided.

2.2.2 Shares by the Rights They Confer to the Partner

Fundamentally, all shares in a joint-stock company are considered ordinary shares, adhering to the "principle of equality" regarding the equal value of shares and the equality of rights and obligations of their holders. However, some shares may grant their holders additional rights and privileges and are considered preferred shares.

10- The first paragraph of Article 607 of the Penal Code.
11- Article 18 of the Executive Decree No. 95-438 aforementioned.
12- The second paragraph of Article 601 of the Penal Code.
13- Paragraph 02 of Article 602 and paragraphs 02 and 03 of Article 674 of the Penal Code.

Thus, shares are divided into ordinary shares and preferred shares based on the rights they confer to the partner.

A. Ordinary Shares

Article 715 bis 42 of the Commercial Law defines ordinary shares as: "Those shares that represent subscriptions and payments towards a portion of the capital of a commercial company, granting the right to participate in general assemblies, the right to elect or remove management bodies, approve all or part of the company's contracts, and its statutes or amendments thereto proportionately with the voting right held under its statutes or by law. In addition to this, ordinary shares grant the right to collect dividends when the general assembly decides to distribute all or part of the net profits realized. All ordinary shares enjoy the same rights and obligations".

This text implies that ordinary shares grant equal and standard rights at the same time, meaning the nominal values are equal, as well as the resulting rights and obligations are equal. These characteristics are inherent and fundamental in any share, where a bond or instrument issued by the issuing company cannot be considered a share if these essential characteristics are not met.

The principle of equality in rights and obligations among shareholders in joint-stock companies is not a matter of public order, so it is permissible, in the absence of any provision in the company's statutes prohibiting it, to issue preferred shares granting their owners more advantages than ordinary shares, such as the right to a larger share of the profit than ordinary shares, or having a greater number of votes than ordinary shares, or priority in the redemption of their value upon the liquidation of the company's assets (Al-Akili, 2008, p. 234).

Consequently, ordinary nominal shares can be divided into two categories according to the will of the founding general assembly. The first category enjoys a voting right that exceeds the number of shares they hold, while the second category enjoys the privilege of priority in subscribing for new shares or debentures (Amoura, 2000, p. 272).

B. Preferred Shares

Preferred shares are defined as: "Shares that grant their holders rights of a higher rank than those granted by ordinary shares " (Radwan, 1994, p. 396).

Article 715 bis 44 of the Commercial Law states: "Ordinary registered shares may be divided into two categories according to the will of the constitutive general assembly, the first category enjoying a voting right exceeding the number of shares held, while the second category enjoys the privilege of priority in subscribing for new shares or bonds".

From this article, it can be inferred that preferred shares are those granting their holder rights and privileges compared to ordinary shares.

Shares are considered preferred if they give priority in receiving dividends or in the distribution of liquidation proceeds and are called priority shares or preference shares. A share is also considered preferred if it grants its holder more than one vote in the company's general meetings, and is referred to here as a multiple voting share (Hussein, 1993, p. 171).

The Algerian legislator required that preferred shares must be nominally formed, desiring according to Algerian jurisprudence to allow the company to ensure shareholders fulfill their obligations and also to defend against public tender offers (Zahra, 2008, p. 143).

Preferred shares are often issued when increasing the company's capital to encourage the public to subscribe to the capital increase shares, especially if the market value of the old shares is less than the nominal value. If the company has issued bonds and its financial position does not support redeeming them, it may offer creditors the option to convert their bonds into preferred shares to encourage them to accept the conversion, thereby transforming debt into equity with creditors becoming shareholders in the company. Conversely, the company may be in a strong financial position with substantial reserves but needs new funds to continue and expand its projects. It increases capital by offering new shares for public subscription, and to prevent harm to the old shareholders, the company decides some advantages for them, turning their shares into preferred and the new shares into ordinary (Al-Akili, 2008, p. 234).

The issuance of preferred shares represents an unusual situation that contradicts a fundamental characteristic of shares: the equality of rights and obligations. Most modern legislations have disapproved of this, although some argue that issuing preferred shares does not violate the principle of equality among partners because the disparity stems from the types of shares. It is predefined that the company's system includes two types of shares and sets forth the advantages and conditions of each type, allowing every subscriber to choose as they wish (Mahrez, 2004, p. 464).

Comparative legislations have varied in their approach to this type of shares. For instance, French legislation permits their issuance with all kinds of privileges (Georges, René, & Germain Michel, 2002, p. 329), whereas Algerian legislation only allows for two types: shares with voting privileges and shares with priority in acquiring new bonds or subscribing to shares.

A. Multiple Voting Shares

Multiple voting shares are those that give their owners more than one vote in general assemblies, contrary to the general principle that grants one vote per share, as stated in Article 684 of the Commercial Law: "The voting right attached to capital shares or enjoyment shares shall be proportional to the capital share they represent, at least one vote per share"….

These shares have their drawbacks, as they allow a minority of shareholders to dominate the company's management, essentially enabling a minority of shareholders to control the election of the board of directors and its management approach. This situation threatens the democracy in a joint-stock company, particularly the fairness in voting according to one's shares, and diminishes the power of the majority of shareholders in managing the company and protecting the collective interest, opening the door to arbitrary decisions that favor the minority at the expense of the majority (Georges, René, & Germain Michel, 2002, p. 333).

B. Priority Subscription Privilege for New Shares or Bonds

Restricting the priority subscription right to new shares or redemption bonds means that these share owners have the right to subscribe before other shareholders. It should be noted that all shares enjoy a preferential right in subscribing to shares or investment certificates issued on the occasion of capital increase. However, this priority only applies to subscribing to new shares or redemption bonds due to the limitation specified by the Algerian legislator in Article 715 bis 44 of the Commercial Law.

In summary, unlike the French legislator, the Algerian legislator has not allowed for many privileges for shares, especially financial privileges such as the right to a higher percentage of profits or liquidation surplus, in an effort to maintain the principle of equality among shareholders.

2.3 Shares in terms of Consumption

The principle is that the value of shares cannot be returned to the shareholders except upon the dissolution of the company and after the settlement of its debts. However, if the company has made sufficient profits during its lifetime, it may return all or part of the share value. This is what is called the consumption of shares.

Therefore, this type of shares is divided into capital shares, which are shares whose value has not been consumed, and on the other hand, into enjoyment shares, which are shares whose value has been consumed.

2.3.1 Capital Shares

According to Article 715 bis 45 of the Algerian Commercial Code, enjoyment shares are those shares for which their nominal amount has been reimbursed to the shareholder through consumption deducted either from profits or reserves. This consumption represents an advance payment to the shareholder for his share in the future liquidation of the company.

A capital share is that share whose value has not been consumed; its nominal value has not been paid to its owner during the company’s life. It remains a capital share, included in the company's assets and connected to its funds until the company's dissolution. Only then can shareholders divide the company’s assets and recover the value of their shares in the capital and everything they are entitled to according to the liquidation outcome. However, if a shareholder wishes to recover the value of his share before the company's dissolution, the only way to do so is to transfer the share to someone else (Mahrez, 2004, p. 469).

2.3.2 Enjoyment Shares

An enjoyment share refers to a share whose value has been consumed by returning its nominal value to the shareholder during the company's life. The shareholder who has consumed his share receives an enjoyment share, giving him the right to a portion of the profits and the right to vote in general meetings (Mahrez, 2004, p. 470).

The company may, in some cases, need to refund the value of shares while it is still active, such as if the company is exploiting a quarry or a mine that expires after a certain period, or if the company has obtained a concession from the government to exploit a public utility like water, electricity, and gas companies, whose assets revert to the government after the concession period ends. If the value of these companies' shares is not refunded (not consumed) while the company is active, it will be impossible to

refund their value after the company's dissolution. Therefore, the company's articles of association provide for the gradual consumption of its shares so that the shareholder who has consumed his share receives an enjoyment share.

Owners of enjoyment shares remain as partners in the company, retaining all rights associated with this status, except for reclaiming the nominal value of their shares at the company's liquidation, because they have already recovered this value when their shares were consumed (Al-Akili, 2008, p. 236).

This consumption occurs either by fulfilling some shares designated by lottery annually, where the company returns their nominal value to their owners, or by fulfilling a part of the nominal value for each share, so that shareholders recover the entire value before the company's dissolution. Some believe the second method is more equitable than the first; if the company suffers losses after consuming its shares through the lottery, the holders of these shares are in a better position than those whose shares have not been consumed because they have already received the value of their shares, while shareholders whose shares have not been consumed lose their stakes in the company's capital (Taha, 2005, p. 230).

Conclusion

A joint-stock company is established to execute large-scale projects due to the ease of raising funds through the freedom of stock trading, and the complete independence of the company's legal personality from the personalities of its partners, which ensures its stability and continuity.

Given the importance of shares, regardless of their types, it is necessary to fulfill their value, not necessarily at the moment of establishment but during their lifetime, according to what is agreed upon in its foundational contract. This is due to the effects in terms of rights and obligations they grant to shareholders compared to other securities issued by the company.

The trading of shares may pose a risk in case of theft or loss, which has prompted legislators to introduce some legal restrictions that limit the ways of trading and allow the parties to agree on some contractual restrictions in their by-laws.

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