Legal Provisions Governing the Simplified Joint-Stock Company under Algerian Legislation

Nouacer Tahar

Faculty of Law and Political Sciences, Laboratory of Development Strategies in Border Areas and the Greater South, University of Tamanghasset (Algeria) ,University of Amin El-Okkal Al-Haj Moussa Ag Akhamokh in Tamanghasset (Algeria), Email : nouacer.tahar@univ-tam.dz

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Abstract:

In line with the changes taking place in the business environment in Algeria, the legislator has introduced a series of legal provisions that meet the requirements of these changes. In this context, Law No. 22-09, amending and supplementing the Commercial Code, introduced a new form of commercial company known as the Simplified Joint-Stock Company. This company differs in some of its provisions and rules from the traditional joint-stock company, as it may be established by one or more natural or legal persons. It is also characterized by the absence of a minimum requirement concerning the number of shareholders and the amount of capital needed for its establishment, as well as the possibility of making contributions in the form of work. The Simplified Joint-Stock Company (S.P.A.S.) may be established exclusively by companies holding the "Start-up" label. A start-up is characterized by its temporary nature, its potential for rapid growth, and its capacity for innovation, development, and continuity. It may also benefit from several tax and customs advantages. The decision to grant the "Start-up" label falls within the competence of the National Committee for Granting the "Start-up", "Innovative Project", and "Business Incubator" Labels, after fulfilling the conditions prescribed by law.

Keywords: Simplified Joint-Stock Company; Start-up Enterprise; Start-up.

Disposiciones jurídicas que regulan la sociedad por acciones simplificada en la legislación argelina

Nouacer Tahar

Facultad de Derecho y Ciencias Políticas, Laboratorio de Estrategias de Desarrollo en las Zonas Fronterizas y el Gran Sur, Universidad Amin El-Okkal Al-Haj Moussa Ag Akhamokh de Tamanghasset (Argelia), **Correo electrónico:** nouacer.tahar@univ-tam.dz

Resumen

En consonancia con las transformaciones que experimenta el entorno empresarial en Argelia, el legislador ha introducido una serie de disposiciones jurídicas que responden a las exigencias derivadas de dichos cambios. En este contexto, la Ley n.º 22-09, que modifica y complementa el Código de Comercio, introdujo una nueva forma de sociedad mercantil denominada sociedad por acciones simplificada. Esta figura difiere de la sociedad por acciones tradicional en algunas de sus disposiciones y normas, puesto que puede ser constituida por una o varias personas físicas o jurídicas. Asimismo, se caracteriza por la ausencia de requisitos mínimos relativos al número de accionistas y al capital necesario para su constitución, así como por la posibilidad de realizar aportaciones de trabajo. La sociedad por acciones simplificada (S. P. A. S.) únicamente puede ser constituida por empresas que posean el distintivo «Start-up». Una empresa emergente se caracteriza por su naturaleza temporal, su potencial de crecimiento rápido y su capacidad de innovación, desarrollo y continuidad. También puede beneficiarse de diversas ventajas fiscales y aduaneras. La concesión del distintivo «Start-up» corresponde al Comité Nacional para la Concesión de los Distintivos «Start-up», «Proyecto Innovador» e «Incubadora de Empresas», previo cumplimiento de las condiciones establecidas por la ley.

Palabras clave: sociedad por acciones simplificada; empresa emergente; start-up.

Introduction

A company is defined as a contract under which two or more natural or legal persons undertake to contribute to a common activity by providing a contribution in the form of work, property, or money, with the aim of sharing the profits that may result from it, achieving savings, or attaining an economic objective of common benefit. They also bear the losses that may arise from such activity.[1]

Commercial companies are divided into partnerships and capital companies. Partnerships are based on the principle of contractual agreement, whereas capital companies are based on the principle of legal organization. General partnerships, limited partnerships, joint-stock companies, and simplified joint-stock companies are considered commercial companies by virtue of their legal form, regardless of their purpose.[2]

The legislator introduced the Simplified Joint-Stock Company in response to the changes taking place in the business environment. It differs from the ordinary joint-stock company in terms of its establishment and organization, since the requirements relating to minimum capital and the plurality of shareholders may not apply to it. It is also prohibited from making public offerings for savings or listing its shares on the stock exchange.

The Simplified Joint-Stock Company may be established exclusively by companies holding the "Start-up" label. To obtain this label, a number of conditions and criteria must be met, relating to the age of the company, the nature of its activity, the ownership of its capital, and the size of its turnover. In addition, start-ups possess certain characteristics that distinguish them from other enterprises.

Based on this introduction, the following research question will be addressed:

What are the legal rules governing the Simplified Joint-Stock Company?

To answer this question, we will adopt the analytical method in order to examine the legal provisions regulating the Simplified Joint-Stock Company, following a methodological structure divided into two main sections:

Section One: The Concept of the Simplified Joint-Stock Company as a Start-up Enterprise.

Section Two: The Establishment and Management of the Simplified Joint-Stock Company.

Section One: The Concept of the Simplified Joint-Stock Company as a Start-up Enterprise

In this section, we will examine the definition and characteristics of both the Simplified Joint-Stock Company and the start-up enterprise.

First: Definition of the Simplified Joint-Stock Company

The Simplified Joint-Stock Company is considered the most recent form of commercial companies, adopted by the Algerian legislator in 2022. It is closer to capital companies than to partnerships and represents the most suitable option for start-up enterprises.

The legislator defined it under Law No. 22-09 as a commercial company by virtue of its legal form, whose capital is divided into shares and which consists of shareholders who bear losses only to the extent of their contributions.[3]

What we notice in this provision is that the definition does not differ from the one provided by the legislator for the ordinary or traditional joint-stock company, except for the use of the term "shares" instead of the term "contributions" mentioned in the provision defining the traditional joint-stock company, which distinguishes the two definitions. However, when referring to the French version of the text, we find that the legislator did not distinguish between the two terms and intended the same meaning.[4]

Second: The Legal Nature of the Simplified Joint-Stock Company

Partnerships are based on the concept of contract, whereas capital companies are based on the concept of legal organization. The general partnership is considered the most representative model of partnerships, while the joint-stock company is the most representative model of capital companies.

By examining the legal provisions contained in Law No. 22-09, we find that the legislator has regulated the Simplified Joint-Stock Company in terms of its formation, organization, and supervision. These provisions reflect a degree of flexibility that contrasts with the rules governing the traditional joint-stock company, which reveals the dual nature adopted by the legislator for the Simplified Joint-Stock Company.

The Simplified Joint-Stock Company combines the concept of contract with that of legal organization. The legislator has brought together mandatory rules that cannot be violated and the freedom based on the principle of autonomy of will. Thus, the parties are given the freedom to determine the minimum capital and the number of shareholders, while other legal procedures remain subject to restrictions, such as the prohibition of public offerings for savings and the limitation of its establishment to companies holding the "Start-up" label. Nevertheless, it remains closer to capital companies by virtue of its legal nature.

Third: Characteristics of the Simplified Joint-Stock Company

The Simplified Joint-Stock Company is characterized by several features, which can be summarized as follows:

1- Absence of a Minimum Capital Requirement:

Law No. 22-09, which regulates the Simplified Joint-Stock Company, provides that the company's capital is divided into shares, with the capital held by each shareholder determined according to the number of shares they own in the company.

Furthermore, no minimum capital is required for the establishment of this company, unlike the ordinary joint-stock company, for which the legislator requires a minimum capital that varies according to the method of incorporation, whether through a public offering for savings or private incorporation.

Regarding legal transactions involving the company's capital or the trading of shares, the Simplified Joint-Stock Company is prohibited from making public offerings for savings or offering its shares for trading on the stock exchange.[5]

2- Financial Consideration:

With regard to the financial aspect relating to shareholders, the shareholders of a Simplified Joint-Stock Company bear losses only within the limits of their contributions. This reflects the principle of limited liability, whereby shareholders are not personally liable through their private assets.

As for the number of shareholders, the Simplified Joint-Stock Company may be established by a single person or by several natural and/or legal persons. If the company consists of only one person, it is referred to as a Single-Person Simplified Joint-Stock Company.

3- Possibility of Making Contributions in the Form of Work:

Unlike the ordinary joint-stock company, the legislator allows the Simplified Joint-Stock Company to issue non-transferable shares resulting from contributions in the form of work. Such contributions are taken into account

in the distribution of profits, net assets, and losses, but they do not form part of the company's share capital. The methods for assessing their value and determining the profits to which they entitle their holders are specified in the company's articles of association.[6]

Fourth: The Simplified Joint-Stock Company as a Start-up Enterprise

Article 715 bis 133 of the Commercial Code provides that the Simplified Joint-Stock Company may be established exclusively by companies holding the "Start-up" label. This means that the establishment of a Simplified Joint-Stock Company remains dependent on obtaining the "Start-up" label. In the absence of this label, the company cannot be established, since one of the essential conditions for its existence is not fulfilled.

A start-up enterprise is defined as an enterprise based on an innovative entrepreneurial idea. It is characterized by a high potential for growth and relies mainly on the use of technology to target new markets through the development of new products.

A start-up is also defined as a small project that has just been launched, or as a business activity or a group of activities that give rise to a new business and require the rapid generation of revenue.

To obtain the "Start-up" label, according to the provisions established by the Algerian legislator, the following conditions must be fulfilled:[7]

The enterprise must not be more than eight years old.

The enterprise's business model must be based on products, services, or any innovative idea.

The annual turnover must not exceed the amount determined by the National Committee.

At least 50% of the company's capital must be owned by natural persons, approved investment funds, or other enterprises holding the "Start-up" label.

The enterprise must have sufficiently high growth potential.

The number of employees must not exceed 250.

Section Two: Procedures for Establishing the Simplified Joint-Stock Company

The Simplified Joint-Stock Company may be established by one or several natural or legal persons. In terms of incorporation, it does not differ from other commercial companies.

First: Incorporation without Public Offering for Savings

Article 715 bis 133 provides that: "The Simplified Joint-Stock Company is prohibited from making public offerings for savings or listing its shares on the stock exchange." This means that incorporation takes place through private subscription, which is limited to the founders only, without inviting the public to subscribe to the company's capital. Furthermore, the company's shares may not be traded on the stock exchange.[8]

However, the Simplified Joint-Stock Company may issue non-transferable shares resulting from contributions in the form of work. These contributions are taken into account in the distribution of profits, net assets, and losses, without being included in the company's share capital.[9]

It should be noted that if the value of contributions in kind does not exceed half of the company's capital and they have not been previously evaluated, the shareholders may unanimously decide that the appointment of a contributions auditor is not mandatory. In the case of a Single-Person Simplified Joint-Stock Company, the contributions auditor is appointed by the sole shareholder. If these contributions do not exceed half of the share capital and have not been previously evaluated, the same conditions relating to the unanimous decision of shareholders not to appoint a contributions auditor for the valuation of such contributions may apply.[10]

Apart from these rules, the provisions governing the traditional joint-stock company remain applicable to the establishment of the Simplified Joint-Stock Company.

In addition to the procedures relating to the establishment of the company and its capital, it should be pointed out that the Simplified Joint-Stock Company is characterized by the absence of a minimum capital requirement, which raises the possibility of establishing the company through contributions in the form of work.[11]

Second: Administration and Management of the Simplified Joint-Stock Company

The administration and management of the Simplified Joint-Stock Company are governed by the general rules applicable to most commercial companies, as well as specific rules provided for in Law No. 22-09, which introduced this type of company.

Article 715 bis 135 of Law No. 22-09 states that: "With the exception of the provisions set out in Articles 594, paragraph 1, 601, paragraph 1, 607, 610, 619, and 715 bis 15 of this Code, the provisions relating to the joint-stock company shall apply to the Simplified Joint-Stock Company, provided that they do not conflict with the provisions of this section."

By referring to the legal provisions specifically governing the Simplified Joint-Stock Company, we find that the legislator has not devoted many provisions to its administration and management. This aspect will be examined below.

The legislator has not required any specific conditions to be met by the person responsible for the administration, the director, or the manager of the company. Nor has it clarified whether this person must be one of the shareholders or a third party. It has also not specified the grounds or procedures for dismissing the manager. These matters are generally determined by the shareholders in the company's articles of association.

The President of the Simplified Joint-Stock Company, or the person appointed in its articles of association as General Manager or Deputy General Manager, exercises the powers of the Board of Directors or its Chairman. In the case of a Single-Person Simplified Joint-Stock Company, the sole shareholder exercises the powers of the President and makes the decisions assigned to shareholders' general meetings.[12]

What we notice is that the legislator has given considerable importance to the director or manager of the Simplified Joint-Stock Company, particularly in the case of the Single-Person Simplified Joint-Stock Company. This is reflected in the powers granted to the manager, including chairing the Board of Directors or the management body, as the case may be, and exercising some of the functions and powers of ordinary and extraordinary general meetings. These powers include appointment and dismissal from administrative positions, ensuring the achievement of the objectives for which the company was established, and representing the company in its dealings with third parties. The manager is also considered the company's legal representative before the competent judicial authorities in disputes that may arise in connection with the duties entrusted to them.

The company's articles of association determine the decisions that must be taken collectively by the shareholders. Decisions falling within the powers of the Ordinary General Meeting[13] and the Extraordinary General Meeting[14], particularly those relating to increasing, amortizing, or reducing the company's capital, merging with other companies or separating from them, making important decisions concerning the dissolution of the company or its transformation into another legal form, appointing statutory auditors[15], approving annual accounts, and determining the methods of distributing profits, must be clearly specified in the company's articles of association.[16]

Third: Procedures for Settling Disputes Involving the Simplified Joint-Stock Company

The commercial environment is characterized by speed, which has become one of the most prominent features of commercial transactions. In response to this development, the legislator introduced specialized commercial courts to examine disputes that were previously handled by the commercial divisions of courts of first instance. These courts have been granted subject-matter and territorial jurisdiction suited to the nature of such disputes.

The legislator established the specialized commercial courts under Law No. 22-13[17], amending and supplementing Law No. 09-09 concerning the Code of Civil and Commercial Procedure, following the repeal of Law No. 05-11 relating to judicial organization[18] by Organic Law No. 20-10 concerning the new judicial organization.[19]

Article 536 bis of Law No. 22-13 provides that: "The specialized commercial courts shall have jurisdiction over the following disputes:

Intellectual property disputes;

Disputes relating to commercial companies, particularly disputes between shareholders and those concerning the dissolution and liquidation of companies;

Judicial settlement and bankruptcy;

Disputes between banks or financial institutions and traders;

Maritime disputes, air transport disputes, and insurance disputes relating to commercial activities;

Disputes relating to international trade."

According to this provision, the Simplified Joint-Stock Company, whether in its ordinary form or as a Single-Person Simplified Joint-Stock Company, is considered a commercial company. Consequently, disputes relating to its shareholders, incorporation, administration, management, dissolution, and liquidation, as well as matters concerning bankruptcy and judicial settlement, fall within the jurisdiction of the specialized commercial courts.

For an application initiating legal proceedings before the specialized commercial court to be formally admissible, it must be accompanied by a report of failed conciliation, failing which the application may be declared inadmissible. Before the case is registered, a conciliation procedure must take place at the request of one of the parties, submitted to the President of the Court. The latter has a period of five (5) days to appoint, by an order issued upon application, a judge to conduct the conciliation procedure within a period not exceeding three (3) months. The parties are then notified of the date of the conciliation hearing.[20]

The conciliation procedure concludes with a report signed by the judge, the parties to the dispute, and the court clerk, in accordance with the rules provided for in the Code of Civil and Administrative Procedure. Under these provisions, the conciliation report becomes an enforceable instrument once it has been deposited with the court registry.[21]

Legal actions brought by Simplified Joint-Stock Companies before the specialized commercial courts may be appealed before the competent Courts of Appeal, in accordance with the rules established by the Code of Civil and Administrative Procedure.[22] This also allows the parties to lodge an appeal in cassation, following the procedures prescribed before the competent judicial authorities.

Conclusion

Based on the foregoing discussion, it can be said that the Algerian legislator has made a positive step by introducing a new form of commercial company, namely the Simplified Joint-Stock Company, in response to the changes taking place in the business environment in Algeria. This is reflected in the fact that its establishment is exclusively reserved for enterprises holding the "Start-up" label.

The main findings that can be drawn from this study are as follows:

The Simplified Joint-Stock Company is considered a commercial company by virtue of its legal form, regardless of the nature of its activities.

The Simplified Joint-Stock Company belongs to the category of capital companies, as its capital is divided into shares and its shareholders bear losses only to the extent of their contributions.

In certain cases, however, some aspects of personal consideration can be found within the company, particularly when it issues non-transferable shares resulting from contributions in the form of work.

The Simplified Joint-Stock Company may be established exclusively by enterprises holding the "Start-up" label.

The establishment and management of the Simplified Joint-Stock Company are characterized by flexibility and simplicity. The legislator has not imposed a minimum capital requirement or a minimum number of shareholders and has granted considerable freedom in the administration and management of the company.

If the Simplified Joint-Stock Company consists of only one person, it is referred to as a Single-Person Simplified Joint-Stock Company.

The Simplified Joint-Stock Company is prohibited from listing its shares on the stock exchange or making public offerings for savings.

Among the main recommendations that can be proposed in this regard is the following:

The establishment of the Simplified Joint-Stock Company should not be restricted exclusively to companies holding the "Start-up" label. This would allow other persons to adopt this form of company and would contribute to increasing its effectiveness in commercial transactions.

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[1] See Article 416 of Ordinance No. 75-58 containing the Civil Code, Official Gazette of the People's Democratic Republic of Algeria, No. 78, published on 30 September 1975, as amended and supplemented.

[2] Article 2 of Law No. 22-09 of 5 May 2022, amending and supplementing Ordinance No. 75-59 containing the Commercial Code, Official Gazette, No. 32, published on 14 May 2022.

[3] Articles 2 and 715 bis 133, paragraph 1, of Law No. 22-09.

[4] Ordinance No. 75-59 of 26 September 1975 containing the Commercial Code, Official Gazette, No. 101, published on 19 December 1975.

[5] Articles 715 bis 133, 715 bis 134, and 715 bis 139 of Law No. 22-09.

[6] Articles 715 bis 133 and 715 bis 140 of Law No. 22-09.

[7] See Article 11 of Executive Decree No. 20-254 of 15 September 2020, establishing the National Committee for Granting the "Start-up", "Innovative Project", and "Business Incubator" Labels and determining its duties, composition, and functioning, Official Gazette of the People's Democratic Republic of Algeria, No. 55, published on 21 September 2020.

[8] Regarding the securities stock exchange, reference may be made to Legislative Decree No. 93-10 of 23 May 1993 relating to the Securities Stock Exchange, Official Gazette of the People's Democratic Republic of Algeria, No. 34, published on 23 May 1993, as amended and supplemented.

[9] Article 715 bis 140 of Law No. 22-09.
[10] Article 715 bis 141 of Law No. 22-09.
[11] Article 715 bis 134 of Law No. 22-09.
[12] Article 715 bis 136 of Law No. 22-09.
[13] See Articles 675 and 676 of Ordinance No. 75-59 containing the Commercial Code, concerning the powers of the Ordinary General Meeting.
[14] See Article 674 of Ordinance No. 75-59 containing the Commercial Code, which defines the powers of the Extraordinary General Meeting.
[15] For further clarification regarding the appointment of statutory auditors, see Law No. 10-01 of 29 June 2010 relating to the professions of chartered accountant, statutory auditor, and certified accountant, Official Gazette of the People's Democratic Republic of Algeria, No. 42, published on 11 July 2010, as amended and supplemented.
[16] Article 715 bis 137 of Law No. 22-09.
[17] Law No. 22-13 of 12 July 2022, amending and supplementing Law No. 08-09 of 25 February 2008 containing the Code of Civil and Administrative Procedure, Official Gazette of the People's Democratic Republic of Algeria, No. 48, published on 17 July 2022.
[18] Organic Law No. 05-11 of 17 July 2005 relating to Judicial Organization, Official Gazette of the People's Democratic Republic of Algeria, No. 51, published on 20 July 2025 (repealed).
[19] Organic Law No. 22-10 of 9 June 2022 concerning Judicial Organization, Official Gazette of the People's Democratic Republic of Algeria, No. 42, published on 16 June 2022.
[20] Article 536 bis 4 of Law No. 22-13.
[21] Article 993 of Law No. 08-09 containing the Code of Civil and Administrative Procedure.
[22] Article 536 bis 5 of Law No. 22-13.