Civil Liability for the Management of a Simple Joint Stock Company.

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Received date: 14/04/2024 Accepted date: 18/06/2024 Publication date: 01/07/2024

Abstract:

The responsibility of commercial companies goes back to the beginning of the emergence of commercial transactions, even if they are not with the same current organization, and the reason for the existence of this system is to approve the powers enjoyed by the management bodies in them, and here the importance of this issue becomes clear, especially after the legislator created, under Law No. 22-09, a form Another company is the simple joint stock company.

Keywords: *Company ; Simple Joint Stock ; Law No 22-09 ; Management ; Director.*

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Introduction:

The idea behind the civil liability of the commercial company came to achieve a balance between the enjoyment of the constituent persons, the partners, of certain powers as managers of the company, and the establishment of limits to avoid their arbitrariness or abuse of these powers granted to them to the detriment of either the other partners or third parties dealing with this company.

The scope of this article is to shed light on the civil liability of the management of the simple joint stock company, which was introduced by Law No. 22_09 amending the Commercial Code, which referred in most of its provisions to the articles regulating the joint stock company in general, unless they conflict with the provisions specific to this type of company.

Thus, it was necessary to refer to the provisions of liability for management in the joint stock company in order to be able to study the specificity of this liability for the management of the company created under this law, whether it is contractual liability or that resulting from the harmful act within the framework of tort liability.

This article aims to discuss the new provisions of the simple joint stock company and compare them with the provisions governing the joint stock company, thus identifying the most important common points between the two companies, as well as identifying the specificity of the civil liability provisions of the director in the simple joint stock company, especially when it comes to a company consisting of a single person.

The topic raises the question of the extent to which the management of the simple joint stock company is subject to the civil liability provisions of the joint stock company in accordance with the provisions of the Commercial Code and the general rules to which the latter is subject?

The problem is addressed, relying on the descriptive and analytical approach, by discussing the management in the simple joint-stock company (the first section), then the scope of civil liability for management in the simple joint-stock company (the second section).

1. Management in the Simple Joint Stock Company:

This section deals with the person in charge of management in a simple joint stock company **(a),** and then the shareholders' associations **(b**).

a. The administrator of the simple joint stock company:

This requirement deals with the head of the simple shareholding company , then the powers of the latter.

- **The president of the simple joint stock company.**

The president in the simple joint stock company means the legal representative system of this company, i.e. the legal representative for all actions in its name and for its account, whereby he has the authority to assume all responsibility, especially in the company's relations with third parties, which justifies the legislator's position in the mandatory appointment of him in the company's articles of association (Babaia B, Zeroual M,(Issue 01, 2023),The exclusivity of establishing a simple joint stock company_ a privilege or a hindrance,algeria, Journal of Law and Humanities, Volume 16.).

Article 715bis136 of the Commercial Code states: "The president of a simple joint stock company or the administrator appointed in its articles of association as general manager or authorized general manager shall exercise the powers of the board of directors or its chairman, in the case of a simple joint stock company with a single person, the sole shareholder shall exercise the powers of the president and take the decisions granted to the partners' assembly" (Ordinance No. 75-59 of September 26, 1975, containing the Commercial Code, (JR No. 78, dated September 30, 1975), amended and supplemente).

It is clear from the text of this article that the legislator gave the shareholders in this type of company the freedom to choose the person in charge of management, by allowing them to include him in the basic law without any other condition or restriction, but if a company of this form is related to a single person, then the management is exercised by the sole shareholder.

Thus, the legislator, contrary to what is based on fund companies in terms of organizing them in most of their provisions under jus cogens rules, the simple joint stock company notes the opposite, thus granting the partners discretion within the limits of public order according to the agreement on the issue of management in it.

As is the case with regard to how the joint stock company is managed, which can take one of two forms, either a board of directors or a board of directors and a supervisory board, as the case may be, it is noted that the legislator for the joint stock company made the matter simpler, and limited the powers of management to either the board of directors or the head person, provided that this head holds either the status of general manager or authorized general manager.

In other words, the legislator did not stipulate the second method of managing the joint stock company, which is a board of directors and a supervisory board, due to the simplicity of the simple joint stock company, as well as the realization of the purpose of creating this form of companies.

- **The powers of the president of the simple joint stock company.**

Article 715bis135 of the Commercial Code states: "With the exception of the provisions stipulated in Articles 594 (first paragraph), 601 (first paragraph), 607, 610, 619 and 715 bis15 of this Code, the provisions relating to joint stock companies shall apply to the simple joint stock company, unless they conflict with the provisions stipulated in this section ".

It is clear from the text of the article that the legislator referred with regard to the powers of the president of the joint stock company to the provisions of the powers of management in the joint stock company, and therefore this president has the same powers as the board of directors or the chairman of the board of directors in the joint stock company, which is represented according to the text of Article 622 of the Commercial Code.

In addition, even if the director exceeds the subject matter of the joint stock company, the company is bound by this exceedance towards third parties, as is the case for the simple joint stock company based on the above reference, which is enshrined in Article 623 of the Commercial Code.

b. General Assemblies of Shareholders.

This requirement deals with the Ordinary General Assembly , and the Extraordinary General Assembly .

- **Ordinary General Assembly.**

The Ordinary General Assembly is the one that meets at least once a year, during the six months preceding the closing of the financial year as a general rule, subject to exceptional provisions where the previous deadlines are extended at the request of the Board of Management or the Board of Directors, as the case may be, in accordance with the legal procedures established for this.

In the case of a simple joint stock company, the decisions of the Ordinary General Assembly are taken unanimously by the shareholders in accordance with the qualifications specified in the company's articles of association and in accordance with Article 715 bis 137 of the Commercial Code: "The decisions that must be taken collectively by the shareholders shall be specified in the company's

articles of association, but the decisions of the ordinary and extraordinary general assembly concerning the increase, amortization, reduction of capital, merger, separation, dissolution, conversion, appointment of auditors, annual accounts and dividends shall be taken collectively by the shareholders in accordance with the methods specified in the company's articles of association ".

It is clear from the text of this article that the legislator equated the quorum for taking decisions under an ordinary and extraordinary general assembly with the unanimity of the shareholders in the simple joint stock company, and since Article 716bis137 of the Commercial Code is considered a special provision compared to the provisions of the joint stock company, which has provisions contrary to the above, in terms of the quorum for taking decisions of this assembly.

What is not subject to this is subject to the agreement of the shareholders, provided that the decisions that must be taken collectively are specified in the articles of association, and the concept of violation is those that do not require the unanimity of the shareholders.

- **Extraordinary General Assembly.**

The Extraordinary General Assembly is that assembly that is entrusted with a competence of an exceptional nature, which generally consists of amending the company's articles of association, and according to the general rules, it may only be amended based on the approval of all partners.

As for the simple shareholding company, it is noted based on the text of Article 715 bis 137/2 Commercial Code above that the legislator addressed the type of decisions that can be concerned with the Extraordinary General Assembly, related to the increase, amortization and reduction of capital, merger, separation, dissolution and transformation of the company into another form, appointment of auditors, annual accounts and dividends, And without specifying who is competent to take them between the ordinary and extraordinary assemblies, specifying the quorum for this, which is in all cases and for the two assemblies according to what was collectively agreed upon in the articles of association of this company, i.e. the matter is left to the will of the partners in it.

2. The scope of civil liability for management in a simple joint stock company:

In this paper, the concept of the civil liability of the director in the simple joint stock company is defined **(a),** and then the effects of the civil liability of the director in the simple joint stock company **(b**).

a. The concept of the liability of the director in a simple joint stock company.

Through this requirement, the definition of the civil liability of the director in the simple joint stock company**,** then the elements of this liability **,**and finally the nature of the civil liability of the director in the simple joint stock company.

- **The definition of the civil liability of the director in a simple joint stock company.**

With reference to the various provisions regulating commercial companies in general and joint stock companies in particular, as well as with reference to the provisions of Law No. 22-09 on the Simple Liability Company, in addition to the provisions of Section 10 regulating the civil liability of joint stock companies, we do not find conflicting texts with the general rules regulating civil liability in its regulation of the liability of the directors of commercial companies, so the basis of the latter does not inevitably depart from the rules established for civil liability in the general rules.

The director in joint stock companies, and thus the simple joint stock company, does not deviate from the concept of the director in commercial companies in general, especially in terms of the qualities that he must possess, which relate specifically to his competence and skills in carrying out management work, especially the condition of legal capacity, whether related to age or related to whether the director enjoys all his mental powers, or whether he does not belong to one of the categories of prohibition in the practice of trade(Belaissaoui M T, Liability of directors of commercial companies, a comparative study, Algeria ,Dar Homa).

Based on the consideration that the director in joint stock companies is deemed an agent for the company and the rest of the partners in carrying out the various management works and executing the agency contract with all care and diligence, his responsibility in return is the idea of compensation for the damage caused by all management works in accordance with what was agreed upon in the basic law, so he is then facing a contractual civil liability, or for all the damage he caused by his management works towards third parties and thus the establishment of his civil tort liability, and therefore the basis for this liability is Article 124 Q. Civil Code: "Any act whatsoever committed by a person through his own fault that causes damage to others, the person who was the cause of its occurrence shall be obliged to compensate " (Diden B, Bemoussat A,(Issue 01, 2007), Criminal and Civil Liability of Directors of Joint Stock Companies, algeria; Algerian Journal of Legal Economic and Political Sciences).

Since the legislator, through the text of Article 715bis135 of the Commercial Code, referred in the organization of the simple joint stock company to the provisions of the joint stock company, it can be said that the liability of the president of the simple joint stock company or the administrator thereof is subject to the same provisions of the liability of the administrator in the joint stock company if it is related to management in the form of a board of directors and a chairman of the board of directors.

- **The elements of the civil liability of the director of a simple joint stock company.**

In this regard, Article 715bis23 of the Commercial Code states: "The administrators are individually or jointly liable, as the case may be, towards the company or third parties, either for violations of the legislative or regulatory provisions applicable to joint stock companies, for breaches of the articles of association or for mistakes committed during their management, if a large number of administrators participate in the same acts, the court determines each one's share in compensating the damage ".

It is clear from the text of this article that the legislator has stipulated the same conditions for the establishment of tort liability as the general rules of fault, cause and causation, although the legislator has specified the aspects of fault that must be proven to establish the liability of the administrator in the joint stock company and thus the liability of the administrator in the simple liability company to be subject to the provisions of this article by virtue of the assignment as discussed above.

Firstly the Error to be proven, This is primarily related to the violation of the rules for establishing this type of company, whether by not including the necessary data, or the manner of conducting general assemblies, or the invalidity of the company, deliberations, distribution of fictitious profits, violation of the relevant laws regulating the various auxiliary bodies in the company, as is the case, for example, for the laws regulating auditors, and in general every law related to the operation of the simple joint stock company.

Also the Establishment of fault for breach of the Articles of Association of the Simple Joint Stock Company, This is related to the director exceeding the limits of his responsibilities and powers stipulated in the articles of association, such as taking decisions in which the articles of association require a certain majority or the unanimity of the partners alone and relate to the subject matter of the company, or exceeding the limits of the amounts he is authorized to use, and in general this error is based on any violation of any of the clauses agreed upon in the company's

articles of association, and in the absence of specifying these powers, the director is limited by nothing but the purpose of the company, which must be taken into account in the conclusion of various transactions.

Or the Errors committed in the management of the simple joint stock company, In this regard, two types can be distinguished, the first type relates to positive errors, which are those that result from every positive act by the director that results in harm to the company, partners or third parties, whether intentionally or through negligence or incompetence, while the second type relates to negative errors, i.e. those resulting from the director's failure to do what he is supposed to do from the management work .

Errors in management are considered the most common causes of civil liability in commercial companies, and the principle is that the latter are the ones who bear responsibility in the face of a bona fide third party as long as they are able to perform, and the manager is only liable in the event of the company's insolvency, bankruptcy or judicial settlement, in addition to the possibility of holding the manager accountable for personal mistakes he commits that are not related to his management task.

Secondly Damage resulting from management errors in the simple joint stock company, and this is the second element for the establishment of civil liability in general, whether it is related to contractual or torts liability, as the resulting error must result in specific damage, and it can be defined as the harm that affects a person as a result of compromising a legitimate interest or one of his rights, whether this legitimate interest is material or moral, and the burden of proving this damage falls on the injured person.

The damage in the establishment of the liability of the director in the simple joint stock company does not differ from its conditions in the general rules, and accordingly, the damage is realized for everything that results from the fault of this director, and it is required that it be direct, realized, and personal, although moral damage is rare in the field of commercial companies(Sabri Saadi M, Al-wadih fi Charh Al-Qanun Al-Madani, General Theory of Obligations, Sources of Obligation, Contract and Individual Will ,Algeria, Dar Al-Huda).

Thirdly Causal relationship, means that the damage is the result of the error committed in the management by the director in the simple joint stock company, where the injured person has to prove this relationship between the error and the damage caused to him.

- **The nature of the director's civil liability in a simple joint stock company.**

Based on the fact that the director in the simple shareholding company enjoys various powers granted to him by the articles of association to carry out management tasks, this may expose him to personal liability for his actions, just as this liability may be borne by the directors in the case of multiple directors, in solidarity towards third parties for management actions and consequently the obligation to compensate(Boubrim A, Farcha K,(Issue 02, 2021), Civil Liability of Directors of Joint Stock Companies,algeria, Eliza Journal of Research and Studies, Volume 06).

Since the director in the company is a trustee of the money and acts in the interest of the company and within the limits of the goal for which it was established, and therefore everything that results from this enters the financial responsibility of the company and thus the benefit of all partners, including this director, in return, if he violates this without the permission of the rest of the partners, the responsibility falls on him alone, so he must guarantee the loss of the company's funds by his personal act and any loss that it suffers.

This is in accordance with Article 715 bis 23 of the Commercial Code, whether towards the company itself or towards third parties; In the case of either violations of the legislative or regulatory provisions applicable to joint stock companies, or for violations of the articles of association or for mistakes committed during management. In all cases, the establishment of the personal liability of the director does not mean that the other directors, if any, are exempt from this liability, especially if their knowledge of this is revealed, as well as the acts that give rise to the personal liability of the director for his personal account under the name and address of the company, and therefore this liability does not arise unless this director commits a fault independently(Al-Homsi A N, (2003),Joint Stock Companies in the Light of Positive Law and Islamic Jurisprudence, Lebanon, University Foundation for Studies).

also The solidarity responsibility of the directors in the simple joint stock company is based either during the stage of establishing the company, or after this stage, where the legislator explicitly gave third parties in the first stage a set of guarantees that entitle them to fulfill their rights due to various violations related to the establishment, the most important of which is solidarity responsibility for the establishment, or in the stage after the establishment, i.e. during the company's legal life as an entity independent of the entity of the partners in it.

This is enshrined in Article 715bis23 of the Commercial Code, as discussed above: "The directors are liable ... or jointly, as the case may be, to the company or to third parties." For the same reasons as the personal liability of the director, either for violations of the legislative or regulatory provisions applicable to joint

stock companies, or for breaches of the articles of association or for errors committed during management.

Accordingly, the solidarity responsibility of the directors in the simple joint stock company is based in the event of committing a common mistake in management, which leads to solidarity compensation for damage, such as taking a wrong decision based on a vote among the directors, and the issue of determining the share of each member in compensating for various damages to the trial judge, and the only members who prove their opposition to the decision taken by the minutes of the board meeting that issued the decision on these acts do not escape this responsibility.

b. The effects of the civil liability of the director in the simple joint stock company.

This requirement deals with the claims arising from the civil liability of the directors of the simple joint stock company**,** the jurisdiction to consider the civil liability suit for management in the simple joint stock company**,** and finally the compensation for civil liability.

- **Claims arising from the civil liability of the directors of the simple joint stock company.**

A civil liability suit may be filed by the partners themselves, which is known as a company suit **,**or a suit may be filed by one of the partners against the individual director or directors, in which case it is called an individual suit.

The company lawsuit is a lawsuit filed in the name and for the account of the latter as a legal person to defend the interests of all shareholders, in the event that the damages include the financial assets of the company, and against the director or directors who committed mistakes that caused damage to the company, during the exercise of their duties.

The right to exercise this suit is due to the legal representative of the company in itself or by the liquidator in the case of liquidation, or the judicial acting agent in the case of bankruptcy or judicial settlement , and it should be noted that the text of Article 715 bis 21 implicitly recognized that the right to file it is on the shareholders and third parties, without mentioning the right of the company as a legal person in this regard, although the jurisprudence and judiciary have recognized the right of the company despite the lack of explicit provision in this regard.

It states: "The founders of the company to whom the nullity was attributed and the administrators who were in their positions at the time of the nullity may be considered jointly responsible for the damage caused to the shareholders or third parties as a result of the dissolution of the company, and the same solidarity responsibility may be attributed to shareholders whose shares offered to the company or benefits were not investigated and ratified ".

In all cases, the right to file this lawsuit may not be conditional on the prior opinion of the General Assembly, which is enshrined in Article 715bis25 of the Commercial Code: "Any condition in the Articles of Association that makes the exercise of the company's lawsuit conditional on the prior opinion of the General Assembly, or its authorization, or includes in principle the abandonment of the exercise of this lawsuit, shall be considered as if it were not ".

As for The individual lawsuit is the lawsuit initiated by the injured person himself, whether a shareholder or a third party, with the aim of redressing the damage caused to his financial assets.

In this case, the interest of the company does not mix with the individual interest of the partner, as it is required for the establishment of this suit that the error or damage is attributed to the manager or managers and not attributed to the company, and that the personal damage is independent of the damage that affects the company, i.e. the sparks affect the individual interest of the partner without the collective interest of the company.

This is enshrined in Article 715 bis 24 of the Commercial Code: "The shareholders may, in addition to the claim for compensation for the damage caused to them personally, individually or jointly, file a claim against the company for liability against the directors, and the plaintiffs have the right to pursue compensation for the entire damage caused to the company, and for the damages awarded to them where appropriate .

In all cases, whether for contractual or torts liability, the board of management can avoid its responsibility if it proves that the non-performance is not due to it but to a foreign cause, such as force majeure or the act of a third party, and thus the lack of a causal relationship between the error committed and the damage caused.

- **Jurisdiction to hear the civil liability suit for management in the simple joint stock company.**

However, the matter is different for claims filed by the partner against the manager, or the company or third parties against the manager or managers in commercial companies in general, and the simple shareholding company in particular, where the commercial section of the court whose jurisdiction is the home of the manager or managers in this company, as a general rule.

Nevertheless, with reference to the provisions of Article 40 of the Civil and Administrative Procedure Code, there are rules of territorial jurisdiction for some articles that are filed before certain judicial bodies exclusively, as is the case with bankruptcy and judicial settlement of companies, as well as cases related to partners' disputes, as the latter must be filed exclusively before the court in whose jurisdiction the place of opening the bankruptcy or judicial settlement or the place of the company's social headquarters is located.

Accordingly, the jurisdiction to hear civil liability claims of a company with a simple shareholding, if the lawsuit is filed against the director by the company, is either before the court whose jurisdiction is the defendant's domicile according to Article 37 of the Civil and Administrative Procedures Code, or before the court whose jurisdiction is the place where one of its branches is located(Law No. 08-09 of February 25, 2008, containing the Code of Civil and Administrative Procedure, (oj No. 21, dated April 23, 2008).

As for the statute of limitations for this case, the legislature addressed it in Article 715bis26 of the Commercial Code: "The statute of limitations for liability against joint or individual administrators is three years from the date of committing the harmful act, or from the time of knowledge of it if it has been concealed, but if the act committed is a felony, in this case the statute of limitations is ten years.

The reason why the legislator subjected these cases to a short-term statute of limitations is to stabilize commercial transactions, which are based on speed and credit, by limiting, under these rules, the uncertainty of legal positions, especially for the director in the simple shareholding company, which is in the interest of achieving the purpose for which the company was originally established.

Conclusion:

From this study, it is clear that the management of the simple joint stock company does not differ from that of the joint stock company, except for some provisions related to the method of management.

We find that the legislator excluded the second form of management in the joint stock company, represented by the Board of Directors and the Supervisory

Board, by limiting the exercise of the administrator in this company to the powers of the Board of Directors or the Chairman of the Board of Directors, without addressing the powers of the Board of Directors, which is the second form of management of the joint stock company, according to Article 715 bis 136 Commercial Code, and therefore cannot be relied upon by the simple joint stock company in the conduct of its affairs. This is due to the simple and consensual nature of this type of company.

Moreover, the legislator granted the partners the freedom to choose the appropriate capital, without requiring a minimum amount of capital, thus eliminating the need for public recourse to savings, which is based on the protection of third parties and providing general security for those dealing with the joint stock company that relies on this method of establishment.

The management system in the simple joint stock company is characterized by the agreement characteristic of this company, and the freedom to choose the manager among the partners, by appointing him in the articles of association of this company.

In his relations with the partners and third parties, the director enjoys all the powers that have been agreed to be granted to him, and in case he is not appointed, he may exercise all decisions and actions that fall within the subject matter of the company, and he has effect vis-à-vis everyone.

The liability in this company is centered on the fact that it is subject to the provisions of liability in the joint stock company, whether contractual or tortious, as it must be proven by the injured person, and in all cases it is subject to proof of the opposite in the case of force majeure or foreign cause, as is the case for the simple joint stock company with a single person, as well as for the simple joint stock company with a single person.

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