Company law

According to The New Egyptian Commercial Law

No.17 of 1999 and The Egyptian Commercial Companies ActNo.159 of 1981

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Preface

Company law is the field of law concerns companies and partnerships which usually carry on some form of economic activities. Companies, in Egypt are “juristic persons”, i.e. they have separate legal personality and those who invest money into the business, mostly have limited liability for any losses the company may suffered .the new concept which was included in the company’s law is that even single individuals may incorporate themselves and limit their liability in order to carry on a business.

The overall structure of the Egyptian company law is derived from French law.

Colleges of law, typically offer a course on business organizations covers different aspects of this area of law which examines issues such as how companies may be formed, operated, and dissolved: the degree to which limited liability protects investors: the extent to which a business can be held liable for the acts of one agent of the company, the relative advantages and disadvantages of different types of companies, and the structures established to monitor these entities.

The basic theory behind all business organizations is that, by combining certain functions within a single entity, a business (usually called a company by economists) can operate more efficiently, and there by realize a greater profit. Governments seek to facilitate investment in profitable operations by creating rules that protect investors in a business from being held personally liable for debts incurred by that business, either through mismanagement, or because of wrongful acts committed by the business.

The Egyptian company law contains general provisions which are applied on all companies and specific provisions for

each company in particular. the companies law heavily regulates joint stock companies compared to other bodies. Most of incorporations provisions are put within joint stock companies, so that the legislator refers to these provisions in many other occasions. For this reason the general provisions of companies will be studies in the first part of this book, then the partnership will be taking place in other part , and the other part will be devoted to the joint stock company.

PART ONE

GENERAL PROVISIONS

Chapter one

Introduction

Business is the cornerstone of prosperity in every society: companies create the resources that permit social development and welfare. The basic objective of business is to develop, produce and supply goods and services to customers. This has to be done in such a way as to allow companies to make profits, which in turn demands far more than just skills in companies' own fields and processes. Astute entrepreneurs often demonstrate an almost intuitive understanding of the synergies that create success. The social skills of company's owners, together with relationships maintained with customers, suppliers and other business people, are always vital if companies are to be run well and developed with a view to the future. (١)

Companies improve their resources by developing materials and ideas. The goods and services produced must meet demands made by customers, other companies or public institutions if companies are to survive. Profitability results when customers are prepared to pay more for goods and services than it costs to produce them. The ability to produce this kind of added value - profit - is the basic prerequisite for business, but it is also a foundation for prosperity in society. Only profitable companies are sustainable in the long term and capable of creating goods, services, processes, return on capital, and work opportunities. This is what business does better than any other sector. Hence,

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١) see, Akthem Elkholy .comparative Lebanon commercial law, 2nd part, commercial companies, 1968.p.2.see also, Mohamed Farid Elariny, commercial companies, Dar Elmatboaat Elgamaeia, Alexandaria, 2002.p.7

companies' basic commercial operations are the primary benefit they bring to society. (١)

one person company

One Person Company' (OPC) is a revolutionary concept which is a step forward to facilitate more business friendly corporate regulations in Egypt. The Companies Act, of 1981 aims pave the way for a more modern and dynamic legislation, to enable growth and greater regulation of the corporate sector in Egypt. Till recently, if you wanted to set up a private company, you needed at least one other person because the law mandated a minimum of three shareholders. So, for the person wanting to venture alone, the only option was proprietorship, an onerous task since it is not legally recognized as a separate entity. OPC will give the young businessman all benefits of a private limited company which categorically means they will have access to credits, bank loans, limited liability, legal protection for business, access to market etc. all in the name of a separate legal entity. OPC provides a whole new bracket of opportunities for those who look forward to start their own ventures with a structure of organized business.

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(١) Companies benefit society by:

- Supplying goods and services that customer cannot, or do not want to, produce themselves; Creating jobs for customers, suppliers, distributors and coworkers. These people make money to support themselves and their families, pay taxes and use their wages to buy goods and services;
- Continually developing new goods, services and processes;
- Investing in new technologies and in the skills of employees;
- Building up and spreading international standards, e.g. for environmental practices;
- Spreading "good practice" in different areas, such as the environment and workplace safety.
- See: The role of business in the society. http://www. svensktnaringsliv.se/multimedia/archive/00000/The_role_of_business_i_376a. pdf last retrieved 8/12/2012.

Single entrepreneur can manage his business on his own. in an OPC the promoter's liability is limited also, one person can take a decision without waiting for other director's consent and wasting of time and energy in convincing other directors can be avoided. OPC is expected to benefit people who are into self-employment and many small-scale sectors. It is a remarkable feature of the Companies act, of 1981. "OPC should boost the confidence of small enrepreneurs".

Companies vary from simple structure as one-man operation to complicated huge organizations. The simplest type of enterprises can be formed in what so called sole owner enterprise which consists of one person, who provides capital and assumes risks of the project. It is true that the owner of the sole project works for his own benefits and he bears his own loss, but such projects, are usually small, limited and cannot compete other giant companies and are very vulnerable as the business proprietor can be held personally liable and may even go bankrupt for business debts. In addition, the sole business projects will not have perpetual succession, they may vanish once the owner dies or losses capacity for any reason. In such a case, both private and public interests of society are jeopardized. It is for this reason that a company is the legitimate and indispensable choice for conducting business in our growing world [١].

It is obvious that most projects, nowadays, require an accumulation of huge capital,[٢] and gigantic effort of good

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(١) Mosleh A. At'tarawneh, Principles of Commercial Law, Dar Qatar Bin Alfouja'a, Doha -Qatar, 2007, P.375.

(٢) The accumulation of capital is the gathering or amassing of objects of value; the increase in wealth through concentration; or the creation of wealth. Capital is money or a financial asset invested for the purpose of making more money (whether in the form of profit, rent, interest, royalties, capital gain or some other kind of return). This activity forms the basis of the economic system of capitalism, where economic activity is structured around the accumulation of capital (investment in order to realize a financial profit). Human capital may also

management, experiments and skillful labor power which cannot be provided only through companies as they are the most appropriate instrument to gather all these utilities. Hence companies become the most important institution in the modern economy all over the world.

Due to the above, the first question which should be asked is: what is the company?

1.1-Definition

Although companies, in theory, are economical organizations enjoying legal personality, they are different types. Each differs from others in certain features, so, promoters should be aware of the structure of different types of companies. Therefore definition of companies and their characteristics are the first two subjects that should be started with.

Generally, company is a business organization. It is an association or collection of individual real persons and/or other companies, who each provide some form of capital. This group has a common purpose or focus and an aim of gaining profits. This collection, group or association of persons can be made to exist in law and then a company is itself considered as a "legal person".(١) The term" company" arose because, it represented or

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be seen as a form of capital: investment in one's personal abilities, such as through education, to improve their function and therefore capital accumulation (wealth) in a market economy. http://en.wikipedia.org/wiki/Capital accumulation. Last retrieved 18/12/2012.

(١)-The English word has its origins in the old French military term" compaignie" (first recorded in 1150), meaning a "body of soldiers" originally taken from the late Latin word companio "companion, one who eats bread with you", first attested in the (Lex Salica) as a claque of the Germanic expression gahlaibo (literally, "with bread"), related to Old High German galeipo "companion" and Gothic gahlaiba "messmate". By 1303, the word referred to trade guilds. Usage of company to mean "business association" was first recorded in 1553 and the

was owned, at least originally, by more than one real or legal person. In Egypt, a company may be a partnership, association, joint-stock company, or organized group of persons working together as a civil association. (١)

The present Egyptian commercial companies law No 159 of 1981(٢) was derived from and based on the Civil Law. The former defined company by stipulating that “the company is a contract whereby two or more persons are obligated to each of them contribute to a financial project, by providing a share of money or work, in order to divide the profit or loss that may arise from this project.”

So, the company, mainly, is a contract, but it has another specific meaning which is different from that given above; it means a legal person that is established by the contract. In fact, one of the features of the company's contract which distinguishes it from other contracts is that it gives birth to a new legal entity. In

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abbreviation "co." dates from 1769. (The equivalent French abbreviation is "cie".) http://en.wikipedia.org/wiki/Company.

(١) In the United States, a company may be a corporation, partnership, association, joint- stock company, trust, fund, or organized group of persons, whether incorporated or not, and (in an official capacity) any receiver, trustee in bankruptcy, or similar official, or liquidating agent, for any of the foregoing."[l] In the US, a company is not necessarily a corporation. See: Geoffrey Morse. "Charlesworth's Company Law". (23th Edition), published by Stevens & Sons, London 1978. PI et seq.

In English law and in the Commonwealth realms a company is a body corporate or corporation company registered under the Companies Acts or similar legislation. It does not include a partnership or any other unincorporated group of persons, although such an entity may be loosely described as a company. Andreas Cahn & David c Donald,» Comparative Company Law: Text and Cases on the Laws Governing Corporations in Germany, UK and USA». Cambridge University Press, Cambridge, UK & New York, 2010. P. xxii.

(٢) This law was passed and published in 1981.

other words, it creates a juristic person distinct from the contracting parties. (١)

It should be noted that the relative importance of the two aspects mentioned above, the contract and legal personality, are dramatically differs from one type of companies to another. (٢) The Egyptian commercial companies 'and the new Egyptian commercial law No. 17 of 1999, initially, provide six forms of companies, namely:

1- The General Partnership, (٣)
2- Limited Partnership or Simple Partnership, (٤)
3- Joint Venture or Co-operation Firm, (٥)

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(١) Len Sealy & Sarah Worthington, «Cases and Materials in Company Law», Oxford University Press, New York, 2008, p. 31.

(٢) Luis M. Camarinha-Matos, Hamideh Afsarmanesh,» Virtual Organizations: Systems and Practices", Springer Since, Boston USA, 2005 p. 169.

(٣) Some writers refer to this partnership as: partnership under collective name. See Kamiran Al Salihi, op cit. p.45. Some legislations use, the same name such as Mexico. For example: see Mexico. Secretaria de Hacienday Credito Publico, McCorqiiodale & Co., Limited, 1912, p.310. Detailed Assessment Report on Anti-Money Laundering and Combating the financing of terrorism, International Monetary Fund, «IMF Report No 09/7, 2009», p.37. Thomas McCord, «The Civil Code of Lower Canada», Published by Dawson Brothers, Montreal Canada, 1870, p. '296. Max Weber, Lutz Kaelber, «The History of Commercial Partnerships in the middle Ages», published by Rowman & Littlefield, USA, 2003, p. 176.

(٤) This partnership, sometimes is known as simple commandite partnership. See Kameran Al-Salihi, op cit, p. 53. Van Beal & Billis, «Business Law Guide in Belgium», Kluwer International, Netherlands, 2003, p.78.

(٥) This sort of commercial enterprises is being called in many previous writings gfe Association in Participation. See Kameran Al-Salihi, «Commercial Law of Bahrain», published by University of Bahrain, 2006, p.60.

4- Joint Stock Company (The Corporation), [١]
5- Limited Partnership by Shares, [٢]
6- With Limited Liability Company,

Companies in Egypt, save the Sole Owner company, are based on contracts and, but joint venture, not enjoy legal personality. The relative importance of these two aspects varies from a company to another, as will be discussed later.

1.2- Classifications of Companies

Companies, in Egypt, whatever their objects, are subject to the Commercial Companies Law No 159 of 1981 and its Implementing Regulations, and the new Egyptian commercial law. Promoters or founders will have to decide which of several types of companies they wish to form, since this make a different to: the types and contents of documents required, numbers of partners, roles, powers and liabilities of partners, the way of management, the amount of capital required and the type of business intend to carry out as in some business there is no choice but the Joint Stock Company such as insurance and banking. [٣]

Nevertheless, companies have been classified in many different ways. The basic and ancient distinction is between civil and commercial companies. The other fundamental distinction is between companies of persons and companies of capital, or in other wards partnerships and companies. [٤]

1.2.1- Civil and Commercial Companies

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(١) Joint Stock Company is worldwide used in Europe meanwhile Corporation is used in USA and Canada.

(٢) This company is known as (Commandite company limited by shares). Kamiran Al-Salihi, op.cit, p. 60 et seq.

(٣) Mosleh A. At'tarwaneh, Principles of Commercial Law».op. cit, 2007, p.390.

(٤)Hugh J. Ault, Brian J. Arnold & Guy Gest, Comparative Income Taxation: A Structural Analysis», published by Kluwer International, The Netherlands, 2010, p.338 et seq.

1 - Criteria of Distinction

Jurists adopted the criteria of differentiating traders from non-traders to classify companies to commercial and civil according to their purposes. Therefore, commercial companies or partnerships are formed to engage in commercial acts, such as banking, industry, import and export.. .etc. On the other hand, any company is formed to carry on civil activities such as agriculture, building or co-operation between lawyers, is a civil entity. (١)

However, the criterion which is adopted in Egyptian Law depends on formality, i.e. if the company is formed under any forms of commercial companies will be deemed a commercial regardless to its object. (٢)

2 - Importance of Distinction

The distinction between civil and commercial companies is of great impotence as follows: (٣)

I- Civil companies should be subject to the civil code as stipulated in the articles (505-537) while commercial companies are governed by provisions of Commercial companies law No 159 of 1981, and Commercial Law No 17 of 1999. (٤)

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(١)Mohammed M Helalya, «Principles of Commercial Companies» (text in Arabic), Dar Al Nahdh Al Arabia, Cairo, (dateless), p.8.

(٢) This is the trend which was adopted by the Egyptian Commercial Companies Law Nol7/1999. See 19 Egyptian Official Gazette, (duplicated), 17th of May 1999. Mohammed Helalya, op.cit, p.8. Kameran Al-Salihi, "Commercial Law of Bahrain", University of Bahrain, 2006, p. 72.

(٣) Mohammed Helalya, op.cit, p. 10. Masoud Madi & Fadhel Al-Zahwi, «The CommercialCompanies In Libyan Commercial Law», (text in Arabic) University of Al Jabal Al Gharbi, Libya, 1997. P13.

(٤) Masoud Madi & Fadhel Al-Zahwi, op.cit, p. 19. - Mohammed Helalya, op.cit, p. 10.

II- Commercial companies, as traders, are obliged to meet all duties of merchants. They may, also, be subject to bankruptcy as any other trader.

III- Partners of civil companies are not traders though they are liable for all the debts of the company. However, their liability, unless otherwise provided, is for a fraction of the partnership debts calculated on a reciprocal basis according to the number of partners. By statute, the partners' respective liabilities are usually proportionate to their respective shares in the capital of the company. (١)

In short, they are not jointly liable. Meanwhile, liability of commercial companies' partners varies according to the type of the company. For example, liability of joint partners of partnerships is unlimited while liability of limited partners of the same partnerships, shareholders of the Joint Stock Company and partners of the Limited Company by shares are limited. In addition joint partners of commercial company are jointly and severely liable for all the commitments of the company to the extent of their property. (٢)

IV- Commercial companies should be registered and their status must be published and chartered, while civil companies may be established without need to registration or publicity in the commercial Registration, (٣) though they, still, should have license or official permission to practice their business.

V- According to the company statutes, unless otherwise provided, unanimity is required in making decision in civil companies, for any question exceeds the powers of the company's managing director. However, decisions of

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(١) Christopher Joseph Mesnooh," Law & Business in France: A Guide to French Commercial and Corporate Law», Kluwer, Martinus Nijhoff Publishers, Netherlands, 1994. p. 16.

(٢) Kameran al-Salhi, op.cit, p. 21 et seq.

(٣) Mohammed Helalya, op.cit, p. 10.

commercial companies and partnerships mostly are made by majority.

VI- Partners of civil companies, usually, hold genuine right of withdrawal and claim reimbursement of their shares' value. On the contrary, this right varies in commercial partnerships and companies; on one hand, the partnership, general or simple, should be dissolved, if any of its joint members withdraws from. On the other hand, limited partners of partnerships and shareholder of other companies may withdraw or assign their shares, in most circumstances, freely.

3- The Egyptian Law Trend

The distinction between commercial and civil companies lost its importance in Egypt as the formal form of the company was adopted as a criterion of classifying commercial and civil companies.(١) Although the Egyptian Civil Code contains provisions applicable to all companies and partnerships regardless to their type, nature or activities. The Egyptian Legislator deems all the partnerships and companies which are or were established under any of the names listed in the Commercial Companies' Law as traders and subject to commercial Law provisions regardless to their purposes. According to the Article (10/2) of the Egyptian Commercial Law:

> *"A company shall be considered a trader as long as it takes one of the forms stipulated in*

(١)most of Arabic countries are copied the Egyptian companies law No. 159 of 1981 for example The Bahraini Companies' Law was copied from the Egyptian Law, therefore any company formed in one of the forms of commercial companies is considered commercial regardless to its objects. See in classifications of companies in Egyptian Law: Mohammed Helalya, op.cit, p. 8. Fayez Naeem Radhwan, «The Commercial Companies)), (text in Arabic), Dar Al-Nahdha Al Arabia, Cairo, 2000.

the laws related to companies whatever the purpose that the company is formed for".

Referring to the Egyptian Commercial Companies Law, the legislator stipulated that companies in Egypt should take one of the names adopted in the companies' law and the Egyptian commercial law otherwise the company should be null and void.

In addition to that all the companies should be regulated by the Commercial Companies' Law even if they are civil.

The above provision lead to a consequence that all the companies in Egypt are commercial, regardless to their nature, since they take one of the names listed in the Commercial Companies' Law and regulated by its provisions. (١)

3- Types of Commercial Companies and Partnerships

Forms of commercial companies are determined by law in a limitative order. The legislator does not differentiate between partnerships and corporations. All commercial associations which are mentioned in the commercial company law are called "companies". It has been stipulated that commercial companies should take one of these forms determined by the law. (٢)

In addition to the joint Venture or, the participation firm, or as known (association in participation) which is a hidden co-operation, (٣) there are five forms of business organizations in which commercial business could be established. Two of these are partnerships and another three are companies. The partnerships are: the General Partnership, Limited or Simple Partnership(٤). The three companies are: the Joint Stock Company,

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(١) Kameran Al-Salihi, op.cit, p. 72.

(٢) Mahmoud Al kelany, op.cit, 209 et seq. Mohammed Helalya, op.cit, p.91 et seq.

(٣) This partnership is called in Egypt "Sharikt al Mahasa".

(٤) They are known by their Arab names, respectively: Sharikat Tadhamun and Sharikat Tawsiyah Baseeth.

the Limited Partnership by Shares and the With Limited Liability Company. (١)

It should be noted that in Arab literature all types of business co-operations are called company. Therefore, linguistically, partnerships and companies in Egypt are both known as companies. This idea explains why some writers wrote for example (General Partnership Company). (٢) It should be noted that, legally is a mistake, the business entity is either a company if it is based on capital or a partnership if it is based on personal elements.

Chapter 2

Incorporation of Companies

(١) Their Arab names respectively are: Sharikat al Mosahamh. Sharikt Tawsiyah Bel ashum, and Sharikat that Massoliyah Mahdoda.

(٢) For example Kamiran Al Salhi in his book: «Commercial Company Law in Bahrain»

It was indicated that companies are based on contracts, which is the Memorandum of Association, or in short, the [memorandum]. In fact, in addition to the memorandum, another document called Articles of association is needed for incorporation of companies. (١)

This chapter aims to explain the conditions and steps of companies' incorporating; therefore it starts with the main constituent documents of the company then the essential conditions.

2.1. Memorandum of Association.

The first requisite of a company is that the partners or the founders should have reached an agreement which is called Memorandum of Association. Generally speaking, an agreement is made when one party accepts an offer made by the other. The agreement must be certain and final. (٢) It has been previously mentioned that in both Egyptian Civil law (Art 505) Commercial defined the company as a contact, though the later mentioned specific details by providing that the company is:

> *"A contract by virtue of which two or more persons undertake to participate in an economic enterprise intended to make a profit, with each contributing a share in the form of property or services in order to divide the profits realized or losses incurred as a result of such an enterprise. As an exception to the previous paragraph a company may be incorporated by a sole*

(١) It should be noted that the sole person company is, logically, excluded from this requirement as a person cannot contract with himself.

(٢) A contract is an agreement giving rise to legally enforceable obligations binding the parties to it. The factor distinguishing contractual obligations from other legal commitments is that they are based on the agreement of the contracting parties. See G.H. Treitel, The law of Contract, published by Stevens & Sons, London. 1962.

proprietor in accordance with provisions of this law. "

2.2. Articles of Association

As a company, weather a partnership or a corporation, is an incorporated body, there should be some rules and regulations to be formed for the management of its internal affairs and conducting of its business as well as regulating relations between members and the company. Moreover, rights and duties of its members towards the company are to be recorded. There comes the need and origin of Articles of association. (١)

The company's Articles of association are provisions in a document which, along with the memorandum of association (in cases where the memorandum exists) form the company's constitution defining the responsibilities of the directors, the kind of business to be undertaken, and the means by which the shareholders exert control over the board of directors. (٢)

A company is an incorporated body. So there should be some rules and regulations to be formed for the management of its internal affairs and conduct of its business as well as the relation between the members and the company. Moreover the rights and

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(١) The term Articles of association of a company, or articles of incorporation, of an American or Canadian Company, are often simply referred to as articles (and are often capitalized as an abbreviation for the full term). The Articles are a requirement for the establishment of a company under the law of India, the United Kingdom Pakistan and many other countries. Together with the memorandum of association they are the constitution of a company. Andrew Hicks & H.S. Goo, "Cases and Materials on Company Law", Oxford University Press, UK, 6th edition, 2008. p. 157.

- http://en.wikipedia.org/wiki/Articles_of_association. Last retrieved 10/01/2013.
- Geoffrey Morse, "Charlesworth's Company Law", op.cit, p. 103

duties of its members and the company are to be recorded. It is an important document which needs to be filed with the Registrar of companies. This is why Articles of Association are necessary and compulsory.

2.2.1. Features of the Articles

Articles of association are the rules regarding internal management of a company. These rules are subsidiary and are considered as a part of the memorandum, hence; they should not contradict with or exceed anything stated in. companies may adopt the standard model of Articles. of association which was passed by the Minster of Commerce. (١)

Generally, articles of association regulate the common affairs of, day to day management, nevertheless:

i. Acts which are beyond Articles can be ratified by the members, provided they do not violate the Memorandum.
ii. Articles define the relationship of the members and the company.
iii. Articles can be altered by passing a special resolution by the extraordinary general meeting
iv. One of the strengths of Articles of association is that it focuses more on the content, rather than on the form. These may include escalation procedures, process charts showing the method or the procedure of work.

2.3. The General Elements of the Memorandum

The memorandum as, the contract of setting commercial companies and partnerships, must satisfy the legal requirements

(١) If a company adopts the model it may copy it and fill in the gaps. A copy of the Articles of Association, stamped and duly signed by signatories to the Memorandum of Association is required for registration.

common to all contracts. Namely: free consent, legitimate object and legitimate reason. (١)

2.3.1. The Consent

Prime Parties to the contract (promoters) of the company must express their consent freely. The genuine consent of the partners is the first essential element. According to the Egyptian Civil Code," the consent to contract must be genuine and it is not genuine unless it has been obtained from a party who has the capacity to contract .and his will is free from any defects". Therefore a person should be eligible to express his consent and his consent should be valid.

1. The Capacity

The incorporators or promoters of a company should have full legal capacity. In general, capacity means a person's aptitude to exercise legal acts necessary for acquiring rights or assuming obligations. It is pretty Known that capacity results from person's discretion which is mainly depends on the age. According to the Egyptian Civil Law a person enjoys full legal capacity if reaches the age of twenty one years unless incapacitated or has limited capacity. (٢) Contrary to the Civil law, the legal capacity according to the commercial law is gained in age of eighteen in

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(١) For more details about pillars of contract: Sabry Khater, «The General Theory of Obligation» (Text in Arabic), University of Bahrain 2009, p.53 et seq. According to the Common law an agreement must have four essential elements to be regarded as a contract, if any of them is missing; the agreement will not be legally binding. These elements are: offer, acceptance, intention of legal consequences and consideration. For more reading about contracts, G.H. Treitle, "The Law of Contract", Stevens & Sons, London, 1962. Beatson, J., "Anson's Law of Contract", 27th edition, London 1998.

(٢) Salem Ghumidh, "Introduction to Bahraini Law (Theory of Law & Theory of Right According to Bahraini Law", University of Bahrain, 2012, p. 398 et seq.

condition that the person enjoys all mental powers, and is not interdicted or disqualified in any manner. (١)

In short, the capacity is an ability to practice legal activities and to hold legal effects resulting from. So it is required to assume obligations, Hence a minor, interdicted person, and unsound mind cannot be a partner in a company's contract.

2. Minors and Interdicted Person

It is true that a minor cannot be a signatory partner, consequently, cannot be a joint partner in a partnership, as joint partners acquire the character of trader by law, and be severely and jointly liable for all the commitments. However, the question which can be asked: can a minor be a shareholder in a company or a limited partner in a partnership? What about if a minor inherited shares in a company after death of his testator? What, about if a shareholder lost his capacity? (٢) According to the Egyptian Commercial Law, minor and interdicted people are not allowed to engage in commercial acts without permission from the court. However, if any of them has funds in a business, the court may order liquidation of such funds and dismiss him from the said business, or may order continuation that business as may be benefiting him. If the court ordered continuation of business, it should appoint a guardian, or grants him, if already appointed, a general or restricted authorization to carry on all the relevant business' activities.

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(١) Mosleh A. At'tarawneh, "Principles of Commercial Law", op.cit, p.71.

(٢) Ownership of shares in a corporation is a property interest, just like any other property interest. Shares can be owned by anyone with the legal capacity to own property in his own name. One of the traditional benefits of the corporate business entity type is the structure of stock as a tangible asset that is freely transferable.
Read more:
http.V/www.ehow.com/info_12053811_can-minor-child-shareholder-s-corporation.htm. Retrieved 10/01/2013.

Consequently, in Egyptian law a minor, i.e., whether more than (18) years and less than 21 years old, may partner a contract, after having permission from the court, unless this participation is legally forbidden. However minor's contract to take shares is voidable by him within a reasonable time after he attains the puberty age, otherwise he cannot recover the amount paid for the nonnegotiable shares unless there has been a total failure of the consideration for which the money was paid.

3. The Validity of Consent

In addition to the capacity, the consent should be not affected by any defect that vitiates the free will of the partner such as mistake, misrepresentation, duress, exploitation and gross disparity, otherwise the contract should be considered null and void. For example the company will be voidable if a partner was mistaken and was under effect that the association is "With limited liability Company" while it is a partnership. (١)

2.3.2. The Object

The second essential element or pillars of the company's contract is the object; setting the pecuniary enterprise for profit making purpose. Therefore any type of association under which two or more people undertake to participate in non economic affairs such as social club or trade union or a non profitable association such as charity organization does not constitute a company. (٢)

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(١) When a party contracts under a fact or law mistake which is known or supposed to be known to the other party, or the other party fall in the same mistake, the contract will be voidable for the benefit of the mistaken party. Mosleh A'A,trawneh, op.cit. p. 101. Khalid Jamal, «The General Theory of Civil Obligations in the Civil Law of Bahrain», (2nd edition), University of Bahrain, 2002, p. 49.

(٢) This concept indicated that the term «company» entails prima facie the incorporation of a commercial venture. Mosleh A'atrawneh, op.cit, p. 380.

It was previously indicated that companies and partnerships are classified, according to their objects, either commercial or civil. Most legislation' systems authorize incorporation of civil companies in the form of commercial companies. In Egypt, although, some companies may be classified as civil entities according to the objective criteria, they are subject to the commercial law provisions. (١)

Concerning companies' contracts, a distinction should be made between two different objects:

1st - obligation of the contracting parties to contribute to the capital in cash, in kind, or services,

2nd: Object of the company, which must be legitimate, real and possible. Therefore, if the object opposes to public order or moral such as gambling or drugs, or the object is forbidden for any reason such as white slavery, the contract should be deemed null and void. (٢)

The company is not allowed to carry on activities rather than those stated in its Memorandum. Save some specific matters, the company, as a juristic person, has the same legal capacity as human being, but in order to protect its shareholders and those who deal with the company, it is allowed to carry on only those objects that it has been created for together with anything

(١) Modern legislations of most countries authorize incorporation of civil companies in the form of commercial companies. Such companies are not commercial according to the objective definition of the company since their objects are not commercial. But according to the formal criteria they are commercial companies.

(٢) The second essential pillar of a contract is the object or the subject matter which, must be possible, lawful and not contrary to public policy. Mosleh A'tarawneh, op.cit. p. 105.

incidental thereto. Anything done outside such objects is, therefore, ultra vires and void. (١)

In Practice, the Memorandum usually states, expressly, all the objects which might be required. The mentioned objects could only altered by a special resolution of the extraordinary general assembly. If the object of the company, as shown in its contract, is different from its object in reality, the object, in practice, is the one that should be adopted to determine the legitimacy of the company. (٢)

2.3.3. The Reason

Reason of the companies varies according to the interpretation of the cause itself. It can be said that the cause is the intention to make profits, and as such it is always lawful. In fact the cause should be observed deeply. Making profits, as a concept, is lawful, (٣) but the question is how theses profits are being gained. No doubt that the company which specialized in providing others with labor power carries on a lawful job, but what about the company which brings labor and issues them false visa, then distributes them in the country in order to collect their wages in consideration of a very law salary, or import white slavery under the veil of house maids or hotel hostess?

The cause should be real, true and legitimate. In other words, it should not oppose the public order and morals. (٤)

Some authors believe that the object and the cause are overlapped as the cause is to fulfill the object; so the company

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(١) To read more about ultra vires, See supra, chapter 3, the legal personality of companies. Massoud madi and Fadhel Al Zahwi, "The Commercial Companies" op.cit, p. 29.

(٢) Mohamed El Sayed El Feky, «Commercial Law», Published by Al-Halabi Legal Publications, Beirut-Lebanon, 2004, p. 322.

(٣) Mohammed El Feky, Ibid. sese4resp. 323.

(٤) Massoud Madi, op.cit, p. 29.

will be null and void if it was established to trade in white slivery which is the cause and object in the same time. (١) Others think that the cause is always distinguished from the object as the cause is always the intention to make profits. (٢)

2.4. Specific Elements

As the main object of the company's contract is to establish a legal entity, some specific elements are required. In this concept three elements will be presented

2.4.1.pluralism of partners

Save the sole company, partnerships and companies can exist only if at least two people agree to participate in any of them. (٣) In fact establishment of a company initially requires a contract which is the general principle, therefore, if a sole trader uses the term " company" for his own business, the use of this term will not be recognized by the law as a commercial company unless he /she forms a" single owner company" according to the provisions of the Commercial Companies Law. (٤)

Moreover, it is essential that the business must be carried on collectively, which means, no company or partnership can exist unless business is conducted in common by the partners. (٥) However, a partner or more may run the business on behalf of

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(١) Mohsen Shafeeq, "Commercial Law",(text in Arabic), Cairo 1967, p. 137. Ali Al-Barawdi, "Commercial Law", (text in Arabic) Monshat Al Ma'aref, Alexandria, Egypt 1986,p.l26.

(٢) Sameer Al Sharqawi, "Commercial Companies", (text in Arabic), 1986, p. 13.

(٣) Al Feky, op.cit, p. 323. Mosleh A'tarawneh, op.cit, p. 380. Al Kelany, op.cit, p. 27.

(٤) Mosleh A'atrawneh, op.cit, p.380.

(٥) Ibid.

others without jeopardizing the legal status of the arrangement. (١)

Consequently, if for any reason, a company is left with only one member, it should be terminated or converted. For example, if a general partnership was partnered by two members, if any of them retired or died, the company should be dissolved by law, (٢) similarly, if the With Limited Liability Company is left with only one member, it should be dissolved unless the remaining partner added somebody with him or converted the company to sole proprietorship. (٣)

The minimum number of partners varies from a company to another. Basically, at least two partners are required in some companies such as General Partnership and With Limited Liability Company, but some others require more. For example the Joint Stock company requires at least three promoters. On the other hand, there is no maximum number except for the With Limited Liability Company; in which the members should not exceed fifty persons. Article (4)

In theory, pluralism can be achieved by gathering any legal persons whether individuals, juristic or both. However, partnerships can only be partnered by individuals.

To sum up: plurality of partners is an essential element for companies during establishment, existence, and continuation.

2.4.2. Combining of Contributions

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(١) Stephen Bainbridge, "The New Corporate Governance in Theory and Practice", Oxford University Press, New York, 2008, P.4.

(٢) The general partnership may be dissolved at withdrawal of one of its partners or if one of its partners died or the court disqualified him or declared him bankrupt See also Kameran Al Salihi, "Bahrain Commercial Companies Law & Bankruptcy Law", University of Bahrain, College of Law, 2005, p.156.

(٣) Kameran Al-Salihi, op.cit, p. 113.

Contribution of property is essential to establish a company. Without such injections of cash, property or resources, companies and partnerships will not be able to carry on their activities. Although this obligation applies to each partner, the type and extent of the contributions may vary given that the only condition is the contribution actually is made.

1. Types of Contributions

There are three types of contributions: cash, article 510 of the Egyptian civil code in kind, article 511 and services. (١)

i. Cash Contribution

A contribution of money or cash is certainly the simplest, easiest and most preferred type to quantify association. Partner pays a sum of money immediately or eventually or promise to pay it at a later date. The partner should perform his obligation at the agreed fixed time. (٢) If he fails to honor his obligation, he might be liable to pay damages and interests.

ii. In Kind Contribution

In kind contribution may be made in two different ways:

a-Transfer of ownership

A transfer of ownership is a contribution involves a transfer of the partner's rights of ownership to the company. This kind of contribution presupposes that the entity has an autonomous patrimony.(٣) The situation is different for undeclared partnerships, to which contributions are made by placing property at the disposal of the partnership's manager since such groups do not have an autonomous patrimony. A contribution that transfers

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(١) Masoud Madi & Fadhel Al Zahawi, "The Commercial Companies", op.cit, p.36. Fattoh A. Doma, "Interpretation of Libyan Commercial Law", op.cit, p. 215

(٢) Masoud Madi & Fadhel Al Zahawi, op.cit, p.36. Fatooh Doma, op.cit, p. 216.

(٣) Fatooh Doma, op.cit, p. 218.

ownership of property is likened to a sale, which means that the partner is bound by the warranties against eviction and latent defects. The partner is not to restitute his property in case of liquidation. (١)

b- Usufruct of Property

A contribution consisting of a usufruct is based in usage of the property without transfer of the ownership. The partnership or the company receives a real right on the property contributed whether movable, tangible or intangible, or a real estate. Hence, contribution in kind may be in the form of real estate such as land and buildings, or movables such as machines and furniture, as well as trademarks or patents. However, in case of usufruct although the property is placed at disposal of the company, the ownership of such a property remains to the owner. Therefore, the contributor is deemed a warrantor towards the company in the same manner as a lessor towards a lessee. (٢)

iii. Contribution in the Form of Service

Finally, the contributor may pledge himself to assist the partnership or the company on a regular basis by putting his or her experience, technical, professional knowledge, talent or fame at the company's disposal. Since such a contribution is a continuing one, the partner is liable for any profit realized on a continuous basis while he or she remains a member of the partnership. So a company member may offer his services as a contribution to the company's business. The services offered should be valuable, important, and have a bearing object of the company. It should not consist of only social or political influence. (٣)

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(١) Masoud Madi & Fadhel Al Zahawi, op.cit, p. 37. Fatooh Doma, op.cit, p. 217.

(٢) Fatooh Doma, op.cit, p. 219.

(٣) Masoud Madi & Fadhel Al Zahawi, op.cit 39. Fatooh Doma, op.cit, p. 219.

As partners of the company are bound by an obligation of non-competition, the partner who presents service as a contribution to the company may not exercise the same acts for his own or in behalf of third party. (١)

However, Contributions in service are mostly not permitted in companies of which their capitals are divided into shares unless, such contributions are valued and add to the capital as a paid value in advan

2.4.3. Sharing of Pecuniary Profits

Partnerships and companies are profit-oriented entities. The primary objective of the partners, embarking on such ventures, is to acquire a patrimonial benefit as opposed to moral benefits, which is the raison of non-profit organizations. (٢) The profits derived from the company must, therefore, be pecuniary in nature; that is, they must contribute towards the positive enrichment of each party's patrimony. It worth mentioning that none of partners may be excluded from participating in such profits. (٣)

Although participation in the profits is the essence of companies and any stipulation excluding it would be ineffective, equal sharing is not a public order. The share of each partner in the assets, profits and losses may vary from case to other

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(١) Doma, op.cit, 220.

(٢) Making pecuniary profits is the criterion for distinguishing companies and partnerships from charities and social associations. Masoud Madi & Fadhel Al Zahawi, op.cit, p. 48.

(٣) According to the Saudi Law all the partners should participate in profits and losses, any terms of excluding a partner from losses or profits shall be null and void. According to Libyan Law if it was agreed to exclude any partner from profits or losses the contract of the company itself shall be null and void According to Egyptian Law, none of the partners may be excluded from profits or losses. Masoud Madi & Fadhel Al Zahawi, op.cit, p.43.

Mohammed Helalya, op.cit, p.37.

according to provisions of the memorandum. If there is no provision on this question, the law provides that the rules for the sharing of one component (profits**, for example**) should be applied to the others. (١)

2.4.4. Intention of Co-operation

Combining of contributions and sharing of profits are not always enough to distinguish a contract of partnership or company from other juridical acts and associations. Jurists have, therefore, added an indispensable subjective criterion: the intention to be involved in a partnership or what is known as intention of co-operation (affectio societatis). (٢) That is what can be called «spirit of co-operation» which cements the contract of

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(١) Participation in the profits of a partnership entails the obligation to share in the losses. Thus, unless the contract of partnership provides otherwise, the losses are shared equally among the partners. A partner could not be excluded from shouldering a part of losses. Mohammed Helalya, op.cit, p. 38. Masoud Madi, op.cit, p.42. Mosleh A'atrawneh, op.cit, p. 381. Mahmoud Al-Kelany, "Commercial Companies", op.cit, p. 32.

(٢) The (Affectio Societatis): This is a French legal concept that means two people or more share the same idea, and personally commit themselves to achieving the purpose of the association. Adolf Berger," Encyclopedia of Roman Law". Transactions of the American Philosophical Society, Held at Philadelphia. 1991. P.356.

Although the Bahraini legislation does not mention the concept of "Affectio Societais" while defining the company contract, it is considered an important and essential element in the contract as the company implies necessarily the existence of a certain spirit of cooperation among its different members. They are supposed to cooperate actively and on equal terms to realize the company's objectives, with a view of sharing the profits and looses of the business. See: Mohammed El-Sayed El-Feky, "Commercial Law", op.cit, p.330.

co- operation. (١) The spirit of co-operation may be described as the partners' intention to cooperate in a common enterprise as the company is a collective contract characterized by a will to unite or a convergence of interests. Therefore, the smooth functioning of the entity should be the every partner's interest. (٢)

The spirit of co-operation is a variable and utilitarian element. It is variable because the extent of the intention will differ from a company or partnership to another and from one category of partners to another within the same type of structure.(٣) It is utilitarian because courts, in cases of disputes, are led to examine the intention of parties to determine whether they are partners or creditors , in case the contract must be characterized or interpreted. (٤)

To determine whether there was an ***affectio societatis,*** the judge has to establish his belief on the facts laid down in front of him. It could be said that there was a collection of presumptions precluding any serious objection, even though each one of them taken separately might give rise to some doubt. For example, if the contribution of one partner is out of proportion to that of the other, the judge must take it into account and consider that fact weighs greatly against the existence of the affectio societati. (٥)

The intention of co-operation distinguishes between companies and other relationship such as co-ownership. Partners

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(١) To read more about intention of cooperation, see: Organization for Economic Co-operation and Development (OECD), "Environment and OECD Guidelines for Multinational Enterprises, Corporate tools and Approaches", 2005.

(٢) Adolf Berger, op.citp. 365.

(٣) Charlaine Bouchard, "Report on the legal nature of partnerships: comparative law study" http://www.bijurilex. org/site/ att/ BOUCHARD - Societe2001-07-05E.htM.

Last retrieved on 10/1/2013.

(٤) Ibid.

(٥) Mohammed Helalya, op.cit, p. 40. Masoud Madi & Fadhel Al-Zahawi, op.cit, p.45.

of companies or partnerships always intend to carry on some sort of business and act for this purpose, while co-owners may not have any idea of acting, it could be a co-ownership without intention of having any business. In addition to that, every owner in co-ownership has indivisible part in the property while partners of co-operation own the partnership collectively. Finally co ownership has no legal personality. (١)

Due to the above, it is clear that the intention of co-operation implies the following:

i- Partners should co-operate actively to fulfill the company's objects.
ii- Partners must be on equal terms unless provided otherwise,
iii- Partners should take shares in profit and losses.
iv- Intention of cooperation plays a significant role in distinguishing companies and partnerships from other associations. (٢)

2.5. Formal Elements of Incorporation

The law imposes certain formalities on many transactions and arrangements to prevent people from making hasty decisions which cannot be retracted, and to provide evidence if it is later required. In respect of establishment of companies and partnerships, two major formalities are required; Writing and chartering.

2.5.1. Writing Requirements

Save participation firm (joint venture), the contract of the company must be written otherwise it will be null and void also every modification of this contract must be written (article 507 from the Egyptian civil law)

(١) Mohammed Helalya, op.cit, p. 42.Mahmoud Al Kelany, op.cit, p. 29.

(٢) Mohammed El Sayed El-Feky, op cit, p. 331.

Due to the above text, it is clear that the written form is not a matter of evidence, it is a constitutive element. Nullity of a company is the consequence of discarding this formality. [١]

It is true that if the contract is not made in a written form, the company will be null and void. [٢] However, the nullity, is of a special nature. The company is not avail itself of a voidance allegation against a third party upon the aforementioned grounds.[٣] The avoidance affects mainly partners of the company who may not sue or plead against others, while others may sue the members and claim nullity of the contract vis-a- vis the company's partners. Promoters who dealt in the company's name shall be severally and jointly liable before third parties for all their acts. [٤]

2.5.2. Registration and Chartering

According to the Art (17/3) of the Egyptian commercial companies Act, Companies do not enjoy juristic personality vis-a-vis third party unless their documents are registered.

So, managers of the company are bound to register the documents in the commercial register otherwise such documents become ineffective towards third party. In other words, the company is not to gain its legal status unless its documents are publicly published. [٥] If managers of the company do not charter

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(١) Mahmoud Al Kelany, op.cit, p. 35. Ali Hassan Younis, "Commercial Companies", Published by Abna Wahba Hassan, Cairo, 1990. R228. Mosleh A'atrawneh, op.cit, p. 383.

(٢) Mohammed Helalya, op.cit, p. 45.

(٣) A'atrawneh, op.cit, p. 383.

(٤) Al- Kelany, "Commercial Companies", op.cit, p. 34.

(٥) Mohammed Helalya, op.cit, p. 48. Mosleh At'trawaneh, op.cit, p. 383.

it, they will be jointly liable to indemnify the company and its partner as well as the third parties for any damage occurred as a result of their negligence.

Chapter 3

The Legal Personality of Companies

Legal personality (also juristic personality and artificial personality) is the characteristic of a non-living entity regarded by law to have the status of personhood. It allows one or more natural persons to act as a single entity (a composite person) for legal purposes. Legal personality, in many jurisdictions, allows that composite to be considered under law separately from its individual members or shareholders. They may sue and be sued, enter contracts, incur debt, and own property. Entities with legal personality may also be subject to certain legal obligations, such as payment of taxes, and may shield their shareholders from personal liability. (١)

This chapter explores the related concepts of corporate legal personality and limited liability. These concepts are central to developing understanding of companies' law and are essential that one is devised to take time here to absorb these fundamental principles.

3.1. The Concept of Juridical Personality

(١) A legal person (Latin: persona ficta) (also artificial person, juridical person, juristic person, legal entity and body corporate) has a legal name and certain rights, protections, privileges, responsibilities, and liabilities under law, similar to those of a natural person. The concept of a legal person is a fundamental legal fiction. It is pertinent to the philosophy of law, as it is essential to laws affecting a corporation (corporations' law) (the law of business associations).
http://en.wikipedia.org/wiki/Legal_personality.

A juristic person is an artificial entity through which the law allows a group of individuals to act as if they were a single unite for certain purposes. (١) In other words, a group of individuals seek specific goals, or an amount devoted for certain purpose recognized by the law. Civil law systems may refer to such entities and companies as "moral persons".

This legal fiction should not be interpreted in a way to treat these entities as human beings, but rather, it means the law recognizes and allows them to act as individuals for some purposes, most commonly, lawsuits, property ownership, and contracts. (٢)

In ordinary speech, we often use the word "person" to refer to an individual human being: a man, a woman or a child. But, legally, the word has more technical meaning i.e. a subject of rights and duties.(٣) Upon incorporation, companies and partnerships, save cooperation firm (association in participation), in most countries are juristic persons "legal entities" with corporate personality capable of assuming legal rights and obligations. They are distinct and separate from their members. (٤)

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(١) For more details see: Salem Ghumidh,"The Legal aspects of Public International Joint Ventures", (PhD thesis), Strathclyde University, Glasgow. 1996, p.211. Fathi Abd-Alsabour,"Al-shakhasy'a Al-qanoony'a lel-Mashroa'at Ala'amah" (Legal Personality of Public Enterprises) Cairo 1975. Dr. Hassan Keeera," Al-madkhal Ela Al-qanoon"(Intro to Lega), (4th edition), para (315). Tusbar Kanti Saha, "Textbook on Legal Methods, Legal Systems & Research", Universal Law Publications, India, 2010, p79.

(٢) Samir Chopra & Laurence F. White, «A Legal Theory for Autonomous Artificial Agents", University of Michigan, USA, 2011. p.156.

(٣) L.S. Sealy, «Cases and Materials in Company Law», Buttterworths, London, 5th edition 2008, p. 29.

(٤) As any other legal subjects, Companies enjoy rights similar to humans save those saved for natural persons. Article (8) of the Commercial Companies Law stipulates that:» Except for Associations of Participation and unless otherwise

Despite of having legal personality, companies can only act through their human agents, therefore, it, in theory, may be liable for wrongful acts as principal [i.e. direct liability] or vicariously [secondary liability] for the acts of its servants acting in the course of their employment. It was alleged that:

> *"a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation".*(١)

3.3. Consequences of Company's Legal Personality

Due to devoid of natural existence, it is unnecessary and illogical to assume that the consequences attributed to the juristic personality are identical to those of the human beings. Company enjoys many rights and assumes many obligations similar to those of individual, such as, ability to own property, sign binding contracts, have name and domicile, nationality, power to sue and be sued. (٢) However, in most jurisdictions, companies do not possess the rights appertaining to humans; for example, a corporation cannot vote.

Nonetheless, according to the civil law system, a companies should have name, patrimony, domicile, legal capacity, nationality as will be discussed in the following paragraphs.

3.3.1. Naming

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provided for in the law, all commercial companies acquire a corporate entity upon registration in the Commercial Registry)).

(١) Salem A. Ghumidh, «The Legal Aspects of International Public Joint Ventures)), op.cit, p.215.

(٢) Salem Ghumidh, op.cit, p. 425.

The company, as a trader, should have a name. Generally any name may be selected, even though, a company cannot be registered by a prohibited name, either absolutely or conditionally. Therefore, incorporators or promoters should choose a distinctive name to their entity. Names of partnerships are usually composed of one or more joint partners' names with the word (& partners or co) if there is any. However using more than two names is not preferable. This part of the name should be followed by the objectives of the company and its type.

In fact, name of the company is of great importance in identifying the company as a juristic person, therefore, the Commercial Companies' Act provides for the name of a company must be clearly stated in the memorandum and articles of association, on company's seal, on business letters and on orders' forms; in addition, it must be affixed at the entrance of the business place. (١)

It should be noted that names of silent or limited partners should not be used in the name of the partnership. If such names are used with their awareness or consent, the limited partner will be deemed jointly liable. (٢) according to the Egyptian commercial law

> *"The name of the limited partnership company shall only include the names of the joint partners. If there is only one partner who is liable in all his property, the word (& Co.) shall be added to his name. The name of the limited partner shall not be included in the name of the company. If it is included with his knowledge, he shall be liable as a joint partner towards third parties acting in good faith. "*

(١) MoslehA. At'tarawaneh, op.cit, p.385.

(٢) Mads Tonnesson Andenaes, "European Comparative Company Law", Cambridge University Press, Cambridge & New York, 2009, p. 157.

In addition, names of corporations must not, in principle, include names or surnames of natural person except in conditions mentioned in law, and must end with suffix indicating the type of the company such as WLL for With Limited Liability Company. (١) Article (21) of the commercial Act stated that:

> "The *name of a general partnership company shall consist of the names of all partners or the name of one or more of them accompanied by (& Co.) or by a similar word giving the same meaning.*

Similarly Article (2/3 of the companies' law) in respect of Joint Stock Company (JSC), (٢) stipulated that:

> *"……the company name shall be derived from the objects for which it is to be incorporated and may include the name of one or more of the shareholders".*

There are some statuary restrictions on freedom of choice. Firstly, the chosen name should be different from and must be not identical or similar to any other existing registered company as to be confusing or misleading. Secondly, it should not be offensive or constitute a criminal offence. Finally, it must be socially accepted.

3.3.2. The Legal Capacity

As a legal person, the capacity of a company entails its capability of being a subject of rights and obligations within limits of the objects listed in the memorandum. It was previously indicated that companies are not allowed to carry on activities rather than those stated in their memorandums. Save some specific matters, the company, as a juristic person, has the same legal capacity as human being, but in order to protect its

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(١)Mosleh A'atarawneh, op.cit, p.444. Salem Ghumidh, "Introduction to Bahraini Law", op.cit, p. 427.

(٢) Mosleh A'atrawneh, op.cit, p.403.Salem Ghumidh, op.cit, p.427.

shareholders and dealers, the company is not allowed to carry on only those activities that it was created for together with anything incidental thereto. Other activities rather than those are considered, ultra virse and void. (١)

As a result of the juristic personality of companies, decisions and actions should be taken by natural persons (managers or agents). Hence, the mental state of these people who are the directing mind and will of a company may attribute to the company itself. So, the company may hold civil or criminal liable for its agents act which have been committed on behalf of the company. It can also be liable in tort. However, agents and managers are not allowed legally to commit such an act, therefore the company shall not be liable for such an act. (٢)

3.3.3. The Domicile

The company, as a juristic person, should have its own domicile which is distinct from those of its members. (٣) The domicile of a company is the location of its management's headquarters which is called the main seat of management. Consequently the domicile of a partnership is the place where the manager performs his activities, while the domicile of corporation is the place where the board of directors and the general assembly convene. (٤)

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(١) Salem Ghumidh, op.cit, p. 348.

(٢) Mosleh A'atrawneh, op.cit, p. 345.

(٣) Domicile is a legal term the purpose of which is to connect an individual to a territory that has a distinct system of law. It is also defined as: The place where a person has fixed his ordinary dwelling, without a present intention of removal. See Salem Ghumidh, "Introduction to law", op.cit, p. 383.

(٤) Khalid Jamal, " Al- Madkhal Ela Alkanoon Al Bahraini" (Introduction to Bahraini Law) text in Arabic) University of Applied Since, Bahrain, 2010 , p.403. Tawfeek Faraj, "Introduction to Law", Moa'assat Altakaful Al-Jam'eai, Alxandarea,1979, p. 168. Has san Keera, "introduction to Law", Dar Al- ma'aref, Alexandria, p.635. Ghumidh, op cit, p. 345.

It is very important not to confuse the headquarters of the company with the place of its business activates. However, usually companies have their domicile in the place of their registration. And retain that domicile throughout their existence.

A Foreign company established outside Egypt but performs business in the state shall have Egypt as a domicile for that business.

3.3.4. The Nationality

As other juridical persons, companies enjoy all of the recognized rights except those concerning human beings. Among those is the nationality. In Egypt, the question of companies' nationality does not arise. (١) However, it arises in respect of

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(١) Martin Wolff, «Private International Law», Oxford University Press, Oxford, UK, 1962. p. 308.

The concept of domicile is a possible alternative to the nationality as the criterion of the personal law. Although the domicile is an important basis of jurisdiction in civil and commercial matters, under Bahraini law, as in many other countries, the domicile does not have the same importance as in English law; it does not indicates the civil status and it does not provides the law by which the personal rights and obligations are determined. Under the Bahraini law the domicile of a company is simply the place where it is formed and consequently where it can be sued.

In Bahrain, as in many other countries including EC countries except UK, nationality is the criterion of the personal law of companies but, to determine nationality most of legal systems including EC countries except the UK and Netherlands say that it is not enough to look to the place of incorporation.

See for further study: Anton A.E. and Beaumont P.R., "Private International Law", 2nd ed, W. Green, Edinburgh 1990, pp 702 et.seq; North P.M & Fawcett J. J.,"

foreign rules on the conflict of laws, (١) and where a foreign conflict rule is to be applied by a court, it follows that the court becomes concerned with the problem of the legal person's nationality. (٢)According to Heinrich Kronstein:

> *"Only for the determination of conflict of laws problems did it seem essential to establish the nationality of a corporation, and for that purpose classic corporate theory seemed adequate."* (٣)

It is usual to speak of the nationality of juridical persons, and thus to import something that is predicated upon natural persons into an area in which it can be applied by analogy only. The concept of a corporation's nationality cannot be dispensed with. Most countries usually do not impose any restrictions on aliens. (٤)

Cheshire and North's Private International Law", 12th edition, Butterworths, London, Dublin, Edinburgh, UK, 1992, p. 138etseq.

(١) Under the Liberal economic philosophy of the beginning of this century, business had no nationality. The language of the Privy Council in UK is indicative: "Unlike an individual, a company has an economic existence only. No activities other than the making and spending of money are open to it. When a company in any particular year derives the major portion of its income from a country it is a legitimate conclusion that this company has rooted itself there for that year. Wallace Bros, & Co. Ltd. v Commissioner of Income Tax, 11 FED. LJ. IND. 32, 36 (P.C. 1948).

(٢) Wolff M., op cit, p. 308. The test of the nationality of the corporation according to the English law is the country of incorporation; see Janson .v. Driefontein Consolidated Mines Ltd [1902] AC 484 at 497,498.

(٣) Kronstein H., "The Nationality of International Enterprise", Lll (52) Col.L.R., Vol. 1952 p.986.

(٤) In some countries, many restrictions are imposed on aliens. For example, In Libya aliens are not allowed to acquire land or any other immovable property. They are also prevented from having banking and insurance business. See Sharquwi M.S.,

The test of nationality is further important in public international law. A state can extend diplomatic protection only to its own nationals, whether they are natural or juridical. In The Barcelona Traction, Light and Power Co. Ltd. Case, (١) Judge Bustamante said:

> *"...the two parties have shown that they agree on the fact that a general rule of international law exists with regard to the diplomatic and judicial protection of commercial limited liability companies which have been injured by the state in which they conduct their business, this rule being that the exercise of the right of protection belongs preferentially to the national State of the company Since in the present case Barcelona Traction is a company incorporated under Canadian law, its protection ought in principle to be exercised by the State of Canada".*

Generally, a company as a legal person shall have its own nationality. It can be said that legislations provide that companies which are established under their provisions be granted nationality of the state. Nationality of a company is usually determined by the place of registration and retains nationality throughout its existence.

"Legal Aspects of Public Sector in Libya" (text in Arabic), 1 Majalat Derasat Kanonya, University of Benghazi, Benghazi Libya, p. 251 et seq.

(١) In The Barcelona Traction, Light and Power Co. Ltd. Case, Judge Bustamante said: ".. .the two parties have shown that they agree on the fact that a general rule of international law exists with regard to the diplomatic and judicial protection of commercial limited liability companies which have been injured by the state in which they conduct their business, this rule being that the exercise of the right of protection belongs preferentially to the national State of the company. Since in the present case Barcelona Traction is a company incorporated under Canadian law, its protection ought in principle to be exercised by the State of Canada". ICJ Report [1964], p.83

3.4.5. The Separate Legal Status (Patrimony)

Patrimony can be defined as the total pecuniary assets and liabilities of a person in a specific time. It contains the property of the person whether under his disposal or credits and total of his pecuniary obligation such as debts. (١)

Hence, the capital is a part of the company's property. Neither the partners nor their creditors may claim a part of the capital. In addition, the capital cannot be used only for the purposes was created for. So it cannot be resituated by partners or dividend among them. (٢)

Partners, initially, are not responsible for debts of the company. However, a distinction should be made between partnerships and corporations. In respect of partnerships; Members of General partnership and joint partners of limited partnerships usually have unlimited liability, that means they are severely and jointly liable for the obligations and commitments of the company to the extent of their property. (٣) While shareholders

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(١)Patrimony may refer to:

- Property or other legal entitlements inherited from (or through) one's father, especially if it has been handed down through generations in the same family, birthright.
- In civil law systems, the total of all personal and real entitlements, including movable and immovable property, belonging to a real person or a juristic person; in some respects similar to the common-law concept of a person's estate
- Patrimony of affectation, in civil law, a legal entitlement that can be divided for a purpose, as distinct from the general patrimony of the person; in some respects similar to a common-law trust
- Family patrimony, a type of civil law patrimony that is created by marriage or civil union, similar to the common-law concept of community property.

(٢) Khaled Jamal Hassan, op cit, p. 407. Hassan Keera, op.cit, 661.p.

(٣) Mosleh A. At'tarawaneh, op cit, p. 383.

of corporations such as joint stock company are only liable to the extent of their contributions to the capital. (١)

Personal creditors of partners or shareholders are not entitled to seek payment of their debt out of the partners' contributions in the company's capital. But they may seek payment out of the debtor's shares in the profits allotted to him in accordance with the company's balance sheet. (٢)

The legal personality has two economic implications. First it grants creditors priority over the corporate assets upon liquidation. Second, corporate assets cannot be withdrawn by its shareholders, nor can the assets of the firm be taken by personal creditors of its members. (٣)

3. 3.6. The Limited Liability

As we showed above, separate legal personality and limited liability are not the same thing. Limited liability is the logical consequence of the separate personality. The legal existence of a company (corporation) means it can be responsible for its own debts. Shareholders will lose their initial investment in the company but they will not be responsible for the debts of the company. Just as humans can have restrictions imposed on their legal personality (as in the case of children) a company can have legal personality without limited liability if that is how it is conferred by the statute. For example; a company may still be formed today without limited liability as a registered unlimited Company.

3.5. The Legal Personality of Partnerships

3.5.1. the Egyptian Law Trend

(١) op.cit, p. 402 et seq.

(٢) op.cit, p. 385.

(٣) Ibid.

Although the Egyptian Commercial law granted partnerships, save the joint venture, a legal personality, but this legal personality is not obvious, because partnerships are deeply affected by the status of members as they are fully liable for all its transactions, which means there is a sort of overlapping between partnerships and partners.

It is true that the characteristics of legal personality seem evident in the partnership such as transacting with third parties, but still affected by the personal consideration, as any joint partner may obliged the partnership and other partners. In addition, third party may claim his rights from any partner for they are jointly liable.

There is another default as the partnership may negatively affected by death, insanity, bankruptcy of any partner, as the partnership will be dissolved. These features may stimulate a question about the advantages of this legal personality. (١)

3.5.2. Critical Point of View

In the commercial and legal parlance of most countries, partnership refers to an association of persons with the following major features:

i. Created by agreement.
ii. Formed by at least two or more, some of them joint persons
iii. The joint owners are personally liable for any legal actions and debts the partnership may face,

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(١) Nevertheless, Partnerships, in most of Arab countries, enjoy legal personality and have the same provision as those in Bahrain For example, In Libya, the general partnership gains the legal personality once it is registered in the Commercial Registrar, See Fatooh Domah, "Explanation of the Libyan Commercial Law"(text in Arabic), Al Maktabah Alwatanyah, Benghazi- Libya, 1973, p. 241 The same provisions are found in the Egyptian law,See Mohammed Helalya, Principles of commercial companies, Dar Al Nahdhah Al Arabia, Cairo, (dateless), p. 59..

iv. It is an association in which joint partners share equally in both responsibility and liability.

Partnerships have certain default characteristics relating to both:

(a) The relationship between the individual partners and
(b) The relationship between the partnership and the outside world.

The former can generally be overridden by agreement between the partners, whereas the latter generally cannot be done.

The assets of the business are owned on behalf of the other partners, and they are each personally liable, jointly and severally, for business debts. For example, if a partnership defaults on a payment to a creditor, the partners' personal assets are subject to attachment and liquidation to pay the creditor.

By default, profits are shared equally amongst the partners. However, a partnership agreement will almost invariably expressly provide for the manner in which profits and losses are to be shared. (١)

Each joint partner is deemed the agent of the partnership. Therefore, if that partner is apparently carrying on partnership business, all joint partners can be held liable for his dealings with third persons.

By default a partnership will terminate upon the death, disability, or even withdrawal of any partner. However, most partnership agreements provide for these types of events, with the share of the departed partner usually being purchased by the remaining partners in the partnership. (٢)

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(١) International Business Publications, "Italy Company Laws and Regulations Handbook", USA, 2012 p. 90. "International Business Publications", "French Company Laws and Regulations Handbook", USA, 2012 p. 63.

(٢) Ibid

By default, each general partner has an equal right to participate in the management and control of the business. Disagreements in the ordinary course of partnership business are decided by a majority of the partners, and disagreements of extraordinary matters and amendments to the partnership agreement require the consent of all partners. (١) However, in a partnership of any size, the partnership agreement will provide for certain election to manage the partnership along the lines of a company board. (٢)

Unless otherwise provided in the partnership agreement, no one can become a member of the partnership without the consent of other partners, though a partner may assign his share of the profits and losses and right to receive distributions ("transferable interest"). A partner's creditor may obtain an order charging the partner's "transferable interest" to satisfy a judgment.

There has been considerable debate in most countries as to whether a partnership should remain aggregate or be allowed to become a business entity with a separate legal personality. For Example, in the United States, section 201 of the Revised Uniform Partnership Act (RUPA) of 1994 provides that "A partnership is an entity distinct from its partners".(٣) In England and Wales, a partnership does not have separate legal personality.(٤) Although the English & Welsh Law Commission proposed to amend the law to create separate personality for all

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(١) Barry S. Roberts & Richard A. Mann, "Smith and Roberson's Business Law". 14th edition, South Western Cengage learning, USA, 2009. P. 617.

(٢) http://en.wikipedia.org/wiki/General_partnership.

(٣) Erik M. Vermilion, "The Evolution of Legal Business Forms in Europe and the United States", published by Kluwer Law International, the Netherlands, 2008 p. 113,

(٤) The reasons for this are historical, reflecting the common law's separate development from the law merchant applicable in continental Europe and in Scotland: see Holdsworth, "A History of English Law", Vol V, p 84, Vol VIII, pp 194-8.

general partnerships, the British government decided not to implement the proposals relating to general partnerships. In Scotland partnerships do have some degree of legal personality. [1]

([1]) http://en.wikipedia.org/wiki/General_partnership. While France, Luxembourg, Norway and Sweden also grant some degree of legal personality to business partnerships, other countries such as Belgium, Germany, Italy, Switzerland and Poland do not allow partnerships to acquire a separate legal personality, but permit partnerships the rights to sue and be sued, to hold property, and to postpone a creditor's lawsuit against the partners until he or she has exhausted all remedies against the partnership assets. In December 2002 the Netherlands proposed to replace their general partnership, which does not have legal personality, with a public partnership which allows the partners to claim for legal personality.

The two main consequences of allowing separate personality are that one partnership will be able to become a partner in another partnership in the same way that a registered company can, and a partnership will not be bound by the doctrine *of ultra vires* but will have unlimited legal capacity like any other natural person.

PART TWO

PARTNERSHIPS

Part Two 2
Partnerships

Introduction

There are three forms of partnerships in which business could be established; the General partnership, the limited partnership and the participation firm.. [١]

Partnerships under Egyptian law are governed by the new Egyptian commercial law No.17 of 1999

As mentioned earlier, the term «company» according to the Egyptian legislations denotes all kinds of companies; therefore the Egyptian Civil Code contains provisions applicable to all partnerships regardless to their different types or objects. It should be noted that partnerships are, essentially, subject to commercial law; in fact any business body formed in any of the forms provided for in the Commercial Companies' Law should be subject to the commercial law regardless to their purposes. Consequently, provisions of both Civil and Commercial codes will apply, in case of conflict; provisions of commercial code will prevail.

Partnerships are associations of persons as distinct from associations of capital, therefore they are entirely dominated by personal elements which affect the legal relationships between partners, not only when the partnership is formed, but also during its life. [٢] If the status or the capacity of any partner is changed by death, bankruptcy or whatever, the partnership may be dissolved. Personal elements also dominate the relationship between partners and third parties as partnerships' liability is generally unlimited. [٣]

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(١) As previously mentioned, they are known by their Arab names which are respectively: Sharikt Tadhamun, Sharikt Tawsiyah Baseeth, Sharikat al Mahasah. And Sharkat Al-Tawsiyah Be Al-Ashom.

(٢) Masoud Madi & fadhel Al Zahawi, op.cit, p. 89 et seq.

(٣) It should be noted that the liability in the limited partnership varies according to the type of members; the limited partners who are not jointly liable but to the extent of their participation, and joint partners who assume unlimited liability, they are liable to the extent of their property. See Kameran al Salihi, op cit p.p53 et seq.

Joint partners are personally and severely liable to the creditors of the partnership for its debts and obligations.

These general characteristics are common to all partnerships, though, they are modifiable by both the law and statutes. However, three types of partnerships may be distinguished: General partnership (traditionally known in Arabs writings as partnership under collective names), Limited partnership (known as simple commondite partnership) and joint ventures or firm of cooperation (Known as association in participation)

These forms will be presented in this division in the same order as they have been illustrated in the commercial act .

Chapter one
The General Partnership

The general partnership is a consensual entity that rests on the agreement of at least two people to carry on business together and to be treated by the outsiders as if each is fully responsible for their business decisions and actions. It is defined as an association of two or more persons trading together under a specific collective trade name for commercial purposes in which the partners assume joint liability, for the partnership's debts, to the

extent of their entire wealth.[١] Article 20 of the commercial act stated that:

«A General Partnership is a firm established by two persons or more under a certain name, and in which the partners are jointly liable to the extent of their all property for the company's obligations.»

So partners are jointly and severally liable for the partnership's obligations. Each partner is deemed to trade under the name of the partnership and assumes its debts and obligations as they are his own. In other words, each partner is fully liable for all of the partnership's obligations. This is so even though only one of the partners is vested with the right of signature. However in such a case the other partners are only liable if the partner with the signing power exercise his power in behalf of the partnership.[٢]

The contract sets out the basic data about the firm, accordingly, it specifies the number of partners who should not be less than two, though the maximum number is not limited, their names, nationalities and domiciles, the name of the partnership, its registered office, its address, capital, financial year, objectives, as well as the terms of distributing profits and losses, the manner in which the firm is to be liquidated and its assets to be divided up.

The general partnership, as it is based on personal elements, is advisable for joint investments between small number of partners who know and completely trust each other. Each partner assumes the characteristics of a merchant and may undertake business under the firm's name. Since the liability of the firm is unlimited, adjudication of bankruptcy leads to bankrupts partners.[٣]

4.1. General Characteristics

As a result of having legal personality, the general partnership, is distinguished by specific characteristics namely: a

(١) Mosleh A'atrawneh, op.cit, p.392.

(٢) Mahmoud Al Kelany, op.cit, p. 216

(٣) Al-Kelany, op.cit, p. 214.

name derived from its partners, unlimited liability, a character of trader and non-negotiable contribution.

1- The personal liability of the partners:

Each partner in the general partnership is personally liable for the firm's debts, as if it were his own debts, and accordingly the partner's liability is not limited to the amount of his share in the firm, but exceeds it to all his other money, and this is due to the fact that the signature on the actions and commitments entered into by the firm Rather, it is done with the firm's address, which includes the names of the partners. In this respect, the general partnership is similar to the civil companies. Some believe that deciding the personal liability of the general partners is due to the fact that the company is composed of a number of merchants working together, and this creates a legal person whose responsibility is in fact on the shoulders of these merchants in addition to the legal person arising from this combination.([1])

2-The absolute and joint liability of the partners:

All partners in a general partnership are fully liable for the firm's debts, not only for the shares they provided in the firm's capital, but also for all their own movable and real estate funds, even those that are not related to investment in the firm. of its capital and other assets, as well as an additional guarantee on the personal receivables of all partners jostling for it with the partners' creditors, and this rule is related to public order, and therefore every agreement that would exempt a partner in a general partnership from this absolute liability for the firm's debts or even limiting his liability for it shall be null and void. ([2])

Since the firm is considered a legal person and abides by its debts, the natural result of this is that its creditors have the right to recourse to it in its funds, as these funds are a general guarantee for them. And all partners are jointly committed to facing the firm's creditors, and accordingly, if one of the partners has personal creditors, the firm's creditors have the right to compete with them in recourse to the partner's private funds, and since the

([1]) Dr. Mahmoud Samir Al-Sharqawi, op cit, p. 77.

([2]) Dr. Al Yamani, op cit, pg. 386, 387.

partner's share is transferred to the firm's patrimony and included in the formation of its capital, Article 525 of the civil law prohibits personal creditors During the establishment of the firm, from receiving their rights from what belongs to the partner in the capital of the firm, but they may receive them from the profits that belong to him, and after the firm is liquidated, they may receive their rights from their debtor's share in the firm's funds after deducting its debts (١).

The joint liability between the partners and the firm results in several consequences(٢):

1- The firm's creditors may direct their claim for the debt to the firm or to any partner in it according to their choice, and none of the partners may ask one of the creditors to divest the firm first (٣). Or limit his claim to his share of the debt.

2- If one of the partners fulfills the entire debt, all the partners are discharged, and the one who fulfilled the payment may have recourse against the rest, each according to his share, provided that the partners bear the share of the insolvent among them, and it is permissible for the one who fulfilled it to have recourse against the same firm .

3- The judgment issued against the general partnership shall also be considered against the partner in it, and it follows that the general partner in his personal character may appeal the judgment issued against the company.

If a new partner joins the general partnership, he becomes personally and jointly liable for the firm's debts, even those that arose prior to his joining, unless it is stipulated that he is not liable for the debts that arose prior to his entry, and this condition is declared. Likewise, the joint liability of the partner who leaves the firm for the debts that arose After his exit on the assumption that

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(،2) Dr. Tharwat Abdel Rahim, op cit, pg. 428.

(٢) Dr. Muhammad Hosni Abbas, Commercial Law, 1966, item 31.

(٣) we mean by stripping the debtor first, it means that one of the partners confronts the company's creditor that he must first return to the other partners or divide the debt between him and the rest of the partners, Dr. Samiha Al-Qalyubi, previous reference, p. 102, 103

the firm will continue after him, when his exit has been declared so that the one who deals with the firm knows that he is no longer a partner in it, otherwise he remains jointly liable for all the firm's debts, even those that arose after his exit.

3- Partner's Acquisition of the trader character:

A partner in a general partnership is considered a trader as soon as he becomes a member of it because he expresses his desire to engage in trade through the firm, and because he is liable for the firm's debts as a personal and joint liability in all his assets, which makes him in a position similar to that of someone who practices trade in his own name. The merchant is considered to be carrying out trade under the title of the firm, and the firm's bankruptcy leads to the bankruptcy of the partners, and then the partner must have the necessary capacity to professional trade, and he is subject to the merchants' system, so the rules for prohibiting the practice of trade on certain sects apply to him, and violating this prohibition does not negate the description of the trader.([1])

However, the bankruptcy of one of the joint partners due to his cessation of payment does not entail the firm's bankruptcy, as the firm does not ask about the partners' debts, but the bankruptcy of one or more partners, which results in the dissolution and termination of the company unless it is expressly agreed in the firm's founding contract that it may continue.([2])

However if a minor become a member as result of any consequences, his guardian acts in behalf of him or his membership should be suspended until becomes illegible.

As a result of gaining the character of merchant, partners are bound by obligations of merchants such as keeping commercial books. But it is not necessary for the partner to keep the same books as the partnership does. In fact it is not logic to bind a partner to keep such books as a personal obligation. Books of the

([1]) Dr. Ali Jamal Al-Din Awad, op cit, ítem 242.

([2]) Dr. Hamdallah Muhammad Hamdallah, op cit, p. 299.

company are sufficient for both the company and its partners, any further obligation it would be dissent. [1]

4- Non Negotiable Shares

Since partnerships of as we have mentioned are based on personal consideration, where the personality of the partner is a significant consideration, it is not permissible for a partner in a general partnership to dispose of his share to others without the consent of the rest of the partners so that the partners are not surprised by a foreigner partner with them, and he may not, in turn, possess for the personal considerations of his predecessor.(٢)

Since the goal of this rule is to protect the interests of the partners, the opinion has been settled that it is not related to public order, so the partners may agree that if one of the partners dies, the company will continue with his heirs, even if they are minors.

A partner may, without the permission and consent of the rest of the partners, transfer to another person the benefits and fruits related to his share in the firm. This person is called alradeef(٣), which is a sub-partner of the partner. This agreement has no effect except between the contracting parties and does not result in a direct relationship between the subsidiary and the firm, as it remains foreign to it and is not invoked by agreement on it. The right of reserve is limited to the partner's claim for his share in the company's profits, just as the firm has no claim to him regarding his share in the share of losses, and the original partner is liable against the firm and third parties.(٤)

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(١) Hossam Issa & Farag Soliman, op.cit, 223. Mosleh A'atrawaneh, op.cit, p. 393. As traders, partners may be declared bankrupts as a result of declaring bankruptcy of the partnership.

(٢) Dr. Ali Hassan Younis, op cit, item 149.

(٣) Dr. Ali Hassan Yunis, op cit, item 149. The saddlebag is the one who rides the animal behind its rider, and the one to whom the rights and obligations of the partner's share are transferred is called the saddlebag because it is hidden for the firmy because the reserve agreement is limited to the contracting parties and is not invoked by the company. Dr. Mustafa Kamal Taha, previous reference, item 297.

(٤) Dr. Tharwat Abdel Rahim, previous reference, pg. 433.

5- The Naming

The general partnership must have name and address by which it deals and distinguishes it from others. This address, as a general rule, consists of the names of the partners in it. The address of the company does not have to include the names of all the partners, but it is possible to mention the name of one or more partners in it, provided that it is preceded or immediately followed by the phrase " general partnership" (١)

Article (21) of the Egyptian commercial law states that:

«The name of a general partnership shall consist of the names of all partners or the name of one or more of them accompanied by (& Co.) or by a similar word giving the same meaning. ».

In the event that a general partnership is formed between members of one family, it is permissible to suffice with the family name as the title of the firm with an indication of the degree of kinship, "brothers..or children or cousins…." The title of the company includes only the firm's names only. If the name of a foreign person appears in the firm's address and he is aware of this and does not raise any objection, he shall be considered jointly liable with the partners for the company's debts before the creditors who dealt with the firm on this basis, not as a partner but as a perpetrator of a mistake that caused If the partners enter into the firm's address the name of a foreign person without his knowledge or despite his objection with the intention of benefiting from his reputation and influence, or the name of a fictitious person, this may be considered a fraud, and the person whose name is entered without his consent may refer to the partners for compensation .(٢)

4.2. Procedures of Formation

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(١) Kameran Al Salihi, op.cit, p. 54. Al Kelany, op.cit, p. 214. Masoud Madi & Fadhel Al- Zahawi, op.cit, p. 91. Mohammed Helalya, op.cit, p. 104.

(٢) Mustafa Kamal Taha, op citce, item 225.Dr. Mahmoud Samir Al-Sharqawi, op cit, p. 74. See also ,Hossam Issa & Farag Soliman, Business Law, Cairo, 2001, p. 220. Mosleh At'tarawneh, op.cit, p. 393.

Formation of a partnership is regulated by the rules that already discussed earlier.(١) Generally, Partners must sign a contract which includes the following particulars:

a. Name of the partnership and abbreviations if any,
b. The head office of the partnership and its offices if there is any,
c. The objects of the company,
d. Names, surnames, nationalities and domiciles of the partners,
e. Names of directors authorized to manage the company and sign on its behalf whether they are partners or others and the extent of their powers and authorities,
f. Capital of the partnership and the contribution of each partner,
g. The manner in which profits and losses are to be distributed, h. Duration of the company,
h. The beginning and end of the financial year,
i. The manner in which the company shall be liquidated.

In order to incorporate and register the partnership, partners, firstly, should submit a summary of e contract to the first instance court in which the headquarter of the firm located or a branch of its branches to registered in the register prepared for this matter (article 48)also this summary must be affixed for three months on the board prepared for this purpose(article 48), finally the summary of the contract must be published in the a paper which printed in the headquarter of the firm(article 49).

All changes to the partnership, including changes of partners and managers, must be registered in the Commercial Register. (٢)

Management of the Partnership

According to the Articles (516 to 520) of the Commercial Act, management of the general partnership shall be undertaken by all the partners unless they appoint a manager or more for this purpose. So, in principle, partners are entitled to take part in managing affairs of the partnership unless the statutes otherwise provided. Hence, every partner is deemed as an agent having the most extensive powers to bind the partnership. However, partners,

(١) See chapter 2 concerning general provisions of companies.

(٢) Mosleh A'atrawneh, op.cit, p.395. Kameran Al-Salihi, op.cit, p. 47.

collectively or solely may oppose any decision taken by others before its implementation, in such a case, the question should be submitted to the other partners to be settled by a majority resolution.

In practice, the statute designates one or more partners or third parties as managers of business. In such a case, other partners should be excluded from management. (١)

4.3.1- Appointment of Managers

In spite of their ability to manage the partnership, partners may appoint one manager or more, either among themselves or others, to manage the partnership. The appointed manager is liable to the partners and others for his own defective acts such as negligent and mismanagement.

The manager may be appointed by the partnership agreement or by a separate procedure. He may also be appointed by alteration of the partnership agreement according to the same procedures of alterations the constituent documents. (٢) The manager who is appointed by the memorandum of association is called "consensual manager," or if his appointment is by agreement independent of the memorandum of association, as if he appointed by separate agreement is called the non-consensual manager .(٣)

the consensual (statutory) manager

The consensual or statutory manager, as we mentioned, is the one who is appointed in the firm's memorandum of association or its amendment. If he was among the partners, he became a member of the firm entity, forming an integral part of its contract, then he represents the firm and does not represent the partners. Therefore, he may not be dismissed without the approval of all partners, including the managing partner himself because his dismissal is an amendment to the company's contract, and

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(١) Mosleh A'atrawneh, op.cit, p. 397.

(٢) Kameran Al-Salihi, op.cit, p. 49.

(٣) John T. Mugambwa, Harrison A Amankwah & C E P (Val) Haynes, "Commercial and Business Organizations Law in Papua New Guinea", published by Rutledge, Cavendish, USA & Canada, 2007, p. 535.

amending the contract requires a consensus like the consensus that was concluded when it was incorporated, however if one of the partners notices that this non-dismissable partner manager has committed acts involving fraud or dishonesty, threatening The entity of the firm and its affiliation, or the loss of competence and ability to manage the firm's business as desired by the partners, they may dismiss him by a court ruling whenever they are able to establish evidence that there is a reasonable reason for his dismissal. If the manager has been dismissed in this way, he may not claim any compensation for his dismissal, and his dismissal must be declared by the firm's management and registered in the commercial registry.([1])

The consensual manager can resign from management on his own, provided that he has a legitimate or strong justification, such as illness that prevents him from managing or old age.

The dismissal or resignation of the consensual manager shall result in the dissolution of the firm , unless otherwise provided, and if the consensual manager decides to resign. then he has the right to recover his share and his rights before the firm, and the share is estimated by the experts, in a manner that does not cause any damages to the resigning manager, and the same rule applies in the case of dismissal .([2])

It is more likely that the consensual manager is a member of the firm's body as a legal person, meaning that he is part of the firm's entity and that he is a special agent on behalf of the company, and that his dismissal or resignation results in the firm's dissolution unless there is an agreement on its continuation.

Non-Partner consensual manager

This manager is called the consensual manager because he is appointed in the firm's memorandum of association or amendment, and he is therefore appointed with the approval of all

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([1]) The Court of Cassation ruled that the relationship of the general partner in the partnership or limited partnership company is not a work relationship, and that the fact of the matter is that he takes it from his work is originally a share of the profit and not a wage owed to an employee.

([2]) Dr. Hamdallah Muhammad Hamdallah ,op cit, pg. 313.

the partners. However, since he is a foreigner from the firm, he is not considered a member of its entity, but rather is considered just an ordinary agent for the firm, and therefore he is always subject to dismissal. His dismissal shall be in the same manner in which he was appointed, i.e., unanimously or by majority when the contract stipulates that. In addition to that, any of the partners may request the judiciary to dismiss him when he provides the legal justification for that, and this manager may resign from the management whenever he wants, provided that the partners are notified of his desire and the resignation shall be at an appropriate time, otherwise he shall be obligated to compensate the company for any damages he may have sustained as a result of his resignation.([1])

Non-consensual manager:

This manager is appointed, as we mentioned, by an agreement separate from the firm's contract, whether this agreement is contemporaneous with the conclusion of the firm's contract, or a successor thereto, and whether the manager is a partner or a non-partner. This partner is not considered a member of the entity of the legal personality of the firm, but rather just an ordinary agent for the firm, as is the case with the non-partner statutory manager, and with this description he is always subject to removal, and he may resign at any time provided that this time is appropriate and that there is an excuse reasonable, otherwise he is obligated to compensate the damages he causes to the company.([2])

It is noted that when appointing this manager, a distinction must be made between two things ([3]):

First: If the company's contract is devoid of any text regulating how the firm is managed, then each partner is considered authorized by the others to manage it, and it is proven to him to undertake all its business without referring to other partners. Because the appointment of the manager in this case is considered

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([1]) Dr. Ali Jamal Al-Din Awad, previous reference, pg. 431.

([2]) Dr. Samiha Al-Qalyubi, op cit, p. 108.

([3]) Dr. Al Yamani, op cit p. 406.

an amendment to the contract, which requires the unanimity of the partners, and the manager in this case takes the description of the statutory manager.

Second: If the firm's contract indicates the necessity of appointing a manager for the firm or permits it and leaves it to the agreement of the partners, then the appointment of the manager after that by separate agreement is nothing but an implementation of the contract, and therefore the majority of the partners is sufficient to appoint the manager.

According to the most correct opinion, the dismissal of this manager is done with the approval of the majority, even if his appointment has been unanimous, and the required majority is the numerical majority, so that this manager is not equal with the partner consensual manager who is considered the most powerful manager in terms of his appointment and dismissal.(١)

4.3.3- Resignation of the Manager.

As people may leave their jobs for different reasons, managers of partnerships may decide to leave their office whether for justifiable or unjustifiable reasons, the commercial law distinguished between two cases:

Lst -if the manager partner was appointed in the memorandum of association, he may not resign his office for unacceptable reasons, and otherwise, he should compensate for any damage. The manager's resignation may lead to dissolution of the company unless otherwise provided for.

2nd- If the manager was appointed in a separate contract, he may resign his office in a convenient time and after serving a notice to other partners, otherwise he shall be liable to compensate. In such a case the company shall not be dissolved. (٢)

It should be noted that if the manager is paid for his job and has been dismissed at an unsuitable time or for unacceptable reasons, he may claim compensation for any damages he may have sustained.

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(١) See Dr. Ahmed Barakat Mustafa, Dr. Kilani Abdel Radi, The New Commercial Law, 2008, p. 182, 183.

(٢) Kameran Al-Salihi, op.cit, p.49.

manager's Powers:

In most cases, the firm's contract determines the scope of the manager's authority, by mentioning the actions that he may carry out. And the manager must not exceed the limits of his powers, he is not allowed to do an action prohibited by the contract of the firm, and he must obtain the permission of the partners in what is necessary in accordance with the provisions of the company's contract ([1]).

However, if the manager's authority is not specified, as aforementioned, he may carry out all management actions and actions that fall within the purpose of the firm, and his actions bind the company and the partners as long as they are within the limits of the firm's purpose and are free from fraud. The manager may carry out the transactions that fall within the purpose of the firm and that require the existence of the firm and the exercise of its activity, without regard to whether these actions are purely management activities, or acts of disposition such as buying goods, selling the firm's products, leasing its funds prepared for this, and borrowing within the limits necessary to manage the affairs of the firm., the appointment and dismissal of employees, the assessment of the compensation due to them, and in general all that is necessary for the functioning of the firm and the achievement of its objectives. . A fortiori, the manager may not donate from the firm's funds except for what is customary on some occasions, such as offering low-risk gifts such as grants given to employees, and it is not permissible for the manager to release the firm's debtors, or to waive the security deposits in its interest or to accept conciliation or arbitration in its dispute (٢).

As a general rule the manager performs the tasks entrusted to him by himself. If he delegated it to another person without being authorized to do so, he would be liable for the act of the representative as if this act had been issued by him personally, and the manager and his deputy are jointly liable. for his mistake in choosing his agent or for the instructions he gave him, and in

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([1]) Ali Hassan Yunis, op cit, p. 119.

([2]) Dr. Ali Hassan Younis, previous reference, pg. 120, 121.

the two previous cases, the firm and the agent manager may have recourse to each other.

But if the firm has appointed several managers, it may be assigned to each of them a specific competence, and then each manager must observe the limits of his competence without infringing on the competence of other managers, otherwise his act is not enforceable in the case of any of them has the right to singly manage, each of them would unilaterally perform any of the management's act, provided that the rest of the managers have the right to object to the act before it is completed, but the right to object is not absolute, as the majority of managers may reject this objection, and if the two sides are equal, the matter is presented to all partners, and the majority of them have the right to reject the objection (١).

Finally, if the contract stipulates that the managers work together and not individually, then the managers must respect this condition and also invoke it against others when it is coerced. But if it is agreed that the decisions of the managing partners will be unanimously or by a majority, then this agreement must be followed, except in the case of an urgent matter Except in the case of an urgent matter, the loss of which results in a serious loss that the firm cannot compensate, any single manager in this case may carry out the work without referring to the rest of the managers to obtain their approval (٢).

No doubt that manger should act with care and skill in good faith to fulfill the partnership's interests otherwise he will be liable for all damages caused to the partnership. The standard of care which is expected from the manager is that of the normal reasonable person. (٣)

4.3.5. Making Decisions

As they have joint interest, Partners of general partnerships are supposed to act collectively. Hence managers are not supposed to work in isolation or separately except in cases of

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(١) Dr. Mustafa Kamal Taha, previous reference, item 244.

(٢) Dr. Hamdallah Muhammad Hamdallah, op cit , p. 316.

(٣) Hossam Issa & Farag Soliman, op.cit, p. 230.

urgent matters. Consequently, decisions shall be taken unanimously unless the partnership agreement provides for the majority. In this case, majority means simple majority unless otherwise stipulated.

It was previously indicated that, if the management of the partnership was delegated to several people without specifying their tasks, each of them may individually take managing actions, provided that others have the right to object to these actions before they are completed. In such a case the actions taken shall be passed by the numerical majority of managers each having only one vote. In case of equal votes, the question must be referred to the partners.

If the partnership agreement requisites the partners to act collectively, decisions shall be taken unanimously unless the contract provides for a specific majority. This condition shall not be violated except in the case of urgency where the firm may incur a heavy or a substantial profit lose. However, if the decisions pertinent to the amendment of the contract, they shall not be valid unless are taken by the unanimity of the partners.

4.3.6. Monitoring Acts of Managers

Partners rather than managers should not interfere in the firm's management, though they are entitled to monitor the performance of the company. To do so, partners may observe acts of managers, examine books and documents and follow execution of transactions. Nevertheless, they should not behave in a way that may hinder the smoothness of the partnership's management. (١)

The right of mentoring over the partnership is a part of the public order, so any agreement to the contrary shall be null and void.

4.3.7. The Liability of the Partnership

According to the provisions of commercial law, the firm shall be bound by all actions taken by the manager within his powers if he ascribes his actions to the firm's commercial name even if he works for his own interest so long as the third party he

(١) Hossam Issa & Faraj Soliman, op.cit, p. 231.

deals with is acting in good faith. Generally, managers should act within their authority and must not exceed their powers as defined by the contract provided that such powers are documented. Due to this, different cases may be indicated:

1st- The partnership will be fully liable if the act is taken under the name of the partnership and for its account.

2nd- The partnership will not be liable if the action was taken under the personal name of the manager unless the act was taken for the interest of the partnership.

3rd- If the manager took an action under the firms's name, but for his own interest, the partnership will be liable as long as the third party was in a good faith.

4th- The firm is liable for the torts of its managers in condition the wrongful acts of managers where taken while practicing the partnership's affairs. (١)

In all circumstances the firm's creditors shall have a claim on the firm's assets, and shall have also a claim on the private assets of any partner who used to be a member of the firm at the time of contracting. All partners including new joiners shall be liable jointly to the extent of their property, for the firm's preceding and subsequent obligations. Any agreement to the contrary shall have no effect towards third parties.

However, if any partner withdraws from the company, he shall not be liable for the firm's obligations subsequent to the publication of his withdrawal. On the other hand, any partner assigns his share in the firm, shall remain liable for the firm's obligations towards its creditors unless they approve this assignment.

4.5. Dissolution of the General Partnership

A general partnership can be dissolved for grounds similar to those applying to corporations and other partnerships. In addition, there are special grounds for the dissolution of general partnership relating to the capacity or competence of partners. For instance the general partnership can be dissolved as a result of partner's bankruptcy or if his affairs are judicially administrated

(١) Hossam Issa & Farag Soliman, op.cit, p.232.

under a scheme approved by his creditors or he loses his qualification to be a trader. (١)

The contract may stipulate that the partnership shall continue in these circumstances or shall continue if the other parties unanimously so decide. In such a case the other partners should refund the excluded partner the value of his contribution.(٢)

In principle, death of a partner leads to dissolution of the general partnerships. However, the contract may contain a provision that partnership need not to be dissolved upon the death of a partner, and the partnership should continue by the surviving partners. It should be noted that such a provision cannot be valid unless there are at least two partners. The value of the deceased partner should be paid to his heirs. The contract may also provide for the continuation of the partnership whit the heirs taking his place. In such a case if any of the heirs is a minor, the company may be converted to a Limited Partnership and the minor shall be deemed a sleeping partner. Or a guardian should be appointed to represent the minor and acts instead of him. (٣)

(١) Kameran Al-Salihi, op.cit, p. 156.

(٢) Mohamed Helalya, op.cit, p.74 et seq.

(٣) Mahmoud Al-Kelany, Commercial Companies, op.cit, p. 236.

Chapter two
The Limited Partnership

Generally, a Limited Partnership is comprised of at least one general partner and one limited partner. The extent of a limited partner's liability for the partnership's commitments is restricted to the amount of capital invested by the limited partner in the partnership. A limited partner may not participate in the management, but if he does, the limited partner will be jointly and severally liable for the partnership's liabilities just as the joint partner.

5.1. Definition

Article 23 of the Commercial Code defines a limited partnership as a firm that is concluded between one or more partners who are responsible and jointly liable and between one or more partners who are owners of funds in it and who are outside the management and are called sleeping partners ([1]). In explaining its legal nature, the Court of Cassation said that it is a firm with a legal personality independent of the personality of its partners, and this personality requires that the firm has an existence independent of the partners, so its capital is independent of their money and is considered a general guarantee for its creditors alone, as the partner's share comes out of his property and becomes owned by the firm After that, he shall have nothing but a mere right to a percentage of the profits or a share in the capital when the firm is dissolved ([2]).

([1]) The limited Partnership appeared in the Middle Ages due to the religious inclination at that time, and the view of the prohibition on the interest-earning loan contract as a kind of usury that contradicts the heavenly religions. In this era the loans were with widespread interest due to the desire of the owners of money to employ and invest them, with a large return without exposing their Without exposing their parimonies to the speculative risks that traders are exposed to, the limited Partnership was established to achieve the cooperation aimed at the owners of capital who wish to invest their money and the traders who have speculative experience in the markets

See Dr. Ahmed Mohamed Mahrez, previous reference, pg. 338.

([2]) Dr. Hamdallah Muhammad Hamdallah,op cit, p. 324.

It is understood from the definition of a limited partnership, previously mentioned, that it is not required to have multiple general and limited partners, as it is sufficient for the establishment of a limited partnership to have one general partner and one limited partner, and it is proven that the personality of the partner - the general or the limited - has a significant position, considering that this firm is a partnership .

A limited partnership is a sort of a hybrid of a general partnership and a joint stock company. (١) It is defined by the Egyptian commercial law as:

" *A firm set up by one or more partners, who shall be jointly liable for the firm's obligations to the extent of all their property, and by another or more partners, who have shares therein but are out of its management. The latter partners are called sleeping partners and shall be liable for the firm's obligations only to the extent of their share in the capital."* (٢)

It is obvious that this type of partnerships provides protection for its limited partners from debts and claims of the business entity beyond their invested contributions, but it allows them profits and losses directly through the entity. It is similar to, but slightly different from, a general partnership in that there are two different kinds of partners. In short, it is an association formed by substantial compliance with statutory requirements,

(١) Roger Leroy Miller & Gaylord A. Jentz," Fundamentals of Business Law: Excerpted Cases", (3nd edition), South Western Cangage Learning, USA, 2010. p. 574.

(٢) Article (23).

consisting of one or more general partners and one or more limited partners. (١)

5.2. Historical Overview

The earliest limited partnerships were called ***societates publicanorum*** and arose in Rome in the third century B.C. During the heyday of the Roman Empire they were roughly equivalent to today's major corporations: many had hundreds of investors, and interests were publicly tradable. However, they required at least one (and often several) partners with unlimited liability. (٢)

In medieval Italy, the concept was revived around the 10th century as the ***"commenda",*** a business organization which was generally used for financing maritime trade. In a ***"commenda",*** the traveling trader of the ship had unlimited liability, but his investment partners on land were shielded. A ***"commenda"*** *was* not a common form for a long-term business venture as most long-term businesses were still expected to be secured against the assets of their individual proprietors. (٣)

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(١) It is stated in the Wikipedia,(the free encyclopedia) that a limited partnership is a form of partnership similar to a general partnership, except that in addition to one or more general partners (GPs), there are one or more limited partners (LPs)

The GPs are, in all major respects, in the same legal position as partners in a conventional firm, i.e. they have management control, share the profits of the firm in predefined proportions, and have joint and sever liability for the debts of the partnership. As in a general partnership, the GPs have apparent authority as agents of the firm to bind all the other partners in contracts with third Parties

Like shareholders in a corporation, the LPs have limited liability, i.e. they are only liable on debts incurred by the firm to the extent of their registered investment, and they have no management authority. The GPs pay the LPs the equivalent of a dividend on their investment, the nature and extent of which is usually defined in the partnership agreement

(٢)http://en.wikipedia.org/wiki/Limited_partnership.Last retrieved 26/1/2013.

(٣) Ron Harris, The Institutional Dynamics of Early Modern Eurasian Trade: The Corpo ration and the Commenda, Prepared for the Conference: The Economic

In Colbert's (١) Ordinance of 1673 and the Napoleonic Code of 1807 reinforced the limited partnership concept in European law. In the United States, limited partnerships became widely available in the early 1800s, although a number of legal restrictions at the time made them unpopular for business ventures. (٢)

In the United States, the LP organization is most common in the film industry or in types of businesses that focus on a single,or limited-term project. They are also useful in "labor-capital" partnerships, where one or more financial backers prefer to contribute money or resources while the other partner performs the actual work. In such situations, liability is the driving concern behind the choice of LP status. (٣)

Performance of Civilizations: Roles of Culture, Religion, and the Law, USC February 23-24, 2007

(١) Jean-Baptiste Colbert 29 August 1619-6 September 1683) was a French politician who served as the Minister of finances of France from 1665 to 1683 under the rule of King Louis XIV. His relentless hard work and thrift made him an esteemed minister. He achieved a reputation for his work of improving the state of French manufacturing and bringing the economy back from the brink of bankruptcy. Historians note that, despite Colbert's efforts, France actually became increasingly impoverished because of the King's excessive spending on wars. Colbert worked to create a favorable balance of trade and increase France's colonial holdings. Colbert's plan was to build a general academy. Gary J. Previts & Peter Walto, "A Global History of Accounting, Financial Reportingand Public Policy: Europe", published by Emerald Group Publishing LTD, UK, 2010. p.38

(٢) Michai Sznajdez &Lucyna Przezborska & Frank Scrimgeour, "Agritourism", Published by CAB International, Willington UK & Cambridge USA 2009, p. 87.

(٣) The LP is also attractive to firms wishing to provide shares to many individuals without the additional tax liability of a corporation. Private equity companies almost exclusively use a combination of general and limited partners for their investment funds. Well-known limited partnerships include Carnegie Steel Company, Bloomberg L.P. and CNN.

In the United Kingdom, limited partnerships are governed by the Limited Partnership Act 1907. However, English law and Scottish law are distinct on partnerships. In English law, limited partnerships are not legally separate entities: the partners are jointly and severally liable and any law suits filed are filed against the partners by name. There has been discussion over whether limited partnerships operating under English law should be made separate legal entities in the same way as limited liability partnerships are. The Law Commission report on partnership law LC283 suggests that creation of separate legal personality should be left as an option for the partners to decide upon when a partnership is formed. There are concerns that automatically making partnerships separate legal entities would restrict their ability to trade in some European countries and also expose them to different tax regimes than expected. (١)

5.3 - Characteristics of the LP

A limited partnership has certain characteristics, the first of which is that it includes two types of partners whose obligations differ from the firm's debts, where the general partner is liable for the firm's debts in his own money, while the limited partner or partners are not liable for these obligations except to the extent of the shares they provide. Also, the title of the limited partnership includes only the general partners, and the general partner acquires the status of a merchant, and since the firm is based on personal consideration, it is not permissible for a partner in it, whether joint or limited, to waive his share to a foreigner from the firm except with the consent of all the partners. We will discuss all these features in detail as follows:

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(١) The Law Commission, Consultation Paper No 161, The Scottish Law Commission, Discussion Paper No 118, Limited Partnership Act 1907, A Joint Consultation Paper, London: The Stationery Office. The Law Commission and the Scottish Law Commission were set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law. The Law Commissioners are: The Honorable Mr. Justice Carnwath CVO, Chairman Professor Hugh Beale. Mr. Stuart Bridge, Professor Martin Parrington, Judge Alan Wilkie, QC. http://lawcommission. justice. gov. uk/docs/cpl61_Limited_Partnerships_Act.pdf.

However, the limited partnership, radically, differs from a general partnership as it comprises of two categories of partners, in addition, there is another difference with regard to the name.

Firstly: There are two groups of partners:

The limited partnership, as we mentioned, includes two groups of partners:

A- One or more joint partner enjoys the same rights and is subject to the same duties that general partners enjoy in the general partnership, so he is independent in the management, acquires the status of a merchant, and his name appears in the company's address and is liable for absolute and joint liability for the firm's debts.

b- A partner or more limited partner who takes a legal position opposite to that of the general partner, so he may not manage the firm, he shall not acquire the character of a merchant, his name shall not appear in the firm's naming, and he shall not be liable for the firm's debts except to the extent of his share in its capital.

The limited partnership is a useful vehicle for investors who do not wish to take an active role in the management of their funds. Investors may use this form of partnerships to create an investment fund under the control of a general partners who have unlimited liability for the partnership's obligations. The limited partners are only liable to the extent of their contributions, provided they do not take part in the management of the partnership business. (١)

As there is no restrictions on the maximum number of partners, the limited Partnership can be partnered by any individual, though, it must have at least two members because, as it was mentioned, this partnership is based on two categories of partners.

Secondly: the partner's share is not permissible to transfer:

A limited partnership is a partnership, based on the personal consideration of the partners, whether joint or limited, and

(١) Denis Clifford, Ralph E. Warner," Form a Partnership: The Complete Legal Guide", 8th edition, Delta Printing, USA, 2008, p. 170.

therefore it is not permissible for any of them to assign his share to a foreigner in the company except with the approval of all the partners who are joint and trusted. In the memorandum of association or the company's articles of association, otherwise, if a partner is allowed to relinquish his share, it is provided that this does not prejudice the rule of the partnership of persons based on mutual trust between the partners ([1]).

It is considered that the limited partner in a limited partnership may not assign his share to a foreigner of the firm except with the approval of all the partners. The most important thing that distinguishes this firm from a partnership limited by shares in which a shareholder may assign his shares to others, because the share is negotiable, and personal consideration does not exist in the shareholder. And as a result of personal consideration in the general and limited partners in a limited partnership, the death or declaration of bankruptcy of any of them leads to the termination of the firm, as well as the imposition of interdiction on him, unless the contract stipulates the continuation of the firm among the rest of the partners.

Thirdly: Naming of the LP

The limited partnership is obligated to take an address that will be its name, and only the names of the general partners may be entered in the firm's address without the names of the silent partners, as it is important for others to know the names of the partners who are personally and jointly liable ([2]).

** There is a question that arises in this regard regarding the rule of law in the event that the name of one of the limited partners appeared in the title of a limited partnership.

The answer to this question requires us to distinguish between two hypotheses:([3])

([1]) Dr. Mahmoud Samir Al-Sharqawi, op cit, p. 95.

([2]) Dr. Aktham Al-Khouli, op cit, item 448.

([3]) Masoud Madi & Fadhel Al-Zahawi,» Commercial Companies)), op.cit, p. 147. See also Mohammed Helalya, op.cit, p. 130. Masoud Madi & Fadhel al-Zahawi, op.cit, p. 147.see also, Dr. Mohsen Shafiq, op cit, item 243, Dr. Mahmoud Samir Al-Sharqawi, op cit, p. 97.

First: If the limited partner's name is included in the firm's address with his knowledge or permission, Article 29 of the commercial law requires that the limited partner becomes obligated to the firm's debts as if he were a general partner, i.e. the limited partner becomes a general partner vis-à-vis others. But he remains a limited partner towards the general partners, and he has the right to claim from them the debts of the firm that exceed the amount of his share.

Second: If the name of the silent partner enters the firm's address without his permission or without his knowledge, he remains in his character as a silent partner, whether vis-à-vis third parties or in relation to the partners and the silent partner must prove that he was unaware of the appearance of his name in the firm's address or that he objected to entering his name in the address.

As we mentioned before, the name of this partnership should be composed of the name. If there is only one partner or names of some joint partners. In both cases the word (& Co.) or any other word indicating existence of other partners shall be added to the name.

It is customary that the notepapers, correspondences and all other documentations issued to the public by the firm will carry a clear statement identifying the name and legal nature of the partnership.(١)

Fourthly: The character of the merchant:

The partners in this firm are of two types, the first: general partners who acquire the status of a merchant, as soon as they join this firm, even if they did not have this character before, and the second category: silent partners who do not acquire the status of a merchant by joining the limited partnership, unless the limited partner has this capacity from Before, that is, he occupies his own

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(١) In this case, the third party dealing with the firm cannot identify the legal nature of the firm. The title does not indicate whether these partners are joint or limited partners, and the third party can identify the truth of their legal position by looking at the commercial register or the summary of the firm's contract. See Dr. Tharwat Abdel Rahim,op cit, p. 469.

trade, and it follows that it is permissible for people who are legally prohibited from engaging in trade, such as public officials, lawyers, officers and others, to participate in a limited partnership as limited partners, as well as the guardian may invest the money of a minor as a limited partner in a limited partnership ([1]).

The doctrinal controversy has raged over the nature of the limited partner's obligation to provide his share in the company, so some went to consider it is a civil act because the limited partner is basically doing the work of hiring and investing his money, and because his liability is limited to the extent of his share, and accordingly, there is no room to implement Affiliate business theory because it only applies upon business carried out by the merchant related to his commercial activity, and the limited partner - a natural or legal person - is not a trader unless he was so before joining the firm. The most correct opinion is to consider the commitment of the silent partner as a commercial commitment. Therefore, commercial rules apply to this obligation, in terms of the jurisdiction of the commercial courts to consider cases related to it, and the provisions of evidence in commercial matters are applied to it, and the testator who is late in submitting his share is obligated to pay the legal interest at the commercial price (5%) ([2]).

Fifthly: liability of the limited Partner:

We mentioned earlier that the liability of the limited partner - unlike the general partner - is limited to the debts and obligations of the firm to the extent of the share he pledged to provide. This principle has been explicitly stated in Article 27 of the Commercial law by saying: "The limited partners are not liable for the loss that occurs except to the extent of the money that they paid or that they were obligated to pay to the firm" ([3]).

It is not permissible for the silent partner, as "one of the owners of funds" as expressly mentioned in Article 23 of the commercial law, to submit a share of the work and that his share

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([1]) See Dr. Ahmed Mohamed Mahrez, op cit, p. 342, 343.

([2]) See Dr. Hamdallah Muhammad Hamdallah, op cit, pg. 326, 327.

([3]) Dr. Samiha Al-Qalyubi, op cit, p120, 121.

must be either cash or in kind, i.e. a financial share. This is not explained by considering the limited partner in the position of the firm's lender. The limited partner is a partner who has all the characteristics of a partner, and his joining the firm does not aim at mere investing his money, but rather with the intention of participation, and for him to be a member of it enjoying the rights that this membership entitles to him, such as participation in profits and losses. The right to control and supervise the management of the firm, as well as the right to request the dismissal of the manager whenever he provides a justification for that.([1])

In the event of the withdrawal of the limited partner from the firm, he shall remain liable to the firm and to the creditors to the extent of his share or the remaining part of it he owes. But his liability is within the limits of his share only, and for the debts owed by the firm until the moment he withdraws from it..[(2)]

5.4- Formation of the LP

The formation of a limited partnership requires the availability of general and specific objective elements in the firm's contract and is subject to the rules established in the general partnership in terms of its convening and its publication. However, the provisions of this publication are distinguished by the fact that the summary of the limited partnership contract that is published does not include the names of the silent partners, and it must be limited to the names of the general partners . Also, the capital of the limited partnership must be mentioned in the contract summary with an indication of the amount of the part paid and the amount that remains under collection ([3]).

([1]) See Dr. Abu Zaid Radwanop cit, p. 280, 281.

([2]) Dr. Hamdallah Muhammad Hamdallah, op cit, p. 330.

([3]) Dr. Tharwat Abdel Rahim, op cit, p. 462, 463. The main differences between the general partnership and the limited partnership is that the former may be partnered by foreigners in condition that Bahraini national should own at least 51% meanwhile the partnership only partnered by Bahraini. In addition the limited partnership requires at least one joint partner and one limited partner. Mohammed Helalya, op.cit, pp. 96-127.

Failure to declare the contract of the limited partnership results in the invalidity of the firm, as is the case in the general partnership. However, invalidity does not lead to authorizing the silent partners to joint partners, and the silent partners remain limited liability for the debts of the invalid firm, i.e. the firm's creditors may not rely on the failure to declare The contract is to make the limited partners joint partners, but the situation remains as if the firm is legally valid. This rule was explicitly stipulated in Article 55 of Commercial law, saying, "The cancellation of the firm does not entail the consideration of the owners of the funds in the limited partnership that they are jointly bound by something" (١).

5.5. Management of the LP

The limited partnership is subject to the general provisions in the management of the firm in general, but since there are two classes of partners in this firm, this necessarily affects its management and the way it operates. The firm is also managed by a manager who is either one of the general partners or from a third party, who is appointed in the memorandum of association and is a consensual manager to whom the provisions of the consensual manager apply, or who is appointed in a later agreement and is a non-consensual manager.

The limited partnership, in terms of contract amendment and distribution of profits and losses, is subject to the same rules that we mentioned previously when we were exposed to the General Partnership.

Based on the foregoing, our study of the management of the limited partnership will be limited to the angle (٢) that reflects the effects of the limited partner's liability, namely: preventing the limited partner from interfering in the management.

The legislator has specialized in managing the limited partnership by virtue of a distinguished ruling, as Article 28 of

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(١) Dr. Hamdallah Muhammad Hamdallah, op cit, p. 330, 331.

(٢) The title of the limited partnership is another angle that reflects the liability of the limited partner.

commercial law stipulates that it is not permissible for the silent partner to interfere in the management of the firm, even by virtue of a power of attorney. The legislator was also keen in Articles 23, 25 and 26 of commercial law to describe the limited partners as the partners outside management, and accordingly the silent partner is not allowed to do any work that is considered interference in the management, so he may not be appointed as a manager of the firm even if all the partners agree to that, and no It is permissible to delegate him to carry out the management work, while it is permissible to agree on appointing a person other than the partners to take over these works.

The opinion differed (١) about the justification for the prohibition of the limited partner's interference in the management of the firm. It was said – which is the most correct – that the purpose of preventing the limited partner from interfering in the management is to protect the third party dealing with the firm, as the limited partner's carrying out the management work is to protect the third party dealing with the firm, as he leads The limited partner's management work leads to the third party's mistaken belief that the limited partner is one of the joint partners, deals with him on this basis and gives the firm his trust, then it becomes clear to him otherwise. Therefore, the limited partner must be prevented from carrying out management in support of the trust of the firm itself and the protection of third parties contracted with it.

It was said, that preventing the limited partner from managing is intended to protect the firm itself and so that the limited partner does not conclude deals or engage in speculations that may cause the firm to suffer heavy losses, while the limited partner is assured of limiting his liability. This opinion was not free from criticism, as there is no fear for the firm or the partners that the limited partner will be its manager, because he is a member of it and is concerned about its future because he participates in its profits, and bears its losses within the limits of his share in the capital. From the directors who are not partners who are not

(١) Hamdallah Muhammad Hamdallah, op cit, p. 330, 331

prohibited from being appointed as directors of the limited partnership.

A third party went on to say that preventing the limited partner from managing the firm was not intended to protect others, as the latter can verify the manager's capacity and whether he is a joint partner, a limited partner or a third party, by looking at the publicized summary of the firm's contract, as it is not mentioned in the This summary or in the title of the firm the names of the limited partners.

There is no evidence that the reason for preventing the silent partner from interfering in the management is mainly to protect others and not the general partners or the firm, is that the legislator has authorized him - as a partner - the right to monitor and observe the management of the firm, without this entailing any liability for the firm's debts, as stipulated in Article 31 of the commercial law that "if one of the limited partners gives advice or conducts an inspection or observation, this does not result in obligating him to do anything." It also proves that the interest of others is the basis for this prohibition, the penalty for violating it, as the violation of preventing the limited partner from interfering in the administration becomes - Pursuant to the provision of Article 30 of the commercial law - he is personally liable to third parties for the act he performed, and he may also become fully liable for all the debts of the firm (١)

5.6- Dissolution

It is true that the Limited Partnership is more flexible than a company in its openness to special distributions of incomes and losses because of its special elements, but it can be forced into dissolution by events like the death, bankruptcy or withdrawal of any of its partners unless otherwise provided. The provisions of the commercial law provides that a Limited Partnership shall be dissolved for any of the following reasons:

5.6.1. Withdrawal of a Partner

if the term of the partnership is indefinite, the partner may withdraw in condition his withdrawal does not harm the

(١) Dr. Abu Zaid Radwan, previous reference, p. 194.

partnership and other partners, he should be in a good faith and notify the other partners of his withdrawal in a suitable time, otherwise the other partners may obtain a court order to oblige the partner to continue in the company and to pay compensation if necessary.

If the firm's term is definite the partner shall not withdraw from the partnership without a court order. (١)

5.6.2. Death or Lacking of Capacity

If the partner died or if a court passes a sequestration order against him or if he is adjudged bankrupt or insolvent. However, the firm's contract may provide for its continuation with the heirs of a deceased partner even if all or some of them are minors. If the deceased partner was a joint partner and the heir is a minor, the minor shall be considered a limited partner to the extent of his litigator's share. In this case the continuation of the firm shall not require a court order to keep the minor's money in the firm.

The firm's contract may provide for its continuation with the remaining partners in case of withdrawal or death of a partner or if an order of sequestration is passed against him or if he adjudged bankrupt or insolvent. If the firm's contract does not contain such a provision, the partners may unanimously agree to continue the firm. Such agreement shall not be binding third parties before recording in the Commercial Registry. (٢)

A partner who decides to leave the limited partnership will continue to have unlimited liability for all the obligations incurred during his partnership. However, he will not be liable for the debts or obligations incurred after registration of his withdrawal.(٣)

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(١) Fayez Na'em Radhwan, "Withdrawal of one of the partner from a partnership", [text in Arabic] published by Dar Al-Feker Al-Arabia, Cairo, 1986, p. 4 et seq.

(٢) Thrwat Habeeb, Lessons in Commercial Law, {text in Arabic} Cairo, 1988, p. 341.

(٣) Kameran al -Salihi, op.cit, p. 156.

CORPORATIONS

Introduction

This division is concerned almost entirely with the law relating to registered companies. These are governed in the main by the Egyptian companies act No. 159 of 1981.

We can classify the corporations into three companies joint stock Company which consider to be the modal of these companies, Limited Liability Company and commondite company limited by shares.

As we have mentioned , the joint stock company is the modal of the corporations we will address only it in chapter four from this study.

Chapter Three
Joint Stock Company

Introduction

This type of company, is also referred to as "Shareholding Company", is the most common and well known type of company in practice and is the purest form of capitalized company. It is mainly concerned with banking, finance, insurance industry and extraction and investments of oil, gas and other natural resources. Therefore it requires an agglomeration of huge capital and gigantic administrative and legal effort. Hence the Egyptian legislator has devoted a large volume of provisions of the ECCL and its Implementation Rules to the Joint Stock Company.

As this company is the most important commercial entity, we will devote this separate section to discuss the most important issues that regulated by the legislator, in this attempt, we will not discuss everything thoroughly rather to clarify the most important issues as we think necessary and reliable.

This division will present the following subjects respectively.

1: Definition and Incorporation of the JSC.

2: Capital & Financial System of JSC.

3: Equity Shares.

4 : Debt Securities (Debentures)

5: Management of the JSC.

1-The Definition & Incorporation of JSC

1.1. The Definition

A joint stock company is the purest form of capitalized company that stands at the other end of scale from the partnership. It is a company whose capital is divided into shares of equal value(١) *and* transferable in the manner provided for in the law or its Articles of Association. It is a legal entity (juristic person) created under statutory authority and has the powers, limitations, and characteristics provided for in the statutes. It is entirely separate from its shareholders, directors and employees. The liability of each shareholder is limited to the value of the shares to which he has subscribed. Consequently, shareholders are not liable for the debts or obligations of the company beyond the said value of their share. This separate existence is the basis of the most important attraction of the corporate form for joint investment. In short, The Joint Stock Company can be defined as a company whose capital is divided into shares and the liability of its shareholders is limited to the par value of their shares.

Joint Stock Company may be either a public which offers its shares and debt securities to the public through public subscription or a private (closed Joint Stock Company) that its shares are entirely subscribed by its promoters.

The Egyptian commercial companies' Law No.159 of 1981 defined Joint Stock Company; in article two as a: "Company whose capital is divided into shares of equal values; which shares are negotiable in the manner prescribed by law. The liability of the shareholder is limited to the value of the shares subscribed for by him. The company name shall be derived from the objects for

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(١) This concept is very common and well known in most current legal systems. For example, defines this company as: "The company of which the capital is divided into shares and created by the shareholders who are liable for losses within the limit of their obligation to contribute to the share capital".

The company limited by shares in the UK which, is the nearest form to the joint stoek company, has the same concept and is defined as : "A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them"See: "Palmer's Company Law", p. 2010.

which it is to be incorporated and may not include the name of one or more of the shareholders”

1.2. Historical Overview[(١)]

Finding the earliest joint-stock company is a matter of definition. Around 1250 in France at Toulouse, 96 shares of the *Societe des Moulins du Bazacle,* or Bazacle Milling Company were traded at a value that depended on the profitability of the mills the society owned.[(٢)] The Swedish company "Stora" has documented a stock transfer for 1/8 of the company (or more specifically, the mountain in which the copper resource was available) as early as 1288. [(٣)]

In more recent history, the English were first with joint-stock companies.

The earliest recognized company was the Company of Merchant Adventures to New Lands1 chartered in 1553 with 250 shareholders. Russia's Muscovy Company, which had a monopoly on trade between Moscow and London, was chartered soon after in 1555. The much more famous, wealthy and powerful English (later British) East India Company was granted an English Royal Charter by Elizabeth[(٤)] on December 31, 1600, with the intention

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(١) To read more: William Robert Scott, "The constitution and finance of English, Scottish and Irish joint-stock companies to 1720", Vol 1, Cambridge University Press, 1912. P.I

(٢) NYSE Euronext Paris: It Started with the Lyons Bourse http://www.nyx.com/who-we-are/history/paris

(٣) http://en.wikipedia.org/wiki/Joint-stockcompany

(٤) The Company of Merchant Adventurers (The Mystery, Company, and Fellowship of Merchant Adventurers for the Discovery of Regions, Dominions, Islands, and Places Unknown) was founded in London, possibly in 1551 by Richard Chancellor", Sebastian Cabot and Hugh Willoughby. Some 240 adventurers purchased shares at 25 Pounds each and they received a royal charter for their company from King Edward in 1553, with Sebastian Cabot appointed its Governor. The purpose of the Company was to seek a new northern trade route to China and the Spice Islands (the Moluccas, now part of Indonesia). Thomas

of favoring trade privileges in India. The Royal Charter effectively gave the newly created Honorable East India Company a 15-year monopoly on all trade in the East Indies. The Company transformed from a commercial trading venture to one that virtually ruled India as it acquired auxiliary governmental and military functions, until its dissolution.

Soon afterwards, in 1602, the Dutch East India Company(١) issued shares, that were made tradable on the Amsterdam Stock exchange.(٢) This invention enhanced the ability of joint-stock companies to attract capital from investors as they now easily could dispose their shares.

During the period of colonialism, Europeans, initially the British, trading with the Near East for goods, pepper and calico for example, enjoyed spreading the risk of trade over multiple sea voyages. The joint stock company became a more viable financial structure than previous guilds or state-regulated companies. The

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B. Courtney, "The law of Private Companies", Bloomsbury Publishing, 2002, p.26.

(١) Irwin, Douglas A. "Mercantilism as Strategic Trade Policy: The Anglo-Dutch Rivalry for the East India Trade". The Journal of Political Economy (The University of Chicago Press) 99 (6): (December 1991). pp 1296-1314.

(٢) The Amsterdam Stock Exchange is considered the oldest in the world. It was established in 1602 by the Dutch East India Company for dealings in its printed stocks and bonds. It was subsequently renamed the Amsterdam Bourse and was the first to formally begin trading in securities. http://en. wikipedia.org/wiki/Joint-stockcompany.

first joint-stock companies to be implemented in the Americas were The London Company and The Plymouth Company. (١)

Transferable shares often earned positive returns on equity, which is evidenced by investment in companies like the British East India Company, which used the financing model to manage trade in India. Joint stock companies paid out divisions (dividends), to their shareholders by dividing up the profits of the voyage in the proportion of shares held. Divisions were usually cash, but when working capital was low and it was detrimental to the survival of the company, divisions were either postponed or paid out in remaining cargo which could be sold by shareholders for profit.

However, in general, incorporation was only possible by Royal Charter or private act, and was limited owing to the government's jealous protection of the privileges and advantages thereby granted.

As a result of the rapid expansion of capital intensive enterprises in the course of the Industrial Revolution in Britain, many businesses came to be operated as unincorporated association or extended partnership, with large numbers of members. Nevertheless, membership of such associations was usually short term, so their nature was constantly changing.

Consequently, registration and incorporation of companies without specific legislation was introduced by the Joint Stock

(١) The London Company (also called the Charter of the Virginia Company of London) and the Plymouth Company were English companies founded in 1606 by James lof England with the purpose of establishing settlements on the coast of North America as part of the Virginia Company In form they were similar to the Company of Merchant Adventures of London. The territories of the companies were the North and the coast of North America. Charles Wankel," Encyclopedia of Business in today's world", SAGE publications USA, 2009, p. 333.

companies Act 1844.(١) Initially, companies incorporated under this Act did not have limited liability, although it became common for companies to include a limited liability clause in their internal rules. In the case of Hallett v Dowdall(٢) the English Court of the Exchequer held that such clauses bound people who have notice of them. Four years later the Joint Stock Company Act 1856 provided for limited liability for all joint-stock companies provided, amongst other things, that they include the word "limited" in their company name. (٣) The landmark case of Salomon v Salomon & Co Ltd established that a limited Liability

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(١) The Joint Stock Companies Act 1844 was an Act of the Parliament of the United Kingdom that expanded access to the incorporation of joint stock company. Before the Act, incorporation was possible only by royal charter or private act and was limited owing to Parliament's jealous protection of the privileges and advantages thereby granted. As a result, many businesses came to be operated as unincorporated association with possibly thousands of members. Any consequent litigation had to be carried out in the joint names of all the members and was almost impossibly cumbersome. Though Parliament would sometimes grant a private act to allow an individual to represent the whole in legal proceedings, this was a narrow and necessarily costly expedient, allowed only to established companies. The 1844 Act created Registrar of Joint Stock Companies, empowered to register companies by a two-stage process. The first, provisional, stage cost £5 and did not confer corporate status, which arose after completing the second stage for another £5.
http://en.wikipedia.org/wiki/Joint_Stock_Companies_Act_l 844#cite_ref-1.

(٢) Hallett vDowdall,(1852)181.jq.B2, 118.E.R 1.

(٣) The Joint Stock Companies Act 1856 was a consolidating statute, recognized as the founding piece of modern United Kingdom company law legislation. Unlike other Acts of 9Parliament that preceded it, the 1856 Act provided a simple administrative procedure by which any group of seven people could register a limited liability company for themselves. Richard Spearman E. Fairies, "Joint stock companies: being a practical treatise on their formation", published by. Farries and Brothers, Bucklerburst, London 1856.

company had a distinct legal personality, separate from that of its individual shareholders. (١)

1.3. General Characteristics

Due to the concept explained above, the main characteristics of the joint stock company will be discussed in the following paragraphs.*

Firstly: Joint Stock Company is a corporation:

In most cases, a joint stock company consists of a large number of shareholders. They are the shareholders who apply to subscribe to the company's shares. In most cases, the company's shares are offered to the public for subscription. A shareholder is considered a partner who applies to subscribe to the shares, and this leads to a large number of shareholders in the company so they don't know each other. In the life of the company, these shareholders exchange shares among strangers in the stock market, and even if there is a personal consideration between the founders at the beginning of the incorporation, it is largely hidden in the life of the company as a result of the trading of shares. Therefore, the existence of this company is not affected by any defect that occurs to the personal considerations of any shareholder, such as his death, insolvency, bankruptcy, interdiction, or even his withdrawal by disposing of his shares to third parties (٢).

The capital of the company is divided into shares of equal value and are negotiable by commercial methods, as the most important thing that distinguishes this company from partnership and the limited liability company is the ability of its shares to be negotiated by commercial methods, i.e. by endorsement if it is a promissory, or by delivery if it is for its bearer, or by registration

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(١) 1. Salomon v A Salomon & Co Ltd [1897] AC 22 is a landmark UK Company law case. The effect of the Lords' unanimous ruling was to uphold firmly the doctrine of corporate personality, as set out in the Companies Act 1862so that creditors of an insolvent company could not sue the company's shareholders to pay up outstanding debts. Andrew Hicks,S.H. Goo," Cases and Materials on Company Law", 6th edition, Oxford University Press, New York 2008, p. 121.

(٢) Dr. Mahmoud Samir Al-Sharqawi, op cit, p. 124.

in the company's books If the share is nominal, then every condition stipulated in the company's articles of association that prohibits the shareholder from assigning his shares to others is considered void. The negotiability of the shares of the joint stock company is one of the factors for the success of this company, as this leads to the desire of savers to buy shares, which leads to a rise in their prices in the stock market, increases the company's credit and helps its project flourish (١).

Secondly: liability of the Shareholder:

Article 2/2 of Companies Law No. 159 of 1981 clarified the scope of the shareholder's liability in a joint stock company, stipulating that the shareholder is not liable for the company's obligations except within the limits of the shares he has subscribed to, in view of this limited liability of the shareholder, he does not acquire the character of a merchant once he becomes a shareholder in the joint stock company, unlike the general partner. It is based on that , the bankruptcy of the company does not lead to the bankruptcy of the shareholder, even if he is a merchant, and limiting the shareholder's liability for the company's debts to the amount of his share is the most important factor that led to The popoulatory of joint stock companies, in addition to the ability of the share to be transferred by commercial methods, as we mentioned.

Thirdly: The name of the company:

Article 2/3 of the Companies Law states that the company shall not have a commercial name that derives from the purpose of its incorporation, and the company may not take the names of the shareholders or the name of one of them as its title. Article 5/1 of the executive regulations stipulates the same provision, and the second paragraph thereof That the company may not take for itself a name identical or similar to the name of another existing company, or that would cause confusion about the type or nature of the company.

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(١) Dr. Edward Eid, Commercial Companies, Part 2, (Joint Companies), Beirut, 1970, item 194.

These provisions mean that the name of the joint-stock company is derived from the purpose for which it was established and not from the name or names of the shareholders in it, as is the case in partnerships. However, as an exception to the previous provisions, the name of a natural person may be called if it existed before the company was transformed into a corporation. Likewise, if it was an individual project, a general partnership, or the name of a patent holder on which the project was based, then it was transformed into a joint stock company, and in this case, the phrase joint stock company is required to be added next to the trade name ([1]).

Examples of joint stock company names include: Misr Spinning and Weaving Company, Al Sharq Insurance Company, Nile Pharmaceutical Company..etc. All contracts and papers issued by the company, its correspondence, invoices, advertisements, papers and publications, must bear the title of the company preceded or synonymous with the phrase "Egyptian Joint Stock Company – EJSC" (article 8 of the Regulations), and the name of the company must be distinguished from all other similar registered offices in all commercial registry offices in Egypt ([2]).

Fourthly: juristic personality:

In view of the economic importance of the joint-stock company and the protection of public savings, the legislator surrounded the formation of the joint-stock company and its acquisition of legal personality by special procedures and stipulated in Articles 17, 18, 19, companies amended by Law No. 3 of 1998, and according to Article 17, the founders notify the administrative body - the company authority - of the incorporation of the company and attach The notification documents are set forth in this article, and the applicant of notification gives a certificate to that effect, and the company is registered in the commercial registry according to that certificate.

([1]) Dr. Samiha Al-Qalyubi, op cit, p. 188.

([2]) Dr. Ahmed Mohamed Mehrez, op cit, p. 402.

A joint-stock company with a public subscription under Law No. 26 of 1954 acquired a legal personality as soon as the republican decision was issued to establish the company. As for a joint-stock company with a closed subscription, that is, whose shares are not offered for public subscription and subscription in its shares is limited to the founders and does not need a republican decision to establish it. Rather, her contract is written in an official document, and she did not acquire legal personality under the aforementioned law except by registration in the commercial registry.([1])

As for Law No. 159 of 1981, Article 22 of it stipulates that for all types of companies it governs, the company's contract and its articles of association, as the case may be, must be published in the Commercial Register, and the legal personality of the company is not established, and it may not start its business except from the date of registration in the Commercial Register ([2]).

Fifthly: The company's capital:

The capital of a joint-stock company plays a vital role in this company, where the liability of all shareholders is limited, in comparison to the capital in partnerships, where the base is the personal and joint liability of the partners for the firm's debts, and

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([1]) the company authority, according to the amended Article 18, companies may object to the establishment of the company for reasons specified in this article - and the company must, within fifteen days of being notified of the objection, remove the reasons for the objection and file a grievance with it to the Minister of Economy. Remove it within ten days. In the event of rejection of the complaint, the company shall be notified by registered mail to remove the reasons for the objection. If it does not remove them within ten days, the Companies Authority shall issue a decision to write off the company from the commercial register, and the legal personality of the company shall cease to exist from the date of cancellation. Concerned parties may appeal this decision before the Administrative Court within sixty days from the date of its notification or knowledge of it.

See: Dr. Tharwat Abdel Rahim, op cit, p. 499.

([2]) Dr. Mahmoud Samir Al-Sharqawi, op cit, p. 128.

the capital of the joint-stock company at least is almost guaranteed the company's sole creditors. For this reason, the legislator establishes a fundamental rule, which is “that the company’s capital is sufficient to achieve its purpose.” The executive regulations of the Companies Law set the minimum capital for a joint-stock company in accordance with the provision of Article 6 of it, at 1000,000 pounds for public subscription companies, and 250,000 pounds for closed companies ([1])

1.4. Advantages

Shareholders of joint Stock Company enjoy a number of privileges such as the followings:

1- The shareholders may attend general meetings, and vote for directors and sometimes the principal officers. The shareholders receive annual reports, and vote upon the yearly audited set of accounts. Other resolutions upon important decisions can be put to them. [٢]

Individual shareholders can sometimes stand for directorships within the company, should a vacancy occur.

2- The shareholders are not usually liable for any company debts that exceed the company's ability to pay. However, the limit of their liability only extends to the face value of their shareholding. This concept of limited liability largely accounts for the success of this form of business organization. [٣]

3- Ordinary shares entitle the owner to a share in the company's net profit. This is calculated in the following way: the net profit is divided by the total number of owned shares, producing a notional value per share, known as a dividend. The individual's share of

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([1]) Dr. Hamdallah Muhammad Hamdallah, The extent of freedom of participation in disposing of his shares, a comparative study in Egyptian and French laws, Arab Renaissance House, Cairo 1994, item 35 and beyond.

(٢) Roman Tomasic, Stephen Bottomley & Rob McQueen," Corporation Law in Australia", op.cit, p. 4.

(٣) Gordon R. Walker, "Commercial Applications of Company Law in New Zealand", published by CCH, NewZeland, 2002 p, 368.

the profit is thus the dividend multiplied by the number of shares that a shareholder owns. (١)

1.5. Incorporation of the Joint Stock Company

The incorporation of a joint-stock company means the set of material legal acts required for the formation of a start-up company in accordance with the provisions of the law. These acts are carried out by a group of people who are the first to think of establishing the company, and the law calls them the promoters.

The establishment of a joint-stock company varies according to the method used by the founders to raise capital. The founders may resort to raising the capital of the company by offering its shares for public subscription, so that the door for participation in the company is open to all on an equal footing through one of the banks licensed by a decision of the competent minister to receive the subscription., or through companies established for this purpose, or companies licensed to deal in securities and after the approval of the Capital Market Authority.

The founders may resort to collecting the capital of the company from themselves only, so they subscribe to all its shares and do not put any of them for subscription, which is called the immediate or closed incorporation.

It is noted that the legislator has singled out the establishment of the joint-stock company through immediate or closed incorporation with provisions that are more simplistic in procedures than those subject to successive incorporation, i.e. through public subscription, as it required the approval of the competent minister for the establishment of these companies.

The reason for this differentiation in the legislation is due to the danger represented in going to public savings and how to use it to serve the national economy and the need to protect the savers and subscribers from the means of deception or fraud that the

(١) Ron Dagwell, Greame wines & Cecelia Lambert, "Corporate accounting", 4th edition, University of New South Wales Press, UNSW Press Book, Australia 2007.p.536

founders of joint-stock companies may resort to on this path, which are caveats that are not found in closed incorporation.
We present successively the establishment of a joint-stock company through public subscription in a first requirement, and we present in a second requirement the immediate or closed incorporation, and finally, in the third requirement, we present the penalty that results from breaching the rules and procedures of incorporation.

1.5.1. General Background

Formation of a joint stock company is slow and difficult in the Egyptian jurisdiction, because companies are formed upon filing a Memorandum of Association. It is not unusual for all the steps necessary for the existence of a corporation to be completed in a long time. The constitutional documents of a joint stock company are the Memorandum and Articles of Association.(١) Standard forms of both of them have been issued by a ministerial Decision. Any variation from the model may constitute a ground for the Ministry of Commerce to reject the application to establish the company. However, additional provisions are permitted to the models provided they do not conflict with the companies' law.

The by-laws of the company which are not a matter of public record are an internal document deals with some matters as the election of directors, powers of executive committee, calling and formalities of conduct and meetings of shareholders, and the board of directors. These matters are also the subject of companies' law, but in most instances, can be varied by the shareholders or in some cases by the board of directors. Together the Articles of association and by-laws are the rules which regulate the company's activities.

Traditionally, the Articles contain: the name of the company, the location of its registered office, a statement of its

(١) The Contract of Association resembles Memorandum of Association; in fact authors usually translate the contract of association to Memorandum of association. Hence the memorandum will be used instead of a Contract.

purpose, term of existence a description of share capital[١] *and* rights of preference shares if any. In addition, the Articles may include provisions relating to the regulation of the affairs of the company as are deemed appropriate, such as directors' powers, procedures of decision making, and whether a special majority of shareholders is required for approving of certain resolutions. [٢]

1.5.2. Promoters

Before a company can be formed, some people had an idea and intention to form it and took the necessary steps to fulfill that intention to be a real fact. Such people called "promoters".[٣] It was alleged that the "promoter" is not a legal term, but of business usefully summing up in a single word a number of business operations familiar to the commercial world by which a company is generally brought into existence.[٤] However a promoter has been described, for example, as" one who undertakes to form a company with reference to a given project and set it going and who takes the necessary steps to accomplish that purpose[٥]

1. Who are the Promoters in Egyptian Law?

The Egyptian legislator defines promoters of the joint stock company in article 7/1 from the Egyptian company's act No.159 of 1981as a person who actually participates in the incorporation of a company for the purpose of shouldering the responsibility

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(١) Ibid. It should be noted that, in the UK, these matters are usually determined in the Memorandum of Association.

(٢) Charlesworth's /'Company Law", 13th edition, published by Steven & Sons, 1978, p. 103.

(٣) Mosleh At'trawneh, op.cit, p. 404.

(٤) Joseph H Gross, «Company Promoters)), 86 Law quarterly Review, at 493. Mosleh At'trawneh, op.cit, p. 404. In Arabic Jurisprudence, there are many definitions for promoters. See for example: Sameha Al-Qulyoubi, "commercial companies" (text in Arabic), Dar Al-Nahadha Al- Arabia, Cairo, 1981, p. 191. Mustafa Kamal Taha, «Commercial Law)) (text in Arabic), Monsha'at Al-Ma'ref, Alxandreia, 1982, p.255.

(٥) Per Cockburn C.J. in Twycross v. Grant (1877) 2 c, P, D 469 (C.A) at p. 541. See Geoffrey Morse, Charlesworth's Company Law. Op.cit. at p 115.

arising there from. According to the law, a person shall be considered a founder if he has, in particular,

1. Offered an in-kind share or in cash share upon the incorporation of the company or,
2. Signed the preliminary contract or,
3. Applied for licensing the company.

According to the Commercial Companies' Law, a joint stock company should have at least three founders (promoters) [(١)]So, it can be said that: the promoters are persons[(٢)] who give instructions for the preparation and registration of the Memorandum and Articles of association, the persons who obtain the directors (Usually promoters are themselves prospective directors), the persons who issue prospectus, negotiate underwriting contracts, contract for purchase of property or procure capital. [(٣)]

Consequently, if a person acts as a servant or an agent of the promoters or was hired to fulfill a job for them, is not, himself, a promoter. Therefore, a lawyer and attorney public who do the legal work necessary to the promoters of a company are not among promoters. [(٤)]

2. Legal Nature of Promoters' Acts

Promoters are not agents for the company which they are incorporating as a company cannot have agents before it comes

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(١) according to the previous Egyptian law No 26/1954 which stated that if the promoters are less than seven the company should be void. However this law was substituted by the law No 159/1981. According to the article (8) of this law, promoters should not be less than three.

(٢) The promoter may be an individual or a juristic person. Any natural person having the required capacity may act as a promoter, Also a juristic person (for example a company) may also act as a promoter of a new under incorporation company. See Hossam Issa & Farag Soliman, "Business Law", op.cit, p. 243.

(٣) See Geoffrey Morse, «Charlesworth's Company Law». Op.cit. at pi 15

(٤) Mosleh A'atrawneh, op.cit, p.404. Mohammed Htelalya, op.cit, p. 162.

into existence.(١) Neither, they are treated as trustees for the future company.(٢) In fact, from the moment they act with the company in mind, the promoters stand in a fiduciary position. Therefore they should not make any secret profit out of the promotion of the company.(٣) Hence, promoters and people acting on behalf of the joint Stock Company are jointly and severally responsible for the consequences of their undertakings carried out before the company is incorporated unless special formalities are complied with,(٤) The promoters should observe in their dealings with the company under formation a care and diligence expected from the ordinary person; that is the highest degree of care that any ordinary person may paid under a same circumstance. The promoters shall be jointly liable for any damages the company or third parties may sustain as a result of their failure to comply with this provision.(٥)

If the company is incorporated, the consequences of the acts made by the promoters, in the course of the company's incorporation, shall be borne by the company together with all related expenses paid by the founders. Article (13) stipulates that: *"contracts and acts made by the founders in the name of the company under incorporation shall bind the company after incorporation if they were necessary for the company's incorporation ".*

Any act made between the company under incorporation and the founders shall not bind the company after incorporation unless approved by the board of directors, provided that the board members do not have connection with the founder who had made such act or that they shall not profit from this act, or unless such act is approved by a resolution adopted by the company's constituent general assembly provided that any of the interested

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(١) See Geoffrey Morse. Op.cit. atpll6

(٢) R. P. Maheshwari, «Principles of Business Studies» vol I, published by Bitambar publishing Company, India, 2004. p.208.

(٣) Mosleh At'tarawneh, op.cit, p, 408.

(٤) Farrar's Company Law, pp. 118-134.

(٥) See Geoffrey Morse, "Charlesworth's Company Law". Op.cit. at p. 118.

founders has no counted votes in the meeting. In all cases the interested founder shall put all related facts before the authority approving such acts. However, such contracts only bind the company if they were necessary for the company's incorporation.(١) Nevertheless, the commitments made before signature of statutes become a part of the company's responsibility, upon the registration with the commercial register, if such acts are approved by:

1. A decision of the board of directors in condition that the person who carried on the commitment is not in the board, or
2. A decision of the shareholders committee, or
3. A resolution of the general assembly in a meeting not attended by the concerned promoters.

In addition to the above, undertakings made with third party will be a part of the company's obligations, if they were necessary for the establishment of the company; otherwise they should be approved by the board of directors or the general assembly.(٢) In all circumstances, undertakings made after the execution of the statutes before registration, bind the company upon the registration to the extent of the powers of attorney given by shareholders.

Apparently, before submitting of an application for incorporation a company, promoters should think about constituent documents as most of the particulars required for incorporation should be stated in the Memorandum and Articles of Association.

1.5.3. **The incorporation's Documents.**

The constitutional documents of a joint stock company are the Memorandum and Articles of Association which are respectively the charter and by- laws of the company. As aforementioned they both should be duly signed by the founders.

1- The Memorandum of Association

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(١) Article (13) of the ECCL.

(٢)the Egyptian law explicitly stipulated these provision Articles 12-13. Mohammed Helalaya, op cit, p 164.

The memorandum of Association is the most important document as it is considered the constitution of the company. It regulates the company's external affairs,(١) in other words, it regulates the partner's relations and the relations between the company and outsiders.(٢) It, particularly, defines the capacity of the company. A company may pursue only such objects and exercise only such acts as are conferred expressly in the memorandum. All other activates are *ultra vires* and void. Hence, it is important that special care should be taken in drafting the memorandum.(٣) As the purpose of the memorandum is to enable persons who invest in or deal with the company to ascertain what its name is, its objects, capacity, liability of members and what share capital is authorized to issue.(٤)

Promoters of the company should draft the proposed Memorandum which, according to the law and executive regulations, should include the essential details of the company.

2- The Articles of Association

Whereas the memorandum of association is the external charter of the company, the Articles of association are the charter for the internal affairs of the company. The Articles deal with the issue and transfer of shares, alteration of capital, general meetings, voting rights, directors, dividends, accounts, audit, winding up and other matters which are related to the internal affairs.(٥) Generally, the Articles of Association are subject to the Memorandum and cannot confer wider powers on the company than those given in the memorandum.(٦) If there is a conflict between the memorandum and Articles the provision of the former must prevail.(٧)

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(١) Geoffrey Morse, Charlesworth's Company Law, op.cit, p. 59.

(٢) Mosleh A'atraweneh, op.cit, p. 406.

(٣) Farrar J.H & Hannigan B.M, Farrar's Company Law, (4th edition), Butterworths, London, 1998,p.p.97-114.

(٤) Geoffrey Morse, op.cit, p.59.

(٥) Geoffrey Morse, op.cit, p. 103.

(٦) Mosleh At'tarawneh, op.cit, p. 407

(٧) Farrarer, op.cit, pp.116-124.

In fact the Articles may contain any rules the member believe that should be regulate the business of the company subject to the following conditions. (١)

1- The article should not contain anything illegal or contrary to the public order.
2- The Article should not, expressly or implicitly, authorize anything forbidden by the Commercial Companies' Law,
3- The Article should not extend or modify the Memorandum. (٢)

1.5.4. Incorporation Process

The Joint Stock Company does not exist as a juristic person until it is registered with the commercial registrar. Before such registration it is only existed vis-a-vis its partners as a mutual binding agreement, though, it cannot perform any acts or to be subject to any rights. Promoters must act on its behalf to carry out all the arrangements of incorporation. (٣)

In addition to the general requirements, the establishment of joint Stock Company requires a chain of procedures starting with an application that should be submitted to the competent administration, (٤) ending by the chartering of its documents.

This part of study deals with incorporation process of JSC as stated in the Egyptian commercial company Act.

1-An Application for Incorporation.

Incorporation of the company is subject to an application to be made by the promoters and submitted to the competent administration. According to the law of the commercial companies' law, the application shall be accompanied with an

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(١) Mosleh At'tarawneh, op.cit, p. 407.

(٢) Ibid.

(٣) Ibid, p. 404.

(٤) These procedures are common between all the civilized legislations such as: Egyptian law, see Mohammed Helalya, op.cit, p. 161 et seq. Jordanian law, see Mahmud Al-kelany, op.cit, p. 93 et seq. Libyan Law, Masoud Madi & Fadhel Al-Zahawi, op.cit, p. 175. British Law, Geoffrey Morse, Charlesworth's Company Law, op.cit, p.59 et seq.

adequate statement on the company's particulars, drawn from the company's preliminary Memorandum and Articles of Association. The statement shall include the name of the promoters, their professions and address. Other attachments shall be also submitted, including:

A copy of the company's preliminary Memorandum and Articles of Association duly signed by the promoters An evaluation of in-kind shares, if any, as provided for in the law of commercial companies.

2. Submitting the Application

Once the application of establishment a company is submitted, the Ministry of Commerce and Industry shall ascertain that the company is to be incorporated on a sound basis and that the Memorandum and Articles of Association do not contravene with the provisions of law. To this effect, the Ministry may request the founders to provide additional details and supporting documents whenever necessary. It may also request that amendments should be made to the company's Constitutes to make them consistent with the provisions of the law or compliant with the standard forms of the Memorandum and Articles of association.

3- Subscription for Shares.

In general the issued capital of the Egyptian joint stock company whose shares are not offered for public subscription s L.E250,000 and the minimum issued capital of the company whose shares are offered for public subscription is L.E 1,000,000. The capital must be divided into shares of equal value, with a nominal value of between L.E 5 and L.E 1,000. All shares must be registered. A shareholder’s liability is limited to the value of the share subscribed for by him. Share certificates are issued in the name of each shareholder.

Upon incorporation or upon increase capital a minimum of 49% of the share capital must be offered for one month to the public and Egyptian natural and juridical persons unless Egyptian shareholders already hold 49%. The JSC is permitted to incorporate if, after one month the JSC is unable to obtain 49% Egyptian shareholders.

10% of the issued capital has to be paid at formation and it has to be increased to 25% within three months from the date of formation of the company, and the rest has to be paid within a maximum of five years from this date.

Moreover, the issued capital of the company may be 100% foreign owned and directed.

The company may also specify in its articles of association an authorized capital, which may not exceed ten times the issued capital.

4- The Constitutive General Assembly

Once the subscription is closed, the founders within thirty day shall invite the subscribers for a Constituent General Assembly to be held. Such a meeting is held once during the company's life.(١) The summon for the meeting should be published, in at least two daily Arabic newspapers; one of them must be local. The publication shall include the agenda of the meeting.

i. Quorum of the Constitutive Assembly

Each subscriber has the right to attend the constituent assembly meeting regardless of the number of shares he owns. (٢) The meeting cannot be held unless a quorum of at least 50% of the capital presents otherwise another summon shall be sent for a second meeting to be held within fifteen day from the date of the first meeting. The second meeting cannot be held unless a quorum of at least 25% of the issued capital presents.

The assembly meeting shall be chaired by a subscriber who own the majority of the shares if he accepted to be the president Resolutions shall be taken by the sample majority of the shares attended unless the law required a special majority in some specific matters. (٣)

ii. Powers of the Constitutive Assembly

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(١) Mosleh At'tarawneh, op.cit, p. 411.

(٢) ECCL, Article (27).

(٣) ECCL, Article (27/3).

The constitutional meeting is mainly concerned with the elementary questions related with the incorporation of the company, therefore the main powers of this assembly include:

1. Approving the statutes of the company or amend them as necessary. Amendment, however can only be made by the majority of the shareholders representing two thirds of the issued capital conditional to agreement of promoters. If statutes of the company are not approved under any circumstances, promoters cannot pursue any further procedures and the Project should be cancelled.
2. Approving the promoter's report on incorporation process including the expenses of incorporation.
3. Approving the valuation of in-kind assets.
4. Electing the first board of directors and appointing the auditors.
5. Declaring the company's finally incorporation.

Having reached this stage, the company will become a real fact and the board of directors shall start its activities.

It is to be noted that, the first board of directors shall register the company and its Articles of Association in the Commercial Registry in accordance with the provisions of the law; otherwise the members of the first board of directors shall be jointly liable for any damages arising from the failure to such registration. (١)

iii. Conformity with the Law

If the company is legally incorporated, the consequences of the acts made by the promoters in the course of the company's incorporation shall be borne by the company together with all related expenses paid by the founders. However, if the company is not incorporated, the subscribers shall get back the amounts they have paid, and the promoters shall be jointly liable for refunding these amounts in addition to paying compensation if necessary. The promoters shall also bear all the incorporation expenses and shall be jointly liable towards third parties for the acts they conclude during incorporation.

(١) Article (101).

However, the shareholders shall not use the nullity of the company as an excuse against third parties. The company shall be liquidated as a going concern without prejudice to the right of any concerned party to institute legal proceedings for joint liability against the promoters and members of the first board of directors as well as the first auditors.

2-The Capital & Financial System of JSC

The Legislator, in respect of the capital of Joint Stock Company, adopted more detailed provisions than any other subject in the companies' law. It was provided that the Memorandum must state the issued capital with which the company proposed to be registered and its division into shares of a fixed amount. The shares may be divided into classes, e.g. preference and ordinary shares. The issued capital may be increased or decreased by a special resolution.

In addition to some aspects related to the financial system of the JSC, this chapter deals with deferent topics related with the capital such as, the structure of the capital and changes of the capital that may occur according to the circumstances a company may face.

2.1. Different Meanings of the Capital

The term (capital) which is used in connection with companies has several meanings; it may be used to denote:

1. The nominal or Authorized Capital

Which is the amount of share capital that the company is authorized to issue depends on its business' requirements. This amount must be set out in the Memorandum of association. (١) The nominal capital of the company can be actual or potential.(٢)

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(١) Rambaran Mangal, «An Introduction to Company Law in the Commonwealth Caribbean)), published by Canoe Pres. University of West Indies, 1995, p.82 . Douglas Smith, "Company Law", Butterworth-Heineemann, Oxford, UK, 1999, p. 106 et seq.

(٢) Patricia Clayton «Forming a Limited Company: A Practical Guide to Legal Requirements and Procedures", the Sunday Times Series Development Press, 10th edition, London 2008, p. 39.Thomas Ewan Cain, Enid A. Marshall, L.P.K

According to the Egyptian Law the company may have an authorized capital not exceeding ten times of the issued capital.

2. The Issued Capital

The issued capital or as can be called (allotted capital) is that part of the company's nominal capital which has been issued to the subscribers. In fact, it is the actual capital which is usually meant whenever the capital is mentioned. It is the capital with which the company is proposed to be registered, and the division thereof into shares of a fixed amount, must be set out in the Memorandum of association and may be increased or decreased as will be explained later. (١)

3. The Paid up Capital

It is that part of the issued capital which has been paid up by the shareholders. According to the Egyptian law the minimum amount can be paid by the subscribers is 1/4 of the nominal amount of the share. It can be increased or decreased according to the memorandum of association. (٢)

4. The Uncalled Capital

The uncalled capital is the difference between the paid up capital and the total value of the issued capital. It is also known as the unpaid capital. It can be called up at any time within ten years. (٣) Nonetheless, the uncalled capital is not considered as a part of the assets until it is called up. (٤)

Suppose the issued capital is L.E 1.000.000 divided to 1.000.000 shares of L.E 1.00, the required ratio to be paid from shareholders is 40% which is the total of L.E 400.000 that is the paid up capital. The remaining of the amount is the uncalled up capital.

5. The Reserve Capital

Brindley & John Charlsworth, "Charlesworth and Cain company law ". Published by Stevens &Sons, London 1977, p. 210.

(١) Geoffrey Morse, op.cit, p. 183.

(٢) Geoffrey Morse, op.cit, p. 184.

(٣) Rambaran Mangal, "An Introduction to Company Law in the Commonwealth Caribbean", op.cit, p. 83.

(٤) Ibid.

Reserve is the amount of funds or assets necessary for a company to have at any given time to enable it, with interest and premiums paid as they shall accrue, to meet all claims on future. The reserve is always reckoned as a liability. When a business creates a "Reserve", it is essentially setting aside a certain amount of money for a specific purpose. Reserves are monies set aside to act as a buffer against future losses.

The reserve capital or reserve liability, is that part of the uncalled capital which a company should have by special resolution and shall not be called up except in the event and for the purpose of the company's being wound up. (١)

6. The Trend of Egyptian Law

Essentially, the company's capital must be sufficient enough to achieve its objectives, and be denominated in the Egyptian currency.

Generally, the company shall have an issued capital which, should be specified by the articles of association. The authorized capital should not exceed ten times of the issued capital. The issued capital shall be fully subscribed for, and each subscriber shall pay at least one-fourth of the nominal value of cash shares, provided that the remaining amount shall be paid within a period of time.

3.2. kindes of Shares

Companies may confer different rights according to different classes of shares. Such as: ordinary shares, preference shares, and incorporation shares. In other occasions, other classes of shared may be found. (٢) The name by which a class of shares is called gives only an indication of the rights attached to in any particular company. To ascertain the rights, reference must be made to the Articles or the terms of such shares' issue. (٣)

The Memorandum of association is required to set out the division of the issued capital into shares of a fixed amount, but it

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(١) Geoffery Morse, op.cit, p. 184. Kameran Al-Salihi," Bahrain Commercial Comp nies & Bankruptcy -Composition Law", University of Bahrain, 2005, p. 76.

(٢) Ibid.

(٣) Ibid.

is not required to set out different classes of shares into which the capital is divided. However, Articles, normally, give companies power to issue different classes of shares.

Article (35/2) of the ECCL provides some privileges to certain types of shares with respect to voting, profits, or liquidation's proceeds or any other rights may be provided for in the company's Articles of Association on incorporation, or in an extraordinary general meeting's resolution by a numerical majority of the partners representing at least two-thirds of the capital, provided that the shares of the same type shall be equal in respect of the advantages, rights and restrictions in condition that these The privileges, rights or restrictions shall not be amended unless otherwise decided by the extraordinary general assembly with the approval of the majority of votes referred to above. The Minister of Commerce and Industry decrees the provisions, requirements and conditions of issuing preferred stocks.

3.2.1. Nominal shares

In Egypt, as in many other countries, shares can be either nominal or for bearers. (١) According to the Egyptian stock market Act, shares shall be issued in the name of their owners, However, the company may issue bearer shares

Although shares are indivisible, two or more persons may jointly own one or a number of shares in conditional that only one represents them before the company. Partners of share(s) jointly owned are jointly liable for the obligations resulting from such ownership.

3.2.2. Bearer Shares

Bearer share is an equity security that is wholly owned by whoever holds the physical stock certificate. The issuing company neither registers the owner of the stock, nor does it track transfers

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(١) See, article (2) of the Egyptian Act No 95 of 1992 concerning commercial companies which stipulates that the statute of the company may provides for issuance of bearer shares for not more than 25% of the total number of the company's shares. The value of these shares should be fully paid in cash. See Dr Hossam Issa & Farag Soliman, op cit, p. 268 et esq.

of ownership. The company disperses dividends to bearer shares when a physical coupon is presented to the firm. (١)

Nominal Shares remain registered and cannot be converted into bearer shares until they are fully paid. (٢)

3.2.3. Preference Shares

Preference shares are those the issue of which is authorized by the Memorandum or the Articles which are entitled to some priority over the other shares in the company.(٣) They usually carry a right to preference in payment of dividend (if a dividend is declared) at a fixed rate; and a right to preference in the repayment of capital in case of winding up. They are defined as a Company stock with dividends that are paid to shareholders before common stock dividends are paid out. In the event of a company bankruptcy, preferred stock shareholders have a right to be paid first. (٤)

The rights attached to preference shares are always a question of construction of the Memorandum, Articles and terms of issue.

Although increasing the issued capital by preference shares is not allowed unless initially so authorized by a resolution passed by the extraordinary general meeting representing, at least 2/3 of the capital at the time of increase, statutes of the company and the extraordinary general meeting representing majority of holding 2/3 of shares, while increasing the capital, may decide some privileges such as voting, profits or dividends or any others rights, to be enjoyed by a class of shares.

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(١) To read more:http:// www.investopedia.com/ terms/ earer_ shareas p#ixzz2MpPVUGKh.

(٢)Patrick A. A. Vanhaute, "Belgium International Tax Planning", IBFD ,2010, Netherlands, p.30.

(٣) Jon Rush & Michael Ottley, «Business Law", Published by Thomson Learning, London, 2006, p. 216

(٤) In some countries preference share shareholders, unlike common shareholders, usually do not have voting rights. Read more: http://www.investopedia.eom/ terms/p/ preference shares.asp#ixzz2MpaUgmYR

3.2.4. Deferred Shares

Deferred shares, or as often called founders or management shares, are usually a small nominal amount with right to take the whole or a proportion of the profits after fixed dividends has been paid on the ordinary shares. Rights of deferred shares depend on the Articles of association or the terms of issue.(١) They are generally issued to the company's founders that restrict their receipt of dividends until dividends have been distributed to all other classes of shareholders as deferred share is a method of stock payment to directors and executives of a company through the deposit of shares into a locked account. Therefore, these shares do not have any rights to the assets of a company undergoing bankruptcy until all common and preferred shareholders are paid. The value of these shares fluctuates with the market and cannot be accessed by the beneficiary for the purpose of liquidation until they are no longer employees of the company. (٢)

Deferred shares are rarely issued now and the modern tendency is to convert existing deferred shares into ordinary shares. (٣)

3.2.5. Enjoyment Shares

Redemption of shares is a very unusual transaction regarding the company's capital. The company reimburses a part or all of its par value of the shares out of its profits or distributable reserves without decreasing its capital. Redemption can be affected trough reimburse a part of the par value to all shares annually until the said shares redeemed within the specified duration, or trough any other manner provided for by statute of the company. (٤) Each share of the same class must be

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(١) Read more:
http://wvvw.investopedia.com/terms/d/deferredshare.asp#ixzz2MwYtGG5A

(٢) Chandra Bose, «Business Law», published by Asoke K. Ghosh PHI, New Delhi, 2008, p.286.

(٣) Charlesworth's Company Law, op cit, p.276.

(٤) USA, International Business Publications (IBP) USA, "Egypt Company Laws and Regulations Handbook", 2003, p. 59.

redeemed for the same amount. If there are different types of shares which are redeemed by various methods such as, some of them redeemed partly meanwhile others totally, each share may lose its right of the first dividends according to the ratio of redemption.

In case of redeemed shares, owners, in some companies, will be given enjoyment shares that authorize them rights in dividends and voting in the general meetings and, in case of winding up the company, to participate in the distributed assets after payment of ordinary and preferred shares.

However, according to the Art (35/1) of the Commercial Companies' Act, enjoyment shares are only issued by companies whose Articles of association provide for redemption of their shares before the expiry of their term because their activities are linked to concessions to exploit of natural resources or granted one of the public utilities for a limited period of time, or to exploit any other non-renewable resource.