Principles of commercial law

According to the Egyptian commercial law

No.17 of 1999

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2024

PREFACE

This course concerns a practical aspects of commercial law. The course contains four parts. Part one under the title of introduction to commercial law. We will address in this part the definition and scope of commercial law, and sources of commercial law

Part two will be devoted to business organizations in Egypt we will address this part in many chapters. in chapter one we will address the general partnership, chapter two will be focused on limited partnership and chapter three will be devoted to joint venture. finally, we will devote the chapter five to the joint stock company as a model for the corporations.

Part One

Introduction to

Commercial Law

Part one

Introduction to commercial Law

Nature of Commercial Law

Introduction

Whether the commercial law is the law of traders only or that it is open to all commercial transactions is an issue which has been touched upon in our introductory notes to Part One. In this chapter more details will be contemplated on both approaches to decide on: either of them or that a combination of both concepts better serve the nature of commercial law as practiced today. In other words, this Chapter is designed to find a proper definition for the term “Commercial Law”, hence paving the way to understand the scope within which that branch of private law operates.

1.1 Definition of Commercial Law

In the absence of any established legal definition of the term "commercial law", many jurists on the subject have put forward various definitions of their own, these include the following:

Professor Sir Roy Goode, for instance, has described commercial law as: *"that branch of law which is concerned*

with rights and duties arising from the supply of goods and services in the way of trade"([1])

By considering that definition it will be noted that that definition dealt solely with the transactions themselves without lending much regard to persons who perform such transactions, and whether they were traders who are practicing these operations in a professional manner, or that it would suffice if such operations are conducted by the ordinary persons who are not taking the trade as a profession.

On the other hand, Article (1) and article (10) of the Egyptian Law of Commerce[(3)] was clear in stipulating the material element when identifying the application of its provisions to all commercial transactions which are conducted by the person (natural or juridical person) for whom the quality of trader is established. In other words, the commerciality by the Egyptian legislation is applicable to commercial transactions, to merchants and to all other persons involved in commercial transactions, for whom the quality of trader is established.

1 _ RM Goode, Commercial Law, 3rd ed., London, Penguin Books, p.8.

To such difference it was responded, however, that the commercial law is a pragmatic and responsive subject which looks to facilitate the commercial practices of the business community. Therefore, as those practices change and develop, often to accommodate new concepts and technologies, the contents of commercial law may change and develop with them, it was concluded, therefore, that a rigid definition of the scope of the subjects would only inhibits this process,[1] a conclusion which needs to be discussed at the following section.

1.2 Scope of Commercial Law

1. In general, it is possible to frame the scope of the commercial law by highlighting the two factors on which the definition of this law rests, that is to say the commercial transactions as the material element, and the personal element reflected by the traders.

2. Whilst the natural process of things suggests that both the above elements are considered, differing opinions eliminated either of the elements and adopted the other, in practice, therefore, two theories emerged, depending on the material element or the personal factor.

1 _ L.S. Sealy & Raj Hooly, ibid, p.4.

1.2.1 Material Theory

1. As it has been demonstrated earlier, jurists in commercial law restricted the definition of their branch of private law to commercial transactions[1] within being able to provide and exhaustive definition of this term.

   The basis of this approach by Common Law jurists is well known to Latin Law jurists and subsequently the Arab jurists, who distinguished between the civil transactions, commercial transactions and mixed transactions(4).

2. According to this theory, the application of commercial law is extended to all commercial transactions, notwithstanding who is performing such transactions, hence the commercial law provisions apply to all transactions which are specifically categorized as such, or transactions which are commonly practiced within the commercial environment, even if non professionally conducted, or incidentally practiced for one time.

3. It is evident that this theory enlarges the scope of applying commercial law not only to transactions legally specified as such, but it also applies to what has been considered to fall

(1) 1 _ Dr. Fawzi Moh'd Sami, ibid, p. 27. For the distinction of commercial transactions from civil transactions see Chapter One of Part Four of this work.

within the commercial activities regardless the person conducting them.

1.2.2 Personal Theory

1. Contrary to the above concept in the system where the subject matter of the commercial law are the persons who are professionally involved in trade, i.e. the merchants, hence it is the function of the jurist or the legislator to identify the terms "trader" and "commercial profession", to decide the scope of the commercial law.

2-This concept, however, is not new, it goes back into history when the law merchant (*lex mercatoria*) was formed and adopted during the Middle Ages, when merchants would travel with their goods to fairs and markets across Europe. Their disputes would be settled by special local courts, where judge and jury would be merchants themselves. These merchant courts would decide the case quickly and apply the *lex mercaoria* as apposed to the local law. In other words, the *lex mercatoria* was an international law of commerce, based on general customs and practices of merchants which were common throughout Europe and

was applied almost uniformly by the merchant courts in different countries(1).

1. It may be noted, however, that while the application of commercial law to a specific category of professionals was then acceptable due to many social factors, which deterred merchants from conducting their business satisfactorily, it was during that period that some of the most important features of modern bill of lading, the concepts of assignability and negotiability, the acceptance of stoppage transit and general average(2).

1.2.3 the position of Egyptian legislature.

The above contradicting concepts which prevailed in Europe during the Middle Ages didn't last long as calls for harmonization between *Lex mercatoria* and national laws started in the 17th and 18th centuries. These calls grew in the second half of the 20th century, where harmonization of the principles and rules of commercial law governing international transactions was clearly evident(3).

Such efforts for harmonization have led to the development of what is now known as transitional

1_ L.S. Sealy & RJA Hooly, ibid, p. 14

2 -ibid

3 _ L.S. Sealy & RJA Hooly, ibid, p.14.

commercial law, and have taken place in a number of ways through international organizations like: the Hague Conference of Private International Law. The International Institute for the Unification on Uniform Trade Law (UNIDROIT), the United Nations Commission on Uniform Trade Law (UNCITRAL) and the International Chamber of Commerce (ICC)(1).

According to the above, and As it has been demonstrated earlier, the legislator in Egypt adopted this progress and adopt the material and personal theory .In Article (1) of the Egyptian commercial law it was stipulated that: "*The provisions of the present law shall apply to trading activities and to all natural or juridical person for whom the quality of trader is established",* Therefore the commercial legislation in Egypt is the law governing the commercial transactions as identified thereby(3). Also article 10/1 of the new Egyptian commercial law confirmed this matter by stipulating that "*the following shall be a trader:-*

1-whoever exercises by way of profession in his name or for his own account a commercial activity"

1 Roy Goode, Reflection on the Harmonization of Commercial Law, Ch. 1 of R. Granston and R. Goode, Commercial & Consumer Law, 1993, pp. 24-27.

Chapter Two

Sources of Commercial Law

Introduction

The nature, value and application of sources in the commercial legal system in any jurisdiction considerably depend on the sequence of such sources in the commercial legislation hierarchy, and the supremacy given by the legislator to this source or the other when applied in courts in different jurisdiction

While the discussions of these sources will be based on the priority adopted by the Egyptian legislator, other views will be also borrowed from other jurisprudence, as a matter of verification on one hand, and for the sake of discussion and comparison, on the other.

The Egyptian Law of Commerce, for instance, arranged these sources in its article two which stipulates that" *1- the provisions of the accord between the contracting parties shall apply to commercial matters. In case no such accord exists, the provisions of the present law, or other laws related to commercial matters, then the rules of trading practices and customs shall apply. If no trading practices or customs exist, the provisions of the civil code' shall*

apply. 2- The agreements between the contracting parties, or the rules of trading practices or customs shall not be applicable where they contradict with the public order in Egypt" .

In fact, this provision did not come with anything new - as some see it - as the sources of commercial law are represented First: In legislation, if there is no legislative provision, reference is made to custom and commercial usages. If that is not the case, reference must be made to the provisions of the Civil Law. As for what was stated in the second article of the necessity of referring to the provisions of the agreement between the contracting parties, it is no more than an application of the general rules that stipulate that "the contract is the law of the contracting parties." This can be understood as defining the role of the will vis-à-vis other sources of commercial law, as a principle dictated by the complementary rules to the provisions of the commercial law, which opens up the greater role of the will in this field ([1]).

([1]) Some jurists said that the text of Article Two is intended to enable merchants to conclude contracts free from a law governing them, so the parties may agree in detail on the rules governing their transactions, or they may quote foreign laws or model rules, subject the contract to its provisions as contract law, but rather as objective rules in the contract, in the field of transactions. Banking, for example, two Egyptian banks can agree on the implementation of model international rules or specific rules in the laws of a state in the United States, despite the fact that the contract is national, and it seems that the general criterion in

In their part, jurisprudence divided the sources of commercial law into two main divisions, formal sources and informal sources.

The formal sources:

We can infer from article two of the Egyptian commercial law that this article arranged the formal sources of the commercial law into four sources as follow:-

1- the provisions of the accord between the contracting parties

2-legislation. (Commercial law and complementary laws).

3-commercial customs and usages.

4-civil law.

1-the provisions of the accord between the contracting parties

As we mentioned earlier, the Egyptian Commercial Law took the contract as the first reference that the judge uses to resolve commercial disputes arising from commercial transactions. Such a dispute goes to the court. The first thing that the judge resorts to to resolve this dispute is the contract concluded between the two parties to the dispute. He applies its terms on the basis that this

this does not violate these rules of public order in Egypt, Dr. Mustafa Kamal Taha, Wael Bundaq: op cit - p. 35.

contract is the closest to the will of the parties. Before applying the terms of the contract, the judge must first make sure From the fact that this contract is valid and the conditions for its conclusion are met .([1])

(2) The Egyptian commercial Law and other complementary laws

The Commercial Law No. 17 of 1999 is the first source of the provisions of the Commercial Law, as well as all subsequent legislation, whether prepared for it or complementary to it.

The new commercial law was issued, including five chapters, as follows:

• Chapter One: Trade in General (Articles 1 - 46).

([1]) It is worth noting that the majority of Arab countries have adopted the position of the Egyptian legislator regarding what the judge must use to resolve the dispute before him. Those countries, the two Emirates through the text of Article Two of the Federal Commercial Transactions Law No. 18 of 1993 as well as the Omani Commercial Law No. 55 of 1990, through Articles 4 and 5 where the article states that if there is no contract or exists and remains silent about the judgment or the judgment was In the void contract, the legislative texts included in this law and other laws apply to all issues addressed by these texts in their pronunciation and content. Special custom or local custom over general custom. If there is no custom, the provisions of Islamic Sharia are applied, then the rules of justice." The first thing to notice on the text of Article 5 is that it did not mention the rules of civil law, which is the second source. After the commercial law in most Arab countries, the reason for this is due to the absence of a civil law in the Sultanate of Oman during the development of this article, and now after the issuance of the Omani Civil Transactions Law No. 69 of 2013, we ask the Omani legislator to intervene and amend Article Two of the Omani Commercial Law No. 55 of 2013 1990 so that the civil law becomes the second source after the commercial law and the laws complementing it, in the absence of an agreement or contract between the parties to the conflict as indicated in Article 4. He also made a difference in the order of the sources that the judge uses when resolving the commercial dispute before him, for example, the Jordanian Commercial Law No. 16 of 1966, as well as the Syrian Commercial Law, where both legislators referred the judge first to the Commercial Law to resolve the dispute between the parties to the commercial contract, Dr. Adel Miqdadi ,op cit - p. 18, 19.

• Chapter Two: Obligations and Commercial Contracts (Article 47 - Article 699).

• Chapter Three: Bank Operations (Article 300 - Article 377).

• Chapter Four: Commercial Papers (Articles 348-549).

• Chapter Five: Bankruptcy (AD 550-776).

As for the complementary legislations to the Commercial Law, they are several legislations issued after the issuance of the abolished commercial group - the old commercial technicians issued by the higher order dated November 13, 1883 and still in force after the issuance of the new Commercial Law No. 17 of 1999, provided that it does not conflict with what it contains of provisions.

Among the most important complementary laws to the Commercial Law No. 17 of 1999:([1])

1. Law No. 34 of 1976 on the Commercial Register.

2. Law No. 11 of 1940 concerning the sale and mortgage of commercial premises.

([1]) This law was issued on May 17, and was published in the Official Gazette No. 9 bis on the same date and began to be applied as of October 1, 1999, with the exception of the check whose provisions were implemented from October 1, 2003, Dr. Hanan Makhlouf: previous reference - p. 23.

3. Law No. 159 of 1981 regarding joint stock companies and partnerships limited by shares with limited liability, as amended by Law No. 3 of 1998.

4. Law No. 95 of 1992 on the capital market, as amended by Law No. 15 of 1995.

5. Law No. 59 of 1995 regarding financial leasing, as amended by Law No. 16 of 2001.

6. Law No. 603 of 1991 regarding public business sector companies.

7. Law No. 88 of 2003 promulgating the Central Bank and the Monetary Banking System Law.

8. Law No. 86 of 2002 promulgating the Intellectual Property Protection Law.

9. Law No. 8 of 1997 issuing the Investment Guarantees and Incentives Law.

10. Law No. 155 of 1957 regarding some commercial sales.

11. Amended Law No. 155 of 1981 Concerning Supervision and Control of Insurance in Egypt, Amended Law No. 156 of 1998.

12. Trade Names Law No. 55 of 1951.

13. Commercial Books Law No. 388 of 1953.

14. Law No. 146 of 1988 regarding money-receiving companies.

Nature of the Legislation

The importance of the commercial legislation as a source of this branch of the private law is stemmed from the fact that it is stable and continuous, hence paving the way to establish rules and regulations of practice, until the legislator decides to amend or alter that legislation for justified reason.

In this respect it is also important to distinguish between commercial legislation of a mandatory nature and their counterparts, the nature of which is supplementary.

1. The Mandatory Commercial Legislation:

The mandatory nature of the legislation may be construed by a close scrutiny of the text and the intention of the legislator when such tool was first drafted, or amended thereafter.

By a general review of any legal system, where the legislation plays a paramount role, it will be observed that , mandatory legislation was purposely drafted and enacted in

order to establish certain policies, protect certain interests, or even to abolish certain practices.

The importance of the nature of the legislation comes to the forefront in cases of contradiction between the commercial legislation, as prior source of commercial law, and other sources(1).

It is to be inferred, that priority will be given to mandatory commercial legislation and the rules embedded therein, whereas other sources will subsequently retreat to the legislative background as demonstrated below. It should be stressed here, that though Egyptian law of Commerce was general on the class of the mandatory legislation which has to be given this priority, such generality should be cautiously construed to mean: a. the mandatory rules applicable to the issue as stipulated in Egyptian Commercial Law, or generally applied therein, b. the mandatory rules stipulated in any other laws relevant to the specific issue in particular, or to commercial matters in general.

1) The sequence of application of commercial law sources has been stipulated by Article (2) of Egyptian Law of Commerce as: 1 Agreement of the contracting parties (contract). 2. Mandatory legislation 3. Rules of commercial customs ,and usages 4. In the absence of commercial custom, the law applicable to civil matters shall apply

In the absence of such sequence of mandatory rules to apply as a source of law, it is envisaged that the court hearing the case will have no other alternative but to apply the contradicting source in the dispute, i.e. the agreement between the parties, as explained hereunder.

2. Supplementary Commercial Legislation;

Contrary to the above binding provisions of the commercial legislation there exist provisions of complementary nature, which have been primarily designated to serve as an explanatory texts for the legislator or the parties to the contract.

one example of such explanatory text is where the intentions of the parties and/or the legislator should be accommodated, in this respect, the Egyptian Law of Commerce assumes solidarity between commercial debtors to repay their commercial debt. To this general provision, however, there is a space of freedom for the legislator or the parties to the contract creating that debt to avoid that assumption of solidarity, as stipulated by that statute: *"Those obliged for a commercial debt are jointly liable for that debt unless the law or the contract stipulates otherwise"*

3- Commercial Customs and Usages

Introduction

Trade usage binds the parties to an international contract of sale, even if they are unaware of such usage at the time of contracting. This immediately raises the question as to how the law binds someone to usages of which he had no knowledge, and why it would be prudent to do so. The question becomes even more relevant in a globalized world where there are an increasing number of newcomers to the trade. Is trade usage an unwritten law or perhaps a 'private' or 'specialized' language([1]) that merchants are presumed to know and that they, therefore, implicitly agree to as conditions or terms of the trade? Or are they bound to these usages by operation of law? Either way, what would be the rationale for the normative nature of trade usage or custom in international trade?

The normative function of trade custom is not a novel concept. It dates back to medieval times when international commercial transactions were regulated by the lex

([1]) See Lisa Bernstein, 'Trade Usage in the Courts: The Flawed Conceptual and Evidentiary Basis of Article 2's Incorporation Strategy' University of Chicago Coase-Sandor Institute for Law and Economics Research Paper No 669, University of Chicago Public Law Working Paper No 452, 42 and accessed 11 April 2015; Lisa Bernstein 'Merchant Law in a Modern Economy' University of Chicago Coase-Sandor Institute for Law and Economics Research Paper No 639, 2d Series, 19 accessed 11 April 2015; Elizabeth Warren, 'Trade Usage and Parties in the Trade: An Economic Rationale for an Inflexible Rule' (1980–1) 42 University of Pittsburgh Law Review 515, 542

mercatoria, a body of law consisting of unwritten, but uniform, international mercantile customs and practices that were applied by judges in specialized merchant courts. However, the growth of nationalism ultimately led to a decline in the status of mercantile custom.([1]) Whether the law merchant still exists today as a supra-national law of international trade in some form or another is controversial([2]) Although some individuals support the notion of autonomous law based on mercantile customs and other general principles of trade that transcend physical and legal boundaries,([3]) others are of the opinion that custom can only operate in very specific circumstances, such as through party agreement contained in national law, where model laws and international conventions, once ratified or

([1]) JH Dalhuisen, 'Custom and Its Revival in Transnational Private Law' (2008) 18 Duke Journal of Comparative and International Law 339, 339–43; Ju¨rgen Basedow, 'The State's Private Law and the Economy: Commercial Law as an Amalgam of Public and Private Rule-Making' (2008) 56 American Journal of Comparative Law 703, 703–6; FK Juenger, 'The Lex Mercatoria and Private International Law' (2000) Uniform Law Review 171, 173; Clive M Schmitthoff, International Trade Usages (Institute of International Business Law and Practice 1987) paras 64–74; Stephen Bainbridge, 'Trade Usage in International Sales of Goods: An Analysis of the 1964 and 1980 Sales Conventions' (1984) 24 Virginia Journal of International Law 619, 624–8

([2]) P Le Goff, 'Global Law: A Legal Phenomenon Emerging from the Process of Globalisation' 14 (2007) Indiana Journal of Global Legal Studies 119, 125–6. Whether it ever existed as an autonomous law is also in dispute. See Ralf Michaels, 'The True Lex Mercatoria: Law beyond the State' (2007) 14 Indiana Journal of Global Legal Studies 447, 453.

([3]) According to the autonomist approach, the lex mercatoria exists independently of any national law and consists of merchant practices, usages, and customs supplemented by the general principles of law that are recognized by merchants, such as those contained in the International Institute for the Unification of Private Law (UNIDROIT) Principles on International Commercial Contracts, restatements of the law, standardized contracts, and conditions of trade. See HJ Berman and C Kaufman, 'The Law of International Commercial Transactions (Lex Mercatoria)' (1978) 19 Harvard International Law Journal 221, 272–7; Dalhuisen (n 3) 348; and, in general, Klaus Peter Berger, The Creeping Codification of the New Lex Mercatoria (2nd revised edn, Kluwer Law International 2010)

acceded to, or where international codifications of customs and practices are contractually incorporated.

Defining trade custom and usage

Comparative analysis shows that it is no easy task to define trade custom and usage. Custom is a vague concept that, on the one hand, is used as a synonym for trade usage or practice, while, on the other, they are used in different contexts and meanings.([1]) For the purposes of this article, these terms are used interchangeably unless otherwise indicated. A number of legal systems apply trade custom and usage without attempting to define it.([2]) German law, for example, provides for customs and trade usages in section 346 of the Handelsgesetzbuch (HBG) .

The same holds true for international instruments used in the regulation of international trade matters such as the 1985 UNCITRAL Model Law on International Commercial Arbitration (as amended in 2006).([3]) Article 28(4) of the Model Law reads: ‘In all cases, the arbitral tribunal shall

([1]) Roy M Goode, ‘Usage and Its Reception in Transnational Commercial Law’ (1997) 46(1) International and Comparative Law Quarterly 1, n 20, refers to the ‘linguistic ambiguity’ of usage and custom. See also Jan Dalhuisen, Dalhuisen on Transnational Comparative, Commercial, Financial and Trade Law, Vol 1: Introduction – The New Lex Mercatoria and the Sources (4th edn, Hart Publishing 2010) 155, n 326, who points out that, because of its ‘fluid nature’ custom can over time move from an contractual implied term to objective law.

([2]) Schmitthoff (n 3) para 9.

([3]) United Nations Commission on International Trade Law (UNCITRAL), Model Law on International Commercial Arbitration 1985 (as amended 2006) accessed 30 June 2015.

decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.' American law, on the other hand, not only recognizes but also defines trade usage. Section 1-303(c) of the 2001 Uniform Commercial Code (UCC) provides that: [a] usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question.([1])

The judge in Egypt admits a commercial usages and customs at all in any dispute of a commercial nature.

Requirements for the operation of trade custom and usage

English law differentiates between custom as a source of law and trade usage as an implied term of the contract.([2]) It is required that custom should have immemorial existence, while that is not required of a usage. Second, custom should be confined to a limited locality, whereas that is not the case for usage. Third, while trade usage should conform to the positive law, custom is by nature

([1]) American Restatement (Second) of the Law of Contracts (1981) s 222 defines trade usage in virtually the same language.
([2]) Halsbury's Laws (n 44) para 51.

inconsistent with the general law of the realm.([1]) Trade usage, furthermore, must consist of certain, reasonable, and uniform practices that are notorious and, thus, well known in the trade and are consistent with the terms of the contract. It is also required that the parties must recognize the binding nature of the usage.([2])

There are certain conditions that must be satisfied before a court treats the conventional custom as incorporated in the contract:-

It must be shown that custom is clearly established and fully known. It means both parties were aware of the custom

customs cannot alter the general law of the land.

They must be reasonable. The main function of these customs is to throw light on such rights and liabilities on which the contract is silent.

Differences between customs and Usage

Usually, conventional customs are referred to as usage but there are a certain distinction between them.

Customs is bound on parties even if there is no express contract between parties and parties cannot deny it, on the

([1]) 4 Ibid paras 1, 5. See also, on English customary law in general, EK Braybrooke, 'Custom as a Source of English Law' (1951) 50 Michigan Law Review 71.

([2]) Roy Goode, Goode on Commercial Law, edited by Ewan McKendrick (4th revised edn, Penguin Books 2010) 14, 97; Halsbury's Laws (n 44) paras 50, 56–61.

other hand, usage will be bound on parties if it is expressively said by the parties.

For a custom to be valid it should exist from time immemorial, but it is not in the case of usage.

4- Provisions of Civil Law

Legislation as a source of commercial law is not limited to commercial legalization and its complementary legislation, but includes civil law as the general sharia of private law and the home of the general rules in regulating private relations in what is not mentioned in a special text of another law. A special text in commercial legislation, and this is what was stipulated in Article 2/2 of the New Commercial Law(1), according to which it is necessary to refer first to the agreement of the parties, then the rules of peremptory commercial law, then commercial custom and commercial usages. Resorting to the provisions of the civil law and when there is a conflict between the provisions of the commercial law and the civil law, the civil text that commands is presented to the interpreted commercial text, because the first is related to the public order. The civil text is pursuant to the rule that the specific restricts the general,

(1) The old commercial legalization issued in 1883 also expressed this fact through Article 17, which stipulates that commercial companies must follow the general principles set out in the Civil Code.

and since the commercial text is a special text and the civil text is a general text, the commercial text must be applied first, as well as if the commercial text is later in the issuance of e on the civil text.(1)

1. The provisions of civil law, in general, continue as a good source of reference for all jurisdictions which adopted the Latin legal thought, rather than the Anglo-Saxon legal thinking, and by so doing it would be possible for the court or an arbitration tribunal to infer civil law provisions to the commercial dispute and decide upon it accordingly.

2. In Egypt, being one of those jurisdictions which adopted the Latin School of Law, the rules of the civil law were placed as the third source to be utilized be the judge in a commercial dispute, if the issue at the dispute is not regulated:

a. Neither by a commercial provision falling within the ambits of Egyptian Law of Commerce, or any other legislation related to commercial matters,

b. Nor by the rules of commercial custom, in the absence of the legislation.

([1]) Dr. Sami Abdel Baqi: The Law of Business, Business, Merchant and Commercial Shop - Arab Renaissance House 2008 - pg 47.

3. The above order clearly indicates the sequence of applying the specific rule available to the dispute, before moving to another rule which is more general.

3-Nevertheless, even where the Egyptian Law of Commerce specifically deals with certain commercial aspects of these contracts, the legislators, particularly regulates the commercial aspects of these contracts leaving the general rules, of such contracts to be dealt with by the Egyptian Civil Code. Therefore, while the former legislation regulated e.g. contracts of sale, mortgage, agency, commission agency, etc.., the latter legislation is also dealing with these contracts in more general terms.

Informal sources:

Explanatory sources mean those sources that the judge is not obligated to refer to while he is in the process of a commercial dispute, as is the case with official sources, but the judge is absolutely free to be guided and consulted with these sources to reach a solution to the dispute before him. These sources are represented in two sources: jurisprudence - and the judiciary.

1) Judiciary:-

The judiciary is one of the explanatory sources from which the judge inspires a solution to the dispute before him.([1])

The judiciary plays an important role as a source of commercial law, not only in countries with the Anglo-American system, in which the judiciary is an official and main source of law in general, where the judge must resort directly after the agreement of the two parties to court rulings to search and investigate a dispute similar to what is presented to him and to bring the same Judging the incident presented to him - the judiciary also plays a prominent role in countries with the Latin system in which legislation and written laws play the first and basis source of law, and the great role of the judiciary emerges as an explanatory source for law in general and for commercial law in particular, as characterized by the order of successive and continuous development, which is A reflection of commercial life, which leads to the legislator's inability to keep pace with this rapid development and fill the gaps and shortcomings resulting from this development. Perhaps actual companies

([1]) It should be noted that the rulings and decisions of the Supreme Constitutional Court interpreting the texts of laws are binding on all state authorities and for everyone (Article 49 of Law No. 48 of 1979 regarding the Supreme Constitutional Court).

and actual bankruptcy are among the prominent examples of the legal systems established by the judiciary.

(2) Commercial Jurisprudence:-

Jurisprudence, like the judiciary, is one of the sources that the judge is comfortable with when deciding what is presented to him of disputes and in interpreting legal rules and supplementing the lack of traditional sources of law. The role of jurisprudence is not limited to influencing the judiciary and only, but in many cases, jurisprudence is a guide and a guide for the legislator as well.

Jurisprudence means the writings and opinions of jurists in studies of commercial law provisions, where jurists can analyze and criticize legislative texts, so the legislator takes these criticisms and observations into account while he is in the process of enacting commercial legislation and laws or when amending them.

PART TWO

BUSINESS ORGANISATIONS

Introduction.

As in many other civil law jurisdictions, Egyptian law recognises companies in which a shareholder's liability is limited to the value of the shares held (e.g., limited liability companies, joint stock companies, partnerships limited by shares). These companies are often referred to as 'capital companies' or "corporations", since the liability of the shareholders and partners is limited to the capital they invested in the company. The Companies Law, issued as Law 159 of 1981, as amended ("Companies Law"), regulates such capital companies.

Egyptian law also recognizes partnerships, both general and limited. Partnerships are governed by the Civil Code and the Egyptian Commercial Code. Matters not specifically regulated under the Companies Law or the Commercial Code are often interpreted according to Civil Code principles. Therefore, the Civil Code is often referred to as the 'gap filler' for specialised legislation.

Certain legal provisions apply to all companies, regardless of legal form. For example, the Investment Law, promulgated by Law No. 8 of 1997, deals with specific forms of business activities and grants companies engaging

in those activities incentives and guarantees, regardless of their legal form. Also the Capital Market Law, promulgated by Law No. 95/1992, contains specific provisions concerning transfers of shares, increases of capital, and the issue of securities and debentures that apply to both joint stock companies and partnerships limited by shares.

In the light of what we mentioned we will divide this part into two main divisions . partnerships and corporation.

PARTNERSHIPS

Introduction

There are three forms of partnerships in which business could be established; the General partnership, the limited partnership and the joint venture firm.. [(1)]

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

(1) 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.

dominated by personal elements which affect the legal relationships between partners, not only when the partnership is formed, but also during its life. (1) 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. (2) 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)

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

(2) 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.

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.(1) 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

(1) Mosleh A'atrawneh, op.cit, p.392.

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.(1)

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. (2)

4.1. General Characteristics

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

(1) Mahmoud Al Kelany, op.cit, p. 216
(2) Al-Kelany, op.cit, p. 214.

namely: a 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:

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

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. ([1])

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 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

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

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 ([1]).

The joint liability between the partners and the firm results in several consequences([2]):

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 ([3]). 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 .

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

([2]) Dr. Muhammad Hosni Abbas, Commercial Law, 1966, item 31.

([3]) 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

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 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 liable for 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

([1]) Dr. Ali Jamal Al-Din Awad, op cit, ítem 242.
([2]) Dr. Hamdallah Muhammad Hamdallah, op cit, p. 299.

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

4- Non Negotiable Shares

Since partnerships 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.([2])

Since the objective 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.

(1) 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.

([2]) Dr. Ali Hassan Younis, op cit, item 149.

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([1]), 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 sub-partner and the firm, as it remains foreign to it and is not invoked by agreement on it. The right of the sub-partner 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.([2])

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

([1]) 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.
([2]) Dr. Tharwat Abdel Rahim, previous reference, pg. 433.

that it is preceded or immediately followed by the phrase " general partnership" (1)

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 firm includes only the names of the partners. 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 firm'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

(1) 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.

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 .([1])

Management of the general 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, 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.

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 urgent matters. Consequently,

([1]) 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.

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.

4.5. 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 under a scheme approved by his creditors or he loses his qualification to be a trader. (1)

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.(2)

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 with the heirs taking his

(1) Kameran Al-Salihi, op.cit, p. 156.
(2) Mohamed Helalya, op.cit, p.74 et seq.

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. [1]

(1) 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

([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.

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 ([1]).

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. [(2)] It is defined by the Egyptian commercial law as:

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

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

" *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."* **(1)**

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, consisting of one or more general partners and one or more limited partners. **(2)**

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(1) Article (23).

(2) 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

5.2- 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:

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 can participate in the management, acquires the status of a merchant, and his name appears in the firm'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. (1)

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

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 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

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

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 ([1]).

** 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.

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

The answer to this question requires us to distinguish between two hypotheses:([1])

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 of the general partner If there is only one partner or names of some joint partners. In

(1) 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.

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.([1])

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 Before, that is, he occupies his own 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 ([2]).

([1]) 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.

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

The jurisprudence 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%) ([1]).

Fifthly: liability of the limited Partner:

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

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” ([1]).

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 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

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

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)]

5.5. 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.

([1]) See Dr. Abu Zaid Radwanop cit, p. 280, 281.
([2]) Dr. Hamdallah Muhammad Hamdallah, op cit, p. 330.

5.6- Dissolution

Limited partnership 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 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. (1)

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

(1) 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.

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. (1)

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.(2)

(1) Thrwat Habeeb, Lessons in Commercial Law, {text in Arabic} Cairo, 1988, p. 341.
(2) 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[(1)] *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.

(1) 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.

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 which

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

1.2. 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 ([1]).

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 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 ([2]).

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

([1]) Dr. Mahmoud Samir Al-Sharqawi, op cit, p. 124.
([2]) Dr. Edward Eid, Commercial Companies, Part 2, (Joint Companies), Beirut, 1970, item 194.

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 ,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.

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, as if it was a sole proprietorship, a general partnership, or the name of the owner of a patent on which the project was established, and then turned into a joint stock company. In this case, it is required to add the phrase joint stock company next to its 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

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

Company – EJSC" (article 8 of the Regulations), and the name of the company must be distinguished from all other similar registered companies in all commercial registry offices in Egypt ([1]).

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.

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

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

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 it 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

([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.

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 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 500,000 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. **(2)**

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

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. (1)

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 the profit is thus the dividend multiplied by the number of shares that a shareholder owns. (2)

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

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

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

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 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.[1] 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 purpose, term of existence a description of share

(1) 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.

capital[1] *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. [2]

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".[3] 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.[4] However a promoter has been described, for example, as" one who undertakes to form a company

(1) Ibid. It should be noted that, in the UK, these matters are usually determined in the Memorandum of Association.
(2) Charlesworth's /'Company Law", 13th edition, published by Steven & Sons, 1978, p. 103.
(3) Mosleh At'trawneh, op.cit, p. 404.
(4) 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.

with reference to a given project and set it going and who takes the necessary steps to accomplish that purpose[(1)]

1. Who are the Promoters in Egyptian Law?

The Egyptian legislator defines promoter 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 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) [(2)]So, it can be said that: the promoters are persons[(3)] who give instructions for the preparation and

(1) 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.

(2) 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.

(3) 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.

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. (1)

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. (2)

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 into existence.(3) Neither, they are treated as trustees for the future company.(4) 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.(5) Hence,

(1) See Geoffrey Morse, «Charlesworth's Company Law». Op.cit. at pi 15
(2) Mosleh A'atrawneh, op.cit, p.404. Mohammed Htelalya, op.cit, p. 162.
(3) See Geoffrey Morse. Op.cit. atpll6
(4) R. P. Maheshwari, «Principles of Business Studies» vol I, published by Bitambar publishing Company, India, 2004. p.208.
(5) Mosleh At'tarawneh, op.cit, p, 408.

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,(1) 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.(2)

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 ".

(1) Farrar's Company Law, pp. 118-134.
(2) See Geoffrey Morse, "Charlesworth's Company Law". Op.cit. at p. 118.

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 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.[(1)] 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

(1) Article (13) of the ECCL.

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

1- The Memorandum of Association

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,(1) in other words, it regulates the partner's relations and the relations between the company and outsiders.(2) 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.(3) 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.(4)

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

(1) Geoffrey Morse, Charlesworth's Company Law, op.cit, p. 59.
(2) Mosleh A'atraweneh, op.cit, p. 406.
(3) Farrar J.H & Hannigan B.M, Farrar's Company Law, (4th edition), Butterworths, London, 1998,p.p.97-114.
(4) Geoffrey Morse, op.cit, p.59.

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.(1) Generally, the Articles of Association are subject to the Memorandum and cannot confer wider powers on the company than those given in the memorandum.(2) If there is a conflict between the memorandum and Articles the provision of the former must prevail.(3)

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. (4)

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,

(1) Geoffrey Morse, op.cit, p. 103.
(2) Mosleh At'tarawneh, op.cit, p. 407
(3) Farrarer, op.cit, pp.116-124.
(4) Mosleh At'tarawneh, op.cit, p. 407.

3- The Article should not extend or modify the Memorandum. [1]

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. [2]

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, [3] 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) Ibid.
(2) Ibid, p. 404.
(3) 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.

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 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.[(1)] 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. [(2)] The meeting cannot be held unless a quorum of at

(1) Mosleh At'tarawneh, op.cit, p. 411.
(2) ECCL, Article (27).

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. (1)

ii. Powers of the Constitutive Assembly

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

(1) ECCL, Article (27/3).

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. (1)

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

(1) Article (101).

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.

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. [1] The nominal capital of the company can be actual or potential.[2] 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. [3]

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

(1) 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.

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

(3) Geoffrey Morse, op.cit, p. 183.

the nominal amount of the share. It can be increased or decreased according to the memorandum of association. [1]

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. [2] Nonetheless, the uncalled capital is not considered as a part of the assets until it is called up. [3]

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

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

(1) Geoffrey Morse, op.cit, p. 184.
(2) Rambaran Mangal, "An Introduction to Company Law in the Commonwealth Caribbean", op.cit, p. 83.
(3) Ibid.

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. (1)

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.

2.2. Structure of the Capital(2)

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

(2) Dennis Campbell," International Joint Ventures", Kluwer Law international, The Netherlands, 2009, p.41

The JSC, in Egypt usually, has a simple capital structure. It is required to have an issued and nominal or authorized capital fixed by its statutes. The authorized capital is the total amount of share capital that the company is allowed to issue which is usually ten times of the issued capital.

2.2.1. Units of the Capital

Capital of JSC is usually divided to a unified class of shares, called ordinary shares, each of which has one vote ratably with other shares in dividends and distribution. According to the Implementing regulations of the capital market law, the minimum issued capital for the company which offered its capital to public subscription shall be not less than one million L.E divided to equal shares of nominal value not less than L.E five and not more than L.E one thousand, fully subscribed for, and each subscriber shall pay at least one-tenth of the nominal value of shares, this amount shall be increased to % 25 within three months from the incorporation of the company provided that the remaining amount shall be paid within a period not exceeding five years from the date of the company's incorporation.

The shares should be issued in a nominal or higher par value but not lower than that. If they were issued in a higher value, the deference shall be used to pay issue's expenditures. The remaining 2**.2.2. Payment of the Capital Amount**

The issued capital should be fully prescribed. Every prescriber should pay, at least, %10 of the prescribed par value on condition to pay the remaining within five years upon the board of directors' request.

The remaining amount of the nominal capital value should be paid in maturity dates; otherwise, compensation may be claimed for delay without need to serve a warning note. Nonetheless, in case of delay, the board of directors may serve an official notice to shareholder to pay within ten days, in case of fail to do so; the company may sell the shares in the stock market or in a public auction. The shareholder may retrieve his shares until the date of sale, if he paid the requirement plus the incurred amount.

2.2.3. In Kind Contributions

If the capital of the company, during incorporation or when increased afterwards, composed of cash and in kind contributions, the founders, during incorporation, or

members of the board, afterwards, according to the circumstances, should apply to the Ministry of Commerce to compose a committee of expertise to validate the estimate share in kind.

The evaluation of the in kind contributions can only be final if it was approved by the Constituent General Assembly or the Extraordinary General Meeting by a decision taken by the majority of two- thirds conditionally that the prescribers of in kind contribution are deprived from voting.

2.2.4. Capital and Assets

A distinction should be made between assets and capital. Assets are the total properties in which the capital and other funds of the company are invested; i.e. capital, loans, undistributed profits... Etc. these assets are usually called real capital. So, the capital is a part of the assets represented by fixed constant figures in the company's budget. (1) The value of assets is changeable depends on the market price, and plays an important role in determining the

(1) Lynford Graham,» Accountants' Handbook, 2011 Cumulative Supplement)) 11th edition, published by John Wiley &Sons, Hoboken, New Jeersy,2011, p. 354.

market value of shares which is usually different from the nominal value. (1)

2.2.5. Protection of the Capital

The company should keep its capital and protect it; i.e., it is neither allowed to pay back its capital to the shareholders as long as it exists, nor it can dispose it off in anything rather those objects it was incorporated for. (2) In fact this doctrine offers a minimum guarantees to creditors of the company. Consequently, the company shall not make any dividends distribution except out of profits available for the purpose, (3) redemption or purchase of any shares can only be made out of the realized profits(4) and the capital can only be returned to shareholders on winding up of the company in condition that all debts have been paid. (5)

2.3. Changing the Capital

As previously mentioned; the joint stock company has an authorized capital amount which is stated in the memorandum and articles of association. Therefore any

(1) See Hossam Isa & Farag Soliman, op cit, p.249.
(2) Simon Goulding, «Company Law», published by Cavendish Publication LTD, 2nd edition, London & Sydney 1999, p. 179.
(3) Jason G. Ellis & J. Scott Slorach, "Business Law 2012-2013" Oxford University Press, UK, 2011, p. 105. Simon Goulding, "Company Law", op.cit, p. 200.
(4) Jason G. Ellis & J. Scott Slorach, "Business Law", op.cit, p. 100.
(5) Andrew Hicks & S.H. Goo, «Cases and Materials on Company Law», Oxford University Press & Black Stone Press, 6th edition, 2008, p. 293. Stephen Judge, "Company Law", Oxford University Press, New York, 2008, p.67.

increase or reduction in this figure involves a change to the memorandum and articles of the company. Although reduction of issued capital requires more intention, a resolution passed by the extraordinary general meeting is essential in case of alteration the capital, either increasing or decreasing.

2.3.1 Increasing the Capital

Every Increase of the capital must be affected by the company in general meeting: according to the law the extraordinary general assembly may increase the authorized capital and may increase the issued capital up to the limit of the authorized capital. In both cases, the issued capital must be paid in full before any increase. (1)

So the power to increase the capital is vested in the general meeting which, usually, acts on a report of the board of directors.(2) This report must provide all relevant information concerning the reason for the capital increase and changes in the company's business that leads to such an increase. (3)

1. Why Should a Company Increase its Capital?

(1) Charlesworth's, op.cit, p. 195.
(2) Jean Pierre Le Gall, Rene Roblot & Robert R, Pennington," French Company Law", pu - lished by Oyez Publishers, Washington, USA, 1974, p. 58.
(3) George A. Bermann & Etienne Picard, introduction to French Law», Kluwer Law Inte - national, the Netherlands, 2008, p. 349.

The question which is frequently asked is: why should a company increase its paid-up capital? Normally, there are four reasons where the company may find itself in a situation to increase its paid-up capital: prerequisite by Bank, A project tender requirement, license requirement and corporate image. (1)

i. Prerequisite of a Bank.

As part of the terms and conditions in the letter of offer from a bank for business loan application submitted by the company, It may increase its paid-up capital as required by the Bank. For example, a company is required to increase its paid-up capital from L.E 2,000,0000 to L.E 3,000,000 as a part of the requirement for the L.E l,000,000 bank loan applications from a bank. (2)

ii Project's Tender

As one of the qualification requirement, the company is to have at least certain amount of paid-up capital before it can submit any project tender document. (3) For example, a company is required to have at least L.E 2000,000 paid-

(1) Madhu Tyagi & Arun Kumar, «Company Law», published by Atlantic Publishers and Distributers, New Delhi, India, 2003, p. 125.
(2) Compare, Simon Goulding, Company Law, op.cit, p. 103.
(3)Compare: Why and how to increase paid-up capital? http://www.malaysiaco.com.my/why-and-how-to-increase-paid-up-capital/

up capital to be pre-qualified for certain projects from the tender.

iii. License Application

A company operating in certain industries may be required to have certain licenses before they can commence its business operations; for example, insurance. The company may need to expand its activities and enhance its financial position before applying for any huge projects. (1)

iv Corporate Image

To be a competitor within a promising business projects, a company may be enforced to increase its capital; as a company of L.E 1000000 is not better than a company with paid-up capital of L.E 5000000. Any increase in paid-up capital by a company will normally be required to produce some proof or evidence that the company has received the relevant amount of money from respective shareholders. (2)

2. Methods of Increasing the Capital

Increasing of Capital can be carried out, either by issue new shares, or by increase the par value of the company's existing shares.

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(1) Ibid.
(2) Ibid.

A company, initially, cannot issue new shares unless its existing shares have been fully paid-up. (1)

The existing shareholders shall have priority right to subscribe for the new shares, and any condition to the contrary shall be null and void. A statement shall be published in two of the local daily newspapers one of them at least in Arabic language declaring: such priority given to the shareholders, the starting and closing dates thereof, and the value of the new shares. Shareholders may also be notified of this statement by registered mail. To obtain the new issued shares, shareholders should express their intention to exercise this priority right within thirty days from the date of statement's publicity.

2.3.2. Reducing the Capital

It is a fundamental principle of law that a company should, except in limited circumstances, maintain its share capital This stems from the need to protect third parties dealing with a limited company against the risk that its assets could be spirited away, leaving nothing to support its debts. More recently, creditors have tended to rely less and less on the level of a company's share capital as an indicator

(1) Ashok Sharma, «Company Law and Secretarial Practice», op.cit, p. 150.

of its creditworthiness. However, the company may find itself in circumstances that has no choice but to reduce its capital. There are a number of reasons why it may be desirable for a company to do so. The main driver is likely to be the effect on the company's distributable reserves. A reduction of share capital, in varnish, creates a reserve which is immediately distributable as a realized profit. This is likely to be very attractive for companies that have large share capitals where historically carried-forward losses have prevented them from declaring any dividends or redeeming shares. The shareholders are required to pass a special resolution to reduce the company's share capital once the directors have made a statement of solvency.[(1)] 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

(1) Mark Stamp & Daniel Simons,»Practical Company Law and Corporate Transactions)), published by Sweet and Maxwell, UK, 2011, p. 83.

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.

1. Reasons for Reduction the Capital

The share capital of the company is usually subscribed in money or money's worth of which could be lost or diminished according to wrong transactions or fluctuations of business. Article (70/c) provides that, the company may, if authorized by its articles, by special resolution, reduces its share capital if it is more than the company's needs or the company has sustained a loss and secedes to reduce the capital to the actual value that exists. So, for example, if a company has an issued capital of five million Egyptian pound and has been proved that amount is more than its needs, it may reduce the nominal amount of shares by

considering paid up shares of nominal amount of L.E five reduced to two Dinars fully paid shares and L.E three is paid back on each share. This would reduce the company's nominal, issued and paid up capital. As the nominal capital can be ten times as issued capital, instead of fifty would be reduced to twenty and so on. It is clear that reduction leads to alter the memorandum of association. (1)

The company may not decrease its capital for a reason other than stated above.

2. Procedures of Reduction the Capital

Proposal for reduction the capital in such cases must be notified by the board of directors to the company's auditors in a proper time before the extraordinary meeting to be held In order to resolve on the reduction. The auditors must provide the shareholders' meeting with a report in which they express their views about reasons and terms of reduction. They must also verify that all shareholders are equally treated.

The reduction of the capital may be achieved either by decreasing the par value of shares or reducing the number of shares.

(1) Compare, Simon Goulding, «Company Law», op.cit, p. 180.

Reducing the par value of share, either by repaying back a part of it to the shareholder equal to the decided percentage of reduction or by discharging them of the unpaid installments of shares' value in proportion to the decided reduction.

If the reduction is due to the company's losses, a number of shares equal to the decided amount of reduction shall be cancelled in proportion to the percentage of the reduction, provided that no shareholder shall be deprived from the company.

2-The Equity Securities (Shares)

Joint Stock Companies may issue two kinds of securities: equity securities (Shares) (1) and debt securities (Bonds). (2) Equity securities are described as the counterpart of the shareholders' contributions to the capital of the company and could be common stock, preferred

(1) An equity security is a share of equity interest in an entity such as the capital stock of a company, trust or partnership. The most common form of equity interest is common stock, although preferred equity is also a form of capital stock. The holder of equity is a shareholder, owning a share, or fractional part of the issuer. Geoffrey Poitras, "Valuation of Equity Securities: History, Theory and Application", published by World Scientific Publication, USA & UK, 2011, pp.3-67. Barry J. Epstein & Eva K. Jermakowicz. interpretation and Application of International Financial Reporting Standards», Published by John Wiley & Sons, Hopkins, New Jersey, USA & Canada, 2010, p. 889.

(2) Debt securities may be called debentures, bonds, deposits, notes or commercial papers depending on their maturity and certain other characteristics. The holder of a debt security is typically entitled to the payment of principal and interest, together with other contractual rights under the terms of the issue, such as the right to receive certain information. Debt securities are generally issued for a fixed term and redeemable by the issuer at the end of that term. Geoffrey Poitras, «Valuation of Equity Securities: History, Theory and Applications op. cit, p. 145.

shares, enjoyment shares...etc. which give to their holders pecuniary rights depending on the financial situation of the company such as; the right to receive dividends, profits, reimbursement of the par value of the shares upon winding up the company, exercise preferred subscription rights in the context of capital increase and to obtain redemption of shares.

Shares also give to shareholders personal rights which allow them to be informed on the management of the company and to participate in the management itself.

3.1. Definition of Shares

A share has been defined as a fractional part of the company's capital. (1) It was also characterized: as: "the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also of consisting of a series of mutual covenants entered into by all the shareholders *inter se* in accordance with the companies' law. (2) The share is measured by a sum of money, namely the nominal amount, and by rights and obligations belonging to it as defined by

(1) Hossam Issa & Dr. Farag Soliman, op cit, p 264. Saharay H.K, " Company Law," (5th edition) published by Universal Publication LTD, New Delhi, India, 2010, P. 105.
(2) Charlesworth's. op.cit,p264.

the Commercial Companies Act, Memorandum and Articles of association. (1)

Shares are personal and negotiable estates, issued in the name of their owners. However, the company may issue bearer shares .The share is indivisible though, two or more persons may jointly own one share or a number of shares provided that only one person shall represent them before the company. The joint shareholders shall be jointly liable for the obligations resulting from such ownership.

Each share in a company must be distinguished by its appropriate number, provided that it need not have a number if all the issued shares or all the issued shares of a particular class are fully paid up and rank *pari passu* for all purposes. In addition, a share certificate, which specifies the share held by the members and which is prima facie evidence of his title to the shares is usually issued to a shareholder. (2)

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

(1)This definition has been mentioned in Carron Co .V. Hunter (1868) 6.M (H.L) Io6.
(2) Geoffrey Morse, op.cit, p. 264.

occasions, other classes of shared may be found. [1] 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. [2]

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

(1) Ibid.
(2) Ibid.

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. [(1)] 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 of ownership. The company disperses

(1) 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.

dividends to bearer shares when a physical coupon is presented to the firm. (1)

Nominal Shares remain registered and cannot be converted into bearer shares until they are fully paid. (2)

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.(3) 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. (4)

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

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(1) To read more:http:// www.investopedia.com/ terms/ earer_ shareas p#ixzz2MpPVUGKh.
(2)Patrick A. A. Vanhaute, "Belgium International Tax Planning", IBFD ,2010, Netherlands, p.30.
(3) Jon Rush & Michael Ottley, «Business Law", Published by Thomson Learning, London, 2006, p. 216
(4) 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

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.

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.[(1)] 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.

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

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. (1)

Deferred shares are rarely issued now and the modern tendency is to convert existing deferred shares into ordinary shares. (2)

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 through 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. (3) Each share of the same class must be redeemed for the same amount. If there are different types of shares which are

(1) Chandra Bose, «Business Law», published by Asoke K. Ghosh PHI, New Delhi, 2008, p.286.
(2) Charlesworth's Company Law, op cit, p.276.
(3) USA, International Business Publications (IBP) USA, "Egypt Company Laws and Regulations Handbook", 2003, p. 59.

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.

3.3. Rights Related to Shares

Shareholders of a company enjoy equal rights and subject to equal obligations. [(1)] It is often convenient regard

(1) Mosleh A't'rawaneh, op.cit, p. 419.

a share as a vessel of several rights and obligation. The shareholder, either individual or joint shall be liable for the obligations and legible for the rights resulting from such shares. Shareholders can individually or collectively exercise the following rights:

3.3.1. Right to Dividends

A dividend is a distribution of the company's assets to its shareholders. Dividends can only be proposed by the directors and must be approved by the general assembly. There is no legal obligation on a company to declare a dividend even where there are sufficient distributable profits available, unless its memorandum or articles of association require to. However, once a final dividend (i.e. as opposed to an interim dividend) is declared on a shareholder's share, that shareholder will be entitled to payment and can sue the company for arrears in the same way as any ordinary creditor may sue for a debt. (1)

A dividend can only be paid out of a company's net The distributable profits which are available for distribution. The distributable profits are the company's net accumulated realized profits. Other profits and reserves, for

(1) Frank Dornseifer, (ed), «Corporate Business Forms in Europe: A Compendium of Public And Private», op.cit, p. 20.

example: unrealized profits i.e. profits which have not as yet crystallized and share premium i.e. any premium charged over and above the nominal value of a share on issue cannot be used for the purposes of paying dividends. (1)

Distributing dividends shall be among shareholders whose names are registered as the last owners of the shares in the company's register when the general assembly approves the financial statements and profit distribution. (2) As regards the company's assets, the last owner of the shares registered in the company's register is the only one entitled to receive the amount due for his share in such assets. (3)

The shareholders' general assembly shall not reduce the distributable percentages of the net profits specified in the company's articles of association.

3.3.2. Distribution of Assets on Winding Up

(1) Read more and compare: Aiman Nariman Mohd Sulaiman, Aishah Bidin, Pamela Hanrahan, Ian Ramsay and Geof Stapledon, «Commercial Applications of Company Law in Malaysia», published by CCH Aisa, 3rd Edition, 2008,, p.421.
(2) Sarah Worthington & L. Sealy "Cases and Materials in Company Law", published by Oxford University Press New York, USA, 2008. p. 241.
(3) Ibid.

If the company is wound up and all the creditors are paid, the remaining assets are available for division among the members. This may be in two stages:

(1) A return of capital;

(2) Distribution of surplus capital.

Some shares may be given a priority as to one or both of these, or excluded from participation in any surplus.

When a joint stock company dissolves, one of its first actions is the liquidation of corporate assets. Creditors of the corporation are the first to be paid with the funds received from the liquidation. Owners of debt securities are also paid before shareholders. Once these debts are paid, the remaining is paid to the shareholders.[1] Preferred shares must be paid before the common stock as common shareholders do not have any special liquidation rights and will receive assets on dissolution only after senior claims have been paid. [2]

3.3.3. Right to Participation in Management

Basically each share authorizes its owner membership of the general assembly and entitles him one vote. The

(1) Simon Goulding, «Company Law», op.cit, Cavendish Publishing Ltd, Sydney & London, 1999R396..
(2) Andrew Hicks & S.H. Goo, "Cases and Materials on Company Law", Oxford University Press, New York, 2008, p. 277.

number of votes which a shareholder may cast at general meetings is calculated accordingly. Every shareholder should be free to vote as he wishes and any agreement restricting freedom of voting is null and void. However, shareholders should exercise their voting rights in the benefit of the company and its members' collective interests.[1]

The shareholder may be appointed as a board of directors' member according to the company's articles of association. However, there are some conditions restricting such rights, so only the shareholders who own a certain amount of shares may apply for the board chairs.

The general assembly shall not add new conditions other than those prescribed in the company's articles of association regarding the right of the shareholder to attend and to vote in the general assembly meetings.

1-Shareholders have votes equaling the number of shares held.

2-A shareholder may appoint a proxy to attend and vote at the general assembly meeting on his behalf.

(1) Murray N. Rothbard," Man, Economy, and State with Power and Market", p. 1281 Ludwig von institute, 2009, Alabama, USA, 2009, p. 1281.

3-Shareholders representing at least 10% of the capital may request an extraordinary general assembly meeting to be held.

4-Shareholders shall be given an attendance card to attend meetings, which shall mention the number of votes to which the shareholder is entitled.

3.3.4. Right to Obtain Documents

The right to obtain certain documents and information can be exercised at any time. It enables the shareholder to access to documents related to shareholders meetings, inventory, financial statements, consolidated accounts, list of directors, members of supervisory board, reports of the board of directors, the draft resolution submitted to the general assembly and minutes of the shareholders meeting and related subjects. (1)

In practice, shareholders obtain printed booklet includes the balance sheet of the last financial year, statement of profits and losses, reports of the board of directors and report of the auditors.

However, right of having accesses to the company's records and to obtain copies or extracts of their details does

(1) Naidu N. V. R.,"Management And Entrepreneurship)), published by I.K International Publishing House, New Delhi, India, 2008, p. 254.

not authorize shareholders to interfere in the day-to-day management, or decisions of the board of directors. (1)

3.3.5. Right to Sue

If they have suffered personal damage distinct from that the company, Shareholders may sue the directors or the company. They may also bring derivation suits in the company's name against the directors as representatives of the company. This usually happens if a resolution passed by the general meeting or the board of directors contrary to the law, memorandum and articles of association. (2)

The general assembly shall not restrict the right of shareholders to file legal actions against all or some of the board members to claim compensation for whatever damage he has sustained in accordance with the provisions of the law.

3.3.6. Right to Obtain Shares' Certificate

A share certificate is a legal document that certifies ownership of a specific number of shares in a company. There are, generally speaking, two types of share certificates; nominal share certificates and bearer share

(1) Mosleh A. At'tarawneh, «Principles of Commercial Law)), op.cit, p. 419.
(2) Roger Le Roy Miller & Gaylord A. Jentz, «Fundamentals of Business Law: Excerpted Cases», published by South-Western, CENGAGE Learning, USA, 2010, p. 552.

certificates. Normally, a nominal share certificate only proves title, and a record of the true holders of the shares kept in the company's stockholders' register. A bearer share certificate is an instrument proves its holder ownership of the shares, entitling the holder to exercise all the legal rights associated with the share. (1)

In the Kingdom of Bahrain, these two types of share certificates can be issued by joint stock companies unless the articles of association provides otherwise. Bearer share certificates shall not be issued for non-fully paid shares. Therefore, If a bearer share certificates is issued for a non-fully paid share, these certificates should be deemed invalid. However, the type of share certificate can be changed, unless this is prohibited by the articles of association. (2)

Shareholders of joint stock companies in Egypt have the right of receiving a certificate of shares. The first board of directors shall issue to each shareholder, within three months from the date of the final publication of the company, an interim certificate of the shares he owns. The

(1) Compare, Zeynep Kalayci, «Types of Share Certificate and Share, CertificateTransfers in Joint Stock Companies», http://www.gsimeridian.com/flles/47.pdf.
(2) IBP USA Staff, USA International Business Publications, «Bahrain Mineral & Mining Sector Investment and Business Guide», op.cit, p. 179.

certificate shall particularly include the name of the shareholder, the number of shares he has subscribed for, the amount paid and the method of payment, the date of payment, the serial number of the interim certificate, the company's capital and its head office.

3.3.7. Right to Dispose of Shares

Shareholders are entitled to dispose of their shares. In principle, shares of Joint Stock Company can be freely assigned to any person(1) since shareholders, on one hand, can be held liable only to the extent of their contribution, and on the other hand, their identity is not the essence of the company. Article (46) of the Egyptian Commercial Companies' law provided that:

"The shares and the interim certificates may be mortgaged, donated, disposed of in any manner'.

Shareholders may also pledge their shares in order to guarantee their obligations. A legal mortgage of shares is affected by transfer of the shares to the lender (the mortgagee followed by registration of the transfer by the company). There should be also a document setting out the

(1) The joint stock company's shareholder has a right to alienate (transfer) his share(s) in the order specified by the legislation. Compare: Jonathan Reuvid & Marat Terterov, «Doing Business With Estonia», GMB Publishing Ltd, London UK, 2005, P. 226.

terms of the loan and containing an agreement to transfer the shares on repayment of the amount borrowed with interest. The document will empower the lender to sell the shares in the event of default by the borrower (the mortgagor).

An equitable mortgage of shares may be made by depositing the shares certificates with the lender as security for a loan. In such a case the lender can enforce his security by applying to the court for a sale of the shares or for an order for transfer and foreclosure. (1)

The mortgager keeps the ownership of shares, though the mortgagee shall receive dividends and use the rights attached to the share unless otherwise agreed upon in the mortgage contract. However, the mortgagee shall not attend the general assembly meetings or take part in its deliberation or approval of its decisions.

The share mortgage shall be made by marking it overleaf, and the rank of the mortgagee shall be determined from the date of entering the mortgage in the share register.

The mortgage shall not be deleted except by a declaration of acceptance of such deletion by the creditor or

(1) Asoke Sharma, «Company Law», Published by Rahal Jain, V.KJndia Enterprises, India, 2010, p. 107.

by a final court order. The deletion shall be marked in the share register.

The mortgagee has the right to retain possession of the shares until the undertaking secured by the mortgage is fully executed. In event of a sale of the pledged shares, the mortgagee has the right to be paid before other creditors.

The company's property shall not be interdicted to discharge debts of shareholders. However, shares of the debtor and its dividends may be interdicted, and such interdiction shall be entered in and deleted from the relevant register upon a notice by a competent authority. However, No heirs or creditors of a shareholder are entitled for any reason, whatsoever, to request for the seizure of the company's books, documents, or property, or to demand the winding-up or the sale of the whole company, or to interfere in any way, whatsoever, in the management of the company's business. In exercising their rights, they shall rely only on the company's records, financial accounts and the general assembly's resolution. The interdictor and the mortgagee[(1)]

3.4. Duties Related to Shares

(1) It should be noted that shares can be mortgaged and pledged. article

Shareholders are not liable for a company's obligations and bear the risk of losses in relation to its business up to the value of shares held and they are entitled to alienate the shares they hold without the consent of other shareholders' or of the company unless otherwise established by the law or by the articles of association. Where the terms and conditions are equal, shareholders should be subject to equal terms and conditions, and are to be treated in the same way. The shareholders' principal duties can be summed up in the following paragraphs:

3.4.1. Pay Due Installments

The shareholder should pay his due installments and any delay interests following the expiration of the date thereof without need to serve him a notice. Shareholders must pay the payable ratio of the nominal value of the shares when a date fixed for payment, or according to a call on shares.

A call on shares is a demand by the directors to shareholders to pay the company the ratio which is unpaid on shares, whether on account of the nominal value of the shares or by way of premium. (1) As when shares are issued

(1) Roman Tomasic, Stephen Bottomley & Rob McQueen «Corporation Law in AustraJ.ia», the Federation Press, Sydney, Australia, 2nd edition 2002, p. 299. Andrew Hicks & S.H. Goo «Cases and

the full amount usually is not payable at once, the terms of issue will provide that part is payable on call, and may another part on allotment and the remainder by installments at fixed dates. The shareholder is bound to pay the amount called for, weather, the whole or a part of the balance unpaid of his shares, as and when called for in accordance with the provisions of the Articles of association. Calls must be made in the manner laid down in the Articles.

The commercial companies' law provides that shareholder shall pay the value of the shares on the due dates. Interests shall be charged for the delay in payment once the date falls due without need for serving a notice. If a shareholder fails to pay a due installment, the board of directors shall be entitled to sell the share after serving a notice to the defaulting shareholder by registered mail with a delivery note. If the shareholder does not pay the amount within specific period from the date of receiving the notice, the company may sell the share in the Egyptian Stock Exchange or in a public auction. However, the defaulting shareholder may pay the due installment until the date of

Materials on Company Law» published by Oxford University Press, New York, USA, 6th edition, 2008, p. 55.

the auction in addition to the expenses incurred by the company.

3.4.2. Pay Farther Expenses

Due payments, if are not timely paid, create extra debt on shareholders, therefore, the shareholder is bound and advised to pay expenses incurred by the company in the process of collecting the unpaid installment and sale of shares. If the company did not receive the due amount it may, as previously mentioned, sell the shares and recover from the proceeds of the sale the delayed installments, expenses and refund to the shareholder any excess amounts. However, if the proceeds fall short of the company's entitlements the company claims the difference by using the ordinary methods.

3.4.3. Refrain From Certain Acts

To refrain from doing any act that might harm the company. It is understood that the shareholder, as any other person is not allowed to harm the company, but is that obligation means, for example, the shareholder is not allowed to compete the company or to carry on any activities resembles objects of the company. In other words, the question which is frequently asked is: can a shareholder

start his own business which may compete with the company that he has invested in? In fact, it is not prohibited, but the business norms do not support this practice and, the company may claim for compensation if the competition is unfair and results in harm to the company. However, there is no provision in the law forbidding or restricting shareholders for competing with the company in which they invested in. As if they do, the business will definitely go in loss because the shareholder can efficiently compete with the company because they has sufficient business secrets and ideas of the company. (1)

Therefore, in order to protect the interest of the company it is suggested to restrict shareholders from unfair competition. The shareholder agreement must include a non competition clause that bound the shareholder to not compete with the company even after the selling of the share. The agreement must provide the time period for non competing with the business after selling the share as ex-shareholder may use business knowledge and plan against the company. The agreement must define the territorial limit under which a shareholder cannot become a

(1) David Sorin, «The Special Events Advisor: A Business and Legal Guide for Event Professionals)), published by John Willy & Sons Ine, Hoboken, New Jersey, USA 2003, p.229.

competitor of the company.[1] Such a clause has a greater importance and has been used worldwide as business success always depends on this clauses. Non competition clause provides the assurance that shareholders cannot become the competitor of the company. [2]

3.4.4. Comply With Company's Resolutions

Execution of any resolution adopted by the general assembly and passed in a legal manner is one of the most important obligations, as the company will not carry on its business in good manner or as planned for if the resolutions made are not fully adopted. [3]

A resolution is an agreement made by the directors or members of a company, therefore, once it was passed, it should bind the company and shareholders. Resolutions of companies are classified into two categories

1. Ordinary Resolutions

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(1) Ibid.

(2)The non competing clause has the following benefits. Such as;

- Ensure the growth of the business;
- Bound the shareholder to not compete with the business;
- Gives the chance for earning more profit;
- Creates the harmony among the shareholders;
- Bounds the shareholder to protect the interest of the company.

Compare: Fernando, A. C, " Business Ethics: An Indian Perspective)), published by Dorling Kindersley (India) Pvt Ltd. India 2009, p. 175.

(3) Simon Goulding, «Company Law», op.cit, p. 134 Andrew Hicks & S.H. Goo, «Cases and Materials on Company Law», op cit, p.228.

These are made for all matters unless the companies order or the company's articles of association require another type of resolution. They are passed by a simple majority of members who are entitled to vote at a meeting, notice of which has been properly given. Voting may also be allowed by a member's proxy. The length of notice required for an ordinary resolution depends on the kind of meeting at which the resolution is to be discussed and made. (1)

2. Extraordinary Resolutions

These are required for certain matters, for example modifying rights and classes of shares or winding-up the company. They are passed by a special majority of votes attending the meeting in person or by proxy, at a extraordinary general meeting. These resolutions are required for important matters such as alterations to the memorandum or articles of association, a change of name, or a reduction of capital. (2)

4-The Debt Securities (Debentures)

To finance their projects, companies may issue debt securities with fixed and floating charges which the

(1) Ibid.
(2) Ibid.

company may create over its property in order to secure the principle sum borrowed and interest thereon until the repayment is due. (1)

Memorandums of associations of joint stock companies, usually, contain express powers to borrow money and to issue securities for loans. (2) Lenders are usually given certificates of bonds to show that they have lent money to the company, in which event each bond evidences a distinct debt. (3) The person who lends money to a company is a bondholder, unlike a shareholder, he is not a member of the company and has no right to attend and vote at general meetings of such companies. He is a creditor and is entitled to interest at the specific agreed rate. (4)

4.1. Definition of debt securities

"Debenture" is an instrument used for raising necessary funds and it represents the contract of a company with the holder or owner to pay the latter a definite sum of money at a stipulated time together with periodic payment

(1) For more reading, see Geoffrey Morse, «Charlesworth's Company Law», op.cit, p. 607. Mustafa Kamal Taha (Commercial Law) text in Arabic, op.cit, p. 312. Mahmud Al-Kelany, op.cit, p. 111.
(2) A type of debt instrument that is not secured by physical assets or collateral. Debentures are backed only by the general creditworthiness and reputation of the issuer. Both corporations and governments frequently issue this type of bond in order to secure capital. Read more: http://www.investopedia.com/terms/d/debenture.asp#ixzz2NcQuv7Uv.
(3) Ric Edelman, «The Truth about Money», published by Rodale Inc, 3rg edition, 2005, USA, p. 117.
(4) Geoffrey Morse, «Charlesworth's Company Law», op.cit, p. 608. Mahmud Al-Kelany, op.cit, p. 111. Philip Martin McCauley, «Stockbroker Series 7 Exam: General Securities Registered Representative)), 2007, p. 184.

of interest. [1] Alternatively, debenture is a document which creates or acknowledges a debt due from a company. Such a document need not be, although it usually is, under seal, it needs not to give, although it usually does, a charge on the assets of the company by a way of security. Hence, bonds may be secured or unsecured. A bond is always indivisible, for a specified sum of money. For example BD 100 which can be only transferred in its entirety. [2] Bonds may be collaterally secured by a trust deed or Convertible bonds; that the holder has a right to convert them, at a specific time, into shares in the company[3] (as will be explained shortly). A bond's certificate, as any other debt security is transferable by an instrument of transfer which is registered by the company. [4]

4.1.1. Features of debentures

Due to the debenture's definition the debenture holders are the creditors of the company to which company pays the interest at a fixed rate and at the intervals stated in the

(1)Compare: Om Prakash Goyal," Convertible Debentures/bonds: Experience of Indian Private Corporate Sector», published by Gain Publishing House, Delhi, 1988. p. 20.
(2) Rambran Mangal, «Introduction to the Company Law in the Commonwealth Caribbean», published by University of West Indies, Jamaica, 1995, p. 108. Michael Ottely & Jon Rush, «Business Law>>, Thomson Learning, London, UK, 2006, p.221.
(3) Philip Martin McCauley, «Stockbroker Series 7 Exam: General Securities Registered Representatives published by Create Space, USA, 2007, p. 184
(4) Pratap G. Subramanyam, "Investment Banking", Tata McGraw-Hill education, New Delhi, 2005, p. 176. Duncan L. Clore, "Financial Institution Bonds", 2008, p. 986.

debenture. No voting rights are given to the debenture holders. Usually debentures are secured by charge on the assets of the company. In fact, debenture is a type of debt instrument issued to anyone who lend money to a company for a specified term and interest rate. In general, debentures have the following important features:

1) Debenture holders are considered creditors of the corporation or in other words, the company borrow money from them through issuing debenture No voting rights. The debenture-holder is not a shareholder and cannot vote in the company's general meetings
2) Fixed rate of interest. A debenture with a fixed charge has a fixed rate of interest. They are always unsecured and earns a fixed rate of interest but has no share of the profit.
3) Compulsory payment of interest. The interest on debenture is payable irrespective of whether there are profits made or not.
4) Redeemable and Irredeemable. A redeemable debenture is the one which is to be repaid within a maturity period, while Irredeemable or Non-redeemable debentures cannot be redeemed in the life time of the company and only repayable upon the liquidation of the corporation.

4.1.2. Differences between Shares and Bonds

As debentures differ from shares in many aspects, it is worth distinguishing between shares and bonds to avoid any confusion.(1)

1. The bondholders are creditor, so they differ from shareholders, as holders of debt securities are ranked prior to the shareholders, and their bonds are issued for a defined term. In addition, debt securities are remunerated by fixed interests and usually remunerated before shares as obligations are paid first where as the income from shares is uncertain and only paid according to the resolution of the general meeting. (2)
2. A company may purchase its own bonds, but it cannot purchase its own shares except in accordance with specific procedures. (3)
3. Interest at the specified rate on bonds may be paid out of the capital as it is a debt and an obligation that should be

(1) Read more: David Kelly, Ruth Hayward, Ruby Hammer, John Hendy«, Business Law», published by Rutledge, USA & Canada, 6th edition, 2011, p. 181.

(2) Ibid. Philip Martin McCauley,»Stockbroker Series 7 Exam: General Securities Registered Representative)), op.cit p. 184.

(3) The principal rules governing the reduction of the capital of SARL (resembles Joint Stock Company) are set out in Article 1223-43 of the French Commercial Code. A private company may reduce the number or nominal value of the shares issued by it by means of an extraordinary resolution. Compare: Mads Tnnesson Andens & Mads Andenas:» European Comparative Company Law» published by Cambridge University Press, Cambridge UK & New York USA, 2009, p. 201.

paid, meanwhile dividends on shares must only be paid out of distributed profits. (1)

However bonds and shares have common features;

1. They are both negotiable, Have similar legal forms, as they can be issued either in a nominal or for a bearer. The nominal form is represented by an inscription of the holder's name on a special ledger kept by the issuer. A certificate is usually sent to the holder proving such registration. (2)
2. Transfer of registered securities had to be registered on the issuer register to be effective. Bearer securities are represented by a written document established by the issuer without owner's name and they are transferred by delivery from hand to another. (3)

4.2.2. Conditions of Issue Debenture

To be valid, bonds shall be nominal or for bearer, negotiable, with equal values and categories and the maturity date shall not be less than two years. The bonds of the same issue shall entail equal rights to their holders towards the company, and any provision to the contrary shall be null.

(1) David Kelly, Ruth Hayward, Ruby Hammer, John Hendy«, Business Law», op.cit, p. 181.
(2) See Jean- Pierre Le Gall, French Company Law, 2nd edition, 1992, Longman, UK. p.219.
(3) Ibid, p, 199

The issuer shall not issue debt securities unless the issued capital is fully paid-up

Bonds, weather nominal or for bearer, shall be negotiable, having equal par value in each issue, and a maturity date .Bonds of the same issue shall confer upon their holders' equal rights towards the issuer. Such provisions are a part of public order so any condition to the contrary shall be null and void.