

## The Particularities of Incorporating a Simplified Joint-Stock Company (A Comparative Study between Algerian and French Law)

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### Abstract

This study addresses the specifics of establishing the simplified joint-stock company through a legal comparison between Algerian and French law, considering it as one of the modern legal forms introduced to keep pace with economic developments and encourage investment. The study aims to highlight the extent to which the legislative philosophy governing the incorporation stage of this type of company differs between the two legal systems. The French legislator adopted a flexible model for establishing the simplified joint-stock company, based on the principle of the freedom of will, granting founders broad discretion in its incorporation, without requiring a minimum share capital, and allowing it to be formed by a single person, while prohibiting public fundraising to maintain its closed nature. In contrast, an analysis of Algerian legal provisions shows that, although inspired by the French experience, the Algerian legislator has surrounded the incorporation of the simplified joint-stock company with several legal safeguards to achieve a balance between encouraging economic initiative, ensuring legal certainty, and protecting partners and third parties dealing with the company. The specificities of establishing a simplified joint-stock company in both legal systems thus emerge from the combination of

capital-based characteristics and contractual flexibility.

**Keywords:** Simplified Joint-Stock Company, Establishment of a Simplified Joint-Stock Company, Algerian Commercial Law, French Commercial Law.

### Introduction

The introduction of the Simplified Joint-Stock Company represents one of the most significant transformations witnessed by modern legal systems in the field of commercial companies, as this company constitutes a flexible and efficient legal model that combines the advantages of capital-based companies with the simplicity of contractual organization.

This form of company first emerged in French law in 1994 before undergoing substantial reforms through subsequent amendments, eventually becoming one of the most widely adopted forms within the French economic landscape.

As part of ongoing efforts to modernize the legal framework and promote investment, the Algerian legislator adopted this model through the amendment of the Commercial Code in 2022, drawing inspiration from the essence of the French experience while adapting it to the national legislative and

economic environment. The Algerian legislator, however, adopted this company form relatively late compared to the French legislator and even in comparison with other legal systems.

The fundamental particularity of this type of company lies in its distinctive mode of incorporation, which clearly differs from that of the classical joint-stock company. Both the Algerian and French legislators were keen to uphold the principle of closed incorporation, making this form an appropriate vehicle for private and innovative projects, away from the public-oriented nature that characterizes the traditional joint-stock company.

In addition to this, another equally important particularity is the absence of any requirement for a minimum capital or a specific number of partners. These criteria are left entirely to the discretion of the founders, in accordance with the nature and needs of the company's activity, thereby facilitating its incorporation and reducing financial and procedural constraints.

Based on the foregoing, examining the specific features of incorporating a Simplified Joint-Stock Company under Algerian legislation in comparison with its French counterpart constitutes an important entry point for understanding the legislator's philosophy in adopting this model and assessing its alignment with the requirements of investment and governance. This consideration has led us, within the framework of this study, to pose the following research question:

**To what extent does the legislative approach of the Algerian legislator differ from that of the French legislator regarding the conditions for incorporating a Simplified Joint-Stock Company?**

To examine the aforementioned research question, the study has been divided into two sections. The first section addresses the

prohibition of public recourse to savings in the Simplified Joint-Stock Company, while the second section is dedicated to examining the absence of any minimum requirement for both the capital and the number of partners.

### **Section One: The Prohibition of Public Recourse to Savings in the Simplified Joint-Stock Company**

The incorporation of the Simplified Joint-Stock Company is governed by several provisions applicable to the traditional joint-stock company, while taking into account the special rules established by the law that created it—rules that confer a distinctive character on its method of incorporation.

The Algerian legislator adopted the method of incorporating the Simplified Joint-Stock Company from its French counterpart. One of the most notable shared features between the Algerian and French experiences regarding this company is the adoption of the principle of closed incorporation, which limits the establishment of the company to its founders only, without the possibility of offering its shares for public subscription.

To study this section, we will address the substance of the prohibition imposed on the Simplified Joint-Stock Company from resorting to public savings, followed by the consequences that arise from this prohibition.

#### **First: The Scope of the Prohibition Imposed on the Simplified Joint-Stock Company from Public Recourse to Savings**

It is evident from the wording of Article 715 bis 139 of Law No. 22-09 containing the Algerian Commercial Code that the legislator has adopted the principle of prohibiting public recourse to savings with respect to the incorporation of a Simplified Joint-Stock Company (SAS). The financing of such a company is therefore not carried

out through the public subscription of its shares, but exclusively among its founders<sup>1</sup>.

It is worth noting that the principle prohibiting public recourse to savings in the context of incorporating a Simplified Joint-Stock Company is enshrined in Article L.227-2 of the French Commercial Code<sup>2</sup>.

The role assigned to the Simplified Joint-Stock Company, along with the contractual freedom enjoyed by its partners in organizing and managing it, has compelled the legislator to intervene to prohibit public solicitation for subscription. This prohibition thus constitutes an essential condition that companies wishing to establish a Simplified Joint-Stock Company among themselves must strictly observe<sup>3</sup>.

The requirement prohibiting public recourse to savings aligns with the closed nature of the Simplified Joint-Stock Company, as it enables the company to fulfill the legislator's purpose behind its establishment. This purpose lies in providing a closed legal framework to organize cooperation among a limited number of enterprises of a certain scale,

rather than mobilizing public savings or raising capital from the general public<sup>4</sup>.

One of the justifications for prohibiting the Simplified Joint-Stock Company from resorting to public savings lies in the freedom enjoyed by its partners in organizing and managing their company. This freedom necessarily entails the absence of public order provisions designed to safeguard public savings—a protection that requires complex formalities, which would hinder the normal operation of a company that relies on flexibility and simplicity in managing its activities. For this reason, the legislator's intervention was necessary to protect natural and legal persons who are presumed to be in a legal and financial position that allows them to safeguard their interests without the need for the traditional safeguards applied in joint-stock companies<sup>5</sup>.

On the other hand, the justification for including this requirement stems from the strict procedures involved in offering shares on the stock exchange, which small and medium-sized enterprises or companies with modest capital are often unable to comply with<sup>6</sup>.

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<sup>1</sup> Article 715 bis 139 of Law No. 22-09 provides: **«A Simplified Joint-Stock Company is prohibited from resorting to public savings or offering its shares on the stock exchange»**. Law No. 22-09 dated May 5, 2022, amends and supplements Executive Decree No. 75-59 dated September 26, 1975, containing the Commercial Code, as published in the Official Gazette of the People's Democratic Republic of Algeria, Issue No. 32, dated May 14, 2022.

<sup>2</sup> Article L.227-2 of the French Commercial Code provides: dated January 3, 1994, establishing the Simplified joint-stock company, published in the Official Journal of the French Republic No. 2, **«La société par action simplifiée ne peut procéder à une offre au public de titres financiers ou à l'admission aux négociations sur un marché réglementé de ses actions»**. ». Law No. 94-1, dated January 4, 1994.

<sup>3</sup> Khaled Ahrabil, The Legal Nature of the Simplified Joint-Stock Company in Moroccan Law, Master's Thesis, Faculty of Legal, Economic and Social Sciences, Ibn Zohr University, 2017, p. 18.

<sup>4</sup> Najib Babayba and Mazouza Zeroual, The Exclusivity of Establishing the Simplified Joint-Stock Company: Privilege or Obstacle?, Journal of Law and Human Sciences, Vol. 16, No. 01, 2023, p. 355.

<sup>5</sup> Ramadan Guenfoud, The Legal Aspects of Startups in Light of Law No. 22-09, Algerian Journal of Law and Political Sciences, Vol. 7, No. 2, 2022, p. 247.

<sup>6</sup> Samia Moualfi and Farida Ayadi, The Simplified Joint-Stock Company: Between Contractual Freedom and Legal Framework, Journal of Law and Human Sciences, Vol. 16, No. 01, 2023, p. 1031. Nabih Bara Boumaza, Rules for the Incorporation and Management of the Simplified Joint-Stock Company under Algerian Law No.

## **Second: The Consequences of Prohibiting the Simplified Joint-Stock Company from Resorting to Public Savings**

The prohibition on the Simplified Joint-Stock Company from resorting to public savings entails the necessity of holding an ordinary general meeting for its incorporation, as is practiced in the conventional joint-stock company established without public subscription. What distinguishes this method of incorporation from the public subscription method is the absence of a draft incorporation, subscription forms, or a constituent assembly. This method is therefore referred to as immediate or closed incorporation. Some legal systems have even allowed for the incorporation of a Simplified Joint-Stock Company within 24 hours electronically, with only a minimal portion of the capital required<sup>7</sup>.

Although failing to comply with the requirement prohibiting public recourse to savings constitutes a breach of a fundamental mandatory rule, the Algerian legislator, under the aforementioned Law No. 22-09, did not prescribe a specific penalty for such a violation. Rather, it merely results in the nullity of the act, in accordance with the second paragraph of Article 733 of the Commercial Code<sup>8</sup>.

Based on this paragraph, it follows that the Algerian legislator imposes nullity on the

contracts of Simplified Joint-Stock Companies that are established through public recourse to savings, considering that such contracts are concluded in violation of the mandatory legal provisions of the Commercial Code.

In contrast, prior to 2019, the French legislator imposed a financial penalty of €18,000 on the managers of a Simplified Joint-Stock Company who solicited the public for subscriptions to the company, as a sanction for violating the principle prohibiting public recourse to savings, pursuant to the provisions of Article L.244-3 of the French Commercial Code<sup>9</sup>.

However, with the amendment of the Commercial Code in 2019, the French legislator reversed this position by repealing the aforementioned article through Article 4 of Law No. 2019-744<sup>10</sup>.

It is worth noting that the prohibition on public recourse to savings in the Simplified Joint-Stock Company was established to ensure that funds are raised privately, accessible only to the partners of the company, and to protect them from adopting an approach that would cause them to lose control over the company's funds and oversight. This is particularly relevant if the subscription were opened to the public, which could potentially threaten the majority control held by the partners<sup>11</sup>.

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22/09, Journal of Legal and Political Thought, Vol. 7, No. 1, 2023, pp. 1743–1744.

<sup>7</sup> Nabiha Bara Boumaza, Rules for the Incorporation and Management of the Simplified Joint-Stock Company under Algerian Law No. 22/09, Journal of Legal and Political Thought, Vol. 7, No. 1, 2023, pp. 1743–1744.

<sup>8</sup> The second paragraph of Article 733 of the Commercial Code provides:

**«The nullity of a company or an amendment to its bylaws shall not occur except by an explicit provision in this Code or the law applicable to contracts».**

<sup>9</sup> Article L.244-3 of the French Commercial Code provides:

«The managers of a Simplified Joint-Stock Company who make a public offering of financial securities or have shares admitted to trading on a regulated market shall be punished by a fine of €18,000»

<sup>10</sup> Dherifa Moussaoui, On the Particularities of the Simplified Joint-Stock Company: A Comparative Study with French Law, Monetary Journal of Law and Political Sciences, Vol. 17, No. 01, 2022, p. 874.

<sup>11</sup> Youssef El Mamouni, The Simplified Joint-Stock Company in Moroccan Legislation, Al-Baheth

## **Second Section: No Requirement for a Minimum Capital or Number of Partners**

Among the essential characteristics that distinguish the Simplified Joint-Stock Company from the traditional joint-stock company is the absence of strict requirements concerning both the minimum capital and the number of partners.

Both Algerian and French legislation have moved toward freeing the incorporation of the Simplified Joint-Stock Company from the financial and formal restrictions that once posed obstacles for certain investors, opting instead to leave the determination of the company's capital to the will of the partners without imposing a legal minimum—and the same applies to the number of partners.

To examine this topic, it is necessary to address the freedom to determine the capital of the Simplified Joint-Stock Company, followed by the freedom to determine the number of partners in this type of company.

### **First: Freedom to Determine the Capital of the Simplified Joint-Stock Company**

From the provisions of Articles 715 bis 134 of the Algerian Commercial Code<sup>12</sup>, it is clear that the capital of a Simplified Joint-Stock Company is determined by the founders based on their full discretion, without any minimum or maximum limit set by the legislator. Article 715 bis 138 of the same Code<sup>13</sup> further confirms that the

capital of a Simplified Joint-Stock Company is specified in its bylaws.

As for the position of the French legislator regarding the capital of the Simplified Joint-Stock Company, it appears to have been inconsistent, as evidenced by the various amendments to the Commercial Code. In the 1994 Code, the French legislator did not set a minimum capital for this company. This law was later amended by the Economic Regulations Act of 2001<sup>14</sup>, which restricted the right to establish a Simplified Joint-Stock Company to legal entities whose capital exceeded 1.5 million French francs.

The French legislator later set the minimum capital of the Simplified Joint-Stock Company at €37,000, pursuant to Article L.224-2 of the French Commercial Code, and subsequently removed any restrictions on the company's capital by amending Article L.227-1 of the aforementioned Law No. 2019-744<sup>15</sup>.

Regarding the types of shares that may be offered in a Simplified Joint-Stock Company, the legislator has not limited them to a specific type. Instead, the law allows for a diversity of contributions, granting founders the right to provide cash contributions, in-kind contributions, and even contributions in kind through labor, known as industrial subscriptions for the company's incorporation. This differs from other joint-stock companies, where contributions are generally limited to cash

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Journal for Legal Studies and Research, No. 44, 2020, p. 61.

<sup>12</sup> Article 715 bis 134 of the Algerian Commercial provides:

**«In addition to the other characteristics set forth in this section, the Simplified Joint-Stock Company is distinguished by the fact that no minimum number of partners or minimum capital is required for its incorporation...»**

<sup>13</sup> Article 715 bis 138 of the Algerian Commercial provides:

**«The capital of a Simplified Joint-Stock Company shall be determined in its bylaws».**

<sup>14</sup> Law No. 2001-420 dated May 15, 2001, concerning New Economic Regulations, Official Gazette of the French Republic, No. 113, published on May 16, 2001.

<sup>15</sup> Law No. 2001-420 dated July 19, 2019, on the simplification, clarification, and updating of company law, Official Gazette of the French Republic, No. 167, published on July 19, 2019.

and in-kind contributions, without the possibility of labor contributions<sup>16</sup>.

This approach was also adopted by the French legislator, as the amendment to the Commercial Code in 2008, pursuant to Law No. 2008-776, allowed for contributions in kind through labor, instead of limiting the capital solely to cash contributions, pursuant to Article L.227-1 and the following articles of the same Code<sup>17</sup>. However, it should be noted that labor contributions do not form part of the company's capital.

### **Second: Freedom to Determine the Number of Partners in the Simplified Joint-Stock Company**

It is generally accepted that, as a contract, the formation of commercial companies requires at least two concordant wills concerning the contract, which is the general rule. By way of exception, certain types of companies may be established by a sole person.

Referring to Articles 715 bis 133 and 715 bis 134 of Law No. 22-09 containing the Commercial Code, it is evident that the legislator has not set a minimum or maximum number of partners required for a Simplified Joint-Stock Company.

It follows from the aforementioned articles that a Simplified Joint-Stock Company may be established by a single person or by

multiple natural or legal persons. The determination of this is entirely at the discretion of the founders, without any legal restrictions<sup>18</sup>. When such a company is established by a sole person, it is referred to as a Single-Member Simplified Joint-Stock Company.

The Algerian legislator adopted this rule from the French legislator, which was reached after numerous stages and developments in the evolution of the Simplified Joint-Stock Company since its introduction in 1994<sup>19</sup>.

A review of the French Commercial Code of 1994 shows that the French legislator restricted the incorporation of the Simplified Joint-Stock Company to a narrow scope, allowing only legal entities to establish it while excluding natural persons active in the fields of economy, trade, and industry. This approach attracted significant criticism from French legal scholars<sup>20</sup>.

In response to the criticisms directed at the French legislator regarding the restriction of the incorporation of the Simplified Joint-Stock Company to legal entities only, the legislator intervened by amending the 1999 Commercial Code through Law No. 99-587 on Innovation and Research<sup>21</sup>. This marked the beginning of the true evolution in the regulation of the Simplified Joint-Stock Company in French law<sup>22</sup>.

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<sup>16</sup> Said Youkrour, The Legal Framework for the Incorporation of the Simplified Joint-Stock Company – A Comparative Study, *Journal of Law and Human Sciences*, Vol. 15, No. 03, 2022, p. 564.

<sup>17</sup> Law No 2008-776 dated August 04, 2008, on the modernization of the economy, *Official Gazette of the French Republic*, No. 181, published on August 05, 2008.

<sup>18</sup> Dherifa Moussaoui, *Op Cit*, p.875.

<sup>19</sup> The purpose of the French Commercial Law of 1994 in creating the Simplified Joint-Stock Company was to provide a flexible legal framework that allows founders to organize and manage their companies with greater freedom compared to the

traditional joint-stock company, while protecting shareholders from full liability.

It also aimed to encourage the establishment of startups and small to medium-sized enterprises by simplifying administrative procedures and reducing formal complexities, thus facilitating business development and innovation without major bureaucratic obstacles.

<sup>20</sup> Dherifa Moussaoui, *Op Cit*, p.875.

<sup>21</sup> Law No. 99-587 dated July 12, 1999, on Innovation and Research, *Official Gazette of the French Republic*, No. 160, published on July 13, 1999.

<sup>22</sup> Dherifa Moussaoui, *Op Cit*, p.876.

In line with this, Article 30 of Law No. 99-587 amended the provisions of Article 262-1 of Law No. 66-537 on commercial companies<sup>23</sup>, allowing both natural and legal persons alike to establish a Simplified Joint-Stock Company.

## Conclusion

We conclude at the end of this study that the establishment of the simplified joint-stock company is based on contractual freedom, both under Algerian law and French law. This modern legal form represents one of the most significant manifestations of the development of commercial company law and its responsiveness to the requirements of the modern economy, particularly the need of investors for flexibility and speed in establishing investment projects.

In this study, we have arrived at a set of findings as follows:

- French law, as the originating legal framework for the simplified joint-stock company since its introduction in 1994, has demonstrated a clear tendency to entrench contractual freedom at the incorporation stage by granting partners broad authority to determine the company's organization, while reducing formal constraints related to share capital and the number of partners. This has made it an effective instrument for attracting investment, particularly within startups and economic groups.
- It appears that the Algerian legislator, when introducing the simplified joint-stock company as part of the 2022 amendment to the Commercial Code, sought to draw inspiration from the French model while adapting it to national legal

and economic specificities. The legislator adopted the principle of flexibility in incorporation, particularly by not requiring a minimum threshold for either share capital or the number of partners.

- The Algerian legislator has fallen into a contradiction by restricting the incorporation of the simplified joint-stock company to companies holding the "Startup" label on the one hand, while on the other hand granting the possibility of its incorporation by one or several natural and/or legal persons.
- Through a comparison of the two systems, it becomes clear that the fundamental difference does not lie in the conceptual framework of the simplified joint-stock company, but rather in the degree of legislative boldness in enshrining partners' freedom and ensuring legal certainty for them. While French law has succeeded in making the simplified joint-stock company a flexible and investment-attractive framework thanks to the clarity of its provisions and the broad scope of contractual freedom, Algerian law still needs to further deepen the legal regulation of this type of company, particularly with regard to defining and regulating the rules of incorporation.

In light of these findings, the study proposes:

- The necessity of reviewing and refining the Algerian provisions governing the incorporation of the simplified joint-stock company, in a manner that allows optimal benefit from the French experience while preserving the specificities of the national legal system, thereby enhancing the business climate and

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<sup>23</sup> Law No. 66-537 dated July 24, 1966, on commercial companies, Official Gazette of the French Republic, published on July 24, 1966.

encouraging initiative and investment.

- The need to address the contradiction made by the Algerian legislator regarding the restriction of incorporation to “Startup” companies only, and to open the possibility for investors who wish to implement their projects within this type of company.
- The Algerian legislator should establish specific legal provisions for the simplified joint-stock company, entirely independent from the regulations governing the traditional joint-stock company.