Ilkogretim Online - Elementary Education Online, 2025; Vol 24 (Issue 1): pp. 1-12
http://ilkogretim-online.org
doi: 10.17051/ilkonline.2025.01.01

Legal Implications Of The Limited Liability Of The Partner In Single-Member Companies Under Algerian Law

Dr. Zekri Imene Professor Lecturer A, Faculty of Law and political science, Abou Bekr Belkaid University of Tlemcen - Algeria. zekrimene_droit@hotmail.fr.

Received: 29/09/2024 accepted: 09/12/2024 published: 15/01/2025

Abstract.

This study highlights the protections granted to single-member companies and their creditors, particularly since they are limited liability companies. The legislature has established legal procedures to safeguard the company's capital, ensuring greater financial transparency and stability.

Among these procedures is the precise determination of the capital in the company's articles of association, along with measures to ensure proper subscription and the contribution of both cash and in-kind shares. This guarantees the existence of genuine capital within specified timeframes, while reinforcing the principle of accurate valuation of non-cash contributions and the immediate payment of cash contributions, in order to prevent fictitious contributions and thus protect the company and its creditors.

The mixing of the company's assets with those of the sole member is considered a serious legal violation that may trigger the activation of the sole member's personal and unlimited liability over their private assets. Even if the member does not personally manage the company, they are still subject to a fiduciary duty that prohibits them from using the company's funds for personal purposes. The legislature has identified various actions as exploitative and depleting the company's funds. However, following amendments to the relevant laws, these safeguards have proven insufficient to protect those dealing with the company from the risks of non-payment and insolvency.

Keywords: Sole Partner, Limited Liability, Capital, assets.

Introduction

The single-member limited liability company holds a prominent position across various sectors of the economy, as it is the most suitable for small and medium-sized enterprises due to its low costs and ease of establishment. This has led to its rapid spread in the business world[1].

These companies provide opportunities for partners to develop their personal ideas and projects. However, the formation of these companies has distinct legal implications, particularly concerning the issue of the sole partner's personal liability. Since the

[1] Although it represents a departure from the traditional concept of a company contract and the impossibility of a person entering into a contract with themselves, and the element of the intention to partner, it embodies the concept of a company as outlined by the legislator in Order No. 96-27, dated December 9, 1996,related to Algeria's Commercial Code.

individual is responsible for managing and operating the company, and often owns it, the principle of limited liability is applied to protect the sole partner from personal liability in case of issues or legal claims. While this applies to the partner, those dealing with the partner face significant risks due to the limited liability of the sole partner, as there are no other partners to share the responsibility.

This is a relevant and contemporary issue that attracts considerable attention in the field of commercial and business law. The matter concerns the regulation of how small businesses and startups are formed and managed, which constitute a significant portion of commercial activity in many countries.

The principle of the financial independence of the sole partner in a single-member limited liability company is one of its most important features, as well as one of its major drawbacks. The purpose of establishing this type of company is to separate the personal financial assets of the sole partner, as long as they do not engage in business activities in their own name but rather in the name and for the account of the company, which alone bears the project's outcomes[2],Except in cases where the sole partner interferes with the legal personality of the company and exploits its funds as if they were their own, resulting in a mixing of the company's assets with the sole partner's personal assets.

The difficulty in fully and definitively separating the company's funds from the sole partner's personal financial assets, as well as the difficulty in proving such separation, makes this feature one of the most significant drawbacks of this type of company. The mixing of these assets may lead to the creation of a fictitious company, especially in the context of the limited liability of the sole partner, particularly after the legislature abolished the mandatory minimum capital requirement for limited liability companies under Law No. 15-20, which amended the Commercial Code[3].

This study raises the following issue : Does the legislator provide legal guarantees to protect the company and those dealing with it from the consequences of limited liability and the financial independence of the sole partner in these companies, which arise from the risks of the partner exploiting the company's funds?

To examine this issue, it is necessary to shed light on the following:

-The legal procedures that ensure the protection of the capital of the single-member limited liability company, as it is the sole guarantee for its creditors.

-The personal liability of the sole partner in the event of mixing the company's assets with the sole partner's personal financial assets.

First : Legal Procedures Ensuring the Protection of the Capital of the Single-Member Limited Liability Company.

[2] Claude Champaud, The Single-Member Limited Liability Company, Dalloz, France, 2012, p. 615.

[3] The legislator made significant amendments to the procedures for establishing limited liability companies under Law No. 15-20, dated December 30, 2015, which amends and supplements Order No. 75-59, dated September 1975, containing the Commercial Code, as published in the Official Gazette on December 30, issue No. 71.

The legislator has not subjected this type of company to many procedures and obligations, as it consists of a single partner who makes the decisions, manages the company, and approves its accounts[4].

Since the original debtor is the company itself, in the event of its insolvency, the limited liability of the partner comes into play, under which the partner is only liable to the company's creditors up to the extent of their share, unlike their personal creditors[5].

It was necessary for the legislator to intervene to protect those dealing with this company through measures primarily related to its capital. The legislator stipulated the requirement for capital and emphasized the importance of this obligation in all commercial companies as a general rule. However, it is a legal provision of utmost importance for this type of company[6].

The capital of the single-member limited liability company represents the funds allocated by its owner to the project. It does not include its assets, which do not form part of the capital and whose value can only increase if the partner modifies it through an increase.

Here, it is important to distinguish between the company’s capital and its financial status, where the legal concept predominates the company’s capital. This capital consists of the funds provided by the partner during the company’s formation or even during its operational phase. On the other hand, the assets represent the accounting side of the company’s funds, which reflects the positive side of its financial position, including everything it owns within the company, such as the partner’s contribution and the profits earned, as well as what it owes to others.

The legislator has required companies to specify their capital in their articles of association and subjected them to procedures that ensure the existence of genuine, not fictitious, capital. To protect the company’s capital, the legislator has surrounded the process of subscription and the contribution of cash and in-kind shares with mandatory procedures in order to consider them as part of the capital[7].

The value of the capital specified in the articles of association represents the most important guarantee for its creditors. It is essential to adhere to this value as it reflects the company’s financial position, which third parties rely on when dealing with the company. Therefore, the legislator has obligated the partner to provide what they have committed to within the agreed-upon timeframe. In case of failure to fulfill this obligation, the partner will be liable to both the company and its creditors[8].

[4] Tayeb Beloula, Corporate Law, Berti Ed., Algeria, 2008, p. 222.

[5] P. Mousseron L.C. Autajon, Droit des sociétés, 2nd Ed, Joly Edition, France, 2013, p. 150.

[6] Article 416 of the Civil Code stipulates: "A company is a contract under which two or more natural or legal persons agree to contribute to a joint activity by providing their share in the form of labor, goods, or money."

[7] Although the legislator allows the partner to contribute labor as a share in a limited liability company, it does not represent part of the company’s capital, in accordance with the provisions of Article 567 bis of the Commercial Code.

[8] Article 421 of the Civil Code stipulates: "If the partner's share is a sum of money to be provided to the company and the partner fails to provide this amount, they are required to compensate the company."

The legislator allowed the partners to pay at least one-fifth (1/5) of the value of the cash contributions, with the remaining amount to be paid within a maximum period of five years. The same legal provision was also established by the French legislator.

The shares must be fully subscribed by the partners. They must be fully paid up when they represent contributions in kind. Shares representing cash contributions must be paid up to at least one-fifth of their value. The payment of the remaining amount shall be made in one or more installments, as decided by the manager, within a period not exceeding five years from the company's registration in the commercial and company register. However, the share capital must be fully paid up before any subscription of new shares to be paid in cash, under penalty of nullity of the transaction.

If applicable, the articles of association determine the terms under which shares in industry can be subscribed. The distribution of shares is mentioned in the articles of association. The funds from the payment of the shares are deposited under the conditions and within the timeframes set by decree in the Council of State[9].

All shares must be subscribed by the partners, and the value of the in-kind shares must be fully paid. The principle of immediate payment aims to prevent fictitious contributions in kind[10].

The immediate payment of in-kind contributions requires that they are not encumbered with debts or burdens that diminish their value. Therefore, any contribution in the form of money encumbered with debts is considered fictitious. If the contribution is encumbered with a lien, it must be genuine; otherwise, it will be regarded as fictitious. This means that the value of the debt should not exceed the value of the share, in order to protect both the partners and the creditors from the potential collapse of the company's financial position[11].

The same procedure applies to the sole partner in a single-member company under Article 564 of the Commercial Code. The process of paying up shares, whether in cash or in-kind, cannot be separated from the obligation to provide them. The guarantee of fulfilling the capital contribution requirement is only achieved by the payment of the shares, in accordance with the provisions of Article 567 of the Commercial Code for limited liability companies[12].

This procedure serves to confirm the partner's intention to establish the company and, more importantly, prevents them from creating a fictitious company, which could pose

---

[9] Article L223-7 of the French Commercial Code, in force since May 16, 2001, amended by Law No. 2001-420 of May 15, 2001, Law No. 2019-222 of May 22, 2019, also known as the "Pacte Law" (Action Plan for Business Growth and Transformation), aimed at reforming and improving the business environment in France. This law included updates to company rules, regulations for small and medium-sized enterprises, and measures to encourage entrepreneurship.

[10] At the request of the company manager, the contributions must be paid within a maximum period of five years from the company's registration in the commercial register. Additionally, the shares must be fully paid up before any subscription to new cash shares, under penalty of nullifying the transaction. This is stipulated in Article 567 of the Commercial Code.

[11] Mohamed Fall Hassan, In-kind Contributions in Commercial Companies: A Comparative Study, First Edition, University Foundation for Studies, Publishing, and Distribution, Lebanon, 2009, p. 220.

[12] Article 567 of Law No. 15-20 dated December 30, 2015, amending and supplementing Law No. 75-59 containing the Commercial Code, stipulates: "The shares must be distributed among the partners in the company's articles of association, and all shares must be subscribed by the partners. The full value of the shares must be paid, specifically regarding in-kind contributions."

significant risks to the company and its creditors. This is the same rationale that led to the legal consensus on the need to define the sole partner's liability, to prevent them from resorting to fraud and creating a fictitious company with nominal partners[13].

In French law, the appointment of a contribution auditor is advised to assess the value of the contributed assets. However, it is not mandatory if none of the contributions exceed a value of €30,000 and the total value of all contributions is less than half of the social capital[14].

The legislator has emphasized the necessity of valuing in-kind contributions through an expert who is responsible for determining their value to be included in the company's capital, in order to ensure that their valuation is not exaggerated, specifically for limited liability companies. However, this obligation is not explicitly stated for single-member limited liability companies, despite its importance, particularly since failure to comply with it may lead to joint liability for all partners who have overvalued the in-kind contributions[15].

However, despite the absence of an explicit provision regarding the joint liability of the partner with the company in the case of fictitious capital, the individual personal liability of the partner remains in effect. The partner is required to pay the difference between the nominal value of the company's capital and the amounts registered in the commercial register[16].

Therefore, the sole partner can be considered personally liable with respect to their private assets for the declared value of the in-kind contributions, as well as for any overvaluation or fictitious valuation of the in-kind contributions made during the establishment of the sole member company. The legislator has also established a criminal penalty for anyone who fraudulently inflates the value of in-kind contributions beyond their actual worth[17].

The legislator's intervention to impose a mandatory minimum capital for the company is, in itself, an important safeguard to ensure the existence of capital to protect the company's creditors. However, in order to simplify the process of establishing a limited liability company, the legislator allowed the creation of a single-member limited liability company without adhering to a specified minimum capital requirement.

This legal provision significantly weakens the protection afforded to the company's creditors regarding its capital. In a company where partners or the sole partner are only liable according to the contributed share, there is no personal or joint liability justifying the lack of a minimum capital requirement, unlike in a partnership company.

---

[13] Mohammed Ibrahim Al-Wasmi, Guarantees for Creditors of the Sole Proprietor Company Under the Kuwaiti Companies Law of 2016, Faculty of Law, Kuwait University, 2017, p. 11.

[14] F. Guiramand, A. Heraud, "Droit des sociétés : Manuel et applications," Francis Lefebvre, Dunod, France, 2013, p. 107.

[15] Article 568 of the Commercial Code.

[16] Fayrouz Ben Chnouf, Modern Trends in the Theory of Financial Liability: The Principle of Unity of Financial Liability in Sole Proprietorship Companies and Fiduciary Actions, A Comparative Study, 1st ed., Dar Al-Fikr Al-Jami'i, Egypt, 2011, p. 187.

[17] Article 800 of the Commercial Code states: "Anyone who fraudulently inflates the value of in-kind contributions beyond their actual worth shall be punished by imprisonment for a term of one to five years and a fine ranging from 20,000 DZD to 200,000 DZD, or by one of these penalties alone."

Furthermore, the legislator allowed the full payment of the cash contribution to be made after the company's formation over an extended period. This provision has rendered the company's capital an ineffective guarantee, as the legislator now requires it only to prove the intention to participate and to determine the rights and powers of the partners within the company.

The reason behind the legislator's abolition of this minimum capital requirement lies in the changing concept of general protection for creditors in commercial companies in general. Now, all of the company's assets and holdings are considered to be the guarantee for its debts. Therefore, it can be said that the fundamental guarantee is no longer the company's capital, but rather its assets, which, from an accounting perspective, represent the funds constituting its financial liability[18].

The company's capital is a theoretical and fixed accounting value that does not change even after it is invested. Therefore, the company's capital has become merely an indirect and hidden guarantee[19].

The legislator's intention was to facilitate the procedures for small and especially emerging sole proprietorships by reducing the requirements for minimum capital. However, this may pose a tangible challenge in terms of protecting the company and involved parties from the consequences of limited liability and the financial independence of the sole member. This approach likely aimed to enhance the success of small businesses by removing legal and procedural barriers, encouraging expansion and growth. Nevertheless, this direction has left the door open to the risks of the sole member exploiting the company's funds, which necessitates discussing the measures the legislator has taken to hold the sole member accountable when engaging in any form of misuse of the company's funds for personal gain.

Additionally, creditors may seek personal and unconditional guarantees, which are often unspecified in terms of amount or duration, potentially leading to the transformation of the sole member's liability into unlimited personal responsibility[20].

Second: The Personal Responsibility of the Sole Partner in the Case of Mixing the Company's Assets with the Sole Partner's Personal Assets.

The limited liability of the sole partner in such a company allows them to avoid having their personal assets executed against. The independence of the sole partner's personal financial liability means that the company alone bears the consequences of the project, being responsible to third parties for all debts arising from the commercial activity. This is because the sole partner engages in commerce without acquiring the status of a merchant, with the entity itself conducting the business activity. As a result, the sole partner's personal assets are shielded from direct liability once the company is formed and registered in the commercial registry[21].

The creditors are deprived in this case of the general guarantee granted to them over the partner's assets when the company's assets are insufficient, due to the principle of financial independence between the partner's personal assets and those of the company.

---

[18] Mohamed Fall Hassan, op. cit., p. 220.
[19] Le Lamy des sociétés commerciales, Dalloz, France, 2014, p. 299.
[20] Feyrous Ben chennouf, op, cit, p 159.
[21] Kareem Karima, Sole Proprietorship Limited Liability Company: The Legal Framework for Medium-Sized Enterprises, Dar Al-Jami'a Al-Jadida, Egypt, 2014, p. 323.

However, this is only realized after the complete and definitive separation between the company’s assets and the personal assets of the sole partner.

The issue of distancing the personal financial assets of the partner is practically difficult to achieve. Separating the company's assets from the sole partner’s requires the application of specific procedures, the most important of which is the non-mixing of these funds. This is particularly challenging as there is no specific legal framework for this type of institution, with the legislator having assigned only a few articles to regulate it. This has led to insufficient guarantees for creditors, leaving their rights inadequately protected.

A complete separation between the sole partner's financial assets and those of the company requires precise management of the institution, especially since the sole partner is often the one making decisions alone and approving the accounts[22].

The sole shareholder must commit to promoting the company's interests, not only as its manager but also as a partner. There should be no conflict between the company's interests and his personal interests, as the company's interests inherently include his own, and vice versa.

The most significant legal consequence of mixing the company's assets with the sole shareholder's personal assets is the establishment of the shareholder's personal and unlimited liability for the company's debts, extending to his private wealth[23], Even if the partner is no longer involved in managing the company by appointing another manager, the French legislator emphasized the necessity for the manager to be personally accountable for their decisions and actions. The manager is prohibited from delegating their authority to another person[24].

The sole partner is bound by a fiduciary duty, which entails that the partner must not exploit the company’s assets or use them for personal purposes to the detriment of creditors. This includes actions such as obtaining loans for personal benefit or making commitments that the company will guarantee loans or obligations obtained from third parties.

Violation of this principle is considered a breach of legal duty, and it is a fundamental legal principle underlying the structure of the company, namely the clear and definitive separation between the company’s assets and the personal assets of the sole partner. When this principle is violated, the personal liability of the partner arises, and the principle of limited and non-personal liability is excluded.

The breach of this fiduciary duty typically occurs when the partner is managing the company. However, it is not a prerequisite for the partner's personal liability, especially when the partner misuses the company's assets in a way that depletes them, even when the partner is not the company’s manager. The partner may use the company’s resources for purposes unrelated to the operation of the business, thus exploiting the company’s financial position as if it were their personal property. For example, the partner may pledge company assets for their personal creditor.

The partner is not entitled to deduct personal expenses from the company’s funds, such as travel expenses, purchasing a car, or any other expenditure that is unrelated to the

---

[22] Tayeb Belloua, op,cit, p. 222.

[23] C. Champaud, L’entreprise personnelle à responsabilité limitée, Dalloz, France, 2012, p. 615.

[24] Article L223-31 of the French Commercial Code.

business nature of the company. Any misuse of the company's funds for personal purposes constitutes a clear violation[25].

The partner is personally liable in the event of borrowing in the name of the company or when the company acts as a guarantor or co-signer for the partner's personal debts.

Apart from this, the company itself is responsible for these actions. In this regard, the French Court of Appeal has ruled that[26].

The company is solely responsible for the actions of the manager that cannot be separated from their duties and role as the managing partner of the company. However, for actions unrelated to their duties, the partner is personally liable.

In other cases of violation of the principle of separation between the company's capital and the sole partner's personal assets, the determination of liability depends on the method of separation followed between the company's assets and the partner's personal assets, as well as the method for determining the partner's liability. The legislator has not clearly defined the partner's liability, only referring to the determination of the sole partner's liability based on the contribution share, that is, based on the share allocated to establish the company[27].

The failure to respect the principle of clear separation becomes apparent, especially when the partner enters into agreements with the company, or when they are responsible for its bankruptcy. The sole partner may use the company's funds when entering into agreements with it, which leads to the commingling of the partner's personal assets and the company's assets. Among these actions are borrowing from the company or making the company a guarantor or surety.

The legislator grants the managing partner, or a non-partner manager, broad powers in managing the company. They are allowed to perform all actions in the name of the company, as long as they do not exceed the scope of the company's purpose[28].

Therefore, the partner can enter into contracts with the company within the scope of its activity and in accordance with its system. The provisions of the agency contract are excluded, as it is inconceivable for the partner to act in a way that conflicts with the interests of the company, which are simultaneously their own personal interests[29].

Here, the legislator has required the managing partner, when holding all powers, to record the decisions made in a decision log[30].

In contrast, the legislator did not regulate these prohibited agreements in a limited liability company (LLC) in the same way as in a joint-stock company, as he did in Articles 628 to 630 and Article 670 of the Commercial Code. In those articles, the manager is prohibited from entering into certain agreements with the joint-stock company to protect

---

[25] Kareem, Karima, Previous Reference, p. 323

[26] CA Lyon, 23 February 2023, No. 22/00880, Cahiers Louis Josserand No. 3, 27 July 2023, https://www.lexbase.fr/article-juridique/97974318.

[27] A method may be followed to partition the partner's assets, allocating a portion of them to the business activity.

[28] The legislator has obligated the manager to be bound by these actions toward third parties, even when they exceed the company's scope, in order to protect third parties acting in good faith, in accordance with the provisions of Article 577 of the Commercial Code.

[29] C. Champaud, op.cit, p 614.

[30] Article 584 of the Commercial Code.

it from conflicts of interest between its interests and those of the shareholders in such agreements.

Nevertheless, the legislator criminalizes any actions taken by the manager that involve using or exploiting the company's assets in a manner that contradicts the company's interests and serves the manager's personal purposes. However, the legislator does not differentiate between regular or free agreements and prohibited agreements[31].

Therefore, based on the provisions related to these prohibited agreements in the joint-stock company, there are three main categories of prohibited agreements, where the legislator has prohibited the conclusion of certain contracts between the company and its managers due to their potential risk[32].

These prohibited agreements are represented by any borrowing operations from the company, including obtaining an overdraft account or any other method aimed at obtaining the company's funds.

Furthermore, the legislator, under the same article, prohibits the company from acting as a guarantor or surety for its obligations towards third parties. These agreements are prohibited even if prior authorization is obtained from the board of directors, regardless of the method of their conclusion, because such actions could place the company's assets and credit under the control of the manager, putting the company's interests at risk.

The first category of prohibited agreements concerns the prohibition on managers borrowing from the company in any form. The legislator aimed to prohibit the loan in its narrow sense, not all credit operations, which include the discounting of commercial papers, documentary credits, and leasing credits.

The second category relates to opening an overdraft account with the company for the members of the board of directors or providing them with financial coverage.

The third category concerns prohibiting the company from acting as a guarantor or surety for its obligations towards third parties. The legislator forbids the managers of the company from offering a guarantee on behalf of the company to secure their own actions towards third parties. It also prohibits any guarantee or collateral that would obligate the company to cover the managers' actions. This is stipulated in Article 628 of the Commercial Code[33].

As for ordinary agreements, the legislator referred to them and considered them to be those agreements that involve the company's transactions with its customers[34].

These are the commercial transactions that fall within the usual activity of the company and are conducted under normal terms[35].

[31] In Articles 800 to 805 of the Commercial Code.

[32] This is evident from Article 628 of the Commercial Code.

[33] Article 628 of the Commercial Code, in its third paragraph, stipulates:
"... It is absolutely prohibited, under penalty of absolute nullity, for those managing the company to contract any form of loans with the company, and they are also prohibited from making the company a guarantor or surety for their obligations towards third parties..."

[34] Article 628 of the Commercial Code.

[35] Philippe Merles, Droit commercial, sociétés commerciales, 17th ed., Dalloz, France, 2014, p. 484.

These are the commercial transactions that fall within the usual activity of the company and are conducted under normal terms, which the French legislator refers to as les opérations courantes[36].

Therefore, the sole partner, in their capacity as the manager, can freely enter into ordinary agreements that do not differ in subject matter from those commitments and contracts the company enters into with its customers, as long as these agreements are not made with the manager in their capacity as the company's manager, and as long as the company does not favor the manager over ordinary customers. This means that agreements outside the usual activity of the company are not considered ordinary agreements and, as such, the managing partner will be personally and unlimitedly liable for them.

The limited liability of the sole partner is based on the principle of not mixing their personal assets with those of the company. Therefore, they can be held responsible for the company's bankruptcy if decisions are made that serve their personal interests, which could lead to a cessation of payment and eventually to bankruptcy.

The legislator, in Articles 224 and 578 of the Commercial Code, has subjected the sole partner to personal liability for failing to distinguish between their personal assets and the company's assets. This results in their personal assets being used to guarantee the company's debts, with the goal of holding the managing partner accountable for any depletion of the company's assets during its liquidation.

The legislator does not distinguish between the legal, statutory manager appointed by the articles of association or the non-statutory manager appointed by a subsequent contract. Similarly, the legislator does not exempt the de facto manager from this personal and unlimited liability in the event of the company's bankruptcy.

Under Article 578 of the Commercial Code, the judge may hold the sole partner-manager responsible for only part of the debts. Therefore, it is necessary to prove the error, the harm, and the causal relationship between the error of the sole partner and the insolvency that led to the company's cessation of payments[37].

Conclusion

In conclusion, it is evident that the system of a single-member limited liability company, even after its amendments, still aims to protect the business owner. However, on the other hand, it places the partner's financial independence in an unstable situation. Despite this, creditors face significant risks due to the absence of a comprehensive legal system that guarantees the preservation of the company's assets, which in this structure serve as the sole collateral for its creditors.

This situation is especially concerning after the legislator abolished the minimum capital requirement without considering the rights of creditors or compensating for the lack of this guarantee with any alternative form of security. Furthermore, while many procedures exist regarding the capital, the legislator has not clearly defined the method of contributing, issuing, or fulfilling the capital shares.

As a result, creditors, in practice, demand significant guarantees due to their inability to rely solely on the company's assets as collateral, especially in the absence of a legal

---

[36] Article 225-39 of the French Commercial Code.

[37] Kareem, Karima, Previous Reference, p. 329.

definition of the company's capital. Therefore, the legal framework of the single-member limited liability company reflects the legislator's efforts to encourage entrepreneurship and facilitate the creation of small and emerging businesses. While this system is beneficial for small business owners, it leaves the issue of financial protection for both the company and its creditors exposed to legal gaps.

In light of this, we recommend the following:

Developing effective monitoring mechanisms aimed at overseeing the use of capital and ensuring it is used legally and in accordance with the company's objectives.

Enhancing transparency in financial operations and making periodic financial reporting mandatory, which would facilitate monitoring and reduce the potential for manipulation of company funds.

Achieving a balance between encouraging entrepreneurship and protecting public interest and the interests of creditors. It is crucial to address gaps in existing laws and ensure the presence of effective mechanisms for monitoring and regulating small and emerging businesses, thereby ensuring sustainable economic growth and enhancing trust in the business environment.

REFERENCES:

Books:

1. Claude Champaud, "The Single-Member Limited Liability Company", Dalloz, France, 2012.
2. Tayeb Beloula, Corporate Law, Berti Ed., Algeria, 2008.
3. P. Mousseron L.C. Autajon, "Droit des sociétés", 2nd ed., Joly Edition, France, 2013.
4. Mohamed Fall Hassan, "In-kind Contributions in Commercial Companies: A Comparative Study," First Edition, University Foundation for Studies, Publishing, and Distribution, Lebanon, 2009.
5. Mohammed Ibrahim Al-Wasmi, "Guarantees for Creditors of the Sole Proprietor Company Under the Kuwaiti Companies Law of 2016," Faculty of Law, Kuwait University, 2017.
6. F. Guiramand, A. Heraud, "Droit des sociétés : Manuel et applications," Francis Lefebvre, Dunod, France, 2013.
7. Fayrouz Ben Chnouf, "Modern Trends in the Theory of Financial Liability: The Principle of Unity of Financial Liability in Sole Proprietorship Companies and Fiduciary Actions, A Comparative Study," 1st ed., Dar Al-Fikr Al-Jami'i, Egypt, 2011.
8. Le Lamy des sociétés commerciales, Dalloz, France, 2014.
9. Kareem Karima, Sole Proprietorship Limited Liability Company: The Legal Framework for Medium-Sized Enterprises, Dar Al-Jami'a Al-Jadida, Egypt, 2014.
10. C. Champaud, L'entreprise personnelle à responsabilité limitée, Dalloz, France, 2012.
11. Philippe Merles, Droit commercial, sociétés commerciales, 17th ed., Dalloz, France, 2014, p. 484.

Legal texts:

1. Law No. 15-20, dated December 30, 2015, which amends and supplements Order No. 75-59, dated September 1975, containing the Commercial Code, as published in the Official Gazette on December 30, issue No. 71.

2. Decree No. 75-58 dated September 26, 1975, amended and supplemented by Law No. 07-05 dated May 13, 2007, establishing the civil code, published in the Official Journal No. 78 dated May 13, 2007, was formulated to define the rules and legislation regarding civil contracts and transactions.
3. The French Commercial Code, in force since the 19th century, amended by Law No. 2001-420 of May 15, 2001, Law No. 2019-222 of May 22, 2019, also known as the "Pacte Law" (Action Plan for Business Growth and Transformation), aimed at reforming and improving the business environment in France.

Webography:

1. CA Lyon, 23 February 2023, No. 22/00880, Cahiers Louis Josserand No. 3, 27 July 2023, https://www.lexbase.fr/article-juridique/97974318.