THE ACCORDION SQUEEZE-IN MECHANISM: EQUALITY COLLAPSE AMONG ASSOCIATES IN COMMERCIAL COMPANIES.

DR. ZEKRI IMENE
Faculty of law university of Tlemcen- Algeria-
zekrimene_droit@hotmail.fr1

Abstract -The reduction of share capital can constitute an abuse of majority when the accordion plays a tune of minority rights violation. Operations involving the reduction of a company's capital to zero before a new subscription reserved for the majority shareholder occurs, provided that these decisions aim primarily to oust minority shareholders without any evidence showing that this ousting was justified by the company's social interest, are considered as a criterion for measuring majority manipulation and the resulting legal consequences, which mainly consist of the nullification of decisions deemed arbitrary against partners, as well as civil and criminal liability.
Keywords: associates- Capital reduction- Equality- Accordion Squeeze-In.

INTRODUCTION

Changes to a company's share capital are often necessary to reflect its economic performance. These adjustments, while crucial for the company's interests, can impact shareholders' rights, particularly the right to equality. Therefore, legislators have implemented measures to ensure fairness in these operations, emphasizing the company's interest while preserving the rights of all shareholders.

It is prohibited to violate the principle of equality among associates, and share capital reduction should not be used as a means to exclude certain shareholders.

However, it is noteworthy that in some cases, notably during the operation known as the "accordion squeeze-in," this operation involves a reduction in capital followed simultaneously by a capital increase. In certain scenarios, this mechanism may question the rights of minority shareholders, and this practice may sometimes lead to the exercise of a form of majority abuse at the expense of minority rights.

Studying the conditions and procedures for reducing a company's share capital, as well as potential abuse situations, is essential to protect the rights of minority shareholders. Even when the overall appearance suggests that the company is acting to preserve its social interest, this practice can often harm minority shareholders. To achieve this, it is necessary to examine the role of Algerian legislators in determining these legal aspects to ensure the integrity of the company's operations and prevent abuses. Therefore, it is essential to analyze the effects of the accordion squeeze-in on these rights as well as the consequences of not adhering to this principle during the implementation of the company's share capital reduction operation.

Consequently, the question raised here concerns the nature of "accordion" operations aimed at reducing the company's share capital and to what extent they can be considered arbitrary when they aim to deprive partners of their rights. What are the legal consequences of an arbitrary reduction in share capital by the majority?

In the face of these serious risks, is there an effective protection system capable of safeguarding the rights of shareholders while ensuring a balance between their interests and preventing the abuse of associates' rights?

To answer these questions, we will follow an analytical and descriptive approach Additionally, we will employ a comparative methodology. Specifically, we will focus on the French judiciary, considering that the Algerian judiciary has not addressed these litigations through judicial decisions and legal interpretations.to clarify the information related to this study, here we will divide our analysis into two main sections:

- **The Implementation of Share Capital Reduction and Its Impact on Shareholders' Rights.**

- **The Breach of Equality Among Shareholders During Capital Reduction and its Legal Effects.**

1. The Implementation of Share Capital Reduction and Its Impact on Shareholders 'Rights.

The notions of transparency and equal treatment of shareholders are fundamental principles of the market economy. According to the efficient market theory, it is necessary to uphold the principle of equality at all stages and under all conditions of the company, including the phase of reducing its capital, regardless of its motive[1] ,"Without a doubt, this reduction has significant implications for the associates[2]

1.1 Implementation of Share Capital Reduction.

The reduction of share capital is carried out using one of the following three methods: reducing the nominal value of shares, reducing the number of shares, or combining techniques, decreasing the number of shares can raise difficulties related to the appearance of fractional shares[3].

The implementation of share capital reduction falls within the jurisdiction of the extraordinary general meeting and presupposes the existence of certain condition. In the limited liability company, the decision belongs to the assembly of associates. The project is communicated to the statutory auditors. Here, the legislator emphasizes that it is not permissible for this reduction to undermine the equality of the partners[4] .

The reduction of capital can only be validly decided by the assembly with the authority to amend the articles of association, under the conditions of quorum and majority required for statutory modifications. This assembly may execute the operations itself or delegate the execution to the management or administrative body.

In the case of a public limited company, it is the extraordinary general meeting, acting on the report of the statutory auditors, who assesses the reasons and conditions for the capital reduction. This report is communicated to the shareholders and statutory auditors at least 45 days before the date of the meeting of the assembly of associates called to pronounce on the proposed reduction. The assembly may potentially delegate authority to the board of directors or executive board to implement the decision. The decision only becomes effective after completing the statutory publication formalities.

Under no circumstances is it permissible to undermine the principle of equality among contributors. All partners must have the opportunity, at the end of the capital reduction, to subscribe to the capital increase as part of its reconstruction or consolidation[5].

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Furthermore, along with the rights of social creditors, this operation undermines the rights of partners or shareholders, which may diminish to the point of breaking equality among them. Some may even fear their exclusion from the company.

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[1] Julien Le Maux, Private Benefits: A Breach of Equality Among Shareholders, Finance Review, Paris 1 Panthéon-Sorbonne University, 2003, vol. 6, issue 1, 64.

[2] Maurice Cozian, Alain Viandier, Corporate Law, 24th edition, LexisNexis, France, 2011, 141.

[3] Deen Gibirila, Company Law, 4th Edition, Manual of Law, Ellipses, France, 2012, 100

[4] Article 575 of the Algerian Commercial law.

[5] Article 712 of the Algerian Commercial law.

[6] Paul Le Cannu, Company Law,5th Edition, Domat Private Law, L.G.D.J, Lextenso éditions, France, 2013, 141.

Nevertheless, this reduction does not entail any return of contributions or distribution to the partners, as it is most often motivated by significant losses. It also does not result in the creation of a new company.
The decision to reduce the capital cannot consequently increase the commitments of the partners unless it is made unanimously. It also cannot break the equality of partners or shareholders unless there is express agreement from those affected by the sacrifice being requested. A reduction of capital carried out by attributing assets to certain shareholders whose shares would be correspondingly cancelled would breach this equality. Such an operation, which amounts to an early division, can only occur with the unanimous consent of the shareholders.
A partner may waive equality in the context of a decision to reduce capital, provided that this waiver is made at the time when the right is acquired[7].
Given the considerable advantages offered by the operation known as the "squeeze-in accordion" in terms of recapitalization and business replenishment, the corporate environment in Algeria has quickly embraced it favorably. Although the Algerian legislature does not explicitly address this operation, it entrusts statutory auditors with the crucial responsibility of monitoring the two variations of capital that underlie it. This measure is justified by the increased financial challenges it may pose within the shareholder community. The president of the board of directors or the directors are liable to sanctions if they do not adhere to the principle of equality, under penalty of sanctions[8].

1.2 The Impact of Share Capital Reduction on Shareholders.

Regarding the shareholders, fixed capital fundamentally represents their individual pecuniary rights, notably their rights in the distribution of profits, losses, and reserves, unless otherwise provided. In other words, it constitutes a claim by the shareholders against the company, which appears contradictory to the concept of negative share capital[9].
In principle, it can be said that the right of the shareholder is equal to the number of shares or stocks of the share capital, which also represents the measure of voting rights of each shareholder's shares in capital companies[10].
Here, capital measures the power of the associates. Power within a company is determined by the ownership of capital, granting majority shareholders significant influence. Participation in the capital not only provides political control, expressed by the number of votes at meetings, but also entails the distribution of financial rights. Although proportionality is not mandatory, unequal clauses are possible, provided they respect the prohibition of unfair clauses[11].
The reduction naturally applies to all shareholders, including those who may have voted against it, but it is crucial that everyone is treated equally. The law reminds the statutory auditors to ensure specifically that the equality of shareholders is respected at a time when those in a better position may seek to gain an advantage[12].
Several reasons lead to the reduction of capital, the realization of which is subject to formal and substantive conditions. Capital reduction often originates from the accumulation of losses by the company, resulting in the net assets becoming lower than the share capital. However, the fixed nature of the share capital provides only a very relative protection[13].
However, the existence of these losses does not necessarily condition the reduction. Shareholders of limited liability companies and public limited companies must still be convened to choose between the dissolution and the continuation of the company[14].
The French Court of Cassation considers that reducing to zero and then increasing the capital, knowing that the losses of the company in the previous fiscal year do not reflect its actual situation

[7] Deen.Gibirila, op. cit.98.
[8] Article number 712 of the Algerian Commercial law.
[9] Chiffautt Molliard, Plaidoyer pour un capital social négatif, JCP Ed, LexisNexis, France, 2003, 1861.
[10] Article n°684 of the Algerian Commercial law.
[11] Maurice Cozian, Alain Viandier, op, cit, 139.
[12] Paul Didier, Commercial law, Volume 2, 3rd Edition, Thémis private law, France, 1999, 403.
[13] Paul Le Cannu, op, cit, 141.
[14] Deen.Gibirila, op, cit, 98.

and with an abnormally short subscription period, constitutes a fraud against the rights of the minority shareholder [15].

The reduction of capital, prior to the recapitalization of a company, is often followed by an operation known as an "accordion squeeze-in." This practice involves reducing and then increasing the capital, typically requiring two separate assemblies, although sometimes one is sufficient.

The reduction is achieved by decreasing the nominal value of the shares, and the increase by issuing new shares at the same amount as set for the old ones. The subscribers of the new shares are those who contribute financially to the recovery of the company, resulting in the elimination of their preferential subscription rights. In the absence of reserves, the issuance is done at par. The "accordion squeeze-in" aims to protect creditors by providing an opportunity for financial renewal with the infusion of fresh funds and possibly a change in direction, in the hope of improving the overall situation of the company[16].

Rectification becomes necessary when contributions in kind have been overestimated due to an error made in good faith or fraudulent exaggeration. The company must then adjust the valuation of the assets concerned to their actual value through a reduction of capital. It is also necessary when the company's activity proves to be insufficient compared to the capital it possesses. Despite an apparently healthy financial situation, the dividends allocated to shareholders are insignificant, resulting in a detriment to its credit.

In such cases, the company may have an interest in reducing its capital. While such a situation is relatively rare, it cannot be ruled out[17].

Such a reduction indeed entails a double consequence. The old securities disappear along with the rights they could have been subject to, and the old partners or shareholders find themselves ousted from the company. In the absence of clear legal provisions, jurisprudence has deemed this reduction possible, again under the simple suspensive condition of a capital increase sufficient to bring it back to at least the minimum level required by the form of the company.

The question arose as to whether the former shareholders have a preferential subscription right during this capital increase. Preferential subscription rights are generally granted to existing partners or shareholders. However, after the reduction of capital to zero, the former shareholders no longer hold any securities. Despite this, the predominant opinion leans towards the recognition of this right[18]

2. The Breach of Equality Among Shareholders During Capital Reduction and its Legal Effects.

The increase of capital and the reduction of capital only take effect afterward. However, some partners or shareholders were not satisfied with this right. They argued that the operation had the effect of either completely excluding them from the company or increasing their commitments by obliging them to subscribe to the capital increase, which is a condition of the reduction, in order to remain in the company[19].

This leads to disagreements among the partners, thereby harming the interests of the company. Therefore, case law considers the interest of the company as a criterion upon which we can rely to detect majority abuse in enterprises.

On the legislative side, it is incumbent upon them to enact appropriate provisions and laws to ensure prevention of majority abuse[20].

2.1 The Company's Social Interest: Criterion for Breach of Equality Among Shareholders.

[15] https://www.legifrance.gouv.fr Court of Cassation, Commercial Chamber, May 7, 2019, No. 17-18.785, F-D

[16] Philippe Didier, Paul Didier, Commercial Law, Commercial companies , Volume 02, Economica France, 2011, 181.

[17] Deen Gibirila, ibid, p 99.

[18] Philipe Didier, Paul Didier, op, cit,179.

[19] Bruno Petit, Corporate Law, 5th Edition, Lexis Nexis, France, 2010, 232.

[20] Momath Ndiaye, Inequality Among Shareholders in Corporate Law, doctoral thesis, Sorbonne Law School, France, 2017, 32.

The legislator considers the preservation of the principle of equality as an objective principle. Therefore, in Article 712 of the Commercial Code, the legislator insists on the prohibition of undermining the principle of equality among shareholders during capital reduction operations.
The process of capital reduction involves decreasing the nominal value of shares. When shares have the same nominal value, changing this value is not complicated and does not affect the observance of the principle of equality. However, it can become complex when it comes to reducing the number of shares. For this reason, the legislator requires the statutory auditor to prepare a report on this operation and present it at least 45 days before the date of the General Assembly, aiming to avoid any negative impact on the rights of shareholders and prevent abuse of power, causing harm to the interests of certain categories within the company, or even to the general interest of the company itself[21].
The possibility of a breach of equality among shareholders arises from a majority abuse. For there to be a majority abuse, there must be a breach of equality among the shareholders of the company. This breach of equality is the necessary condition to open judicial control over decisions suspected of majority abuse.

Case law requires that all corporate decisions respect or guarantee equality among the partners. Thus, the majority shareholders cannot be accused of abuse if their decisions maintain equality among the shareholders[22].
In light of these elements, partners must be regarded as the key elements of equality in corporate law. This is at least the solution that positive law seems to advocate, as the law only uses the phrase "equality among shareholders," and jurisprudence never sanctions distinctions between securities unless it results in inequality among partners[23].

In the event of a reduction of capital to zero followed by an increase, majority abuse would only be conceivable if a breach of equality in the treatment of shareholders could be demonstrated. This means that minority shareholders should be disadvantaged or less advantaged than majority shareholders.
In the case of the reduction of share capital, it must strictly adhere to equality among shareholders. However, during the subsequent increase, complications can arise, especially if it occurs without preferential subscription rights, thereby excluding certain former shareholders.
If the capital increase is conducted with preferential subscription rights, all shareholders have the opportunity to subscribe[24].

However, if it is done without this right, only certain shareholder can participate, which could raise potential issues.
In the case where the preferential subscription right is removed during the deliberation of the assembly, those who will benefit from this right during the capital increase would not have been able to participate and vote during this deliberation.
It is important to note that the answer to the question of whether there is majority abuse will depend on the specific circumstances of each case and the applicable legal provisions in the relevant jurisdiction[25].
It seems difficult to consider that the "squeeze-in" operation could constitute a breach of equality among the partners, particularly under the Commercial Code[26].
Here arises the notion of the company's interest. Even though the concept of social interest is debated in doctrine, judges who apply the theory of majority abuse systematically refer to it.

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[21] Kalouche Altaib, Establish the Principle of Equality in Algerian Commercial Law as a Guarantee of Shareholder Rights in Joint-Stock Companies, Algerian Journal of Law and Political Science, Volume 07, Issue 02, 2022, 506.
[22] Jean Marc Moulin, Company Law, 2nd Edition, Lexis Nexis, France, 2007, 08.
[23] Momath, Ndiaye, op, cit, 35.
[24] Article 712 of the Algerian Commercial Code.
[25] https://www.legifrance.gouv.fr/juri/id/JURITEXT000007492255 Judgment of the Commercial Chamber of the Court of Cassation, dated February 28, 2006, Legifrance. Consulted on January 25, 2024.
[26] The legal texts have not confirmed it.

Therefore, the social interest appears as the justifying factor for the breach of equality. In this sense, all breaches of equality observed in the course of social life are not punishable under the grounds of majority abuse, they are only punishable if these breaches cannot be justified in the social interest[27].

The company must be established in the common interest of the partners. Disagreements among partners that paralyze the functioning of the company are a cause of early dissolution[28].

Thus, for example, the systematic retention of profits while simultaneously increasing the remuneration of majority directors may or may not constitute an abuse of majority depending on whether these retained profits support a policy of development and investment by the company. More generally, any decision that provides for differential treatment of shareholders in a company may escape the risk of annulment on the grounds of abuse of majority as long as this deviation from equal treatment can be justified by the social interest. The longevity, and even more so, the survival of the company may justify differentiated treatment of shareholders in a company[29] .

Majority abuse, even if it does not directly impede the functioning of the business, is considered a violation of the principle of equality. This abuse harms the interests of the company, thereby generating significant conflicts among the partners. The majority exploits its position to pursue individual gains at the expense of the company's overall interests.

Thus, the commitment of management to pursue the company's interests is not only tied to the necessity of not exceeding its purpose, but also to the duty of integrity towards the company, which implies avoiding conflicts of personal interests with those of the company[30].

the company. This stems from democracy. Thus, the obligation to meet both conditions to establish unfairness and harm to the company's interests is no longer disputed[31]

2.2 The Legal Consequences of Shareholders' Abuse in the Context of the Squeeze-Out accordion Mechanism.

In order to put an end to such deviations and abuses arising from the majority, the legislator grants minority shareholders the right to resort to the judiciary in case of prejudice resulting from majority decisions, through legal action. They can thus file a complaint before the courts with the aim of stopping the arbitrariness affecting them and repairing the damages suffered.

In this context, minority shareholders have the right to directly file a lawsuit against majority decisions, commonly referred to as "minority shareholder litigation." This approach allows them to appear before the court to defend their interests and ensure compliance with legal principles and the basic statutes of the company[32].

In minority litigation, the burden of proof generally lies with the plaintiff, namely the minority, who must prove the error and the prejudice. This means demonstrating that the decisions made by the general assembly serve the interests of the majority at the expense of minority shareholders, and showing malicious intent in the decisions made by the majority. As for the prejudice, it is up to the partners to prove it, and it is the judge's responsibility to remedy it. Thus, the sanction for arbitrariness must address two aspects, the removal of the prejudice resulting from the arbitrary decision and the resolution of disagreements among the partners.

These issues are often related to the person who made the decision, as the material harm suffered by the minority is only the outward and material aspect of the arbitrary decision. In addition to the

[27] Jean Marc Moulin, ibid, 09.

[28]https://www.dalloz.fr/documentation/Document?idCourt of Cassation, Commercial Chamber, judgment No. 19-10.693 dated March 3, 2021, consulted on 29 january 2024.

[29] Jean Marc Moulin, op, cit, 25.

[30] Abdullah Khaled Al-Sufani, The Legal Existence of Commercial Companies, PhD thesis in Private Law, Volume 1: "Demolition of the Legal Existence of Commercial Companies, Volume 2: Tunis University, Faculty of Law and Political Science, Tunisia, 2000/2001, 412.

[31] Wajdi hatoum, The Role of Collective Interest in Protecting Commercial Companies, A Comparative Study, 1st Edition, Legal Publications by Al-Halabi, Lebanon, 2007,376.

[32] Tarek Al-Bakhti, The Role of the Judiciary in Protecting Minority Shareholders within Joint-Stock Companies," Moroccan Journal of Local Administration and Development, 2013, 143.

material harm, arbitrariness causes a more serious moral harm resulting from the disagreements among the partners and the inequality they generate, creating a negative sentiment among them[33].
The removal of prejudice resulting from arbitrariness can be achieved either by annulling the decision itself or by compensating for the prejudice. As for resolving disagreements among the partners, this can take the form of a judicial dissolution of the company, exclusion or expulsion of one or more partners from the company, i.e., a partial dissolution of the company. Finally, it can take the form of an individual dissolution, where the aggrieved shareholder decides to withdraw from the company[34].
The legislative text stipulates that the annulment of contracts or transactions other than those provided for in the preceding provision can only occur for the violation of a binding provision of this law or the laws applicable to contracts[35] .
As a result, it can be said that the Algerian legislature has not explicitly defined the case of abuse in the context of annulling resolutions of general assemblies, and has not provided for specific provisions in this regard.
Therefore, the judge cannot annul a specific legal act unless there is an explicit basis in the law governing that act, as this would undermine the security and stability of transactions and the protection of interests. To address this gap, an alternative system called the "presumed nullity system" has been developed. Under this system, it is up to the judge, within the framework of his discretionary power to determine the penalty, to decide if the majority's abuse constitutes a defect in the formation of the company's will, similar to defects in consent. In this case, the minority plaintiff can only claim appropriate compensation for losses suffered as a result of the arbitrary decision[36].
Under the legal provisions, personal criminal liability is incurred when a reduction of the share capital of a corporation is carried out improperly by the directors, particularly in circumstances involving criminal practices such as reducing the company's capital without regard to equality among shareholders[37].
The recapitalization of Company SI through a " Accordion Squeeze-In," resulting in a reduction to zero of the company's share capital, appeared to be an effective means for the majority shareholder to avoid the obligation to purchase the remaining shares held by the minority shareholder. However, to prove fraud, it is necessary to demonstrate intent on the part of the guilty party. While proving fraud requires the gathering of material elements, it also requires evidence of fraudulent intent on the part of its perpetrators[38].

CONCLUSION

In conclusion, it can be inferred from this study that the " Accordion Squeeze-In" remains an impactful maneuver, leading to instability for shareholders. It is essential for auditors to intervene objectively to ensure equality among shareholders and protect their rights against any potential infringement.
This suggests that although this operation may have a significant impact on shareholders' situations, its serious consequences may be justified by the social interest and the need to ensure the survival of the company, which could ultimately be beneficial for shareholders.
Although the " Accordion Squeeze-In " presents interesting financial advantages, it remains a capitalistic operation with multiple and significant consequences for shareholders. While it may be favorable for the company, it is often less so for shareholders, whether current or potential. The former risk seeing their shares disappear in the event of a reduction of capital to zero, leading to an increase in their liabilities if they subscribe to the subsequent capital increase, or forced exclusion if they do not.

[33] Dominique Schmidt, "The Rights of Minority Shareholders in the Public Limited Company," Preface by Mr. Jean-Marc Bischoff, vol. 14, Paris, Sirey, Dalloz, Paris 1970, 139.
[34]Tarek Al-Bakhti, ibid, 140.
[35] Article 733 of the Commercial law.
[36] Wajdi hatoum, op, cit,425.
[37]Article 827 of the Commercial law.
[38] Jean Marc moulin, op, cit, 27.

Despite the fact that the legality of the operation is no longer contested, its regime still poses difficulties. It is possible that future studies, accompanied by legislative intervention expressly and crucially dedicated to the "Accordion Squeeze-In " technique, may find solutions to the legal problems already raised.
We can recommend the following:
Develop and strengthen regulations regarding capital reductions to ensure compliance with the principle of equality and protection of minority shareholders.
Enhance transparency in the decision-making process concerning capital reductions by providing adequate information to all shareholders about the reasons and expected financial and legal consequences.
Increase the role of regulatory and supervisory authorities in monitoring and reviewing capital reductions to ensure their compliance with legal and ethical standards.
Promote the application of rigorous corporate governance practices, including strengthening the role of boards of directors in overseeing management decisions related to capital reductions.
Raise awareness and educate minority shareholders about their rights and available legal remedies in case of violations

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