TOWARDS ESTABLISHING A THEORY FOR PROTECTING OTHERS IN COMMERCIAL

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Abstract
It is well established that third parties are given crucial importance in the external dealings of the commercial company. The latter prompted the legislator to pay attention to setting up a legal system that works to protect third parties and gain their trust, especially after the development that affected the concept of third parties in commercial law. However, despite the interest that they received at the level of legal texts, jurisprudence and even judicial jurisprudence, the term "third party" did not change. It is ambiguous, although it is as old as the origin of law, and although it is one of the most widely used legal terms at the level of legal texts, especially commercial ones, its ambiguity is due to the legislative attempt to define a clear and accurate concept, which led to different other concepts around it. In the same line of thought, this led to the emergence of some systems that include formal and objective legal rules aimed at protecting the rights of creditors with commercial companies, which prompted jurisprudence and the judiciary to protect their rights by looking for solutions and legal means to ensure that protection.

KEYWORDS: Third party; Stability of transactions; Principle of good faith; Interest of the company; Creditors' rights.

INTRODUCTION:

Among the most important legal principles underlying the concept of third-party protection is the "principle of good faith." Legislators have often regarded this principle as a fundamental requirement for third parties to enjoy the legal protection granted to them. Consequently, good faith has become a crucial requirement for a third party to obtain a favorable judicial ruling, which is established at the time of contract formation[1].

The principle of good faith has contributed to the development of third-party protection within commercial companies, thus gaining judicial endorsement and becoming an essential element in many judicial principles. These principles have established significant legal frameworks aimed at protecting third parties, among which is the doctrine of "apparent authority." French jurisprudence based the creation of this doctrine on the principle of good faith as a legal foundation to justify it. This doctrine has paved the way for numerous legal systems aimed at formalizing third-party protection.

Shareholders also enjoy a set of fundamental rights, ranging from financial rights to non-financial ones. However, it is notable that many shareholders, especially, tend to neglect their administrative rights. This neglect is evident from their low attendance at general meetings, as real-world observations show a clear imbalance between general meetings and the board of directors due to shareholders' absences. Many focus solely on their share of company profits, leading to a dominant influence on the company[2].

The importance of the doctrine of "apparent authority" lies in its prioritization of transaction stability and support of confidence, even at the expense of the true legal position holder.

1Sabine Vacrate, The Society Created in Fact: An Attempt at Theorization, Preface by Hervé Lecuiyer (B.D.D.P, 2003) (Volume 405, L.G.D.J 2003) p 92.
2Muhammad Farid Al-Araeni, Commercial Companies (Dar Al-Jami'a Al-Jadida 2003) p 273.

This doctrine protects an objective position by fostering trust in legal transactions[3]. When legislators relied on the doctrine of appearances to protect third parties, they established apparent authority as the sole basis without requiring any fault on the part of the third party or compromising the condition of good faith[4].

The significance of this study is that it addresses the conflicts of interest within commercial companies and their negative effects on stakeholders' rights. The study adopts an analytical methodology to explore critical aspects of the topic. Given the above, the study raises a key issue: determining the principal guarantees for third-party protection in commercial companies in light of relevant legal rulings. This question prompts an inquiry into the legislative success in establishing a comprehensive system that ensures third-party safety from all acts attributable to the company or its directors in particular.

This study divides the topic into two main sections, examining Section 1, the substantive guarantees for third-party protection, followed by Section 2, which covers third-party protection through procedural safeguards, as detailed below:

Section 1: Substantive Guarantees for Third-Party Protection

To protect third parties, legislators have provided significant guarantees related to the financial aspect of the company by safeguarding its capital, which serves as a principal security for creditors. Legislators have introduced several preventative measures to preserve this security, beginning from the formation of the company's capital and throughout any subsequent changes, particularly during partner contributions, decisions to reduce capital, and structural adjustments such as mergers or demergers.

Therefore, legislators have mandated specific procedures for all practices concerning the company's capital from its inception. They have focused on its existence and effectiveness within the company to fulfill its objectives and protect third parties' interests[5].

I. Third-Party Protection During Company Formation

For a company's contract to be valid, it is insufficient to merely fulfill the general conditions of consent, subject matter, and purpose as required for other contracts. Additional specific conditions must be met for a company contract, distinguishing it from similar contracts. Article 416 of the Civil Code affirms this by stating: "A company contract obligates two or more natural or legal persons to contribute to a joint activity by providing a share of work, capital, or cash, with the goal of profit-sharing, achieving economic savings, or reaching an economically beneficial common goal, while also bearing any potential losses."

Thus, the objective of establishing a commercial company is to undertake economic projects, which necessitates adequate financial resources for the company. The company can only be envisioned through financial contributions from all partners, who fund it by providing shares[6].

1. The Importance of Company Capital in Third-Party Protection

Company capital serves as the primary security for creditors, prompting legislators to protect it upon the company's formation. Legislators emphasized the necessity of real, non-illusory capital for it to effectively protect third parties and sustain the company. Legislators established certain foundations for capital, starting from its clear designation in the

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3 Salama Abd Al-Fattah Haliba, The Rules of Apparent Status in Financial Exchange Contracts in Islamic Jurisprudence and Positive Law (Dar Al-Jami'a Al-Jadida 2005) p 99.

4 Saudi Hassan Sarhan, Towards a Theory for Protecting Good Faith Third Parties Dealing with Commercial Companies: An Analytical, Foundational, and Comparative Study (Al-Muttahida Publishing 1999) p 117.

5 *Fawzi Muhammad Sami, Commercial Companies: Explanation of Commercial Law (Dar Al-Thaqafa Publishing House 1997) (vol. 4) p 14.*

6 *Salam Hamza, Commercial Companies (Dar Houma 2015) (pt. 1) p 140.*

foundational legal document. After designation, the next stage involves liberating it in alignment with partners' actual contributions to prevent the risk of a fictional company.

One of the most important safeguards provided by legislators to third parties is the "principle of capital stability." This principle distinguishes between the company's capital, which acts as a guarantee for creditors, and the company's continuously fluctuating assets. While transactions and business activities affect the company's assets, its capital remains stable, despite any potential changes. The decision to reduce the company's capital is among the major actions affecting it. To protect both the company and third parties, legislators intervene to safeguard company assets and the general security afforded to creditors, which includes all company holdings in addition to the declared capital in the foundational contract. Legislators have presence, avoiding the possibility of a fictitious company, and serves as a necessary component in established a legal system governing company capital, which applies during its liberation and when assessing in-kind contributions. Proper legal liberation of capital ensures its realizing the principle of capital stability[7]. To build trust with stakeholders, it is essential to highlight third-party protection during capital formation and to address the legal procedures that ensure the capital's existence.

a. *Third-Party Protection During Capital Formation*

The concept of a company's assets as collateral for its creditors does not imply that only the initial shares contributed during the company's formation are included in this guarantee. Instead, the guarantee encompasses all the company's real and movable assets and any property it currently owns or acquires in the future. This follows the general guarantee principle stipulated in Article 188 of the Civil Code, which states, "All the debtor's assets guarantee the payment of their debts."

While the guarantee covers all the company's assets, the company's current assets are not part of its capital, which does not increase unless new shares are contributed or decrease unless the foundational bylaws are amended to reduce it. Thus, a commercial company's capital comprises only the shares contributed by partners. This limitation poses a risk to both the company and the third parties interacting with it, who lose their legally entitled security over the company's assets if the company faces dissolution or liquidation due to its capital falling below the minimum set by law. For this reason, the legislature intervened to regulate all transactions involving company capital, particularly those concerning capital reduction and setting a minimum capital level.

One reason for the weakness of this guarantee is the confusion between the company's capital and its financial assets, especially following some scholars' critiques of capital as security for third parties, arguing that it serves as an indirect and sometimes hidden or unclear guarantee. French legal scholar François Goré, for instance, argued that a company's assets are a superior and more reliable guarantee for creditors because they represent the positive side of the company's financial assets and everything the company owns, providing a significant security measure for third parties[8].

According to commercial law, a joint-stock company's capital cannot fall below five million Algerian dinars if the company seeks public savings, or one million dinars if it uses private methods for establishment[9].

The Algerian legislature followed the French approach in setting minimum capital requirements for corporate entities to protect third parties. However, there is no maximum

7 Sabine Dana, Social Capital (Litec 1989) p 128.

8 François Goré, The Notion of Social Capital (ed. Dalloz 1981) p 91.

9 Ordinance No. 75-58 (Sept. 26, 1975), amended by Law No. 07-05 (May 13, 2007) (containing the Civil Code), Official journal No. 78.

capital requirement for limited liability companies to prevent the formation of companies beyond the intended scope of this legal form[10].

- ***No Labor Shares in Corporate Entities***
  Article 567 of the Commercial Code11, which regulates the provisions for limited liability companies, prohibits contributing labor shares to corporations. This restriction aims to protect creditors' interests related to the company's capital and full subscription and reflects creditors' inability to enforce these shares through specific performance, which could substantially impact their general guarantee. Additionally, labor shares are personal and conflict with the financial nature of capital[12].

- ***Full Payment of In-Kind Shares Upon Establishment of a Joint-Stock Company***
  Article 596 of the Commercial Code mandates that in-kind shares in joint-stock companies must be fully paid up at the time of establishment. The same requirement applies to partnerships with shares, as stipulated in Article 715/3 of the Commercial Code, and also applies to limited liability companies. Article 567 of the Commercial Code states, "All shares must be subscribed for by the partners, and their value must be fully paid up, whether the shares are in-kind or monetary."

- ***Quarter Payment of Cash Shares***
  At the time of subscription, at least a quarter of the nominal value of cash shares must be paid, with the remainder to be settled in one or more installments within five years from the company's registration in the commercial registry. According to Article 596 of the Commercial Code, Article 715 bis 52 specifies that if cash shares are not fully paid at subscription, they must be registered shares[13], allowing the company to identify the shareholder responsible for the remaining balance[14].

b. Legal Procedures Ensuring Capital Existence15
When a partner contributes a cash share to a commercial company, the law mandates that they fulfill their commitment within the agreed period. If they fail to do so, they are liable to compensate the company and third parties for any damages caused[16]. The capital value indicated in the foundational document is crucial, as this value reflects the company's financial standing relative to third parties, which they can rely on when dealing with the company.

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10 Muhammad Farid Al-Araeni, Commercial Companies: The University Commercial Project Between the Unity of the Legal Framework and the Diversity of Forms (Dar Al-Jami'a Al-Jadida 2004) (1st ed.) p 31.

11 Ordinance No. 75-59 (Sept. 26, 1975), amended by Law No. 22-09 (May 5, 2022) (containing the Commercial Code), Official journal No. 32 (2022).

12 Ali Al-Areifi, Explanation of Commercial Law (Dar Al-Nahda Al-Arabiya) p 134.

13 Unlike a limited liability company, Article 576 of the Commercial Code states that the value of both cash and non-cash contributions must be fully paid from the establishment of the company

14 Halouch Fatima Amal, The Shareholder's Right to Dispose of His Shares in a Joint Stock Company (Doctoral Thesis, Faculty of Law, Djilali Liabes University 2015) p 135.

15 Muhammad Fal Hassan Ould Amin, Non-Cash Contributions in Commercial Companies: A Comparative Study (1st ed., University Publishing and Distribution Institution 2009) p 144.

16 Civil Code art. 421 ("If a partner's share is a sum of money he contributes to the company, and he does not provide this amount, then he is liable for compensation.").

Regarding the subscription process for joint-stock company capital[17], the founders must follow specific procedures. Subscription is documented on forms containing key company information, particularly the capital amount[18]. Full subscription is required, with at least one-quarter of the nominal value of cash shares paid at subscription, and the balance due within five years[19].

2. The Principle of Capital Stability

To serve the company's purposes and secure creditors, capital must remain stable and cannot be diminished unless the company is dissolved. This principle yields important consequences, including the prohibition of reducing capital without following specific procedures. If these procedures are not followed, the reduction cannot be invoked against company creditors. Additionally, a portion of the capital cannot be withdrawn and distributed as profits to partners. Any such distribution is considered a distribution of fictitious profits, which creditors can demand be returned to the company, even if made in good faith[20].

a. Protection of Third Parties During the Reduction of Corporate Capital[21]

The legislator permits capital reduction for companies, provided that procedures and conditions aimed at protecting third parties who interact with the company are followed. Capital reduction in a limited liability company is done through the general assembly, according to the requirements for amending the articles of association, which requires approval by a majority of the partners representing three-quarters (3/4) of the company's capital unless otherwise stipulated in the founding contract, as per Article 586 of the Commercial Code. The other conditions for capital reduction can be summarized as follows:

- ***Formal Requirements:***

The decision of the partners' assembly to reduce the company's capital entails amending the founding contract by establishing a new value that differs from the original capital amount stipulated in the founding contract. No specific procedure is defined by the legislator; however, the decision is taken by a majority of three-quarters of the partners, followed by the capital reduction and amendment in the same manner as other amendments to the articles of association, through registration and publication. The law mandates penalties for company managers who fail to publish the capital reduction decision in the official legal announcements bulletin, as stipulated in Article 827/3 of the Commercial Code. Notifying third parties of this decision is essential to allow them to take necessary measures to protect their rights. Therefore, a corporate capital reduction is valid only if it has been published and third parties are informed.

- ***Substantive Requirements:***

The capital reduction may not be executed by reducing the minimum capital imposed by law, especially for joint-stock companies, as they would be dissolved and liquidated if their

17 The payment of one-quarter of the company's capital applies to corporate entities and not to personal companies due to their personal and joint liability.

18 Exec. Decree No. 95-438, art. 4 (Dec. 23, 1995) (containing the provisions of the Commercial Law related to joint-stock companies and partnerships).

19 Law No. 15-20, art. 567 (Dec. 30, 2015) (amending Law No. 75-59 concerning the Commercial Code).

20 Safwat Behnsawy, Commercial Companies (Dar Al-Nahda Al-Arabiya 2007) p 38.

21 In the matter of reducing the company's capital, there are civil and criminal penalties if formal procedures are not followed, beginning with the auditor's review and presenting the matter to the extraordinary general assembly.

capital falls below the legal minimum. Limited liability companies face the same consequence for similar reasons[22].

The main restriction on reducing the company's capital is that it should not be justified by losses, as stated in Article 775 of the Commercial Code. If accumulated losses lead to the capital falling below the stipulated level in the founding contract or the legal requirement, the company is dissolved and liquidated. However, the legislator allows a company to reduce its capital without dissolution if it is not due to losses.

b. Right of Third Parties to Oppose Corporate Capital Reduction

Reducing the company's capital, even without losses, weakens the security available to third parties with claims on the company. Thus, the law grants creditors the right to oppose capital reduction, even when not justified by losses. Article 575 of the Commercial Code states that creditors have the right to object within one month from the date of filing the minutes of the deliberations with the court registry for limited liability companies. The same applies to creditors and representatives of shareholders in joint-stock companies, as specified in Article 713 of the Commercial Code.

In a ruling by the Court of Appeal of Versailles in France, the judge rejected the notion that a corporate capital reduction through share repurchase is a management act benefiting the company, especially since the company canceled the shares after incurring losses[23].

c. Prohibition on Distributing Dividends from Corporate Capital

The principle of capital stability grants third parties rights over the company's capital, preventing the legislator from reducing it by distributing it as dividends to shareholders, which would be considered fictitious profits. Thus, partners may only distribute profits by respecting distribution conditions and ensuring the distribution does not affect the company's capital, thereby protecting third-party rights. Profits earned from the company's activities may be distributed among the partners unless they decide to reinvest them in the capital, in which case the profits assume the characteristics of capital, which may not be touched before liquidation[24].

- ***Civil Liability for Violating Profit Distribution Regulations:***

The civil penalty includes holding members of the administrative body and the accounts manager liable and requiring the shareholder to return the amount received as a fictitious profit[25]. Distributing fictitious profits establishes civil liability for members of the board, especially if they fail to maintain regular accounting documents, in violation of statutory provisions. Consequently, the company may initiate liability claims against board members, demanding compensation for damages caused by capital depletion. Additionally, shareholders may seek compensation for personal losses through a separate claim.

- ***Criminal Liability for Violating Profit Distribution Regulations:***

22 Commercial Code art. 589 ("In the case of a loss of three-quarters (4/3) of the company's capital, the managers must consult the partners regarding the decision to dissolve the company. If the managers do not consult the partners, or if the partners cannot deliberate correctly, any interested party may request the dissolution of the company in court.").

23 CA, Versailles, 1er chambre, Jan. 24, 2012, Jurisclasseur, Rev. Mensuelle, Droit des Sociétés, Lexis-Nexis (June 2012) p 04.

24 Mustafa Kamal Taha, Fundamentals of Commercial Law: A Comparative Study (1st ed., Al-Halabi Publications 2006) p 519.

25 Commercial Code arts. 715 bis 23 & 716.

The law stipulates that "the president, administrators, and general managers of a joint-stock company who deliberately distribute fictitious profits to shareholders without providing an inventory list or submitting fraudulent inventory lists are subject to penalties[26].

- ***Shareholder Obligation to Return Illegally Distributed Profits:***
  In cases of illegal profit distribution, recovery of dividends paid without justification is permissible. Article 588 of the Commercial Code states, "The return of distributed profits that are not genuinely earned can be requested from the shareholders who received them, and the claim for recovery of unjustly received amounts is limited to three years from the date dividends were distributed."[27]

II. Protection of Third Parties During the Company's Operations

Every company has a manager who undertakes administrative tasks and acts that fall within the company's purpose. The manager contracts with third parties, signs on behalf of the company, represents it before the courts and public authorities, and distributes the profits earned to the partners. The actions of the manager give rise to two types of liability: the company's liability for the actions taken by the manager against third parties who deal with it, and the manager's own liability for his actions against the company. This highlights the protection afforded to third parties interacting with the company regarding the manager's actions[28].

1. Protection of Third Parties in the Presence of a Company Manager

It is well-known that companies cannot manage themselves; they must appoint managers who act on their behalf and represent them to third parties and the judiciary. Article 553 of the Commercial Code states: "The management of the company belongs to all partners unless otherwise stipulated in the founding documents. One or more managers may be appointed from among the partners or outsiders, or this appointment may be stipulated in a subsequent contract." If no one has been designated to manage the company, it is presumed that the partners have granted management rights to each of them, allowing any partner to individually carry out administrative tasks and actions within the company's purposes. If a partner makes a mistake or violates the terms of the company contract, they may also be held criminally liable if they commit offenses affecting the company or third parties[29].

In the case of multiple managers, if one manager undertakes an administrative action or acts without objection from the others, all become responsible for that action. It is important to note the effects of one manager's opposition to the actions of another manager regarding third parties unless it is proven that the third party was aware of this, according to Article 555/3 of the Commercial Code, which states: "The opposition of one manager to the actions of another manager has no effect on third parties unless it is proven that they were aware of it..."

Logically, the terms of the contract regarding the manager's powers, their limits, and how authority is distributed in cases of multiple managers cannot be used against third parties, as stated in Article 555/4 of the Commercial Code. Thus, the legal protection for third parties in commercial companies becomes clear.

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26 Commercial Code art. 715 bis 24.

27 Commercial Code art. 726 ("No request for the recovery of any profit from shareholders or stockholders may be made except in the case of commercial distribution contrary to the provisions of Articles 724 and 725 of the Commercial Code.").

28 Jean-Pierre Berda, The Function and Responsibility of Managers of Joint Stock Companies (Paris 1934) p 178.

29 Muhammad bin Ibrahim Al-Mousa, Introduction by Sheikh Muna' Khalil Al-Qattan, Partnerships between Sharia and Law (Dar Al-Asima for Publishing and Distribution 1998) p 249.

2. The Company's Liability to Third Parties for the Actions of its Managers

The company is bound by the contracts and actions taken by the manager under two conditions: the manager must act in the name of and for the benefit of the company, and the manager's actions must fall within the scope of the powers granted to him by the company contract. If the manager's powers are not specified in the company contract, he is bound by the interests and purposes of the company if the third party is acting in good faith[30].

However, if the third party is acting in bad faith—meaning they know that the manager is acting in his personal interest—the company is not bound by the contract, and the third party can only seek recourse against the manager himself. Therefore, if the third party demands compliance from the company, it must prove the bad faith of the third party, since the company, as a legal entity, was not previously bound by this act, but rather the manager is personally liable, even if the third party dealing with the manager is in good faith. However, the French law of 1966 explicitly stated in Article 14 that: "In the relationship between the company and third parties, the conditions that limit the powers of the manager as defined by law cannot be invoked."[31]

Section Two: Formal Guarantees for the Protection of Third Parties

Article 418 of the Civil Code states: "The company contract must be in writing, otherwise it shall be void; likewise, any amendments to the contract are void if they do not have the same form as that contract." Article 545 of the Commercial Code also states: "The company is established by an official contract, otherwise it is void." From these previous provisions, it can be understood that informal writing can suffice in commercial companies; however, as per the provisions of Article 545 of the Commercial Code, the validity of the company contract depends on it being formalized in an official format, as this is a fundamental element of the contract and not merely a means of proving it. This rule applies to all contracts, whether commercial or civil, to protect the rights of third parties dealing with the company.

This was confirmed by the Supreme Court in its ruling No. 142806 dated March 26, 1996, stating: "It is legally established that the establishment and validation of the company contract must be through an official contract, otherwise it is void."[32]

I. The Importance of Written Contracts in Protecting Third Parties

The purpose of writing is to establish the results derived from this contract, as it is a contract that creates a legal entity that has a direct relationship with third parties, who must know everything related to this entity to determine their position in dealings with it[33].

No company can carry out its projects and investments in isolation from third parties interacting with it. For these parties to be willing to deal with it, they must know this legal entity as a trader and be informed of any changes that occur to it, which can only happen through the legal advertising formalities imposed by the legislator on commercial companies in general. This ensures that third parties have sufficient access to all information related to the company they are dealing with throughout its social life, from its establishment until its dissolution, thereby protecting their interests connected to the company.

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30 Aziz Al-Akili, The Intermediate Guide to Commercial Companies (Dar Al-Thaqafa for Publishing and Distribution 2006) p 303.

31 Ammar Amoura, Concise Explanation of Algerian Commercial Law (Dar Al-Ma'arifa 2009) p 239

32 Tiba'a Najat, Printed Materials on Company Law, Third-Year Private Law Level (Faculty of Law and Political Science, Abderrahmane Mira University 2018) p 19.

33 amiha Al-Qailoubi, Commercial Companies (1st ed., Dar Al-Nahda for Publishing and Distribution 2018) p 87.

The draft of the company's articles of association prepared by the founders constitutes the fundamental document upon which subscribers rely when subscribing to the capital after being informed of the conditions contained therein, which are not open for discussion. The founders are not allowed to make any amendments to the company's system during the period between the subscription and the convening of the founding assembly.

The legislator requires this draft to be prepared at the request of the founders and by a notary in accordance with certain formalities, and it must include a detailed statement of all rules concerning the company after acquiring legal personality, as it serves as the constitution that will govern the company from its inception until its dissolution.

To protect third parties, the legislator requires the founders to include a number of mandatory data in the draft of the articles of association, some of which relate to the company from a legal and financial standpoint, and others pertain to the governing structures.

In addition to the data required for all commercial companies included in Article 546 of the Commercial Code, such as the form of the company, its duration, its address, its name, and its subject, the following must also be included in the draft articles of association:

- *The establishment of the company with seven partners,*
- *The amount of its capital,*
- *The management and supervision of the company,*
- *The powers of the managers,*
- *The number of shares owned by a member of the management and their powers,*
- *The specific rules regarding the general assembly.*

The importance of the data contained in the draft articles of association for a joint-stock company is significant. The notary must ensure that these details are documented, and then this draft is deposited with the National Commercial Register[34].

1. *Proof of the Company Contract*

Based on legal texts, it is established that the company contract cannot be proven between partners without a written document. However, regarding third parties, Algerian legislation and similar legal systems uphold a legal rule that allows for the proof of the existence and termination of debts in the relationship between the company and creditors through all means of proof. The rationale behind this is that it is unacceptable for third parties to suffer from the negligence and carelessness of partners. Consequently, the lack of writing does not affect the rights of third parties, as addressed in Article 545 of the Commercial Code, which states: "No proof shall be accepted between partners that contradicts or exceeds the provisions of the company contract. However, third parties may prove the existence of the company by all means if necessary."[35]

Through the second paragraph of Article 324 bis 1 of the Civil Code, the Algerian legislator states: "Contracts for institutions or equivalent to companies must be proven by official contract, otherwise they are void." Additionally, writing in civil companies is a condition for the validity of the contract, not merely a means of proof. However, it is noteworthy that the legislator deviated from the general rule of free proof, as explicitly stated in Article 30 of the Commercial Code: "Every commercial contract is proven by:

34 Salmi Warda, The Protection of Third Parties within the Framework of Joint-Stock Companies (Doctoral Thesis, Faculty of Law, Frères Mentouri University 2015-2016) p 20.
35 Nadia Fadhel, Capital Companies in Commercial Law (University Publications Bureau) p 42.

- ***Commercial papers,***
- ***Informal documents,***
- ***Accepted invoices,***
- ***Correspondence,***
- ***Ledgers of the parties,***
- ***Proof by testimony or any other means deemed necessary by the court."***

Furthermore, Article 545, paragraph 2 of the Commercial Code states: "No proof shall be accepted between partners that contradicts or exceeds the provisions of the company contract," meaning that partners cannot prove anything contrary to the contract except by virtue of the official contract at its level, in application of the principle of equivalence of forms. Nevertheless, the legislator, in exercising the rules protecting third parties who deal with the company in good faith, has granted them the possibility to prove the company contract by any means available, as they are not responsible for the absence of its writing. This was explicitly recognized by the Algerian legislator in the provisions of commercial law when it permitted third parties dealing with the company to prove its existence by all means available to them, thereby encouraging the culture of freedom of proof in commercial matters. While the original proof in civil matters is registration, the original principle in commercial matters is the freedom of proof; thus, Article 333 of the Civil Code excludes commercial matters from its scope.
The wisdom behind requiring this element is that it addresses the specificity of this contract, which establishes a legal entity with a financial responsibility independent of the partners themselves[36].

2. ***The Importance of Legal Advertising in Protecting Third Parties***
Legal advertising is a legal feature that provides protection to third parties, as the legislator has mandated that partners inform third parties about the formation of the company and any subsequent modifications. This is referenced in Article 548 of the Commercial Code, which states: "Founding contracts and amended contracts for commercial companies must be deposited and published according to the specific regulations for each form, otherwise they shall be void."
Article 12 of Law 08-04, amended and supplemented by Law 13-06, concerning the conditions for practicing commercial activities[37], defines legal advertising for legal entities as the act of informing third parties of the contents of the founding documents of companies, transfers, modifications, as well as operations affecting the company's capital, pledges, leasing and sale of business premises, and financial accounts and notifications. Moreover, all rulings and judicial decisions involving amicable settlements or bankruptcies, as well as any actions involving the prohibition or withdrawal of the right to engage in commerce or the deletion or withdrawal of the commercial register, must be the subject of legal advertising at the expense of the concerned party.

Thus, the goal of legal advertising is to inform third parties of the legal status of the company so that they can engage with it according to its designated status[38]. The commercial legislator has imposed legal advertising on commercial companies as a pressing necessity in

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36 Mukhneish Hassan, The Protection of Third Parties During the Establishment of Joint-Stock Companies (Master's Thesis, Faculty of Law and Political Science, Mohamed Boudiaf University 2019-2020) p 18.
37 Executive Decree No. 15-111 of May 3, 2015, specifying the procedures for registration, amendment, and format in the commercial register.
38 Mahmoud Mukhtar Ahmad Barbury, Saudi Commercial Transactions Law (Dar Al-Nahda Al-Arabiya 1982) p 207.

our contemporary time to protect third parties dealing with commercial companies. A company cannot carry out its projects and complete its investments in isolation from those third parties, who cannot be expected to know about actions or works related to commercial companies from the time of its legal advertisement in the required legal format; thus, they cannot invoke its absence against third parties[39].

II. The Importance of the Obligation to Inform in Protecting Third Parties

The obligation to provide information is one of the requirements of good faith in concluding contracts. The concealment of any important information that affects third parties is considered contrary to the principle of good faith. Therefore, the contracting party is obligated to provide all true and accurate information related to the contract to the other party, so that they are not exploited due to their lack of knowledge of the contract[40].

Consequently, shareholders are the primary stakeholders in the company and are affected by any developments during its lifetime. The law considers the general assembly in the company to represent the highest authority within it. To enable shareholders to participate effectively in discussions during the general assembly meetings and vote on the decisions presented in its agenda, they must be adequately informed and have a clear understanding of the company's operations, the nature of its activities, the projects it has undertaken or plans to undertake, and its financial position. Shareholders' awareness of these matters can only be achieved through access to the company's records and obtaining information contained in the reports and documents issued by the company periodically.

The shareholders' right to access information is a means of illuminating their exercise of other related rights, which gives them the ability to monitor and inspect the actions of the management members and ensure the normal and proper functioning of the company[41].

The goal of emphasizing the right to information is to achieve transparency in administration and management, thereby strengthening the trust between the company and the shareholders and attracting other investors. Thus, following a wise information policy is a modern approach adopted by major companies. Granting the right to information empowers shareholders to exercise their remaining rights with knowledge and awareness.

This allows them to determine the framework within which they will exercise oversight in general meetings. Therefore, it is said that information is the starting point in the oversight process of shareholders within companies[42].

1. The Content of the Commercial Company's Obligation to Inform Third Parties

In this regard, legal scholars tend to argue that the obligation to inform takes two forms: a pre-contractual obligation (legal advertising) and a contractual obligation (disclosure). In both cases, the aim is to illuminate the consent of the contracting parties[43].

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39 almi Warda, The Protection of Third Parties through Legal Disclosure of Commercial Companies, Journal of Legal and Political Studies Research Center, no. 1 (2017) p 1.

40 Belhaj Al-Arabi, The Legal Framework of the Pre-Contract Stage in Light of Algerian Civil Law: A Comparative Study (University Publications Bureau 2010) p 75.

41 M. Cozian, A. Viandier & F. Debdissy, Company Law (13th ed., Litec 2001) no. 822 p 292.

42 Khalfaoui Abdelbaqi, The Shareholder's Right to Monitor the Joint-Stock Company (Master's Thesis, Faculty of Law and Political Science, Frères Mentouri University 2008-2009) p 11.

43 Abdul Razzaq Al-Sanhouri, The Intermediate in Explaining the New Civil law, Vol. 1, Sources of Obligation (Al-Halabi Legal Publications 2000) p 553

The importance of information in commercial companies has evolved from an obligation to inquire into a right to be informed. This right for third parties to obtain information through legal advertising and notification procedures fosters trust and transparency, ensuring that anyone dealing with the company is fully and accurately aware of its status.

The Algerian legislator has regulated the right to information and protected it within the provisions of Articles 677, 678, 680, 682, and 683 of the Commercial Code. This is in line with the general principle set forth in the Civil Code, which states: "Non-manager Partners are prohibited from management, but they may access the company's books and documents, and anyagreement contrary to this is void."

Therefore, no one can prevent a partner from accessing the company's documents. The legislator distinguishes between two situations concerning the right to information. The first pertains to the general condition of the company, which involves informing shareholders about any changes and developments affecting the company at any time, whether by informing them in person at the company's headquarters or by sending them information. This is known as the right to ongoing information. The second situation involves allowing shareholders access to the documents presented to the general assemblies well in advance of the meetings to study and review them in order to make appropriate decisions. This is referred to as the right to prior or preliminary information[44].

2. How Legal Advertising Works

The obligation to inform applies to all commercial companies as defined by commercial law. Article 4 of Law No. 13-06 concerning the practice of commercial activities stipulates[45]: "Every commercial company or any institution subject to registration in the commercial register must carry out the legal advertisements specified in the applicable legislation and regulations." Newly registered companies in the commercial register are exempt from the legal deposit and advertising requirements for their accounts during their first year of registration.

The goal of legal advertising is to inform third parties about the legal status of the company so that they can interact with it accordingly. Thus, the principle of invoking knowledge against third parties is based on two pillars: first, the presumption of lack of knowledge, and second, that lack of knowledge does not affect the validity of actions that are not subject to advertising procedures; instead, it is a civil penalty aimed at protecting third parties, as opposed to annulment[46].

It is worth noting that the announcement of legal information related to the company, which has previously been recorded in the commercial register, is published in the official bulletin of legal announcements, as specified in Article 2, paragraph (a) of Executive Decree No. 16-136 dated April 25, 2016, which defines the manner and costs of publishing legal advertisements in the official bulletin of legal announcements[47].

As a rule, all commercial companies are subject to publication, except for:

- ***Newly registered companies in the commercial register during their first year.***

44 Ahmad Barakat Mustafa, Protection of Minority Shareholders in Joint-Stock Companies (Comparative Study), Journal of Legal Studies, no. 16, p 99.

45 Law No. 13-06 of July 23, 2013, on the conditions for conducting commercial activities, Official journal No. 39, July 31, 2013 (Alg.).

46 Kamal Baghdar, Aspects of Protecting Third Parties in Commercial Companies under Algerian Commercial Law, Tikrit University Journal of Legal Sciences, vol. 2, no. 28 (2015) p 163.

47 Executive Decree No. 16-136 of April 25, 2016, on the procedures and costs for publishing legal notices in the Official journal of Legal Announcements, Official Gazette No. 27, May 4, 2016 (Alg.).

- *Companies established under support mechanisms for youth employment, which are exempt from paying fees related to the legal deposit of accounts for three consecutive years following their registration in the commercial register.*
- *Institutions of an industrial and commercial nature are not subject to legal advertising.*

Regarding the method of publishing legal data, it is carried out according to the provisions set forth in paragraphs (a), (b), and (c) of Article 2 of the aforementioned executive decree in the following order:

- *Paragraph (a) addresses the basic law governing commerce.*
- *Paragraph (b) pertains to the powers of the management bodies.*
- *Paragraph (c) covers financial disclosures, including balances, accounts of the company, and public borrowing operations. Legal advertising takes effect 24 hours after its publication in the official bulletin of legal announcements.*

This is inferred from Article 13 of Law No. 04-08, amended and supplemented by Law No. 13-06, which states[48]: "The legal advertisements carried out by a legal entity under its responsibility begin to take effect after one full day from the date of their publication in the official bulletin of legal announcements."

Additionally, the legislator has mandated that commercial companies publish their advertisements in national daily newspapers. Article 13 of Law No. 13-06 stipulates: "Legal advertisements must also be published in the national press or any suitable means, at the expense and responsibility of the legal entity."[49]

It is also worth noting that the Algerian legislator has allowed for electronic publication as per Article 5 of the aforementioned executive decree, which states: "Legal advertisements may be published electronically."

CONCLUSION:

The theory of protecting third parties in commercial companies has gained significant importance in commercial law, as the legislator has established numerous legal provisions and principles that contribute to the stability of commercial transactions from one side and bolster trust in the company's dealings with its external environment on the other side.

It is self-evident that this protective system, given its wide-ranging and varied areas, is a significant approach in commercial and economic relations that cannot be fully encapsulated in a single study. Rather, it offers insights into some aspects of third-party protection. In general, third-party protection can be linked to the concept of formality that governs commercial company contracts from the founding stage through the company's operations.

Key Findings:

1) *One notable observation from this study is the considerable attention the legislator has given to representing the commercial company towards third parties by providing provisions that define the powers of management and expand the scope of their responsibility.*
2) *Despite the legislator's efforts to establish these systems, the management system for commercial companies has not yet transcended the classical framework of agency contracts, which negatively impacts third-party rights.*

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48 Law No. 04-08 of August 14, 2004, on the conditions for conducting commercial activities, Official Gazette No. 52, August 18, 2004 (Alg.).

49 Moukhniche Hassan, The Protection of Third Parties During the Establishment of Joint-Stock Companies, supra, p 21.

3) *It can be inferred from the above that the Algerian legislator has not established an independent system for protecting third parties, unlike some comparative legislations.*

Recommendations:

1) *Reestablishing Legislative Framework: There should be a reestablishment of a legislative framework that ensures the protection of third parties in commercial companies through clear legal provisions.*
2) *Legislative Intervention: The legislator should intervene to regulate and address third-party rights to avoid issues in applying the provisions, especially given the lack of judicial interpretations on the topic of legal protection for third parties in commercial companies.*
3) *Mechanisms to Protect Rights: Efforts should be made to find mechanisms that prevent the company from unfairly harming the rights of partners and third parties, along with the principle of maintaining the legal personality of the commercial company even after its dissolution, to ensure the management of its assets and liabilities, alongside the legislator's efforts to ensure the transparency of the liquidator's work.*
4) *Institutionalizing Financial Disclosure: There should be an institutionalization of financial disclosure as an obligation on the part of joint-stock companies, which serves as a crucial guarantee for third parties, given their interest in financial information that is vital for assessing the company's status and its ability to fulfill its obligations to creditors.*

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