The Principle of Negotiability of Securities and the Restrictions Imposed Thereon

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***Abstract*—This study aims to shed light on an important aspect of the economy upon which the initial concept of capitalism and joint-stock companies relied, namely transferable securities as distinctive economic and investment instruments. These securities are characterised by several features, the most important of which is negotiability. This can only emerge and be exercised publicly within a legal framework and a liberal economic system, specifically in the stock market (or the Stock Exchange in Algerian legislation), where they are traded continuously in an organised and regular manner.**

However, our examination of the laws governing these securities reveals the principle of negotiability, alongside legally established exceptions or restrictions that limit negotiability, shifting it from an absolute to a relative principle. This raises the question of whether the notion of negotiability can be considered independently of the freedom of investment enshrined in various constitutions, or whether these are regulatory aspects without which the law does not permit securities to be traded.

Keywords—Transferable Securities, Principle of Negotiability, Exceptions to the Principle of Negotiability.

I. INTRODUCTION

Commercial companies, particularly joint-stock companies that undertake large-scale projects, have economic necessities that require them to understand and pay attention to special types of assets for the formation of their total capital and savings. These assets are referred to as securities or transferable securities. By issuing them, companies raise the funds necessary to carry out their activities.

Joint-stock companies issue securities when they require financial resources to fund their activities. They provide a means of collecting individuals' savings and directing them towards financing projects in return for yields determined at the time of issuance. Due to their continuously expanding scope in practical reality, transferable securities occupy a distinguished position in the economic life of every country, thanks to their effective role in mobilising national savings and directing them towards successful investment fields.

Despite the financial nature of transferable securities and their traditional negotiability, which may first be seen during the subscription stage in joint-stock companies or when they enter the Stock Exchange (or the securities market in American legislation), they are also clearly manifested through their entry into digital trading platforms. These platforms constitute a newly developed form. This is from a practical perspective. However, we often encounter restrictions or exceptions that limit negotiability, whether those stipulated in the company's articles of association or in company laws from a legislative and regulatory perspective[1]. These include provisions that prohibit certain types of securities from being traded until the company has been registered in the Commercial Register. Similarly, restrictions may be limited to the incorporation stage, such as the provision prohibiting the trading of guarantee shares provided by members of the board of directors, thereby affirming the personal consideration attached to the security. Furthermore, in the context of this study, we refer to the prohibition of digital trading in virtual securities under Algerian law for certain reasons, which differs from the approach taken in American legislation.

Since negotiability is the general rule governing the transfer of securities, it encompasses many forms that reflect its details and applications in practice, particularly on traditional and digital stock exchanges. This raises the question of what is meant by the concept of securities negotiability and whether it applies without limitation.

A. First section: The Legal Framework of the Principle of Securities Negotiability

The advantages that distinguish various types of securities make them a major incentive for enhancing a company's capacity, particularly when they enter the designated market. However, their results would not become apparent without the characteristic of negotiability and the close relationship between the two. This characteristic constitutes a legal principle in itself that requires further theoretical grounding and definition.

B. First Subsection: The Legal Nature of the Principle of Securities Negotiability

If we were to summarise stock exchange transactions in a single term, it would be the principle of negotiability, measured against the contract of sale in contract law. At first glance, it seems to be a process that does not actually go beyond buying and selling, the two aspects of the contract of sale in the general theory of contracts. The basis of this is the concurrence of

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two wills for the purpose of forming the contract. Here, we are referring to the sale of transferable securities. However, examining its specific legal nature gives it a classification that falls outside the customary scope of contract law due to its economic considerations.

Legislative approaches to the legal nature of trading vary, and legislation has adopted different legal classifications depending on the specific elements and circumstances[2]. In France, legal scholarship and case law have settled on describing stock exchange transactions as contracts of sale, given that trading operations appear closer in nature to contracts of sale than to other types of contracts.

However, with regard to transactions involving the trading of transferable securities on the stock exchange, the national legislator has refrained from classifying them as contracts of sale, despite such transactions resembling this type of contract. Examining the laws governing the Algerian stock market justifies this position, as they have not used the term 'sale of transferable securities', despite the similarities between the two and the fact that such transactions are subject to the general theory of contracts in most respects. This is due to their subjection to the public policy rules governing the stock exchange.

We emphasise that the fact that most laws avoid using the term 'contract of sale' for stock exchange transactions is due to the specific and sensitive nature of these transactions, given that the stock exchange is closely linked to the state economy. Consequently, many of the rules governing contracts of sale have been disregarded due to the involvement of a third party — the state — and new mandatory provisions have been adopted. These are known as the public policy rules of the stock exchange. Furthermore, this concept extends beyond the legal sphere to encompass economic thought and, consequently, economic public policy.

Accordingly, the principle of party autonomy has clearly declined and been restricted because of the specific characteristics of stock exchange trading contracts. These contracts are subject to a special stock exchange regime that differs from other legal regimes due to their unique characteristics. Indeed, some contemporary legal scholars state that:[3]

'When we examine the stock exchange rules, particularly those governing trading, we discover a uniqueness without parallel. Even the commercial rules codified in the Commercial Code do not violate the principle of respecting the will of the contracting parties to the extent that the stock exchange rules do, relying on the law establishing it or on the laws governing the regulatory authorities responsible for supervising it".

Accordingly, the principle of party autonomy has been excluded from the stock exchange regime. The rules of this regime are imposed by the stock exchange and the Market Regulation Authority in response to market conditions, with the aim of protecting trading. This is due to economic considerations predominating over legal considerations in stock exchange transactions, the latter being confined to a set of legal provisions and mandatory rules contained in these laws and characterised by their status as public policy rules.

The provisions governing the Algiers Stock Exchange clearly demonstrate the national legislator's intention to distinguish contracts for trading transferable securities on the stock exchange from general rules applicable to contracts of sale. For instance, the general rules governing sales contracts stipulate that sales contracts relating to movable property are concluded as soon as the offer and acceptance of the two contracting parties coincide. Once this agreement has been reached, the contract may not be amended or rescinded except by mutual agreement of the parties, for reasons prescribed by law[4].

However, there is a significant difference between these rules and the provisions governing the stock exchange, particularly with regard to the conclusion of a contract upon mere concurrence of wills. Under the stock exchange system, this takes the form of sell and buy orders for securities listed on the stock exchange. A sell order constitutes an invitation to contract, addressed through an intermediary in stock exchange transactions to an unidentified person. A buy order issued to the intermediary constitutes acceptance of the contractual terms proposed by the seller, without the buyer knowing the seller or being aware of the characteristics of the offer issued by the latter.

The specific nature of the stock exchange regime, as distinct from the general rules, is also evident in the ability to prevent a contract from being concluded[5]. The Stock Exchange Management Company has the authority to cancel a trading price, thereby cancelling all transactions executed at that price. It may also cancel a specific transaction. In all other cases, once the company has recorded a trading transaction, it is deemed effective and irrevocable. In stock exchange transactions[6], ownership is transferred as soon as the intermediary executes the order, leaving the contracting parties with no opportunity to amend or cancel the transaction, unlike under the general rules.

Therefore, although trading contracts are implicitly subject to the provisions of the Algerian Civil Code concerning contracts of sale, they are nevertheless governed by strict and mandatory rules that cannot be contravened due to the specific nature of the stock exchange and the speed of transactions it requires.

C. Second Subsection: The Meaning of Securities Negotiability and Its Legal Basis

To avoid addressing the meaning of securities negotiability and its legal basis directly, it is first necessary to refer to the status of securities under Algerian legislation before proceeding to the remaining elements.

Firstly: An overview of securities under Algerian legislation.

Transferable securities are initially defined pursuant to the provisions of Article 2 of Executive Decree No. 91-169, which regulates transactions relating to transferable securities. 'By their nature, transferable securities include debts of a specified

amount owed by capital companies; bonds of whatever nature; partners' shares in limited partnerships; usufruct shares; perpetual annuities; capitalisation bonds; profit-sharing bonds; and, in general, any financial product negotiable on the stock exchange[7].'

It is evident that this article does not provide a definition of transferable securities, but rather lists the types of securities that may qualify, indicating that the list is illustrative. This is further confirmed by the phrase 'and, in particular, any financial product negotiable on the stock exchange'.

Furthermore, the Algerian legislator identified capital companies as the source of transferable securities, which may take the form of joint-stock companies or limited partnerships. However, the issuance of transferable securities is exclusively the right of joint-stock companies[8]. This is one aspect. On the other hand, the legislator excluded the state and legal entities affiliated with it, such as public economic entities.

Pursuant to Legislative Decree No. 93-08, the Commercial Code was amended to define transferable securities in Article 715 bis 30 as follows: 'Transferable securities are negotiable instruments issued by joint-stock companies and listed on the stock exchange, or capable of being listed. They confer similar rights according to their category, and allow direct or indirect participation in a specified portion of the issuing company's capital, or a general debt claim against its assets[9].'

Several observations can be made about this article, the most notable of which is the restriction of the issuers of transferable securities to joint-stock companies alone. This restricts the right previously granted to limited partnerships under the aforementioned Executive Decree. However, the legislator maintained the exclusion of the state and its affiliated bodies from issuing transferable securities.

With the promulgation of Legislative Decree No. 93-10[10], the legislator rectified this error by authorising the state and local authorities to issue transferable securities in Article 1, which states the following: 'The Stock Exchange constitutes a framework for organising and conducting transactions involving transferable securities issued by the state, other public-law entities and joint-stock companies.'

Nevertheless, Article 30 of Regulation No. 97-03 once again restricted the issuers of transferable securities to joint-stock companies, providing as follows: 'Only transferable securities issued by joint-stock companies in accordance with the provisions stipulated in the Commercial Code shall be admitted to trading on the stock exchange.'

Notably, in all the aforementioned definitions or enumerations of transferable securities, the national legislator has consistently upheld the negotiability characteristic of shares. This means that the rights embodied in a share can be transferred to third parties either in exchange for something of value, such as through a sale or exchange, or without anything being given in return, such as through a gift or bequest. This can be done in accordance with commercial procedures, without the need to follow the rules governing the assignment of rights under civil law. This is because the latter would conflict with the flexibility and speed required for share transactions[11].

Additionally, the Algerian legislator aims to develop the national financial market and enhance the efficiency of the Stock Exchange by encouraging investment and financing operations through the stock exchange with numerous incentive measures. However, in the same context, Algerian law does not permit the digital trading of virtual currencies for security and governance reasons[12].

By contrast, the United States Securities and Exchange Commission has approved the listing of exchange-traded funds involving the cryptocurrency Bitcoin in recent years, thereby increasing their appeal to investors. This means that these digital assets are listed on American trading exchanges. This is because the state itself has a developed banking system in which the process of money creation through the fractional reserve system is maximised, to the extent that electronic money created by private banks typically represents more than 90% of the total money supply in the economy[13].

The national legislature has also designated a special venue for transactions involving the trading of transferable securities: the Stock Exchange. This constitutes a physical space for traditional trading, which is still used in many countries, including Algeria, as well as for digital trading in the digital market. In recent years, considerable efforts have been made in Algeria to implement the latter in a precise manner, although the country relies solely on transferable securities that have not reached the level of modernity characterising the American financial market. Financial relations between market participants are organised through all of its bodies, including the Commission for the Organisation and Supervision of Stock Exchange Operations. In American legislation, this body is known as the United States Securities and Exchange Commission. These relations are primarily based on buying and selling securities, which all fall within the concept of securities trading activity. In principle, these activities are contractual in nature and take the form of financial transactions.

It should also be noted that securities have two fundamental characteristics. The first is the financial consideration, embodied in the most prominent characteristic of securities: negotiability in economic terms, whether traditional or digital. The second element is the personal consideration, embodied by individuals who wish to invest and consequently seek to achieve financial profits. This aspect identifies the owner of the security.

In order to define personal consideration, it is important to acknowledge that the legal interpretation of this concept is ambiguous due to the lack of clarity in civil and comparative legislation and judicial practice regarding its meaning[14]. This has led to divergent doctrinal opinions on the matter. Some scholars have defined it as 'a contract in which the personality of one of the contracting parties, or a particular quality possessed by that party, has been taken into consideration when concluding the contract', such as a contract concluded with a contractor[15].

Others have adopted a different view, according to which personal consideration refers to taking the personality of one or both contracting parties into account, constituting an essential element of the contract. In other words, the personality of one of the contracting parties forms the basis for concluding the contract, in addition to its subject matter[16].

Broadly speaking, personal considerations in a contract involve taking into account the personal characteristics of all parties involved, as in the case of a company contract. Particular reference may be made to closed joint-stock companies, in which the shareholders' personalities constitute a matter of personal consideration for all contracting parties, since their relationship is governed by their own will and agreement, to the exclusion of others. This differs from joint-stock companies, where shareholders are subject to mandatory provisions set out by the legislator. One example is the prohibition against a shareholder being completely deprived of the right to transfer their shares. The transfer of shares is not subject to the civil law procedures for assigning rights[17], which makes them more negotiable and consistent with their economic nature. This is a distinctive feature of joint-stock companies and partnerships limited by shares. This is a principle relating to public policy, and these companies may not be deprived of it except subject to the restrictions and conditions expressly established by law[18].

When establishing a company, the primary motive for entering into the contract is the personality of the partner, but the main objective is to make a profit. However, this objective may coincide with another motive, as in the case of deposit, loan and contract agreements. In these contracts, personal considerations are not the main reason for entering into the contract, although they remain an essential element.

The same applies to contracts for trading transferable securities, where personal considerations are attached to the essential element: the security itself in relation to its owner. It is the owner who confers this characteristic upon the security, or the owner's connection with the company once its shares are offered for subscription[19]. At this point, anyone can become a shareholder by paying its value. This is because the urgent necessity of gathering the largest possible amount of capital led to the creation of the joint-stock company form. However, this absence of personal consideration is not absolute: personal consideration remains relevant in closed-subscription joint-stock companies. In other words, the personal consideration attached to a founding shareholder is greater than that associated with an investing shareholder.

Accordingly, personal consideration is one of the fundamental elements of a security, defined as the essential element intrinsically attached to the security in accordance with its owner, in addition to financial consideration. This forms the basis of the principle of freedom of negotiability that characterises securities. Nevertheless, the restrictions imposed on this principle, which will be addressed below, reveal several limitations thereof.

D. Second: the meaning of securities negotiability

In commercial terminology, negotiability corresponds to assignment in civil law. It is characterised by the simplification of the process of transferring rights, arising from the need to move and invest funds in order to revitalise economic activity. The negotiability of transferable securities is essential for the continuity of business activities.

Share negotiability is considered a fundamental right enjoyed by shareholders in joint-stock companies and investors in the securities market. This right allows shareholders and investors to transfer shares by transferring ownership through commercial methods compatible with the speed of share transactions. Generally, once a shareholder has paid the full value of a share, or at least a quarter of it, they can trade it freely. Negotiability is an essential characteristic of shares in joint-stock companies and in the financial market.

We may define negotiability as an economic principle that characterises a security, shifting it from a bargaining context to an investment-oriented approach. It encompasses several transactions, the most prominent of which are buying and selling, whether carried out through an intermediary in stock exchange transactions or directly through digital trading.

The legal basis for the transferability of securities is set out in Article 715 bis 40 of the Commercial Code, which states the following: 'A share is a negotiable instrument issued by a joint-stock company to represent a portion of its capital.' Therefore, negotiability is a matter of public policy and cannot be abolished or deprived of by any agreement, although it may be restricted. This includes the freedom of shareholders to dispose of their shares in two ways: positively, by having the right to dispose of them; and negatively, by having the freedom not to dispose of them. Consequently, a shareholder is free to remain in the company without selling their shares[20].

The principle of freedom of negotiability is of considerable importance and has a wide scope. A share retains this characteristic throughout the company's life, from the moment it acquires legal personality or from the date of full payment in the event of an increase in capital[21]. The share remains negotiable even after the company's dissolution, until the liquidation is closed, pursuant to Article 715 bis 53 of the Commercial Code. Therefore, if someone buys shares in a company that is being liquidated, they have the right to receive a portion of the liquidation surplus proportionate to their shareholding, pursuant to Article 715 bis 43 of the same Code, as they have replaced the transferring shareholder.

This continuity is also evident in cases where a judgment declares the company null and void or invalidates the issuance of shares. This is because transactions carried out before the judgment was issued remain valid given the formal validity of the shares, pursuant to Article 715 bis 54 of the Commercial Code. Accordingly, in this case, nullity does not affect the validity of the trading transaction as it was completed before the judgment establishing such nullity was issued.

It should be noted that transferring a security entails transferring the associated rights, whether financial, such as the right to dividends, or non-financial, such as the right to vote. The new transferee therefore replaces the transferring shareholder

with regard to rights and obligations towards the company. The transferring shareholder cannot reclaim the contribution made to the company's capital in order to preserve its stability; this contribution remains with the new shareholder (the transferee). The flexibility of the rules governing securities negotiability is particularly evident in the case of joint-stock companies listed on the stock exchange.

It can also be said that negotiability refers to the ability of a transferable security to be transferred via the straightforward processes set out in the Commercial Code[22]. Bearer securities are transferred by physical delivery, while registered securities are transferred by updating the company's records. Endorsement remains the method of transferring order securities. However, these methods have evolved alongside modern technologies.

Transferable securities can now be transferred merely by moving them from one account to another. This eliminates the material basis through which the rights arising from ownership of transferable securities were embodied. Therefore, the emergence of dematerialisation has affected the way securities are traded. Consequently, bearer securities are disappearing, and all securities are becoming registered as they are intangible, movable assets that arise from an entry in an account maintained by the issuer (a legal entity) or an authorised intermediary. They have no physical existence, but the company remains the sole owner of its assets while shareholders merely hold personal rights against the company[23].

E. Second section: Restrictions on the Negotiability of Securities

The principle of freedom of share negotiability is fundamental to a joint-stock company and constitutes a matter of public policy. Under no circumstances may an agreement abolish this principle or deprive a shareholder of it. However, this freedom is not absolute. Instead, it is subject to temporary restrictions that do not abolish or suspend trading. Instead, the purpose of these restrictions is to regulate the process of securities trading. These conditions allow personal considerations to enter capital companies, whereas previously they were confined to partnerships[24].

Restrictions on the freedom of share negotiability are clearly manifested in the limitations imposed on it. These limitations may be set out in the company's articles of association, in which case they constitute legal restrictions. Alternatively, they may result from the refusal to admit third parties to the company. Other measures include granting shareholders a pre-emption right to purchase shares transferred to non-shareholders within a specified period. Such restrictions are imposed to provide guarantees for those dealing with the company and constitute contractual restrictions in this case. This concerns the negotiability of securities within the company.

The restrictions imposed on the principle of securities negotiability on the Algiers Stock Exchange, however, take on a different dimension. These restrictions may be similar, if not identical, across various Arab and foreign legislations. Here, we refer to the conditions for listing on the stock exchange quotation list.

F. First subsection: Restrictions on the negotiability of securities in joint-stock companies

Although the principle of negotiability is legally enshrined and recognised in practice through customary investor behaviour, this does not mean that it applies without limitation. In fact, this principle is subject to legal and contractual restrictions in commercial companies, as discussed below.

G. First: Legal restrictions

Legal restrictions on the negotiability of transferable securities include those relating to the trading of shares held by members of the board of directors and those concerning the trading of founders' shares.

1. Prohibition on trading shares before the company is registered in the Commercial Register and before the full payment of a capital increase[25].

A commercial company does not acquire legal personality until it is registered in the Commercial Register. Shares can only be legally attributed to the company once it has come into existence in accordance with the law. Before this procedure is completed, trading in shares is prohibited. This is set out in the first paragraph of Article 715 bis 51 of the Commercial Code. Furthermore, pursuant to the second paragraph of the same article, shares may not be traded during a capital increase until the increase has been paid in full[26].

The Algerian legislator has prohibited the trading of shares during the company's incorporation period, rendering it conditional upon registration in the Commercial Register. In the case of a capital increase, however, trading depends on completion of the increase, i.e. full payment of the increased amount[27]. Nevertheless, any amendment to the company, including a capital increase, requires publication formalities and registration in the Commercial Register[28].

It is noteworthy that the legislator has linked the trading process to the company's legal personality. Pursuant to Article 715 bis 53 of the Commercial Code, shares remain negotiable during the liquidation period and before its closure because the company retains its legal personality. The negotiability of securities also remains valid when a company is declared null and void or when the issuance of shares is invalidated, provided the shares are formally valid (Article 715 bis 54 of the Commercial Code).

II. Prohibition on trading guarantee shares

According to Articles 619 and 659 of the Commercial Code, which deal with the board of directors and supervisory board of a joint-stock company respectively, each member of either body must own a number of shares as set out in the articles of association, provided that the total number of shares represents at least 20% of the company's capital. These shares are referred to as 'guarantee shares'[29].

Guarantee shares are an essential requirement for ensuring the proper performance of administrative and management duties throughout the term of office of a director or a member of the supervisory board. Accordingly, both types of members must hold shareholder status at the time of their appointment, as this status is linked to an interest in the company's success, serving as a guarantee for minority shareholders and the company's creditors. These shares may therefore be subject to sale or seizure in cases of negligence or fraud by members of the board of directors when managing the company. This results in the loss of shareholder and, consequently, membership status[30].

If a member does not own the specified number of shares in the company's articles of association when they take up their position, or if they subsequently lose ownership during their membership, they must resolve the issue within three months. Otherwise, they will be considered to have resigned automatically, in accordance with Article 619 of the Commercial Code. Accordingly, it is not sufficient for a member to hold bare ownership or usufruct only, since ownership under the general rules encompasses both rights[31].

Pursuant to the aforementioned Article 619, guarantee shares are considered non-transferable and remain allocated to the member throughout their term of office to guarantee the proper performance of management duties. Therefore, they must necessarily be registered shares so that the owner's identity can be established.

III. Legal Restriction Concerning Founders' Shares in Cases of Judicial Reorganisation or Bankruptcy of the Company

Within the framework of the general provisions governing bankruptcy and judicial reorganization, Article 262 of the Commercial Code prohibits managers of legal entities from transferring their equity interests and shares as soon as a bankruptcy or judicial reorganization judgment is issued, unless authorized by the supervising judge. This restriction is intended as a precautionary measure to prevent managers from evading the consequences of their actions.

It should be noted that founders' shares should not be confused with shares or interests granted to company founders as a reward for their efforts in establishing the company, as defined in some legal systems[32].

IV. Prohibition on trading promises of shares

Initially, these refer to temporary certificates issued to subscribers while registered or bearer shares are being prepared and distributed to shareholders[33]. These certificates grant subscribers the right to obtain shares. It takes a certain period of time to distribute definitive shares to subscribers, during which time subscribers may wish to transfer the certificates representing promises of shares. However, the prohibition established by law in paragraph 3 of Article 715 bis 51 prohibits trading in these certificates during the incorporation of the company and in the event of a capital increase until the increase has been verified, unless the company's existing shares are listed on the stock exchange.

A. Second: Contractual Restrictions

Although financial considerations take precedence over personal considerations in joint-stock companies, shareholders nevertheless retain the freedom to increase or decrease the importance attached to personal considerations, provided this offers greater protection for shareholders and third parties dealing with the company[34].

This is reflected in the role of personal considerations and their effect on the negotiability of securities. Shareholders are given the freedom to include restrictions on share trading in the company's articles of association[35]. These contractual restrictions are intended to limit shareholders' rights to transfer securities to others for various reasons. For instance, shareholders may wish to refuse admission to third parties they do not trust, thereby preventing them from acquiring shares in the company.

It should be noted that such restrictions on a shareholder's right to transfer their shares cannot abolish that right entirely, as this would contradict the principle of share negotiability. Contractual restrictions on negotiability are numerous and include the following:

V. The Approval (Consent) Clause

As a general rule, shareholders are free to trade and dispose of their shares. However, a provision in the company's articles of association may sometimes prohibit this. Such a transfer is subject to the condition that the company approves it. This condition is based on personal considerations that may lead the company to prevent shares from passing to shareholders whose admission it deems to be harmful, such as those who oppose its activities or compete with it. Accordingly, the company selects its shareholders based on its own interests and ensures that they enjoy the confidence of those dealing with it.

Consequently, a shareholder wishing to transfer their shares retains their status until the company grants approval. Upon approval, this status is transferred to the transferee, i.e. the new shareholder. Approval is granted by the body designated by the company for this purpose, in accordance with the procedures and conditions stipulated in the Commercial Code. Article 715 bis of the Commercial Code provides for this restriction as follows:

'The transfer of shares to a third party by any means may be subject to company approval pursuant to a provision in the articles of association, regardless of the transfer method, except in cases of inheritance or transfer to a spouse, ascendant or descendant.

This condition may only be stipulated where such shares are required by law or the articles of association to take the registered form."

This demonstrates the personal considerations underlying the approval clause, which restricts the company's ability to transfer shares to a shareholder's designated transferee. However, this restriction only applies to registered shares, as they are subject to control[36]. This is not the case for bearer shares, for which such control is almost impossible. This guarantees and protects the interests of both the company and the shareholder.

Furthermore, the legislator has expressly excluded cases of inheritance and transfers made in favour of a spouse, ascendant or descendant, for which the transferring shareholder is not required to seek the company's approval. Accordingly, the approval clause applies when the person to whom the shareholder wishes to transfer their shares is not connected to the company.

Article 715 bis 56 sets out the procedures for implementing the approval clause. A shareholder wishing to sell or transfer all or some of their shares must notify the company by registered letter with acknowledgement of receipt. The letter must specify the transferee's first and last names and address, the number of shares to be transferred and the proposed price.

The company's response may be either approval or refusal. Explicit approval is given through a positive decision communicated to the person concerned. Failure to respond within two months of the notification date is deemed acceptance. Refusal must be explicit and issued within the legally prescribed period[37]. While the company is not required to provide reasons for refusal, it is obliged to propose an alternative to the shareholder within the legally prescribed time limits[38].

VI. The Pre-emption (Buyback) Clause

Some researchers have defined the pre-emption clause as "a legal position arising for a partner when another partner transfers their undivided share to a third party in return for consideration, granting the former the right to recover it from the transferee, either voluntarily or compulsorily, in exchange for payment of the price paid, in addition to the expenses of the contract[39]". Pre-emption also means that some or all shareholders have priority over others in benefiting from the transfer of shares. This is also referred to as the right of preference.

A shareholder wishing to sell or transfer their shares must notify the other shareholders and offer the shares to them before offering them to others. They must also specify the number of shares, the price and the method of payment[40]. Accordingly, this clause reflects the personal considerations agreed upon in the articles of association, which grant shareholders the right of pre-emption. Pre-emption is first regulated under Articles 794 et seq. of the Algerian Civil Code as a right that permits a person to replace the buyer in a sale of immovable property.

This restriction, agreed upon in the articles of association, reflects the application of personal consideration and grants shareholders the right of redemption. If a shareholder wishes to sell their shares to someone outside the company, they must notify the company accordingly. This allows any shareholder or the board of directors to redeem these shares within a specified period, thereby substituting themselves for the buyer in exchange for a fair price[41]. Once this period has expired, the transferring shareholder may sell their shares without restriction to the person of their choice. The shares subject to redemption must be registered shares[42]. This safeguards the interests of the company and shareholders who do not wish the person concerned to become a company member.

We note that, although this clause has been addressed in Articles 981 of the Civil Code and 715 bis 58 of the Commercial Code, it has not been regulated by the national legislator. These provisions clarify that, when reducing its capital, a company can purchase a number of its own shares corresponding to the desired reduction[43]. The purchased shares are then cancelled using amounts deducted from the capital or the legal reserve, in accordance with the legally prescribed procedures.

A company resorts to purchasing pledged shares when they are subject to compulsory sale upon the debt maturing. In such a case, the company is compelled to reduce its capital. It may object to the transfer of the share from the owner to the purchaser (the creditor to whom the shares are pledged). However, if it does so, the company must redeem the share for its own benefit at a fair price[44].

VII. The pre-emptive right to subscribe

Personal considerations in securities are also reflected in the right of shareholders to subscribe to new shares issued by the company when it increases its capital. All shareholders enjoy this right in proportion to the shares they own, and it applies to all transferable securities[45].

Article 694 of the Commercial Code establishes this right through the following provision:

‘Shares confer a pre-emptive right to subscribe to capital increases. Shareholders are entitled, in proportion to the value of their shares, to a pre-emptive right to subscribe to the cash shares issued to effect the capital increase...’

However, the exercise of this right is subject to one condition: the capital increase must be carried out by issuing new cash shares offered for subscription. Additionally, the legally prescribed period for existing shareholders to exercise this right must be observed, which is thirty (30) days from the date subscription opens[46].

Accordingly, existing shareholders acquire the pre-emptive right to subscribe through personal considerations embodied in the security, affecting the shareholder’s position. This aims to prevent outsiders from entering the company, thereby preserving the enterprise’s specific character.

Second requirement: Restrictions on the trading of securities on the Algiers Stock Exchange.

In addition to the various legal and contractual restrictions on the negotiability of securities within joint-stock companies — a situation referred to as ‘over-the-counter’ trading — there are also exceptions to securities trading within the market. These occur in three stages, as follows:

A. Pre-listing stage:

This is the first step that any issuer of securities, regardless of its legal form, must take. It constitutes the stage preceding the listing process on the stock exchange and involves several conditions that must be met, which can be summarised as follows:

The adoption of a decision to proceed with listing on the stock exchange by the company’s extraordinary general meeting.

Legal preparation of the company and its shares, and compliance with the conditions and procedures required for stock exchange quotation.

The company’s valuation of its assets, i.e. determining the sale or issue prices of its shares based on an assessment by a member of the National Association of Chartered Accountants who is not the company’s statutory auditor.

The selection of a stock exchange intermediary to support the company throughout all stages of the admission process.

The issuer of the transferable securities must prepare a draft information memorandum containing all information relating to its financial and strategic position, as well as its securities. This must be submitted to the Commission for the Organisation and Supervision of Stock Exchange Operations.

The submission of an application for admission in accordance with the legal conditions established by the Stock Exchange Commission.

The Commission for the Organisation and Supervision of Stock Exchange Operations must approve the company’s admission to the Central Depository of Securities for the purpose of registering its entire share capital in the case of a share issue or the amount of the loan in the case of a bond issue.

The issuing entity launches a marketing campaign through various media, followed by the sale of the securities through the banking network. Positive results are then published for the public, after which the Central Depository of Securities settles the transaction within three days.

B. Listing stage:

This is the stage at which the security is entered into the stock exchange quotation list, following an admission decision from the Stock Exchange Commission that allows the security to be listed on the stock exchange. The Securities Exchange Management Company then publishes an announcement in the Official Bulletin, specifying the date of the security’s first quotation session and its listing price. The results of the first quotation session are also published for the public in the Official Quotation Bulletin.

C. Post-listing stage:

A liquidity agreement is concluded at this stage between the stock exchange intermediary and companies authorised to determine share prices by purchasing their own shares. This agreement specifies the conditions under which the intermediary, acting on behalf of the issuing entity in the market, may conduct such transactions.

The issuing entity must then inform the public of any changes or significant events that may affect the price of the securities. They must also inform the public of their annual and quarterly management reports and financial statements, and deposit these documents with the Commission for the Organisation and Supervision of Stock Exchange Operations, the Securities Exchange Management Company and the Central Depository of Securities.

The New York Stock Exchange serves as an example of the listing requirements on American stock exchanges. These include financial criteria, a specified number of shareholders, a minimum number of shares available for trading, a specified share price and applicable fees[47].

According to the latest update of the Cross-Border Listings Guide, dated 1 January 2024, a company seeking to list on the New York Stock Exchange must, unless otherwise specified, pay an application fee of USD 25,000 and a fixed initial listing

fee of USD 300,000 for each class of common shares. There is also a listing fee of USD 5,000 for each additional class of common shares. Annual fees amount to a minimum of USD 80,000 and increase according to the number of listed shares.

Subject to limited exceptions, the total fees that may be collected from an issuer during a calendar year cannot exceed USD 500,000. Additional fees apply to extra corporate procedures, such as listing extra securities. Additional costs include printing expenses, registration fees required by the Securities and Exchange Commission, and legal and accounting fees[48].

VIII. CONCLUSION:

This study has shown that, although financial considerations are the main driving force behind transferable securities, personal considerations still play a role in this field. Personal considerations accompany transferable securities throughout the entire process, from the formation of joint-stock companies to their establishment and existence, and even during the liquidation stage. This is initially reflected in the principle of negotiability, which drives the circulation of securities and paves the way for specific legal restrictions governing their transfer, as set out in the company's articles of association or legislation.

The principle of negotiability of transferable securities is found to be relative rather than absolute, as it is subject to exceptions and restrictions. The most prominent of these include agreements between shareholders and other contractual restrictions, such as the approval or redemption clauses, as well as the pre-emptive right to subscribe to new shares. This confirms that the principle of negotiability within joint-stock companies and on the stock exchange does not disappear entirely. Instead, it is a mechanism that has existed alongside securities and has contributed to the growth of this type of company, which relies primarily on transferable securities to mobilise savings and develop projects. Furthermore, the concept of negotiability is manifested in joint-stock companies through balancing the freedom to subscribe to and transfer shares with the contractual restrictions and conditions imposed. This balance is inherent in the security itself, as it constitutes the fundamental principle from which negotiability derives.

In all cases, it is evident that the concept of securities negotiability is underpinned by numerous factors. The concept involves principles that protect the interests of the company and enterprise, and safeguard the interests of founders and shareholders. This is achieved by preventing individuals who do not have their trust from joining the company, whether at the time of its establishment or during its operations. This includes agreements concluded between founders or shareholders. This is only made possible through the existence of transferable securities as distinct economic instruments.

Based on our findings, we make the following recommendations:

The need to establish a unified legal framework specifically governing the trading of securities on the stock exchange.

The need to establish an international agreement specifically governing trading systems in the transferable securities market.

Opening the Algerian Securities Exchange to other global markets.

- Enacting legislation to permit and regulate foreign investment in transferable securities on the Algiers Stock Exchange alongside the Algerian dinar. This would attract foreign financial companies and grant them accreditation, creating investment and financial activity on the stock exchange while benefiting from their expertise.

Encourage investment in transferable securities by establishing the necessary legal foundations and incentives.

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[12] - Law No. 25-10 of 24 July 2025 concerning the prevention of money laundering and terrorist financing, published in the Official Gazette No. 48.

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[14] - The Arabic word iʿtibar has several meanings, including 'consideration' and 'recognition'. See Jamal al-Din Muhammad ibn Makram Ibn Manzur, Lisan al-Arab, Dar al-Sadiq, Beirut, 2005, p. 529. The word iʿtibār also means purpose and estimation. See the Academy of the Arabic Language in Cairo's Intermediate Dictionary, Dar al-Da'wah, Cairo, entry 'ʿ-b-r', p. 580. The adjective 'personal' refers to something that concerns a particular individual and their identity. This definition is given in the Intermediate Dictionary, as cited in Ali Talal Hadi, Personal Consideration and Its Effect on the Establishment and Transfer of Shares and Interests in Capital Companies, Dar al-Nahda al-Arabiyya, Cairo, 2013, p. 14.

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[21] - Article 715 bis 51 of the Commercial Code.

[22] - Fouzia Ben Ghanem, 'The Legal Framework Governing Transferable Securities Issued by Joint-Stock Companies', Master's Thesis, Faculty of Law and Administrative Sciences, Ben Aknoun, Algiers, 2005, p. 17.

[23] - Ben Ghanem Fouzia, same reference, p. 18.

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[25] - Article 549 of the Commercial Code.

[26] - Article 548 of the Commercial Code.

[27] - Pursuant to Articles 444 and 766 of the same Code.

[28] - In accordance with the theory of the de facto company, under which a judgment declaring the company null and void does not have retroactive effect and the company retains its legal personality until the nullity judgment is issued, this is done in order to protect third parties.

[29] - The term 'guarantee shares' appears in Article 620 of the Commercial Code, while the term 'shares serving as guarantees' appears in Article 659 of the same Code. Legal scholarship has generally adopted the former terminology. See Mohammed Farid al-Arini, Commercial Companies: The Collective Commercial Enterprise between the Unity of the Legal Framework and the Diversity of Forms', published by the New University Publishing House in Al-Azariṭa in 2006, p. 246.

[30] - 31. Fahd Saqr Ayyad Al-Mutairi, 'The Legal Framework Governing Share Trading', Master's Thesis, Faculty of Graduate Legal Studies, Arab University, Amman, p. 80.

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[41] - Samiha al-Qalyoubi, previously cited reference, pp. 760–761.

[42] - Ghada Ahmed Issa, Agreements Between Shareholders in Joint-Stock Companies, 1st edition, Modern Book Foundation, Tripoli, Lebanon, 2008, p. 56.

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[44] - Fouzi Atwi, Commercial Companies, Al-Halabi Legal Publications, no edition or publication date stated, p. 166.

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