

Civil Liability of Founders for Incorporation Acts in a Public Shareholding Company

Mamoon Suliman Alsmadi¹, HAMDN GHUNEMAT², Ali Akram kadhim³, MOHAMMED HAMEED ALWAN⁴, Ahmad boutosh⁵, Hashim Balas⁶

Abstract

The study notes that despite regulatory measures on company formations, especially financial companies, an unlawfully established public shareholding company is possible, raising questions about associated consequences. Legislators' positions on this vary across jurisdictions and time. Therefore, the study aims to clarify the Jordanian legislator's stance by elucidating civil liability for founders and outlining liability lawsuit provisions. Key findings reveal a legislative gap regarding founders' liability for actions during incorporation. It is recommended that the legislator introduces specific rules to regulate founders' liability, especially concerning contracts on behalf of the company.

Keywords: *Civil Liability, Founders for Incorporation Acts, Public Shareholding Company, Jordanian Legislator, Civil Liability, Liability of Founders, Legislative Gap, Founders of Public Joint-Stock Companies.*

Introduction

The emergence of joint-stock companies marked a significant turning point in the economic evolution of modern societies. They represent the quintessential form of large-scale projects due to their ability to aggregate substantial capital resources utilized in economically significant endeavors. These companies emerged as a solution to the inadequacies of individual initiatives in undertaking pivotal economic projects, contributing to the development of the capitalist system on one hand and expanding their operations from the national to the international level on the other. They evolved into transnational corporate giants, transcending borders and continents.

The history of these corporate entities is replete with speculation, bankruptcies, and misconduct perpetrated against shareholders. These events have engendered a pervasive lack of trust in both the companies themselves and the individuals who manage them. The rush of the public and investors towards these corporations, driven by the desire for substantial profits, led to numerous frenzied speculations and the emergence of fraudulent companies. These fraudulent enterprises resulted from the exploitation by those in charge of these corporations and the privileges they enjoyed, thereby creating a state of instability. Consequently, legislators intervened in an attempt to address such deviations.

Given that the continuity and success of these companies hinge upon their sound establishment, as it constitutes the cornerstone and foundation for their formation and growth, it's imperative to recognize that this establishment begins with an idea or vision conceived by a group of individuals who plan to create an economic entity. After taking the necessary legal and financial steps to establish it, the success of this idea is contingent upon the reputation, expertise, and diligence of these founders. The legal regulations governing the founders of joint-stock companies, as well as the rules governing the establishment of these companies, appear to be in apparent conflict. Therefore, reconciliation is necessary, starting with the interest

¹ Assistant Professor, Ajloun National University, Faculty of Law, Department of Law, Email: Mamoon.alsmadi@anu.edu.jo.

² PHD, General section, college of Law, Mansoura University, Egypt, Email: Hmd1512@gmail.com, (Corresponding Author)

³ Academic title/ Assistant Professor, General specialization/private law, Specialization/Civil Law, Lecturer at the Faculty of Law, Al-Bayan Private University, Email: ali.ak@albayan.edu.iq.

⁴ Islamic philosophy-Prophetic Hadith, Department of Hadith and its Sciences, College of Islamic Sciences, Al-Iraqia University, Lecturer, Iraq-Baghdad, Email: isc.had.exp@aliraqia.edu.iq, phone: 009647707903637.

⁵ Associate Professor, Ajloun National University, Faculty of Law, Department of Law, Email: Ahmad.boutosh@anu.edu.jo

⁶ Associate Professor, Ajloun National University, Faculty of Law, Department of Law, Email: h.balas@anu.edu.jo

that necessitates facilitating the procedures for establishing such a company and then creating a conducive environment by setting rules that ensure the protection of these interests. This is the approach adopted by Jordanian law.

Significance of the Research

The research assumes importance as it delves into the topic of civil liability for the founders of joint-stock companies. This is due to the significant role played by joint-stock companies in the economic development of modern societies. They serve as effective means of aggregating individual savings and investing them. Concerns arise over the deviations that accompany the establishment of these companies, as some founders may exploit the advantages available to them for their personal gain. There is also a fear of the rights of many shareholders being compromised. To address these concerns, several legal regulations have been established to define the duties and powers of these founders and the responsibilities that arise from their breach of these duties or overstepping their powers.

Statement of the Problem

Despite the regulatory framework governing the establishment of companies, particularly public joint-stock companies, it is possible for an illegitimate public joint-stock company to be formed. In such cases, questions arise regarding the consequences of this situation and the liabilities that ensue from it. The positions of legislators have varied across different times and places. Therefore, the research problem lies in the fact that Jordanian legislation, specifically the Companies Law, does not address the regulation of civil liability arising from the violation of establishment rules, leaving it to the general provisions of civil law.

Questions of the Study

Main Question

To what extent are the general provisions of civil liability sufficient to establish the liability of founders for violating establishment rules under Jordanian legislation?

This main question leads to several sub-questions:

What is meant by the founders of a public joint-stock company?

What duties are imposed on the founders?

What is the nature of civil liability for the founders?

What are the provisions governing lawsuits related to civil liability for the founders?

Objectives of the Research

To define the concept of founders of public joint-stock companies.

To elucidate the duties imposed on the founders.

To clarify the nature of civil liability for the founders.

To outline the provisions governing lawsuits related to civil liability for the founders.

Methodology

In our research, we will adopt an analytical and descriptive methodology to break down the subject into its simplest elements, aiming to delve deeply into its study and understand it comprehensively. We will attempt to interpret the legal provisions and jurisprudential decisions governing the liability of founders.

Chapter One

The Concept of Founders of Public Joint-Stock Companies and Their Duties

The establishment of a joint-stock company relies on the efforts and work of its founders. This includes activities such as gathering shareholders, drafting the contract and bylaws, seeking a license, and other actions that lead to the establishment of the company. Where it is legally permissible for a legal person, or legal person, to be a party to a contract, have a physical presence, and have the right to property.

The level of interest from potential subscribers depends on their trust in the founders, their status, and their number. Therefore, it is necessary for us to research the concept of founders and identify their duties as prescribed by Jordanian Companies Law. This will be accomplished as follows:

Section One: Defining the Founders of Public Joint-Stock Companies.

Section Two: The Duties Imposed on the Founders in Public Joint-Stock Companies.

The first Issue

Defining the Founders of Public Joint-Stock Companies

The definition of a founder has been a subject of varying interpretations within Islamic jurisprudence. Some have argued that a founder must necessarily be a partner, as only they possess the intention to participate and bear the responsibility arising from the establishment of the company. This viewpoint stipulates that the founder must be among the signatories to the initial contract of the company. Conversely, another perspective has considered the description of the founder as synonymous with the description of a partner. In this view, a founder could be an individual who actively participates in the establishment of the company without necessarily being a partner.

Hence, defining the concept of a founder, in a general sense, holds significant legal and practical importance. It instills confidence in those who wish to invest in the company regarding the founders and their reputation and expertise in the fields and purposes of the company's project. The founder is anyone who actively participates in the establishment of the company with the intention to bear the resulting responsibilities. Jordanian legislation, however, does not explicitly adopt a specific definition for the concept of a founder. Instead, it lays out various provisions focusing on the legal status of this individual and specifying the conditions that must be met.

The determination of the concept of a founder requires an examination from several perspectives, as follows:

Section One: The Linguistic and Terminological Meanings of a Founder

Arabic dictionaries provide multiple closely related definitions for a founder. A founder is described as an active participant in commerce, someone who contributed to the establishment of a joint-stock company, and a signatory to the preliminary contract. A founder of a company is defined as someone who laid its foundations and established it under their supervision, someone who created and brought it into existence. The term "establishment" signifies providing another meaning that did not exist previously, as founding is better than affirming because carrying words with affirmation is superior to carrying them with repetition.

Divergent views exist regarding the definition of the founder in joint-stock companies, with differences ranging from narrowing to broadening this term. Some aspects of jurisprudence argue that the founder must be a partner because they possess the intention to participate and bear the responsibility arising from the company's establishment. This perspective emphasizes that the founder should be among those who sign the initial contract of the company. Conversely, French jurisprudence has started to expand the concept of the founder, considering anyone who engages in activities that effectively drive the company's formation as a true founder, even if they are not among the signatories of the initial contract .

Modern jurisprudence leans toward the necessity of broadening the definition of the founder to provide legal protection for public savings and young entrepreneurs when establishing public subscription joint-stock companies. According to this contemporary approach, anyone who significantly contributes to the company's existence, even if they are not among the signatories of the company's contract, is considered a founder .

The second aspect: The Commercial and Legal Meaning of the Founder

Establishing a joint-stock company is considered a commercial endeavor. The founder is the person who originates the idea of establishing the company and initiates the incorporation procedures, and it's not sufficient to consider someone a founder merely because they contributed to promoting the company's project, succeeded in convincing others to subscribe, collected some subscriptions, or performed legal, accounting, or commercial expertise services for the company. To be recognized as a founder, it is required that they actively, continuously, and effectively work towards the establishment of the company, assuming the responsibilities arising from the establishment .

The establishment of a joint-stock company is not an endeavor devoid of profit motives. The founders have a significant interest in the establishment, often centered around retaining a substantial portion of the capital or providing an in-kind share to the company. There is no impediment to compensating their services in the form of wages or fees .

The Jordanian law does not define the founder in joint-stock companies but rather focuses on regulating the incorporation procedures and specifying the conditions required of founders, as well as the liability arising from the failure of incorporation, without delving into a specific definition of the founder. This was a prudent decision as it allowed the judiciary to adapt to each case individually, as it would be challenging to provide a comprehensive definition of the founder.

On the other hand, comparative legislation has provided definitions. For example, the Egyptian legislator defines the founder as: "Anyone who actively participates in the establishment of a company with the intention of assuming the responsibilities arising from it. A founder is considered as such, and exclusively, those who sign the preliminary contract or contribute an in-kind share during its establishment. Those who participate in the establishment on behalf of the founders of free professions are not considered founders .

Similarly, the Kuwaiti legislator defines the founder as: "Anyone who actively participates in establishing a company, signs its contract either personally or through a representative, and contributes to its capital with either cash or in-kind .

Consequently, the characteristic of being a founder is no longer solely dependent on signing the company's bylaws and directly initiating the incorporation procedures. It can also be attributed to other individuals. Despite the legal tendency to expand the definition of the founder, it is still subject to specific conditions. We agree with this view because it entails assuming responsibility for any actions taken. These conditions include:

Active and Effective Involvement: To acquire the designation of a founder, it is not sufficient to merely initiate the incorporation procedures. The individual must actively, continuously, and effectively contribute

to the establishment of the company. Those who engage in tasks that are not significantly relevant to completing the incorporation procedures are excluded from this designation

Personal Responsibility: To be recognized as a founder, the person must personally undertake the tasks associated with incorporation and not act on behalf of others through agency or due to an employment relationship. They must manage the process themselves and be personally liable for their actions .

The Second Issue

Duties Imposed on Founders in Public Joint-Stock Companies

After studying the project of the company and assessing the anticipated benefits, required expenses, and being convinced of its potential as a future venture, the founders should proceed to realize the envisioned idea in practice. They can do this by initiating the incorporation procedures. The starting point for undertaking the advanced procedures begins with certain preliminary actions, which can be described as preparatory activities for incorporation. These activities primarily involve preparing the necessary documents for company incorporation, with the most important of these being the company's bylaws and the company's system. The second task is to gather the company's capital, which consists of the total cash and in-kind shares .

Hence, we have divided this issue into two subparts, where we will discuss the duties incumbent upon the founder. Failing to adhere to these duties may result in legal accountability. Here are the two subparts:

Section One: Duties Related to Preparing the Required Documents for Incorporation

Jordanian law mandates that the founder of a joint-stock company organize certain documents required for the incorporation of the mentioned company. Foremost among these documents is the document that defines the legal rules governing the company's activities as a legal entity. This document includes specifications regarding the nature of the company's capital, its amount, its name, its subject matter (object), the governance of the company by shareholders, and the governance of the company towards third parties. This document is commonly referred to as the “Company's Bylaws” in Jordanian law.

Article 92 of Law No. 22 of 1997 (Companies Law of 1997) and its amendments stipulate the duty of founders to prepare, register, and deposit the company's system with the Companies Controller at the Ministry of Industry and Trade, using the prescribed template for this purpose. This contract must include the company's name, its main headquarters, its objectives, the names of its founders, their nationalities, the authorized capital, and the portion that has been actually subscribed. It should also include details of any in-kind contributions, if applicable, and their values. The contract should specify the method, form, and manner for calling the board of directors to meetings .

This foundational contract and the basic system must be signed by each founder in front of the company controller or a person authorized in writing for this purpose. It is also permissible for their signatures to be notarized by a notary public or an authorized attorney.

Article 94 of the same law provides that the Minister of Industry and Trade, based on the assignment of the Companies Controller, shall issue a decision to accept or reject the registration of the company within thirty days from the date of submission, with a maximum of thirty days from the date of the assignment of the controller. The application should be signed by the founders and comply with the legal requirements. If the minister does not issue a decision within that period, the application is considered accepted. If the minister rejects the registration of the company, the founders have the right to appeal this decision to the Supreme Court.

Upon careful examination of these provisions, it can be inferred that the Jordanian legislator emphasizes the following duties imposed on the founder:

The mandatory data that must be included in both the company's founding contract and its basic system are essential and must be disclosed in both documents. However, additional information may be included, often as optional data, such as specifying the company's duration, branches, offices, both domestically and internationally, and any other information that the founders consider relevant to the company's objectives.

The assignment of the company controller to accept or reject the company's registration is not solely based on verifying whether the founders have met the required conditions in their application. It also takes into consideration the economic viability of the company's proposed project and the qualities possessed by its founders, which protect the national economy and the funds of the public who invest in its capital.

The Jordanian legislator allows the Minister of Industry and Trade to issue a decision to reject the registration of the company without being obligated to specify the reasons for this rejection. However, the founders have the right to appeal this decision before the Supreme Court. It is suggested that the minister should be obligated to provide reasons for the rejection to inform the founders of the grounds for rejection and enable them to address these reasons in their appeal to the court. This interpretation aligns with the possibility of appealing the minister's rejection decision before the competent court.

Section Two: Duties Related to Capital Collection and Subscription

A joint-stock company, like any economic project, cannot achieve its objectives without having sufficient capital to start its activities. Therefore, it is the responsibility of the founders to collect the company's capital. The capital of a joint-stock company serves as a general guarantee for its creditors, and it is the basis for the success of the company's project. The subscription to the capital is of utmost importance in establishing the company. The company cannot be established if the capital is not fully subscribed. Subscription should be limited to money or assets in the company. Subscription to the capital is a commitment and an intention to acquire the status of a shareholder or partner in the company.

The legislator in Jordan pays significant attention to the capital of public joint-stock companies, as it represents the sole guarantee for the company's creditors. The provisions of the Companies Law No. 22 of 1997 do not extensively regulate the procedures for collecting capital, as these procedures are regulated by the Securities Law No. 76 of 2002 and the regulations and instructions issued under it. These regulations cover all procedures related to capital collection from the time of its opening until its closure. Subscription is the expression of the intent to participate in the company's project, along with the commitment to provide a share of its capital equivalent to the subscribed shares. Jordanian law adopts the principle of maintaining the company's capital, which is initially determined by a specific amount of money and cannot be changed, whether by increase or decrease, except through specific legal procedures designed to protect the rights of creditors and shareholders.

The Jordanian legislator stipulated in Article 99 of the Companies Law that the founders of a public shareholding company, when signing its incorporation contract and its basic system, must fully cover the value of the shares they have subscribed to and provide the supervisor with evidence of this. The percentage of shares subscribed by the founders in banks and financial companies should not exceed 50% of the authorized capital, and the number of founders should not be less than fifty persons. The contribution of the founder or founders in the public shareholding company at the time of incorporation should not exceed 75% of the authorized capital.

The Jordanian legislator allowed for diversity in the entities through which subscription can be made, whether banks or financial companies. This increases confidence in the subscription process and adds further guarantees for the subscribing public. The contribution of the founder or founders in the public shareholding company at the time of incorporation should not exceed 75% of the authorized capital. The legislator's aim is to prevent the control and domination of some shareholders over the management of the company. Additionally, the basis of this company is the participation of the largest number of individuals, and therefore it is necessary to ensure the participation of the largest number of partners, which cannot be achieved if an individual is allowed to contribute more than 75% of the capital.

It is the duty of the founder or the founders or the founders' committee to offer the remaining shares for public subscription as allowed by the effective Securities Law. However, partners in limited liability companies or those designated by shares or special contributors to a public shareholding company may cover the entire difference in the authorized capital of the company or offer the remaining shares for private public subscription, in accordance with the procedures specified in Securities Law No. 76 of 2002.

Paragraphs (c) and (d) of Article 99 have prohibited the founders of a public shareholding company from subscribing to shares offered for subscription during the incorporation stage. However, they are allowed to cover any remaining shares after the subscription period has ended, which must occur within three days of closing the subscription. In any case, if the shares offered for subscription are not fully covered, the capital subscribed to must not fall below the minimum limit specified in Article 95 of this law, and the number of subscribers must not be less than two. The Jordanian legislator did not specify the subscription period, leaving it to the founders to determine the necessary duration for subscription, which can vary depending on the nature and purpose of the company.

Furthermore, Article 9 of Law No. 18 of 2017 (Securities Law of 2017) empowers the Board of Commissioners of the Authority to issue the necessary instructions for the implementation of the provisions of the law. This council has issued several instructions, including the Instructions for Registration, Depository, and Settlement of Securities for the year 2004, which included several appendices representing issuance prospectus templates. These instructions also obligated public shareholding companies, in their eighth article, within two weeks of obtaining the right to commence operations, to submit an application to the Securities Depository Center for the registration of securities issued by them, according to the model prepared by the center, along with information and data, including the issuance prospectus related to the shares offered for subscription.

The third branch of duties pertains to the duty to convene the founding meeting (first General Assembly meeting). Jordanian law imposes a fundamental obligation on the founders of a public shareholding company, which is to call for the convening of the founding meeting of the company. This duty gives rise to several subsidiary obligations governing the mentioned call, and Article 92 of the Jordanian Companies Law explicitly states this obligation in the incorporation contract and the basic system, which must include various details, including "8- The method of managing the company and those authorized to sign between its incorporation and the first General Assembly meeting, which must be held within sixty days from the date of the company's incorporation .

The founding meeting (first General Assembly meeting) is subject to the procedures and requirements for invitations, legal quorum, and decision-making applicable to the general meetings of the company . The meeting must be held within the Hashemite Kingdom of Jordan. The meeting is considered legal if attended by shareholders representing more than half of the company's subscribed shares. If this quorum is not met within one hour of the scheduled meeting time, the Chairman of the Board of Directors shall issue a new invitation to convene a second meeting within ten days from the date of the first meeting . This invitation must be announced in two local daily newspapers at least three days before the meeting date. The second meeting is considered legal regardless of the number of shares represented .

The powers and functions of the founders' committee of the public shareholding company expire as soon as the first Board of Directors of the company is elected. They must then hand over all documents and records related to the company to this board.

Section Two: Civil Liability Provisions for Founders for Violating Establishment Procedures

As previously mentioned, despite the regulatory oversight imposed on the establishment of companies, especially financial companies, it is possible for a public shareholding company to be established unlawfully. In such cases, questions arise regarding the consequences of this situation and the resulting liabilities.

The Jordanian legislator has addressed the violation of the procedures for establishing a public shareholding company by stating: "If the Companies Controller determines that a public shareholding company has

neglected to apply any legal provision or violated such a provision during its establishment phase, he shall issue a written warning to rectify its situation within three months from the date of the warning. If the company does not comply with the warning, he shall refer it to the court .

This provision allows the court to liquidate the company through compulsory liquidation, according to the provisions of Article 226 of the same law, due to the company's invalidity, resulting in consequences and liabilities. What concerns us here is the civil liability of the founders for violating the legal provisions when establishing the public shareholding company, which can be divided as follows:

First Point: The Nature of Civil Liability for Founders for Violating Establishment Rules

Second Point: Provisions of the Civil Liability Lawsuit for Founders for Violating Establishment Rules

The First Issue

The Nature of Civil Liability for Founders for Violating Establishment Rules

Jurisprudence has provided classifications for the liability of founders, which can be either contractual or tortious. Contractual liability is based on the failure to fulfill contractual obligations in order to compensate the party that has suffered damages as a result of non-performance. Tortious liability, on the other hand, relies on a personal act that causes harm to another, characterized by fault, whether material or moral damage, to the person or their property. There must be a causal link between the harm and the fault for liability to arise .

If a founder commits an error against another founder, a subscriber, or a third party with no connection, this error should be pursued, and through it, the basis of liability can be established as either tortious or contractual. According to the general rule, the injured party is entitled to compensation for the harm suffered if the conditions are met, which include harm, fault, and a causal relationship. In this way, liability arises towards the injured party, and it may be contractual when the founder engages in contractual actions towards the company and third parties, or it may be tortious .

The following two subsections will address this issue:

Section One: Tortious Liability of Public Shareholding Company Founders

Tortious liability is based on a single legal obligation, which is the obligation not to harm others. Joint and several liability in tort is presumed by law. Therefore, the liability of the founder in public shareholding companies is tortious towards third parties. To emphasize this, Article 256 of the Jordanian Civil Code states, "Every person who causes harm to others shall be liable for the harm, even if not intentionally.

The main obligations of company founders, according to general liability rules and company law, primarily consist of regulatory obligations. Regulatory obligations refer to the founders of the company breaching a legal duty directed towards everyone, leading to the right of those who have suffered harm to seek redress through legal action. The source of these obligations lies in the law itself, as it defines what constitutes a regulatory duty and therefore a breach of this regulatory duty. Consequently, their liability becomes fault-based due to their failure to comply with the rules associated with company establishment that violate company law, securities law, or related regulations and instructions. As a result, this breach may cause harm to third parties, whether or not the company is invalidated due to a flaw in its establishment .

For instance, if a company is registered under a name chosen with fraudulent or illegal intentions, or if it is built on confusion, deception, and fraud, it may lead to the company being required to amend its name and pay significant financial compensation. This can cause a substantial financial loss to the company .

The founders' liability does not need the existence of a contract between them and the affected party. When an individual causes harm to others owing to their fault, liability develops, with the goal of holding the

person who broke the regulatory duty accountable for compensating the harm caused by their fault. The only prerequisite for this form of culpability is that the individual makes an error that causes harm to others, no matter how little. As a result, this liability frequently extends to non-contractual parties. However, it may occur with one of the contracting parties on occasion. For example, in the instance of a founder's liability to other founders, the founding contract is what holds the founders together. If the founder commits a non-contractual error, their liability towards the other founders is then based on fault and is established by the law itself .

According to the general principles regarding joint liability in cases of negligence, it is based on the provisions of Article (256) of the Civil Law. In cases where multiple individuals are responsible for a harmful act, the law does not establish joint liability for their actions. Instead, each of them is held accountable according to their share in the harmful act and the extent of their contribution to causing it. The court may also rule that they are all equally responsible or jointly and severally liable, as affirmed by the Jordanian Companies Law in Articles (257, 277). These articles specifically pertain to the misuse of company funds during liquidation and the dissolution of the company. It should be noted that the Jordanian legislator did not introduce joint liability among the founders in contrast to what was established for the chairman and members of the board of directors, who bear joint and several liability for any violations committed by any of them or all of them against the laws and regulations in force. They are collectively responsible for compensating all damages resulting from the harm caused to others.

The second Section: Contractual Liability of the Founders of the Joint-Stock Company

For contractual liability to arise, a valid contract must exist that includes specific obligations undertaken by each party to the contract in exchange for something. In the case of bilateral contracts, it is clear-cut. However, in unilateral contracts, it is sufficient for the contract to include specific obligations undertaken by the party issuing it for contractual liability to apply, even if those obligations are not enforced.

Contractual liability for the founders of the joint-stock company arises when there is a breach of contractual obligations. The founder who breaches their commitment is then obligated to compensate the other party for any damages suffered as a result. Contractual liability can be established whether there is a failure to perform or if the execution is defective .

In the context of founders, they are bound by the founding contract, which imposes obligations on individual founders. If one of the founders fails to fulfill their contractual obligations, this leads to contractual liability. Since the company's contract is based on free will, the foundation of this liability is voluntary intent. For example, if one of the founders fails to deliver the promised share in kind, it may force the remaining founders to purchase an equivalent share at a higher price. In such cases, the responsible founder can be held liable under contractual liability provisions .

As for the founder's liability towards the subscribers, it is observed that jurisprudence has presented several opinions regarding the nature of subscription. Some argue that it is a contract, while others believe it is a unilateral act of will, and still, others consider it voluntary. However, the prevailing view is to consider it a contract concluded between the founders and the subscribers.

In this context, the offer represents the statement of subscription through which the founders offer shares in their companies to the public. Subscribers express their desire to subscribe by signing the application form, constituting acceptance. This means that the offer made by the founders is tied to the acceptance issued by the subscribers in a way that legally binds the contract.

The formation of this contract results from the free will of both parties to create the legal effect. Furthermore, one of the prerequisites for establishing a company is the founding contract. Therefore, any breach of any obligation in this contract results in contractual liability, which is rooted in the free will of the contracting parties . For example, if the founders undertake obligations towards the subscribers regarding the company's shares and the completion of the subscription process and its legal procedures, and then the founders breach their obligations by conducting formal subscriptions or completing

subscriptions before registering the company, or by providing incorrect information in the prospectus, this would lead to the nullification of the subscription and causing harm to the subscribers. In this case, the founders can be held liable for the damages suffered by the subscribers based on contractual liability .

The Second Issue

Provisions of Civil Liability Lawsuit Against Founders for Violating Founding Rules

The Jordanian Companies Law does not stipulate the necessity of a court ruling declaring the company's nullity due to a defect in its establishment to file a lawsuit against the founders for liability . The liability lawsuit is independent of the nullity lawsuit. Through this claim, we will determine the parties to the liability lawsuit and then the amount of compensation, as follows:

Section One: Parties to the Compensation Lawsuit

Interest is the general condition for accepting a lawsuit. Therefore, the parties to the compensation lawsuit in the field of civil liability for the founder are the claimant (the injured party) and the defendant (the responsible party) for the damage. Each party will be explained as follows:

The Claimant in the Compensation Lawsuit

The claimant is the person who has suffered as a result of the violation of the founding rules, whether they are a natural person or a legal entity. They have the right to file a civil liability lawsuit and initiate it with the aim of obtaining full compensation from the competent court. According to the general rules and the Companies Law, the claimant can be as follows :

The company.

The shareholder.

The creditors of the company.

The Defendant in the Compensation Lawsuit

The lawsuit is filed against the individuals responsible for the defects in the establishment that led to the claimant's damages. Although the Jordanian Companies Law did not specify who is responsible for these violations, as it does not regulate such lawsuits in the first place, unlike comparative legislations that have identified them as founders, members of the first board of directors, first supervisory committee members, appointed shareholders, and experts, as is the case in Lebanese legislation, and similarly in Syrian legislation with differences in terminology .

Section Two: The Impact of the Civil Liability Lawsuit

Compensation is the consequence of establishing the elements of liability arising from the founder's error in the founding actions. When these elements are met, the court assigns the founder to compensate for the damage suffered by the injured party. Compensation is one of the ways of civil liability to remedy harm, and it is the natural result of establishing the founder's liability for their mistakes. It is the judicial means to remedy or mitigate the harm.

Due to the lack of detailed regulation by the Jordanian legislator regarding the civil liability of founders in the Companies Law, there are no specific provisions for compensation. However, one can refer to what the Jordanian legislator has alluded to by imposing fines for violating the provisions of the Companies Law, as stated in Article 282 of the current Companies Law. This article imposes a fine of no less than 100 Jordanian Dinars and no more than 1,000 Jordanian Dinars on anyone who violates any provision of this law or any order issued under it for which the law does not specify a specific penalty. If this penalty is not

sufficient to deter founders from violating any of the founding procedures, it can be supplemented with a compensation claim.

Since the Jordanian Companies Law lacks specific provisions regarding the liability of founders for paying the company's debts arising from its establishment, it leaves room for judicial discretion to regulate this liability. Regarding the liability of founders for paying the debts owed by the company to third parties, a judgment issued by the Court of Appeal in Amman stated:

Referring to Articles 90-94 of the Companies Law related to the establishment of a public shareholding company, there is no provision indicating the liability of the founder or founders for settling the debts that the company incurs towards third parties. Furthermore, paragraph two of Article 92 of the same law specifies how the company should be managed and who is authorized to sign during the period between its establishment and the first general meeting, which must be held within sixty days from the date of the company's establishment. Additionally, Article 426 of the Civil Law states that solidarity among civilians or creditors exists only by agreement or legal provision, as solidarity among civilians or creditors is not presumed or assumed but should be based on a legal provision or explicit or implicit agreement. There is no evidence in the documents indicating any agreement on solidarity, and the Companies Law does not provide for a situation of solidarity, as previously mentioned. Consequently, the lawsuit must be dismissed against the defendant (Rural Real Estate and Hotel Investments Company) due to the absence of a legal dispute. Since the Court of First Instance reached the same conclusion in this regard, its decision is well founded, and this appeal must be rejected .

This is also confirmed by the principles established by the judiciary of the Jordanian Court of Cassation, according to what was stated in one of its rulings: "4- The founder or founders of a public joint-stock company shall not be considered responsible for fulfilling the debts that the company owes to others, in accordance with the provisions of Articles (90–94) of the Companies Law. 5- Solidarity between debtors or creditors does not exist except by explicit or implicit agreement or by the text of the law, in accordance with the provisions of Article (426) of the Civil Code .

Conclusion

This research has examined the civil liability of founders for the acts related to the establishment of a public shareholding company in Jordan. We have discussed the definition of founders, their duties, the nature of their civil liability, and the applicable legal provisions. The key findings and recommendations can be summarized as follows:

Founders can be either natural or legal persons.

Unlike general civil liability, establishing civil liability for founders does not require proving fault; it is sufficient to establish a causal link between the defect in the establishment and the resulting harm. If this defect is proven, and the court is convinced that the harm occurred as a result, liability can be attributed to the responsible party.

Jordanian legislation does not comprehensively address the liability of founders for all actions they undertake during the establishment period, which represents a legislative gap.

Recommendation

The Jordanian legislator should adopt a clear definition of founders, distinguishing them from other individuals who may perform certain actions or transactions on behalf of the company during its establishment phase. A suggested legal text could be: "A founder is anyone who signs the company's establishment contract and owns a portion of its capital in cash or has contributed in-kind shares upon its establishment while complying with the provisions of this law."

It is recommended that the Jordanian legislator establishes specific rules governing the liability of founders in detail, especially concerning the actions and contracts they enter into on behalf of the company.

References

- Abdullah, M. B. (2004). Commercial Companies: General Theory of Companies. Dar Al-Nahda Al-Arabiya.
- Al-Aqeeli, A. (Year). Commentary on the Commercial Law, Part Four: Commercial Companies, Article 373.
- Al-Areeni, M. F. (2006). Commercial Companies. Dar Al-Jame'a Al-Jadida.
- Al-Azzam, A. (2000). The Legal Status of Company Founders: A Comparative Study (Master's thesis). The University of Jordan.
- Al-Bahnasawi, S. (2007). Commercial Companies. Dar Al-Nahda Al-Arabiya for Publishing and Distribution.
- Al-Bustani, S. Y. (2014). Business and Companies Law. Al-Halabi Legal Publications.
- Al-Fayruzabadi. (1997). Al-Qamoos Al-Muhit [The Comprehensive Dictionary], Part One. Damascus.
- Al-Khalailah, R. K. S., & Al-Ubaidat, M. A. (2008). Penalties for Violating the Rules of Establishing Public Shareholding Companies (Unpublished master's thesis). Arab Open University, Amman.
- Al-Mawla, B. K. (2010). Obligations of Shareholders in Joint-Stock Companies: A Comparative Study. Dar Al-Hamid for Publishing and Distribution.
- Al-Ouji, M. (2015). Criminal Liability in Economic Enterprises. Al-Halabi Legal Publications.
- Fatahi, M. (2009). The Legal Status of the Founder in Joint-Stock Companies in Algerian Law. Dafater Al-Siyasa Wal-Qanun, 2.
- Fouda, A. H. (1998). Money Companies and Commercial Contracts. Dar Al-Fikr Al-Jame'i.
- Ibn Manzur, A. M. (1980). Lisan al-Arab [The Arabic Language]. Dar Sader.
- Ismail, F. M. (2015). The Legal Status of the Actions of Company Founders in Pre-Establishment and Post-Establishment Stages: A Comparative Study. Journal of Legal and Political Sciences, 4(2).
- Murashda, R. A. S. (2015). Oversight of the Activities of Public Shareholding Companies in Jordanian Law: A Comparative Study (Doctoral dissertation). International Islamic University, Amman, Jordan.
- Nasseif, E. (2000). Al-Kamil Fi Qanun Al-Tijarah [The Complete Commercial Law], Vol. 2. Beirut.
- Sami, F. M. (2010). Commercial Companies. Dar Al-Thaqafah for Distribution and Publishing.
- Sari Al-Din, H. S. (2011). Principles of Egyptian Commercial Law. Dar Al-Nahda Al-Arabiya.
- Yamalke, A. (2017). Commercial Law: Companies - A Comparative Study. Dar Al-Thaqafah for Distribution and Publishing.
- Laws
- Securities Law No. 18 of 2017.
 - Egyptian Companies Law No. 159 of 1981 and its amendments.
 - Jordanian Companies Law No. 22 of 1997 and its amendments.
 - Kuwaiti Companies Law No. 1 of 2016.