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Title

**Legal translation in the Light of Translating
Memorandums of Association from Arabic into English**

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DEDICATION

To our parents and all the members of our families.

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INTRODUCTION

There is an inseparable relation between language and law; by means of written language, constitutions come into existence and laws are enacted, thus, legal translation is a special area of translational activity, as it involves law, and can often produce not just linguistic, but also legal impact and consequence, thus, it is essential that the legal translator has a basic understanding of the nature of law and legal language.

This research aims to provide a description of legal language and present an account of legal translation between English and Arabic, to find possible strategies and methods to overcome the recurrent hindrances faced by translators dealing with legal documents.

Therefore, this study can be important, especially for people working in the field of legal translation and legal systems, in order to avoid unintentional consequences of inappropriate legal translation. Most forms of legal texts require clearly and accurately defined rights and duties for all, this is why it is very important to ensure the precise correspondence of these rights and duties between source texts and target texts. It is also essential to understand the features of legal language and how inaccuracies have occurred in the past and how this can be avoided in the future. The study is analytical and backed through empirical

and observational results. The corpus will be in the form of two authentic memorandums of association written in Arabic, which are a One-person Limited Liability Company and a Partnership agreement. These translations will be put to ample analysis. The main reason for the corpus choice, which is Memorandums of Association, was our willingness to tackle a legal document that is not very known for the general public. Moreover, we have decided to entitle our research:

**Legal Translation in the Light of Translating some Memorandums of Association from
Arabic into English.**

This title paves the way to ask the following problematics:

What are the strategies to overcome the recurrent challenges of translating Memorandums of Association from Arabic into English?

This problematic shed light on several questions that can be summed up into three, namely:

- What are the features of English and Arabic legal languages?

- What are the main difficulties of legal translation?

-What are the possible approaches and techniques for translating legal texts in general and memorandums of association in particular?

To answer these questions, the thesis will draw some hypotheses:

-Analysing the features of legal English, contrasting them with the features of legal Arabic is a pioneering step in the study of legal texts. Such comparison will help us come up with a list of similarities and differences between both languages.

- Figuring out the common difficulties that a translator needs to consider when translating legal documents between both languages.

-Adopting some strategies and methods such as borrowing foreign terms, naturalizing some specific terms into the target language or using functional equivalents. However, some terms necessitate simple equivalent translation, as they function simultaneously in both languages, to overcome the challenges faced during the translation process.

The underlying theories of our research are Peter NEWMARK's theory (1964) and Eugene NIDA's theory (1984). This is due to the fact that these approaches propose prominent methods and strategies to non - literary translations including legal translations. Nida (1984) suggests two kinds of equivalence namely formal and dynamic equivalence. For

the translation of legal translation, “*formal equivalence*” is more appropriate and its principles are often applied in the translation of such texts, however for cultural – bound terms “*dynamic equivalence*” can be useful.

Concerning Newmark’s theory (1984), it proposes two types of translations; “*semantic*” and “*communicative*”. For Newmark (1984), these particular types of translation can be applied to different kinds of texts, believing that legal texts, when translated only for informative aims such as foreign laws, require semantic translation, whereas texts that are translated for the purpose of functioning as a legal instrument like contracts require communicative translation and must be treated as a special type, with all elements making them concurrently valid in the target language community.

Our research is divided into three chapters, in the first chapter , we will deal with legal language in general (1.1) then, we will move to the definition of both legal English (1.1.2) and legal Arabic (1.1.3). Furthermore, in the second part of the first chapter, we will define legal translation (1.2), finally, we will talk about sources of legal Arabic and legal English (1.3). The second chapter is the empirical part; in which we will expose the translation of our corpus. After that, in the third chapter we will present the corpus of our study (3.1), then we will talk about the methodology of corpus analysis (3.2), after that the study explores the

applicability of Peter NEWMARK's and Eugene NIDA's theories on legal translation (3.2). Finally, we will expose the main hindrances encountered during the translation of our corpus, we will also suggest some methods and strategies to overcome such difficulties (3.4).

Our study was based on some prominent books, concerned with legal language and translation studies such as Peter TIERSMA's "*Legal Language*" (1999), which helped us to explore the different features of legal language and legal English. Furthermore, for the translation theory of our research, we have referred to Nida's "*toward a science of translation*" (1964) and Newmark's "*Approaches to Translation*" (1984).

It is worth noting that there are some research studies which have been already done, by other students, dealing with legal translation, such as the thesis of the student HADHOUM Iméne, entitled "*Translation of first and second book of the 2005 family code of Algeria*" at the university of TiziOuzou, the thesis of the student TIGHZA Houda, "*Translation of collocations in the light of family code*", at the university of Constantine and the research paper of the student MEISSOUR El Hachemi, entitled "*Difficulties in translating the Commercial Code in the light of translating the convention between Algeria and the European Union*" at Oran university.

Chapter 1: Legal language and Legal Translation

Legal texts are formulated in a special language which is highly subject to particular constraints. Moreover, legal language has its own terminology, characterized by system bound nature. Therefore, it can be considered as a distinctive category in its own right. Legal translation, on the other hand is the process of translating such texts. In the present chapter we will discuss the features of both legal language and legal translation. Firstly, we will talk about legal language in general (1.1), then, we discuss legal English (1.1.2) and legal Arabic (1.1.3). Secondly, we will move to legal translation (1.2) and its different characteristics and difficulties.

1.1. Legal language

Legal language is the language used by lawyers, judges, legislators, and others concerned with legal contexts, to express legal analysis and legal rights and duties, to advocate for, or to express the resolution of a client's legal matter, etc. Tiersma (1999:142) regards legal language as a “*sublanguage*” rather than a distinct language. Moreover, he emphasizes that this sublanguage is not unitary, but rather diverse and fluid in response to different cultural contexts. Nevertheless, Tiersma's guiding premise is that the sublanguage

of legal discourse diverges from ordinary language in far more ways than the technical languages of most other professions.

1.1.1. Characteristics of Legal Language

Legal language has several features that make it different from general language.

According to Tiersma (1999) the following are the main characteristics:

1.1.1.1. Lengthy and Complex Sentences

Studies show that sentences in legal language are longer than in other styles, and also have more embeddings, making them more complex. Sometimes, there seems to be an attempt to state an entire statute or linguistic principle in a single sentence.

1.1.1.2. Wordiness and Redundancy

Lawyers are very prone to use wordy and redundant phraseology. They also tend to use ponderous phrases such as “*at slow speed or subsequent to*” where a single word would suffice (slowly, after). On the other hand, sometimes legal language is not overly wordy at all, but highly compact or dense. The economic incentives and strategic motivations under which lawyers operate seem to be significant, i.e. when clients are paying a large fee; there is a motivation to be verbose.

1.1.1.3.Unusual Sentence Structure

Lawyers make use of unusual sentence structures, as in a proposal to effect with the Society an assurance, which is taken from an insurance policy. Often these unusual structures result in separating the subject from the verb, or splitting the verb complex, which can reduce comprehension.

1.1.1.4.Impersonal Constructions

A related characteristic of legal style is impersonal constructions. The best example is the avoidance of first and second person expression “*I*” and “*you*”. Using the third person in statutes does make some communicative sense, the personal pronoun “*you*” might, therefore, be inappropriate or ambiguous. Elsewhere, as in the tendency of judges to refer to themselves as the court rather than “*I*”, it creates an impression of objectivity and authority, thus helping to legitimate the legal system. Multi-judge panels seem less reluctant to use “*we*” and “*will*” even to refer to a decision made by their predecessors long ago. In this regard, the first person stresses the continuity and perceived timelessness of the law.

1.1.2. Legal English

Legal English is widely considered as a sublanguage, this term puts forward the idea that legal English differs from general English; the differences can be noticed in vocabulary, morphology, syntax, and semantics, as well as in other linguistic features. Specialized use of certain terms and linguistic patterns retain the teaching process of legal language i.e. we study legal English as a kind of second language in which there is a specialized use of vocabulary, phrases, and syntax that facilitate the interaction between people.

1.1.2.1. Features of Legal English

Legal English has several features that can be classified as follow.

1.1.2.1. Terms Borrowed from Latin and French

One of many noticeable features of English legal lexicon is the existence Latin terms in its terminology. Alcaraz and Brian (2002) link the presence of such terms to certain reasons; that are: In the first place, it was impossible for English law to escape the influence of Latin which was sustained by the power of the Roman church over Europe at that time, and also the widespread use of Latin as a language of learning and literature, in addition to the

incredible power of the Roman law which was a coherent written system, in this context we can mention some Latin phrases and words in common use:

De jure that means stated by law (www.Dictionary .Cambridge.Org). **In absentia** which means in absence(www.Dictionary .Cambridge.Org).

As with Latin, the existence of legal French terms within English legal language is also largely apparent. This was mainly caused by the Norman Conquest in 1066, since the language of the invaders gained a great position in England, bringing with it a wealth of legal French terminology (Crystal and Davy, 1986) , to illustrate that, we can cite the following examples of legal terms borrowed from French: Contract, proposal, schedule, terms, conditions, policy, alias, quash,etc.

1.1.2.2. The Use of the Modal “shall” in Legal English

The modal “*shal*”l may cause certain difficulty in both interpretation of clauses including it and in the translation of such clauses. The modal *shall*, in legal texts, carries an obligation or a duty as opposed its common function: expressing futurity (Tiersma: 1999).Moreover, Sabra (1995: 27) claims that any legal verb preceded by ‘*shall*’ is normally

translated into Arabic in the present form. To understand this situation, here is an example of a translation from English into Arabic:

All such payments shall be made to Landlord at Landlord's address.

This sentence can be translated into Arabic as:

تدفع كل هذه الأقساط إلى المكري في عنوانه الموضح

1.1.2.3. Archaic style of legal English

Legal English lexicon is greatly made of archaic legal terms. Yet, this touch of Archaism is not useless; there are reasons behind this use. Tiersma (1999:95) states that “*legal language often strives toward great formality; it naturally gravitates towards archaic language*”. For him, archaisms give a kind of formality to the language to which they belong. A frequent example of the use of archaism is the verb ‘*witnesseth*’ with the preservation of an ‘eth’ ending for the third person singular of the present tense as an alternative of the current morpheme ‘es’ ‘witnesses’.

There are also some archaic adverbs, that are actually a mixture of deictic elements: ‘here’ ‘there’ and ‘where’ with certain prepositions: of, after, by, under, etc. For example in

The parties hereto agree as follow. “*Hereto*” means according to this contract.

In spite of the usefulness of the archaic style within legal language, its functionality is still debatable. Certain outdated terms and constructions cause real difficulties for better understanding; they make legal language inaccessible to the public reader or more specifically to those who are mainly concerned with legal matters and noticeably such terms render comprehension difficult.

1.1.2.4 Lexical Redundancy

Legal language is widely related to exactness of reference; therefore, it has tendency toward lexical repetition and functional redundancy. By way of illustration, consider these examples with their Arabic translations used by Sabra (1995: 37) himself: *The Lessee*

shall pay to the Lessor at the office of the Les يدفع المستأجر إلى المؤجر في مكتب المؤجر

In this example, if we choose the possessive pronoun 'his' instead of the word 'Lessor' in the phrase 'at the office of the Lessor' would certainly causes confusion and ambiguity. This feature of legal language facilitates the task of the translator to know the exact meaning intended by the legal drafter.

1.1.2.5. The Use of Technical Terms

As we have already mentioned, a significant part of legal English vocabulary is a mixture of archaic terms and borrowed terms from Latin and French. Another noticeable feature of legal English is its technical terminology. According to Tiersma (1999:17) “*if a word or a phrase is used exclusively by a particular trade or profession or if that profession uses it in a way that differs from its normal meaning and the term has a relatively well-defined sense, it should be considered a technical term*”.

This means that a technical term is an unshared term used exclusively by a specific trade or profession.

1.1.2.6 .Recurrent use of Doublets

In legal English, there is a common use of collocations in which synonyms or near-synonyms are combined in pairs known as “doublets” Such words can be nouns, verbs, adjectives or even prepositions. For example: “*Made and entered*”, “*by and between*”.

1.1.3. Legal Arabic:

Legal Arabic is the Arabic used only in legal contexts; it differs from general Arabic, as it includes distinguishing features which gives it a tinge of formality. As Legal English, Legal Arabic language has also some distinguishing features, such as, the use of long and

complex sentences, which are mainly used to give enough information, and so be more detailed about legal writings, in fact, linking conjunctions play an important role in such sentences. Moreover legal Arabic is full of terms that are associated with Islamic religion, for example terms such as: كفالة, عرف, خلع, are purely Arabic and cannot be found in other languages, generally such terms would be a source of many hindrances for translators.

Legal Arabic tends also to be more lexically cohesive than English legal language, this cohesion is often in the form of repetition of the same lexical item, we illustrate this with the following example: يلتزم الطرفان على هذا العقد ويلتزم الطرفان بنصوصه

“The two parties sign this contract and the two parties abide by its wordings.”

Furthermore, since written Arabic is often more explicit than English, less information should be recovered from the context.

1.2. Legal Translation

Legal translation is a special type of translation involving cross linguistic communication in the legal context. Bold claims have been made about legal translation. It has been described as a category in its own right and as “*the ultimate linguistic challenge, combining the inventiveness of literary translation with the terminological precision of technical translation*” (Gémar 1995: 9). The list of legal translation is endless and we have

also to keep in mind that other documents become "legal" when they pass into the civil and criminal justice systems.

Many authors claim that the special status of legal translation derives from the nature of legal discourse that gives rise to legal effects. Sarcevic (1997) splits up legal documents into prescriptive and descriptive texts, plus hybrid texts which contain both functions (e.g. judicial decisions, appeals, petitions...etc).

In monolingual legal drafting, the concept of fidelity was reflected in the insistence of meticulous wording. Accordingly, translators were instructed to be more faithful to the original text, a tendency which lasted until the twentieth century when the rise in national language consciousness in bi- or multilingual countries such as Switzerland, Belgium and Canada resulted in greater respect for the "genius" of the target language,(Sarcevic1997). Kasirer (2000) thinks that the letter versus spirit debate is unhelpful, since both options relegate the translator to the role of a passive mediator. Specialists in legal translation now define fidelity as achieving an equivalent impact on the target reader, which may justify substantial changes in the original text to respect the stylistic conventions of the target legal culture.

1.3. Sources of Legal Arabic and Legal English

It is worth noting that Legal translation is often more difficult than other types of technical translation because of the system-bound nature of legal terminology. Unlike scientific or other technical terminology, each country has its own legal terminology, based on its legal system. Legal English is related to Common Law that is the ancient law of England based upon societal customs and recognized and enforced by the

Judgments and decrees of the courts common law is “*the law developed by the common law as being common to all the Crown's subjects*”. (Www. Dictionary.Cambridge.Org), as many terms do not have direct equivalent in either Islamic or Arab Civil Law. Legal Arabic, on the other hand, involves aspects of the Islamic Law and Civil Law.

The main conclusion is that legal lexicon differs to a great extent from ordinary one. No doubt that such vocabulary does not render legal language clearer, but unfortunately, it makes it hard to understand without a considerable familiarity with the legal sphere. Therefore legal translation is regarded as one the most difficult kind of translations as it

requires high competency in vocabulary of the source and target languages in addition to the knowledge of the cultural backgrounds of these languages.

Chapter2: Translation of the Corpus

A Model of Partnership Memorandum of Association:

Mr.....Born on..... Living in

Mr.....Born on.....Living in

Parties who attended and agreed to form Partnership asked the notary signing hereunder to approve this memorandum of association that is mentioned as follow:

First Chapter

PARTNERSHIP'S FORM – PARTNERSHIP'S OBJECT - PARTNERSHIP'S

REGISTERED OFFICE

Article 1:PARTNERSHIP'S FORM: Under this contract by and between the two parties and all the new partners who may join this contract, it has been agreed the establishment of partnership that shall comply to the laws and regulations in effect, especially the article 551 and the order 75-59 dated on September twenty sixth nineteen seventy six (26.09.1975) including the commercial law and the memorandum of association.

Article 2:PARTNERSHIP'S OBJECT:The Partnership's object shall be.....

Article 3: PARTNERSHIP’S NAME: This Partnership’s name “Partnership.....”

The name shall be written clearly with complete and notable letters in all *Partnership’s acts*, Partnership’s factures, Partnership’s schedules, Partnership’s documents and Partnership’s deals.

Article 4: REGISTERED OFFICE:The Partnership’s registered office is located at

The Partnership’s registered office may be relocated to another place under an extraordinary general assembly’s decision.

Article 5: PARTNERSHIP’S TERM: The term of the Partnership’s shall be ninety nine (99) years, commencing from the date of the Partnership Record in the Commercial Register and its acquiring of a moral personality as it was known in this subject. The partnership can be dissolved before the date aforementioned if necessary, the same way as the partnership was set up.

Second Chapter:

SUBMISSIONS –CAPITAL- SOCIAL SHARES – CAPITAL INCREASE OR

DECREASE

Article 6: SUBMISSIONS

Mister..... has submitted the sum ofto the Partnership

Mister..... has submitted the sum ofto the Partnership

The total submissions are estimated by thirty thousand dinars(300000)DZDdivided into thirty 30 quotaswith an estimated value of one thousand dinars (1000) DZD

Article 7:PARTNERSHIPCAPITAL: The Partnership's capital is defined by 30000 DZD, divided into 30 quotas with a value of 1000 DZA for each quota shall be paid totally and distributed to the partners according to their contribution hereunder:Mr's quotas: fifteen(15) social quotas

Mr's quotas: fifteen(15) social quotas

The total number of the Partnership dividends constituting the Partnership's capital is (30)quotas. The payment of the capital is performed in cash with the legal currency in effect by the notary signing hereunder, in accordance with laws in effect. The notary shall deposit the capital in the office account opened at the Wilaya's treasury. The capital may be withdrawn when the necessary conditions are met; using treasury's check delivered on behalf of the Partnershipafter opening an account for the capital in a national bank.

Article 8: CAPITAL INCREASE: The Partnership's capital may be increased by a unanimous agreement of all the partners once or more. Capital's increase may be performed by all legal means especially by setting up new shares, either such shares are common or preferred consisting of monetary quotas or by adding some or of the profits thereof, or by any other income of any kind, or by increasing nominal values of the shares existing when the Partnership was set up.

Article 9: CAPITAL DECREASE: Partnership's capital may be decreased by a decision of the extraordinary general assembly of the partners withdrawing from the extraordinary general assembly especially by the interpolation of the quotas value owned by the partners withdrawing from the Partnership, or decreasing the nominal values of the shares constituting the capital.

Chapter three

MANAGEMENT – ADVANCE PAYMENT– DEDUCTION.

Article 10: MANAGEMENT:The Partnership shall be managed during its existence by one manager or more, chosen either by and between the partners or by a third party, currently Mr.....is appointed to be the manager for an indefinite term, under the provisions

of the article 553 of the order 75-59 that authorizes the management of the Partnership by all the partners. Each partner shall act for and on behalf of the Partnership; otherwise such acts are null and void. The partner shall not be liable for such acts.

When confronting others, the partners shall have full authority to represent the Partnership and carry out all the operations that fall within the partners' field including opening current accounts on behalf of the partnership in any bank, credit institution or postal management instruments. The partner may also deposit and withdraw any sum of money, sign or liquidate creditor or debtor checks, pay any sum due of money, adjust every account, purchase primary products that shall not be delayed, sign all the deals either executed immediately or after a term, subscribe freely the commercial documents, Partnership endorsement, receive all its sums, follow any judicial dispute, either as a plaintiff on behalf of the company or as a defender and assign the right to represent the partnership in other procedure by rising hand and recording or confiscation or any other hindrances, whether before or after the payment in addition to treat any problem and sign any reconciliation, agreement, or covenant, either the covenant concerns services or supplies and any rent of the Partnership's properties or for the Partnership's benefit by others.

Concerning credit operations and any purchase or sale or property exchange or trading post owned by the Partnership or arrangement of official mortgages on the Partnership's property or ordinary mortgage on its trading post and incorporate in another company using a part or all of the Partnership fund, the said may not be fulfilled without partners unanimity.

Article 11: ADVANCE PAYMENT: Each partner may deposit sums of money in the company's fund whenever the partner agrees about partners' value, in the form of advance payments either as new sums of money or by legacy for the company as part of his term's dividends or by legacy for the Partnership as part of the partner's last term dividends. On the other hand; no partner may withdraw any sum of money, for any reason, if such operation is necessary when submitting such sums, the partner shall notify its desire to the other partners at least three months before the operation. If there is no unanimous agreement, the said shall be notified by a recorded letter with a receipt, in order to give the Partnership a sufficient period to fix and balance its operations regularly, so the Partnership may not be affected by such withdrawal.

Article 12: DEDUCTION: Each partner may ask for the deduction of a particular sum due to cover the expenses of the partner's travels and transportation, in addition to the costs paid for

the partnership's affairs, after the submission of the documents including the partner's signature indicating the expenses that shall fall within the Partnership overheads.

Chapter four

SHARES ASSIGNMENT- OWNERSHIP OF PARTNERSHIP FUNDS - DEATH

Article 13: SHARES ASSIGNMENT: The assignment of some or all the shares by and between the partners may be performed freely. No partner may assign some or all of the partner's shares to a third party, unless there is an explicit agreement from the other partners, otherwise the assignment is null and void, when facing the partners included in the constituent agreement or in a subsequent supplementary agreement, the partner wanting to assign shall notify the other partners of its intent during the legal accepted term in order to allow the partners to regularize the partners financial situation to recuperate these shares or to express their, refusal. The notification shall be on an accessible letter including a receipt, if the legal deadline of the report expires and no partner asked for the shares to be assigned or the partners expressed unwillingness in a legal document, thereupon the partner may act freely.

Assignment of the shares shall be proven by an official document, article 561 of the Commercial Law.

Article 14: OWNERSHIP OF PARTNERSHIP FUNDS: The Partnership is the sole owner of the Partnership's funds, thereupon personal creditors of a partner do not have the right to seize Partnership's funds, shut down the Partnership, make a judicial inventory of the Partnership's funds, or perform any act that may hinder the Partnership's management, whilst the personal creditors may submit reservations to the other partners against the debtor partner. The partners may also be acquainted with the last inventory documents and the commercial accounts set by the Partnership to keep the partners debts.

Article 15: DEATH: Contrary to the first paragraph of the provisions taken from the article 562 of the decision 75-53 aforementioned, the partnership shall not be dissolved because of the death of a partner, but the partnership shall remain under the management of the other partners, the heirs or the representatives of the dead partner. In case of seizure on a partner, bankruptcy, forbidding the partner from commercial activities or losing his civil and national rights, the company hereby shall be dissolved. (Article 56636 of the order number 75 – 59)

Fifth Chapter

ACCOUNTS- FISCAL YEAR- INVENTORY – BENEFITS –ACQUAINTANCE

Article 16: ACCOUNTS BOOKS: AllthePartnership’s operations shall be recorded on books of accounts and on special registers that shall keep the terms and conditions legally defined, according to the texts and commercial conventions.

These books and registers shall be kept by the company’s general management or by a certified accounts’ expert chosen by the administration for such aim and working under the liability of the partnership. Each partner has the right to control the fund, registers and booksof accounts when necessary.

Article 17: FISCAL YEAR:ThePartnership’s fiscal year shall commence on 1st January and shall terminate on 31st December of each year. Exceptionally, the first fiscal year of the current partnership shall commence on the date of the partnership’s setting up hereby and shall terminate on 31st December of the current year, upon the representatives agreement.

Article 18: INVENTORY: The manager shall control the partnership’s accounts to manage regularly. Under the memorandum of association in effect, the manager shall record all the operations, set an annual inventory to the Partnership’s assets and liabilities. The manager

shall also prepare a budget containing such inventory in order to count the profits and losses.

The inventory shall be recorded on a special register signed by the managing partners.

The estimation made by the managers or the expert shall be set under the liability of such managers in charge of the fiscal year operations, the inventory, the general exploitation counting, losses and profits counting, and the general budget, shall be submitted to the partners to be approved.

Article 19: PROFITS: The net annual production after the discount of the overheads and all the partnership's charges represents the annual profits. The profits shall be distributed to the partners according to the partners' shares in the Partnership, whether such shares are original or added, the same partners bear the losses if there are any with the same percentage. The profits gained every fiscal year shall be used essentially to cover the overheads and the losses if there are any, in order to preserve the partnership's assets to maintain the partnership's continuity regularly.

The net dividends of each partner may be withdrawn freely by the concerned partner; the partner may also preempt such dividends, to be added dividends or common advance payments as mentioned above.

Article 20: ACQUAINTANCE:Under the provisions of the article 558 of the order 75-59 containing the Commercial Law, each partner has the right to be acquainted with the trade registers, accounts, contracts and bills, twice a year and in the Partnership's registered office .

Generally, the acquaintance shall be with all the documents available in the partnership. The partner has also the right to claim counterparts.

Chapter Six

CHANGING THE FORM – EXTENSION – LIQUIDATION- DISPUTES.

Article 21: CHANGING THE FORM:By unanimous agreement by and between the partners, the type of the partnership may be changed, whenever the partners want and without creating a new legal person. The memorandum of association may also be amended.

Article 22: EXTENSION:The management staff shall organize an assembly including all the partners, at least one year before the legal termination of the partnership, in order to decide whether the partnership will still exist or not.

If the management staff did not organize this assembly, each partner may warn this staff to organize the assembly by a recorded letter.

If the warning was vain, the partner may ask for the president of the court of the company's jurisdiction or call for the administration to make a decision on this object.

Article 23: LIQUIDATION: If the partners hereby decide in accordance with the conditions legally defined, to not extend the existence of the company or in case of the premature or optional dissolution, the procedures of liquidation commence from the day when the legal existence of the company terminates, the liquidation herein may be performed either by and between two partners or by and between the most capable partner whether he is director or not or an account expert, and this by general agreement of the partners.

The liquidator or liquidators have full powers in such field, especially the power of purchasing the Partnership's assets either by a mutual consent or by a public auction of all the rights, shares and the movable or immovable funds, either retailing or wholesale, the liquidator or liquidators have also full power to agree or to reconcile or grant any assignment or rise the hand with or without money.

The liquidators have also the power to enter in any privacy lawsuit before the profits distribution, provided that the net balance shall be distributed if any after the subtraction of

the entire overheads including the wages of the liquidators on the partners, in accordance with partners contributions' percentage in the partnership capital, as mentioned above.

Article 24: DISPUTES: All the disputes related to the Partnership's business whether by and between the partners during the existence of the Partnership or by and between the partners and the administration, or by and between the Partnership and a third party or during the liquidation terms shall be subject to of the jurisdiction of the company's registered officethereuponall the partners shall choose a representative within the jurisdiction of the Partnership .All the notifications and requisitions shall be sent to the said addresses.

Final Operations

DOMICILE – PROMULGATION – EXPENSES

Article 25: DOMICILE: In order to implement the contract and the contract's legal consequences, each party shall choose a domicile aforementioned, as a usual domicile where the partner may be consulted if needed.

Article 26: PROMULGATION: Everyone owning a counterpart of the memorandum of association has the power to perform the deposit and the promulgation required by law.

Article 27: EXPENSES: The entire overheads, duties and notarization taxes hereof shall be borne by the partnership and included in the establishment expenses.

Registration:

The registration fees shall be performed by separated stamp duties ceiled on margins, under the articles 59 and 206 from the order 105/76 dated on December 09,1979, including the registration law and the article 124 of the law number 13 dated on December 18,1983, containing the fiscal law of nineteen eighty four (1984).

Document02

People's Democratic Republic of Algeria

Ministry of Justice

Memorandum of Association of One-Person Limited Liability Company

Before Mister...the notary signing hereunder, in the office situated at...attended:

Mister...Born on...Wilaya of Tiziouzou, in accordance with the certificate of birth number..., living at..., holding a driving license (second copy) number...delivered by Wilaya of Tiziouzou, on... of Algerian nationality... asked the notary signing hereunder to draft the Memorandum of Association of One-Person Limited Liability Company as follow:

First Chapter

FORM – OBJECT – NAME - TERM

Article1: FORM: A Company of One-Person Limited Liability is set up hereby.

The Company shall subject to: The order number 75/97 dated on September 26, 1975 amended by Legislative Decree number 93-08 dated on April 2, 1993 - order number 27/96 dated on 12/09/1996 including the Commercial Law

-Memorandums of Association.

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-All texts with a legislative and regulatory nature in effect.

Article2: OBJECT:The company's object is: ...

Article3: COMPANY'S NAME: The Company's Name shall be: **A Company of One-person Limited liability.**

The Company's Name shall be preceded or followed by the expression (Company of One-person limited liability) shall be written clearly and in complete letters with a statement of Company capital in all contracts, bills and memos. Generally, in all documents issued by the Company.

Article4:REGISTEREDOFFICE: The registered office of the company is located at...and may be relocated to any other place in the same city, by a decision of the manager, and to any other place under the partner's decision.

Article5: TERM: The Term of the Company shall be **99** years, commencing from the date of the Company's record in the Commercial Register, except in cases of pre-dissolution or extension herein.

Second Chapter

SUBMISSIONS- CAPITAL –CAPITAL INCREASE and

DECREASE

Article6:SUBMISSIONS: Mister... submitted an amount of...representing fifth (1/5) of the Company's founding Capital.

The amount aforementioned was indeed deposited this day at the Notary Office Treasury as mentioned in accounting registers. The said shall not be withdrawn, only after the fulfilling all the legal procedures .If any share is in kind, the said shall be designated mentioning its value in accordance with the article 568 of the Commercial Law.

Article7: COMPANY'S CAPITAL: The Company' Capital is one hundred thousand Algerian dinars (**100000** DZD) divided into one hundred shares (100) with an equal nominal value that is worth onethousand Algerian dinars (1000DZD) numerated from 01 to 100 paid fully.

Article8: CAPITAL INCREASE: The Company's Capital may be increased by a decision of the sole Partner once or more, by all means and legal means especially by:

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- 1) Setting up new shares (share in kind or in cash).The said shall be distributed as submissions,
- 2) Increasing the nominal value of the existing shares
- 3) Integrating the savings resulting from the profits undistributed.

CAPITAL DECREASE:The Capital may be decreased by reducing the number of shares.

The shares shall not be less than one thousand Algerian dinars (100,000 DZA) or the nominal values shall not be less than one thousand dinars (1000 DZD). If the Capital reduction is necessary to be less, the said shall be followed within a one year to be paid back to the amount mentioned above, if the Company has not be converted during the same period into a Company of another kind in accordance with Article 566 of the Commercial Law.

Article9: PARTNER'S RIGHTS: Natural person may not be a sole partner except in a One-person Limited Liability Company. A Limited Liability Company may not have a Sole partner as One-person Limited Liability Company. In case of breaching the last paragraph's provisions, each and every concerned partner shall claim for the dissolution of the Companies established illegally. The said results from all the company's shares in one hand, the dissolution may not be claimed before one year of the shares collection. When Sole Trader

Document02

gathers all the shares in a company where there is more than one Partner, in all cases, the Court may grant an extended term of six months to settle the situation, whilst a dissolution sentence may not be pronounced, if the settlement has been done when considering the object.

Chapter three

COMPANY'S MANAGEMENT-MANAGER'S NAMING

Article10:COMPANY'MANAGEMENT: The Company shall be managed by a manager or managers as Sole Partner or Silent Partner, appointed by a decision of the managing manager or managers if many. Shall be as follow: the One-person Limited Liability Company named (... import export) followed by the signature of the manager or managers. The sole manager or managers may not use their signature to issues that do not fall within the company objects. If the said do such actions, all obligations shall be null and void NOWTHEREFORE, the manager or managers have absolute power to act on behalf of the Company, to perform all the operations related to the company's object with all the legitimate means so do the private attorney in together not separately. The said managers and private attorney have full power to

Document02

appoint the company's workers if many, to suspend the said workers from work or lay the workers off, to estimate their bonuses, to pay an amount of money, to subscribe each and every commercial document, check, bill of exchange, bond of any kind and to transfer a deal with the said or pay, to buy and to sell goods and chattels, to sign all contracts; treaties and deals in cash or deferred, concerning company's affairs. The manager may also deposit company's fund or bonds in any bank in the public treasury, withdraw the company's money, make the decision of any debt, transfer and debt back, assign the Company's right, mortgages, lawsuits of termination and other rights in kind of different types and agree on lifting restrictions, and other common hindrances. The said shall be carried out by proving or without faithfulness, delivering letters and parcels received on behalf of the company from each and every postal office, travel agency, transport company; or rail service and receive each and every receipt, or telegraph receipt, carry out all customs operations, on behalf of the company in all bankruptcy operations, judicial settlement, signing any reconciliation or union contract and do for the company in any debt distribution system or settlement, consenting all settlement and receive the amount of each dividend or debt distribution, following all lawsuits, signing any comprehensive insurance and settlement of losses and damages.

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The partners shall give attention to the company's affairs, and shall not act for the partners private affairs. Concerning the company's obligations, the partners shall not make and enter into any commitment in kind or solidarity. Under the rules of common system, the partners are liable for violating legal texts, breaching the current Memorandum of Association or are liable for the errors committed during the partners' management either against the company or against others. The partners may not be insulated without legitimate reasons. The partners may resign from the function whenever the partners want, provided that the unique partner shall be inform the unique partner of the partners' intention within six months at least. In case of death of any manager, voluntary assignment, or disability by disease for more than 6 months, the remaining manager carries on the management of the company alone. If the remaining manager dies, is insulated, resigned voluntary or affected by disability or disease for more than three months. If the said manager may not carry out its functions, a manager or more shall be appointed, as decided by the unique partner under the decision extraordinary made as specific hereinafter the termination of the managers' function shall not result in the company's dissolution. The managers shall be rewarded for the functions and shall be compensated for liabilities in the management and have the right to a fixed wage decision, the

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amount and the way of paying the said wage shall be indicator. The unique partner may also pay the delegation and transition expenses.

Article10bis: Under the article 715 bis, paragraph fourteen (14), five (5), and seventy five bis (75) of the decree number 08/93 dated on April 24th, 1993, and the complementary Financial Law of two thousand and five (2005), issued under the order number 05/05 dated on July 25th, 2005, especially the article 12, Mr ... is appointed custodian accounts keeper, in the registered office: ... accredited and recorded on custodian accounts keepers under the number 07/2069 as the company's custodian accounts keeper for three (3) years commencing from the financial year two thousands and fourteen (2014) until the financial year two thousands and sixteen (2016), as stated in the certificate issued by the custodian accounts keepers on October 16th, 2014.

Article11: DECISION NATURE: The sole partner decisions herein are either considered as ordinary or extraordinary

Article12: ORDINARY DECISION Ordinary decisions shall be linked to approval, amendment or accounts refusal and making all the decisions related to profits distribution.

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The appointment and resignation of any manager. In general, making all the decisions that may not affect the amendment of the Memorandums of Association.

Article 13: EXTRAORDINARY DECISIONS: The sole partner may make extraordinary decisions concerning the amendment of the Memorandums of Association.

All the extraordinary decisions herein, shall be preceded by a report drafted by an accredited expert over the company's situation.

Article14: FINAL ACCOUNTS: The director shall write a management report, inventory, carry out annual accounts. The sole partner shall hereby approve the accounts, after the custodian accounts keepers' report, within six months commencing from the termination of the financial year.

The unique partner may not mandate its powers or record its decisions made instead of the General Assembly and in a register. The decisions breaching the provisions of such article may be cancelled by a claim of each and every concerned person that may interfere in the management operation and shall appeal to the company's inventory to meet rights.

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Article15: MANAGER NAMING:Mr. ... is named a manager and the company's partner

for an indefinite term, commencing from the day when Mr... accepted the mission assigned to

him

Article16: AMENDEMENT OF THE MEMORANDUM OF ASSOCIATION:

The sole partner may hereby amend the Memorandum of Association, especially concerning:1

– Renaming the company or indicating the company's address.2 –Increasing or decreasing the

company's capital

3- Transferring the current company into a company of another kind.

Article17: THE SOLE PARTNER'S RIGHT TO ACCESS

The Silent Unique partner may acquaint with all the operations of the company and the account registers in the company's registered office, either by himself or by a legal mandatory.

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Article18: FINAL ACCOUNTS: The managers shall give every year and during the term following the inventory termination, account statements of the precedent financial year to the unique partner, as well as the suggestions concerning the dividends that shall be distributed if necessary. The managers shall enclose the said statement with the decisions the managers wanted to show to the unique partner to be approved and accredited, after the report of the custodian accounts keepers, within six months, commencing from the termination of the financial year.

Chapter four-

FINANCIAL YEAR-INVENTORY-ALLOTMENT OF PROFITS-PAYEMENT OF

PROFITS

Article 19: FINANCIAL YEAR. The company's financial year shall commence on 1st January and shall terminate on 31st December of each year.

Exceptionally, the first financial year shall include herein the term between the date of the commencing of all operations and the 31st December of the same year.

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Article20: INVENTORY:The Company's operations shall be approved hereby with regular account reports in accordance with the commercial regulations. Each and Every year, the managers shall make an inventory of the company's assets and liabilities, the said shall be shown to the unique partner, to be consulted and recorded on a special notebook.

Article21:ALLOTMENTOFPROFITS: Profits are the rest of the annual output approved by inventory after the subtraction of overhead expenses and social costs, with any considerable needed consumption.

1-Five percent shall hereby deducted, to create legal reserve, the deduction is not obligatory when the reserved money represents one tenth (1/10) of the company's capital, the said deduction restore the normal function, if the reserve is used, whatever the reason is.

2-Five percent shall be deducted for the management: The unique partner may herein decide if needed to deduct all part of the profits, before the parts distributions, in order to constitute exceptional reserve of money if necessary.

Article21: PAYMENT OF PROFITS. The Payment of profits shall be performed on the dates defined by the managers every year.

Chapter five

DISSOLUTION-LIQUIDATION-DISPUTES-DECLARATIONS-EXPENSES

Article22: DISSOLUTION: TheCompany hereby, shall not be dissolved before the expiration of the legal term, as defined in the article five.

The manager shall have the decision of the sole partner in order to take an extraordinary decision concerning the continuity of the company or its dissolution. In all cases, the decision of the only unique partner shall be declared, in case of losing three quarters (3/4) of the company's capital. The unique partner shall decide whether to make decision of dissolving the company or not. In all cases, the decision of the unique partner shall be declared publicly.

The unique partner shall be consulted to decide on the sort of the company. The unique partner's decision shall be published in accordance with the article 589 of the Commercial Law.

Article23:LIQUIDATION: When the company comes to an end or is dissolved prematurely whatever the reason is, the managers shall the liquidate the company, if there are no managers; the unique partner shall appoint one liquidator or more.

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The operation of liquidation shall be performed by the liquidator under the terms and conditions defined in the article 765 of the Commercial Law. In case of liquidation, the unique partner shall keep the same prerogatives in social life and may by an ordinary decision terminate the function of the liquidator and appoint other liquidators.

The approval of the last financial and social year accounts, the liquidation accounts, and giving quittance to the last manager.

Article24: EXPENSES:The Company shall bear all the expenses necessary for the contract and its lawsuits that shall be included in overheads.

Thereof, The contract made and signed in the notary office of Maitre signing hereunder in
two thousand and sixteen.

On...(day)Hereinafter read and signed the contract content.

The notary

Chapter 3: Challenges and Strategies of Translating Memorandums of Association

Legal texts translation is considered by many researchers as one of the most challenging processes. The difficulties encountered are mainly due to the system-bound nature of legal terminology. Therefore, our research aims to find possible solutions for such recurrent hindrances. This chapter is divided into three sections: The first one will be devoted to the presentation of the corpus(3.1); the second will be dedicated to the methodology of the corpus analysis(3.2) ,whereas in the third section(3.3), we will talk about the major hindrances faced during the translation of our corpus.

3.1. Presentation of the Corpus

Our research aims to define and solve some recurrent hindrances in legal translation. Thus, the corpus upon which our research is based consists of two authentic Algerian memorandums of associations written in Arabic.

“A memorandum of association is a document that regulates a company's external activities and must be drawn up on the formation of a registered or incorporated company. As the charter it forms the company's constitution. Memorandum of association gives the company's name, names of its members (shareholders) and number

of shares held by them, and location of its registered office. It also states the company's objectives, amount of authorized share capital, whether liability of its members is limited by shares or by guaranty, and what type of contracts the company is allowed to enter into”.(Www. Dictionary .Cambridge.Org).

The two memorandums of associations are a One-person Limited Liability Company that we referred to as “Document 02” and a Partnership Agreement which we referred to as “Document 01”. We translated the corpus into English in accordance with some types of authentic English and Arabic models which make them appropriate subjects for this empirical study. We referred to our translations as “Document Tr 02” and “Document Tr 01”.

3.2. Methodology of Corpus Analysis

Our study is analytical and validated through empirical and observational results. The representative data will be in the form of two memorandums of association written in Arabic. These are a One-person Limited Liability Company and a Partnership agreement. It is worth noting that we have translated the corpus according to some strategies and methods dealing with the nature of legal translation process in order to make the legal translated text understandable for the reader in the target language. Simultaneously, the translated text must

reflect the original character and unique features of the legal system of the source language country. These requirements push the translator to take great care of the constant connection between the translated text and the source language specificities.

3.3. Theories Applicable on the Translation of Memorandums of Association

Memorandums of association are legal texts, thus, to translate them, it is necessary to define the aims of legal translation in general and identify a theoretical basis to achieve them. Therefore, theories that we have chosen to deal with are Nida's theory (1964) and Newmark's theory (1984), this choice is due mainly to the close relation between these theories and legal translation.

3.3.1. Legal Translation and Nida's Theory

Nida's theory (1964) claims that there are two orientations in translation that he refers to in terms of *equivalence*. He differentiates between two types of equivalence *formal* and *dynamic*. According to Nida (1964:159): "*Formal equivalence pays more attention on the message itself, in both form and content. The main concern is that the message in the target language should match as closely as possible the different element in the source language, i.e. the message in the target culture is constantly compared with the*

message in the source culture to determine standards of accuracy and correctness". Nida also calls this type of translation a "*gloss translation*" which is defined as attempting to reproduce as literally and meaningfully as possible the form and content of the original (Idem).

The other type of equivalence is described by Nida (1964) as being *dynamic*, and is defined as "*something in which the concern is with matching the target-language message with the source-language message, but with the dynamic relationship, that the relationship between the receptor and the message should be the same as that which existed between the original receptors and the message*", (Ibidem). Nida does not ascribe those types of translation to any particular kind of texts instead they should be treated as general or literary translations, however, concerning the requirements of legal translation, formal equivalence is much more appropriate and its principles are, in fact, often applied in the translation of such texts.

3.3.2. Legal Translation and Newmark's Theory

Newmark (1984) has presented a similar approach to the differing types of translation. He also differentiates between two types of translation, which he calls *communicative and semantic translation*. The key difference between the two is expressed in the following definition: "*Communicative translation attempts to produce on its readers an effect as close*

as possible to that obtained on the readers of the original. Semantic translation attempts to render as closely as the semantic and syntactic structures of on the readers of the second language allow, the exact contextual meaning of the original” (Newmark 1984: 39).

Newmark ascribes these particular types of translation to different kinds of texts, believing that legal texts, when translated only for informative purposes e.g. foreign laws, wills, require semantic translation, whereas texts that are translated for the purpose of functioning as a legal instrument e.g. contracts, patents, international agreements, require communicative translation and must be treated as a special type, with all elements making them concurrently valid in the target language community. According to Newmark (1984), in legal translation:

“Every word has to be rendered, differences in terminology and function noted, and as much attention paid to the content as to the intention and all possible interpretations and misinterpretations of the text [...] – thus the semantic aspect; nevertheless the standard format, syntax, archaisms, as well as the formal register of the TL, must be respected in dealing with documents that are to be concurrently valid in the TL community [...] – hence the communicative aspect”. (Idem: 47).

Bearing these instructions in mind, it is clear that the translation of legal texts such as official and school documents is a more demanding type of translation. It is semantic in principle, but very often it has communicative aspects, since the texts are simultaneously informative, aimed at functioning in foreign communities, and must be fully understandable by the target language reader.

3.4. Major difficulties of translating memorandums of association

During the translation process of our corpus, we have faced many hindrances .We have divided these difficulties into three categories: difficulties due to equivalence, difficulties due to the difference in language systems and difficulties due to the specific terminology of legal translation.

3.4.1. Hindrances due to the Difference in Language Systems

Arabic and English are two different languages; they both belong to different language families, Arabic being a Semitic language, while English belongs to the Indo-European languages. Thus, translators from and into English face difficulties on different linguistic levels, that are mainly terminological and syntactic i.e. modals and passive structures' incongruities, or textual i.e. lexical repetition and punctuation marks.

3.4.1.1. The Use of Obligation Form

One of the characteristics of legal language is the use of obligation form. In formal English legal language, "shall" is used frequently to assert a legal rule and obligation rather than futurity express.

The following examples illustrate more the use of the modal shall during the translation process of our corpus:

Example 1:

”اكثر او مدير طرف منحياتها طوالتسير والشركه تدار. “ (Document: 01, p : xx)

“The Partnership shall be managed during its existence by one manager or more...”. (Document:01Tr ,p 20)

In this example *shall* is used in English despite the absence of its equivalence in Arabic, in other words shall in this situation is used, as we have already mentioned, to assert a legal rule.

Example : 2

”رسمي عقد الحصص إثبات يجب.....“ (Document:01,p xxii)

“Assignment of the shares shall be proven by an official document”.(document:01Tr,p23)

The second meaning that “*shall*” carries is obligation. Therefore, in the second example, shall is the translation of the word يجب. Thus, “*shall*” does not bear its common function that is expressing futurity.

3.4.1.2. Frequent Use of Redundancy

Legal language requires exactness and effectiveness. Therefore, it has tendency toward lexical repetition, this can be a source of a series of difficulties to the translator dealing with legal texts. The following example taken from our corpus illustrates more the challenges of the recurrent use of redundancy.

Example:

“الشركاء مسئولون حسب قواعد النظام العام عن المخالفات للنصوص الشرعية أو خرق القانون الأساسي الحالي أو الأخطاء التي يرتكبونها أثناء إدارتهم سواء الشريك الوحيد بنيتهم تلك قبل ستة اشهر على الأقل في حالة وفاة المسير”(Document:02,P:xxxiv).....”

“Under the rules of common system, the partners are liable for violating legal texts, breaching the memorandum of association in effect or are liable for the errors committed during the partners’ management either toward the company or toward others. The partners may not be insulated without legitimate reasons. The partners may resign from their function whenever they want to, but the unique partner shall be informed before at least six months, in case of death of a manager...”.(document:02Tr,p37)

In this example we notice that the word *partner*, contrary to the original passage in Arabic, is systematically repeated in the English translation. This kind of redundancy and repetition is one of the features of legal English, is mainly used to be more explicit and to avoid any ambiguity.

3.4.1.3. Archaic Use of Adverbs

A special aspect of archaism is the persistence in legal English of compound adverbs based on the simple deictic 'here', 'there', 'where' and so on. The use of archaic forms of language such as archaic adverbs also belongs to the characteristics of English legal texts. “Here-,

there- and where- words persist in modern legal usage largely as a consequence of legal tradition rather than usefulness.

Example1:

“يمكن زيادة رأسمال الشركة باتفاق كافة الشركاء و تتم هذه الزيادة بكل الوسائل القانونية و خاصة بإنشاء أسهم جديدة سواء كانت أسهم عادية أو ممتازة تتمثل في حصص نقدية أو بإضافة بعض أو كل الفوائد إليه”(Document:01,P:xix)...

“Capital’s increase may be performed by all legal means especially by setting up new shares, either such shares are common or preferred consisting of monetary quotas or by adding some or of the profits thereof...”(Document:01Tr,p:20).

The archaic word “*thereof*” is used systematically in legal English, to mean “of that”

Example 2 :

تم بهذا العقد إنشاء مؤسسة ذات الشخص الوحيد وذات المسؤولية المحدودة(Document:02,p :xxix)

“ACompany of One-Person Limited Liabilityis set uphereby...”(document:02 Tr,p31).

“*Herby*” is used in legal English to mean **according to this contract** or by this contract , or according to the provisions of this contract , this archaic adverb is composed of the deictic element “*here*” which refers to this contract and the preposition “*by*” .

Example3:

“إن التكاليف العامة و الحقوق و الرسوم التوثيقية الخاصة بهذا العقد تتحملها الشركة و تدرج في مصاريف التكوين”(Document02: P 95)

“ The entire overheads, duties and notarization taxes hereof shall be borne by the partnership and included in the establishment expenses”.(document:01Tr,p30).

“*Herof*” is used in legal English to mean “of this contract”, this archaic adverb is composed of the deictic element “*here*” which refers to this contract and the preposition “*of*”.

These adverbs have a great role in legal translations as they carry an important meaning for example the term hereby means by this contract by this means, as a result of this, so it is very important for the translator dealing with legal texts to pay attention to these terms. The difficulties of such adverbs will mainly be found by people who do not deal with legal terminology or legal texts.

3.4.2. Hindrances due to Equivalence

The principle that a translation should have an equivalence relation with the source language text is problematic. Difficulties of equivalence occur at various levels, ranging from word to textual level. The equivalence problem in legal translation is mainly due to semantic, socio-cultural, and grammatical differences between the source language and the target language. Moreover the meaning(s) that a word refers to are culturally bound, and in most cases the meaning(s) of a word can only be understood through its context.

Example 1:

(Document: 01, P xvi) القانون الأساسي لشركة تضامن

Partnership's memorandum of association (Document:01Tr,p17)

The Arabic term القانون الأساسي is usually translated into English as “*statute*” (Www.AlmaanyDictionary.Com), but in British legal system this term has another meaning. Indeed, statute is defined in Collins dictionary as “*an enactment of a legislative body expressed in a formal document such as an act of parliament*”. (Www.Collins Dictionary .Com). In fact, statute is an act of legislator that declares, proscribes or commands something; specific law expressed in writing. Moreover, statutes set for general propositions of law that

court apply for specific situation. Statues forbid a certain act, direct a certain act, make a declaration or set forth governmental mechanism to aid society. It signifies the evaluation of bill from legislative proposal to law. The term statute cannot have the same meaning of *لشركة القانون الأساسي*, this is why we have chosen to translate it as memorandum of association which is defined in the same dictionary (Collins dictionary), as “*the primary constitutional document of a company. It must be drawn up when a company is formed and signed by two or more founder members. It must state the company's name and registered office, the purposes for which it was formed, the amount, if any, of its authorized capital and, where appropriate, that it is a limited (or public limited) company*”. (Www. Collins Dictionary. Com)

Example 2 :

يودع الموثق رأسمال لحساب المكتب المفتوح لدى خزانة الولاية (Document 01,p :xix)

“Notary shall deposit the capital in the office account opened at the Wilaya's treasury...”(Document:01Tr,p:19).

The Arabic word *Wilaya* can be translated as *county*(AlmaanyOnline Dictionary © 2010-2016) which is the equivalent in the British administrative division, but as being described in

Cambridge dictionary (2016) *County* “is an area of Britain, Ireland, or the US that has its own local government”. (Www. Dictionary.Cambridge.Org). We notice from this definition the word *county* is closely related to Anglo-Saxon countries and cannot render the real meaning of *Wilaya*, in other words it is a cultural – bound term that doesn’t have a functional equivalent. Therefore we have chosen to keep it as a borrowing word from Arabic.

Example 3:

“(Document:01Tr, Pxvii). حدد المقر الاجتماعي للشركة”

“Company’s registered office is located.....”(Document:01Tr,p18).

This term is usually translated as *head office*(Www. Almaany Dictionary. Com)©2010- 2016) even in legal translations, but with a deeper research in the British legal system we found that the most adequate equivalent is “*registered office*” which is “*the official address that every British company must have, and that must be recorded on the official list of the Registrar of Companies*”. (Www.Collins Dictionary).

The translation is based on Nida’s theory (1964) which advocates dynamic equivalence. According to him, Formal equivalence pays more attention to the message itself, in both form and content, whereas dynamic equivalent concerns the relationship between the

receptor and the message that should be the same as that which existed between the original receptors and the message, using translation dynamic equivalence aims at complete naturalness of expression, this is why we can consider the equivalents we used to render the meaning as dynamic.

3.4.3. Hindrances due to the specific terminology of legal language One of the

greatest difficulties usually encountered by translators is the unfamiliarity of legal text terminology. The difficulties of Legal terminology can be divided into two categories purely technical terms and semi-technical or mixed terms.

3.4.3.1. Purely Technical Terms

These terms can be found exclusively in the legal sphere and have no application outside it. The lexical units of this type are distinct from others. These terms are known as legalisms and are usually listed in legal dictionaries. Here are some examples taken from the memorandums of association:

Example1:

(Document01: P:xxxiii). باطلة جميع الالتزامات تكون.

“All obligations shall be null and void”. (Document:02Tr,p35).

One of the characteristics of legal English is the frequent use of doublet in which synonyms or near- synonyms are combined in pair “doublets” Such words can be either nouns, verbs, adjectives. In the example mentioned above the term باطلة is translated as *null and void*(Www. Almaany Dictionary. Com) this doublet means “*anything that cannot be enforced legally*”(Www.Collins Dictionary .Com)

Example 2:

“لا يستطيع أي شريك أن يتنازل تحت أي عنوان كانعن بعض أو كل حصصه لشخص أجنبي عن الشركة”(Document01: P:xxii).

“No partner may assign some or all of his shares under any condition to a third party”.(Document:01Tr,p23).

The term “*third party*” is a legal term that means “*someone other than the principals who are involved in a transaction or a contract*”. (Www.CollinsDiconary.com).

To translate such terms translators dealing with legal texts should have a solid knowledge of legal terminology.

Example 3:

“ يعرض التقدير الذي يضعه المديرون أو الخبير المختص تحت مسؤولية هؤلاء المديرون عن عمليات السنة المالية (Document:01P:xxix)

“The estimation made by the directors or the expert put under the liability of these directors of the financial year operations”.(Document:01Tr,p26).

Regardless the context, the Arabic term مسؤولية is usually translated into English as *responsibility*,(Www. AlmaanyDictionary. Com).However, in legal English this term has its equivalent used in legal texts that is “*liability*” which means “*The state of being legally obliged and responsible*”(Www. Collins Dictionary .Com).

The method of translating technical terms was similar to all cases: consulting dictionaries, glossaries and terms banks to find suggested terms and synonyms.

3.4.3.2 .Semi-Technical or Mixed Terms

This second group consists of words and phrases from the common stock that have acquired additional meaning by a process of analogy in the specialized context of legal activity. These terms are therefore polysemic. They are much more numerous and are constantly growing in number as the law changes to meet the continuously changing needs of

the society. Moreover, they are semantically more complex, presenting the translator with a wider range of choices. Translators dealing with words of this kind, face the familiar dilemma raised by connotation, ambiguity, partial synonym and the fact that the precise nuance is often context-dependent. These are some examples of this category:

Example1:

(Document 02:P:xxix) “الشركة بتسعة وتسعين سنة مدّة حددت”

“The term of the company shall be 99 years”(Document:02Tr,p32).

The Arabic word *مدّة* can be translated as duration, period or term, (Www.Almaany Dictionary .Com) and this according to the context in which it is used, since duration is “the amount of time that something lasts”, period is “a length of time” Whereas term is “the fixed period of time”.(Www. Dictionary. Cambridge. Org) . Nevertheless, the word *term* has another legal meaning which is “*The period of time during which a contract is in force*” (Www. Collins Dictionary. Com).This is why the term *مدّة* should be translated as “*term*” in legal English.

Example 2:

(Document 01: P:xxxiii)...الوضعيةمنح اجل أقصاه ستة اشهر لتسوية...

“The Court may grant an extended term of six months to settlethe situation”.(Document02:Tr,p35).

The term settle has several meanings such as : “*to start living in a place where you are going to live for a longtime*” (1), *to relax into a comfortable position* (2), *paying the money that you owe*(3)”.(Www. Dictionary. Cambridge. Org). In legal English, however, this term means “*to end or resolve ‘a dispute for example by making a decision or coming to an agreement*” (Www.Collins Dictionary. Com).

Example 3 :

(Document 01 : P: xxii)لحصصإحالة

“Assignmentof the shares”. (Document:01 Tr,p23)

The Arabic term إحالة is translated into English as *assignment*,(Www.Almaany Dictionary.com). Nevertheless ,in general English *assignment* has the meaning of a “*task or mission*” (Www.Dictionary.Cambridge.Org).Whereas, in legal English assignment means “*an*

act of making a legal transfer of a right, property, or liability”.(Www. Collins Dictionary.

Com).

The translation of these technical terms is based on Newmark’s theory (1984) which claims that, in legal translation, a translator should pay more attention to the content as well as to the intention and all possible interpretations and misinterpretations of the text. Thus the standard format, syntax, archaisms, as well as the formal register of the target language, must be respected when dealing with documents that are to be valid in the target language community. It is clear that the translation of legal texts has communicative aspects since the texts are simultaneously informative, aimed at functioning in foreign communities, and must be fully understandable by the target language reader.

This chapter is devoted to the difficulties found during the translation of our corpus and the strategies to overcome these difficulties. The challenges we faced during the translation process of our corpus are mainly due to the difference in language systems between English and Arabic, equivalence and complex nature of legal terminology. To overcome these hindrances we have adopted some methods and strategies such as borrowing original terms, consulting bilingual dictionaries to find the most appropriate equivalents or using functional equivalents when we encounter culture – bound terms. Nevertheless, some

terms require semantic translations, as they function simultaneously in both languages systems.

Conclusion

Legal language includes some very complex linguistic characteristics. Contrary to legal Arabic that does not really differ from general Arabic, legal English itself is regarded as a sublanguage. Some of its features are nothing more than time-worn habits that have long outlived any useful communicative function. Other characteristics arguably serve some function, such as signaling that an event is an important proceeding, or enhancing the cohesiveness of lawyers as a group. More problematic are features that clearly enhance communication within the profession but mystify outsiders. Here, we may need to weigh how important it is for the ordinary public to understand the language at issue. In the final analysis, legal language must be judged by how clearly and effectively it communicates the

rights and obligations conferred by a constitution, the opinions expressed by a court, the regulations embodied in a statute, or the promises exchanged in a contract. While ordinary people may never understand every detail of such legal documents, our law should be stated as clearly and plainly as it can be. Translation of Memorandums of Association can be considered as a continuum that involves literal or formal translation at one end and free or dynamic translation at the other. This is why we have adopted some methods and strategies such as using borrowed terms, referring to up-to-date electronic dictionaries and well-defined parallel corpora to find the most appropriate equivalents or using functional equivalents when we encounter culture – bound terms. Nevertheless, some terms require semantic translations, as they function simultaneously in both languages. So literal translation can be adequate in translating purely technical and common terms or words, since such terms are not context dependent.

For students or translators wanting to deal with legal texts, they should have a large knowledge in both languages systems, in addition to the legal and cultural background of both languages.

Future studies may be concerned with the analysis of communicative function within other domains of arabic legal texts such as, constitutions, judicial opinions, or court proceedings.

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APPENDIX A

English Glossary

A

Access	إطلاع
Acquaintance	إطلاع
Acts	تصرفات
Adjust	تسوية
Advance payments	تسبيقات
Amend	عدل
Appeal	لجئ
Appointe	عين
Approval	مصادقة
Approve	ابرم
Article	مادة
Assets and liabilities	أصول و خصوم
Assign	تنازل
Attend	حضر

B

Balance	موازنة
Bankruptcy	إفلاس
Bill of exchange	كمبيالة
Bond	سند

Breach	إخلال
Budget	ميزانية
By and between	بين

C

Capital decrease	خفض رأسمال
Capital's increase	زيادة رأسمال
Contrat	عقد
Claim	طلب
Commence	تبدأ
Commercial Law	قانون تجاري
Commonshares	أسهم عادية
Comply	تخضع
Confiscation	مصادرة
Consult	مخاطبة
Counterparts	نسخ
Creditor	دائن
Curry out	قيام
Customs operations	عمالياتلجمركية

D

Deadline	أجل
Deal	صفقة
Debt back	تحويل دين

Debtor	مدین
Decree	مرسوم
Deduction	إقتطاع
Defender	مدافع
Deposit	ودع
Dissolve	انحل
Domicile	موطن

E

Each and Every	كل
Endorsement	تظهير
Establishment	إنشاء
Expanses	نفقات
extension	تمديد

F

Faithfulness	وفاء
Fiscal year	سنة مالية
Funds	أموال

G

General assembly	جمعية عامة
goods and chattels	بضائع

H

heirs	ورثة
-------	------

hinder

يعيق

I

implement

تنفيذ

In effect

سارية المفعول

interfere

يتدخل

interpolation

إستيغاء

J

judicial dispute

منازعة قضائية

judicialinventory

جرد قضائي

L

Laws

قوانين

lawsuits of termination

دعاوي الفسخ

legacy for the company

تركة للشركة

liable

مسؤول

liability

مسؤولية

lifting restrictions

رفع قيد

liquidate

تطهير

liquidation

تصفية

loss

خسارة

M

management

ادارة

manager

مسير

mandate	تفويض
Memorandum of Association	قانون أساسي
memos	مذكرات
mortgage	رهن

N

name	تسمية
nominal values	قيم إسمية
notify	إشعار
null and void	باطل

O

object	موضوع
obligations	إلتزامات
operation	عملية
Order	أمر
overheads	مصاريف عامة

P

parcel	طرد
Partner	شريك
partnersunanimity	إجماع الشركاء
Partnership	شركة
plaintiff	مدعي
pre-dissolution	حل مسبق

Preferredshares	ممتازة أسهم
private attorney	تفويض خاص
profit	ربح
promulgation	نشر
property exchange	مبادلة عقار
prove	إثبات
provisions	أحكام

Q

quotas	حصصة إجتماعية
--------	---------------

R

receipt	وصل
reconciliation	صلح
refusal	رفض
registration fees	رسوم تسجيل
Registered office	مقر الشركة
regularize	ترتيب
Regulations	تنظيمات

S

seize	حجز
settle	تسوية
set up	إنشاء
shall	يجب

share	حصّة
shares assignment	تنازل عن الحصص
sign	توقيع
Silent Partner	غير شريك
Sole manager	وحيدمسير
sole owner	وحدها هي المالكة
sole Partner	شريك وحيد
stampduty	طابع دمغة
Submissions	تقديمات

T

term	مدة
term's dividends	أرباح محصلة
terms and conditions	شروط
third party	الغير
treaty	معاهدة
two parties	طرفين

U

unanimous agreement	إتفاق جماعي
Under	بموجب
unwillingness	عدم الرغبة

V

vain	دون جدوى
------	----------

W

Wilaya's treasury	خزينة الولاية
withdraw	سحب

Arabic glossary

ا

Approve	أبرم
unanimous agreement	اتفاق جماعي
prove	إثبات
Deadline	أجل
partnersunanimity	إجماع الشركاء
provisions	أحكام
Breach	إخلال
management	إدارة
term's dividends	أرباح محصلة
interpolation	إستيغاء
Commonshares	أسهم عادية
Preferredshares	ممتازة أسهم
notify	إشعار
Assets and liabilities	أصول و خصوم
Access	إطلاع
Acquaintance	إطلاع

Bankruptcy	إفلاس
Deduction	اقتطاع
obligations	التزامات
Order	أمر
Funds	أموال
Dissolve	انحل
Establishment	إنشاء
set up	إنشاء

ب

null and void	باطل
goods and chattels	بضائع
Under	بموجب
By and between	بين

ت

Commence	تبدأ
Debt back	تحويل دين
Comply	تخضع
regularize	ترتيب
for the company	تركة للشركة
payments	تسبيقات
name	تسمية
Adjust	تسوية

settle	تسوية
Acts	تصرفات
liquidation	تصفية
liquidate	تطهير
Endorsement	تظهير
mandate	تفويض
private attorney	تفويض خاص
Submissions	تقديمات
extension	تمديد
Assign	تنازل
sharesassignment	تنازل عن الحصص
Regulations	تنظيمات
implement	تنفيذ
sign	توقيع

ج

judicialinventory	جرد قضائي
General assembly	جمعية عامة

ح

seize	حجز
share	حصة
quotas	حصة اجتماعية
Attend	حضر

pre-dissolution

حل مسبق

خ

Wilaya's treasury

خزينة الولاية

loss

خسارة

Capital decrease

خفض رأسمال

د

Creditor

دائن

lawsuits of termination

دعاوي الفسخ

vain

دون جدوى

د

profit

ربح

registration fees

رسوم التسجيل

refusal

رفض

lifting restrictions

رفع قيد

mortgage

رهن

ز

In effect

سارية المفعول

withdraw

سحب

Fiscal year

سنة مالية

Bond

سند

Capital's increase

زيادة رأسمال

ش

Partnership شركة

terms and conditions

شروط

sole Partner

شريك وحيد

ص

Deal

صفقة

reconciliation

صلح

ط

stamp duty

طابع دمغة

parcel

طرد

two parties

طرفين

Claim

طلب

ع

Amend

عدل

unwillingness

عدم الرغبة

Contrat

عقد

operation

عملية

Customs operations

عمليات جمركية

Appointe

عين

غ

third party

غير

ق

Memorandum of Association

قانون أساسي

Commercial Law

قانون تجاري

Laws

قوانين

Curry out

قيام

nominal values

قياسية

ك

Bill of exchange

كمبيالة

ل

Appeal

لجئ

م

Article

مادة

property exchange

مبادلة العقار

Consult

مخاطبة

term

مدة

plaintiff

مدعي

Debtor

مدين

Decree

مرسوم

liable

مسؤول

manager

مسير

Sole manager

مسير وحيد

Silent Partner

مسير غير شريك

Confiscation	مصادرة
Approval	مصادقة
overheads	مصاريف عامة
Defender	مدافع
treaty	معاهدة

Registered office مقر الشركة

judicial dispute	منازعة قضائية
Balance	موازنة
object	موضوع
Domicile	موطن
Budget	ميزانية

ن

Counterparts	نسخ
Expanses	نفقات

و

sole owner	وحدها هي المالكة
Deposit	ودع
heirs	ورثة
Faithfulness	وفاء
receipt	وصل

ي

interfere	يتدخل
-----------	-------

shall

يجب

hinder

يعيق

APPENDIX B

Corpus

نموذج

قانون أساسي لشركة تضامن

حضر

..... السيد

..... المولود

..... الساكن

..... السيد

..... المولود

..... الساكن

الذين حضروا بمجلس العقد و أنشؤوا فيما بينهم شركة تضامن حيث طلبوا من الموثق الممضي أسفله إبرام العقد الأساسي لها و الذي حدد على النحو التالي:

الباب الأول

الشكل، الموضوع، التسمية، المقر:

المادة 1 : الشكل

تم بموجب هذا العقد بين الطرفين المائلين و جميع الشركاء الجدد الذين يمكن إلتحاقهم فيما بعد، إنشاء شركة تضامن تخضع للقوانين و التنظيمات السارية المفعول و خاصة المادة 551 و ما يليها من الأمر 59-75 المؤرخ في السادس و العشرين سبتمبر ألف و تسعمائة و ستة و سبعين (1975.09.26) المتضمن القانون التجاري والقانون الأساسي.

المادة 2: الموضوع

يتمثل موضوع الشركة في ***

المادة 3 : التسمية:

سميت هذه الشركة "شركة التضامن " *****

كما يجب أن تظهر هذه التسمية مكتوبة بوضوح و بأحرف كاملة و بارزة في جميع تصرفات الشركة و فواتيرها و جداول إرسالها و كذا كافة الأوراق الخاصة بها و بمعاملاتها.

المادة 4 : المقرر:

حدد المقرر الإجتماعي للشركة :

و يمكن تحويله الى أي مكان آخر بموجب قرار من الجمعية العامة غير العادية.

المادة 5 : المدة: حددت مدة هذه الشركة تسعة و تسعين سنة (99)، ابتداء من تاريخ قيدها بالسجل التجاري و إكتسابها الشخصية الاعتبارية المتعرف عليها في مثل هذا الشأن، كما يمكن حلها قبل هذا التاريخ متى دعت الضرورة لذلك و بنفس الكيفية التي أنشئت عليها.

الباب الثاني

التقديمات - رأس المال - الحصص الإجتماعية - زيادة و خفض رأس المال المادة 6 : التقديمات:

قدم السيد للشركة مبلغا قدره دينار جزائري أي..... (دج).

قدم السيد: للشركة مبلغا قدره دينار جزائري أي..... (دج).

مجموع التقديمات تقدر بثلاثين ألف دينار جزائري أي (30.000,00 دج)، مقسمة إلى ثلاثين (30) حصة إجتماعية ذات قيمة إسمية قدرها ألف دينار جزائري (1.000,00 دج).

المادة 7: رأس المال:

حدد رأسمال الشركة بمبلغ قدره ثلاثين ألف دينار جزائري - ري (30.000,00 دج) قسم إلى ثلاثين (30) حصة اجتماعية بقيمة اسمية قدرها ألف دينار جزائري (1.000,00 دج) لكل واحدة سددت قيمتها كاملة ووزعت على الشركاء بنسب مساهمة كل منهم كما يلي:

- خصص للسيد : خمسة عشر (15) حصة اجتماعية.

--خصص للسيد: خمسة عشر (15) حصة اجتماعية.

جملة حصص الاشتراك المكونة لرأس المال الشركة ثلاثون (30) حصة إجتماعية.

دفع هذا الرأسمال كله نقدا بالعملة المتداولة قانونا بين يدي الموثق الممضي أدناه طبقا للقوانين السارية المفعول و الذي سيودعه لحساب المكتب المفتوح لدى خزينة الولاية، حيث يمكن سحبه حين تتوفر الشروط الضرورية لذلك، بصك الخزينة يحرر بإسم الشركة بعد فتح حساب لها بإحدى البنوك الوطنية.

المادة 8 : زيادة رأس المال:

يمكن زيادة رأسمال الشركة بإتفاق كافة الشركاء مرة واحدة أو عدة مرات، و تتم هذه الزيادة بكل الوسائل و الأساليب القانونية و خاصة بإنشاء أسهم جديدة، سواء كانت أسهما عادية أو ممتازة تتمثل في حصص نقدية أو بإضافة بعض أو كل الفوائد إليه، أو بواسطة أية إيرادات أخرى، من أي نوع كانت أو برفع القيم الإسمية للأسهم الموجودة وقت إنشاء الشركة.

المادة 9 : تخفيض رأسمال

كما يمكن أيضا خفض رأسمال الشركة بمقرر من الجمعية العامة غير العادية للشركاء المنسحبين من الجمعية العامة غير العادية للشركاء و خاصة عن طريق إستيغاء مبلغ الحصص للشركاء المنسحبين منها أو خفض القيم الإسمية للأسهم المكونة لرأس المال.

الباب الثالث

الإدارة - التسبيقات - الإقتطاع.

المادة 10 : الإدارة:

تدار الشركة و تسير طوال فترة حياتها من طرف مدير أو أكثر يختاره الشركاء سواء بينهم أو من الغير و في الوقت الراهن عين السيد..... مسيرا للشركة لمدة غير محدودة.

و ذلك طبقا لأحكام المادة 553 من الأمر رقم 75-59 التي تسند إدارة الشركة لكل الشركاء، يتولى كل شريك التصرف بإسم الشركة و لصالحها و إلا كانت تصرفاته المخالفة لهذا الشرط باطلة و غير سارية المفعول في الحق الشركة، و يتحمل مسؤولية تصرفاته الخاصة عن هذا النطاق شخصيا.

يتمتع الشركاء في مواجهة الغير بأوسع السلطات لتمثيل الشركة و القيام بكل العمليات التي تدخل في ميدان اختصاصهم بما فيها فتح الحسابات الجارية، باسمها في أي بنك أو مؤسسة قرض أو إدارة الصكوك البريدية، وكذا إيداع أو سحب أي مبلغ كان، و توقيع أو تطهير الصكوك الدائنة أو المدينة و دفع أية مبالغ مستحقة، و تسوية كل حساب و القيام بأعمال شراء المواد الأولية، و بيع ما للشركة من مقولات غير القابلة للتأخير و إبرام جميع الصفقات سواء المنفذة فورا أو بعد أجل و الإكتتاب بحرية في الأوراق التجارية و تطهيرها و تلقي أو تسديد مبالغها، و متابعة أية منازعة قضائية، سواء بصفتها مدعيا بإسم الشركة، أو مدافعا عنها و التنازل عن أي حق تمثيل الشركة في أي إجراء آخر يتعلق برفع اليد و التسجيل أو المصادرة أو أي قيد كان، سواء قبل أو بعد الدفع و كذا القيام بمعالجة أي مشكل و إبرام أية مصالح، و إيتفاقية، أو تعهد سواء كان موضوعه خدمات أو توريدات مع أي إيجار لممتلكات الشركة أو لفائدتها من الغير.

غير أنه بالنسبة لعمليات الإقتراض، و كذا كل شراء أو بيع أو مبادلة لعقار أو لمحل تجاري ملك للشركة، و كل ترتيب لرهون رسمية على عقارات الشركة أو لرهون عادية على محلاتها التجارية، و كذا الدخول بجزء أو بكل أموال الشركة في شركة أخرى أو مؤسسة، لا يمكن تحقيقها إلا بإجماع الشركاء.

المادة 11 : التسبيقات

يجوز لكل شريك متى وافق بقيمة الشركاء أو يودع مبالغ بصندوق الشركة في شكل تسبيقات سواء كانت مبالغ جديدة أو بتركة للشركة في إطار حصته من الأرباح المحصلة عن المدة أو بتركة للشركة في إطار حصته من الأرباح المحصلة عن المدة الفارطة، و بالمقابل، لا يستطيع أي شريك سحب مبالغ من أموال الشركة، و لأي سبب كان و ذا ما تحتم ذلك، يجب عليه إشعار بقيمة الشركاء برغبته هذه في أجل ثلاثة أشهر على الأقل قبل إجراء العملية ما لم يتم الإتفاق على خلاف هذا الشرط صراحة، حال تقديم تلك المبالغ و يتم الإشعار برسالة مسجلة مع وصل إستيلاء حتى يتسنى للشركة في هذه الفترة مدة كافية لملائمة و موازنة أعمالها بصورة عادية و منتظمة بحيث لا تتأثر بهذا السحب.

المادة 12 : الإقتطاع

لكل شريك الحق في المطالبة بإقتطاع مبلغ معين مستحق لتغطية نفقات التنقل و الأسفار و كذا نفقات التمثيل التي تصرف لفائدة شؤون الشركة، بعد تقديم هذا الأخير، وثائق تحمل توقيعه تبين فيها النفقات التي تدرج ضمن المصاريف العامة للشركة.

الباب الرابع

التنازل عن الحصص - ملكية أموال الشركة - الوفاة.

المادة 13 : التنازل عن الحصص:

يتم التنازل عن بعض أو كل الحصص فيما بين الشركاء بكل حرية بينهم، لا يستطيع أي شريك أن يتنازل تحت أي عنوان كان عن بعض أو كل حصصه لشخص أجنبي عن الشركة إلا بعد الموافقة الصريحة لجميع بقية الشركاء و إلا كان هذا التنازل للغير صحيحا في مواجهة الشركاء المدرجين في عقد تأسيسي أو في عقد تكميلي لاحق يجب أن يبلغ لهم الشريك العازم عن التنازل رغبته في ذلك خلال مهلة مقبولة قانونا حتى يتمكنوا من ترتيب أوضاعهم المادية لرد هذه الحصص أو ببذون رفضهم.

و يتم التبليغ برسالة مضمونة الوصول مصحوبة بوصول الإستلام و إذا فات الأجل القانوني لهذا التبليغ و لم يتقدم أي شريك لاقتناء الحصص المعروفة للتنازل أو أظهروا عدم رغبتهم فيها بوثيقة شرعية يكون وقتها حر التصرف.

و يجب إثبات إحالة الحصص بعقد رسمي، المادة 561 من القانون التجاري.

المادة 14 : ملكية أموال الشركة:

الشركة وحدها هي المالكة لمجموع الرصيد المكون لأموالها، و بالتالي فإنه ليس للدائنين الشخصيين لأحد الشركاء أن يحجزوا على أموال الشركة أو توقفها عن العمل أو إجراء جرد قضائي لأموالها أو أي عمل من شأنه أن يعيق سيرها، و كل ما يستطيعون عمله في هذا الصدد هو أن يقدموا تحفظاتهم لبقية الشركاء ضد الشريك المدين، كما أن يطلعوا على آخر وثائق الجرد و الحسابات ذات الطابع التجاري الموضوعة من طرف الشركة حفاظا على ديونهم.

المادة 15 : الوفاة:

خلافاً لأحكام الفقرة الأولى من المادة 562 من الأمر 59-75 السابق ذكره، لا تتحل الشركة بسبب وفاة أحد الشركاء فيها بل تستمر القائمة فيما بين الشركاء الباقين و ورثة أو ممثلي الشريك المتوفي.

أما الحجز على أحد الشركاء أو غشاًوة أو إفلاسه أو منعه من ممارسة مهنته التجارية أو فقده لأهليته المدنية أو لحقوقه الوطنية، فيؤدي حتماً إلى حل الشركة (المادة 5636 من الأمر رقم 59-75).

الباب الخامس

الدفاتر الحسابية - السنة المالية - الجرد - الأرباح - الإطلاع.

المادة 16 : الدفاتر الحسابية:

تسجيل جميع عمليات الشركة في دفاتر و سجلات خاصة تمسك ضمن الشروط المحددة قانوناً و وفقاً للنصوص و الأعراف التجارية.

تمسك هذه الدفاتر و السجلات إلزامياً من طرف الإدارة العامة للشركة أو من طرف خبير حسابات معتمد تختاره الإدارة لهذا الغرض، لكن على عهدة الشركة و تحت مسؤوليتها.

و لكل شريك الحق في مراقبة الصندوق و السجلات و الدفاتر متى ظهر له ذلك.

المادة 17 : السنة المالية:

تبدأ السنة المالية للشركة من أول يناير و تنتهي في الواحد و الثلاثين ديسمبر من كل سنة.

و إستثناءاً لهذه القاعدة، فإن السنة المالية الأولى للشركة الحالية تبدأ من تاريخ قيامها بموجب هذا العقد و تنتهي في الواحد و الثلاثين ديسمبر من السنة الجارية باتفاق المائلين.

المادة 18 : الجرد:

يتولى المدير، الرقابة العامة على حسابات الشركة لتسيير بصورة عادية و منتظمة طبقاً للقوانين السارية المفعول، و هذا القانون الأساسي، و يلتزم بتسجيل كل العمليات و يضع جرداً سنوياً لأصول و خصوم الشركة، كما يعد ميزانية يوجد فيها هذا الجرد حساباً للأرباح و الخسائر و ينقل الجرد على سجل خاص يوقعه الشركاء المديرون.

يعرض التقدير الذي يضعه المديرون أو الخبير المختص تحت مسؤولية هؤلاء المديرون عن عمليات السنة المالية و إجراء الجرد و حساب الاستغلال العام و حساب الخسائر و الأرباح و الميزانية العامة على الشركاء للمصادقة عليها.

المادة 19 : الأرباح:

إن الإنتاج السنوي الصافي بعد خصم النفقات العامة و جميع أعباء الشركة يمثل الأرباح السنوية. و هذه الأرباح تعود للشركاء بنسب الحصص التي قدموها للشركة سواء كانت حصصاً أصلية أو حصصاً إضافية، كما يتحمل نفس الشركاء الخسائر إن وجدت و بذات النسب. إن الأرباح المحققة في كل سنة مالية توجد بالدرجة الأولى لتغطية النفقات العامة و الخسائر إن وجدت حتى يمكن المحافظة على سائر مجوداتها و إستمرارها بصورة عادية و منتظمة. إن حصة كل شريك في الأرباح الصافية يمكن سحبها بكل حرية من قبل الشريك المعني، كما يمكنه إستبقاؤها لتكون على شكل حصص إضافية أو تسبيقات عامة كما سبق بيانه.

المادة 20 : الإطلاع:

وفقاً لأحكام المادة 558 من الأمر 59-75 المتضمن القانون التجاري، يحق لكل شريك غير مدير إن يطلع بنفسه مرتين في السنة و في مركز الشركة على سجلات التجارة و الحسابات و العقود و الفواتير. بوجه عام، الإطلاع على كل الوثائق الموجودة بالشركة أو المسلمة منها، كما له الحق في المطالبة بأخذ النسخ.

الباب السادس

تغيير الشكل - التمديد - التصفية - المنازعات.

المادة 21 : تغيير الشكل:

يمكن باتفاق جماعي للشركاء تغيير هذه الشركة إلى شركة من نوع آخر في أي وقت شاءوا دون أن يترتب على هذا التغيير إنشاء شخص معنوي جديد كما يمكن بنفس الكيفية إجراء أي تعديل للقوانين الأساسية.

المادة 22 : التمديد:

قبل سنة على الأقل من الانتهاء القانوني لمدة الشركة، ينبغي أن يعقد اجتماع بمبادرة من هيئة التسيير، يضم جميع الشركاء للتقدير فيما إذا كانت الشركة ستمدد لفترة تالية أم لا.

و إذا لم تبادر هيئة التسيير لعقد هذا الاجتماع، يكون لكل شريك الحق في أن يوجه لها إنذار من أجل القيام بهذه المبادرة و يوجه الإنذار عن طريق رسالة مسجلة.

و في حالة إذا لم يكن لهذا الإنذار جدوى، جاز للشريك الذي قدمه أن يطلب من رئيس المحكمة التي يوجد بدائرة اختصاصها مقر الشركة، أو يكلفه بالاتصال بها و استدراج الإدارة لاتخاذ قرار في هذا الشأن.

المادة 23:التصفية:

إذا قرر الشركاء مجتمعين في إطار الشروط المحددة قانونا عدم تمديد الشركة أو في حالة الحل المسبق و الاختياري لها، تبدأ إجراءات التصفية من اليوم الذي ينتهي فيه وجود الشركة القانوني، أو الإتفاقي، و تتم التصفية سواء بواسطة شريكين معا أو الشريك الأقدر مديرا كان أو غير مديرا أو خبير حسابات باتفاق جماعي للشركاء.

يكون للمصفي أو المصفين أوسع السلطات في هذا المجال و خاصة سلطة بيع موجودات الشركة، سواء بالتراضي أو بالمزاد العلني لجميع الحقوق و الأسهم و الأموال المنقولة أو العقارية و سواء بالجملة أو بالتجزئة، كذا سلطة الاتفاق أو التصالح أو منح أي تنازل أو رفع اليد بمقابل أو دونه، و أيضا سلطة الدخول في أية خصوصية قضائية قبل إجراء القسمة على أن يوزع الباقي الصافي إن وجد بعد طرح كل التكاليف العامة بما فيها أجور المصفين على الشركاء، بحسب نسب تقديراتهم في رأسمالها، كما سبقت الإشارة إليه سابقا.

المادة 24 : المنازعات:

كل المنازعات التي تتعلق بأعمال الشركة سواءا كانت بين الشركاء أثناء حياة الشركة أو بين الشركاء و الإدارة، أو بين الشركة و الغير، أو خلال فترة التصفية، تكون خاضعة للاختصاص الإقليمي لمقر المحكمة الكائن بدائرتها مقر الشركة، و عليه فإن جميع الشركاء ملزمون بإختيار مواطن لهم في نطاق الدائرة القضائية لهذه الشركة حيث توجه كافة التبليغات و الإستدعاءات لهذه العناوين.

أعمال ختامية

الموطن - النشر - النفقات.

المادة 25 : الموطن:

من أجل تنفيذ هذا العقد و جميع توابعه القانونية، اختار كل واحد من الطرفين سكنه المذكور أعلاه، موطنًا معتادًا له يمكن مخاطبته فيه بصورة اعتيادية عند الحاجة.

المادة 26:النشر:

يخول لكل حامل نسخة من هذا العقد الأساسي جميع الصلاحيات للقيام بإجراءات الإيداع و النشر التي يتطلبها القانون.

المادة 27 : النفقات:

إن التكاليف العامة و الحقوق و الرسوم التوثيقية الخاصة بهذا العقد تتحملها الشركة و تدرج في مصاريف التكوين.

التسجيل :

تؤدي رسوم التسجيل بواسطة طوابع دمغة منفصلة توضع بالهامش طبقاً لمحتويات المادتين 59 و 206 من الأمر رقم 105/76 المؤرخ في 09 ديسمبر 1976.

المتضمن قانون التسجيل وكذا المادة 124 من القانون رقم 13 المؤرخ في 18 ديسمبر 1983، المتضمن قانون المالية لسنة ألف وتسعمائة وأربعة وثمانين (1984)

الجمهورية الجزائرية الديمقراطية الشعبية
وزارة العدل

القانون الأساسي لمؤسسة ذات الشخص الوحيد
و ذات المسؤولية المحدودة

أمام الأستاذ * * * * * الموثق الممضي أسفله، الكائن مقر مكتبه * * * * *

حضر

السيد: * * * * *

، المولود بتاريخ * * * * * بتيزي وزو، حسب شهادة الميلاد رقم * * * * *، الساكن
* * * * *، الحامل لرخصة السياقة (نفسية ثانية) رقم * * * * * الصادرة عن دائرة
تيزي وزو، بتاريخ * * * * * وهو من جنسية جزائرية ----- الذي طلب من
الموثقة الممضية أسفله، إعداد القانون الأساسي لمؤسسة ذات الشخص الوحيد وذات المسؤولية المحدودة
كالتالي:-----

الباب الأول

الشكل - الموضوع - التسمية - المقر - المدة

المادة الأولى: الشكل:-----

الشكل: تم بهذا العقد إنشاء مؤسسة ذات الشخص الوحيد وذات المسؤولية المحدودة والتي تخضع: ---
لأمر رقم 97/75 المؤرخ في 26 سبتمبر 1975 المعدل بالمرسوم التشريعي رقم 93-08 مؤرخ في
1993/04/25 ----- والأمر رقم 27/96 المؤرخ في
1996/12/09 المتضمن القانون التجاري----- القوانين الأساسية-----
كل النصوص ذات الطابع التشريعي والتنظيمي السارية القانون التجاري-----

المادة الثانية: الموضوع:----- يتمثل موضوع الشركة في:

----- **المادة الثالثة: التسمية:**-----

----- تسمى هذه الشركة: مؤسسة ذات الشخص الوحيد وذات المسؤولية المحدودة ولا بد أن يسبق أو يتبع اسم الشركة بعبارة (المؤسسة ذات الشخص الوحيد وذات المسؤولية المحدودة) مكتوبة بوضوح وبأحرف كاملة مع بيان رأسمالها في جميع العقود والسفاتج والمذكرات وبصفة عامة في كل الوثائق الصادرة من الشركة ----- **الصفحة الثانية**

----- **المادة الرابعة: المقر:**-----

حدد المقر الاجتماعي للشركة*** ويمكن تحويله إلى أي مكان آخر بنفس المدينة، بقرار من المسير، وفي أي مكان آخر بموجب قرار الشريك-----**

----- **المادة الخامسة: المدة:**----- حددت مدة الشركة ب: تسعة

وتسعين (99) سنة، ابتداء من تاريخ قيدها بالسجل التجاري، ما عدا في حالتي الحل المسبق أو التمديد المنصوص عليهما في القانون الأساسي-----

الباب الثاني

التقديمات – رأس مال- رفع وخفض رأس المال

المادة السادسة: التقديمات:----- قدم السيد...مبلغا

قدره.....يمثل خمس(5/1) رأسمال التأسيسي للشركة -----وأودع المبلغ المذكور فعلا بصندوق مكتب التوثيق في هذا اليوم كما هو ثابت من السجلات المحاسبية ولا يمكن سحب هذا المبلغ إلا بعد إتمام جميع الإجراءات القانونية وفي حالة ما إذا كانت إحدى الحصص عينية يجب تعيينها وذكر قيمتها وفقا للمادة 568 من القانون التجاري-----

----- **المادة السابعة: رأسمال الشركة:**-----

حدد رأسمال الشركة المذكورة بمبلغ قدره مائة ألف دينار جزائري (100.000 دج) مقسم إلى مائة (100) حصة اجتماعية ذات قيمة اسمية متساوية مبلغها ألف دينار جزائري (1000 دج) مرقمة من 01 إلى 100 سددت قيمتها كاملة.

----- **المادة الثامنة:**-----

***رفع رأس المال:** يمكن زيادة رأسمال الشركة بقرار من الشريك الوحيد مرة واحدة أو أكثر بجميع الوسائل والطرق القانونية ولاسيما:-----

1- بإحداث حصص جديدة توزع تمثيلا لتقديمات، حصص عينية أو نقدية-----

2- برفع القيم الإسمية للحصص الموجودة-----

3- بإدماج الإحتياطات الناتجة عن الأرباح التي لم توزع-----

*** خفض الرأسمال:**----- يمكن تخفيض رأسمال عن

طريق إنقاص عدد الأسهم دون أن تقل عن مائة ألف دينار جزائري (100.000 دج)، أو القيم الاسمية دون أن تقل الواحدة عن ألف دينار جزائري (1000 دج) وإذا ما تحتم تخفيضه إلى ما أقل من ذلك يجب أن يكون متبوعا في أجل سنة لإعادته إلى المبلغ المنصوص عليه أعلاه، ما لم تحول الشركة في نفس الأجل إلى شركة من نوع آخر وفقا للمادة 566 من القانون التجاري-----

المادة التاسعة: حقوق الشريك:----- لا يجوز لشخص طبيعي

أن يكون شريكا وحيدا إلا في شركة واحدة ذات مسؤولية محدودة ولا يجوز لشركة ذات مسؤولية محدودة أن يكون لها كشریک وحيد شركة أخرى ذات مسؤولية محدودة مكونة من شخص واحد وفي حالة الإخلال بأحكام الفقرة السابقة، فكل من يعنيه الأمر أن يطلب حل الشركات، المؤسسة بطريقة غير شرعية، إذا كان ذلك ناتجا عن اجتماع كل حصص الشركة في يد واحدة، لا يسوغ تقديم طلب حل الشركة قبل سنة من جمع الحصص عندما يجمع شريك واحد كل الحصص في شركة فيها أكثر من شريك، وفي جميع الحالات، يمكن للمجتمع منح أجل أقصاه ستة أشهر لتسوية الوضعية في حين لا يمكن الحكم إذا تمت التسوية يوم النظر في الموضوع-----

-الصفحة الثالثة-

الباب الثالث

إدارة الشركة- تسمية المسيرين

المادة العاشرة: إدارة الشركة:-----

يتولى إدارة الشركة مسير أو مسيرون سواء الشريك الوحيد أو غير شريك يعينون بمقرر من الشريك الوحيد المسير أو المسيرين إن تعددوا التوقيع باسم الشركة بالعبارة التالية: عن المؤسسة ذات الشخص الوحيد وذات المسؤولية المحدودة المسماة (م.ش.و.ذ.م. معوام استيراد وتصدير)، " EURL AOUAM **IMPORT EXPORT**" يليها إمضاء المسير أو المسيرين-----

ولا يسوغ للمسير الوحيد ولا لأحد المسيرين أن يستغلوا إمضاءاتهم لغير مسائل الشركة، وإذا فعلوا فإن هذه لأعمال وجميع الالتزامات تكون باطلة وعليه فلهم السلطة المطلقة للتصرف باسم الشركة للقيام بجميع الأعمال المتعلقة بموضوع الشركة بسائر الوسائل والطرق الشرعية دون افتقار على ذ، ولهم بالأخص قائمين معا لا منفصلين إن تعددوا تسمية عمال الشركة توقيفهم عن العمل وعزلهم وتقدير مكافأتهم وقبض مبلغ مالي ودفعه وإكتتاب كل ورقة تجارية أو شيك أو كمبيالة أو سند مهما كان نوعها،

وتحويلها والتعامل بها وتسديدها وشراء البضائع وبيعها وإبرام سائر العقود والمعاهدات والصفقات نقداً أو مؤجلاً فيما يرجع إلى شؤون الشركة وإيداع أموالها أو سنداتهما بكل مصرف بالخبزينة العامة وسحبها وتقرير تحويل أي دين وتحقيقه والتنازل في حق الشركة عن كافة حقوق الامتياز ورهون الخبزة ودعاوي الفسخ وغيرها من الحقوق العينية على اختلاف أنواعها والرضا برفع كل قيد حجز وتعرض وغير ذلك من الموانع العامة كل ذلك بإثبات الوفاء أو بدونه وتسليم الرسائل والطرود الواردة باسم الشركة من كل مكتب بريدي، وكالة سفر، شركة نقل أو مصلحة السكك الحديدية وقبض كل بريدية أو تلغرافية والقيام بجميع العمليات الجمركية والنيابية عن الشركة في كافة عمليات التخليصة والتسوية القضائية والتوقيع على كل صلح أو عقد اتحاد والقيام عن الشركة في كل نظام توزيع دين أو تسوية والرضا بكل تسوية وقبض مبلغ كل ربيحة أو مستحق في توزيع دين وتتبع سائر دعاوي القضائية وعقد كل تأمين من سائر الأخطار وتسوية الخسائر والأضرار-----

وعليهم أن يولوا عنايتهم لشؤون الشركة وليس لهم القيام لصالحهم الخاص بأية عملية داخلية في موضوع الشركة. ولا يعقدون بسبب وظيفتهم أي إلتزام عيني أو تضامني فيما يتعلق بإلتزامات الشركة وهم مسؤولون حسب قواعد النظام العام عن المخالفات للنصوص الشرعية أو خرق القانون الأساسي الحالي أو الأخطاء التي يرتكبونها أثناء إدارتهم سواء نحو الشركة أو نحو الغير ولا يعزلون إلا لأسباب شرعية ولهم أن يستقبلوا من وظيفتهم غي كل وقت بشرط إخبار الشريك الوحيد بنيتهم تلك قبل ستة أشهر على الأقل، وفي حالة وفاة أحد المسيرين أو تسليمه طوعاً وكذا في حالة ما إذا صار القيام بوظيفته مستحيلاً بسبب عاهة أو مرض ثابتين على ستة أشهر يواصل المسير الباقي تسيير الشركة لوحده. وإذا توفي هذا الأخير، عزل أو تنازل طوعاً عن وظيفته أو أصيب بعاهة أو مرض ثابتين لمدة تزيد على ثلاثة أشهر ويستحيل لذلك على المسير المذكور الإستمرار في القيام بمهامه يعين مسير واحد أو أكثر حسب ما يظهر للشريك الوحيد بقرار استثنائي يتخذ بالكيفية الأتي بيانها بعد ولا ينجر عن انتهاء مهام المسيرين لسبب من الأسباب انحلال الشركة ويكون للمسيرين مكافئة على وظيفتهم وتعويضاً للمسؤولية التابعة للتسيير والحق في مرتب ثابت، نسبي أو ثابت معاً بين مبلغه وطرق دفعه بقرار من الشريك الوحيد وله علاوة على ذلك الحق في سداد مصروفات الإنابة والانتقال-----

المادة العاشرة مكرر: طبقاً للمادة 715 مكرر، الفقرة أربعة عشر (14) وخمسة وسبعين مكرر (75) من المرسوم رقم 08/93 مؤرخ في 25/04/1993 والقانون المالية التكميلي لسنة ألفين وخمسة (2005) الصادر بموجب الأمر رقم 05/05 المؤرخ في 25/07/2005، لا سيما المادة 12 منها، **عين******* محافظ الحسابات، الكائن مقر مكتبه*****، المعتمد والمسجل لدى محافظي الحسابات تحت رقم 2069/07 محافظاً لحسابات المؤسسة لمدة ثلاثة سنوات (03) تمتد من السنة المالية ألفين وأربعة

عشر (2014) إلى غاية السنة المالية ألفين وستة عشر (2016)، كما هو مبين في الشهادة الصادرة عن محافظ الحسابات بتاريخ 2014/10/16.-----المادة الحادية عشر: طبيعة القرارات:-----

----- تعتبر قرارات الشريك الوحيد عادية أو غير عادية.-----
----- الصفحة الرابعة-----

المادة الثانية عشر: القرارات العادية:----- القرارات العادية تتعلق بالمصادقة أو التعديل أو الرفض للحسابات واتخاذ كل القرارات الخاصة بتوزيع الأرباح.--- تعيين أي مسير وعزله وبصفة عامة اتخاذ جميع القرارات التي لا تمس بتعديل القوانين الأساسية.-----

المادة الثالثة عشر: القرارات الغير العادية.----- للشريك الوحيد صلاحية إتخاذ قرارات غير عادية خاصة بتعديل القوانين الأساسية.----- كل القرارات الغير العادية وتسبق بتقرير معد من طرف خبير معتمد حول وضعية الشركة.-----
المادة الرابعة

عشر: الحسابات الختامية:----- يضع المدير تقرير التسيير ويقوم بإجراء الجرد ويعد الحسابات السنوية ويصادق الشريك الوحيد على الحسابات بعد تقرير محافظتي الحسابات في أجل ستة أشهر اعتبارا من اختتام السنة المالية.----- لا يجوز للشريك الوحيد تفويض سلطاته وتدوين قراراته المتخذة عوض الجمعية العامة ومكانها في سجل.-----
----- يمكن أن تلغى القرارات التي تتخذ خرقا لأحكام هذه المادة بطلب من كل من يعنيه الأمر.-----
----- يتدخلوا بأية صفة كانت في عملية التسيير وعليهم أن يلجئوا إلى جرد الشركة للقيام بحقوقهم.-----

المادة الخامسة عشر: تسمية المسير-----
سمى ***** مسير وشريك للمؤسسة لمدة غير محدودة ابتداء من اليوم الذي رضي بالمهمة المسندة إليه وقبلها صراحة.-----

المادة السادسة عشر: تعديل القانون الأساسي:----- للشريك الوحيد حق إدخال ما يراه صالحا من التعديلات على القانون الأساسي لاسيما ما يخص:-----
1- تغيير تسمية الشركة أو بيان عنوانها.-----
2- زيادة رأسمال الشركة أو تخفيضه.-----
3- تحويل الشركة الحالية إلى شركة في شكل آخر.-----

المادة السابعة عشر: حق الشريك الوحيد في الإطلاع:----- للشريك الوحيد غير المسير الحق في الإطلاع سواء بنفسه أو بواسطة وكيل قانوني على كافة عمليات الشركة وكذلك الإطلاع بمقر الشركة على سجلات حساباتها ودفاترها.-----

المادة الثامنة عشر: الحسابات الختامية:-----

على المسيرين في كل سنة وفي الفصل الذي يلي إنهاء الجرد أن يوجهوا إلى الشريك الوحيد كشوف حساب السنة الماضية، وكذا اقتراحاتهم فيما يخص الربحة التي توزع عند الاقتضاء ويصبحون ذلك بنص القرارات التي يريدون عرضها على الشريك الوحيد للموافقة عليها والمصادقة عليها بعد تقرير محافظي الحسابات في أجل ستة أشهر اعتباراً من اختتام السنة المالية.-----

الباب الرابع

السنة المالية – الجرد- تخصيص وتوزيع الأرباح – دفع الأرباح

المادة التاسعة عشر: السنة المالية:----- تبدأ السنة المالية للشركة

في أول شهر جانفي وتنتهي في الواحد والثلاثين من شهر ديسمبر من كل سنة--وبصفة استثنائية تشمل السنة المالية الأولى التي بين تاريخ الشروع في العمليات وبين الواحد والثلاثين ديسمبر من نفس السنة--

المادة العشرون: الجرد:-----

تثبت عمليات الشركة بمحركات حسابية منظمة المسك طبقاً لقواعد التجارة ويقوم المسيرون سنة بجرد ما للشركة وما عليها ويعرض هذا الجرد على الشريك الوحيد للفحص ويسجل بدفتر خاص---

المادة الواحدة والعشرون: تخصيص وتوزيع الأرباح:-----

الأرباح هي الباقي من النتائج السنوي المثبت بالجرد بعد طرح المصروفات العمومية والتكاليف الاجتماعية مع كل استهلاك معتبر لازم-----

وتخصم من الأرباح:----- - **الصفحة الخامسة-**

الخمس في المائة (5%) لإنشاء الاحتياط القانوني ويصير هذا الخصم غير إلزامي عند بلوغ مال الاحتياط القانوني عشرة (1/10) رأسمال الشركة ويستعيد مجراه إذا ما مس الإحتياطي لأي سبب كان.--

2- وخمس في المائة (5%) للتسيير-----

ويمكن للشريك الوحيد أن يقرر في كل وقت شاء خصم كل الأرباح أو جزء منها قبل توزيعها لتأسيس الأموال الاحتياطية الاستثنائية أن اقتضى الأمر ذلك-----

المادة الثانية والعشرون: دفع الأرباح:-----

يكون دفع الأرباح في المواعيد التي يحددها المسيرون سنويا-----

الباب الخامس

الحل- التصفية - المنازعات- الإعلانات- المصاريف

المادة الثانية والعشرون: الحل:

لا تتحل الشركة قبل انتهاء المدة القانونية لها المحددة في المادة الخامسة-----
المسير مطالب للحصول على قرار الشريك الوحيد لإتخاذ القرار الغير عادي لإستمرار الشركة أو إنهائها
وفي كل الحالات، فإن قرار الشريك الوحيد يجب إشهاره في حالة خسارة ثلاثة أرباع (3/4) رأسمال
الشركة ويجب على الشريك الوحيد النظر فيما إذا كان يتعين إصدار قرار حل الشركة ويلزم في جميع
الحالات إشهار قرار الشريك الوحيد علنيا.-----
أن يستشيروا الشريك الوحيد لتقرير أمر مصير الشركة ويجب إشهار قراره طبقا لنص المادة 589 من
القانون التجاري.--

المادة الثالثة والعشرون: التصفية:

عندما تنتهي الشركة أو تحل قبل الأوان لأي سبب كان يقوم المسيرون بالتصفية وإذا انعدموا فمن طرف
مصف واحد أو أكثر يعينهم الشريك الوحيد.-----
عملية التصفية تتم من قبل المصفي ضمن الشروط المحددة في المادة 765 من القانون التجاري، الشريك
الوحيد يحتفظ في حالة التصفية بنفس الصلاحيات في الحياة الاجتماعية الأخيرة وحسابات التصفية بنفس
الصلاحيات في الحياة الاجتماعية و يمكنه بقرار عادي إنهاء مهام المصفي و تعيين مصفين اخرين-----
المصادقة على الحسابات للسنة المالية
الاجتماعية الأخيرة و حسابات التصفية وإعطاء مخالصة للمسير الأخير.-----

المادة الرابعة والعشرون: المصاريف:

تتحمل الشركة جميع المصاريف اللازمة لهذا العقد وتوابعه القانونية طبقا لما هو جاري به العمل وتدرج
في المصاريف العامة.-----

اثبات المأذون

حرر العقد بمكتب التوثيق للأستاذة الممضية أسفله، سنة ألفين وستة عشر.-----
ويوم:

وبعد أن قرأنا عليهم مضمون العقد أمضوه معنا في الأصل.-----

الموثق

- الصفحة السادسة والأخيرة

Abstract in Arabic

توضح هذه الدراسة التحديات التي وجدها أثناء ترجمة الوثائق القانونية، وبصفة خاصة القوانين الأساسية للشركات. وتهدف هذه الدراسة إلى تحديد هذه التحديات عند ترجمة القوانين الأساسية من اللغة العربية إلى اللغة الإنجليزية، والأسباب الكامنة وراءها وكذا الأساليب والحلول المعتمدة لتخطيها. وتحلل هذه الدراسة ميزات الأنظمة القانونية للغتين العربية والإنجليزية وخصائصها من أجل الكشف عن التأثيرات التي أدت دوراً في إنتاج الترجمة. لذلك، اعتمدنا على النظرية اللغوية الاجتماعية في تحليل ترجمتنا.

وكشفت الترجمة عن مواجهتنا لأنواع مختلفة من التحديات عند ترجمة القوانين الأساسية للشركات التي يمكن تصنيفها إلى ثلاث فئات رئيسية وهي: تحديات راجعة إلى أنظمة اللغة وتحديات راجعة إلى مصطلحات وتحديات راجعة لتكافؤ وتخلص الدراسة إلى أن ترجمة المصطلحات المعجمية المذكورة أعلاه تتطلب الخبرة، والتدريب المهني، والمعرفة الجيدة لأنظمة اللغوية والقانونية للغات، وكذلك استخدام القواميس الإلكترونية الحالية والرجوع إلى مدونات موازية جد واضحة في اللغة الهدف.

Abstract

The present study explores and determines the challenges encountered in translating legal documents, particularly Memorandums of Association from Arabic into English, the reasons behind these challenges, methods and solutions adopted to overcome them.

This study analyzes the features and characteristics of Arabic and English legal systems in order to uncover the influences that played a role in the production of the translation. Therefore, sociolinguistic theories are adopted in the analysis to deduce and comment on the strategies used for rendering source text memorandums of association.

The empirical part revealed that the translation of Memorandums of Association poses different kind of challenges that can be classified into three main categories namely:

Language systems, terminology and equivalence. The paper concludes that translating the above-mentioned lexical terms requires expertise, professional training, robust knowledge of the linguistic and legal systems of languages, as well as up-to-date electronic dictionaries and well-defined parallel corpora.

