

The Legal Effects of the Share Redemption Process in Jordanian Company Law in Light of the 2020 Instructions for Redeemable Shares for Private Shareholding Companies

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Abstract

Objectives: Share buybacks are an exception to the principle of share permanence and the stability of a company's capital, representing a novel concept in Jordanian corporate law. This study examines the provisions governing share buybacks and their legal effects on shareholders of repurchased shares, other shareholders, the company, and its creditors, given the issue of insufficient legal regulation of the buyback process.

Methods: The study adopts a descriptive-analytical approach by examining relevant legislative texts and judicial rulings, despite their scarcity. It is divided into two main sections: the concept of redeemable shares and the legal implications of a company's share redemption process.

Results: The study identifies deficiencies and inconsistencies in the legal regulation of share buybacks in Jordanian legislation, which pose risks to the rights of the company's creditors, redeemable shareholders, and the company itself. Additionally, the law does not explicitly allow granting redeemable shareholders enjoyment shares in exchange for their redeemed shares.

Conclusions: The study recommends that the Jordanian legislator introduce comprehensive legal regulations that establish clear controls for the share buyback process and explicitly permit the issuance of enjoyment shares to holders in exchange for their redeemed shares.

Keywords: Private shareholding company, Redeemable shares, Treasury shares, Enjoyment shares.

الأثار القانونية لعملية استرداد الأسهم في قانون الشركات الأردني وعلى ضوء صدور تعليمات الأسهم القابلة للاسترداد للشركات المساهمة الخاصة لسنة (2020) عدنان صالح العمر^{1*}, أمجد العزام²

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ملخص

الأهداف: يعد استرداد الأسهم استثناء على مبدأ ديمومة السهم وثبات رأس مال الشركة، وهو فكرة مستجدة في قانون الشركات الأردني، هذه الدراسة تبحث في أحكام استرداد الأسهم وأثاره القانونية على أصحاب الأسهم المستردة والمساهمين الآخرين والشركة ودائنها في ظل مشكلة عدم كفاية التنظيم القانوني لعملية استرداد الأسهم. المنهجية: وقد اعتمدت هذه الدراسة المنهج الوصفي التحليلي من خلال تحليل النصوص التشريعية ذات العلاقة وتحليل الأحكام القضائية رغم ندرتها، وتم تقسيم هذه الدراسة إلى مبحثين رئيسيين: مفهوم الأسهم القابلة للاسترداد؛ والآثار القانونية المترتبة على عملية استرداد أسهم الشركة.

النتائج: وقد توصلت الدراسة إلى وجود نقص ومغالطات في التنظيم القانوني لعملية استرداد الأسهم في التشريع الأردني ينذر بتهديد حقوق دائني الشركة وحملة الأسهم القابلة للاسترداد والشركة، كما لم ينص على إمكانية منح الحاملين أسهم تمتع مقابل استرداد أسهمهم.

الخلاصة: توصي هذه الدراسة أن يضع المشرع الأردني تنظيمًا قانونيًا كافيًا يتضمن ضوابط لعملية استرداد الأسهم، وأن ينص على إمكانية منح أسهم تمتع للحاملين مقابل استرداد أسهمهم.

الكلمات الدالة: أسهم قابلة للاسترداد، أسهم خزينة، أسهم تمتع، شركة مساهمة خاصة، أسهم مؤقتة.

1. Introduction

Shares are the capital-forming units of public and private shareholding companies. Originally, shares are characterized by their permanence throughout the life of the company, and it is not permissible to return their value to shareholders or withdraw them from the company during its existence (Etiwi, 2015). However, a company may, during its lifetime, issue redeemable shares for several reasons.

One reason for issuing redeemable shares is to increase the company's capital. Instead of taking on debt and facing its potential consequences, the company may opt to issue redeemable shares as a financing alternative. Another reason is to enhance share profitability. By redeeming shares, the company reduces the number of outstanding shares, leading to an increase in dividends for the remaining shareholders (Al-Faki, 2015).

Redeemable shares may also be used to exclude undesirable shareholders and maintain control over company management. A company may allocate specific shares to administrators, employees, or family members. If any of these individuals sell their shares to outsiders, the company can exercise its option to redeem those shares, thereby preventing third parties from participating in the company (Sedky, 1993; Elonen, 2022).

Additionally, redeemable shares serve as a means of repaying the company's capital to shareholders. In such cases, these are referred to as "enjoyment shares." This occurs when a project is gradually deteriorating, based on a temporary right (e.g., mining projects), or reliant on a government concession (e.g., electricity and water utilities). Once the concession period ends, the company's assets revert to the government. To ensure it has sufficient funds to repay its capital at that time, the company refunds the value of all shares to shareholders in advance (Abu Al-Rous, 2002; Al-Omar and Al-Naimi, 2024).

Shares Redemption is an emerging concept in Jordanian shareholding companies. The Jordanian legislator has limited the redemption system to private shareholding companies, excluding other types of capital companies, such as public shareholding companies and limited liability companies. The main issue addressed in this study is the lack of clarity in the legal framework governing redeemable shares in Jordanian legislation. This raises several questions regarding the legal effects of share redemption on the shareholder, the redeeming company, other shareholders, and creditors.

2. The Concept of Shares Redemption

This section explains the definition of redeemable shares, their characteristics and differences from treasury shares.

2.1 The Definition of Redeemable Shares

The Jordanian Companies Law did not define redeemable shares, nor did the Jordanian judiciary. However, jurists have proposed several definitions, such as "the bonds received by the shareholder, according to which he obtains the nominal value of his share as a result of a process called depreciation of the capital" (Sarkhouh, 1982). It has also been defined as "the share whose nominal value has been obtained without waiting, as is the normal situation, until the date of the company's dissolution and liquidation" (Al-Qalyubi, 1993). Some scholars have further defined it as "the shares that were consumed, that is, the company paid their value to the shareholder in installments or at once by lottery" (Sami, 2010).

After reviewing the previous definitions, this study defines redeemable shares as "a class of capital shares that gives its owner or the company the right to redeem its nominal or true value from the company's profits during its life and the right to obtain 'jouissance' shares in exchange for redemption."

2.2 The Characteristics of Redeemable Shares

The most important characteristics of redeemable shares are:

1. **The redeemable share is a temporary share:** Generally, shares are indefinite and not subject to amortization, meaning they remain as long as the company exists. However, redeemable shares grant shareholders the right to redeem their value during the life of the company.
2. **The redeemable share belongs to the preferred shares category:** The prevailing view is that redeemable shares fall under the category of preferred shares because they grant an exceptional right to the shareholder—the right to redeem their value before the company's expiration and liquidation. This right is not granted to holders of ordinary shares (Dweik, 2017). This study considers that the Jordanian legislator implicitly adopted this view in Article (68 bis) of the Companies

Law, where it stipulated provisions for redeemable shares within the types of shares with special privileges. Some comparative legislations have also taken this approach, such as the Kuwaiti Companies Law of 2016, which, in Article 153, states: "The Authority shall issue the conditions and rules for issuing preferred shares and converting them into ordinary shares, as well as the conditions and procedures for their redemption..."

2.3 The Difference Between Redeemable Shares and Treasury Shares

There is a similarity between the process of redeeming shares and the company's purchase of its shares in that both are exceptional operations that involve the company's shares during its lifetime (Al-Arini, 2002). They both include the concept of repurchasing shares after their issuance, affect the shareholder's position to the extent that their relationship with the company is interrupted unless they receive 'jouissance' shares, and are considered means of reducing the company's capital (Jordanian Instructions for Treasury Shares, 2014, Art. 13, 15).

Despite these similarities, the company's redemption of its shares cannot be considered in any way equivalent to purchasing them as treasury shares, as there are fundamental differences between these two operations. The most prominent differences are as follows:

1. This study considers that original treasury shares are ordinary shares that later acquire the status of treasury shares after being purchased by the company. Accordingly, every ordinary share that can be purchased by the company becomes a treasury share. However, under the provisions for the redemption of private shareholding companies in Jordanian legislation, a share is not redeemable unless the company's articles of association explicitly stipulate that it enjoys this privilege.

2. The company's purchase of its shares (treasury shares) occurs only at their true value, as they are originally purchased through the financial market. It is prohibited to purchase them directly from shareholders through private transactions (Jordanian Instructions for Treasury Shares, 2018, Art. 6(d)). In contrast, the redemption of shares may occur at either their nominal or true value, as specified in the company's articles of association or prospectus (Sami, 2010). Furthermore, redemption may also occur without any payment, according to the provisions of the relevant article. It is worth noting that some may perceive a contradiction between Article (4/Z) and Article (7/A-4) of the same instructions, which refer to the company paying the value of the shares as agreed upon in the company's system. However, in reality, there is no contradiction. The implementation of the paragraph in the previous article applies if the redemption involves payment, whereas if the redemption occurs without payment, there is no need to implement this paragraph.

3. In the case of a company's purchase of its shares (treasury shares), the selling shareholder's relationship with the company ends to the extent of the shares sold. However, in the redemption process, if the shareholder does not receive 'jouissance' shares in exchange for redeeming their shares, their relationship with the company is also severed. On the other hand, if they are granted 'jouissance' shares, their connection with the company continues, albeit within the limits of the rights granted by these shares (Sami, 2010).

This study considers that the source of a private shareholding company's right to redeem its shares is contractual in nature, as it is the company's articles of association that grant it the right to issue redeemable shares. In contrast, the company's right to purchase its shares (treasury shares) is based on statutory law, meaning the company has the right to buy its issued shares even if its articles of association do not explicitly provide for it

3. The Provisions of the Shares Redemption Process.

This section explains the legal nature of redeeming shares and its conditions.

3.1. Legal Nature of Shares Redemption Process

Legal scholars have differed regarding the legal nature of the process of redeeming shares and have been divided into the following perspectives:

The first perspective views redemption as a return of the capital provided by shareholders upon their contribution to the company (Radwan, 1983).

The second perspective considers the process of share redemption as the distribution of an exceptional share of the company's profits to shareholders. In this view, each shareholder is allocated a portion of the profits equal to their share in

the capital, while the capital itself remains fixed until the company is terminated (Antaki, 1952).

The third perspective holds that the share redemption process is neither a refund of part of the company's capital to shareholders nor an exceptional distribution of its profits. Instead, it is seen as an "accelerated repayment" of the shareholder's share in the company's capital (Radwan, 1983).

This study, in turn, considers the process of redeeming shares as the company's repurchase of a specific type of shares that it originally issued. These shares can be repurchased at a cash price specified in the company's articles of association or based on their true value. The purchase consideration may also include granting 'jouissance' shares to the shareholder whose shares have been redeemed, or even proceeding without financial compensation, as stated in Article (4/Z) of the refund instructions.

If it is argued that this opinion confuses the redemption of shares with the company's purchase of its shares (treasury shares), we affirm that both involve the repurchase of shares. However, each follows a distinct legal framework, as previously explained when discussing the differences between redeemable shares and treasury shares

3.2. Conditions of Shares Redemption Process

The company, when performing the process of redeeming shares, must take into account the following conditions:

1. Existence of a provision in the company's Memorandum of Association permitting the redemption of shares:

Article (68/b bis) of the Jordanian Companies Law provides a single condition for a private shareholding company to issue redeemable shares, which is that this right must be stipulated in its articles of association. The aforementioned article also refers to the specification of other conditions, such as whether the issuance of redeemable shares or their redemption is subject to instructions issued by the Minister of Industry and Trade. Article (4) of these instructions stipulates that the articles of association of the company (private shareholding company) must include data related to the rights, benefits, and priorities of the redeemable shares, as well as the terms and conditions of their redemption.

2. Financing the Redemption of Shares from the Company's Profits: Although the Jordanian legislator in Article 5/b of the Instructions for Redeemable Shares for Private Shareholding Companies (2020) permits a private shareholding company, in the event of non-availability and/or exhaustion of funding sources from the company's profits, to finance the redemption from its capital, provided that the minimum capital stipulated in the Companies Law is not affected, legal scholars require that for the validity of the redemption process, the sources of the amounts allocated to recover the value of shares must come from the company's profits. These sources may include the balance of distributable profits, the balance of the voluntary reserve, the balance of the reserve for redemption, and the balance of the issue premium. It is not permissible to refund the value of the shares from the company's capital or from the compulsory reserve, as both are guarantees of the rights of creditors that must not be violated (Al-Qalyubi, 1983).

Accordingly, if the company does not achieve any profits in that year, the redemption process is prohibited until the company generates profits in a future year (Dowidar, 2008), as the priority in that case will be to compensate for losses and restore capital (Ismail, 2002). If the redemption occurs using funds deducted from the capital or from the compulsory reserve, this recovery is void, and the shareholders who have received the value of their shares must return what they received to the company's fund (Nassif, 1983). Financing the redemption of shares in this manner is considered the distribution of fictitious profits to shareholders, which constitutes an invalid process punishable by law (Article (278/a) of the Jordanian Companies Law). This study considers that the company is not allowed to refund the value of the redeemed shares from the balance of other compulsory deductions, such as deductions for scientific research, taxes, fees, and others, as this contradicts the purpose of their privatization as intended by the law

3. The date specified for the stock redemption process: The Jordanian legislator, whether in the Companies Law or the Instructions for Redeemable Shares for Private Shareholding Companies (2020) (Jordanian Instructions for Redeemable Shares for Private Shareholding Companies, 2020, Art. 4(f)), did not specify specific time periods for carrying out the process of redeeming shares that would obligate the company or holders of redeemable shares after a certain period has passed from the date of the company's incorporation or from the date of issuing the redeemable shares.

Accordingly, this study considers that the matter is left to the company's articles of association, which may either

stipulate or not stipulate specific dates for the implementation of the share redemption process.

4. **Shares may not be redeemed if they were seized or pledged**, except with the approval of the party that placed the attachment or the pledgee creditor (Jordanian Instructions for Redeemable Shares for Private Shareholding Companies, 2020, Art. 4(c)).

4. Legal Implications of the Shares Redemption Process

In the event that the company performs the process of redeeming shares, there is no doubt that there will be legal consequences for the redeemed shares, the company, the owners of the redeemed shares, and the company's creditors as a result of this process

4.1. The Effects of Shares Redemption on Their Owner

After redeeming the shares, there is no doubt that the legal position of the shareholder will change within the company, and the rights they enjoyed before the redemption of their shares will be affected. This study believes that the extent to which these rights are affected depends on whether the shareholder obtains 'jouissance' shares or not.

1- In Case the Shareholder' Obtaining of 'Jouissance' shares in Exchange for His Redeemed Shares

Although the Jordanian legislator did not explicitly provide for the right to give 'jouissance' shares to the owner of the redeemed shares, the Jordanian Law Interpretation Bureau No. (4) of 2013 concluded that a private shareholding company has the right to issue 'jouissance' shares in return for redeeming the shares if this is stipulated in the company's contract or articles of association (Available on the Jordanian Judicial Council's website). Accordingly, if the company grants 'jouissance' shares to the shareholder whose shares have been redeemed, these shares will serve as evidence of the relationship between the owner of the redeemed shares and the company. Therefore, the shareholder's obtaining of 'jouissance' shares in exchange for their redeemed shares does not result in the loss of all the rights they enjoyed prior to the redemption. Instead, they will retain the rights granted by the 'jouissance' shares as stipulated in the company's articles of association. The company's articles of association may stipulate the following rights for the holder of 'jouissance' shares:

1. **Participating in the company's profits:** Some legal scholars believe that the holders of 'jouissance' shares enjoy all the rights they had before the redemption of their shares, including a right to participate in the company's profits, but to a lesser extent than the capital shareholders (Al-Sultan, 2006, p. 15). Other jurists argue that the shareholders of 'jouissance' shares have the right to participate in the profits of the company in the same way as capital shareholders (Al-Qalyubi, 1983).

2. **Attending general assembly meetings and voting on its decisions.**

3. **Participation in the membership of the company's board of directors:** This assumption is applicable in the case of the company's continuation after the full redemption of its capital shares. If the company is to survive, it cannot do so without a board of directors. In this scenario, the company will be managed by the holders of 'jouissance' shares because there are no remaining capital shareholders.

4. **Instituting a nullity lawsuit** against the decisions of the general assembly or the board of directors that violate the law or the company's articles of association or memorandum of association.

5. **Subscribing to any new shares issued by the company** and allocated to shareholders.

6. **Participating in the liquidation surplus:** Some legal scholars argue that holders of 'jouissance' shares should not be entitled to any of the company's assets after its liquidation until the holders of capital shares have recovered the nominal value of their shares (Yunus, 1990).

2- In Case the Shareholder's Non-Receiving 'Jouissance' shares in Exchange for His Redeemed Shares

We have seen that the Jordanian legislator did not stipulate the right to give 'jouissance' shares to the owner of the redeemed shares. Accordingly, this study considers that the partner whose shares have been completely redeemed exits permanently from the company and, therefore, does not retain any financial or moral rights in the company after his shares are consumed (Yunus, 1990).

4.2. Effects of redemption on Redeemed Shares

In order to understand the effects of the redemption process on the redeemed shares, we refer to Article (4/f) of the Jordanian Instructions for Redeemable Shares for Private Shareholding Companies (2020), which provides three options for

the fate of the shares after their redemption. These options are:

1. **The company shall keep the redeemed shares:** Originally, the company may not keep the shares permanently, as this contradicts the principle that a company may not own itself. However, the Jordanian legislator has stipulated in Article (4/f) of the aforementioned instructions that the company has the option to keep the redeemed shares. The legislator did not, however, provide any specific controls or conditions regarding the duration for which the company can keep the shares after their redemption.

2. **Reissue the redeemed shares:** The basic idea behind the share redemption process is that the redeemed share no longer remains in the shareholder's possession. Otherwise, the redemption process would merely be an exceptional profit grant to the shareholder whose shares have been redeemed.

3. **Cancel the redeemed shares and reduce the company's capital:** The Jordanian legislator has provided the private shareholding company with the option to cancel the redeemed shares and reduce its capital by the amount of those shares, as stated in Article (82/c bis) of the Companies Law and Article (4/f) of the Redeemable Shares Instructions for Private Shareholding Companies (2020). This, however, contradicts the principle of the stability of capital and its inviolability, which is the most important guarantee of the rights of the company's creditors. We will discuss this matter in a later paragraph

4.3. Effects of Shares Redemption on the Redeeming Company

The process of redeeming shares has legal implications for the redeeming company, the most important of which are:

1. The Emergence of Obligations on the Company to Face the Holders of the Redeemed Shares:

a) Returning the value to the owner of the redeemed shares:

In the event of the redemption of shares, the company is obligated to return their value to the owners according to the conditions stipulated in the company's articles of association. If the company breaches this obligation, Article 7/b of the Jordanian Instructions for Redeemable Shares for Private Shareholding Companies (2020) allows the owner of the redeemable shares to resort to the judiciary to claim the value of these shares. In its legal capacity, the Amman Court of Appeal ruled in its decision that the plaintiff, the owner of the redeemable shares, has the right to claim the value of her shares (Amman Court of Appeal, decision No. 37023/2011, dated 20/5/2014, qistas).

b) Granting holders of redeemed shares 'jouissance' shares:

We have previously mentioned that the Jordanian legislator did not explicitly stipulate the right of the company to grant 'jouissance' shares to the holder of redeemed shares. The only legal basis for the company's right to grant 'jouissance' shares is the decision of the Jordanian Law Interpretation Bureau No. (4) 2013, as referenced earlier. Therefore, if the company's articles of association stipulate its right to grant 'jouissance' shares in exchange for redeemed shares, the company is obligated to grant 'jouissance' shares to the holders of the redeemed shares.

2. Reducing the company's capital by the amount of redeemed shares:

As we have seen previously, the Jordanian legislator, in Article (82/c bis) of the Companies Law and Article (4/f) of the Instructions for Redeemable Shares for Private Shareholding Companies (2020), permits the private shareholding company to reduce its capital by the nominal value of the redeemed shares if the company chooses to cancel these shares after redeeming them instead of reissuing or keeping them.

Reducing the company's capital through share redemption does not require the approval of the company's general assembly, and the company's creditors have no right to object to it, even though reducing the company's capital harms their guarantees. This effect will be the subject of our discussion in the coming paragraphs

4.4. Effects of Shares Redemption on other of the Capital Shares Holders.

Here, we inquest whether shares redemption affects the rights of the remaining non-redeemable shareholders. Since there is no answer in Jordanian legislation, it is also necessary to answer this question by this study, we must also differentiate between the case of the shareholders obtaining and not obtaining 'jouissance' shares in exchange for the redemption of their shares.

1- In Case the Shareholders Obtaining 'Jouissance' Shares in Exchange for their Redeemed Shares

Referring to the rights enjoyed by the shareholders of the 'jouissance' shares mentioned previously, it becomes clear to

us that the shareholders of the enjoyment are in a better position than the shareholders of the capital in which the owners of spent equity will get rid of the investment and loss risk while it is borne by the holders of the capital shares. On the other hand, the owner of the 'jouissance' shares will retain the rights stipulated in the company's statute, as mentioned previously, which may amount to the retention of the enjoyment shareholder's right to participate in a percentage of the company's profits, participate in voting on the decisions of the general assembly and participate in the management of the company and others. Undoubtedly, the holder of the 'jouissance' shares competes with the owners of the capital shares in these rights, and they lack the exclusive possession of them.

2- In Case the Shareholders Non-Obtaining 'jouissance' shares in Exchange for their Redeemed Shares

The failure of the holder of the redeemed shares to obtain 'jouissance' shares and his final exit from the company will allow the remaining capital shareholders to monopolize all the financial and moral rights of the company's shares. They will monopolize the annual profits, especially in light of the expectations of increased earnings per share due to the reduction in the number of outstanding shares. This leads to the enrichment of shareholders' rights by increasing dividends, as a result of distributing them to a smaller number of shares (Al-Faki, 2015). They will also monopolize the management of the company by controlling the majority in voting on the decisions of the general assembly.

4.5. Effects of Shares Redemption on Company's Creditors

To find out the impact of the redeemed shares on the rights of the company's creditors, this study presents the following hypotheses:

1. In Case of Paying the Value of the Redeemed Shares from the Company's Capital and the Compulsory Reserve:

We have previously shown that some legal scholars have stipulated that, for the redemption process to be valid, the value of the redeemed shares must be paid from the company's profits. The value of the shares may not be refunded from the company's capital or from the compulsory reserve because they are among the guarantees of the rights of creditors that may not be touched (Al-Qalyubi, 1983).

However, the Jordanian legislator, in Article 5/b of the Instructions for Redeemable Shares for Private Shareholding Companies (2020), permitted the private shareholding company, in the event of non-availability and/or exhaustion of funding sources from the company's profits, to finance the redemption from its capital, provided that the minimum capital stipulated in the Companies Law is not affected.

This study makes the following observations about the aforementioned article:

1. The text of the aforementioned article violates the principles of the stability of the company's capital and its untouchability, which requires that the redemption of shares does not affect the rights of the creditors.
2. The text of the aforementioned article contradicts the fact that, when the company's capital is reduced—whether in the part that exceeds the minimum capital stipulated in the Companies Law or in the part that is less than it—the creditors' rights are tied to the entire capital of the company, on which the creditors relied when they dealt with the company.
3. The text of the mentioned article does not fit the case of a company that plans to redeem its full capital shares, as its project is based on a government concession for a specified period. Once its term ends, ownership of the project transfers to the government without compensation, or the company's assets are naturally consumable, such as mineral and coal mines, oil wells, and others.

2. In Case of Reducing the Company's Capital by the Amount of Redeemed Shares:

The principle is that the reduction of the company's capital involves harming the rights of the company's creditors. Therefore, the Jordanian Companies Law, in Article (82/b bis), grants the creditors of the private shareholding company the right to object to the procedures for reducing the company's capital (Jordanian Companies Law, 1997, Art. 82/b). However, the mentioned law also stipulated in Article (82/c bis) that the private shareholding company has the option to cancel the redeemed shares and reduce its capital by the amount of these shares, with the creditors having no right to object to the reduction of the company's capital by way of redeeming the shares. The same provision is repeated in Article (4/f) of the Redeemable Shares Instructions for Private Shareholding Companies (2020). Accordingly, this study considers that the

provisions of Articles (82/c) of the Companies Law and (4/f) and (5/b) of the Instructions for Redeemable Shares for Private Shareholding Companies (2020) harm creditors, since reducing the company's capital through redemption will reduce the guarantees to repay their debts. The Jordanian legislator should have provided guarantees for the rights of creditors in the event of a reduction in the company's capital by way of redemption of shares. These guarantees should include:

1. Granting the company's creditors the right to object to the decision to reduce the company's capital by way of redemption of shares.

2. Establishing a reserve for the redemption of shares equal to the amount by which the company's capital has been reduced so that it may not be disposed of, except after the debts of the company's creditors have been paid.

3. Providing real or personal guarantees to the company's creditors to ensure the payment of their debts in exchange for a decrease in the company's capital.

4. Not allowing the company to redeem the shares in the event of a loss, since the first priority in this case is to provide the necessary funds to support the company's financial position in order to continue its activity and obtain sufficient financial resources to fulfill its obligations and pay off the debts of the company's creditors (Nyoni, 2018; Dowidar, 2008; Ismail, 2002).

5. Not allowing the company's management to use inside information to implement the share redemption process (Birkmose, 2018).

The company's management members may redeem the value of their shares before their true value decreases, knowing that the company will face future losses that threaten its collapse. This will harm the company's creditors, who will face the loss and collapse of the company's financial position alone.

3. In Case of the Company Borrowing to Repay the Value of the Redeemed Shares:

This study considers that the company may not pay the value of the redeemed shares by borrowing, as this method will affect the rights of the creditors by increasing the company's debts and reducing its ability to pay off their debts

5. Results

The most important findings of this study are:

1. The Jordanian legislator did not expressly stipulate the right of the private shareholding company to grant 'jouissance' shares to holders of redeemed shares. Despite the issuance of the Decision of the Law Interpretation Bureau No. (4) 2013, which affirmed the right of private shareholding companies to issue 'jouissance' shares if their statutes stipulate that, this is considered a minor attempt to cover this legislative deficiency. The aforementioned decision did not provide any provision related to 'jouissance' shares. This legislative deficiency leads to undesirable results, such as the problem of interrupting the shareholder's connection with the company when redeeming all of his shares and depriving him of all his financial or moral rights in the company. This situation exposes the company to a problem free from shareholders if its existence continues for a period of time after the total redemption of its shares.

2. The Jordanian legislator violated the general rules regarding the reduction of the company's capital in Article (82/c bis) of the Companies Law when it permitted the private shareholding company to reduce its capital by the amount of the redeemed shares without requiring the approval of the general assembly or the right of creditors to object. This may harm the rights of shareholders and creditors and provides an opportunity for the company's management to abuse its unilateral powers to reduce the company's capital by redeeming shares.

3. The Jordanian legislator violated the principle of the stability of the company's capital and its inviolability, which is prescribed to protect the financial position of the company and protect the rights of shareholders and creditors, when it authorized the private shareholding company to finance the redemption of its shares in the event of non-availability and/or depletion of funding sources from the company's profits in Article (5/b) of the Jordanian Instructions for Redeemable Shares for Private Shareholding Companies (2020). Despite the stipulation of the aforementioned article not to prejudice the minimum prescribed capital, which is fifty thousand JD according to Article (66 bis) of the Companies Law, the text of the aforementioned article overlooked the fact that the rights of the company's creditors are related to the entire capital of the

company on which the creditors depend in their dealings with it, and that it is not permissible to prejudice it, whether it is more or less than the aforementioned minimum

6. Recommendations

The study recommends the following:

1. The Jordanian legislator should stipulate the right of the company to grant 'jouissance' shares to the holders of the redeemed shares and regulate the rights related to them, in order to complete the legislative deficiency that leads to undesirable consequences. These consequences include the problem of the shareholder's disconnection from the company when redeeming his shares and depriving him of all his financial and moral rights in the company. This situation exposes the company to the problem of being without shareholders if its existence continues for a period of time after the total redemption of its capital shares.
2. The Jordanian legislator should limit the financing of the redemption of shares to sources derived from the company's profits and reverse the allowance for companies to finance share redemption from their capital account. This should be done in accordance with the principle of the stability of the company's capital and its inviolability, in order to protect the financial position of the company, the rights of shareholders, and the rights of the company's creditors.
3. The Jordanian legislator should stipulate guarantees that protect the rights of creditors and ensure that the company's management does not abuse its powers in the event of a reduction in its capital by way of share redemption. These guarantees include: the right of the company's creditors to object to the decision to reduce the company's capital through share redemption; establishing a special reserve for the redeemed shares, ensuring that it is not disposed of except after paying the company's creditors; or providing real or personal guarantees to the company's creditors to ensure the payment of their debts in return for the decrease in the company's capital. Additionally, the company's management should not be allowed to use internal information to implement the share redemption process

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