

## Stocks Redemption

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### Abstract

This paper examines and analyzes the right of the Private Shareholding Companies in stocks redemption according to the Jordanian Companies Law No. 22 of 1997 and its amendments in comparison with United Kingdom Companies Act 2006 with the aim of clarifying the concept of redemption and showing weaknesses and strengths within the Jordanian legislation regulating the redemption right of a company. It clarifies what is the redemption, its conditions, how to regulate the redemption procedures and the effects of redemption. It concludes that the Jordanian legislator, even though he had stipulated the concept of the right of redemption, yet there is lack in regulating this right heretofore. Therefore, it recommends a number of essential issues, the most important of which is the necessity of issuing instructions that will regulate the right of the company in the redemption of its own shares in order to control the redemption process and clarify the legal implications thereof and to find a clear way for the shareholder of the redeemable shares rather than leaving him subject to the will of the contractors.

**Keywords:** Redemption, Stocks, Private Shareholding Company, Companies Law, Shares

### **1. Introduction**

The Amendment No. (4) of 2002 to the Jordanian Companies Law No. (22) for the year 1997 has come in line with the global development and technological development in an effort by the legislator to create fertile investment background to bring foreign investment opportunities into the Hashemite Kingdom of Jordan, in particular the giant intercontinental companies, as well to support internal investments. This amendment has introduced new legal concepts, including what called the "Private Shareholding Company."

A Private Shareholding company, of a new type that has its own distinctive character in terms of its flexible rules and its transcendence of formalities, is different from other companies stipulated by the Jordanian legislator in Article (6) of the Companies Law No. (22) for the year 1997 and its amendments towards the Solidarity Company, the Limited Partnership and the Limited Liability company as well as other companies.

By originating this type of companies, the legislator exalted the will of the power of the shareholders and gave them the ability to create

the legal rule that governs the relationship between them and considered it the first authority from which the rules applied to the company were derived. Beside, it has reflected the principle of "Consent makes the Law". Then, the the conventional nature was more than the regulatory nature, and thus it gave an opportunity for creative economic activities to be free from controls as in other companies. It also granted it a distinct legal medium to alleviate the severity of these rules and provided an opportunity to create partnerships with private projects that are specific to creative ideas (Alkharabsheh, 2015: 11-17).

This study will focus on the redeemability of the stocks under the Jordanian Companies Law compared to the United Kingdom Companies Law 1996, as it is a special topic that pertains to the private shareholding companies and is exclusively limited to other companies by clarifying its concepts, conditions, how it is applied, its effects, and the purpose of its creation.

The legislator has granted this type of companies the right to issue redeemable shares at the request of the company or the shareholders or

when certain conditions are met, in support of the provisions of Article (68 bis) of the Jordanian Companies Law that outlines the types of shares and options for shareholding and has given the right to issue multiple types of shares where the company resorts to issue such Shares with their flexible features desiring to attract new investors and pumping cash payments into the company away from borrowing. Such type of stocks has been stipulated in the United Kingdom Companies law, as it is found in limited liability companies, public shareholding companies and private shareholding companies. The present study aims to produce the best possible outcomes and compare them with the United Kingdom companies law in order to reach the desired benefit from stipulating right in the law and covering its legal aspects on ground is in this field, where its concept is ambiguous and there are conflicting opinions about its application.

## 2. Related Previous Studies:

**Al-Barghouthi (2018) entitled: Redeemable Stocks in Private Shareholding Company of shares that are not introduced in the Amman Stock Exchange, A Comparative Study.**

In this study, the authors discuss the nature of the shares of a Private Shareholding Company, the title of a Private Shareholding Company to redeem shares under the Jordanian Companies Law and the title of a company to redeem shares under the Egyptian Companies Law.

This study concluded that there is a legislative deficiency in organizing the redemption process, and that the legislator was satisfied to mention it in a comprehensive manner. The authors concluded a suggestion of recommendations, the most prominent of which was the necessity of issuing instructions regulating redemption, and suggested a legal regulation for redemption.

The current paper is consistent with the previous study in the research on the right of the private shareholding company in shares redemption. However, the current study differs from the previous study in that it will examine the difference between Dividend shares, Treasury stocks and redeemable shares. While this study differs by the fact that it will clarify the redemption procedures under the United Kingdom law in various companies and how to apply it on ground on the Jordanian private

shareholding companies, but the authors will not address a proposal for a legal regulation of redemption.

By commenting on the previous studies, the authors concluded that there were few studies that dealt with this subject, and this study may be one of the few studies that will address the Stocks Redeemability in the Jordanian Companies Law compared to the United Kingdom Companies Law.

Therefore, this paper study will discuss the Stocks redeemability under both the Jordanian Companies Law compared to the United Kingdom Companies Law, according to the following:

- The concept of redeemability.
- The procedures of redeemability.

## 3. The Concept of Redeemability

Seeking investment promotion in the kingdom, the Amendment No. (4) of 2002 to the Jordanian Companies Law No. (22) for the year 1997 has responded to the new economic and legal developments by including the "Private Shareholding Company" in the law. Where, the Jordanian legislator set more flexible rules compared to other companies' rules provided under this law. The legislator entitled the will of the founders a wide scope to regulate the company's contract and its Articles of Association, and narrow the jus cogens in organizing such type of companies.

Among the most important provisions granted by the legislator to the will of the founders is the agreement to form the capital of several types and categories of shares, including the permissibility of issuing redeemable shares. Further, the legislator also stipulated that the minimum amount for the contributed capital should be Fifty Thousand JDs, as (Article 68/b, e Bis) of this law provides as follow:

“b- The Memorandum of Association of a Private Shareholding Company may stipulate its right to issue recoverable shares either upon the Company or shareholder's request or upon the availability of certain conditions.

e- A Private Shareholding Company may buy any shares it had previously issued. It may also re-issue or sell same for the price deemed proper by the Board of Directors or cancel them and accordingly decrease its capital on the basis set

out in its Memorandum of Association and this Part. Company owned shares shall not be taken into consideration for the purpose of ascertaining a quorum for attendance at the General Assembly's meeting and for taking decisions therein, provided that the Securities Law and regulations and instructions issued pursuant thereto are observed."

Thus, this chapter will focus on (Article 68/b, e bis) of the Jordanian Companies Law by discussing the following two sections:

- Redeemable Stocks or shares
- Corporate Repurchase of its Own Stocks or shares

### **3.1 Reading and Importance of Stocks Redemption**

Upon tracing the emergence of stocks redemption, it became evident that United Kingdom Companies Law was reluctant to the idea of stocks redemption as well as the company's repurchase of its shares, based on the idea of protecting creditors' rights and any third party that could be harmed as a result of the stocks redemption process or the company's repurchase of its shares (Ferran, 153, 2008).

The beginning of the stocks redemption began in the United Kingdom Companies Law of 1929, whereby companies were allowed to issue redeemable preferred shares and were granted the right to repurchase its shares. However, in (1981) this right was expanded by allowing companies to issue ordinary shares provided that such shares are redeemable shares. The basis for this amendment of 1981 was a report issued by the United Kingdom Parliament Committee headed by Sir Harold Wilson who highlighted the difficulties facing small companies in raising their capital and the government's report on the Corporate repurchase of its Stocks or shares (Vitali, 2006: 6).

Hence, the United Kingdom companies law began to be flexible towards the alteration of capital by a company and the way the partners exit, by adopting the concept of redemption in an attempt to attract investment and cash flow into the market. (Kessler, 1954 :15).

The concept of the redemption process generally has a number of functions that can assist companies in the performance of them, the redeemable shares may work to achieve the privacy of the company's personality. In other

words, the company's redemption rules may work to preserve the special relationship between the shareholders in the company and thus maintain the stability of the company. For example, redeemable shares may be issued to shareholders who have specific obligations according to the contract, and once any failure to perform their duties appeared, the company will redeem the shares.

For example, a company may issue redeemable shares for its employees, where they can redeem at the end of the employee's termination or death, and thus the company maintains its privacy and stability (Ferran, 2008:156). A company may also issue redeemable shares to a shareholder based on strict preconditions so that these shares are redeemed if these conditions are met, such as the condition of work commitment for the company for a certain period.

Giving the company the ability to repurchase the redeemable shares, constitutes an incentive "for businessmen as it is a debt that can be withdrawn when they make a quick profit, as the profit resulting from redeeming them is considered the interests. (Kessler, 1954:15).

On the other hand, the redeemable stocks or shares may achieve a benefit to the company as it is effective in protecting the control of the original shareholders (owners) of the company, as these shares work as an exit method for short-term investors who want to achieve a quick profit without a long investment and convert their contributions and investments into quick cash as these shares are considered a way for investors to exit. (Vitali, 2006: 8).

In addition, redeemable shares protect the company from being controlled by investors by giving the company the ability to redeem the issued shares in the market and thereby reducing the opportunity for attempts to acquire the company by pooling the issued shares offered (Vitali, 2006: 8).

On the one hand, the company may wish to issue redeemable shares so that it has an alternative way to return the surplus capital to shareholders without making a repurchase of its own shares or paying a return (stamp fees), which is one of the most important reasons that the company prefers the redemption process over the stock repurchase process because there is no stamp fees due on redemption (Lexisnexis, 2018).

It is worth noting that the Jordanian legislator did not set any provisions for the private shareholding companies, when he granted it the right to issue redeemable shares or to put conditions for its issuance, or did not set a regulation for its implementation on the ground, however it has been left to the shareholders consent, the decisions of the General Assembly or the Board of Directors.

However, the United Kingdom law has regulated the issue of redemption from its beginning. As it has stipulated its provisions in section (18) of chapter three of the (2006) law, where it allowed for all the companies to issue redeemable shares, and put the detailed rules for its issuance and treatment. Thus, the issue of redemption make us thinking of the methods, controls and the rules of redemption that should steer the redemption process and how to deal with the redeemable shares.

Many scholars and researchers studied the redeemable stock, where it has been defined as “the shares granted to the shareholder who called in his shares during the corporate’s life, where the call in share means that a company has paid the the nominal value of the share to the shareholder during the corporate’s life without waiting until its dissolution or liquidation”. (Alkharabsheh, 2005:72). It has been also defined as: “the stock whose owner obtained its nominal value without waiting as it is the natural situation to dissolve and liquidate the company” (AlQalioubi, 1993: 486). Others defined it as: “The redemption of a company for all or part of the redeemable stocks from the shareholders holding these shares either against the nominal value or otherwise at the value specified in the Articles of Association” (Barghouti, 2018: 29). Whereas, United Kingdom jurisprudence defined it as “The shares issued by the company's capital that are redeemable at the request of the company or upon the request of the shareholder” (Duzer , 2009:770). It also defined it as (The Shares issued on conditions that allow the company to redeem these shares in the future) (Ferran, 2008: 156).

However, Redeemable Stocks or Shares could be definde as : the Shares issued on special terms and allowing the company or the shareholder to request a refund at nominal value or at the value agreed upon during the life of the company.

### 3.2 Corporate Repurchase of its Own Stocks or shares

The purchase of a company of its own stocks requires mentioning the reasons behind that as well as the rules thereof and the position of these shares.

For decades, the debate has intensified dramatically over allowing the company to buy its own shares and this concern has been the subject of discussion before several committees in the United Kingdom Parliament. Apparently, the debate was settled when this right was granted to the companies when a number of conditions were put in place for the protection from abuse of this right. The debate continued until the beginning of the eighties, when it was agreed that a company shall not undertake the process of repurchasing its own shares even if such right is provided in its contract and its Articles of Association, because the result of the process of returning the partners is to reduce the capital of the company, assuming that what is resulted from the repurchase process will lead to the cancellation of shares purchased by the company, and there is an unacceptable reality in converting the company's assets into a specific class of shareholders whose shares are purchased. (Gower, 2016: 316)

Many legislations adopted this idea. Even when laws were amended it has emphasized the concept of this idea and prevented limited companies from acquiring or subscribing to their shares, whether by buying them or in any other way, and they are subject to fines and penalties if they violate this rule (Gower, 2016: 316).

This is what the general rule of the United Kingdom Companies Law of 2006 has taken, as the company cannot hold its own shares unless certain conditions are met, by which it may possess its own shares including the redeemable shares. These conditions are defined by the provisions of Articles (690-708) of the United Kingdom Companies Law.

It worth mentioning, herein, the grounds that may drive companies to undertake the process of repurchasing their own shares, the most important of which are:

- The company's debts due on the shareholders:  
The debtor to the company may be a shareholder and in the absence of other financial assets, it is better for the company to restore the shares by

settling its claims instead of resorting to the courts, and to obtain unenforceable judgments, even if they are in greater amounts, even if the value of the stock in the market is less than the amount of the debt, (Kessler, 1954: 15).

- Eliminate unwanted shareholders:

The company is eager to buy shares of opponent shareholders, who always refuse the administration's actions in terms of the adjustments in the company by using their shares to blackmail the administration. So, it always strives to try to buy their shares to get rid of them as they are unwanted shareholders. (Kessler, 1954: 15)

The purchase of shares of opponent shareholders is the extremist practice of repurchase. This authority is used in the financial satisfaction transactions where the shareholder is excluded through the company's purchase of its shares at a higher price. In *Trevor v. White Whitworth*, Lord McKengtin strongly warned against any authority that results for the company practicing effective repression against the criticism of its performance through a simple method, such as repurchase of shares. It is clear that it destroys the democracy of shareholders and spoils the shareholder's right in accounting the administration. Then, the administration resorts to displace the opponent shareholders instead of paying efforts to improve its performance (McCabe, 1991:19).

- Eliminate the problem of Split Shares in the company:

Shareholders may become entitled to earn split or partial shares as a result of the earnings per share. For example, if every (100) shares had a return of one share, then the one who owns 50 shares had a return of half a share, while this problem can be solved by giving shareholders the option of cash compensation instead of partial shares, and thus the company solves this problem by buying partial shares and returning sold as units (Kessler, 1954:15).

It is clear that a company's purchase of its own shares is a thorny process that is risky if the company is permitted to act without controls and provisions, as both shareholders and creditors as well as the performance of the stock market are exposed to risk as the company is given the ability to interfere in the market by buying its shares when it believes that its price is less than

its value and sends signals that the company is confident that the value of the shares will increase depending on its self-assessment of its share price, and this assessment may be based on flawed basics, leading to market failure (McCabe, 1991: 23).

Similarly, the purchase process may ultimately lead to a reduction in the company's capital, which threatens equally creditors and shareholders, through the collapse of their project and the transfer of company money to specific shareholders whose shares have been purchased and thus they were able to obtain their full right while other shareholders assumed investment risks. (Ramadan, 2008:655).

Despite the fact that, the Jordanian legislator grants the Private Shareholding Company the right to purchase its shares according to the provisions of Article (68 / e bis) which states that "A Private Shareholding Company may purchase, sell or reissue the shares previously issued at the price that the Board of Directors deems appropriate, or cancellation and reduction of their capital by the amount of these shares according to the principles set out in its articles of association and this section, and the shares owned by the company are not taken into account for the purposes of the quorum availability in the meetings of the General Assembly and for taking decisions therein, taking into account the provisions of the Securities Law and the regulations and instructions issued pursuant thereto". Yet, there are no instructions or controls related to the process of repurchasing the stocks of a Private Shareholding Company. Whereas, in Public Holding Company has the right to purchase its own shares according to the provisions of Article (175/a) of the Jordanian Companies Law, and there are issued instructions that regulate such issue in (2014), given that the company's purchase of its shares is one of the most important operations carried out by the Private Shareholding Company.

Further, special instructions were issued for the purchase of the Public Shareholding Company for treasury shares issued for the year (2014), provided that the purchase shall take place through the Stock market.

As the Private Shareholding Company has not yet been included in the Stock market, there is no scope for the implementation and application of the provisions of (Article No. 89/1 bis). Where it refers what was not stipulated in the private shareholding companies' provisions to the provisions of the public shareholding companies, and thus the process of purchasing the private shareholding company is subject to an agreement between Shareholders according to its contract and articles of association.

On the other hand, the United Kingdom Companies law deals with the company's repurchase of all kinds of shares, as the Limited Liability Company, the Public Shareholding company, and the Private Shareholding company have the right to purchase their shares under the provisions of the United Kingdom Companies Law of 2006 under certain conditions. However, the Jordanian legislator granted this right to Public shareholding companies and Private Shareholding companies, where the public company's repurchase of its shares was regulated according to the instructions issued for the year 2014. But this right is considered ineffective for the Private Shareholding Companies until it is agreed to be included in the Stock market and thus the provisions of (Article 89 bis) of the Jordanian Companies law No. 22 of 1997 and its amendments shall apply.

According to the provisions of Articles (690-708) of the United Kingdom Companies Act of (2006) which constitute the general rules that control the company's repurchase of its shares, and one of the most important controls of this Article is that the company, according to the provisions of Article (690/2), cannot hold its shares if the remained shares ultimately after a process of Repurchase are only redeemable shares and treasury shares. In other words, at least one shareholder shall, after the repurchase process, hold non-redeemable shares (Duzer, 2009: 178). This is what the Jordanian legislator adopts when it stipulates in Article (66) bis of the Companies Law that the capital of the Private Shareholding company shall not be less than fifty thousand JDs. Since the company cannot purchase its shares if the result of this affect the minimum amount of its capital.

The process of repurchasing takes place only for shares paid according to Article (691) of the United Kingdom Companies Law, and this means that the company cannot subscribe to its shares, but it is beneficial from the provision of this article that the shares can be purchased from shareholders and in which stipulated the word "purchase" but does not include the subscription (French, 2014: 295). This is consistent with the Jordanian legislator, as the company's purchase of its issued shares does not include all the securities issued by the company, it is a process that includes only the shares issued by the company, however it does not include bonds or stock options, (Obaidat, 2015: 131).

In the United Kingdom Companies Law, before the commencement of the stock repurchase process, the company's contract and Articles of Association shall not stipulate a provision prohibiting the company from re-purchasing its shares, as it was granted the right to issue the redeemable shares, even if its contract and regulations did not include that (French, 2014: 295). Whereas in private Shareholding companies according to the Jordanian legislation, the company's contract and Articles of Association should include a provision granting this right. Thus, United Kingdom legislator granted the private shareholding company more flexibility in equity issues compared to the Jordanian legislator.

In United Kingdom law, the company is obligated to pay the value of the shares purchased in full from the time of the purchase, and that the purchase at installments or by the payment of the amount at a later date is not permitted (Duzer, 2007: 187). However, under the Jordanian Law of Companies there are no restrictions on payment of stocks purchase as (The company and the shareholder) can agree on any mechanism to pay the price other than what the United Kingdom legislation says.

The United Kingdom law stipulates the details and restrictions governing the company's Repurchase of its shares that must be followed to provide the necessary protection to the market where the driving reasons for the purchase are taken into account. Often, monetary is less in case if the goal of the stock Repurchase is to activate the employee stock plan. (Lexisnexis, 2018).

The process of repurchasing and financing of the company under the United Kingdom Companies Law of (2006) differs according to the type of company. This process differs in the public shareholding company from the private shareholding company, where the latter is the subject of this study, as the United Kingdom law permitted the Private shareholding company to repurchase its shares if the conditions mentioned in the institutional investor and provided that the rules related to the share Repurchase process are fulfilled. (lexisnexis, 2018).

According to the provisions of Article (693) of the United Kingdom Companies Law, the Private shareholding company always implements the process of shares repurchase outside the market “off-market purchase”, meaning that the purchase process shall take place in a place other than the recognized investment stock market or in a recognized stock market but not subject to a marketing arrangement on the stock market.

The above mentioned Article took into account whether the company’s capital meets the requirements to purchase the shares stipulated in the law and the rules mentioned in the Companies Law and whether it will do so through obtaining any approvals required to carry out the stock purchase process and whether any banking facilities obtained by the company contain contraindications affecting the repurchase process and how to fund the repurchase process and other requirements. (lexisnexis, 2018).

According to the provisions of Article (692) of the United Kingdom Companies Law, the private shareholding company finances the process of repurchasing shares that are made outside the stock market from its distributable profits, and from the fees of the new equity issue that was made with the aim of financing, and from the capital according to the United Kingdom Companies Law (709-723). And from any cash available according to the provisions of Article (962) of the United Kingdom Companies Law, where the total purchase price per year shall not exceed (15000) Euros or the nominal value estimated at (5%) of the capital paid in full from the beginning of the fiscal year, whichever is less.

In the Jordanian Companies Law, and based on the assumption that the Private Shareholding companies is included in the stock market, the process of financing the company to purchase its shares will be in accordance with the instructions for the purchase of the Public Shareholding Companies issued in 2014 and in accordance with the provision of Article 4 / b, where the financing will be from retained earnings and other reserves except the required reserve.

It is worth noting, that the financial position determines for the company the options that are physically available to it, and therefore if there is more than one financial option available for the company, it would be better to focus on the impact that each option will have on the company’s accounts that follows the company’s purchase of its own shares, (Lexisnexis, 2018).

The company's purchase of its own shares requires a number of procedural steps that should be followed to produce the legal effect, which is obtaining the approval of the shareholder, the owner of the shares, on the process of selling his shares to the company. The approval of the shareholders should be obtained by a special decision on the terms of the purchase contract before committing to it in accordance with the provisions of Article (694) of the United Kingdom Companies Law.

However, obtaining this approval can be reached in two ways: either upon the issuance of the shareholders’ approval by a special decision before the company commences to a contract, or that the purchase contract stipulates that it does not make any legal effect until its terms are approved by the shareholders by a special decision (French, 2014: 298). However, the Jordanian legislator did not mention the item of the company's purchase of its own shares in the terms of reference for the ordinary or extraordinary general assembly mentioned in Articles (76 bis and 77 bis) of the Jordanian Companies Law. By reasoning in practice, the purchase decision to be issued by a company is issued upon an extraordinary general assembly decision in accordance with the provisions of Article (89 bis), which refers to the application of the rules of Public Shareholding Companies to everything that is not explicitly stated. As it has been expressly stated in the provisions of

Article (9/175) of the Jordanian Companies Law that a company's purchase of its shares shall be subject to the powers of the extraordinary general assembly.

As for the decision required by the company's shareholders in the United Kingdom law, it is a special decision taken by the general assembly to approve on the purchase contract unless the company's Articles of Association and contract stipulate a higher percentage, provided that the shareholder to whom the purchase decision relates is not entitled to vote, either in person or on behalf, where the shareholder is not qualified to vote because there is an interest. Otherwise, the decision is deemed invalid according to the provisions of Article (695) of the United Kingdom law, and the company may take the approval by a written decision where the Private shareholding companies may, according to United Kingdom law, hold meetings of the General Assembly upon written decisions by sending a copy of the purchase contract before sending the decision or this copy is attached to the decision for all shareholders. If the decisions is to be taken by a General Assembly meeting, the decision is deposited with the company's registrar 15 days before the general meeting is held until it is seen by the shareholders and distributed as well in the General Assembly meeting of the company, and if the contract is not written, a memo clarifying its terms shall be issued and all shareholders shall be informed of the Purchase contract and the name of the shareholder related to this contract, (Duzer, 2009: 177) , (French, 2014:299).

Compared to the Jordanian legislator, which enforced a company to hold an extraordinary General Assembly' meeting for the approval on purchase of the company's own shares, but the direct related shareholder in purchase contract is allowed to vote and attend the above mentioned meeting. However, it is suggested that the shareholder should be prevented to vote because there is an interest.

On the other hand, in the United Kingdom law, there is no specific time between decision taken by shareholders for the approval on purchase of the company's shares and Purchase contract. As it is possible that the decision to approve the purchase process and the purchase contract is in two close times (French, 298: 2014).

In the Jordanian legislation, and on the assumption that the Private Shareholding companies is included in the Stock Market, Article (3) of the instructions issued regarding the public shareholding company's purchase of its own shares is binding to disclose to the Securities Commission the decision recommended by the Board of Directors to the General Authority to approve on the purchase process immediately upon its issuance. The company is obligated, according to Article (6) of the same instructions, to implement the purchase process within one year from the date of the first purchase, and it becomes clear that the General Assembly's decision to approve the purchase is not to coincide with its immediate implementation, but it should end within a year if it begins implementing the decision.

However, this approval issued by the shareholders of the company may be general or limited to purchase its own shares in a certain capacity or from a certain category. Also, it can be conditional, subject to certain conditions, or not (Duzer, 2009: 177). And this is what the Jordanian legislator agrees with, as the General Assembly takes its decision as appropriate.

There are a number of steps that should be taken after own shares repurchasing, in particular the buy-backed shares that have been repurchased, in terms of canceling or holding then as (treasury shares, according to the provisions of Articles (706) and (704) of United Kingdom law.

In addition, the company's members record should be updated, the share certificates issued for the shares purchased should be canceled, and any collectable stamp duties should be paid in respect of the shares purchased and all requirements by the Corporates Council should be met, such as a copy of the stock purchase contract. The company should also update its accounts to reflect any changes in the company's capital and any reserves affected as a result of the financing of the own shares purchase. Further, a copy of any agreed share purchase contract shall be kept available for examination for a period of ten years. Previous reference: (Duzer, 2009:177). This process in Jordanian law obliges the company to update its data with the Companies Control Department and to clarify the changes in its contract and its Articles

of Association. However, given that the purchase process is applied in the Stock Market, the fees and stamps applied are paid according to the provisions of the Stock Market.

#### **4. The procedures of Redeemability**

The Jordanian legislator authorized the private shareholding company to issue redeemable shares within the company's capital formation at the request of the company or the shareholder. However, he did not set conditions, provisions or a way to organize the redemption process, but rather he gave the Minister the authority to organize the redemption process according to the amendment of the Jordanian Companies Law No. (34) of 2017. Whereas, Article (68 / b bis) of the Jordanian Companies Law stipulates that "the articles of association of the private shareholding company may stipulate the right of the company to issue redeemable shares either at the request of the company or shareholder, or when certain conditions are met, and the Minister shall issue the necessary instructions that specify the conditions for the issuance of this type of stock and its cases of redemption". However, to date, no instructions have been issued to regulate the redeemable shares.

On the other hand, the United Kingdom legislator has laid down a regulation for the redemption process within the provisions of the United Kingdom Companies Law in (2006), by allotting for it Section Three of Chapter Eighteen.

**This chapter will discuss this issue through the following two sections:**

**Section One: Issuance of Redeemable shares.**

**Section Two: Financing the Redemption process**

#### **4.1 Issuance of Redeemable Shares**

The issuance of redeemable shares includes a statement of the right to issue them, the non-redeemability (failure) reasons and a statement of the provisions of how to redeem the own shares, and this will be dealt with through the following sub-sections.

##### **4.1.1 Power of a Company to issue Redeemable Shares**

A private shareholding company has the right, according to Article (684) of the United Kingdom Companies Law, to issue redeemable shares either at the request of the shareholder or

the company unless otherwise provided by its contract or its Articles of Association. Meaning that as a rule, a company has the right to issue such shares and it may not be prevented from issuing them unless the company's contract and Articles stipulated that it was forbidden from this right. (Duzzer, 2007).

However, the Jordanian legislator authorizes the company, according to the provisions of Article (68 / b bis) of the Jordanian Companies Law, to issue redeemable shares if the company's Articles of Association stipulate this right, meaning that if the company's Articles of Association do not provide for the right to issue redeemable shares, it is not allowed for the General Assembly neither the Board of Directors to issue this type of stocks unless after amending its contract and Articles of Association.

According to the provisions of Article (686) of the United Kingdom law, the redeemable shares should be paid for in full by the shareholder before proceeding in the redemption process, and this prevents the redemption process from erasing the personal responsibility of the shareholder whose shares are redeemed in relation to the unpaid capital.

In order to prevent the company from being arbitrary, the law obligated to pay in full the price of the shares upon redemption, unless otherwise provided in the redemption agreement, or it was agreed with the shareholder to pay the price later (French, 2014: 295). According to the nature of the private shareholding company in Jordanian law, it is permissible that the founders are free to agree on organizing the process of paying for the redeemed shares. However, the authors deem it is not permissible to redeem the shares without a compensation, as it would cause injury to the right of the shareholder and violate the rules of justice, while, the Jordanian Companies Law did not stipulate the necessity of determining the price of redemption leaving the matter to the will of the founders. In practice, this matter is controlled by the Board of Directors and subject to its decision in the event that it is not restricted by the company's Articles of Association.

Conversely, the United Kingdom legislator did not determine a certain percentage for the redeemable shares at the time of their issuance,

as the majority of the company's ownership may be from the redeemable shares, however according to the provisions of Article (684) of the United Kingdom Companies Law, it is forbidden that a company's capital consists entirely of redeemable shares by that it is not possible to issue redeemable shares, if there are non-redeemable issued shares. The provisions of Article (690) of the United Kingdom Companies Law prohibited the company's purchase of its own shares if after the purchase, only treasury and redeemable shares remained, and also the provisions of Article (641) of the United Kingdom Companies Law prohibited the company from reducing its capital if it results in no shareholders remaining except redeemable shares holders.

The United Kingdom legislator aimed from these provisions stipulated in the law to protect a company from the risk that it will end up losing its shareholders in the event of a redemption of its own shares. (French, 2014: 297).

However, compared to the Jordanian legislator, according to the provisions of Article (68 / a bis), which allowed the issuance of any type or category of shares without specifying the related percentages thereof and provided that it should be free from any restriction regarding these percentages. Therefore, given that the provisions of this Article is absolute without restriction or condition, it does not mean that the company's capital may consist of the redeemable shares only, as the legislator required that the minimum amount for the capital of a Private Shareholding Company shall be fifty thousand JDs.

In line with the principle of capital stability and the protection of creditors and shareholders of the company, by terminating the company without shareholders, it is not acceptable from a practical point of view that the minimum amount of the company's capital, stipulated in the law be composed, even partially, of redeemable shares in line with the principle of the company's capital stability.

Also, it is not permissible to convert the different types or categories of shares and their classes may not be converted into redeemable shares after their issuance according to the United Kingdom law. As redeemable shares must be issued from the beginning, because the conditions for redemption are set, in United

Kingdom law, before the redemption of shares is issued and offered to shareholders (Duzer, 2009: 177 ).

Whereas the Jordanian legislator did not put any objection to the company converting and replacing any type or class of shares issued by the company into redeemable shares, as this matter was left to the shareholders agreement and according to the contract and the company's Articles of Association. However, even if the contract and the Articles were not specified in the beginning, then such decision may be issued by the company's general assembly upon an extraordinary meeting subject to the provisions of Article ( 80 / c). Where this Article imposes on the company to take into account the Category rights of shares issued by the company when it makes the process of converting shares into redeemable shares, so that it may not be prejudiced until after the owners 'approval to convert them.

The idea of observing the class rights of shares issued by the company is agreed by the United Kingdom legislator with the Jordanian legislator. If the company performing the redemption process has different categories of shares, then it is necessary to take into account whether the resulting redemption prejudices the rights related to any of these categories or not, and the company will need to obtain the approval of the category whose redemption affects its rights. (Lexisnexis, 2018).

As well, in the Jordanian legislation, the redemption process takes place either at the request of the company or the shareholder, or when certain conditions are met. In the event that the redemption is suspended upon the request of the company, it is entitled to request its own shares redemption at any time, however this right is permissible and the company is not obligated to use it. Nevertheless, when there is a binding provision in the company's contract and its Articles of Association, the company is required to redeem the shares upon certain conditions, and the company may be obligated to implement redemption at a specific date or a specific case. For example, when a shareholder dies or reaches the age of sixty or his shares fall below a certain amount or fail to fulfill a specific obligation. Redemption may be at the request of the shareholder, and the shareholder is

completely free to request redemption at any time, unless otherwise provided in the Articles of Association that limits this right by a specific period of time.

One of the important points that must be considered regarding the redemption of redeemable shares is the timing of redemption, which can be fixed with specific dates, limited to a specific period, specified by major events, or left entirely to the desire of the company's administration. The United Kingdom jurisprudence directs that if a specific date is set for redemption, the shareholder or the company or both are free to take the decision (Gower, 2016: 319) and this is consistent with the Jordanian practical reality.

It should be noted here, that if the shares are redeemable, based on the option of the company, the shareholder, or both, then the amount payable upon the issuance of the redemption decision may be fixed or calculated based on an equation, where such equation may be fixed by the contract and the company's Articles of Association or issued based on a judgment or a decision by an expert or according to what the Board of Directors considers and the General Assembly has the right to estimate the value of this amount if the contract and the Articles of Association allow it.

However, if this matter is left to the company to determine the share price, it is an agreement that is determined by consent between the company and its redeemable share holders, in accordance with its contract and Articles of Association, or in accordance with the decision of the General Assembly' decision taken to redeem the shares, meaning that "Consent makes the law". However, the authors consider that the redemption price option is an agreement option that is not permissible to interfere with or set a specific standard by the legislator. However, it could closer to justice that a specific equation for the value of this amount is determined by the company's auditor, because the share price is valued at a value equal to the nominal value or less or more.

When any of the reasons for redemption are realized, obstacles may arise to the process of redemption. For example, the company may fail to perform the redemption process, such as if the company revokes its commitment to redeem the

redeemable shares when the redemption conditions are met or it retracts the implementation of the stock purchase agreement that was concluded with shareholders, This may happen perhaps because the company decided to void the contract or could not perform the contract for urgent reasons. For example if the new share issues did not achieve the desired return or if its profits were not satisfied. Then what is the compensation that the shareholders deserve?

In this case, and according to the provisions of Article (735) of the United Kingdom Companies Law, the company is not liable in damages in the event of any failure to implement, as it is believed that the failure to implement does not achieve any damage as the result of the failure is the seller's remaining a shareholder in the company and without prejudice to any right of the shareholder, except his right to sue the company for damages in respect of its failure.

One of the ways available to the court is to take a decision for a specific performance (Payment Order) by requesting the company to redeem the shares or carry out the purchase process according to the agreed terms. However, if the company shows that it is unable to cover the costs of the redemption process or implement the purchase agreement from the distributable profits, the court shall not order it to a specific performance order. Meanwhile, the provisions of Article (735) did not mention any references to other shareholders' rights,

However, there is little possibility that shareholders have the right to sue the company on the basis of a court alert to prevent the company from distributing any profits until it is able to fulfill its commitment (Gower, 2016: 337-338).

If the company is wound up, then it is considered a case of failure. Thus, if the company liquidates whatever type it has an optional liquidation and there are redeemable shares or the company has committed to a contract to purchase shares and the conditions were achieved thereof, but the shares have not been redeemed, then the terms of redemption may be enforced against the company, and When shares are redeemed, they are treated as cancelled. However, if the company is wound up due to bankruptcy, the owner of the redeemable

shares, if the company is forced to implement redemption, may obtain the amount owed, in whole or in part, or not at all, as he is treated as a creditor of the company (Gower, 2016: 337-338).

If the conditions for redemption are applied to the company upon liquidation, then the redemption amount shall be paid in priority before any amounts owed to the shareholders and all other debts and liabilities of the company and any amounts owed to the preferred shareholders who have preference in the capital according to the provisions of Article (735) of the United Kingdom Companies law (Gower, 2016:337-338).

Comparing with the Jordanian Companies Law, it is noted that, given the lack of instructions governing the issue of redemption, the company's contract and its Articles of Association have the priority in application over how to compel the parties to abide by it and indicate how to remedy the company's failure to redemption.

The author, however, think that failure in the redemption process should be monitored by the court by an application submitted to the court by the company or the shareholder. However, before the court decides to force the company to issue a share redemption decision, it should take into account the opinion of the company auditor on whether the redemption process can be implemented as well as the financial implications that can be reflected on the status of the company in case the company is forced to redemption.

In the case of the inability to compel the company to redeem, the authors consider that the owners of the redeemed shares shall be treated, as soon as the redemption conditions have been met, as privileged creditors due to the specificity of the redemption idea as it originated from the idea of a fixed-interest debt.

#### **4.1.2.Terms & Manner of Redemption**

The process of recovery takes place by taking a decision from the body authorized by law or specified in the contract and the Articles of Association if the law permits it to do so. However, according to the provisions of Article (685) of the United Kingdom Companies Law, two options were decided to determine the

provisions of the appropriate conditions and how to redemption:

1. Upon the issuance of a decision by the Board of Directors that specifies the conditions for redemption and how to follow the procedures for redemption, if this authority is granted to the Board under the company's contract and Articles of Association or by issuing an ordinary decision from the General Authority to amend the contract and the company's Articles of Association and give the Board of Directors this authority. Once the Board of Directors has this power, it should determine the terms, conditions and how to redeem the shares before the company issues the redeemable shares, and it should announce those terms and conditions in the capital statement and should notify the companies registrar thereof.
2. Where the Board of Directors are not authorized to issue the terms, conditions and terms for redemption, then it should be mentioned in the company's contract and Articles of Association. As for the Jordanian Companies Law, and in light of the lack of instructions that regulate the redemption process, it is noted that upon the practice in Jordanian companies that issue redeemable shares, the person authorized to determine the provisions, conditions, and method of the redemption process is the General Assembly, according to an extraordinary decision or by a statement mentioned in a contract and Articles of Association of the company, or by authorizing this power to the Board of Directors, and thus it will agree the United Kingdom law.

However, the authors deem that it is right for the General Assembly to take charge of deciding these terms and conditions, or to be stated within the company's contract and Articles of Association, once the essence of the redemption problem is the terms and conditions that will be applied when redeeming shares in order to protect the non-redeemable shareholders whose shares cannot be redeemed, so that all shareholders realize their rights even if it is a non-flexible requirement.

It should be mentioned that redeemable shares are treated as canceled, in accordance with the provisions of Article (688) of the United Kingdom Law, which states: "Where shares are redeemed, the shares are treated as canceled,

and the amount of the company's issued share capital is diminished accordingly by the nominal value of the shares redeemed". This can happen during the practice of redemption within the Jordanian companies where some companies resorted, during the redemption process, to redeem its own shares and reduce them by the nominal value of the shares, if it is provided so by the company's contract and Articles of Association. This is practically can done by two separate decisions by the extraordinary general assembly, as the company's capital may not be reduced by virtue of merely redeeming the shares. However, some companies resort to redeeming the redeemable shares and holding them as treasury shares owned by the company, contrary to the United Kingdom law that stipulated the cancellation of the redeemable shares once the redemption decision has been issued.

Whereas, the authors consider that the redemption process in terms of its concept, coming from international companies, never resembles the idea of the treasury shares and therefore it is not accepted that the company maintains a redeemable share as a treasury share.

#### 4.1.3 Financing of Redemption

According to Article (687) of the United Kingdom Law (2006): "A private shareholding company may redeem out redeemable shares of distributable profits of the company".

The distributable profits are defined as (the net profits and the remaining amounts of money from the company's income after deducting the expenses and overheads) (Ramadan, 2008: 204). Whereas, distributable profits, according to the United Kingdom jurisprudence, are defined as the accumulated profits, as they are not used through distribution, capitalization or amortization of losses. (Lexisnexis, 2018).

However, the authors defines the distributable profits as: "The net profit achieved in the same year after deduction of expenses and reserves, and any profit not distributed in previous years". Besides, the Profits should be real earnings not fictitious profits, as fictitious profits are dividends that are distributed in violation of the law or those profits that do not conform to the financial position of the company. The profit is

fictitious if there is no actual increase in the company's net assets, whether as a result of the company's business or by selling some of its assets.

The consequence of the fictitious profits lies because it affects the capital of the company, which may not be affected except in accordance with the provisions of the law. However, the Jordanian legislator did not explicitly address the fictitious profits and impose a disciplinary effect thereof, but it has imposed civil and penal liability on the members of the Board of Directors in case of violating the law and the provisions of the contract and the Articles of Association of a company. As well, in the case of distributing fictitious profits and not identical to the reality of the company, Articles (73 / bis, 157, 158, 5/287/159) of the Jordanian Companies Law (Almawajdah, 2014: 24) (Barghouthi, 2018: 41).

If the company finances the entire Redemption from the distributable profits, then the Redemption process will produce the following effect: which is to reduce the company's capital by canceling the redeemed shares, as it is considered canceled by law, upon its redemption at the nominal value, and in return its amount shall reduced from the distributable profits and transfer the amount to a fund called "Capital Redemption Reserve" of the company.(French, 2014:295)

Where, the Capital Redemption Reserve should be equal to the value of distributable profits, as it increases in the event that the redemption value is paid from the distributable profits at the nominal value, which deducted from the company's capital. (Duzer,2009: 178)

However, Creditors cannot object to the reduction of the company's capital in this case, given that with the company's Capital Redemption Reserve in place where the company transfers the amount that was reduced from the company's capital to the Reserve within its budgets. This means that the company's capital has never been affected, where a Capital Redemption Reserve is treating Shares as part of the capital of the company and shall not affect the rights of creditors, as the company has to dispose of its profits in the manner it deems appropriate (Gower, 2016:321).

The Jordanian Companies Law is consistent with the United Kingdom Companies law regarding financing redemption from profits, as it permits the company to deduct a portion of its net profits for the voluntary reserve, and the General Authority may decide to act in the manner it deems appropriate, to use this reserve for the Company purpose, or it may distribute it amongst the shareholders as profits (85 / b / bis) . The voluntary reserve is defined as :(the deducted part of the profits that the shareholders may request its distribution, as it is based on the idea of saving a portion of the shareholders 'profits and depriving them of it to achieve a legitimate interest of the company such as covering expected additional expenses, then the company may form it or not, and if the company did not use it, the general assembly may decide to distribute it on the shareholders.(Nannis, 2002: 96). Consequently, the company may use this reserve to finance the redemption process, and there is nothing to prevent this.

#### **4.1.4. Redemption Finance from Share Premium Account**

The United Kingdom law also stipulated that the company can finance the redemption process from the fees of new share issues, known as the issue premium, and the issue premium is the additional value on the nominal value of the share and it shall be paid by the shareholders in exchange for their subscription with the old shareholders in the retained earnings and reserves, thus preserving the interests of the old shareholders and the value of their shares. (Nannis, 2002: 86).

According to Article (81 / b / bis) of the Jordanian law, it is permitted for the Board of Directors to issue authorized shares at any price, whether at the nominal value or higher or less. The increase in the nominal value of the share is an issue premium recorded in a special account, called the "Share Premium Account", after covering issuance process. However, it not permissible to distribute profits from this account, so it does not give a special aspect of the company's activity as it is part of the company's capital. (Mustafa, 1988:491). Some of the jurisprudence opinions believe that the issue premium is a financial value added to the nominal value of the share, so it should be treated as part of the company's capital and shall

not be distributed as dividends, otherwise it is considered "a fictitious profits", as it is not a profit and does not result from the company's practice of its purposes (Nannis, 2002 : 88)

While another jurisprudence opinion said that the issue premium combines the characteristics of profits and the company's capital, based on a fact that the issue premium is additional amounts to the nominal share price, however it does not merge into the company's capital, which when combined with the obligatory reserve form a guarantee to creditors. However, the issue premium can be considered a profit belongs to the company and then a company is free to dispose of it. (Sudky, 1993:34).

The executive direction, in practice, choose this opinion, as cash is distributed to shareholders from the issue premium account if there are no losses incurred by the company and provided that they are in excess of the company's need. (Announcement issued by the Companies General Controller in 2019). Consequently, the issuance account can be used to finance Redemption process in practice within Jordanian companies if its contract and memorandum permit this.

The United Kingdom Companies Law states in the provisions of Article (687): "If the redeemable shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to the aggregate of the premiums received by the company on the issue of the shares redeemed or the current amount of the company's share premium account (including any sum transferred to that account in respect of premiums on the new shares), whichever is the less".

The amount of the company's share premium account is reduced by a sum corresponding to the amount of any payment made for redeemed shares from the company's capital at the nominal value of the redeemed shares (French, 295: 2014). It is noted here that the United Kingdom Companies Law has reduced the issue premium and the company's capital account (Gower, 2016: 321). If the share premium amount is less than the nominal value of the shares, the difference amount shall be transferred to the

Capital Redemption Reserve. (Duzer, 2009: 180).

The Capital Redemption Reserve has been established for cases where the company funds the redemption process from distributable profits or partly with the returns of the issue premiums, as it transfers the amounts of redemption to the Reserve in parallel with the reduction of the company's capital as a result of the cancellation of the redeemed shares. The Capital Redemption Reserve is un-distributable reserve, however it can be used for issuing additional paid-up shares distributed to shareholders. Otherwise, it is subject to the capital reduction rules (Gower, 2016: 322).

The authors concludes from this that the idea of the redemption process in United Kingdom law is based on the principle of canceling the redeemed shares, when implementing the redemption process and reducing the company's capital by the nominal value of these shares as they are fully paid. As well, compensating the reduction in parallel from the issue premium or in the Capital Redemption Reserve in the case of financing redemption from the distributable profits.

#### **4.1.5. Redemption Finance from Company's Capital**

Under Articles (709-723) of the United Kingdom Company's law the shareholders of a Private Shareholding Company is granted, unless otherwise provided by its Articles of Association or contract, the right to take a decision for the approval on redemption from the company's capital. This is called a payment of permissible capital. Where this method cannot be used by a company unless after the company uses the full available profits and the full issue premium and converts it to the company's capital. (Duzer, 2009: 181).

The amount of permissible capital payment is the amount of the sums required to be found for the redemption price after the exhaustion of the use of available profits and the issue premium. Where the available profits related to the payment of the of permissible capital are the distributable profits which can be determined by a company through the following elements:- Profits - losses - assets - liabilities, capital stock price and reserves including non-distributable

and the company should announce the specified amount through the amount of any distribution made in a legal way by the company after the date of the accounts related to determining the available profits or before the end of this period and by resorting to the method of financing the redemption process from the capital of the company (payment of the permissible capital), the company's capital is reduced because the redeemed shares will be canceled and there is no way to balance through the capital redemption reserve, and thus the company will actually reduce the capital. (Gower, 2016: 332)

The procedures required to implement the financing process of the payment of the permissible capital are complex and thorny and should be followed literally in order for the necessary legal effect to occur so that some companies may prefer to reduce their capital according to the decision of the General Assembly rather than financing the redemption with the authorized capital payment (Duzer, 2009: 181).

Initially, the Board of Directors shall issue a specific statement, specifying the value of the amount required by the payment of the capital and the approval of that payment, explaining that the company is able to continue its work within at least one year from the date of executing the financing process from the capital, it has the ability to discharge its debts and obligations, clarifies the financial resources, that the Board of Directors believes it is available during this year, show the goals that the Board of Directors seeks during that year, clarify the company's ability to continue its business and its ability to pay its debts during the next year of the financing process, attached with the reinforcement of the legal auditor shows that the permissible capital payment has been calculated accurately and that the company has the ability to continue its business and has the financial solvency to pay its debts and fulfill its obligations and that the Board is not aware of anything that indicates that the statement of the board of directors is illogical and that it is based on rationale (2008: 335 Gower,).

The General Assembly's shall issue a special decision of its approval to finance redemption from the company's capital, whether by a written decision or a general meeting. The board

of directors' statement should be available to the members to view or send it, attached with the written decision, to all members who are entitled to vote on the decision. However, members whose shares relate to the redemption process are not allowed to vote, otherwise the decision is deemed illegal (Duzer, 2009:187).

It must pass within a week immediately after the disclosed statement of the Board of Directors and after the approval of the General Authority within a week, it must be published in the newspaper so that any creditor has the right to object to the decision of the General Authority within five weeks directly from the date of publishing the decision requesting to prevent implementation.

The decision should be passed within a week immediately after the disclosed statement of the Board of Directors and shall be issued within a week, after the approval of the General Assembly. The decision should be published in the Official Gazette so that any creditor has the right to object to the decision thereof, within five weeks directly as of its publishing date, requesting to prevent implementation.

The company shall either provide notice of the same provisions published in the Official Gazette to be published in a newspaper, circulated in the part in which the company is registered in the United Kingdom, or provide written notice to all creditors, provided that the decision of the General Assembly shall be delivered to the Companies Council within 15 days attached with a copy of the Board's statement along with the auditor's report. Also it shall be available for inspection by any member or creditor during the period starting from the date of publishing the decision in the Official Gazette until five weeks (Duzer, 2009: 184).

However, the payment of the company's capital to finance the redemption process can only be executed after five weeks from the date of taking the decision until 7 weeks, whereby opposing members and creditors may resort to the court to challenge the decision in accordance with the provisions of Article (723) of the United Kingdom law.

Where any member or creditor may submit to the court an application to cancel the decision taken, as this decision affects the capital of the company and affects the rights of creditors and

provides notice to the Companies Council. The court has broad powers for such a request, where the court may take one of the following actions:

- Postponing the procedure where an arrangement can be made to convince the court that the redemption process is in the interest of the opposing shareholders and / or protect the opposing creditors.
- Give instructions and find an exit that it may think is appropriate to facilitate or start implementing these arrangements.
- Revoke or confirm the decision upon the terms and conditions that it may think are appropriate, according to the provisions of Article (721) of the United Kingdom Companies Law.

In light of the above mentioned, the question is, can the idea of Redemption finance from the company's capital be applied under the Jordanian law?

The authors deem that due to the lack of instructions regulating the redemption process, while leaving the issue of redemption subject to the contract and the company's Articles, there is nothing to prevent the founders' agreement to determine how to finance the redemption. However, in practice, Often companies, according to the records of the Companies Control Department, determine financing from profits, issue premiums, or other funds away from the company's capital.

Some believe it is permissible to finance from the capital of the company, based on the fact that the Jordanian legislator abandoned the principle of capital stability of the capital, when he authorized the limited liability company to have a capital of one Jordanian Dinar only, in accordance with the provisions of Article (2) of the Jordanian Companies Law, when it allowed for Joint Investment Company to have a variable capital, Article (210) of the Jordanian Companies Law (Barghouthi, 2018: 55).

However, the authors consider that the Jordanian legislator took into consideration the principle of Capital Stability when it stipulated in Article (66 bis) that: the capital of the Private Shareholding Company shall not be less than Fifty Thousand JDs, without prejudice to this capital. As well as it is not possible to resort to this capital unless at the minimum limit to finance the recovery process. Whereas, the redemption finance that

can be made from the capital shall not exceed Fifty Thousand JDs.

However, in terms of the position of the United Kingdom legislator, he did not approve the idea of financing redemption from the capital until the company exhausted all available profits and issue premiums thereof. As well, after a company developed complicated procedural controls and restrictions. Thus, such a decision is not just an absolute enforceable decision, however it must be approved by creditors and shareholders, and is subject to appeal because of the possible damage to creditors. He has thus provided the necessary protection to both creditors and the shareholders. Therefore, the authors supports the idea of permitting redemption financing from the company's capital, with observing the very specific and accurate controls of the United Kingdom legislator, and subject to the disclosure of financial solvency. Where these procedures and controls should be placed under the instructions issued by him.

## 5. Conclusion

The Private Shareholding Company, despite it receives the attention of the Jordanian legislator when it is introduced and has a particular chapter in the Companies Law of 1997 and its amendments, but when the authorized body, concerned with the issuance of the instructions regarding redemption, failed to regulate the purchase of the private shareholding company of its own shares, it made it a fertile place for the will of the contractors. The authors, herein, reached a number of results as follow:

- The Jordanian legislator stipulated the right of a company to purchase its own shares (Art: 68 /e), but did not issue any instructions regarding the purchase of a Private Shareholding Company of its own shares. However, when trying to apply the provisions of Article (98), we find that the instructions related to the purchase of a Public Shareholding Company of its own shares for the year 2014 are applied to the companies listed on the Stock Exchange.
- The Jordanian legislator stipulates the right of the company to issue redeemable shares (Art: 68 / b), either at the request of a company or the shareholder or when certain conditions are met,

provided that the Minister shall issue the instructions regulating this process.

- No instructions were issued in terms of redemption, redemption procedures, redemption financing, and the assignment of these shares after the redemption process.
- The legislator did not succeed in the provision of Article (82 / c) when he allowed the joint stock company to cancel any shares that were not subscribed to, which it repurchased or redeemed according to its Articles of Association and reduce its capital by the nominal value of these shares, as these shares are not purchased by the company or redeemed unless if they are paid in full and are deemed subscribed shares, and the word (other than) may have been wrongly used.
- The Jordanian legislator has succeeded when stated on the possibility of reducing the capital of the Private Shareholding Company by the nominal value of the Redeemed shares unconditionally, contrary to the rules for reducing the capital of the company, where the financing of these shares shall be from the voluntary or distributable profits. However, creditors are not harmed if the shareholders are using their profits or reserves consisting of profits. As it does not affect the company's capital, the guarantee of creditors.
- The United Kingdom legislator has set a clear and detailed regulation for both the companies 'purchase of its own shares and the redemption process, covering all the legal aspects thereof and organizing each of the two processes and clarifying the difference between them through this organization and the assignment of these shares. Where it left only small details of the contractor's will. As it has recognized the importance of these two processes and their impact on the company's accounts.
- Based on the provisions of Article (68 / d bis) of the Jordanian Companies Law, which allows a private shareholding company to convert or replace any type or class of shares issued thereof to any other type or class and is issued absolutely, which means that the redeemable shares can be transferred into non-redeemable ordinary shares, where this is inconsistent with the United Kingdom Companies Law which prevents the transfer of redeemable shares to any other type of shares.

Therefore, it is highly recommended that the Jordanian legislator sets instructions for shares redemption that would regulate the redemption process in line with United Kingdom Companies Law. These instruction shall confirm the following:

- redemption shares shall be issued in a manner that does not affect the minimum capital of Private Shareholding Company, which is not less than 50,000 JDs, in order to preserve the principle of capital stability.

- Allow financing through distributable profits, required reserves and issue premiums upon the issuance of new shares.

- Funding from the company's capital should be permitted, but within the strict controls that were laid by the United Kingdom Companies law that established deep stability for the financing process from the company's capital, unless that affect the minimum amount of capital.

- to cancel the redeemed shares immediately and create a special fund during the redemption process, because the redemption concept differs from the concept of the company Purchase of its own shares as United Kingdom companies law sets.

- Protect the minority of shareholders when making purchase and redemption decisions by the majority of shareholders, if there is unfairness and prejudice to their rights, by allowing the court to consider objections submitted against purchase contracts and redemption decisions and consider them as summary procedures.

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