Is the shareholder an owner or a creditor of the company ?

The question truly deserves some developments.

While creating a trade company, the founding partners bring a capital contribution, in cash most of the time. Once created, those people shall be named « shareholders », meaning, as it sounds, that they hold shares, i.e fractions of the issued share capital.

Then, once the structure exists legally, and as it goes along time, they are normally entitled to perceive benefits *, if the results turn out to be positive though.

Pursuant to Algerian law, a company is a legal person, which means that it is independant from the natural or legal entities who gathered and got to create it (Article 417 of the Algerian civil code).

Banking law, that could enlighten us significantly, considers that a client who puts cash or receives a wire for example, in his bank account, becomes a creditor towards the financial institution proportionally to the amount injected [Thierry Bonneau in Droit bancaire, LGDJ Editions].

The gate is here : a bank is a company that receives money from its clients. Likewise, any private or state-owned commercial company receives money from its shareholders, at any time of its life (issued share capital, increasing the share capital, current-accounts of the shareholders, etc).

So, we own our money while it is still between our hands, but as we hand it to a company, we do not own it anymore but we become a creditor vis-à-vis that entity, i.e this latter has a negative debt towards us, it has to refund us one day.

However, there is a huge legal difference, or a consequence rather, between the money put into a banking account as a client, and the one put into a company as a shareholder. It is the level of preference of the debt.

The client of the bank is an ordinary unsecured creditor, while the shareholder is a hypo-ordinary unsecured creditor. For instance, if the company goes down and cannot insure its burdens and pay off its creditors (external creditors), an insolvency procedure ought to be open, and, in that case, the shareholder would not be entitled to perceive the liquidating dividend only after having paid all the other creditors (public Treasury, providers, daily bills, etc). The shareholder is the last creditor to be paid.

So, this is not aiming to be scareful but people should be aware while investing in a company because taking back their money or more is not that obvious. There is an important part of hazard for the shareholders of a venture, and the role of advisors is precisely to secure and forsee things upstreamly, before even thinking of a dispute.

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