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### **The Supervisory Role of the Emirates Securities and Commodities Authority over the Company's Buyback of its Shares with the Intention of Reselling amidst the Outbreak of the Corona Pandemic – A Comparative Study**

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#### **Abstract**

With the prevalence of the term “buyback” of the company’s shares, especially amidst the crises faced by the countries of the world, the latest of which is the Corona pandemic, many companies have resorted to buying their shares offered in the trading markets for many reasons. The public shareholding company may see that the value of its share is valued at less than the nominal value that is traded in the market, and this will prompt it to invest its money by repurchasing its shares. The reason may be the company’s desire to motivate investors to buy its shares, which will result in an increase in the price of those shares. Whatever the case, the reasons for the company’s purchase of its shares have become a modern practice in most capital markets, especially on the basis of allowing public shareholding companies to buy their shares. However, this practice is surrounded by procedures represented in the necessity of fulfilling the conditions and requirements included in the Securities and Commodities Authority Board Resolution No. 40 of 2015 regarding the controls and procedures related to the company’s purchase of its shares with the intention of reselling them and the provisions of Decree-Law No. 32 of 2021 regarding commercial companies. Therefore, this study aimed to explain the regulatory controls and procedures issued by the Securities and Commodities Authority and to indicate the adequacy of the role played by the Authority in extending its control over the process of purchasing the company’s shares. The study ended with several results and included a set of recommendations.

## **Keywords**

Securities and Commodities Authority, buyback, the supervisory role, selling company shares.

## **Introduction**

Various legislations have surrounded the public shareholding company's purchase of its shares with a set of controls and procedures with the aim of achieving effective control that benefits the shareholders of this company and the investors alike. The reason is that the company's purchase of its shares may be a reason to manipulate the prices of the shares of this type of company, which leads to harm to the investors or shareholders who wish to buy those shares.

Accordingly, the Board of Directors of the Securities and Commodities Authority issued Resolution No. 40 of 2015 regarding the controls and procedures related to the company's purchase of its shares, which is considered a legal tool to achieve oversight by the Securities and Commodities Authority over public shareholding companies wishing to purchase its shares.

The Law No. 32 of 2021 regarding commercial companies also regulates the subject of the company's purchase of its shares in Article 221, paragraph 1, which states that "the company may not pledge its shares or buy those shares unless the purchase is to reduce the issued capital or to consume the shares. Those shares shall have a vote in the deliberations of the General Assembly and no share in the profits." The second paragraph of the same article referred to the decision issued by the Board of Directors of the Securities and Commodities Authority, which regulates the conditions and procedures followed in case that the company purchases its shares with the intention of reselling them, and the aforementioned reference to it.

Therefore, the study aimed to shed light on the decision of the Board of Directors of the Securities and Commodities Authority No. 40 of 2015 regarding the controls and procedures related to the company's purchase of its shares with the intention of reselling them.

## **Significance of the Study**

The present study gains its importance from the need to know the controls and procedures related to the company's purchase of its shares in accordance with the Securities and Commodities Authority Resolution No. 40 of 2015 and the extent of their effectiveness in achieving adequate oversight, especially during the exceptional measures taken by the Securities and Commodities Authority related to the repercussions of the spread of the Corona virus, including the deactivation of some texts of the decision referred to above.

This study also gains its importance from the scarcity of legal studies that deal with the issue of control over the public shareholding company's buyback in

the UAE law, to form an addition through which an important aspect of the UAE legislation is covered.

### **Objectives of the stud**

1. Highlighting the rules and procedures regulating the public shareholding company's purchase of its shares in the UAE legislation and its role in achieving adequate control over the company's purchase of its shares.
2. Reviewing the terms of purchase and the documents to be submitted to the Securities and Commodities Authority.
3. Highlighting the obligations of the public shareholding company in case that the Securities and Commodities Authority approves the purchase with the intention of selling.

### **Problem Statement**

The problem of the study lies in the danger resulting from the public shareholding company's buyback of its shares and the consequent harm to shareholders and investors in case that the purchase process is contrary to what was stated in Resolution No. 40 of 2015 regarding the controls and procedures related to the company's buyback of its shares, and to shed light on the adequacy of the the role played by the Securities and Commodities Authority in extending its control over the purchasing process.

### **Study questions**

Based on the foregoing, the study raises the following questions:

1. What is the concept of the public shareholding company's buyback of its shares, and what is the position of the UAE legislator regarding the company's buyback of its shares?
2. What is the adequacy of the provisions governing the process of public shareholding company buying its shares with the intention of reselling them, and do these provisions achieve adequate control of the Securities and Commodities Authority over the purchase process?
3. Are the recent and exceptional measures taken by the Securities and Commodities Authority related to the repercussions of the spread of the Corona virus, including deactivation of some texts of Resolution No. (40) for the year 2015, have a negative impact on the supervision entrusted to it over the company's buyback of its shares?

### **Methodology**

Based on the foregoing and to clarify the supervisory role of the Securities and Commodities Authority in the UAE over the company's buyback of its shares, we will follow in our study the analytical approach based on analyzing the opinions, rulings and rules concerned with this subject and comparing them with the Jordanian and Egyptian legislations. This is done by dividing this research into two sections as follows:

**First:** The rules governing the control over a public shareholding company's buyback of its shares in the UAE legislation.

**Second:** Oversight of the public shareholding company's buyback of its shares in comparative legislation.

**First: The rules governing the control over a public shareholding company's buyback of its shares in the UAE legislation:**

The UAE legislator has been concerned with making rules governing the process of public shareholding company buying its shares, and this act is associated with a set of guarantees that effectively contribute to reducing fraud or deception whose victims are the investors wishing to buy the shares of this company. The UAE legislator has mentioned these rules in two places: the Decree-Law No. 32 of 2021 regarding commercial companies, and the Securities and Commodities Authority Board of Directors Decision No. 40 of 2015 regarding the controls and procedures related to the company's buyback of its shares with the intention of reselling them.

Therefore, defining the rules governing the public shareholding company's buyback of its shares in the UAE legislation requires dividing this topic into three sections as follows:

**The rules regulating control in accordance with Decree-Law No. 32 of 2021 regarding commercial companies:**

Article 221 Paragraph 1 of Decree-Law No. 32 of 2021, regarding commercial companies, states: "The company may not pledge its shares or buy those shares unless the purchase is to reduce the issued capital or to redeem the shares. In this case these shares will not have a voice in the deliberations of the assembly and no share in the profits".

The second paragraph of the same article stipulates that "Except for the provision of Clause 1 of this Article, a company that has been established for at least two financial years, and after the approval of the General Assembly, may purchase a percentage not exceeding 10% of its shares with the intention of disposing of it in any form of disposal. The transfer of ownership in accordance with the conditions, controls and procedures issued by a decision of the Authority, and the treasury shares may not be counted within the legal quorum in the meetings of the general assembly, and they do not have a voice in the deliberations of the general assembly, nor a share of the profits until their ownership is transferred or canceled. The company's money is the number of canceled shares, and the reduction process in this case is not subject to the provisions of Articles 204 and 206 of this Decree-Law.

It is clear from this text that the UAE legislator has set a set of controls that must be implemented when the company purchases its shares. They are as follows: First: The company may not buy or mortgage its shares except in two cases: The first case: that the purpose of the purchase is to reduce its capital.

In this regard, Article 205 of the UAE Companies Law states that "the reduction of the company's capital shall be by one of the following methods: 4-

Purchasing and destroying a number of shares equal to the portion to be reduced”.

The process of buying shares in order to reduce the capital requires the approval of the Securities and Commodities Authority and the issuance of a special resolution for the company's general assembly in accordance with Article 204 of the UAE Companies Law. In this case, a number of shares are purchased at the value of the part to be reduced from the capital, from the company's legal reserve, after which the sold shares are cancelled. <sup>1</sup>

This case differs from the case of the company buying some of its shares for the purpose of reselling them and subscribing to them again, which was regulated by the Authority's Board of Directors Decision No. 40 of 2015 which will be the subject of our study.

The second case: that the purchase is with the intention of redeeming the shares, i.e. recovering them from the shareholders and removing them from the company.

Depreciation of shares means returning their nominal value to the shareholder during the life of the company and before its expiry<sup>2</sup>. This is the way the company resorts to if its project is one that gradually perishes, such as ships and planes, or works under a concession from the government or a public authority, and then the concession reverts to the public authority granting the concession. These two cases are outside the topic of our study, which is limited only to the topic of purchase with the intention of resale.

Second: According to the legal text, the purchased shares may not have a vote in the general assembly or a share in the profits.

Thus, the text has prohibited the company's management from benefiting from these shares, as they cannot be used to influence the decisions of the General Assembly,<sup>4</sup> generated and they are not used in distributing the profits <sup>3</sup> by them.

Third: As an exception to the foregoing, the UAE Companies Law permits a public shareholding company to buy its shares with the intention of reselling them again, but the legislator stipulated several conditions for this, namely:

1. The establishment of the public shareholding company listed in the market must have elapsed for at least two fiscal years.
2. Approval of the company's general assembly and treasury shares are not counted within the quorum at the meetings of the general assembly.
3. The percentage of the purchased shares should not exceed 10% of the shares represented in the capital.
4. The shares purchased with the intention of reselling them shall not have a vote in the deliberations of the general assembly or a share of the profits until they are resold or canceled.
5. In case the company cancels the purchased shares, the capital must be reduced by the number of canceled shares.
6. Follow the conditions and procedures issued by the Securities and Commodities Authority.
7. Therefore, it becomes clear to us that the legislator was not only concerned

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1 Dr. Mohammed Farid Al-Orini, 2007, p 371.

2 Dr. Faiz Naim Ruidwan, 2007, P. 450.

3 Dr. Sharif Ghannam, 2017, p. 675.

4 Dr. Safwat Bahnasawi, 2007, p. 342.

with the general conditions he mentioned in the Companies Law with regard to the company's buyback of its shares and disposing of them in any form of actions transferring ownership, but also referred to the conditions, controls and procedures issued by a decision of the Securities and Commodities Authority, which we will address in the next section.

The researcher believes that the legislator's referring to the controls contained in the Securities and Commodities Authority's decision, in addition to what was mentioned in the text of Article 221 with its two paragraphs, constitutes a complementary control to some of them on the company wishing to dispose of its shares by any type of ownership transfer.

### **The rules governing supervision in accordance with the Securities and Commodities Authority Resolution No. 40 of 2015:**

Resolution No. 40 of 2015, issued by the Securities and Commodities Authority regarding controls and procedures related to the company's buyback of its shares with the intention of reselling them, included many controls that constitute a new control tool in addition to the controls stipulated by Decree Law No. 32 of 2021 regarding commercial companies. These controls include the conditions that must be met for the public joint stock company to purchase a percentage of its shares with the intention of reselling them, the documents required to be submitted to complete the purchase process, and the obligations imposed on the company in the event that the Securities and Commodities Authority approves the purchase process. We will address these topics in the following parts:

#### **Part one: Conditions that must be met for a public shareholding company to buyback a percentage of its shares with the intention of reselling them**

Article (1) of Resolution No. 40 of 2015 issued by the Securities and Commodities Authority allowed a public joint stock company to buyback a percentage of its shares with the intention of reselling them. These conditions are:

1. At least two fiscal years have passed since the incorporation of the public shareholding company listed on the financial market, and it has issued two audited balance sheets that were approved by the company's general assembly, and that a period of no less than one year has passed since the last sale of previously purchased shares, if any.
2. The approval of the company's general assembly, pursuant to a special resolution, on the purchase process with the intention of resale, with the authorization of the company's board of directors as follows:
3. Executing the decision of the General Assembly within the period approved by the Authority for the implementation of the procurement process.
4. Reducing the company's capital in the event of the expiry of the deadline for the Authority to sell the purchased shares by canceling those shares with the amendment of the company's capital in the articles of association.

5. The purchase percentage should not exceed 10% of the shares representing its paid-up capital.
6. Some jurists believe that the legislator wanted to enable the company to maintain the stability of the price of its own shares by intervening as a price stabilizer in the stock market.
7. The company may not conduct the purchase process until six months after the last issue of any securities by public subscription.

**Part two: Documents to be submitted to the Securities and Commodities Authority to complete the purchase process:**

The first article, in its second clause, obligated the public joint stock company to submit an application to obtain the authority's approval of the purchase process in accordance with the form approved by the authority, together with some documents, information and data supporting the application. Among these documents are:

- A. An undertaking by the company to fulfill the obligations resulting from the approval of the Authority regarding the purchase process with the intention of selling. We will explain these obligations in the third part of this section.
- B. An acknowledgment from the company's board of directors and its auditor that the company's subsidiaries, if any, and which appear in its consolidated balance sheets, do not own any shares in the company.
- C. Approval of the central market in case the company is licensed by it, with compliance with any rules or instructions it specifies in this regard.

**Part three: Obligations of the company in case of the approval by the Securities and Commodities Authority on the purchase process:**

The first article, in its third clause, obligates the public shareholding company in the case that the Securities and Commodities Authority approves the company's buyback of a percentage of its shares, several obligations represented in:

1. Announcing the purchase to the public in two widely circulated local daily newspapers, at least one of which is in Arabic, and a period of no less than (14) fourteen days has elapsed between the date of the company's announcement of the company's desire to purchase and the date of the actual execution of the purchase.
2. Executing the purchase process within a period not exceeding one year from obtaining the approval of the Authority.
3. Refraining from the company's buyback of its shares during a period of (15) days and before (3) days after disclosing its financial statements or any material information that would affect the share price, up or down.
4. The company's refusal to buy its shares through counter orders. Accordingly, it is not permissible to carry out the company's buyback of its shares through opposite orders, which include a purchase order and a sale order with the same company on the same security, because the company is bound by a period of retention of these shares and may not be sold until the end of this period of time.
5. The company refrains from making any sale while undertaking the



announced purchases.

6. Not to sell the purchased shares until one year has passed from the date of the company obtaining the approval of the Authority regarding the purchase process.

7. Subject to Clause 6, the purchased shares shall be sold within a period not exceeding two years from the date of the last purchase, otherwise the purchase is considered a capital reduction, with which the purchased shares must be terminated, without the need for a special resolution from the company's general assembly.

8. Notify each of the Authority and the market in which its shares are listed of the date of the board of directors meeting, in which the issue of the company's sale of its purchased shares will be discussed, at least two working days before the date of the meeting, and the decision of the company's board of directors including its approval of the sale process as soon as it is duly approved and signed.

9. Notifying both the Authority and the relevant market of the date of executing the sale operations.

10. The company's refusal to issue any new shares resulting from public subscription or debt instruments convertible into shares before the completion of the sale of the purchased shares.

11. None of the company's board members or executive managers should be a party to the purchase or sale process.

12. The subsidiary company may not buy the shares of the parent company or the holding company.

13. Completing the buying and selling process in accordance with the trading regulations in force in the licensed stock exchanges in the country.

14. Completing the buying and selling process in accordance with the trading regulations in force in the licensed stock exchanges in the country.

15. Comply with the requirements of subsequent disclosure of purchase and sale operations, according to the form prepared by the Authority.

16. By reviewing the conditions related to the company's buyback of its shares, neither the Decree-Law No. 32 of 2021 regarding commercial companies nor the decision issued by the Securities and Commodities Authority regarding the prohibition of financing the purchase of treasury shares by borrowing, and that the company does not have existing loan bonds.

Accordingly, the researcher recommends the UAE legislator that the conditions contained in the law or the decision issued by the authority should include articles regarding the prohibition of financing the purchase of treasury shares by borrowing, and that the company does not have an existing loan bond.

### **Exceptional measures taken by the Securities and Commodities Authority for public shareholding companies wishing to buyback their shares amidst the Corona pandemic (COVID 19:**

The world is currently experiencing some unprecedented events and situations amidst the spread of the Corona virus pandemic and the resulting damage, human and financial losses and its impact on the economy as a result of freezing a large number of activities in various economic fields due to the precautionary measures taken by countries, which are represented in imposing quarantine to avoid the effects of the spread of the virus.

Undoubtedly, the outbreak of this pandemic has become a source of concern, whether for traders or even others. Based on this critical situation, many



companies face great challenges to continue to work and provide services or implement the obligations arising from them. Consequently, most economic activities witnessed a decline in the size and level of their performance. The financial markets were not immune to the impact of this pandemic, as many companies resorted to repurchasing their shares.

The Securities and Commodities Authority in the United Arab Emirates has issued exceptional procedures for joint stock companies wishing to buyback their shares in order to provide more flexibility and support to the capital markets in the country, provided that these procedures do not have any negative impact on trading in these markets. These exceptional measures have been applied since the start of the pandemic and remained in effect until June 30, 2020. Any public joint stock company wishing to benefit from these exceptions must submit an application to the Securities and Commodities Authority.

The question that arises in this regard is: Do the exceptional measures taken by the Securities and Commodities Authority related to the repercussions of the spread of the Corona virus, including suspending some texts of Resolution No. 40 of 2015 have a negative impact on the supervision entrusted to it over the company's buyback of its shares? Before answering this question, it is necessary to refer to the reality of these exceptions in the first section, and we will discuss in the second section the impact of these exceptions on the effectiveness of the control over the company's buyback of its shares.

### **The exceptional measures launched by the Securities and Commodities Authority for companies wishing to buyback their shares amidst the Corona pandemic**

The circular issued by the Securities and Commodities Authority included an exception to the text of Article 1/3/3 that the company refrained from purchasing its shares during a period of 15 days before and 3 days after disclosing its financial statements or any material information that would affect the share price up or down, provided that none of the company's board of directors, executive managers or any of the knowledgeable employees is directly or indirectly a party to the buying or selling process.

The text of Article 1 / Third / 1, which states that the purchase process is announced to the public in two widely circulated local newspapers, one of them at least in Arabic, and a period of no less than 14 days has passed between the date of the announcement of the company's desire to purchase and the date of the actual implementation of the purchase, was also deactivated in addition to deactivating the text of Article 1 / first / 2, which includes the approval of the company's general assembly by virtue of a special resolution on the purchase process with the intention of reselling.

Moreover, the Authority agreed to facilitate the methods of disposing of the purchased shares in line with the text of Article 219 of the Commercial Companies Law No. 2 of 2015 related to the company's purchase of its shares.

### **This includes ways**

1. For shareholders in return for cash dividends in the case that the General Assembly approves the distribution of treasury shares in return for cash dividends.
2. For shareholders wishing to purchase them when the company offers those shares to them.
3. For an investor or a number of investors in return for a cash amount.
4. For the company's employees in accordance with the company's employee incentive programs.

The circular issued by the Securities and Commodities Authority required public shareholding companies that have purchased their shares and wish to dispose of them by any of the aforementioned disposal methods, to refer to the Authority in this regard.

### **Part two: The effect of the exceptions made by the Securities and Commodities Authority on the effectiveness of its control over the company's buyback of its shares:**

Undoubtedly, the goal of these exceptions is to stimulate the company's purchase of its shares in order to support the financial markets in light of the global conditions due to the Corona pandemic. Therefore, easing the required procedures and time periods, according to what was mentioned in the first section, would contribute to enhancing investor confidence and supporting market stability in the face of global challenges arising from the Corona pandemic.

By looking at the circular issued by the Securities and Commodities Authority, a question arises about the effectiveness of supervision in light of the exceptional measures taken by the Securities and Commodities Authority, which are related to the repercussions of the spread of the Corona virus, including the deactivation of some texts of the decision referred to above.

### **Here we review the actions taken by the authority**

First: The exception to the text of Article 1 / Third / 3, which stipulates that the company should refrain from buying its shares during the period of 15 days before and 3 days after disclosing its financial statements or any material information that would affect the share price, up or down, provided that none of the members of the company's board of directors or its executive managers or any of the knowledgeable employees are directly or indirectly party to the purchase or sale process.

Suspending the work of this text means allowing the company to buyback its shares without being bound by the time periods stipulated in the previous article. Thus, this would destabilize the confidence of investors, forcing them to quickly dispose of their shares in order to avoid any expected loss.

Moreover, the suspension of the text of Article 1 / Third / 1, which states that the purchase process is announced to the public in two widely circulated local newspapers, one of them at least in Arabic, and a period of no less than 14 days has passed between the date of the announcement of the company's desire to purchase and the date of the actual implementation of the purchase, will lead to withholding knowledge of the purchase process from most investors. This will be a cause for complicity in buying from specific shareholders with whom the executive

management of the company or some members of the board of directors agree to buy their shares at a certain price. The company then buys these shares at a higher price. This makes these shareholders achieve profits at the expense of the rest of the shareholders. Moreover, suspending the text of Article 1 / First / 2, which includes the approval of the company's general assembly by virtue of a special resolution on the purchase process with the intent of reselling, will make this matter in the hands of the company's board of directors.

Accordingly, the researcher believes that these exceptions weakened the supervisory role of the Securities and Commodities Authority, which is reflected in the protection of shareholders and investors in this company.

### **Monitoring the Public Shareholding Company's Buyback of its Shares in Comparative Legislations**

Comparative legislation has focused on the issue of monitoring the public shareholding company's purchase of its shares, and this act is assisted with a set of guarantees that contribute significantly to activating the supervisory role over the public shareholding company's purchase of its shares. This topic will be divided into several parts, and we will address the position of comparative legislation on the subject of censorship, successively, as follows:

#### **Monitoring according to the Jordanian legislation**

The Jordanian legislator dealt with the issue of the company's buyback of its shares in Companies Law No. 22 of 1997 pursuant to Article (98/e), as amended by the latest temporary Law No. (35/2010), which states that "a public shareholding company may buy and sell the shares issued by it in accordance with the provisions of the Securities Law and the regulations and instructions issued thereunder.

Accordingly, the instructions for public shareholding companies to purchase the shares issued by them "Treasury Shares" for the amended 2014 Jordanian year set out a set of conditions that must be implemented when the public shareholding company purchases its shares, which are:

First: The number of shares to be purchased should not exceed (10%) of the number of shares subscribed to for the company.

Second: The amount allocated for the company's purchase of its shares should not exceed the realized retained earnings and other reserves except for the compulsory reserve. The issuance discount and the negative value of the fair value valuation differences of financial assets through other comprehensive income items are subtracted.

Third: That the purchase of treasury shares is not financed by borrowing, and that the company does not have current loan bonds.

Fourth: A company that has increased its capital may not purchase treasury shares before the lapse of one year from the date of registering the increase shares

with the Securities Depository Center. The exception to this is the capital increase by granting free shares "capitalization of profits, reserves and share premium."

Fifth: The company wishing to purchase treasury shares must submit a written application to obtain the approval of the Authority in accordance with the form prepared for this, accompanied by the following:

1. The decision of its general assembly in its extraordinary meeting, including the approval of the purchase and sale of treasury shares, provided that the decision includes the following:
2. The maximum percentage of shares that the company intends to purchase.
3. Justification for the purchase.
4. Amounts allocated for purchase.
5. Approvals of the official authorities that the company is subject to its control, if the legislation to which these bodies are subject so required.
6. Audited annual financial statements.
7. Audited financial statements for the last quarter preceding the date of submitting the purchase requisition.
8. Ad format.

The application submitted is considered by the Authority's Board of Commissioners, and then its decision is issued with approval or rejection within 21 working days from the date of submitting the application that completes the terms and requirements and is disclosed. The company must, within a period of four working days from the date of obtaining approval of its request, announce the decision of the general assembly, the official approvals, the date of the start of the purchase process, as well as the financial intermediary companies through which the execution will be carried out.

Moreover, the instructions regarding the purchase of shares by public shareholding companies issued by "Treasury Shares" for the amended 2014 Jordanian year prohibited the company to start implementing the purchase process before 7 working days have passed from the date of the last announcement. The instructions also included the matters to be taken into account when starting the purchase process from the market, and these matters are summarized as follows:

1. That the daily demand in one trading session does not exceed 10% of the daily trading rate of the share.
2. The company may exceed the percentage referred to in the previous item in case the share's daily trading rate is low, provided that this percentage does not, in any case, exceed 50% of the share's daily trading rate, provided that the Board's prior approval is obtained and announcing that to the public. .
3. That the company implements the purchase process within a period not exceeding one year from the date of the first purchase.
4. It is prohibited to buy treasury shares through transactions.
5. The company is prohibited from executing purchase operations for its shares at a price higher than the price of the last transaction that was executed during the trading session.

What enhances the monitoring role of the public shareholding company's buyback of its shares in Jordanian law is the obligation to comply with the disclosure requirements stipulated in the exporting companies' disclosure instructions and auditing standards for the year 2004, in addition to the necessity of disclosing on a weekly basis the number of shares purchased, the average price at which they were executed, and the percentage of the remaining shares of the intended purchase and disclosure of the reasons for rescinding the implementation and/or

not continuing to purchase treasury shares.

It should be noted that treasury shares do not have the right to participate in voting in the meetings of the company's general assembly or even representation on the board of directors and do not have any rights to the profits that are distributed from the company to shareholders. The company keeps the treasury shares for a period ranging between six months from the date of the last purchase and not exceeding eighteen months from the same date. It may not issue any new securities during the period of holding the treasury shares.

In the case that treasury shares are not purchased within the specified period, the company must inform the Securities Commission of the reasons for this at least 30 days prior to the end of this period. The Board of Commissioners of the Securities and Commodities Authority has the right, based on a justified request from the company, to extend the period of holding the shares for the period it deems appropriate in accordance with the requirements of the public interest. In the case that the shares are not sold within the period included in the instructions issued by the Authority and for justified reasons, the company must determine the method of disposing of these shares in one of the following ways:

1. Reducing the capital with the balance of treasury shares.
2. Distributing it to the company's shareholders.

The oversight role of the Jordanian Securities Commission is also enhanced by the fact that the company is prohibited from carrying out any purchase and sale of its shares during the period from the date of the auditor's approval of the annual financial statements until the date of their approval and approval by the General Assembly at its regular meeting. It is also prohibited from carrying out any purchase or sale of its shares during a period of three days before and two days after disclosing the quarterly and semi-annual financial statements.

### **Monitoring according to Egyptian legislation:**

The Egyptian legislator, in accordance with Article 48 of Law No. 4 of 2018 amending the provisions of Law No. 159 of 1981 regarding commercial companies, allowed the company to purchase its shares and set controls for that contained in the aforementioned text. These controls are summarized as follows:

1. The company may not, in any way, acquire a portion of its shares exceeding 10% of the total issued shares.
2. In the case that the company acquires part of the shares within the range of 10%, it is required to notify the Securities Commission of that within a date not exceeding three working days, and it must dispose of the shares to others within a date not exceeding one year from the date of obtaining them.
3. In the case that the company does not act in accordance with what is stated in the second clause, it must reduce its capital by the amount of the nominal value of those shares in accordance with the procedures specified in the executive regulations of the law. If the company fails to do so, the Securities Commission shall take measures to reduce the company's capital after the lapse of thirty days from the date of its notification in accordance with the procedures stipulated in the

executive regulations.

4. The aforementioned shares do not have the right to vote or to receive profits when distributing them, and they are deducted from the total shares of the company when calculating the attendance and quorum required for voting in the general assembly, until they are disposed of.

5. The company may purchase some of its shares to distribute to its employees as part of its share in the profits.

### **Conclusion**

The present study has dealt with the subject of the supervisory role of the Securities and Commodities Authority over the public joint stock company's purchase of its shares with the intention of reselling them on the basis of the Decree-Law No. 32 of 2021 and Resolution No. 40 of 2015, regarding the controls and procedures related to the public joint stock company's buyback of its shares, issued by the Board of Directors of the Securities Authority. The controls and regulatory procedures issued by the Securities and Commodities Authority have been identified and the extent to which the authority plays a significant role in extending its control over the process of purchasing the company's shares has been identified. The study concluded with a set of results and recommendations, which can be summarized as follows:

#### **First: Results**

1. The UAE legislator was not only concerned with the general conditions it mentioned in the Companies Law with regard to the company's purchase of its shares and disposing of them in any form of ownership transfer, but also included the conditions, controls and procedures issued by a decision of the Securities and Commodities Authority.

2. Decree-Law No. 32 of 2021 regarding commercial companies and the decision issued by the Securities and Commodities Authority did not contain any provisions on the prohibition of financing the purchase of treasury shares by borrowing, and that the company does not have existing loan bonds.

3. The measures taken by the Securities and Commodities Authority during the Corona pandemic included the exception from the text of Article 1 / Third / 3, which stipulates that the company refrain from buying its shares during a period of 15 days before and 3 days after disclosing its financial statements or any material information that would influence the share price, up or down, provided that none of the company's board of directors, executive managers, or any of the knowledgeable employees is directly or indirectly a party to the purchase or sale process.

4. The Securities and Commodities Authority has taken its decision to deactivate the text of Article 1 / Third / 1 related to announcing the purchase to the public in two widely circulated local daily newspapers, one of them at least in Arabic, and the passing of period of no less than 14 days between the date of the company's announcement of the company's desire to purchase and the date of the actual purchase.

5. The Securities and Commodities Authority's procedures included deactivation of the text of Article 1 / first / 2, which includes the approval of the company's general assembly under a special resolution on the purchase process with the intention of reselling.

6. Suspending the above texts means allowing the company to buyback its shares without being bound by the rules governing the company's purchase of its

shares. This leads to undermining the confidence of investors and forcing them to quickly dispose of their shares in order to avoid any expected loss. It also weakened the supervisory role of the Securities and Commodities Authority, which is reflected in the protection of shareholders and investors in this company.

### **Second: Recommendations**

1. The researcher recommends the formation of a committee by the Securities and Commodities Authority to study the effects of the deactivation of the texts contained in the Securities and Commodities Authority Resolution No. 40 of 2015 regarding the controls and procedures related to the company's buyback of its shares with the intention of reselling them, especially since the text that was deactivated constitute in itself, real control over the company's purchase of its shares. Therefore, the suspension of its work necessarily leads to illegal practices, including, for example, the exploitation of material information. In this context, the company's management possesses information that is not publicly available. Therefore, deactivating the text of Article 1 / Third / 3 referred to in the third item of the results will lead to gains for the management body at the expense of the rest of the shareholders. One of the committee's tasks is to submit a comprehensive report on all companies that have exercised the process of purchasing their shares during the Corona pandemic period and to indicate the effects resulting from the decision which was taken by the authority in the light of the submitted report.
2. The researcher recommends the UAE legislator to include the conditions included in the law or the decision issued by the authority, including not financing the purchase of treasury shares by borrowing, and that the company does not have an existing loan bond.

### **References**

- Ahmed Labib and Imad El Din Abdel Hai, *Commercial Companies in the United Arab Emirates* 2015.
- Ismail Ismail, NidalArbid and Abdul Rahman Maree, *Accounting for Money Companies*, Damascus, Damascus University Publications 2008
- SherifGhannam, *Explanation of Commercial Companies Law No. 2 of 2015*, Dubai Police Academy Publications, second edition, 2017
- SafwatBahnasawy, *Trading Companies*, Arab Renaissance House, 2007
- Ali Al-Baroudi and Muhammad Farid Al-Aarini, *Commercial Law*, Alexandria, University Press, 1987.
- Fayez NaimRadwan, *Commercial Companies According to Federal Law No. 8 of 1984 and its amendments in the United Arab Emirates*, Dubai Police Academy Publications, 2007
- Mohamed Farid El-Arini, *Commercial Companies, The Collective Business Project between the Legal Framework Unit and Polymorphism*, New University House, Alexandria, Egypt, 2007
- Hesham Al-Fadhly, *Commercial Companies in Egyptian Law, Joint Stock Companies, and Limited Liability Companies*, 1998.

### **Legislation**

1. Federal Decree-Law No. 32 of 2021 regarding commercial companies,



published in the Official Gazette No. (712) Supplement, Year (51), dated 9/26/2021.

2. Companies Law No. 22 of 1997 amended by the latest temporary Law No. 35/2010 published in the Official Gazette No. 5059 dated 9/30/2010

3. Law No. 4 of 2018 amending the provisions of Law No. 159 of 1981 regarding commercial companies, published in the Official Gazette No. (2) bis, dated 16/1/2018.

4. The Authority's Board of Directors Decision No. (40) of 2015 regarding the controls and procedures related to the company's purchase of its shares. United Arab Emirates.

5. Instructions for public shareholding companies to purchase the shares issued by them "Treasury Shares" for the year (2014). the Hashemite Kingdom of Jordan.

### **Websites**

<https://www.mubasher.info/news/3609832/>