International Academic Institute for Science and Technology

International Academic Journal of Humanities
Vol.11, No.1, 2024, pp.14-25.

ISSN 2454-2245

International Academic Journal of Humanities

www.iaiest.com

Company Merger and its Impact on Eligibility for Litigation

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Abstract

Resorting to the judiciary is a right guaranteed by most constitutions, and it is organized according to procedural laws that guarantee whoever takes this path the integrity of the procedures. It is known that a judicial claim is made only through a lawsuit, which is preceded by a claim of the right. In order for the lawsuit procedures to take place in the manner prescribed by the law, the latter required the availability of a number of The conditions for accepting a lawsuit are litigation, eligibility, capacity, and other conditions. The lawsuit in the judicial claim is the right of every person to whom the law recognizes legal personality and thus enjoys the legal capacity that allows him to be a party to any legal relationship, and among these people is the company, and when we are before an existing company that has legal capacity, there are no problems with that company entering into the legal process. Any legal relationship, except that what is raised is in the event that an abnormal situation occurs in the life of the company that affects its eligibility, as is the case in a merger. Here we will be faced with a new company existing as a result of the merger of two companies with each other, but the end of the life of the company through the merger does not mean applying all the procedures. Regarding the termination of the company, we are faced with an abnormal situation of the end of the legal existence of the company, and this prompts us to examine this issue based on the impact of the merger on the eligibility for litigation of the merged company.

Search Keys: Litigation, Eligibility, Integration, Procedural Work.

DOI:10.9756/IAJH/V11I1/IAJH1102
Received: 13 December 2023/Accepted: 16 January 2024/Published: 31 January 2024

The Introduction

To avoid what may happen to them during the period of their legal existence, companies seek to follow various methods to preserve their entity, even if this may lead to a new formation that is completely different from what it was before, so the owners intend to preserve the company's existence, even if that existence is gelatinous. What we mean by this In the field of merger, merger is a legal process that aims to annex one company to another in its entire existence, so that the personality of the merging company becomes the origin and it is the one that will confront reality, or it is the process of creating a new legal entity resulting from the merging of two companies with each other, so that new entity is formed on the influence of both previous companies, and in both In both cases, the owners of the companies (the merged or combined companies) are trying to maintain their existence as businessmen who operate their work through the new legal existence that resulted from that merger. For them, their previous existence is the same, even if it was gelatinous. However, from a legal standpoint, this new entity will be the same. The one who confronts the reality will then bear the resulting legal obligations and the consequences that will result from it.

The merged commercial company, whether by annexation or merging, will be the subject of several influences, and this is what we can see in its legal position, or in the position of its shareholders, or in any transaction to which the merged commercial company may be a party, and what we mean by the contracts concluded by it through its legal representative. What concerns us in this area is to address the impact of the company merger on the eligibility to litigate, as it is known that practicing any commercial business may be the subject of a judicial claim, and within the scope of our research we would like to answer the impact of this merger on the eligibility to litigate if we take into account that the new entity will replace The merged company fulfills all its obligations, and therefore the company resulting from the merger will become the owner of the presence in the face of what was directed against the merged company, and among those effects that the new company will face may be judicial claims, so the importance of the topic of our research lies in explaining the extent of the legal treatment of this issue. Whether in the amended Iraqi Companies Law No. 21 of 1997 or the Iraqi Procedural Law represented by the amended Procedures Law No. 83 of 1969, citing the comparative legal texts that addressed this topic, so we consider examining this topic by dividing it into two sections. In the first section, we address the definition of merger and address two requirements in it. In the first requirement, we discuss the concept of merger and its types, and then in the second requirement we discuss the justifications for merger and its conditions.

As for the second section, we address the eligibility to litigate for merging and merging companies and its procedural impact by dividing it into two requirements. In the first requirement, we address the eligibility to litigate for merging and merged companies, and then we address in the second requirement the procedural impact of the merger in the course of lawsuits**.**

The First Topic: The Concept of Merger and its Justifications

Merger is a means that leads to two results, despite the presence of one intention among those who resort to it. It leads to the end of the legal existence of an existing entity - the merged company - and the emergence of a new entity, according to the method that was followed in the merger. Therefore, this requires us to explain what is meant by merger and its types in the application. First, and then explaining the justifications for the merger and its conditions is a second requirement, according to the following**:**

The First Requirement: Definition of Merger and its Types

Integration has a linguistic meaning and a jurisprudential meaning, and through its meaning and concept we can deduce its types, which we will discuss successively and according to the following:

First Branch: Definition of Merger

Integration into language has many meanings Merge means: merge the matter Merge Integrated: straightened. And an order Dammaj and Damaj: straight. And they merged on Thing: They met. And integrated it On them, [1] which also means merging, merging, merging, so it is merging, and the object is merging • merging the hair : braiding it and

Lisan al-Arab by Ibn Manzur, third edition, part two, Dar Sader, Beirut, 1414 AH, p. 274

straightening it . Merging two or more things: making them one thing, uniting them tightly " merging two things - merging colors : mixing them, making them blend" [1]

Although this meaning is in language, there are other meanings in jurisprudence and law, and we will discuss them as follows:

First: Integration is Jurisprudence

Merger, as we mentioned earlier, is an idea that may lead to two results. This indicates that this term may lead to ambiguity, which is what drives opinions to differ in setting a definition for merger. We see among them those who define merger as "the annihilation of two or more companies through the inclusion of one or several other companies." To it, or merging two or more companies to form a new company, [2]" and it is also known as "the joining of two or more companies by merging one with the other or by forming another new company in which the existing companies are merged. [3] "

There are those who see that merger has meaning in view of the essence of its idea , [4] as they see it as "a voluntary act based on the will of the parties concerned to create another legal person on the ruins of the merged companies." According to this view, a merger is an agreement or contract between two or more companies to Forming one new company, provided that this new company bears all debts and obligations related to the combined companies, or joining an existing company to another company so that the latter becomes responsible for what the combined company was responsible for and the obligations that will arise in the future[5]

We believe that merger means combining two companies with each other to form a new company to achieve the desired goal of the merger process, or it is a voluntary process in which two companies agree that one of them will join the other, so the merged company dissolves with the personality of the merging company. It is a process of dissolving a legal personality that was existing with another legal personality that was existing. And still, it is also a process of support with various capabilities. The merger leads to the dissolution of the legal personality of the two original companies in favor of the new company emerging from it, or it leads to the dissolution of the legal personality of the merged company with the legal personality of the merging company, so that the latter is responsible for the obligations that were imposed on the merged company, as well as the transfer of rights to it.

Second: Legal Integration

The amended Iraqi Companies Law No. 21 of 1997 ,included legal texts that dealt with the merger of companies in Articles (148-152) where the texts of those articles dealt with the permissibility of resorting to merger according to conditions that were amended pursuant to Coalition Provisional Authority Resolution No. (64) of 2004 [6] merger, leaving the matter to jurisprudence - as it happened with us - to have its say in setting an appropriate definition of merger according to the precise vision. For this term, except by reviewing the controls regulating the work of exchange and brokerage companies in the sale and purchase of foreign currencies, amended No. (1) of 2022 issued by the Central Bank of Iraq, we find them in the fourth paragraph of Article (4), which states ((Companies that arise from the merger of a number not less than... For (10) companies that mediate the sale of foreign currencies or more in a private joint-stock exchange company of category (A), and the companies that arise from the merger of a number of not less than (5) companies that mediate in the sale and purchase of foreign currencies are called a limited exchange company according to category (B))) We see through this text that these controls referred to the concept of the joint-stock or limited company - specialized in buying and selling foreign currencies - which will be established through the merger of a number of companies with each other, as the text stated that the joint-stock company specialized in buying and selling foreign currencies is the result of the merger of ten companies. He mediates so that the joint-stock company

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Dr. Ahmed Mukhtar Abdel Hamid Omar ,Dictionary of the Contemporary Arabic Language, First Edition, Part One .Dar Alam al-Kutub, Cairo, 1424 AH, 2008, p. 767

Dr. Hossam El-Din Abdel-Ghani Al-Saghir, The Legal System for Corporate Merger, first edition, Dar Al-Thaqafa for Printing and Publishing, Cairo, 1987, p. 23.

Dr. Saeed Youssef Al-Bustani, Business and Corporate Law, second edition, Al-Halabi Legal Publications, Beirut .p. 447 ,2008

Dr. Muhammad Ibrahim Musa, Bank Merger and Confronting the Effects of Globalization, New University House .Alexandria, Egypt, 2010, p. 30

Dr. Hossam El-Din Abdel-Ghani Al-Saghir .Previous source , p. 25

For criticisms of this amendment, see Footnote No. (1) D. Latif Jabr Komani, Commercial Companies, A Comparative .Legal Study, Al-Sanhouri Library, Baghdad, 2009, pp. 329 et seq

bears the obligations that were owed by the merged companies, in addition to transferring the rights to them .[1] As for comparative laws, such as the law of joint stock companies, limited partnerships by shares, limited liability companies, and Egyptian one-person companies No. (159) of 1981 also referred to merger in general in Articles (130-135) without directly referring to establishing a definition of merger.

Second Section: Types of Merger

Through the concept of merger, it becomes clear to us that it takes place through two means. The company's merger can take place through annexation or through mixing. We are examining both methods according to the following:

First: Merger by Annexation

Annexation, as a means of merger, is done by joining an existing commercial company (but it preferred to join another company) to another that may have economic solvency or any other reason and have one commercial company with it. This leads to the first company becoming part of the company. The second into which it was merged,[2] and this leads to the expiration and demise of the first company with the survival of the second commercial company, which will be called the merging company, taking into account the goal of the merger by annexation, which leads to an expansion of the scope of the company and an increase in its capital to the extent of the value of the assets of the merged company[3].

Annexation is a double-edged sword, as it works to ensure that one of the two companies maintains its entity and system and continues to exist until it performs its tasks as the company with legal existence, while from another aspect it leads to diluting the second company with its legal personality and legal system, and this is done through the transfer of all its rights and obligations to The merging company .[4]

Since merger by annexation takes place through the joining of one company to another, there are cases that may be similar in one way or another to annexation in its known meaning, but each has its own description and organization. It is not possible for a commercial company to transfer its activity to another company as an annexation, even though the company that the activity will be transferred to it, it will bear the obligations and undertake all the work related to the new activity, and this is what was confirmed by the Egyptian Court of Cassation in the appeal. No. 679 of the year 40 dated 4/19/1976, where he emphasized ((merger that It follows on him succession Company Inclusive For the company Merged succession General While she has from rights And what on her from Commitments According For provisions The law.....and from then No It is considered Integration - in meaning the law No. 244 of 1960 - abstract Transfer section from activity a company to a company Other As a share In kind head Her money as long I stayed Company The first Reserved With her personality Moral And Her responsibility Finance With what Maybe He is Stuck With it from Commitments .[5] It is also not a guarantee that a company will enter into a partnership with

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Paragraph Ten of Article (4) Regulations for regulating the work of exchange and brokerage companies in buying and selling foreign currencies, amended No. (1) of 2022, which stipulates: “All rights and obligations of the merged companies shall be transferred to the merged company (the parent company) or resulting from the (merger based on Provisions of Article (152) of the applicable Companies Law

Dr . Fawzy Mohammed Sami, Companies Commercial - provisions the public And private (study comparison) .Edition The first, library Dar: house the culture For publication and distribution, Amman, 1999 , p. 130 Metabolism Mr. Dr . _ Dear Al-Aqili , the law commercial, Business Commercial And merchants And the store - companies Commercial - papers commercial, library Dar: house the culture For publication and . distribution, Amman, 1997 , p. 230

Dr . Mahmoud selected prairie, Law Transactions Commercial - companies commercial, 2nd edition , Dar: house - Renaissance Arabic, Cairo, 2006 , p. 86. Dr . Edouard Eid, companies Business (principles Public companies persons) , Printing press Najwa, Beirut, 1969 , p. 27, see also D. Samiha , Qalyubi Companies ,commercial ,5th edition Dar: house Renaissance ,Arabic ,Cairo 2011 , s .174

Paragraph Tenth of Article (4) Controls regulating the work of exchange and mediation companies in buying and .selling foreign currencies, amended No. (1) of 2022 mentioned above, and is expected to be increased .Samiha Al-Qalioubi , previous reference, p. 173

Appeal No. 679 of 40 Office Art 27 pages No. 977 dated 04-19-1976 is available at the link
https://www.bibliotdroit.com/2020/05/blog-post_138.html
.Entry date: 5/3/2023 at eleven in the morning

another company by purchasing a number of shares of the second company, while both companies maintain their independent legal personality. (1)

Second: Integration by Blending

Merger by merging occurs through two or more companies merging together for the purpose of establishing a new company based on the ruins of the merged companies. Thus, another legal personality is created that did not previously exist because it is a different legal personality from the legal personality that the merged companies enjoyed . (2)

. (3) Also, the companies merged through merging, whether they are two or more companies, will have the same existential fate, meaning that the annihilation will be the result of the merger process of those companies, so that the annihilation of the companies will include all the combined companies, not leaving one company without another, and this is what is observed through the birth of the new legal personality.

As is the case in a merger by annexation, the new commercial company that was established through a merger by combination will own all the assets and funds of the merged companies, in addition to that it will bear the debts and obligations of those companies, not to mention that the new commercial company will be a general successor to the merged companies, etc. This confirms that the new company that emerged through the merger will take into account the rules for establishing companies in its establishment, because it is not considered a continuation of the merged companies, but rather a new company with a legal personality completely different from the legal personality that was enjoyed by each of the mortal companies In this regard, it must be said that it is not possible to acknowledge the existence of a merger by combination in the event that two or more companies work under joint management among themselves, as is the case in some industrial and professional unions. Also, it is not possible to say that there is a merger by combination in the case of what is known as the temporary grouping of some companies. With the aim of carrying out a specific work and bearing the resulting consequences and sharing the profits and losses, as the matter in this case does not lead to the expiration of the legal personality of the combined companies, but rather each of them continues to maintain its legal personality and financial liability(4)

The Second Requirement: Justifications and Conditions for the Merger

Merger is not only the process of uniting two or more companies together and forming another new company. Merger does not take place and be of value except after taking into account certain conditions, which we will discuss in turn: First branch

Justifications for the Merger

Merger is a process of purely commercial and economic benefit, whether a financial return is achieved or not. Whoever takes the path of merger either seeks to achieve a financial return by maximizing the assets of existing companies and merging them into a new entity, or whoever takes the path of merger is trying to avoid a loss that may befall him. He intends to join an existing commercial conglomerate, and in both cases, the purpose of commercial profit is available

Therefore, it can be said that merger is a process that is not limited only 5() to the union of a company with another existing company and the disappearance of its legal personality to form a new company, or the disappearance of the legal status of a company for the benefit of another company. Rather, it has economic and commercial goals and justifications, some of which are beneficial to the merged company itself and others are related to the interest of the national economy and the interest of consumers and shareholders on the other hand (6)

Accordingly, the most important justifications for merger can be summarized as follows:

Dr. Mustafa Perfection Taha , Companies ,commercial Dar: house the university New ,For publishing ,Alexandria .p. 339 , 1998

Dr. Samiha Al-Qalioubi , previous reference, p. 174

Dr. Fayez Naeem Radwan, Commercial Companies, Dar Al Nahda Al Arabiya, Cairo, 2001, p. 135

Dr. Elias Nassif, Al-Kamil fi Commercial Law, Part Two, Commercial Companies, Second Edition, Mediterranean .Publications and Oweidat Publications, Beirut - Paris, 1992, p. 403

Whether that intention exists in the will of the annexed or annexed company

Abdul-Jabbar Ali Muhammad Al-Mashhadani , justifications for corporate mergers and its legal effects in Iraqi and .comparative law, research published in the Heritage University College Journal, issue eight, 2010, p. 131

First: Increasing financial capacity: Given the increased demand for produced goods, companies seek to increase their financial capacity, so they seek to merge with one or more companies with the aim of increasing the financial capacity to control the increasing demand for produced goods .(1)

Second: Reducing risk: A company operating in one field may be exposed to risk Economic risks lead to problems in conditions of market fluctuations, and the merger contributes to reducing these risks If one activity is exposed to risks, another activity can compensate

Third: Acquisition: Overcoming a competing company with the aim of expanding operations activity and seizing additional power at the national level allows the merging company the possibility of changing the power relations that are unfavorable to it through merging with the competing company or companies and putting the power of control in the hands of the merging company and then controlling the labor market.(2) .

Fourth: Encouraging investment: It is considered merger One means Legal followed To encourage Investments Foreign The company Foreign instead of from that be established in nation what on Toward apparent Summons excitement Feeling the National against Element The foreigner , Seeking to the Union with a company patriotism in order to take Company New Al-Najama on merger In form Nationally , And it has He hesitates Investors Foreigners in investment Their money in nation what Due for risks Many , but the situation It will vary if Possible For their companies merger with a company Other get up by this Investment , and this is the situation Guaranteed portion Risks will be need Country from Side Other , Especially if She was willing in completion Investments Foreign jointly with its citizens , The matter that Easy achieve it if what united a company Foreign with Other National (3).

Fifth: Other reasons : There are other justifications that may lie in the desire of companies to achieve a kind of integration, interdependence and joint cooperation among themselves, and also to reconsider economic policies for the purpose of achieving an increase in production rates to compete with other projects, in addition to the merged companies may desire administrative rationalization (Administrative bodies within the company) and thus reducing expenses. These are lofty goals sought by the merged commercial companies.(4)

Second Section: Merger Conditions

The merger process is preceded by a number of conditions specified by law and also required by commercial custom. In order for the merger to have its effect, these conditions must be taken into account. Article (149) of the amended Iraqi Companies Law No. (21) of 1997 specifies the conditions for merger and is limited to the following:

First: Similarity between the merging companies: In the justifications for the merger, we touched on the companies' desire to expand their commercial activity and then seek to merge with each other for the purpose of maximizing their resources first and increasing production second, and this necessitates that there be similarity in the work of those merged companies, and by similarity we mean here that The activity practiced by the merged companies must be similar and harmonious so that we are faced with a commercial entity that achieves the desired goal. If there is a company specialized in producing dairy and another company specialized in manufacturing canned milk or packages of milk, then the merger of both companies will achieve integration between them. This condition is indicated in the first paragraph of Article (149) of the Iraqi Companies Law. This paragraph was canceled after the law was amended pursuant to Coalition Provisional Authority Resolution No. (64) of 2004, so similarity is not considered a condition for the merger of companies (5)

Second: The quality of the projects resulting from the merger: This means that the importance in the merger process lies in the quality of the projects that will result from it, meaning that the merger must be for the benefit of projects that have legal, commercial, and economic value. The merger must not lead to the loss of a large and important

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Dr. Khaled Al-Shawi, Explanation of the Iraqi Commercial Companies Law, Part One, First Edition, Al-Shaab .PressBaghdad, 1968, p. 503

article around Reasons Fusion Companies According The law is available at the following link
www.mohamah.net/law
Entry date: 9/7/2023 at seven in the evening

article around Reasons Fusion Companies According To the law, op. cit

Abd al-Jabbar Ali Muhammad al-Mashhadani , previous reference, p. 132

This is what we found in the Egyptian legislator in the law Companies Contribution And companies recommendation .With shares And companies Self the responsibility Ltd And companies the person the one Egyptian No of 1981 in Article (130) thereof. As for the Jordanian Companies Law No. 22 of 1997 in Article (222) (159) .thereof, it adopted the condition of similarity for the merger of companies

economic entity for the benefit of the entity. Economically, it is less important. A joint stock company would merge and dissolve in favor of a limited company, or a limited company would lose its legal personality in favor of a joint liability company, and so on. This is what was indicated in the second paragraph of Article (149) of the Iraqi Companies Law. (1)

Third: Legal Ratios for the Number of Founding Members

The law specifies the minimum and maximum number of founders for commercial companies. In this case, it must be said that the merger process must take into account the legally specified number of founders .Fourth Approval of the : merger for development plans and planningdecisions The merger and what will result from it must not conflict with **:** development plans or national planning decisions. This trend was in effect according to the fourth paragraph of Article (149) ofthe Iraqi Companies Law, but its implementation was canceled after it was amended. By the decision of the Coalition Provisional Authority, while the merger may lead to the creation of a monopoly situation or goals harmful to the public interest . (2)

The Second Topic: Eligibility for Litigation for Merging and Incorporated Companies and its Procedural Impact

Commercial companies enjoy legal capacity, and this is a result of granting them legal personality. The company can be a party to a lawsuit, whether it is a plaintiff or defendant, and this is considered one of the rights that companies enjoy, and since merger, as we mentioned above, is a path that leads to the disappearance of legal personality. For the existing company and its dissolution with the new legal personality, this directly leads to its lack of legal capacity, and then this is reflected in the litigation capacity of the merged company, and its impact on the dispute is clear.

Therefore, we examine this issue by dividing it into two requirements. In the first requirement, we address the eligibility for litigation for merging and merging companies, and in the second requirement, we address the procedural impact of the merger on the course of lawsuits, according to the following:

The First Requirement: Eligibility for Litigation for Merging and Incorporated Companies

The company is an independent entity independent of the people who founded it, and this entity or conglomerate has its financial and administrative independence from the partners, and the enjoyment of this conglomerate with rights and privileges is the result of granting it legal personality, or as some call it, "conceptual personality is its[3] which ", These rights . (4) acquisition of legal capacity so that it can achieve the purpose that it For which it was established and obligations granted to thecompany are very similar to those granted to natural persons except in certain cases. (5)

The company enjoys a number of rights that preserve its legal existence to carry out its business normally, and then it can enter into all legal relations with other legal persons. Among those rights that the company enjoys is the right to litigation, so it can be a plaintiff or defendant. Enjoying this capacity allows it to claim. And to defend its rights and interests, and no partner has the right to represent it before the court unless he has the capacity to represent on its behalf, just as no person who is considered a partner in the company has the right to file a lawsuit in his name if he has a right to the company, but rather the lawsuit is filed in its name.

Granting these rights is an effect of the company enjoying a legal personality, which is granted to it immediately after the issuance of its certificate of incorporation, so that it is eligible to acquire rights and bear obligations, and all of this is within the limits of the purpose for which the company was established in accordance with its contract, and this is if the company exists without anything happening to it that affects its existence. But in the case of a merger, does the matter remain as it was, or is there a change that will occur to it due to the change that occurred in the merger process? The legal capacity of the company is lost and expires as soon as the company merges with another company or as soon as the two companies merge and a new company is formed, so that the legal capacity that the company enjoyed, which is one of the most important consequences of granting the company legal personality, will be lost, and therefore

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The Jordanian legislator also went in the same direction in Article (223) of the Companies Law
Dr.. Latif Jubair Komani, previous reference, p. 288
Dr.. Latif Jabr Komani, previous reference, p. 51
Article (22) and Article (183) of the Iraqi Companies Law No. 21 of 1997, as amended
Dr.. Farouk Ibrahim Jassim, Al-Mawjiz fi Commercial Companies, Legal Library, Baghdad, 2006, p. 32

the merged company or the merged companies will be lost. Its ability to acquire rights and assume obligations as a result of this [1.]

It can be said that if the merged company loses its legal capacity, it will lose the right to litigate in its capacity as a company with an independent legal entity, as lack of capacity is a basic condition for accepting the lawsuit, as among the conditions for acceptance are interest, capacity, and capacity. These conditions will be disturbed if the company loses its legal personality. After the merger occurs, the company will have no interest in claiming rights, nor does it have the capacity to sue because it has merged with the merged company, in addition to the fact that the merged company will lose the capacity to file a lawsuit.

Therefore, it can be said that the legal capacity of the merged company, which qualifies it to be a party in a lawsuit to claim rights, will be transferred to the merged company, as the latter will become responsible for everything related to the merged company after the latter has lost its authority ( ) , and this leads us to question. Does the merger constitute the termination of the company in the known sense, that is, will the procedures followed in the termination of the company be applied, including the appointment of a liquidator and the company retaining the legal capacity that qualifies it to carry out some business until the entire company is liquidated?

Here the answer lies according to the justification for the merger, which we referred to in the first section, as the expiration of the merged company here does not entail its liquidation in the known legal sense upon expiration, and the procedures for evaluating the company's assets and assets, distributing them to the partners, and repaying its debts to others do not take place in the case of the merger. Rather, all that is done is an evaluation process for all of the above for the purpose of knowingthe value and actual amount of the assets and liabilities of the merged company so that the true value of the in-kind shares that will be transferred to the merging company is known [(2)]and the question also remains here is whether the physical presence of the merged company qualifies it to be a party. In an existing lawsuit, whether plaintiff or defendant, the answer here will be detailed in the second requirement of this section.

Therefore, it can be said that the capacity to litigate is an integral part of the legal capacity of the company, and therefore the disappearance of legal capacity as a result of the merger will leave an immediate impact on the capacity to litigate, and thus the merged company will not be able to be a party to a lawsuit for a judicial claim, but rather the matter will be limited to the hands of the merging company .

The Second Requirement: The Procedural Impact of the Merger on the Conduct of Lawsuits

We have previously said that the company is an independent entity from the responsibility of those in charge of it financially and administratively. This gives the company the freedom to enter into all relationships and transactions

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indicated some Legislation Honestly to continuation retention Company With personality morale for now Finish from registration a contract merger And his fame, Such as what We can that We conclude Implicitly Keep on Personal Moral For the company Merged Until registration a contract Integration as matter No. (2 32) of Law Companies Jordanian No. (22) of 1997 Which states (((Continuation Councils administration Companies student merger to that Complete registration Company The consolidation continues Councils administration Companies that I decided merger existing to that Complete registration Company Inclusive Or the resultant on merger And acknowledge the accounts Independent And then get up The Commission Executive Referred to her in Article (230) Virginity administration Company For a period Do not add on Thirty One day She invites During it Commission the public For the company Integrated or Resulting on merger And acknowledge the accounts Independent To elect council administration new after distribution Resulting shares on merger And acknowledge the accounts Independent And you get elected My auditors :Accounts The company)) . And Article (280) of Law Companies Yemeni No. (22) of 1997, which stipulates It shall continue Councils administration Companies that I decided merger existing to that Complete" registration Company Inclusive or Resulting on merger And then get up The Commission Executive Referred to her in Article (279) of this the law Virginity administration Company For a period no Increase on Thirty One day You pray During it Association Generality For the company Inclusive or Resulting on merger To elect council administration new after distribution Stocks Resulting on merger And set My auditors Accounts .((Company

Dr. Ghaith Mustafa Al-Khasawneh, The Legal Center for Joint-Stock Companies involved in the merger process and the extent to which they are affected by the merger in accordance with the provisions of Bahraini and ,comparative law, research published in the Journal of the Faculty of Sharia and Law, Al-Azhar University .Issue Thirty-One , Part Four, December 2016, p. 1665

with others, and guarantees it the right to file a judicial claim by entering into the lawsuit as a plaintiff or defendant, even if it happens that the company files a lawsuit. Or a lawsuit was filed against it, and as we said in the first requirement of this section, the termination of the company through merger does not entail the application of the legal procedures related to the liquidation and termination of the company and then the termination of all the company's [1] dealings, including the dismissal of the lawsuits filed by the company and brought against it, and therefore in The situation in which the merger takes place and there is an existing lawsuit, will that lawsuit end if we take into account ,the loss of the conditions for accepting the lawsuit, which are the rivalry, eligibilityand capacity, and the transfer of the availability of those conditions in the company merged with, then in the event that the conditions for accepting the lawsuit are transferred from the person who was one of the The two parties to the lawsuit are transferred to another person, which is the merging company. Will this leave any impact on the lawsuit? Is this considered a procedural action?

In the beginning, it is necessary to clarify the concept of procedural work. What is meant by it is that legal work that is part of the dispute and results in limited procedural effects. The procedural work is many and varied, some of which are issued or carried out by the judge, such as issuing a ruling or order on the petition, and some of them are what he does. The opponents or their attorneys, such as submitting requests, maintaining defenses, or appealing judgments, including what is done by others, such as the testimony of witnesses or the work of an expert and the merger results in a direct procedural effect in the case - so to speak - and this effect is represented by the cessation of adversarial work ( ) as a result Due to the loss of the conditions for accepting the lawsuit, the legal capacity and capacity, but this procedural effect is on the side of the merged company, given that the merger results in the loss of legal capacity. As for the side of the merged company, the legal capacity still exists [2] and this leads to saying that the merging company is in accordance with According to the provisions of the law ( ) , it will replace the merged company and all rights and obligations will be transferred to it.

This is what the Egyptian Court of Cassation followed in many of its decisions, including its decision which states: "The merger of a company into another company results in the termination of the first merged company, the disappearance of its personality, and the succession of the second merging company, which has a general succession in terms of its rights and obligations, so this company becomes the last." It alone - and according to the ruling of this court - is the party that disputes and disputes regarding those rights and obligations, and if it is established that the appellant company initiates the lawsuit as the merging company of the other company, then there is no importance . [3] after that for omitting this statement when deciding the cassation appealas And I settled down Provisions court Discrimination Jordanian on that merger Lead to expiration The merged company and the demise of its legal personality, as it ruled in its decision No. (3779/2009) as follows: "... from Article (222/ a) of Law Companies No. 22 of 1997 and its amendments that it She listened On it Integrated a company with a company Other It is called (the company The comprehensive) expires Company Merged In it and it will go away Personal Legality Of which, And accordingly The a personality a company farm the Union Globalism Legal entity may It's gone since Its merger with a company Hijazi And Ghosheh Back Legal she has And why? Prepare For a company Union Farm Globalism any Existence Legal. And where that court the customs Appeal did not Take care that in Its ruling is in place Appeal So it is Her rule may be Chest Facing up not The rival It is considered Subsequently Definitely Invalid no Produces any Effect. [4] "

.In another ruling, the Jordanian Court of Cassation ruled... an end agency because of merger in Her decision No which stipulates: "If It's gone Personal Legality For the company, It is no Prepare from It is permissible ,(1994/182) ?take any Procedure from procedures Litigation in Confront it To disappear Her personality Legality , And why Prepare Hello to litigate, And where that agency that He was right Appearance Before Courts may be It passed Considering from the date mentioned, So The Discrimination Presenter from Her agent mentioned He is advance of ,whom no Owns right Submit it , because His agency did not Prepare You authorize him acting Company distinctive And it is may be progress By discrimination Without that He is for him characteristic You authorize him that , And

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(1) ,Dr . Nael Al-Muhaisen , The brief one in Companies Commercial , 1st edition , Dar: house the culture , Amman p. 153 , 2008

Kamel Abdul Hussein Al-Baldawi, Commercial Companies in Iraqi Law, Dar Al-Kutub for Printing and .PublishingUniversity of Mosul, 1990, p. 236

Stab No. 2193 of 55 BC Session 5/7/1990 Available at the following linkhttps://manlaw.ahlamontada.com/t175-topic Access date: 9/11/2023 It's seven o'clock in the evening

Rights Cassation No. (2009/3779), five-member panel, issued on 2/14/2010. Available at the following link to Adalah :Center publicationshttp://adaleh.info/Sys/diligence-madaniah.aspx

it is Discrimination Well deserved To answer In a way . And where that an agency Lawyer ... no You authorize him acting Company Featured The Judgment Appellant annul, And consideration all procedures that Done after the date mentioned invalid, Because she procedures Done in not Presence The discount .. because Lawyer that He was present This is amazing procedures did not Be for him characteristic Discount Considering from the date The mentioned . As for Saying That ripper no It hurts By stabbing him, So he said conditional By not Existence a reason For invalidation related By system year, as he adverb in This is amazing The suit In addition to that Featured no Get hurt from the decision Distinguished, so that the decision mentioned Repeat the case To walk With it again And just assets, because the decision Outgoing from court the beginning resolution void Invalidity never And falsehood no It follows on him [1] any Effect (Article 168 Civil)

Therefore, the merger of the company results in the company's inability to appear before the court, whether as a plaintiff or defendant, and it will not be able to enter into legal relations, whether that is represented by conducting because the merged company has lost its legal existence by losing its eligibility and , [2] contracts or concluding deals transferring to the merging company or the company. The new company that was formed from the merger of two companies together. The appearance before the court will be or will be transferred to the merging company, which .will be deemed to have legal capacity after the latter has lost legal capacity

Conclusion

The merger leads to the company losing its legal capacity, and this effect is an inevitable result of the company losing its legal personality. Therefore, the company's right to appear before the court will be transferred to the existing company that resulted from the merger. Through our review of the impact of the merger on the legal capacity of the merged company, we have reached a number of results. The recommendations are discussed in turn:

Results: Among the most important results we reached through our research are the following:

1. The Iraqi legislator dealt with merger as a means of ending the legal existence of the company in the Iraqi Companies Law No. (21) of 1997, which was amended by Coalition Provisional Authority Resolution No. (64) of 2004, in Articles (148-152), but the treatment was short and did not include detailed provisions. The merger and its effects are as dealt with in the Jordanian Companies Law No. (22) of 1997.
2. The regulations for regulating the work of exchange and brokerage companies in buying and selling foreign currencies, amended No. (1) of 2022 issued by the Central Bank of Iraq, included the establishment of banking companies through merger, and its texts included the terms of the merger and referred the issue of the transfer of rights and obligations resulting from the merger to Article (152) of the Companies Law. Iraqi, and despite the importance of referring to the company law for the purpose of unifying provisions, the company law, as we mentioned, is marred by deficiencies in dealing with the merger of companies.
3. Merger, whether by annexation or by amalgamation, leads to the annexed company losing its legal personality, and thus this leaves an impact on its legal capacity, which existed as a result of granting the company legal personality.
4. A company merged with another company cannot be a party to a lawsuit. In addition, it cannot continue the lawsuit because its legal capacity has been lost, and this affects the completion of the legal conditions for filing and accepting the lawsuit.
5. The company with which it is merged is the one who assumes the right to file a judicial claim, and the use of this right does not take place on behalf of the merged company, but rather it is the one with the jurisdiction to undertake this matter after it, and because it is the one who will have the capacity to litigate.
6. Some comparative legislation, such as the Jordanian Companies Law No. (22) of 1997 and the Yemeni Companies Law No. (22) of 1997, allowed the merged company to continue to retain its legal capacity throughout the duration of the merger procedures until a decision is issued to register the company resulting from the merger and granting this period is important now, in particular. If there are still lawsuits against the merged company or it was filed by it, these lawsuits will be resolved and the interruption that results from loss of legal capacity will be avoided.

Discrimination rights No. (182/1994) Authority Quintet , Outgoing Dated 9/14/1994, available at the following link https://almerja.net/reading.php?idm=181067

Kamel Abdul Hussein Al-Baldawi , previous reference, p. 235

Recommendations

1. Researching the issue of merger and the conclusions it entails leads us to make the following recommendations:
2. We recommend that the Iraqi legislator develop provisions for merger in detail and incorporate them into the Iraqi Companies Law No. (21) of 1997, by amending its provisions, especially since our legislation included a referral to the provisions of merger in the Iraqi Companies Law, and as indicated by the controls regulating the work of exchange and mediation companies in buying and selling foreign currencies. Amended No. (1) of 2022 issued by the Central Bank of Iraq.
3. We propose to the Iraqi legislator to amend the text of Article (84) of the amended Iraqi Procedures Law No. (83) of 1969, by expanding the concept of loss of legal capacity and not to limit that concept to the natural person, but also include the legal person. We propose the following text: ((The proceeding of the case shall be interrupted) By virtue of the law, the death of one of the parties, the loss of legal capacity to dispute for any reason , or the loss of the capacity of the person who was conducting the litigation on his behalf. One of the opponents Unless the case has been prepared for a ruling on its merits the reviewer

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