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Merger Of Public Sector Companies From A Legal Perspective - A Comparative Study

Hussein Saad Yosif, Wael Al-Dubaisy
Islamic University of Lebanon, Lebanon

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ABSTRACT

The merger policy is one of the economic policies that has gained global fame, due to the successes it achieves in most developed and developing countries alike, as many countries have legislated these policies in their laws in order to achieve the desired economic goals and move towards a market economy, so they are a double-edged sword. It may be a means for the state to get rid of debts and the extinction that occurs in the commercial project, which in turn leads to the failure of that project. These two methods may be a means to achieve the state's economic goals and achieve development to advance the reality of these companies with both methods. The life of public sector companies may be affected by some unexpected or anticipated changes that these companies may face, which leads to the necessity of resorting to the merger option as an effective means to get rid of these problems that public sector companies are not able to continue in light of the economic difficulties. Therefore, it is a legal process that results in the final expiration of the legal personality of the public company as in liquidation, and the termination may be temporary with the emergence of a new legal personality or it may be an implicit continuation of the previous legal personality, as this procedure results in a set of effects that affect the company, employees and customers and has advantages and disadvantages as well. In fact, we find that despite the advantages and disadvantages that arise from these two methods, they are in fact one of the main solutions for the public company to get rid of the obligations that lead to its end. Public sector companies are among the largest money companies that are considered effective centers in the national economy, as these companies may face obstacles that limit their activity and growth as a result of an emergency or lack of prior planning or the combination of public company ownership and management, so the state resorts to merging these companies to get rid of their negative effects.

INTRODUCTION

After maintaining public sector companies became costly in many developing countries as a result of a group of economic reasons that led to this result, therefore the largest part of public funds and administrative efforts became directed to activities that are not related to improving and developing the economic reality of these companies, all of which led to many governments resorting to the merger policy to get rid of the burden of chaos, losses and interventions and increase the area of competition with the private sector so that the public company is more capable of meeting the needs of individuals with greater flexibility as a result of increasing the value of both companies.

Although the merger achieves major goals as a result of the continuous and permanent development of companies in various sectors, as the capacity of individual companies no longer leads to achieving integration and economic concentration according to what these companies aspire to in achieving their major goals, the merger is a way for public sector companies to get rid of stumbling blocks and collapses, to be an opportunity to strengthen the economy and increase the capital of these companies so that they can withstand and challenge the critical reality.

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The importance of the research

The importance of our research entitled the merger of public sector companies from a legal perspective is of great importance on both the theoretical and practical levels. On the theoretical level, the importance of knowing the most important obstacles and problems raised on the theoretical level is highlighted, and the importance of this topic is highlighted in considering public sector companies as part of the national wealth of the country and also representing the executive tool of the state. On the practical level, the importance of knowing what is related to the issue of successive losses incurred by these companies in Iraq and their inability to pay the salaries of their employees has recently emerged clearly, considering the merger as one of the most important solutions in the law of these companies to rid them of this crisis they are currently going through.

Research Objectives

The aim of the research is to identify the problems that public sector companies are suffering from at this time and the huge losses they are exposed to and how this defect can be addressed by using the experiences of countries that have gone through this matter. In addition to knowing the statement of what is limited by the merger and its advantages, disadvantages, types, effects and forms and knowing the position of comparative laws on it, in order to identify the areas of deficiency and deficiency in the texts that dealt with this topic, and to develop legal solutions to confront them by proposing to amend what should be amended, and legislate what should be legislated from legal texts, and pointing out to the legislator the need to re-adjust many of the legal texts regulating the research topic and formulating and creating them.

Research Problem

The basic problem raised by the research topic is limited and we try through answering several questions to decipher the contents of this topic, the most important of which are: Focusing on knowing the extent of success achieved by public sector companies or not from the date of their establishment until the present time, by studying the reality of their major problems and evaluating them. What is the role of mergers between public companies as a means of solving the problems that these companies suffer from? How effective are the current legal texts in addressing this imbalance? Who are the competent authorities in carrying out the merger process? What are the legal implications? We will try to answer them in light of this legal study.

Research Methodology

In order to cover the aspects of our research topic, we adopted the analytical, foundational, descriptive and comparative approach at the same time, as we will analyze, explain, criticize and praise all legislative texts, judicial rulings or jurisprudential opinions. We also followed, in part, the foundational approach by returning branches to their origins, in addition to following the comparative approach by comparing the laws that approved and regulated the work of public sector companies. Or with its own laws in both Iraq and Egypt.

Research plan

In order to cover all the details of the research and stand on its various data and in a manner consistent with its specificity, we have divided it into two basic requirements. In the first requirement, we will discuss the legal concept of merger, and in the second requirement, we will discuss the legal framework of merger.

THE LEGAL CONCEPT OF MERGER

Some believe that if two companies suffering from the same difficult circumstances merge, the situation will become more difficult, which necessitates stating the cases in which merger is restricted and a successful strategic decision ( ). Therefore, the economic and technical situation must be studied before entering and making the merger decision. Therefore, we will study the merger of public sector companies in this requirement in two branches, as we will explain what is meant by merger in the first branch, and we will discuss in the second branch the types of merger and its legal nature as follows: -

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Stating what is meant by the merger of public sector companies

With regard to legislation, neither the Iraqi, Egyptian nor French legislators defined merger in the laws of public or private companies, and in our view they did well in that, because setting legislation is not the task of the legislator but rather the result of the efforts of jurisprudence and the judiciary.

The merger of public sector companies has been defined linguistically ( ), as well as technically, and the jurisprudential definitions have differed according to the different opinions of jurists, some of whom defined merger in terms of explaining its effect as "a measure intended to unify several companies independent of each other into one legal entity, whether through a new legal entity or by merging one or more companies into an existing company" ( ). Some of them defined it according to the legal personality as “the union of two or more companies into one company, whether by the merger of one company with another, whereby the merged company loses its legal personality in favor of the merged or merging company, which is called merger by way of annexation, or by the dissolution of two companies to form a new company on its ruins, which is called merger by way of amalgamation” ( ). Another opinion of jurisprudence defined it based on the nature of the concluded agreement as “arising from an administrative act based on the direction of the will of the concerned parties to create another legal person on the ruins of the merged company” ( ). Another opinion of jurisprudence defined it as “a contract by virtue of which one or more companies are organized into another company, so the legal personality of the organizing company is removed and its assets and liabilities are transferred to the merging company, or two or more companies are merged by virtue of which the legal personality of each of them is removed and its assets and liabilities are transferred to the new company” ( ). It is worth noting that jurists did not know the merger of public sector companies, but rather focused efforts on defining the merger only, as it is the origin, so we can define the merger of public sector companies as (a contract by which one or more public companies are organized into another public company, such that the legal personality of the first organized company is removed and all its rights and obligations are transferred to the other company, or two or more public companies may merge under a contract between them to establish a new public company to which all rights and obligations are transferred and the legal personality of the merged public companies is removed). It is clear from this definition that the merger is a consensual contract between two or more parties, and that the financial liability of the dissolved public companies is transferred to the other public company, and that the merger leads to the end of the public company without entering into its liquidation. After defining the legal merger of public sector companies, it is necessary to search for its legal basis in Iraqi legislation and comparative legislation, as the Iraqi legislator in the Public Companies Law No. (22) of 1997, as amended, devoted articles (31-35) to mergers, and the same applies to the Companies Law No. (21) of 1997, as amended, which devoted five articles to it ( ). As for the French legislator, the merger process is subject to the general provisions of the French Commercial Companies Law No. (66-537) of 1966, as amended. The French Privatization Law issued on 6/8/1986 considered the merger between public and private companies as one of the methods of privatization of public sector companies ( ). The same applies to the Egyptian legislator, who permitted the merger between holding companies under the provisions of Article (36) of the Public Business Sector Companies Law No. (203) of 1991, and also permitted the merger of subsidiary companies ( ). In the absence of a specific procedure, it is followed to refer to the Egyptian Companies Law No. (159) of 1981 with the provisions related to merger ( ). As well as the executive regulations of this law ( ). The merger was also stipulated in the Public Sector Bodies and Companies Law No. (97) of 1983 in Chapter Six related to merger, transformation, division and expiration, as it allocated only two articles to merger with other texts related to merger powers ( ). As for the scope of merger, the Iraqi legislator in the Public Companies Law went to the permissibility of merger between public companies only, as public companies were not allowed to merge with mixed and private companies as well as foreign companies ( ). It also did not allow branches of foreign companies to merge with public sector companies, completely contrary to the position of the Jordanian legislator who allowed the merger of branches and commercial agencies of foreign companies operating in Jordan with Jordanian companies, as this matter is an exception to the general principle that requires there to be two legal persons, because the Jordanian legislator aims to attract global capital to the national economy as well as expertise ( ). As for the French legislator, he did not limit the merger between public sector companies only, but rather opened the door to merger between public and private companies, meaning that he took the broad meaning of the merger of public sector companies. The French legislator established the Industrial Development Institute (I.D.I), through which research is conducted on the best ways to transform institutions into production units such as Beer, to give it the opportunity to compete globally ( ).

As for the Egyptian legislator, he permitted the merger between public sector companies in the Public Sector Bodies and Companies Law ( ), and also permitted it through the merger between holding companies through the provisions of the Public Business Sector Companies Law ( ).

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It is worth noting that the merger requires that it be:

1- The general rule in the merger is that it be between two existing companies that enjoy an independent legal personality according to the provisions of the law, as the merger may not be between one company only, as it requires two companies.

2- The merger requires that it be between public sector companies with similar and identical activities, and it is also permissible for the merger to be between companies with integrated activities.

3- That the legal personality ends with one of the merged companies and the merging company remains, which is what is expressed by merger by way of annexation, or the legal personality of both companies ends in order to establish a new company, which is what is expressed by merger by way of mixing.

4- A contract is organized between these two companies that are to be merged, specifying all assets and everything related to the establishment.

5- The merger requires that the financial status of the merged company be transferred to the merging company, all rights and obligations.

6- The unity of nationality is required for the merged companies, i.e. the merger may not be between national and foreign companies.

7- The merger must not lead to economic effects that are in violation of the national specialized decisions and the development plan, whenever it is found that this merger negatively affects the economic development process.

Types of mergers and their legal nature

As for the types of mergers, there are two methods, which are the traditional method, which was adopted by the Iraqi, Egyptian and French legislators. Another way is according to the field of the merged company, the traditional way of merging contains two forms: -

The first form: Merger by annexation: It is achieved when two or more existing companies agree to merge between them, as the first company is called (the merged company) and the second company is called (the merging company), as the latter retains its legal personality. As for the first, its legal personality is removed. The capital is transferred from the merged company to the merging company. In addition to the transfer of all rights and obligations to the merged company.

This type is the most widespread and common, as the stronger company economically and commercially may annex a weaker or lesser company, through agreement or consent between them ( ). This form is less expensive and easier in terms of procedure, as through it the company avoids many of the legal difficulties resulting from the merged company losing its legal personality, unlike the other type that requires expensive expenses, cost and a long time ( ).

The second image: Merger by way of combination: that is, two or more existing companies agree to merge and establish a new company. "In this way, each of them will end and the legal personality will be associated with it, and another new company will be established to replace it in the rights and obligations of the merged companies" ( ). It is necessary to follow the legal procedures imposed by the provisions of the law regarding the establishment of this new company. It is worth noting that this merger is achieved between companies of the same importance in order to stop competition and increase production according to supply and demand and increase profits ( ).

It is clear from the above that there are other types and forms of mergers other than the traditional forms ( ), but we will suffice with this amount because the Iraqi legislator and other comparative legislations have adopted it.

It is worth noting that determining the legal nature of the merger is an important matter for public sector companies wishing to focus their activities and control the markets, as through this determination we can distinguish between merger and other similar systems. Jurisprudence has differed in determining the legal nature of merger in public sector companies. Some scholars of jurisprudence ( ) believe that the merger is a premature expiration of the merged company and a comprehensive transfer of its financial liabilities to the merging or new company whose capital increases through the merger or whose capital is formed from the merger of the capital of the merged companies, but they differed in the legal interpretation of this comprehensive transfer of financial liabilities. While another opinion of jurisprudence

believes that the merger is a premature expiration of the merged companies while their economic project continues, as the elements of the project are the material elements, money and human elements necessary to implement the project and achieve its purposes and remain ongoing with the expiration of the merged company, which explains the transfer of the financial liabilities of the merged company to the merging or new company ( ). While another side of jurisprudence believes that the merger is based on the idea of contracting, as it is a contract or agreement concluded between companies and therefore requires the availability of all the pillars and elements of the contract, but it lacks the approval of the general assembly or the groups of partners in the company in order for the merger to be a final binding contract, as the entire process takes place in successive stages ( ). This is what we go to prefer the contract theory in the merger between public sector companies in the normal situation, but in the exceptional case where the merger is the result of government decisions as in Iraq in the case of the Council of Ministers' tendency to merge or the ministry's tendency to merge, the legal nature of the merger is of a mixed and special nature. That is, the origin of the merger is of a contractual nature and when the authorities intervene it becomes of a mixed contractual and regulatory nature. As for the reasons and motives specific to the merger, "the motive for resorting to the merger varies according to the surrounding circumstances. The company concerned may resort to it when it achieves great success in its work and has the desire to expand its projects, reorganize its structure and cooperate between other companies" ( ). Therefore, the merger is formed out of the desire for joint cooperation between the merging companies to achieve that integration Especially when they are of the same capacity and importance. This is the goal of the contemporary economy, which is based on the principle of economic concentration with the aim of reducing the cost of production and achieving the best results. Or this merger is a technical means of developing public companies through their economic concentration in very large units that support the ability of these companies to compete in the local and global market. This merger may achieve vertical integration rather than horizontal integration, which occurs in companies that differ in their purposes but whose activity is integrated. The merger may also be motivated by control, and this is evident when one company outperforms another, so the purpose of this merger is to eliminate competition and confront companies that dominate the markets. "As achieving integration between the two sectors improves existing products, creates new products, reduces production, in addition to the desire to reduce general expenses, direct management, and eliminate the existing competition between the merged companies" ( ). In other cases, intangible matters such as fame, technical knowledge, and organizational promotions for the merging companies are benefited from through the merger ( ). The justification for the merger may be globalization ( ), with the aim of confronting the economic variables in light of globalization, and companies have also resorted to establishing large or giant blocs among themselves to confront any development or change witnessed by the commercial and economic arena in light of globalization ( ).

All of the above are considered economic reasons for resorting to merger as an important means to achieve major economic goals, as this motive is one of the most important motives for merger because many of the economic and commercial variables that have recently appeared globally have led to companies fearing for their future, in the ability to compete, which led them to seek to achieve merger to confront these variables.

The amazing revolution witnessed by the aspects of economic and commercial life and the communications and information revolution undoubtedly requires effective capacity and great human and mental effort, as well as abundant funds to achieve major goals. This is what developed countries have sensed, so they adopted the method of economic and commercial concentration as a mechanism for achieving economic and commercial abundance ( ). These are the economic reasons for merger.

As for the merger of public sector companies as a realistic alternative to get rid of their stumbling, this is the main reason for which merger is resorted to in most mergers of public sector companies, as the accumulated losses for several consecutive years that public sector companies were exposed to, as they did not find solutions except through merger, according to which they get out of problems and stumbling and preserve the rights of their owners, as these losses led to these companies losing their positive returns, as well as losing the markets that they controlled. Therefore, these crises highlighted many positive developments, as they were a major motive for public sector companies to resort to merging with other more successful companies.

As most countries that own public sector companies supported and endorsed this trend in their laws, as we mentioned previously, as well as in various administrative decisions related to merger, as we will see in the second section, as these countries provided all possible facilities to make the merger process a success, through conducting comprehensive reviews of the economic feasibility study that is presented, as well as weak management, as well as low capital levels and weak oversight and transparency ( ). We can say that the motive for merging commercial

companies varies according to the circumstances. The motive for merging may be the desire for cooperation between the companies involved in the merger, to achieve horizontal or vertical integration between them, or the motive for merging may be the desire for control and monopoly ( ). Accordingly, merging cannot always be considered a defect or an advantage, as the ruling differs according to the goal it seeks to achieve. The goal in this lies in achieving the desired benefit from it towards all parties in the company, shareholders, workers and others. It is worth noting that merging achieves several advantages, the most important of which are: -

1- Merger aims to achieve higher productivity rates and aims to reduce expenses and reduce costs ( ) of the activity carried out by the company, which results in lowering prices so that goods and products become available to the consumer. The United States of America was one of the first countries to realize the importance of merging, as the merging movement began in American history in the nineties of the nineteenth century. Another movement began in the 1920s, when the United States of America sought to impose its economic control over European countries and other countries, encouraging American investment in these countries, especially Britain, Italy and Belgium. It also exposed European companies to fierce competition from American companies, which threatened to collapse ( ). Then, European countries used the same method to confront this matter.

2- Achieving greater and greater profits for these merged companies based on the optimal use of production tools.

3- Obtaining raw materials more and faster as a result of the merger, as well as gaining markets that were not controlled by the permanent companies through the merged companies, which leads to achieving more accuracy in work, in order to achieve the desired goals from them.

4- Eliminating fierce competition between merged companies with similar activities, as credit is strengthened, management is directed, all general expenses are reduced, and production costs such as commercial advertisements are reduced for the purpose of competition. In order to form a very large production unit capable of managing the major projects required by the economic development process through large capitals.

5- The ability to attract capital and provide technically and administratively efficient elements capable of dealing with the requirements of the economic and commercial cycle ( ). By increasing its ability to increase the company's needs, which in turn is reflected in the Rapid growth and development of companies. These companies can convert a large part of the profits for the purpose of developing capital, which cannot be achieved through internal expansion through their own efforts alone.

6- By merging, the merged company has the ability to distribute its activities, whether by similarity or integration with rapid geographical spread because the size of the company will become larger after the merger, so its markets will also grow.

7- The merger leads to the development of the reality of these merged companies by developing work and management methods through the new blood entering these companies, as the administrative systems and supplies are upgraded, which in turn reflects in the stability of the labor cycle rate.

8- Increasing the company's ability after the merger process to spend on research and studies and conduct development, modernization and improvement operations by relying on the latest technologies and using them rationally and relying on experienced competencies with great knowledge and expertise and upgrading these human skills and capabilities ( ).

9- Merger is an important means of competing with global companies by establishing major national companies that are able to compete with multinational companies with a global character.

As for the disadvantages of merger, it is no different from the disadvantages that affect it and have dire consequences, as they can be limited to the following:-

1- Merger raises the problem of monopoly and puts an end to competition between the merged companies, which greatly affects the poor quality of products and their high prices ( ). Monopoly puts an end to competition between the merged companies, and has a direct impact on production and its quality, as well as high prices, the end of monopoly, poor quality of products and their high prices.

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2- Merger of companies leads to the company being so large that it may be completely paralyzed due to the inability to adopt the principle of flexibility when making quick and decisive decisions to seize important profitable opportunities.

3- Representation may be the result of a clash of cultures, different working methods and divergent visions as a result of the diversity of these cultures ( ). Consequently, it results in a lack of complete preparation and a failure to develop sound plans to complete the merger process more successfully as if it were well planned.

4- Merger leads to many social and economic problems because this situation leads to restructuring and reorganization related to the merged companies, which leads to dispensing with some employees or workers and laying them off as a result of not needing them, which affects in one way or another the social, commercial and economic activity in society.

5- Merger leads to the loss of control that was imposed more centrally by the senior management that had complete control over the companies before the merger.

Therefore, when we search for the defects of the merger and our source is some applications on these defects and how they were treated, in the United States of America, the merger process is subject to the supervision of the Ministry of Justice, as well as the competent courts to prevent any process such as monopoly and others, as they have set two conditions for completing the merger approval process, which are that any merger process does not result in the concentration of market power in order to preserve the principle of fair competition, as well as that other companies can enter the markets easily and smoothly.

It is clear from the above that the merger process cannot be considered an advantage or a disadvantage, but rather it is an economic phenomenon whose ruling differs according to the circumstances of each case individually. The important thing is the result that the company obtains upon merger in terms of the benefits that can accrue to the public company or the merged public companies or the members or founders or others.

THE LEGAL FRAMEWORK FOR THE MERGER PROCESS

To clarify the legal framework for the merger process, we must divide this requirement into two branches, as we will discuss in the first branch the merger procedures between companies, and in the second branch we will discuss the extent of the legal impact of the merger on the company, partners and others according to the following: -

Legal procedures followed in the merger process

As the merger process requires a set of preparatory procedures that must be carried out in preparation for completing the merger process through preparing for the preparatory stage of the merger. At this stage, good preparation and extensive studies are required in the economic and financial aspects of the merging and merged company, and negotiations, discussions and initial proposals are made between the related companies. These negotiations are conducted directly through representatives of the related companies, or through intermediaries for this purpose. They are usually conducted by those with control and those who have the ability to persuade companies due to their ownership of a large percentage of the shares of these companies or their ownership of a large number of their shares ( ). These negotiations are conducted in a confidential manner in order to maintain share prices and the smooth running of these companies and not to affect shareholders, creditors and workers in them ( ). At this stage, negotiations usually take place about the funds received by the merging company, their value and how to pay the debts of the merged company, as well as examining all obstacles that hinder the merger, including how the assets and liabilities of the companies are evaluated, the date of closing the accounts or approving the budgets ( ). It is worth noting that this stage of negotiation is of great importance in the success of the merger process or not, and therefore most legislations left this stage to the merging companies, to conduct the necessary discussions for the negotiation and agreement stage, as at the end of this process, the companies authorize someone to represent them and draft and sign the minutes of the meeting between them (meeting protocol) and it does not take the place of holding the meeting. If this process succeeds and the merging companies agree on all the basic matters and organize this minutes that represent the basic rules on which the merger is based, "this document does not have a binding nature for the related companies, but rather it is an agreement of intent between them in which they declare their approval of the foundations "( ). However, if that meeting or negotiations fail, it will not have any consequences, and the negotiators will not bear any obligations.

As for the merger contract, after the end of the first preparatory phase, the second phase begins, which is the phase of implementing the merger project, which precedes the merger contract and includes all the conditions related to the merger process, its pillars, effects, motives, purposes, assets, liabilities, method of estimation, time of estimation, as well as rights and obligations ( ).

It is clear from the above that the draft (merger contract) is an agreement prepared and formulated by the authorized persons of the merged public companies and signed by them, provided that it includes all the data and all the procedures and conditions related to the merger contract project. "The merger project is a major stage in the merger process that confirms the serious intention to conclude the merger contract, but this project is not binding on the related companies except after it is ratified by the competent authorities of these public companies" ( ).

It is worth noting that each company individually issues a decision by the Board of Directors These companies are required to approve the merger process, then this approval is submitted to the competent minister, along with all the priorities and joint minutes, for approval by the competent minister, then submitted to the Council of Ministers for final approval ( ). Therefore, one of the results of the merger is the transfer of the financial liability of the merging company. If the merger is by way of annexation, only the assets and liabilities of the merged company are divided. However, if the merger is by way of combination, the assets and liabilities of all companies involved in the merger process and the merged company are evaluated, so that it becomes a new company. “The merging company is required to issue shares at the value of these assets to the shareholders in the merged company. These shares are in-kind shares because they represent objects provided by the merged company. They may be tangible or intangible assets (movable property or real estate). This requires a true and correct assessment to evaluate these in-kind shares” ( ). The procedures for approval, registration and publication approved by law must be adhered to, whether the merger is by way of amalgamation or annexation. If the merger is by way of amalgamation, the procedures followed when establishing the company must be followed initially. However, if the merger is by way of annexation, the articles of association of the merging public sector company must be amended and registered in the registry, bulletin and official gazette. Therefore, publicity requires that the merged company expire with the merger and this expiration must be publicized. As for the merging company, it requires making the necessary amendments to its contract and articles of association and this must be publicized. If a new company is established into which several companies merge, it is necessary to take the necessary measures to establish a new company and publicize this establishment ( ). Therefore, all legislations are keen on the necessity of informing the interested party of the changes that have occurred, to give them the opportunity to defend their rights legally in the event that they are subject to any violation, and require the publicization of the merger contract and its official documentation ( ). Since the merger must have legal conditions and procedures that must be followed, the Public Companies Law stipulated in Clause One of Article (31) amended by Order No. (76) of 2004 that (two or more companies may be merged completely into one state-owned company, provided that it carries out similar or similar activities. If all the companies concerned are affiliated with one ministry, the relevant ministry may propose the merger. If the companies concerned are affiliated with different ministries, these ministries must agree in writing to this merger, including taking into consideration the ministry that will ultimately own the company as a result of the merger for the purposes of Articles 33, 32, 31 and 34, New Companies). This text is understood to mean that there must be conditions for the merger, the first of which is that the merger is related to two or more public sector companies subject to the provisions of this law in a complete manner and not divided, meaning that it is not permissible to merge a public company with a private or mixed company, and the second is that there is unity in the company's purposes, meaning that the purpose of both companies is one, whether identical or complementary, and this is what was expressed in the previous law before the amendment, and after the law was amended, the legislator expressed it explicitly (similar or different), as the Egyptian legislator did not include this provision in a special text, but the most likely is that unity of purpose is required for the merger between companies. As for the merger procedures, the first procedure referred to in the above article is the merger proposal, so if the companies wishing to merge belong to one entity, then this entity has the right to propose the merger, and this is what the Iraqi legislator expressed (if the companies concerned belong to one ministry, then the relevant ministry may propose the merger). If the companies wishing to merge belong to more than one entity, each of these entities must agree individually by means of an official written record. As for the Egyptian legislator in the Public Sector Bodies and Companies Law, he granted the Board of Directors of the public sector company the right to propose the merger and submit it to the general assembly, or the Board of Directors of the public sector body may propose the merger pursuant to the provisions of Article (8/10). As for the Public Business Sector Companies Law, he granted the competent minister the right to submit the merger proposal pursuant to the provisions of Article (36) thereof. As for the second procedure for the merger, it was stipulated in Clause Two of the amended Article (31), which stipulated that (the concerned minister or ministers shall prepare a merger proposal and submit it to the administrative director for final approval in consultation with the Governing

Council. After the transfer of government authority to the Iraqi Interim Government, the proposal shall be submitted to the Council of Ministers for approval or the entity that will succeed it), which consists of preparing a study for the economic and technical evaluation of the company to be merged, containing the objectives of the merger, its conditions, and all other information. In addition, the merger decision shall be attached to this study, which includes the name, activity, capital, founders, and type of company. The concerned minister or ministers shall submit it to the administrative director or the Council of Ministers to approve the merger or not, as the legislator, by virtue of this amendment, did well when he addressed the deficiency before amending this article, which stipulated (the ministry shall prepare a feasibility study...), as this article was neglected if the merger was from more than one party. As for the Egyptian legislator in the Public Sector Bodies and Companies Law, it also stipulated the approval of the Council of Ministers for the merger proposal based on the approval of the company's general assembly, while in the Public Business Sector Companies Law, it stipulated the approval of the Prime Minister for the merger based on the proposal of the competent minister. It did not stipulate the necessity of preparing a study of the economic and technical feasibility ( ), but this matter can be taken implicitly, but the legislator stipulated a new provision that the Iraqi legislator did not stipulate despite its importance, which is the formation of a committee for the purpose of estimating the net assets of the merged companies, the formation of which shall be issued by a decision of the competent minister, and its decisions shall be subject to appeal before the competent judicial authorities ( ), as the Iraqi legislator must include such a provision in the Public Companies Law. The Public Companies Law then stipulated the necessity of taking complementary and supplementary procedures to complete the merger stage, as it requires the ministry that will supervise this company and the board of directors to amend the contract or create a new incorporation contract, which is what was indicated in the amended Article (32), which stipulated that (when the administrative director agrees in consultation with the Governing Council or (the Council of Ministers or the entity that will succeed it, as appropriate) to the merger based on Article 31, paragraph two, the ministry that will supervise or ultimately own the new company will amend the original contract or create a new contract and the board of directors will amend the incorporation contract or prepare a new incorporation contract), as this text contains a deficiency in the wording and unnecessary repetition, and it would have been more appropriate for the legislator to abbreviate this, and this is what we will clarify in our recommendations. After the administrative director or the Council of Ministers approves the merger, the role of the competent ministry or the ministry that will supervise this company comes upon being notified of the decision, as it amends the company contract if the merger is by annexation or creates a new contract if the merger is by amalgamation, then the ministry informs the registrar of the new or amended contract. This is what was indicated in Article (33) of the Public Companies Law, which stipulated that (the ministry that will eventually own the new company shall notify the Registrar of Companies of the amended contract or provide the Registrar with the new contract, and the merger shall be effective from the date of approval by the Administrative Director "or the Council of Ministers or the entity that will succeed him, as appropriate" unless the Administrative Director, in consultation with the Governing Council, specifies a day for the merger to take effect. On the date on which the merger becomes effective, the cases of common ownership of the project or projects merged into the new company shall end, and the Registrar of Companies shall issue a new incorporation certificate). The Iraqi legislator considered, pursuant to this amendment, that the merger shall be effective from the date of its approval by the former Administrative Director or the current Council of Ministers, unless another day is specified for the implementation of this amendment by the Administrative Director in consultation with the Governing Council or the Council of Ministers. This matter is subject to consideration and is a dangerous precedent, as this enforcement shall apply to the merged companies themselves, while others cannot be considered effective before them except from the date of its publication in the newspaper or bulletin. The legislator also stipulated that the validity of the merger ends in the event of the common ownership of the merged companies and the certificate of incorporation of the merged company is issued by the Registrar of Companies. With the exception of the last provision, which was not included in the previous text before the amendment, this text granted the Council of Ministers the authority to merge. In addition, the previous text included the provision regarding the termination of the legal personality of the company that merged into another company or the company that was formed ( ), and the issuance of the new amended text removed it, and it did well; because it is considered an implicitly valid provision. It is worth noting that what is noted about this text is that it tends towards elaboration rather than brevity in the art of drafting known legal texts; This is because some of the provisions included in this text were ambiguous, including the phrase (common ownership of the project or projects). An opinion from jurisprudence comments on this phrase by saying, "This expression is not understood. Was the merged company owned in common? On the contrary, the merger process may lead to multiple parties owning the merging company after one of the merged companies was owned by a specific party" ( ). In addition, there are phrases that do not need to be mentioned, including what the text includes, such as the phrase (and as appropriate) and (the Council of Ministers), so we believe that they are redundant, as long as the text is included, for example. The question may be

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raised about the extent to which merger is permissible in the liquidation phase of a public company? Since this matter was not stipulated by the Iraqi legislator in the Public or Private Companies Law, on the contrary, the UAE Companies Law No. (2) of 2015 stipulated in Article (276) that this is permissible, and Article (288) of the Executive Regulations of the Egyptian Companies Law No. (96) of 1982 stipulated that this matter is permissible, but the prevailing opinion of the Iraqi legislator is that this matter is permissible, due to the absence of a legal text prohibiting this in the Public or Private Companies Law, and because the merger contradicts the purpose of liquidation, and because the company is an economic project that must be preserved and continued in order to ensure the continuity of economic projects with great activity; This is because the merger basically leads to saving the company and preserving it from expiration, which the legislator does not like and considers to be the last thing in the life of the company ( ). It is worth noting that the merger is considered one of the general reasons for the expiration of companies; because it leads to the disappearance of the legal personality of the merged company or companies. It is assumed, as a general principle, that this company or merged companies are subject to the provisions of liquidation to inventory its assets, collect its rights and pay its debts, but this matter cannot be The merged companies are exempted from the general principle; this is because the assets of this company or the merged companies are transferred to the merging or new company in accordance with the provisions of the law. This is what the Public Companies Law indicated in the second clause of Article (34), which stipulated that (the rights and obligations of the merged company or companies are transferred to the new company) ( ), meaning that the merger is a special type of solution for the company.

In completion of the procedures for merging public companies, it is necessary to carry out the necessary publication procedures for the merged companies in the Official Gazette and the Registrar's Bulletin, so that the merger produces its effect and can be invoked against others. Otherwise, this merger cannot be invoked. This is what Article (49) of the Public Sector Bodies and Company Law indicated in Chapter Six on Merger, Division and Expiry, which stipulated that (the expiry of the company must be registered in the commercial register and the Chairman of the Board of Directors shall follow up on the registration procedures. The expiry of the company shall not be invoked against others except from the date of its registration in the commercial register), as the legislator did well to include the second provision regarding the penalty for non-publication, and indicated the necessity of publication.

This is also what the Iraqi legislator went for in the first clause of the amended Article (34) of the Public Companies Law, which stipulated that (the Governing Council or the Council of Ministers or its successor, after the transfer of power to the Iraqi interim administration, shall publish its decision to merge in the Official Gazette of Iraq and in the bulletin issued by the Registrar of Companies, if possible). As for the previous text before the amendment, it referred to the necessity for the Ministry to publish the merger decision in the Official Gazette and in the bulletin issued by the Registrar. It is noted that, firstly, it added the word (Iraq) to the Official Gazette, which is redundant in the view of legal jurisprudence. Secondly, it gave the authority to carry out this procedure to the Governing Council or the Council of Ministers. What is the relationship of the Council of Ministers to this matter, especially since the previous text before the amendment was more valid than the amendment that was made to it? It is worth noting that the transitional government wanted to make this amendment to give the Governing Council and the civil governor in particular the authority to merge public companies, because the Public Companies Law before its amendment granted the right to merge to the Council of Ministers, which did not exist at that time. Therefore, this amendment was issued in exceptional circumstances, it would have been better not to issue it, as there were no constitutional institutions that represent the Iraqi will instead of the foreign will that issued it, so this amendment is supposed to be cancelled and formulated in an Iraqi form. The purpose of the merger is that it aims to create economic units that are more efficient and productive, which requires that there be similarity, similarity and harmony between the activities of the merged and identical companies ( ). The main motive for our study of the merger, despite it being one of the methods of termination, lies in the fact that it is not only the union of two or more companies or the establishment of a new public company according to a specific legal organization, but rather that merger aims to achieve economic goals and address the legal and economic problems and obstacles of these companies. If this happens, its benefit will accrue to the national economy as a whole and not to the merged companies that suffer from economic or administrative problems. If the merger takes place, it will address these problems to some extent, and achieve many advantages, including that the new management may be more organized than the previous management of public companies, which leads to the formation of a model tool and huge capital capable of meeting the requirements of the merged company, and then this company achieves the goal it seeks to achieve through the merger, which is to achieve high profits and the ability to compete, and this is what achieves the goals of the development plan that public companies are obligated to.

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Legal effects resulting from the merger process

The merger process also has very significant legal effects on all public companies involved in the merger process, including the expiration of the legal personality of the merged company, and the transfer of its financial liability to the merging or new public company, as well as the impact on partners, creditors, debtors and other parties such as employees. Therefore, we must study them separately according to the following: -

1- The impact of the merger on the merged public company:

The merger leads to the expiration of the legal personality of the merged company or companies (loss of capacity) in favor of the merging companies or new companies (). Some jurisprudence believes that the merger does not lead to the dissolution of the merging company in the exact sense because it does not end except with liquidation, but rather the company's project remains in place, and it is not required for the merger to be preceded by liquidation ( ). Since the new company acquires legal personality from the date of publication.

The merged company loses legal capacity, so its powers end with the acquisition of rights, bearing obligations, concluding contracts and pledges, and also loses the capacity to litigate, since the company is no longer able to appear before the judiciary, whether it is a plaintiff or a defendant ( ). Rather, the merging company becomes the one that possesses this legal capacity.

The merger also leads to the transfer of the financial status of the merged companies to the merging companies, including all of their positive and negative elements, since the merging or new company becomes a general successor to the merged company or companies, so the merging company is held accountable. "The merger will achieve the transfer of the financial status of the merged company without the need to liquidate it and pay its debts" ( ). Therefore, the expiration of the merged company and the loss of its legal personality as a result of the merger results in the end of the authority of its board of directors, and the merging company replaces the merged company upon merger, and then it becomes the only party represented in its board of directors and the party that disputes the rights and obligations of the merged company ( ). Although the Iraqi legislator did not explicitly stipulate this matter in the Companies Law, it can be inferred from the rest of the texts.

2- The effect of the merger with respect to For the merging or new public company resulting from the merger:

The merger leads to an increase in the capital for the merging company, with a share in kind representing all the assets of the merged company, and when the merging company approves the merger, this is considered a ratification of the merger that requires publication by the merging and merged company. Which results in making the necessary amendment to the articles of association and bylaws to ensure the inclusion of new partners in it. Issuing shares or stocks in exchange for the shares they owned. "It is also noted that the effects of the merger are not limited to increasing the capital of the merging company, as it does not only receive the assets of the merged company, but also receives the project that the company was formed to achieve in its entirety, and it is also decided that the merging company receives the liabilities of the merged company in the form of a sum of money, including positive and negative elements that replace it in its rights and obligations" ( ).

The permanent company is a general legal successor to the merging companies, as all rights and obligations of the merged company or companies are transferred to it. The capital of the merging company is increased by the net amount of the merged company after deducting the obligations and private debts incurred by it. The merger also leads to the merging or new company being responsible for all the debts of the merged company, as the merging company is legally responsible for paying these debts and all obligations, and the basis of this responsibility ( ) lies in considering the merging company as a general successor to the merged company. "Since the effects of the contract are directed to the general successor of the contracting parties, and the general successor is the one who succeeds his predecessor in all or part of his financial liability, so the successor replaces the predecessor with respect to the rights and duties that constitute the financial liability" ( ). The merging company may not be relieved of its responsibility for any of these debts due to its lack of knowledge of the debt or its amount. Because upon transfer, it received all the assets and therefore must bear all the liabilities.

3- The effect of the merger on the partners and shareholders in the merged or merging company: -

Merger by means of mixing or inclusion does not prevent the partners or shareholders from transferring from the merged company to the merging company. As for the partners in the merging company, the partners or shareholders

are not affected in their rights and obligations, unless there is fraud on the part of the merging company, and the partners in the merging company have the right to file a lawsuit against them, because the merging company in the merger contract retains its legal personality and financial status.

As for the partners in the merged company, "once the merger is achieved, the partners in the merged companies become partners or shareholders in the merging company unless otherwise agreed" ( ) as this status entails several effects, as the merging company and its shareholders are entitled to the right to the merger consideration. "They obtain a number of shares in the merging or new company in exchange for their rights in the defunct company, in exchange for the in-kind share they received from the merging or new company" ( ). The shareholders in the merging company continue to retain this status in the merging company, as they obtain all the rights of the partners, and there is no difference in that from the partners of the merging company, such as the right to profits, voting, oversight and participation in decisions. The shareholders in the merging company also have the right to participate in the management of the permanent company, as the company's activity expands after the merger, which requires more effective oversight and management work until the funds and activities resulting from the merger process are controlled. The partners also have the right, in the event of fraud, deception, forgery, fraud or other cases, to object to the merger, and they have the right to withdraw from the merger by filing lawsuits in this manner before the competent courts.

4- Effects of merger on creditors of the merging or merged company: -

As the merger affects the rights of creditors of these companies upon the expiration or dissolution of the company, then another company takes its place, as the guarantee increases when the merging company is solvent, quite the opposite when the company is insolvent. All legislations have been keen to explicitly stipulate in their laws the protection of the rights of creditors, especially the creditors of the merging companies ( ). Accordingly, the merger contract for these companies includes the manner in which the debts of the merging company are paid, because in this matter the rights of creditors are preserved. As it may be agreed in this contract to zero out all debt related to the merging company, and here the assets are transferred net of creditors' rights to the merging or new company. It may be agreed in the merger contract to transfer these assets related to creditors' rights, as this contract shows the amount of obligations imposed on the merging company, so all laws obligate merging companies to commit to fulfilling them ( ). However, the question that arises here is whether the creditors of public companies or others have the right to object to the merger decision if it causes harm to them? The answer to this matter is in terms of the ability to fulfill the obligations imposed on the creditors. If the permanent company is able to fulfill its obligations imposed on the merger process, there is no room for objection to the merger. However, if the opposite is the case, the French legislator explicitly stipulated this matter by granting the right to object to the merger process ( ). As for the Iraqi legislator, he did not stipulate this procedure, which is a deficiency that requires mentioning and stipulating it. However, this deficiency requires us to research the jurisprudential opinions on this matter. The opinion is more likely in jurisprudence: “If the merged company transfers all rights and obligations to the merging company, the creditors of the merged company have the right to object to the merger decision” ( ). The court may, after submitting evidence of this, reject the merger decision, which is considered legally void. It is worth noting that the rights of creditors arise from all assets of the merging and merged company alike.

5- Effects of the merger on the debtors of the merged and merging public companies: -

The debtors of the merged company become debtors of the merging or new company after completing the merger procedures. The debtors of the merged company do not care whether the companies that merged are solvent or insolvent, and because they are ultimately indebted to the merged company and are required to pay, whether the payment is to the merged, merging or new company. What matters is that they obtain a clearance from the company to which the payment was made and that this payment is correct so that they are not obligated to pay twice ( ).

It is clear from the above that the debtor's consent is not necessary to complete the merger because the latter is not a transfer of a right that requires the debtor's consent, but rather the comprehensive transfer of the financial liability from the merged company to the merging or new company with rights and obligations, as the merging company becomes the owner of the absolute right to demand the debtor, warn him and file a lawsuit against him before the competent courts to demand payment.

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6- Effects of the merger on employees: -

The merger results in the expiration of the legal personality of the merged company, as this does not mean that the company will renounce the contracts it has concluded, including the employment contract, because the merging company is the one that succeeds the merged company in general accordance with the provisions of the law, and therefore all contracts are ongoing and enforceable towards the merging company as a result of the merger process. "Legal jurisprudence has emphasized a well-established principle within the framework of individual labor relations, which is to ensure the continuity of employment contracts during the change of the legal positions of the employer, so that the work becomes more linked to the institution than to the person of the employer, and this principle has been enshrined in most international legislations" ( ).

CONCLUSIONS

Through the study of "Legal Merger of Public Sector Companies: A Comparative Study", we have reached several conclusions, most of which we have mentioned in detail in their respective places, and we will present them in what follows in a more specific manner, in addition to some proposals that we deem to present regarding the subject of this study as follows:-

1- In Iraq, public sector companies have recently suffered greatly, which affected them and led to their loss and collapse, as they have reached the point of incurring very large debts, such that continuing with them has become not an easy matter, as it is necessary to provide adequate treatment for what these companies are suffering from by introducing modern management methods (privatization, restructuring, transformation, merger and liquidation) as a result of the socialist management that led to their inability to compete with the private sector at this stage, and that the state aims to transform these losing companies into profitable ones, through the state budget directed at supporting the losing companies among them, by supporting them with grants to pay the salaries and wages of workers.

2- The Iraqi legislator in the Public Companies Law considered the employees and users of companies as public employees subject to the provisions of the service laws for employees working in the public sector, contrary to what the Egyptian legislator went for and did well in that he considered them as workers subject to the provisions of the Labor Law and are considered employees with regard to the crimes they commit in connection with the job such as embezzlement and others, as it would have been more appropriate for the Iraqi legislator to follow what the Egyptian legislator did.

3- Merger is one of the economic policies that have gained global fame due to its being considered one of the successful solutions to rid public companies of their problems, due to the successes it has achieved in most developed and developing countries alike, in order to achieve the desired economic goals and move towards a market economy, the state's economic goals and achieve development to advance the reality of these companies in both ways. Merger is a contract by which one or more public companies are organized into another public company that is identical or similar in activity, so that the legal personality of the first organizing company is removed and all its rights and obligations are transferred to the other company. This is called merger by way of inclusion. Or two or more public companies may be merged by virtue of a contract between them to create a new public company to which all rights and obligations are transferred and the legal personality of the merged companies is removed. This is called merger by way of combination.

4- The principle of merger is that it is of a contractual nature, i.e. it is a consensual contract with all its elements between the two parties. However, in the exceptional case where the merger is the result of government decisions in the event that there is a trend by the Council of Ministers to merge, the legal nature of the merger is of a mixed and special nature, and when the authorities intervene, it becomes of a mixed contractual and regulatory nature.

5- The motive for merging commercial companies varies according to the circumstances. The motive for merging may be the desire for cooperation between the companies involved in the merger, to achieve horizontal or vertical integration between them, or the motive for merging may be the desire for control and monopoly. Accordingly, merging cannot always be considered a defect or an advantage, as the ruling differs according to the goal it seeks to achieve, as the goal lies in achieving the desired benefit from it towards all parties in the company, shareholders, employees and others.

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6- The merger leads to the merging or new company being responsible for all the debts of the merged company, as the merging company is legally responsible for paying these debts and all obligations, and the basis of this responsibility lies in considering the merging company a general successor to the merged company.

7- The Iraqi legislator was also unsuccessful in formulating Article (33) of the Iraqi Public Companies Law when amending it by order of the Provisional Coalition Authority, which stated that the merger shall be effective from the date of approval of the Administrative Director or the Council of Ministers unless the Administrative Director, in consultation with the Governing Council, specifies a day for the merger to take effect. On the date on which the merger becomes effective, the joint ownership of the project or projects merged into the new company shall end and the Registrar of Companies shall issue a new incorporation certificate. This is contrary to the usual practice in all company laws, which consider the merger effective from The date of issuance of the certificate of incorporation by the registrar, which is what the previous text included before the amendment, and the previous text did not include the fact that the entry into force of the merger ends the state of common ownership of the merged companies, and this matter is ambiguous and redundant.

8- The Iraqi legislator was also not successful in formulating Article (34) of the Iraqi Public Companies Law when amending it pursuant to the order of the Provisional Coalition Authority, which went to the fact that the one who publishes the merger decision in the Official Gazette and the Bulletin is the Governing Council or the Council of Ministers, so what is the relationship of the Council of Ministers or the Governing Council to this procedure, especially since the previous text before the amendment was more valid than the amendment that was made to it; because it required the competent ministry to publish the merger decision in the Official Gazette and in the registered bulletin, in addition to the amended text including some redundant phrases that did not exist before the amendment.

9- The Iraqi Public Companies Law did not refer the provisions that do not contain a specific text to the provisions of the Iraqi Companies Law No. (21) of 1997, which shows the possibility of taking the referral despite the lack of a text on it, describing the Private Companies Law as a general law that governs companies in general in what does not contain a specific text in other laws to the extent that it does not conflict with the provisions of the Public Companies Law.

10- The Iraqi legislator in the Public Companies Law stipulated that only one reason for the company to be dissolved and then liquidated is achieved, which is what Article (14) stipulated, when the company's loss reaches (50%) of its nominal capital, then the ministry studies this matter and then refers this study to the Council of Ministers for the latter to decide whether to continue the company or liquidate it, and the Iraqi legislator did not stipulate the remaining reasons for liquidation as the legislator did in the Private Companies Law, which may allow room and flexibility for those in charge.

RECOMMENDATIONS

1- We call on the Iraqi legislator to unify the provisions of public and private companies in one law (towards one law for companies), so that one provision applies to companies to avoid all problems that arise from contradiction, duplication or legislative deficiency in one law without the other, taking into consideration the special nature of each company.

2- We recommend that the Iraqi legislator add an article related to the inadmissibility of bankruptcy of public companies according to what the prevailing opinion in jurisprudence has gone to in order to resolve the dispute, and we suggest that it be in the following form (It is not permissible to declare bankruptcy of public companies subject to the provisions of this law), in addition to that we recommend that the Iraqi legislator stipulate that (It is permissible to restructure or rebuild public companies with the aim of saving the project with a plan developed by the founding bodies and approved by the Council of Ministers within a period of thirty days from the date of its receipt).

3- We call on the Iraqi legislator to count the members and employees of public sector companies as workers subject to the provisions of the current Iraqi Labor Law No. (37) of 2015 and not to count them as public employees subject to the civil service laws as the Egyptian legislator did. This allows them to move with the economic project of the public company to the private company.

4- We propose amending the legal articles that contain the two phrases wherever they appear (Executive Director) - (Governing Council) in the Public Companies Law and replacing them with the two phrases (Prime Minister) - (Council of Ministers).

5- We recommend that the Iraqi legislator add a special text regarding how to estimate the in-kind share, and we suggest that it be in the following form (The in-kind share provided in public companies shall be estimated by a committee formed by a decision of the competent minister upon his request, headed by a judge of the Court of First Instance specializing in commercial lawsuits at the location of this share, and with the membership of a representative of the Ministry of Finance, a representative of the Financial Supervision Bureau, a representative of the Real Estate Registration, and a representative of the Chamber of Commerce at the location of the share. The committee shall submit its report within a period of sixty days from the date of its formation to the minister for approval within thirty days from the date of submitting the report to him. In the event of non-approval, a joint meeting shall be held within thirty days from the date of objection to the report to take the appropriate decision regarding it by majority. If approval is obtained, the competent ministry shall take the necessary action).

6- We suggest that the merger should not be limited to public companies among themselves, but rather the merger should be between public companies and mixed and private companies, as the Jordanian legislator did.

7- We call on the Iraqi legislator to reorganize and amend the provisions of Chapter Eight on the merger of public companies that were amended by the order of the Provisional Coalition Authority, which wanted to give the Governing Council and the Civil Governor in particular the authority to merge public companies; because the Public Companies Law before its amendment granted the right to merge to the Council of Ministers, which did not exist in the Coalition Authority, and therefore this amendment was issued in exceptional circumstances that would have been better not to issue it if there were no constitutional institutions in which the Iraqi will is represented instead of the foreign will that issued it, so it is assumed that this amendment should be cancelled and reformulated; For the purpose and time for which it was issued has expired, and we call for rewording it to be as follows: -

- Article (31) in the following form (First: It is permissible by a decision of the Council of Ministers to merge a public company with another or merge two or more public companies to form a new public company, provided that they have similar or integrated activities. Second: If the companies to be merged belong to one ministry, this ministry is the one that proposes the merger to submit it to the Council of Ministers. However, if the companies to be merged belong to different ministries, these ministries must agree by virtue of an official report signed by the competent ministers to be submitted to the Council of Ministers for approval within thirty days).

- Article (32) in this form (After the Council of Ministers approves the merger, the competent ministry or the entity not affiliated with a ministry shall, within a period of thirty days, amend the contract of the merged company or draft a new contract for the company resulting from the merger. The Board of Directors shall also amend the articles of association or Preparing a new incorporation contract).

- As well as Article (33) in the following form (The competent ministry or the entity not affiliated with a ministry must notify the registrar of the amended contract or the new contract within thirty days from the date of approval of the merger, so that this will be noted by the registrar within a period not exceeding ten days from the date of receipt of the amended or new contract).

8- Article (34/First) in the following form (The ministry or the entity not affiliated with the relevant ministry must publish the merger decision in the Official Gazette and in the registrar's bulletin)

9- We propose adding an article to the Companies Law that allows the merger in the liquidation phase of the public company as in the comparative laws in order to save the company from liquidation and termination.

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