

Corporate Mergers from the Perspective of Private International



Firas Karim Sheaan¹, Hind Faez Ahmed Al-Hasoon²

^{1,2}University of Babylon, College of Law, Iraq

ABSTRACT: Economic competition casts its shadow on economic projects, as it pushes most of these projects to move towards economic blocs, and international merger is the legal means through which companies and economic projects can achieve their goals in creating these economic blocs. This merger technique directly affects the merging companies because the companies concerned with it not only lose their economic independence, but also lose their legal entity and thus their legal personality, as they disappear completely and are dissolved in the merging company. Also, the international merger of companies takes place through a contract called the merger contract, and these companies are usually of different nationalities, which raises the problem of searching for the law applicable to the merger contract itself, as it is a contract that includes a foreign element, and what is the legal system to which the international merger of companies is subject.

KEYWORDS: International merger, corporate merger, applicable law, private international law

1. INTRODUCTION

Merger is the economic means of concentrating projects into large production units, as it is the most common and widespread form of concentration in the capitalist world due to its ease of procedures, low expenses, and reduction of risks to which small and medium enterprises are exposed. When it is conducted, it only requires... The approval of the majority that has the power to amend the company's bylaws, as is the case in a joint-stock company, which is considered the most suitable company to be a subject of merger. In view of the importance of the issue of merger and the complexity of its dimensions, most modern legislation has resorted to regulating it through special texts in corporate laws, because merger affects the rights and interests of many, and imposes many obligations on their debts, as merger has decisive effects on the merged companies, especially on their legal personality, and has a clear impact. On shareholders and creditors, and on commercial competition by reducing or enhancing it.

Since international mergers usually take place between companies of different nationalities, which raises the question about the law applicable to international mergers and the legal consequences that arise from them.

According to the above and in order to cover the subject of the research, we will divide our research into two topics, starting in the first of which we will address the statement of the legal adaptation of international integration and the statement of its legal nature as a necessary introduction necessary to reach knowledge of the applicable law, which is what we will devote to the second section.

2. LEGAL ADAPTATION OF INTERNATIONAL INTEGRATION

Studies of private international law focus on the relations of individuals of an international nature, that is, legal relations with a foreign element. In its scope, legal adaptation aims to determine the correct description of the legal relationship in order to know the legal group to which the relationship is linked in order to determine the attribution rule that shows the law applicable to this relationship.

The merger process is characterized by complexity because it includes various aspects and goes through several stages, starting with negotiations and ending with the final version of the merger project, which requires determining the legal description of the merger process in accordance with what prevails in jurisprudence and law, in the first requirement. Since the international merger takes place between companies that are characterized as multinational, meaning that it exceeds the territorial scope of a single state, this calls us to clarify the international character of the merger and the standard by which that character is determined, which will be the content of the second requirement.

2.1 Defining merger and explaining its legal nature

The Iraqi legislator adopted merger as one of the ways of dissolving companies, as he stipulated this in Paragraph Four of Article 147, Chapter One of Chapter Six of the Amended Companies Law No. 21 of 1992, and also regulated its provisions in Chapter Two

Corporate Mergers from the Perspective of Private International

of the same chapter in Articles 148-152.

It is noted that the Iraqi legislator did not set a definition for integration, which is not surprising, as the legislator usually tries to stay away from setting a specific definition. This approach is the same as in some legislation, such as Egyptian Companies Law No. 159 of 1981 and Jordanian Companies Law No. 22 of 1992, as no definition of merger was set in each of them.

In the face of this silence and the ambiguity of the idea of integration, the views of jurists differed regarding its definition and the definition of its meanings according to the angle from which the issue of integration is viewed, as follows:

2.1.1 Definition of merger in view of its effects

An aspect of jurisprudence defined merger by looking at the effects that it entails by saying that:

“A measure intended to unite several independent companies into one legal person, whether through a new legal person, or by merging one or more companies into an existing company.”⁽¹⁾

It is also known as “the merger, dissolution, and demise of two companies together, and the transfer of all their funds to a new company, or the dissolution of only one of them and the transfer of all its funds to the merging company.”⁽²⁾

Others defined it as “the joining of two or more previously existing companies, either by merging one with the other, or by forming a new company, in which the existing companies are merged”⁽³⁾

There are those who said that merger is “the union of two companies, by dissolving them and transferring their financial liabilities to a new company, or joining one of them to the other, and therefore at least one of the two companies must be dissolved”⁽⁴⁾

It is noted from the previous definitions that they focus on the impact resulting from the merger, which is the expiration of the legal personality of the merged companies, and the emergence of a new company that replaces the merged companies and is considered its successor in all rights and obligations.

2.1.2 Definition of merger through its contractual nature

Another aspect of jurisprudence focuses on the essence of the idea of merger, and that it is of an agreement nature, as it stems from a voluntary act based on the will of the parties concerned to create another legal person on the ruins of the merged companies.⁽⁵⁾

According to this view, a merger is an agreement or contract between two or more companies. It may be by way of combination when two or more companies agree to form one new company, following the cessation of the previous companies, so that the new company bears the debts and obligations of those companies. It may also be by way of annexation when they agree. A company with another upon the first joining the second, so the legal personality of the merged company disappears, and its debts and obligations are transferred to the merging or annexing company.⁽⁶⁾

There are those who define it as “a process that involves a company or several companies transferring all of its assets to another existing company whose capital increases by the amount of these assets or to a new company, so that the merging or new company bears all the liabilities of the merged company, and the new shares or shares that represent these assets are transferred.” To the merged companies⁽⁷⁾.

While others defined it as “a contract between two or more existing companies that leads to the dissolution of the merged company or companies, and the transfer of its financial liability with all its positive or negative elements as a single unit to the merging company with the continuation of the economic project of the merged company.”⁽⁸⁾

The merger contract leads to the transfer of the financial liability of one company to another company, and this merger results in a new company, originating from all the companies into which it was merged. The merging company, or the company resulting from the merger, is considered a successor to the merged companies, and is replaced by legal subrogation in what it owns and owes, within limits. What was agreed upon in the merger contract, without prejudice to the rights of creditors⁽⁹⁾.

1) (Dr. Rizkallah Al-Antaki and Daoud Al-Sibai, Encyclopedia of Commercial Rights, Commercial Companies, Dar Al-Insha, Damascus, 1962, p. 235.

2) (Dr. Abdel Hakim Fouda, People's Companies - Solidarity Companies - Simple Partnership - Joint Venture) in the light of jurisprudence and the jurisprudence of cassation, Dar Al-Fikr Al-Jami'i, Alexandria, without a year of publication, p. 20.

3) (Dr. Mustafa Kamal Taha, Commercial Law - Capital Companies, University Cultural Foundation, Alexandria, 1982, p. 221.

4) (Dr. Jack Al-Hakim, Commercial Companies, Damascus University Press, 1992, p. 247.

5) (Xavier Seux Baverez, Social Studies, Dalloz, 2003, p. 205. Referenced in the book of Dr. Hossam El-Din Abdel-Ghani Al-Saghir, The Legal System for Corporate Mergers, Cairo, 1986, p. 25.

6) (Taheri Bashir, Merger of Commercial Companies in Algerian Law, doctoral thesis submitted to the Faculty of Law, University of Algiers Ben Youssef Ben Khedda, 2016, p. 254.

7) (Ahmed Abdel Wahab Saeed Abu Zeina, The Legal Framework for the Merger of Commercial Companies - A Comparative Study, PhD thesis submitted to the Faculty of Law - Cairo University, 2012, p. 9.

8) (Dr. Ahmed Muhammad Mahrez, Merger of Companies from a Legal Point of View - A Comparative Study, Dar Al-Nahda Al-Arabiya, Cairo, 1983, p. 7.

9) (Dr. Muhammad Hussein Ismail, Merger in the Jordanian Company Law Project, Mu'tah University Journal for Research and Studies, first issue, June 1986, p. 12.

Corporate Mergers from the Perspective of Private International

Some legislation has confirmed the contractual nature of the merger. Among these is what is stated in Article 289 of the Executive Regulations of the Egyptian Companies Law No. 151 of 1981, which states: "The draft merger contract shall be prepared by the Board of Directors or managers...", as well as what is stated in Article 225 of the Jordanian Companies Law No. 22 of 1997.

Denying or ignoring the contractual nature of the merger or considering it as a procedure means that it can be done by an administrative decision, for example, and this violates the shareholder's right to remain a shareholder in the company in which he started investing, which is a principle that forms the basis of the contractual character, and the shareholder's right to object to the merger ⁽¹⁾.

Through the advanced presentation, we find that the legal nature of the merger process is that it is a voluntary act that reflects the direction of two wills to produce a legal effect. The obligations that arise from it after that have their source in the merger contract, which is the most likely legal condition for the merger.

2.2 The international character of the merger contract

The importance of determining the international character in any legal relationship is evident as it is a necessary premise for the legal relationship to enter within the scope of private international law and for the contract to be subject to legal rules that differ from national contracts. A contract is considered internal if all its legal elements come together within the framework of one country, and therefore it is subject to one legal system, so that if a dispute is raised about this contract before a judge, he is obligated to apply the rules of his national law directly ⁽²⁾.

As for an international contract that has a foreign element, it is a contract whose effects extend to more than one country, and after that it is subject to legal rules consistent with its nature by searching for the most appropriate laws by comparing between the legal systems that are likely to be applied ⁽³⁾. It must be noted that The parties have the right to choose the law applicable to their international contracts in terms of their composition, terms and effects. If they remain silent about determining this law, the judge must determine it based on the circumstances and circumstances of the case ⁽⁴⁾.

Accordingly, the problem of conflict of laws does not arise before the judge unless the relationship in question is characterized by an international nature, as the internal contract is subject in all cases to the law of the country under which it arose, and in the event that the parties choose a foreign law, the rules of this law will be considered as contractual clauses that do not They may violate the preemptory rules in internal law, and their choice of this law represents an expression of their desire to choose, not as a law ⁽⁵⁾.

The question that arises here is when is the merger contract international and what is the standard by which the international character of the merger contract is determined? In this regard, it is necessary to consider the jurisprudential standards that were mentioned in determining international status, which we will explain later.

2.2.1 Legal standard

Some jurists have tried to find a standard on the basis of which the international character of the contractual association can be determined, while not deviating from the legislative texts related to the subject of private international law, by relying on the attribution controls used in determining the applicable law, such as the nationality and domicile control for personal status matters, and the will control for trade contracts. However, this last control is characterized by being a non-objective control, meaning that it requires positive activity from the parties represented by their explicit or implicit choice of a specific legal system to reveal the law that governs their contract ⁽⁶⁾.

Accordingly, the legal standard is based on the basic idea that a contract is considered an international contract whenever one or more of its legal elements relate to more than one legal system, whether this element relates to its parties, its purpose, the place of its conclusion, the place of its implementation, or its subject matter. Accordingly, The contract concluded between a national and a foreigner is considered international because the foreign character touches on the element of the parties. This element may focus on the reason for the contract or the place to which the money is directed. A contract concluded abroad between two nationals is considered international because the foreign element touches on the place of its conclusion ⁽⁷⁾.

)1 (See: D. Mamdouh Abdel Karim, Conflict of Laws, 1st edition, House of Culture, Amman, 2005, p. 163.

)2 (See: D. Firas Karim Shayan, The impact of international trade agreements on the development of conflict of laws rules, doctoral thesis, College of Law, University of Mosul, 2007, pp. 2-3.

)3 (See: Dr. Salah Al-Muqaddam, Conflict of Laws in Bills of Lading and Ship Charter Parties, A Comparative Study in Maritime Law, University House, Alexandria, 1981, p. 198.

)4 (See: Salam Hadi Jassim, The Idea of a Free International Contract and Its Affect by International Substantive Rules, Master's Thesis, Institute of Arab Research and Studies, Cairo, 2011, p. 8.

)5 (See: D. Hisham Ali Sadiq, The Law Applicable to International Trade Contracts, Al-Ma'arif Institute, Alexandria, 1995, p. 48, Dr. Izz al-Din Abdullah, Private International Law, 3rd edition, Part 6, Dar al-Nahda al-Arabiya, Cairo, p. 211.

)6 (See Muhannad Azmi Abu Al-Ala Maghli, Mansour Abdel Salam Al-Taraira, the law applicable to electronic consumption contracts of an international nature, research published in the Journal of Sharia and Law Studies, University of Jordan, Jordan, Volume 4, Issue 2, 2014, p. 41.

)7 (See D. Hisham Khaled, Introduction to Arab Private International Law, Dar Al-Fikr University, Alexandria, 1st edition, 2003, p. 104. friendship. Firas Karim Shayan, previous source, pp. 17-18.

Corporate Mergers from the Perspective of Private International

2.2.2 Economic standard

According to this standard, determining the international character of the contract is through analyzing the contractual association and looking at its subject matter and the extent of its connection to the interests of international trade, through the concentration of money exchange operations across borders or the extent to which they exceed the internal territorial scope of the state. The contract is considered international whenever it results in the transfer of capital from One country to another, regardless of the nationality of the contracting parties or other elements of the foreign character. Therefore, if the contract does not lead to an exchange movement, it is not considered international, even if the foreign character refers to it ⁽¹⁾.

It is noted that the word international trade, according to the supporters of this standard, takes the broad meaning, meaning that it does not adhere to the internal classification of commercial or civil businesses, but rather includes, for example, the import of goods from abroad or the export of national products to a foreign country. It also includes industrial production operations, the exchange of wealth, and contracts for the transfer of technology and franchising. ...etc ⁽²⁾. It must be noted that the economic standard for the international contract appeared in the late twenties of the last century (twentieth century) in France and went through three stages, which are as follows: ⁽³⁾.

The first stage - in which the contract is considered international if it includes the ebb and flow of goods and capital across borders between two or more countries.

The second stage - in which the contract is considered international if it relates to the interests of international trade. This stage appeared on the occasion of the acceptance of the arbitration clause in international contracts. If the dispute affects the interests of international trade, it can be subjected to arbitration.

As for the third stage, the contract is considered international if its effects extend beyond the national economy. Therefore, all legal elements of the contract must be considered to estimate the extent of its departure from the scope of the national economy.

2.2.3 Double standard

Due to the different points of view regarding defining what is meant by an international contract, some jurists saw the necessity of adopting both legal and economic standards together. The jurisprudence supporting this standard sees the necessity of fulfilling the two standards in the contract so that it can be considered an international contract. One cannot be fulfilled without the other being fulfilled. The presence of the foreign element in the contract must coincide with the cross-border circulation of funds. Part of the jurisprudence holds that the combination of the two standards came about as a result of intertwining. And the overlap between legal relations and economic relations ⁽⁴⁾.

The supporters of this standard believe in their justification for the necessity of the double standard that the legal standard, even if it is capable of raising the problem of conflict of laws, is not sufficient to give the contract an international character. There are elements that may be present in the contract, but they are not sufficient to give it an international character. The difference in the nationalities of the contracting parties is not enough. To recognize this characteristic and subject the contract to foreign law, and that the economic criterion alone is not sufficient to grant the international description of the contract ⁽⁵⁾.

Accordingly, the standard for the internationality of a contract has evolved from a legal standard that requires the presence of a foreign character in an element of the contractual bond to an economic standard that requires, because the contract is international, that it be related to the interests of international trade, and then to a standard that combines the legal and economic standards to internationalize the contract.

With regard to the internationality of the merger contract, it seems that the legal standard prevails over the rest of the standards, which was supported by the Paris Court of Appeal, considering the legal standard sufficient for the contracting country, which is the presence of the foreign element in the legal relationship. On the other hand, companies, as legal persons, are characterized by

1) (See Hassanein Dhia Nouri Al-Musawi, Will and its Role in Determining Iraqi International Jurisdiction, research published in Maysan Research Journal, Iraq, Volume Eight, Issue 16, 2016, p. 396.

2) (See D. Ahmed Abdel Karim Salama, Principles in the International Conflict of Laws, Dar Al-Nahda Al-Arabiya, Cairo, 2008, p. 189.

3) (See: D. Hisham Ali Sadiq, The Law Applicable to International Trade Contracts, previous source, p. 81, Dr. Sami Badie Mansour, Dr. Okasha Abdel-Al, Private International Law, University House, Beirut, 1995, p. 397, and Dr. Firas Karim Sha'an, previous source, p. 12.

4) (See: D. Muhammad Walid Al-Masry, Al-Wajeez fi Explanation of Private International Law - A Comparative Study, 2nd edition, Dar Al-Thaqafa for Distribution and Publishing, Amman, Jordan, 2011, pp. 193-194.

5) (Dr.. Bashar Muhammad Al-Asaad, Investment contracts in international private relations and their nature - the law applicable to them - means of settling their disputes, 1st edition, Al-Halabi Legal Publications, Beirut, 2006, pp. 34-35.

Corporate Mergers from the Perspective of Private International

the foreign character. About the national company and that the nationality link is what is relied upon to differentiate between national and foreign legal persons, where the foreign character of the company is determined based on the nationality officer ⁽¹⁾.

According to this standard, and with regard to the merger contract, the contract concluded between the foreign company and the national company is considered an international contract due to the difference in the nationality of the companies involved in the merger process, and the contract concluded between two national companies is considered a national contract unless the contract relates to a foreign element other than the nationality.

This was confirmed by what was stated by a part of American jurisprudence, which believes that “if any of the branches and agencies affiliated with American companies conclude a specific contract with the parent company, this contract will not have international status, given that the contracting parties have true American citizenship.” That is, there is no difference between them. The nationality of the contracting parties, and all of that, unless there is another presumption or evidence that could indicate the internationality of the particular relationship.”⁽²⁾Note that the Iraqi Law of Branches and Offices of Foreign Companies and Economic Institutions No. (5) of 1989 AD recognized in Article (5/Fifth) the legal personality of the branch ⁽³⁾.

Based on the above and the concept of the violation, the merger contract between the American company and the Iraqi company is considered an international contract according to the legal standard according to which the internationality of the contract is determined if there is a foreign element in the legal relationship. Therefore, the merger contract between companies of different nationalities is an international contract and in accordance with the standard legal.

3. THE LAW IS APPLICABLE TO THE INTERNATIONAL MERGER CONTRACT

The activity of people in general is no longer limited to the territory of the state to which they belong by nationality, but rather extends to legal relations with people belonging to other countries, which leads to the establishment of legal relations colored by a foreign element. Its effects extend from the regional scope to the international scope, such as sales contracts and other obligations contractual ⁽⁴⁾.

Thus, the problem of conflict of laws arose due to the increase in commercial transactions between countries or between people across borders and the inability of national legislation to accommodate international changes and keep pace with rapid developments in the field of international trade, in addition to the lack of conviction of the parties to the international legal relationship in the rules of international trade, which pushed the parties to the legal relationship to agree in advance on an offer. Their contractual disputes are referred to arbitrators and to the internationalization of international trade contracts and their subjection to commercial customs and customs, considering the latter far from the authority of the state ⁽⁵⁾.

After we have shown the internationality of the merger contract that takes place between two or more companies, each of which has a different nationality from the other, and in accordance with the legal standard that requires the presence of foreign character in an element of the legal relationship in order for it to be international, and since the international merger takes place between companies that differ in nationality, it fulfills the requirements of the legal standard to add... The international character of the contract, in addition to the availability of the requirements of the economic standard, which is that the contract must be related to the interests of international trade, and since the merger at the international level is based on economic concentration, the formation of large companies at the international level, and the improvement of production and its distribution, which results in the merger contract being linked to international trade in accordance with the economic standard.

Whereas the rules of conflict of laws related to determining the law applicable to international contracts require resorting to the principle of private international law, known as the principle of the submission of the international contract to the law of will, which has become one of the recognized principles in private international law ⁽⁶⁾.

Therefore, we will divide this topic into two requirements, the first of which will explain the concept of the idea of the law of will and the case of the will being explicit or implicit in determining the applicable law. The second will be to explain the solutions in the event that the will is silent about determining the applicable law to the contract.

)1 (Quoted from Dr. Hisham Khaled, The nature of the international contract, a comparative jurisprudential study, Mansha'at Al Maaref, Alexandria, 1995, p. 21.

)2 (Article (5/Fifth) of the Iraqi Law of Offices of Foreign Companies and Economic Institutions No. (5) of 1989 stipulates that: ((The Registrar shall issue a license for the branch or office within fifteen days from the date of the last publication, and the branch or office shall acquire legal personality from the date of issuance of the license.

)3 (Dr. Ghaleb Ali Al-Daoudi, Private International Law, Conflict of Laws, Conflict of International Jurisdiction, Enforcement of Foreign Judgments, A Comparative Study, Dar Al-Thaqafa for Publishing and Distribution, Amman, 1432 AH - 2011 AD, p. 74.

)4 (Dr. Abdul Wahab Abdullah Al-Maamari, the merger of multinational commercial companies, a comparative legal jurisprudential study, Dar Al-Kutub Al-Qawaniyya, Egypt, 2010, p. 661.

)5 (Dr. Bashar Muhammad Al-Asaad, Investment Contracts in International Relations

)6(Dr.. Bashar Muhammad Al-Asaad, Investment Contracts in International Private Relations, op. cit., p. 93 .

Corporate Mergers from the Perspective of Private International

3.1 The concept of the idea of the law of will

The law of will regarding contracts or actions is intended in conflict of laws to be the law chosen by the contracting parties or stakeholders, explicitly or implicitly. In other words, that is, the application of the free will of the parties to govern the contractual relationship. Adopting this theory includes respecting the principle of the authority of the will. Thus, the will is capable of creating Obligations and adherence to them ⁽¹⁾. According to the above, we will explain the content of the principle of the law of will in the first section, while we devote the second section to explaining the types of choice of contract law.

3.1.1 The content of the principle of the law of will

The law of will is based on the idea that the contracting parties choose for themselves the law that governs this association in terms of the terms of the contract or in terms of its effects. The principle of the authority of will has prevailed in determining the law that governs the international contract rather than the internal contract since the nineteenth century when the international contract includes a foreign element of the contract. Elements of the contract, such as the place of implementation, its subject matter, or the difference between its parties in terms of nationality or domicile. In the event of the presence of this foreign element in the contractual relationship, the contracting party has the right to be subject to the law that guarantees his financial interests and fulfills his desires. ()

The contract theory is considered one of the most important manifestations of the principle of will power, as this principle had an impact on the mechanism of private international law, which considers the meeting of contractual commandments sufficient evidence in itself that it is the source of the obligation. The contract theory is based on the fact that if the contracting parties choose a law to govern their contractual relationship, then this law becomes part of the law terms of the contract⁽²⁾.

This principle has been subjected to criticism, as some believe that although there are cases in which the choice of the applicable law depends on the will of the people (), just as contractors have the right to set rules related to organizing their contractual ties, as members of a specific legal system, these contractual rules are their own rules. Because they are not characterized by generality and abstractness, and do not bind only the extremes, they are like contractual terms specific to the contracting parties. It is difficult to consider them as contract law ⁽³⁾.

The principle has also been subjected, in general, to criticism, as it is believed that individuals, by choosing the law of their contract, in this case become on an equal footing with the state on the one hand and escaping its authority and control on the other hand, when they choose and impose the application of the law they choose ⁽⁴⁾.

Some jurists have responded to this objection, stressing that “the will of the contracting parties does not specify the relevant law, but rather it concentrates the contract in a specific place. If the contract is concentrated in this way, then the law of the place chosen by the contracting parties is the one that applies to the contract.”

Some national legislation has also established the rule of the law of will, which generally establishes the right of the parties to an international contractual relationship to choose the law that governs it. Article (25/1) of the Iraqi Civil Law No. (40) of 1951 AD stipulates that: ((It applies to contractual obligations. The law of the state in which the contracting parties have a common domicile is located. If they share a domicile, if they differ in domicile, the law of the state in which the contract was concluded shall apply unless the contracting parties agree or it becomes clear from the circumstances that another law is to be applied. This article of the Egyptian Civil Code ⁽⁵⁾ also corresponds to Article (19/1) as well as Article (20/1) of the Jordanian Civil Code ⁽⁶⁾.

The French Code of Procedure also emphasized the freedom of the parties to choose the law applicable to the subject of the dispute, without being bound by any national law, as well as without being bound by specific legal rules, in Article (1496) of it, which stipulates: “The arbitrator shall settle the dispute in accordance with the rules of the law chosen by the parties.” In the absence of such a choice, according to what he deems appropriate. In both cases, the arbitrator must take into account commercial customs))
(7)

Now, the international merger contract concluded between several companies, one of which differs from the other in terms of its enjoyment of the nationality of a country, the public bodies of these companies have the right to choose the applicable law in the event of a dispute arising between the companies involved in the merger process, given that the merger contract is an international contract and given that the latter is subject to the principle The freedom of the parties to choose the law applicable to the subject of the dispute in accordance with national legislation, arbitration texts and international agreements.

1) (Dr. Mamdouh Abdul Karim Hafez, Private International Law According to Iraqi and Comparative Law, 1st edition, Al-Hurriya Printing House, Baghdad, 1973 AD, p. 312.

2) (Dr.. Mamdouh Abdel Karim Hafez, Private International Law, Conflict of Laws and Jurisdiction, op. cit., p. 165.

3) (Dr. Muhammad Walid Al-Masry, previous reference, pp. 180-181.

4) (Dr. Okasha Muhammad Abdel-Al, Conflict of Laws (Comparative Study), Al-Halabi Legal Publications, Beirut, 2007, p. 755.

5) (Dr.. Hisham Ali Sadiq, The Law Applicable to International Trade Contracts, op. cit., p. 292.

6) (Dr. Muhammad Walid Al-Masry, previous reference, p. 181.

7) (Dr.. Okasha Muhammad Abdel-Al, International Civil and Commercial Procedures and Implementation of Foreign Judgments, op. cit., p. 337.

Corporate Mergers from the Perspective of Private International

3.1.2 Photos of agreement on the applicable law

What distinguishes the law chosen by the parties to resolve the dispute arising from a legal relationship between those parties is the personal element. The latter is represented in the freedom of the parties to choose the applicable law in international contractual obligations, and it may be explicit or implicit.

First: Explicit expression of will: When the parties explicitly express in their contract a law to govern the dispute, in this case this chosen law is considered the competent one to govern the contractual relationship, provided that this law is not contrary to public order and morals in the judge's state, and thus it is not permissible for the latter to search for the intention of the parties. The legal relationship with regard to the law is applicable to its application to rule the dispute, since the will has been expressly expressed in choosing the law ⁽¹⁾.

With regard to the international merger contract, the party to the contract (the merging companies) has the right to choose the applicable law expressly included in the text of the international merger contract to govern the contractual relationship. Therefore, the judge or arbitrator must commit to applying this chosen law in respect of the principle of the parties' freedom to choose the law to govern the dispute, unless this The law is contrary to public order and morals.

Second: Implicit expression of will: The parties to the relationship, especially in international contracts, rarely ignore the explicit definition of the law applicable to the dispute. In the event that the will does not declare the definition of the law, the court seeks to reach or search for this will in its definition of the applicable law through The implicit expression of the parties, such as the presence of a text taken from the law of a particular country in the contract ⁽²⁾ or the use by the parties of a contract formula in force in a country and an arbitration institution located in that country was chosen. In this case, there is an implicit choice of law, which is the law of the aforementioned country ⁽³⁾.

One of the means through which the judge can clarify the implicit will to determine the applicable law in the event that there is no explicit provision for choosing the law by the parties to rule the dispute is by writing the contract in a specific language or documenting the contract with an employee of a specific country, so it is understood that the parties to the relationship have implicitly directed their will to Their contractual relationship is subject to the provisions of the state whose language was used in the contract and whose contract was documented by one of its official employees ⁽⁴⁾.

The legislative texts of comparative laws⁽⁵⁾ also confirmed that in the event that the parties to contractual obligations do not explicitly agree on determining the applicable law, the arbitrator or judge must search for the implicit will through what is included in the international contract.

From all of the above, and to the extent that the issue relates to the international merger contract that takes place between companies of different nationalities, in the event that the parties (the merging companies) do not explicitly stipulate in the contract a law governing the contractual relationship when a dispute arises, the judge or arbitrator may search for the implicit will for contractors.

3.2 The law is applicable to the international merger contract when the will is silent

If the contracting parties do not explicitly declare their will that the contract concluded between them be subject to a specific law that governs the legal relationship, and the judge cannot reveal their implicit will, as we presented previously, then there are two approaches to attribution, which are rigid attribution and flexible attribution:

3.2.1 Rigid attribution approach

This approach to determining the law applicable to international contracts is characterized by the fact that it ensures that contractors have prior knowledge of the law that governs the contract when they remain silent about choosing it. It also achieves for them the legal security they seek, in addition to the stability of the requirements of international trade, as the rigid attribution approach expresses the legislator's point of view regarding what he sees as the closest laws. A connection to this contractual bond, such as the law of the country to which the contracting parties belong, by their nationality or domicile, or the law of the country of concluding or implementing the contract ⁽⁶⁾.

Thus, the rigid attribution approach is described as the legislative approach, because the legislator is the one who carries out the process of objective concentration of the contractual relationship when the parties to the contractual relationship do not specify the applicable law explicitly or implicitly, by establishing specific attribution rules that the judge is obligated to apply, and it is not

)1 (See the text of Article (19/1) of the Egyptian Civil Law No. (131) of 1948 AD.

)2 (See the text of Article (20/1) of the Jordanian Civil Law No. (43) of 1976 AD.

)3 (Dr. Fawzi Muhammad Sami, International Commercial Arbitration, a comparative study of the provisions of international commercial arbitration as stated in international, regional and Arab rules and agreements, Baghdad, year 1412 AH - 1992 AD, p. 201.

)4 (Dr. Ghalib Ali Al-Daoudi, Private International Law, Conflict of Laws, op. cit., pp. 216-217.

)5 (Dr. Ghalib Ali Al-Daoudi, Private International Law, Conflict of Laws, op. cit., p. 217.

)6 (Dr. Fawzi Muhammad Sami, Commercial Arbitration, op. cit., p. 187.

Corporate Mergers from the Perspective of Private International

possible in the event that the attribution rules are determined beforehand. The legislator permits the judge to exercise his own discretion in this matter ⁽¹⁾.

The Egyptian Civil Law, Article (19/1), was adopted as a rigid method of attribution. The Jordanian Civil Law, Article (20/1), and the Iraqi Civil Law, Article (25/1), were also adopted.

We will address each of the controls established in this regard, as follows:

First: The law of common domicile: The legislator himself assumed the objective focus of the contractual bond in the event that the will of the contracting parties remained silent about determining the applicable law, in accordance with Article (19/1) of the Egyptian Civil Code, Article (20/1) of the Jordanian Civil Law, and Article (25/1) of the Iraqi Civil Code when it stipulates that: ((The law of the state in which the common domicile of the contracting parties is located shall apply to contractual obligations if they share a domicile...)) This comparative legislative solution is distinguished by the fact that it guarantees to the contracting parties prior knowledge of the applicable law in the event that there is no The latter is determined explicitly or implicitly by the parties to the contractual relationship ⁽²⁾.

Thus, under the legislative texts of comparative laws, the legislator has explicitly stipulated the application of the state's law if the domicile of the contractual relationship is the same, and in the event that the parties to the contractual relationship do not specify this law explicitly or implicitly. However, the question that can be raised here, with regard to the international merger contract between companies, is how can Determine the domicile of the company and branches of foreign companies?

Iraqi law specifies the company's domicile in Article (48/6) of Civil Law No. (40) of 1951 AD, which stipulates that: ((1- Every legal person shall have a representative of his will 6000- and he shall have a domicile, and his domicile shall be considered the place where the center of Its management and companies whose main headquarters are abroad and have business in Iraq are considered, according to internal law, their management center to be the place where they manage their business in Iraq) ⁽³⁾.

Accordingly, it is clear from the above that the company's domicile is the place where the main management center is located, and specifying this location must be stipulated in the company's contract. The legal text also makes clear that if the company practices its work in Iraq while its management center is located abroad, then its management center is in accordance with Iraqi law. It is the place where the company carries out its business in Iraq. Therefore, the Iraqi legislator set a double standard, which is the main management center as a general rule. However, if the company takes a branch in Iraq as the center of its activity, even if its main center is abroad, then it is considered present with regard to the work of this branch and is considered domiciled in Iraq ⁽⁴⁾. Article (18) of the Jordanian Civil Law No. (43) of 1976 AD also stipulates that: ((... The domicile of a legal person is the place where its management center is located, and legal persons whose management center is abroad and has a branch in Jordan The center of its branch is considered its domicile), and Article (53) of the Egyptian Civil Code considers the company's management center to be the domicile law ⁽⁵⁾.

Thus, the domicile of a legal person is the place where its management center is located. As for legal persons whose management center is abroad and has a branch in a country, the center of its branch is considered its domicile ⁽⁶⁾.

As an example of this, regarding the international merger contract that takes place between a Jordanian company that carries out its activities in Iraq with an Iraqi company, since according to Article (48/6) of the Iraqi Civil Code, the Jordanian and Iraqi companies have settled in Iraq and have combined domiciles, so Iraqi law applies in the event that the Determining the merging companies (Jordanian and Iraqi) according to the applicable law to govern the dispute that may arise from the merger contract, in accordance with Article (25/1) of the Iraqi Civil Code.

Second: The law of the place of concluding the contract: Comparative national legislation, when the contracting parties remain silent about the explicit or implicit will to choose the applicable law to govern the legal relationship when a dispute arises, gives jurisdiction to the law of the state of concluding the contract, the second location in the order after the law of the common domicile of the contracting parties if they share a domicile⁽⁷⁾.

1) (Dr. Amer Muhammad Al-Kiswani, Encyclopedia of Private International Law/1, Conflict of Laws, Dar Al-Thaqafa for Publishing and Distribution, 2010, p. 199.

2) (See the text of Article (19/1) of the Egyptian Civil Code, as well as the text of Article (25/1) of the Iraqi Civil Code, as well as the text of Article (20/1) of the Jordanian Civil Code, as well as what is stipulated in Article (1496) of the Code of Procedure. French.

3) (Dr.. Hisham Ali Sadiq, The Law Applicable to International Trade Contracts, op. cit., p. 416.

4) (Dr.. Bashar Muhammad Al-Asaad, State Contracts in International Law, op. cit., p. 309.

5) (Dr. Okasha Muhammad Abdel-Al, International Civil and Commercial Procedures, op. cit., pp. 349-350.

6) (Article (42) of the Iraqi Civil Law No. (40) of 1951 AD stipulates the definition of domicile as follows: ((Domicile is the place where a person usually resides, permanently or temporarily, and a person may have more than one domicile.((

7) (Farouk Ibrahim Jassim, Al-Mawjiz fi Commercial Companies, 2nd edition, Legal Library, Baghdad, 2011, p. 36.

Corporate Mergers from the Perspective of Private International

This approach to attribution has been criticized because it presupposes that the center of gravity in the contractual relations presented before the judiciary is necessarily the common domicile of the contracting parties or the country of concluding the contract, while ignoring the specific nature of each contract⁽¹⁾.

3.2.2 Flexible attribution approach

Given the difficulties caused by the rigid attribution approach that is based on the officers of the common domicile and the place of concluding the contract on the one hand and its insufficiency to determine the applicable law in a more objective and comprehensive manner with the requirements of international trade on the other hand, therefore some believe that giving the judge the freedom to determine the applicable law to international relations is not Especially the contractual ones, to search for the location of the objective center of the contract so that the law of this place applies to it⁽²⁾

Thus, the flexible attribution approach, in contrast to the rigid approach in attribution, seeks more flexibility, as under this approach the judge is given the right to search in each case separately for the laws closest to the contractual bond, which expresses the center of gravity in the contractual bond according to what the conditions and circumstances of the contract indicate. In an effort to achieve justice for both parties to the contractual relationship⁽³⁾.

This trend in attribution was led by the French professor (Bativol), who believes that the will of the contracting parties is not capable of specifying the law relevant to the ruling of the international contract, but rather the will of the contracting parties exists only in concentrating the contract in a specific place in light of the subject of the contractual bond and the data and circumstances of the contract. When concentrating the contractual bond according to what... Previously, the law of the place chosen by the contracting parties as the headquarters for this association is the one that applies to the contract, and accordingly, the judge applies to the contractual association the law of place, which constitutes the center of gravity in this association. Thus, this theory has been successful when solving the problem of conflict of laws in matters of international contracts between two principles. Different and competing, the first of which is the principle of voluntary choice of contract law, and the second is the principle of taking into account the closest relationship to the contractual bond when choosing the law⁽⁴⁾. Accordingly, and according to this approach, the judge can exclude the law that the contracting parties chose to govern their contractual relationship if the contract law is not closely related to the contractual relationship⁽⁵⁾.

Thus, this approach rejects any direct role for the will in choosing the contract law, as it sees the will of the contracting parties as nothing more than a mere control for attribution in a rule of conflict of laws in the judge's state. His role is limited to the objective focus of the contractual bond within the framework of a specific legal system related to it in light of the requirements of the contract. And its circumstances and circumstances⁽⁶⁾.

Therefore, according to this approach to flexible attribution, it gives the judge broad discretionary power, as the judge determines the applicable law without referring to the will of the contracting parties in determining it. Accordingly, this approach to attribution has been criticized because it lacks the elements of certainty and prior knowledge by the parties to the contractual relationship of the applicable law, given that determining the final law depends on the circumstances of the contract in each individual case⁽⁷⁾.

It is possible to support this critical opinion because this approach lacks the elements of certainty and prior knowledge by the parties to the contractual relationship. Moreover, comparative national legislation has obligated the judge or arbitrator to apply the law that the contracting parties agreed upon explicitly or implicitly. In the event that the law of will is not specified, the judge must apply the law of the home country. The joint contract is for the contracting parties, and if they differ, he must apply the law of the place where the contract was concluded.

With regard to the international merger contract concluded between companies of different nationalities from the other, in the event that the merger contract does not explicitly or implicitly stipulate the applicable law, the Iraqi, Egyptian, and Jordanian legislator has obligated the application of the law of the domicile if they share a domicile, but if they do not The domicile of the companies involved in the merger is the same, then the law of the country in which the merger contract was concluded will be applied to govern the legal relationship in application of the texts of comparative national legislation.

We can raise the question about the possibility of applying international trade law to an international merger contract, considering that this falls within the flexible approach to attribution, which we will note below.

1) (Dr. Jaber Jad Abdul Rahman, Private International Law, Part Two, First Edition, Al-Hilal Press, Baghdad, 1949, p. 334.

2) (Article (53) of the Egyptian Civil Law No. (131) of 1948 AD stipulates that: ((The legal person enjoys all rights... 2- He shall have... D- An independent domicile, and his domicile shall be considered the place where his management center is located. And companies whose main headquarters are abroad and have activity in Egypt, the center of their management according to internal law is considered the place where the local administration is located.)

3) (Dr. Mamdouh Abdel Karim, Private International Law, Conflict of Laws, op. cit., p. 171.

4) (Dr.. Hisham Ali Sadiq, The Law Applicable to International Trade Contracts, op. cit., p. 418.

5) (Dr. Okasha Muhammad Abdel-Al, International Civil and Commercial Procedures and Implementation of Foreign Judgments, University Press House, Alexandria, 2007, p. 350.

6) (Dr. Muhammad Walid Al-Masry, previous reference, p. 187.

7) (Dr.. Bashar Muhammad Al-Asaad, State Contracts in Private International Law, op. cit., pp. 312-313.

Corporate Mergers from the Perspective of Private International

3.2.3 Applying the rules of international trade law

We previously stated that the merger contract that takes place between companies that differ from each other in their nationality is related to the interests of international trade in accordance with the economic criterion of the internationality of the contract, as international merger aims to internationalize activities, open new markets, reduce expenses, and increase production at the international level.

The question that can be asked in this regard is whether the rules of international trade law can be applied to the international merger contract, considering the latter is related to the interests of international trade?

International trade law differs from private international law, as the latter is a set of unified rules that aim to determine the applicable law when a conflict occurs between different national laws regarding a specific legal relationship. International trade law, however, is unified substantive rules prepared to regulate an international commercial relationship and thus leads to adjudication. On conflict of laws ⁽¹⁾.

Some have defined ⁽²⁾ international trade law as “a set of transnational rules that are independent of internal legal systems and the system of public international law, and which find their source in international commercial customs and general principles upon which commercial arbitration courts settle, and which provide legal regulation and subjective solutions for international trade transactions.”. Thus, the sources of international trade law are the prevailing norms in international trade as well as the rulings issued by international arbitration courts.

Some international treaties have taken into account and given the arbitral tribunal the right to apply the rules of law most closely related to the subject of the dispute, provided that the rules of established international commercial customs are taken into account in the event that there is no agreement between the parties to the dispute on the applicable law explicitly, or if the international contract does not include anything that refers to a law for its application ⁽³⁾.

Article (21) of the Arab Commercial Arbitration Agreement of 1987 stipulates that: “The Authority shall decide the dispute in accordance with the contract concluded between the two parties and the provisions of the law that the two parties agreed upon explicitly or implicitly, if any, otherwise in accordance with the provisions of the law most closely related to the subject of the dispute, provided that the rules of Established international trade customs.

The rules of international trade are objective rules specifically developed to regulate existing relationships in the international community of trade and business. They are non-national rules that arose automatically in commercial and professional circles in response to the requirements of international trade and were stabilized over time due to the frequency of action in accordance with them in this field. Therefore, dealers on the international trade scene prefer to submit to such rules. These customary rules they established themselves to respond to their common needs and interests ⁽⁴⁾.

Thus, some believe that international trade law should be called international trade law, meaning that internationalism is considered a feature that characterizes the law, not trade, because its rules, although not issued by the legislator, share the same general characteristics of the legal rule ⁽⁵⁾.

Despite the above, and with regard to international trade law, some see the inability of this law to govern international disputes, as it is still in the formative stage, as it is a nascent system that has not yet reached the stage of completion, and the lack of codification of many international customs and customs in the field of international trade, in addition to not causing or Publish arbitrators’ rulings that apply these customs and customs, and the substantive rules of international trade law are still insufficient to cover all the issues that may arise within the framework of private international relations. In addition, these rules are silent about providing any solution to the dispute that may arise regarding them, including the absence of customs. The international community does not have any solutions to confront the problem of eligibility to contract or safety of consent⁽⁶⁾.

The critical direction of these rules adds that resorting to general principles by arbitrators, as it is the law applicable to international contracts, is a bad solution in its results and in its technical mechanisms⁽⁷⁾. It also adds that international trade law does not rise to the rank of international law because there is no international project similar to the legislator. This opinion adds that it is more correct to call it international trade law and not international trade law, meaning that internationalism is considered a characteristic that distinguishes trade, not law⁽⁸⁾.

1) (Dr.. Talib Hassan Musa, International Trade Law, 7th edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 1433 AH - 2012 AD, p. 81.

2) (Dr. Bashar Muhammad Al-Asaad, Investment Contracts in International Private Relations, op. cit., p. 147.

3) (Dr.. Fawzi Muhammad Sami, International Commercial Arbitration, op. cit., pp. 91-92.

4) (Dr. Hisham Ali Sadiq, The Law Applicable to International Trade Contracts, op. cit., pp. 149-150.

5) (Dr. Talib Hassan Musa, previous reference, p. 83.

6) (Dr.. Hisham Ali Sadiq, The Law Applicable to International Trade Contracts, op. cit., pp. 222-223.

7) (Dr. Hafiza Al-Sayyid Haddad, Contracts concluded between countries and foreign persons and determining their nature and the legal system governing them, Al-Halabi Legal Publications, Beirut, 2003, p. 813.

8) (Dr. Talib Hassan Musa, previous reference, p. 83.

Corporate Mergers from the Perspective of Private International

He also criticized international trade law because it often hides an unsatisfactory solution for foreign companies that seek to continue dealing at the international level ⁽¹⁾.

In turn, we support what has been criticized for international trade law, considering that it is one of the applied solutions for it to be the law that must be applied. This is due to the fact that this law was not issued by the legislator of a country and the lack of integration of its rules, as mentioned above, in addition to the fact that in most cases the contracting parties do not know the content of this law, and finally because this law is not included in the law. Conflict of laws rules for the countries in question.

CONCLUSIONS

After completing the research on the subject of the law applicable to the international merger of companies, we have reached a set of conclusions as follows:

- 1- An international merger is a merger that takes place between two or more companies, each of which has a different nationality than the other, whether the merger is by means of annexation or by way of mixing. As we have shown, the Egyptian and Jordanian comparative laws have allowed this merger, provided that the company resulting from the merger is a national joint-stock company, in other words. Another is that comparative legislation allowed the merger of a foreign company into or with a national company to form a national joint-stock company.
- 2- The merger is a contract between the companies involved in the merger process, and considering that the latter is the one that takes place between companies of different nationalities, the international merger contract in this case is one of the international contracts that relate to more than one law, so the national law cannot be the reference in dispute cases that arise from it. This merger or because of it.
- 3- The issue of the internationality of the contract is a legal issue that is subject to the law to which the dispute was raised to determine the internationality of the contract or not, by clarifying the elements of the contract and its intrinsic characteristics, and it is under the supervision of the Court of Cassation. Therefore, it is not up to the parties to adapt the contractual bond because this type of contract raises problems of conflict of laws, as The latter can be withdrawn from state courts and resorted to arbitration according to the principle of the authority of will.
- 4- With regard to determining the applicable law to the international merger contract, the companies involved in the merger process (public bodies) must agree on the applicable law, explicitly or implicitly. In the event that this law is not specified, the judge can only apply the law of the common domicile if they share a domicile. However, if If the domicile of the merging companies is not united, the judge must apply the law of the country in which the merger contract was concluded and in accordance with what is stipulated in some legislation such as Egyptian, Jordanian and Iraqi.

RECOMMENDATIONS

- 1- We call on the Iraqi judiciary to adopt the legal standard in determining the internationality of integration.
- 2- We call for the need to include in international merger contracts a condition under which the applicable law is determined.

REFERENCES

- 1) Dr. Ahmed Abdel Karim Salama, Principles in the International Conflict of Laws, Dar Al-Nahda Al-Arabiya, Cairo, 2008.
- 2) Dr. Ahmed Abdel Wahab Saeed Abu Zeina, The Legal Framework for the Merger of Commercial Companies - A Comparative Study, PhD thesis submitted to the Faculty of Law - Cairo University, 2012.
- 3) Dr. Ahmed Mohamed Mahrez, Merger of Companies from a Legal Point of View - A Comparative Study, Dar Al-Nahda Al-Arabiya, Cairo, 1983.
- 4) Dr. Bashar Muhammad Al-Asaad, Investment contracts in international private relations and their nature - the law applicable to them - means of settling their disputes, 1st edition, Al-Halabi Legal Publications, Beirut, 2006.
- 5) Dr. Jaber Jad Abdul Rahman, Private International Law, Part Two, First Edition, Al Hilal Press, Baghdad.
- 6) Dr. Jack Al-Hakim, Commercial Companies, Damascus University Press, 1992.
- 7) Dr. Hossam El-Din Abdel-Ghani Al-Saghir, The Legal System for Corporate Mergers, Cairo, 1986.
- 8) Hassanein Dhia Nouri Al-Musawi, Will and its Role in Determining Iraqi International Jurisdiction, research published in Maysan Research Journal, Iraq, Volume Eight, Issue 16, 2016.
- 9) Dr. Hafiza Al-Sayyid Haddad, Contracts concluded between states and foreign persons and determining their nature and the legal system governing them, Al-Halabi Legal Publications, Beirut, 2003.

1) (Where one of the arbitration bodies formed within the framework of the International Chamber of Commerce arbitration system concluded that: "In the absence of the express choice of the parties, the law that is applied to the disputed contract is the law of State (X), even though the contract was concluded in Brussels and with a national Belgians, and despite its international character, this contract is subject to the law of State (S). Dr.. Bashar Muhammad Al-Asaad, Investment Contracts in International Private Relations, op. cit., pp. 249-250.

Corporate Mergers from the Perspective of Private International

- 10) Rizkallah Al-Antaki and Daoud Al-Sibai, Encyclopedia of Commercial Rights, Commercial Companies, Dar Al-Insha, Damascus, 1962.
- 11) Dr. Sami Badie Mansour, Dr. Okasha Abdel-Al, Private International Law, University House, Beirut, 1995.
- 12) Salam Hadi Jassim, The idea of a free international contract and its impact on international substantive rules, Master's thesis, Institute of Arab Research and Studies, Cairo, 2011.
- 13) Dr. Salah Al-Muqaddam, Conflict of Laws in Bills of Lading and Ship Charter Parties, A Comparative Study in Maritime Law, University House, Alexandria, 1981.
- 14) Dr. Talib Hassan Musa, International Trade Law, 7th edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2012.
- 15) Taheri Bashir, Merger of Commercial Companies in Algerian Law, doctoral thesis submitted to the Faculty of Law, University of Algiers Ben Youssef Ben Khadda, 2016.
- 16) Dr. Amer Muhammad Al-Kiswani, Encyclopedia of Private International Law/1, Conflict of Laws, Dar Al-Thaqafa for Publishing and Distribution, 2010.
- 17) Dr. Abdel-Hakim Fouda, People's Companies - Solidarity Companies - Simple Partnership - Joint Venture) in the light of jurisprudence and the judiciary of cassation, Dar Al-Fikr Al-Jami'i, Alexandria, without a year of publication.
- 18) Dr. Abdul Wahab Abdullah Al-Maamari, the merger of multinational commercial companies, a comparative legal jurisprudential study, Dar Al-Kutub Al-Lawaniyya, Egypt, 2010.
- 19) Dr. Ezz El-Din Abdullah, Private International Law, 3rd edition, Part 6, Dar Al-Nahda Al-Arabiya, Cairo,
- 20) Dr. Okasha Muhammad Abdel-Al, International Civil and Commercial Procedures and Implementation of Foreign Judgments, University Press House, Alexandria, 2007.
- 21) Dr. Okasha Muhammad Abdel-Al, Conflict of Laws (Comparative Study), Al-Halabi Legal Publications, Beirut, 2007.
- 22) Dr. Ghaleb Ali Al-Daoudi, private international law, conflict of laws, conflict of international jurisdiction, implementation of foreign judgments, a comparative study, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2011.
- 23) Farouk Ibrahim Jassim, Al-Mawjiz fi Commercial Companies, 2nd edition, The Legal Library, Baghdad, 2011.
- 24) Firas Karim Shayan, The impact of international trade agreements on the development of conflict of laws rules, doctoral thesis, College of Law, University of Mosul, 2007.
- 25) Dr. Fawzi Muhammad Sami, International Commercial Arbitration, a comparative study of the provisions of international commercial arbitration as stated in international, regional and Arab rules and agreements, Baghdad, 1992.
- 26) Dr. Muhammad Ibrahim Musa, Bank Merger and Confronting the Effects of Globalization, New University House, Alexandria, 2010.
- 27) Muhammad Hussein Ismail, Merger in the Jordanian Company Law Project, Mu'tah University Journal for Research and Studies, first issue, June, 1986.
- 28) Dr. Muhammad Walid Al-Masry, Al-Wajeez in Explanation of Private International Law - A Comparative Study, 2nd edition, Dar Al-Thaqafa for Distribution and Publishing, Amman, Jordan, 2011.
- 29) Dr. Mahmoud Muhammad Yaqut, Freedom of Contractors to Choose the Law of International Contracts between Theory and Practice, an analytical and comparative study in light of modern trends in private international law, Ma'arif Institute, Alexandria, 2000.
- 30) Dr. Mustafa Kamal Taha, Commercial Law - Capital Companies, University Cultural Foundation, Alexandria, 1982.
- 31) Dr. Mamdouh Abdel Karim, Conflict of Laws, 1st edition, House of Culture, Amman, 2005.
- 32) Dr. Mamdouh Abdel Karim Hafez, Private International Law According to Iraqi and Comparative Law, 1st edition, Al-Hurriya Printing House, Baghdad, 1973.
- 33) Muhannad Azmi Abu Al-Ala Maghli, Mansour Abdel Salam Al-Taraira, the law applicable to electronic consumption contracts of an international nature, research published in the Journal of Sharia and Law Studies, University of Jordan, Jordan, Volume 4, Issue 2, 2014.
- 34) Dr. Hisham Khaled, Introduction to Arab Private International Law, Dar Al-Fikr University, Alexandria, 1st edition, 2003.
- 35) Dr. Hisham Khaled, The nature of the international contract, a comparative jurisprudential study, Mansha'at Al-Ma'arif, Alexandria, 1995.
- 36) Dr. Hisham Ali Sadiq, The Law Applicable to International Trade Contracts, Mansha'at Al Maaref, Alexandria, 1995.



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.