
THE LEGAL ASPECT OF THE HOLDING COMPANY'S RELATIONSHIP WITH ITS SUBSIDIARIES

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Abstract

The Jordanian legislator gave special importance to the holding company and the extent of its relationship with its subsidiaries, as this study aimed to define the relationship of this company in the light of the provisions of the Jordanian Companies Law No. 27 of 1997 and its amendments. Where this study was dealt with through three sections, where we dealt in the first section with the nature of the holding company and aspects of differentiation from suspected concepts, by explaining what the holding company is and explaining the aspects of differentiation between the holding company and the suspected concepts. Holding on to its subsidiaries, through administrative control, financial control and control through merger. As for the third topic, it dealt with the responsibility of the holding company towards its subsidiaries, where we dealt with the statement of the responsibility of the holding company in its capacity as manager of the subsidiary company, and the statement of the responsibility of the holding company for the debts of its subsidiary company. The researcher's findings and recommendations.

Keywords: holding company, investment company, control, merger.

Introduction:

What the global economy witnessed in the last stages of tremendous development and the emergence of what is called the internationalization of production, is considered an extension of the factors influencing the production process to go beyond the borders of the state. The concept of the global economy has come to replace the concept of the national economy, after the principle of freedom of trade and industry prevailed, which made countries compete in providing guarantees to companies and institutions that invest in their countries in order to develop their economy.

In light of the economic conditions, the so-called corporate group system emerged, and it is an outgrowth of economic concentration processes between projects, and a means to achieve stability and economic balance between them, when major national and foreign companies carry out these operations, which is called in English and American jurisprudence the holding company, while it is called the system French parent companies. And at the level The international company has been called by several names, including the multinational company, the multinational company, or the transnational companies. On the other hand, the company under its control is called the subsidiary company¹. The Jordanian Companies Law No. 22 of 1997 and its amendments allocated five articles to the holding company (Articles 204-208). The problem of the study and its main elements were represented by explaining what the legal and economic concept of the holding company is, the mechanism used for the holding company's control over its subsidiaries, and the subsequent responsibility as a result of this control. This study also aimed at identifying the nature of the holding company and its subsidiary, identifying how the relationship between the holding company and its subsidiaries arises, and identifying the means of control of the holding company over its subsidiaries. The place of study. In this study, we will investigate the following:

¹ Dr.. Aziz Al-Aqili, the mediator in commercial companies, a comparative jurisprudence study in public and private rulings, Dar Al-Thaqafa for Publishing and Distribution, Jordan, Amman, 2022, p. 420. Dr.. Akram Yamalki, Commercial Law, Companies (a comparative study), Dar Al Thaqafa for Publishing and Distribution, Jordan, Amman, 2006, p. 333.

The first topic: the nature of the holding company and aspects of differentiation from suspected concepts.

The second topic: the means of control of the holding company over its subsidiaries.

The third topic: the responsibility of the holding company towards its subsidiaries.

Findings and Recommendations:

The first topic

The nature of the holding company and the aspects of differentiation between it and what approaches it in terms of concepts

Originally, the holding company is a public shareholding company of the funds companies, but it is distinguished by some special principles from the public shareholding company.² through the distinguished functions that it performs, which distinguishes it from other companies to be described as holding, starting with a contractual bond, between the owners of common interests. It has a personality independent from the personality of the partners, and it is managed and expires in accordance with the rules governing this type of company. In light of this, we will discuss in this section what the holding company is in the first requirement and the differences between the holding company and the suspected concepts as a second requirement.

The first requirement: the nature of the holding company.

Some jurisprudents called it the mother company as an indication and expression of the holding company, considering that the parent company contributed to the establishment of another company under its control called the subsidiary company (the newborn), where the source of control over the subsidiary company as it owns a large part of its capital as a result of the parent company's participation in its establishment .³ In other words, it is a company that owns several shares

Other companies are called subsidiaries to the extent sufficient to enable them to manage the subsidiaries and how to run or manage the subsidiaries.⁴

The English law issued in 1989 AD defined the holding company by stating the means used by the company to control other companies through its provisions (Section 736 and 736A)⁵. The same law stipulated in Article (736A) on the method of collecting votes when it was decided that the right to vote takes place in the meeting of the company's general assembly, which is taken into account with regard to the control of the holding company by voting or by agreeing with another group of shareholders to obtain a majority. votes for

² Dr.. Elias Nassif, Encyclopedia of Commercial Companies, Part Three (holding companies and companies whose activities are restricted to outside Lebanon (offshore), Al-Halabi Library, Beirut- Lebanon, Edition / 5, 2008, p. 48.

³ Dr.. Muhammad Hussein Ismail, The Holding Company and Its Relationship with Its Subsidiaries, Shuqair and Aksha Printing Company, Amman, 1st edition 1990 AD, p. 11

⁴ Dr.. Mahmoud Samir El-Sharkawy, The Multi-National Project and the Holding Company as a Means for its Implementation. Research published in the Journal of Law and Economics, (1976), pg. 314.

⁵ Article (736) of the English Companies Act of 1989 stipulates the following:

(1) A company is a "subsidiary" of another company, its "holding company", if that other company—

(a) holds a majority of the voting rights in it, or

(b) is a member of it and has the right to appoint or remove a majority of its board of directors, or

(c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it, or if it is a subsidiary of a company which is itself a subsidiary of that other company.

administrative control,⁶ Voting is also taken into account when appointing managers or when electing members of the board of directors, as well as if the appointment of managers is done through the holding company, or if this (holding) company has the power to dismiss the manager or managers.⁷

And Article (54/1) of the English Companies Act of 1948 set specifications for considering the company as a holding company, if it owns more than half of the capital in another company, or if it exercises the role of an observer in forming the board of directors of another company, or if it owns shares In an intermediary company, it is originally a holding company.⁸

Thus, English law has adopted the control criterion to determine the holding company through:

1. The holding company owns more than half of the subsidiary company's capital.
2. Overseeing the composition of the board of directors of another company.

Among the foreign laws that shared the English law with the criterion of control as a definition of the holding company, the Belgian law that considered the company a holding company if its main purpose is to participate in the capital of a company or several subsidiaries, so that this participation gives the partner or shareholder the authority to manage these subsidiaries.⁹

Some jurisprudence¹⁰ has gone to say that the holding company is a company that controls another company when it controls the shares of the company or buys shares, and the control is through voting control in the target company - the subsidiary.

⁶ 6Ben Pettet, *Company Law*, London..., 2001, P42.

⁷ 7Article (A736) of the English Companies Act of 1989 stipulates the following:

(2) In section 736(1)(a) and (c) the references to the voting rights in a company are to the rights conferred on shareholders in respect of their shares or, in the case of a company not having a share capital, on members, to vote at general meetings of the company on all, or substantially all, matters.

(3) In section 736(1)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters; and for the purposes of that provision—

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⁹ Jaafar Ibrahim Hussein Bani Issa, *The Legal System of the Holding Company in Jordanian Law*, Master's Thesis in Private Law, Al al-Bayt University, Jordan, 2002, p.11.

¹⁰ 10Charlie Higley. *Utility Holding Companies Are Threshing Ratepayers*. May 1999. Public Citizen's Critical Mass Energy Project .p 5

“A holding company is a corporation that owns the stock of another company. Holding companies are created when one company acquires another company by purchasing most or all of the voting stock of the target company.”

What the jurisprudence¹¹ went to and some legislations¹² focused entirely on one idea, which is the idea of control, which is the control of the parent company over its subsidiary company, because of its monopoly on the right to appoint members of the board of directors of the subsidiary company to obtain the majority of votes that enable it to direct the subsidiary company in the direction that achieves its interests.

It should be noted that the Council of the International Islamic Fiqh Academy, which is affiliated with the Organization of the Islamic Conference, held in its fourteenth session in Doha, issued Resolution No. 130 (14/4) dated 11-16 January 2003 regarding modern companies, holding companies and others, as it settled on defining a holding company as: “A company that owns shares or quotas in the capital of a company or other companies that are independent of it in a proportion that legally enables it to control its management and draw up its general plans.”

As for the reality of Arab legislation, most of them did not deal with the definition of the holding company in comparison with the Lebanese law and the Jordanian¹³ law. It can be said that the establishment and management of the holding company is not much different from the management of other companies, except through the concept of subordination to the controlling company,¹⁴ and this control is through the holding company owning no less than 51% of the shares of the affiliated company. In order to manage and control it, and since the origin of the term “holding” known in the financial language is of English origin, and it is derived from the verb “to hold” which means “to take or hold” and in this sense the holding company was given the name “holding company” i.e. a holding company for partnerships, shares, etc. .

As for the Jordanian Companies Law, it defined the holding company in Article (204/A) thereof by saying: “The holding company is a public shareholding company that carries out financial and administrative control over a company or other companies called subsidiaries in one of the following ways:-

- 1- To own more than half of its capital and/or
- 2- To have control over the composition of its board of directors.

We note that the Jordanian law, through its definition of the holding company, also adopted the criterion of control as a basis for defining the holding company, which is achieved through two methods:

1. Possession of the majority of the shares of the subsidiary company.
2. Controlling the formation of the board of directors of the subsidiary company.

According to the above text, the Jordanian legislator limited the possibility of a holding company controlling a subsidiary company by the two aforementioned means, excluding other means of control known in some laws, including the English law, which permitted control by agreement of a member of the company with other members of it to vote in addition to his vote.¹⁵

¹¹ Dr.. Marwan Al-Ibrahim, previous reference, pg. 78. Also see: -

Larsen, E. J. (2006). *Modern advanced accounting* (10th ed.). New York, NY: McGraw Hill

¹² Article 705 of the French law of July 12, 1985 on autonomy.

¹³ Among the Arab laws that regulated the provisions of the holding company are the Kuwaiti Companies Law No. (15) of 1960 and its amendments in 1992 and 1995, the Omani Commercial Companies Law No. (4) of 1974, the Algerian Commercial Law of 1975, the Egyptian Law No. (203) of 1991, and the Tunisian Companies Magazine for the year 2001 .

¹⁴ 14 H. Bardetn, B. Goutiere, A. Charveria, Ph. Janin. “Les Holdig, guide juridique et fiscal” 2eme Editionm Paris 1995, p93.

¹⁵ Smith & Keenan’s Company Law, London.....,2002 p.44

The second requirement: aspects of the distinction between the holding company and similar concepts.

The main purpose of the holding company is to control other companies that are legally independent from it, called subsidiaries, through owning a significant percentage of the shares or shares of the capital of subsidiaries. The holding company is basically a public shareholding company,^{16 17} but it has something that distinguishes it from the public shareholding companies.

In this regard, we will discuss the differentiation between the holding company, the investment company, the holding company, the multinational project, the holding company and the sister company, the holding company and the producers' agreement.

First: The holding company and the investment company.

Both the holding company and the investment company acquire a percentage of the shares in the capital of a company or other companies. Despite this similarity between them, the difference between them is that one of them is considered a holding company and the second is an investment company.¹⁸ However, the holding company owns shares in other companies with the intention of controlling These companies, while investment companies own the shares of other companies with the intention of obtaining the profits they generate, not with the intention of controlling, which is the most important thing that distinguishes the holding company from the investment company.¹⁹

The holding company contributes in order to control, control and supervise the subsidiaries, which is the most important difference. When the percentage of ownership of shares is high, we are facing a holding company, which is a great indicator of the availability of the intention of control by the latter, which is stipulated in the Jordanian Companies Law in Article (204 / A). when it was stipulated that the mother company owns more than half of the capital of the company or its subsidiaries²⁰, but when the percentage of ownership of shares is small, then it is an indication of the trend towards investment,

This is what actually happens when the investment company owns shares in integrated companies²¹. It should be noted that the Jordanian legislator stipulated in Article (205 / b) that: - "b) Investing its funds in stocks, bonds and securities." Where it is considered confirmation that the objectives of the holding company is to invest its money in stocks, bonds and securities. While some jurisprudence went²² to say that the Jordanian law did not set a fixed criterion to distinguish between the holding company and the investment company, other than that, others went,²³ that control is only for the purpose of investment, and that the goal of control and investment is to achieve profit, and we agree with this Opinion, as the term control and investment are two sides of the same coin.

And some legislations in France, Germany and the United States of America ²⁴set a legal regulation for investment companies stipulating that the company's purposes be limited to managing a portfolio of movable

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¹⁷ Dr.. Muhammad Hussein Ismail, Holding Companies, previous reference, p. 34.

¹⁸ Hanafizadeh, P. & Moayer, S. (2008). A methodology to define strategic processes in organizations: An exploration study in managerial holding companies. *Business Process Management Journal*, 14(2), 219-227

¹⁹ Muhammad Shawky Shaheen, Joint Companies, Their Nature and Provisions in Comparative Egyptian Law, without publishing house, without date, p. 107.

²⁰ Article (204/a) of the Jordanian Companies Law

²¹ Dr.. Muhammad Hussein Ismail, The Holding Company, previous reference, p. 35.

²² Dr.. Muhammad Hussein Ismail, the same source.

²³ Dr.. Marwan Al-Ibrahim, previous reference, p. 80.

²⁴ See Article (3) of the French Decree of December 28, 1957.

values such as investing the savers' money in securities, and these companies mostly take the form of joint-stock companies, and this type of company is also called the management company. .

Second: The multinational holding company and project

When a holding company is established in a particular country, and its company or its subsidiaries are located in a country or countries other than the country of the company in which it was established, then it can be said that the project in which it is established

These companies have a multinational project, for example, as if the company has a main office in Britain and other branch offices in Asia, Europe and Africa.²⁵ And the multinational company is not a single company from the legal point of view,²⁶ but it must consist of a main company that is considered at the top called the holding company, followed by other subsidiaries of it, spread in many countries geographically far from the holding company, but it remains within the same framework as the holding company in the application The economic aspect set by the holding company.²⁷

The term multinational project is applied to an economic project that is being implemented by legal units located in more than one country, which carry out economic activity in those countries in different forms. It is the essential difference between a holding company and a multinational project. Some jurisprudence²⁸ has stated that the multinational project is "a union or mixing between companies of different nationalities that are linked through participation or control of the management according to an agreement and form one economic unit, based on the group of companies operating in this way, that constitutes an economic unit in the field of international trade." And for this project to have a single administrative thought or mind that works across the world as if it were one company.

While others²⁹ argued that the multinational project is distinguished as multiple entities, each with its own independent identity and independent home, working together under the umbrella of one central system. Although both the multinational project and the holding company are based on an economic strategy drawn up by the central administration. The difference lies in the fact that the multinational project is broader in scope and less clear than the holding company,

given that the holding company is one of the two parties to the establishment of the multinational project. According to some³⁰, the multinational project is established by one of the means of international law (international agreements or treaties) that arise between two or more international companies. Article (207) of the Jordanian Companies Law stipulates the application of the law to holding companies that are established according to agreements concluded by the government with other countries, saying, "The provisions of this law are applied to holding companies that are established in the Kingdom according to agreements concluded by the government of the Hashemite Kingdom of Jordan with other governments or Arab or international organizations, in cases not stipulated in their founding agreements or in their constituent contracts and regulations.

²⁵ See Article (1) of the German Investment Funds Act 1970.

²⁶ In the United States of America, the law issued in 1940 regulated investment companies and defined their purposes and activities that they are prohibited from practicing.

²⁷ Dr.. Muhammad Hussein Ismail, previous reference, p. 37. For details of this idea, see d. Ahmed Abdel Aziz and others, multinational companies and their impact on developing countries, published research, Journal of Administration and Economics, Issue (85), 2010 AD, p. 116 and beyond.

²⁸ The term multinational corporations was used for the first time in a study presented by David Lilienthal to the Carnegie Institute of Technology on April 4, 1960, and then used by the American Business Week magazine in its issue of April 20, 1963.

²⁹ Dr.. Ali Kazem and others, The nature of the holding company's relationship with subsidiaries, Journal of Legal Sciences, University of Baghdad, Volume 22, Issue 1, 2007, p. 1.

³⁰ Dr.. Mahmoud Samir Sharkawy, previous reference, p. 52.

Third: The holding company and the sister company:

In order for a company to be considered a sister company to another company, the general assembly of the shareholders in the company must be the same as the members of the general assembly of the other company, and that the sister company is not legally affiliated with the other company,³¹ as each of the two companies is independent of the other, and the board of directors may be similar in each. Whether or not the two companies are identical, as this is a matter for their general assembly, because dependency means that a specific company as a legal person owns shares or quotas in the capital of another company, so the first is holding and the second is affiliated. In the sense of the emergence of the sphere of control by the parent company over the subsidiary company, which is the most important feature that the holding company praisers.

Fourth: The Holding Company and Producers Agreement:

A producer agreement is a contract concluded between two or more companies, the aim of which is to develop unified plans or policies to preserve their interests, such as the parties' companies agreeing to draw up a unified economic strategy, such as unifying prices, setting production, reducing prices, or working to divide the region geographically between the parties. The agreement, and for each company to remain independent from the other, however, the importance of such an agreement is declining due to the seriousness of its legal status, due to the difficulty in persuading the violating members to abide by it, in addition to the fact that such an agreement may lead to a void monopoly due to its illegality.³²

The second topic

Means of control of the holding company over its subsidiaries

The holding company is characterized by the element of control, as this element is manifested in several aspects, including administrative and financial control, which constitute the source of the relationship between the holding company and its subsidiaries, given the shares owned by the holding company in the capital of subsidiaries, and the nature of the relationship between the holding company and subsidiaries can be classified. It has an administrative relationship and a financial relationship.³³ Therefore, we will divide this topic into administrative control as a first requirement and financial control as a second requirement.

The first requirement: administrative control

To find out the issue of the administrative control of the holding company over its subsidiaries, we need to identify the mechanism of the holding company's practice of administrative control or administrative control over its subsidiaries. What is the description of this relationship (administrative relationship)?

One of the means or methods of control that the holding company follows to control its subsidiary is to control the management of the subsidiary company, through the following methods:

The holding company owns 51% or more of the shares of the subsidiary company, as it can thus obtain the majority of votes in the general assembly, and from this aspect it can control the decisions of the subsidiary company. In the event that the subsidiary company's statute stipulates the right of the holding company to appoint or dismiss members of its board of directors³⁴, as it can control the decisions of appointing or

³¹ Cythin Day Wallace, *Legal Control Of the multinational Enterprise* Martinus Publisher, London, 1982, P.3.

³² Dr.. Muhammad Hussein Ismail, previous reference, p. 37.

³³ Dr.. Muhammad Hussein Ismail, previous reference, pg. 40

³⁴ James. C. Bonbright and Gadinier C Means, *The Holding Company*, Augustus-M-Kelly Pubilsher, New York, 1979, p.21

dismissing members of the board of directors of its subsidiaries,³⁵ and thus the holding company achieves administrative control over the subsidiary, without having a percentage of shares that enable it to control the general body.

It is also not required that the holding company's contribution be directly in the capital of its affiliated company, as it can control a company through a subsidiary company. Assuming that company (A) controls the management of company (B) by owning a large percentage of its shares, and that company (B) controls the management of company (C), the holding company (A) will have control over company (B) by participating in its capital, and the company (A) also becomes in control of the company (C) - holding it in relation to it - through the company (B), i.e. through indirect participation.³⁶

What calls for holding companies to strengthen their administrative control over their subsidiaries did not come out of nowhere. It seems that what is known as central control is an inevitable necessity for a group of subsidiaries based on vertical or hierarchical integration, as each subsidiary specializes in a specific partial production stage within the framework of a project. One, and this is the reality of most of the subsidiaries, because vertical or hierarchical integration among the subsidiaries requires coordination between the activities of these companies scattered here and there among the countries of the world within the framework of a comprehensive production plan.

So here we are in front of an integrated economic project, horizontally or vertically, which is undertaken by several companies that are legally independent and subordinate in reality, and are managed and controlled by one company called the Holding Company, and in order for that project to achieve its intended purpose, there must be one strategy that all these companies seek to achieve. This strategy is developed by a company called the Holding Company, and the latter company supervises all its subsidiaries through its ability to appoint members of the board of directors of each subsidiary, as well as the inability to appoint any member without its approval³⁷.

The compatibility seems clear between the ability of the holding company to decide the policies of its subsidiaries and the strategy that was set by it, which calls for describing control as the domination of the holding company over the various activities of its subsidiaries and its assets completely, by monopolizing the issuance of decisions related to this activity.³⁸

The Arab legislation that regulated the holding companies confirmed when it made the holding company's management of the subsidiaries or its participation in the management of the companies in which it shares among the activities that it is not permissible to deviate from. What was stated in Article 264 of the Qatari Companies Law, which stipulates that: "The objectives of the holding company shall be according to the following:

1- Participation in the management of its subsidiaries or in which it is a shareholder.³⁹

Article 2 of the Lebanese Legislative Decree No. 45 of 1983 stated that: "2) Management of companies in which you own partnership or shareholding shares."⁴⁰

Article (227) of the Kuwaiti Companies Law stipulated the management of the holding company for its subsidiaries, saying: "The holding company is a company whose aim is to own shares of Kuwaiti or foreign shareholding companies, as well as to own shares or stakes in Kuwaiti or foreign limited liability companies,

³⁵ Dr.. Ali Kazem and others, p. 3 and beyond.

³⁶ Dr.. Marwan Al-Ibrahim, previous reference, p. 84.

³⁷ Article (204/a//2) of the Jordanian Companies Law

³⁸ J.C. PAUL: *Consolidated financial statements of holding companies*, first edition, New Delhi, 1995, P.3.

³⁹ Dr.. Muhammad Hussein Ismail, previous reference, pg. 29.

⁴⁰ Dr.. Muhammad Hussein Ismail, the same source.

or to participate in the establishment of these companies.” Companies of all kinds, their management, lending and guaranteeing them with others.⁴¹

It is noticeable that the texts of the aforementioned legislation were inaccurate in terms of wording in distinguishing between the management of the holding company for subsidiaries and the company’s participation in the management of companies that contribute to their capital. It has or shares in it,⁴² and thus the Lebanese legislator has neglected in Article 2 of the legislative decree the case of the holding company’s participation in the management of other companies that contribute to its capital without controlling it.

The same applies to the Kuwaiti legislator, who also omitted in Article (227) of the Companies Law the condition of the holding company’s participation in the management of the companies it controls, but it owns shares in their capital.⁴³

While the Jordanian and Omani legislators were more precise in their wording, as Article (205/a) of the Jordanian Companies Law stipulates that: “The objectives of the holding company are as follows:

a) Managing its subsidiaries or participating in the management of other companies in which it has shares.⁴⁴

Article (127) of the Omani Companies Law stipulates that: “The objectives of the holding company shall be according to the following:- Management of its subsidiaries or participation in the management of other companies in which it is a shareholder⁴⁵

What the Jordanian and Omani legislators went to through the previous texts, when they made the management of holding companies for their subsidiaries one of the objectives of the company, because companies do not become subsidiaries until after controlling them, where the management is the one who controls them, and the two legislators also put within the above texts another option. It is the participation of the holding company in the management of the companies in which it shares, when the holding company cannot control other companies in which it owns shares.

The second requirement: financial control

In addition to the administrative control enjoyed by the holding company over its subsidiaries, the financial control is reflected in defining the financial and investment policy, and setting production plans in the subsidiary company. If the administrative relationship that connects the holding company with its subsidiaries is a central relationship in general, then the financial relationship that links the holding company with its subsidiaries has a central relationship..

Also, when the holding company interferes in the financial policy of the subsidiary company, in addition to the continuous control imposed on it by the holding company.⁴⁶ And we had previously indicated that the Jordanian Companies Law No. (22) of 1997 and its amendments were presented by providing for the financial control of the holding company over the subsidiaries in Article (204/a) by saying: “The holding company is a public shareholding company that carries out financial and administrative control over a company or Other companies are called subsidiaries in one of the following ways:-

1- To own more than half of its capital and/or

⁴¹ Article (1/264) of the Qatari Companies Law No. 5 of 2002.

⁴² Article (2/2) of the Lebanese Legislative Decree No. 45 of 1983.

⁴³ Article (227) of the Kuwaiti Companies Law No. 15 of 1960, Chapter Eight (Holding Company) was added by Emiri Decree No. 117 of 1992. That article of the Commercial Companies Law was replaced by Law No. 28 of 1995.

⁴⁴ Article (2/2) of the Lebanese Legislative Decree No. 45 of 1983, previously referred to.

⁴⁵ Dr.. Ali Kazem and others, previous reference, p. 10.

⁴⁶ Article (205/a) of the Jordanian Companies Law.

2- To have control over the composition of its board of directors.

This means that the Jordanian law stipulated that the holding company should own more than half of the capital of another company, and Article (206 / A / 1) of the Jordanian Companies Law indicated that the holding company would control the subsidiary company by owning a percentage of not less than 51%. If among its objectives is the establishment of subsidiaries or owning shares or quotas in public shareholding companies, limited liability companies, or partnerships limited by shares. Provided that these companies operate with the same objectives set out in Article (205) of the Companies Law for the holding company.

Article (1) of the Egyptian Business Sector Law No. (203) of 1991 does not allow the formation of a holding company except in the form of a joint-stock company wholly owned by the state or one or more legal persons.⁴⁷ Likewise, Article (16) of the same law also does not allow the subsidiary company to be except in the form of a public shareholding company⁴⁸.

One of the means of control is the company owning a percentage of not less than 51% of its capital, as the holding company owns this percentage and it accounts for the general majority of the company. As a result of the holding company's control, it determines the areas of investment for the subsidiary company, and decides the mechanism for financing it and the sources of this funding. The holding company also undertakes setting the production plan for each subsidiary, within the framework of the general plan for the project. It also undertakes determining export markets and distributing them among its subsidiaries according to its preference. Project interest⁴⁹. In addition, the holding company is the one that determines the percentage of profits for all its subsidiaries, as well as determining the prices of commodities produced by the subsidiaries. These companies are also required to determine the cash liquidity that must be kept.⁵⁰

The aforementioned comparative legislation unanimously agreed on the percentage required for control, which is the absolute majority of the capital, 51% of the shares with votes, and the English⁵¹ law regulated the company's relationship. The holding company and its subsidiaries, however, did not establish a regulation showing the case of one company's subordination to two or more holding companies. The holding company is obligated to include in its annual budget the name and nationality of its subsidiaries, as well as a statement of its shareholding in it and the type of this shareholding. The company affiliated to it is managed as if it were a division of the holding company, even if it enjoys an independent legal personality on the one hand.

On the other hand, English law looks at the holding company and its subsidiaries as if they were one company, where the holding company can influence the way its subsidiaries practice their activities fully when they choose managers for them, but the English law prevented the holding companies themselves from managing the subsidiaries themselves⁵².

The effects of the holding company's control over the financial structure of the subsidiaries appear clear from the early stages of establishing the subsidiaries, when the latter are under various financial pressures, from the moment of the formation of their financial structure, which depends mainly on the holding company.

It is worth noting that the subsidiaries, since their inception, have started with a small capital funded by the holding company, in addition to the available local financing, which is not sufficient to meet their needs, which means weak financial resources, and thus the subsidiaries remain in constant need of financial financing from the holding company that supports them financially. Through loans, in a manner that guarantees additional financial control of the holding companies over their subsidiaries. The centralization of the financial management of the holding company reaches its climax on its subsidiaries, when it monopolizes the authority to issue financial decisions, without leaving any element of initiative for the subsidiaries, even with regard to

⁴⁷ Article (127) of the Omani Commercial Companies Law No. 4 of 1974 and its amendments

⁴⁸ Dr.. Ali Kazem and others, previous reference, p. 27.

⁴⁹ Article (206) of the Jordanian Companies Law

⁵⁰ Article (1) of the Egyptian Business Sector Law No. (203) of 1991

⁵¹ Article 16 of the Egyptian Business Sector Law No. (203) of 1991

⁵² Dr.. Hossam Issa, *Multinational Companies*, research published in the *Journal of Legal and Economic Sciences*, Ain Shams University, July, 1976 AD, Year 18, p. 170.

their own budgets. The holding company considers its subsidiaries mere production and distribution units.⁵³ On the other hand, there is a type of subsidiaries that often enjoy decentralized financial management, such as those companies specialized in producing one type of products to meet the continuity of demand for them, which requires good knowledge about the market and demand, and these products are usually similar to the products of competing companies.⁵⁴ The Anglo-American countries had taken the manifestations of the holding company's control over its subsidiaries, what was done with budgets and consolidated accounts.⁵⁵ As for the Jordanian Companies Law, it stipulates in Article (208) that: "The holding company shall prepare, at the end of each fiscal year, a consolidated balance sheet, statements of profits, losses, and cash flows for it and all its subsidiaries, and to present it to the General Assembly, along with clarifications and data related to it, as required." Accredited international accounting and auditing principles and standards.

Article (13) of the Egyptian Business Sector Law stipulates that: "The holding company shall prepare consolidated financial statements presenting assets, liabilities, shareholders' rights, revenues, and expenses." And the uses of the company and its subsidiaries in accordance with the conditions, conditions and data specified by the executive regulations⁵⁶.

The third requirement: control through integration

1. Merger is of great importance in financial companies, perhaps the most prominent of which is the joint-stock companies, the most active in the economic life, because the largest economic projects often take the form of joint-stock companies, and their financial ability enables them to hinder the work of small companies and their stumbling in the realization of their projects, so the merger came as a means to keep these projects standing. By merging it with large projects, whatever the method of merging, whether by mixing or by annexation.
2. Merger is considered one of the most important and preferred means of economic concentration, the accumulation of capital, and the transition of economic units from small units to large units.⁵⁷
3. Economic focus is achieved by a number of means, including merger, joint venture, nascent company, and holding company. However, the point of difference is between merger and joint venture, as the latter is created with capitals owned by people of different nationalities.⁵⁸
4. The importance of integration from the economic point of view, as an ideal tool for the concentration of projects and their integration horizontally or vertically, is a matter that gives them strength that enables them to strengthen their ability to compete, increase production to the maximum extent, reduce its cost and maximize the return from it.⁵⁹

As we mentioned earlier, the holding company is characterized by its ease of use to concentrate, unify, and exercise power over a number of companies despite its independence, by owning the majority of the capital shares in the subsidiary company, as this is done without any obstacles, while the approval of a majority (75%) is required for the merger of companies. From the shares represented by the meeting for each company

⁵³ Manser A. W., *The Financial Role of the Multinational Enterprises*, Longman, New York, 2001, P.245.

⁵⁴ The English Companies Act issued in 1948 and 1976 regulated the relationship between the parent company or subsidiary company and the parent or controlling company. Likewise, the English Companies Law issued in 1989 regulated the relationship between the controlling company and the subsidiary company by indicating the means used by the company to control other companies within its provisions (Section 736 and 736A)

⁵⁵ R. Pennington: *Company law* (London - Bullerworth. 1989, p640.

⁵⁶ Mason M. and Miller R., *The Economics of International Business*, John Wiley and Sons Inc., New York, 2003,p.244.

⁵⁷ Dr.. Muhammad Hussein Ismail, previous reference, p. 85.

⁵⁸ Article (208) of the Jordanian Companies Law

⁵⁹ Article (13) of the Public Business Sector Law No. 203 of 1991.

separately.⁶⁰ The minority shareholders may oppose the claim against the fairness of the merger contract with the competent court.⁶¹

In addition to the problem of providing the necessary shares for control, the holding company does not find it difficult to do so, by linking other companies with it, as if we were facing a merger.⁶² In order for the merger to be one of the means of control or one of the sources of dependency of the company affiliated with the controlling company, these means will be represented by merger through mixing and merger through consolidation.

1. Merger by annexation

Merger is achieved by way of consolidation through the merger of one or more companies with another existing company, one of which is called the merging company, and the other company is called the merging company. The legal personality of the merging company, with its assets and liabilities fully transferred to the merging company, which retains its legal personality.⁶³

This type of merger is considered one of the means of increasing the capital of the merging company with in-kind shares, because those shares that you receive are not focused on a specific amount of money, but are focused on all the assets of the merged company.⁶⁴ And since the merging company is the company that will remain existing, and it is the one that will increase its capital, this makes the door of control open for one company over another. If a merger by way of consolidation enables the holding company to achieve its control over a foreign company on its behalf through one of its subsidiaries, is the matter achieved equally, if the subsidiary company is the merged company or the merging company?

If the subsidiary company is the merged company, then the merging company will become, through the merger, affiliated with the holding company, since the holding company has a share in the capital of the merging company, which it received as in-kind shares in the capital of the merging company, as a result of the dissolution of the merged subsidiary company in the foreign merging company.⁶⁵ But if the merging company is the subsidiary company and the merging company is a foreign company, then the merger of the latter company with the subsidiary company constitutes an expansion of the sphere of control of the holding company.

2. Merger by mixing: Merger by amalgamation means the merging of two or more companies that leads to the demise of the legal personality of each of them, and the transfer of their assets and liabilities to establish a new company that will be the company resulting from the merger.⁶⁶

The new company resulting from the merger shall issue them shares in kind to the shareholders of the merging companies in exchange for their shares in their companies that were dissolved as a result of this merger.

In order for this type of merger to be one of the sources of the new company's subordination to the holding company, it must be the holding company, if the law allows it to practice a commercial or industrial activity, or one of its subsidiaries is a party to the merger contract, then the goal of the holding company is to control A foreign company must out of the total of its companies, in order to acquire new sites of importance in

⁶⁰ Dr.. Hosni Al-Masry, Merger and Division of Companies (Comparative Study), 1st Edition, House of Legal Books, Cairo, 2007, p. 33.

⁶¹ Gourrier (J) La nation juridique d'entreprise commune, ds Droit Nucleaire Eurpeaire P.U.F., Paris, 1986.

⁶² Dr.. Hossam El Din Abdel Ghani Al Sagheer, The Legal System for Mergers of Companies, first edition, Cairo, 1987, pg.

⁶³ Article (230/C) of the Jordanian Companies Law.

⁶⁴ Article (235) of the Jordanian Companies Law.

⁶⁵ Dr.. Muhammad Hassan Ismail, previous reference, pg. 44.

⁶⁶ Dr.. Mohamed Ibrahim Moussa, Merger of Banks and Confronting the Effects of Globalization, New University House, Tanta, 2008, p. 26. See also: oliver(M.C)&Marshal(E.A)Company law, 12th., The M+E handbook series, 1994, p412.

production or marketing, which the holding company cannot reach. Thus, the new company, with huge capabilities and greater than the capabilities of the outgoing subsidiaries, becomes a subsidiary company, to serve the higher strategy that it sees. The holding company is a necessity to achieve it, and a means by which it eliminates the competition of those foreign companies.⁶⁷ Therefore, merger by mixing is considered a source of dependency, and as we have shown it is a merger that results in the creation of a new company, with which the rules for establishing new companies must be taken into account, which is somewhat similar to partial fission or what is called partnership by fission, or what some call merger. Partial,⁶⁸ as this is through the desire of a company with great activity to divide its business, and therefore its obligations, into separate sections that are managed by companies that are legally independent of it and affiliated at the same time to that company, for example if there is an industrial company affiliated with its business center in the capital, Amman. And decided to transfer its activities, in whole or in part, to the regions.

The third topic

The responsibility of the holding company towards its subsidiaries

As a result of the holding company's control over its subsidiaries, whether financial or administrative control, it is natural for the holding company's responsibility towards its subsidiaries to be realized, and the type of responsibility will be divided in this topic through, the responsibility of the holding company as a manager of the subsidiary company and the responsibility of the holding company for debts affiliated companies.

The first requirement: the responsibility of the holding company in its capacity as the director of the subsidiary company

The main reason that the holding company is armed with to control its subsidiaries is its possession of a large proportion of the capital of those companies, which gave it the power to exercise many powers, including the appointment or dismissal of members of the board of directors of the subsidiary company, and then control of its board of directors, which gave it the characteristic the boss. This was confirmed by the Egyptian Court of Cassation in its decision (Appeal No. 897 of 53 BC, session 12/26/1988).⁶⁹ It seems that the administrative control exercised by the parent company over the nascent company directly, or through an intermediary, makes the managers of the nascent company submit, when they exercise their activities, to the control of the parent company's board of directors, so the nascent company appears as a front for the parent company, and since the parent company owns most of the company's capital The fledgling, so its financial liabilities appear mixed, and the balance sheet with its profits and losses appears to be the same in the two companies.⁷⁰ The holding company, as a legal person, cannot express its will except through a natural person who represents it in the subsidiaries, or a representative on it who is considered as an agent for it, who is appointed by the chairman of the board of directors of the holding company or the chief of managers, as a representative of the company in its relations with others. who is usually at the rank of director.⁷¹ And since the holding company has the power to appoint or remove the members of the board of directors of the subsidiary company, this is considered a direct interference in its management, as the intervention of the holding company represents the main role in the life of the subsidiary company, and it is a role that may erase the role of the boards of directors of the subsidiary company entirely, which transforms Mostly to a mere intermediary between the holding company and the affiliated company to convey the instructions of the central administration⁷² As for indirect

⁶⁷ For details of this idea, see d. Hossam Al-Din Al-Saghir, previous reference, p. 510.

⁶⁸ Dr.. Muhammad Hussein Ismail, previous reference, pg. 57.

⁶⁹ Dr.. Hosni Al-Masry, previous reference, p. 48.

⁷⁰ Dr.. Muhammad Hussein Ismail, previous reference, pg. 54.

⁷¹ Dr.. Hosni Al-Masry, previous reference, p. 42.

⁷² Counselor Moawad Abdel-Tawab, Introduced in the Commercial Judiciary, in fifteen years 1975-1990 AD, pg. 338.

interference, some have gone,⁷³ To the possibility of the holding company indirectly intervening in the management of the subsidiaries, by appointing delegates for it in the management of the subsidiaries from abroad, as this is done through its approach to middle persons from within the subsidiary, who enjoy great confidence in the management of the holding company.

The Jordanian Companies Law stipulated in Article (204/d) that the holding company appoints its representatives on the boards of directors of the subsidiary company in proportion to its shareholding.⁷⁴ Article (205/a) of the same law stipulated that one of the objectives of the holding company is to manage its subsidiaries or to participate in the management of other companies in which it contributes.⁷⁵

The second requirement: the responsibility of the holding company for the debts of its subsidiary.

The responsibility of the holding company for the debts of its affiliated company in accordance with the general rules is limited to the limits of the liability of any partner for the debts of the company of which he is a member, so that that liability does not exceed the amount of his contribution to the company's capital if the affiliated company is a capital company, or if the holding company is a limited liability partner.

If the holding company bears responsibility for the debts of its affiliated company, then this is a result of the holding company using the scope of responsibility in its capacity as the manager of the subsidiary company, in addition to the holding company transferring the profits of the affiliated company to its own accounts. These reasons are considered essential for the holding company to bear responsibility for the debts of the subsidiary company. Given that the holding company forms with the subsidiary company an integrated economic unit in which all financial accounts are combined, especially when the subsidiary company is wholly owned by the holding company, this is considered a sufficient reason for the responsibility of the holding company for the debts of the subsidiary company. As a result of the existing economic and financial integration between the holding company and its subsidiary, which means unity of responsibility towards the debts of the subsidiary company.⁷⁶ The Jordanian Companies Law stipulated⁷⁷ that the chairman and members of the board of directors of the public company are responsible towards the company, shareholders and others for every violation they committed of the laws and regulations. This provision was supported by the Jordanian judiciary, by the decision of the esteemed Jordanian Court of Cassation (Rights) No. (384/2003) when the judiciary settled the liability of the partner in the limited liability joint-stock company, as long as that company carries out its business within the limits of laws and regulations. From the foregoing, we find that the position of Jordanian law⁷⁸ and some court rulings⁷⁹ Regarding establishing the responsibility of the holding company for the debts of its subsidiaries - in its capacity as a manager - it is somewhat similar to the position of the French judiciary, when the subsidiary company is a joint venture, the holding company is fully responsible with its subsidiaries for all the debts of the company, considering the holding company as a partner Solidarity. On the other hand, the responsibility of the holding company may arise for the debts of its subsidiaries, if the latter was a simple partnership company, and the first company was a limited partner that handles external management work⁸⁰. Here it must be noted that the Jordanian⁸¹ Companies Law has clearly demonstrated the

⁷³ Dr.. Hussein Ismail, previous reference, pg. 77.3 Dennis Logue , International Integration of Financial Markets, Washington, C. American Enterprise Institute, 1999, p.141.

⁷⁴ Dr.. Muhammad Hussein Ismail, previous reference, p. 80. Hassan Muhammad Hind, The Extent of the Parent Company's Responsibility for the Debts of its Nascent Company in the Group of Companies, Ph.D. Thesis, Ain Shams University, 1997, p.83.

⁷⁵ Dennis Logue , International Integration of Financial Markets, Washington, C. American Enterprise Institute, 1999, p.141.

⁷⁶ Dr.. Muhammad Hussein Ismail, previous reference, p. 80.

⁷⁷ Article (204/d) of the Jordanian Companies Law.

⁷⁸ Article (205/a) of the Jordanian Companies Law

⁷⁹ Dr.. Marwan Al-Ibrahim, previous reference, p. 86.

⁸⁰ Article (157/a) of the Jordanian Companies Law

⁸¹ Refer to the decision of the Jordanian Court of Cassation (Rights) No. (384/2003) dated May 29, 2003.

financial union between the holding company and its subsidiaries (the company's budget) by stipulating that in Article (208) thereof. The holding company must prepare at the end of each fiscal year a consolidated budget and statements of profits, losses and flows Cash for it and all its subsidiaries and to present it to the General Assembly with clarifications and related data in accordance with the requirements of approved international accounting and auditing standards and principles.

Conclusion

From the foregoing, we can focus on the most important results we have reached, as well as the most important recommendations that result from the legal relationship of the holding company with its subsidiaries, as follows:

First: the results

1. The Jordanian Companies Law is considered one of the best Arab laws in dealing with the holding company when Articles (208-204) are devoted to this type of company.
2. Although the Jordanian law did not provide a direct definition of the holding company, it adopted the criterion of control as a basis for defining the holding company.
3. The Jordanian legislator has restricted the holding company to the form of a public shareholding company, excluding it from being a limited liability company. The same legislator also excluded from the scope of subsidiaries the partnership company and the limited partnership company.
4. The Jordanian Companies Law has settled the jurisprudence of non-discrimination between the holding company and the investment company by adopting the criterion of control to differentiate between the holding company and the investment company, through the text in Article (204/a) of the Jordanian Companies Law, when it stipulated that The parent company owns more than half of the capital of the company or its subsidiaries so that we can either be a holding company, while this is not a condition for the investment company, meaning when the percentage of ownership of shares is low, it is an indication towards investment.

Second: Recommendations.

1- We wish the Jordanian legislator to amend the text of Article (204/a) by deleting the conjunction (or) so that Paragraph (a) of the article becomes as follows: A holding company is a public shareholding company that exercises financial and administrative control over a company or other companies called subsidiaries of one of The following methods:

To own more than half of its capital and to have control over the composition of its board of directors.

2- Working on adding a text in the Jordanian Companies Law that includes the extent of the holding company's eligibility to use the funds and rights of its subsidiaries, through explicit texts regulating the relationship of the holding company with its subsidiaries.

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