Merger and Acquisition Laws in UK, UAE and Qatar: Transferring Rights and Obligations.

Thesis for the Degree of Doctor of Law
By
Ameen Baggash Abdulhemed Al-Hemyari

Brunel University
School of Law

July 2012

I declare that the work presented in this thesis is my own except where it is stated otherwise.

Ameen Baggash Al-hemyari

ABSTRACT

Across six Chapters, this thesis examines the legal effects of mergers and acquisitions (M&As) on the employees, Board of Directors and shareholders of companies with the objective of gaining in-depth understanding of this area. The thesis then develops legal and practical solutions for the problems and negative effects associated with M&As, specifically regarding employees, Boards of Directors and shareholder companies involved in such operations. This research determines to answer the following question: How do mergers and acquisitions (M&As) affect employees, management and shareholders rights and obligations? And what the legal basis for transferring their rights and liabilities between companies involved in M&As?

Despite the importance of M&As as a means of economic concentration and emergence in terms of major commercial or industrial projects, the laws of both the UAE and Qatar do not sufficiently address the issue of mergers or their goals and conditions. They also fail to regulate acquisitions or to otherwise specify when acquisitions become necessary for companies. Furthermore, the laws do not specify the rights of workers regarding their knowledge of or participation in M&As or developed adequate solutions for the negative impacts on companies workers in such processes. These laws do not provide the right for the Board of Directors of the transferor company to merge with the Board of Directors of the transferee company. Additionally, they also unsuccessfully address the minority shareholders right (those not interested in the merger) to exit the merged company and recover the value of their shares. Moreover, the UAE and Qatar have not developed appropriate solutions for the exchange of shares between companies involved in mergers in the case of dissimilarity between the actual values of the shares of both companies. This has notably led to jurisprudence and judiciary confusion between the concept of M&As, their legal nature and the legal basis or theory for the transfer of the rights and liabilities of employees, management and shareholders between companies involved in M&A operations.

In accordance with legal texts, the above discussion, M&A legal theory and the theory of the agency contract between a company and its Board of Directors, the thesis argues that M&As should not lead to cutting labour contracts or negatively affect employee rights as long as corporate ventures remain in place and M&A operations do not lead to the liquidation of merged or acquired companies. Also, the thesis shows that a company is linked with its Board of Directors through a special form of agency contract, which justifies the transfer of the rights of the Board of Directors of the merged company with regards to the merging or new company management. The thesis also develops solutions and processes for the exchange of shares between merged companies when there are differences between the actual values of their shares, through the shareholders of the merged company buying shares from the merging company or by selling their shares to the merging company and recovering the value of their shares in cash. The study also recommends taking a set of procedural measures during M&As, modifying some of the relevant legal texts of the UAE and Qatar, which would mitigate the negative effects of mergers and acquisitions. Furthermore, this research suggests ways to improve such laws to reach the level of those of developed countries, in order to encourage mergers and acquisitions in the region.

ACKNOWLEDGEMENTS

First and foremost, I would like to express my deepest gratitude to Dr Jurgita Malinauskaite; my supervisor throughout this research for her constant support and dedication over the last two years. Her guidance has helped me open the door of legal research and guided me through it in a short and linear way. Her supervision has greatly influenced and shaped my understanding of research and law which I have learnt greatly from. Her insightful comments and suggestions in each of our research meetings gave me the determination to look beyond and this thesis has been improved a great deal by incorporating her intellectual advice.

I would like to thank my parents, who I am greatly indebted to for all their support and love; who raised me up and gave me both the determination and confidence to pursue a path that led me to achieve my goals in life. I am also grateful to my loving wife, brothers and sisters, brother and sister-in-law and all my friends who have supported me and who waited so patiently and eagerly for this research to be completed.

This work is dedicated with thanks to everyone whose inspiring visions and practical support helped towards its completion, especially Prof Kaiyan Kaikobad, Prof Maher Dabbah, Dr Olufemi Amao and Dr Mohammed Korotana; who encouraged me and gave me the confidence to continue my studies in the form of a PhD degree. I would like to express my gratitude to Prof Robert Home and Prof Peter Jaffey for them advice and encouragement throughout this project.

I am also obliged to thank all other faculty staff at the Department of Law at Brunel University and Samantha Rawson for their strong support.

DEDICATIONS

To the source of pride that illuminated my way of life and who has influenced me to become who I have become today; to the pure spirit of my father; Allah bless him and rest his soul in eternal peace.

To the light of my eyes, who endured the pain of parting and waited patiently and who supported me with love in each step of the way (my dear precious -mother- may Allah protect her).

To those who suffered, missed and waited; I ask Allah to guide me so that I may fulfil my duty towards them all my life (my brothers and sisters).

To my life partner and companion (the mother of my children).

To every relative and sincere friend.

To my wounded country and its suffering people.

I gave this modest effort.

Table of Contents

ABSTRACT i
ACKNOWLEDGEMENTS ii
DEDICATIONS iii
INTRODUCTION 1
CHAPTER ONE: THE CONCEPTS, TYPES AND OBJECTIVES OF M&As 18
1.1 Overview 18
1.2 The Legal Conceptsof M&As 21
1.2.1 Definition of Mergers According to the Concept of Sale 22
1.2.2 Definition of Mergers According to the Contractual Concept 26
1.2.3 Definition of Acquisition 30
1.2.4 Mergers According to UK Legislation 31
1.2.5 Acquisition According to UK Laws 35
1.2.6 Mergers According to UAE and Qatar Laws 37
1.3 Distinctions between Mergers and Acquisitions 41
1.3.1 Differences between M&As from the Legal Aspect 41
1.3.2 Practical Differences between M&As 42
1.4 Classifications of M&As 43
1.4.1 M&As by Degree of Business Relationship 44
1.4.1.1 Horizontal M&As 44
1.4.1.2 Vertical M&As 46
1.4.1.3 Conglomerate Mergers 48
1.4.2 Merger Types in Terms of the Merger's Effects on the Company's Legal Personality 50
1.4.2.1 Mergers by Absorption 50
1.4.2.2 Mergers by the Formation of a New Company 51
1.4.3 Domestic and Cross-Border M&As 53
1.4.3.1 Domestic M&As 53
1.4.3.2 Cross-Border M&As 56
1.4.4 Acquisitions According to the Type of Buyer and Quantity 61
1.4.4.1 Acquisitions According to the Type of Buyer 61
1.4.4.2 Acquisition Types According to Quantity 62
1.5 Motives of Mergers and Acquisitions 64
1.5.1 Realisation of Economies of Scale 65
1.5.2 Customer Demand 65
1.5.3 Gaining Access into New Markets or to New Sales Channels 65
1.5.4 Globalisation 66
1.5.5 Obtaining New Products and Brands 67

1.5.6 Diversification 69
1.5.7 Changing Business Models 69
1.6 Summary and Conclusion 70
CHAPTER TWO: THE LEGAL BASIS FOR TRANSFERRING RIGHTS AND OBLIGATIONS BETWEEN COMPANIES INVOLVED IN M&As 75
2.1 Overview 75
2.2 Personal Nature Theory 77
2.3 Theory of the Legal Personality of a Company 82
2.3.1 Continuation of the Transferor Company's Legal Personality 84
2.3.2 Expiration of the Legal Personality of the Transferor Company 91
2.3.3 Expiration of the Transferor Company's Legal Personality without Liquidation 95
2.4 Conclusion 101
CHAPTER THREE: EMPLOYEE'S RIGHTS AND OBLIGATIONS IN M&AS 104
3.1 Overview 104
3.2 Effects of M&As on Employees' Rights 107
3.3 Employees' Rights in the Transfer of Undertakings According to UK Legislation 113
3.3.1 Individual Employees' Rights in M&As According to the UK TUPE Act and the UK Cross-Border Merger Act 116
3.3.2 The Duty to Provide Employees with Information to Participate in M&A Decisions 121
3.3.3The Rights of the Owners of Collective Labour Contracts in M&As According to the UK TUPE Regulations and Cross-Border Merger Act 123
3.4 Employees' Rights in M&As According to UAE and Qatar Legislations 131
3.4.1 Individual Contract Rights in M&As 131
3.4.2 Employees' Rights in M&As Regarding Employment Contracts of an Unspecified Duration 137
3.4.3 Rights of the Owners of Collective Labour Contracts in M&As 140
3.5 Kind of Employees Rights and Obligation in M&As 142
3.6 Conditions for Employee Transfer 145
3.7 Similarities and Differences Regarding Employees' Rights in M&As in the Laws under Study 149
3.7.1 Similarities between the Provisions of the Legislations of the UK, the UAE and Qatar Relating to Employees' Rights in M&As 149
3.7.2 Differences between Employees' Rights in M&As According to the UK TUPE and Cross-Border Merger Acts and UAE and Qatar Laws 152
3.8 Reducing the Negative Impacts of M&As on Employees 154
3.9 Conclusion 158
CHAPTER FOUR: THE EFFECTS OF M&As ONTHE RIGHTSOF BOARDS OF DIRECTORS 161

4.1 Overview 161
4.2Nature of the Relationship between Companies and Directors 163
4.2.1 Agency Theory 163
4.2.2 Theory of the Institution or Organisation 166
4.3 Directors' Duties and Responsibilities According to the UK Companies Act 2006 168
4.3.1 Directors Rights and Obligations 168
4.3.2Directors' Liabilities Following the Insolvency of Company 175
4.3.3 Directors' Rights in the Company 177
4.3.4 The Roles of Boards of Directors in M&As 180
4.4 Effects of M&As on the Contracts and Rights of Directors in Practice 185
4.5 Director Transfer in M&As According to UK Legislation 188
4.6 Directors' Rights in M&As According to UAE and Qatar Laws 193
4.7 Effects of M&As on the DirectorAuthority in Representing the Transferor Company 199
4.8 Similarities and Differences between Directors Rights' In M&As According to UK, Qatar and UAE Laws 203
4.9 Reducing the Negative Impacts of M&As on Directors 204
4.10 Conclusion 210
CHAPTER FIVE: SHAREHOLDERS' RIGHTS IN M&As 213
5.1 Overview 213
5.2Consequences of M&As on Shareholders' Profits 216
5.3 Shareholders' Rights in Profits of the Transferee Company 221
5.4 Shareholders' Rights in M&As According to UK Laws 224
5.4.1 Shareholders' Right to Approve M&A Decisions 224
5.4.2 Classes of Shares 229
5.4.3 Shareholders' Rights in the Transferee Company's Shares 235
5.4.4 Distribution of New Shares if the Companies in the Merger Involve Shares from One Type 237
5.4.5 Distribution of Different Types of Shares 241
5.4.5.1 Distribution of Fully or Partly Paid-Up Shares 241
5.4.5.2 Distribution of Ordinary and Preference Shares 243
5.5Shareholders' Rights in M&As According to UAE and Qatar Laws 248
5.5.1 The Majority of Shareholders Required to Approve M&A Decisions 248
5.5.2 Shareholders' Rights to Object to M&As 252
5.5.3 Shareholders' Rights in the Transferee Company's Shares 254
5.5.4 Distributing New Shares if the Transferor Company's Shares are of One Type 257
5.5.5Distributing New Shares if the Shares of the Companies involved in the Merger are of Different Types 264

5.5.5.1Distribution of New Shares Comprising Fully and Not Fully Paid-Up Shares.. 264
5.5.5.2 Distributing Capital and Enjoyment Shares 266
5.5.5.3 Distribution of Ordinary and Preference Shares 272
5.6 Overcomethe Problems of Distribution of the shares of Companies Involved in M&As 279
5.7 Conclusion 286
CHPTER SIX: CONCLUSION AND RECOMMENDATIONS 290
6.1 Conclusion 290
6.1.1 Address the Legal Concepts of M&As in the UAE and Qatar Laws 297
6.1.2 Solutions to reduce the Negative Effects of M&As on Employee’s Rights 299
6.1.3 Overcome the Negative Effects of M&As on Directors’ Rights 303
6.1.4 Solve the Matters of the Distribution of Shares between Companies involved in the Merger 308
6.2 Study Contributions 315
6.3 Future Research 317

INTRODUCTION

The modern economy is distinguished by the phenomena of centralisation of the economic forces and the transformation of economic units from small to large units, as large business projects in this era have become the effective drive for achieving economic progress and advancement. Mergers and acquisitions (M&A) are used as the most significant means for achieving economic centralisation and the emergence and acquisition of large projects.[1]

For this reason, during the last two decades, in Qatar[2] and the UAE,[3] mergers and acquisitions (M&As) between companies have witnessed significant growth and have reached unprecedented record levels. The key factors for this are attributed to a prevailing orientation towards globalisation and the low cost of funding and avoiding bankruptcy, which happens from time to time in some companies.

M&As are, nowadays, frequent events in the lifecycles of companies. The reason for this is the current financial crisis, which has led to weakening global demand and depressing commodity prices. Perhaps the primary reason for the increase in M&As in the past ten years is due to the increase in the profitability of the resultant entity through taking advantage of the 'synergy effect' by becoming more competitive, economic

[1] There are several other means to achieve economic centralisation, such as: holding companies, joint ventures, trusts and cartels. However, the merger could be the most significant and most prevailing of such means because of its advantages. The merger, with its two types (amalgamation or combination), is considered to be the way to achieve the highest grade of centralisation. This is because the merged companies not only lose their economic independence but they also lose their legal entities and their incorporated capacities are terminated forever. Consequently, all such companies are dissolved and melted into one company, which is a merging or new company, and the merged companies will not have any existence after the merger.

[2] The State of Qatar is an Arab country situated in the Arab Gulf Cooperation Council State, which has transformed itself from a poor British protectorate, noted mainly for pearling, into an independent state with significant oil and natural gas revenues. Oil and natural gas revenues enable Qatar to have a per capita income not far below the leading industrial countries of the world.

[3] The UAE is located in the heart of the Arabian Gulf bordered by the Gulf to the north and north-west, the state of Qatar and Saudi Arabia to the west, the Sultanate of Oman and Saudi Arabia to the south and the Sultanate of Oman and the Gulf to the east. The sovereign state of the United Arab Emirates came into existence on 2nd December, 1971. It has a federal structure and comprises seven Emirates namely Abu Dhabi, Dubai, Sharjah, Ras Al Khaimah, Fujairah, Ajman and Umm Al Quwain. Abu Dhabi, which is the capital of the UAE, is the largest and richest of the federal units. It is also the biggest producer of oil and the major contributor to the federal budget.

conditions and the difficulties facing small and medium-sized businesses, thus limiting their ability to work and grow. Furthermore, technological development has actively contributed to the evolution of this phenomenon and the spread of M&As among commercial companies across the UK, the UAE and the State of Qatar.

Take the current example in the UK: company's activities have reached a record high over the last few years in terms of the values of mergers and acquisitions. An analysis of international M&A activity by KPMG showed that UK companies made 232 acquisitions of international companies in 2010. This marked a big shift in the M&A market that year.[4]

In the UAE and Qatar region, the case is not much different; due to the global financial crisis that has been witnessed in recent years and the decline in oil prices to levels not seen since early 2007, some companies in the UAE and Qatar have been affected, like most companies worldwide. Despite this influence, due to the huge oil discoveries and respective geographic locations of the State of Qatar and the UAE, the effects of the global financial crisis have not reached most of the companies in both countries; the two countries remain witness to fast and continuous development in all sectors, the most important of which is the business and economic sector. This development has been accompanied by numerous companies investing in the sectors of oil and gas, construction and other businesses. It has also encouraged the governments of the two countries, which own most of the assets of the giant corporates, to encourage national companies to merge with or acquire other national or international companies. So, this situation will drive a slew of companies to enter in M&A activities across the UAE and Qatar on the basis that such activities are one of the solutions that governments and institutional investors have in the current climate to face the financial crisis and to enable companies to avoid bankruptcy or to increase their profits.

[4] For more see: Williamson, M "*UK firms 'resuming merger and acquisition activity"* [2010], Available at:<**http://www.heraldscotland.com/business/corporate-sme/uk-firms-resuming-merger-and-acquisition-activity-1.1074017**> [Accessed 01 June 2011]; see also *British Sky Broadcasting Group Plc v Competition Commission*, Court of Appeal (Civil Division), [2010] EWCA Civ 2; (2010) 107(5) L.S.G. 16, Basbos, F. A. M '*The Legal Effect of the Merger of the Public Companies Limited by shares under the Jordanian Law'* PhD thesis in Law, Amman Arab University, (2006, Jordan) 11-17, Vickers, J. (2004), *Merger Policy in Europe: retrospect and prospect*. UK: Office of Fair Trading, pp.1-15.

The UAE has emerged as the most active centre for M&A activity in the Arab Gulf Cooperation Council (GCC[5]), with 50 such transactions being reported from that country alone between 1996 and 2001; during this period, the total number of transactions in the banking sector was 49, followed by business services with 21, oil and gas with 20, insurance with 17, food-related businesses with 14 and wholesale trade with 11. Significantly, the majority (38 of the 91 deals) were small deals of between $10 million and $50 million. There were 12 deals of between $100 million and less than $500 million and five transactions exceeded $500 million.[6]

In recent years, GCC M&As have constituted up to 10% of global M&A activity. In the year (2011) it has reached 4%, compared to Europe's 15% share. Geographically, the majority of M&As are expected to take place within the GCC area: the UAE with a share of 58.4%, followed by Qatar (11.4%).[7] In October 2012, companies based in the UAE were collectively "the most important and most frequently targeted" in the Middle East for mergers and acquisitions (M&As), with a value of $1.473 billion across eight deals compared with seven transactions worth a combined $22 million in the preceding month.[8] One deal topped the $1 billion mark in October, which was the National Shipping Company of Saudi Arabia's agreement to buy the fleet and business of Dubai-based crude oil tanker company Vela International Marine for $1.3 billion.[9]

---

[5] The GCC is an Arab regional organisation of six Arab countries; United Arab Emirates, Qatar, Saudi Arabia, Bahrain, Kuwait and Oman. It was founded in 1981 and its headquarters are in Riyadh, the capital of Saudi Arabia. These countries are the richest oil countries in the Middle East and the articles that make up the laws of each of the GCC countries are identical. In addition, the United Arab Emirates and the State of Qatar are the most developed countries in the GCC. For this reason, the study focuses on the provisions for mergers in the State of Qatar and the UAE Commercial Companies Laws rather than considering all six countries.

[6] Lewis A and McGlinchy, *The International Comparative Legal Guide to Mergers & Acquisitions 2010, A practical cross-border insight into mergers & acquisitions* (Global Legal Group Ltd).

[7] For more see Saleh Suhaibani and Abdel Azim Mussa 'Merger and Acquisition, Global financial turmoil and new opportunities' [2011] l Rajhi Financial Services.

[8] John Isaac "UAE firms 'most targeted' for M&A deals in October" [2012], available athttp://www.khaleejtimes.com/biz/inside.asp?xfile=/data/uaebusiness/2012/October/uaebusiness_October317.xml§ion=uaebusiness, accessed (13/12/2012)

[9] Ibid

However, despite the high cases of M&As in the UAE and Qatar and the attention of both countries to such operations, M&As of UAE and Qatar companies compared with the UK are still in their infancy. One of the most important reasons for this is due to the laws in the UAE and Qatar not having clear provisions regulating such transactions and their legal effects such as the UK legislation. Accordingly, the objective of thesis is to gain in-depth understanding of the legal basis for transferring the rights and obligations of employees, directors and shareholders between companies involved. The thesis then develops legal and practical solutions for the problems and negative effects associated with M&As, specifically regarding employees, Boards of Directors and shareholders. Following this, the provisions of the legislations of the UAE and Qatar relating to M&As are developed and remedied by taking advantage of UK legislation.

Looking at the relationship between a venture and a company, a venture is the economic or technical means that a company uses in order to achieve its ventures, whilst the company itself is the legal embodiment of the venture. Moreover, the venture is considered to be a socio-economic cell comprising three elements: work, management and capital, which are the key elements that drive the ventures that companies depend on. This thesis focuses on discovering how M&As effects the rights and obligations of employees, directors and shareholders; why and how such impacts could occur in the corporation systems of the UK, the UAE and Qatar. It determined the legal basis for retaining and transferring employees, directors and shareholders rights and obligations in companies involved in M&As operations, with finding solutions and practical perceptions to mitigate for the negative effects of M&As on employees, directors and shareholders in companies and the processes taking place in the UK, the UAE and Qatar. The thesis also aims to determine the legal nature of M&A, and analyse the reasons that prompted the UK, UAE and Qatar lawmakers to allow companies to engage in mergers even if one of the companies concerned was under liquidation. Moreover, the thesis aims to find practical and legal solutions for the problems in exchange of shares between companies involved in the merger in case of different situations. This includes cases such as the nominalism value with the actual value of the transferor and transferee company shares, or in cases of decimal fractions in one of the companies involved in the merger

while there exist an absence of such decimal fractions in the shares of the other company. In addition, in cases where one of the shareholders of the transferor company is not able to obtain new shares in the transferee company, practical solutions are found. The total legal quorum for shareholder approval on M&A decision is suggested, as are practical and legal solutions for shareholders who object to M&As and wish to exit from the operations.

According to UK, UAE and Qatar laws, as well as the theory of the legal personality of a company, mergers lead to all the transferor company's business obligations being transferred to the transferee or new company, which would receive all the transferor company's assets and liabilities. Consequently, this means that all the rights of the transferor company, including the rights of the employees and the Board of Directors in their work and positions and all the subsequent rights and benefits that they enjoyed before the merger (in addition to the rights of the shareholders in the transferor company's shares and its profits), are transmitted to the transferee or new company by force of law. However, the truth and reality has often proved to be contrary to such laws, as a number of recent studies[10] have shown that some M&As lead to a loss of some workers, with some members of the Board of Directors losing their rights, work and/or positions and all the consequences of them (including rights and benefits) in the transferee or new company.[11]

These problems are not limited to company employees or Boards of Directors: they also extend to shareholders, who are hampered by many procedural and legal obstacles and problems when exchanging shares between transferor and transferee companies when there are differences between the actual value of the shares of the transferor company and the actual value of the transferee company's shares.[12] For

---

10 For more see Rhoades S A. (1993), Efficiency effects of horizontal (in-market) bank mergers, Journal of Banking and Finance 17, North-Holland, 411-422, Mylonakis J. (2006), The Impact of Banks' Mergers & Acquisitions on their Staff , Employment & Effectiveness, International Research Journal of Finance and Economics ISSN 1450-2887, Issue 3, pp122-135.

11 Bhat P, 'Impact of Mergers & Acquisition on Employees & Working Conditions' (*Law article; Indian Legal article* 2010) <**http://www.123oye.com/job-articles/cyber-law/mergers-acquisitions.htm**> accessed 11 November 2011.

12 For classes of shares see paragraph 5.4.2 of the Chapter Five of this thesis.

example, unlike the UK Companies Act, UAE and Qatar Companies Laws only allow companies to issue one type of shares (ordinary shares). Accordingly, if the shares of the transferor company consist of ordinary and preferences shares[13] while the shares of the transferee company consist only of ordinary shares, how can the transferee company distribute its shares to the shareholders of the transferor company? In addition, according to UK, UAE and Qatar Companies Laws, the shares of a company are divided into shares in cash (fully paid shares) and shares in kind (not fully paid-up shares).[14] For shares not fully paid up, the laws require shareholders to meet 25% of the cash value of the shares upon subscription. "On the contrary, the shares in kind shall meet their value in full upon underwriting".[15] Accordingly, if the shares of the transferor company are divided into shares paid their full nominal values and shares not paid their full nominal values while the shares of the transferee company only consist of shares paid their full nominal values, the question arises as to how the shares of the transferee company are distributed amongst the shareholders of the transferor company.

In addition, according to UAE and Qatar Companies Laws, the shares of companies are divided into enjoyment shares (shares subject to recovery or consumption during the life of the company) and capital shares. In this regard, a question arises concerning how the transferee company's shares are distributed among the transferor company's shareholders if the transferor company's shares are divided into capital shares and enjoyment[16] shares while the transferee company's shares are only capital shares. In addition, unlike the UK Companies Act, the laws of the UAE and Qatar do not allow the transferee company to obtain shares in the transferor company in return for payment in cash, which leads to issues relating to how the transferee company's shares are distributed amongst the transferor company's shareholders if the shares of the transferor company include shares with decimal fractions while the transferee company's shares are free from decimal fractions.

[13] For more details see paragraphs 5.4.5.2 and 5.5.5.3 of the Chapter Five of this thesis.
[14] For more see paragraphs 5.4.5.1 and 5.5.5.1 of the Chapter Five of this thesis.
[15] Article 155 of the State of Qatar Companies Law.
[16] For meaning and more details see paragraphs 5.4.2 and 5.5.5.2 of the Chapter Five of this thesis.

The practical and legal problems of M&As do not stop at this point but extend to the majority vote of the shareholders required for approval of the merger decision. Unlike section 907 of the UK CA and regulation 13 of the UK Cross-Border Act, UAE and Qatar Companies Laws require the merger decision to be approved by a double majority: a majority in the number of shareholders who attend the vote and also who own the majority of shares. Furthermore, UAE and Qatar Companies Laws do not provide for the rights of partners or shareholders who do not support the suggestion of the merger or acquisition to exit from such operations and recover the value of their shares, which leads to the failure of the M&A process or a delay in its procedures due to the lack of the quorum required by the texts of law or the objection of the shareholders to attend the meeting of the Extraordinary General Assembly on the operation, which is necessary to approve M&A decisions.

Accordingly, when companies are involved in M&As, especially where this involves changes in corporate identity or ownership, significant questions arise for the employees, Boards of Directors and shareholders of the companies: does this change mean that employment, Board of Directors and shareholder contracts and other rights have ceased, and what is the legal basis for transferring all of these rights and obligations between companies involved in M&A operations?

Is the reason for the negative effects of M&As due to shortcomings in the legislation that allow employers to evade obligations imposed by laws and dictated by reason and logic? Or it is the desire of the companies involved to avoid further losses likely obtained by one of the company involved before M&A? Alternatively, is it due to the restructuring of companies involved in M&A operations? Furthermore, if modern laws protect the rights of employees, Boards of Directors and shareholders in M&A cases, what is the legal basis of the laws? Is it because the legal relationship between employees and directors with the enterprise is stronger than the relationship between them and their employer, or is it rather because M&As do not lead to the liquidation of the transferor companies but rather the transference of their ventures with all rights and obligations to the transferee or new company?

To discuss the problems and answer the questions above, the study follows the methodology of a qualitative and comparative study. There were difficulties in obtaining the necessary data due to the confidentiality of the judicial systems of the UAE and Qatar, which do not publish the judicial decisions that are issued by their courts, and blackout of companies to incidents and problems that occur on employees; Board of Directors and distribution of the transfer shares on shareholders of the companies involved in the process of M&As, in addition to sharing of the Governments or influential people in capital firms, or in its ventures Board of Directors directly or by other names, as well as the difficulty interview workers laid off from their jobs due to differences in nationalities and their place of residence, led to the difficulty to interviewing employees or Board of directors members or shareholders who had their rights affected by M&As. This is in addition to the importance of focusing on the legal side of the effects of M&As in order to reach the legal theory for the transfer of rights and obligations between the companies, and to know the legal basis for retain employees, directors and shareholders companies involved of their rights in M&As cases - which most of the research and published scientific messages lack - the research in this study follows a qualitative and a comparative methodology.

The thesis undertakes a critical analysis and employs a comparative law method,[17] which uses a comparison as a tool in order to determine objectively what approach is taken to a particular problem, as a merger and acquisition effects on employees, directors and shareholders in the UK, UAE and Qatar countries. The comparative study and comparative law can be used as an aid to legislation and law reform, as a tool of construction, as a means to understand legal rules or as a contribution to the systematic unification and harmonisation of law. Thus, the comparative method and comparison itself has been an essential tool for generating knowledge in this thesis. It leads also to

[17] According to Malinauskaite Jurgita (2006) there is no decisive definition of what comparative law and comparative method is yet. But there is a rather vague definition of comparative law refers to suggest an intellectual activity with law as its object and comparison as its process' the extra dimension is given to internationalism. In general terms, comparative law is the comparison of the different legal systems of the world. For more see Malinauskaite J "A dive Into 'Unknown' Waters: A critical Analysis of the EC Merger Control Mechanism and Policy and its Application in th Baltic Countries" PhD thesis, Westminster University, [2006], 70, 76

understanding of texts of laws and grasps their legal styles' at the national, regional and international level.[18] In accordance with Warrington M (1998)[19] a comparative study and law in the fields of historical, socio-economic, psychological and ideological can assist with finding the elements, which are influencing the law at all levels from a conceptual to ideological framework. In general, comparative law can be used to evaluate the efficacy of an approach to a legal problem (in the legal effects of M&A) in terms of a jurisdiction's cultural, economic, political and legal background.[20] For these reasons and due to the small size of the United Arab Emirates and Qatar and newness and modest their experience in the legislative arena compared with the United Kingdom and its legislation, this thesis could not be employed without comparison method between the UAE, Qatar and UK legislation. That exclusively, the study on a single legal system or on similar legal systems away from the comparison method leads to the repetition and dimension to take advantage of legislation from each other that were achieved by the comparative study method between the dissimilar legal systems.[21]

Following a comparative and analysis method in this thesis (focusing on the legal aspect of the effects of M&As on employees, Boards of Directors and shareholders) and studying the legal basis for the transmission of their rights and obligations in such operations gives solutions to many of the problems faced by workers and shareholders in companies involved in the UAE and Qatar. It also helps in understanding the theory and the legal basis for retaining the rights and obligations of employees, directors and shareholders in M&As, which supports other researchers in continuing research in practical fields in order to access to create an environment and a strong legal system for both countries regarding M&As. This will then encourage companies to engage in M&As operations and investors to increase their investments in the companies involved, which will reflect positively the national economy in both countries. following this methodology

---

18 German comparatists Zweigert and Koezt "Comparative Law: Method, Science or Educational Discipline" Bashkir State University [1998] 68, 69

19 Warrington M and Hoecke M "Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law" the International and Comparative Law Quarterly, Vol. 47, No. 3, Jul [1998] 496, 497

20 Malinauskaite Jurgita (2006), Ibid, 70,75

21 De Cruz, P "Comparative law in a changing world" second Ed, Cavendish Publishing Limited, London [1999]

and focusing on the legal aspect of the effects of M&As on employees, directors and shareholders and studying the legal theories for transferring their rights and obligations in M&As assists in establishing the rules applicable to M&A operations and also helps to determine the legal implications of them, particularly concerning the effects on the moral personalities of the transferor and transferee companies and their financial assets. It also helps in understanding a company's relationship with its employees and shareholders before or after the merger, as well as providing knowledge of the proper interpretation of the legal texts regarding M&As.

In order to achieve this, the study relied on some Arabic sources which were collected from some Arabic universities or bought from the libraries in the Arab region. The study also relied on some previous studies on the effects of M&As on employees and directors conducted on some M&As in the UK. In this regard and due to the secrecy policy followed by most countries of the GCC in general and the UAE and Qatar in particular with regard to publishing judicial decisions, as well as the similarity of the texts of Egyptian Companies and Labour Laws and Jordanian Companies and Labour Laws with the texts of the State of Qatar and UAE Companies and Labour Laws, this thesis uses and depends on judicial judgements of the Egyptian and Jordanian courts.

Due to the rapid growth in all economic and commercial fields that the UAE and Qatar have been witnessing due to oil and gas discoveries, they are two of the fastest growing economies and most competitive countries in the Middle East and North Africa. Furthermore, there is a strong and special relationship between the UK, UAE and Qatar, which goes back decades and is anchored in business ties going back 70 years, when Shell and the British Multinational Oil and Gas Company (BP) first came to support Abu Dhabi's discovery of oil. This is currently embodied in the form of many joint ventures between the countries, which reached a value of £9.6 billion in 2011 compared to £8.9 billion in 2010; the countries will try to further increase this figure in the future.[22] At the

[22] There is now a mass of connections between individuals, civil society, and businesses in the countries. These connections are robust due to longstanding shared values and have made an ideal foundation for a thriving commercial and trade relationship. The UAE is the UK's largest export market in the Middle East. British contractors and consultants have been involved in some of the most iconic infrastructure projects in

same time, the UK Government is strongly committed to fostering greater commercial engagement, partnerships and opportunities on infrastructure development with Qatar and to pushing the relationship between the two countries into new areas. Qatar is the UK's third largest export destination in the Gulf region. Over the past five years, bilateral trade has increased by over 160% to £2.2 billion. Imports of Qatari goods increased by more than 200% in the last year alone, driven by our growing demand for liquefied natural gas (LNG).[23]

Furthermore, given the importance of M&As between companies in the both the UK, UAE and Qatar, the similarities in their impact on employees and directors in both countries, in addition to the difference between the UK legislative systems with UAE and Qatar legislative systems are evaluated. In addition, due to the evolution of the legislation in the UK, and addressing the issues of M&As in the British legislation from different approaches, this allows and helps the researcher to conduct a comparison, and take advantage of British legislation in order to address the gap and remedy the shortages and imbalances legislative that suffered by the UAE and Qatar legislations relating to M&As. As well as in the scope of the personal nature theory and the theory of the legal personalities of companies (supported by the researcher and the thesis), the UK Companies Act 2006, the TUPE Regulations 2006, the Cross-Border Act 2007, and UAE and Qatar Companies and Labour Laws, this thesis deals with the rights of employees, Boards of Directors and shareholders in M&As, as a comparative study.

In this regard, the thesis employs a comparative approach between the UK, UAE and Qatar legislations. Islamic Shari'a law regulates the laws of the UAE and Qatar and gives both workers and shareholders rights and obligations, thereby establishing social

---

the UAE, including the Burj Al Arab, the Dubai Metro, the YAS Marina Circuit, Ferrari World, the Zayed National Museum, and Masdar City. On the other hand, the UAE's has significant investments and projects in the United Kingdom such as London Array, Emirates Sky Line and the largest port in UK being developed by Dubai Ports. For more see For more see Ghali George Daniel "Methods and Problems of Accounting for Mergers" Alexandria, University House, [2002] 30, 31

[23] For more, see Howell D "UK's 'Strong and Growing' Economic Relationship with Qatar: Qatar Infrastructure Projects" [2011], available at: http://www.fco.gov.uk/en/news/latest-news/?view=Speech&id=627772082. Accessed 13/12/2012; Barakat S "Kuwait Programme on Development, Governance and Globalisation in the Gulf States, the Qatari Spring: Qatar's emerging role in peace making", the London School of Economics [2012]

justice and providing a decent life for families. As well as this, Islam preserves the rights of the owners of capital and prohibited any form of procrastination in the payment of rights so debts return to their owners, also prohibiting fraud among dealers, and regulating shareholders' profits. However, M&As has been result of globalization, monopoly and competition between companies to enter new markets, Islamic Shari'a law in its main sources (Qur'an and Sunnah) as well as the Islamic scholars did not address the issues of M&As,[24] and its legal effects from the legitimacy side, therefore the study avoided delving into the impact of M&As in terms of legitimacy. Even the researcher does not enter in clamour, polemics and doctrinal interventions that may take out of the study important goals it seeks to achieve.

Despite the fact that the core principles of the laws in the UAE[25] and Qatar[26] are drawn from Shari'a, the application of Shari'a law is restricted and commercial/contractual transactions are regulated by written commercial codes and laws that are consistent with Western business needs.[27] Most of the UAE and Qatar legislations are comprised of a mix of Islamic and European concepts of civil law, which have a common root in the Egyptian legal code established in the late 19th to 20th centuries.[28] The UAE and Qatar laws are the applicable laws in the two countries and it is a set of rules that govern the behaviour of individuals within the UAE and Qatar society.

---

[24] For more see Mahmassani Sobhi "Workers' rights and duties in Islam" [2010], available at: http:// www.onefd.edu.dz, accessed 21/11/2012 (Arabic source) translated by Al-hemyari, Ameen Baggash, School of Law, Brunel University, London, the UK

[25] The United Arab Emirates (the UAE) is a federation of seven emirates comprising Dubai, Abu Dhabi, Ajman, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain and was formed in 1971. The UAE federal constitution provides for an allocation of powers between the federal government and the government of each emirate. Dubai is subject to the federal law of the UAE but retains the right to administer its own internal affairs and enjoys certain other exclusive rights.

[26] Qatar is a peninsula located halfway down the west coast of the Arabian Gulf. Its territory comprises of a number of islands. It has maritime and land borders with Saudi Arabia and maritime boundaries with Bahrain, United Arab Emirates and Iran. The total land area of Qatar is approximately about 11,500 square kilometers. Islam is the official religion of the country and Arabic is the official language in Qatar, and English is widely spoken.

[27] The basis of the legal system in the UAE is Sharia or Quranic Law. In the constitutions, Islam is identified as the state religion as well as the principal source of law. However, although the principles of Sharia influence criminal and civil laws, the direct influence of Sharia in the UAE is primarily confined to social laws, such as family law, divorce or succession. Most commercial matters are now dealt with by either civil courts or permanently established arbitration tribunals.

[28] Ahmed Aly Khedr & Bassam Alnuaimi "A Guide to United Arab Emirates Legal System" Hauser Global Law School Program, New York University School of Law [2010]

The Articles of laws are characterized-like any laws in any countries- that their rules are general abstract; where, they do not address the specific individual, but addresses all people, the UAE and Qatar laws are features also by its binding rules, that force individuals to respect it by applying sanction on who opposes their operations. However, the UAE and Qatar legislations do not depend on a legal system similar to the Common Law system which is generally based on judicial precedents; legislation plays an extremely important role.

Like other legal systems in the GCC, the legal systems of the UAE and Qatar are quite complicated and those unfamiliar with their workings can find this very problematic. However, although these systems are different from legal systems in the West, the basic legal principles and structure are logical and understandable. They have evolved over many centuries, in a similar way to the West and, especially in the UAE and Qatar, are adapting to the changing needs of society with new developments in thinking for a modern age. More changes in commercial law have liberalized legal regimes, creating a more open and understandable environment for foreign businesses and investors.

Prior to the establishment of the UAE, each of the seven Emirates regulated its own affairs by passing local laws and regulations, including legislation establishing and regulating a judicial system.[29] The Federal Government is entrusted with the task of promulgating legislation concerning and regulating the principal and central aspects of the Federation. In the comparatively short period since its establishment, the UAE has made important strides in regulating some of the vital legal aspects of its rapidly expanding economy such as Labour Law,[30] Commercial Companies Law[31] and several other very important laws were also promulgated. However, the UAE legislation are not

[29] For example the Emirate of Abu Dhabi promulgated a Law in 1968 establishing and regulating the Abu Dhabi Courts. It also promulgated the Law of Procedure at the Civil Courts No. (3) of 1970, and the Law of Procedure at the Criminal Courts of 1970. Dubai promulgated a Law establishing its Courts in 1970 and Fujairah followed suit in 1969. Ajman, Sharjah, Ras Al Khaimah and Umm Al Quwain established their Courts by Laws passed in 1971. Some of the local laws that were promulgated prior to the Federation still prevail today and will continue to be applicable unless and until they are repealed by Federal Legislation.

[3030] Labour Law No. (8) of 1980, the Law under study

[31] Commercial Companies Law No. (8) of 1984 Law under study

issued by parliament, rather, according to the UAE Constitution the state laws are issued under the provisions of the Constitution, where, Council of Ministers prepare a draft law and submit it to the Federal National Council (FNC), the Council of Ministers presents the draft of law to the President of the Union for approval, then submitted to the Supreme Council for ratification. Then, the federation president signs the law after ratification by the Supreme Council, and it is issued.

Qatar[32] legislation does not differ from UAE legislation; according to the first article of the permanent constitution of the State of Qatar, Shari'a law is the main source of its legislation. Articles 105 & 106 of permanent constitution also clearly state that the laws issued through the Al-Shoura Council shall have the right to propose bills. Every proposal shall be referred to the relevant committee in the Council for study, with recommendations submitted to the Council. If the Council accepts the proposal, the same shall be referred in draft form to the Government for study and opinion. Such a draft shall be returned to the Council during the same or the following term of session. Also, any bill rejected by the Council may not be re-introduced during the same term of session. Any draft law passed by the Council shall be referred to the Amir for ratification.

In the judicial field, historically, Shari'a (religious) Courts formed the judicial cornerstone of the UAE and Qatar. The modernisation of the majority of the legal systems in these countries at the beginning of the twentieth century, led to the establishment of Civil Courts which were generally granted the competence to review civil transactions as well as commercial and other types of disputes. Separate Criminal Courts were also established. Matters of personal status such as marriage, divorce, custody and inheritance remained with the Shari'a Courts whose judges were trained in Islamic Law and Jurisprudence. In the UAE, the establishment of the Civil and Criminal Courts resulted in diminishing the role of the Shari'a Courts. Nevertheless, the competence of the Shari'a Courts in some Emirates, particularly Abu Dhabi, was

[32] Qatar is a peninsula located halfway down the west coast of the Arabian Gulf. Its territory comprises of a number of islands. It has maritime and land borders with Saudi Arabia and maritime boundaries with Bahrain, United Arab Emirates and Iran. The total land area of Qatar is approximately about 11,500 square kilometers. Islam is the official religion of the country and Arabic is the official language in Qatar, and English is widely spoken.

substantially expanded later on to include, in addition to matters of personal status, all types of civil and commercial disputes as well as serious criminal offences. Therefore, in addition to the Civil Courts, each of the seven Emirates maintains a parallel system of Shari'a Courts, which are organised and supervised locally.

The Federal UAE Civil Courts and the Civil Courts of Qatar, similar to the courts in most of the countries in the Arabic area, are organised to form two main divisions; civil and criminal, and are also generally divided to three stages of litigation, namely the Courts of First Instance, Appeal and the Supreme Court (colloquially referred to as Court of Cassation).[33]

Although there are judicial systems in the UAE[34] and Qatar,[35] like the UK which makes judicial action a public one regulated and practiced by the state, however, composition of judicial system in the UAE and Qatar and the way the functioning of the courts does not rise to the level of the UK judicial system. Take as an example the State of Qatar, which has no specialized court to hear cases of workers, in the UAE in spite of the presence of a specialized court in labour issues, however, the Emirati legislator does not give this court the right to control of M&As, the reason for this is due to the small size of the UAE and Qatar, recent inception of the two countries and the modest experience between its judges.

The thesis is split into six chapters: to understand the legal basis for transferring rights and liabilities between companies involved in M&As, Chapter One classifies the

[33] In the UAE The jurisdiction of the third division, namely the Shariah courts, which initially was to review matters of personal status, was expanded in certain Emirates such as Abu Dhabi to include serious criminal cases, labour and other commercial matters. Important cases with a security aspect are referred to special courts.

[34] Judicial system in the UAE comprises three degrees litigation which are: Court of First Instance, the Court of Appeal, the Court of Cassation, each of these courts separate jurisdictions, are: Civil Court, Commercial Court, Criminal Court, Labour Court, Court of Real Estate and Personal Status court (Family Court).

[35] The judicial system in the State of Qatar, like the judiciary in the UAE. According to the new legislation the judicial structure in Qatar's judicial system consists of the Court of Cassation on top of the judicial hierarchy, followed by the Court of Appeal, the Court of First Instance and the Supreme Judicial Council, however Qatar does not have a court to consider in employees problems in general or the problems resulting from M&As which affect on employees directors of companies involved.

concepts of M&As, demonstrating the main differences between them and classifying M&A types and objectives. In order to understand the legal basis for transferring the financial disclosure of the transferor company to the new or the transferee company, in addition to retaining the rights and liabilities of employees, directors and shareholders in M&As, Chapter Two discusses the legal basis for this transfer according to the personal nature theory and the theory of the legal personalities of companies. Chapter Three provides a thorough understanding of the consequences of M&As on employees and their rights in M&A operations. It deals with the rights of employees by individual and collective contracts, the types of rights that should be transferred between the companies involved and the necessary conditions. Chapter Three also gives some practical and legal solutions and suggestions that would mitigate the negative effects of M&As.

Chapter Four discusses the aforementioned consequences of M&As on Boards of Directors and, accordingly, classifies the relationship between the company and its directors or Board of Directors according to the theory of the institution or organisation and agency theory, as well as the legal theory of the personality of companies (the main theory). Additionally, the chapter discusses the effects of M&As on the rights and contracts of Boards of Directors. Finally, the chapter presents various courses of action that can be taken in order to mitigate and overcome the negative impacts associated with M&As on the management of a company.

Chapter Five classifies the rights of shareholders in M&As, such as regarding the management, profits, getting new shares and approving M&A decisions. Shareholders have the right to object to an M&A and exit from the company with the option of recovering the value of their shares. Also, the chapter focuses on solving the problem of exchanging shares between transferor and transferee companies when there are differences in the actual values of shares. The end of this chapter presents possible solutions and suggestions that can be implemented to alleviate and overcome the negative impacts associated with M&As on the shareholders of a company.

Chapter Six presents a holistic look at Chapters One, Two, Three, Four and Five and provides an in-depth summary of the differences between the texts of the laws under consideration in terms of how these texts address the legal effects of M&As on employees, management and company shareholders. Moreover, some suggestions and recommendations are made concerning the reformation and amendment of these texts, in addition to proposing some practical solutions that can help to mitigate the negative effects of M&A. Further recommendations are made regarding solving the problem of exchanging shares between transferor and transferee companies. The study concludes with suggestions for possible future research directions. Finally, the last section provides a summary of the thesis and makes its closing remarks.

CHAPTER ONE: THE CONCEPTS, TYPES AND OBJECTIVES OF M&As

1.1 Overview

Mergers and acquisitions are nowadays frequent events in the lifecycles of companies, on the basis that this option has been recognised as one of the most prominent solutions for facing the repercussions of the financial crisis that has swept the world since 2007. The crisis has threatened many different economic entities in regard to bankruptcy or liquidation.[36] Thus, M&As are one of the most successful means of enabling companies and economic entities to avoid this problem and to achieve profits, whether through entry to new markets, taking advantage of economies of scale or reducing the costs associated with producing a greater number of products or services.[37]

Nevertheless, despite the importance of M&As and the multiplicity of their goals, it should be noted that the laws under consideration do not provide specific definitions of M&As,[38] which, in fact, is not a drawback but is an advantage enjoyed by modern legislation, thus leaving a wide scope for jurists and judiciaries to attempt to elicit the meanings of the texts of the laws. However, despite such powers, the judiciary and jurists have not achieved consensus on one coherent definition of M&A concepts; this has resulted in increased confusion surrounding the overall understanding of the meanings of mergers and acquisitions, their nature, the knowledge of their effects and the legal theory for the transmission of the rights and obligations of employees, directors and shareholders between companies involved in M&As.

---

[36] For more see Abdel Azim Mussa and Saleh Suhaibani, 'Merger & Acquisition: Global financial turmoil and the new opportunities' [2008] Investment Research, Al Rajhi Companies for Financial Services 1, 13.

[37] For more see ibid 10; Abdul Majeed bin Saleh Al-Mansour, 'Acquisition Companies and the Position of Jurisprudence from it' Islamic jurisprudence [2011]; Ashkenas, Ronald N., DeMonaco, Lawrence J. & Francis, Suzanne C, 'Making the Deal Real: How GE Capital Integrates Acquisitions' (1998) 76 (1)Harvard Business Review 6, 15; Ravenscraft David J. & Scherer F.M,*Mergers, Sell-offs and Economic Efficiency* (The Brookings Institution 1987); Hughes Alan, *The Impact of Merger: a survey of empirical evidence for the UK in Mergers and Merger Policy, Oxford University Press* (1989); Balmer, John M.T and Dinnie Keith, 'Corporate identity and corporate communications: The antidote to merger madness'(1999) 4 (4) Corporate Communications: An International Journal.

[38] The laws give a general concept for merger without indicating the type of agreement or contract which in accordance with a merger may be a harmonious union of two companies with result that a new company is formed which comprises both of their previous shareholders, directors and employees.

Markedly, opinions surrounding jurisprudence and judicial judgements in defining the concepts of mergers and acquisitions are divided into two concepts: the concept of sale,[39] which considers M&As to have the same meaning and refers to a contract of sale or legal process wherein the merging or acquiring company buys the merged or acquired company; and secondly, the contractual concept,[40] which differentiates between M&As and considers a merger as a contract between two or more companies, subsequently leading to the transfer of the rights and liabilities of the transferor company to the transferee or new company, while an acquisition relates to a contract of sale by one company to buy the shares of a second company, in whole or in part, in the form of payment in cash or bonds.

In addition, unlike UK legislation, UAE and Qatar legislation does not regulate acquisitions in the hearts of their texts[41] or situations where a merger or acquisition is necessary for a company.[42] Furthermore, the laws of both the countries allow for all types of companies to enter a merger without distinction between companies enjoying a moral personality and companies that do not enjoy a legal personality, which include companies that are established between two or more persons in order to achieve a particular purpose and are not recorded or declared in the Commercial Register, ending with the end of the work that they were established to achieve, such as a particular partnership company. Moreover, UAE and Qatar legislation is unsuccessful in regulating cross-border M&As

[39] One proponent of this concept for mergers is the Egyptian Court of Cassation, as seen in its judgement dated 15February 1977.For more, see Section 1.2.1:Merger Definition According to the Theory of Sale of this chapter.

[40] For the meaning of the contractual concept of merger and its proponents, see Section 1.2.2:The Contractual Theory in Merger Definition of this chapter.

[41] Because the laws and the draft of laws in the two countries do not prepare or issue through Parliament, and do not depend on the case law as is the case in the UK, due to the lack of Parliament in the two countries (Qatar and UAE). For example in the UAE the bill is prepared by the Council of Ministers and submit it to the Union National Assembly then to the president of the Union for his approval and presentation to the Supreme Council for ratification. Following this, the President of the Union shall sign the bill after ratification by the Supreme Council and shall promulgate it. This is also the case in Qatar, where the advisory Council shall handle the legislative authority. For more see Constitutions of Qatar and UAE.

[42] Section 23 of the Enterprise Act classifies when merger becomes an importance for the company, when provided for that by saying ‘a relevant merger situation has been created if—two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24; and the value of the turnover in the United Kingdom of the enterprise being taken over exceeds £70 million’. For more see also article 24 of the act.

and also fails to indicate the goals and objectives of M&As.[43] Accordingly, the question raised is: what are the legal concepts, types and objectives of M&As and what are the differences between them? This will be discussed in this chapter, which is arranged as follows.

Parts two and three of this chapter respectively discuss merger and acquisition concepts and thereby demonstrate the main differences between them. Studying and defining the concepts of M&As and stating the differences between them helps to provide an understanding of the legal natures and the effects of each of them on the moral personalities of companies involved in M&As, in order to acknowledge and classify the legal basis for transferring the rights and obligations of employees, directors and shareholders from the transferor to transferee company. Following this, the cause for the transmission of the rights and obligations of the transferor company's shareholders to the transferee or new company is determined. The right of the transferee company to exchange shares with them exists only in merger cases and not in acquisitions, as chapter five of this thesis explains.

In addition, this chapter gives a clear indication of the types of M&As, as well as their targets, owing to the differences in the aims of each type of merger or acquisition compared to others. It also considers the differences in the procedures and legal texts applicable to each merger or acquisition, as well as the impacts of mergers and acquisitions on the legal personalities of companies involved in M&A operations and their management, depending on the different types of merger or acquisition. Thus, the objectives of sections four and five are concerned with classifying M&A types and motives. Finally, section six provides a summary and conclusion of the chapter.

[43] The reason for that is due to the legislation of the UAE No 8 of 1984 being old, and legislator confusion between the concept of merger and acquisition.

1.2 The Legal Concepts of M&As

Mergers and acquisitions describe a host of financial activities in which firms are bought and sold. In an acquisition, one party purchases another by acquiring all of its assets.[44] The acquired entity ceases to exist as a company body but the buyer sometimes retains the name of the acquired firm or indeed may use it as its own name.[45] In a merger, a new entity is created from the assets of two firms and new stock is issued. Mergers are more common when the parties are of a similar size and influence. Sometimes, acquisitions are labelled "mergers" because "being acquired" carries a negative connotation (like "being eaten"); a merger suggests mutuality.[46] M&A activities involve both privately held and publicly traded companies and acquisitions may be friendly (both entities are willing) or hostile (the buyer is opposed by the management of the acquisition target).

In spite of the importance of M&As as methods for external growth (both from the standpoint of project strategy and in terms of their effects on industry structure or companies and their stakeholders),[47] M&As still lack a general theory governing and providing a precise definition; many legal and economic studies still confuse the interpretations of M&As. The reason for this is that both mergers and acquisitions are defined as tools intended to reap benefits from the expansion of the main activity of a company, increasing the competitiveness of the company. Alternatively, they can be conducted to reduce the costs of operation of the company in an attempt to increase the overall operational efficiency of the merging or acquiring company. It is considered that this increases the company's profitability through attempting to control another company operating in the same industry or in a complementary industry, whether through the

[44] For more see Nakamura, H.R "Motives, Partner Selection and Productivity Effects of M&As: The Pattern of Japanese Mergers and Acquisition" PhD thesis, Institute of International Business, Stockholm School of Economics [2005].
[45] Hoang, Thuy Vu Nga "Critical Success Factors in Merger & Acquisition Projects" Master thesis [2008] 3, 5, for more see also David Marqués Ibáñez and Yener Altunbas "Merger and Acquistion and Bank Performance in Europe; The Role of Strategic Similarities, Working Paper series, European Centre Bank [2004]1, 33.
[46] Picot G, *Handbook of international mergers and acquisitions: Preparation, Implementation and Integration* (Palgrave Macmillan 2002) 15.
[47] For M&A importance see Jennifer M. Vandeburg, Joan R. Fulton, Susan Hine and Kevin T. McNamara "Driving Forces and Success Factors for Mergers, Acquisitions, Joint Ventures, and Strategic Alliances Among Local Cooperatives, [2004]1, 10.

purchase of a majority or all of the company shares that formed the capital of the acquired company (acquisition), or through annexation or fully merging another company into the merging company (merger).

In order to remove ambiguity and confusion regarding M&As, this part must first provide a clear and accurate definition for M&As in accordance with the concept of sale, the contractual concept and the provisions of the laws under consideration, as highlighted in the next section. The subsequent chapters of this study discuss the legal nature of M&As and subsequently identify the impacts on employees, Boards of Directors and shareholders.

1.2.1 Definition of Mergers According to the Concept of Sale

The proponents[48] of this concept for mergers combine the concepts of mergers and acquisitions on the basis that both are sales contracts between the transferor and transferee companies. Therefore, on this basis, they believe that a merger has many diverse implementations. Essentially, the term ‘merger’ is used to describe a wide range of dealings between enterprises, including mixtures, purchases or takeovers, unions and fusions, to name a select few. Moreover, in some cases, the term ‘merger’ is frequently and mistakenly used in combination with the term ‘acquisition’.

According to this concept, Marof (2008)[49] and Chiplin and Wright (1987)[50] believe that a company merger is a combination of the assets and liabilities of two firms to form a single business entity,or to buy part of company activity or part of tools production. For example, an entity may purchase another facility or some of its unit

[48] This concept for merger taken by a number of scholars and commentators of the laws, and a number of other from Economy Jurists such as:Al-masry H, Private legal aspects for the integration of investment companies in normal shares companies (First Edition, Dar Al-Fikr 1986);Tokhi Doam,‘Mergers Companies: Experience looking for success in the market’ (2009) <\\acfs4\lwpg\lwpgaba\My Documents\POLICE M&A 7.mht> accessed 11 July 2011; Sherman A. and Hart M, *Mergers & Acquisitions from A TO Z*(2nd edn, Amacom Publishing 2006); Gaughan P A,*Mergers, Acquisition and Corporate Restructurings* (4th edn, John Wiley and Sons 2002).

[49] Ismail Marof Al-mohami 'Companies Merger in the A bill of new Companies Act of 2002 and in Comparative Legislation' Alsahafa (18 March 2008). Arabic Source

[50] Chiplin B and Wright M, ‘The Logic of Mergers: The Competitive Market in Corporate Control in Theory and Practice’ (1987) Institute of Economic Affairs.

production, which can enable the integration process to be implemented through the issuance of tools, property rights, payment in cash or other equivalent assets. Also, according to Sherman and Hart (2006),[51] a merger is a combination of two or more companies in which the assets and liabilities of the selling firms are absorbed by the buying firms.

This concept of mergers was adopted by the Egyptian Court of Cassation in a judgement dated 15 February 1977,[52] which ruled that a merger contract is a contract of sale. The main case or claim can be summarised as follows: the Eastern Company for Cinema (the original debtor) merged with the General Company of the Role of Cinema, and the General Company of the Role of Cinema merged with the Cairo Company for the Distribution of Films, which then merged with the General Enterprise of Egyptian Cinema. Following this, the General Enterprise of Egyptian Cinema merged with the Egyptian Public Authority for Cinema. The Court of First Instance, in its primary judgement regarding the debt, ruled in favour of the claimant and against the Egyptian General of the Cinema. However, the Egyptian General of the Cinema defended the claim before the appeal court by not accepting the lawsuit on the basis that the lawsuit was irrelevant because the General Company of the Role of Cinema, which had merged with the General Enterprise of Egyptian Cinema, did not replace the Eastern Company for Cinema (the original debtor), which had been merged with and fully replaced in its legal personality and all of its rights and obligations. In particular, in regard to the debt, the legal personality of the Eastern Company for Cinema (the original debtor) did not expire through the sale of the General Company of the Role of Cinema, whereby the sale was confined to the assets and liabilities detailed in the partition resolution issued from the general sentinel and not including the debt mentioned. Therefore, it should have directed the claim to the public guard on this company, i.e. its legal representative, and not the General Enterprise of Egyptian Cinema.[53]

---

[51] Sherman, A. and Hart *M 'Mergers and Acquisitions From A to Z'*Second Ed, Amacom (New York, 2006), 10

[52] In this case this judgement has been used due to similarity of the texts of Egyptian Law with the texts of the State of Qatar and UAE Companies Laws.

[53] The Judgement Court of the Egyptian Court of Cassation for the 15 February, year 1977, published in the Journal of the Technical Office, Issue 2, (1984).

The Egyptian Court of Appeal rejected the aforementioned argument on the basis that the sale included the assets and liabilities of the Eastern Company for Cinema and the buyer company (General Company of the Role of Cinema) replaced it in terms of its rights and obligations. It therefore could not refuse the claim raised by the creditor against the transferee company (which merged with the General Company for the Role of Cinema).[54]

The Egyptian Court of Cassation confirmed this judgement,[55] stating that: 'the assets and liabilities of the Eastern Company for Cinema are transferred to the General Company for the Role of Cinema, based on the sale contract concluded between the General Company for the Role of Cinema and the guard, and it has received what it bought. Also, the judgement was ratiocinate from this document that the General Company for the Role of Cinema purchased a financial disclosure of the Eastern Company for Cinema in all its elements of the assets and liabilities without limit or restriction to what is stated in the evaluation of a resolution or general guard decision issued in ratification of it. Thus, the buyer company replaced the Eastern Company for Cinema in all its rights and obligations, and then the General Company for the Role of Cinema merged with the Cairo Company for the Distribution of Films, which merged with the General Enterprise of Egyptian Cinema. For this reason, the latter enterprise is the defendant and owner of adjective in the claim, and this illation agrees with the true of law'.[56]

Accordingly, it is clear that the Egyptian Court of Appeal and the Court of Cassation described the concept of a merger as 'a contract of sale'. However, this description is not accurate as the matter in this claim does not relate to a contract of sale for many reasons.

---

[54] The Judgement Court of the Egyptian Court of Cassation, 15 February, year 1977, Ibid.
[55] Ibid.
[56] Ibid: In this case this judgement has been used due to similarity of the texts of Egyptian Law with the texts of the State of Qatar and UAE Companies Laws.

Firstly, in the case of a merger, the transferee company does not make a payment in cash in exchange for the transferor company's assets that were transferred to the new or transferee company as a result of the merger.[57]Therefore, the description of a merger as a contract of sale goes against the fact that the essence of selling is the transfer of ownership (or other financial rights) in return for cash, which is not achieved in merger cases. The disadvantage of this interpretation can be seen clearly in the case of mergers by the formation of a new company,[58] which results in the demise of the legal personality of both the transferor and transferee companies and the emergence of a new legal personality for the new company resulting from the merge.

Secondly, the merger does not lead to the liquidation of the transferor company but rather the transmission of its rights and liabilities with the survival of its economic ventures as a set of assets in the scope of the transferee company, which justifies the transferee company's shareholders getting new shares in the transferee company, with the transfer of the rights of the employees and management of the transferor company to the transferee company, the description a merger acting as a contract of sale standing in contrast to this finding.

Thirdly, the description of a merger as a contract of sale on the basis of the comprehensive transition of the financial disclosure of the transferor company to the transferee company is unsuccessful and cannot be relied upon as an interpretation of the legal basis for the transfer of the transferor company's management and shareholders' rights and obligation to the transferee company, on the basis that a sale contract leads to sever the legal relationship between the company and its shareholders due to them obtaining cash in return for their shares. Also, the sale can occur without the consent of the transferor company's management, which later leads to its Board of Directors being laid off.The description of a merger as a contract of sale also violates the provisions of

[57] Sections 902 and 905 of the UK Companies Act, for instance, authorises the transferee company to pay in cash for shares of the transferor company. However, this does not mean the transformation of the merger process to an acquisition, because the text provides with or without any cash payment to members. Accordingly, if legislators aim for the merger process to be a process of sale, they will frankly provide for that without mentioning the exchange of shares between the transferee company and the shareholders of the transferor company.
[58] For the meaning, see Section 1.4 of this chapter.

UK, UAE and Qatar laws, the effects of M&As and the theory of the legal personality of a company,[59] which all confirm that "a merger is a contract between two or more existing companies";[60] "accordingly every transferor company is dissolved without going into liquidation, and on its dissolution transfers all its assets and liabilities to a transferee company".[61] Furthermore, the description of a merger as a contract of sale stands in contrast to this concept. It can instead be discerned that a merger is a partnership contract or merger contract between two or more companies, whereby the transferor company's property and shares move to a transferee company, which subsequently replaces it in all its rights and obligations.

1.2.2 Definition of Mergers According to the Contractual Concept

This concept for mergers deals with mergers from the contractual side and the demise of the moral personality of the transferor company without reference to the destruction of such companies. According to this concept, the merger definition differs depending on the nature of the work of the companies involved in the merger. Markedly, the most common definitions for a merger according to this concept are the definitions of the merging of companies and economic entities.[62] According to this concept, a merger is a contract whereby two or more companies agree to combine shares and assets together into a single company, with the demise of the moral personality of each company or companies merged, and to accordingly establish one personality for the new company resulting from the merger.[63] In other words, a merger is the legal process of combining a single company or several existing companies, or is otherwise a contract between the transferor company and the transferee company. According to this definition of a merger,

---

[59] For the meaning, see Section 2.3 of Chapter Two of this thesis.
[60] For more, see sections 272 of Qatar and 276 of UAE Companies Laws.
[61] Section 2 of the UK Cross-Border Merger Act 2007.
[62] Jim Downey, 'Mergers and acquisitions, Technical Information Service, Topic Gateway' (2008) 54 3.
[63]Among the supporters of this concept are Sofya Frantslikh, *Mergers and Acquisitions, Featured Case Study: JP Morgan Chase*(Pace University 2005) 5, 6;Sudarsanam P.S,*'The Essence of Mergers and Acquisitions*' Prentice Hall International, London (1995); Gaughan, P A *Mergers, Acquisition and Corporate Restructuring* (4th edn, John Wiley and Sons2002); Hammed Mohamed Ali; Ahmed Hosny, *eliminate trade veto* (Manshah Almarf) 19. Arabic Source

the legal personality of the transferor firm demises and all its rights and obligations are transferred to the transferee company, which replaces it in all its rights and obligations.[64]

Through comparing this definition of a merger with the definition according to the concept of sale, the researcher finds that the former definition (according to the opinions[65] of the proponents of the contractual concept) is closest in terms of accuracy and is worthwhile for the following reasons. Firstly, this definition shows that a merger is a contract occurring through consensus or mutual agreement between the transferor and transferee companies, which is consistent with what is outlined in the texts of the laws under consideration, which provide that: 'The merger will not be valid until it is issued under a decision from every company that becomes a partner thereof as per the terms and conditions prescribed for the amendment for the articles of association and the statute of the company'.[66] Markedly, this confirms that a merger is a contract necessitating the availability of general pillars of the contract, such as mutual consent between companies involved in mergers, a place and a reason.[67]

Secondly, this definition highlights the legal nature of the merger contract and also its effects, which are the most important aspects. Markedly, 'all the rights and liabilities of the transferor company will be transferred to the transferee company, whereby the transferee company that resulted from the merger will be considered the legal successor to the transferor company, which is replaced in all its rights and liabilities'.[68]

---

[64] Sebastian Spaeth and Helena Garriga, 'Corporate Strategy Mergers &Acquisitions' [2002] DepartmentManagement, Technology and Economic.

[65] Ahmed Mohamed Mehrez, Companies Merger from the Legal side; A comparative Study (Dar Al-Nahda Al Arabiya, 1985) Arabic Source; Khalid Al-Azmi, The Legal effects of Merger on Shareholders and Debtor of companies (Cairo University 2004 and Hammad, M A M, 'Merger Company According the Jordanian Companies Law' (Master Thesis, University of Jordan and Pasbos 2006).

[66] See sections 272 of Qatar and 276 of UAE Companies Law.

[67] For the concept of the acceptance or satisfaction, see Wael Ibrahim bin Suleiman bin Jawharji "The general staff of the contract, satisfaction, place and reason" (2005).

[68] See sections 277 of Qatar and 280 of the UAE Commercial Companies Laws and 904 of the UK Companies and Cross-Border Acts.

Thirdly, the definition of a merger according to this concept highlights what is not considered a merger between companies, such as economic concentration processes that occur by other non-merger means, such as joint ventures, holding companies[69] the transfer of part of a company to another company or merger groups that do not take the form of a company in the legal concept of a merger (such as merge associations and public institutions), which are not mergers in the legal sense. Essentially, this is what is confirmed by the Egyptian Court of Cassation, who emphasised this requirement when ruling that 'a merger should be between companies that have or enjoy a moral personality, whereby the operation that includes the capital of the new company consists of the assets of another company not considered as merged. Also, joining a branch or individual venture to another company or with this company to establish a new company is not a merger in the legal sense because branches or individual ventures do not have independent legal personalities'.[70] Moreover, in another judgement regarding mergers between shareholding companies, the Egyptian Court of Cassation also ruled that[71] 'a merger that leads to the transferee company's succession of the transferor company in all its rights and obligations is a merger between companies that have moral personalities and independent financial disclosure. In accordance with that, the moral personality of the transferor company expires and all its rights and obligations - including its financial assets - devolve to the transferee or new company, which replaces it in its rights and obligations. Thus, there is no merger when any company transfers part of its activities to another company as shares in-kind in its capital, as long as the first company still retains its moral personality and financial assets, including its obligations'.[72]

---

[69] Denunciation Egyptian 27.1976), Group of the Technical Office, 977.

[69] Egyptian Denunciation, April 19, 1976, Group of the Technical Office Year 27.1976 p. 977, in this cases these judgements have been used due to similarity of the texts of Egyptian Law with the texts of the State of Qatar and UAE Companies Laws.

[70]Appeal No 679 for year 40 Session 19/04/ 1976, 977, and appeal No 1687 for year 50 Session 13/ 05/ 1986.In this case, these judgements have been used due to the similarity of the texts of Egyptian Law with the texts of the State of Qatar and UAE Companies Laws.

[71] In this case this judgement of the Egyptian Court of Cassation has been used due to similarity of the texts of Egyptian Law with the texts of the State of Qatar and UAE Companies Laws.

[72] Appeal No 213 of 21s, session 10/03/1955, super heater journal 36 of 1956.In this case, this judgement has been used due to similarity of the texts of Egyptian Law with the texts of the State of Qatar and UAE Companies Laws.

From the above definitions of a merger, as well as from the link between these definitions and the texts of the laws under study, we can define a merger as a contract between two or more existing companies whereby one or more companies joins another company (merger by absorption). The moral personality of the transferor company expires and all its rights and obligations move to the transferee company, which remains in existence. It can also be the mixing of two or more companies (merger by the formation of a new company). In this case, the moral personalities of the two companies entering the merger expire and they transfer all their rights and obligations to the new company resulting from the merger, which will receive all the rights and obligations of the two companies. The two companies' economic ventures continue in the scope of the legal personality of the new company which becomes the legal representative and the party that claims all the rights and obligations of the companies involved in the merger.

This definition is described by the researcher for the following reasons. Firstly, the definition of a merger as a contract requires the presence of two or more companies enjoying full legal personalities. Thus, mergers do not happen amongst companies that do not have moral personalities, such as particular partnership companies, companies that are in the process of construction or foundation, or companies that have been liquidated and their assets divided.

Secondly, the definition refers to the types of merger from a legal point of view, whereby a merger arises through the annexation of one or more companies to another existing company, which is referred to as merger by absorption.[73] Alternatively, the dissolution of the companies involved in the merger and their blending, with the subsequent establishment of a new company through their financial assets, is described as merger through the formation of a new company.[74]

Thirdly, the definition focuses on the expiry of the legal personalities of the company or companies merged as a result of the merger, the definition of which focuses

---

[73] Section 904 of the UK Companies Act 2006 and regulation 2 of the UK Cross-Border Act 2007.
[74] For definitions of merger by absorption and merger by formation a new company, see paragraphs 1.4.2.1 and 1.4.2.2 of this chapter.

on the most important element of the merger: moving the comprehensive financial disclosure of the company or companies merged to a new company, including the rights and profits or losses and negative obligations.

Finally, the definition refers to the continuation of the economic venture of the company or companies merged, which justifies moving all the rights of the employees, the Board of Directors and the shareholders of the transferor company to the transferee company. This is consistent with merger objectives and the theory of the legal personality of a company and thereby enhances the researcher's opinion in regard to the transfer of these rights from the transferor to the transferee company, as can be seen in the following chapters.

1.2.3 Definition of Acquisition

The expression 'acquisition' is normally used when one company buys or takes control of another, whether by buying the majority of the company's shares or all of its property.[75] Unlike in the case of a merger, in an acquisition the buying company does not necessarily assume the liabilities of the target company. According to Spaeth and Garriga (2002)[76], an 'acquisition' normally involves the purchase of another firm's assets and liabilities, with the acquired firm continuing to exist as a legally owned subsidiary of the acquirer.[77] The acquired entity ceases to exist as a corporate body but the buyer sometimes retains the name of the acquired company, or indeed may use it as its own name.[78]

Accordingly, the legal concept of acquisition is a contract of sale between two companies: the first big and strong (the acquiring company) and the second weak and less powerful (the acquired company). The first company gains control of the second through

[75] Gaughan P A,*Mergers, Acquisitions and Corporate Restructurings* (4th edn, Hoboken 2007) 12; Also see: Sudarsanarn P S, *The essence of mergers and acquisitions* (prentice hall 1995) 1.
[76] Sebastian Spaeth and Helena Garriga, Corporate Strategy Mergers & Acquisitions [2002] Department Management, Technology and Economic 6.
[77] Jonathan A D Long 'Mechanics of Mergers & Acquisitions' [2011] A Paper Delivered at the workshop on M&As: How not to go wrong 5.
[78] The practical examples for acquisition operation is, Procter and Gamble made a major acquisition in 2005 when it purchased the Gillette Company, Inc., in order to extend its reach in the consumer products industry.

the purchase of all or some of its outstanding shares, or otherwise through the purchase of its assets. The result of this process is the disappearance of the sold company and significant activity for the acquiring or purchasing company.[79] In this regard, the company is then able to control the financial and administrative activities, with invested capital of the acquired company. Accordingly, the acquiring company becomes a holding company, whilst the acquired company becomes a subsidiary without the demise of the legal personality of one of the two companies.[80]

Through the concept of acquisition mentioned above, it is clear that, in the case of an acquisition, four elements and important pillars must be present. Firstly, there must be a contract between two companies whereby there is a purchase (not a transfer) of the assets and the obligations of the acquired company to the acquiring company. Secondly, the acquiring company should be a large and strong company and the acquired company should be a smaller and weaker company in terms of financial position. Thirdly, in order for the acquisition to occur, the acquiring company must buy a large proportion of the acquired company's assets through the purchase of all or at least 51% of its shares, in order to gain power and dominate the voting in terms of the Board of Directors. Moreover, following the acquisition, the acquired company should disappear or otherwise become a subsidiary of the acquiring company. Also, the acquiring company becomes a holding company that has control over all the activities and dealings of the acquired company, without the demise of its moral and legal personality.

1.2.4 Mergers According to UK Legislation

According to UK Legislation, a merger is a legal process whereby one or more public companies, including the company in respect of which the compromise or arrangement is proposed, transfer their undertakings, property and liabilities to another existing public company (a "merger by absorption").[81] Alternatively, it is a legal process whereby two or more public companies, including the company in respect of which the compromise or

---

[79] For more see Saleh Suhaibani and Abdel Azim Mussa 'Merger and Acquisition, Global financial turmoil and new opportunities' [2008] l Rajhi Financial Services.
[80] Ibid.
[81] Section 904/1/a of the UK Companies Act 2006.

arrangement is proposed, transfer their undertakings, property and liabilities to a new company, whether or not it is a public company (a "merger by the formation of a new company").[82] In other words, a merger is a legal process where one company proposes to acquire all the assets and liabilities of another in exchange for the issuance of shares or other securities of one to the shareholders of the other, with or without any cash payment to shareholders.[83]

From the merger concepts mentioned, it can be said that UK legislators are keen and give attention to regulate mergers by providing provisions showing the general concepts of merger, as well as solving the problem of a minority shareholders or partners who are not willing to merge by providing that they can exit the transferor company and recover the value of their shares through payment in cash by the transferee company. UK legislation emphasises that the shareholders of the transferor company get new shares in the transferee company instead of their shares in the transferor company, which merge with the transferee company's shares.[84]

Importantly, UK legislators stipulate the transfer of all rights and obligations from the transferor company to the transferee company. In this regard and according to the UK Companies Act,[85] mergers can have impacts in different ways. If two entities genuinely desire to combine their business activities for their mutual advantage, then a merger may be a harmonious union of two firms, with the result that a new firm is formed that comprises both of their previous shareholders, employees and management (merger by the formation of a new firm).[86] The practice of mergers tends to be that they are anything but harmonious because the new firm (the resulting entity) usually finds itself with two people doing the same work that had been performed when the businesses were separate firms.[87] Consequently, there will be a period of adjustment in which one group in the

---

[82] Section 904/1/b of the UK Companies Act 2006.
[83] Section 902 of the UK Companies Act 2006.
[84] Sections 902 and 909 of the UK Companies Act 2006.
[85] The Companies Act 2006, which received royal assent at the end of 2006, replaces virtually all the previous UK companies' legislation. The Act was brought into force in stages, with the final provision being commenced on 1 October 2009.
[86] Section 904/b of the UK Companies Act 2006.
[87] Stephen Girvin and others, Charles *worth's Company Law* (8thedn, Sweet & Maxwell 2007) 762.

management tends to acquire the upper hand. For example, the resulting firm's logo, name and business culture may resemble one of the previous firms more than other.[88] Another means by which a merger can take place is where one firm is absorbed into another firm so that there is a merger but the resultant entity is effectively an enlarged form of one of the firms (merger by absorption).[89] In any event, the resulting firm will have to recognise the shareholdings of the shareholders in the previous firm.[90]

The UK legislators also give attention to companies taking benefit from the advantages of a merger, as determined by law. This is represented in the exemption of companies involved in mergers or resulting from mergers from all taxes and fees deserved due to the merger, giving priority to mergers of public shareholding companies and distinguishing between mergers by absorption and mergers by the formation of a new company. In cases of merger by absorption, the texts of the laws only allow public shareholding companies with others of the same type to form a new public shareholding company through the merger. In cases of merger by the formation of a new company, the law allows mergers for all public shareholding companies, regardless of the type of company resulting from the merger.

According to the UK Insolvency Act 1986,[91] there is a specific mechanism for the merger of companies. According to section 110 of the act, a company that is in voluntary winding up may transfer or sell the whole or part of its business or property to another company. The company may, in the case of voluntary winding up, pass a special resolution authorising the liquidator to receive a variety of property types, including cash, share policies or other interests, in the transferee company for distribution among the members of the transferor company according to their interests in that company.[92]

---

[88]Stephen Girvin and others, Ibid, 762
[89] Section 904/a of the UK Companies Act.
[90] Stephen Girvin, Sandra Frisby and Alastair Hudson, Ibid, 762.
[91] The Insolvency Act 1986 is an Act of the Parliament of the United Kingdom that provides the legal platform for all matters relating to personal and corporate insolvency in the UK. The Insolvency Rules came into force on 29th December 1986.
[92] Stephen Girvin, Sandra Frisby (N 58) 768, 766.

Indeed, a company is not just a legal personality; at the same time, it is a cell or economic entity that needs to preserve and continue its work. The UK legislators take this into consideration when they provide the right of companies in the merger even the companies under liquidation. With reference to this fact, article 110 of the UK Insolvency Act 1986 provides that it is allowed for any company under liquidation to empower the liquidator - by special decisions issued by the General Assembly - to provide the company's activity or its assets to another company, in return for shares or other interests in the company for distribution to the shareholders of the company under liquidation.[93] The meaning of liquidation here is liquidation that happens in accordance with the requests of shareholders.[94] However, in the case of voluntary liquidation in accordance with the requests of creditors, the liquidator derives its powers from the court or from the liquidation committee.[95]In this case, if the merger project cannot be implemented due to the non-issuance of a special resolution from the General Assembly authorising the liquidator to provide the company's assets to another company, or if the shares of the companies involved consist of different categories, then the court can ratify the merger decision according to the rules and provisions of the Companies Act 2006.

From the abovementioned, we can conclude that, according to the UK Companies Act, there are two circumstances in which a merger can take place: either by one company merging with another company or by two companies forming a new company by means of their merger. Shares or payment in cash for the transferor company's shareholders are exchanged by the transferee company, replacing the transferor company in all its rights and obligations. This statute applies only to mergers between shareholding public companies; it does not apply to mergers involving private companies.

[93] Section 110/2 of the UK Insolvency Act 1986.
[94] Section 110/3/a of the UK Insolvency Act 1986.
[95] Section 110/3/b of the UK Insolvency Act 1986.

1.2.5 Acquisition According to UK Laws

The most important acquisition (takeover) activities in the UK are governed by the Takeover Code[96] addition to part 28[97] of the UK Companies Act 2006. With this in mind, section 979[98] of the UK Companies Act 2006 provides that a takeover bidder is someone who has already acquired 90% of a company's shares and accordingly has the right to compulsorily buy-out the remaining shareholders. Conversely, section 983[99] allows minority shareholders to insist their stakes are bought out. Furthermore, according to the Takeover Code, as a basic principle, all shareholders are to be treated equally within the same class of shares. In order to help ensure such equality, bidders involved in a takeover and mandatory offer are prohibited from paying lesser amounts to other parties for target shares within a certain period.[100]

According to Stephen (2007),[101] acquisitions (takeovers) may take effect by means of the simple method of one firm acquiring the majority or the whole of the shares in another firm from its shareholders. While, mergers ostensibly appear to involve the consensual union of two or more different firms, acquisitions may not necessarily be harmonious. Acquisitions involve one firm acquiring all or the majority of the shares in another firm and so taking over that other firm's business assets. The firm conducting the acquisition will make an offer to the target firm's shareholders to buy their shares at a given price. In relation to acquisitions or takeovers of public firms, whose shares are traded on regulated markets, the buyer will typically build up its shareholding in the target firm slowly until it holds a majority of its shares sufficient to take control of the business.[102]

[96] The Takeover Code or City Code on Takeovers and Mergers (the UK Takeover Code) governs the conduct of mergers and takeovers in the UK and applies where there is an acquisition of control of a UK public company which is listed on the UK Official List or of any other UK public company (including one whose shares are traded on AIM) which has its place of central management and control in the UK. The UK Takeover Code amended and takes effect on 19 September 2011.
[97] Part 28 of the UK Companies Act 2006.
[98] For more see article 979 of the UK Companies Act 2006, Part 27.
[99] See article 983 of the UK Companies Act, Part 27.
[100] For more, see paragraph A1/2 of the City Code.
[101] Stephen Girvin, Sandra Frisby and Alastair Hudson (n 58) 782.
[102] Section 110/3/b of the UK Insolvency Act 1986.

In acquisition cases, it is normal for the acquiring firm to make an offer to the other firm's shareholders to buy their shares at a stated price and with a fixed time within which the offer is to be accepted, with the condition that if a named percentage of the shareholders does not accept the offer, the offer is void. The offer is usually at a higher price than the present market value of the shares as quoted on the stock exchange and it may be in cash or in kind.[103]

Economic reasons and rival bidders are the most important reasons for acquisitions. From a legal perspective, takeovers adopt one of three different types: friendly takeovers, bail-out takeovers and hostile takeovers.

A friendly takeover means the takeover of one company by changes occurring in its management and control through negotiations between the existing promoters and prospective investors; this is done in a friendly manner. Thus, this type is also referred to as a negotiated takeover. This kind of takeover is carried out in further consideration of the common objectives of both parties.[104]

A hostile takeover is a takeover where one company unilaterally pursues the acquisition of the shares of another company without the knowledge of the second company. The main reason that causes companies to resort to this kind of takeover is to increase their market share.[105] Finally, the bail-out takeover option refers to the takeover of a financially tired company by a financially wealthy company.[106]

It can be noticed that, unlike UK legislation, UAE and Qatar legislation does not regulate or define acquisition operations. Perhaps the reason for this is owing to the fact that the laws addressing M&A subjects in both countries are old, in addition to the lack of experience of national companies in acquisition cases due to the difference in economic

[103] Section 110/3/b of the UK Insolvency Act 1986.
[104] For more reading see Antony Seely "Takeovers : the 'public interest test" Business & Transport Section, House of Common Library [2011] 2, 18 and An Empirical Analysis of the Effects of the Threat of Takeover on UK Company Performance Working Paper No. 5, Nuttall R, Nuffield College, University of Oxford [1999].
[105] Anthony Clare, Ibid.
[106] Ibid.

size and capital between them and foreign companies. This needs to be reviewed by the lawmakers in both countries and domestic and cross-border acquisition needs to be regulated, commensurate with the economic development of the two countries.

1.2.6 Mergers According to UAE and Qatar Laws

According to UAE and Qatar Companies Laws, a company may "even if in the process of dissolution…merge with another company of the same type or another type".[107] Furthermore, "the merger will take place by adding one or more companies to another existing company or by merging two or more companies in a new company under establishment".[108] "The merger contract will define its terms and conditions, especially the evaluation of the liability on the merging company and the number of shares or equities that are allotted in the capital of the company or that is resulted from the merger".[109] "The merger will not be valid until it is issued under a decision from every company that becomes a partner thereof as per the terms and condition prescribed for the amendment for the articles of the association and statute of the company".[110] "All the rights and liabilities of the transferor company will be transferred to the transferee company or the company resulted from the merger which to be effective after the completion of the merger procedures and registration of the company as per the provisions of this Law".[111] “The transferee company or new company that resulted from the merger will be considered as legal successor to the transferor company and is replaced in all rights and liabilities".[112]

Through the legal texts outlined above, it can be observed that, as a result of the perceived importance of companies and their role in serving society and the economy, UAE and Qatar Companies Laws permit the merger of companies even in the case of companies in liquidation. This is on the basis that the reality confirms that a company is

[107] Sections 272 of Qatar and 276 and 279 of UAE Companies Laws.
[108] Sections 273 of Qatar and 276/1 and 2 of UAE Companies Laws.
[109] Sections 273 of Qatar and 276/2 of UAE Companies Laws.
[110] Ibid.
[111] Sections 277 of Qatar and 280 of UAE Companies Laws.
[112]Articles 280 of the UAE and 277 of Qatar Companies Laws.

not just a legal personality but is also an economical cell or entity requiring maintenance and encouragement in terms of continuation. However, the capacity for companies in liquidation cases to merge (which is intended in the text by the legislators)requires that the company remains in liquidation. It also requires that the company accordingly does not issue a decision to confirm the completion of the liquidation following the payment of debt[113] and that the distribution of the company's assets amongst its partners and shareholders has not been initiated.[114] Essentially, at the end of the liquidation phase, the company has virtually ended and its economic project has also expired; thus, the merger in this case is a formality, especially if the company's assets or money have not remained, where, the aims of company from the merger in this case to take benefits from tax exemptions provided by law. This is because a real merger includes the transfer of the assets and liabilities of the transferor company to the transferee company. Also, a merger requires the liquidator to have obtained a decision from the partners or shareholders to confirm the merger of the company with another company to form a new company.[115]

The texts also point out the epithet of a merger as a contract between two or more companies, which is commensurate with the contractual nature of mergers, as a merger is a process that happens by mutual consent and with the approval of the shareholders of the transferor and transferee companies. Moreover, the texts point out the types and effects of merger decisions, as well as the procedures to be followed to make a merger decision.

To encourage and provide support for small businesses to enter into competition with large companies, the texts mention that all companies seeking to merge have the right to choose and merge with any type of company. However, one disadvantage of these texts can be seen when companies are given this right without any restrictions or

[113] Mohsen Shafik, *Mediator in the Egyptian Commercial Law* (3rd edn, Al-nahdah Egyptian Library 1957) 730 Arabic Source, 666; for this condition see sections 904 of the UK Companies Act 2006, 276 of the UAE and 273 of Qatar Companies Law, which provide for "merger take place between two or more existing company". Also see section 2 of the UK Cross-Border Merger Act 2007, which provides that "the transferor company is dissolved without going into liquidation".

[114] Abdul Ghani Chkaanh, 'Legal order for the liquidation of commercial companies'[1992] Cairo University 147; Galagry Edmonton Land Co. Ltd. (In Liquidation) WL [1975],1; Roy Goode, Royston Miles Goode, *Principles of Corporate Insolvency Law* (4th edn, Sweet Maxwell 2011).

[115] Mustafa Kamal Taha,*Commercial Companies* (Dar university publications 2000) 375, 397.

discrimination between companies with a legal personality and those that do not enjoy a legal personality, such as particular partnership companies. Al-sgir (1987)[116] and Al-msri (1986)[117] believe there is no harm in allowing all types of company to enter into merger operations without discrimination between companies. However, this view is contrary to the provisions of the laws, which require that mergers only occur between existing companies and those enjoying moral personalities.

According to UAE and Qatar laws, companies are divided into three types: capital companies, people companies and mixed companies.[118] Capital companies are based on financial accounts and do not depend on the personalities of partners, often including a number of shareholders. Importantly, the aim of such companies is to raise the funds required for a project; the optimum model for capital companies is the shareholding company.[119] On the other hand, mixed companies combine the characteristics of persons companies and capital companies.[120]In this regard, there are no problems in merging these types of companies with other companies of the same type or a different type; rather, the problem is in regard to particular partnership companies, which are a type of persons company.[121]

A persons company is an organisation based on the personalities of shareholders and confidence amongst partners, which is often established between a small number of people associated by close relationships, friendship or knowledge. Such companies include joint companies, limited partnership companies and particular partnership companies. In this instance, the question that arises is: to what extent is the merger of particular partnership companies (especially those companies established to do or perform a specific job and to end with the completion of work) feasible?

---

[116] Al-sagir Hosam Al-din (n 14) 22.
[117] Al-masri Hosny (n 23) 66.
[118] See sections 4 of Qatar and 5 of the UAE Companies Laws, the laws of both countries are taking by Latin division, which unlike Anglo-Saxon System which division of type of companies into public and private company such the UK laws.
[119] Nice algebra Kumana, 'Commercial companies: Comparative legal study, Arab Academy in Denmark (2008) 61, 70.
[120] Nice algebra Kumana Ibid.
[121] Sections 8 of the UAE and 6 of the Qatar Companies Laws.

Particular partnership companies comprise two or more persons and the company does not have a moral personality, so the company is therefore not subject to the procedures of registration in the Commercial Register. This type of company is characterised by confidentiality between partners, without the presence of others, and does not need to be recorded in the Commercial Register or publicly, or its existence disclosed in the face of others. As a result of this, it does not have a name (title), independent finances, eligibility foracquire rights and take responsibility, nationality or homeland, or a legal representative.[122]

Furthermore, particular partnership companies are often established in order to accomplish commercial business or otherwise, so their composition only takes a specific amount of time. In this regard, a particular partnership company is not subject to a liquidation system as it does not enjoy a moral personality. It also has no independent financial receivables from the partners' receivables; rather, its liquidation is limited to the settlement of the accounts between the partners and determining the share of each of these in regard to profit and loss.[123]

Accordingly, if a merger only occurs between two or more companies with independent legal personalities, it is therefore necessary to exclude particular partnership companies from the circle of companies that may integrate or be involved in merger operations, as they do not enjoy a legal moral personality that would qualify them to appear before the judiciary. With this in mind, the texts of articles 272 of Qatar and 276 of the UAE companies laws, which allow merger operations for all companies (including particular partnership companies), are unfortunate, because particular partnership companies are different from the other companies that enjoy independent legal personalities in the face of others. Furthermore, entry of this type of company into M&As

[122] Kaliouby S, Business general theory of companies and persons companies (3th edn, Dar Al-Nahdah Alarabia 1992), Part One, 332, 343. Arabic Source

[123] This what was confirmed by the Kuwaiti High Court when ruled for that by saying 'the Particular Partnership Company is distinct from other companies as a hidden and does not exist for others, and not has independent moral personality on the personality of its owners and the business by one partners be private for him, and be responsible for it in the face of who dealing with him'. For more information, see Judgement of the Kuwaiti Court, Session 14/4/1970, Journal of the Judiciary and the Law, second year, first ed., 51.

leads to deprive companies of the tax breaks that are provided by the laws in cases of mergers between shareholding companies. For this reason, the aforementioned articles need to be reviewed and modified by legislators.

From the texts, it can also be observed that there is an indication of the types of mergers and their procedures. The text also confirms how UAE and Qatar Companies Laws have adopted the contractual concept for the merger definition. This can be seen through the explicit statement that a merger is a contract, thus implying that a merger requires the presence of two or more companies adopting similar or different activities. Therefore, mergers can only take place in the presence of two or more existing companies; if the companies do not exist, strictly speaking, then this cannot be considered a merger in the eyes of the law. Similarly, it is not a merger when one company purchases most of the shares of another company with the aim of transforming it into a subsidiary of the buyer company.

1.3 Distinctions between Mergers and Acquisitions

1.3.1 Differences between M&As from the Legal Aspect

Although they are often uttered in the same breath and used as though they were synonymous, the terms ‘merger’ and ‘acquisition’ mean slightly different things. From the legal perspective, the differences between M&As can be seen by considering the extent of the continuation or the end of the legal entity of the transferor or acquired company. Essentially, acquisition means buying,[124] ruling and controlling a percentage between 51% and 100% of the acquired company’s shares, with the survival of the personal, moral and legal entity of the acquired company without change and with its operations continuing as usual. Thus, the acquiring company can re-sell the shares it possesses in the acquired company to other investors if they desire to do so.[125] In other words, when one company takes over another and clearly establishes itself as the new

---

[124] For more see Robert F. Bruner "Does M&A Pay? A Survey of Evidence for the Decision-Maker" [2001] Executive Director, Batten Institute Darden Graduate School of Business, University of Virginia 2, 26.
[125] For more see Abdul Majeed bin Saleh Al-Mansour, Ibid.

owner, the purchase is called an acquisition. From a legal point of view, the target company ceases to exist: the buyer "swallows" the business and the buyer's stock continues to be traded.[126]

According to the theory of the legal personality of a company,[127] a 'merger' refers to the expiration of the legal personality (the legal entity) of the transferor company and the abolition of its record as a separate commercial name in the Commercial Register of companies. This is ascertained upon completion of merger procedures and the registration of the new company resulting from the merger, meaning the dissolving of the legal entity of the transferor firm into the legal entity of the transferee company (merger by absorption), or the dissolving of both the transferee company and the transferor company and the subsequent emergence of a new legal entity (with a new commercial name) by the formation of a new company, comprising the same assets and liabilities of each of the transferee and transferor companies.[128] In the purest sense of the term, a merger happens when two firms, often of about the same size, agree to go forward as a single new company rather than remain separately owned and operated. This kind of action is more precisely referred to as a "merger of equals." Both companies' stocks are surrendered and new company stock is issued in its place.

1.3.2 Practical Differences between M&As

From the practical side, acquisitions can be seen as hostile acts as they often happen without the consent of the members of the Board of Directors of the acquired company. This may subsequently result in changes in the acquired company's management according to the desires of the acquiring company that controls the voting shares in the

[126] Ben McClure "The Basics of Mergers and Acquisitions" Investopedia [2010] 1, 15.
[127] For meaning see paragraph 3 of Chapter Two of this thesis.
[128] In other words, unlike with acquisitions, with mergers all the rights and liabilities of the transferor company are transferred to the transferee company or to the company resulting from the merger following the completion of merger procedures and the registration of the company as per the provisions of law. The transferee company is considered a legal successor to the transferor company and replaces it in terms of all rights and liabilities.

acquired company.[129] Commonly, there is often the transfer of the ownership of shares to the acquiring company's shareholders, either by the payment of cash or by bonds: the acquiring company is thus able to control the assets of the acquired company and its requirements. However, markedly, mergers usually happen by agreement between the administrations of each of the merging and merged companies and also with the approval of the General Assemblies of each, owing to the importance of mergers in terms of representing the common interests of both parties and ensuring the shareholders of both companies retain their shares in the new entity or in the merging company. The shares are therefore accrued to shareholders in the new company.[130] Whether a purchase is considered a merger or an acquisition really depends on whether the purchase is friendly or hostile and how it is announced. In other words, the real difference lies in how the purchase is communicated to and received by the target company's Board of Directors, employees and shareholders.

In practice, there is also commonly differentiation between M&As in terms of the ways in which they are funded and in terms of the relative sizes of the companies. Unlike a merger, an acquisition is financed either through monetary financing or through debt bonds. Furthermore, capital may also be funded by borrowing from any bank or by obtaining finance by issuing bonds, instead, can give share of acquiring company as substitute or compensation.[131]

1.4 Classifications of M&As

The importance of studying the types of mergers and acquisitions is relevant owing to the different objectives of each type of merger and acquisition, as well as differences in the

[129] Al-Mansour, Ibid, 11.
[130] For more details see Delaney F, *Effectiveness of Merger and Acquisition and Corporate Financial Performance in Construction* (Napier University 2003) 27, 29.
[131] For this reason Al-Mansour [2008] in his research considers that the difference between M&As in terms of the option of acquisition is often a preliminary stage for the merger operation to avoid many different procedures of the merger process, with the acquired company's commitment to developing and maintaining employment and conducting administrative and financial restructuring being a prelude to reaching the stage of a merger between two companies. For more see Abdel Azim Mussa and Saleh Suhaibani. "Merger & Acquisition: Global financial turmoil and the new opportunities" Investment Research, Al Rajhi Companies for Financial Services [2008], 1, 13; Al-Mansour (n 13).

legal provisions applicable in regard to mergers by absorption or mergers by the formation of a new company. Furthermore, there are differences in terms of their effects on the corporate structures involved in the M&A operations. Unlike mergers by absorption, mergers by the formation of a new company are known to be more complex and also have significant effects on the structure of the merging and merged companies, owing to the dissolution of the two companies and the formation of a new company, which requires greater effort and more money. With this in mind, it is recognised that there may also be some significant effects on the employees and Boards of Directors of the transferor and transferee companies owing to restructuring and the desire of the owners of the two companies to apply unified rules and regulations for the company resulting from the merger. In practice, mergers are traditionally classified in three ways: by degree of legal dependency, by degree of business connection and by the nationality of the companies.[132] Moreover, acquisitions are classified according to the nationality of the companies, the type of work and production of the companies, the type of buyer and the quantity of shares. In the following paragraphs, different M&A types, according to their categorisation approaches, will be described in reference to the laws under study, showing the economic rationales behind the types.

1.4.1 M&As by Degree of Business Relationship

1.4.1.1 Horizontal M&As

A horizontal merger is a business merger in which two firms are involved in the production of the same kinds of goods and services (for example, merging one steel manufacturer with another steel manufacturer).[133]A horizontal acquisition also takes place between two companies in the same line of business, such as one tool and dye company purchasing another.[134] In other words, horizontal acquisition simply means a strategy to increase market share by taking over a similar company. This takeover or

[132] For more see Abdul Majeed bin Saleh Al-Mansour, 'Acquisition Companies and the Position of Jurisprudence from it' Ibid, 10.
[133] For more see Jeffrey Church, 'The Impact of Vertical and Conglomerate Mergers on Competition' [2004] Department of Economics, University of Calgary, Calgary, Alberta, Canada.
[134] For more see Patrick R Parsons and Robert M Frieden, *The Cable and Satellite Television Industries* (Needham Heights: Allyn & Bacon 1998) 192.

buyout can be done in the same geographical location or in other countries to increase the company's reach.[135]

Mergers and acquisitions of this kind often take place as part of a strategy to achieve a larger share of the available consumer market by merging the strengths of each firm into one central entity.[136] At times, a merger of this kind will also take place as a way of minimising the number of competitive companies within a given industry, which subsequently decreases the number of companies operating in a particular area. Markedly, this can be achieved owing to the merger facilitating collusion amongst the companies to reach a monopoly in the area or field in which the companies work, and thus to raise prices.[137] This is often the case, especially in saturated markets. The reason for this is that horizontal mergers reduce the number of firms within an industry and thus enable the merged company to realise monopolistic profits.[138]

Importantly, the motives for this type of merger mainly surround economies of scale or the development of the market position. Furthermore, a horizontal merger could lead to the production of higher quality goods and services, thus allowing consumers to receive a greater amount of satisfaction from their purchases. At the same time, a horizontal merger could create a situation where consumers have fewer options when it comes to selecting goods and services, thus forcing consumers to settle for less than what they really wanted.[139]

---

[135] Simon Pilsbury and Andrew Meaney, 'Are Horizontal Mergers and Vertical Integration a Problem?' [2009] Analysis of the rail freight market in Europe, Joint Transport Research Centre.

[136] For more see Cristina Barbot "Horizontal Merger and Vertical Differentiation" Working Papers [2001] 3, 17.

[137] Simon Pilsbury and Andrew M, ibid 106; Joseph Farrell and Carl Shapiro, 'Scale Economies and Synergies Horizontal Mergers Analysis' (2002) 68 International Law journal665,710.

[138] For more see Farrell J and C. Shapiro, 'Horizontal mergers: an equilibrium analysis' (1990) 80 American Economic Review107, 26.

[139] For the effects of horizontal merger see Matthew Weinberg, 'The Price Effects of Horizontal Mergers' (2008) 4 (2) Oxford Journals Economics & Law Journal of Competition Law &Economics 433, 447;
Hosken Daniel S and Christopher T Taylor, 'The Economic Effects of the Marathon- Ashland Joint Venture: The Importance of Industry Supply Shocks and Vertical Market Structure'[2004]Journal of Industrial Economics, forthcoming Working Paper 269;Werden Gregory J and Luke M Froeb 'Unilateral Competitive Effects of Horizontal Mergers In Handbook of Antitrust Economics', ed. Paolo Buccirossi. MIT Press [2005].

A horizontal merger is organised by Qatar and UAE Companies Laws where they allow for a company to merge with other companies of the same or different types,[140] in order to provide an opportunity for companies to increase their activities by attempting to create more efficient economies of scale, with a desire to preserve and protect small business.

1.4.1.2 Vertical M&As

A vertical merger or acquisition occurs when two companies work at different stages of production of the same item. In most cases, the vertical merger is a union that takes place voluntarily. Both parties determine that joining forces will strengthen the current positions of the two businesses and also lays the foundation for expanding into other areas as well. For example, a company that produces bearings for factory machinery may choose to merge with a company that manufactures gears for the same type of machinery. Together, they may subsequently decide to continue to provide products to their existing clientele.[141] Post-merger, the result is vertical integration and a single firm now performing both stages of production. It is useful to adopt a three-way classification for conglomerate mergers based on the relationship between the products involved. These are mergers between complementary products, neighbouring products and unrelated products.[142]

According to Barthélemy (2011),[143] a vertical merger or acquisition is a process in which several steps in the production and/or distribution of a product or service are controlled by a single company or entity, in order to increase that company or entity's power in the marketplace. A current example is the oil industry, in which a single firm

[140] For more see articles 272 of Qatar and 276 of UAE Companies Laws.
[141] For more see Anna Lee Meador, Pamela H Church and L Gayle Rayburn, 'Development of Prediction Models for Horizontal and Vertical Merger' (1996) 9 (1) Journal Of Financial And Strategic Decisions, 11, 23; Roberto Frias "Horizontal and Vertical Merger differentiation, Working Papers, [2001] For the effects of Horzintal Merger on Competition see also the Judgement of the Rye Investments Ltd v Competition Authority, High Court (Competition)Cooke J, [2009] IEHC 140.
[142] Jeffrey Church, Ibid.
[143] Barthélemy J, 'The Disney-Pixar relationship dynamics: Lessons for outsourcing vs. vertical integration' [2011] Organizational Dynamics 43, 48.

commonly owns the oil wells, refines the oil and sells gasoline at roadside stations. In horizontal integration, by contrast, a company attempts to control a single stage of production or a single industry completely, which lets it take advantage of economies of scale but results in reduced competition.

These types of M&As can reduce the reliance of one company upon another. Furthermore, it also reduces the costs of the two firms by eliminating redundant processes. This can also mean a merger between two companies involved in an identical business but at different levels. As an example, an upstream oil company may merge with a downstream oil company to streamline operations, or an automobile company may purchase a tyre manufacturer or a glass company.[144] Similarly, a meat processing company could merge with a food distributor.[145] Mergers in such situations permit firms to gain greater control of the manufacturing or selling process within one single industry.[146]

A vertical merger typically requires more than a simple agreement for the joining of forces. Mergers of this kind will involve careful planning on the behalf of both firms. Investors for both entities will be involved in the process, as well as both management teams. Normally, all firms will also want to prepare their respective client bases for the vertical merger by providing them with information about what is anticipated to change and what will remain the same. The idea is to assure existing customers that the products and services upon which they rely will still be available, the level of service will remain high and that there will be benefits of the merger that will make life easier for each customer. However, some parties consider that mergers could lead to a substantial lessening of competition owing to the merger parties having knowledge of existing

[144] Doug O'Brien, 'Developments in Horizontal Consolidation and Vertical Integration' [2005] The National Centre for Agricultural Law Research and Information, University of Arkansas School of Law 2, 12.
[145] Doug O'Brien,ibid, 115.
[146] For more see Westone *et al*, Ibid, 83 and Bruning I, Ibid, 12.

systems and a broader portfolio of products. In particular, they are concerned about the effect of the 'bundling' of products.[147]

According to Pilsbury and Meaney (2009),[148] a company should undergo a vertical merger or acquisition when there is a threat of being unfairly exploited by a supplier. When there are a small number of suppliers, there is a possibility that these suppliers may take advantage of their clients' dependence to behave opportunistically. By using vertical integration instead of outsourcing, a firm can totally avoid this threat.[149]

There are also various different types of acquisition that allow one company to acquire another, such as through buying the voting stock. This can be done by a tender offer or otherwise by agreement of the administration. In the case of a tender offer, the buying company makes an offer to buy the stock directly to the shareholders, thereby bypassing the administration.[150]

Another type of acquisition is consolidation. In the case of a consolidation, entirely new companies are produced, with the two previous entities ceasing to exist. Consolidated economic statements are organised under the assumption that two or more company entities are, in reality, only one entity. The consolidated statements are then prepared by merging the account balances of the individual companies after certain adjustments and accordingly eliminating certain entries.[151]

1.4.1.3 Conglomerate Mergers

Conglomerate mergers occur between two or more companies involved in totally unconnected business activities or in totally different industries. For example, a

---

[147]Office of Fair Trading and others v IBA Healthcare Ltd, COURT OF APPEAL, CIVIL DIVISIONSIR ANDREW MORRITT V-C, MANCE AND CARNWATH LJJ, [2005] 1 All ER (Comm) 147.
[148] Simon Pilsbury and Andrew Meaney, 'Are Horizontal Mergers and Vertical Integration a Problem?' [2009] Joint Transport Research Centre4, 20.
[149] Simon Pilsbury and Andrew Meaney, Ibid 119; Doug O'Brien, Ibid115.
[150] Ibid; and Andrew Meaney, Ibid, 2, 26; Doug O'Brien, Ibid 115.
[151] Basbos, Ibid, 14.

conglomerate merger could witness the unison of an athletic shoe company merging with a soft drinks company. This category of merger is further subdivided into two main types: mixed and pure. Mixed conglomerate mergers involve companies that are looking for product extensions or market extensions, whilst pure conglomerate mergers, on the other hand, involve firms with nothing in common. Moreover, there are various other subdivisions of conglomerate mergers, such as financial conglomerates, concentric companies and managerial conglomerates.[152]

Importantly, there are numerous reasons for this type of merger. Amongst the more general reasons are adding to the share of the market owned by the company and indulging in selling. Companies also look to add to their overall synergies and productivity by undergoing conglomerate mergers.[153] Furthermore, there are many different benefits associated with conglomerate mergers.[154]One of the major benefits is that conglomerate mergers assist companies in diversification. As a result of conglomerate mergers, the merging companies can also reduce the level of exposure to risks through the sharing of assets and the reducing of business risk. However, such a merger can also become a risk to the company if the new company becomes too large or if it is not otherwise able to successfully blend the two companies.

In conclusion, conglomerate mergers have many implications. For example, it has often been seen that the two companies merging do not have the same customer base as they are in totally different businesses, yet companies still continue to strive to ascertain conglomerate mergers in order to boost their sizes.[155] This, at times, has adverse effects on the functioning of the new company. It has usually been experiential that such companies are not able to operate like they used to prior to the merger taking place. In addition, conglomerate mergers do not affect the structures of the host industries.

[152] For more see Gary Hewitt, ‘Portfolio Effects in Conglomerate Mergers, an analytical note for the OECD’[2001] Computation Law and Policy 1, 296.
[153] For more details see Furse M, *The Law of Merger Control in the EC and the UK* (Oregon 2007) 223, 224.
[154] For more see the Judgement of the Competition Appeal Tribunal: Hutchinson 3G (UK) Ltd v Office of Communications, [2005] All ER (D) 396 (Nov), paragraph 31.
[155] For the effects of Conglomerate Mergers on Competitive Practices between the Company see Judgement of the European Court of Justice, [2005] All E.R. (EC) 1059; [2005] E.C.R. I-987.

Moreover, it has normally been observed that companies that go for these types of merger are able to add to their production, as well as strengthen their marketing area; thus ensuring improved profitability. Furthermore, they are also able to manage a wide variety of activities in a particular market. For example, such companies can carry out research activities and applied engineering processes.[156]

1.4.2 Merger Types in Terms of the Merger's Effects on the Company's Legal Personality

1.4.2.1 Mergers by Absorption

Mergers by absorption take place when an existing company acquires all the assets and liabilities of one or more transferor companies in exchange for the issuance of shares to the shareholders of the transferor company (with or without a cash payment).[157]

According to section 278 of UAE Companies Law and section 274 of Qatar Companies Law, this kind of merger will be executed by a decision of dissolution issued by the transferor company.[158] The net assets of the transferor company will then be evaluated in pursuance to the provisions of evaluating the material share stipulated in the law.[159] Subsequently, the transferee company will issue a decision increasing its capital, as per the result of the estimation to the transferor company capital. Subsequently, the increase of capital will be distributed amongst the partners in the transferor company in accordance with their shares therein.[160]

The objectives of a merger by absorption are the greatest operational consolidations in all business areas. Accordingly, this particular model implies or

[156] For the effects of Conglomerate Mergers see: Jeffrey Church, *The Impact of Vertical and Conglomerate Mergers on Competition*(Church Economic Consultants Ltd, 2004) 312; William J. Kolasky, Conglomerate Merger and Range, *Effects Its A long Way from Chicago to Brussels* (George Mason University Symposium 2001) 1, 27;Dennis E Logue and Philippe A Naert, 'A Theory of Conglomerate Mergers' (1970) 84 (4) The Quarterly Journal of Economics.
[157] Article 274 of the State of Qatar Law and article 277 of the UAE Law.
[158] Article 273/1 of Qatar Companies Law.
[159] Article 274/2 of Qatar Companies Law.
[160] Article 274/4 of Qatar Companies Law.

accommodates all other types of merger, whether between firms operating in the same business (horizontal mergers),[161] between companies operating or doing business in a way considered complementary (vertical mergers)[162] or between companies operating in different businesses (conglomerate mergers).[163] A merger by absorption may lead to decrease overlapping property and staff, achieve lower operating costs and add further economies of scale, such as in purchasing or distribution. However, a merger by absorption makes the merger contract subject to certain conditions, where the drawing up of a merger report is required, as well as the verification of the merger by experts and notification of the merger prior to its registration in the Commercial Register of the place of establishment of the absorbing entity. A practical example of a merger by absorption was the absorption of GBL by Electrafina.[164]

Moreover, according to the theory of the legal personality of a company,[165] the consequence of a merger by absorption from the legal side is the expiry of the transferor company and the demise of its legal personality, with the survival of its physical entity and economic project in the scope of the transferee company, which receives all the transferor company's rights and replaces it in terms of all its rights and obligations.

1.4.2.2 Mergers by the Formation of a New Company

Mergers by the formation of a new company take place when two companies issue decisions of dissolution and then they form a new company, with its capital consisting of all the assets and rights of the two companies involved in the merger, in exchange for new shares issued by the new company for both the transferor companies' shareholders (with or without a cash payment).[166]In other words, the term 'merger' in regard to the formation of a new company means to unite two companies into one larger company,

[161] For meaning, see Section1.4.1.1: Horizontal M&As.
[162] See Section1.4.1.2: Vertical M&As.
[163] See Section 1.4.1.3:Conglomerate Mergers.
[164] Merger absorption of GBL by Electrafina, Joint press release Groupe Bruxelles Lambert S.A. - Electrafina of March 13, 2001).
[165] For more, see Section 2.3 of Chapter Two of this thesis.
[166] See sections 904 and 902 of the UK Companies Act 2006 and 257 of Qatar Companies Law.

subsequently resulting in the creation of a new company with a new name (with the name commonly consisting of the names of the original two companies) as well as a new trademark. On the other hand, such a merger can take place by the merger of two or more companies into a new company.[167] Markedly, such types of merger are made by issuing each company involved in the merger (the transferor and transferee companies) a decision to dissolve itself, at which point a new company is formed, as per the terms stipulated in the law. Each merging company is then allotted with a number of shares or equity equivalent to its shares in the capital of the new company. These shares will be distributed amongst the partners in every merging company in accordance with their shares therein.[168]

Mergers by the formation of a new company can accommodate vertical, horizontal and conglomerate mergers, and further comprise national and cross-border mergers. Unlike mergers by absorption, mergers by the formation of a new company are distinguished in regard to their complex measures and their negative effects on the structures and entities of the transferor and transferee companies, their employees, and directors, owing to the time it takes to restructure the two transferor companies and establish the formation of the new company resulting from the merger. Markedly, in this type of merger, there is the melting of the legal entity for each of the merging and the merged companies, and the subsequent emergence of a new legal entity under a new trade name with the same assets and liabilities of each of the transferor and transferee companies.

This type of merger may be used in order to avoid bankruptcy. Essentially, it represents the desires of two companies to enter a new market, take advantage of economies of scale or reduce the costs associated with the production of a greater number of products or services, for example by reducing the number of employees resulting from the merging of similar sections. Moreover, via the merge, the companies may aim to control a greater share of the output sectors belonging to each of the two parties of the

---

[167]Articles 273 and 276 of Qatar and UAE Companies Laws.
[168] Articles 275 of Qatar and 278 of the UAE Companies Laws. For the concept of merger by the formation of a new company according to the UK Companies Act, see article 904/2 of the Act.

merger, thereby increasing the capacity of each to influence production and price trends within their respective sectors.

Given the importance of this type of merger and its implications, section 904[169] of the UK Companies Act and sections 278[170] of UAE and 275[171] of Qatar Companies Laws were organised in terms of its concept and procedures through explicit texts. According to the theory of the legal personality of a company (and unlike in cases of merger by absorption) the consequence of a merger by the formation of a new company from the legal side is the expiration of the transferor and transferee companies, the demise of their legal personalities and the subsequent emergence of a new legal personality, which is a company personality resulting from the merger. Therefore, this type of merger requires extensive consultations between the two companies involved prior to the merger in order to reach the best solutions and results and to avoid the two companies from experiencing negative effects should the merger fail, such as owing to the time that this type of merger necessitates. A practical example of this type of merger was the merge of Emirates Bank with the National Bank of Dubai by 95% of the capital. The deal was valued at $ 3.8 billion and resulted in the birth of one of the largest banking institutions in the GCC region.[172]

1.4.3 Domestic and Cross-Border M&As

1.4.3.1 Domestic M&As

A domestic merger occurs when one or more national companies merge with one or more other national companies. In other words, a national merger is a merger by absorption or by the formation of a new company in the same country between companies that have a

---

[169] See also regulation 2 of the UK Cross-Border Merger Act 2007.
[170] See article 278 of UAE Companies Law.
[171] Which provides for "The merger will be made by issuing each merging companies a decision of dissolution and then they form a new company as per the terms stipulated in this Law? Each merging company will be allotted a number of shares or equities equivalents to its shares in the capital of the new company. These shares will be distributed among the partners in every merging company in accordance with their shares therein".
[172] Saleh Suhaibani and Abdel Azim Mussa (n 50) 8.

similar nationality and operate under national laws. A prime example of this was the merger between Halifax and Lloyds banks. The objectives of this type of merger may be to achieve vertical and horizontal integration or to otherwise motivate competition and/or survival, as well as to increase the companies' respective abilities to compete with dominant foreign companies.[173] Also, such a merger may be used as a solution for troubled companies,[174] to achieve public interest and protect the national economy, maintain a company's reputation, ensure protection from exposure to economic vibration or may be used as a result of the desire to control.[175]

A domestic acquisition is a process occurring between companies of one nationality and is subject to the law or laws of one state, regardless of whether the two companies practice the same or different activities and regardless of whether the acquisition is in whole or in part. In other words, unlike cross-border acquisitions, domestic acquisitions refer to where the selling and buying companies are incorporated within the same country or where acquiring and selling occurs between companies sharing the same geographical borders of operation.[176] This type of acquisition can be friendly and occur through negotiations of the Boards of Directors of the two companies involved in the acquisition operation. Alternatively, they can be unfriendly, which occurs in cases where the target company of the acquisition is unwilling to be purchased or where the Board of Directors of the target company does not have adequate knowledge in regard to acquisition offers.

---

[173] For more see Joseph A. Clougherty, 'Export orientation and domestic merger policy: theory and some empirical evidence' (2005) 38 (5) The Canadian Journal of Economics / Revue canadienne d'Economique779, 806; Yano M, 'Trade imbalance and domestic market competition policy' (2001) 42 International Economic Review 729, 50.

[174] Levinsohn J, 'Testing the imports-as-market-discipline hypothesis' (1993) 35 Journal of International Economics 1, 22; Harrison A, 'Productivity, imperfect competition and trade reform' (1994) 36 Journal of International Economics 53, 73.

[175] For more see Horn H and J Levinsohn, 'Merger policies and trade liberalization' (2001) 111 Economic Journal 244, 76; Zhang A and H Chen, 'Horizontal Mergers in A liberalizing World Economy' (2002) 7 Pacific Economic Review359, 76.

[176] How this type of acquisition developed in the past twenty years see Danbolt J B H, 'A Comparative Analysis of the Wealth Effects to Target and Bidding Company Shareholders from Domestic and Cross Border Acquisitions into the United Kingdom' (1996) Department of Accountancy and Finance Heriot-Watt University 26, 27; Fatemi A M and Furtado E P H, *An Empirical Investigation of the Wealth Effects of Foreign Acquisitions*, in Khoury S J and Ghosh A, (Ed.), *Recent Developments in International Banking and Finance* (Vol 2, Lexington Books 1988] 363, 379.

Domestic M&As may be witnessed either in the form of absorption or through the formation of a new company. In addition, they may also occur between two companies producing goods or presenting different services for final specific products,[177] or between two companies operating within the same activity and which together produce similar products and services in order to form a larger entity and gain access to the largest market shares, hence reducing the costs associated with the production of a new entity.[178]

Notably, a domestic merger leads to the expiry of the transferor company's legal personality and the transfer of all its rights and obligations to the transferee company, which subsequently becomes the legal representative for both companies in the face of others. Unlike cross-border mergers, Martin (2004)[179]finds that in the UK, domestic M&As lead to increase both profitability and the wages of employees. Furthermore, Terry (1996)[180] adds that domestic mergers offer employees the opportunity to improve their social identities.

The aim of this type of merger or acquisition is to strengthen national companies and thereby increase their activities and services in competition with foreign companies. Furthermore, through such acquisitions, companies try to expand their markets through the annexation of customers of other companies in order to get new technologies, to try to reduce production costs by creating larger companies, as a result of a desire to control.

Practical examples of these mergers between local companies that occurred in 2008[181]in the UAE and Qatar include: the integration of Barwa Real Estate Company with Qatar for real estate investments, the integration of Qatar Trading for meat and livestock with the Al Meera Company for Consumer Goods, and the integration of the Qatar Company for Navigation with Qatar for Shipping.[182] Examples of domestic

[177] For more, see Section 1.4.1.1.3: Conglomerate Mergers.
[178] For more, see Section 1.4.1.1.1: Horizontal Mergers.
[179] Martin J. Conyon, Sourafel Girma, Steve Thompson and Peter W. Wright, 'Do Wages Rise or Fall Following Merger?' (2004) 66(5) Oxford Bulletin of Economics and Statistics 847, 862.
[180] Deborah J Terry, 'Employee Adjustment to An Organizational Merger: Stress, Coping and Intergroup Differences, Stress Medicine' (1996) 12 105, 122.
[181] For more see Saleh Suhaibani and Mussa, Ibid, 6, 7.
[182] Saleh Suhaibani and Mussa (n 50) 12.

acquisitions in the UAE and Qatar include: between Ezdan Real Estate and the International Company for Housing in Qatar,[183]the acquisition between the Qatar Company for Cinema and Film Distribution (a public company) with Qatriah for advertising (a limited liability company), Abu Dhabi Investment Authority acquiring Citigroup, Emirates Bank International's acquisition of the National Bank in Dubai, and Advanced Technology for Investment's acquisition of IMD-MNFG for facilities.[184]

1.4.3.2 Cross-Border M&As

According to the UK Cross-Border Merger Act 2007,[185] 'cross–border merger' means merger by absorption, merger by absorption of a wholly owned subsidiary or merger by the formation of a new company.[186] These activities occur between at least one UK company and at least on EEA company.[187] Accordingly, every transferor company is dissolved without going into liquidation[188] and on its dissolution transfers all its assets and liabilities to the transferee company in return for shares or other securities representing the capital of the transferee company or by a cash payment, receivable by the members of the transferor company.[189]

---

[183] For more, see 'billion dollars' worth of mergers and acquisitions in the UAE' (*Al Ittihad newspaper*) http://www.alittihad.ae/details.php?id=72257&y=2011 # ixzz1W1is5leJ accessed 10/ September 2011. Arabic Source

[184] For more see Saleh Suhaibani and Abdel Azim Mussa (n 150) 53.

[185] The UK Companies (Cross-Border Mergers) Regulations 2007 came into force in December 2007 and implements Directive 2005/56/EC of the European Parliament and Council on cross-border mergers of limited liability companies. The Regulations provide for the merging of any two public or private limited liability companies resident in the EU (providing such a merger is permitted under the relevant domestic law of a company) and introduce the concept of a 'true merger' to the English legal system. Whereas previously in the UK mergers could only be effected by transferring the individual assets and liabilities of the transferor under a traditional business sale and purchase agreement mechanism, the Regulations now allow for the automatic transfer of all assets and liabilities of a transferor by operation of law.

[186] Regulation 2 of the UK Cross-Border Merger Act 2007.

[187] Regulation 2/c of the UK Cross-Border Merger Act 2007.

[188] Regulation 2/4/b provides for this by saying "every transferor company is dissolved without going into liquidation, and on its dissolution transfers all its assets and liabilities to a transferee company formed for the purposes of, or in connection with, the operation".

[189] Anthony Clare "A New UK Takeover Technique" The International Comparative Legal Guide To Mergers & Acquisitions 2011 A practical cross-border insight into mergers & acquisitions, Global Legal Group Ltd, London [2011]14, 17.

In accordance with the merger concept above, the Cross-Border Act provides for a two-stage process to implement a merger between at least one company formed and registered in the UK[190] and at least one company formed and registered in an EEA state other than the UK.[191] Under the regulations, a "cross border merger" may take one of three forms: "merger by absorption",[192] where an existing transferee company acquires all the assets and liabilities of one or more transferor companies; merger by absorption between an existing transferee company and one or more of its wholly owned subsidiaries; and merger by the formation of a new company,[193] which acquires the assets and liabilities of two or more existing transferor companies.[194] In each case, the transferor companies are dissolved without having to go through a formal liquidation process. On dissolution, all their assets and liabilities are automatically transferred to the transferee company by operation of law.[195]

The merger process has to be certified and approved by a competent authority (in England, this is the High Court).[196] It is also necessary to carry out a parallel process in each of the other relevant jurisdictions involved to obtain a pre-merger certificate from the appropriate authority.[197] The law also sets out the conditions to be met in cross-border mergers, representing what must be prepared or produced by the directors of a UK transferee company, which must include: a directors' report explaining the effects of the merger for members, creditors and employees, and an independent expert report as to whether all the shareholders of the transferee companies in agreement that preparation of the report by management is not necessary.[198]

[190] Regulation 2/2/c of the UK Cross-Border Merger Act 2007.
[191] Regulation 2/2/d of the UK Cross-Border Merger Act 2007.
[192] Regulation 2 of the UK Cross-Border Merger Act 2007.
[193] Regulation 2/4 of the UK Cross-Border Merger Act 2007.
[194] Regulation 2/1 of the UK Cross-Border Merger Act 2007.
[195] Regulations 2/2 and 3 of the UK Cross-Border Merger Act, Ibid 4.
[196] Regulation 16 of the UK Cross-Border Merger Act 2007.
[197] For more information, see regulation 3, Ibid.
[198] Anthony Clare, *A New UK Takeover Technique, The International Comparative Legal Guide To Mergers & Acquisitions 2011 A practical cross-border insight into mergers & acquisitions* (Global Legal Group Ltd 2011) 14, 17.

The UK cross-border regulations also require that such cross-border mergers take account of statutory employee participation rights where these exist in one or more of the merging companies. Employee participation is the practice of mandatory representation of employees on the boards of companies that are of a certain size.[199] Moreover, approval of the proposal is required from the shareholders of each of the companies involved.[200]

On the other hand, cross-border acquisition refers to a situation wherein the buying and selling companies are incorporated in two different countries and are thereby subject to two or more different legal regulations. A cross-border acquisition may notably be friendly or aggressive and may be entirely procured or acquired through the purchase of part or all of the shares and assets of the acquired company.[201]

The cross-border merger regime constitutes a more efficient way of merging the businesses of two firms rather than the traditional transfer of the individual assets and liabilities of other firms, as the assets and responsibilities of the transferor firms will move mechanically through the operation of law. As the transferor company is automatically dissolved upon the merger taking effect, there is no need to undergo a separate liquidation process following a merger and, consequently, costs and timescales are reduced. Additionally, the act of merging with an existing firm in a foreign country allows the acquirer's existing goods to be introduced relatively speedily into the new market territory.[202] Furthermore, in a reciprocal sense, it allows any goods of the target company to be introduced into the acquiring firm's long-established markets.[203] Cross-border M&As can also provide access to new sources of supply and services.[204] Cross-

[199] Section 17/b of the UK Cross-Border Merger Act, which provides for that by saying "One of the Consequences of a cross-border merger is "the rights and obligations arising from the contracts of employment of the transferor companies are transferred to the transferee company" For more, see part 4 of the UK Cross-Border Act 2007.

[200] Section 13 of the UK Cross-Border Merger Act 2007.

[201] Danbolt J, 'Cross-Border Acquisition into the UK An analysis of Target Company Returns'[2000] *Accounting, Accountability and Performance* Department of Accounting and Finance 27, 62.

[202] Kristina Hare and Kirin Ohbi, Cross-Border Mergers, 2010.

[203] For more details, Coeurdacier N, De Santis R A and Aviat A. (2007), Cross-Border Mergers and Acquisitions, Financial and International Forces1, European Central Bank, Frankfurt am Main, Germany, 5, 54.

[204] Arnold M F. (2007), Regulation of Mergers by the UK Competition Authorities: the Effects on Shareholder Value and Management Motivations for Mergers. Cranfield University, P57 and Sudarsanam,

border mergers can be used to reduce the number of legal entities and streamline corporate governance obligations and compliance costs within a corporate group. They also may have the advantage of increasing the possibility of claiming tax relief for losses that might otherwise be unavailable where the losses are those of an overseas subsidiary.[205]

However, unlike domestic merger companies, this type of merger has little effect on employees and their rights due to the difference in the skills of foreign companies' employees in relation to the skills of national companies' employees, as well as the prevailing work culture in both companies prior to the merger. The impacts of cross-border M&As are not limited to the impact on employees and the level of competition between companies: there are many matters that may face cross-border M&As. Take the example of a merger between a UK company and a company from another European country: some legislation (such as some legislation of the European Union), in order to determine the applicable law in merger cases, applies a different test to determine a company's domicile.[206]Each jurisdiction in its Company Laws will have a means of legislating for mergers and dealing with the complications of two firms becoming one or one firm being integrated into another.[207] There are also taxes and administrative problems and difficulties arising from non-harmonised areas of company law, especially in the area of work participation.[208]

UK Companies Law regards a company's domicile as being the country in which the company has its registered office, irrespective of where its head office or major activities are located. Thus, the registered office may be in one convenient location for

---

S 'Creating Value from Mergers and Acquisitions: The Challenges' (2003) Pearson Educational Ltd, Harlow,and Chapter 9.

[205] For more see Benjamin Esty, Bhanu Narasimhan and Peter Tufano, 'Interest-rate exposure and bank mergers' (1999) 23 Journal of Banking & Finance 255, 285.

[206] Jonathan Rickford,*The European Company: Developing a Community Law of Corporations*(Antwerp 2003]; EU Competition Law Rules Applicable to Merger Control, European Commission, Competition Handbook, Brussels, 2010.

[207] Stephen and Alastair Hudson (n 58) 804.

[208] Rob Lant and Joel Phillips, "M&A Tax Matters" (2010) 74 KPMG; H. Donald Hopkins, 'International Acquisitions: Strategic Considerations' (2008) 15 International Research Journal of Finance and Economics261, 268.

regulatory or other purposes while the company's real business is conducted elsewhere.[209] However, nothing in UK law prevents a company from moving its operations and control to another country: it will still be a UK company so far as UK law is concerned. By contrast, companies of most member states of the European Union are deemed to be domiciled wherever their central management is located because that is considered to be de facto the place where the company's directing mind and will is located.[210] Thus, a firm incorporated in London but whose head office is in Stockholm would be regarded as a UK company in the United Kingdom and as a Swedish company in Sweden. However, since it would not be registered in Sweden (in this instance), there is currently a problem as to where it has a legal personality under Swedish law.[211]

The European Court of Justice has tried to solve such problems on multiple occasions. In Centros Ltd v Erhvervs-og Selskabsstyrelsen,[212] the court upheld the right of an English registered company to operate as a branch in Denmark. The Danish authorities had refused to allow it to do so on the basis that this was, in reality, a Danish company that was simply registered in London to avoid the minimum capital rules applied to Danish private firms.

In another judgement of the European Court of Justice, relating to Uberseering BV v Nordic Construction Company Baumanagement GmbH,[213] a Dutch firm moved its head office to Germany. According to Dutch law, which uses the place of registration or incorporation theory, as in the UK, it still remained a Dutch firm. According to German law (which uses the real-seat theory), it was held to be subject to German law and accordingly it was rejected as a lawful personality there. The European Court of Justice

[209] Stephen and Alastair Hudson (n 50) 804.
[210] Ibid.
[211] See same example in Stephen and Alastair Hudson, Ibid, 804. Stephen and Hudson (2010) explain that bay saying indicates that the EU from its earliest days has been strove to find and document the lawful system, but a convention for the mutual recognition of each other's firms was never ratified, even by the original six Member States, and the location is still unresolved.
[212] Case C-212/ 97, supra note 72, [1999] E.C. R. 1-1458. See the case in Peter Hay 'Balancing of interests: Liber amicorum Peter Hay zum 70. Geburtstag' Verlag Recht and Wirtschaft Gmbh Frankfurt am Main (2005), 131, also see example in Stephen and Alastair Hudson, Ibid, 809.
[213] C-208/ 00 Ubereering BV v Nordic Constriction company Baumanagement, Gmbh (NCC) [2002] E. C. R. 1-9919, 461, see the case in Stephen Weatherill *'Cases and Materials on EU Law'*, 8th Ed, Oxford University Press (2007).

held that although there should be some controls on migration, the denial of a lawful personality was a clear breach of the freedom of establishment.[214]

Practical examples of cross-border mergers in the UK, UAE and Qatar include the merge of Shell, Texaco and Amoco and the merge of BP and Mobil. Examples of cross-border acquisitions between companies include the acquisition between Barclays Bank and Qatar Holding, Citigroup and the Abu Dhabi Investment Authority, and the acquisition between Turkish Telecommunications and Oger Telecommunications in the United Arab Emirates.[215]

In the end of this part, we should point out that, unlike UK merger legislation, Qatar and UAE laws do not address this type of merger in the heart of their texts, owing to the small sizes of domestic companies and their inability to engage in competition with international companies that are characterised by large and multiple objectives and activities. This case needs to be reconsidered by the Emirati and Qatari legislators through the formulation of legal texts governing mergers between national companies with each other and between national companies and foreign companies, taking into account the business and company's volume and the culture of the area. This should also take into account the extent of the effects of a cross-border merger on the level of competition between national companies or at the level of its performance or on its employees.

1.4.4 Acquisitions According to the Type of Buyer and Quantity

1.4.4.1 Acquisitions According to the Type of Buyer

This type of acquisition is divided into two parts: acquisitions through the purchase of shares, which means that the acquiring company buys the acquired company's shares through bidding and then submits them to the shareholders of the acquired company, with

---

[214] For more see Stephen and Alastair Hudson, Ibid, 809 for more see Jonathan Rickford, *The European Company: Developing a Community Law of Corporations* (Antwerp 2003); EU Competition Law Rules Applicable to Merger Control, European Commission, Competition Handbook, Brussels, 2010.
[215] Saleh Suhaibani and Mussa (n 50) 32.

the payment of the value of these shares made in cash;[216] and secondly, acquisition by the purchase of assets, which means the purchase of the company's entire assets in cash by the acquiring company, where the company that acquired its assets distributes for or versus acquired assets to its shareholders in cash in preparation for the liquidation of the acquired company, or otherwise with a company that acquired its assets using versus assets in changing its main activity. This kind of acquisition involves a costly legal title transfer and must be approved by the shareholders of the selling company.[217]

1.4.4.2 Acquisition Types According to Quantity

This type of acquisition is divided into total acquisitions by the purchase of all the assets of the acquired company and partial acquisitions by the possession of part of the shares of the company. In regard to partial purchases, some acquiring companies prefer to buy 51% or more of the acquired company's shares, thus meaning that the acquiring company has a dominant voting power in the Board of Directors. This enables it to control the Board of Directors' company decisions or at least secure effective participation in the issuance of such decisions.[218]

What interests us in all the kinds of acquisitions that have been explained is the legal and practical effects on the legal entities of the companies involved in acquisitions, which are representative in regard to the extent of continuing or ending the legal entity of the acquired company and thus the extent of the impacts on the rights of workers, the Board of Directors and the shareholders of the acquired and acquiring companies.

Acquisitions (in the most part) mean that the acquiring may purchase up to 100% of the acquired company's shares with the survival of its legal entity in the scope of the legal personality of the acquiring company, where it will continue in its operations as usual. The acquiring company is then able to re-sell what it received in shares in the

[216] Abdul Majeed bin Saleh Al-Mansour (n 10) 42.
[217] Abdul Majeed bin Saleh Al-Mansour (n 10) 42.
[218] For more see Abdul Majeed bin Saleh Al-Mansour (n 10).

acquired company. Importantly, this means the survival and transfer of the projects of the acquired company to the acquiring company, which justifies the transfer of the acquired company's employees' rights (both in relation to work and other rights) to the acquiring company. With this in mind, according to the theory of the legal personality of a company and the texts of the laws under consideration, in this type of acquisition the transfer of the facility from one owner to another does not justify the cancelation of employment contracts.[219]

However, from a practical perspective, an acquisition can often be a hostile act by the acquiring company without the consent or approval of the management in the acquired company, which may result in a change of management in the acquired company. Furthermore, by the acquisition, the acquiring company may be able to control the fixed assets of the acquired company and its property and liabilities, subsequently leading to cuts in the relationships of the acquired company with its shareholders who take their shares in cash instead.[220]

Moreover, an acquisition is a process of buying and selling between two or more companies, whereby one company (the acquiring company) acquires some or all of the shares in another company (the acquired company). The shareholders of the acquired company obtain cash in return for their shares that are sold to the acquiring company. Subsequently, the legal relationship between the acquired company and its shareholders is cut off once the acquisition is process completed. Therefore, in acquisitions (unlike shareholders in merger cases), the shareholders of the acquired company do not obtain new shares in return for their shares that expired by the acquisition operation. The result is that the acquisition does not raise legal problems in cases of trading shares between the acquiring company and acquired company's shareholders.[221]

---

[219] For more see paragraph 2.3(the theory of legal personality of company) in the Chapter two of this thesis, regulations 4 and 7 of the UK TUPE Act, 51 of the State of Qatar and 126 of the UAE Labours Laws and also paragraph 1.2 (M&A concepts) in this chapter.
[220] See Chapter Four of this thesis.
[221] See Chapter Five of this thesis.

1.5 Motives of Mergers and Acquisitions

Mergers and acquisitions often result in a number of social benefits. Mergers can bring about better management or technical skills to bear on underused assets. Moreover, mergers can also produce economies of scale and a scope that reduces costs, improves quality, and increases output. The possibility of a takeover can notably discourage company managers from behaving in ways that fail to maximise profits. A merger can also enable a business owner to sell the firm to someone who is already familiar with the industry, and who would be in a better position to pay the highest price. The prospect of a lucrative sale induces entrepreneurs to form new firms.

In order to prove these rules and effects, and to learn more about M&A, many studies and literatures[222] discuss such aspects, with the motive of merger recognised as merging and sharing corporations' resources to achieve common purposes, which can be improved together than alone. Other research[223] has been carried out on the dissimilarities between types of people, with respondents questioned on the business objectives behind mergers. The majority of respondents believe that the most significant purpose behind M&A is increase the market share (35%), followed by the maximisation of shareholder worth (20%) and access to new geographical markets (19%).[224]

This study, as well as most other studies,[225] has also found that the most important objectives of mergers and acquisitions include the realisation of economies of scale, customer demand, gaining access into new markets or to new sales channels, globalisation, obtaining new products and brands, diversification, and changing business models, which are discuses like as the following statement.

---

[222] Sudarsanam P S,*'The Essence of Mergers and Acquisitions'* (Prentice Hall 1995) 13.
[223] Kleinert, J & Klodt H. (2000), Megafusionen: Trends, Ursachen und Implicational. Tubingen, pp22-45.
[224] Results of the study reveal that market driven motives dominate the companies to merge or to acquire a company, the access to new geographical markets.
[225] Kintbaa Bashir Altib, merger and acquisition between success and failure, Arabic Marktes, 2008, Abdul Majeed bin Saleh Al-Mansour (2010), Ibid.

1.5.1 Realisation of Economies of Scale

The most significant purpose for merger is business leaders' desire to leverage increased size to reduce the per-customer costs incurred by the enterprise. Typically, mergers which are driven by this purpose are executed within the same or similar markets, thereby decreasing the time and cost of incorporation, and thus leveraging increased size, geography or creation. This approach is sometimes called as 'buying market share.'[226] The typical promise to shareholders is that consolidation will net savings that will raise earnings—often during the merging of procedures, IT infrastructures, consolidation of production, and the reduction of operations and administrative costs.[227]

1.5.2 Customer Demand

As consumers become more knowledgeable and demand lower costs and better service, competition for customer 'hearts and minds' is on the increase. At the same time, customers are more in control of the terms of this competition. Increasingly, mergers are driven by the objective of 'capturing' more customers so as to ensure a constant revenue stream, or to otherwise expand the market within which new products and services can be delivered. This facilitates cross-selling and common branding.[228]

1.5.3 Gaining Access into New Markets or to New Sales Channels

Many mergers occur in defined product markets wherein the acquirer or merger partner is currently serving. For example, merging with a company that enables to target a broader or more responsive audience cannot only give access to a greater number ofpotential

[226] Mack, R, Gerrard, M and Frey, N "An IS Perspective on Mergers and Acquisitions: A Six-Stage Handbook. In: Strategic Analysis Report" R-14-6198, and Gartner Research [2002].
[227] See Kang, N and Johansson, S 'Cross-border mergers and acquisitions: their role in industrial globalisation', Directorate for Science, Technology and Industry, OECD, working paper [2000]; Kleinert, J Klodt and H Megafusionen: Trends, Ursachen und Implication. Tubingen [2000] 22, 45.
[228] Brunig (n 53) 14.

buyers, but can also help to bring about enhanced production or distribution capabilities in new territories.[229]

The move into other geographical regions may be spurred by poor prospects for growth in the areas in which the company is established. This type of diversification would be considered horizontal or related diversification. Furthermore, the size gives confidence to the client in the capability of the company. There are other possible motives for growth, such as profit, cost, revenue and prestige. Essentially, the means of achieving corporate growth can occur through internal or external growth. Moreover, three means of achieving corporate growth and development are identified:[230]

- Internally, where the Finn invests its own capital to set up and operate a new venture. This option is often the primary vehicle of growth.
- Externally through an acquisition or merger. This option is often used where speed is of the essence.
- A combination strategy that combines elements of internal and external development through contractual agreements.[231]

1.5.4 Globalisation

During recent years, the emergence of a truly global economy has improved opportunities to tap the global workforce to supplement internal staff or to extend the enterprise. As a consequence, additional activity in acquiring offshore subsidiaries and service organisations to extend the enterprise's business or to add needed abilities can be seen. 'Going global' naturally brings about the need to merge or to acquire, as the time

[229] Brunig, Ibid 14, 15; Sherman A J, *Merger and Acquisition from A to Z, Strategic and Practical Guidance for Small- and Middle-Market Buyers and sellers* (New York 1998) 10.
[230]Delaney F, 'Effectiveness of Merger and Acquisition and Corporate Financial Performance in Construction'[2003] Napier University in partial 27, 29; Gaughan P A, *Merger, Acquisitions and Corporate Restructuring* (4th edn, John Wiley & Sons 2007) 14.
[231]For more details read: Delaney F, (2003) ibid 201, 24.

required to establish and grow new foreign businesses—particularly in unknown markets—far exceeds the need to execute an M&A strategy.[232]

It has been observed in recent years that there are several different sectors of the economy which are heating up with a number of cross-border mergers and global alliances; this is only to improve the economic state of the countries. Globalisation and mergers have helped to improve the economic state, with many more sectors having only experienced successful mergers with overseas' companies in the UK. These global associations have brought an array of success, which has subsequently created a brand value in the market. The trends and growth of mergers and acquisition dealings have led to a noticeable increase in the globalisation and mergers within the UK.[233]

Globalisation and mergers within the UK have been massively advantageous for all sectors across the country, which has increased the global market efficiency. The relation between globalisation and mergers in the UK are quite noteworthy. The important elements of British mergers for globalisation can be cited as: a good growth policy in the context of globalisation firms in the UK, which have been experiencing a surge in the revenue expansion owing to cross-border mergers, with figures set to increase more. Generally, UK firms have a clear M&A strategy, with the market policy obvious for most firms. That is why, when finalising a deal, no confusion arises. [234]

1.5.5 Obtaining New Products and Brands

In the realm of new product progress, firms intending on achieving growth agonise over the 'acquire or create' judgement. Those with available cash, a good depth of resources, access to technology, and a keen strategic vision are in the greatest position to purchase

---

[232] For more details read: Sherman A J. (1998), Profuse Reference, P10 and Pehr-Johan (2008) NorbäckGlobalisation and profitability of cross-border mergers and acquisitions, Research Institute of Industrial Economics, pp242-260.
[233] Pehr-Johan "Nor back Globalisation and profitability of cross-border mergers and acquisitions" Research Institute of Industrial Economics, [2008] 242, 260.
[234]'Globalisation and Mergers in India' <http://business.mapsofindia.com/globalisation/mergers-india.html> accessed 22 September 2010.

companies' firms or to otherwise merge with firms to achieve new products. The alternative is a complex, expensive, and time-consuming period of product or service progress. Frequently, by the time a new product has cleared its beta stage, competitors and developers of knock-offs or cheaper versions are already releasing rival offerings. Technological gains have shortened the time it takes to design, manufacture, promote, and ultimately deliver a product or service to the marketplace; therefore, many companies prefer to buy rather than make in order to avoid expensive and time-consuming R&D, which notably may not yield the desired results.[235]

The example for the extension of the product portfolio is the BMW–Rover Merger. Rover covered the lower end of the market with Land Rover; Rover had the strongest 4x4 brand worldwide. BMW was not present in those segments at that time. BMW stated that the alternative to buying Rover would have been to develop its own small car and sport-utility; however, each would have cost BMW more than acquiring Rover. Altogether, with the purchase of Rover, BMW acquired 17 marquees, including legendary names, such as MG, Austin-Healey and Triumph, and added a Mini—a small car and a sport utility—to its product range, all of which BMW needed, and for far less than it would have cost to develop them.[236]

Domestic and cross-border M&A provide many prospects for achieving economies of scope from global marketing strategies [237](Child *et al.*, 2001). Branding provides a useful illustration of such potential. An increasing number of Institution Multinationals (MNEs) are standardising their brands in order to send a consistent worldwide message and to take greater advantage of media opportunities by promoting one brand, one packaging, and one uniformed positioning across the market. Rather than

---

[235] For more details read: Bruning, Ibid, 12, 14, Pedain C, 'Managing Processes and Information Technology in Mergers' [2004] Cranfield University 9, 12.

[236] For more Jemison and others, 'Corporate Acquisitions: A Process Perspective' [1986] Academy of Management Review 145, 163; McCann J E & Gilkey R Joining, 'Forces - Creating & Managing successful Mergers & Acquisitions' [1988]Englewood Cliffs.

[237] Child J, Falkner Dand Pitkethly R, *The Management of International Acquisitions(*Oxford University Press 2001).

a patchwork quilt of local brands in local markets, the owners of international brands increasingly favour simplified international brand portfolios.[238]

1.5.6 Diversification

Mergers and acquisitions are frequently pursued to fulfil a need externally, rather than domestic. Such deals are frequently driven by the need to get exterior competencies which cannot—or, for causes of economy, should not—be developed internally. Such competencies include knowledge exemplar intellectual capital, skills or innovative techniques, products, such as to build a wider range of products addressing convenience-based competition (and keep the customer from looking elsewhere) and technology, such as infrastructure, processes and capital.[239]

1.5.7 Changing Business Models

Numerous M&As occur in defined product markets wherein the acquirer or merger partner is presently helping. For example, merging with a firm that enables to target a broader or more responsive audience cannot only give access to a greater number of potential purchasers; it can also assist in bringing about enhanced production or distribution capabilities in new territories. As businesses have expanded throughout the last decade of this century, the fiercest of battles have been fought over existing products in new markets. Entering a market for the first time, however, is an act fraught with multiple risks.[240] There are buyer-specific and competitive issues needing to be understood before access can be successfully gained to a new market. Moreover, purchasing a firm or merging with a firm that already has a foothold in that segment and which knows the ropes can ease the process and thereby minimise the risks. In the merger exercise, BMW acquired Rover to gain access to new geographical markets and to

[238] Ahammad, M F and Glaister, K W (n 37).
[239] Bruning I, 'Managing the Integration of Marketing & Sales in Mergers' [2005] Cranfield University 13, 14.
[240] Berger A N, 'The effects of bank mergers and acquisitions on small business lending' [1997] Journal of Financial Economics1-43.

thereby use the existing sales channels. Unlike Rover, BMW has a strong international sales organisation, which can open up significant potential for Rover in the USA and Asia within a short time period of time. On the other hand, however, Rover's sales organisation in the UK, Italy, Spain and France provide an interesting basis for expansion in the lower market segment.[241]

1.6 Summary and Conclusion

Companies are economic entities that need attention and encouragement in order to continue carrying out their work. Therefore, UK, UAE and Qatar laws are keen to regulate mergers between companies and to give companies this opportunity and option, even companies undergoing liquidation. The laws of the UK, the UAE and Qatar also provide for the transfer of all the rights and obligations of the transferor company to the transferee company. They also categorise the different types of merger (merger by absorption and merger by the formation of a new company) and identify the procedures and conditions to be followed in each type of merger.

With the aforementioned in mind, in this chapter we have found that the description of a merger as a contract of sale goes against the fact that the essence of selling is the transfer of ownership (or other financial rights) for a cash price, which is not achieved in merger cases. The disadvantage of this interpretation can be seen clearly in the cases of merger by the formation of a new company, which leads to the demise of the legal personality of the transferor and transferee companies and the emergence of a new legal personality for the new company resulting from the merger. Furthermore, a merger does not lead to the liquidation of the transferor company but rather the transmission of its rights and liabilities, with the survival of its economic projects as a set of assetsin the scope of the transferee company. This justifies the transferor company's shareholders getting new shares in the transferee company instead of their shares in the transferor company. The concept of a merger as a contract of sale stands in contrast to this finding.

---

[241] For more see Pedain (2004), Ibid 9, 12; Bruning (2005), 13, 14; Carrillo (2001), Ibid, 10.

On the other hand, an acquisition is a contract of sale between two or more companies, whereby the acquiring company buys the shares or assets of the acquired companies in whole or in part in cash, without affecting the moral personality of the acquired company or the company that remains in existence after the acquisition. Accordingly, an acquisition does not lead to the expiry of the acquired company. In an acquisition, the acquiring company may buy a dominant and governing percentage of up to 90% of the shares of the acquired company, but may nevertheless witness the survival of its legal entity as it is, in effect, continuing its operations as usual.

Unlike a merger, an acquisition is often a hostile act by the acquiring company without the consent or approval of the management or Board of Directors of the acquired company, which may therefore result in a change in the management of the acquired company according to the desires of the acquiring company, which dominates the voting shares in the new company. Also, through the course of acquisition, the acquiring company is able to control the fixed assets of the acquired company and its assets and liabilities in return for payment in cash. By contrast, a merger commonly occurs through agreement between the administrations of each of the transferor and transferee companies and also with approval from the General Assemblies of the shareholders of the two companies, who retain their shares in the transferee company. Accordingly, it is recognised that they turn into shareholders in the transferee company. These clear definitions of M&As and the distinctions between them from the legal and practical sides help us to understand the impact of them on the shareholders of the companies involved, and why the shareholders of the transferor company obtain new shares in the transferee company in return for their shares in the transferor company in merger cases only.

Moreover, this chapter shows that M&As are beneficial to the performance of the parties involved in these processes through increased revenues and the improved utilisation of human resources, as well as an increased customer base. Furthermore, companies involved in such operations aim to enter a new market, achieve a diversification of their services or products through benefiting from economies of scale, or otherwise reduce the costs associated with producing a greater number of products or

services. In addition, they also seek to control a larger share of the output of the sector to which the two parties of companies (merged and merging, or acquired and acquiring) belong.

With the aforementioned in mind and in order to determine the legal basis for the transition of the rights and obligations of employees, directors and shareholders from the transferor to the transferee company, this chapter has provided an evaluation of the concepts, types and objectives of M&As; the researcher concluded that, despite some similarities between the legal texts of the UK, UAE and Qatar laws that regulate mergers, UAE and Qatar laws have not addressed acquisitions and cross-border mergers. Additionally, unlike UK M&A legislation, UAE and Qatar laws allow all companies to enter into merger operations, without distinction between companies that enjoy moral personalities and companies that do not have moral personalities. This is incompatible with the theory of the legal personality of a company, whereby a merger leads to the expiry of the transferor company, the demise of its moral personality and the transfer of all its rights and obligations to the transferee company.

In order to remove this ambiguity, it would be preferable for Qatari and Emirati legislators to review the laws governing M&As so as to fit with the development that the two countries are witnessing. This could be achieved through rewriting the laws of both countries and regulating national and cross-border M&As with explicit texts in one law for each country separately. Each law should include the concepts, types, objectives and procedures of M&As. The new laws should also address the legal effects of M&As and regulate the rights of employees, directors and shareholders in such operations. Remedying the texts of the UAE and Qatar and providing for the rights of employees, directors and shareholders in M&As would lead to mitigate the adverse effects of such operations, as well as create an appropriate legal environment to aid the success of M&As and encourage companies to engage in such operations.

The legislators in Qatar and the UAE should amend article 272 of Qatar Companies Law and article 276 of UAE Companies Law, focusing on M&As between

shareholding companies and other existing companies that have legal personalities. This could be achieved through taking benefit from section 904 of the UK CA 2006 and providing similar texts. These amendments could provide solutions for the types of companies that can enter into M&As, enable companies in such operations to take advantage of the tax exemptions that are provided by the laws and help to determine the legal natures of M&As.

Section 904 of the UK Companies Act and regulation 2 of the UK Cross-Border Merger Act indicate the concepts of mergers and the legal effects of such operations when they provide that a merger takes place when all the transferor's rights, undertakings and liabilities are transferred to the transferee company. However, the laws do not show the type and nature of the legal agreement whereby the transferee company receives all the transferor company's rights and replaces it in all its rights and liabilities. Therefore, it would be useful for the UK legislators to indicate the type of agreement between transferor and transferee companies in M&A cases, e.g. a sale agreement or a partnership agreement. From the researcher's perspective, this would help to define the legal nature of M&As, distinguish between them and provide an understanding of the legal basis for the transfer of rights and obligations between companies involved in M&As.

Section 902[242] of the UK Companies Act and section 2[243] of the Cross-Border Merger Act provide that "the members of the transferor company (or transferor companies), receive shares in the transferee company (or one or more of the transferee companies), with or without any cash payment to members". However, the sections do not indicate the percentage of the amount that must be paid in cash by the transferee company to the shareholders of the transferor company in return for their shares that transferred to the transferee company by the merger, which may lead to confusion between M&As. So, it would be better if the UK legislators added text to sections 902 and 905 of the CA and regulation 2 of the Cross-Border Merger Act determining the amount in cash that the transferee company can pay to the shareholders of the transferor

[242] Section 902 of the UK Companies Act 2006.
[243] Regulation 2 of the UK Cross-Border Merger Act 2007.

company in return for their shares that expired or transferred to the transferee company due to the merger. Adding text to determine the amount to be paid by the transferee companies to the shareholders of the transferor companies would prevent confusion between M&As and make it easier to identify their legal natures and the legal implications of each of them; thus making it easier to identify the legal basis for transferring the rights and obligation of employees, directors and shareholders in merger cases.

CHAPTER TWO: THE LEGAL BASIS FOR TRANSFERRING RIGHTS AND OBLIGATIONS BETWEEN COMPANIES INVOLVED IN M&As

2.1 Overview

According to the UK legislation[244] and the UAE and Qatar laws[245]M&As do not lead to the severing of employees' and directors' contracts or the cancellation of shareholders' rights in the companies involved: these contracts and all the rights that are consequent upon them are transferred from the transferor company to the transferee company by force of law.[246] This means that employees and directors therefore have the legal right to transfer their rights and obligations to the transferee company on their existing terms and conditions of employment and with all their existing rights and liabilities intact. Also, the transferor company's shareholders obtain new shares from the transferee company shares in return for their shares that expired due to the merger.

Although the texts of the UK, UAE and Qatar laws relate to the transmission of rights and obligations of employees and shareholders in merger cases, controversy still continues between some the Jurists[247] and the judiciary[248] about the legal basis that the legislation is based upon for the transfer of such rights and obligations between companies involved in M&As and their views are divided into two theories. First, the personal nature theory,[249] which focuses on the relationship between employee and employer; second, the theory of the legal personality of a company[250] and the legal nature

[244] For more seesection 904 of the UK Companies Act 2006 and regulations 2 and 17/b of the UK Cross-Border Merger Act. For more see also regulations 4 and 5 of the UK TUPE Act.
[245] For more see articles 276 of the UAE and 272 of the State of Qatar Companies Laws, furthermore, articles 126 of the UAE and 52 of Qatar Labour Laws.
[245] Sections 904/a and b of the UK Companies Act 2006, and articles 277 of Qatar and 280 of UAE Companies Laws.
[246] Transfer and undertaking guide A Lus Laboris Publication, global Human resources Lawyers [2009], Lewis Silkin "TUPE Employee Protection on Transfers" [2007]
[247] For more see Section 2.3 of this chapter.
[248] For more details, see Egyptian Court of Cassation Judgement 15February 1977, the Technical Office, No. 2.1964, Section 2.3.2 of this chapter.
[249] For meaning, see Section 2.2 of this chapter.
[250] See Section 2.3 of this chapter.

of M&As, which focuses on the legal personality of a company and the extent of its expiry as a result of a merger or acquisition, as well as the relationship between the company and its employees, directors and shareholders.

Due to the importance of identifying the legal basis for transferring the rights and obligations of employees, Boards of Directors and shareholders between companies involved in M&A operations, this chapter explores the legal basis or the legal theory for transferring all rights and obligations between companies involved in M&A operations. Studying such theories helps in establishing the rules applicable to M&A operations and also helps to determine the legal implications of them, particularly concerning the effects on the moral personalities of the transferor and transferee companies and their financial assets. It also helps in understanding a company's relationship with its employees and shareholders before or after the merger, as well as providing knowledge of the proper interpretation of the legal texts regarding M&As.

This chapter is divided into four parts. Part one gives a general overview. Part two classifies the personal nature theory. Part three defines the theory of the legal personality of a company, which is divided into three sections: Section 2.3.1 takes a closer look at the survival of the legal personalities of transferor companies. Section 2.3.2 analyses and explains the expiration of the legal personality of the transferor company. Section 2.3.3 examines and classifies the expiration of the legal personality of the transferor company with the survival of its economic projects. Finally, part four provides a summary and conclusion.

2.2 Personal Nature Theory

This theory is deployed under the English common law[251]that was in force at the beginning of the twentieth century. It is based on the personal nature of the employment contract, and explains that the employee's rights under a contract of employment cannot be assigned to another employer without the employer consent. Accordingly, the employment contract ceases to exist where there is a change in ownership of the employing company as a result of a merger, acquisition or other restructuring.[252]

Also, according to this theory UK common law gave the individual worker the negative freedom not to consent to a change of employer.[253] For this reason, practical employment issues resulting from M&As globally were particularly heightened in the UK and other countries at the beginning of the twentieth century even issued of the modern Labour and Commercial Companies Laws, which gave attention to organising the relationship between companies and their employees, Board of Directors and shareholders.[254]

English courts were in the habit of excluding the recognition of employee rights and interests by the management of a company based on the ultra vires principle, and decided that a change in employer could not result in a burden being placed on an employee without his consent. In the Nokes v Doncaster Amalgamated Collieries

---

[251] Common Law is a system of law in place in England and its colonies. Common Law—law common to all England—was based on the principle that the rulings made by the King's courts were made according to the common custom of the realm, as opposed to decisions made in local and manorial courts which judged by provincial laws and customs. The crafting of English Common Law was begun in the reign of Henry II. For more see R. C. van Caenegem 'The Birth of the English Common Law' Second Ed,(Cambridge Martials, 1997).

[252] Bob Hepple, 'Workers' Rights in Mergers and Takeovers: The EEC Proposals' (1976) 5 Indus Law Journal 202; Ian Smith, Gareth Thomas, *Employment Law* (9th edn, Oxford University Press 2008).

[253] Davies O L, *The Regulation of Takeovers and Mergers*(Sweet & Maxwell 1976); For more see Wanjiru Njoya, *Property in work: the employment relationship in the Anglo-American firm: Studies in modern law and policy* (Ashgate 2007) 66, 67; Isioma Ahiauzu, 'Rights of Employees in Mergers and Acquisitions under the Nigerian Law: A Critical Analysis (2008).

[254] D. Milman, "From Servant to Stakeholder: Protecting the Employee Interest in Company Law" in: Corporate and Commercial Law: Modern Developments. ed. / David Feldman; Frank Meisel. London: (Lloyd's of London Press, 1996) 147, 171.

case[1940] AC 1014,[255] a coal miner was transferred into the employment of the acquiring corporation, on a transfer of assets and liabilities by court order under section 154(1) and (4) of the Companies Act 1929, without his knowledge or consent. The Chancery Court ruled that Mr Nokes would be liable to pay damages to the new business under the Employers and Workmen Act 1875 section 4 if he had a service contract with the company. He denied this but the Divisional Court and the Court of Appeal ordered him to pay damages and costs. However, Mr Nokes refused the judgement and appealed to the House of Lords. The House of Lords held by a majority that Mr Nokes did not have to pay the fee because his employment could not be transferred without his consent. The House of Lords also ruled that the new employer could not sue the employee under the Employers and Workmen Act 1875 for breach of contract because there was no contract in force between them.[256] Lord Atkin, in that case, "declared that any rule of automatic transfer of employment was „tainted with oppression and confiscation" and upheld the principle that „a man is not to be compelled to serve a master".[257]

However, it is important to note that this common law rule was the offspring of an era that generally had very minimal protection for employee rights outside of the general protection of employment law. The rights and interests of employees were seen as not a legitimate concern of company law.[258] The principle that the shareholders were rightfully the "owners" of the company and thus the only group deserving of protection or recognition under company law was the prevalent argument amongst legal theorists. Accordingly, the employees' interest was thus firmly subordinated to the interests of the owners or shareholders of the company.[259] The ruling of Plowman J in the famous case of

---

[255]*Nokes v Doncaster Amalgamated Collieries Ltd* [1940] AC 1014, for more see Norman Selwyn, *Law of Employment'*(14th edn, Oxford University Press 2006) 657, 659.
[256] Donoghue V Doncaster Amalgamated Collieries. Ltd. Nokes V Same [1939] 2 K. B. 578; reversed by the House of Lords on Appeal [1940] A. C. 1014, for more see Wanjiru Njoya, Ibid, 67.
[257] Ibid.
[258]*Hampson v. Price Patent Candle Co.* (1876) 45 LJ Ch.437.
[259] David Milman Servan, *Corporate and Commercial Law: Modern Developments*(Lloyds of London Press Ltd 1996) 147, 149; Also see, Isioma, Ibid, 12; Grantham R P, 'The doctrinal basis of the rights of Company Shareholders'(1998) 554 Company Law Journal 148,149.

Park v Daily News[260] expounded this traditional view by holding that ex gratia payments of company funds by sympathetic managers to redundant employees, without taking account of the interests of shareholders, are an exercise in philanthropy that is illegal, being ultra vires and a breach of the managers' fiduciary duties.[261] So, this theory did not hold any longer in front of the development of new legislation, which recognises that the relationship between the enterprise or institution and its workers is stronger than their relationship with the employer. Therefore, the personal nature theory has been criticised in many ways.[262]

Firstly, the fact that the employee's consent may be required for the transfer of his employment as a result of a take-over or merger transaction creates its own problems. The consent provision is based on the assumption that the employer and their employee have equal bargaining powers. It is obvious that this assumption is idealistic and does not reflect the true position of employees today, especially in many developing countries with high unemployment rates. Giving the employee the right to choose whom they work for is of no benefit to them in such cases, as the employee would be more interested in preserving their employment than in choosing their employer.[263]

Secondly, reliance on the principles of the personal nature theory as the basis for transferring employees' and directors' rights and obligations in M&A cases is not consistent with logic and reality in full acquisitions, where the transferee company, instead of acquiring the undertaking, might have bought the whole of the shares of the transferor company, changed the Board of Directors, adopted new articles, amended the objections and other clauses in the memorandum, changed the nature of the business, increased the capital and, with the consent of the Board of Trade, even have adopted a

[260][1962] Ch. 927. The judgement of Oliver contains an exhaustive review of the decision cited by eve in the Lee, Behrens & Co. case of the cases in which the decision in the Lee, Behrens & Co. case has been followed, in particular Parke v Daily News Ltd [1962] Ch 927, Re W. & M. Roith Ltd [1967] 1 WLR 43 and Ridge Securities Ltd v Inland Revenue Commissioners [1964] 1 WLR 479 and of Re Introductions Ltd.
[261] P L Davies, The Regulation of Takeovers and Mergers, London 1976.
[262] Julie A. Cassidy, *Concise Corporations Law* (Federation Press 2006) 224; Andrew Hicks, S. H. Goo, *Cases and Materials in Company Law* (6thedn Oxford University Press 2008) 329.
[263] For more see Davies, Ibid, 92.

new name, which all lead to significant restructuring taking place, affecting employees' rights but without changing the identity of the employer.[264] With this in mind, "the consent of the worker could be effortlessly bypassed in such a situation".[265]

Thirdly, the rights that were given to workers under English common law were extremely limited. In real terms, the employee may have the right to decide whether or not to accept employment with the transferee or new employer, but this does not give employees the right to object to M&As. Also, it does not suggest that the decision regarding whether or not the company should merge should be given to employees; it does not therefore protect the employee against the adverse consequences of a transaction that has proceeded despite the lack of employee consent. It only gives the employee the liberty to refuse the transferee's offer.[266]Employee's situation vis-à-vis the shareholders in the decision to M&As is for the purpose of highlighting the feeble bargaining and disadvantaged position the employee may be in where M&A is rumoured or occurs unexpectedly.[267]

More importantly, this theory focuses more on the personal relationship between the employees and the employer and neglects the most important aspect: the legal personalities of the companies involved in the transfer of undertakings. This aspect is considered by most modern laws, including the legislations of the UK, the UAE and Qatar, which assess the relationship between companies and stakeholders on the basis of the legal personality of a company. Accordingly, the transferor company expires as a result of the merger, with the transfer of all its rights and obligations.[268]

---

[264] For more see Paul Lynton Davies, *The Regulation of Takeovers andMergers* (London, 1976) 92.
[265] Ibid.
[266] Milman D, *From Servant to Stakeholder: Protecting the Employee Interests in Company Law*in Feldman & Meisel (eds), *Corporate and Commercial Law Modern Developments* (Lloyds of London Press Ltd 1996).
[267] Grantham R B, 'The doctrinal basis of the rights of Company Shareholders' (1998) 57(3) Company Law Journal 148,149.
[268] For more, see section 2.3 of this chapter.

For these reasons, use of this theory was stopped after the enactment of the Transfer of Undertakings (Protection of Employment) Regulations 1981.[269] The fundamental purpose of the TUPE regulations was to bring about a reversal of the common law rule, i.e. to ensure that employees are not prejudiced in any way by the transfer of the business in which they are employed. Instead, the employment contract between the employees and the transferee company remains valid by the same rights and obligations of the contract of employment between the employees and the transferor company that was valid before the merger. It should be noted, however, that the TUPE regulations apply much more broadly. They are not confined to inter business transfers; applying for instance to outsourcing arrangements by local authorities and even to the granting of financial support to charities.[270]

The TUPE regulations were introduced in order to give effect to the Acquired Rights Directive of 1977/ 77/ 187 (the ARD).[271] This has a number of important consequences. The first is that the UK courts are required to interpret the TUPE regulations purposively, i.e. ensure that the purpose of the regulations is achieved, even if this means giving the regulations a meaning other than that suggested by a literal reading of the text. The most famous example of this is the case of Litster v. Forth Dry Dock Engineering Ltd,[272] in which the House of Lords effectively rewrote regulation 5 of the 1981 regulations so as to prevent employers evading the TUPE regulations by dismissing employees a few hours before a transfer.[273]

[269] The law replaced by The Transfer of Undertakings (Protection of Employment) Regulations 2006 which came into force on 6 April 2006 and is intended to implement the amended Acquired Rights Directive (No.2001/23 EC).

[270] For more see Sophie Redmond v. Bartol [1992] IRLR 366. For more seeHazel McLean, 'Protection for Transferred Employees' (1993) 52(2) The Cambridge Law Journal214, 217; Michael Salter Aidan Briggs, ‘An Introduction to TUPE’ [2011] Ely Place Chambers4, 27.

[271] In February 1977, the Council of the European Communities adopted Directive 77/187. 1 The purpose of the directive is to safeguard the rights of employees of businesses that are sold or transferred. The directive seeks to protect employees in three ways. First, it provides for the automatic transfer of the former employer's obligations to the new employer. Secondly, it prohibits the dismissal of employees solely on account of the transfer. Finally, it requires employers to inform and consult with employee representatives regarding the effects of the transfer. 77/187/EEC was subsequently repealed and replaced by Council Directive 2001/23/EC.

[272]Litster v Forth Dry Dock and Engineering Co Ltd [1988] UKHL 10 (16 March 1989) United Kingdom House of Lords Decisions.

[273] Ibid.

Another important consequence is that the UK courts are obliged to follow the interpretations of the Acquired Rights Directive handed down by the ECJ.[274] Furthermore, the public sector has had an important influence in relation to the TUPE regulations. To begin with, TUPE can apply to transfers by a public body, even though they are not, in some senses of the term, a business.[275] Moreover, as a matter of historical fact, the tendency beginning in the 1980s for local authorities to contract out services has been a regular context for the operation of the TUPE regulations. Finally, whilst the private sector has tended to regard the TUPE regulations as something to be avoided if possible, public authorities have tended to be enthusiastic supporters, especially after the Labour government came into power in 1997.[276]

2.3 Theory of the Legal Personality of a Company

Company legal personality refers to the fact that, as far as the law is concerned, a firm really exists. This means that a firm can sue and be sued in its own name, hold its own property and – crucially – be liable for its own debts. It is this concept that allows limited liability for shareholders as the debts belong to the legal entity of the firm and not to the shareholders in that firm. This theory focuses on the legal personalities of companies[277] involved in M&As and the extent of the expiry of the legal personality of the transferor company and the transfer of all its rights and responsibilities – including the rights of employees, the Board of Directors and shareholders – to the transferee company as a result of the merger or acquisition. There is almost unanimous agreement among Jurists

[274] (ECJ) is the European Court of Justice.

[275] Hazel McLean 'Protection for Transferred Employees' Ibid, 214, 217.

[276] Michael Salter Aidan Briggs "An Introduction to TUPE, Ibid, 4, 27.

[277] Corporate legal personality arose from the activities of organisations, such as religious orders and local authorities, which were granted rights by the government to hold property, sue and be sued in their own right and not to have to rely on the rights of the members behind the organisation. Over time the concept began to be applied to commercial ventures with a public interest element, such as rail building ventures and colonial trading businesses. However, modern company law only began in the mid-nineteenth century when a series of Companies acts were passed which allowed ordinary individuals to form registered companies with limited liability. The way in which corporate personality and limited liability link together is best expressed by examining the key cases.

and the judiciary[278]that the legal basis for the transfer of rights and obligations between transferor and transferee companies is due to the legal personalities of companies and the nature of M&As. However, proponents of this view disagree about the expiry of the legal personality of the transferor company as a result of a merger or acquisition. Some of the Jurists[279] believe that M&As do not lead to the expiry of the legal personality of the transferor company; rather, it remains in existence and continues in the context of the legal personality of the transferee company. On the other hand, others of the Jurists and the judiciary[280] believe that a merger leads to the expiry of the transferor company and the demise of its moral personality, as well as an increase in the capital of the transferee company in the share of all kinds of assets of the transferor company. Furthermore, M&As affect the Memorandum of Association and the company system in order to secure the entry of new partners or shareholders. Notably, the effects of the merger are not limited to an increase in the capital of the transferee company; the transferee company not only receives the assets of the transferor company but also receives the venture that the company sought to achieve. Also, it receives all of the rights of the transferor company in the form of a sum of assets covered – including the positive[281] and negative elements[282] – and takes the transferor company's place in terms of rights and

---

[278] Mohamed Abdel-Hamid, *The Legal System for the Share of Labor in Commercial Companies* (Arab Renaissance House 1990); Mahmoud Mukhtar Prairie, *Moral Personality of commercial Company - Terms of Acquisition and the Borders of Protest by it- A comparative study between the Egyptian and French and English Law* (2nd edn, Cairo 2002) 75, 86; Mohamed Abdel-Hamid, *The General Theory of Commercial Companies, People, Companies* (Al-naser Library 1988) 119 Arabic Source, 141; Mohsin Shafiq, *Mediator in the Commercial Law* (3rd edn, Egyptian Renaissance Library 1976) 790, 337.

[279] Yvonne Cheminade, *Legal Nature of the merger of the companies* (Trim com, 1970) 22; Champoud C, *Trading Companies, Societies in general* (Rev trim com 1967); Ahmed Mohamed Mehrez, *Merger Companies from the Legal side; A comparative Study* (Dar Al-nahdah Alarabia 1985). Arabic Source

[280] For the proponents of this opinion, see Section 2.3.2 of this chapter with its footnote

[281] The positive elements of the company or companies merged means all the elements which could lead to increase property and profits of the company and its shareholders, corporeal or incorporeal, movable or unmovable, for instance, the profits made by companies during their work, which has not been distributed and entered into merger agreement, deals and projects that concluded with others during its lifetime, its customers, , business reputation, and products, markets and shops with commercial buildings that were practiced its work in, experiences and skills gained by the company and its workers and management prior to the merger and company's right to claim rights and litigation on others about the merged company rights on other before merger, etc.

[282] Negative elements of the company are intended to elements that may affect the entity companies and their profits after the merger, such as the loss that may occur to the merged or new company due to non-completed projects which contracted by the merged companies- whether due to compensation by the non-implementation at the time agreed upon between the merged company and other, or due to the increase in commodity prices and wages needed to implementation these projects- as well as the loss which might cause merged company due to not to sell some product of its products, branches, buildings and shops of the

obligations. Accordingly, the transferee company becomes the claimant and respondent for the two companies in all rights and obligations. Due to the importance of the opinions on this subject, they will be reviewed in the following two sections.

2.3.1 Continuation of the Transferor Company's Legal Personality

The concept of the survival of the legal personality of a transferor company means that the merger does not lead to the expiry of the transferor company; rather it remains in existence and continues in the context of the legal personality of the transferee company. The proponents[283] of this concept explain that if the transferor company loses its moral personality through a merger, the company does not dissolve or expire. Rather, its presence continues and remains in terms of conducting its activities within the framework of the moral personality of the transferee company. Importantly, its lack of moral personality does not detract from its presence because in the moment that it loses its moral personality, it adopts the position of the moral personality of the transferee company. Proponents of this view justify this opinion in the arguments posed below:

Firstly, a company's expiration assumes liquidation because dissolving needs to be followed by liquidation. In accordance with this, the company should collect its rights, pay off its debts and distribute surplus finances between the partners. If the merger does not include the liquidation of the transferor company, the transmission of its financial assets to the transferee company means that the transferor company cannot be described as expiring.[284]

Secondly, the transferor company retains all the main pillars of the existence of the company following the merger, which consequent excluding the idea of the expiration

---

company rents that have not paid, the rights of workers in compensation and work, the lawsuit, which may bump up by some of the shareholders and creditors on the company to demand the right or raise damage, and bear and pay compensation for damage caused by the merged company during its work and has entered into merger agreement.

[283] Ahmed Mohamed Mehrez, *Mergers of the Legal Side, Comparative Study* (Arab Renaissance Publishing House1985) 57, 96; Yvonne Cheminade, *Nature Juridique De la Fusion des Societies Anonyms* (*Rev,* 1970). For more see Khalid Al-Azmi, Ibid, 187.

[284] Cheminade (n 256)256; Al-azmi (n 19) 187.

of the company. Furthermore, proponents of this opinion[285] state that the transferor company will not lose any pillar of those elements required by law for the existence of the company, and if the merger leads to various modifications in the system of the transferor company – which may lead to changes in the name or form or purpose of the transferor company –however, these amendments are permitted by law under certain conditions, and therefore do not result from the expiration of the transferor company.

Thirdly, the proponents[286] of this theory support their view by stating that if we assume expiration of the moral personality of the transferor company by merger, then the moral personality is not one of the pillars of the company, so loss of the transferor company its moral personality – as tracers of the merger – does not detract from its existence as a company.[287] Markedly, the proponents of this opinion consider that the importance of the moral personality of the company is limited to two basic effects: it is the embodiment of the company's activities in relation to another; and the separation the company's financial disclosure from the disclosure of each partner from partners within it. Notably, however, it is neither of these two effects, or both, that arises from the moral personality to the extent considered to be a pillar forming the company.[288] The advocates of this opinion confirm their beliefs by stating that there are companies that do not have moral personality, such as the company under incorporation, and particular partnership company; however, the law recognises their existence regardless.[289]

Most importantly, the proponents[290] of this concept explain the reason for the survival of the merged company without expiration: they state that although a merged company loses its moral personality as a result of a merger from the date that the merger contract is recorded in the Commercial Register (as is the case in a company's

[285] Cheminade(n 256); Al-azmi (n 19) 189; Ahmed Mohamed Mehrez (n 256) 47, 48.
[286] Cheminade (n 256) 20, 21; Ahmed Mohamed Mehrez (n 256) 46, 47.
[287] Ibid.
[288] For more see Ahmed Mohamed Mehrez (n 256) 46, 64, 74; Cheminade (n 256) 20, 21, for more see also Al-azmi,(n 19) 190.
[289] For more See Alazmi (n 19)190.
[290] From the proponents of this concept is section 152/2 of the Egyptian Commercial Companies Law No 159 of 1981.This situation has been inferred by the text of Egyptian Companies Law due to its similarity to UAE and Qatar Companies Laws and also because most of the texts of UAE and Qatar Companies Laws are taken from Egyptian Companies Law.

liquidation), the effect of the loss of the company its moral personality does not appear - only in the face of others. As for the relationship between the transferor company and the transferee company, this loss does not have an impact because this relationship is governed by the merger contract, which represents the law of the parties. The transferor company retains its moral personality in relation to the transferee company within the limits of the rights regulating the merger contract.

In addition, the advocates of this theory[291] state that the reason for the lack of expiration of the transferor company's legal personality is that the merger is a change in the legal form of the transferor company. According to this idea, despite the difference between the merger and the change of the legal form of the company in some ways, however, the legal nature of the two operations is one. The difference between them is limited in that the merger requires the presence of two existing companies, whilst changing the legal form is achieved through one company. Markedly, holders of this opinion add that, despite this difference, it must consider the merger and change of the legal form from the angle of modification that occurs within the company.[292] Despite the result of each of the two processes amending the company system in terms of the company form, its name and style of its work this amendment does not affect the company entity or its existence. The proponents of this opinion[293] continue to deny the existence of differences between a merger and changing the legal form of the company, stating that we should not interpret the term as changing the legal form of the company in the narrow sense contained within company law;[294] rather, this term must be interpreted in a broad sense so as to include all the changes and developments occurring in the entity of the merged company and merging company imposed by requirements and the necessities of economic development.[295]

Despite the arguments given by the proponents of this opinion to support their position, it is contrary to the facts and subject to criticism in many ways. Firstly, this

[291] Cheminade (n 256) 42, 43, for more see Al-azmi (n 19) 198.
[292] Ibid.
[293] Cheminade (n 256) 43, and Ahmed Mohamed Mehrez (n 256) 64, 74.
[294] For Company definition see articles 2 of the State of Qatar and 4 of UAE Commercial Companies Laws.
[295] See Khalid Al-Azmi (n 19) 199; Cheminade (n 256) 43.

theory contradicts the facts presented in various legal articles, such as 283/6 of the State of Qatar and 281/4 of the UAE Companies Laws, both of which consider that mergers cause the expiry of the transferor company. Thus, it is not valid to say that the merger does not result in the expiry of the transferor company; otherwise, these texts could be considered loquacious.[296] Furthermore, such a statement violates the concept of mergers and their legal nature, which considers that a merger is a contract wherein all the rights and obligations of a merged company are transferred to a merging company through the force of law, following the completion of the merger operation and recording of the new company in the Commercial Register. Therefore, this argument contradicts legal texts and the nature of mergers.

Secondly, to believe that the legal personality of the transferor company survives without expiry in merger cases[297]contradicts the provisions of UK, State of Qatar and UAE laws, which explicitly provide that "merger take place between two or more "existing" companies",[298]accordingly, mergers cause the transferor company to transfer all of its rights and obligations to the transferee company",[299] "the transferor company is dissolved without going into liquidation, and on its dissolution transfers all its assets and liabilities to the transferee company".[300] In addition, the pillars of the transferor company no longer have an independent existence for several reasons. Firstly, there is no longer the existence of a group of partners in the transferor company, simply because they become partners in the transferee company. Secondly, there is no longer the independent existence of the shares or quotas provided by the partners to the transferor company where, following the merger, such quotas or shares were found to be mixed with the financial disclosure of the transferee company (in the case of merger by absorption) or

[296] For more, see articles 283/6 of the State of Qatar and 281/4 of UAE Companies Laws, which provide for "considering the reasons of dissolution for each kind of companies stipulated in this chapter, the company will be dissolved for: Merger of the company in other company".
[297] For more, refer to Section 2.3.1 of this chapter.
[298] See section 904 of the UK Companies Act 2006; the existing companies mean the companies involved in M&As must to enjoy by the full legal personality, and its legal personality remains without expiry or liquidation before M&As.
[299] See articles 277 of the State of Qatar and 280 of the UAE Commercial Companies Laws, also sections 904 of the UK Companies Act and 2/2/3 of the UK Cross-Border Merger Act. Also, this is contrary with the texts of articles 283 and 281 of the State of Qatar and UAE Companies Laws mentioned, which consider a merger as one of the reasons for the expiry of companies.
[300] See sections 2/2/e and 2/3/d of the UK Cross-Border Merger Act 2007.

with the financial disclosures of the new company resulting from merger (in the case of merger through the formation of a new company).[301] Thirdly, the shareholders of the transferor company (with regards to their approval on merger decisions) intend to achieve profit or to subscribe to sharing the profits or potential losses through the merging or formation of a new company. Finally, the intentions for participation are no longer the same in terms of the partners of the transferor company, although the scope of cooperation has expanded. This includes the partners of the transferor company and the partners of the transferee company, especially if the form of the transferor company is different from the form of the transferee or new company.[302]

Thirdly, the measurement of merger cases with liquidation companies' cases – which the owners of this opinion believe – is a measure with a difference owing to differences in the results which merger and liquidation aim at. When the company expires for any reason other than merger, the intervention phase of liquidation is established in order to reach the apportionment of its assets after the payment of its debts, so the company subsequently loses its moral personality at the end of liquidation. Markedly, this means the expiry of the economic project of the company that has elapsed by liquidation. While in merger cases, the transferor company aims to continue its economic project and is not subject to liquidation; rather, its financial assets are transferred through a comprehensive transfer to the transferee or new company, and the legal personality of the transferor company only expires from the date that the merger is completed and the transferee or new company registered in the Commercial Register.[303]

Finally, the measurement of merger with change in the legal forms of companies (on the basis that they have the same legal nature) is incompatible with many of the facts. Mergers essentially occur between at least two companies, whilst changing the legal form of a company involves a single company. In addition, a merger leads to the expiry of the legal personality of the merged firm (which is acknowledged by the proponents of this

[301] For more see Khalid Al-Azmi (n 19)189; Ahmed Mohamed Mehrez (n 256) 48.
[302] Khalid Al-azmi (n 19) 190, translated by the researcher (Ameen Al-hemyari) School of Law, Brunel Unversity, West London, United Kingdom.
[303] Ahmed Mohamed Mehrez (n 256) 50.

view) and the transfer of its financial assets to the transferee or new company; changing the legal form of a company does not lead to the expiry of the moral personality of the company.[304] Furthermore, the financial assets of a company that changes its legal form are not transferred to another company; rather, the change of the legal form is merely an amendment to the company system. Furthermore, mergers do not result in a change to the legal form of the merged company: this only happens in the case of the merger of a further company or with another company from the same legal form as the merged company.[305]

On the other hand, applying the idea of changing the legal form of a company through a merger leads to the violation of laws in the case of a merger by the formation a new company. The consequence of a merger by the formation of a new company is the expiry of the legal personality of the transferor and transferee companies, the demise of their moral personalities and the establishment of a new company with a new legal moral personality. But a change of legal form of company does not lead to the expiry of the company or its moral personality does not expire, which therefore does not lead to the creation of a new moral personality like in a merger by the formation of a new company.[306]

From the discussion above, we can conclude that proponents of this theory believe that a merger does not lead to the expiration of the transferor company or its legal personality; rather, it remains in existence and continues in the context of the legal personality of the transferee company after the merger. This is, however, contrary to reality because the supporters of this view (the concept of the survival of the moral personality of the transferor company after the merger) are mixing between the concept of a company and a company's venture. The fact is that the loss of the transferor company's moral personality via the merger directly leads to the expiry of the company. Accordingly, the transferor company does not have a legal existence afterwards; all its rights and obligations are transferred to the transferee company, which replaces it in all

[304] Al-Azmi, Ibid, 199.
[305] Rupert G 'Discusses commercial law' 14th Ed, Roblot R, t. I, No. 1591,(Paris,1991), 1173.
[306] Rupert G 'Discusses, Ibid, 1173.

its rights and liabilities, becomes the party who takes care of and looks after the interests of the company, and acts as the claimant and respondent in all the rights and obligations of both the transferor and transferee companies.

The company's venture is part of the economic entity of the company that it was established to achieve, which does not expire by M&As. Rather, it remains and is continuous within the framework of the legal personality of the transferee company. In accordance with the basis of this, all the transferor company's rights and obligations (including the contracts and rights of employees, directors and shareholders) are transferred to the transferee company. Confusion between the concept of the company and its economic venture is contrary to this fact and the theory of the legal personality of a company regarding transferring rights and obligations between companies involved in M&As.

The belief that the legal personality of the transferor company survives and the company continues in its work within the scope of the legal personality of the transferee company also means that there are two legal personalities: - the legal personality of the transferor company and the legal personality of the transferee company - for a single company (the transferee company or the new company resulting from the merger), which leads to an overlap with respect to the acquisition of the rights and obligations of the two companies before the merger by the transferee company after the merger. Therefore, this concept cannot be the legal basis for the transfer of rights and obligations of employees, directors and shareholders between companies involved in mergers or acquisitions.

2.3.2 Expiration of the Legal Personality of the Transferor Company

The advocates[307]of this opinion believe that the legal basis for the transfer of all of the rights and liabilities between companies involved in the merger are due to the premature expiry of the transferor company and the demise of its moral personality, as well as a comprehensive transmission of its financial assets to the transferee company, which entails an increase in the capital of the transferee or new company; its capital comprises the financial status of the transferor companies. However, supporters of this theory have differing opinions concerning the legal basis for the comprehensive transmission of the financial disclosure of the transferor company to the transferee or new company, the Egyptian Court of Cassation in one of its Judgements[308] stating that the merger is a sale and Mohamed Azmi (1998)[309] believing that it is a transfer of rights and debts; Rupert G (1991)[310]and others[311] suggest that it is a comprehensive transmission of the financial disclosure without liquidation. Markedly, Mustafa Kamal Taha (2000)[312] and others[313] state that it is the continuation of the 'company's economic venture. Due to the importance of these opinions in determining the legal nature of M&As, access to the legal

---

[307] Mohamed Abdel-Hamid, *The General Theory of Commercial Companies, People, Companies* (Al-naser Library 1988) 119, 141; Mohsin Shafiq, *Mediator in the Commercial Law* (3rd edn, Egyptian Renaissance Library 1976) 790, 337; Mohamed Abdel-Hamid, *The Legal System for the Share of Labor in Commercial Companies* (Arab Renaissance House 1990); Mahmoud Mukhtar Prairie, *Moral Personality of commercial Company - Terms of Acquisition and the Borders of Protest by it-* A *comparative study between the Egyptian and French and English Law* (2nd edn, Cairo 2002) 75.86; Mustafa Kamal Taha, *Commercial Companies* (House of University Publications 2000) 375, 379; Jacob Sarkhou, 'The Legal Framework for Integration between the Kuwaiti Banks, A comparative Study', (1993) research published in the Journal of Law, Academic Publication Council in the Kuwait University, 51; Tamah Shammari 'Mediator in the study of Kuwaiti Companies Law and its Amendments', A comparative study – 3th Ed, without the publisher 1999,171; Ali Hassan Younis, *Commercial Companies* (Dar Arab Thought 1991) 94,146; Abu-Zeid Radwan, *Joint Stock Companies in Accordance to the Provisions of Law No. 159 of 1981 and the Public Sector* (Dar alfikr Al-Arab 1983)142. Arabic Source This theory is taken also by the Arab judiciary representative by the Judgements of the Egyptian judiciary, for more see the Judgement of Egyptian Court of Cassation No. May 12, 1986, Veto judgement, 3 March, 1973, Journal of law, No, V and VI to the years of 57.1977, 56, and Appeal No, 1687 to the year 50 BC, the session 03/05/1985.

[308] Egyptian Court of Cassation Judgement February 15, 1977, the Technical Office, No. 2.1964, for more see the full case in the footnote on the next page.

[309] Mohamed Medhat Azmi, *A relationship of the project with suppliers and customers* (Facility knowledge 1998) 299.

[310] Rupert G, *Trade Law*(14th edn, Paris 1991) 1173.

[311] Abu Zaid Radwan (n 281) 142; Ali Younis (n 281); Mohammed Abdul Hameed (n 281) 141, 149.

[312] Mustafa Kamal Taha, *'Commercial Companies'* (Dar university publications2000), 397.

[313] Hussein al-Masri (n 35) 127 and Jacob Sarkhou (n 42) 55.

basis for the transfer of employees', the management's and shareholders' rights and the obligations between companies involved in M&As, the opinions will be explored in the following paragraphs.

Firstly, merger includes the sale of the transferor company to the transferee company. Although the prevailing belief in jurisprudence and the judiciary is to consider merger to be a comprehensive transmission of the rights and obligations of the transferor company to the transferee company, the Egyptian Court of Cassation, in one of its judgements, nevertheless still considers merger as a sale contract. The Court – in its judgement dated February 15/1977[314] – upheld the Court of Appeal in describing a merger contract in which, according to the judgement, the Eastern Company for Cinema merged with the General Company for Cinema as a contract of sale on the basis that the merger included the transfer of the transferor company's assets and liabilities to the transferee company. However, the explanation of the court that the transfer of comprehensive financial disclosure of the transferor company to the transferee or new company – on the basis that the merger is a contract of sale – is contrary to the fact that selling is the transfer of ownership (or other financial rights) for a price in cash. The sales contract also requires the delivery of the thing sold to the buyer and obtain of the price; this does not take place in merger cases. The disadvantage of this interpretation seems clearer in the case of a merger by the formation of a new company, which leads to the demise of the moral personalities of both the transferor and transferee companies and the subsequent emergence of a new moral personality for the new company resulting from the merger. Here, a question arises: where is the buyer who bought the assets of the companies?[315] The difference between a merger and a sale also seems apparent in the return received by the shareholders of the transferor companies in exchange for their shares. Whilst the seller gets the share price in cash and the legal relationship between the seller and his shares is cut off, the shareholders of the transferor company get new shares

[314] Egyptian Court of Cassation Judgement February 15, 1977, the Technical Office, No. 2.1964, This judgements has been used in this situation due to similarity of the texts of Egyptian Commercial Companies Law with the texts of the State of Qatar and UAE Companies Laws, which often take its texts from the texts of Egyptian laws.
[315] Jacob Sarkhou (n 42) 35.

instead of their old shares that were cancelled as a result of the merger.[316] The result is that the shareholders of the transferor company become shareholders in full rights in the transferee or new company.

Therefore, the interpretation of the expiration of the transferor company and the transfer of its rights to the transferee company on the basic measure of the merger as a contract of sale neither complies with the nature and theory of merger, nor with the legal provisions that consider merger as one of the reasons for the expiry of the commercial company merged and the transfer of its rights to the new company as a result of the merger.[317]

Secondly, according to Mohamed Medhat Azmy (1998),[318] the comprehensive transition of the financial disclosure of the transferor firm to the transferee company is the transference of rights and debts together. Markedly, the transferor company is always the assignor (sender), whilst the transferee or new company is the receiver with regard to that which represents the assets of the transferor company, or the transferee upon in relation to liabilities of the transferor company's. The disadvantage of this interpretation – stating that the comprehensive transition of the financial disclosure of the transferor company to the transferee company is the transference of rights and debts together – seems clear in that the terms of the force of transference of rights and the conditions forcing debt transference are not consistent with procedures to be followed in the emergence or formation of merger, and conditions of into force. Notably, according to article 338 of Qatar and article 338/1 of UAE Civil Laws,[319] which stipulate that a debt transfer is not made unless it is accepted by the creditor, the rights of the transferor company's creditors are limited to the right to object to the merger. However, this objection does not mean that the consent of the creditors of the transferor company is a

[316] For more see the Differences between M&A according to the merger and acquisition theory in the Chapter One of this thesis.
[317] See articles 281 and 280 of the UAE and 283/6 and 277 of the State of Qatar Commercial Companies Laws and also regulations 2/2 and 3 of the UK Cross-Border Merger Act 2007.
[318] Mohamed Medhat Azmy (n 19) 299.
[319] See article 338/1 of the UAE Civil Laws No 22 of 2004 which provides for that by saying 'Transfer shall not be valid in the right of the creditor unless he approved'. Also see article 338 of Qatar Civil Law No 22 of 2004.

prerequisite or a pillar from pillars to complete the merger agreement. Essentially, according to article 280 of UAE Companies Law, a merger (after taking place) only stops if it is opposed by the creditors of the transferor company during the specified period. Moreover, the impact of this objection to stop the merger is accepting the demise: either by waiver of the creditor concerning his opposition, or as otherwise ruled to reject the opposition by a final judgement or the fulfilment of the debt by the company if the debts are urgent, or through providing sufficient guarantees to fulfil it if the debt is deferred.

Thirdly, a merger is a comprehensive transmission of the transferor company's financial disclosure without liquidation. Abu Zeid Radwan (1978),[320] Hassan Younis (1991),[321] Hossam El-Din Alassar (1987)[322] and others[323] believe that transferring all the rights and obligations between companies involved in mergers refers to the expiration of the transferor company with the comprehensive transfer of its assets to the transferee or new company without being subject to traditional liquidation, as the liquidation of the transferor company is not followed by the division of its assets. Instead, the liquidation is limited to assessment of the assets and liabilities of the transferor company to find out its financial position. Furthermore, the transferor company's financial disclosure – including its assets and liabilities – is transferred to the transferee or new company; thus, according to this view, the expiration of the transferor company is expiration or dissolution without liquidation. This opinion was supported by the Arab judiciary in a judgement of the Egyptian Court of Cassation,[324] which decided that liquidation following a transferor company's dissolution due to a merger is a theoretical liquidation and not a real liquidation, as its aim is limited to determining the financial position of the company.[325]

---

[320] Abu Zeid Radwan, *The Commercial Companies in the Kuwait Law* (Dar Alfikr Alarabi 1978) 143, 142. Arabic Source

[321] Ali Hassan Younis, *Commercial Companies* (Dar Al-Fikr Al-arabi 1991) 94, 146. Arabic Source

[322] Hossam El-Din Alassar (n 245) 61.

[323] Samiha Agayloby,*Commercial Companies-the General Theory for People Companies* (3rd edn Dar Alnahdah Alarabia, 1992) 61, 137 Arabic Source; Mohamed Abdel-Hamid,*The General Theory of Commercial Companies* (Alnaser Library 1988) 119, 141 Arabic Source; Khalid Alazmi (n 19) 207.

[324] This judgement has been used in this situation due to the similarity of the texts of Egyptian Commercial Companies Law with the texts of the State of Qatar and UAE Companies Laws, which often take their texts from the texts of Egyptian laws.

[325] For more see the Judgement of the Egyptian Court of Cassation N 363, year 52, meeting 12/ 05/ 1986.

The fact is that to say that the expiration of the transferor company will be accompanied by a conventional liquidation of the transferor company leads to a result inconsistent with the nature of the merger and its legal effects: a merger leads to the transfer of the comprehensive financial disclosure of the transferor company with its commercial ventures to the transferee or new company without liquidation.

2.3.3 Expiration of the Transferor Company's Legal Personality without Liquidation

According to regulation 2[326] of the UK Cross-Border Merger Act, paragraph 8/5[327] of the UK TUPE Act, Hosni Al-msry (1986),[328] Husam al-Saghir (1987),[329] Mustafa Kamal Taha (2000)[330] and others,[331]the legal basis for the transfer of all rights and liabilities between companies involved in mergers refers to the expiration of the legal personalities of the transferor companies without liquidation, with the continuation of their economic ventures in the scope of the transferee company after the merger. Accordingly, a merger leads to the premature expiry of the transferor company and the demise of its moral personality with the continuation and transfer of its commercial ventures, as well as a comprehensive transmission of its financial assets to the transferee or new company,

[326] Which provides for "every transferor company is dissolved without going into liquidation, and on its dissolution transfers all its assets and liabilities to the transferee company"

[327] Which provides for "regulations 4 and 7 of the law do not apply to any relevant transfer where the transferor is the subject of bankruptcy proceedings or any analogous insolvency proceedings which have been instituted with a view to the liquidation of the assets of the transferor and are under the supervision of an insolvency practitioner".

[328] Hosni Al-masry, *Mergers and Division of the Companies* (First edn, without publishing 1986) 127.

[329] Husam al-Saghir,Ibid, 67.

[330] Mustafa Kamal Taha (n 286) 327.

[331] Mohamed Abdel-Hamid, *The Legal System for the Share of Labor in Commercial Companies* (Arab Renaissance House 1990); Mahmoud Mukhtar Prairie, *Moral Personality of commercial Company - Terms of Acquisition and the Borders of Protest by it- A comparative study between the Egyptian and French and English Law* (2nd edn, Cairo 2002) 75,86; Mohamed Abdel-Hamid, *The General Theory of Commercial Companies,- People, Companies* (Al-naser Library 1988) 119, 141; Mohsin Shafiq,*Mediator in the Commercial Law* (Part I 3rd edn, Egyptian Renaissance Library 1976) 790, 337; Jacob Sarkhou,'The Legal Framework for Integration between the Kuwaiti Banks, a comparative Study'(1993) 17 research published in the Journal of Law, Academic Publication Council in the Kuwait University51; Tamah Shammari 'Mediator in the study of Kuwaiti Companies Law and its amendments', A comparative study - the third Ed, (without the publisher 1999),171, Ali Hassan Younis, *Commercial Companies*(Dar Arab Thought, 1991) 94, 146 Arabic Source. This theory adopted also by the Arab judiciary represented by Judgement of Egyptian Court of Cassation No. May 12, 1986, Veto judgement, 3 March, 1973, Journal of law, No. V and VI to the years of 57.1977, 56, and Appeal No. 1687 to the year 50 BC, the session 03/05/1985.

which receives all the rights, assets and obligations of the transferor company and becomes the legal representative, claimant and defendant in all the rights and liabilities of both the companies.

Mustafa Kamal Taha (2000),[332] Hosni Al-msri (1986),[333]Hassan Younis (1991)[334] and Hossam El-Din Alassar (1987)[335] support the theory of the expiration of the legal personality of a company with the continuation of its venture in a merger or acquisition, serving as the legal basis for transferring the rights and obligations of employees, directors and shareholders between the companies involved by comparing the concept of the company and its economic venture.[336] Accordingly, the economic venture is an economic entity for production that is based on a set of physical elements and human elements interacting to achieve a particular purpose which the owners of the venture seek to achieve.[337]The material elements of the venture are represented in the physical and moral funds for venture. But the human elements are represented in the minds that create and administer the venture, as well as in the labour running it.[338] In contrast to this, the commercial company is defined as a contract by which two or more natural or legal persons undertake sharing a venture which aims to make profit by submitting a share of cash or service and sharing in the profit or loss resulting from the venture.[339]

From these definitions, the relationship between a company and its venture is clear: a company is necessarily based on a specific economic venture. In spite of this relationship, however, there should not be confusion between the company and the economic venture: the company is a legal building for partners themselves with the contract as its basis. Therefore, it organises the shareholders who form it. Markedly,

---

[332] Mustafa Kamal Taha, *Commercial Companies* (House of university publications2000) 375, 379.
[333] Hosni Al-masri, Ibid, item 76, 127.
[334] Ali Hassan Younis, *Commercial Companies* (Dar Al-Fikr Al-arabi 1991) Arabic Source.
[335] Hossam El-Din Alassar, Ibid, 61.
[336] This opinion was supported by the Arab judiciary in the Judgement of the Egyptian Court of Cassation, which decided that liquidation following the merged company's dissolution due to the merger is theoretical liquidation and not a real liquidation, with its aim limited to determining the financial position of the company.
[337] Ali Hassan Younis, *Commercial Shop* (House of the Arab Thought 1963)55.
[338] Mohsin Shafiq,*The Project with Multimedia Nationalities* (Cairo University Press 1978) 15, 22.
[339] Article 2 of the State of Qatar Commercial Companies Law

aventure is nothing more than an economic and technical means that is used by the company to achieve its purpose.[340] In addition, a company enjoys a moral personality but venture does not: a company is the legal embodiment of venture because a venture is an economic idea whilst a company is a legal idea.[341]The venture is a socio-economic cell comprising three elements – labour, capital and management – and an economic object is larger than the company, although the company remains the legal object that embodies the venture.[342]

Accordingly, it is obvious that the usefulness of the merger cannot be achieved unless the transferee or new company receives the financial rights of the transferor company – including assets and liabilities. As a result, there is a necessary continuation of the human elements who used the exploitation of the assets of the transferor company including all who manage the venture or the workers who were operating it. Also usefulness from the merger is not achieved if the transferor company shareholders do not get new shares from transferee or new company shares.

This result explains and supports the legal personality theory of a company. Accordingly a merger leads to dissolve the transferor company without it going into liquidation or the demise of its moral personality. Its commercial venture survives and is transferred to the transferee company as a set of assets, which entails an increase in the capital of the transferee company: its capital comprises its financial assets and the financial status of the transferor company.[343] Accordingly, a merger affects the statute of the transferee company in order to secure the entry of the partners or shareholders of the transferor company. Hence, the transferee company issues new shares to the shareholders of the transferor company in return for the shares they owned in the transferor company that expired due to the merger. The legal effects of a merger are not limited to an increase in the capital of the transferee company: the transferee company not only receives the

[340] Al-Shammari (n 281) 15.
[341] Mourad Fahim,'The Principle of Workers Participation in Comparative Law and Egyptian Law'(PhD Thesis, University of Alexandria 1996); Lambert-faivere, 'The Enterprise and its legal forms' (1968) 947.
[342] Mourad Mourad Fahim ibid 315.
[343] For more information, see regulation 2 of the Cross-Border Merger Act 2007, which provides that "The consequences of a cross-border merger are that— the assets and liabilities of the transferor companies are transferred to the transferee company".

assets of the transferor company but also receives the venture that the company sought to achieve. Also, it receives all of the rights of the transferor company in the form of assets covered - including the positive and negative elements - and takes their place in terms of rights and obligations. Accordingly, all the rights and obligations of the transferor company - including the rights and liabilities of the employees, directors and shareholders - are transferred to the transferee company, which becomes the legal representative for the stakeholders of the two companies and the complainant and defendant in the rights and liabilities of the transferor and transferee companies.

The legislations of the UK, the UAE and Qatar uphold this theory and the economic reality desire in maintaining the existence of economic ventures and encouraging their continuation when they expressly provide for the "comprehensive transfer of the financial disclosure of the transferor company to the transferee or new company",[344]with continue of the transferor company ventures in its physical and human elements. Also, the legislators of the UK, Qatar and the UAE impose the continuation of labour contracts with the employees of a venture in the case of a change in its owner when they provide for "The service contract shall not terminate in case of merger of the enterprise with another enterprise or transfer of its ownership or the right in its management to a person other than the employer for any reason. The successor shall be jointly liable with the former employer for the payment of the workers entitlements accruing from the latter."[345] Accordingly, the legislators of UK, UAE and Qatar made a link between the employees and the venture being conducted as part of an investigation of the stability of the employment relationship – regardless of who is the venture owner – which means the continuation of employees and directors contracts despite a change of employer.

---

[344] See sections 2 of the UK Cross-Border Merger Act 2007, 904 of the UK Companies Act 2006 and 280 of the UAE and 277 of Qatar Companies Laws, which provide that a "Merger take place between two or more existing companies" every transferor company is dissolved without going into liquidation, and on its dissolution transfers all its assets and liabilities to a transferee company formed for the purposes of, or in connection with, the operation".
[345] See articles 126 of the UAE and 52 of the State of Qatar Labour Laws.Also see sections 4, 5 and 7 of the UK TUPE Act 2006.

Accordingly, the personal nature theory that was applied under English common law is not realistic and is not commensurate with the legal relationship between the company and its employees, directors and shareholders, or with the legal nature of M&As or the effects that result from such operations. Also, this theory is not commensurate with the texts of new laws, which provide for all the rights and obligations of the transferor company to be transferred to the transferee or new company. This legal nature and the legal effects can be seen in the expiry of the transferor company and the demise of its moral personality, while its trade venture survives and is transferred to the transferee company, which receives all the assets of the transferor company and takes its place in terms of its rights and obligations.

Consequently, the concept that the shareholders own everything in companies is disappeared by UK, UAE and Qatar legislation, which currently aim to appreciate and uphold the social and community interest aspects and depend on the legal personality of the company in the interpretation of the legal relationship between the company and its employees and directors. Accordingly, employees and directors have a relationship with the organisation itself, irrespective of who their employer is. This recognition is what has led the Companies, TUPE and Cross-Border Merger Acts of the UK, in addition to the UAE and Qatar Companies and Labour Laws, to provide for the automatic transfer of employees' rights and obligations from the old employer to the new employer, and the automatic transfer of shareholders' rights form the transferor company to the transferee company in a merger. Wherefore, the modern laws of the UK, the UAE and Qatar have abandoned the personal nature theory on the basis that companies are not purely market-driven objects of enterprise to be abandoned to the exigencies of agents of capitalism and shareholders' interests, but are economic ventures with a view to appreciate and uphold social and community interest aspects, shareholders and all other stakeholders of the company. Therefore, their existence should be maintained and encouraged.

Abandoned of the UK, the UAE and Qatar in its legislations about the personal nature theory in their legislations; the idea that the shareholders are the owners of everything in the company and taking by the theory of legal personality of company is

not a coincidence: they follow the approach taken by the UK courts since the case of Salomon v A Salomon & Co Ltd [1897] AC 22 (House of Lords).[346]This case set out the principle of company personality and established that the firm as a person, distinct from individual shareholders, was the proprietor of itself and its assets. The House of Lords ruled to set aside a judgement of the Court of Appeal that felt Salomon was a fraud and his company was a "sham",[347] ruling in favour of the claimants by stating that the company was properly set up, there was no fraud and thus Mr Salomon was a distinct entity from his company, his directorship, his shareholding and his rights as a secured creditor.[348]

The new approach is thus to harmonise principles of company law and labour law with a view to appreciating and upholding the social and community interest aspects of both subjects. The firm is no longer viewed as a purely market-driven object of enterprise to be abandoned to the exigencies of agents of capitalism. There is also growing recognitionby the legislation[349], jurisprudence[350] and the judiciary[351] that employees have a relationship with the organisation itself, irrespective of who the employer is.[352] This recognition is what led the new legislation in the UK,[353] the UAE and Qatar[354] to provide for the automatic transfer of the employment relationship from the old employer to the new employer in M&A cases. And lead also to provide for the automatic transfer of the shareholders rights form merged to merging or new company.

---

[346] Salomon v A Salomon & Co Ltd [1897] AC 22 (House of Lords).
[347] Broderip v Salomon [1895]2 Ch 323 (Chancery Division and Court of Appeal).
[348] Salomon v A Salomon & Co Ltd [1897] AC 22, Ibid.
[349] See From these legislation is Commercial and Labour legislation of UK, UAE and Qatar.
[350] For more see Beryl Grant, *Employment Law: A Guide for Human Resource Management*(First edition, Thomson Learning 2002).
[351] See *Giles* v *Rhind* [2003] 2 WLR 237 and *Shaker* v *Al-Bedrawi* [2003] 2 WLR 922).
[352] Wedderburn, 'Employees, Partnerships and Company Law' [2002] Industrial Law Journal 99.
[353] The applicable law to protect workers and their rights in cases of M&As in the UK is now the Transfer of Undertakings (TUPE) Act of 2006. According to this law, collective work contracts, in terms of protection, use the same rule of individual employment contracts, in the sense that they do not expire due to a M&A, but transfer to a new company with the same conditions applying. A fundamental principle determined by the law is that employees' contracts transfer from the transferor to the transferee company, including rights and obligations, whether prescribed for the worker or the employer.
[354] In this regard, UAE and Qatar Labour Laws and Companies Laws are not much different from the CA and TUPE laws of the UK: the labour laws and commercial company laws in all three countries follow the theory of the legal personality of a company and regulate the transfer of rights and obligations of employees and shareholders from the transferor company to the transferee company.

The UK and Arabic judiciary support and uphold the theory of the legal personality of a company.[355] A good illustration of the application of the theory of the legal personality of a company is Lee v Lee's Air Farming [1961] AC 12.[356] A claim was made to the Privy Council in London against Lee's Air Farming Ltd (respondent), whereby the widow of Mr Lee claimed she was entitled to compensation under the TUPE Act as the widow of a 'worker'. The issue went first to the New Zealand Court of Appeal, which refused compensation on the basis that Mr Lee was not a 'worker' within the meaning of the TUPE Act, which lead the claimant to appeal the case to the Privy Council in London. The Council ruled that the widow was entitled to compensation, on the basis that the firm and Mr Lee were distinct lawful entities and therefore capable of entering into lawful relations with one another.

Finally, it must be noted that acquisitions may have a similar effect to a merger regarding the rights of employees, but the difference, most cases, some acquisition cases do not lead to expiry of acquired company. Also, shareholders of the acquired company (the transferor company) do not get new shares from the acquiring company's shares as a result of acquisition. Also, the difference between a merger and an acquisition may occur with regard to an acquired company's rights, which differ according to the type of acquisition, by what means it is carried out and the type of companies involved.[357]

2.4 Conclusion

There are some key points to take from this chapter. First, it is important at this stage to grasp the concept of the corporate personality of a company, which means that a trading company has a legal personality independent of its owners or shareholders. Accordingly,

---

[355]For an example, see the Egyptian Court of Cassation judgement of 15 February 1977, the Technical Office, No. 2.1964 (for the full judgement, see Section 2.3.2: Expiration of the Legal Personality of the Transferor Company of Chapter Two of this thesis). This judgement is used as an example due to the similarities between the texts of Egyptian Commercial Companies Law and the texts of the State of Qatar and UAE Companies Laws, which often take their texts from the texts of Egyptian laws.
[356] Lee v Lee's Air Farming [1961] AC 12.
[357] For more, see Section 1.3: Differences between M&As in Chapter One of this thesis.

a trading company is a legal entity that has rights and obligations in the face of others. Second, having grasped the concept of the corporate personality, we also need to understand its consequences, i.e. the fact that a company can hold its own property and be responsible for its rights and obligations concerning employees, directors and shareholders in M&A cases.

With the aforementioned in mind, this chapter has provided an evaluation of the legal basis for transferring the rights and obligations of employees, directors and shareholders between companies involved in M&As. The chapter has analysed the personal nature theory that has prevailed under UK Common Law and discussed how the UK TUPE Regulations, CA and Cross-Border Merger Act have abandoned this theory in favour of the theory of the legal personality of a company. In addition, the chapter has also highlighted the concept of the legal theory of a company and how UK, UAE and Qatar Companies and Labour Laws have taken this theory as the legal basis for transferring rights and obligations between companies involved in M&As.

The chapter has concluded that the legal basis for transferring all the rights and obligations - including those of employees, directors and shareholders - between the transferor and transferee company refers to the legal personality of a company and the extent of its expiry as a result of a merger or acquisition. Accordingly, mergers lead to dissolve the transferor company and the demise of its moral personality without it going into liquidation, as well as an increase in the capital of the transferee company in the share of all kinds of assets of the transferor company. Accordingly, the transferee company not only receives the assets of the transferor company but also receives the project that the transferor company sought to achieve before the merger. Also, it receives all of the rights of the transferor company (including the positive and negative elements) and takes the transferor company's place in terms of rights and obligations. Therefore, the transferor company's shareholders obtain new shares from the transferee company's shares in return for their shares that expired by the merger. Also, it may be useful for the employees and directors who were running projects prior to the merger or acquisition to

continue managing and running the projects, in order to ensure that large projects of companies do not lose staff experience.

With the aforementioned in mind, and due to UK, UAE and Qatar legislators acknowledging the importance of the legal personality of a company, the independence of this personality from the shareholders or owners of companies, the idea that the relationship between employer and employees is stronger than the relationship between employees and the company, furthermore, the concept that the shareholders own everything in companies is disappeared by UK, UAE and Qatar legislation, which currently aim to appreciate and uphold the social, community interest aspects and employees' rights in the work and depend on the legal personality of the firm in the interpretation of the legal relationship between the company and its employees and directors, and the legal reasons for transferring their rights and liabilities in transfer and undertakings. Accordingly, employees and directors have a relationship with the company itself, irrespective of who their employer is. This recognition is what has led the Companies, TUPE and Cross-Border Merger Acts of the UK, in addition to the UAE and Qatar Companies and Labour Laws, to provide for the automatic transfer of employees' rights and obligations from the old employer to the new employer, and the automatic transfer of shareholders' rights form the transferor company to the transferee company in a merger. If the legislations of the UK, UAE and Qatar followed the theory of the legal personality of a company, this would facilitate interpretation and understanding of the legal basis for the transition of rights and obligations from the transferor to the transferee company and help to solve some of the problems that arise due to the negative effects of some M&As.

CHAPTER THREE: EMPLOYEE'S RIGHTS AND OBLIGATIONS IN M&AS

3.1 Overview

Mergers and acquisitions (M&As) are strategic tools utilised by organisations in an attempt to achieve a number of different objectives depending on their individual circumstances and their medium to long-term goals. Primarily, the central goal of a merger or acquisition is to increase efficiency and to accordingly seek to reduce costs in an attempt to improve overall profitability. Despite their overall attractiveness, however, mergers and acquisitions are not always successful and, if not handled with care, profound effects may be witnessed with regard to employees.

Accordingly, there is the popular perception that M&A activity usually leads to (and indeed is frequently motivated by) the opportunity for substantial workforce reductions. This popular interpretation was reinforced by an influential contribution by Shleiffer & Summers (1988),[358] who markedly suggest that control changes associated with merger activity offer the opportunity for firms to renege on implicit and explicit labour contracts, subsequently leading to a 'breach of trust' with employees. Furthermore, this notion has been similarly supported by Mylonakis (2006), who states that between 1997 and 2003, M&As between various banks decreased employees (a reduction of 10.23%)[359]. Additional consensus in this arena is also evident through the works of Conyon *et al*. (2005)[360] and others[361], with such research reporting that M&As subsequently lead to reductions in the levels of derived labour demand (both in the short

---

[358] Shleiffer A and Summers L, *Breach of Trust in Hostile Take-overs* in Auerbach, A J (eds),*Corporate Take-overs: Causes and Consequences* (University of Chicago Press 1988).

[359] Mylonakis J, 'The Impact of Banks Mergers & Acquisitions on their Staff Employment & Effectiveness' (2006)3 International Research Journal of Finance and Economics 121, 137.

[360] Conyon M. Girma S, Thompson, S and Wright P, 'The Impact of Mergers and Acquisitions on Company Employment in the United Kingdom' [2003] Centre for Research on Globalisation and Labour Markets 1, 26.

[361] For more see Conyon M J, Girma S, Thompsonc, S, Wright P, 'Do Hostile Mergers destroy Jobs'? (2001) 45 Journal of Economic Behaviour & Organisation 427, 440; Pasha A T, 'Effects of Merger on Management: Case Study of a Bank' [2010] European Journal of Economics, Finance and Administrative Sciences 98, 105; The employment effects of mergers and acquisitions in commerce, Report for discussion at the, Tripartite Meeting on the Employment Effects of Mergers and Acquisitions in Commerce, 2003, International Labour Organisation, Geneva1-62.

and long-term). This effect is not limited to the first years of merger or acquisition but rather extends up to ten or more years following the completion of operations. This ultimately affects performances at work and with regard to other rights, with decreases in employees' contracts potentially amounting to 19% for related firms and 8% for unrelated mergers.[362]

Due to such a cause, many M&As fail. Accordingly, breaking the mind-sets of people working in firms undergoing M&As and attempting to convince staff that the operation is for the good of the organisation (thus leading to improvements as well growth) is commonly perceived as an uphill task[363]. Due to the aftermath of M&As mostly affecting employees, it is a well-known fact that whenever there is a merger or an acquisition,[364] it is likely that negative outcomes (i.e. layoffs due to the structure of the company resulting from the merger requiring a lower number of people to perform the same task) will be experienced. Accordingly, when companies are involved in M&As (especially where this involves changes in corporate identity or ownership) significant questions arise for the position of employees: for example, does this change mean that their employment contracts and other rights have ceased? In other words, to what extent do M&As affect employees and how can the negative aspects be overcome?

Is the reason for the negative effects of M&As on employees owing to shortcomings in legislation, or is it due to the restructuring of the company resulting from the merger or acquisition? Furthermore, if the UK, UAE and Qatar laws ensure employees' rights at work in M&As, what is the legal basis for this? Is it due to the link of workers to the enterprise or company more so than the link between them and the employer? Or is it owing to the fact that M&As do not lead to the liquidation of companies involved in M&A operations, but the transfer of their rights and obligations (including economic projects) to the new company resulting from the merger or

[362] For more Effects Of M&A on employees see also: Richmond Virginia 'Merger and Acquisition Turmoil on Top Management Teams' [2009] 1, 131; Walsh J P 'Top Management Turnover following Mergers and Acquisitions' (1989) 9 (2) Strategic Management Journal173, 183.
[363] Bhat P,'Impact of Mergers & Acquisition on Employees & Working Conditions' (*Law article India* 2010)<http://www.123oye.com/job-articles/cyber-law/mergers-acquisitions.htm>accessed 13 June 2011.
[364] For more details see Jensen M C,'Agency Costs of Free Cash flow, corporate Finance and Take-overs' (1986) 76 (2) American Economic Review, Papers and Proceedings323,329.

acquisition? Or is it for both reasons? This is discussed across seven sections in this chapter, according to the legislations under study and the theory of the legal personality of a company.

In terms of the importance of workers' contracts, there is the postulation that workers are one of the main pillars of the implementation of projects that companies seek to achieve. Moreover, owing to the negative effects on employees as a result of some M&A operations and due to the differences between the texts of the UK, UAE and Qatar laws in dealing with employees' rights in the context of organisations undergoing M&A operations, this chapter explores the rights and obligation of employees in M&As, and identifying the legal basis for transferring their rights and obligations between transferor and transferee companies according to UK TUPE, CA and Cross-border Merger Acts, and UAE and Qatar companies and labour laws. The chapter is arranged as follows:

Section 3.2 of this chapter explores the effects of M&As on employees' rights. Section 3.3 identifies employees' rights and obligations according to the UK TUPE Act, UK CA and UK Cross-Border Merger Act. This section is divided into two paragraphs: paragraph one defines the rights and liabilities of the owners of individual employees' contract in M&As Cases, and paragraph two discusses the rights and obligations of the owners of collective contracts in M&As cases.

Section 3.4 takes a closer look at the effects that M&As have on the employees of transferor and transferee companies according to the UAE and Qatar legislations. These sections further analyse and explain the rights and obligations of the owners of individual employee contracts, as well as collective labour contracts, in M&As according to the Qatar and UAE laws.

Moreover, due to the differences between the texts of the laws under study in dealing with employees' rights in the context of organisations dealing with M&A operations and to highlight the deficiencies and legal loopholes in each law, opinions are proposed and their advantages are considered. Section 3.5 classifies the similarities and

differences between employees' rights according to the UK, UAE and Qatar laws. Section 3.6 looks at and classifies ways of overcoming the impacts of M&As on employees. Finally, Section 7 provides a summary and conclusion.

3.2 Effects of M&As on Employees' Rights

There are contrasting views on the effects of M&As on employees. Accordingly, some economic theories predict that M&As can benefit employees. This allegedly occurs because the transaction constitutes a mechanism for stimulating additional investment in human capital and promoting ability upgrading of the workforce, particularly if these transactions result in the implementation of new technologies. For example, Jovanovic and Rousseau (2002, 2004)[365] conjecture that high quality managers and high quality projects are complementary. Furthermore, they assert that takeovers result in the diffusion of new technologies and the reallocation of capital to more efficient uses and to better managers. Jovanovic and Rousseau add that technological change and ownership change are complementary, which implies that these transactions should lead to some job reduction but also skill upgrading and wage growth for workers that remain with the company. Mcguckin, Nguyen and Reznek (2001)[366] state that M&As in general are processes that directly destroy jobs. Nevertheless, M&As facilitate synergies between merged organisations and consequently generate improvements in terms of efficiency and therefore increase competitiveness. The larger, combined and more efficient firms contribute to the overall good of the public as they can be expected to pass on various cost savings to consumers through the lowering of prices. Furthermore, increased efficiency in the utilisation of resources eventually translates into economic and employment growth. Short-term job losses should therefore be seen as an acceptable price for improved economic health and eventual higher employment growth.

[365] Boyan Jovanovic and Peter L. Rousseau "Merger as Reallocation" Working Paper 9279, National Bureau of Economic Research, Cambridge [2004] 1, 31.
[366] Robert H, McGuckin, Sang V. Nguyen, Arnold P Reznek,'The Impact of Ownership Change on Employment, Wages and labour productivity in US manufacture (1977–1987)' (2001) 19 Centre for Economic Studies, US Bureau of the Census, International Journal of Industrial Organization 95, 98.

In turn, some studies indicate that despite the positive effects of M&As in some cases, M&As are not always successful and, if not handled with care, there may be profound effects with regards to employees. These vary depending on the type of M&A, the place where it occurs and the type of services provided by the enterprise involved in the M&A.[367]In a highly influential article, Shleifer and Summers (1988)[368] conjecture that M&As constitute a transfer of wealth from employees to shareholders. According to the authors, this occurs because acquirers do not honour implicit contracts with employees concerning salaries and benefits. Thus, in their view, the abrogation of these commitments enables the new owners of the firm to use the deal as a mechanism for enhancing the profitability of the firm and, ultimately, shareholder wealth at the expense of employees.[369]

Using firm-level data, Conyon, Girma, Thompson and Wright (2002)[370] reported that UK mergers resulted in a reduction in wages and compensation of non-production workers. In a follow-up to this study, Conyon, Girma, Thompson and Wright (2005),[371] studied and reported the negative effects of M&As on the demand for labour and subsequently indicate that there is a significant reduction in the use of labour post-merger, amounting to 19% for related firms and 8% for unrelated mergers. Gugler and Yurtoglu (2004)[372] analysed the effects on employment, concluding that there is a 10% drop in labour within industry demand in the aftermath of mergers involving European companies.[373]

---

[367] For M&A types, see Section 1.4 of Chapter One.

[368] Andrei Shleifer and Lawrence H Summers, *Breach of trust in hostiletakeovers* in Alan J. Auerbach (eds) *Corporate takeovers: Causes and consequences*(University of Chicago Press 1988) 33, 59.

[369] For more see Brockner J, 'The effects of work layoffs on survivors: Research, theory and practice in Staw BM' Cummings LL (eds) Research in organizational behaviour (1988) 10 JAI Press: Greenwich213, 255.

[370] Conyon M, Girma S, Thompson S and Wright P W, 'The Impact of M&As on company employment in the United Kingdom' (2002) 46 European Economic Review 31, 49.

[371] Conyon M, Girma S, Thompson S and Wright P Ibid.

[372] Gugler K and Yurtoglu B, 'The effect of Mergers on Company Employment in the USA and Europe' (2004) 22 International Journal of Industrial Organization481, 502.

[373] Gugler and Yurtoglu "explore the effect of M&As on employment in three different industry blocks, which are manufacturing (including utility industries), construction and other services, and trade (including hotels and restaurants) [2006] for more see Bhagat S, Shleifer A and Vishny R W "Hostile takeovers in the 1980s; the return to corporate specialization" Brookings Papers on Economic Activity: Microeconomics [1990] 1, 72.

Dutz (1989)[374] believes that employment losses are likely to be more substantial in horizontal mergers than in vertical or unrelated cases, particularly where the industry exhibits substantial economies of scale and/or surplus capacity. Lehto and Ockerman (2006)[375]state that cross-border M&As[376] lead to downsizing in manufacturing employment by up to 20%. On the other hand, domestic M&As with a domestic purchaser have negative effects on employment across all sectors. The effect of domestic M&As with foreign-owned purchasers on employment is remarkably negative in construction and other services.[377]Girma and Gorg (2004) determined that, when considering data from the UK electronics industry, it can be seen that the incidence of foreign takeovers reduces employment growth, particularly for unskilled labour workers.[378]

From the above, it can be concluded that, in general, M&As lead to job losses and the number of jobs in the transferee or new company will almost invariably be less than the sum of the jobs in the transferor and transferee company before M&As. These losses come about as a consequence of consolidation and the related organisational restructuring and rationalisation of operations, which first reduce and then subsequently limit the creation of new jobs. This opinion is confirmed by an International Labour Organization (ILO) report[379] that reviewed the effect of M&As on employment in the financial services sector: it states that they generally destroy jobs. The report underlines the fact that, because merger impacts are combined with other processes, such as globalisation, non-merger related restructuring and the introduction of new technologies, it is frequently impossible to disentangle the losses related to M&As from those of other processes. The

[374] Dutz M A, 'Horizontal Mergers in declining Industries' [1989] International Journal of Industrial Organisation 11, 37.

[375] Lehto E and Ockerman P B, 'Analysing the employment effects of Mergers and Acquisitions' [2008] Journal of Economic Behaviour and Organisation 112,124.

[376] For the meanings of vertical, horizontal and cross-border mergers, see Section 1.4 of Chapter One

[377] For more see Amihud Y, DeLong G L and Saunders A, 'The effects of cross-border bank mergers on bank risk and value' [2002] Journal of International Money and Finance 857-877.

[377] Girma S and Gorg H, "Blessing or curse? Domestic Plants Employment and Survival Prospects after Foreign Acquisition" [2004] Applied Economics Quarterly 50, 89,110.

[378] For more see Conyon M J, Girma S, Thompson, S and Wright p. W ibid 343.

[379] "The employment effects of mergers and acquisitions in commerce" Report for Discussion at the Tripartite Meeting on the Employment Effects of M&As in Commerce, International Labour Organisation, Geneva [2003] 1, 62

ILO study concludes, however, that the impacts of M&As on employment and on working and employment conditions are nevertheless still negative.

Furthermore, the ILO report on the effects of M&As on employment in banking and financial services notes that a merger or takeover invalidates employment agreements in numerous ways. The worker is now working for someone else but without ever having taken any steps to change employers. This brings home in the most emphatic manner the one-sidedness of the employment relationship, as well as the fact that workers have no control over the decisions of their employer.[380]

The concept of mergers between companies and the dismissal of staff owing to administrative restructuring is a key problem in the GCC[381]—much like the UK and other countries. This has become evident from various incidents resulting from the operations of M&A in the region. Notably, evidence for such a notion can be seen in the case of Alblad Bank,[382] which resulted from the merger of eight institutions. This operation gave rise to confrontation with approximately 1,000 employees belonging to the Al Rajhi Exchange Company, which notably owns 13% of the shares of the bank. Importantly,[383] the bank considers that it is not obliged to have such employees within its workforce. However, the staff members requested adherence to the decision of the Saudi Council Ministers' which decided to transfer all the staff of the exchange institutions to the bank,

---

[380] Report for discussion at the Tripartite Meeting on the Employment Impact of Mergers and Acquisitions in the Banking and Financial Services Sector, International Labour Organisation (ILO), Sect oral Activities Programme [2001] 1,116.

[381] The GCC is an Arab regional organisation of six Arab countries, which are: United Arab Emirates, Qatar, Saudi Arabia, Bahrain, Kuwait and Oman. It was founded in 1981 and its headquarters are in Riyadh, the capital of Saudi Arabia. These countries are the richest oil countries in the Middle East and the articles that make up the laws of each of the GCC countries are identical. In addition, the United Arab Emirates and the State of Qatar are the most developed countries in the GCC. For this reason, the study focuses on the provisions for mergers in the State of Qatar and the UAE Commercial Companies Laws rather than considering all six countries. We are guided by this case from Saudi due to similarities of the companies system and legislation in Saudi Arabia, Qatar and UAE, which are countries from the States of the Gulf Cooperation Council (GCC).

[382] Alblad Bank is Saudi joint stock company, established by Royal Decree 48 / M on 9/21/1425 e (November 4, 2004) with a capital of three billion Saudi Riyals, and its headquarters is Riyadh city (the capital city of Saudi Arabia Kingdom). For more see http://www.bankalbilad.com.sa/ar/about.asp?TabId=1 or http://www.bankalbilad.com.sa/ar/submitresume.asp.

[383] See Shobokshi H Report. (19/10/2005), Merger between the Companies and its Impact on Staff, Available at: http://www.alarabiya.net/programs/2005/10/24/17993.html Accessed (12/12/2010).

with non-employment only following the completion of the accession of all staff—including women and non-Saudis. Furthermore, the decision of the Council of Ministers included consideration to the bank carrying the amounts estimated by the Enterprise Monetary resulting from the dissolution of staff contracts owing to the merger, and taking into consideration the settlement rights of all workers within such institutions. Markedly, according to the Labour and Workers Law, Article 89,[384] it is stated that, in the case of merger, the contracts of employees fall under the responsibility of the new employer.

However, the new company did not adhere to this resolution. On the basis that the new company resulting from the merger needs a process of restructuring—which requires the dispense of some employees and their replacing with new working hands with new skills and high energies—the new company resulting from merger is unable to bear the burden of staff who were in the two companies before the merger.

However, these justifications did not convince employees with cancelled contracts and affected rights, wherefore the case was brought to court. The primary rule of the trial committee was issued for the settlement of labour disputes in Jeddah city, which ruled that all workers return to their work at the Al-blad Bank, and that the bank was then required to pay their salaries from the date of layoffs from the Rajhi institutions—spanning through to the date of their new work at the Al-blad Bank. Following this judgement, the bank offered workers the opportunity to forfeit their rights and accordingly return to work at the bank on a probationary stipulation. Through this request, the bank sought to circumvent the workers of the merged company and their rights to move complete with all of their rights intact to the merged company through the exploitation period cited in their new contracts, subsequently dismissing them during the probationary period, thereby refusing their rights. Notably, however, this was rejected by workers, who continued to claim the transfer of all rights.[385]

[384] Article 89 of the System of work and workers of the new Saudi issued by Royal Decree No. 51 and the date of 08.23.1426 H which published in the Official Gazette (om Alkra), issue: 4068 date of 25 Ramadan 1426 corresponding 28/10 / 2005.
[385]Shobokshi H Report, Ibid.

Here, the question in the instance mentioned, if the employees leaving their work in the in the Al-blad Bank, and giving up their claim during the trial: can then claim to consistently demand their old contracts or compensation in the case of failure of such in the work under experience, which are offered to them by the new company following the merger?

Mobark (2005)[386] justifies layoffs due M&As in the GCC by stating that the merger in the Arabic region generally lacks the concept of a deep economy, which enables strong economic institutions to be built. Importantly, mergers occur for several reasons, the most important of which is the composition of a strong economic entity; this ultimately requires a process of the restructuring of the companies, which consequently results in job losses. Mobark also adds that the work requires the efficiency of professionals: if there is professionalism and efficiency, mergers may then be more successful.[387]Furthermore, due to the size of companies in the GCC in comparison to the size of companies in the UK or other industrial countries, there are few M&As between national and foreign companies in the region and, for this reason, the Boards of Directors of companies in the GCC do not have a sophisticated management culture to help deal with the results of such mergers.[388] However, the question remains here: are such reasons enough to implement layoffs?

Taking into consideration this view regarding the effects of M&As on employees, the question is: in the UK, UAE and Qatar do M&As lead to the restriction of employees' rights? Furthermore, according to UK, UAE and Qatar laws, what is the legal basis for transferring employees' rights from the transferor to the transferee company in M&A cases? The following sections clarify employees' rights in terms of individual and collective employment contracts in M&A cases according to UK, UAE and Qatar laws.

---

[386] Mobark N 'Merger between the Companies and its Impact on Staff' (2005) <http://www.alarabiya.net/programs/2005/10/24/17993.html accessed 12 December 2010.

[387] Ibid, for more see Mohammed Awad Al-mlhm "measurement methods for the purposes of mergers" Applied Research [2002-2003].

[388] For more see Mohamed Khair al-farh "The GCC Companies face challenges due to economic blocs" Constitution newspaper, Amman, Jordan, No. 15571[2007] and Fatima Aeryvan and Munira Achammemari "Importance of restructuring the family business, Management of financial irregularities, Kuwait, [2007], 7, 40.

3.3 Employees' Rights in the Transfer of Undertakings According to UK Legislation

The UK TUPE and Cross-Border Merger Acts regulate the rights and obligations of the owners of individual and collective employees' contracts by explicit provisions in cases of the transfer of undertakings. UK legislation has abandoned the personal nature theory of employment contracts that was applicable under British Common Law, which assessed the relationship between workers and employers on a personal basis regardless of the legal personality of the company. In accordance with this theory, the relationship between the employer and its employees is stronger than the relationship between the company and its employees; hence employees' contracts and other rights expire once the employer changed. This subordination of employee rights in corporate theory is no longer applicable at the current time in UK law on the basis that there is a growing recognition that employees have a relationship with the organisation itself, irrespective of who the employer is. This recognition is what led several jurisdictions to introduce legislation that overrides the common law and allows for the automatic transfer of the employment relationship from the old employer to the new employer on the sale of a business. The new approach is thus to harmonise the principles of labour law and company law in the UK with a view to appreciating and upholding the social and public interest aspects of both subjects. The company is no longer viewed as a purely market-driven object of enterprise to be abandoned to the exigencies of agents of capitalism.[389]

In response to the increasing number of business mergers, which were affecting workers' job security, in February 1977,[390] the Council of the European Union adopted Directive 77/187, relating to the protection of workers in merger cases. The purpose of the directive is to safeguard the rights of employees of businesses that are sold or

[389] For more see Wedderburn, 'Employees, Partnerships and Company Law' (2002) 31 (2) Industrial Law Journal 99.

[390] The Acquired Rights Directive, Council Directive No. 77/187 (hereinafter called the ARD), was adopted on 14 February 1977 to implement the Social Action Programme. In 1998, the 1977 Directive was amended by Council Directive 98/50/EC and then, in 2001, it was replaced in (so far as content goes) essentially the same terms by Council Directive 2001/23/EC ('the Directive').

transferred in EU member states.[391] Accordingly, the situation in the UK changed. UK law started to follow the legal theory of the personality of a company. The Transfer of Undertakings (Protection of Employment) Act 1981[392] (otherwise called the TUPE Act) was issued, a law establishing the consultation rights of employees in M&As and providing for the automatic transfer of employment rights and liabilities from the old employer to the new.[393] The TUPE regulations were introduced in order to give effect to the Acquired Rights Directive of 1977 and to bring about a reversal of the common law rule, i.e. to ensure that employees are not prejudiced in any way by the transfer of the business in which they are employed.

In 2006, the TUPE Act 1981 was updated by the TUPE Act 2006,[394] which aims to ensure (as far as possible) that the rights of employees are safeguarded in the event of a change of employer by enabling them to remain in employment with the new employer on the terms and conditions agreed with the transferor.[395] One of the main goals of the 2006 TUPE regulations is to provide more clarity on the operation of the TUPE Act 1981. Furthermore, one of the main goals of the 2006 TUPE regulations is that UK courts are obliged to follow the interpretations of the Acquired Rights Directive handed down by the CJEU.[396] Accordingly, in the case of the seminal European Court guidance in Spijkers v Gebroeders Benedik Abbatoir CV,[397] the law interpreted a transfer as where there is a transfer of an economic entity that retains its identity, meaning an organised grouping of resources that has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.[398] Also, in Ayse Suzen v Zehnacker

[391] Vivien Shrubsall "Employment Rights and Business Transfers - Changes to the Acquired Rights Directive" Web Journal of Current Legal Issues in association with Blackstone Press Ltd, [1998].
[392] The TUPE regulations implement the 1977 European Council Acquired Rights Directive. In broad terms, the TUPE regulations protect employees' terms and conditions (except occupational pension arrangements) when the business in which they work is transferred from one employer to another. Employment with the new employer is treated as continuous from the date of the employee's start with the first employer. Terms and conditions cannot be changed where the operative reason for the change is the transfer, although changes for other reasons may be negotiated.
[393] For more, see Section 2.3.3 of Chapter Two of this thesis.
[394] The TUPE Regulations came into force on 6th April 2006.
[395] See regulations 3 and 2 of the UK TUPE Act 2006.
[396] For more, see Section 2.3.3 of Chapter Two of this thesis.
[397] [1986] ECR 1119, Spijkers v Gebroeders Benedik Abattoir CV 24/85 [1986] ECR 1119 EC.
[398] See paragraph 2 of the TUPE Act 2006.

Gebaudereinigung GmbH Krankenhausservice,[399] the judgement held that the law does not apply to a situation where a person has a trusted provision of services to a first undertaking and terminates that contract and enters into a new contract with a second undertaking.

The TUPE Act 2006 governs employment[400] contracts (whether individual or collective labour contracts) and accordingly remedies their effects through the elaboration of rules governing the relationship between the parties. Amongst these effects, the commitments of both the transferor company and the transferee company in terms of employment contracts and the conditions contained within them are considered. Accordingly, "all the transferor's rights, powers, duties and liabilities under or in connection with the transferring employees' contracts of employment are transferred to the transferee".[401] This all-embracing concept encompasses rights under the contract of employment, statutory rights and continuity of employment and includes employees' rights to bring a claim against their employer for redundancy, discrimination, unpaid wages, bonuses, holidays, personal injury claims, unfair dismissal, etc.[402]In Enterprise Managed Services Ltd v Dance and Others,[403] a case concerning a TUPE transfer, the Employment Appeal Tribunal (EAT) held that a decision to 'harmonise' the incoming employees' terms with existing employees could have been legitimately made to improve productivity, so that subsequent dismissals based upon the 'harmonised' terms may not have been for a reason connected with a transfer and would therefore not be automatically unfair under the TUPE Act.[404] Accordingly, once it has been determined

[399] Ayse Suezen v Zehnacker Gebäudereinigung GmbH Krankenhausservice, [1997] IRLR 225.
[400] Notably, the employee—according to the UK legislation—means 'an individual who has entered into or works under a contract of employment and includes, where the employment has ceased, an individual who worked under a contract of employment, and "UK employee" means an employee who has entered into or works under a contract of employment with a UK company' for more see article 2/) of the TUPE Act 2006
[401] Paragraph 4/1 of the UK TUPE Act 2006; also see regulation 2 of the UK Cross-Border Act 2007.
[402] According to paragraph 7/1 of the TUPE Act 2006, any dismissal of an employee either before or after a relevant transfer will be automatically unfair where the sole or principal reason for the dismissal is either; the transfer itself; or a reason connected with the transfer, that is not an economic, technical or organisational reason.
[403] Enterprise Managed Services Ltd v Dance & Ors (Transfer of Undertakings: Dismissal or automatically unfair dismissal) [2011] UKEAT 0200_11_2109, EMPLOYMENT APPEAL TRIBUNAL, Appeal No. UKEAT/0200/11/DM (2011).
[404] Ibid,<http://www.bailii.org/uk/cases/UKEAT/2011/0200_11_2109.html>accessed 8 May 2012.

that there has been a relevant transfer, the next question is: who is automatically transferred to the transferee?

3.3.1 Individual Employees' Rights in M&As According to the UK TUPE Act and the UK Cross-Border Merger Act

Regulations 4 of the TUPE and 17/b of the Cross-Border Merger Acts regulate the rights of individual employees rights in M&As and provides for the right any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.[405]Although regulation 4 of the TUPE Regulations regulates individual employees' rights, among the issues raised by this provision is the problem of determining which of those who work (in a non-technical sense) for the transferor count as employees. Regardless of the perennial difficulty in distinguishing between employees and independent contractors, this question has been made more difficult by the decisions of the Court of Appeal in Brook Street UK (Ltd) v.[406] and Dacas and Cable and Wireless v. Muscat.[407] These cases establish that an agency worker who has been on site for more than twelve months is probably an employee of the transferor and that someone who provides services via his/her own Service Firm may none the less be an employee of the transferor.

In accordance with regulations 2 of the TUPE Act and 3 of the Cross-Border Act, an employee "means any individual who works for another person whether under a contract of service or apprenticeship or otherwise but does not include anyone who provides services under a contract for services and references to a person's employer shall be construed accordingly".[408]The question remains here is who are the owners of

[405] For more, see regulation 4 of the UK TUPE Act 2006.
[406] Dacas v Brook Street Bureau (UK) Ltd [2004] IRLR 358 CA.
[407] Cable & Wireless plc v Muscat [2006] EWCA Civ 220.
[408] Regulation 2 of the UK TUPE Act 2006.

individual contracts who are entitled to move accordance with paragraphs 4 of the TUPE and 17 of the Cross-Border Acts?

The TUPE Act "confers mandatory protection on the terms and conditions of employment of the employees who are the subject of a relevant transfer".[409] Accordingly, the rights of the transferor company's employee's transfer to the transferee company in the same conditions and privileges that they had in the transferor company, as M&As do not diminish the contractual rights of employees. Also, the law does not allow employers to force employees to agree validly and effectively to a diminution in their contractual rights. In an important decision concerning TUPE transfers, the Employment Appeal Tribunal (EAT) gave guidance in the case of Tapere v South London & Maudsley NHS Trust.[410] First, it gave guidance on the interpretation of mobility clauses in the context of a TUPE transfer and, secondly, on Article 4/9 of the TUPE Act, which allows a transferred employee to treat themselves as dismissed if a relevant transfer involves a substantial change in working conditions that are to the employee's material detriment. The EAT held that "detriment" should be considered using the subjective approach that applies in discrimination law.

The TUPE Act also provides protection for employees in M&A cases regardless of the size of the business. It does not matter if it is a large business with thousands of employees or a very small one, like a shop, pub, and garage. This will not make a difference to the employee's job. The TUPE Act aims for the protection of employees in M&As, represented namely by the employee's contract of employment being preserved and the liabilities of the employer,[411] in connection with the contract, being passed from the transferor to the transferee. However, for an employee to be entitled to protection by the articles of the TUPE Act, including the right not to be unfairly dismissed, three criteria must be satisfied. Once these three requirements have been satisfied, the articles

---

[409] For more see Andrew C. Bell,*Employment Law*(2nd edn, Thomson Sweet & Maxwell 2006); Charles Wynn-Evans, 'The Ongoing Saga of TUPE and Contractual Variations Power v Regent Security Services Limited' (2007) 36 Industrial Law Journal 480, 485.
[410] [2009] UKEAT 0410_08_1908, United Kingdom Employment Appeal Tribunal (19 August 2009).
[411] Regulation 4/2 of the UK TUPE Act 2006.

of the TUPE Act will apply.[412] Firstly, the employee must have been assigned to the undertaking.[413] Secondly, the employee must not have objected to the transfer. Thirdly, the employee must have been employed by the undertaking immediately before the date of the transfer.[414] In other words, the employee is not transferred if he performs duties for or spends part of his working time involved in the part transferred but is not employed within this part at the time of the transfer, even though he may be employed elsewhere within the transferor's undertaking. The only exception is when Section 4/6 applies, which provides that: "shall not transfer or otherwise affect the liability of any person to be prosecuted for, convicted of and sentenced for any offence".[415]

The practical application for this can be seen in the decision of the CJEU in the Dutch case of Botzen and Others v Rotterdamsche Droogdok Maatschappij BV.[416] The transferors went into liquidation. In order to safeguard as many of their employees' jobs as possible, they entered into an agreement with another company, who agreed to take over several of the transferor's departments and the staff employed within them. The others, including the claimants, were dismissed by the liquidators of the transferor. The liquidators claimed that the Directive 77/197 did not apply to them as they did not work full time or substantially full time. The CJEU opined that the directive "must be interpreted as not covering the transferor's rights and responsibilities arising from a contract of employ or an employ relationship existing on the date of the transfer and entered into with employees who, although not employed in the transferred part of the undertaking, performed certain obligations which involved the use of assets assigned to the part transferred or who, whilst being employed in an administrative department of the undertaking which has not itself been transferred, carried out certain duties for the benefit of the part transferred."[417]

[412] Regulation 4/1 of the UK TUPE Act 2006.
[413] Regulation of 4/1 of the UK TUPE Act 2006.
[414] Regulation of 4/1 of the UK TUPE Act 2006.
[415] Regulation 4/6/2 of the UK TUPE Act 2006.
[416] Arie Botzen and others v Rotterdamsche Droogdok Maatschappij BV [1985] EUECJ R-186/83 (7 February 1985).
[417] Arie Botzen And Others -v- Rotterdamsche Droogdok Maatschappij Bv C-[1985] EUECJ R-186/83.

A question that arises here is whether the regulations only apply when the employee was dismissed after the transfer or whether there are circumstances in which they may apply when the employee was dismissed before the transfer. Regulation 4/3 of the TUPE Act preserves the rights of employees who are subjected to unfair dismissal due to a transfer of undertakings. One of the most startling and famous decisions relating to the TUPE Act was made by the House of Lords in Litster v Forth Dry Dock Engineering.[418] This case arose because of attempts by the transferors to avoid the application of the TUPE Act by dismissing all employees a few hours before a transfer and then arguing that, in those circumstances, those dismissed could not be said to be employed immediately before the transfer. Their lordships held that the automatic transfer provisions applied not only to those employed immediately before the transfer but also those who could show that they would have been so employed had they not been unfairly dismissed for a reason connected with the transfer. Furthermore, according to the Court of Appeal in Fairhurst Ward Abbott v Bottes Building,[419] paragraph 4 of the TUPE Act may apply where only a part of an undertaking is transferred.

In P Bork International[420]the Court of Justice of the European Communities (ECJ) held: "the only workers who may invoke Directive 77/197 are those who have current employment relations or a contract of employment at the date of the transfer".[421] However, terminations of employees' relationships on a date before that of the transfer are in breach of article 4(1) of the directive. Accordingly, the employees must still be considered as employed by the undertaking on the date of the transfer with the consequence, in particular, that the obligations of the employer towards them are fully transferred to the transferee, in accordance with the texts of the relevant laws.[422]

---

[418] Litster v Forth Dry Dock and Engineering Co Ltd [1988] UKHL 10 (16 March 1989).
[419] Ward Abbott v. Bottes Building, [2004] ICR 919; [2004] IRLR 304, 02-Dec-2003.
[420] P Bork International A/S (in liquidation) v Foreningen Arbejdsledere I Danmark (C-101/87)[1989] IRLR 41.
[421] P Bork International A/S v Foreningen AF Arbejdsledere i Danmark/ Olsen v Junckers Industrier A/A; Hansen and others v Junckers Industrier A/A; Handels-Og Knotorfunktionaerernes Forbund I Danmark v Junckers Industrier A/S [1989] IRLR 41.
[422] See article 3/1 of Directive 77/187/EEC.

The transferee company or the buyer cannot change employment conditions or agreements that were established between the employees and the transferor company before the transfer of the undertaking. There are two main checks and balances available here against an employer who wishes to re-organise terms and conditions of employment. The first is contractual and the second is by virtue of the law of unfair dismissal. Neither is entirely satisfactory. There is one limiting principle at least under contract law. It is clear that an employer may not lawfully unilaterally change employment terms. An imposed change gives rise to a breach of contract. Obviously, if the change of terms is fundamental, the employee may resign and claim constructive dismissal, triggering a claim for damages for wrongful dismissal and compensation for unfair dismissal. However, an employee does not have to take such a drastic step. They may of course simply resist the change and continue their employment. In order to this, in Rigby v Ferodo Limited [1988] ICR 29[423] the court ruled that an employer who unilaterally proposed a 5% wage reduction was in breach of contract and could be resisted by the employee; thus allowing him to claim the arrears of pay wrongfully withheld from him under the contract.[424]

Finally, it must be noticed that the provisions of the UK TUPE Act adopt a set of basic principles, the most important of which is calculating the period of service that the worker spent in the merged company in the case of transferring employment contracts from the transferor company to the transferee company.[425] According to the TUPE Act, its provisions also apply to employees who are based outside of the UK as long as the employee is employed by a UK employer.[426] The significant part of the business transfer is that it involves a UK business and their ‘undertakings’ in the UK. In the case of business transfers, if the firm that the employee works for has an ‘undertaking’ in the UK (e.g. premises, assets, fixtures and fittings, employees, etc.) but the employee is part of a team that spends the majority of their working week outside the UK (for example, as part

[423] Rigby v Ferodo Ltd [1988] ICR 29.
[424] Ibid, also see Keir and Williams v Hereford and Worcester County Council [1984] IRLR 91 and Burden Coutts v Hertfordshire County Council [1988] ILR 29.
[425] Al-azmi Khalid “Effects of Merger in the Shareholders and Creditor Companies, Ibid.
[426] For more, see regulation 22/2 of the UK Cross-Border Act.

of a sales team), then the employee should be covered under the TUPE Act.[427]Moreover, the TUPE Act covers employees that work in central or local government and are transferred from the public to the private sector.

3.3.2 The Duty to Provide Employees with Information to Participate in M&A Decisions

According to regulation 11 of the UK TUPE Act[428] and regulation 23 of the UK Cross-Border Merger Act,[429]legislative protection for employees includes the right to be informed about and, in some circumstances, consulted on an asset purchase and the right to a statutory redundancy payment (or severance). Such rights are in addition to any union arrangements or collective bargaining agreements, which will be transferred automatically and be binding upon the transferee firm. Accordingly, detailed advice should be sought concerning the prospective costs of proposals in order to restructure the target business after its acquisition. The case of Polkey v A.E. Dayton Services Ltd [1988] ICR 142, HL[430] was an unfair dismissal case in which an employer had failed to consult an employee about impending redundancy. The House of Lords held that the failure to consult was itself enough to make the dismissal an unfair dismissal.[431]

[427] Regarding this situation, if the company employee works for is about to take part in a service provision change, there must be an organised group of employees in the UK for it to qualify for TUPE protection. For example, if a contract to provide website maintenance comes to an end and someone else is taking over the contract. If employee part of a team of employees that has performed the contract centrally in the UK, but one of the IT technicians works from home outside the UK, you should still be protected under TUPE. However, if the whole team worked from home which was outside the UK then it is unlikely you would be protected by TUPE as there would be no organised group of employees.
[428] Regulation 11 of the UK TUPE Act 2006 “which imposes an obligation upon the transferor to notify the transferee of “employee liability information”. Notification must be provided not less than 14 days before the transfer and the transferor must thereafter notify the transferee of any changes in that information prior to the transfer”.
[429] Regulation 23 of the UK Cross-Border Act 2007, which provides for "as soon as possible after adopting the draft terms of merger merging company shall provide information to the employee representatives of that company or, if no such representatives exist, the employees themselves. The information must include, as a minimum, information—identifying the merging companies, any decision taken pursuant to provisions of law and the number of employees employed by each merging company”.
[430] Polkey v A.E. Dayton Services Ltd [1988] ICR 142, HL.
[431] Polkey v A.E. Dayton Services Ltd [1988] ICR 142, HL.

The responsibility to consult arises if either of the companies involved in the merger or acquisition plans to make changes likely to have an effect upon employees after the transfer. In that situation, there is an obligation to consult with employee representatives and this consultation cannot merely be formal.[432]Consultation must be "with a view to seeking their agreement to the intended measures."[433] Furthermore, the employer must reply in writing to any representations received and if an employee rejects the response, he has to show in writing why he rejected it.[434] The information and consultation responsibilities presuppose collective governance of the workplace. Hence, the responsibilities to notify and consult are owed primarily to collective institutions.[435] Only if the workers have failed to elect representatives after being given a reasonable opportunity can an employer's responsibilities be fulfilled by dealing with individual employees.[436]

Accordingly, the employer is not exempt from liability in the case of defaulting in carrying out consultation with employees; it is not a valid excuse for an employer to say that the reason for the lack of consultation with employees was the small number of employees concerned or the financial positions facing the companies involved. Regulation 13/9 of the UK TUPE Regulations 2006 does not contain a "special circumstances" exemption to relieve employers from liability in the case of a failure to consult with employees in M&As.[437] In the case of Sweetin v. Coral Racing,[438] the EAT held that the purpose of the remedy is to punish and deter non-compliance by employers. Therefore, in a case where there is no consultation at all, the starting point will be that the award is to be 13 weeks' pay and it will be for the employer to show any mitigating factors sufficient to reduce the award.

---

[432] For more see Vincent Keter and Tim Jarrett "Transfer of undertakings (TUPE)" Business and Transport Section. Library House of Commons, [2011] 3, 11.
[433] Ibid, 3, 11.
[434] for more see John McMullen, 'Case law relating to service provision changes under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006'(2010) 84 Amicus Curiae 9, 12.
[435] Charles Wynn-Evans, *Blackstone's Guide to the New Transfer of Undertakings Legislation*(Oxford University Press 2006).
[436] For more, see regulation 14 of the UK TUPE Act 2006 and regulations 22, 23, 41 and 42 of the UK Cross-Border Merger Act 2007.
[437] For more, see regulation 13 of the UK TUPE Act 2006.
[438] Sweetin v Coral Racing Employment Appeal Tribunal [2005] IRLR 252 (20th December 2005.

In addition, UK legislation gives employees broad rights to participate in the operations of mergers and acquisitions.[439] Notably, employee participation in this context is a system that provides employees with the right to play a role in M&A operations,[440] whereby employee participation means the influence of the employees, or their representatives, in the affairs of a company by way of: the right to elect or appoint members of the company's supervisory or administrative organ and the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.[441]

3.3.3The Rights of the Owners of Collective Labour Contracts in M&As According to the UK TUPE Regulations and Cross-Border Merger Act

According to section 278/1 of the Trade Union and Labour Relation (Consolidation) Act 1992 (TULRCA),[442] a "collective agreement" means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers' accordingly the agreement must include one or more of the following:[443] terms and conditions of employment, or the physical conditions in which any workers are required to work;[444] engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;[445] allocation of work or the duties of employment between workers or groups of workers; matters of discipline; a worker's membership or non-membership of a trade union; facilities for officials of trade unions;[446] and machinery for negotiation or consultation, and other procedures, including the recognition by employers or employers' associations of the right of a trade union to

[439] Regulation 22 of the Cross-Border Act 2007.
[440] Regulation 36 of the UK Cross-Border Merger Act 2007.
[441] Regulation 38/1 of the UK Cross-Border Merger Act.
[442] Trade Union and Labour Relations (Consolidation) Act 1992 is updated by The Employment Relations Act 1999 Chapter 26. This act came into force on 27 July 1999.
[443] Section 178/1 of the UK Trade Union and Labour Relations Act 1992.
[444] Ibid.
[445] Paragraph (b) of the UK Trade Union and Labour Relations Act 1992, Ibid.
[446] Paragraph (f) of section 178 of the UK Trade Union and Labour Relations Act 1992, Ibid.

represent workers in such a negotiation or consultation or in the carrying out of such procedures.[447]

According to Richard O'Dair (2006),[448] one long-running controversy in the transfer of undertakings has been the effects upon transfers of collective agreements incorporated into contracts of employment, which are solved by court judgements[449] and the provisions of laws. UK TUPE Act and Cross-Border Merger Act is organised and provides collective work contracts with special attention through the provision of employees being able to participate in cases of M&As through their representatives. According to regulation 7 of the UK Cross-Border Merger Act, once the merging companies have adopted the draft terms of the merger, the directors of the UK merging company are obliged to draw up a report that explains, amongst others things, the legal and economic grounds for the draft terms, as well as the effect of the cross-border merger on its employees. Copies of the directors' report must be delivered to the employee representatives or, if there are no such representatives, to the employees directly.[450] The employee representatives (or the employees if there are no representatives) can respond to the directors' report with an opinion.[451]

According to regulations 13, 14 and 15 of the TUPE Regulations 2006, an employer must inform and consult the representatives of the affected employees long enough before a relevant transfer.[452] The employer must inform those representatives of: the fact that the transfer is to take place; the date or proposed date of the transfer and the reasons for it;[453] the legal, economic and social implications of the transfer for any affected employees; and the measures that they envisage will mitigate the negative effects of the transfer process.[454]

---

[447] Paragraph (g), Ibid.
[448] Richard O'Dair "A Guide of the Transfer of Undertakings Regulations 2006"36 Bedford Row [2006].
[449] For more see caseWerhof v Freeway Traffic Systems GmbH & Co. KG [2006] IRLR 400 in this paragraph.
[450] Regulation 7 of the UK Cross-Border Merger Act 2007.
[451] Ibid.
[452] Regulation 13/1 of the UK TUPE Act 2006.
[453] Regulation 13/2 of the UK TUPE Act 2006.
[454] Regulation 13/2/a, Ibid.

In addition, legislation requires transferee companies to share certain information with their employees, including the number of employees employed by each merging company. This enables the employee representatives (or the employees where there are no employee representatives) to determine the allocation of seats in relation to the special negotiating body. Where the management of the merging companies fails to provide the required information, or where the information is considered to be false or incomplete, employee representatives or employees may then present a complaint to the Labour Court, which, if it finds that the complaint is well-founded, can make an order requiring the company to disclose the information. Furthermore, the law provides standard rules that set the minimum requirements for employee participation arrangements in so far as the employee representatives (or the employees where there are no such representatives) will have the right to elect, appoint, recommend or oppose the appointment of directors of the newly merged company.[455]

With the aforementioned in consideration, we can conclude that the collective work contract is not between the worker and the employer, but rather between employees' representatives and an employer or organisations, representing the interests of employees from one side and the employer from the other side defining the conditions that must be respected. Accordingly, the question that arises in this regard relates to employees employed by collective contracts: are their rights and obligations transferred between companies involved in M&As and what assurances are provided by UK law to achieve this?

UK law governs this kind of contract in explicit texts and provides assurances, such as individual contracts. According to the TUPE Act, collective work contracts follow the same rule as individual contracts: they do not end with M&As but are transferred to the transferee company with all their conditions. The transferee company must be committed to implementing the conditions of the contracts, unless there is a collective agreement in the transferee company that includes better terms for

[455] For more see Regulations 19 and 15/1 and 2 of the UK Cross Border Merger Act 2007.

employees.[456] Where the rights and obligations of the transferor organisation arising from a contract of employment or employment relationship are transferred to the transferee, the same terms and conditions in any applicable collective agreement apply until the agreement expires or is replaced.[457] This includes the preservation of any contractual terms derived from collective agreements and any contractual provisions on how discretion under any relevant statute will be applied to the employee contract and other rights that are in force at the time of the transfer. This applies to "public and private undertakings engaged in economic activities whether or not they are operating for gain".[458]

Accordingly, the capability of an employer to vary employment terms before or after a TUPE transfer has been deeply circumscribed, even where the employee consents to such alteration. This is confirmed by the UK courts in one of their judgements concerning whether collective agreements that are negotiated from time to time can bind an employer following a transfer of employment; it was previously held that regulation 5 of the TUPE Act renders such a 'dynamic' clause enforceable against the new employer.[459]

In 2002, part of the undertakings of London Borough of Lewisham (the "council") in which the claimants (former employees) worked was transferred to CCL, a private sector employer. In 2004, it was transferred again to Parkwood,[460] another private sector employer. The TUPE Act 1981[461] applied to each transfer. The claimants' employment contracts contained a clause that provided that their salary would be "in accordance with collective agreements negotiated from time to time by the National Joint Council for Local Government (the "NJC")". After the 2004 transfer to Parkwood, new rates of pay for the period 1 April 2004 to 31 March 2007 were negotiated and agreed by the council and the relevant unions through the NJC. Other terms were also agreed

[456] See regulation 5/aandb of the UK TUPE Act 2006.
[457] For more, see regulation 17 of the UK TUPE Act 2007.
[458] Article 3/4 of the TUPE Act 2006.
[459] England and Wales Court of Appeal (Civil Division) Decisions, [2010] EWCA Civ 24.
[460] The appellant is Parkwood Leisure Limited. Parkwood is the respondent in the proceedings and the employer of the claimants (respondents to its appeal).
[461] It is updated by the TUPE Act 2006.

relating to training, development and other aspects concerning working relationships. Parkwood was not party to the negotiations. Although Parkwood increased pay in 2005 in accordance with the NJC rates agreed after the 2004 transfer, it did so expressly without acknowledging any liability to do so. Parkwood subsequently refused to increase pay in later years in accordance with further revised rates agreed through the NJC.[462] The claimants brought claims to the Employment Tribunal for unlawful deduction from wages. They argued that their employment was transferred to Parkwood under regulation 5 of the TUPE Act 1981 and that any collective agreements would also transfer under regulation 6 of the TUPE Act 1981. The tribunal rejected the claims and found that the renegotiated pay rise in 2004 amounted to a new collective agreement that did not bind Parkwood. On appeal, the Employment Appeal Tribunal ("EAT") disagreed and found in favour of the claimants. The appellant (Parkwood) appealed to the court of Appeal (CA). The court of Appeal held that it was bound by the European Court of Justice decision of Werhof v Freeway Traffic Systems GmbH & Co,[463]which decided that terms referred to in a collective agreement negotiated by a third party (here the council, being the claimants' former employer) will only continue to apply to the transferred employees' contracts until the relevant collective agreement expires, terminates or is replaced.[464]

The CJEU's reasoning was based on article 3 of the Acquired Rights Directive 77/187/EC (now Directive 2001/23/EC),[465] which provides that "rights and obligations under a contract of employment existing at the date of the transfer are transferred to the transferee".[466] The transferee had to comply with any collective agreement applying to the transferor "until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement".[467] The CJEU in Werhof said clauses in employment contracts that refer to third party agreements are "static", so

[462] This case posted by Ruth Bonino, 'Effect of TUPE on Collective Agreements' (2010)http://www.employmentlawwatch.com/tags/werhof-v-freeway/accessed 12 December 2011.
[463] Werhof v Freeway Traffic Systems GmbH & Co. KG [2006] IRLR 400.
[464] Werhof v Freeway Traffic Systems GmbH & Co. KG [2006] IRLR 400, Ibid.
[465] The Acquired Rights Directive is the name given to Council Directive 77/187 of 14 February 1977, which aims at 'the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses' (as amended by Directive 98/50/EC of 29 June 1998; consolidated in Directive 2001/23 of 12 March 2001).
[466] Article 3/1 of the Acquired Rights Directive 77/187/EC.
[467] Article 3/2 of the Acquired Rights Directive 77/187/EC.

collective terms agreed after the transfer will not bind the transferor.[468] The CJEU's conclusion was based on two important considerations. First, that the directive did not intend a transferee to be bound by a collective agreement other than the one in force at the time of the transfer. Second, that the transferor has a fundamental right to join, or not to join, an association and this fundamental right would be breached if the "dynamic" approach were to apply.[469]

From the above discussion, it can be noted that UK law governs collective employee contracts with individual contracts in explicit texts and provide for the transfer of employees' right and obligations from the transferor to the transferee company in both collective and individual employees contracts. Thus, British legislation abandoned the theory of personal nature that was applicable in old British laws. Instead, it adopted the legal theory of the personality of a company, which considers that the relationship between employees and a company is stronger than that between employees and an employer. It also explains that a merger is a contract between two or more companies, which is assumed to lead to the expiration of the transferor company and the demise of its legal personality. However, this demise does not mean the decomposition of the company from the contracts concluded by it, simply because the transferee or new company succeeds the transferor company in all its rights and obligations. Importantly, all contracts concluded by the merged company remain in existence and continuous. The reason for the survival of contracts concluded by the transferor company in this case is because the merger does not lead to the liquidation of the transferor company[470] and the sharing of its assets: its financial assets (including various positive and negative elements) and its economic ventures are transferred to the transferee company.[471] This fact dictates the continuance of contracts concluded by the transferor company, which includes the rights of the owners of collective and individual employee contracts in the transferor and transferee companies in terms of work and other rights that they enjoyed before the merger or acquisition.

---

[468] Ruth D. Bonino, Effect of TUPE on Collective Agreements, Employment Law Watch [2010].
[469] Ruth D. Bonino, Effect of TUPE on Collective Agreements, Ibid.
[470] For more, see regulation 17 of the UK Cross-Border Act 2007.
[471] For more, see Section 2.2: The Legal Basis for the Transfer of Rights and Obligations between Companies Involved in M&As in this chapter.

To implement the provisions of the UK Companies Act and the TUPE Act regarding employees' rights and obligations in M&A cases, the TUPE Act requires that there must first be real transmission of assets and shares between companies involved in M&A operations, whether in whole or in part. A relevant transfer may be affected by a series of two or more transactions and may take place whether or not any property is transferred to the transferee by the transferor: this applies to public and private undertakings engaged in economic activities. In other words, the TUPE Act's provisions apply when there is a change in the person responsible for operating the undertaking. So, an administrative reorganisation of public administrative authorities or the transfer of administrative functions between public administrative authorities is not a relevant transfer.

Secondly, for the purposes of applying the legislation, the transfer of undertakings must also occur between stable economic entities. The meaning of an economic entity being 'stable' is that in addition to being characterised as an economic entity, it also retains its identity.[472] This was applied under the 1981 Act in the UK in Mackie v Aberdeen City Council,[473] where a contract between a local authority and a contractor to produce an operational 'smart card' system that could be used by the council for the cash-free payment of meals by school children and as a bus pass by senior citizens, which was for a fixed price, for a fixed task and for a defined product, was not a stable economic entity that could be the subject of a transfer on its termination.[474] Although the word 'stable' is not expressed in the new regulations or in the 1981regulations, there was no doubt about its application in the Mackie v Aberdeen City Council case (a case under the 1981 regulations). It is proposed that the new regulations, in order to give effect to Union law, should also be read accordingly and the word 'stable' should be` implied.[475]

---

[472] See ECJ Case C-48/94 [1996] IRLR 51, for a detailed discussion see also McMullen,*Business Transfers and Employee Rights* First Ed, (Butterworths Lixisnxis 1998).
[473] John McMullen, 'Recent judicial and legislative developments in the law of transfer of undertakings' (2006) 35(6) Industrial Law Journal24, 28.
[474] For more see John Mcmullen, 'An Analysis of the Transfer of Undertakings (Protection of Employment) Regulations 2006' (2006) 35(2) Industrial Law Journal119. Here, we must notice that although the word 'stable' is not expressed in the new regulations, nor was it expresssed in the 1981 regulations, however, this condition must be achieved to apply the law in M&A cases.
[475] John McMullen, Ibid, 119.

In the case of Smartex Limited [2006] CSIH36,[476] the appellant (Ms Mackie) was employed by Smartex Limited (Smartex) from 28 October 2002 until 12 December 2003, when she entered the employment of the respondent. She resigned from that employment on 7 May 2004. She then lodged claims with the Employment Tribunal (ET), including a claim for unfair dismissal in accordance with the provisionsof the TUPE Act 1981. By a decision dated 24 September 2004, the ET held inter alia that there had been no such transfer and dismissed the claim. The appellant appealed to the Employment Appeal Tribunal (EAT).[477] By a decision dated 21 September 2005, the EAT dismissed the appeal. It held that the type of business conducted by Smartex in the present case was a one-off contract for the production of a smart card. Once that contract was completed, the respondent's business with Smartex was at an end, leaving no stable or discrete economic entity. There was no transfer of tangible or intangible assets, even though the EAT had found that there was a stable economic entity before 12 December 2003, on the grounds that the business did not thereafter retain its identity. The court also held that the appellant's job with Smartex was to assist with the development of the card and to get it up and running. While part of her function in the initial phase was to pass on some of her expertise to her assistant, Miss Nicol, there was insufficient evidence to show that the job that Miss Nicol was assigned to do was the job that the appellant had been doing. Her contract with the respondent did nothing to support her contention that she continued to do the same job.[478]

[476] Smartex Limited [2006] CSIH36 XA125/05, SECOND DIVISION, INNER HOUSE, COURT OF SESSION.
[477] Smartex Limited [2006] CSIH36 XA125/05, Ibid.
[478] Ibid.

3.4 Employees' Rights in M&As According to UAE and Qatar Legislations

3.4.1 Individual Contract Rights in M&As

The State of Qatar and UAE Laws regulate individual labour contracts, through the elaboration of the rules governing the relationship between its parties, as well as its conditions, and the legal effects of M&As on such as these contracts. Article 1/9 of the State of Qatar and 1/4 of the UAE Labour Law define the concept of employment contract as "An agreement between an employer and worker, whether of a definite or indefinite duration, whereby the worker undertakes to perform a certain work for the employer, under his direction or supervision in return for a wage".[479]

Article 52 of Qatar and article 126 of UAE Labour Laws also state: "The service contract is not terminated when a change occurs in the form or legal status of the firm due to the merge of the enterprise with another enterprise or the transfer of its ownership or the right in its management to a person other than the employer for any reason. The original and the new employers shall remain jointly liable for a period of six months for the discharge of any obligations resulting from employment contracts during the period preceding the change; after the lapse of that period, the new employer shall solely bear such liability".

Through the texts mentioned, it can be concluded that the UAE and Qatar legislation -like the contemporary legislation- taking by the theory of the legal personality of company and determine and confirm that the worker is tied to the project regardless of a change of owner, which therefore means the continuation of the contract with a new employer, whether having acquired this status due to the transfer of ownership, such as

[479] Articles 1(9) of the State of Qatar Labour Law 14 of 2004 and 1(4) of the UAE Labour Law 12 of 1986, which define labour by saying 'Labour: Any human effort, whether intellectual, technical or physical exerted in return for a wage'.

the sale of the business, or otherwise through the non-transference of ownership, such as rent.

Accordingly, it is clear that if the enterprise ownership is moving to a new employer, this does not lead to breaking the link between the worker and the enterprise, and similarly does not affect the rights of workers or their contracts, where the new employer is accountable by solidarity with the old employer for six months to settle things between the new and old employer, and to thereby transfer the responsibility to the new employer.

In order to preserve employees' rights in transfers of undertakings on the basis that the employee is the weaker party in this equation, and also in order to maintain the legal status occupied by the worker before M&A, the legislature make the responsibility on employees' rights a shared between the new and old employer for six months after the merger. However, the solidarity of the old employer with the new employer is not absolute, with the laws indicating that, after six months, the new employer is solely responsible for the implementation of the obligations arising from the employment contracts between the worker and the former owner of the venture.

The provisions of the judiciary in Arabic areas were supported and settled concerning this rule, when, most 'courts sentenced that contract of employment does not end when the employer change'. An example, in appeal Nos 108 and 109 of 2009 (Labour Court),[480] the UAE appeal Court stated that "the text in Article 126 of the Labour Law indicates that when the individual ownership of the enterprise transfers from the original employer to the new employer each of them will be jointly liable with the other on the implementation of the obligations arising from employment contracts in the previous period to transfer of this property for a period of six months from the date of transitions. After the expiration of this period, the responsibility of the previous employer

[480] The judgement of the UAE appeal court, in appeal Nos 108 and 109 of 2009.

in the implementation of these commitments ends and the new employer remains solely responsible.[481]

In another judgement, the Jordanian Excellence Court in its judgement[482]ruled that a contract of employment does not end when the employer changes through merger or acquisition.[483] The summary of case is as follows: HPA worked under a contract of employment as an employee in the Mashreq Bank Lebanese Joint stock company Amman Branch since September, 1979, with the total amount paid to him at his last salary 312.500 Dinars—unlike the thirteenth, fourteenth and fifteenth months' salary in addition to allowances. On June 13, 1991, by decision of the Commission on Economic Security in Jordan the Mashreq Bank branches in Jordan split from the centre of president of the Bank in Beirut, and entrusted the administration of those sections to the Petra Bank[484]. On May 31, 1993, Mashreq Bank subsidiary Amman merged with Jordan Gulf Bank. The plaintiff (worker) introduced his claim in with case number 1033/92 in front of the Court of First Instance at the Amman- Jordan-against each of the Mashreq Amman Bank and Management Committee of the Bank of the Mashreq. Subsequently, the plaintiff did not end his work but continued to work in the Jordan and Gulf Bank Company. Notably, the transfer of ownership of the company from the employer to any other owner in any action does not affect the employment contract, where the contract between the worker and the new employer remains in existence through force of the law, as if the employee had signed with the new employer from the very beginning, thereby transferring its effects and being responsible for implementing all obligations resulting from such. Importantly, this is the lesson from the text of Article 52 of the State of Qatar Labour Law,[485] and needs to be understood concerning the fact that the work of the plaintiff is on-going: splitting the Mashreq Bank branches in Jordan from the centre of administration in Beirut

---

[481] The judgement of the UAE appeal court, in appeal Nos 108 and 109 of 2009.

[482] Judgement of Jordanian Excellence Court No. 284/95 of 25/03/1995. Source Pasbus (2006), Ibid, pp. 141-145. This judgement has been used in this situation (Judgement of Jordanian Court of Cassation) due to absence of judicial rulings published in the UAE and State of Qatar and similarity of the texts Jordanian Law with the State of Qatar and UAE Companies Laws, which often take its texts from the texts of Egyptian laws.

[483] Ibid.

[484] Petra Bank domestic Bang in the Kingdom of Jordan.

[485] Article 52 of the State of Qatar Labour Law No 2 of 2004.

does not constitute the end of the service of all the users in Jordan. However, the respondent would not accept the decision made by the Court of Appeal, therefore he appealed against the judgement to the Court of Cassation. This appeal was based on his view that the Court of Appeal erred when it ruled that the plaintiff remained at the top of his work and he was not laid off from the work, even though the Committee of Economic Security completed the merger process between the Mashreq Bank and the Jordan and Gulf Bank.[486]

However, the Court of Cassation rejected the appeal and supported the impugned decision on the basis that, although the merger would result in the expiration of the transferor company and the demise of its legal personality, this lapse does not mean the decomposition of the company from its contracts because the transferee or new company succeed the company in its rights and obligations. Ultimately, all contracts entered into by the transferor company continue and are on-going.[487] The reason for the continuation of the contracts entered into by the transferor company is owing to the fact that the merger does not involve the liquidation of the transferor company and/or the sharing of its assets, but rather the transfer of its financial assets, including the positive and negative elements, which requires existence and continue the activities of the transferor company in the scope of the transferee company. This fact leads to the continuation of contracts entered into by the transferor company, where their impacts go to the transferee or new company.[488]

Moreover, where the contract of employment continues once it is formed, a contractual relationship linking the two parties is established with the imposed continuous obligations imposed on each of them as long as the contract exists. Accordingly, the ownership of the facility is moved or changed, there should not be impact on the employment contracts between the employer and worker; therefore, the expiration of the transferor company and the demise its legal personality do not impact

---

[486] Judgement of Jordanian Excellence Court No. 284/95 of 25/03/1995.
[487] For same meaning see articles 276 of Qatar and 284 of UAE Companies Laws.
[488] The principal of the theory of the legal personality of company, for more meaning see Section 2.3 of Chapter Two of this thesis.

employment contracts; accordingly, the contract remains in force prior of merger and transferring to the transferee company by force of law, and that does not depend on the satisfaction of the worker or the transferor company, and where the transferee company cannot steer away from the contracts or obligations entered into by the transferor company.[489]

This result was previously approved by the Egyptian Court of Cassation[490] in its decision of 26December 1981, which also added two main rules to the judgement above. Firstly, the rules and provisions included in the contracts and regulations of the transferee company before a merger are non-mandatory and do not apply to the transferor company's employees, as long as their contracts and systems that were in effect in their regard did not include similar rules and provisions. Secondly, the privileges that were enjoyed by the transferor company's employees cannot be disregarded by the transferee or new company after a merger or acquisition.[491]

This rule—which is stipulated by law and confirmed by court rulings—applies on the merger by absorption and merger by formation a new company where the employees in the transferor company maintain their legal status, and their contracts move from the transferor companies to the transferee company—even if there is no legal text in the contracts or in the merger contract requiring or deciding this. Ultimately, this is enforceable by law.[492] Markedly, following the M&A operation, the employer should set internal appropriate rules and regulations for the company resulting from M&A to suit the new situation so as not to dissipate the rights of workers.

[489] For more, see Hammad M A M, 'Merger Company According the Jordanian Companies Law'(Master Thesis, University of Jordan and Pasbos 2006).
[490]In this case this judgement has been used (Judgement of the Egyptian Court of Cassation) due to absence of judicial rulings published in the UAE and State of Qatar and similarity of the texts of Arab Laws with each, which often take its texts from Egyptian laws.
[491] The Judgement of Egyptian Court of Cassation, December 26, 1981.
[492] See articles 277 of the State of Qatar, 276 of the UAE, 904 of the UK Companies Laws and 17 of UK Cross-Border Merger Act 2007.

This was confirmed by the Jordanian Court Excellence[493] when it ruled that the transferee company is the successor of the transferor company in all its rights and obligations. This rule, from the public order, does not depend on the consent of the worker or the new employer; the intention of this rule is to protect the worker and to ensure stability in the employee's work—especially following the relationship between the workers and enterprise or venture having become stronger than the relationship between the worker and the owner of business. With this in mind, it can then be stated that the employment contract will have lost its adjective personal,[494] thereby implying that changing employer is not in itself a reason for the expiration of labour relations. Ultimately, this is not justified or fitting concerning the termination describing abuse, and lends it legitimacy in this case.[495]

Notably, Saghir (1986)[496] and Al-Borai (2003)[497] state that there should be expansion concerning the application of the rule of continuity of contracts for work, with amendments including its scope. Importantly, everyone has a working relationship with their employer, and so the application of this rule requires, firstly, a change in the legal status of the employer, which subsequently means a change in the venture management. This, of course, includes a change either in the property or in utilisation.

---

[493] See the judgement Jordanian Court Excellence Number. 697/95 (30-2661 to 2667) and judgement of Egyptian Court of Cassation Number 213 s 21 years, meeting March 10th 1955, year, 36 January-June 1956, p.345 and 677. This judgements has been used in this situation due to similarity of the texts of Egyptian and Jordanian Commercial Companies Laws with the texts of the State of Qatar and UAE Companies Laws, which often take its texts from the texts of Egyptian laws.

[494] Asair (1986), Ibid, 588, 589.

[495] Al-masri (1986), Ibid, 311, 322.

[496] Al-Saghir (1987), Ibid, 587, Al-Borai A H, *The Mediator in Social Law* (Dar Al-nahdah Alarabiah, 2003) 777. Arabic Source

[497] Al-Saghir Ibid 777.

From the aforementioned and according to the texts of laws, cases,[498] theory of the legal personality of company and M&A nature, it can be stated that the transferee company is the legal successor of the transferor company, and replaces them in financial assets in their rights and their obligations, and also replaces them in contracts within which the transferor company was a party. Therefore, the expiration of the transferor company does not have any effect on the employment contracts of which the company is a party, with such contracts remaining continuous in the face of the transferee company, and whereby it is not permissible for the transferee company to terminate the employment contract established by the transferor company. However, the continuation of the work contract—which the transferor company is a party of—does not prevent the transferee company from its right to organise the ventures that transferred form the transferor company, to comply with the conditions required for, and to be a real organisation.[499]

3.4.2 Employees' Rights in M&As Regarding Employment Contracts of an Unspecified Duration

Unlike employment contracts with an indefinite duration[500] and casual work,[501] temporary work, according to the State of Qatar and UAE Labour Laws, is defined as

[498] See the judgement of Egyptian Court of Cassation which decided 'Consequent merger of companies in other, expiry of the first company, demise its moral personality, and succession the second company to it as general succession in all its rights and liabilities, and the second company become lonely which can bicker and quarrelled on in this rights and liabilities' date May 12, 1974. And in other judgement of Jordanian Court of Cassation in Resolution No. 1544 (2001 m distinguish (the five) as of July 23, 2001, the court decide 'Where, the plaintiff filed his claim against the Jordanian Al Nisr Insurance, and this company does not have a legal existence because it is merged with Refco Insurance, as a result, Al Nisr Al Arabi for insurance created, therefore the moral personality of them demise and it no, longer has legal existence, and not allow to claim on it in the rights which moved to new company'.

[499] For more see Section2.2.1.1.2.

[500] The State of Qatar Labour Law provides for 'Continuous Service: The uninterrupted service of the worker with the same employer or his legal successor. This continuous service will not be interrupted in case of periods of leave, permitted or agreed absence or stoppage of work in the establishment for reasons not related to the worker'.

[501]Casual work, according to article 18 of the State of Qatar Law, is 'Work is by its very nature not included in the activities carried on by the employer and the performance of which does not take more than four weeks'.

'the work whose nature necessitates its performance in a limited period or which is limited to a certain work and ends upon its performance'.[502]

From the text above, it may be stated that the provisions relating to the survival of labour contracts following M&A are the provisions relating to limited duration contracts; however, if the service contract is of an indefinite duration, any of the two parties may terminate the contract. In this case, the party intending to terminate the contract is required to notify the other party in writing, as defined by law.[503] However, the right to terminate the service contract is not absolute, but rather must be based on legal justification, and there should therefore be no harm affecting the other party not commensurate with this interest of termination. If the termination is not intended to achieve a legitimate interest, or otherwise if the interest achieved by the termination does not fit with the harm to the other party, the termination in this case is arbitrary; the judge, in this case, has to predict the reasons for termination on the basis of substantive matters, as estimated by the judge in question without supervision from the Court of Cassation, when the estimate was based on palatable reasons.[504]

In confirmation of this view, the Arab judiciary represented by the Egyptian Court of Cassation went on to state that the appointment of activity of the enterprise or pressing expenses or the shutting down one of its subsidiaries allows the employer to end the contracts of some workers based on his authority in the organisation or enterprise, which is at the discretion of him without supervision—as long as it is justified. In such

---

[502]Article 17 of the State of Qatar Labour Law 2004 and UAE Labour Law 8 of 1980.

[503] Which provided for that by saying 'If the service contract is of an indefinite duration any of the two parties thereto may terminate it without giving the reasons for the termination? In this case the party intending to terminate the contract shall notify the other party in writing as prescribed by the law. If the contract is terminated without observing these periods, the party terminating the contract shall be obligated to compensate the other party for an amount equivalent to the wage for the notice period or the remaining part thereof'. See articles 41 of the Qatar and 117 of the UAE Labour Laws.

[504] See Al-moligy A S (1984) The Middle of Legislation Society (Labour Law, the Law of system of Public Worker and Insurance Law), Second Ed, p. 280 and Al-arif A. Ibid, p. 351 and Gulf Talent (2007), UAE Labour Law, pp. 1-44. See also article 117 of the UAE Labour Law, which provides for that by saying:"The employer and employee may terminate the employment contract with unlimited period, for a valid reason at any time after conclusion of the contract by written notice duly given to other party, thirty days at least prior to termination. 2. In respect of daily pay employees period of notice shall be as: A. On week in the employee has worked for more than six months but less than one year. B. Two weeks if the employee has worked for at least one year. C. One month if the employee has worked for at least five years".

operations the judiciary can only following the verification of the seriousness of the justifications, which lead to laying some workers or expenses.[505] In appeal No 83 of 1959,[506] the court decided that the authority of the employer in regulating their enterprise is absolute power, on the basis that they are the company owner and responsible for its management, and not just an observer of its decisions. Notably, at his discretion, if he considers economic crisis casts its effects upon him, or a disaster is about to occur and may lead to a narrow circle of his activities or pressure him in terms of expenses, this allows him the freedom to take whatever decisions he sees as required in order to protect his business and to accordingly protect his legitimate interests.[507]

We conclude from this that the ending of employment contracts of indefinite duration concluded by the combined company ultimately depends on the availability of justifications calling for termination; otherwise, the termination is considered arbitrary and therefore calls for worker compensation: such circumstances included, for example, employees being laid off owing to dual careers or work duplication, or owing to the reorganisation of the company's overall structure following the merger, or the abolition of some operations which the company carried out before.[508] On the other hand, a worker may terminate his employment contract if the merger transfers the workplace to an area far from the original place of work, or if the working conditions agreed upon between the worker and the company are changed, or if he has otherwise established more suitable working conditions.[509] In short, the principle of contracts for work does not prejudice the right of two parties in unspecified period contracts to terminate the contract, provided that the termination is based on legitimate reasons.

---

[505] Appeal (N 127 (Y 32 (1966), Technical Office, p. 821 and appeal (N 29 (Y 32 (1966), Technical Office, p. 401.

[506] Appeal N 83 (22K (1959), Technical Office, p. 798.

[507] The judgement of Egyptian Court of Appeal N 83 (22K (1959), Technical Office, p. 798.

[508] Mercadal B Janin P 'Memento Practice trading companies' Lefebvre, Ed, 14, Paris, (1983-1984) 936.

[509] For more see Al-saghir Hosam Al-dine (n 483) 593.

3.4.3 Rights of the Owners of Collective Labour Contracts in M&As

A collective agreement is a legally enforceable contract for a specified period (usually one year) between the management of an organisation and its employees represented by an independent trade union regulating the terms and conditions of work and the provisions of operation.[510] This agreement is notably also between the organisation and trade union organisations, as well as the owner or a group of business owners. Markedly, it is written with the agreement detailing and defining conditions of employment (wages, working hours and conditions, overtime payments, holidays, vacations, benefits, etc.), as well as procedures for dispute resolution.[511] This is also referred to as labour agreement, union agreement, or union contract.

The collective agreements refer to the regulations of conditions of work and the conditions and provisions of operating in-line with international lab or standards contained in the Labour Conventions issued by the International Labour Organisation,[512] which subsequently lead to increasing the standard of living of workers—physical and cultural—and the provision of aspects of social care and healthcare for them.[513] The collective agreement is not between the worker as an individual and the employer including a commitment in the work versus wage, but rather exists between the trade union organisation and represents the interests of the workers on the one hand and the employer on another. Moreover, it specifies the conditions that must be respected[514] when the individual work is concluded so as to achieve the interests of the workers and to thereby ensure the employer has some degree of stability in his dealings with the workers

---

[510] Mohammed Hussain Mosaor *'What the Labor Law, Individual Employment Contract, and the Collective Employment contract'* First Ed, (House the New University, 2006).

[511] For more, see Basbos (2006), Ibid, p. 138, Alsair (1987), Ibid, p. 597 and Hasn A A (1982) the Abstract in the New Labour Law, Cairo, Egypt, p. 416 and article 1/4 of the UAE Labour Law 8 of 1980.

[512] The International Labour Organisation (ILO) is the United Nations (UN) body that sets internationally recognised labour standards to protect the rights of workers globally. It is a 'tripartite' organisation, consisting of three parties: workers, employers and governments. The organisation was set up after the First World War as part of the League Nations (the precursor to the UN). For more see Chandra Roy and Mike Kaye *'The International Labour Organization: A Handbook for Minorities and Indigenous Peoples*' Minority Rights Group International and Anti-Slavery International (2002).

[513] See Basbos, Ibid.

[514]The articles of 116-138 of Qatar Labour law specify the provisions of this kind of contract and how to solve the problems caused from them.

and accepting the union the terms of employment.[515] This type of contract is renewed through collective bargaining, and is renewed if the last period was completed without agreement on the renewal extended to work the convention for three months, and continues to negotiate for its renewal, if passed two months, without reaching an agreement, any parties in the Convention was to submit the matter to the competent administrative authority in mind of taking the required action necessary.[516]

From the aforementioned and according to Al-sair (1987),[517] article 126 of the UAE and article 52 of Qatar Labour Laws focus on individual contracts of employment but not collective labour contracts. Despite the importance of collective labour contracts and the regulatory role of these collective agreements for labour relations, the texts of the UAE and Qatar Labour Laws do not apply the rule of the continuity of employment contracts in transfers of undertakings.[518]

Mehrez (2002)[519] believes that the regulatory role of collective agreements for labour relations cannot be denied, as it is considered as the Constitution to individual employment contracts, therefore, he gave three solutions; firstly, the collective agreement that held by the transferee company (including its rights and privileges) applies to employees of the transferor company, provided that the rights and privileges in the collective agreement that hold by the transferee company must be at least equal with what was contained in the collective work contract provided by the transferor company.[520] However, if there is no collective contract concluded by the transferee company, this does not prevent the continuation of workers of the transferor company in using the individual advantages determined by their collective contract concluded by knowledge of the transferor company.[521] Secondly, the transferee company can accept the collective

[515] Badawy K M. the Reference in Labours United Legislation, Part Two, section 95, p. 90.
[516] For more see Basbos (2006), Ibid, pp. 138-139 and Alsair (1987), Ibid, pp. 597-599.
[517] See Al-sair (1987), Ibid
[518] See Al-Azmi K M 'the Legal Effects of Mergers on the Shareholders and Creditors' (Ph.D. thesis, Cairo University 2004); Al-sair (1986), Ibid
[519] Mehrez A, 'The Integration of Companies from A legal Perspective: A comparative study' (Dar Al-nahdah Alarabia 2002) 311-322. Arabic Source
[520] See Al-azmy k(n 503).
[521] See Basbos (2006), Ibid, and Al-sair (1986), Ibid.

employment contract and abide by this in mind of the workers of the transferor company, and thus becomes a party to this contract, requiring the application of the principle of succession of the transferee company of the transferor firm public succession in all its rights and obligations.[522] Thirdly, the transferee company can enter into negotiations with the Trade Union organisation workers regarding a new collective labour agreement, taking into account various new economic and social circumstances.[523]

The fact is that the transmission of the collective labour contracts of the transferor company to a transferee or new company raises many practical problems due to different cultures and the nature of the work in the companies, which may need a large amount of money. Therefore, it is best to try to avoid problems and difficulties potentially facing companies involved in mergers due to the collective transition of the employees of the transferor company to the transferee company. This may require negotiations with representatives of the workers or trade unions concerning all conditions according to the workers' rights and obligations following the merger. This may assist in establishing an appropriate solution during the preparatory phase, and will also better enable all parties to prepare for the merger.

3.5 Kind of Employees Rights and Obligation in M&As

According to articles 126 of the UAE and 52 of Qatar labour laws and regulations 4 and 5 of UK TUPE Act 2006, as well as according to regulations 2/2, 3 and 4 of UK Cross-Border Act, it is normal that the transference of employment contracts be concluded by the transferor company to the transferee or new company, not leading to the prejudice of the rights of workers or abridging the privileges enjoyed by them. The continuation does not only focus on labour contracts but also includes what workers enjoyed in the form of advantages and benefits prior to the merge, such as bon uses, promotions, vacations and discounts, facilities, qualification and training courses, nutrition, clothing and tickets that provided by some companies for their workers and all advantages that enjoyed by

[522] Mehrez A,'The Integration of Companies from A legal Perspective: A comparative study'(Dar Al-nahdah Alarabia 2002) 311-322. Arabic Source
[523] Basbos (2006), Ibid.

employees prior to the merger. Where, the transferee or new company cannot repudiation of employment contracts which are concluded by the transferor company or to otherwise detract from the advantages that the employees were enjoyed prior to the merger.

This applied in one of the issues of dispute submitted to arbitration COICA Cairo.[524] The abstract of the case stated that the Contemporary of Oils and Soap Company accustomed to provide breakfast for workers who worked it during the Ramadan month, as well as to give workers the amount of meat on the occasion of Eid al-Adha each year. After the nationalisation of the company in 1963, it was decided that a fee be given instead of this feature in-kind; this continued until the time at which the company merged into the Egyptian Oils and Soap Company, which subsequently abstained from adhering to this part of the contract. Despite the intervention of the General Union of Workers of Food Industries with the workers at the merged company, the merging company insisted on its position. Subsequently, when the dispute was referred to arbitration, the merging company stuck to its position by the grounds that the merger of the Contemporary Oils and Soap Company led to the end of all privileges enjoyed by its workers. However, the arbitral tribunal did not recognise the view of the merging company, and instead decided that the merger should not affect the wages of the workers or otherwise detract from the distinguishing features of their contract, nor should it detract or diminish or affect the workers of the merging company. COICA arbitration therefore decided to bind the merging company to pay all the features mentioned to workers of the merged company.[525]

Furthermore, the transferee company would not impose its rules of procedure on the workers of the transferor company if the application of regulations would affect the rights they had enjoyed in the transferor company; however, the regulation of the transferee company applies to the workers of the transferor company, and the workers

[524]Appeal No 127 of the year 32 Q, Session 7 April, 1966. This judgement has been used in this situation due to similarity of the texts of Egyptian Law with the texts of the State of Qatar and UAE Companies Laws, which often take its texts from the texts of Egyptian laws.
[525] Conflict No. 7 of 1969 Cairo Arbitration; Meeting June 10, 1970, Group COICA Principles of Arbitration in Labour Disputes, N (138) in August 1975, Principle 6, p. 9.

should take benefit from it if the regulation has better advantages determined for them.[526] Regardless, in order to take advantage of such, a worker must be present at the company at an earlier date concerning the merger of transferor company workers, as long as the employment contracts associated with the transfer company do not decide upon similar systems.

The Egyptian Court of Cassation confirmed this as the view when deciding that case of merger the transferee or new company take the liabilities and rights of employees of the transferor company and applies for them its system, however, if its system has different provisions from the provisions of the transferor company, which may lead to negative impact on the transferor company employees rights that they were enjoyed before the merger, the system does not apply. Essentially, there is no place for implementing the rule of equality in this area because equality can only be in the context of rights, which is an area guaranteed by law.[527]

On the other hand, however, it is not permissible for the workers of the transferee company to demand to the advantages enjoyed by workers of the transferor company on the pretext of equality amongst workers in one establishment. The differentiation between workers per enterprise is not to prejudice the principle of equality if it were based on sound justifications. This principle was applied by the Arabic Judiciary by a judgement of the Egyptian Court of Cassation[528]when the court rejected the claim of a worker of a transferee company who requested that the transferee company make his rights equal to the rights of workers of the transferor company. In this instance, the court stated in its ruling that the transfer of ownership of the enterprise from one employer to another—in any act of any kind—does not affect the employment contract and the contract between

---

[526] See articles 51 of the State of Qatar Labour Law N 14 of 2004, 276 of the State of Qatar and 280 of UAE Commercial Companies Law, which provide for all the rights, obligation and liabilities of merged companies to be transferred to the merging or new company.
[527] Appeal N 392 (K51 (Y 1982) al-shrbiny Grip, G11, p. 105 also See appeal (N 27 (Y 51k meeting September, 26, 1981), al-shrbiny Grip, G10.
[528] This judgement has been used in this situation due to absence of judicial rulings published in the UAE and State of Qatar and similarity of the texts of Egyptian Law with the texts of the State of Qatar and UAE Companies Laws, which often take its texts from the texts of Egyptian laws.

the worker and employer, which is required to continue to exist if the employee had signed with the employer at the beginning of his contract.[529]

3.6 Conditions for Employee Transfer

The principle of the survival of the rights and obligations of employees of companies involved in M&As, as provided by the laws under study and confirmed by jurisprudence opinions and judicial judgements, requires the availability of several conditions to be implemented. The most important of these conditions are discussed below.

Firstly, the legal status of the employer must be changed. This condition requires that change occurs through a change in ownership or use, for example a transfer of ownership owing to death, inheritance, testament, sale or lease, or transformation or merger.[530]The UK TUPE 2006 regulations apply if an undertaking or business is transferred. They therefore do not apply simply if the ownership of shares in a limited company is transferred. In that situation, the basic position is that employees still remain employees of the company and thus do not need special rules to transfer their employment contracts to a new employer. In order to this, the UK Court of Appeal, in Millam v The Print Factory (London) 1991 Ltd CA 2007 ICR 1331,[531] ruled that the texts of the TUPE regulations apply if an undertaking or business is transferred, or if a service provision change is made, but do NOT apply when shares in a limited company are transferred.

In this situation, the continuity of the venture is not intended in the sense of continuation of the previous elements[532], but rather that there be the continuation of the same or different activity/activities in order to achieve the same goal as that established in

---

[529] Appeal N 29 (45K (Meting January 3, 1979) Al-shrbiny Grip, G5, p. 13.

[530]According to article 52 of the State of Qatar from the cases changing the legal status of the employer are transformation companies and merger. Same meaning as regulations 9/4 of the UK TUPE Act 2006 and 126 of the UAE Labour Law.

[531] Court of Appeal on 19th April 2007, [2007] EWCA Civ 322, reported at [2007] ICR 1331 (also at [2007] IRLR 526).

[532] For more see Al-sair (n 485) 491, 499; Al-masry (1986), Ibid and Basbos (2006), Ibid, 135.

the contract. In other words, the activities practiced by the workers prior to the change will continue on even after a change; this is what the Arabic jurisprudence agrees upon[533] where the continuation of employment contracts—despite a change of employer—assumes continuation in the same or in a similar activity, despite this change.[534]

Secondly, employees' contracts must be continuous at the time the employer changed. Accordingly, the new employer does not have to adhere to contracts of employment that ended before the change of employer or the transmission of the enterprise.[535] The rule of the continuation of employment contracts applies without regard to the type and nature of the employment contract, whether it is a fixed-term contract or a contract of an indefinite duration.

Importantly, the cases of temporary cessation of the employment contract due to an emergency—such as illness or vacation, breastfeeding or the performance of military service, do not lead to cancel the contracts of employees even the employer have changed during this period—where the contracts still remain in force. The reason for this is that, as long as the stop was related to the rights and privileges enjoyed by workers in accordance with the law, the contract must therefore not be compromised. Thus, the advantages enjoyed by the workers of the transferor company must continue with the transferee or new company.[536]

Thirdly, regulation 8 of the UK TUPE 2006 provides some new and important exceptions to the general principle that liabilities in connection with the contract transfer to the transferee. Once again, the underlying policy is the desire to free transferees from TUPE Act liability in order to encourage a "rescue culture".[537] Accordingly, to apply the provisions of the TUPE 2006 in M&As, the company or entity involved should retain its identity. In other words, the transferor company should not have entered into insolvency

---

[533] See Basbos (2006), Ibid, p. 136 and Al-masry (1986), Ibid, p. 552.
[534] For more see case of Smartex Limited 2006] CSIH36 inSection 3.3.3 of this chapter.
[535] Abdul Hamid Othman Hefny 'The effect of changing the employer on Labour Contracts in the Egyptian and France Laws' First Ed, (Publications University of Kuwait, 1997) 76.
[536] Al-sair (n 483) 592 and Basbos (2006), Ibid, 137.
[537] See regulation 8 of the UK TUPE Act 2006.

or liquidation. The most helpful case and the case that is, even now, regularly cited by courts when forming judgements as to whether or not a business transfer has occurred is the European Court of Justice case of Spijkers v Gebroeders Benedik Abattoir CV [1986] 2 CMLR 296.[538] This case concerned a company that ran a slaughterhouse. The company became insolvent and closed down, dismissing all employees. It was purchased some time later, by which time it had entirely ceased activity and dissipated its goodwill. The ECJ identified that "the decisive criteria for establishing the existence of a transfer within the meaning of the Directive is whether the entity in question retains its identity."[539] To ascertain whether or not this has occurred, the ECJ stated that it is "necessary to take account of all the factual circumstances of the transaction in question" and went on to set out a number of factors that need to be considered, such as a change in the legal status of the employer and the continuation of the ventures of the companies involved. However, the court went on to say that, in deciding whether this condition is fulfilled, "each of these factors is only part of the overall assessment and cannot be examined independently of each other".[540]

Furthermore, employment contracts should be in existence at the time of the merger or acquisition: the employee should not have left their job in the transferor company for any reason, unless the reason refers to force majeure or the dismissal of employees by the employer because of the transfer.[541] In accordance with regulations 4 and 5 of the UK TUPE Act and articles 126 of UAE and 52 of Qatar Labour Laws, this does not apply for employees who left or resigned of their own free will before the merger or acquisition. In the case of Ayse Süzen v Zehnacker Gebäudereinigung GmbH Krankenhausservice ,[542] the court ruled that the Directive 1977/187/EEC does not apply to situations where a person has a trusted provision of services to a first undertaking and terminates that contract and enters into a new contract with a second undertaking, unless there is a concomitant transfer from one undertaking to another of significant tangible or

[538] Spijkers v Gebroeders Benedik Abattoir CV [1986] 2 CMLR 296.
[539] Spijkers v Gebroeders Benedik Abattoir CV [1986] 2 CMLR 296.
[540] Spijkers v Gebroeders Benedik Abattoir CV [1986] 2 CMLR 296.
[541] Regulation 7 of the UK TUPE Act 2006.
[542] Ayse Süzen v Zehnacker Gebäudereinigung GmbH Krankenhausservice [1997] EUECJ C-13/95.

intangible assets, or the taking over by the new employer of a major part of the workforce in terms of numbers and skills assigned by the predecessor to the contract.

Finally, there must be the continuation of the commercial venture and the survival of the opportunity to work, which means a continuation of the activity that was carried out by former employers. When this activity continues—irrespective of whether or not the new employer uses the elements of previous exploitation—what matters is the unity of activity and not the elements of exploitation or production. Of course, when the facility is the same, it often exercises the same as its previous activities when changing employer; subsequently, the opportunities of work occupied by the workers with the previous employer continue. Notably, their contracts continue as those which were in effect at the time of change.

Importantly, however, if the activity ceases temporarily—such as in the case when the new employer decides after the enterprise moved that some renovations and repairs are required on devices, equipment or the place at which the company carries out its activities—this does not preclude the application of the rule of the continuity of employment contracts as long as the facility will be operating again following the cease of the reasons for pause.

It is noted that the continuation of a company in the performance of its activities in M&A cases does not mean uniformity and an exact match between the activity of the entity before and after the transfer or undertaking; rather, the intention is the survival of the jobs that were occupied by the workers before the change of employer.[543]

According to a ruling of the Egyptian Court of Cassation ([1980] 459), the continuation of employment contracts in the transferee or new company after a merger or acquisition requires that the aims of the transferee company should be similar or complementary to the aims of the transferor company, where employees continue to perform work that does not differ much from the work agreed upon in the contract of

---

[543] Al-Saghir (n 483) 592.

employment. This was confirmed by the Egyptian Court of Cassation in its judgement issued in a meeting on 1 March 1980,[544] which ruled that it is not permissible to commission workers permanently in work substantially different from the work for which they have been contracted, unless required by necessity and provided that this change is only temporarily implemented to face this necessity and removed when the necessity expires. Alexandria Court, in its judgement issued on 30 December 1957,[545] also ruled that "in the case of the sale of the enterprise, it is not allowed to force workers to continue the work if the buyer's work is completely different from the original work, especially if the work is exclusively artistic. The continuation in this case needs to be approved by the worker".[546]

3.7 Similarities and Differences Regarding Employees' Rights in M&As in the Laws under Study

3.7.1 Similarities between the Provisions of the Legislations of the UK, the UAE and Qatar Relating to Employees' Rights in M&As

According to sections 4, 5 and 7 of the UK TUPE Act, and articles 52 of Qatar and 126 of UAE Labour Laws, it has been determined that the merger of a company does not entail the termination of labour contracts, but rather that all the rights, obligations and liabilities of the employees of the transferor company are transferred to the transferee or new company by virtue of law once the process of the merger has been completed.[547]This provision concerns public order, and does not depend upon the consent of the worker or the new employer.

Importantly, according to the texts of the laws under consideration, it is normal that the transference of employment contracts from the transferor company to the transferee company is not limited to employees' contracts, but should also include any

---

[544] Appeal No 459 for the year 44 Q, meeting 1, March [1980].
[545] Alexandria Court of Elementary, Judgement 671, Year 57 , worker part 14, meeting 30 December [1957].
[546] Ibid.
[547] For more see sections a and b of article 904 of the UK Companies Act 2006; a and b of article 3 of the UK Cross-Border Merger Act; and articles 277 of Qatar and 280 of UAE Commercial Companies Laws.

and all privileges enjoyed by workers in the form of advantages and benefits prior to the merge. Accordingly, "any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee".[548] This is supported by the English[549] and Arabic[550] judiciaries, e.g. the Jordanian Court of Cassation rules that "…the merger led to the expiration of the transferor company and the demise of its legal personality". However, such expiration does not mean the separation of the company from its obligations and contracts: owing to the merging or acquiring a company, the merged or acquired company must ensure legal succession in all its rights and obligations and that all the contracts concluded by the merged or acquired company remain and are continuous.[551]Notably, UK, Qatar and UAE laws follow the legal theory of the personality of a company, which is based on the moral personality of companies involved in M&As and the extent of their expiration with the survival of their commercial ventures as a result of a merger or acquisition. Accordingly, with mergers the moral personality of the transferor company expires without liquidation and devolves all its elements in terms of financial assets to the transferee company, which receives all the assets and liabilities of the transferor company, including its ventures as a set of property movable and immovable. Legislation, jurisprudence and the judiciary are based upon justifying the transfer of rights and obligations, including the rights of employees, between companies involved in M&A operations. Accordingly, the transfer of an activity from one company to another company is not considered to be a merger as long as the first company still retains its moral personality and financial assets.[552]

[548] Paragraph 4/2 of the UK TUPE 2006.
[549] For more see Section 2.3.4 of this chapter.
[550] In this case used the Judgements of Jordanian Court Excellence and Egyptian Court of Cassation due to the lack of judgement available and due to the nature of judicial secrecy provisions in the GCC area and also to the similarity of the texts laws of the State of Qatar and UAE laws with the texts of Egyptian Laws.
[551] Judgement of the Jordanian Court Excellence No. 697/95 (30-2661 to 2667).For a similar judgement, see Egyptian appeal No. 113, p. 28 s Session, of 18/12/1973, p. 24, p. 128, as well as appeal No. 121 s 28 years meeting 29.01.1979, S. 1430, p 423.
[552] For more see article 2 of the UK Cross-Border Act 2007, and Section 2.3 of Chapter Two of this thesis

Also, M&As do not lead to the cutting or cessation of the legal relationship between the employees of the transferor and transferee companies.[553]

The purpose of the laws and also the jurisprudence and the judiciary[554] in upholding the legal theory of the moral personality of a company and deciding to transfer employees' rights and obligation between companies involved in M&As operations is to support the principles applied by modern laws, which intend to protect the worker and ensure stability in their work - especially following the establishment of the relationship between the worker and the enterprise and its venture becomes stronger than the relation between the employee and the employer that originally contracted him.[555] It also aims to enable companies to benefit from their workers and the skills they acquired through their work in the company before the merger or acquisition.

It is worth noting that the principle of continuation and the survival of labour contracts in the cases of mergers and the transmission of the commitments of the transferor company to the transferee company require adherence to certain conditions, which require a change in the legal status of the employer (either in terms of use or property) and the sustainability of the venture. The intention here is not the continuation of project elements as before, but rather to ensure the continuation of the same activity in order to achieve the same goals as prior to the merger. In addition, there must be the continuation of the business and the survival of employee opportunities and existing projects. Moreover, labour contracts must be applicable at the time when the employer changes, so the new employer does not have any obligation to an employment contract that ended before the merger or acquisition.[556]

---

[553] For more see the judgement Egyptian Appeal Court, Appeal No 213 of 21s, session 10/03/1955, super heater journal 36 of 1956, 345. Also see the Rule Jordanian Court Excellence No. 697/95 (30-2661 to 2667) In this case used the Judgements of Jordanian Court Excellence and Egyptian Court of Cassation due to the lack of judgement available and due to the nature of judicial secrecy provisions in the GCC area and also to the similarity of the texts laws of the State of Qatar and UAE laws with the texts of Egyptian Laws.
[554] Appeal No. 127 of 32 s, meeting of April 7, 1966, the Technical Office, p. 821
[555] For more see: Al-sair H (n 483) 588-589; Al-masry H (n 42) 311-322
[556] For more, see Section 2.4.3 of this chapter

The texts of the State of Qatar, UAE and UK laws relating to the effects of mergers on the rights of individual contracts are similar. The laws also follow the legal theory of the personality of a company and protect the owners of individual employees' rights at work and all other privileges enjoyed by them in the transferor company and the transferee company, which becomes its legal successor in all rights and obligations by force of law.

3.7.2 Differences between Employees' Rights in M&As According to the UK TUPE and Cross-Border Merger Acts and UAE and Qatar Laws

Although there are similarities between some of the texts of regulations of the UK TUPE Act, and Cross-border Act and the UAE and Qatar Labour Laws relating to preserving the rights of the owners of individual employment contracts, the texts of the laws relating to M&As and their effects upon employees have many differences.

Unlike the UK TUPE Regulations and Cross-Border Merger Act,[557]in Qatar and UAE laws, there are no particular integrated and binding legal systems regulating M&A operations and their impacts on workers and their rights. They do not highlight solutions and treatments that can be used in order to reduce these effects: article 126 of the UAE and article 52 of Qatar Labour Laws only regulate the rights of individual employers in M&As, which leads to difficulties in terms of understanding employees' rights in cases of the transfer of undertakings. This could in turn lead to corporate exploitation of these legislative shortcomings and mistakes, and the manipulation of the rights of staff, as happened in the case of Bank Al-blad and Al-Rajhi Companies Exchange with their employees.[558]

[557] For more, see regulation 17 of the UK Cross-Border Act 2007, which frankly provides for "The consequences of a cross-border merger are that—the rights and obligations arising from the contracts of employment of the transferor companies are transferred to the transferee company".
[558] For more, see Section 2.2 of this chapter.

Unlike section 5 of the UK TUPE Act[559] and regulation 36 of the Cross-Border Merger Act,[560] UAE and Qatar legislations do not regulate the rights and obligations of the owners of the collective employees contracts[561] in M&As, or give the owners of such contracts the right to participate in the selection of the new management of the transferee or new company.[562] Furthermore, unlike the TUPE and Cross-Border Merger Acts of the UK, UAE and Qatar legislation does not regulate the rights of employees to participate in negotiation procedures in M&As, either by themselves or through their representatives.[563]This leads to deprive the owners of collective contracts of the right to take advantage of the provisions of the labour laws in the two countries, which state that the rights of individual employees are transferred from the transferor to the transferee or new company in merger cases. It also leads to the ignorance of employees of their legal situation after M&As and increases their concern for their future and their rights at work, which leads to negatively affect the morale of the employees and thus their performance in their work, which may affect the performance of the companies involved. The failure of the UAE and Qatar legislators to regulate the rights of the owners of collective contracts may also lead to the owners of companies that employ staff by collective labour contracts dismissing them without any rights once the firms enter into M&A negotiations, which at the same time deprives the company of a large segment of its workers and their skills.

Importantly, unlike the UAE and Qatar laws, regulations 5 and 7 of the TUPE Act and regulation 36 of the Cross-Border Merger Act[564] of the UK are regulate a collective work contract with special attention through the provision of employees being able to participate in cases of M&As through their representatives.[565]Moreover, the UK

[559] Regulation 5 of the UK TUPA 2006.
[560] See chapters 3 and 4 of the UK Cross-Border Act.
[561] For the meaning and conditions apply of collective employee's agreement see sections 179 and 180 of the 1992 Act.
[562] For more, see sections 37 and 39 of the UK Cross-Border Act which provide for "the standard rules of employee participation apply, the UK transferee company may limit the proportion of directors elected, appointed, recommended or opposed through employee participation to a level which is the lesser of— the highest proportion in force in the merging companies prior to registration, and one third of the directors".
[563] For more, see regulations 17, 25 and 38 of the UK Cross-Border Act 2007.
[564] For more, see regulations 37, 38 and 39 of the UK Cross-Border Act 2007.
[565] See part 2 of the UK Cross-Border Regulations.

legislation also includes the right to be informed about and, in some circumstances, consulted in the case of an asset purchase and the right to a statutory redundancy payment (or severance), as well as protection against unfair dismissal.[566]

Furthermore, unlike UAE and Qatar legislation, the TUPE Act 2006 defines the conditions and scope of the application of its provisions.[567] It applies to public and private undertakings engaged in economic activities, whether or not they are operating for gain. Moreover, the law applies to workers employed in the undertaking, business or the part transferred if they ordinarily work outside the United Kingdom.[568] However, an administrative reorganisation of public administrative authorities or the transfer of administrative functions between public administrative authorities is not a relevant transfer and is not governed by any such law.[569] Moreover, regulations 4 and 7 of the law do not apply to any relevant transfer where the transferor is the subject of bankruptcy proceedings or any analogous insolvency proceedings that have been instituted with a view to liquidate the assets of the transferor and are under the supervision of an insolvency practitioner.[570]

3.8 Reducing the Negative Impacts of M&As on Employees

Despite the existence of legal provisions to guide M&As and address their effects on the employees of companies involved in such operations, the negative effects of M&As on employees as a result of restructuring the new company after completion of the merger or acquisition is inevitable in some cases. There are many solutions that can be taken to solve this matter, as discussed in the following paragraphs.

[566] For more, see section 7 of the UK TUPE 2006: "Accordance with this section either before or after a relevant transfer, any employee of the transferor or transferee is dismissed, that employee shall be treated for the purposes of Part X of the 1996 Act (unfair dismissal) as unfairly dismissed if the sole or principal reason for his dismissal is—the transfer itself; or a reason connected with the transfer that is not an economic, technical or organisational". For unfair dismissal cases see Part X of the UK Employment Rights Act 1996.
[567] For more see article 3 of the UK TUPE Act2006.
[568] See article 3/4 of the UK TUPE Act 2006.
[569] Article 3/5 of the UK TUPE Act 2006.
[570] Regulation 8/7 of the UK TUPE Act 2006.

Firstly, compensation can be given to employees who cannot be accommodated as part of the transferee ore new company or who do not want to be allocated positions lower than the positions they held prior to the merger. The compensation should be commensurate with the years of service that they had with the company and the services that they provided for the company prior to the merger and paid in cash from the profits made by the companies either before or after the merger.

Secondly, companies involved in M&As should take overall responsibility for maintaining and protecting the rights of workers (such as their rights in work or other rights and privileges that they enjoyed before the merger or acquisition), as well as commitment and adherence to the texts of laws that confirm these rights for employees in the transfer of undertakings. A worker's right to the protection of their employment contract is often viewed as highly significant. This is especially true as in a lot of cases workers are more interested in keeping their source of livelihood than being compensated for the loss of it, irrespective of how magnanimous the compensation they receive is or how well informed they may be about it. The contract of employment is the legal basis for every right and interest that the employee has in the employing firm. Therefore, it is where the worker first looks to establish what lawful protection they have in relation to a merger that would affect their privileges and interests.[571]Where the employee loses their employment or their contract is terminated without proper notice contrary to the provisions of their contract due to the merger or acquisition, problems could be created not only for the terminated employee but also the retained employees, who may be psychologically distressed by the process of the merger or acquisition due to the apprehension that they are next in line to lose their jobs.[572]

The aforementioned opinion has been supported by the Egyptian Court of Cassation, which ruled that the transfer of ownership of a facility from one employer to another (via any means, including integration into another organisation) does not affect employment contracts: the contract between the employee and the new employer with all

---

[571] Paul L Davies, *The Regulation of Takeovers and Mergers* (London, Sweet and Maxwell1976).
[572] Paul L Davies, 1976, Ibid.

the responsibilities remains in existence by force of law.[573] In another judgement, the Egyptian Court of Excellence ruled that rewarding a worker becomes a duty for the successor to fulfil. The Kuwaiti Court of Excellence stated the same notion when suggesting that rewarding workers is a debt duty placed upon the successor, with workers continuing in the service of the successor with conservation payments as their rewards for the period preceding.[574]

Thirdly, organisations must effectively develop and implement an assistance programme for displaced employees. Such a programme should include advanced notification, severance pay, extended benefits, a retaining programme, outplacement activities and employee consultation rights (their right to be informed within a reasonable time about the merger and how their rights and interests individually, as well as collectively, would be affected by it).[575] Moreover, there should be strong emphasis placed on the needs of determining whether or not the acquired firm's personnel are a good fit for the acquiring organisation. Consideration should also be given to whether or not mass layoffs can be avoided.[576]Moreover, communication between the executive team and employees during the pre-acquisition phase needs to be consistent so that anxiety levels amongst personnel can be kept to a minimum.[577]Consultation and communication are fundamental to the success of M&As and facilitate the process. They also serve as a way of involving workers in the process and soliciting their co-operation to avoid attitudes that could pose difficulties post-transfer.[578]

[573] See Appeal Number 27, year 51 k, meeting 26/ 12/ 1981, S32, p 2423 .This judgement has been used in this situation due to similarity of the texts of Egyptian Law with the texts of the State of Qatar and UAE Companies Laws , which often take its texts from the texts of Egyptian laws.
[574] Appeal No. 8-192, Labour discrimination , April 26, 1993 meeting, judgement of non-publication, Referred to in tuner Hanafy A, the Effects of Change employer on labour contracts, p. 27 and onwards
[575] Isioma Ahiauzu, Ibid, 10
[576] Starkman P E, 'Mergers and Acquisition: A Checklist of Employment Issues' (2000-2001) 13 DePaul Business Law Journal 47, 47. For more see also Isioma Ahiauzu, Ibid and Carole Spink, 'Employment Issues: The Forgotten Keystone in International mergers and Acquisitions' (2001) 133 Business Law Journal143.
[577]'Impact of Mergers & Acquisition on Employees & Working Conditions' <\\acfs4\lwpg\lwpgaba\My Documents\Legal Articles India Impact of Mergers & Acquisition on Employees & Working Conditions.mht> accessed 1 November 2010.
[578] C.A. Spink, 'Employment Issues: The Forgotten Keystone in International mergers and Acquisitions', 2000-2001 13 DePaul Business Law Journal 143.

In addition, there should be focus on the dissemination of legal awareness between workers and organisations, with staff being made aware of company goals, as well as the positives, negatives and features associated with the merger or acquisition. Moreover, there should be the facilitation of a meeting of the workers of the organisations involved in the merger or acquisition, either directly or through their representatives. This would help them to participate in the process of the merger or acquisition, make them aware of the working conditions of the new company and give them knowledge of the members of the Board of Directors. It would also help to relieve them of anxiety regarding their future in the work that they will undertake during the merger or acquisition period.

Furthermore, companies seeking to undergo a merger or acquisition must make bold decisions and ensure the training of personnel where their working circumstances have changed, with such methods and modern techniques adopted so that they can either work in the new institution resulting from the merger or acquisition or in another branch of the merging or acquiring company.

Finally, from both of the cases referred to above and in accordance with the researcher's view that whenever there are clear legal texts this eases M&A problems, there must be a reform of the texts relating to M&As in UAE and Qatar Companies and Labour Laws in terms of legal measures and solutions, which could include the following.

Qatari and Emirati lawmakers should enact clear legal provisions to address the rights and obligations of employees in M&As, and provide for the right of employees to retain their functions and all the rights and obligations that consequent from it through amending the texts of article 126 of the UAE and article 52 of Qatar Companies Laws or adding new provisions to the Companies Laws of the two countries. This could be achieved by taking advantage of regulations 4 and 7 of the UK TUPE Act and regulations 17 of the UK Cross-Border Merger Act, providing similar texts.

Qatari and Emirati lawmakers should enact legal provisions to require companies involved in M&As to notify their staff regarding the conducting of the merger or acquisition in enough time, giving them the right to participate by themselves or through their representatives. In addition, they should regulate the amount of compensation that can be obtained by workers who do not get a new job in the transferee or new company, as well as regulate the sanctions that may be imposed on companies that do not inform their employees regarding M&As. In order to achieve this, Emeriti and Qatari legislators can take advantage of regulations 11, 12, 13, 14 and 15 of the UK TUPE Act and regulations 22 and 23 of the UK Cross-Border Merger Act and provide similar texts.

UAE and Qatar laws should regulate the rights and obligations of the owners of collective contracts in cases of M&As, and provide for the preservation of employees' contractual rights against the transferee and all other rights "in connection with the contract", such as discrimination claims and personal injury claims, with the right to participate in the negotiation processes and to choose their representatives. The laws should also give employee representatives the right to obtain expert assistance in information, consultation and negotiation procedures relating to M&As involving multinational companies and domestic companies. This should be implemented while also allowing employees and their representatives to give their views on M&As. In this regard, Emirati and Qatari legislators can take advantage of regulations 5, 11, 13 and 14 of the UK TUPE Act and regulations 25-32 of the UK Cross-Border Merger Act.

3.9 Conclusion

Employees support the management and do the work of the business; thus subordinate employees and lower level managers are required for productive management and for the business to achieve success. However, the damaging effects of M&As on employment are unfortunate but inevitable in many cases. Parties involved in M&As are usually very hopeful in the initial stages. Plans often involve extensive strategising, restructuring and reconstructing. In most cases, the purchaser or new employer would want to alter the entire structure of the operation and its pattern of labour-management relations. This may

put employees under a lot of pressure to adapt to the changes brought about by the M&A, which may lead to the loss of many of the workers. It is generally thought that whenever there is a merger or acquisition between companies, workers are laid off. The reason for this is due to corporate restructuring, which occurs after the completion of the merger.

With the aforementioned in mind, this chapter has provided an evaluation of the rights of employees in M&As according to Qatar and UAE laws, the UK TUPE Regulations and the UK Cross-Border Merger Act, as well as the theory of the legal personality of a company. The chapter has examined the effects of M&As on employees' rights and obligations and showed that the effects vary by type of business deal bargain, the country and the type of merger or acquisition. In this regard, the chapter has pointed out that corporate restructuring, a lack of consultation with staff, underestimation of the results of the process and the ambiguity of the texts of the UAE and Qatar laws relating to employees' rights in M&As are some of the important reasons increasing the negative effects of such operations on employees.

The chapter has also explained the rights of employees who are employed by individual and collective contracts in M&As. Accordingly, the chapter has shown that UAE and Qatar Labour Laws, like the UK TUPE Regulations, uphold the theory of the legal personality of a company in the interpretation of the legal relationship between companies, workers and employers, providing for the automatic transfer of employees' rights in the transfer of undertakings. With this in mind and according to the theory of the legal personality of a company, M&As lead to the transfer of the transferor company's venture to the transferee or new company. Therefore, it may be useful for the employees who were running ventures prior to the merger or acquisition to continue doing so, in order to ensure that large ventures do not lose staff experience. In spite of this, unlike the UK TUPE Regulations and Cross-Border Merger Act, UAE and Qatar Labour Laws regulate the rights of the owners of individual employment contracts but not collective employment contracts, or the rights of employees to elect their representatives for or participate in M&A negotiation processes. The laws do not require an employer to inform their employees regarding M&As or give employees the right to make a claim to the

Labour Court in cases where the employer fails to inform them of such operations in enough time before the process begins.

The chapter has also detailed the conditions required by the laws for the continuation of employment contracts and all subsequent rights in the transfer of undertakings. In this regard, the chapter has pointed out that the transfer of workers' rights from the transferor to the transferee company includes the right to work and any other rights that they enjoyed before the merger or acquisition, providing the employees practiced such work without interruption prior to the operation.

With the aforementioned in mind, this chapter provides many legal and procedural solutions, which, from the perspective of a researcher, could contribute to reduce the negative effects of M&As on employees. These solutions include the necessity of notifying workers or their representatives of the merger or acquisition process in sufficient time and giving them the opportunity to participate in negotiation processes, as well as providing them with the training they need to work in the new company. Financial remuneration during the time of a merger or acquisition can be important and is usually expected. Further solutions include rewriting the UAE and Qatar legal texts relating to workers' rights in M&A cases commensurate with the new laws and the importance of their effects on workers; and adding legal texts to regulate the rights of the owners of collective contracts in M&As, as well as the rights of employees to obtain information on M&As and their potential effects on their rights. The adoption of such solutions would inevitably lead to mitigate the negative effects of M&As on employees and help the transferee or new company to mitigate the expenses that may be incurred by the company in training new employees.

Retention incentives are an important part of any merger or acquisition. Employers need to retain their employees because they need to retain their intellectual capital, the client relationships that have been fostered and the business focus that allows the organisation to continue to operate effectively.

CHAPTER FOUR: THE EFFECTS OF M&As ONTHE RIGHTSOF BOARDS OF DIRECTORS

4.1 Overview

Directors' duties are an implementation of the business, and exert the maximum effort of good corporate governance and to thereby achieve the goals for which the company was created. Moreover, directors have to attend meetings and the allocation of their activities should be ensured in order for them to serve the company and monitor its work, with preparation projects to ensure status confirmation and the subsequent increase profits.[579] Despite the importance of directors for companies, however, some studies[580] still show conflict surrounding the legal status of the members of directors and conditioning the relationship between the company and its directors amongst the agency theory. This means that the company director is considered to be an agent of the partners in the company's management.[581] Moreover, the theory of the institution or organisation means the company director - or the Board of Directors - does not act as an agent for either the organisation or its partners, but rather as a member of organisation's entity, which speaks under its name, expresses its will and is obligated under such legal actions.[582]

Legal problems are not limited to adapting the legal relationship between the company and its directors, but extend to the effects of M&As on authorities and the rights of directors of companies involved in such operations regarding retirement and

[579] Mahmoud Fahmy "The responsibility of members of the Board of Directors of shareholding Company" Business Conference, Cairo, [1980] 7

[580]Parkinson J.E, *Corporate power and responsibility* (Oxford University Press1993); Zahra, S A & Pearce J A, 'Boards of directors and corporate financial performance: A review and integrative model'(1989) 15 Journal of Management 291, 334; Donaldson L, *Anti-managerial* 'Theory of the firm: Managerial behaviour, agency costs and ownership structure'(1976) 3 Journal of Financial Economics 305, 360

[581] Berle A. & Means G.C, *The modern corporation and private properly*(Macmillan Press1932); Baysinger B D & Hoskisson R E, 'The composition of boards of directors and strategic control' (1990) 15 Academy of Management Review 72, 87

[582] Aktham ameen-Kholi,*Classes in Commercial Law* (2nd edn, Cairo 1969) 39, 46; Mohsen Shafik, *A mediator in Commercial Law* (2nd edn, Cairo 1957) 599, 536; Fama E.F, 'Agency problems and the theory of the firm'(1980) 88 Journal of Political Economy 288, 307

departures for the purpose of taking advantage of an offer from another firm.[583] Some people still hold the belief that the operations of M&As only have impacts on the employees and top management of the transferor company; in fact, M&As can also be tumultuous for the top management executives and other employees of the transferee company. Notably, the impacts of M&As on top level management may involve a 'clash of egos', as well as variations in the cultures of the two organisations.[584]

The differences in the legal texts of the UAE and Qatar Companies Laws, which set a limit on the number of members of Boards of Directors and do not develop solutions for the fate or the legal status of members in M&A cases, subsequently assist in the emergence of legal and practical problems during or after the end of M&As between companies involved in M&As and their Boards of Directors, which may later lead to prevent the completion of the merger or acquisition or have a negative impact on the results. As confirmation of this, according to Jeffrey Krug (2009),[585] mergers and acquisitions do not result in instability amongst management at target companies solely in the short term, as is often assumed, but ultimately result in abnormally high turnover lasting much longer. Target companies are believed to lose 21 per cent of their executives each year for at least ten years following an acquisition, with 'more than double the turnover experienced in non-merged firms'.[586]

Accordingly, when companies are involved in M&As, significant questions arise for Boards of Directors. For example, does this change mean that their employment contracts and other rights have ceased? How many top executives can continue on in their jobs after one, two or five years following M&As? What is the legal basis for transferring all directors' rights and obligations between companies involved in M&A operations? In accordance with the theory of the legal personality of a company and UK, UAE and

[583] Krug J, 'Top management team and leadership effects of mergers and acquisitions, and global strategy' [2005] Harvard Business Review, Strategic Management Journal.
[584] Paul A. Pautler, 'The Effects of Mergers and Post-Merger Integration: A Review of Business Consulting Literature' [2003] Bureau of Economics Federal Trade Commission.
[585] Jeffrey Krug, *Mergers and Acquisitions: Turmoil in Top Management Teams* (Business Expert Press 2009).
[586] For more information, see Section 4.4 of this chapter.

Qatar laws, this chapter will respond to the questions above and discuss directors' rights and liabilities in M&As.[587]

Section 4.2 discusses the nature of the relationship between companies and directors according to agency and organisation theories. Section 4.3 classifies the Board of Directors' duties, responsibilities and rights. The purpose of Section 4.4 is to provide a thorough understanding of the consequences of M&As for the Boards of Directors of the companies involved. Sections 4.5 and 4.6 identify the rights of directors in M&As according to UK, Qatar and UAE legislation. The purpose of Section 4.7 is to provide a thorough understanding of the consequences of M&As for the authority of directors in representing companies involved in M&As. Section 4.8 gives a summary of the similarities and differences between UK, Qatar and UAE legal texts relating to the impacts of M&As on Boards of Directors. Section 4.9 explains ways of overcoming the impacts of M&As upon Boards of Directors' rights and contracts. Finally, the last section of this chapter provides a summary and conclusion.

4.2Nature of the Relationship between Companies and Directors

4.2.1 Agency Theory

The application of economic theories to the study of organisations in general, and Boards of Directors in particular, has grown in popularity in the past years.[588] However, due to the multiplicity of the jurisdiction on Boards of Directors and the economic roles that are undertaken by companies in their communities, the interpretation of the legal relationship between a public shareholding company and the members of its Board of Directors is still shrouded in mystery in relation to two theories: the first is agency theory and the second

[587] Due to the multiplicity of the tasks, functions and rights of directors in companies, they cannot be covered in one study. Furthermore, as this study focuses on researching the legal basis for transferring the rights and obligations of employees, directors and shareholders in M&As, this chapter focuses only on the effects of M&As on the rights and obligations of directors and the rights of Boards of Directors in the transition from the transferor company's management to the new management of the transferee company

[588] Philip, Ibid, 19 and Donaldson L, *Anti-managerial theories of the firm* (Cambridge University Press, Cambridge 1995).

is the theory of the institution. Kholi (1969),[589] Ross (1973)[590] and Jensen and Meckling (1976)[591] believe that Boards of Directors are agents of the partners in terms of company management. In the classic case of Aberdeen Railway Co v Blaikie Brothers, [592] Lord Cranworth said that: "A corporate body can only act by agents, and it is of course the duty of those agents so to act as best to promote the interests of the corporation whose affairs they are conducting."[593]

The key idea of agency theory is that the company director acts as a proxy for the company.[594]The proponents[595] of this theory argue that the separation of ownership and control underlines the concept that organisations are both work-sharing and risk-sharing entities.[596] The shareholders contribute capital and bear the risk of the organisation, while the managers are usually wholly responsible for decision management.[597]

According to the proponents of agency theory,[598] a commercial company is a contract by which two or more natural or legal persons undertake to share in a venture, by submitting a share of cash or service and sharing in the profit or loss resulted from the venture.[599] This concept is an important foundation that shows that upon the establishment of any joint stock in a company, there must be a contract defining the

---

[589] Kholi Akthem Ameen, *Courses in Commercial Law* (2nd edn, Dar Al-nahda Alarabia) 39 Arabic Source; (1969) 46, al-Saghir (n 483); Shafiq M, *The Mediator in Commercial law* (3rd edn, 1957)599.
[590] Ross S, 'The economic theory of agency' (1973) 63 The principal's problem American Economic Review 134, 139.
[591] Jensen M & Meckling W, 'Theory of the firm: Managerial behaviour agency costs and ownership structure' (1976) 3 Journal of Financial Economics305, 360.
[592] Aberdeen Railway Co v Blaikie Bros [1854] 1 Macq 461 (House of Lords), for more reading see Len Sealy and Sarah Worthington, *Cases and Materials in Company Law* (8thedn, Oxford University Press) 332, 333.
[593] Ibid at 471
[594] Eisenhardt K L, 'Agency theory: A review and assessment' (1989) 14 Academy of Management Review57, 74.
[595] Philip Stiles, Ibid, 19, 22
[596] Eisenhardt K L, 'Control: Organisation and economic approaches' (1985) 31 Management Science 134, 149; Baysinger B D and Hoskisson R E, 'The composition of boards of directors and strategic control' (1990) 15 Academy of Management Review72, 87.
[597] Jensen M and Meckling W, 'Theory of the firm: Managerial behaviour, agency costs and ownership structure' (1976) 3 Journal of Financial Economics305, 360; Fama E F and Jensen M C, 'Separation of ownership and control' (1983) 26 Journal of Law and Economics301, 325.
[598] For more reading see Section 4.2.1 of this chapter
[599] Articles 2 of the State of Qatar and 4of UAE Commercial Companies Law. See also articles 513 of the State of Qatar Civil Law N 22 of 2004 and 513 of the UAE Civil Law N 22 of 2004

general rules of the contract, such as satisfaction,[600] the place of the contract[601] and the reason.[602] Moreover, the contract must be written.[603] Thus, the theory of the agency is to ensure that the moral personality of the company is created as a result of the convergence of the will of the partners in the company. This means that the moral personality of the company is generated by the will of the partners, registration in the company register or the issuance of a certificate of incorporation, which is only an indication of the personality of a company that is already present prior to registration or before the issuance of a certificate. Notably, a company director, according to the theory of agency, represents only the interests of the partners and the will of the members.[604] With this in mind, it follows that in joint-stock companies all members of the Board of Directors are associated with the company by an agency contract or an employment contract: if the idea that the shareholding company was founded on is contractual, this stems from the fact that the Board of Directors is an agent for the company.

This theory has been criticised for several reasons. Firstly, it is not compatible with the legal system of managing companies, as the laws allow a partner who is appointed manager in a company contract to continue managing the company despite opposition from other partners.[605]Furthermore, a director may be selected by the majority of partners; however, they are considered to be a representative of the company and all its partners - even those who do not agree with their appointment, and this provision is incompatible with the rules of agency theory.[606]

Secondly, the theory is inconsistent with the theory of the legal personality of a company and the special nature of the merger as a contract that leads to the expiry of the transferor company and the transfer of all its rights and obligations (including the venture

[600] About the concept and conditions of satisfaction see articles 65-147 of the State of Qatar Civil Law. See also articles 64-157of the UAE Civil Law
[601] Articles 148-154 of the State of Qatar Civil Law
[602] Where 'the contract invalidate if he adheres to the contractor for no reason or to cause unlawful'. For more, see articles 155-157 of the State of Qatar Civil Law
[603]Most of the Arabic judiciary believe and uphold this theory, which is provided for explicitly or implicitly
[604] Yamilky (2006), Ibid
[605] Mohsen Shafik (n 312), Ibid, 536
[606] Kholi Akthem Ameen (n 573) 39, 46

of the company) to the transferee company. This includes all the negative and positive elements and the rights of the transferor company, including the right for the Board of Directors of the company to become members of the Board of Directors of the transferee company. To say that the relationship between the company and its Board of Directors is governed by an agency contract is an infringement of this theory because in an agency contract, the principal or client can terminate or restrict the agency contract at any time: even there is an agreement to the contrary. This does not agree with the relationship between a company and its Board of Directors. Also, the laws authorise that anyone can be a shareholder, agent and a member of the Board of Directors of a company at the same time; notably, this may result in the duplication and multiplicity of tasks and functions, which may fundamentally affect the company's work and success.[607]

For the reasons above, Basbos (2006)[608] and Almasry (1986)[609] state that the director of a company is not considered an agent of the company or partners, but rather a member of the entity of the company who speaks on the organisation's behalf, expresses their own will and are obligated in their legal actions.

4.2.2 Theory of the Institution or Organisation

The contractual theory in an interpretation of the contractual nature of a company remained prevalent until the end of the nineteenth century. However, at the beginning of the twentieth century,[610] this theory began to recede in the face of institution or organisation theory, which is based on the care of the interests of the community, enterprise and directors. This theory emerged as a result of a contraction of the principle of will authority (pacta sunt servanda), which is one of the most important bases of the contract, and state intervention in the enactment of legislation that regulates economic institutions in order to maintain the general interests of society. Moreover, institution

[607] For more reading see Jensen, M and Meckling, ibid 581; Prentice, D and Holland, P R J 'Contemporary issues in corporate governance' Oxford: Clarendon Press (1993), Baysinger, B D and Hoskisson R E, 'The composition of boards of directors and strategic control' (1990) 15 Academy of Management Review 72, 87; Fama, E F and Jensen, M C (n 581) 581.
[608] Basbos (2006) Ibid, 54, 55; Alsaghir (n 482) 490
[609] Al-masry (n 42) 521
[610] See Basbos (2006), Ibid, 57

theory is based on the modern idea that the interests of a company exceed the limits of the contract, as it involves the interests of all persons who are interested in the success of the company, such as creditors, employees and holders of bonds issued by the company. Furthermore, the company's goals should not conflict with the economic development plan of the country.

With the aforementioned in mind, a company is one of the elements that contribute to the achievement of national interest. Moreover, a company in this context is an institution aimed at achieving the interests of individuals and the interests of the state. Therefore, a company in this sense is a private institution that works side by side with public institutions to serve the community. In order to achieve its objectives in serving the national economy, it must provide the necessary flexibility when operating its activities.[611]

According to this theory, the members of the Board of Directors are not linked with the company by any contractual link but are rather linked by legal relationship as a member - not an agent with a salary.

To distinguish between the two theories, Stiles (1998)[612] confirms that agency theory holds that there is an irreducible agency cost in the move away from ownership to managerial discretion and the realignment of incentives to reduce these costs are ex-ante costs.[613] Despite this, Eisenhardt (1989)[614] and Williamson (1984)[615] say there are strong similarities between the two theories, particularly in regard to their view of the role of the Board of Directors as an instrument of control: "the board is principally an instrument by which managers control other managers".[616]

---

[611] Yamilky A, *Commercial Law, Comparative Study of Companies*(Dar of the Culture for Publishing and Distribution 2006).
[612] Philip Stiles, 'The roles and responsibilities of boards of directors in large UK companies' (PhD Thesis, University of London 1998) 19, 22.
[613] Williamson O.E, 'Corporate governance' (1984) 93Yale Law Journal1197, 1230
[614] Eisenhardt (n 578)
[615] Williamson (n 597) 1197
[616] Williamson (n 597) 1223

Through a review of the two theories, the arguments and evidence put forward by their proponents and the legislative texts, the researcher believes that the legal nature of the relationship between a company and its Board of Directors is based on a mixture of the two theories. To reconcile agency theory and institution theory, Mohsen Shafik (1957)[617] says that the rules of agency theory regulate the internal links among the partners on one hand and among the managers on the other hand, while the external relationship that arises between the directors on one hand, and with others on the other hand is governed by the idea of the lawful deputy. Accordingly, the legal status of the members of the Board of Directors or the directors of a company is determined on the basis that they are not agents but a special type of agent, given the complex nature of their jobs at high levels of the organisation with many responsibilities. Essentially, this is what most jurisprudence of law mechanisms seeks.[618] It has also been stated in the harmonisation of the agency theory[619] and the theory of institutions[620] that the rules that control the agency of internal links are between the partners and managers. On the other hand, the external links between managers must take the idea of membership as the basis for these links. This means that the manager of a company is legally responsible for the company in everything required to meet its purpose and therefore is not simply an agent for the partners. Accordingly, and in line with the theory of the legal personality of a company, what are the duties, liabilities and rights of company directors? And what is the fate of the Board of Directors of the transferor company after M&As?

4.3 Directors' Duties and Responsibilities According to the UK Companies Act 2006

4.3.1 Directors Rights and Obligations

The Board of Directors, according to UK CA, is the body responsible for the management of the company, has the authority to make significant strategic and

---

[617] Mohsen Shafik (n 312)
[618] Yamilky A (n 595)
[619] For the legal meaning of this theory, see Section 4.4.1
[620] According to this theory, the Board of Directors or directors of the company are not agents for it or for the partners, but are the legal deputies of the company in all requirements to achieve its purpose and thus, in the company's link with others, are not allowed to protest by conditions that are the powers of directors.

management decisions and is responsible for seeing that the company is run lawfully.[621] According to UK legislation, a company is a separate entity, yet it cannot function without its Board of Directors, which is responsible for the management of the company on behalf of its owners.[622]

In the UK, as in many countries, the role and responsibilities of a Board of Directors vary depending on the nature and type of business entity and the laws applying to the entity. The most important of the board's functions are described in the most general terms by legal articles (e.g. in the Companies Act 2006), which have been developed by English courts over the last century or so, and by the proponents of the modern theory of directors. Firstly, the strategic role of the Board of Directors is a major factor in strengthening a company's competitive position and in ensuring the alignment of the company's purpose with shareholders' interests. The strategic role of the board is one of its most important duties and usually includes: identifying what business the company is in; developing a vision and mission; assessing threats, opportunities, strengths and weaknesses; selecting and implementing strategies; the acquisition and allocation of resources; the setting of policies;[623] and heavy involvement in the decision-making process within the organisation in crisis situations.[624]

Secondly, one of the most important elements and primary duties (this was debated for a long time in the UK Parliament[625] before being approved legally) of a company director is that they "must act in a way that he considers, in good faith, would

---

[621] According to section 250 of the UK Companies Act 2006 the term "director" is defined so as to include "any person occupying the position of director, and has been properly appointed as "directors"

[622] Christopher Pass "Corporate Governance and The Role of Non-Executive Directors in Large UK Companies: An Empirical Study" Working Paper No 02/25, Bradford University School of Management, Working Paper Series[2002]

[623] (Pearce & Zabra 1991, Hilmer 1993, Tricker 1984)

[624] Ibid for more reading see Parkinson 1993, for more see Pahi and Winkler (1974), (Goodstein, Gautam & Boeker 1994, Mintzberg 1978, Pearce & Zahra 1991). For more see Eisenhardt 1 989a Zahra and Pearce (1989) and Pfeffer 1972, 1973

[625] When introduced into Parliament the clause which was enacted as s.172 attracted a considerable amount of debate, and far more than any of the other general duties contained in Ch.2. This was probably due to a number of reasons. One was undoubtedly some uncertainty as to how the section would be interpreted and applied. Unlike the other general duties which were drafted in such a way as clearly to encapsulate existing common law rules and equitable principles, s.172 did not do so. For more see Andrew R Keay " Andrew Keay "Good faith and directors' duty to promote the success of their company" Company law 138, [2011]2

be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to the likely consequences of any decision in the long term, the interests of the company's employees, the need to foster the company's business relationships with suppliers, customers and others, the impact of the company's operations on the community and the environment, the desirability of the company maintaining a reputation for high standards of business conduct, and the need to act fairly between the members of the company."[626]

The expression 'good faith' has raised controversy in the literature due to its meaning, in this context, not easily being ascertained. Sealy (1989)[627] identifies two meanings given to the phrase; first, it provides the idea of acting honestly and with the best intentions. The second definition connotes the idea of an activity being genuine. Sealy states that the first definition tends to require a more subjective application, while the latter requires a more objective application.[628]

In the interpretation of 'good faith', Andrew R Keay (2010)[629] says that Article 172 the UK companies Act 2006 imposes a duty on directors to be more inclusive in their decision making, namely taking into account the relationships the company has with stakeholders while seeking to benefit the members. In Cobden Investments Ltd v RWM Longport Ltd,[630] the court ruled that good faith can most likely promote the success of the company for the benefit of its members as a whole. In other contexts, it might mean that a person has to exercise the caution and diligence that is to be expected of an ordinary person of ordinary prudence.[631]

[626] For more, see article 172/1 of the UK Companies Act 2006

[627] Len Sealy, 'Bona Fides' and 'Proper Purposes' in Corporate Decisions' (1989) 15 Monash U.L.R. 263, 269

[628] Andrew R Keay "Good faith and directors' duty to promote the success of their company" Company law 138, [2010]
"The Duty of Promote the Success of the Company is fit for Purpose?" Centre for Business Law and Practice, School of Law, University of Leeds [2010], 2

[629] Ibid

[630] Cobden Investments Ltd. v RWM Langport Ltd & Ors [2008] EWHC 2810 (Ch) (20 November 2008) England and Wales High Court (Chancery Division) Decisions

[631] For more see Keay (n 612) 2

In terms of directors' actions, good faith is not a new word to British courts and legislation;[632] there are indications in previous case law that directors have had a comparable responsibility in the past. In the Scottish Co-operative Wholesale Society Ltd v Meyer[633], Lord Denning said that the duty of a director "was to do their best to promote its business and to act with complete good faith towards it."[634] The judgement remains a leading precedent for the clear statement that the duty of care of a director is to the company itself, not to the interests of particular shareholders.

There are a number of reported cases where courts have not accepted that a director has acted in good faith.[635]For example, Judge Jonathan Crow, in Extrasure Travel Insurance Ltd v Scattergood (2003)[636], did not convince when the directors said that they were acting in the best interests of the company. In this case, the court was of the opinion that there had been a breach of duty. The company, Extrasure, had paid a sum amounting to most of its funds to its holding company in a corporate group arrangement. Subsequently, Extrasure became insolvent and ultimately its business was sold off and the purchaser, together with Extrasure, brought proceedings against the two former directors who had orchestrated the payment to the holding company. It was argued, inter alia, that the directors had breached their duty to use their powers for the purpose for which they were conferred. The directors stated that they had acted in the best interests of Extrasure and that the sum represented money owed to the holding company.[637] However, the judge Jonathan Crow had no hesitation in rejecting this assertion based on the proven circumstances existing at the time of the payment.[638] The deputy judge felt

---

[632] Andrew R Keay, Ibid

[633] Scottish Co-operative Wholesale Society Ltd. v. Meyer [1959] AC 324, for more reading see Julie A. Cassidy,*Concise Corporations Law*(5th edn, the Federation Press 2006) 220;Andrew Hicks, S. H. Goo *Cases and Materials on Company Law* (6thedn, Oxford University Press 2008) 113.

[634] Ibid, 367

[635] For example, see *Neptune (Vehicle Washing Equipment) Ltd v Fitzgerald (No.2)* [1995] B.C.C. 1000 Ch D; *Simtel v Rebak* [2006] EWHC 572 (QB); [2006] 2 B.C.L.C. 571 at [104]; *Primlake Ltd (In Liquidation) v Matthews Associates* [2006] EWHC 1227 (Ch); [2007] 1 B.C.L.C. 666 at [313].

[636] Extrasure Travel Insurances Ltd V Scattergood [2003] 1 B.C.L.C. 598, for more see *Company Law in practise* (7th edn, Oxford University Press 2008), Keay (n 613); Robert Flannigan,'Fiduciary Duties of Shareholders and Directors' [2004] Journal of Business Law277, 302.

[637] *Extrasure* [2003] 1 B.C.L.C. 598 at [103]

[638]Ibid, for more also seeper Lord Greene MR in Re Smith and Fawcett Limited [1942] Ch 304 at 306, per Jonathan Parker J in Re Regent crest plc v. Cohen [2001] 2 BCLC 80

that the reason offered by the directors had been created ex post.[639] He was of the view that the sum was paid because another subsidiary of the holding company needed the money to pay a third party who was pressing for payment, and this action was not in the best interests of the company that actually made the payment. The deputy judge opined that the directors' evidence was not plausible and he found against them. He said: "I am satisfied that the defendants did not think, on 17 August 1999, that the transfer of £200,000 was in the best interests of Extrasure."[640]

In Shepherd v Williamson [2010] EWHC 2375,[641] the trial judge, Mrs Justice Proudman, considered that Mr Shepherd did not breach the duty imposed by section 172 of the 2006 of the UK Companies Act[642]. According to section 994 of CA 2006,[643] the shareholder presenting to petition - Mr Shepherd - was also a manager of the firm. In 2007, the relationship between Mr Shepherd and Mr Williamson (the firm's other manager and stockholder) deteriorated when they failed to agree upon the terms on which Mr Shepherd would retire from the business. Mr Shepherd subsequently petitioned under section 994 of the CA 2006 to seek the purchase of his shares and alleging, amongst other things, that he had been excluded from administration of the firm. It was in this context that Mr Williamson argued that Mr Shepherd had failed to act in good faith when, in November 2007, he left an anonymous voicemail message on the phone of a senior project manager of one of the company's important clients (a hotel chain), to whom tenders were being submitted, saying that the company was under investigation by the Office of Fair Trading (OFT) and that an employee of the company and the hotel chain were colluding. Prior to January 2006, the point at which an Office for Fair Trading investigation began, the company had taken part in 'covering' in the construction industry, i.e. submitting a bid higher than other competing bids in a tender for a contract knowing that it would not succeed in order for a chosen tenderer to be preferred amongst

[639] Lord Greene MR in Re Smith and Fawcett Limited [1942] Ch 304
[640] Ibid
[641] Shepherd v Williamson & Anor [2010] EWHC 2375 (Ch) (24 September 2010) England and Wales High Court (Chancery Division) Decisions
[642] Section 172 of the UK Companies Act 2006 which imposes a duty on each manager to act in a way in which he considers, in good faith, would be most possible to promote the success of the firm for the benefit of its members (shareholders), and the interests of the firm's workers.
[643] Section 994 of the UK Companies Act 2006

the colluding parties. Mr Shepherd was not directly involved with these activities. In September 2009, the firm was fined £91,053 by the OFT,[644] a reduced figure reflecting a leniency agreement in which the company agreed to cooperate with the OFT's investigation. The trial judge, Mrs Justice Proudman, considered Mr Shepherd's good faith for the purposes of section 994 with reference to section 172. She noted that "an anonymous telephone call is not a praiseworthy course of action" but did not find that Mr Shepherd had breached the duty imposed by section 172.[645]

The principle of good faith in the text of s.172[646] does actually contain two other subsections, which provide exceptions to the duty laid down in paragraph 1 of the section 172. First, paragraph 2 provides that where a firm includes purposes other than benefiting the members, it operates as if the reference to promoting the success of the firm for the advantage of its members were to achieve the purposes set by the firm.[647] The second exception is contained in paragraph 3 of the article. It provides that the duty to promote the success of the company for the benefit of the members is subject to any enactment or rule of law requiring directors to consider the interests of the company's creditors. What the subsection does is to recognise, inter alia, the common law development of a duty of directors to take into account the interests of the creditors of the company in certain circumstances. Thirdly, the Board of Directors has to act in accordance with the constitution of the company and must only exercise its powers for their proper purpose.

The directors' duties contained in section 172 of the 2006 Act replace the common law principle under which directors must act in accordance with the memorandum of the company and legal articles:[648] the Board of Directors must act to promote the success of the company and act in a way that would most likely promote the success of the company for the benefit of its members as a whole. In doing so, the board must have regard (amongst other matters) for: the likely consequences of any decision in the long term; the interests of the company's employees; the need to foster the company's

[644] For more see Andrew R Keay (n 613).
[645] Shepherd v Williamson & Anor [2010] EWHC 2375 (Ch) (24, Ibid)
[646] Section 172 of the UK Companies Act 2006
[647] For more, see paragraph 2 of section 172 of the UK Companies Act 2006
[648] For more, see section 171 of the UK Companies Act 2006

business relationships with suppliers, customers and others; the impact of the company's operations on the community and the environment; the desirability of the company maintaining a reputation for high standards of business conduct; and the need for members of the company to act fairly with one another.[649]

In addition, directors must exercise their powers independently without subordinating to the will of others. A director must exercise the skill and care which a reasonably diligent person with both the general skill and experience of someone carrying out the functions of the director of the company would be reasonably expected to have and the skill and experience that the director actually has.[650] Additionally, the director has to avoid conflicts of interest and conflict with other directors, whereby they must avoid conflict between their duties to the company and either their personal interests or duties to third parties.[651]

Furthermore, a director must not exploit their position for personal benefit.[652] Accordingly, directors must not accept any benefits (including bribes) from a third party that are conferred because of his being a director or his actions as a director. However, the law provides that directors may accept benefits up to a certain level to ensure directors are not in breach of duty just for accepting corporate hospitality.[653]

Additionally, a Board of Directors must: monitor the company's management, and make sure that the company acts strictly in accordance with the powers and rules set out in its memorandum and articles of association, file copies of special and extraordinary resolutions of the shareholders and of certain ordinary resolutions at the Companies Registry and inform the Registrar of Companies of the appointment or retirement of any director or company secretary or of any change in the situation of the company's

[649] Section 172 of the UK Companies Act 2006
[650] Lasfer, M Ameziane, 'On the Monitoring Role of the Board of Directors: The Case of the Adoption of Cadbury Recommendations in the UK' (2004) 9 Advances in Financial Economics287, 326.
[651] For more see John, Kose and Lemma W. Senbet, 'Corporate Governance and Board Effectiveness'(1998) 22Journal of Banking and Finance.
[652] Section 176/1, 2 of UK Companies Act 2006
[653] Article 175 1/2 of the UK Companies Act 2006

registered office.[654]To summarise this paragraph, in normal circumstances, directors will owe their duties and responsibilities to a company according to the provisions of the law and the company's statute. However, the question remains: what director duties apply in a company that is in a state of insolvency?

4.3.2Directors' Liabilities Following the Insolvency of Company

Some directors may choose to take advantage of the various protections afforded by company law by operating their companies with reckless or wilful disregard for the interests of their company's creditors and even their shareholders. UK legislation has responded to this type of situation. According to section 463[655] of the CA 2006, company directors are liable to compensate their company, in certain circumstances, where they allow published company reports to include untrue or misleading statements or omissions and where this causes loss to their company. A director may incur personal liability for a company in insolvency cases where the directors allowed the company to continue trading when there was no reasonable prospect that it would avoid going into insolvent liquidation (wrongful trading) and therefore they may be required to contribute to the company's assets.[656]The directors may also be required to contribute to an insolvent company's assets if they knowingly allowed the company to carry on business with the intent of defrauding creditors or for any fraudulent purpose (fraudulent trading).[657]

Where a company is insolvent or threatened by insolvency, a director may need to consider and act in the interests of the creditors of the company in priority over the duty to promote the success of the company.[658] In particular, a director must take every step to

[654] Adams, Renee B., 2000, "The Dual Role of Corporate Boards as Advisors and Monitors of Management: Theory and Evidence." Previously titled "The Dual Role of Corporate Boards as Advisors and Monitors of Management, " http: //ssrn. Com/abstract=241581 From the Social Sciences Research Network Website. And ["MORI-Higgs"], 2003, "Research Study Conducted by MORI for The Higgs Review", 20`h January
[655] Section 463 of the UK Companies Act 2006
[656] Stephen Hewes, Vanessa Knapp"Companies Act 2006 and Directors' duties" Freshfields Bruckhaus Deringer, [2008]
[657] Stephen Hewes, Vanessa Knapp, Ibid
[658] John Davies (n 234) 28, 45

minimise any loss to the creditors of the company at any time when they know or ought to conclude that there is no reasonable prospect of the company avoiding going into insolvent liquidation.[659] The Board of Directors assumes the legal liability for offences that may be committed by directors who take their company into liquidation, which include:[660] destruction or falsification of company records; transactions in fraud of creditors; misconduct in the course of winding up, which includes the failure to disclose and hand over the company's books, papers and property; falsification of the company's books; making material omissions from the company's statement of affairs; and making false representations to creditors.[661]

According to section 1270[662] of the CA 2006, companies are also liable to compensate any person who acquires securities in a company on the strength of any preliminary statement or interim report or statement issued by it that contains an untrue or misleading statement or that omits mention of any matter that the law requires to be included in the report or statement in question issued by the directors during the discharge of their managerial responsibilities within the company. In the case of Lonrho Ltd v Shell Petroleum co Ltd [1980] 1 WLR 627,[663] the House of Lords held that directors must always act in the best interests of their company, whose interests are "not exclusively those of its shareholders but may include those of its creditors".[664] The Court of Appeal, in West Mercia Safetywear Ltd v Dodd [1988] BCLC 250,[665] expanded on this by ruling that the directors of a company that is in an insolvent state must have regard to the interests of its creditors. Thus, it is part of directors' fiduciary duties to their

---

[659] Nick Graves, Mark Shepherd and Alyson Whale "The Companies Act 2006 General duties of a director" Burges Salmon, [2009]
[660] For more, see section 11 of the UK Insolvency Act 1986
[661] Section 206 of the UK Insolvency Act 1986
[662] Section 1270 of Companies Act 2006 provides this new rule which made change in the Financial Services and Markets Act 2000 rules, which are designed primarily to ensure that deliberately inaccurate or incomplete information is not released to the market. 'The Financial Services and Markets Act 2000 (the Act) received Royal Assent in the United Kingdom on the 14 June 2000. The Act will establish a single statutory regime for the regulation of many kinds of financial sector business and a single statutory regulator, the Financial Services Authority ("the FSA").
[663] Lonrho Ltd v Shell Petroleum co Ltd [1980] 1 WLR 627
[664] Ibid
[665] West Mercia Safetywear Ltd v Dodd [1988] BCLC 250

company that they act with due regard to the interests of their creditors during a period of insolvency.[666]

The UK Companies Act 2006 also defines directors' responsibilities in cases where they fail to perform their functions or breach their duties, as provided for by sections 171-177[667] of the law. In accordance with section 178 of the CA 2006, they will be liable for any damages or compensation if the company suffers loss as a result of this. Moreover, they will be required to account for any profit made, as judged in the case of Regal (Hastings) Ltd V Gulliver [1942];[668] return company property; and any contract entered into by them without disclosing their interest will be cancelled. The court ruled that a director is in breach of their duties if they take advantage of an opportunity that the corporation would otherwise be interested in but was unable to take advantage of. However, the breach could have been resolved by ratification by the shareholders, which those involved neglected to do.[669]

A director may also be personally liable for the company's debts if they have either undertaken personal liability (such as giving a written guarantee) or have allowed another person to believe that they were acting on their own behalf rather than on behalf of the company. A director who is in breach of their fiduciary duties to the company, or who exceeds their authority, may also be liable to the company and may have to pay damages or to account for any profits made.[670]

4.3.3 Directors' Rights in the Company

Liability insurance may be available to protect directors against personal liability, except in circumstances where such protection is prohibited, for example in cases of wilful

---

[666] West Mercia Safetywear Ltd v Dodd [1988] BCLC 250
[667] Sections 171-177 of the UK Companies Act 2006
[668] Regal (Hastings) Ltd v Gulliver [1942] UKHL 1 (20 February 1942) United Kingdom House of Lords Decisions
[669] Regal (Hastings) Ltd v Gulliver [1942] UKHL 1, Ibid
[670] Hon Margaret Hodge, 'Companies Act 2006; Duties of company directors, Ministerial statements' [2007] 6, 13

neglect, wilful default, dishonesty or crime, breach of certain statutory prohibitions not involving a crime (such as unlawful distributions or wrongful trading), criminal fines and costs of litigation where indemnity is not permitted.[671] It is legal for the company to take out such insurance and pay the premiums, although these are likely to be substantial, and the policies may be subject to specific exclusions.[672]

Except for the amount of allowances and bonuses received, members of the Board of Directors have the same rights as company employees, such as the right to leave, the right to apply to work flexibly, the right to request time off to undertake study or training and the right not to be unfairly dismissed. Members of the Board of Directors also have the right to equal treatment for working hours, rest breaks and paid holidays; the right to access the statements of companies; the right of protection from unauthorised deductions of pay; and the right to work in a safe and appropriate environment.[673] Furthermore, if one or more members of the Board of Directors are disabled, the employer (the company) must not treat them less favourably because of something connected with the person's disability unless there is a fair and balanced reason. For this form of discrimination, the employer must know or should reasonably have been expected to know that the person is disabled. The protection provided by the EA[674] does not just cover disability discrimination; an employee may be protected by the EA if they believe that they have been discriminated against because of their: age; disability; gender reassignment; marriage and civil partnership; race; religion and beliefs; sexual orientation; or pregnancy and maternity.[675]

From the directors' general duties according to the CA 2006, it can be concluded that being an answerable director means more than just acting with integrity and using one's talents to the firm's best benefit. The general duties mean that a director must act in the interests of the company and not in the interests of any other parties – including

[671] Cameron McKenna "Directors' duties under the Companies Act 2006" [2007]
[672] Ibid
[673] The UK Health and Safety Requirements Parish Council Safety (1998)
[674] Employers and the Equality Act 2010,came into force on 10 September 2011, and ensures consistency in what employee needs to does to make your workplace a fair environment and to comply with the law
[675] For more see "The Equality Act 2010 what's the new for employers? Government Equality Office, [2011] 1, 16

shareholders.[676] This principle applies even for 'one-man' companies, which means that a sole shareholder/director may not put his/her interests above that of the company. Also, directors have to act in accordance with the company's constitution and observe any restrictions contained therein and act in order to bring 'successes to the company. This involves creating sustainable profitability and exercising reasonable care, skill and diligence. Accordingly, a director must show the general knowledge and skill that may reasonably be expected of a person carrying out the functions expected to be carried out in relation to the company. Thus, a managing director will be expected to have knowledge of all areas of the business or to have engaged people who can help them; a director must also act in accordance with any specific general knowledge and skills they actually have. Therefore, a director who is a qualified accountant would be expected to show greater general knowledge, skills and interest in relation to financial aspects of the company than another director who was not so qualified. A director must not allow any personal or outside interest to affect their duty to the company. A director must, therefore, avoid any situation where they personally have, or may have, a direct or indirect interest that conflicts, or may conflict, with the interests of the company. Finally, a director must not accept benefits from third parties and must declare any interest in a proposed transaction or arrangement, whether it is direct or indirect. These legal obligations and responsibilities are placed on directors, breach of which can give rise to personal obligations under civil and criminal law and even disqualification from holding office as a director.[677] Furthermore, company directors are liable to compensate their company if they allow published company reports to include untrue or misleading statements and where this causes loss to their company. A director may incur personal liability for a company in insolvency cases where the directors allowed the company to continue trading when there was no reasonable prospect that it would avoid going into insolvent liquidation. The question remains: do directors' duties, rights and responsibilities remain in M&As?

[676] For more directors duties see Kaya and Kosmin L *'Directors Duties'* First Ed, (Jordans, 2008)
[677] For more see Simon Mortimore *'Company Directors: Duties, Liabilities, and Remedies'* Second Ed, (Oxford, 2012)

4.3.4 The Roles of Boards of Directors in M&As

Members of the Boards of Directors of companies involved in M&As face a unique set of challenges and considerations through every stage of the transaction, from inception to execution. Hence, many M&A transactions may not be successful. The common reasons for this failure include: overpaying for the target, which places additional pressure on the management; not fully understanding what is being purchased; a clash of cultures between the two companies; problems with layoffs; and exchanging shares between the shareholders of the companies involved.[678] The most tragic situation occurs when the management and the board have properly identified an attractive target and executed the transaction well but failed to plan for the integration of the two companies.[679]

Under UK legislation, the board is collectively responsible for the management of the companies and sharing in M&A operations. Accordingly, a draft of the proposed terms of the scheme of the merger must be drawn up and adopted by the directors of the merging companies in respect of each transferor company and the transferee company,[680]such as its name, the address of its registered office and whether it is a company limited by shares or a company limited by guarantee and having a share capital. It must also detail the number of shares in the transferee company allotted to members of the transferor company for a given number of their shares (the "share exchange ratio") and the amount of any cash payment, as well as the amount of any benefit paid or given (or intended to be paid or given) to any experts.[681] It should detail any benefits to any director of a transferee company and the consideration for the payment of the benefit.[682] A copy of the draft terms of the merger should be delivered to the Registrar of Companies,[683] which must publish in the Official Gazette notice of receipt of a copy of

[678] Timothy J. Galpin and Mark Herndon, *The complete guide to mergers and acquisitions: process tools to support M&A* (John wiley & Sons. Inc 2007).
[679] For more reading see Eric Armour, 'How boards can improve the odds of M&A success' (2002) 30(2) Strategy & Leadership13, 20.
[680] Section 906 of the UK Companies Act 2006
[681] For more, see article 905 of the UK Companies Act 2006
[682] Ibid
[683] Section 906/1 of the UK Companies Act

the draft terms from that company.[684] The directors must prepare for the vote-on M&A decision-at the meeting which explains the effect of merger on the company and seeing out the legal and economic grounds for the proposal.[685] There are must also be a report prepared on the proposal on behalf of the both companies, including commentary on acquisition of valuation.[686]

Directors must also draw up and adopt a report, which must explain the effect of the merger for the members, creditors and employees of the company and state: the legal and economic grounds for the draft terms; any material interests of the directors (whether as directors, members, creditors or otherwise);[687] and the effect on those interests of the cross-border merger, in so far as it is different from the effect on the like interests of other persons.[688] The directors of a transferee company in the UK must deliver copies of the report to its employee representatives (or if there are no such representatives, the employees) no less than two months before the date of the first meeting of the members, or any class of members, of the company.[689] Directors are also responsible for attending negotiation processes between the companies involved in the merger or acquisition and the employees or their negotiations about employee participation in merger or acquisition processes.[690]

To ensure the success of M&As, Boards of Directors must follow certain legal procedures and practical measures. For example, directors should ask to review the post-acquisition integration plan and determine who is accountable for its implementation. This would probably cover three areas: activities necessary immediately after the transaction closes, frequently a list of 'housekeeping' items; the communication plan, covering not only short-term communication with customers, stockholders and workers but also ongoing communication to address the primary concerns of key stakeholders based on solicited feedback; and, finally, the plan for delivering intended synergies, not

[684] Section 906/2, Ibid
[685] Section 908 of the UK Companies Act 2006
[686] Sections 909 and 936 of the UK Companies Act 2006
[687] For more, see regulation 8/1 and 2 of the UK Cross-Border Act 2007
[688] Ibid
[689] Regulation 8/5 of the UK Cross-Border Merger Act 2007
[690] Relation 29, Ibid

only in regard to cost savings through consolidation, buying synergies, etc., but also pertaining to activities intended to expand revenue.[691] These plans should highlight on-going processes to generate new performance improvement ideas as the organisations learn to work together.

Not only does the board have a duty to oversee M&As, but it is essential to the success of any transaction. The board should coordinate with the acquirer and define a well-thought-out integration plan for the first three months and beyond. This strategy should be developed well ahead of the real integration. It should set forth milestones that must be reached within the first three months.[692] The plan should designate leaders and define their roles and liabilities post-closing, and may even contemplate the formation of an integration committee to help smooth the transition period. Consideration may be given to bringing in a third party to assist with or lead the integration procedure.[693]

Furthermore, it is incumbent for boards to be as sure as they can be that there is a workable and comprehensive integration plan in place before they approve a deal. An especially important part of the process is ensuring that the management talent will be in place to bring about the transition. Consideration needs to be given to recruiting and retaining talent, succession planning, organisation structure and communicating with employees at all levels.[694] As a result of the important duty of directors to develop an investment strategy within the target firm in the development of M&As, the board should obtain information about the target and the transaction early and often. It is normally not the role of the board to establish guidelines or fence-posts for the economic terms of the deal; instead, the board should focus on understanding why the transaction is being proposed and reviewing the terms to ensure that they are consistent with the strategic goals of the firm.[695] The board should communicate with the executive directors to get

---

[691] For more reading about directors duties in M&A cases see article 905of the UK Companies Act 2006
[692] For more reading see Stanley Foster Reed, Alexandra Reed Lajoux and H. Peter Nesvold' A Merger and Acquisition Buyout Guide' 4 Ed, McGraw-Hill, USA, (2007), also see article 906/1 of the UK Companies Act
[693] For more on directors' duties in M&A cases, see article 906/2, Ibid
[694] For more reading see Lipton, Martin and Andrew R Brownstein, 'Takeover Responses and Directors Responsibilities - An Update'[1984-1985] Journal of Law 1403.
[695] Ibid

information early and frequently and directors should read the information that is provided.[696] They should not just focus on the price and the information presented but should examine the deal as business people and think about what is not being presented. They should test the assumptions behind the transaction, not just because it is the directors' fiduciary duty to do so but because they care about the company and its long-term success. [697]

Additionally, a board member should focus on the risks inherent in M&As through diligence in the work with very comprehensive reviews at various stages of the process to identify any problems, with an estimate of whether it is appropriate to bring in third-party advisors. This is particularly true in cases where a material adverse change is a very significant issue or there is a change in the business that would justify the purchaser seeking to terminate the transaction or adjust the purchase price.

Moreover, every board member has a duty of care as part of his/her fiduciary duties in decision making. The management needs to ensure that the board is informed in a way that enables the directors to fulfil that duty. It is good practice for the board to be provided with a summary of the key terms of the merger agreement, as well as the pitfalls and risks. Directors also have to focus on determining a brief timeline of the merger integration, showing the key milestones and expected problems from M&A operations on people and how the new firm will deal with talent retention. In accordance with the competence of the Board of Directors, the board can properly approve a transaction only if it concludes that the proposal is in the best interests of the stockholders.[698] Also, the board must evaluate a proposed business combination in light of the risks and benefits of the proposed transaction compared to other alternatives reasonably available to the corporation, including the alternative of continuing as an independent entity.[699]

---

[696] For more reading see Laurence Stybel "The Role of The Board of Directors During M&A Deal Making", the Acfai University Press (2011), 66, 68

[697] Aktham Kohli (n 573) 37, 47

[698] Aktham Kohli,Ibid37, 47

[699] Mustafa Kamal Wasfi, *Civil liability for members of the Board of Directors in shareholding company* (1965) 44, 45

It was held in Fulham Football Club Ltd v Cabra Estates Plc[700] by the Court of Appeal that the test should be whether at the time of the agreement the directors were acting bona fide for the benefit of the company in M&As cases. If they were, then any agreement would be binding on them, even if they latterly considered that to implement it would be contrary to the company's interests.[701]In Partco Group Led v Wragg,[702] it was held that the mere supply of information by the directors of a target company, as required in the City Code (the forerunner to the Takeover Code), did not necessarily make them liable to an action for negligent misstatement.

Finally, in the acquisition cases, directors must focus on one primary objective: securing the transaction offering the best value reasonably available for the stockholders, as a sale of control transaction represents the only opportunity to receive a control premium. However, not every merger constitutes a 'sale of control'. A 'stock-for-stock' merger, where a majority of the shares in the continuing entity will continue to be held after the merger by a "fluid aggregation of unaffiliated shareholders representing a voting majority", is not a sale of control.[703] Of course, in this case, the Board of Directors must exercise its basic duty of care by reviewing all reasonably available information concerning the transaction and other alternatives.

To consider all these matters, it may be necessary or desirable to create a taskforce of independent directors. This taskforce should include board members that have the expertise, time and ability to conduct a detailed evaluation of all aspects of the negotiations and deal. Their mission is to raise all issues (both short and long term) to ensure that management and outside advisors have thoroughly considered and evaluated all outcomes.

---

[700] Fulham F C V Cabra [1992] B.C.L.C.863
[701] Ibid
[702] Partco Group Led v Wragg,[2004] BCC 782
[703] Mohsen Shafik, *The Mediator in Commercial Law* (3rd edn 1957) 536

4.4 Effects of M&As on the Contracts and Rights of Directors in Practice

There are two competing views on the effects of M&As on directors. Previous UK literature shows that acquiring firms frequently make one-off bonus payments to their senior executives (CEOs) for M&A completion.[704] Haugen and Senbet (1981)[705] claim that CEOs should be rewarded for their skill, effort and company performance, and the executive compensation package should be designed to align managers' interests with those of shareholders. Core et al. (1999)[706] and Zhao and Lehn (2006)[707] further show that CEOs in companies with weaker corporate governance often receive greater compensation than those in companies with stronger corporate governance.

On the other hand, many studies[708] indicate that M&As may create instability in target executive teams that lasts for many years following acquisition. For example, Guest (2006)[709] indicates that large acquisitions result in significant pay increases for top management during the year following acquisition; however, the increase is transitory and an offsetting decline occurs in the two years following the acquisition. Grinstein and

[704] Gristein, Y and Hribar P, 'CEO Compensation and Incentives: Evidence from M&A Bonuses' (2004)1 Journal of Financial Economics 73; Coakley J and Iliopoulou S, 'Bidder CEO and Other Executive Compensation in UK M&As' (2006) 12(4) European Financial Management 609, 631.

[705] Haugen R A and Senbet L W, 'Resolving the Agency Problems of External Capital through Option' (1989) 36(3) Journal of Finance 629, 647

[706] Core J E, Holthausen R W and Larcker D F, 'Corporate Governance, CEO Compensation, and Firm Performance' (1999) 51(3) Journal of Financial Economics 371, 406

[707] Zhao Lehn, 'CEO Turnover after Acquisitions: Are Bad Bidders Fired?'(2006) 61(4) Journal of Finance 1759, 1811

[708] For more see Krishnan H A, Miller A and Judge W Q, 'Diversification and Top Management Team Complementarily: Is Performance Improved by Merging Similar or Dissimilar Teams?' (1997) 18(5) Strategic Management Journal 361,374; Walsh, J P, 'Doing a deal: Merger and acquisition negotiations and their impact upon target com-pany top management turnover' 10(4) Strategic Management Journal 307-322; Employment effects of mergers and acquisitions in commerce. (2003), International Labour Office Geneva, pp1-162, Carman J. O and Casgrain, F M. (2006), Labour and Employment Issues in A Hot Mergers & Acquisitions Market, Vancouver, British Columbia, Fraser Milner Casgrain , pp1-25 and Pasha A T., 'Effects of Merger on Management: Case Study of a Bank, Department of Information Technology'[2010] Bahauddin Zakariya University, European Journal of Economics, Finance and Administrative Sciences 1 -9.

[709] Andy Cosh, Paul M Guest and Alan Hughes, 'Board Share-Ownership and Takeover Performance'(2006) 33 Journal of Business Finance & Accounting 459, 510

Hribar (2004)[710] add that increases in pay associated with mergers tend to be one-off bonus payments. Krug (2003)[711] states that most target companies' top management teams are relatively stable before they are acquired. This stability is similar to that experienced by firms that are not acquired. For the average firm, this leadership continuity is permanently altered once the firm is acquired. Moreover, Krug argues that target companies can expect to lose 21% or more of their executives each year after the merger.[712]

Richmond (2009)[713] indicates that companies lose an average of 8–10% of their top executives each year through normal attrition. This attrition includes retirement and departures for the purpose of taking advantage of an offer from another firm. Importantly, during the first year following an acquisition, the target firm can expect to lose approximately 24% of its top executives: a turnover rate roughly three times higher than normal. In the second year, it can expect to lose an additional 15%, which is therefore an approximate loss of 40% of the firm's original top management team in the first two years following an acquisition.[714]

Black et al. (2007)[715] confirm that there is growing evidence on employment losses (skilled and semi-skilled) post-merger, and they show that higher levels of merger and acquisition activities lead to shorter job tenure, implying that such transactions involve employee layoffs. Lehto and Böckerman (2008)[716] conclude that almost all changes in ownership lead to job losses. In addition, Kuvandikov (2010)[717] identified

[710] Grinstein Y and Hribar P. (2003) CEO Compensation and Incentives—Evidence From M&A Bonuses, Cornell University. Also see Grgoriou G N and Renneboog L. (2007), International M&A Activity Since 1990, Recent Research and Quantitative Analysis, pp. 1-181
[711] Krug (n 570)
[712] Jeffrey A. Krug and Ruth V. Aguilera "Top Management Team Turnover in M&As" : (2004) 4 121, 149.
[713] For more information, see Richmond. (2009), Turmoil in Top Management Teams Following Mergers and Acquisitions, pp. 1-131
[714] Richmond, Virginia (2009), Merger and Acquisition Turmoil on Top Management Teams, 1-131
[715] 'Large Merger Recoils and Spin Flips from Generic Black Hole Binaries' (2007) 659(1) The Astrophysical Journal Letters
[716] For more see Lehto and Böckerman,'Analysing the Employment Effects of Mergers and Acquisitions' (2008) 68(1) Journal of Economic Behaviour & Organization 112;Conyon (n 333).
[717] Kuvandikov A. (2010),Causes of post-merger workforce adjustments, The York Management School, University of York, pp 1-30

several factors that help to explain post-merger employee layoffs, including: poor performance of merging firms pre-takeover, the disciplinary role of takeovers, the synergy created by mergers and the high premiums paid to targets. Coucke et al. (2007)[718] and Hillier et al. (2007)[719] believe that poor performance may also be associated with more traditional factors leading to employee layoffs, such as a decline in product demand as a result of general business cycle conditions and technological or other industry-wide changes. Furthermore, the reason for the loss of many members of Boards of Directors in the first and second years after completed acquisitions may be due to the restructuring of new companies resulting from M&As, which may be necessary in some cases due to the bankruptcy of one of the companies or the desire of the shareholders of the transferee company to reduce losses by reducing the number of members of the Board of Directors.

The effects of M&As are not limited to the contracts of directors but extend to other impacts, such as level of output, wages and efficiency. These effects may extend to directors psychologically as a result of the process of negotiation and merger procedures. This could later lead to a negative impact on the level of work and production in the company.[720] For these reasons, the top managers of the transferor company typically experience uncertainty concerning whether or not they will have a role to play in the transferee company and the role that they may be asked to play during and following the transition. These managers usually demonstrate resistance to M&A processes, as well as a range of other positive and negative reactions. Many mid-level managers can also feel caught between the expectations of the executive management and loyalty to the people who report to them.[721]

[718] Coucke K, Pennings, E. and Sleuwaegen L,'Employee layoff under different modes of restructuring: exit, downsizing or relocation' [2008] Industrial and Corporate Change 16, 161-82.
[719] Hillier, D., Marshall, A., McColgan, P. and Werema S, 'Employee Layoffs, Shareholder Wealth and Firm Performance: Evidence from the UK' [2007]Journal of Business Finance and Accounting 34, 467-94.
[720] Grinstein Y and Hribar P. (2003) CEO Compensation and Incentives—Evidence From M&A Bonuses, Cornell University. Also see Grgoriou G N and Renneboog L. (2007), International M&A Activity Since 1990, Recent Research and Quantitative Analysis, pp. 1-181.
[721] Rafferty M A, 'Managing change in biotech: mergers and acquisitions, neuter biotechnology' (2007) <http://www.nature.com/nbt/journal/v25/n6/full/nbt0607-689.html> accessed 30 June 2010.

In summary, the effects of M&As in terms of displacing target company executives appear to be growing stronger over time. Accordingly, the question that arises is how UK, UAE and Qatar laws ensure the rights of Boards of Directors in M&As?

4.5 Director Transfer in M&As According to UK Legislation

According to section 250 of the CA 2006,[722] the term 'director' includes any person occupying the position of a director by whatever name they are called. This is a long-standing feature of UK Company Law and has remained intact following the law reform process. It means that, in determining whether any person is or has been a director of a company, account must be taken not only of whether a person has been duly appointed and registered as a director in accordance with the prescribed procedures, but also of whether that person is or has been exercising the actual legal functions of a director and taking part as a full member in the process of making the sorts of decisions that directors routinely make.

The legal status of public limited corporations is governed by the Companies Act 2006.[723]According to section 154 of the CA 2006,[724] all companies are required to have at least one director (a public company must have two). This is because companies, as 'artificial' legal entities, cannot act themselves – they need to act through other persons. A company's directors are the persons to whom the law looks to manage the affairs of a company on behalf of its owners and who invariably take most of the decisions relating to affairs of the company.[725] This is so even in the case of small private companies that may have only one or two shareholders. Accordingly, in such a situation the law will still see a technical distinction between the interests of the shareholder as the owner of the company and the responsibilities of the director as the person who makes decisions on its behalf.

[722] Section 250 of the UK Companies Act 2006
[723] Jurisdiction contained in the law already been confirmed by UK Act 1985, which also a view reinforced by the Cadbury recommendations (1992).
[724] Section 154 of the UK Companies Act 2006
[725] John Davies, "A guide to directors' responsibilities under the Companies Act 2006" the Certified Accountants Educational Trust, July 2007

Accordingly, in UK legislation, a Board of Directors is a group of people elected by the owners of a commercial entity to take care of the interests of the company and its shareholders according to the principle of good faith. The role and responsibilities of Boards of Directors vary depending on the nature and type of business entity and the laws applying to the entity. According to advocates of the agency theory,[726] directors of public companies have a duty to exercise skill and care and to act in good faith to promote the success of the company and benefit its members as a whole, as per the scope of its statute.

Importantly, article 154of the act does not place limitations on the number of public company directors: it stipulates a minimum of two company directors but does not put an upper limit on the number, which means that the law does not prevent an increase in the members of directors of shareholding companies before, during or after M&A operations. Accordingly, in UK legislation, there is no indication that there should or could be the dispensing of directors of the transferor company or the abridging of their rights and privileges guaranteed by law (including their rights in work contracts with the transferee company) after the process of M&A and the restructuring of the new company, as long as there is no reason or legal justification otherwise. On the contrary, regarding M&A operations, UK law gives the directors of transferee companies wide participation, power and authorities through their participation in drawing up a report about the process, as well as delivering copies of the report to employee representatives, drawing up and adopting a draft of the proposed terms of the merger and delivering details to the Registrar of Companies of the company's particulars (date, time and place of every meeting, together with a copy of the draft terms of the merger). From this, it is considered

[726] See Section 4.2 of this chapter: "In corporate management theory, the idea has been set out that the Board of Directors should not simply be a senior executive committee, but ought to take a broad-ranging long-term view of the company's activities and objectives. Public company directors in reality may well not attend exclusively to maximising shareholder returns. The long-term enhancement and prosperity of the corporation for the benefit of all its stakeholders often is, and arguably should always be, the board's primary goal. Accountability to all those who directly contribute to the company's activities, and for the company's reputation and status, for more see Dean J L. (2000), 'Directing Public Companies, company Law and Stakeholder Society'(Thesis submitted for the degree of Doctor of Philosophy, Brunel University)10-14; Sir Geoffrey Mills, *Controlling Companies* (Unwin Hyman 1988) 21; H.J. Goldschmid, 'The Governance of the Public Corporation: Internal Relationships' in D.E. Schwartz, Commentaries on Corporate Structure and Governance. The ALl-ABA Symposiums 19 77-78(Philadelphia: ALl-ABA, 1979) 174; T. Cannon, *Corporate Responsibility*(Pitman 1994) 135

imperative to state that in the case of M&As, all the rights, liabilities and contracts of the Board of Directors of the transferor company continue in the transferee company by force of law, even if there is no explicit legal provision as such. This is what is understood from the texts of UK laws,[727] which protect employees' terms and conditions of employment when a business is transferred from one owner to another and provide for the automatic transfer of their employment in both domestic and cross-border M&A. It is as if their employment contracts had originally been made with the new employer. Their continuity of service and any other rights are all preserved.[728] Both old and new employers are required to inform and consult all the employees affected directly or indirectly by the transfer.[729]

With this in mind, it can be stated that M&As do not withdraw or cancel the rights or contracts of the management of the transferor company, but rather that all the rights and contracts of the Board of Directors of the transferor company continue with the transferee company, which must maintain its obligations in regard to its directors and the transferor company's directors in their work and all the rights and obligations consequent from it. According to the theory of the legal personality of a company, mergers result in the expiration of the transferor company and the demise of its moral personality, alongside an increase in the capital of the transferee company in terms of the shares in kind and all assets of the transferor company. Mergers also affect the Memorandum of Association and the company system through its amendment. The transferee company does not just receive the assets of the transferor company but also receives the venture that the company sought to achieve. Accordingly, it is considered that it may be useful for the ventures of the transferor company - in order to achieve its goals - survival of the Board of Directors of the transferor company and participation in the management of transferee company after M&A, to ensure the directors' experience is not lost.

---

[727] See section 904 of the UK Companies Act 2006 and regulation 2 of the UK Cross-Border Merger Act 2007
[728] For more, see articles 4 and 7 of the UK TUPE Act 2006
[729] For more information, see Section 3.3.3 of this chapter

However, this does not mean exploiting the text of Article 154 of the UK Companies Act and doubling the number of members of the Board of Directors of the transferee company, which would ultimately lead to an overlap in the competences of members, affect the decision-making process or increase the financial burden of the company; rather, there should be a reasonable increase in the number of members of the Board of Directors of the transferee company consistent with the company's needs and the stability of its work, taking advantage of the expertise and skills of its and the transferor company's Board of Directors. In this case, it is noted that section 154 of the CA 2006 puts a minimum without setting an upper limit for the number of directors of public and private companies, which may lead to the exploitation of the text. Members of the Board of Directors who wish to stay in their positions in the top level of management may also demand that the transferee or new company increases its new management to a number higher than the company needs, which may lead to confusion and an overlapping of competencies among the members of the Board of Directors of the transferee or new company and the new company suffering heavy expenditures due to increasing the number of members of its Board of Directors without controls. In order to avoid an unlimited increase in the number of members of the Board of Directors of the transferee company in M&As, it is hoped that a paragraph will be added to the text of Article 154 that allows, under exceptional circumstances, a 100% increase in the number of Board of Directors of the transferee company in the first M&A case and to 25% in subsequent mergers or acquisitions, or in any prospective M&A operations in the future.

According to the researcher's belief, putting a specific limit on the number of directors of a transferee or new company resulting from a merger or acquisition not only prevents the exploitation of companies in increasing this number to a value that may outweigh the transferee company's needs but also opens the door for board members of the two companies to compete for positions as members of the Board of Directors of the transferee or new company on the basis of competence and experience. This may pave the way for the election of the Board of Directors to be based on choosing the finest members of the two companies involved in the merger or acquisition.

An increase in the number of members of the board of the transferee company can be substituted for by calling for elections of a new Board of Directors from the old directors of the transferor and transferee companies. This should take place with the participation of the employees or their representatives and shareholders in the company one month after the end of the M&A process and the registration of the new company. In the case of a failure to select a new administration during this period, the period should be extended to three months. The new Board of Directors has to take care of the interests, rights and obligations and work in good faith for the benefit of both the transferor and transferee companies and their employees and shareholders.

Furthermore, the transferee company can expand its management and the development of new positions through creating new sub-departments according to the parent company's interests to accommodate former directors who were not fortunate enough to become part of the transferee company's Board of Directors, provided that they have the same powers and rights that they had in their previous posts prior to the merger or acquisition. In accordance with the researcher's opinion, accommodating the transferor company's directors in the scope of the transferee company or in one of its branches enables the company to take benefit from the expertise and skills of the directors of the transferor company, especially in M&A cases between companies that differ in their products and services, or between companies from different places, such as a merger between a company from the UAE and a British company. This is because the transferee or new company may need to keep the transferor company's customers or gain the trust of its employees, which may not be achievable by only maintaining the transferor company's directors in the Board of Directors of the transferee company. Furthermore, the company saves cash payments that may otherwise be incurred in dispensing of the transferor company's directors due to expenses in training the new administration or the movement and housing of new members.

4.6 Directors' Rights in M&As According to UAE and Qatar Laws

UAE Companies Law, like State of Qatar Companies Law, states that the management of the shareholding company will be undertaken by an elected Board of Directors.[730] The statute of the company will define the method of its formation,[731] the number of members and the period of membership on the board. The laws also stipulate the method of electing members to the Board of Directors and identify their terms of reference in representing the company before third parties and the judiciary. Directors should implement the decisions of the board and abide by its recommendations.[732] Furthermore, the laws specify how to determine the emoluments of members of the Board of Directors[733] and business that the members are not entitled to exercise during their work as members of the Board of Directors,[734] alongside the method of dismiss them or resigning from the Board of Directors.[735]

In the cases of M&As, it is noted that the stipulations of UAE legislature do not differ to those of Qatar legislature in terms of defining a maximum and minimum number of members of the Board of Directors of a shareholding company. Furthermore, there are no explicit texts in the laws of both the countries that regulate the possibility of the Board of Directors of the transferor company being involved in the management of the transferee company by increasing the number of members of the Board of Directors of the transferee company. Unlike in the UK, Article 94 of Qatar Companies Law provides for a specific number of members of a Board of Directors that cannot be bypassed: "the management of the shareholding company will be undertaken by an elected board of

[730] See articles 94 of the State of Qatar and 95 of UAE Companies Laws
[731] See article 99 of the State of Qatar Companies Law
[732] Articles 102 and 106 of the State of Qatar Companies Law provided for this by saying:"The chairman of the board of directors will be the head of the company and he will represent the company before the third parties and judiciary. He should implement the decision of the board and abide by its recommendations. Considering the authorities prescribed for the general assembly in this law or the statute of the company, the board of directors will enjoy the wide authorities to carry out the works required by the objective of the company. It is entitled, within the limit of its competence, to authorise one of its members to carry out one or more particular works or to supervise, in any way, the activities of the company."
[733] See article 118 of the State of Qatar Companies Law
[734] See articles 107 and 110 of the State of Qatar Companies Law
[735] See article 117 of the State of Qatar Companies Law

directors, provided that the number of members should not be less than five and no more than eleven".[736]Moreover, Emirati and Qatar Civil Laws provided for "the right of the company to dispense managers who are not partners", saying "The managers of non-partners are always susceptible to isolate".[737]

According to the texts above, the general rule is that it is not permitted to increase or reduce the number of members of a Board of Directors by modifying the contract of the company or its statute. Basbos (2006),[738] Al-masry (1986)[739] and others[740] justify the defects of the legal texts of UAE and Qatar laws relating to this case by saying that allowing an increase in the number of members of the Board of Directors of public shareholding companies after a merger could obstruct transferee company directors from working to their best ability. Such action would cause the effectiveness of the resultant company to be weakened, as well as increasing difficulty when making decisions that serve the interests of the company. Accordingly, it is believed that the board would not be able to achieve perfect harmony between its members as each member would have their own specific ideas.

However, faith in this opinion could lead to procedural obstacles and legal problems in M&As in terms of members of Boards of Directors who feel that the merger or acquisition threatens their jobs or their rights. It may also lead to companies not being able to benefit from the experience and skills of their old directors. Notably, this could adversely affect the entire M&A process, for instance by lengthening the speed of completion or stopping the process of the merger or acquisition entirely. Ultimately, however, there is no doubt that it would hinder the achievement of the objectives intended by the legislature regarding M&As between companies.

---

[736] Article 94 of the State of Qatar Commercial Companies Law. The same thing is pursued by UAE Companies Law in article 95, which provides for "the management of a company shall be vested in a board of directors comprised in accordance with the Articles of Association, provided that their number is not less than three, and not more than fifteen directors and their term of office does not exceed three years."
[737] Articles 524/3 of the State of Qatar and 524/3 of UAE Civil Laws
[738] Basbos (2006), Ibid, 57
[739] Al-masry (1986), Ibid, Item 157
[740] Al-azimy (n 19) 341 (n 256) 162, 254; Al-saghir (n 483)490-497

However, this does not mean that Qatar and UAE Companies Laws prohibit the members of the Board of Directors of the transferor company sharing management with the members of the Board of Directors of the transferee company. On the contrary, from the texts of the two countries' laws, it can be discerned that the laws give directors of transferor companies the right to participate in the management of the transferee company, in addition to the opportunity to continue to manage the project that the company sought to achieve prior to the merger. This is provided for as the texts state that "the company in which it was merged or which resulted from the merger will be considered as legal successor to the merging companies and is replaced in all rights and liabilities".[741]Furthermore, article 524 of the State of Qatar and article 525 of UAE Civil Laws provide that partners or shareholders who are members of the company's Board of Directors and who are subscribers in the management of the company remain in their positions despite M&A operations: "the partner may not be removed from the administration of the company without justification, as long as the company remains in existence".[742]

In addition, articles 277 of Qatar and 280 of UAE Companies Laws provide that "All the rights and liabilities of the transferor company will be transferred to the transferee company, which is replaced in all its rights and liabilities". Moreover, Articles 52 of Qatar and 126 of UAE Labour Laws provide that "The service contract shall not terminate in the case of the merger of the enterprise with another enterprise or transfer of its ownership or the right in its management to a person other than the employer for any reason. The successor shall be jointly liable with the former employer for the payment of the workers' entitlements accruing from the latter".

From the texts, there is reference made to Emirati and Qatari laws giving directors of the transferor company the right to transfer their rights in work and other aspects to the transferee company, with the opportunity to share in the management of the transferee company. Accordingly and in line with the theory of the legal personality of a company,

[741] See article 276 of the State of Qatar Commercial Companies Law
[742] See articles 524 of the State Qatar and 525 of UAE Civil Law No 22 of 2004

it is fair to state that the survival and continuity of the rights and contracts of the Boards of Directors of companies involved in M&As remains existing after mergers by force of law, provided there is no reason to withdraw such a privilege.

This has been confirmed by the Arab judiciary in its judgements, which have ruled that M&As do not lead to the end of the rights of employees in work.[743] In the judgement of the Jordanian Court of Cassation,[744] the court decided that the transferee company was responsible for the debts and the other obligations of the transferor company. As stated in resolution number 246/2004, “all the rights and obligations of the transferor company are move to transferee company after completion of merger and registration of the new company -transferee company-in the Commercial Register according to provisions of law, accordingly, transferee company become a legal successor of transferor company and replace it in all its rights and obligations”.[745]

However, there are exceptions to the aforementioned ruling, such as in cases of liquidation, bankruptcy and final licensed closure, all of which may lead to the cessation of the work of the facility and its ventures. Excluding these cases, the contracts of the transferor company’s directors and their rights remain and continue, and the successor shall be jointly liable with the previous employers concerning the implementation of them. This was confirmed by the advisory opinion of the Egyptian People’s Council, which stated that as long as the facility is still active, the employment contract remains in place without regard to the change of owner; contracts do not end unless the facility has subsided in its existence and components due to a liquidation, bankruptcy or final closure. Accordingly, the Board of Directors or one of its members cannot leave work due to change employer or the owners of the company without legal reason or prior

[743] See resolution discriminatory number 3412/92And published in the Journal of the Jordanian Bar Association, Nos. 43-1995 Nos. IX and X, Egyptian Denunciation 19 April 1976 Group Technical Office Year 27.1976, p977, Judgement of Egyptian Appeal No 679 s 40—Session 19/04/1976, Distinguish human No. 697/95 (30-2661 to 2667 and Appeal No. 113, p. 28 s Session, of 18/12/1973, p. 24, p. 128

[744]In this case this judgement has been used due to similarity of the texts of Jordanian Law with the texts of the State of Qatar and UAE Companies Laws

[745] Judgement of Jordanian Court of Cassation No. 246/2004 dated 28.6.2004 m Publications, see also its resolution No. 2445/2001 m on 10/28/2001 Justice Centre, source Basbos (2006), Ibid, p71

notice, and the employer or owner of the new company also cannot disqualify directors or one of its members for this reason.[746]

It is worth mentioning that if the merger changes the legal form of the company and leads to the demise of its legal personality, this requires a change in the legal form of the venture that the company was created to achieve. So, a member of the Board of Directors cannot terminate or leave work without any legal reason. On the other hand, the transferee company cannot refuse to maintain its contracts and obligations to the members of the Board of Directors as long as its established ventures remain in existence and the company is not liquidated.[747]

However, the retention of members of the Board of Directors in their work and positions in M&As does not necessarily mean doubling the number of members of the Board of Directors of the transferee company, which would ultimately lead to an overlap between members (as previously discussed).[748] Rather, advantages should be achieved through the expansion of the directors of the company and the development of new positions,[749] with an election for a new Board of Directors for the transferee company from all members of the Boards of Directors of the old transferor and transferee companies. This should involve the participation of the employees (or their representatives) and the shareholders of the transferor and transferee companies. Even though companies involved in M&As do not lose the skills of their directors, or against the provision of laws that provide for the transfer of employees' rights in transfer of undertakings cases, also in order to stop the opposition of the Board of Directors to M&As and to facilitate the success of M&As, the company must place directors who do not secure board membership in the new administration of the transferee company

[746] For more see Al-azmi, Ibid
[747] For more reading see appeal of Egyptian Court of Cassation N 453, year 41K, meeting 07/ 02/ 1983, S34, A 1, p 426 and appeal N (1299), year 49K, meeting 28/ 11/ 1983, also see Al-azimy (n 503) 238; Alsghir (n 438) 507; Salim A R 'explain provisions of Companies Law N (159) of 198' Second Ed, (2001), 1075
[748] See Section 4.5 of this chapter
[749] To achieve that the researcher believe that, this is activating or revitalising the role of the department within the parent company and in its branch within so as to introduce new departments and to give it basic functions, to help to develop the work and the exploitation of the energies and skills of new members of the Board of Directors

elsewhere within the company in order to preserve the rights they enjoyed prior to the merger or acquisition.

A practical example of this is the merger process that took place between the Arab Company for Pharmaceutical Industry and Advanced Pharmaceutical Industries Co.[750] Following the end of the merger procedures, the Boards of Directors of the two companies dissolved and an executive committee took over the management of the new company, which accordingly distributed shares to shareholders and invited the Extraordinary General Assembly to an extraordinary meeting for the election of a new Board of Directors consisting of eleven members: eight from the Arab Company for Pharmaceutical Industry and two from the Advanced Pharmaceutical Industries Company, as well as a new member.

Here, we can point out that Emirati and Qatari laws are not sufficiently fair regarding the rights of the members of the Board of Directors of the merging company, due to the fact that the laws in the two countries do not provide for the Board of Directors of the merging company to participate in M&As and do not specify them roles during these processes. Also, they do not give them the right to object to the merger or to take it to court in cases of a failure to respond to their legitimate claims to stay in their jobs and positions with the same rights. Furthermore, the laws do not specify that measures must be taken in cases of members of the Board of Directors wishing to exit from membership of the company's management regarding compensation. This requires the intervention of Emirati and Qatari legislators to repair and modify the texts by taking advantage of the provisions of UK legislation, providing similar texts to section 904 of the UK CA 2006 or section 2 of the UK Cross-Border Merger Act 2007.

Also, the lawmakers in both countries should modify the texts of laws relating to the number of members of the Board of Directors of a public shareholding company, as per the situation in the UK Companies Act, by reducing the minimum number of

[750] The Arab Company for Pharmaceutical Industry and Advanced Pharmaceutical Industries Co are two medical companies in Jordan, for more see Basbos (2006), Ibid, pp 77-83

members and removing the maximum limit. This would give each company the right to determine the number of members of its Board of Directors according to its need, in the case of M&As or other cases, which in turn would overcome the problems that face companies involved in M&As due to objections by directors wishing to retain their posts. This also helps the transferee company to differentiate between members of its directors and the transferor company's directors and to then choose an appropriate management team. A reduction in the number of members of Boards of Directors provided by article 94 of Qatar and article 95 of UAE Companies Laws would leads to prevent overlap the terms of reference between members of the Board of Directors the transferor and transferee companies after the merger.

4.7 Effects of M&As on the Director Authority in Representing the Transferor Company

According to the theory of the legal personality of a company,[751] the consequence of a merger is the expiration and dissolution of the transferor company. However, this dissolution is different from normal dissolution as the merger does not lead to the liquidation of the company's funds[752] and the apportionment of its assets; rather, the transferee company receives the full financial assets of the transferor company, including the positive[753] and negative elements.[754] Accordingly, the authority of the directors of the

[751] For meaning, see paragraph 2.3 of Chapter Two of this thesis

[752] For more, see article 2 of the UK Cross-Border Merger Act 2007

[753] The positive elements of the company or companies merged means all the elements which could lead to increase property and profits of the company and its shareholders, corporeal or incorporeal, movable or unmovable, for instance, the profits made by companies during their work, which has not been distributed and entered into merger agreement, deals and projects that concluded with others during its lifetime, its customers, , business reputation, and products, markets and shops with commercial buildings that were practiced its work in, experiences and skills gained by the company and its workers and management prior to the merger and company's right to claim rights and litigation on others about the merged company rights on other before merger, etc.

[754] Negative elements of the company are intended to elements that may affect the entity companies and their profits after the merger, such as the loss that may occur to the merged or new company due to non-completed projects which contracted by the merged companies- whether due to compensation by the non-implementation at the time agreed upon between the merged company and other, or due to the increase in commodity prices and wages needed to implementation these projects- as well as the loss which might cause merged company due to not to sell some product of its products, branches, buildings and shops of the company rents that have not paid, the rights of workers in compensation and work, the lawsuit, which may bump up by some of the shareholders and creditors on the company to demand the right or raise damage, and bear and pay compensation for damage caused by the merged company during its work and has entered into merger agreement.

transferor company to represent the company in front of others expires.[755] The company is not represented by a liquidator and as soon as the merger process is completed, the Board of Directors of the transferee company becomes the legal representative for both the transferor and transferee companies, as well as the entity that claims to sponsor the interests of the two companies.

Essentially, the Arab judiciary, by means of the Egyptian Court of Cassation,[756] supported this view when it ruled that an original creditor company had fully merged with another company prior to the adjournment of proceedings. The consequences of this merger were the expiry of the merged company, the demise of its moral personality and the end of its authority, as well as the authority of its director. Thus, a claim concerning a debt owed made by an appellant (a creditor) against a former director after the merger (the debtor) was not legally permissible, thus the judgement contested on it will be correct, when this claim is refused.[757]

In another case, the plaintiff (A, M) filed a lawsuit against the Board of Directors of Jordan's Al-Nisr Insurance after it was merged with Refco Insurance Company. The court ruled that while the plaintiff had filed a lawsuit against Jordan's Al-Nisr Insurance, the company did not legally exist because it was proven to have merged with Refco Insurance Company. Therefore, the identity of it had expired and it did not legally exist at that time, which prevented the claimant from suing the company as such rights had been transferred to the new company.[758]

---

[755] Appeal N 2193 year 55K meeting 07/05/1990—in this case this judgement has been used due to similarity of the texts of Egyptian Law with the texts of the State of Qatar and UAE Companies Laws

[756] In this case this judgement has been used due to similarity of the texts of Egyptian Law with the texts of the State of Qatar and UAE Companies Laws

[757] Appeal N 284, year 34 k, meeting, 7/12/1967, s18 p 1851- in this case this judgement has been used due to similarity of the texts of Egyptian Law with the texts of the State of Qatar and UAE Companies Laws

[758] Judgement of Jordanian Court of Cassation No. 1544/2001 meeting, date of 23/07/2001, source Basbos (2006), Ibid, p72 for the same meaning cases see judgements of the Egyptian Court of Cassation representative in verdicts: appeal N 435, year 41k meeting 07/ 02/ 1983, S34 p 1, p 426, appeal N 972, year 49S, meeting 14/05/1984, and Appeal N 363, year 52k, meeting 12/05/1986, Sections 3.2.1.1:Theory of the Contract and 3.2.2.1 of this thesis

In a judgement of the Egyptian Court of Cassation, the court also ruled that a merger leads to the expiration of a company and the demise of its legal personality and thus the demise of the authority of its director in representing the company and the disposition of its rights.[759]The Al-nasr Company for Tobacco and Cigarettes asked the head of the Civil Chamber Court of Alexandria to force Hassan Khalil to pay the amount of 2000 LE; however, the president of the court refused to issue the command, so the company resorted to the establishment of proceedings before the Court of Alexandria College, requesting the defendant's payment of this amount. As explained in its claim, the defendant owed the amount to the Kotharelli Brothers Company (which the claimant had merged with) under the warranty of a debt written on 15 December 1957. In a meeting on 5 February 1963, the court permitted the defendant to introduce a guarantor in the lawsuit. Angelo Kotharelli entered into the lawsuit in his personal capacity and in his capacity as a director for the company. The respondent said that he had paid the amount claimed by Angelo Kotharelli when he was a manager of the Kotharelli Brothers Company and a representative of the company, which subsequently merged with the Al-nasr Company for Tobacco and Cigarettes. In June 1963, the First Degree Court decided to request the swear to Angelo Kotharelli. Kotharelli did not turn up, so it was considered that he had declined to swear. Hence, on 30 December 1963, the claim was dismissed. The Al-nasr Company for Tobacco and Cigarettes appealed this judgement in front of the Alexandria Appeal Court, which ruled that Angelo Kotharelli was not among the original defendants of the lawsuit and thus ruled to cancel the appellant's judgement and obligated the defendant to pay to the appellant company the amount of 2000 LE and legal fees from the date of the judicial demand until the date of payment.[760]

The judgement of the Alexandria Appeal Court was not accepted by the appellant: the appellant appealed against the judgement in front of the Court of Cassation on the basis that the judgement violated the law. The words of the appellant are significant: according to the law, it is not permitted for the Court of Appeal to say that it is not possible to direct an oath to a partner who has withdrawn from a company. This is

[759] Appeal N 2193 year 55K meeting 07/05/ 990—in this case this judgement has been used due to similarity of the texts of Egyptian Law with the texts of the State of Qatar and UAE Companies Laws ,
[760]Appeal N 2193 year 55K meeting 07/05/1990, Ibid

because the withdrawing partner had nothing to do with the incident. The Court of Cassation did not accept the arguments of the appellant and ruled that "from the impugned judgement it is clear that the Kotharelli Brothers Company - the original creditor - merged as a full merger in the company that appealed against it before adjourning the proceeding. The consequence of this merger was the expiry of its legal personality and therefore the end of the authority of its director, along with the demise of his entire obligation in the representation of the company or its rights in the face of others. Accordingly, directing an oath to the director concerning the payment of the debt owed on the company after the termination of his work in the representation of the company is not legally permissible; therefore the appellant's judgement is correct if refused request an oath from the respondent. Therefore, the appeal should be rejected".[761]

To sum up, the expiration of the transferor company and the demise of its moral personality as a consequence of a merger or acquisition leads to the termination and demise of the authority and functions of the transferor company's Board of Directors and the demise of their status as members of the Board of Directors of the transferor company, in terms of business and in terms of representing the company in front of others. However, these considerations do not mean the liquidation of the company. Notably, as long as the merger does not result in the liquidation of the company, the merged company does not require the appointment of a liquidator to represent it in the event of the demise of the power of its Board of Directors: the Board of Directors of the transferee company, according to every case, becomes the legal interface of the transferor company in regard to all its rights and obligations. On this basis, mergers result in the directors or the Board of Directors of the transferor company moving to the transferee company and forming part of its administration. One entity becomes representative of the two companies together, representing them in their rights and obligations.

[761] Translated by Al-hemyari Ameen Baggash (2010) School of Law, Brunel University, University of West London, London, United Kingdom

4.8 Similarities and Differences between Directors Rights' In M&As According to UK, Qatar and UAE Laws

The laws under consideration disagree concerning the number of members appropriate for a Board of Directors of a public company. The UK Companies Act does not put a maximum on the number of Board of Directors members of a shareholding public company, which does not lead to the emergence of any problems or obstacles regarding this in M&A cases. The transferee company can combine the members of its Board of Directors with the directors of the transferor company or elect a new administration from the directors of the transferor and transferee companies after the completion of the merger and the registration of the transferee company in the Commercial Register. By contrast, UAE and Qatar Companies Laws put a maximum and minimum on the number of Board of Directors members that cannot be bypassed. Not only was an error committed by the Emirati and Qatari legislators when they put a limit on the number of directors of shareholding companies, but the legislators in both countries have not implemented suitable solutions for developing the texts of the laws relating to the number of directors or Board of Directors Company in the case of M&As. They have not provided effective alternative solutions for this matter, such as the rights of members of the Board of Directors of both the transferor and transferee companies to elect a new administration from the members of the old Boards of Directors of the transferor companies, which may lead to problems in companies wishing to undertake M&A operations as a result of the intransigence of some members of the Board of Directors who do not wish to leave their positions at the top of the administrative hierarchy of the company.

Unlike UK laws, UAE and Qatar laws do not indicate the role that the members of the Board of Directors provide for the company or its employees, or for the success of the merger or acquisition process. Although the laws agree and address the transfer of all rights and obligations from the transferor company to the transferee company, they fail to show the kind of rights that must be moved, e.g. the rights of members of the Board of Directors of the merged or acquired company. This may lead some companies to exploit

the lack of clarity in the texts and evade their responsibilities towards the old members of management and their rights.

UAE and Qatar laws still take agency theory as the basis for determining the relationship between companies and their directors, which leads to increase the split in opinions of some Arabic Jurists concerning the duties and rights of directors in service to a company (in terms of taking care of its interests and the interests of clients) and the nature of the relationship between the company and its Board of Directors.

4.9 Reducing the Negative Impacts of M&As on Directors

The negative effects of M&As are not limited to the impacts on the rights and contracts of the workers: they can also extend to the rights of the Boards of Directors. For this reason, chief executives often oppose a merger because they fear losing their jobs or transitioning to a new role. Likewise, board members are sometimes reluctant to contemplate a merger because they feel loyal to the chief executive and the staff that have spent years building the organisation. The researcher believes these fears can be eased by taking several procedural and legal steps, as described below.

Firstly, there should be an honest and early appraisal of the extent of the ability and potential of the transferee or new company to combine its management and the transferor company management. In addition, there must be some coordination between the administrations of the two companies involved in the merger or acquisition, as well as communication concerning the introduction of the working conditions and the problems and disadvantages suffered by each company, if any, before entering into the processes and procedures of a merger or acquisition. Furthermore, there must also be coordination between the administrations and employees of the two companies in an attempt to work together, which would subsequently facilitate the merger or acquisition process and the transfer of financial contracts, debts and all rights and obligations between the companies. An example of a board correctly focusing on working conditions and employees occurred with Quickturn Design Systems, Inc. In 1998, Quickturn was

approached by Mentor Graphics in a hostile takeover attempt. In the first meeting of the Quickturn board after the offer was made, the directors paid considerable attention to employee welfare, since retaining talent was critical to Quickturn's success, whether it remained an independent entity or not. As a result, the board immediately hired an independent human resources consultant to develop an employee retention strategy.[762] When Quickturn rejected the offer from Mentor. The board once again focused its attention on employees and by the time the merger occurred, the company had lost almost none of them.[763]

Secondly, consideration should be given to the directors of the transferor company, giving them broad powers to contribute to the completion of the merger and preparing them psychologically to accept working side by side with the directors of the transferee company, either as members of the Board of Directors of the transferee company or in a new position in company or in one of its subsidiaries. This can be achieved through having meetings between the members of the Boards of Directors of companies involved in M&As and the shareholders and workers of the companies during or after the M&A process. Having a board connection between the two firms may improve information flow and communication between the firms, as well as increase each firm's knowledge and understanding of the other firm's operations and corporate culture. This enhanced knowledge and information advantage, in turn, may lead to a better merger or acquisition transaction between the two firms.[764] The information advantage may also affect the takeover premium and hence the transaction price of the deal. This is because acquirers with a board connection to the target may enjoy a bargaining advantage in deal negotiations due to their private information about the target firm, relative to outside bidders with no connection to the target.[765]In addition, particularly in first-degree

[762] The source of this example is Jay W. Lorsch, 'How boards can improve the success rate of M&A activity' Boardroom Briefing, Harvard School, Boardroom Briefing Vol. 3, No. 3 A publication of Directors & Boards magazine, [2006] 6, 8. For more see Bainbridge, Stephen M "Dead Hand and No Hand Pills: Recommitment Strategies in Corporate Law" Berkeley Program in Law and Economics, (California at Los Angeles, 2003)
[763]Jay W. Lorsch "How boards can improve the success rate of M&A activity", Ibid, 6, 8
[764] Ian Cookson, 'The Board's Role in M&A' (2006) 3(3)Boardroom Briefing, A publication of Directors & Boards magazine10, 14
[765] For more see Jay W. Lorsch "How boards can improve the success rate of M&A activity" Ibid, 743

connections, the presence of an acquirer's director on the target firm's board may limit competition from outside less-informed bidders, and reduce the acquirer's incentive to offer a higher premium in order to deter a competing bidder. Finally, greater information flow and communication between connected firms may affect the transaction costs of the deal by mitigating the need for the advisory services of investment banks in initiating the transaction and identifying synergy sources. In a recent study of 1,664 acquisitions between 1996 and 2008, Ye Cai (2010)[766] observed a board connection between the acquirer and the target companies in 9.4% of the transactions. In terms of dollar deal values, connected transactions represented 19.8% of the overall transaction volume.[767] It was found that the average acquirer abnormal return from two days before to two days after the acquisition announcement was 0.12% in first-degree connected transactions and -2.33% in non-connected transactions. The difference was 2.45% and significantly different from 0 at the 5% level. In addition, they found lower takeover premiums in the presence of a first-degree connection. Interestingly, takeover premiums become even lower when the connected director is an executive at the acquirer.[768]

Thirdly, the new directors should be informed of the modus operandi of the new company and its objectives. Moreover, they should be informed of the benefits, such as salaries, vacations and other incentives, to which they are entitled as a result of continuing to work for the company resulting from the merger or acquisition, whether remaining in their past positions or in lower positions, as long as it does not affect their financial rights and moral status.

Furthermore, there should be an election of a new Board of Directors for the new administration of the transferee company, with the participation of the shareholders and owners of the transferor and transferee companies. The new administration becomes the sole legal representative of the new company and its shareholders and employees in claims made in relation to each of the rights and obligations of the transferor and

[766] Ye Cai "Board Connections and M&A Transactions" Leavey School of Business Santa Clara University [2010], 3
[767] Ye Cai, Ibid 747
[768] Ibid

transferee companies, both before and after the merger or acquisition. A member cannot be elected more than once unless otherwise stipulated in the statute of the company; members of the Board of Directors may withdraw from the board provided that it is done in a suitable time and they are not liable to the company. The Boards of Directors of companies that decide to merge continue to exist until the completion of the registration of the transferee company and the approval of the separate accounts. At this time, the Executive Committee, formed from the chairmen and members of the Boards of Directors of the companies wishing to merge (or their managers, as the case may be) and the companies' auditors take over the management of the company for a period not exceeding 30 days. During this time, it should invite the general assembly of the transferee company to elect a new Board of Directors. This should be realised after the shares resulting from the merger are distributed.

After voting ends, the members of the Board of Directors of the transferee or new company are selected from the boards of both the transferee and transferor companies. The Board of Directors are elected for a period of three years; after that, new elections are conducted with the participation of members who were not chosen in the first election of the new Board of Directors. For members who are not elected in the first election or in following elections, or for those who lost their positions on the Board of Directors resulting from an election, the transferee company should appoint them to work in a position within the company or in one of its subsidiaries. They should receive the same salary and benefits that they were receiving prior to the election and with the same advantages offered by the acquirer for the newly elected management after a merger.

A practical example of the election of members of a new Board of Directors for an acquirer from the members of the Boards of Directors of the transferee and transferor companies is the merger process that occurred between the Arab Company for the Pharmaceutical Industry and Advanced Pharmaceutical Industries Company. This resulted in a new company under the name of the Arab Company for the Pharmaceutical Industry. The Boards of Directors of the merged and merging companies dissolved and a new Board of Directors was elected, consisting of eleven members: eight from the Arab

Company for the Pharmaceutical Industry, two from Advanced Pharmaceutical Industries Company and one new member.[769]

Another example is the merger transaction between Deutsche Telekom and France Telecom[770] in the UK. After the merger, the two companies revealed that Tom Alexander, former CEO[771] of Orange UK, was appointed Chief Executive of the new joint venture, while Richard Moat, the former CEO of T-Mobile UK, was named Chief Financial Officer and Deputy CEO[772]:

"A Board of Directors has also been formed, on which Tom Alexander and Richard Moat will serve as executive directors. Tim Höttges, CFO of Deutsche Telekom, will lead the board as non-executive chairman for two years. After this time, the leadership will rotate to Gervais Pellissier, Deputy CEO and CFO of France Telecom, for two years."

Philipp Humm, Chief Regional Officer of Europe for Deutsche Telekom, and Olaf Swantee, Executive Vice President of Europe at France Telecom, also joined the six-person board, but as non-executive directors.[773]

In addition, in cases of the bankruptcy of a transferor company and the inability of the acquirer to absorb its management and the transferor company's management, by cooperation and coordination between the two companies the acquirer can negotiate with members of the Board of Directors who cannot be accommodated as members of the

---

769 For more see Basbos (2006), Ibid, 86

770 Deutsche Telekom, a leading integrated telecommunications company, has operations in around 50 countries around the world and accounted for more than 151 million mobile customers as of December 31, 2009. France Telecom had a user base of around 132.6 million mobile customers at the end of the last year, while its Orange brand is the number three mobile operator in Europe.

771 The CEO means the Chief Executive for the company

772 'Deutsche Telekom and France Telecom Complete UK Merger' <http://www.mobilemarketingmagazine.co.uk/content/deutsche-telekom-and-france-telecom-complete-uk-merger> accessed 4 May 2011

773 'Merger of T-Mobile UK - Orange UK Completed' <http://news.softpedia.com/news/Merger-of-T-Mobile-UK-Orange-UK-Completed-139037.shtml> accessed 4 May 2011; see also 'Deutsche Telekom and France Telecom announce completion of UK merger' <http://everythingeverywhere.com/2010/04/01/deutsche-telekom-and-france-telecom-announce-completion-of-uk-merger/>accessed 10/ 06 2011)

Board of Directors of the merging company or who do not want to stay in positions lower than their positions prior to the merger. They can be compensated commensurate with their length of service and the services that they provided for the company prior to the merger; the compensation should be paid in cash from the profits made by the companies before the merger or after the merger. Also, the payment should be made during a period of three months from the end of the merger or acquisition and recorded by the transferee company in the Commercial Register.

In this regard, the lawmakers of the State of Qatar and UAE should review the legal texts of laws relating to the number of members of Boards of Directors of shareholding companies and modify the texts to accommodate the increased number that could be needed by companies in M&A cases. The current texts could be changed to say "the management of the shareholding company will be undertaken by an elected Board of Directors. The statute of the company will define the method of its formation, the number of members and the period of membership on the board, provided that the number of members should not be less than two. The period of membership thereof should not be more than three years."

Emirati and Qatari legislators could also add text to the laws to allow companies involved in M&As to elect a new Board of Directors from the directors of the transferor and transferee companies, in order to meet companies' needs and to take care of the interests of shareholders, employees and others. Achieving this can be done through taking advantage of regulation 38 of the UK Cross-Border Merger Act and providing similar provisions.[774]

[774] The regulation provides for "the employee representatives of the UK transferee company, or if there are no such representatives, the employees, shall have the right to elect, appoint, recommend or oppose the appointment of a number of directors of the transferee company, such number to be equal to the number in the merging company which had the highest proportion of directors (or their EEA equivalent) so elected or appointed". "The employee representatives, or if there are no such representatives, the employees, shall, taking into account the proportion of employees of the transferee company formerly employed in each merging company, decide on the allocation of directorships, or on the means by which the transferee's employees may recommend or oppose the appointment of directors". For more see regulations 38/1, 2 and 3 and 39 of the UK Cross-Border Act 2007

Finally, the legislators of UAE and Qatar should take note of UK laws and develop the terms of reference and duties of shareholding company directors in M&A cases, giving them the right to participation and consultation at all stages of M&A processes and the right of appeal against arbitrary decisions that may affect them as a result of these operations, which would strengthen the relationship between the companies and their directors and promote the success of M&A procedures.

4.10 Conclusion

Being a responsible director means more than just acting with honesty and integrity and using one's talents to the company's best advantage. Hence, the thrust of much modern legislation has been to seek the promotion of better standards of management in companies for the service of the company and its shareholders and to increase profits. No one can ignore the damage and the negative effects on the Board of Directors that may accompany some M&As, which may extend to their contracts, level of output, wages and efficiency, due to the corporate restructuring that occurs after the completion of a merger. It can also occur due to taking or adopting some of the laws to the principle of personal theory in the interpretation of the relationship between the employee and the employer, or due to adopting wrong a strategy regarding the number of the Board of Directors of the shareholding companies by some of laws. For instance, UAE and Qatar Companies Laws, unlike UK Companies Law, put a maximum on the number of members of the Board of Directors of shareholding companies that cannot be bypassed, even in M&As. It is known that a merger leads to the expiration of the transferor company and the demise of its moral personality, with the termination and demise of the authority and functions of the transferor company's Board of Directors and the demise of their status as members of the Board of Directors of the transferor company, in terms of business and in terms of representing the company in front of others. This might lead to objections by some members of the Boards of Directors of the companies involved, especially those who feel they are going to lose their jobs, which might cause the failure of the merger or acquisition.

In accordance with the theory of the legal personality of a company, the transferee company not only receives the assets of the transferor company but also receives the venture that the company sought to achieve. Also, it receives all of the rights of the transferor company in the form of a sum of money covered. Therefore, it may be useful for the projects that were transferred from the transferor to the transferee company to be managed by the board of the transferor company who were initiated to manage such projects before the merger or acquisition, so that the companies involved and their projects do not lose the previous directors' experience.

With the aforementioned in mind, this chapter has provided an evaluation of the rights of Boards of Directors in M&As according to Qatar, UAE and UK laws. The chapter has analysed the relationship between a company and its directors according to agency theory and institution theory; the researcher concluded that the relationship between any company and its Board of Directors is an agency relationship from a special type of agency contract. Accordingly, a director of a Board of Directors is not an agent for the company or its partners, but is a member of its legal entity, speaks in its name and expresses its will, and their legal actions are binding on the company. Accordingly, the rules of agency theory govern the internal links between partners on one hand and between managers on the other hand, but the directors in the face of others are legal deputy about the company. An agency contract ends with the death of the client or the transfer of the enterprise from one person to another. Also, the client can dissolve the agency contract without the knowledge or consultation of the agent. The Board of Directors is a representative of the company and all its shareholders, even the shareholders who did not choose them to manage the company. By contrast, an agent represents only the person who chose them, and such rules do not apply to the relationship between a company and its directors.

The chapter has also identified the duties, liabilities and rights of directors in general and in M&A cases. In addition, the chapter has also highlighted how M&As impact the top management of transferor and transferee companies and how this influence extends for many years following the completion of M&As process.

Additionally, the chapter has also highlighted the rights of directors to retain their contracts of work and for their rights to be transferred from the transferor to the transferee company. It was concluded that British laws clearly put a minimum limit and no maximum limit on the number of members of Boards of Directors of shareholding companies, which facilitates the integration of the boards of the transferor and transferee companies or the election of a new administration from the Boards of Directors of the two companies. Not only this, but UK laws give the directors of companies involved in M&As the right to participate in M&A procedures, which allows them the opportunity to know their position upon completion of the merger proceedings. This drives them to not oppose M&A processes and to contribute seriously and effectively to the success of such processes.

The chapter has also included various proposals and solutions, which are seen by the researcher as having the potential to reduce the negative effects of M&As on company directors' rights; this is particularly clear in the proposal to give the administrations of the transferor and transferee companies further powers to participate in M&As, incorporating the proposal to merge the companies' management. Subsequently, there should be the election of a new administration with the participation of the shareholders and staff of the two companies. In addition, the legislators of the UAE and Qatar should develop the articles of the laws of both countries relating to the number of members of Boards of Directors of shareholding companies, taking advantage of the UK CA 2006 and providing similar text to section 154 of the UK CA. This would facilitate an increase in the number of members of the Board of Directors or the election of new management for the transferee or new company from the management of both the transferor and transferee companies in M&As.

CHAPTER FIVE: SHAREHOLDERS' RIGHTS IN M&As

5.1 Overview

A shareholder is an individual or organisation owning shares in a firm: they have a legal claim on a percentage of the firm's earnings and assets and share the same level of limited liability. In cases of bankruptcy, shareholders generally lose the entire value of their holdings.[775] 'Shareholders' does not just mean the holders of shares, but could also include other parties holding a merely beneficial interest in such shares.[776]

According to the theory of the legal personality of a company,[777] a merger leads to the expiry of the transferor company. However, this expiration does not lead to the liquidation of the company and the division of its assets but instead involves transferring both the negative and positive elements[778] of the transferor company to the transferee company. In such a case, the merger not only increases the capital of the transferee company but the company also receives all the projects that the transferor company was established to achieve. Accordingly, the transferor company's shareholders receive a number of shares in the transferee company instead of their shares that expired by the merger, with the same rights as the shareholders of the transferee company, i.e. the right to attend meetings, to discuss and vote, to appeal decisions, to a share in the output of the liquidation of the company and to waive their shares to others.

The problem here is not how shareholders get profits or new shares in the transferee company, or how they can attend meetings or vote on decisions, because such rights are stipulated by the texts of laws. Rather, the problems are: unlike UK legislation, UAE and Qatar laws only allow companies to issue one type of shares (ordinary shares), accordance with, if the shares of the transferor company consists of ordinary and preferences shares, while, the shares of the transferee company consists only from

[775] Shafiq M,*Mediator in the Egyptian Commercial Law* (2nd edn, Dar Alnahdah Alrabia1991) 541, 483 Arabic Source
[776] Court of Appeal (Civil Division), McKillen v Misland (Cyprus) Investments Ltd, [2012] EWCA Civ 179
[777] For meaning see Chapter Two of this Thesis
[778] For an explanation of this, see footnote paragraph (2.3) of Chapter Two of this thesis

ordinary, how can the transferee company distribute its shares to the shareholders of the transferor company? In addition, according to the UK, UAE and Qatar the shares of company are divided into shares in cash and shares in kind, accordance with, the legislators of UK, Qatar and the UAE have estimated that a company may not need to use or exploit all its capital to carry out its project during the first three years of its establishment. In order to that, the legislators in countries do not require a company to meet its full capital when it makes an IPO, but merely request that it meets 25 % of the stock of its cash value upon subscription.[779]"On the contrary, the shares in kind shall meet their value in full upon underwriting". Accordingly, if the shares of the transferor company are divided into shares paid their full nominal values and shares not paid their full nominal values, while, the shares of the transferee company are divided into shares paid their full nominal values, the question arises as to how the shares of the transferee company are distributed amongst the shareholders of the transferor company.

In addition, unlike the UK Companies Act, the laws of UAE and Qatar do not allow for the transferee company to obtain shares of the transferor company shares in return for pay in cash, which leads to issues relating to how the transferee company shares are distributed amongst the transferor company's shareholders if the shares of the transferor company including shares with decimal fraction, while, the transferee company shares free from decimal fraction. Furthermore, as some merger or acquisition operations might not receive acceptance from the partners or shareholders, the question accordingly arises concerning the extent of the rights of those partners or shareholders who do not support the suggestion of the merger or acquisition to exit from such operations and recover the value of their shares. The problems do not stop at this point but extend to the rights of shareholders in the sale or exchange of their shares in the transferee company after the merger process is completed.

[779] Sections 91 and 586 of the UK Companies Act 2006 and article 155 of Qatar Companies Law

Not only that, but M&A problems may affect the profits of the shareholders of the companies involved. Many studies[780] relating to the implications of M&As provide mixed results regarding the merits of M&As in terms of outcomes for shareholders: some studies find that M&As lead to maximise shareholder value, which in some cases went up to between 16% and 45%.[781] However, others believe that this is rarely the case, with the shareholders of the acquiring company commonly suffering losses following the acquisition owing to the acquisition premium and augmented debt load. This has the potential to reach approximately 10% of the overall market value for the five years post-merger,[782] which leads to a question about the fate of the profits of the transferor company's shareholders after the merger.

Accordingly, when companies are involved in M&As, significant question arise regarding shareholders. For example, how do M&As affect the rights of shareholders of companies? And what is the legal basis for transferring all the rights and obligations of shareholders in M&A cases? In accordance with the legal theory of the personality of a company, this question (alongside others) will be discussed in this chapter, which is arranged as described below.

The chapter will begin by providing a general overview of the rights and problems for shareholders that may arise resulting from some M&A operations. Section 5.2 explains the shareholders rights in M&As. Section 5.3 provides a thorough understanding of the consequences of M&As for the profits of shareholders and the legal basis for transferring their rights from the transferor company to the transferee company Section 5.4 considers the rights of the transferor company's shareholders versus the merger according to UK laws, which is also divided into two parts: the first part discusses

---

[780] See Rym Ayadi "Assessing the Performance of Banking M&As in Europe" Centre for European Policy Studies [2007]; Casper Flugt, 'Shareholder wealth effects of mergers and acquisitions: An empirical investigation of short-term performance in the European market' (PhD thesis, Aarhus School of Business 2009); Malcolm Arnold and David Parker, 'UK Competition Policy and Shareholder Value: The Impact of Merger Inquiries' (2007) 18 British Journal of Management27, 43.
[781] Malcolm A and David P "UK Competition Policy and Shareholder" ibid 761; Anand M, 'Impact of Merger Announcements on Shareholders Wealth: Evidence from Indian Private Sector Banks' (2008) 33(1) Journal for Decision Makers35, 54. For more information, see Section 5.2 of this chapter
[782]For more reading see Franks J R, Harris R and Titman S, 'The post-merger share-price performance of acquiring Firms' (1991) 29 Journal of Financial Economics and Section 5.2 of this chapter

the right of shareholders to approve M&As and the second part classifies the rights of the shareholders of the transferor company in the shares of the transferee company.

Subsequently, Section 5.5 takes a closer look at the transferor company's shareholders' rights (versus merger) in the transferee company according to UAE and Qatar laws, which is separated into four subsections: the first subsection analyses the majority of shareholders required to approve M&A decisions; the second subsection takes a closer look at the transferor company's shareholders' rights in the shares of the transferee company, which deals with the way shares in the transferee company are distributed to the shareholders of the transferor company when there are differences between the nominal values of the shares of both companies; the third subsection addresses the rights of shareholders in terms of objecting to M&As and therefore choosing to exit from the company and recover the value of their shares; and the fourth subsection discusses the right of the shareholders of the transferor company to trade the shares that they obtained from the transferee company after the merger. Section 5.6 classifies ways of overcoming the impact of the merger on shareholders. Finally, Section 5.7 will present a summary of the chapter and conclusive remarks.

5.2Consequences of M&As on Shareholders' Profits

The extensive literature relating to the implications of M&As provide different results regarding the effects of such operations on shareholders. For example, Malcolm and David (2007),[783] Anand (2008),[784] Delaney and Wamuziri, (2004),[785] in addition to other studies,[786] believe that one of the primary motives behind any strategic corporate M&A decision is to maximise shareholder value, owing to the fact that M&As induce a number of changes within the organisations. Essentially, the size of the organisation changes; its

[783] Malcolm A and David P "UK Competition Policy and Shareholder Value" ibid, 761
[784]Anand M "Impact of Merger Announcements on Shareholders' Wealth: Evidence from Indian Private Sector Banks" ibid, 762.
[785] Frank T Delaney and Sam C Wamuziri, 'The impact of mergers and acquisitions on shareholder wealth in the UK construction industry' (2004) 11(1) Engineering, Construction and Architectural Management65, 73
[786] Cakici N, Hessel C and Tandon K, 'Foreign Acquisition In the United State and Effects on Shareholder Wealth' (1991) 3(1) Journal of International Financial Management and Accounting 39, 60.

stocks, shares and assets also change. Even the ownership may change. However, the impacts of mergers and acquisitions vary from entity to entity and also from country to country, depending on the structure of the deal.[787]

Silvia Rigamonti (2001)[788] examined the stock market valuation of mergers in the insurance industry between 1996 and 2000 in Europe. He formed a sample of 56 deals in which the acquiring company was listed and he found that insurance companies' mergers enhance value for bidder shareholders. Over the event window (-20, +2), their abnormal return was 3.65%.[789] The abnormal returns for acquiring firms were larger the greater the relative size of the deal value. He also found that mergers occurring between insurance firms located in the same European country were not valued positively by the market, while cross-border deals appeared to increase shareholder wealth.[790]Chari et al. (2004)[791] found significant and positive abnormal returns from cross-border M&As, due to international tax differences.[792]

Martin et al. (1999)[793] performed a systematic empirical analysis of the effects of merger and acquisition activity on profitability and firm level employee remuneration in the United Kingdom, using a specially constructed database for the period 1979-1991. They found that both profitability and wages rise following acquisition and that firms that merge within the same industry experience larger increases in profitability and pay their workers higher wages than those engaged in unrelated acquisitions. Aghion et al. (2005)[794] reported that M&As lead to increased concentration in the industries where they occur and trends towards innovation, which leads to drive firm growth and increase

---

[787] For more reading see Malcolm A and David P, 'UK Competition Policy and Shareholder Value: The Impact of Merger Inquiries' (2007) 18 British Journal of Management27, 43.
[788] Silvia Rigamonti, 'Mergers and Shareholders' Wealth in the Insurance Industry' [2001]Catholic University of the Sacred Heart of Milan - Department of Economics and Business Administration,
[789] Ibid
[790] For more see Sudarsanam S, Holl P and Salami A, 'Shareholder Wealth Gains in Mergers: Effect of Synergy and Ownership Structure' (1996) 23(5/6) Journal of Business Finance and Accounting 673, 698.
[791] Chari A, Ouimet P and Tesar L "Acquiring Control in Emerging Markets: Evidence from the Stock Market" NBER Working Paper No. W10872 [2004]
[792] For more see Spyros I Spyrou, Ibid, 31, 32
[793] Martin J Conyon, Sourafel Girma, Steve Thompson, and Peter W.Wright, 'Do hostile mergers destroy jobs?' (2000) 45(4) Journal of Economic Behavior & Organization 45.
[794] Aghion P, Blundell, R, Bloom N and Griffith R, 'Competition and innovation: an inverted-U relationship' (2005) 120(2) Quarterly Journal of Economics 701, 728.

shareholder profits. De Bondt and Thompson (1992)[795] believe that the increase in shareholder profits is due to the lower average cost of production due to either cost synergies, leading to economies of scale, or a transfer of superior technologies, leading to a downward shift of their average cost curves.[796]

Mulherin and Boone (2000)[797] studied the acquisition and divestiture activities of a sample of 1305 firms from 59 industries during the 1990–1999 period and reported that both acquisitions and divestitures in the 1990s increased shareholder wealth between 16% and 45%.[798] Vijgen (2007)[799] highlights that M&As in the western parts of continental Europe during the period 1992–2002 created a significantly positive run-up and mark-up for target shareholders, with 11.4% and 10.1%, respectively. These findings appear in the UK, where studies by Kennedy and Limmack (1996),[800] Gregory (1997)[801] and Cosh and Guest (2001)[802] report that hostile acquisitions improve firm profitability over a three-year post-bid period by 4.9% each year, compared with −0.7% for friendly takeovers.

Andrade et al. (2001)[803] found that mergers concluded in the 1980s and 1990s yielded negative, not statistically significant, returns for acquirers in various event windows around the announcement dates. Conversely, they produced positive returns for targets of 14% to 20%.[804] Furthermore, Ashton and Pham (2007)[805] studied the effect of

---

[795] De Bondt W F and Howard T, ‘Is efficiency the driving force behind the mergers?’ (1992) 13 Managerial and Decision Economics 31, 44.
[796] For more see Thomas A. Turk, Jeremy Goh and Candace E Ybarra, ‘The Effects of Takeover Defenses on Long Term and Short Term Analyts Earnings Forecasts: The Cases op Poison Pills’ (2007) 4 Corporate Ownership & Control.
[797] Mulherin J H and Boone A L, ‘Comparing Acquisitions and Divestitures’ (2007) 6Journal of Corporate Finance117, 139.
[798] Mulherin J H and Boone A L
[799] Vijgen D, ‘Shareholder wealth effects of M&A’s in the Western part of Continental Europe’ (Master thesis, University of Maastricht 2007) 1, 67.
[800] Kennedy, V A and Limmack, R J, ‘Takeover activity; CEO turnover and the market for corporate control’ (1996) 23 Journal of Business Finance and Accounting 267, 285.
[801] Gregory A, ‘An examination of the long run performance of UK acquiring firms’ (1997) 24 Journal of Business Finance and Accounting 971, 1007.
[802] Cosh A and Guest P "The long-run performance of hostile takeovers: UK evidence" Working Paper, ESRC Centre for Business Research, University of Cambridge [2001].
[803] Andrade, Gregor, Mark Mitchell, and Erik Stafford, ‘New Evidence and Perspectives on Mergers’ (2001) 15 Journal of Economic Perspectives103, 120.
[804] Ibid

61 UK financial institution mergers over the period 1988 to 2004. They found that these mergers increased efficiency and had little impact on retail interest rates.[806] Fabio Braggion (2010) also finds that target banks experience positive abnormal returns of 6.6% in the announcement month and the combined abnormal returns are a little over 3%.[807]According to Danbolt (2004),[808] increases in the gains of shareholders stem from many sources, such as reductions in agency costs, the enhancement of the competitive position and synergies. Mitchell et al. (2004)[809] add that bidder shareholder returns seem to vary depending on the characteristics of the firms involved and the timing of the merger. Spyros I Spyrou (2010)[810]also reports that the magnitude of the gains to shareholders is dependent on the method of payment and that, for bidders and acquirers, trading activity, liquidity and bid-ask spreads are affected by the form of payment. The method of payment in takeovers is important for a number of reasons. From a theoretical point of view, Jensen (1986)[811] discusses the agency costs of free cash flow and argues that acquisitions financed with cash and debt will generate larger benefits than those accomplished through the exchange of stocks because "stock acquisitions do nothing to take up the organisations' financial slack and are therefore unlikely to motivate managers to use resources more efficiently". Thus, firms that have large amount of cash or high cash flow are more likely to make cash offers.[812]

---

[805] Ashton John and Khac Pham "Efficiency and price effects on horizontal bank mergers "Centre for Competition Policy Working Paper, University of East Anglia, No. 07-9 [2007]

[806] For more see Savor, Pavel, and Qi Lu, 'Do Stock Mergers Create Value for Acquirers?'(2000) 6(2) Journal of Finance 1061, 1097; Becher David, 'The valuation effects of bank mergers' (2000) 6(2) Journal of Corporate Finance189, 214.

[807] Fabio Braggion, Narly Dwarkasing and Lyndon Moore "Mergers and Acquisitions in British Banking: Forty Years of Evidence from 1885 until 1925" [2010].

[808] Danbolt J, 'Target company cross-border effects in acquisitions into the UK' (2004) 10 European Financial Management83, 108.

[809] Mitchell M L, Pulvino, T and Stafford, E "Price pressure around mergers" Journal of Finance, 59, [2004] 31, 63

[810] For more see Spyros I Spyrou, 'Stock price reaction to M&A announcements: Evidence from the London Stock Exchange' (2010) 16 Journal of Money, Investment and Banking 31, 32.

[811] Jensen M C, 'Agency Costs of Free Cash Flow, Corporate Finance and Takeovers' [1986] American Economic Review36.

[812] Casper Flugt, 'Shareholder wealth effects of mergers and acquisitions: An empirical investigation of short-term performance in the European market' (PhD thesis, University of Aarhus 2009).

On the contrary, through reviewing a UK dataset for the period 1990-2009, Black et al. (2010)[813] found a significant reversal in the long term, with failed deals outperforming those that succeeded. This outperformance is dependent on the target's status and the method of payment and is not simply a reflection of the UK phenomenon of private deals being financed using cash. Moeller et al. (2004) take into account the size effect when comparing the announcement effect of equity and cash bids. Large acquirers of public targets lose −2.45% if paying with equity and lose only −0.75% if paying with cash. Small acquirers gain 2.84% if they pay with cash and lose −0.42% if they pay with shares. Conn et al. (2005) find that bids financed with any payment method other than cash lose −0.47% over 36 months following the announcement.

Furthermore, Cook and Spitzer (1999)[814] report that 83% of mergers are unsuccessful in producing any business benefit as regards to shareholder value. Conn et al. (2005)[815] calculated abnormal returns for a sample of UK firms and found that acquirers lose around 20% over three years. Hence, the overwhelming consensus is that shareholders in acquiring companies suffer significant wealth losses when long-run returns are considered.[816] Savor and Lu (2009)[817] suggest that negative wealth effects could be the result of managerial empire building or hubris: managers may engage in M&As in order to maximise their own utility at the expense of shareholders. Another possibility is that M&As are initiated by firms with overvalued equity who wish to pay for the (real assets of the) target with overpriced shares.[818] Becher (2000)[819] and Bhagat et al. (2005)[820] add that the reasons for the negative effects of some mergers on

---

[813] Emma L. Black, Jie (Michael) Guo and Jing-Ming (Thomas) Kuo "Do UK Mergers Create Shareholder Value? UK Evidence" Department of Economics and Finance, Durham Business School, University of Durham, [2010]

[814] Kelly J, Cook P C and Spitzer P D "Mergers and Acquisitions: Global Research Report" [1999] 1, 24

[815] Conn C Cosh, AGuest P and Hughes A, 'The impact on UK acquirers of domestic, cross border, public and private acquisitions' (2005) 32 Journal of Business Finance and Accounting 815, 870.

[816] For more see Christian Tuch and Noel O'Sullivan, 'acquisitions on firm performance: A review of the evidence' [2007] International Journal of Management Reviews 148.

[817] Savor, Pavel, and Qi Lu (n 787) 232.

[818] For more see Roll, Richard, 'The Hubris Hypothesis of Corporate Takeovers' (1986) 59 Journal of Business199, 216

[819] Becher David, 'The valuation effects of bank mergers' (2000) 6(2) Journal of Corporate Finance 189, 214.

[820] Bhagat Sanjai, Ming Dong, David Hirshleifer, and Robert Noah, 'Do tender offers create value? New methods and evidence' (2005) 76 Journal of Financial Economics 3, 60

shareholders are the difficulty in accurately measuring M&A returns and the difficulty in timing information release, with bidders systematically overpaying for acquisitions.[821]

Many people invest in companies. They buy shares in the hope that the value of their investment will increase. People also buy shares in private companies in order to secure a say in how the company is run or to ensure that they are directors. There are other reasons for acquiring shares. A vital question for every shareholder is: when the company is involved in a merger or acquisition, what is the fate of the transferor company's shareholders regarding the profits of the transferee company after the merger?

5.3 Shareholders' Rights in Profits of the Transferee Company

According to the theory of the legal personality of a company, a merger leads to the end of the transferor company and the demise of its moral character. However, the expiration of the transferor company is not followed by the liquidation of the company and the division of its assets. As a result, the shareholders of the transferor company receive a number of shares in the transferee company in return for their shares in the transferor company (which elapsed as a result of the merger), retaining their capacity as shareholders in the transferee company. Accordingly, the shareholders of the transferor company enjoy all the rights of the shareholders of the transferee company, including the right to company profits that are achieved after the merger.

Sections 630[822] and 633[823] of the UK CA 2006 afford protection to the shareholders of a company according to the class of shares; paying a dividend is the usual way for a company to distribute a share of its profits among its shareholders. In the UK CA 2006, section 829 to section 853, there are detailed statutory rules regarding the distribution of profits to the company's shareholders. The main purpose behind these provisions is to prohibit companies from making distributions (including dividends)

[821] Bhagat Sanjai, Ming Dong, David Hirshleifer, and Robert Noah, 'Do tender offers create value? New methods and evidence' (2005) 76 Journal of Financial Economics 3, 60
[822] Section 630 of the UK Companies Act 2006
[823] Section 633 of the UK companies Act 2006

except out of profits.[824] Accordingly, in a public firm, the usual practice is to declare and pay an interim dividend based on the accounts for the first six months of the company's financial year by the directors of company. The directors will then recommend a final dividend to the Annual General Meeting (AGM) based on the profits made in the full year, and the Annual General Meeting then passes a resolution declaring that dividend.[825]

In private firms, the practice varies widely. If the firm is making profit, there are essentially two ways in which this profit can be paid over to the people who own and run the firm. First, after deducting tax at the source in accordance with the pay as you earn (PAYE) system, salaries or fees are paid to the directors (or others, e.g. family members) for the work they have done for the firm.[826] Secondly, the other way of taking money out of the firm is for the firm to pay dividends. These are paid to shareholders and will be paid in accordance with the rights of the respective shareholders.

The classic example of the rights of shareholders in companies' profits is the House of Lords decision in Adelaide Electric Co v P Prudential Assurance (1934),[827] where the payment of dividends being moved to Australia along with the business resulted in a lower payment, given the relative strengths of the Australian and British currencies of the time. However, the underlying right to receive the dividend was unchanged.

According to Stephen, Firsby and Hudson (2010),[828] in the absence of any such agreement, the shareholder is entitled to dividends or other benefits declared after the date of completion of the contract of a merger, when the transferee or new company is recorded in the Commercial Register. According to Heron International Ltd v Lord Grade

---

[824] A. B. Levy, *Private Corporations and Their Control* (2th edn, Routledge and Kengan Paul 2000)
[825] For more see Armour J, Deakin S, Sarkar P, Singh A and Siems, M 'Shareholder Protection and Stock Market Development: an empirical test of the legal origins hypothesis' Journal of Empirical Legal Studies, 6 [2009] 343, 380
[826] Lazonick W and O'Sullivan M, Maximizing shareholder value: A new ideology for corporate governance, (2001) 29(1) Economy and Society 13, 35; Einer Elhauge, 'Sacrificing Corporate Profits in the Public Interest' [2003] Harvard Law School
[827] Adelaide Electric Co v P Prudential Assurance (1934), A.G. 122
[828] Stephen G, Firsby and Hudson, Ibid 133

[1983] BCLC,[829] loss suffered by a shareholder as a result of a breach of duty in relation to a takeover bid is a personal loss and will not be reflective of loss to the company, and does not affect other shareholders' rights in profits.[830]

UAE and Qatar Companies Laws confirm this fact by stating that "The Company contract should not include any text that prevents any partner from the profit or exempt him from the loss; otherwise, it will become null and void. However, the text that exempts the partner who has not submitted any share in the partnership except his work is allowed".[831] "If the company contract has not fixed the share of the partner in relation to the profits or losses, his share shall then be in pro rata to his share in the capital. Moreover, if the contract limits the share of the partner in the profit only, his share in the loss shall then be equivalent to his share in the profit. The same can be applied if the contract limits the fixing of the share of the partner in the loss only."[832] Moreover, the imaginary profits cannot be distributed to the partners; otherwise the company creditors are then able to demand every partner to return what is received, even if they are a bona fide partner.[833]

From the texts, it can be noted that the laws provide for shareholders' rights in company profits and also include the prohibition of any agreement that prevents any partner from profits or waives him from losses. This right applies for the company's shareholders before and after the merger, provided that the shareholders maintain their shares in the company resulting from the merger and do not leave the company or recover the value of their shares in cash before or after the merger. Accordingly, if the company contract has not fixed the share of the partner in the profits or losses, their share shall then be pro rata to their share in the capital. Moreover, if the contract limits the share of the partner in the profit only, their share in the loss shall be equivalent to their share in the profit: such rules apply for the shareholders of transferor and transferee companies after merger operations, with there being no difference between the transferor and transferee

[829] Heron International Ltd v Lord Grade [1983] BCLC (CA) at [4.1]-[4.7]
[830] Ibid
[831] Articles 13 of Qatar and 18 of the UAE Companies Laws
[832] Articles 14 of Qatar and 19 of the UAE Companies Laws
[833] Articles 15 of Qatar and 20 of the UAE Companies Laws

companies' shareholders in this regard. The laws under study confirm this by stating: "All the rights and liabilities of the merging company will be transferred to the company in which it was merged or to the company resulted from the merger to be effective after the completion of the merger procedures and registration of the company as per the provisions of this Law. The company in which it was merged or which resulted from the merger will be considered as legal successor".[834]

This opinion has been adopted by the Arab judiciary represented by the Egyptian Court of Cassation, which authorises the transmission of the financial disclosure of the transferor firm to the transferee company by the extent agreed upon in the merger contract. This was attested when the court ruled that "Mergers by absorption, or the formation a new company, lead to the expiration of the transferor company and the demise of its legal personality, with the transfer of its financial assets to the transferee company, which replaces it in all its rights and obligations and then becomes the responsible company regarding the rights, debts and profits for the transferor company's shareholders."[835]

5.4 Shareholders' Rights in M&As According to UK Laws

5.4.1 Shareholders' Right to Approve M&A Decisions

The approval of shareholders and convincing them that the merger achieves their goals is not easy, but circumstances differ from case to case: shareholders in some cases may refuse to transition their rights in shares from one company to another when the merger takes place. Therefore, the question here is: is the approval of shareholders on M&A decisions important to complete such a process, and what percentage is required from the votes of shareholders for the success of such operations? Essentially, M&As need the consent of the corporation's shareholders in order to effectuate the process, which can be

---

[834] Articles 277 of Qatar and 280 of the UAE Companies Laws, also see section 904 of the UK Companies Act 2006 and regulation 2 of the Cross-Border Merger Act 2007

[835] Appeal N 113, p. 28 s, meeting 18/12/1973 p. 24, p. 12 As well as appeal No. 121 s year 28, meeting 29/ 01/ 1979, S. 1430, p. 433, In this case used the Judgements of the Egyptian Court of Cassation due to the lack of judgement available in the UAE and Qatar and due to the similarity of the texts laws of the State of Qatar and UAE laws with the texts of Egyptian Laws.

obtained through illustrating that the merger or acquisition will result in increased profitability for the corporation. Accordingly, shareholders can stop a merger if they believe it is bad for the corporation or their profits by voting against it - or by suing the directors of the corporation.

However, Jarrell Brickley and Netter (1998)[836] and Maquieira Megginson and Nail (1998)[837]point out that although some merger operations lead to loss returns for shareholders, most shareholders support mergers, as apparent from votes by company shareholders and passage rates that frequently seem to indicate strong support for M&A processes. Jensen Ruback (1983)[838]adds that the reason shareholders give a majority consent for mergers to take place despite the risks that may threaten their interests is due to their desire to overcome difficulties from which the company is suffering or may suffer in the future as a result of opting to reject the merger offer. These difficulties may take a number of facets, such as financial, production and marketing hurdles, or a lack of skilled labour and an increase in unskilled employment. Similarly, the reason may emanate from the faith of shareholders in that the loss of their rights after a merger is an episodic or temporary loss that can be compensated quickly after a merger. This can come about as a consequence of an increase in the capital of the new company resulting from the merger, which will perhaps allow them to enter new markets.[839]

A good example is Clear Channel Communication's acquisition of AMFM Inc., which occurred in 2000. Clear Channel's stock decreased by more than 7% over a three-day period in October 1999, when the deal was rumoured and eventually announced. The stock then declined at an additional 6% over the following 141 days, subsequently leading to the merger vote. Importantly, both of these returns were even worse on an industry- or market-adjusted basis. Despite the markets' negative assessment of the deal,

---

[836] Andrade G, Mitchell M, and Stafford E, 'New Evidence and Perspectives on Mergers' (2001) 15(2)Journal of Economic Perspectives 103, 120/

[837] Burch I R, Morgan A G, Jack G and Wolf J G, 'Is acquiring-firm shareholder approval in stock-for-stock mergers perfunctory?' *(Financial Management Association* 2004*)*<http://findarticles.com/p/articles/mi_m4130/is_4_33/ai_n8689970/ accessed 05/05/2011>

[838] Jensen M C and Ruback R S, 'The Market For Corporate Control: The Scientific Evidence' [1983] Harvard Business School 1, 62.

[839] Andrade G, Mitchell M, and Stafford E (n 808) 103,120

82% of Clear Channel's possible votes were cast in favour of the acquisition, including 79% of non-management votes (assuming management's vote was 100% in favour).[840] Consequently, a natural question arises here regarding the shareholders' approval for the merger and its necessity, and whether this forms an important and integral condition for the success of merger operations. In this respect, what percentage of voting shareholders is required to support and approve mergers and acquisitions before such a process becomes legally binding?

The UK legislation pays attention to the problems that can accompany the process of voting on M&A resolutions by shareholders. Accordance with, in the case of M&As, UK legislators are keen to ensure explicit regulations in terms of identifying the percentage of shareholder votes required for approval of M&As in the two kinds of merger (merger by absorption and merger by the formation of a new company). They stipulate that a majority of shareholders is required to approve merger operations. This is provided for by the law stating: "the scheme must be approved by a majority in number, representing 75% in value, of each class of members of each of the merging companies, present and voting either in person or by proxy at a meeting".[841] In addition, the UK legislation gives the competent court the legal right to control mergers and to ensure the safe conduct and approval of shareholders in merger operations.[842]

Accordingly, a merger decision must be approved by three-quarters of the shareholders attending the voting either in person or by proxy at a meeting, regardless of the shares they own. This means that a merger decision is a special resolution that must be issued by the Extraordinary General Assembly; this is what is understood by the text

[840] For more see Black E, Michael J and Kuo T J. (2010), Do UK Mergers Create Shareholder Value? UK Evidence, Department of Economics and Finance, Durham Business School, University of Durham, pp. 1–39.
[841] See section 907 of the UK Companies Act 2006 and regulation13 of the UK Cross-Border Merger Act 2007, which requires the merger proposal to be approved at a meeting of members by a majority in number, representing three-quarters in value, of each class of shareholders
[842] Sections 917 and 918 of the UK Companies Act 2006 and regulations 7, 8 and 9 of the UK Cross-Border Merger Act 2007, which provide that "the UK company must produce three documents which they should make available to shareholders";"The company must secure the approval of their shareholders on the terms of the merger. Additionally, should shareholders request a copy of the court order approving the merger, UK companies is required by law to send such documents and failure to comply is an offence".

of article 283 of the UK Companies Act, which states: "the concept of a special resolution of the members (or of a class of members) of a company means a resolution passed by a majority of not less than 75% by members representing not less than 75% of the total voting rights of the members who (being entitled to do so) vote in person or by proxy on the resolution".[843]In the case of an incomplete quorum in the first meeting, British legislators solve this problem by giving the competent court the authority to determine cases that do not require attendance of the meeting by the shareholders or their representatives.[844]In the Gramophone and Typewriter Ltd v Stanley [1908] 2 KB 89, 105, per Buckley LJ "the Court of Appeal ruled that "The directors are not servants to obey directions given by the shareholders as individuals; they are not agents appointed by and bound to serve the shareholders as their principals. They are persons who may by the regulations be entrusted with the control of the business, and if so entrusted they can be dispossessed from that control only by the statutory majority which can alter the articles."[845]

Although the UK law determining the validity of Ordinary General Meetings and the number of shareholders necessary for the approval of a merger is clear, Al-zmi (2004)[846] believes that British law does not specify the number of shareholder votes necessary for the approval of a merger in cases involving the existence of special types of shares. In this regard, the draft merger would prejudice the rights and benefits of the shareholders in such categories (shareholders or creditors) where it is necessary to hold separate meetings for these special categories and to thereby obtain their approval of the merger project. Birds (2000)[847] explains this situation by saying that although the General Assembly of a company grants approval of the merger project, the competent court controlling the merger approves merger decisions only after confirming the approval of

---

[843] For more, see section 283 of the UK Companies Act 2006
[844] For more, see section 91 of the UK Companies Act
[845] In the Gramophone and Typewriter Ltd v Stanley [1908] 2 KB 89, 105, per Buckley LJ ,
[846] Macfarlanes "Establish A business in the UK A guide for overseas companies, Corporate and M&A" [2011], 7
[847] Birds J & Others, *Boyle and Birds Company Law* (4th edn, Jordon2000) 621.

all categories of shareholders whose rights are affected by the merger, and also through separate meetings held for each category.[848]

All individual shareholders (including those who did not attend the meeting) may object to the resolution on the basis that it has not been validly passed and was not approved by the majority of shareholders as required by law. According to Henderson v Bank of Australasia[849] and Musselwhite v C H Musselwhite & Son Ltd,[850] the effect of procedural irregularity is that the resolution is void and the individual shareholders would be entitled to bring a personal claim for a declaration of invalidity. They would also be justified in refusing to transfer their shares from the transferor to the transferee company. However, in Allen v Gold Reefs of West Africa Ltd[851] challenged the resolution that the majority of shareholders must act bona fide in the interests of the company as a whole.

Although the requirement for the majority of shareholders to exercise their power for the interests of the company is well established, it can be difficult to apply in situations where the proposed alteration affects the rights and obligations of shareholders inter se rather than the interests of the company itself. This was stated by Lord Hoffmann in Citco Banking NV v Pusser's Ltd [2007] 2 BCLC 483 (at [18]): "it must…be acknowledged that the test of 'bona fide for the benefit of the company as a whole' will not enable one to decide all cases in which amendments of the articles operate to the disadvantage of some shareholder or group of shareholders".

From the above, we can conclude that companies involved in M&As must obtain the acceptance of the majority of shareholders on a merger or acquisition decision. As mentioned in Chapter One,[852] a merger is a contract between two or more companies that occurs by the acceptance of the shareholders of the companies involved. Accordingly, a merger cannot take place without the consent of shareholders. In this regard, section

[848] Birds J & Others, *Boyle and Birds Company Law* (4th edn, Jordon2000) 621.
[849] Henderson v Bank of Australasia (1890) LR 45 Ch. D 330
[850] Musselwhite v C H Musselwhite & Son Ltd [1962] Ch. 964)
[851] Allen v Gold Reefs of West Africa Ltd [1900] 1 Ch. 656 Lord Lindley stated (at 671-672)
[852] For more see paragraph 2.1 of the Chapter One of this thesis

907[853] of the UK CA 2006 and regulation 13 of the UK Cross-Border Act are clearer than article 140 of the UAE and article 140 of Qatar Companies Laws, due to the keenness of UK legislators to take into account the majority of shares of the shareholders present at the meeting to approve the merger decision. UK law does not require a dual majority of shareholders who are present at the meeting and who own the majority of shares. UK legislation also authorises the competent court to control the merger and to thereby make sure that the company takes into account the implementation of the conditions set by laws. The company must, accordingly, provide the shareholders with documents that request their approval for the merger. The law also defines cases that do not require the attendance of shareholders, which leads to facilitate M&A processes between companies and reduce their costs and the negative effects on stockholders.

From the above, we can conclude that British legislation is clearer than UAE and State of Qatar legislation due to the keenness of British legislators to take into account the majority of shares of the shareholders present at the meeting to approve the merger decision. British legislation also authorises the competent court to control the merger and to thereby make sure that the company takes into account the implementation of the conditions set by laws and accordingly provide the shareholders with documents that request the shareholders' approval for the merger. With the clarity of the texts of UK laws relating to this section, the researcher believes that the texts of UK laws relating to shareholders' rights to approve mergers do not require any further additions or modifications.

5.4.2 Classes of Shares

A company is an independent legal entity, separate from its directors, shareholders, managers, employees and agents. Company assets belong to the company but, at the same time, shareholders own the company, which has a separate legal existence. Accordingly, a shareholder is an individual or organisation owning shares in a company. Shareholders have a legal claim on a percentage of the company's earnings and assets, and share the

[853] Section 907 of the UK Companies Act 2006

same level of limited liability as the company itself. In cases of bankruptcy, shareholders generally lose the entire value of their holdings.[854] Shareholders have many rights and obligations in a company, such as making decisions about a number of special issues that affect the company by passing ordinary resolutions or special resolutions if required by the company system or the replaceable rules.[855] Shareholders also have the rights to attend meetings and sell their shares. In addition, dividends are paid to shareholders out of the company's post-tax profits. However, shareholders are not liable for the company's debts, except for any amount unpaid on shares.[856]

According to Farwell J (1901) in Borland's Trustee v Steel Bros & Co Ltd[857] a share is "the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders inter se accordance with the companies Act s. 3. The contract contained in the articles of association is one of the original incidents of the share".[858] More prosaically 54 (1) of the CA 2006 defines a share as being a "share in the company's share capital". A share in a company is in itself a form of personal property. All shares must have a fixed nominal value. The share is measured of a sum of money namely, the nominal amount of the share, and also by the rights and obligations belonging to it as defined by the companies Acts and by the memorandum and articles of the company.

Types of shares vary from one company to another. The general situation in the UK Companies Act 2006 is that, in return for investing in a company, a shareholder gets

---

[854] Sealy, Sarah Worthington, *Cases and Materials in Company Law* (8th edn, Oxford University Press 2008)

[855] For the rights and how shareholders can exercise the right voting within the company see Article (144/ 2/ B) and Article (322) of the UK Companies Act which provided for 'on a poll taken at a general meeting of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way'. For more see also Articles (698, 717, 990 and 1277).

[856] For shareholders profits see Article (581) of the UK Companies Act which provide for 'pay a dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

[857] *Borland's Trustee v Steel Brothers & Co Ltd* [1901] 1 Ch. 279, for definition of shares see also Borland's Trustee v. Steel Bros. [1901] 1 Ch. 279 at p. 288; C.I.R. v. Crossman [1937] AC 26 at pp. 40-41, 51-52, 66

[858] See Stephen Girvin and Firsby (n 131); Simon Gouldin, *Company Law* (2nd edn, Cavendish Publishing Limited 1999)

a bundle of rights in the company, which may vary according to the type of shares acquired. Most companies only have one class of shares (ordinary shares); however, UK law is extremely flexible and allows many classes of shares to be created. This is achieved by setting out the different rights assigned to the various classes, usually in the company's articles. There may be a number of commercial or marketing advantages in providing different types of rights to different classes of shareholders or other investors in a company. Some investors may prefer to know with certainty that they will receive a fixed dividend; others may prefer to speculate on the company generating higher profits than a fixed dividend might require, and yet others may require voting profits than a fixed to the company because they prefer a higher fixed dividend or loan interest instead. Consequently, a company is not bound to issue all its shares with the same rights but may confer on different classes of shares, thus giving different right to different shareholders. Such classes of shares may be described as ordinary shares and preference shares.

Ordinary shares are shares that grant the owner with a number of rights, such as the right to transfer the property to another person, to get the profits distributed by the company, to see the books of the company, the right of priority in the public offering (IPO)[859]. Furthermore, when the company's capital increases, to vote at and attend General Assembly meetings, to share in the company's assets upon liquidation and the right to nomination for membership of the Board of Directors of the company is entitl.[860] In Greenhalgh v Arderne Cinmas,[861] a class of shares was formed within the meaning of the article providing for variation in the rights attached to a class of shares. According to Lord St David in Upperton v Union-Castle Mail Steamship Co Ltd (1902),[862] the preference shareholders proposed to alter the articles so as to give themselves a right to vote on all resolutions. This would not affect the rights of the small number of ordinary shareholders unless they approved it in accordance with an article providing for the variation of class rights, i.e. the class rights attached to the ordinary shares.

[859] General Subscription
[860] For more see Sealy, Sarah Worthington, Ibid and Somiah Abdul Rahim, Ibid
[861] Greenhalgh v Arderne Cinemas Ltd (No 2) [1946] 1 All ER 512; [1951] Ch 286
[862] Upperton v Union Castle Mail Steamship CO Ltd [1902] 19 TLR 123

Preference shares, as evident from their name, are shares that give their owners or holders additional rights not enjoyed by the owners of ordinary shares. Some of these rights, in addition to those described for ordinary shares, include primacy over the owners of ordinary shareholders to a percentage of the profits of the company, as well as giving priority in obtaining the output of the liquidation of the company before the owners of ordinary shares and after bondholders. The owners of preference shares also receive a concession represented by an increase in the number of votes that they enjoy at meetings of the General Assembly, with a right of pre-emption over other shares.[863]In Wilsons and Clyde Coal CO Ltd v Scottish Insurance Crop Ltd,[864] the colliery assets of a coal mining company had been transferred to the National Coal Board under the Coal Industry National Act 1946 and the company was to go into voluntary liquidation. Meanwhile, the company proposed to reduce its capital by retiring capital to the holder of the preference stock. The articles provided that in the event of winding up, the preference stock ranked above the ordinary stock in terms of payment the outstanding payments. It was held that the proposed reduction was neither unfair nor inequitable. Even without it, the preference shareholders would not be entitled in winding up to a share in the surplus assets, nor to receive more than a return of their paid-up capital. Accordingly, they could not object to being paid, by means of the reduction, the amount that they would receive in the proposed liquidation.[865]

In White v Bristol Aeroplane Co Ltd [1953],[866] the company's share capital comprised preference shares and ordinary shares and it proposed to increase its share capital by issuing new preference shares ranking pari passu with the existing preference shares and new ordinary shares ranking pari passu with existing ordinary shares. The question considered by the Court of Appeal was whether this clause applied on the basis that the rights of the existing preference shareholders would be 'affected' by the issuance of new pari passu shares. Lord Evershed held that the rights of the owners of the preference shares would not be affected; after the issuance of new preference or ordinary

[863] For more see Julie A. Cassidy 'Concise Corporations Law' 5th Ed, (the Federation Press, 2006)
[864] Wilsons & Clyde Coal Co. Ltd v English [1937] 3 All ER 628
[865] Wilsons & Clyde Coal Co. Ltd v English [1937] 3 All ER 628, Ibid
[866] White v Bristol Aeroplane Co [1953] Ch. 65 219

shares, the rights attached to the existing preference shares would be, in formal terms, precisely the same as they had been before the issue. The only change would be in the enjoyment of, and the capacity to make effective, the voting rights attached to the shares.[867]

Shares are also divided into enjoyment shares[868] and capital shares. Enjoyment shares give their owners the right to the company's profits without giving them the right to the assets of the company, after the consumption of the nominal value of the company shares. In other words, this is a type of share in which the consumption of nominal value is based on a decision by the Extraordinary General Assembly.[869] In contrast to this type of share, capital shares essentially mean shares representing the capital of the company, giving their owners the right to profits, as well as the right to the assets of the company upon liquidation.

It is worth mentioning that there is another distinction of share type: fully paid shares (shares in kind)[870] and shares for which the nominal values have not been fully paid (shares in cash).[871]Shares fully paid up or shares in kind are shares for which shareholders have to pay all the actual value. This is stated in Article 158 of Qatar law Companies Laws: "The company may hold material shares given against non-cash assets or evaluated rights. The founders shall request the civil court to appoint one or more experts to verify whether these shares were properly evaluated and rectified. Estimation of these shares will not be final until it is approved by a group of underwriters with a numeral majority possessing two-thirds of the cash shares. Material shareholders have no right to voting even though they are cash shareholders. The material shares shall not represent the shares other than those paid up completely. The shares representing material dividends will not be delivered until their complete ownership is transferred to the

[867] White v Bristol Aeroplane Co [1953], Ibid, for more see Douglas Smith, Smith *Company Law* (First Edition, Planta Tree 1999)
[868] For the meaning of shares and the rights of shareholders in this kind of shares see articles 170, 171 and 172 of the UAE Companies Law
[869] For more see Buallal F, Explanation of the new Moroccan Commercial Law [2007] 361
[870] For this class of shares see sections 32/ 2, 557, 629 and 630 of the UK Companies Act 2006, and 125
[871] For this cases of shares see section 586 of the UK Companies Act 2006

company”.[872] By contrast, shares not fully paid their nominal values are shares in cash that are not required to be paid at once. Article 155 states that the “Share value shall be paid in cash by a single payment or in instalments. The instalment to be paid upon underwriting shall not be less than 25% of the share value. However, the share value must completely be paid within five years from the date of the publication of the decision of the company’s incorporation in the gazette”.[873]

The purpose of section 630 of the UK CA 2006 is to protect shareholders who belong to a certain class, giving them, in the words of Gower & Davies,[874] a “veto over the change proposed, even if the company’s constitution provides them with no right to vote on the issue”.[875] Thus, when any proposal to alter the articles may vary their class rights, either the consent of that class of shareholders is required, usually with a 75% majority at a separate meeting of that class[876] (unless the articles specify otherwise), or a written resolution is required with the support of the holders of 75% of the nominal value of that class.[877]

Accordingly, if the shares of the transferor company are divided into different types or categories while the shares of the transferee company consist of one type of share, there are practical problems that may arise when distributing the shares of the transferee company to the shareholders of the transferor company. In relation to this aspect, how the transferee company can divide its shares for the transferor company’s shareholders if the transferor company’s shares are divided into many different types or categories, while the transferee company has only one type of shares?

---

[872] For more see Article (158) of Qatar Companies Law

[873] For the meaning of this kind of shares see Rdoan, *Joint-stock companies and the public sector* Dar (Alfikr Alarabi1983) 97 Arabic Source; (1983); Yakop S (108) 105; Al-saghir (n 483) 212; Hald (n 279)279

[874] Gower and Davies, *Principles of Modern Company Law* (8th edn, Thomson Sweet & Maxwell 2008) 669.

[875] Ibid, 664

[876] The UK Companies Act 2006 section 630 (4)(b)

[877] The UK Companies Act 2006 section.630 (4)(a), for more see section 633 of the UK companies Act 2006

5.4.3 Shareholders' Rights in the Transferee Company's Shares

According to the theory of the legal personality of a company, sections 913 and 914[878] of the CA and regulations 2 and 17 of the UK Cross-Border Act 2007, the general situation in the UK Companies Act 2006 is that, in return for investing in a company, a shareholder gets a bundle of rights in the company, which may vary according to the type of shares acquired. Most companies only have one class of shares (ordinary shares); however, UK law is extremely flexible and allows many classes of shares to be created. This is achieved by setting out the different rights assigned to the various classes, usually in the company's articles. The main rights that are usually attached to shares are: to attend general meetings and to vote (typically, shares carry one vote each, although there may be non-voting shares or shares with multiple votes). Moreover, it should also be noted that the statutory rights state that a shareholder has the right to appoint a proxy to attend a general meeting,[879] to request a general meeting, and to have a written resolution circulated to the members. Moreover, each shareholder has the right to get a share of the company's profits, where the distribution of profits is paid through means of a dividend of a certain amount paid in regard to each share.[880]

According to the theory of the legal personality of a company and UK legislation, the merger consequences are that the transferor company (without liquidation[881]) expires and transfers all its assets to the transferee company, and then the transferor company's shareholders get a number of shares in the transferee company as opposed to their shares in the company that expired owing to the merger. This enables them to enjoy all the rights enjoyed by the old or former shareholders or partners in the transferee company,

---

[878] Which provides for "the scheme of merger must provide that where any securities of a transferor company (other than shares) to which special rights are attached are held by a person otherwise than as a member or creditor of the company, that person is to receive rights in the transferee company of equivalent value"? For more see also section(914) of the UK Act

[879] For the rights and how shareholders can exercise the right voting within the company see article 144/2/b and article 322 of the UK Companies Act, which provide for "on a poll taken at a general meeting of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way". For more, also see articles 698, 717, 990 and 1277

[880] For shareholders profits see article 581 of the UK Companies Act which provide for 'pay a dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

[881] For more, see regulations 2 of the UK Cross-Border Merger Act 2007

such as the right to attend meetings[882] of the General Assembly for discussion and voting, the right to participate in the management company,[883] the right to receive a portion of profits and to receive a share in the output of liquidation, and the right to appeal decisions issued by the General Assembly contrary to the company system and the provisions of the law. These rights (the transferor company's shareholders' rights in the transferee company) are confirmed by the texts of laws, which state that "A proposed merger is where one of the companies proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities of that one to shareholders of the other, with or without any cash payment to shareholders".[884]

However, the problem here is not the shareholders of the transferor company obtaining shares in the transferee company (because this is decided by the provisions of the law), but how these shares are distributed to the transferor company's shareholders in 'mergers by absorption' or in the case of a merger by the formation of new companies, such as when the actual value of the shares of the transferor company is different to the actual value of the transferee company's shares, such as if the transferor company owns ordinary shares but the transferee company owns preference shares. Moreover, this problem also extends to several problems emerging in cases where there are decimal fractions in shares of the transferor company whilst the shares of the transferee company are free from fractions. Notably, therefore, questions arise concerning how the transferee company's shares are distributed to the shareholders of the transferor company if the shares of the transferor company are from one type, how they are distributed in cases where there are differences between the nominal and actual values of shares of the transferor and transferee companies, and how they are distributed where there is the presence of decimal fractions in the shares of the transferor company and the absence of decimal fractions in the shares of the transferee company. What are the solutions provided by British legislation for such cases? The following section discusses these difficulties and suggests solutions for these problems.

---

[882] For general meeting, see sections 301, 302, 303,307, 336 and 437 of the UK Companies Act 2006

[883] For more, see Section Two of Chapter three of this thesis.

[884] Section 905 of the UK Companies Act, for more see also sections 904 and 913/1 of the UK Companies Act and regulation 3 of the UK Cross-Border Merger Act 2007

5.4.4 Distribution of New Shares if the Companies in the Merger Involve Shares from One Type

According to section 829 of the CA 2006, distribution means distribution of a company's assets to its members, whether in cash or otherwise. This is subject to the following exceptions:[885] the issue of shares as fully or partly paid bonus shares; extinguishing or reducing the liability of any of the members on any of the company's shares in respect of share capital not paid up, or repaying paid-up share capital;[886] the redemption or purchase of any of the company's own shares out of capital (including the proceeds of any fresh issue of shares) or out of unrealised profits;[887] and the distribution of assets to members of the company on its winding up.[888]

Most companies have just one class of shares, which will be ordinary shares carrying one vote per share, full dividend rights and full rights on winding up. Companies often set up different classes of shares for a range of different reasons. These may include wishing to pay dividends in particular ways; providing shares for family members or employees; to separate voting rights, capital rights and rights to profits by allocating different classes; or for many other reasons. Ordinary shares and preference shares, shares in cash, material shares, shares fully or partly paid up and redeemable shares are included in these types of shares.[889]

Accordingly, if the shares of the companies involved in the merger are from the same type with a single value, there are no practical problems with regard to the issue of replacement shares between the shareholders of the transferor and transferee companies, as each share of the transferor company will be offset by a new share in the transferee company. Accordingly, the transferor company's shareholders must receive a number of shares from the transferee company shares, which must be the same type of shares as they

[885] Section 829/ 1 of the UK Companies Act 2006
[886] Section 829/ 2/ a of the UK Companies Act 2006
[887] Section 829/ 2/ c of the UK Companies Act 2006
[888] Section 829/ 2/ d of the UK Companies Act 2006
[889] For more see Matteo L. Vitali, 'Classes of Shares and Share Redemption in Italian and UK Company Law: the Peculiar Case of the Redeemable Shares' (2006) 10(2) Electronic Journal of Comparative Law, 1, 39

owned in the transferor company. Building on this fact, if the transferor company has one type of shares with one related value, the transferee company should issue one type of shares distributed amongst the transferor company's shareholders, each one receiving a percentage of their shares in the transferor company.[890] However, if the transferor company's shares are divided in terms of rights and benefits into many types, or divided into several categories in terms of value, the shareholders of the transferor company must then get a number of shares conferring them with the same rights that were conferred upon their shares in the transferor company.[891] Notably, however, if the transferee company's system does allow the issuance of various types of shares, the transferee company is then required to issue one type of shares equivalent to the actual value type of the transferor company's shares to all the shareholders of the transferor company, each one with the same percentage that they owned in the transferor company. Therefore, in order to determine the number of shares that the shareholders of the transferor company can obtain in the transferee company's shares, it is necessary to know the real values of the shares of the two companies involved in the merger.[892]

British legislation explicitly treats symmetric share trading, which it provides for by saying that a "proposed merger is where one of the companies proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other".[893] However, although this solves the exchange of shares between companies involved in mergers (as in the case mentioned), the question here remains: what is the solution if the amount owned by shareholders in the transferor company does not reach the limit to get them one or more shares in the transferee company? Whilst it is well known that the shares of companies are indivisibility shares, on the other hand transferor company shares often include some fractional shares, e.g. if the transferor company shares are equivalent to 1.08n of the shares of the transferee company.

[890] Al-shamry T (n 305) 197; Alazmi (n 503) 297, 213
[891] Al-shamry T ibid 197
[892] Al-shamry T (n 91) 197
[893] For more see article 595 of the UK Companies Act 2006

Hossam al-Saghir (1987) says that, in this case, each shareholder with a number of shares that do not allow them to obtain new shares in the transferee company (as mentioned above) should sell the shares they own, lose their description as a shareholder or buy shares to complete the quorum. This opinion was met with strong opposition by Arini (2002),[894] who states that, in this case, the decision to merge must be made by a consensus of all the shareholders of the transferor company unless the company system rules otherwise. This is because a merger decision in such circumstances may jeopardise the fundamental rights of the shareholders of the company by forcing them to sell all their shares or be forced to buy an additional number of shares to reach the quorum of shares required.[895]

However, Arini's (2002)[896] argument goes against the fact because this opinion stands in contrast with section 907 of the CA 2006 and regulation 13 of the Cross-Border Merger Act, which confer the right to approve a merger decision to a majority of shareholders attending the meeting. In such matters, the researcher believes that no issues can arise when the transferor's company shares include fractional shares. This is because sections 902 and 905 of the CA 2006 and regulation 17/1 of the Cross-Border Act 2007 explicitly provide the right for shareholders who decide to sell their shares to obtain the cash equivalent of these shares. Accordingly, every shareholder who owns a number of shares less than the quorum has to buy shares to reach the quorum to get one or more shares in the acquiring company, as has been seen in the previous example, or has to sell their shares by auction.

From what has been mentioned above, it can be concluded that British legislators are clearer in addressing the problems arising in relation to the exchange of shares between transferor and transferee companies in cases where the shares of the companies are from the same class or where one of the company's shares include shares with decimal or integer numbers, as the CA 2006 and Cross-Border Merger Act 2007 allow

[894] For more see Arini P. M, Ibid
[895] Arini P. M, Ibid
[896] Ibid. For more see Jarrell G A and Poulsen A B, 'Stock Trading before the Announcement of Tender Offers: Insider Trading or Market Anticipation?' (1989) 5(2) Journal of Law, Economics & Organization 225

the transferee company to exchange shares with the shareholders of the transferor company by cash or by shares. This thereby facilitates mergers between companies and helps in the success of such processes because the shareholders who do not want to exchange their shares can obtain cash in return for their shares in the transferor from the transferee company without having to search for buyers from outside the company or selling the shares at auction.

However, in the case of share trading, the problem is not limited to the exchange of decimal fractions between transferor and transferee companies, but in the fact that assuming the actual values of the shares of the companies involved in the merger are equal is an unrealistic assumption. This is because the actual values of shares of companies often differ, even if the shares are even in their nominal values. Accordingly, the question remains as to how shares can be exchanged when there are differences in the shares of the companies involved in mergers.

With this in mind, it must be noted that the shares trading system (in addition to the payment in cash provided for by the UK Companies Act, unlike in Emirates and Qatar Companies Laws) facilitates the exchange of shares without prejudice to the unity of the share, and accordingly implements a solution for the problem of trading shares between companies when there are differences between the nominal values of the shares of companies involved in mergers, which may be faced with most mergers. According to articles 595/2 and 902 of the Companies Act 2006, companies should "allocate new shares or money from the transferee company assets for the benefit of shareholders of the transferor company with paying cash or without any cash payments".[897] It should be noted that the British Companies Act does not specify the percentage of the equivalent in cash received by the shareholders of the merged companies, in addition to the shares they will receive in the merging or new company. Accordingly, Bertrel (1991)[898] says that the amount received by the shareholders of the transferor company (in addition to the shares

[897] For more see the Articles which are provided for that by saying "merger is where one of the companies proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities of that one to shareholders of the other, with or without any cash payment to shareholders".
[898] Bertrel J P and Jeantin M,*Merger and Acquisition, Commercial Companies*(12 Ed, Paris mc-graw Hill Publisher 1991)

of the transferee company) is not limited to an amount of cash only, but could be in the form of bonds and others. This means that the shareholders of the transferor company will receive shares in the transferee company, in addition to amounts in cash, instruments or bonds that do not represent a share in the capital of the transferee company. This leads to facilitating the exchange of operations of shares between the transferor and transferee companies, whether the shares of both companies are from one type or from different types. The following sections will discuss such matters in depth with a review of the solutions provided for by British legislation.

5.4.5 Distribution of Different Types of Shares

5.4.5.1 Distribution of Fully or Partly Paid-Up Shares

According to the UK Companies Act, company shares are divided in terms of the type of share offered by the shareholder into shares in cash[899] and shares in kind. Shares in cash represent monetary shares in the capital of the company, but shares in kind represent material shares in the capital of the company.[900] British legislators have predicted that a company may not need to use all its capital to carry out its project during the first years of its establishment and so are not required to fulfil all their capital when subscribing. The legislature only requires the fulfilment of one-quarter of the nominal value of the shares at subscription, which the UK Companies Act provides for by stating: “A public company must not allot a share except as paid up at least as to one quarter of its nominal value and the whole of any premium on it”.[901]On the contrary, shares in kind must have their value fulfilled in full upon subscription.[902] Accordingly, if the shares of the company consist of both these types (cash shares not fully paid their value and shares in kind fully paid their value), the question arises: how are the transferee company’s shares distributed to the shareholders of the transferor company?

---

[899] Sections 91 and 583 of the UK Companies Act 2006

[900] Payment in kind is compensation provided in the form of goods and services of value, rather than in cash format. One example of payment in kind is food and board. This is a form of payment often offered to people like ranch hands and live-in staff. For more reading see Joyful Giving "FAQ: In-Kind Donations of Stocks, Bonds & Mutual Funds, Mennonite foundation of Canada [2011] 1, 4

[901] For more, see article 586 of the UK Companies Act 2006

[902] For more, see article 283 of the UK Companies Act

Bertrel (1991)[903] states that it is allowed to distribute the transferee company's shares to the shareholders of the transferor company proportionate with the shares they owned in the transferor company without distinction between shares that are fully paid up in regard to their value and shares that have not been fulfilled to their value in full. On the other hand, Smith D (1999)[904] states that there are two ways to solve this matter: the first solution is to distribute the transferee company's shares proportionate to the number of shares owned by the shareholders of the transferor company without discrimination amongst them in terms of the amount paid from the value of the shares. The second way is to distribute the transferee company's shares among the transferor company's shareholders proportionate to the amount paid from the nominal value of the shares by them; thus, shareholders who own shares that are not fully paid their nominal value do not get the number of shares in the transferee company, similar to the shareholders who own shares that its nominal value have been paid in full.[905] Accordingly, if the quorum for replacement is that every share in the transferor company is equivalent to eight shares in the transferee company, for example, then every shareholder who owns one share in the transferor company with its nominal value paid in full would receive eight shares in the transferee company.[906] Moreover, a shareholder who owns one share in the transferor company with half its nominal value paid would receive four shares in the transferee company. In addition, shareholders who have paid a quarter of the nominal value of their shares in the transferor company will obtain two shares in the transferee company in return for their shares in the transferor company.[907]

The researcher believes that the two opinions mentioned above do not agree with the facts, simply because Bertrel's (1991)[908] opinion is equal regarding the rights of shareholders who have paid the nominal value of their shares in full and those who have not paid the full nominal value, which means that the shareholders who did not pay the

[903] Bertrel J P (n879) 224
[904] Douglas Smith, *Company Law* (First Ed, Plant A Tree 1999)
[905] Ibid, 107, 109
[906] Stephen Griffin, *Company Law Fundamental Principal* (4th Ed, Pearson Education 2006)
[907] For more Andrew Hicks and H Goo, *Cases and Materials on Company Law* (6th Ed, Oxford University Press 2008)
[908] Bertrel (n 879)

full value of their shares obtain benefits in the transferee company at the expense of other shareholders that have paid the full value of their shares. The second opinion also does not provide a lasting and fast solution to the problem of exchanging fully or partly paid-up shares between companies involved in mergers, due to the time that the process of accounting and distributing new shares into two categories takes.[909]

Therefore, in order to solve the problem of distributing shares in the transferee company for the two sets of shareholders of the transferor company, the researcher believes that the transferor company may claim the shareholders (i.e. by shares that are not fully paid their nominal values) should pay the remainder from the nominal value before the merger. In this regard (and in the case that the shareholders delay or reject payment), the company may, after warning the shareholders in question, offer these shares for sale at auction or on the stock market if the shares had been recorded in the stock market. Thus, all shares have their nominal values paid in full, which facilitates the distribution of merging or new company shares, where the merging or new company distributes all merged company shares evenly - each shareholder with the same percentage of their shares in the merged company. Here, it should be mention that, according to UK legislation, exchanging fully or partly paid-up shares does not raise many practical problems because the Companies Act allows for companies involved in mergers to exchange shares by cash or by shares, which facilitates the purchasing of shares that cannot be exchanged by cash.[910]

5.4.5.2 Distribution of Ordinary and Preference Shares

According to the provisions of the UK Companies Act,[911] a company is not bound to issue all its shares with the same rights but may confer different rights on different classes of shares, thus giving different rights to different shareholders. Therefore, some companies issue preference shares, which may entitle their owners to benefits not

---

[909] For more see Derek French, *Blackstone's Statutes on Company Law 2011-2012* (Oxford University Press 2012)

[910] Thrawat Ali Abd Al-Rahim, *Explaining the new Egyptian Commercial Cod*e (3th edn, Dar Al-nahdah Alarbia 2000) 580 Arabic Source

[911] Sections 629, 543 and 630 of the UK Companies Act 2006

enjoyed by owners of ordinary shares, in order to encourage the public to subscribe to new shares[912] or to convert bondholders to shareholders,[913] disposing the company from paying off its debts.[914]

Accordance with, preference shares entitle their owners to priority or preference in some rights and profits, such as priority to obtain profits, several votes in the General Assembly of the company, or priority in the sharing of assets of the company upon its liquidation.[915] By contrast, ordinary shares are defined as shares that do not entitle their respective owners to any rights with special qualities and the rights of owners of ordinary shares are ranked below the rights of preference shareholders.[916]

Furthermore, returning to British legislative texts, it can be noted that this legislation authorises the issuance of preference shares. According to the UK Companies Act, a company can issue any shares, with specific rights or restrictions, under an ordinary resolution of the General Assembly of the company (provided it takes into account the provisions of law), without prejudice to any rights related to existing shares.[917]

According to the UK Companies Act, a company can issue ordinary shares with different rights, such as Class A, B and C ordinary shares, some of which have priority over others - in terms of access to profits, voting rights, or the company's assets upon liquidation.[918] With this in mind, for the issuance of preference shares the UK Companies Act requires that the company's contract or its statute must authorise the issuance of such shares. In this regard, the company statute must include all the rights conferred by

---

[912] Morse & Others (1999), Ibid, 208; Alazimi (n 503) 297, 309

[913] For more reading see Paul Davies *'Gower and Davies: The Principles of Modern Company Law'* Thomson Sweet & Maxwell, Eight Ed, (London 2003), 613 ff. and Sandra Laurent "Capital Structure Decision: The Use of Preference Shares and Convertible Debt in the UK" Bristol Business School, University of the West of England, [2000], available at www.ssrn.com, accessed 28/ 03/2012

[914] For more see Matteo L. Vitali, Classes of Shares and Share Redemption in Italian and UK Company Law: the Peculiar Case of the Redeemable Shares (2006) 10(2) Electronic Journal of Comparative Law 1, 39

[915] Stephen G and Sandra F (n 847) 132

[916] Ibid

[917] For more see Alazmi, Ibid, 279, 310

[918]Pennington, *Company Law*(7the edn, Butterworths 1995) 270 ; Charelsworth and others (n324) 178

preference shares to their owners, simply because the basic principle is equality between all shareholders in a company.[919]

In this regard, if the shares of the transferor company were divided into ordinary shares and preference shares, while, the transferee company has only ordinary shares, the question would then arise concerning how the shares of the transferee company are distributed to the shareholders of the transferor company who own preference and ordinary shares after restructuring the company resulting from the merger.

According to the UK Companies Act (and as long as the law allows the company to issue ordinary shares and preference shares), we must draw attention to the fact that there are no practical problems that raise concern in the cases of trading ordinary shares and preference shares between transferor and transferee companies, as long as the statute of the transferee company is authorised to issue preference shares. Subsequently, in this case, the transferee company issues two types of shares: ordinary shares are distributed to the shareholders who contributed by ordinary shares, whilst preference shares are distributed to the shareholders who contributed by preference shares. Thus, each shareholder of the transferor company gets the shares in the transferee company, each in proportion to the type of shares they owned in the transferor company. However, if the statute of the transferee company does not authorise the issuance of preference shares, the transferee company may amend its statute by adding articles to allow the issuance of preference shares by the Extraordinary General Assembly of the company.[920]

However, in some cases, it should be noted that the approval of the Extraordinary General Assembly of the transferee company to amend the company system for the possibility of issuing preference shares is not easy: the Extraordinary General Assembly may reject this. In this regard, the question is raised as to the fate of preference shares in the transferor company in the event that the transferee company can only issue one type of shares, i.e. ordinary shares.

[919] Charlesworth, Morse & Others (n 324) 178; Pennington Ibid 655
[920] For more see Al-azmi (n 503); Mohriz A (n 507) 159, 245; Almasri H, Ibid 153, 251; Shafiq M, (n 684) 517, 459; Abdul-Rahim (n 846)582

In this case the researcher believes that the responsibility of treating this problem must fall with the transferor company, where if the rule inadmissibility forces a shareholder to sell their shares in the company, it may allow the avoidance of this rule in cases where the statute of the transferor company allows the recovery of preference shares.[921]Notably, the declaration of the company willingness to recover preference shares usually leads to draw attention of the owners of preference shares to exchange their shares into ordinary shares and giving them the opportunity to do that. The statute of the company often provides for this right (the right for owners preference shareholders to convert their shares into ordinary shares), whereby, if they so desire, they can use or neglect it. This right corresponds to the company's right to recover preference shares; the existence of these two rights, side by side, in the statute of the company is common.[922]

Accordingly, if the transferor company utilises its rights in the recovery of preference shares, campaign preference shareholders use their right to convert their shares into ordinary shares, and then all shareholders of the transferor company become shareholders by ordinary shares. However, if the statute of the transferor firm does not allow for the company to recover preference shares and does not give campaign preference shareholders the right to convert their shares into ordinary shares, it is then incumbent upon the transferor company to get approval from the owners of preference shares to accept ordinary shares in the transferee company.[923]

In an attempt to solve this issue, the English judiciary in Griffith v. Paget (1877) 5 Ch. D 894[924] ruled that, in the case of a shareholding company (with capital divided into two or more shares) with shareholders possessing different rights, it is not within the authority of the General Assembly under the votes of the majority of the shareholders to determine the distribution of shares between the categories of shareholders, unlike their

[921] Recovery shares are option of the company it can be able to use or neglect it. if the company decided to use its right in recovery, it will give the owners of recovered Shares, market value of such shares, plus dividend payable if it has reason, and then exit the owner of recover shareholders from the company
[922] Kaliouby (n 432) 330, 272
[923] Alazmi (n 503) 279–310
[924] For more see Griffith v. Paget (1877) 5 Ch. D 894; Sealy L. S *Cases and Material in Company Law* (5th Ed 1992), 514.

rights. Accordingly, the shares of the transferee company must be distributed to the transferor company's shareholders in proportion with the actual value of each type of share separately.[925]

In summary of the above, we can conclude that the UK Companies Act 2006 allows the issuance of preference shares side by side with ordinary shares. The law also allows for companies consisting of fully and not fully paid-up shares (shares in kind and in cash shares). Sections 902 and 907 of the UK Companies Act and regulations 2 and 17 of the UK Cross-Border Merger Act allow the transferee company to exchange shares with the shareholders of the transferor company for the same shares or for cash in return for their shares that transferred to the transferee company. Accordingly, in merger cases between UK companies or between UK companies and foreign companies, there are no practical problems raising concern regarding the distribution of shares amongst the transferee company's shareholders and the shareholders of the transferor company. In cases where the transferor company's shares are divided into preference and ordinary shares, the transferee company issues two types of shares in merger cases: ordinary shares are distributed to shareholders of ordinary shares and preference shares are distributed to shareholders of preference shares. This also applies to cases of other share divisions (shares in kind, shares in cash, and capital or enjoyment shares), where the transferee or new company can issue different shares in accordance with the transferor company's shares; thus each shareholder of the transferor company gets shares in the transferee company, each identical in proportion and type to those they owned in the transferor company.[926]

[925] For more see Griffith v. Paget (1877) 5 Ch. D 894; Sealy L. S *Cases and Material in Company Law* (5th Ed 1992), 514.

[926] For the types of shares see John Armour 'Share Capital and Creditor Protection: Efficient Rules for a Modern Company Law' the Modern Law Review Limited, Blackwell Publishers (2000) 355, 378 and Paul P. Davies 'Introduction to Company Law' Second Ed (Oxford 2002), 263

5.5Shareholders' Rights in M&As According to UAE and Qatar Laws

5.5.1 The Majority of Shareholders Required to Approve M&A Decisions

The intent of shareholders' approval of a merger is to show the consent and desire of shareholders to move their money, rights and obligations from the transferor to the transferee company and to take steps to achieve this. This is realised through their attendance of an Extraordinary General Assembly meeting[927] (in person or through their agents) and voting on the merger project or not objecting to it. According to the theory of the legal personality of a company, the consequence of a merger is the expiry of the transferor company and the transfer of its financial assets to the transferee company. In such a case, the shareholders' approval of the merger or acquisition decision is highly important, owing to the impact on the structures and systems of the companies involved. For this reason, UAE and Qatar laws are keen to identify the specific majority required at the Extraordinary General Assembly to take such a decision. Accordingly, if the General Assembly of the company[928] is the supreme authority in the shareholding company, the Extraordinary General Assembly[929] is the entity that has the power and authority to make all decisions that could subsequently modify the system of the company – including merger decisions. This is determined by Article 137 of Qatar and Article 137 of the UAE

[927] A practical example of successful integration and shareholders majority required for that, United Airlines' and Continental Airlines' respective shareholders voted on September 17 to approve the merger of a wholly owned subsidiary of United's parent UAL Corporation into Continental, allowing the merger of the two airlines to go ahead. Continental Airlines' shareholders voted at a meeting held in Houston and UAL's shareholders voted at a meeting held in Chicago. UAL Corporation's primary subsidiary is United Airlines. More than 98 per cent of the votes cast by Continental's shareholders and 75 per cent of its shares outstanding were voted in favour of the transaction. UAL saw similar results: More than 98 per cent of UAL shareholders' votes cast and 84 per cent of the shares outstanding were voted in favour of the merger.

[928]The Extraordinary General meeting is a meeting specially called to discuss a particular item of a company's business, usually one of some importance? The meeting may be called by a group of shareholders or by the directors, for terms of reference and functions the Extraordinary General see articles 122-136 of the State of Qatar Commercial Companies Laws.

[929] The laws state for this by saying "The General Assembly of the company is the supreme authority in the shareholding company; the Extraordinary General Assembly is the entity which has the power and authority to make all decisions which could subsequently modify the system of the company—including the merger decision. However, this general assembly meeting is not entitled to make amendments in the statute of the company, by which the burdens of the shareholders may increase or amend the basic objective of the company.... Any decision in contrary to the above will be null and void". For the terms of reference and functions of Extraordinary General Assemblies, see articles 137,138, 139 and 140 of Qatar Companies Law.

Companies Laws, which state that "The decision to dissolve or liquidate or transfer or merge the company in another company will not be taken except in the extraordinary general assembly meeting".[930]

UAE and Qatar laws both also determine a quorum for the validity of the General Assembly meeting by stating that "the extraordinary meeting of the general assembly will not be valid except if it is attended by shareholders representing a minimum of three-quarters of the capital".[931] With this in mind, "if this level is not available in the case of the first meeting, the second meeting will be considered valid if there is the presence of shareholders representing more than half of the shares of the company".[932] "If this minimum threshold is not met in the second meeting, an invitation should then be sent for a third meeting to be held after thirty days from the second meeting. The third meeting is deemed valid irrespective of the number of shareholders attending the meeting".[933]The legislations of both countries also determine that "the level or majority required in order achieving the approval of M&A decisions will not be valid until attended by shareholders who represent a minimum of three-quarters of the capital".[934]

Accordingly, it is clear that although the legislators give power to the majority of shareholders to amend the company system (including the approval of merger decisions), the legislators of both countries require a double majority: representing a numerical majority for shareholders attending the meeting and a majority in the value of the shares represented at the meeting. In other words, the majority required for the issuance of decisions by the Extraordinary General Assembly of a company relating to a merger is the majority that attended the meeting and also the majority in terms of share ownership. This means that a merger decision must be approved by more than half of the shareholders present at the meeting and the shareholders who approve the decision must own at least three-quarters of the value of the shares of the company.

---

[930] For more, see articles 137/4&5 and 137/1, 2, 3 & 4 of UAE Companies Law.
[931] Articles140 of the State of Qatar and 140 of UAE Commercial Companies Law
[932] Articles140 of the State of Qatar and 140 of UAE Commercial Companies Law
[933] Articles140 of the State of Qatar and 140 of UAE Commercial Companies Law
[934] Ibid

The texts still remain unclear concerning the majority required for the issuance of decisions by the Extraordinary General Assembly of the company in second meetings in the case of the absence of a quorum at the first meeting. The legislators stipulate that the presence of shareholders representing half the company's capital is required, but do not empower the court with the right to monitor and assess cases that do not require the presence of the shareholders or their representatives to approve M&As (such as in the UK Companies Act), which leads to difficulties in terms of the owners of the large shares in the determination of such operations, thereby failing if the minimum level required by the texts did not achieve. It is further acknowledged that the period stated by the text between the first, second and third meetings is a relatively long period, which may therefore affect the speed of completion of M&A procedures; this may in turn adversely affect the stability of the companies and the level of work and production due to preoccupation with negotiation process and shareholders' approval.

With the aforementioned taken into account, it would be preferable for Qatari and Emirati legislators to be clearer with respect to the majority required for the issuance of decisions by the Extraordinary General Assembly of a company, particularly in terms of the period of time between the first and second meetings. Essentially, in cases of an incomplete quorum in the first meeting, it can take benefit from the provisions of the UK Companies Act and leave the determination of the majority approval required of shareholders in M&As to the competent court and allowing them to monitor M&A operations. Also, there is nothing to prevent the legislators from reducing the percentage required to ensure the approval of the Extraordinary General Assembly on M&A decisions during the first meeting, by focusing on the majority of shares represented by those who attended the meeting - not considering the majority of shares of the partners or shareholders in full, as is the current situation. This could be achieved by modifying the current text and replacing it with new text providing that 'The merger must be approved by a majority in number, representing 75% in value, of each class of members of each of the merging companies, present and voting either in person or by proxy at a meeting.' Amending the texts of article 140 of the UAE and article 140 of Qatar Companies Laws by adding similar texts to section 907 of the CA and regulation 13 of the UK Cross-

Border Act 2007 would remove control of the owners of large shares over M&A decisions; thus speeding up decision making and reducing the effort and money required from the companies involved.

This is in regard to shareholding companies; however, if a company involved in a merger is a limited partnership company or joint company, the merger decision shall not be valid until it is issued by the consensus of the partners, unless the statute of the company states otherwise.[935] Relating to merger decisions for a limited liability company, much like for limited partnership and joint companies, UAE and Qatar laws state that "merger decisions shall not be valid until they are issued by the consensus of shareholders and approval of the Concerned Authority".[936]

Accordingly, it can be stated that, unlike shareholding companies in Joint and Limited Liability Companies, decisions relating to mergers will not be valid until they are issued by the consensus of all solitary shareholders or partners, unless the statute of the company states otherwise. In such types of company, the laws seek support and consent from all partners regarding merger or acquisition decisions. This is owing to the fact that this kind of decision may lead to negative effects on the company entity involved and shareholder rights, as such companies consist of partners who manage the company and who will be jointly responsible for its liabilities in their private properties.[937] The decision can also increase the obligations of the entity and the shareholders, e.g. if a shareholding company merges with a limited liability company or if a limited liability company merges with a joint company, as a joint company consists of shareholders who are jointly responsible in their properties for the liabilities of the company, while the shareholders or partners of a limited liability company will not be asked only for their share in the capital. In such a case, the merger decision must be issued unanimously. It should be noted that

[935] For more, see articles 37 and 55 of the UAE and 34 and 50 of the State of Qatar Commercial Companies Laws
[936] Articles 254 of the State of Qatar and 249 of UAE Commercial Companies Laws
[937] See articles 19 and 44 of Qatar Companies Law

that this rule of public order is not permissible for the General Assembly of the shareholders to overturn.[938]

5.5.2 Shareholders' Rights to Object to M&As

There is no doubt that M&As lead to changes and amendments within the companies involved, with a change in the system and holding of the transferee company. Also, the transferee company bears the obligations and debts of the transferor company on the basis that it is the legal successor of the company. Accordingly, the question raised here is: what if shareholders wish to exit from the company on the grounds that the interests and rights they enjoyed in the transferor company (such as their rights in profit, obtaining new shares or participating in the administration of the new company) are threatened or deficient in the transferee company? Can shareholders exit from the company wishing to merge and recover the value of their shares?

UAE and Qatar Companies Laws do not provide effective solutions that recognise the rights for shareholders to exit from companies involved in M&As and recover the value of their shares. Once two companies have entered into a merger agreement and the agreement is adopted by the Competent Authority specified by law, a resolution of the merger is applied without the need to achieve the approval of all the shareholders or the shareholders who oppose.[939] Not only that, unlike the UK Companies Act, the laws of both countries do not give the transferee company the right to buy the shares of shareholders who do not want to retain their shares following M&A operations. This is inconsistent with the right of shareholders to exercise their rights and authorities guaranteed by law, which are acknowledged as the right of any person to utilise their rights in order to achieve their own interest,[940] as long as the interest it purports to achieve is legal and legitimate and not intended to cause injury to others.

[938] 'The legal nature of companies and shareholders rights'<http://new.esgmarkets.com/showthread.php?t=44992> accessed 16 May 2011.
[939] For more, see articles 273, 274, 275 and 277 of the State of Qatar Companies Law
[940] See article 62 of the State of Qatar Civil Law

In order to avoid such problems, as long as no rules in the laws or the statute of the company prohibit or restrict the trading of shares, the researcher believes that shareholders should be able to withdraw from the company by selling their shares on the stock exchange. This accordingly ensures the principle of equity trading by allowing shareholders who do not seek to achieve a merger to exit from the company at a time that suits them and at the same time allow the entry of new shareholders without undermining the integrity of the company capital.[941] In this regard, the question arises and remains concerning how the value of the shares of shareholders who want to withdraw from the commercial entity can be estimated before the merger.

UAE and Qatar laws do not provide solutions for such a case; for this reason, Alsghir (1987)[942] says that the value of shares should be estimated by agreement (or through the judiciary) whilst taking into account the current value of all assets of the company. Accordingly, the value that was reached or agreed upon must be delivered to the retreating shareholders before the completion of the merger process. In the case of a partner or shareholder disapproving this value, it will be up to them to refer the matter to the judiciary to estimate the price value of their shares.[943] In this regard, the court rules in terms of the compensation for stakeholders –claimants- if there is a reason[944] and the amounts are adjudged to have the same properties as the assets of the transferor company.[945]

Moreover, to avoid such problems, the researcher believes that UAE and Qatar legislators could take benefit from Article 135 of Egyptian law No 159 of 1981[946] and provide for “shareholders who object to M&A decision in the General Assembly or who

[941] For more see Al-azimy (n 503) 344, 345
[942] Al-saghir (n 483) 309
[943] For more, see article 296 of the Executive Regulations Egyptian Commercial Companies Law No 159 of 1981 (In this case this reference used due to the similarity of the texts laws of the State of Qatar and UAE with the texts of Egyptian Law)
[944] See article 135/5 of Egyptian Commercial Company Law No 159 of 1981.
[944] In this text we are guided by article 135 of the Egyptian Commercial Companies Law Number 159 of 1981 due to text clarity and the similarity of the texts of the State of Qatar and UAE laws with the texts of Egyptian Law
[945] Article 135 of the Egyptian commercial Company Law
[946] See articles 135/3, 4 and 5, Ibid.

did not attend the meeting by an acceptable excuse can request exit from the company and recover the value of their shares, and that in a written request to the company within twenty days from the date of publicity or published merger or acquisition decision, and the value of shares will be estimated by agreement or Judiciary, taking into account the current value of all assets of the company".[947] More importantly, the legislators of both countries could take advantage of sections 902 and 905 of the UK Companies Actand provide for similar texts".[948] This is because providing for the rights of a minority of shareholders who do not wish to exit from the companies involved in a merger and providing for the right of the transferee company to obtain shares in the transferor company by cash would remove exhibitions shareholders who do not prefer merge their capital with capital of shareholders of other company, thus, accelerate the completion of the merger.

5.5.3 Shareholders' Rights in the Transferee Company's Shares

According to the theory of the legal personality of a company, a merger leads to the expiration of the transferor company and the demise of its moral character. However, the expiration is not followed by the liquidation of the company and the division of its assets. As a result, the shareholders of the transferor company receive a number of shares in the transferee company as opposed to their shares in the transferor company (which elapsed as a result of the merger), retaining their capacity as shareholders in the transferee company. Accordingly, the shareholders of the transferor company enjoy all the rights experienced by the former shareholders or partners in the transferee company, like the right to participate in the company's administration,[949] the right to attend General Assembly meetings and discuss and vote on issues at such meetings,[950] to appeal decisions issued by the General Assembly concerning violations of the company's statute

[947] In this text, we are guided by article 135 of the Egyptian Commercial Companies Law Number 159 of 1981 due to text clarity and the similarity of the texts of the laws of the State of Qatar and UAE with the texts of Egyptian Law
[947] Chris Higson a and Jamie Elliott, 'Post-takeover returns: The UK evidence' (1998) 5 Journal of Empirical Finance 27, 46.
[948] For more, see articles 595 & 902 of the UK Companies Act 2006
[949] See articles 96, 97 and 98 of the State of Qatar and 97 and 98 of UAE Commercial Companies Laws
[950] See articles 198 and 123 of Qatar and 199 of the UAE Companies Laws

or the provisions of law, and the right to a share in the outputs of the company's liquidation.

A merger in the legal sense is what leads to a change in the equity of the shareholders of the transferor company, whereby each one of the transferor company's shareholders will get shares in the transferee company instead of their shares in the transferor company. Therefore, there is no merger when all the shareholders of the transferor company - even the shareholders who accepted the merger operation - receive cash as opposed to what they owned in shares in the transferor company. Such cases constitute sales and therefore mergers do not occur when the shareholders of the transferor company receive cash, bonds[951] or other instruments from the transferee company instead of the shares in the transferor company that they owned before the merger.[952]

This is confirmed by UAE and Qatar Companies Laws regarding mergers by absorption[953] or mergers by the formation a new company, which stipulate that "Each merging company will be allotted a number of shares or equities equivalent to its shares in the capital of the new company. These shares will be distributed amongst the partners in every transferee company in accordance with their shares therein".[954] Accordingly, the result of the merger is that the shareholders of the transferor company must receive a number of shares in the transferee company that equate to the same quality of shares that they owned in the transferor company. Based on this fact, if the shares of the transferor company are of one type with a single value, then the transferee company is issued with one type of shares. These are distributed to the shareholders of the transferor company, with each in proportion to their rights in the transferor company.[955] However, if the

---

[951] However, some of the legislation - as is the case in the British Companies Act - allows for the shareholders of the transferor companies to obtain shares with amount of money from the transferee company. For more see articles 595 and 902 of the UK Companies Act 2006.

[952] Taha M K, *Egyptian Commercial Law* (First edn, Dar al Nahda al-Arabia 1968) Arabic Source; Al-saghir, Ibid, 537, 538, Basbos, Ibid; Al-arif A, *Explain the Companies in Egypt* (1980), 160, Shafik M, Ibid, 672; Bak M S, *Shareholders Company in the Egyptian and Comp ration Law*(1949) 390.

[953] For more, see article 274 of Qatar Companies Law

[954] For more, see article 275 of Qatar Companies Law

[955] Al-shmary T,*The Mediator in the study of Kuwaiti Companies Law and its amendments: Comparative Study* (3rd edn, without publisher) 12.

transferor company's shares are divided in terms of rights and benefits into several different types or are otherwise divided in terms of value into several categories, then the shareholders of the transferor company must receive a number of shares in the transferee company conferring them with the same rights conferred to them by their shares in the transferor company. With this in mind, if the system of the transferee company does not allow the issuance of multiple types of shares, then the transferee company issues one type of share to all shareholders of the transferor company, in accordance with the quality of their shares in the transferor company.[956]

Accordingly, to determine the number of shares that the shareholders of the transferor company should receive in the transferee company (which is known as the rate of the replacement of shares), it is important to understand the actual value of the transferee company's shares, as well as the actual value of the transferor company's shares. If the shares of the transferor company are from one type and the actual value of every share of the transferor company is equal to the actual value of every share of the transferee company, there are then no practical problems in regard to the process of share replacement; this is owing to the fact that every share in the transferor company is offset by a new share in the transferee company. However, in fact, an equal actual value of the shares of companies involved in mergers is purely theoretical. Often, the actual value of the shares of companies involved in mergers varies, despite being equal in nominal value.[957]

Practically, the process of exchanging shares does not occur simply: there are practical problems that arise in the event of a disagreement concerning the actual values of the shares of the transferor and transferee companies, as well as in cases where there are differences in the types or classes of the transferor company's shares. The texts of the laws of Qatar and the UAE do not give the transferee the right to buy shares from the transferor company by cash in merger cases and are not flexible enough to allow

[956] For more see article 274/4 of the State of Qatar Companies Law which provided for that by saying "The increase of capital will be distributed among the partners in the merging company in accordance with their shares therein".
[957] For more see Al-azimy (n 503) 266 and Al-saghir (n 493) 203

companies to issue multiple types of shares. This necessitates discussion concerning the problems arising as a result of differences in the actual values of shares of companies involved in merger operations. These issues are explored in the following sections.

5.5.4 Distributing New Shares if the Transferor Company's Shares are of One Type

If the shares of the merged company are of one type and the actual value of the transferor company's shares is equal with the actual value of the transferee company's shares, then the issue of replacing shares does not pose any difficulty owing to the fact that, in this case, the replacement will happen on the basis of each share in the transferor company being offset by one share in the transferee company. However, equality concerning the actual values of the shares of the companies involved in the merger (as noted previously) is a theoretical assumption. Most likely, the actual value of the shares of the companies will vary. In this case, the actual values of the shares of the companies involved in the merger must be known in order to determine the rate of share replacement. This is determined based on the relationship between the actual value of the transferor company's shares and the actual value of the transferee company's shares.[958]This can be illustrated by the following example.[959]

If we assume that the capital of the transferee company is £900,000 and its number of shares is 900,000, then the actual value per share is £1. If its net assets are estimated to be £120,000, on the other hand, then the capital of the transferor company will be £600,000, with the number of its shares totalling 600,000 and its net assets worth an estimated £160,000.

The actual value of the transferee company's shares: $\frac{\text{£ } 120{,}000}{900{,}000 \text{ Shares}}$

[958]Al-azimy H, 'The effects of Merger on Shareholders and Creditors Companies' (PhD thesis in Law, University of Cairo 2004) 267.
[959] See similar example Alsghir, Ibid, and Alazimy, Ibid, 268

The actual value of the transferor company's shares: $\frac{£\ 160{,}000}{900{,}000\ \text{Shares}}$

Accordingly, it is clear that the relationship between the actual value of the transferee company's shares to the actual value of the transferor company's shares is:

$\frac{£\ 120{,}000}{900{,}000\ Shares} : \frac{£\ 160{,}000}{600{,}000\ Shares}$ = 1,333 to 2,666

This means that the actual value of the transferee company's shares equates to half the value of the actual shares of the transferor company. Thus, the replacement rate for one share in the transferor company is two shares in the transferee company. In this regard, the transferee company must issue two new shares for each share in the transferor company; thus each shareholder in the transferor company will receive double the number the number of shares in the transferee company.

In fact, the issue of determining the rate of replacement of shares between companies involved in mergers is not simple. There are practical difficulties arising in this regard concerning the principle of indivisible shares, whereby, according to UAE and Qatar Companies Laws, the share is part of the equal parts of the company's capital and is indivisible.[960]Therefore, the shareholders of the transferor company must receive a correct number of shares in the transferee company without fractions, as opposed to their shares that they owned in the transferor company. Accordingly, the matter of replacing shares does not raise any difficulty as long as the transferor company's shares are integers free of fractions, as is the case if shares in the transferor company are equal to one, two or three shares in the transferor company. However, the rate of replacement of the transferor's company shares using an integer free of fractions is supposed to be a rare occurrence in practical life. In reality, the rate of replacement of the transferor's shares is often by a number including some fractional shares, e.g. if the transferor company's shares are equivalent to 5.08 shares in the transferee company.

[960] For more, see articles 154 of Qatar and 149 of UAE Companies Laws, which explicitly provide for this property by saying that "shares of a shareholding company are undividable"

In order to overcome this problem, Al-azmi (2004)[961] finds that the most appropriate number of shares in the transferee company must be selected to be equivalent in terms of the integer value of the shares in the transferor company, or that the most appropriate number must otherwise be selected from the shares of the transferor company, which can be rounded to an integer. This is provided that it is an approximation of fractional shares in the smallest way possible, which can therefore provide a replacement rate without fractions. To illustrate this, we can use the following example.[962]

If we assume that the actual value of the transferee company's shares = £1,560 and the actual value of the transferor company's shares = £900, then the value of the transferee company's shares is then estimated by the number of shares of the transferor company, which totals $\frac{1,560}{900} = 1,63$.

This means that each share in the transferee company is equivalent to 1.63 shares in the transferor company; therefore, it is necessary to select the most appropriate number of shares of the transferee company to be equivalent in terms of integer value to a number of shares in the transferor company, which may be approximated to an integer, for example.[963]

Number of shares in the company	Equivalent number of shares in the transferor company	Output after the shares are approximated
1	1.63	2
2	3.26	3
3	4.89	5
4	6.52	7

Figure one: Distribution of New Distributing Shares Comprising of Integers and Decimal Numbers: Similar examples in Al-azmi Halid (2004, p 271) and Al-sqir (1987, p 203)

[961] Al-azmi H (n 940) 270
[962] See same example Al-azmi (n 940) 173
[963] For more see Al-azmi (n 893)270, and Al-saghir (n 493) 203

Through the table, it is clear that the approximation of 4.89 to 5 shares represents less override relating to the approximation of fractional shares of the merged company to the nearest integer. Consequently, the rate of replacement is formed on the basis that every five shares in the merged company are equivalent to three shares in the merging company. This example (which is representative of rounding fractional shares to integers) leads to finding a replacement rate devoid of fractional shares and takes into account and develops a solution to Article 154 of Qatar Companies Law.[964]

The approximation of fractional shares to the nearest integer (as in the example above) provides a solution to the problem of exchanging shares that include decimal fractions between transferor and transferee companies, which leads to a replacement rate of shares free from decimal fractions being calculated. However, it can be seen that following such a process without implementing other procedural solutions or modifications to article[965] 278 of UAE and articles 154 and 275 of Qatar Companies Laws may lead to benefit the shareholders of one of the two companies (the transferor or the transferee company) at the expense of the shareholders of the other company. For this reason, the researcher believes that until we get a correct replacement process, all the shares of each partner must be approximated separately, with compensation for the shareholders for the value of fractional shares that are waived. The process of compensation is discussed in the following paragraphs.[966]

Firstly, shareholders who have been affected as a result of rounded fractional shares must be compensated through the allocation of a share of the profits realised before the merger[967] or which will be achieved by the transferee company after the

[964] Rounding fractional shares to the nearest integer in cases where there are decimal fractions in the shares of one of the companies involved in the merger, such as in the example above, provides a solution to the problem of share exchange when the transferor company's shares include decimal fractions while the transferee company's shares are free from such fractions. It also provides a solution to article 137 of Qatar Companies Law, which prevents the indivisibility of shares in the face of the company in merger cases. This leads to facilitate the exchange of shares between the transferee company and the shareholders of the transferor company and thus increases the likelihood of the success of the merger process

[965] Articles relating to exchange for the rights of the transferor company shareholders in the shares of transferee company after the merger in the UAE and Qatar Commercial Companies Laws

[966] Al-azmi (n 985) 271

[967] See section 172 of UAE Companies Law

merger. This must be distributed to the affected shareholders and, during the specified period, should be commensurate with the damage suffered owing to the rounding of fractional shares. In this case, if the rounding of fractional shares results in richer shareholders of the transferee company and damage to the shareholders of the transferor company, a proportion of the profits should be allocated and distributed to the shareholders of the transferor company to help achieve a balance between the shareholders of the transferee and transferor companies.[968]

Secondly, shareholders who have been affected by the rounding of fractional shares should be compensated by specifying the date use of the new shares, i.e. the date that the accounting profits of the new shares can begin. For example,[969] if two companies merged on 01 January 2011, it may then be agreed that all the new shares issued by the transferee company to the shareholders of the transferor company do not only deserve profits from October 2011 - they are worthy of profits for the period from 01 January 2011 until 31 September 2011.[970] Accordingly, if the approximation of fractional shares leads to richer shareholders of the transferor company and damage to the shareholders of the transferee company, the postponement of the date of the shareholders of the transferor company utilising new shares obtained in the transferee company leads to achieving a balance between the shareholders of the transferor and transferee companies.[971]

Thirdly, shareholders who have been affected by the rounding of fractional shares should be compensated in cash by distributing amounts of money to the affected shareholders, equivalent to the value of the fractional shares that are waived.[972] This means that the shareholders of the transferor company will receive shares in the transferee company in addition to cash instead of the decimal shares that cannot be approximated. This system of exchanging shares (in addition to making payments in cash) between companies involved in mergers could ease the process of replacing shares without prejudice to the unity of the share and could thereby assist in developing an

[968] Al-saghir (n 493) 203, 211
[969] Same example in Al-azmi (n 940) 270
[970] Al-azimy (n 940) 272
[971] For more see Al-sagir (n 493) 203,208
[972] Alazmi (n 940) 271; Alsgir H (n 493) 211

appropriate solution for the problem of fractional shares that appears in some merger processes.[973]

Importantly, UAE and Qatar legislators do not implement such solutions. They should therefore take advantage of the UK Companies Act and add to the merger texts to allow companies involved in mergers to allocate a certain percentage of their capital payments to shareholders who do not wish to merge, or instead of shares that cannot be approximated.[974]

In this regard, the question remains: what is the solution if the number of shares of one of the shareholders of the transferor company is less than the quorum that would enable them to obtain one share in the transferee company? For example, if it was decided that the replacement rate would be that every share in the transferee company is equivalent to two shares in the transferor company. In this regard, it may then be questioned: what is the solution for shareholders who have individual number of shares in the transferor company?

Emirati and Qatari legislators have not addressed or considered special provision for this matter. To resolve this issue, Al-saghir (1987)[975] and Al-azimy (2004)[976] believe that every contributor who owns a number of shares less than the quorum can either sell the shares that they owned and lose their description as a contributor (if they had only one share) or buy new shares in the transferee company to meet the quorum. Supporters of this opinion believe - in this case – that the merger decision can be made by the majority specified by law or the statute of the company

Arini (2002) does not recommend this opinion on the basis that mergers in these cases (involving buying or selling shares by cash) require the unanimous approval of the

---

[973] For more see Alazmy A,*Commercial Law* (Dar Al-Nashr 1935)213;Alqylopy S *Commercial Companies* 315, 273; Aobid R,*Commercial Companies in Egyptian Law*(5th edn, Dar Althaqafh Alarabia 1997) 313, 400; Alazmi, Ibid, 279
[974] For example see articles 595 and 902 of the UK Companies Act 2006
[975] Alsaghir (n 483) 189
[976] Alsaimy H (n470) 501

shareholders of the transferor company on the merger decision, unless the statute of the transferor company provides otherwise. Arini (2002) bases his opinion on the basis that the merger decision in this case leads to compromise the fundamental rights of the shareholder, as it forces the contributors to sell the shares they owned or to purchase an additional number of shares to meet the quorum.

The researcher agrees with the supporters of the first opinion, who believe that every shareholder who owns a number of shares less than the quorum can either sell the shares that they owned and lose their description as a contributor or buy new shares in the transferee company to meet the quorum. Merger decisions in this case can be made by the majority specified by law or by the statute of the company, even if the decision involves forcing some shareholders to buy or sell shares if they do not meet the quorum. In this regard, respecting the opinions of the majority shareholders (especially shareholders who have a lower number of shares than the quorum required for replacement) is fundamental,[977]especially as the shareholders who own shares less than the quorum required for replacement have a small percentage of the total of the transferor company's shares. Moreover, mergers often occur between public shareholding companies and it should be noted that total approval from shareholders in public shareholding companies is more or less semi-impossible due to the large number of shareholders in them.[978] Shareholders who own a small percentage of shares also do not attend the meetings of the General Assemblies of these companies.[979]

Accordingly, shareholders who decide to sell their shares if they have less than the quorum for replacement can do it and get the amount of cash versus these shares. Confirming this, Sidky (1993)[980] believes that if the principle of the freedom of the share requires the partner not to be forced to give up his shares, it may sometimes be necessary

---

[977] Hossein Fathi, *The legal regulation of the recovery and the purchase of shares by the company* (Dar Al-nahdah Arabia 1986) 23. Arabic Source

[978] For more see Almasry H, *Private legal aspects for the integration of investment companies in normal shares companie* (First Edition 1986) 62; Al-aryny M F, Ibid Item 362, p553

[979] Hosni Al-masri,*The Legal Aspects of the Merger of Investment Companies with Joint Stock Company*, (Dar Al Nahdadh Al Arabia 1986) 47-48, 62. Arabic Source

[980] Amir Siddiqui, *The legal system for the purchase of shares by the company exported* (Dar Al-nahdah Arabia1993). Arabic Source

to exclude the condition for shareholder consent when the interests of the company require it.[981] Therefore, in order to eradicate such a problem, the researcher believes that UAE and Qatar legislators need to take advantage of section 902 of the UK CA and section 2 of the Cross-Border Merger Act and provide for the rights of companies involved in mergers to exchange shares with shares or with a cash payment receivable by members of the transferor company.

5.5.5Distributing New Shares if the Shares of the Companies involved in the Merger are of Different Types

5.5.5.1Distribution of New Shares Comprising Fully and Not Fully Paid-Up Shares

According to Articles 155 and 158[982]of Qatar Companies Law, shares are divided in terms of cash shares (not fully paid-up shares) and shares in kind (fully paid shares): cash shares constitute cash shares in the company's capital while shares in kind are material shares in the capital of the company.

The legislators of Qatar and the UAE have estimated that a company may not need to use or exploit all its capital to carry out its project during the first years of its establishment. Accordingly, the legislators in both countries do not require a company to meet its full capital when it makes an IPO[983], but merely request that it meets a quarter of the stock of its cash value upon subscription. The laws state that the "share value shall be paid in cash by a single payment or instalments. The instalment to be paid upon underwriting shall not be less than 25% of the share value. However, the share value must be completely paid within five years from the date of the publication of the decision

[981] For more see Al-azmi (n 940) 277
[982] Which provide for that by saying 'Share value shall be paid in cash by a single payment or instalments. The company may hold material shares given against non-cash assets or evaluated rights. Estimation of these shares will not be final until it was approved by a group of underwriters with a numeral majority possessing two third of the cash shares. Material shareholders have no right of voting even though they are cash shareholders. The material shares shall not represent the shares other than those paid up completely.
[983] General Subscription

of company incorporation in the gazette".[984] "On the contrary, the material shares shall meet their value in full upon underwriting".[985] Accordingly, if the shares of the transferor company are divided into shares paid their full nominal values and shares not paid their full nominal values, the question arises as to how the shares of the transferee company are distributed amongst the shareholders of the transferor company.

UAE and Qatar laws do not address this matter. In this regard, Al-azmi (2004)[986] believes that it is permitted for the shares of the transferee company to be distributed amongst the shareholders of the transferor company proportionate to the number of shares owned, without discriminating between shares paid their full values and shares not paid their full values. Alqilubi (1977),[987] Kaid (1997),[988] Taha (2000)[989] and Obeid (1997)[990] progress on this to suggest that there are two ways of distributing such shares: firstly, in proportion with the number of shares owned by the shareholders of the transferor company, without discrimination between them in terms of the amount paid towards the value of the shares; and secondly, the distribution of shares in proportion to the amount paid towards the nominal value of the shares. Shareholders who have not paid the full nominal value of their shares do not get the same number of shares in the transferee company as shareholders who own shares with their nominal value paid in full.[991] Accordingly, if the quorum for replacement is each share in the transferor company is equivalent to four shares in the transferee company, then each shareholder with one share in the transferor company with its nominal value paid in full will receive four shares in the transferee company. A shareholder who has one share in the transferor company with half its nominal value paid will receive two shares in the transferee company, while a shareholder who has paid a quarter of the nominal value of their shares

[984] See article 155 of the State of Qatar Commercial Companies Law
[985] See article 158 of the State of Qatar Commercial Companies Law
[986] Alazmi (n 940) 282
[987] Alqilubi S, 'Characteristic for limited liability companies' [1977] Journal of Economy 12.
[988] Kaid M B A, *The General Theory of companies*(Arab Renaissance House1997) 28.
[989] Taha M K, *Commercial Companies*(Arabic Publications House 2000) 33.
[990] Obeid R, *Commercial Companies in Egyptian Law*' (5TH edn, Arabic Culture House Egypt 1997) 136.
[991] For more see Alazimi (n 940) 283; Alqilubi S (n 930) 272

will receive one share in the transferee company for each share they had in the transferor company.[992]

In order to avoid the problems associated with the distribution of the transferee company's shares to two sets of shareholders of the transferor company, the researcher (consistent with some of the jurists[993]) believes that it could be permissible for the transferor company to demand that its shareholders who have contributed by shares not paid their nominal values to pay the remainder of the nominal value in full before the merger. In the case of their delayed or refused payment, after warning them the company could offer the shares for sale by auction or in the stock market if the shares are registered as such.[994] Thus, all the shares become paid their nominal value in full, which facilitates the distribution of the transferee company's shares equally amongst all the transferor company's shareholders.[995]

5.5.5.2 Distributing Capital and Enjoyment Shares

Enjoyment shares (consuming shares)[996] means returning the share value to the shareholders during the company's life and before its expiry.[997]Such shares are called enjoyment shares, which are capital shares that have consumed their nominal value, and their owners recover this value during the company's life. Importantly, it corresponds with capital shares, which are shares whose owners only recover their nominal value following the expiration and liquidation of the company.[998]

Pursuant to the principle of the stability of the company's capital, the rule is that, during the course of its life, it is not permissible for the company to consume all or some

---

[992] Al-azmi, Ibid, 283, Bastian D 'Mergers of companies' Juris-filing of companies, Fase. 164/1, 1960
[993] For more see Alqylopi Samihah (n 993) 253, 254 yakob Sraoh, Ibid 126
[994] Al-azmi (n 940) 283
[995] Alqylopi Samihah (n 930) 253, 254 yakob Sraoh, Ibid 126
[996] This name for this type of share is used by the Arab jurisprudence for the shares of some companies that are consumed with the passage of time as a result of use, such as shares in flight companies, bus companies and factories that consume their equipment by use.
[997] Sarkhou Y, Ibid, 126
[998] Kaliouby (n 954) 321, 253, 254; Sarkhou, (n 126)

of its shares by returning its nominal value to shareholders. However, resorting to consuming its own shares may seem necessary to companies in some cases, such as if the company is a franchise company given by the government or by a juristic body for a certain period, following which the property and assets of the company devolve to the donor (free of charge), such as electricity and gas companies. Alternatively, there may be other organisations that require the consumption of their assets, such as ships and aircrafts, which may then result in the company not having the same value of shares at the end of its life. In this instance, it is impossible for the shareholders to recover the value of their shares.[999]

UAE Companies Law allows a company during the course of its life to consume all or some of its shares by returning their nominal value to shareholders. It provides for this by saying: “the articles of association may provide for share depreciation during the life of the company if its venture depreciates gradually or is based on temporary rights”.[1000] The consequence of this is that a company can only consume all or some of its shares if the statute of the company stipulates that this is permissible. However, if the statute of the company does not comprise permission to consume shares, it is permissible for the Extraordinary General Assembly to amend the company system by providing authorisation to enjoyment shares.[1001] If the statute of the company allows the consumption of its shares, it has to pay the nominal value of its consumer shares from its profits and reserves, with the exception of legal reserve.[1002]

Accordingly, the relationship between the company and shareholders who own shares consumed as a result of use by the company is not interrupted: they retain their capacity as a shareholder and get enjoyment shares instead of consumed share capital. However, a shareholder who consumes their shares retains their capacity as a shareholder

---

[999] See: Shafiq M (n 312) 533, 475; Kaliouby S (n 930) 321, 254; Abdulrahim Rahim T A, *Explanation of the new Egyptian Commercial Law* (3rd edn, Dar Alnahda Al-Arabia 2000) 580. Arabic Source

[1000] Article 171 of the UAE Companies Law, which also provides for “the shareholder whose share is depreciated shall obtain a bonus share” “Amortization may be effected by the company's purchase of its own shares, and the shares thus obtained shall be written off by the company”

[1001] For more see Al-azmy H (n 940) 286; Shafiq M (n 53) 476; Taha M (n 1004) 225, 229; Sarkhou 133 Younis A H,*Commercial Companies* (without publisher 1991) 317.

[1002] For more, see article 172 of UAE Companies Law

in the company but ultimately does not retain the same rights as they had before consuming their shares. At the same time, the owners of capital shares who do not consume their shares retain the same rights. Accordingly, it is logical to state that the rights of the owners of enjoyment shares are inferior to the rights of owners of capital shares that are not consumed.[1003]

Therefore, owners of enjoyment shares retain their capacity as shareholders in the company and have all the same rights as the owners of capital shares that is not consumed, including the right to attend General Assembly meetings, vote and be involved in profit sharing, as well as the right to the output of the liquidation of the company. However, the proportion of profits for owners of enjoyment shares may be less than the profits obtained by the owners of capital shares that are not consumed. In addition, the owners of enjoyment shares cannot share in the apportionment of the assets of the company upon liquidation only after the owners of the capital shares that did not their shares consumed recovering the value of their shares. This is logical as the owners of enjoyment shares have already recovered the nominal value of their shares during the company's life.[1004] It is in this regard that the question arises concerning how the transferee company's shares are distributed among the transferor company's shareholders if the transferor company's shares are divided into capital shares and enjoyment shares while the transferee company's shares are only capital shares.

Unlike the UAE, Qatar law does not provide a solution to this case because it does not provide for the right of the company to consume shares during the company's life. Furthermore, the laws of both countries do not address the operations of exchanging shares between companies involved in mergers. For this reason, the problem stands out more especially as the shareholders of the transferor company must receive new shares in the transferee company equivalent to their shares in the former, while the owners of enjoyment shares have fewer rights than the rights associated with capital shares. Logic then requires that the value of the enjoyment shares is less than the value of capital

[1003] For more Sarkhou Y, 'Shares and it's trading in Joint Stock Companies in the Kuwaiti Law' (PhD thesis, University of Cairo1982), 128.
[1004] For more see Alazmy (n 940); Younis, A H (n 1007) 258, 317; Kaliouby S (n 954) 321, 354.

shares. Accordingly, there is no equality between the owners of enjoyment shares and the owners of capital shares.[1005]

With this taken into account, Bastian (1996)[1006] progresses to say that the transferee company's shares are distributed to the shareholders of the transferor company on the assumption that these shares represent money resulting from the company's liquidation and each shareholder then obtains shares equivalent to their share in the result of the liquidation of the company. Samih Kaliouby (1993)[1007] explains this by saying "the owners of enjoyment shares receive all the same rights as the owners of capital shares except recovering the nominal value of shares when the company goes into liquidation". This means that when the liquidation of the company occurs, the owners of capital stock recover the nominal value of their shares. After this, the remaining assets of the company are distributed amongst all the shareholders, whether they are subscribers by shares of capital or enjoyment of shares.[1008]

It follows that it is necessary for the owners of capital shares to receive a number of shares in the transferee company equivalent to the nominal value of their shares in the transferor company, so the position of the owners of capital shares becomes equal to the owners of enjoyment shares in terms of both of them having regained the nominal value they contributed to the capital of the transferor company, even if they differed in the nature or the time they obtain this versus. After uniting the owners of enjoyment shares with the owners of capital stock, the remaining shares of the transferee company are distributed to all shareholders (owners of enjoyment shares and owners of capital shares) on the basis of one replacement rate, without distinguishing between them. In order to illustrate this, the following example is cited.[1009]

If we assume that the transferee company receives the net assets of the transferor company and the shares of the transferor company are divided into two types of shares,

---

[1005]Al-Saghir H (n 483) 222
[1006] Bastian D (n 998) 121
[1007] Kaliouby (n 930) 254
[1008] For more, see Sarkhou (n 1009)139, 140
[1009]For similar examples, see Al-azimy (n 940) 189, 191

the first type would be capital stock, totalling 20,000 shares; and the second type would be enjoyment shares, totalling 20,000 shares. The nominal value of the transferor company's shares is £100 and the actual value of the transferor company's shares is £500. The transferee company issued 40,000 shares instead of the transferor company's shares and the actual value of the transferee's shares totals £50. The distribution of the shares of the acquirer to the shareholders of the merged company would be as follows.[1010]

Firstly, the owners of capital stock in the transferor company must get a number of shares in the transferee company equivalent to the nominal value of the shares they owned in the transferor company in order to become owners of capital stock in the same status as the owners of enjoyment shares. This can then be distributed like the rest of the shares in the transferee company to all shareholders in the transferor company on the basis of one exchange rate without distinction between them.[1011] This can help to determine the number of shares that the owners of capital stock can obtain versus the nominal value of their shares by the following equation:[1012]

The number of shares of capital in the transferor company = 2,000 share capital
The nominal value of the transferor company's shares = £10 pounds per share
The actual value of the merged company's shares = £50 per share
The number of enjoyment shares of the transferor company = 2,000 enjoyment shares

The actual value of the transferee company's shares = £5 per share
The number of new shares issued by the transferee company = 40,000 new shares

The net assets of the transferor company shall be = the actual value of the shares × the number of shares = £50 × 40,000 shares = £2,000,000

[1010]Al-azmi (n 940) 289
[1011] For more Kaliouby S, *Business general theory of companies and persons companies* (3th edn, Dar Al-Nahdah Alarabia 1992) 330, 272 Arabic Source; Mohamed Bahgat Kaid, *Commercial Companies-General Theory for the Company* (First Edition, Dar Al-Nahda Al Arabiya 1997) 276 Arabic Source; Reda Ebeid, *Commercial Companies in the Egyptian Law* (5th Edn, Dar Al Arab culture 1997) 416 Arabic Source; Mustafa Kamal Taha, *Commercial Companies* (Dar university publications, 2000), 248.
[1012] For more see Alazmi (n 940) 290,291

Furthermore, the nominal value of the shares of the owners of capital in the transferor company = the number of shares of capital × the nominal value of the shares = 2,000 shares × £10 = £20,000 pounds. Then, the owners of the capital stock in the transferor company get a number of shares in the transferee company equivalent to the nominal value of the shares they owned in the transferor company = the nominal value of their shares ÷ the actual value of the transferee company's shares = 20,000 ÷ £5 = 4,000 shares in the transferee company.

If the number of shares of capital in the transferor company is 2,000, this means that the owner of each share capital in the transferor company would receive two shares in the transferee company; in other words, each share capital in the transferor company corresponds with two shares in the transferee company. The remaining shareholders in the transferee company following the owners of capital stock instead get the nominal value of the shares they owned in the transferor company = 40,000 - 4,000 = 36,000 shares in the transferee company.[1013]

After the owners of capital stock receive a number of shares in the transferee company equivalent to the nominal value of the shares they owned in the transferor company, the owners of capital shares become in the same position as the owners of enjoyment shares. The remaining shares of the merging company are then distributed amongst all the shareholders in the merged company, i.e. the owners of capital stock and the owners of enjoyment shares, on the basis of one exchange rate, without distinction between them. This is highlighted as follows.

The remaining shares of the transferee company ÷ all the transferor company's shares = 36,000 shares in the transferee company ÷ 4,000 shares in the transferor company shares = 9 shares.

Therefore, each shareholder with one share (capital shares or enjoyment shares) in the transferor company receives nine shares in the transferee company.

[1013]Alazmi (n 940) 290, 291

To sum up, the share of the owners of capital stock is equal to 4,000 + 18,000 = 22,000 shares in the transferee company. The share of the shareholders or owners of enjoyment shares equals 18,000 shares in the transferee company. This means that each share of capital stock is offset by 11 transferee company shares, with all shares of enjoyment shares offset by approximately 9 shares in the transferee company.[1014]

It is noted that these problems do not arise in the cases of acquisition as the acquiring company acquires all or most of the shares of the acquired company by cash; thus the problem of exchanging shares between companies does not appear in acquisition cases. More importantly, the researcher believes that the reason for the emergence of such matters is mainly due to the lack of clarity of the texts of UAE and Qatar Companies Laws relating to shares trading. It is also due to the lack of rights of companies to issue different types of shares, as well as the transferee company not being allowed to buy shares from the transferor company by cash. All of these issues lead to the accumulation of problems during the process of exchanging shares between companies involved in mergers. Such problems can be treated through reconsidering the texts of the laws and modifying them through taking advantage of the provisions of UK laws.

5.5.5.3 Distribution of Ordinary and Preference Shares

The fact that the capital of a joint stock company is divided into equal shares in terms of its nominal value,[1015] whereby the basic principle is that shares equal in nominal values entitle their owners to equal rights, namely rights in profits, attending General Assembly meetings, voting and the right to a share of the assets of the company after liquidation. However, the equality rule between shareholders does not relate to public order.[1016] Accordingly, the company system may provide for the contrary - both during the establishment of the company or in the course of its life. During a company's life, some companies systems may include text that allows exclusions to the rule of equality

[1014] Ibid; Al-saghir (n 483) 222,
[1015] Article 152 of Qatar Companies Law
[1016] Kaliouy (n 1017) 319, 248; Taha, M, Ibid (n 1017) 215, 223; Rahim S A (n 1004) 582; Bahgat K M (n 1017) 277; Sarkhou J (n 1009)125; Alazimy (n 940) 290

between shareholders through the issue of preference shares.[1017] It is usual for some company systems to provide for the establishment of preference shares that entitle their owners to various advantages not enjoyed by the holders of ordinary shares. Notably, this occurs when the company needs new funds and decides to increase its capital by issuing preference shares in order to encourage the public to subscribe in new shares.[1018] The company may also resort to the issuance of preference shares when it seeks to convert bondholders to shareholders and to replace their bonds with shares, or to otherwise offer them special advantages until they accept the transition to shareholders and thus get rid of the payment of the company debts.[1019]

From the aforementioned, it can be said that ordinary shares are shares that do not entitle their holders to any rights of any special nature and the rights of the owners of such shares are ranked after the rights of the owners of preference shares.[1020] In contrast, preference shares give their owners priority or preference: the owners of such shares enjoy (whilst shareholders by ordinary shares do not) various advantages, which might be priority in getting profits, priority in sharing of the company assets upon liquidation or more votes in the General Assembly of the company.[1021]

Concerning the permissible issuance of preference shares, UAE legislators believe that preference shares that have multiple votes may allow the minority shareholders who own the majority of votes to control the fate of the company and impose their hegemony on the majority of the shareholders. For this reason, UAE Companies Law prohibits companies from issuing preference shares.[1022]

[1017] Yunus (n 1007) 315; Sarkhou (n 1009), Melhem A A, Ibid, 91; Abdul Rahim T, *Expiation of Egyptian new Company Law* (3rd edn, Dar Alnhdah Arabia 2000) 582 Arabic Source. Yunus adds that if there is nothing in the company system that permits bypassing the principle of equality, it is not permissible to violate this rule unless such an action is approved by all the shareholders of the company
[1018] Al-azmi (n 940) 293
[1019] Ibid, 290 , Kaliouby (n 1017) 319, 249; Sarkhou (n 1009) 109; Abdul Rahim (n 1004) 684, 582
[1020] See Tharwat Abdulrahim (n 1023) 582
[1021] For more see Morse G Charlrthworth & Mores,*Company Law*(16th Edn, Sweet & Maxwell 1999), 178; Penningtion R, *Company Law* (7thedn, Butterworth 1995) 254
[1022] Article 152/2 of UAE Companies Law

Qatari legislators have remained silent regarding the issuance of such shares, neither permitting nor preventing it, which leads to confusion amongst the Arabic jurisprudence about the permissible extent of increasing a company's capital in preference shares according to the current texts of the relevant law. Younis (1991)[1023] and Salym (2001)[1024] say that a company can only amend its statute by adding provisions to increase the capital of the company by preference shares if all old shareholders approve. Nevertheless, Abd Al-Rahim (1975),[1025] Radwan (1978)[1026] and Sarkhou (1982)[1027] believe that, according to the Qatar Companies law, it is permissible for a company to amend its statute by the decision of the Extraordinary General Assembly and then to issue preference shares. The proponents of this argument base this opinion on Articles 188 and 189 of Qatar Companies law, which gives the Extraordinary General Assembly the right to increase some shareholder rights and obligations or decrease them. Accordingly, the researcher believes that the opinion that a company can issue preference shares by a decision from its Extraordinary General Assembly is the right view. This is owing to the fact that, the issuance of preference shares does not result in an increase in the old shareholders' obligations, as they will retain the same rights they enjoyed prior to the issuance of preference shares. The only occurrence that will happen in this case is that the preference shares will give their owners some privileges. Furthermore, in the case of issue preference shares there is the opportunity for the old shareholders of the company to accept or refuse the issuance of preference shares during an Extraordinary General Assembly meeting.

Given the ambiguity of UAE and Qatar legal texts in identifying the extent of allowing the issuance of preference shares, the question raised is how the transferee company's shares are divided amongst the transferor company's shareholders if the transferee company's shares consist of ordinary shares while the transferor company has

---

[1023] Younis A H,*Commercial Companies* (House of the Arab Thought1991)
[1024] Salym R A,*Explanation Profusions of Companies Law N (159) of 1981* (2th edn 2001)
[1025] Abd al-Rahim S A, *Explanation of the Kuwaiti Commercial Law* (House of Scientific Research 1975) 351, 352
[1026] Radwan A, *Commercial Companies in Kuwait Comparative Law* (Dar al-nashr 1978) 410, 411 Arabic Source
[1027] Radwan A, Ibid

ordinary and preference shares. In other words, what is the fate of the preference shares of the transferor company if the transferee company only has ordinary shares?

According to the theory of the legal personality of a company and UAE and Qatar laws, the transferor company's shareholders obtain shares in the transferee company instead of their shares in the transferor company that expired due to the merger. However, the picture concerning ordinary and preference shares of companies involved in a merger remains incomplete and unclear in the current texts of UAE and Qatar Companies Laws. Ahmed M Mehrez (1985),[1028] Hussein Al-Masri (1986)[1029] and others[1030] argue that, according to UAE and Qatar laws, if the statute of the transferee company does not authorise the issuance of preference shares, the company can amend its statute by adding rules to allow the issuance of preference shares by a decision of the Extraordinary General Assembly of the company. However, the Extraordinary General Assembly of the company may refuse to amend the statute of the company to issue preference shares, which again leads to the question about the fate of preference shares in the transferor company.

Amir Siddiqi (1998)[1031] believes that the treatment of this problem is the responsibility of the transferor company: if the rule does not authorise forcing the shareholder to give up their shares, the shareholder is then not compelled to sell their shares to the company. However, the bypassing of this rule is permitted if the statute of the transferor company allows it to recapture preference shares.[1032] If the company decides to use its right to preference share recovery, this gives the owners of the recovered shares the market value of such shares, plus any dividends payable, and then the owners of the refunded shares exit from the company.[1033]In such a situation, the

---

[1028] Ahmed Mohamed Mehrez,*Companies Merger: A comparative Study* (Dar Al-Nahda Al Arabiya 1985) 159, 245 Arabic Source

[1029] Hussein Al-Masri, *Legal aspects of the merger of investment firms in joint stock companies* (First edition, Dar Al-Nahda Al Arabiya1986) 153, 251. Arabic Source

[1030] Shafiq M (n 889) 517, 45, Abdul-Rahim T (n 968) 684, 582

[1031] Amir Siddiqi (n 961)

[1032] Recapturing shares differs from the consumption of shares which means the performance of the nominal value of shares, with the shareholder maintains his capacity as a partner in the company and entitlement to the profits; however, the recovery of shares is an option the company could use or neglect.

[1033] Al-Melhem (n 98) 56

company is required to declare its desire to recover the preference shares and the company's announcement usually draws the attention of the owners of preference shares to their right to convert their shares into ordinary shares, thereby giving them the opportunity to convert such shares.[1034]

Al-Melhem Ahmed (2000)[1035]adds that the statute of the company often provides the owners of preference shares with the right to convert their shares into ordinary shares. This conversion provides an option for the owners of preference shares that they can use or ignore. This right corresponds with the company's right to recover preferred shares, where custom indicates the existence of these two rights side by side in the statute of the company.[1036]Accordingly, if the transferor company utilises its right to recover preference shares, the campaign of preference shares similarly adopts their right to convert their shares into ordinary shares, whereupon all shareholders of the transferor company become shareholders by ordinary shares.[1037]

However, if the transferor company's statute does not authorise the company to recover preference shares and does not give the owners of preference shares the right to convert their shares into ordinary shares, the transferor company must then obtain approval from the owners of preference shares to accept ordinary shares in the transferee company. If the transferor company does not get the approval of preference shareholders, the merger process fails. Nevertheless, if the transferee company obtained the approval of the owners of preference shares, they must then receive ordinary shares in the transferee company equivalent to the actual value of their preference shares in the transferor company.

However, if the transferor company's statute does not authorise the company to recover preference shares and does not give the owners of preference shares the right to convert their shares into ordinary shares, the merger process fails. Nevertheless, if the

[1034] Al-Melhem (n 98) 56
[1035] AhmedAbdul Rahman Al-Melhem, *Preference Shares in Kuwait Companies Law and Comparative Law* (first edition, Council of Scientific Publications 2000) 67.
[1036] Al-azmy (n 840) 273; Al-Melhem A (n 941) 67
[1037] Al-melhem (n 941) 61, 67

transferee company obtained the approval of the owners of preference shares, they must then receive ordinary shares in the transferee company equivalent to the actual value of their preference shares in the transferor company.[1038]

In order to provide more clarity surrounding how a transferee company can distribute its shares amongst the shareholders of the transferor company in the case of multiple share classes, the following example is provided.[1039]

Let us assume that transferee company A has issued a total of 100,000 shares versus the net assets of transferor company B, which was valued at an estimated £2 million. The capital of company B is divided into two types of shares: ordinary shares totalling 200,000 shares (the actual value per share is £7) and preference shares numbering 60,000 shares (the actual value per share is £10).

The distribution of the shares of the transferee company would be as follows:
The actual value of ordinary shares = 200,000 shares × £7 = £1,400,000 pounds
The actual value of the preferred shares = 60,000 × 10 = £600,000

The new shares will be distributed by 1,400,000 to owners of ordinary shares to 600, 00 for owners of preference shares, at the rate: 7:3

Thus, the allocation for owners of ordinary shares is 0.7 from the shares of the transferee company, which would be their share 100,000 × 0.7 = 70,000 shares in the transferee company.

The owners of preferred shares are allocated 0.3 from transferee company shares, with their share then being = 100,000 × 0.3 = 30,000 shares in the transferee company.

[1038] Al-melhem (n 941) 61, 67; Al-Melhem (n 1041)123
[1039] The rules of this example is taken from the example mentioned in Al-azmy (n 940) 294; Al-saghir (n 483) 217

Thus, every 20 ordinary shares in transferor company B is equivalent to 7 shares in transferee company A. Moreover, every two preference shares in transferor company B are equivalent to one share in transferee company A.[1040]

From the above, we can conclude that when the capital of the transferor company is divided into ordinary and preference shares, the rule requires the retention of shareholders' rights as conferred to them by their old shares before the merger.[1041] The consequence is that it is necessary for the owners of preference shares in the transferor company to get preference shares in the transferee company.[1042] However, if the statute of the transferee company does not authorise the issuance of preference shares or its Extraordinary General Assembly does not agree concerning the issuance of such shares, as is the case in the legal system of UAE and Qatar Companies Laws, then the owners of preference shares in the transferor company will receive ordinary shares in the transferee company, provided that the value of the new shares is equivalent to the actual value of the preference shares.

Although such arguments provide solutions to the problem of exchanging shares when the transferor company's shares consist of preference and ordinary shares while the transferee company only has ordinary shares, the researcher believes that such a solution does not match the objectives that companies seek to achieve from the issuance of preference shares, which involve encouraging the public to subscribe to new shares (preference shares) and taking advantage of the special features offered by preference shares in order to convert bondholders to shareholders, and thus pay off its debts. This method in the distribution of shares may also lead to a slower merger process and placing additional expenses on the companies involved due to delaying the proceedings. This distribution method may also force the owners of preference shares in the transferor company to accept ordinary shares in the transferee or new company, which may push some of them to object to the merger and exit from the company. Therefore, the researcher believes that the legislators of the UAE and Qatar should remedy and address

[1040] Alazmi (n 940) 290, 294
[1041] Ahmed Melhem (n 1041)
[1042] Sarhoh (n 986); Al-azmi (n 940) 305

the lack of provision in the texts of their laws for the right for companies to issue preference shares side by side with ordinary shares. They should take advantage of the text in the UK Companies Act relating to classes of shares and provide similar texts, taking into account the peculiarity of the work of companies and shareholders in the region.

5.6 Overcomethe Problems of Distribution of the shares of Companies Involved in M&As

Through searching and comparing the texts of the laws of Qatar, the UAE and the UK, it can be concluded that there are some similarities between some of the texts, e.g. in consideration of the rights of shareholders regarding mergers, rights in profits, the right to attend meetings of General Assemblies, the right to vote on resolutions and the right to get new shares with profits in the transferee company. Notably, however, many of the texts of the aforementioned laws differ in the way they deal with other related topics, as well as in regard to certain rights and benefits that must be guaranteed by companies involved in mergers for their shareholders. Undoubtedly, shareholders are an integral part of the company entity. In this regard, a series of legislative and procedural measures must be undertaken in order to preserve shareholders' rights in M&A cases, as described below.

Firstly, in order to achieve the approval of shareholders on M&A decisions, articles 140 of the UAE and 140 of Qatar Companies Laws[1043] (much like section 907 of the UK Companies Act and regulation 13 of the UK Cross-Border Act 2007) require approval by a majority in number, representing 75% of the shareholders. However, unlike UK legislation, UAE and Qatar laws require a double majority, representing a numerical majority of the shareholders attending the meeting and a majority in the value of the shares represented at the meeting. Not only that, but the texts of the laws of both

[1043] Which provide for "The decision in dissolve or liquidate or transfer or merge the company in another company will not be taken except in the extraordinary general assembly meeting. The extraordinary meeting of the general assembly will not be valid except it is attended by the shareholders representing minimum three quarter of the capital".

countries still remain unclear concerning the majority required for the issuance of decisions by the Extraordinary General Assembly of the company in second meetings in the case of the absence of a quorum at the first meeting. They also do not empower the court with the right to monitor and assess cases that do not require the presence of shareholders or their representatives to approve M&As, which leads to difficulties as decisions regarding M&As given to the control of the owners of the large shares on the decision-making, thereby leading to the failure of the merger operation in cases of non-adherence to the minimum level required by the text.

With the aforementioned taken into account, it would be preferable for Qatari and Emirati legislators to be more discerning with respect to the majority required for the issuance of decisions in the Extraordinary General Assembly of the company relating to approvals on merger decisions. Such a ratio must be taken by focusing on or considering the shares of shareholders represented at the meeting - not deliberation of the shares of the partners as a whole, as is the current situation - by modifying the current text of article 140 of UAE Companies Law, as well as article 140 of Qatar Companies Law. In addition, controls should be developed to regulate and ensure the approval of shareholders on merger decisions. There would be no problem in taking advantage of section 907 of the UK Companies Act and regulation 13 of the UK Cross-Border Merger Act[1044] and providing similar text.

Secondly, UAE and Qatar Companies Laws do not recognise the rights of shareholders opposed to the idea of the merger to exit from the company and recover the value of their shares. Accordingly, when two companies agree on a merger and this agreement is adopted by the competent authority specified by law, the merger decision is applied without the need to achieve the approval of shareholders who may oppose the merger project, which is inconsistent with the rights of shareholders to exercise their rights and authorities guaranteed by law. To solve such matters, shareholders who do not wish the merger or to remain in the transferee company should be able to withdraw from

[1044] Which provide for “The scheme of merger must be approved by a majority in number, representing 75% in value, of each class of members of each of the merging companies, present and voting either in person or by proxy at a meeting”.

the company by selling their shares on the stock exchange securities, as long as there is no provision in the law or the statute of the company restricting the trading of such stocks. This accordingly ensures the principle of equity trading for shareholders who do not seek to achieve a merger and wish to exit from the company at a time that suits them, which simultaneously leads to the entry of new shareholders without prejudice concerning the capital of the company. In order to avoid such problems, Qatari and Emirati legislators should also add text to the texts relating to the concept of mergers in a form that allows shareholders who are unwilling to enter into a merger to exit from the company. Notably, there would be no problem in taking guidance and benefit from Article 135 of Egyptian Companies Law,[1045] which provides for this right that by saying "shareholders who object to the merger or acquisition decision in the General Assembly or who did not attend the meeting by an acceptable excuse can request exit from the company and recover the value of their shares, and that in a written request up to the company within twenty days from the date of publicity or published merger or acquisition decision, and the value of shares will be estimated by agreement or Judiciary, taking into account the current value of all assets of the company".[1046]

Third, the UK Companies Act allows for companies to issue different types of shares that come with different conditions and rights. It is known that shares differ from company to company. Amongst these shares, there are ordinary shares, preference shares, shares in cash and shares in kind. Furthermore the UK Companies Act provides that a "merger is where one of the companies proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities of that one to shareholders of the other, with or without any cash payment to shareholders".[1047] Accordingly, it must be recognised that, in accordance with the provisions of the UK CA, it is not likely that practical problems will arise with regard to the issue of replacement shares between the shareholders of the transferor and transferee companies because each shareholder of the

[1045] Egyptian Commercial Companies Law No 159 of 1981. In this text we are guided by the Egyptian Commercial Companies Law due to text clarity and the similarity of the texts of the State of Qatar and UAE laws with the texts of Egyptian Law
[1046] Article 135 of the Egyptian Companies Laws No 159 of 1981
[1047] Article 595 of the UK Companies Act 2006

transferor company will get shares in the transferee company, each in proportion to the type the shareholder owned in the transferor company, or an amount of money.

Unlike UK legislation, UAE and Qatar laws do not allow for companies to issue different types of shares. Assuming equal actual values of the shares of companies involved in the merger is an unrealistic assumption, as the actual values of shares of companies often differ, even in regard to their nominal value. This difference appears clearly in the case of the shares of the transferor company that includes decimal fractions whilst the transferee company's shares do not include these. In such cases (according to UAE and Qatar Companies Laws), the share is part of the parts of equal value of the company's capital and is indivisible.[1048] Also, unlike UK Companies Act, the laws in both countries do not give the shareholders of the transferee company the right to buy shares from the transferor company shares by cash. Notably, this leads to issues when a transferee company divides its shares in regard to the shareholders of the transferor company. This problem can be overcome through selecting the most appropriate number from the shares of the transferee company, which should be equivalent in terms of the true value number (i.e. a number without decimal fraction) to the shares of the transferor company. Otherwise, the most appropriate number should be selected from the shares of the transferor company, which can be rounded to an integer (provided that the rate of fractional shares is rounded in the smallest way possible), with compensation for shareholders who have been affected by the rounding of fractional shares. They should be paid by a sum of money corresponding to the value of the fractional shares that has been waived or could not be approximated. In addition, the legislators of UAE and Qatar should add text to the Companies Laws of the two countries to allow the transferee company to pay in cash to the transferor company shareholders in return for their shares that cannot be rounded to an integer. This can be achieved by taking advantage of sections 902 and 905 of the UK CA and regulation 2 of the UK Cross-Border Merger Act by providing similar text.[1049]

[1048] For more, see article 154 of the State of Qatar Companies Law

[1049] Instead of this the UAE and Qatar legislator can also providing for this by saying: "in return for merger is shares in the transferee company for the benefit of shareholders of the transferor company with payment in cash or without any cash payment, with the condition that the payment in cash does not exceed 20% of

In addition, it is well known that company shares are divided in terms of the type of quota offered by the shareholder into shares in cash, whose shareholders only have to fulfil one-quarter of the nominal value of the shares (i.e. 25% of these shares), and material shares, whose value must be fulfilled in full. In this regard, if the shares of the transferor company consist of shares in cash not fully paid their values and material shares fully paid their values, whilst the shares of the transferee company consist of shares in cash and material shares fully paid their values, the problem arising here is how the transferee company can distribute its shares to the shareholders of the transferor company.[1050] Qatar and UAE laws do not govern this case; therefore, in order to solve these matters, the researcher believes that the transferor company must request that shareholders whose shares are not fully paid their nominal value should accordingly pay the remainder from the nominal value before the merger. In the case that the shareholders delay or reject payment, the company may warn them to offer these shares for sale at auction or on the stock market if the shares are restricted in the market. Thus, all shares fulfil their nominal values, paid in full, which facilitates the distribution of the transferee company's shares.[1051] The transferee company continues to distribute its shares to all the transferor company's shareholders evenly -each with the same percentage of shares as they held in the transferor company before the merger. Furthermore (and in order to resolve this matter on a permanent basis), there is nothing to prevent Qatari and Emirati legislators from adding text to the laws to organise the payment process for the value of cash shares that have not had their full value met by the shareholders, or to organise the sale of their shares by auction as soon as possible after the start of merger procedures.

---

the capital of the shares of the transferor company". Here it should be noted that, through the shares trading system—in addition to payment in cash—the exchange of shares without prejudice to the unity of the share will be facilitated, which provides a solution for the problem of fractional shares that may be faced with most mergers. Moreover, through the requirement of the payment in cash, provided that does not exceed the amount of 20% of the capital of the merged company - as researcher deems-is intended to avoid mistakes and bugs, commonly incurred by the lawmakers in Britain when failing to specify the percentage of the versus in cash which the shareholders of the merged companies can receive in addition to the shares they will receive in the merging or new company, where if payment in cash exceed 90%, the process becomes an acquisition and not a merger.

[1050] For more, see Section 4.5 of this Chapter

[1051] **S**ee the article 167 of the UAE Companies Law

Furthermore, UAE and Qatar laws do not allow for the company to issue preference shares. Accordingly, if a foreign company's shares consist of preference and ordinary shares (the transferor company) and the company wishes to merge with a national company that only has ordinary shares (the transferee company), the matter is raised as to how the transferee company's shares are distributed to the shareholders of the transferor company after restructuring the company resulting from the merger. To solve such problems, the researcher believes that responsibility for the procedural treatment of this problem must be with, or in the hands of, the transferor company. In this regard, if the general rule requires that it is not permissible to force the shareholder to abandon or sell his shares in the company, it may allow concession to this rule if the statute of the transferor company allows the company to recover preference shares. If the company decides to use its right to recover the shares, this means it would give the owners of the recovered shares the market value of these shares in addition to the profits, thus resulting in the exiting of the owners of the recovered shares from the company.[1052] Accordingly, if the transferor company uses its right to recover preference shares, the owners of the preference shares may use their right to convert their shares into ordinary shares, and then all shareholders of the merged company become shareholders by ordinary shares.[1053] However, if the statute of the transferor firm does not allow for the company to recover preference shares and does not allow for the owners of preference shares to convert their shares into ordinary shares, it is incumbent upon the transferor company to get approval from the owners of preference shares to accept ordinary shares in the transferee company. Notably, whoever gives their consent must receive ordinary shares in the transferee company equivalent to the actual value of the preference shares. The researcher also finds that this procedural solution must be accompanied by another legal solution and add legal text to the heart of the Companies Laws of the two countries allowing companies to issue all types of shares like the UK Companies Act. This would avoid the problems that arise due to differences in the actual values of shares in the case of exchanging shares between companies involved in mergers.

[1052] For more, see Ahmed Abdul Rahman Al-Melhem, '*Preference Shares in the Kuwait Companies Law and Comparative Law* (First Edition, Council of Scientific Publications2000), 56
[1053] Ibid, 56, 58

Additionally, it is known that the shares of some companies are divided into capital shares and enjoyment shares, where enjoyment shares are shares consuming their nominal values: the owner recovers this value during the life of the company.[1054] On the other hand, the owners of capital shares only recover their nominal values after the expiration and liquidation of the company. Here, it should be noted that shareholders who have consumed their shares do not experience any interruption in their relation with the company, but rather remain able to retain their capacities as shareholders and achieve the enjoyment of shares as opposed to the shares of capital consumed. However, this description does not give the shareholder the same rights as they enjoyed prior to the consumption of such shares. Therefore, a problem arises here concerning how the shares of the transferee company are distributed amongst the transferor company's shareholders if its shares are divided into capital and enjoyment shares whilst the transferee company's shares are only capital shares.

UAE and Qatar laws do not provide answers to such problems, so the researcher believes (going with the opinion of jurists[1055]) that as long as the enjoyment shares have fewer rights than the rights of capital shares, logic requires that the value of enjoyment shares is less than the value of capital share. Therefore, it is not fair or logical that there should be equality between the owners of enjoyment shares and the owners of capital shares, although each of them gets the same shares in the transferee company. For this reason, the transferee company's shares are distributed to the shareholders of the transferor company on the assumption that these shares represent funds from the liquidation of the company, and then every shareholder gets a share equivalent to their share in the output of the liquidation of the company.[1056] The owners of enjoyment shares enjoy the same rights as owners of capital shares, except they recover the nominal value of their shares when the company goes into liquidation. This means that, upon company liquidation, the owners of capital shares recover the nominal value of their shares; after that, the remaining shares of the company are divided for all shareholders into capital or

[1054] Radwan Abu-Zeid, *Joint Stock Companies and the Public Sector*(Dar Al-Arab Thought 1983) 97, 115
[1055] For more see Alazmi (n 940) 290, 315; Kaliouby (n 1017) 319, 248; Taha M K (n 1017) 215, 223; Rahim S A (n 1031) 683, 582; Bahgat K M (n 1017) 339, 277; Sarkhou J (n 1009) 125
[1056] For more see Section 5.4:Distribution of Shares According to UAE and Qatar Companies Laws

enjoyment shares. The consequence of this is that the owners' of capital shares must receive the number of shares in the transferee company equivalent to the nominal value of their shares that they owned in the transferor company. Accordingly, the owners of capital shares become in the same position as the owners of enjoyment shares, as every one of them recovers the nominal value that contributed to the capital of the transferor company. After the positions of the owners of enjoyment and capital shares become equal, the shares of the transferee company are then distributed for all shareholders, i.e. the owners of enjoyment shares and the owners of capital stock, on the basis of the exchange of one rate without distinction between them.

5.7 Conclusion

This chapter has discussed and classified the rights of shareholders in M&As. It has found that, according to the theory of the legal personality of a company, a merger in the legal sense is an operation that leads to a change in the equity of the shareholders of the transferor company, whereby each one will get shares in the transferee company (in line with the "share exchange ratio") or a cash payment in return for their shares in the transferor company. Consequently, the transferor company's shareholders enjoy the same rights as the transferee company's shareholders, such as the rights to attend the General Assembly and to discuss, vote and appeal decisions issued by the General Assembly concerning the violation of the statute of the company or the provisions of law; rights in the profits; and the right to a share from the output of liquidation.

The chapter has also highlighted how British legislature more clearly addresses share exchange problems, as it authorises companies to issue preference shares side by side with ordinary shares, gives three-quarters of the shareholders the right to vote on merger decisions and entrusts the competent court to make sure this is achieved, with an with an evaluation of cases that do not require the presence of shareholders during the voting on the merger decision. There is no doubt that the existence of such texts in British legislation facilitates the exchange of shares between the transferee and transferor company when the transferor company's shares consist of preference shares and ordinary

shares while the transferee company only has ordinary shares. Furthermore, the identification of the percentage of the votes of the shareholders present that is necessary to approve the merger decision removes the fear of failing to reach a merger decision due to the control of the owners of large capital.

Furthermore, according to the CA and the UK Cross-Border Act the consequences of merger is that; the transferor company is dissolved without going into liquidation, and on its dissolution transfers all its assets and liabilities to the transferee company. The consequences of that the transferor company shareholders obtain new shares or payment in cash in return for their shares that transferred to the transferee or new company. These texts solve the issue that arises due to differences between the nominal and actual values of the shares of the companies involved in the merger and facilitate the distribution of the transferee company's shares to the shareholders of the transferor company in cases where the transferor company's shares consist of fully paid-up shares and not fully paid shares. They also provide a solution to the problem of exchanging shares that include decimal fractions, which leads to the quick completion of the merger process, a reduction in costs and an improvement in its likelihood of success. However, UK CA and Cross-Border Merger Act do not specify the amount that the transferee company is allowed to pay instead of some shares in the transferor company, which may lead to the merger lose one of its properties and lead to confusion between a merger and an acquisition. This can be overcome by specifying the sum necessary to purchase the shares of the transferor company that cannot be cannot be replaced for any reason.

The chapter also highlighted the differences between the texts of the UK CA and UAE and Qatar Companies Laws and developed solutions relating to the rights of shareholders in M&A cases. Accordingly, it was found that, unlike the UK CA, UAE and Qatar Companies Laws do not allow companies to issue preference shares. Importantly, unlike sections 902 and 905 of the UK CA and section 2 of the UK Cross-Border Merger Act, articles 274/4 and 275 of Qatar and articles 277/4 and 279 of UAE Companies Laws do not allow the transferee company to make payments in cash in return for some of the transferor company's shares that cannot be replaced by new shares due to a difference in

the actual values of the shares between the two companies. This occurs when the transferor company's shares are divided into preference and ordinary shares while the transferee company only has ordinary shares, when the transferor company's shares consist of fully and not fully paid-up shares while the transferee company only has shares not fully paid, or otherwise when the transferor company's shares include decimal fractions while the transferee company's shares are devoid from fractional shares.

Furthermore, for merger decisions, unlike section 907 of the UK CA and section 13 of the UK Cross-Border Merger Act, articles 137 and 140 of UAE and article 140 of Qatar Companies Laws require approval from the majority of shareholders attending the meeting who own a majority of shares, which may lead to the failure of the merger process in cases where there is a lack of the quorum required by law. Furthermore, unlike sections 902 and 905 of CA and regulations 2 and 17 of the UK Cross-Border Act,[1057] Emirati and Qatari legislators have failed to govern the rights of partners who reject the idea of the merger project and have also not provided them with the right to exit from the company and recover the value of their shares.

In order to resolve such problems, the researcher concluded that companies involved in a merger should develop plans and programmes to solve the problem of exchanging shares by compiling an accurate inventory and performing an assessment of the shares of the companies before making the merger decision. Then, the owners of shares that have not been fully paid their actual values should be given the opportunity to pay the full values or sell their shares at auction. Emirati and Qatari legislators should add legal text to the Companies Laws of the two countries to allow companies to issue preference shares, as well as allow the transferee company to pay in cash instead of some of the shares of the transferor company to avoid the issue that arises due to differences in the actual values of the shares of the two companies involved in the merger, just as in the UK Companies Act. Also, in order to resolve these problems, UAE and Qatar legislators should add legal text that allows or gives any shareholder unwilling to participate in the

[1057] According to sections 902 and 905 of the CA and regulations 2 and 17, new shares or payments in cash are obtained by the transferor company's shareholders from the transferee or new company in return for the merger

merger the right to exit from the transferor company and recover the value of their shares or to sell them by auction. In addition, Emirati and Qatari legislators should replace the current texts of the laws of the two countries with new texts focusing on the majority of shareholders present at the meeting, taking advantage of section 907 of the CA and regulation 17 of the UK Cross-Border Merger Act.

It must be noted that this chapter focused on the rights of shareholders in mergers without acquisition, as trading shares between companies involved in acquisitions does not raise any legal problems, due to the acquired company's shareholders receiving an amount in cash in return for their shares in the acquired company, which is transferred to the ownership of the shareholders of the acquiring company. Accordingly, the acquired company's shareholders do not receive any shares entitling them to any rights in the acquiring company after giving up their rights for the benefit of cash. Therefore, in acquisition cases, there are no issues relating to share exchange between the acquired company's shareholders and the acquiring company. Adding such texts to UAE and Qatar Companies Laws through taking advantage of the UK CA and Cross-Border Merger Act would solve the matter of the exchange of shares between transferor and transferee companies when there are differences between the nominal and actual values of the shares of the companies involved. It would also allow the minority shareholders who object to the merger decision to get out of the company and recover the values of their shares in cash, which leads to the quick completion of the merger process, a reduction in costs and an improvement in its likelihood of success.

CHPTER SIX: CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

This thesis examines how M&As affect employees, directors and shareholders, and the legal basis for transferring their rights and obligations between companies involved in such operations, according to the UK Companies Act, the TUPE Regulations and the Cross-Border Merger Act and UAE and Qatar Companies and Labour Laws. Given that the negative effects of M&As on employees, directors and shareholders commonly occur in both UK and UAE and Qatar corporations and the fact that UK legislation regulates such processes more clearly than the UAE and Qatar legislations, one of the important reasons for making this study a legal comparative study dealing with the rights and obligations of employees, directors and shareholders in M&As was to take some lessons from the results of the research and the UK legislation's legal texts to improve the texts of the UAE and Qatar laws on this matter.

Mergers and acquisitions are currently two of the most important ways for companies to expand their operations, increase profitability in the long run, benefit from economies of scale, reduce costs, reduce taxes, build 'economic empires' and protect themselves from bankruptcy. However, M&As between companies may aim to reduce costs by laying off employees or members of the Board of Directors, which may be inevitable in some M&As. The effects of M&As in terms of the rights and obligations of employees, directors and shareholders vary from entity to entity and also from country to country, depending on the structure of the deal, the type of M&A and the type of services provided by the enterprises involved in the merger or acquisition. Accordingly, some M&As have positive effects in terms of increased efficiency and reduced costs in an attempt to improve overall profitability, which intensify incentives to exert effort and thus achieve economic and employment growth.

On the other hand, there is growing evidence of employment losses (skilled and semi-skilled) post-merger that extend to the Boards of Directors and may include the wages, efficiency and psychological wellbeing of employees, which may create instability in target executive teams that ultimately lasts for many years following the acquisition. This may lead to feelings of confusion among the employees and the Board of Directors, which may encourage them to leave the organisation, causing the corporation to lose their expertise. Such effects may also lead to objections by directors who feel that they are going to lose their jobs so work to disrupt or delay M&A proceedings. This can be done by deliberate delaying signing a draft of the proposed terms of the merger scheme, by providing misleading information about the company's financial situation and its profits, by disclosing the secrets of the company to another company, or by neglecting their duties or incite the employees to leave work or to object to the merger, which thus leads to negative impacts and contributes to the failure of the merger process.

These problems are not limited to company employees or Boards of Directors; they also extend to shareholders, who are hampered by many procedural and legal obstacles and problems when exchanging shares between the transferor and transferee companies when there are differences between the class of shares and the actual value of shares of the transferor company and the actual value of the transferee company's shares: if the shares of the transferor company consist of ordinary and preference shares while the shares of the transferee company consist only of ordinary shares, or if the shares of the transferor company are divided into fully and partly paid-up shares, while the shares of the transferee company are divided into shares paid their nominal values in full.

In addition, according to the UAE and Qatar laws, the company capital is divided into equal shares is indivisible in the face of the company, which leads to issues relating to how the transferee company shares are distributed amongst the transferor company's shareholders if the shares of the transferor company including shares with decimal fraction, while, the transferee company shares free from decimal fraction? Furthermore, as some merger or acquisition operations might not receive acceptance from the partners

or shareholders, the question accordingly arises concerning the extent of the rights of those partners or shareholders who do not support the suggestion of the merger or acquisition to exit from such operations and recover the value of their shares. The problems do not stop at this point but M&A problems may affect the profits of the shareholders of the companies involved

Several factors help to explain post-merger employee layoffs, including: the restructuring of new companies resulting from M&As, pre-takeover poor performance of merging firms or a decline in product demand arising as a result of general business cycle conditions and technological or other industry-wide changes. Negative shareholder wealth effects could also be the result of managerial empire building or hubris: managers may engage in M&As in order to maximise their own utility at the expense of shareholders. Another possibility is that M&As are initiated by firms with overvalued equity. There is also difficulty in accurately measuring M&A returns and in timing information release, with bidders systematically overpaying for acquisitions. One cause of the direct and indirect factors that increase the negative effects of M&As on employees, directors and shareholders in UAE and Qatar companies is the lack of clear provisions in the laws of both countries in addressing and regulating M&As and their legal effects.

Employees, directors and company capital are the three basic elements for the conduct of commercial ventures that companies are established to achieve. Therefore, if their rights and obligations in M&As are not resolved fairly, this can lead to a rise in layoffs, increased unemployment and depriving companies from staff experience and skills. Companies can thus incur extravagant expenses due to training new employees or due to a lack of sufficient knowledge of working conditions by the board of the new administration of the transferee or new company, who are appointed or elected after the merger. Furthermore, the negative effects of merger on the shareholders' profits or their rights to sell shares and exit from the companies involved, or not putting in place appropriate solutions for the exchange of shares when the actual value of the transferor company's shares differ from the actual value of the transferee company shares, may lead

to the opposition of shareholders, who see the lack of clarity regarding the results of the merger as enough reason to fear their rights after the operation. They may then withdraw their capital from the companies involved, which may lead to the failure of the merger or acquisition operation and dispel the capital of the companies, thereby undermining their service to society.

The study intended to discover why and how such impacts could occur in the corporation systems of the UK, the UAE and Qatar. It determined the legal basis for transferring the rights and obligations of employees, directors and shareholders between companies involved in M&As. The results of the study, UK legislative texts and judicial judgements were then used to improve and develop the UAE and Qatar legislations.

To achieve these objectives, the study had to examine the topic from varying aspects through an analytical comparative study between the texts of the UK Companies Act, the Cross-Border Merger Act and the TUPE Regulations with the UAE and Qatar Companies and Labour Laws according to two theories: the personal nature theory and the theory of the legal personality of a company.[1058] The study reached the conclusion that the legal basis for transferring these rights and obligations is due to the legal personalities of the companies involved in M&As. Accordingly, a merger leads to dissolve the transferor company and the demise of its moral personality, as well as an increase in the capital of the transferee company in the share of all kinds of assets of the transferor company, without going into liquidation.[1059] Furthermore, M&As affect the Memorandum of Association of the transferor company in order to secure the entry of the transferor company's partners or shareholders. Accordingly, the transferee company not only receives the assets of the transferor company but also receives the venture that the company sought to achieve.[1060] Also, it receives all of the rights of the company in the

[1058] For an explanation of this theory, see Section 2.3 of Chapter Two of this thesis.
[1059] For more information, see regulation 2 of the Cross-Border Merger Act 2007.
[1060] For more information, see regulation 2 of the Cross-Border Merger Act 2007, which provides that "The consequences of a cross-border merger are that— the assets and liabilities of the transferor companies are transferred to the transferee company".

form of a sum of money covered, including the positive[1061] and negative elements.[1062] The result of this is that the transferee company replaces the transferor company in terms of its rights and obligations.

Consequently, in the case of mergers, the transferor company's shareholders obtain new shares in the transferee company in return for their shares that expired due to the merger. Furthermore, during M&As, it may be useful for the employees and directors who were running and managing the ventures of the transferor company before the merger or acquisition to continue managing and running the ventures that the transferor company was established to achieve, which transferred to the transferee or new company by the merger or acquisition, so as to ensure that the large ventures of companies involved in M&As do not lose the experience of the staff and Board of Directors. Moreover, to ensure the success of M&As, it is essential to keep employee and director turnover low after M&As, as there can be large financial implications from the cost of hiring new employees, the loss of knowledge and the loss of client relationships. Therefore, organisations must proactively work to maintain or regain employees and directors through taking tangible steps to effectively reduce turnover during a merger or acquisition.

The theory of the legal personality of a company is the theory that the researcher believes and supports as the legal basis for transferring rights and obligations from the transferor to the transferee company. On this basis, M&A processes only occur between existing companies enjoying legal personalities. Also, the personal nature theory gives rise to the idea that the relationship between a company's owners and its employees and directors is stronger than the relationship between employees and directors with the company. Furthermore, the concept that the shareholders own everything in companies is

[1061] For the meaning of 'positive elements', see the footnote in Section 2.3: Theory of the Legal Personality of the Company in Chapter Two of this thesis.
[1062] For the meaning of 'negative elements', see the footnote in Section 2.3: Theory of the Legal Personality of the Company in Chapter Two of this thesis.

old idea and not present in the legislations of the UK, the UAE and Qatar,[1063] which currently aim to appreciate and uphold the social and community interest aspects and depend on the legal personality of the company in the interpretation of the legal relationship between a company and its employees and directors. Accordingly, employees and directors have a relationship with the organisation itself, irrespective of who their employer is. This recognition is what has led the Companies,[1064] TUPE[1065] and Cross-Border Merger[1066] Acts of the UK, in addition to the UAE and Qatar Companies[1067] and Labour Laws,[1068] to provide for the automatic transfer of employees' rights and obligations from the old employer to the new employer, and the automatic transfer of shareholders' rights from the transferor company to the transferee company in a merger. Wherefore, the modern companies and labour laws of the UK, the UAE and Qatar have abandoned the personal nature theory on the basis that companies fare economic venture with a view to appreciate and uphold social and community interest aspects, shareholders and all other stakeholders of the company. Therefore, their existence should be maintained and encouraged.[1069]

The study also found that merger is a partnership contract that occurs by the acceptance of the shareholders of both the companies. Accordingly, the transferor company's shareholders obtain new shares in the transferee or new company in return for their shares in the transferor company that expired as a result of the merger. By contrast, an acquisition is a sale contract, so the acquired company's shareholders obtain cash in return for their shares; thus cutting off the legal relationship between the acquired company and its shareholders. It was also concluded that M&As should not impact the rights and liabilities of the owners of individual and collective employment contracts; it

[1063] See section 904 of the UK Companies Act 2006, regulations 2 and 17/ 2 of the Cross-Border Merger Act 2007, regulations 4 and 5 of TUPE Act and articles 280 of UAE and 277 of Qatar Companies Laws with articles 126 of the UAE and 52 of Qatar Labour Laws.
[1064] Sections 904, 902 and 905 of the UK Companies Act.
[1065] Paragraphs 4, 5 and 7 of the UK TUPE 2006.
[1066] For more information, see regulation 17/ 2 of the UK Cross-Border Merger Act 2007.
[1067] Articles 280 of UAE and 277 of Qatar Companies Laws.
[1068] Articles 126 of UAE and 52 of Qatar Labour Laws.
[1069] This concept for companies confirmed by regulation 17/ 1/ b of the UK TUPE Act and articles 126 and 52 of Qatar labour laws which provide for "The consequences of merger are that— the rights and obligations arising from the contracts of employment of the transferor companies are transferred to the transferee company".

was pointed out that the workers' rights that are transferred are not limited to employment contracts but also include all the rights and obligations that they enjoyed in the transferor company before the merger or acquisition.

The study analysed the relationship between a company and its directors according to agency theory and institution theory; the researcher concluded that the relationship between any company and its Board of Directors is an agency relationship from a special type of agency contract. Accordingly, a director is not an agent for the company or its partners but is a member of its legal entity, speaks in its name and expresses its will, and their legal actions are binding on the company. Accordingly, the rules of agency theory govern the internal links between partners on one hand and between managers on the other hand. However, in the face of others, the directors are legal deputies of the company. Furthermore, the study concluded that, according to the theory of the legal personality of a company, a merger in the legal sense is an operation that leads to a change in the equity of the shareholders of the transferor company, whereby each one will get shares in the transferee company (in line with the "share exchange ratio") or a cash payment in return for their shares in the transferor company. Consequently, the transferor company's shareholders enjoy the same rights as the transferee company's shareholders, such as rights in profits; the right to a share from the output of company liquidation; and the rights to attend the General Assembly meeting, vote and appeal decisions issued by the General Assembly concerning violations of the statute of the company or the provisions of law.

The study also concluded that although UAE and Qatar laws (like UK legislation) regulate mergers, uphold the theory of the legal personality of a company as the legal basis for transferring rights and obligations between companies involved in mergers and provide for the transfer of the rights and obligations of employees and shareholders from the transferor company to the transferee or new company, through comparing UK, UAE and Qatar legal texts of laws related to M&As, it was found that there are many fundamental differences between the texts of the laws of these countries in terms of regulating M&As and the treatment of their effects on the rights and obligations of

employees, directors and shareholders of companies involved in such operations. This may contribute to increase the negative effects of M&As on the rights of employees, directors and shareholders of the companies involved; therefore, the study proposes a set of procedural and legal recommendations and solutions. More detailed findings with recommendations are summarised in the following sections:

6.1.1 Address the Legal Concepts of M&As in the UAE and Qatar Laws

Unlike UK legislation, UAE and Qatar laws do not regulate the concepts of acquisitions and cross-border mergers. The laws also do not specify the competent court for the approval of pre-merger requirements, which leads to confusion regarding the concepts of the two terms and their effects from a legal aspect, and the legal basis for transferring rights and obligations between companies involved in M&As. In order to remove this ambiguity, there is a need to rewrite the UAE and Qatar laws relating to regulate the provisions of domestic and cross-border M&As, as well as the rights of employees, directors and shareholders in M&As, commensurate with the importance of these operations.

The existence of clear legal provisions regulating M&As and the rights and obligations of employees, directors and shareholders in such operations would make it easier to understand and implement the provisions of the laws as the need arises, reduce the negative effects of M&As, create confidence in the hearts of investors and owners of capital in companies and encourage companies to enter into such operations. Wherever there are clear legal texts preserving the rights of companies and clients, this improves the likelihood of success of M&As, creating a favourable environment for M&As between companies in the region. This leads to increased investment and national companies taking advantage of the skills and reputations of foreign companies, as well as diversifying and increasing their production. Political stability in the present day depends on economic stability, and economic stability is dependent on the existence of a favourable environment and proper legal basis that regulates the transactions and preserves the rights and obligations of the parties involved in such transactions. It is

therefore important to rewrite the texts of the UAE and Qatar laws relating to M&As, reformulating them in line with the importance of M&As.

Unlike, article 904 of the UK CA and article 2/3 of the Cross-Border Merger Act, articles 276 of UAE and 272 of Qatar Companies Laws allow all companies to enter into merger operations, without distinction between companies that enjoy moral personalities and companies that do not have moral personalities. This therefore means that particular partnership companies can merge with public companies, which contravenes the texts of the laws and the theory of the legal personality of a company, which requires M&As to be between existing companies enjoying legal personalities. The texts of the articles in UAE and Qatar Companies Laws also deprive companies involved in M&As from taking benefit from the advantages of a merger, e.g. the exemption of the companies involved from all taxes and fees deserved due to the merger, which can be obtained by M&As between public shareholding companies. Accordingly, the legislators in the UAE and Qatar should determine the types of companies that can enter into M&A operations and amend article 272 of Qatar Companies Law and article 276 of UAE Companies Law. This should be done by focusing on existing companies that have a legal personality and taking advantage of the UK Companies Act and provide for the similar text of section 904 of the UK CA 2006, stipulating that "except particular partnership companies, even companies in the process of liquidation, a merger takes place between two or more shareholding companies, or between a shareholding company and a joint company, or a limited partnership company, equities partnership company or limited liability company, to form a shareholding company".

Adding such text to the provisions of Companies Laws enables companies to take advantage from the tax exemptions provided by the legislations for shareholding companies involved in M&As and avoids the entry of companies that do not enjoy legal personalities into such operations. Furthermore, it would even enable companies under liquidation to enter into M&As, on the basis that companies are economic entities created in the public and shareholders' interest; they should therefore be maintained so they can continue to do their work.

6.1.2 Solutions to reduce the Negative Effects of M&As on Employee's Rights

Although employees' contracts and other rights in M&As are important, unlike regulations 23, 29 and 38 of the UK Cross-Border Merger Act and regulations 11and 13 of the UK TUPE Act, UAE and Qatar Companies and Labour Laws do not give employees or their representatives the right to participate in M&A decisions, to be aware of M&As, to obtain information before the merger or acquisition proceedings start, or to participate in the selection of members of the Board of Directors of the transferee or new company resulting from the merger or acquisition. Furthermore, unlike regulation 11 of the UK Cross-Border Act, the UAE and Qatar legislations also do not provide the transferee company with the right to receive detailed data and information from the transferor company about the identity and age of an employee; disciplinary procedures taken against an employee; grievance procedures taken by an employee; certificates and courses that they received; or information about any collective agreement that will have effect after the transfer. Unlike regulation 13 of the UK TUPE Act, UAE and Qatar legislators do not regulate or require the transferor and transferee companies to negotiate with the affected employees due to a relevant transfer. The laws of both countries also do not enable the employer to consult with affected employees or their representatives long enough before a relevant transfer, nor do they require employees to be informed of the fact that a transfer is to take place, the date or proposed date of the transfer, the reasons for it and the legal, economic and social implications of the transfer for any affected employees.

Unlike regulations 4 and 5 of the UK TUPE Act, the laws of both countries also do not indicate the types of employment contract that can be transferred in transfers and undertakings, i.e. whether they refer to individual or collective employee contracts. Unlike regulation 33 of the UK Cross-Border Act, the UAE and Qatar Companies Laws do not give the employees of companies involved in M&As the right to elect the members of the special negotiating body in M&As; moreover, unlike regulation 36 of the UK Cross-Border Act, UAE and Qatar laws do not specify standard rules for employee participation.

Unlike regulation 7 of the UK TUPE Act, the UAE and Qatar legislations do not provide a solution for the dismissal of employees because of a relevant transfer, either before or after M&As. They also do not specify the legal status of workers in cases of bankruptcy of one of the companies involved in the merger or acquisition. Furthermore, unlike regulations 24 of the UK Cross-Border Merger Act and 12 and 15 of the TUPE Act, UAE and Qatar laws do not provide for the right of employees to file a grievance, present a complaint or seek appropriate compensation when a merging company has failed to provide information about a merger, or in the case that the information provided was false or incomplete in a manner particular to the employees or their representatives. Due to such legislative deficiencies and imbalances in the UAE and Qatar legislations, there is no doubt that they lead to increase the negative effects of M&As on employees and decrease confidence in their success. With this in mind, the researcher believes that such matters can be overcome by many solutions, as discussed in the following paragraphs.

Articles 126 of UAE Labour Laws and article 52 of Qatar Labour Laws must be developed by Qatari and Emirati legislators, providing for the rights of individual employees to be automatically transferred with the business, in all terms and conditions of their work contract, in the cases of transferring an undertaking (M&As). In order to do this, UAE and Qatar legislators can take advantage of regulation 4 of the UK TUPE Act and provide similar texts. The development of such texts in UAE and Qatar Labour Laws would lead to remove ambiguity in the current texts and confirm the transfer of the rights and obligations of owners of individual contracts in M&As, where any such contract shall have the same effect after the transfer as when it was originally made between the person so employed and the transferee.

UAE and Qatar legislators should regulate the right of the owners of collective contracts to maintain their employment contracts, transferring it from the transferor company to the transferee or new company in cases of M&As. They should also provide for the right of employees to select their representatives in M&A negotiation processes, the right to be consulted and informed about M&A procedures and the right to transfer

their contracts and all the rights resulting from them from the transferor company to the transferee company. In this regard, Qatari and Emirati legislators can take advantage of section 5 of the UK TUPE Act and provide similar texts, taking into account the working conditions in the region. The researcher believes that adding such text would remove the ambiguity concerning the interpretation of the texts of articles 126 of UAE and 52 of Qatar Labour Laws, as well as confirm the right of the owners of collective contracts to transfer their rights and obligations in M&As, just as the owners of individual contracts can. Adding text to the provisions of UAE and Qatar legislations would allow the rights of the owners of collective contracts to be transferred in transfers and undertakings, which is particularly important as most companies in GCC countries import their employees en masse through the guaranty system: the Services Office or company bring in a group of workers and then send them to work individually or by collective contracts. Providing such a provision would protect such workers, as they are the weaker party in the company.

Qatari and Emirati legislators should enact legal provisions to require companies to inform their staff regarding the conducting of M&As, giving them the right to participate by themselves or through their representatives in the selection of a Board of Directors of the transferee or new company, as well as give employee representatives the right to obtain expert assistance in information, consultation and negotiation procedures relating to M&As involving multinational companies and domestic companies. This should be implemented while also allowing employees and their representatives to give their views on M&As. In this regard, Qatari and Emirati legislators can take advantage of section 29 of the UK Cross-Border Merger Act and section 15 of the UK TUPE Act, and provide similar texts.

Qatari and Emirati legislators should also regulate the legal status of employees in the case of bankruptcy of one of the companies involved in the merger or acquisition, providing employees with the right to present a complaint to the Labour Court and the right to seek appropriate compensation when a merging company has failed to provide information about a merger, or in the case that the information provided was false or

incomplete in a manner particular to the employees or their representatives. In this regard, Qatari and Emirati legislators can take advantage of regulations 8, 12 and 15 of the UK TUPE Act and 24 of the UK Cross-Border Act and provide similar texts. The addition of such texts to the provisions of the laws of both countries would ensure that employees have the right to get correct information about the conditions of M&As and their results in an appropriate timeframe, with compensation when companies fail to correctly inform their employees.

Both the old and the new employers must inform and consult the representatives of the 'affected employees'. They must explain: why the transfer is taking place; when it will take place; what the legal, economic or social implications are; and what actions the employer might take in relation to the transfer. The employer must allow trade unions to access affected employees and provide accommodation for consultations. The laws should provide the right for employees and their representatives to present a complaint to an employment tribunal in cases where the employer has failed to consult with them. In this regard, the legislators of the UAE and Qatar can take advantage of regulations 13 and 15 of the UK TUPE Act 2006.

Organisations must effectively develop and implement an assistance programme for displaced employees. Such a programme should include advanced notification and employee consultation rights (their right to be informed within a reasonable time about the merger and how their rights and interests individually, as well as collectively, would be affected by it).

There should be focus on the dissemination of legal awareness among employees of organisations, through holding training sessions for staff, and do lectures for them in the field of law, management and public relations. Moreover, there should be the facilitation of a meeting of the workers of the organisations involved in the merger or acquisition, either directly or through their representatives. This would help the employees to participate in the process of the merger or acquisition, make them aware of the working conditions of the new company and give them knowledge of the members of

the Board of Directors. It would also help to remove any fear or anxiety of the employees that accompanied them during the merger or acquisition period.

Companies involved in M&As could resort to negotiation with their employees who cannot be accommodated as part of the merging company or who do not want to be allocated positions lower than their positions prior to the merger. Such compensation should be commensurate with the years of service that the employees had with the company and the services that they provided prior to the merger. Alternatively, the matter should be shown to the Arbitration Committee, with a commitment to its decision. This case requires that the transferor company was not exposed to bankruptcy.

Companies seeking to undergo a merger or acquisition must make bold decisions and ensure the training of personnel where their working circumstances have changed, with such methods and modern techniques adopted so that they can either work in the new institution resulting from the merger or acquisition, or in another branch of the merging or acquiring company.

The adoption of such legal and procedure solutions as mentioned above would eliminate the anxiety and create confidence and peace of mind for employees of companies involved in M&As, motivating them to work at the same level and pace as before the merger. In addition, it would help companies to avoid lawsuits that can be raise by employees who feel that the companies involved did not inform them or allow them to participate in the merger, or from employees who cannot be accommodated in the transferee or new company. Such solutions also enable the transferee or new company to take advantage of the experience and skills of its employees and the transferor company's employees, as well as avoid the expense of training new workers.

6.1.3 Overcome the Negative Effects of M&As on Directors' Rights

The negative effects of M&As are not limited to impacts on the rights and contracts of employees: they can also extend to the rights of directors. For this reason, chief executives often oppose a merger because they fear losing their jobs or transitioning to a

new role. Likewise, board members are sometimes reluctant to contemplate a merger because they feel loyal to the chief executive and the staff that have spent years building the organisation. In addition to corporate restructuring, the type of merger or acquisition and the differences between the corporate cultures involved, the differences in the legal texts of the UAE and Qatar companies laws (which set a limit on the number of members of Boards of Directors and do not develop solutions for the fate or legal status of surplus members in M&A cases) subsequently assist in the emergence of legal and practical problems during or after the end of M&As for the companies involved and their Boards of Directors, which may later lead to prevent the completion of the merger or acquisition, or have a negative impact on the results, due to objection to or wilfully impeding M&A procedures by some members of the Boards of Directors of the companies involved. If they feel that the process threatens their interests or their rights in action, they may do this through miscalculating the profits of the companies involved, hiding some important documents that may be in their possession or disclosing some secret important information related to the companies involved and its products to another company that may seek to attract them and benefit from their expertise and the information in their possession. To mitigate the negative effects of M&As on the Boards of Directors of the companies involved, the study has constructed many proposals, as discussed in the following paragraphs.

There must be some coordination between the administrations of the two companies involved in the merger or acquisition, as well as communication concerning the introduction of the working conditions and the problems and disadvantages suffered by each company (if any), making an honest and early appraisal of the extent of the ability and potential of the transferee company to combine its management with the transferor company's management. This would subsequently facilitate the merger or acquisition process and the transfer of financial contracts, debts and all rights and obligations between the companies.

There should be an election of a new Board of Directors for the new administration of the transferee company from the Boards of Directors of the transferor

and transferee companies, with the participation of the shareholders and employees or the employees' representatives[1070] of the transferor and transferee companies. The new administration becomes the sole legal representative for the transferor and transferee companies with its shareholders and employees in all rights and obligations that have arisen or may arise before and after the merger or acquisition, and the claimant and respondent in all the rights and liabilities of the companies involved. "Every director of the transferee company, who has been elected, appointed or recommended by the employee representatives or the employees, shall be a full director with the same rights and obligations as the directors representing shareholders, including the right to vote".[1071]

There should be consideration given to members of the management of the transferor company, with broad powers to contribute to the completion of the merger and prepare them psychologically to accept work in the Board of Directors of the new company, or in a new position in sub-departments of the parent company or its subsidiaries if not elected as a member of the Board of Directors of the transferee or new company. This can be achieved through activating the sub-departments in the parent company of the transferee company and the development of new positions commensurate with the size and scope of the work of the transferee or new company after the merger or acquisition. This also can be achieved by: intensifying meetings and communication between the members of the Boards of Directors, the shareholders and the workers or their representatives of the companies involved in the merger or acquisition; the exchanging of opinions; and the reviewing of the proposals that lead to the election of a new administration, taking advantage of other members and their experience in line with the transferee or new company's needs. Moreover, directors should be informed of the benefits, such as salaries, vacations and other incentives, to which they are entitled as a result of continuing to work for the company resulting from the merger or acquisition, whether remaining in their past positions or in lower positions, as long as it does not affect their financial rights and moral status.

[1070] In this regard, see paragraphs 22, 29, 30, 33, 38 and 39 of the UK Cross-Border Merger Act 2007.
[1071] Paragraph 83/ 4 of the UK Cross-Border Merger Act 2007.

In this regard, Emirati and Qatari legislators should remedy and change article 95 of UAE Companies Law and article 94 of Qatar Companies Law, putting a minimum but no maximum on the number of members of Boards of Directors of shareholding companies. In this regard, Emirati and Qatari legislators can take advantage of section 154 of the UK Companies Act 2006, which provides that "a public company must have at least two directors", and provide similar texts. Amending the provisions of the UAE and Qatar Companies Laws relating to the number of members of the Board of Directors of shareholding companies through putting a minimum without a maximum to the number would make it easy for the transferee company to increase the number of its Border of Directors and accommodate its directors and the transferor company's directors; this would also help the transferee company to form a new administration from its directors and the directors of the transferor company by election-based appointment, enabling the transferee company to keep the administrative crew of the two companies and take advantage of their skills and experience.

The Emirati and Qatari legislators should address the rights of members of Boards of Directors of companies involved in M&As, providing them with the right to participate in M&A negotiation processes and the right to provide their opinions and proposals with effective contribution to the success of such operations. This could include: drawing up and adopting a draft of the proposed terms of the merger; explaining the effect of the merger for the members, employees of the companies involved; negotiating with the employees who wish to leave the company to find alternatives; preparing plans and programmes for corporate work during and after the operation; and providing visualisations of the problems that could be faced in the work of the companies during or after the merger or acquisition and providing relevant solutions. Furthermore, the directors of the merging companies should adopt a draft of the proposed terms of the merger scheme and deliver a copy to the registrar, informing the workers about the merger and its stages and listening to their concerns and suggestions can help contribute to the success of the process and the speed of its completion. In this regard, the Emeriti and Qatari legislators can take advantage of sections 905 and 906[1072] of the UK

[1072] For more information, see sections 8, 905 and 906 of the UK Companies Act 2006.

Companies Act 2006 and regulations 7 and 8[1073] of the UK Cross-Border Merger Act 2007 and provide similar legal texts.

Legislators in the UAE and Qatar could also add text to the laws under study to allow the transferee company to increase the number of members of its Board of Directors or to elect a new Board of Directors from its directors and the transferor company's directors, in order to meet the transferee company's needs, expand its activities and increase its number of shareholders and employees after the merger or acquisition. This should include the caveat that the increase is made within a reasonable limit according to the transferee or new company's needs. Providing for an increase in the number of directors of the transferee company by a limited number in M&As would help the transferee company to accommodate the administration and management of the transferor company without any legal problems or obstacles and allow them to take advantage of the skills and experience of the members of the Boards of Directors of the two companies.

In cases where the transferee company is unable to accommodate its directors and the transferor company's directors due to losses in the profits of one of the two companies or lower production and sales of the transferee or new company after the merger, the researcher believes that the companies involved can negotiate on the appropriate compensation acceptable to both the transferee company and the members of the Boards of Directors who cannot be accommodated as members of the Board of Directors of the transferee company or who do not want to stay in positions lower than their former positions. Such a solution prevents companies involved in M&As from accommodating a greater number of board members than they need to, while at the same time protecting the rights of the members of Boards of Directors through providing them with fair compensation in return for their service in the company before the merger or acquisition.

[1073] Paragraphs 7, 8 and 12 of the UK Cross-Border Merger Act 2007.

6.1.4 Solve the Matters of the Distribution of Shares between Companies involved in the Merger

The UK Companies Act, the UK Cross-Border Merger Act and UAE and Qatar Companies Laws provide for the rights of shareholders in M&As. This includes the right for shareholders in the transferor company to obtain new shares in the transferee company instead of their shares that expired as a result of the merger, the right to approve M&A decisions, the right to attend meetings of the General Assemblies and vote on resolutions, and rights regarding the profits.[1074] Despite these similarities between the texts of UK, UAE and Qatar Companies Laws, the texts of the laws differ in the way they deal with other topics relating to shareholder rights in M&As. This therefore requires intervention and the development of practical and legal solutions, as discussed in the following paragraphs.

In order to achieve the approval of shareholders on M&A decisions, UAE and Qatar Companies Laws (much like the UK Companies Act and the UK Cross-Border Merger Acts) require approval by a majority in number, representing 75% of the shareholders. However, unlike section 907 of the UK Companies Act and section 13 of the UK Cross-Border Merger Act, article 140 of UAE Companies Law and article 140 of Qatar Companies Law require a double majority, representing a numerical majority of the shareholders attending the meeting and a majority in the value of the shares represented at the meeting. In addition, the texts of the laws of both countries still remain unclear concerning the majority required for the issuance of decisions by the Extraordinary General Assembly of the company in second meetings in the case of the absence of a quorum at the first meeting. They also do not empower the court with the right to monitor and assess cases that do not require the presence of shareholders or their representatives to approve the merger or acquisition, which leads to difficulties because decisions regarding M&As are given to the control of the owners of the large shares. This therefore leads to the failure of the merger operation in cases of non-adherence to the minimum level required by the texts.[1075]

[1074] For more information, see article 169 of UAE Companies Law.
[1075] For more detail and example see paragraphs 5.4.1 and 5.6 of the Chapter Five of this thesis.

With the aforementioned taken into account, it would be preferable for Qatari and Emirati legislators to be more discerning with respect to the majority required to approve the draft terms of M&As and focus on a majority in number, representing 75% in value, present and voting either in person or by proxy at a meeting. They should give the competent court the right to observe the voting process and to estimate cases that do not require the presence of shareholders or their proxy at a meeting. This can be achieved by taking advantage of and providing similar texts to section 907 of the UK Companies Act and regulation 13 of the UK Cross-Border Merger Act. These texts provide a solution to the problem that arises due to the control of the owners of the large shares over the decision-making process for approving the draft merger or acquisition terms at the first meeting. They also solve the problem of the lack of the quorum of required shareholders to approve the merger decision in the second and third meetings as required by the provisions of UAE and Qatar Companies Laws; thus improving the chance of the success of the merger or acquisition process.

Unlike sections 902 and 905 of the UK Companies Act and paragraphs 2 and 17 of the UK Cross-Border Merger Act, UAE and Qatar Companies Laws do not give the transferee company the right to payment in cash in return for some shares in the transferor company. The laws also do not recognise the rights of shareholders opposed to the idea of the merger to exit from the company[1076] and recover the value of their shares. Accordingly, when two companies agree on a merger and this agreement is adopted by the competent authority specified by law, the merger decision is applied without the need to achieve the approval of shareholders who may oppose the merger project, which is inconsistent with the right of shareholders to exercise their rights and authorities guaranteed by law.

To solve such matters, as long as there is no provision in law or in the statutes of the companies restricting the trading of such stocks, shareholders who do not agree with

[1076] This is dissimilar to section 994 of the UK Companies Act 2006, which gives a minority shareholder the right to petition the court for an order to stop any act by the majority in a manner unfairly prejudicial to the interests of the members generally, or to some part of its members. This could include a breach of a legal bargain between the shareholders (e.g. a Shareholders Agreement or Articles of Association) or a breach of quasi-partnership principles.

the merger decision or who do not wish to remain in the transferee company should be able to withdraw from the company by selling their shares on the stock exchange. This accordingly ensures the principle of equity trading for shareholders who do not wish to achieve a merger and wish to exit from the company at a time that suits them, which simultaneously leads to the entry of new shareholders without prejudice concerning the capital of the company. Qatari and Emirati legislators should also add to the provisions of the laws relating to mergers to allow shareholders who object to the merger or acquisition decision in the General Assembly or who did not attend the meeting by an acceptable excuse can request exit from the company and recover the value of their shares, in a written request to the company within a certain period from the date of the publicity or publication of the merger or acquisition decision, and the value of their shares will be estimated by agreement or the Judiciary, taking into account the current value of all assets of the company.

The UK Companies Act allows companies to issue different types of shares.[1077] Furthermore, according to sections 902 and 905 of the Companies Act and paragraphs 2 and 7 of the Cross-Border Merger Act, the transferee company can pay cash to the transferor company's shareholders in return for their shares that transferred to the transferee or new company.[1078] It must therefore be recognised that, in the UK, it is not likely that practical problems will arise with regard to the issuance of replacement shares for the shareholders of the transferor and transferee companies because each shareholder of the transferor company will get shares in the transferee company, each in proportion to the type that the shareholder owned in the transferor company, or an amount of money.

Unlike the UK Companies Act, UAE and Qatar Companies Laws do not give the transferee company the right to pay in cash instead of the transferor company shares. Notably, this leads to issues when a transferee company divides its shares in regard to the shareholders of the transferor company. This matter appears clearly in cases where the shares of the transferor company include decimal fractions while the transferee

[1077] For more information, see sections 556, 560, 617, 586 and 580 of the UK Companies Act 2006.
[1078] For more information, see Chapter 9: Class of Shares in the Companies Act 2006**.**

company's shares do not. This matter can be overcome through selecting the most appropriate number from the shares of the transferee company, which should be equivalent in terms of the true value number (i.e. a number without a decimal fraction) to the shares of the transferor company. Otherwise, the most appropriate number should be selected from the shares of the transferor company, which can be rounded to an integer (provided that the rate of the fractional shares is rounded in the smallest way possible), with compensation for shareholders who have been affected by the rounding of fractional shares. They should be paid a sum of money corresponding to the value of the fractional shares that has been waived or could not be approximated. In addition, the legislators of the UAE and Qatar should add text to the Companies Laws of the two countries to allow for the transferee company to determine an amount of money to be paid to the shareholders of the transferor company in replacement of their shares that cannot be rounded to an integer, taking advantage of sections 902 and 905 of the UK Companies Act and paragraphs 2 and 17 of the UK Cross-Border Merger Act and provide similar texts.

According to sections 586 and 593 of the UK Companies Act, articles 161 and 153 of UAE Companies Law and articles 155 and 158 of Qatar Companies Law, company shares are divided in terms of the type of quota offered to the shareholders into shares in cash, whose shareholders only have to fulfil one-quarter of the nominal value of the shares (i.e. 25% of these shares) in the first year of the founding of the company, and shares in kind, whose value must be fulfilled in full. The matter arising here is how the transferee company can distribute its shares to the shareholders of the transferor company if the shares of the transferor company consist of fully and not fully paid-up shares, while the transferee company's shares consist only of fully paid shares.

Qatar and UAE laws do not govern this case; therefore, in order to solve these matters, the researcher believes that the transferor company must request that shareholders whose shares are not fully paid their nominal value should accordingly pay the remainder before the merger. In the case that the shareholders delay or reject payment, the company may warn them to offer these shares for sale at auction or on the

stock market if the shares are restricted in the market. Thus, all shares fulfil their nominal values, paid in full, which facilitates the distribution of the transferee company's shares to its shareholders and the transferor company shareholders in line with the shares they had prior to the merger.[1079]

Unlike sections 556 and 560 of the UK Companies Act, article 153 of UAE Companies Law and article 152 of Qatar Companies Law only allow a company to issue ordinary shares and do not allow the issuance of preference shares. The laws also do not put solutions in place for share trading between shareholders in the transferee and transferor companies if the shares of the transferor company are divided into ordinary shares and preference shares while the transferee company's shares only consist of normal shares. Furthermore, UAE and Qatar laws do not pay attention to the problem of exchanging shares between companies involved in a merger when there are differences between the nominal values and the actual values of the companies' shares.

To solve such problems, the researcher believes that responsibility for the procedural treatment of this problem must be with, or in the hands of, the transferor company. In this regard, if the general rule requires that it is not permissible to force the shareholder to abandon or sell their shares in the company,[1080] concessions to this rule may be allowed if the statute of the transferor company allows the company to recover preference shares.[1081] If the company decides to use its right to recover the shares, this means it would give the owners of the recovered shares the market value of these shares in addition to the profits of shares; thus resulting in the exiting of the owners of the

[1079] Article 167 of UAE Companies Law and article 157 of Qatar Companies Law provide for the right of a company to sell the shares of shareholders who default to pay the value of their shares in cash, by saying: "If the shareholder delays in the payment of the share instalment on the due date, the Board of Directors may act on the share by notifying the shareholder for payment of the instalment due through registered mail. If he does not make settlement within thirty days, the company can sell the share in a public auction or securities market. The company shall settle its delayed instalments and expenses from the value derived from that sale and the remaining amount shall be returned to the shareholder. In spite of this, the delayed shareholder can, even on the day of sale, pay the value due on him plus the expenses of the company. If the outcome of the sale is not enough to settle these amounts, the company can collect them from his private assets. The company shall cancel the share on which such action was made and the buyer shall be given a new shareholding of the cancelled number. The sale activity must be indicated in the share register, mentioning the name of new owner".
[1080] Article 174 of UAE Companies Law and article 166 of Qatar Companies Law.
[1081] For more information, see article 176 of UAE Companies Law.

recovered shares from the company.[1082] Accordingly, if the transferor company uses its right to recover preference shares, the owners of the preference shares may use their right to convert their shares into ordinary shares and then all shareholders of the merged company become shareholders by ordinary shares. However, if the statute of the transferor firm does not allow the company to recover preference shares and does not allow for the owners of preference shares to convert their shares into ordinary shares, it is incumbent upon the transferor company to get approval from the owners of the preference shares to accept ordinary shares in the transferee company. Notably, whoever gives their consent must receive ordinary shares in the transferee company equivalent to the actual value of the preference shares. More importantly, this procedural solution must be accompanied by another legal solution and legal text should be added to the heart of the Companies Laws of the two countries to allow companies to issue preference shares alongside ordinary shares, like the UK Companies Act does. This would avoid the problems that arise due to differences in the actual values of shares in the case of exchanging shares between companies involved in mergers.

The shares of some companies are divided into capital shares and enjoyment shares, whereby enjoyment shares are shares consuming their nominal values: the owner recovers this value during the life of the company. Accordingly, if the shares of the transferor company are divided into capital and enjoyment shares while the transferee company has only capital shares, the question raised is how the transferee company can divide its shares among the shareholders of the transferor company.

To solve this matter, the researcher believes that as long as the owners of enjoyment shares have fewer rights than the owners of capital shares, logic requires that the value of enjoyment shares is less than the value of capital shares. Therefore, it is not fair or logical that there should be equality between the owners of enjoyment shares and the owners of capital shares, although each of them gets the same type of shares in the transferee company. For this reason, the transferee company's shares are distributed to

---

[1082] For more information, see Ahmed Abdul Rahman Al-Melhem, *Preference Shares in the Kuwait Companies Law and Comparative Law* (First edition, Council of Scientific Publications 2000) 56.

the shareholders of the transferor company on the assumption that these shares represent funds from the liquidation of the company, and then every shareholder gets shares equivalent to their shares in the output of the liquidation of the company. The owners of enjoyment shares enjoy the same rights as the owners of capital shares; nevertheless, they cannot recover the nominal value of their shares when the company is liquidated. This means that, upon company liquidation, the owners of capital shares recover the nominal value of their shares; after that, the remaining shares of the company are divided among all shareholders who contributed by capital or enjoyment shares. The consequence of this is that the owners of capital shares must receive a number of shares in the transferee company equivalent to the nominal value of the shares that they owned in the transferor company. Accordingly, the owners of capital shares become in the same position as the owners of enjoyment shares, as each one of them recovers the nominal value that they contributed to the capital of the transferor company. After the positions of the owners of enjoyment and capital shares become equal, the shares of the transferee company are then distributed among all shareholders, i.e. the owners of enjoyment shares and the owners of capital stock, on the basis of the exchange of one rate without distinction between them.

It must be noted that the issue of trading shares between transferee and transferor companies only arises in mergers without acquisition, as trading shares between acquiring and acquired companies in acquisition cases does not raise any legal problems for the acquired company's shareholders. This is because the shareholders of the acquired company get cash instead of their shares that expired as a result of the acquisition, which means the ownership of shares in the acquired company is transferred to the ownership of the acquiring company's shareholders; thus breaking the legal relationship between the acquired company and its shareholders. Accordingly, the acquired company's shareholders do not receive any shares entitling them to any rights in the acquiring company after giving up their rights for the benefit of cash. Therefore, this does not raise any problems relating to exchanging shares between the acquiring company and the shareholders of the acquired company.

Finally, we can conclude that, whatever the outcome of a merger or acquisition or its effects on employees, directors and shareholders, M&As remain two of the most important processes that keep economic entities from bankruptcy, increase products, maximise profits, exchange experiences and skills, and open new markets for the companies involved. Accordingly, the economies of the UAE and Qatar could potentially exploit and take benefit from an upsurge in M&As through encouraging such operations between national companies with one other and between national and foreign companies.

Despite some legislative reforms that have taken place in the UAE and Qatar, the protection of employees and directors and also the problem of exchanging shares between transferee and transferor companies in the context of M&As and corporate restructuring has largely been regulated by a patchwork of legal texts that have substantial gaps. Accordingly, the Emirati and Qatari legal systems do not yet fully reflect the progressive position on the issue as seen in the UK CA 2006, the Cross-Border Merger Act 2007 and the TUPE Act 2006, in terms of prior employee consultation, automaticity of the transfer of employment, not putting an upper limit on the number of members of the Board of Directors of public shareholding companies, and the right for companies to issue different classes of shares with share exchanges between the transferee and transferor companies by shares or by cash. Therefore, it is hoped that the UAE and Qatar legislators will effect these changes regarding the provisions of laws relating to M&As so that any tension that exists between the protection of workers' rights and corporate interests in M&As will be resolved.

6.2 Study Contributions

The main limitation of this research is that it represents a cross-sectional look at the effects of M&As on employees, directors and shareholders and looks at the legal basis for the transition of their rights and obligations. The study is the first legal comparative study that deals with the legal rights and obligations of employees, directors and shareholders in M&As, and tries to contribute and provide a range of legal and procedural solutions to the effects of M&As on the contracts and other rights of employees, directors and

shareholders according to the UK Companies, Cross-Border Merger and TUPE Acts and UAE and Qatar Companies and Labour Laws. The most important contributions provided by the thesis are:

The thesis tries to remedy the legislative shortcomings and mistakes and fill the legal gap in the texts of UAE and Qatar legislation relating to M&As by taking advantage of UK legislation. The study tries also to provide a clear picture of the legal concept of M&As and the differences between them, from both a legal and a practical perspective, in order to open the door for researchers and commentators of laws to contemplate and devise the nature of mergers and acquisitions. They can then identify their effects on the legal personalities and stakeholders of the companies involved.

Importantly, the thesis provides the legal basis for transferring the rights and obligations of employees, directors and shareholders between companies involved in M&As. Studying such theory helps in establishing the rules applicable to M&A operations and also helps to determine the legal implications of them, particularly concerning the effects on the moral personalities of the transferor and transferee companies and their financial assets. It also helps in understanding a company's relationship with its employees before or after a merger, as well as providing knowledge of the proper interpretation of the legal texts regarding M&As.

The thesis provides solutions to the legal and procedural problems that appear during the distribution of the transferee company's shares to the shareholders of the transferor company in return for their shares that expired due to the merger, due to differences in the types of shares or the nominal and actual values of the shares of the companies involved in the merger.

The study provides a solution to employees, directors and shareholders, enlightening them of their rights and obligations in M&As. This applies to the GCC in general and to the UAE and Qatar in particular, which are in dire need of such a study

due to the large number of M&As between local businesses and between local and foreign firms, with an absence of clear legislation governing such operations.

According to the theory of the legal personality of a company, the thesis also provides a legal basis to continue the research into M&As and their effects from different aspects. It provides advice for the development of legislation and the judiciary in the region, which would lead to modern legislation consistent with the legislation of developed countries and would strengthen the role of the judiciary in resolving the disputes that can arise from M&As. This would in turn lead to investor confidence in the national legislation and the success of M&As.

6.3 Future Research

Despite the importance of the results and the practical and legal solutions provided by the thesis for the problems of exchanging shares between transferor and transferee companies and for the effects of M&As on the rights of employees and directors, with the legal basis for transferring rights and obligations between companies involved in M&As found by the study, due to the secrecy pursued by companies in their work, in addition to the secrecy judgements made by the courts in the GCC in general and in the UAE and Qatar in particular, the study does not cover the effects of M&As on firms in the UAE and Qatar from the practical side. Further research is needed to examine the effects of M&As on boards, employees and shareholders in companies in the UAE and Qatar region. For example:

- The thesis does not address the effects of M&As on employees' contracts and all the rights consequent from these through a realistic assessment of the impact of such operations on national or foreign (expat) employees' contracts in the first year after a merger or acquisition and the years that follow. It also does not investigate the time required for the stability of the employees in their work in the merged companies or the scope of the impact of M&As on the level of workers' rights and responsibilities, or the level of their performance and skills in

companies operating in the UAE and Qatar. Further research is needed into employees' rights and obligations in M&As and the effects that such operations have on their rights from both practical and legal aspects. Practical, procedural and legal solutions can then be developed for such effects by taking advantage of UK legislation, taking into account the circumstances, nature of the work and the size of the companies in the UAE and Qatar region.

- The thesis does not remedy the legal effects of M&As on the rights and obligations of managers at the top or lower levels in a firm or in one or more of its subsidiaries that function inside or outside of the UAE and Qatar from the practical side. Further research on the legal effects of M&As on directors could address the effects of domestic and cross-border M&As in reality through considering M&A cases in the region, then analysing and studying the cases and developing solutions in the light of the texts of the relevant laws.

- The study of the effects of M&As on shareholders of the UAE and Qatar companies involved is still in its infancy; therefore, there is enormous potential to research this area using analytical frameworks, specifying particular processes to remedy the negative effects of M&As on shareholders and auditing the reasons for why the UAE and Qatar legislators do not allow companies to issue preference shares, as well as investigating the matters that result from this in cases of M&As and solving such matters, with work on the development of the texts of legislation, according to the accidents and cases that display.

BIBLIOGRAPHY

• Books and Journals

Abd al-Rahim S A, *Explanation of the Kuwaiti Commercial Law* (House of Scientific Research 1975)

Abdul Rahim T A, *Expiation of Egyptian new Company Law* (3rd edn, Dar Alnhdah Arabia 2000) Arabic Source

Abu Zeid R, *The Commercial Companies in the Kuwait Law* (Dar Alfikr Alarabi 1978) Arabic Source

Abu-Zeid R, *Joint stock companies in accordance to the provisions of Law No. 159 of 1981 and the public sector* (Dar Al-Arab Thought 1983) Arabic Source

Aeryvan F and Achammemari M, '*Importance of restructuring the family business, Management of financial irregularities'* (Mtabi al Kuwait, 2007)

Agayloby S, *Commercial Companies: The General Theory for People Companies* (3rd edn, Dar Alnhadah Alarabia 1992) Arabic Source

Ahiauzu I and others, 'Employment Issues: The Forgotten Keystone in International mergers and Acquisitions' (2000-2001) 133 Business Law Journal 14

Ahiauzu I, 'Rights of Employees in Mergers and Acquisitions under the Nigerian Law: A Critical Analysis' 12

Alassar H, *The legal effects of Merger on Companies* (First edition, Dar Alnhada Alarabia 1987) Arabic Source

Al-azimy H, *The effects of Merger on Shareholders and Creditors Companies; PhD thesis in Law*, (University of Cairo 2004)

Al-Azmi K, *The Legal effects of Merger on Shareholders and Debtor of companies* (Cairo University 2004)

Al-Borai A H, *The Mediator in Social Law: Explaining the Employment Contract of the Individual and in Accordance with the Provisions of Law No. 12 of 200* (Dar Al-nahdah Alarabiah 2003) Arabic Source

Al-farh M K, 'The GCC Companies face challenges due to economic blocs' *Constitution Newspaper* (Amman, 1 July 2007) 15571

Ali Hassan Younis, *Commercial Companies* (Dar Al-Fikr Al-arabi 1991) Arabic Source

Ali Yunis, *Commercial Companies* (Dar Al-Fikr Al-arabi 1991) Arabic Source

Al-Juma A, 'Brief in the types of companies in the Lebanese law' 1, 8

Al-Mansour A S, 'Company Acquisitions, and the Position of Jurisprudence from' [2008] Journal of Islamic Jurisprudence

Al-Mansour A S, *Acquisition Companies and the Position of Jurisprudence from it* (Islamic jurisprudence 2011)

Al-masri H, *Companies Merger and Division, A comparative Study between France and Egyptian Laws* (First edition, 1986) Arabic Source

Al-Masri H, *Legal aspects of the merger of investment firms in joint stock companies* (First edition, Dar Alrabia 1986) Arabic Source

Al-masri H, *The Legal Aspects of the Merger of Investment Companies with Joint Stock Company* (Dar Al Nahdah Al Arabia 1986) Arabic Source

Al-masry H, *Private legal aspects for the integration of investment companies in normal shares companies* (First Edition, Dar Al-Fikr 1986) Arabic Source

Al-Melhem A, *Preference Shares in Kuwait Companies Law and Comparative Law* (First edn, Council of Scientific Publications 2000)

Al-melhem M A, 'Measurement methods for the purposes of mergers' [2002-2003] Applied Research

Al-mohami I, *Companies Merger in the A bill of new Companies Act of 2002 and in Comparative Legislation* (Alsahafa, 2008) Arabic Source

Al-moligy A S, *The Middle of Legislation Society*; *Labour Law, the Law of system of Public Worker and Insurance Law* (2nd edn, Kluwer Law International 1984)

Alqilubi S, 'Characteristic for limited liability companies' [1997] The Journal of Economy

Amihud Y and others, 'The effects of cross-border bank mergers on bank risk and value' [2002] Journal of International Money and Finance 857-877

Amir Sidky, *The legal system for the purchase of shares by the company exported* (Dar Al-nahdah Arabia 1993) Arabic Source

Anand M, ‘Impact of Merger Announcements on Shareholders Wealth: Evidence from Indian Private Sector Banks; Indian Institute of Management Lucknow, Vikalpa’ (2008) 33 (1) Journal for Decision Makers 35, 54

Andrade G and others, ‘New Evidence and Perspectives on Mergers’ (2001) 15 (2) Journal ofEconomic Perspectives 103, 120

Andrei S, Lawrence H Summers, *Breach of trust in hostile takeovers, in (Alan J. Auerbach (ed.) Corporate takeovers: Causes and consequences* (University of Chicago Press 1988)

Andrew C. Bell, *Employment Law* (2nd edn, Thomson Sweet & Maxwell 2006)

Armour E, ‘How boards can improve the odds of M&A success”, Strategy & Leadership’ (2002) 30 (2) MCB UP Ltd13

Armour J, ‘Share Capital and Creditor Protection: Efficient Rules for a Modern Company Law’ (2000) 63(3) the Modern Law Review Limited 355

Arnold M F, *Regulation of Mergers by the UK Competition Authorities: The Effects on Shareholder Value and Management Motivations for Mergers*. (Cranfield University 2007) 57

Ayadi R, ‘Assessing the Performance of Banking M&As in Europe’ [2007] Centre for European Policy Studies

Badawy K M, ‘The Reference in Labours United Legislation’ Part Two, section 95, 90

Balmer John M.T and Dinnie, Keith, ‘Corporate identity and corporate communications: The antidote to merger madness’ (1999) 4(4) Corporate Communications: An International Journal

Basbos, F. A. M, ‘The Legal Effect of the Merger of the Public Companies Limited by shares under the Jordanian Law*’* (PhD thesis in Law, Amman Arab University 2006)

Bastian D, *Mergers Companies* (Oxford university Press 1990)

Baysinger B D and Hoskisson R E, ‘The composition of boards of directors and strategic control’ (1990) 15 Academy of Management Review

Becher D, ‘The valuation effects of bank mergers’ (2000) 6 (2) Journal of Corporate Finance 189, 214

Berger A N, ‘The effects of bank mergers and acquisitions on small business lending’ [1997] Journal of Financial Economics 1

Berle A, Means G.C, *The Modern Corporation and Private Property* (Macmillan 1932)

Bertrel J P. and Jeantin M, *Merger and Acquisition, Commercial Companies* (12th edn, Mc-Graw Hill Publishers 1991)

Betts and Others v Brintel Helicopters Ltd. and KLM Era Helicopters [1997] CA

Beyond, *Explanation of the new Egyptian Commercial Law* (3rd edn, Kluwer Law 1990)

Bhagat S, Dong S, Hirshleifer D, and Noah R, ‘Do tender offers create value? New methods and evidence’ (2005) 76 Journal of Financial Economics 3, 60

Bhagat S, Shleifer A and Vishny R W, ‘Hostile takeovers in the 1980s; the return to corporate specialization’ (1990) Brookings Papers on Economic Activity: Microeconomics 1, 72

Birds J & Others, *Boyle and Birds Company Law* (4th edn, Jordon Publishing 2000)

Black E M, Guo J and Kuo J, ‘Do UK Mergers Create Shareholder Value? UK Evidence’ (Department of Economics and Finance, Durham Business School 2010)

Black E, Michael J and Kuo T J, ‘Do UK Mergers Create Shareholder Value? UK Evidence’ (2010) Department of Economics and Finance, Durham Business School, University of Durham 1–39

Bob H, ‘Worker Rights in Mergers and Takeovers: The EEC Proposals’ [1976] Industrial Law Journal 197, 202

Bourne N, *Bourne On Company Law* (5th edn, Routledge 2011)

Braggion F, Dwarkasing N and Moore L, ‘Mergers and Acquisitions in British Banking: Forty Years of Evidence from 1885 until 1925’ [2010]

Briggs M, ‘An Introduction to TUPE’ [2011] Ely Place Chambers 4, 27

British Sky Broadcasting Group Plc v Competition Commission, Court of Appeal [2010] EWCA Civ 2, (2010) 107(5) L.S.G. 16

Brockner J, 'The effects of work layoffs on survivors: Research, theory and practice' in Staw BM Cummings LL (eds), 'Research in organizational behavior' (1998) 10 JAI Press: Greenwich 213, 255

Brown C Medoff J L, *The Impact of Foreign Acquisition on Labour. In: Auer Bach, A (Ed.), Corporate Takeovers: Causes and Consequences* (University of Chicago Press 1989)

Bruner R F, 'Does M&A Pay? A Survey of Evidence for the Decision-Maker' [2001] Executive Director, Batten Institute Darden Graduate School of Business, University of Virginia 2, 2

Bruning I, *Managing the Integration of Marketing & Sales in Mergers* (Cranfield University 2005)

Buallal F, *Explanation of the new Moroccan Commercial Law* (Dar Al-Fikr Al-arabi 2007) Arabic Source

C. Wynn-Evans, 'The Ongoing Saga of TUPE and Contractual Variations' [2007] Industrial Law Journal 480

C.A. Spink, 'Employment Issues: The Forgotten Keystone in International mergers and Acquisitions' (2000-2001) 13 DePaul Business Law Journal 133, 143

Cai Y, 'Board Connections and M&A Transactions' [2010] Leavey School of Business Santa Clara University 3

Cakici N, Hessel C and Tandon K, 'Foreign Acquisition in the United State and Effects on Shareholder Wealth' (1991) 3(1) Journal of International Financial Management and Accounting 39, 60

Chandler P, *An A-Z of employment law: A complete reference source for managers* (4th edn, kogan 2003)

Chari A, Ouimet P and Tesar L, 'Acquiring Control in Emerging Markets: Evidence from the Stock Market' (2004) NBER Working Paper No. W108 72

Charlesworth, Morse & Others, *Company Law* (7th edn, Butterworth 1995)

Child J, Faulkner D, Pitkethly R, *The Management of International Acquisitions* (Oxford University Press, 2001)

Chiplin, B and Wright M, 'The Logic of Mergers: The Competitive Market in Corporate Control in Theory and Practice' [1987] Institute of Economic Affairs.

Church J, ‘The Impact of Vertical and Conglomerate Mergers on Competition’ (University of Calgary 2004)

Clare A, ‘A New UK Takeover Technique: The International Comparative Legal Guide to Mergers & Acquisitions 2011; A practical Cross-Border Insight into M&As Global Legal Group Ltd’ [2011] London 14, 17.

Clougherty J A, ‘Export orientation and domestic merger policy: theory and some empirical evidence’ (2005) 38 (3) The Canadian Journal of Economics / Revue canadienne d'Economique 779, 806

Coeurdacier N, De Santis R A and Aviat A, ‘Cross-Border Mergers and Acquisitions, Financial and International Forces’ (2007) European Central Bank 1018/2007

Conn C Cosh, AGuest P and Hughes A, ‘The impact on UK acquirers of domestic, cross border, public and private acquisitions’ (2005) 32 Journal of Business Finance and Accounting 815, 870.

Conyon M J and others, ‘Do Wages Rise or Fall Following Merger?’ (2004 66(5) Oxford Bulletin of Economics and Statistics, 847, 862

Conyon M J, Girma S, Thompsonc S, Wright P, ‘Do Hostile Mergers destroy Jobs?’ (2001) 45 Journal of Economic Behaviour & Organisation 427, 44

Conyon M, Girma S, Thompson S and Wright P, ‘The Impact of Mergers and Acquisitions on Company Employment in the United Kingdom’ [2005] Centre for Research on Globalisation and Labour Markets, School of Economics, University of Nottingham 847, 862.

Core J E and others, ‘Corporate Governance, CEO Compensation, and Firm Performance’ (1999) 51 (3) Journal of Financial Economics 371, 406

Cosh A and Guest P, ‘The long-run performance of hostile takeovers: UK evidence’ (2001) Working Paper, ESRC Centre for Business Research, University of Cambridge.

Cosh A and others, ‘Board Share-Ownership and Takeover Performance’ (2006) 33 (3-4) Journal of Business Finance & Accounting 459, 510

Danbolt J, ‘Cross-Border Acquisition into the UK An analysis of Target Company Returns’(2000) 6(2) Accounting, Accountability and Performance 27

Danbolt J, ‘Target company cross-border effects in acquisitions into the UK’ (2004) 10 European Financial Management 83, 108

Danbolt, J ‘A Comparative Analysis of the Wealth Effects to Target and Bidding Company Shareholders from Domestic and Cross Border Acquisitions into the United Kingdom (1986-1991)’(U-thesis Heriot-Watt University 1996)

Davies J, ‘A guide to directors’ responsibilities under the Comp Joseph Farrell and Carl Shapiro, ‘Scale Economies and Synergies Horizontal Mergers Analysis’ (2001) 68 International Law Journal 685

Davies O L, *The Regulation of Takeovers and Mergers* (Sweet & Maxwell 1976)

Davies P, *Gower and Davies: The Principles of Modern Company Law* (8th edn, Thomson Sweet & Maxwell 2003)

De Cruz, P "Comparative law in a changing world" Cavendish [1999]

Dean J L, ‘Directing Public Companies, company Law and Stakeholder Society’ (PhD Thesis, Brunel University 2000)

Deborah J Terry, ‘Employee Adjustment to an Organizanal Merger: Stress, Coping and Intergroup Differences, Stress Medicine’ (1996) 12(2) WILEY 105

Delaney F T and Wamuziri S M, ‘The impact of mergers and acquisitions on shareholder wealth in the UK construction industry” Engineering, Construction and Architectural Management’ (2004) 11(1) Emerald 65

Delaney F, ‘Effectiveness of Merger and Acquisition and Corporate Financial Performance in Construction’ (PhD thesis, Napier University 2003)

Dennis E. Logue and Philippe A. Naert, ‘A Theory of Conglomerate Mergers’ (1970) 84 (4) The Quarterly Journal of Economics

Donaldson L, *Anti-managerial theories of the firm* (Cambridge University Press 1995)

Douglas Smith, Smith, *Company Law* (First edn, Planta Tree 1999)

Downey J, ‘Mergers and acquisitions, Technical Information Service’ (2008) Topic Gateway Series 3

Dutz M A, ‘Horizontal Mergers in declining Industries: theory and advice’ (1989)7(1) International Journal of IndustrialOrganisation 11

Dutz M A, 'Horizontal Mergers in declining Industries' [1989] International Journal of IndustrialOrganisation 11, 37

Ebeid R, *Trading Companies in the Egyptian law* (5th edn, Dar Alnhdah Al-arabia, 1997) Arabic Source

Eisenhardt K L, 'Agency theory: A review and assessment' (1989) 14 Academy of Management Review 57

Eisenhardt K L, 'Control: Organisation and economic approaches' (1985) 31 Management Science134

Esty B and others, 'Interest-rate exposure and bank mergers' (1999) 23 Journal of Banking & Finance 255, 285

Fama E F and Jensen M C, 'Separation of ownership and control' (1983) 26 Journal of Law and Economics 301, 325

Fama E.F, 'Agency problems and the theory of the firm' (1980) 88 Journal of Political Economy 288, 30

Farrell J and C. Shapiro, 'Horizontal mergers: an equilibrium analysis' (1990) 80 American Economic Review 107

Fatemi A M and Furtado E P H, 'An Empirical Investigation of the Wealth Effects of Foreign Acquisitions, in Khoury S J and Ghosh, A, (Ed.)' (1988) 2 Recent Developments in International Banking and Finance363

Fathi H, *The legal regulation of the recovery and the purchase of shares by the company* (Dar Al-nahdah Arabia 1986) Arabic Source

Flannigan R, 'Fiduciary Duties of Shareholders and Directors' [2004] Journal of Business Law; Sweet & Maxwell and Contributors 277, 302

Flugt C, 'Shareholder wealth effects of mergers and acquisitions: An empirical investigation of short-term performance in the European market' (PhD thesis, University of Aarhus 2009)

Franks J R, Harris R and Titman S 'The post-merger share-price performance of acquiring Firms' [1991] Journal of Financial Economics 29

Frias R, 'Horizontal and Vertical Merger differentiation' (2001) Working Paper

Gaghan P A, *Merger, Acquisitions and Corporate restructuring* (4th edn, John Wiley & Sons 2007)

Gaughan P A *Merger, Acquisitions and Corporate Restructuring* (4th edn, John Wiley & Sons 2007)

German comparatists Zweigert and Koezt "Comparative Law: Method, Science or Educational Discipline" Bashkir State University [1998] 68, 69

Girma S and Gorg H, 'Blessing or curse? Domestic Plants' Employment and Survival Prospects after Foreign Acquisition' (2004) Applied Economics Quarterly [2004] 5

Girvin S, Frisby S and Hudson A, *Charles worth's Company Law* (8th edn, Sweet & Maxwell 2007)

Goode R, Goode R M, *Principles of Corporate Insolvency Law* (4th edn, Sweet Maxwell 2011)

Grant B, *Employment Law: A Guide for Human Resource Management* (First edition, Thomson Learning 2002)

Grantham R B, 'The doctrinal basis of the rights of Company Shareholders' (1998) 57(3) Company Law Journal 148, 149

Grantham R P, 'The doctrinal basis of the rights of Company Shareholders' [1998] Company Law Journal 148,149

Gregory A, 'An examination of the long run performance of UK acquiring firms' (1997) 24 Journal of Business Finance and Accounting 971, 1007

Grgoriou G N and Renneboog L, *International M&A Activity Since 1990, Recent Research and Quantitative Analysis* (First edition, Academic Press, 2007)

Gristein Y and Hribar P, 'CEO Compensation and Incentives: Evidence from M&A Bonuses' (2004) 73 (1) Journal of Financial Economics

Gugler K and Yurtoglu B, 'The effect of Mergers on Company Employment in the USA and Europe' (2004) 22 International Journal of Industrial Organization 481, 502

Hamdallah M, *The extent freedom of the shareholder to act in his shareholder; Acomprative study between Egyptian and France Laws* (Dar Al-nahdah Alarbia, 1996-1997) Arabic Source

Hammad M A M, 'Merger Company According the Jordanian Companies Law' (Master Thesis, University of Jordan and Pasbos 2006)

Hammed M A and Ahmed H, *Eliminate trade veto* (Manshah Almarf, 1998)

Hare K and Ohbi K, *Cross-border Mergers (*2010)

Harrison A, ‘Productivity, imperfect competition and trade reform’ (1994) 36 Journal of International Economics 53

Hasan A, *the Abstract in the New Labour Law* (Cairo, 1982)

Haugen R A and Senbet L W, ‘Resolving the Agency Problems of External Capital through’ (1981)36(3) the Journal of Finance 629

Haynes M, Thompson S, ‘The productivity effects of bank mergers: Evidence from the UK building societies’ (1999) 23 Journal of Banking & Finance 825, 846

Hepple B, ‘Workers' Rights in Mergers and Takeovers: The EEC Proposals’ (1976) 5 Indus Law Journal 197, 202

Hewitt G, ‘Portfolio Effects in Conglomerate Mergers, an analytical note for the OECD’ (2001) 5 Computation Law and Policy1

Hicks A, S. H. Goo, *Cases and Materials in Company Law* (6th Ed, Oxford University Press 2008)

Higson C and Elliott J, ‘Post-takeover returns: The UK evidence’ (1998) 5 Journal of Empirical Finance 27, 46

Hillier D and others, ‘Employee Layoffs, Shareholder Wealth and Firm Performance: Evidence from the UK’ [2007] Journal of Business Finance and Accounting 34, 467

Hoang T V N, ‘Critical Success Factors in Merger & Acquisition Projects, (Master thesis, 2008)

Hodge H M, ‘Companies Act 2006; Duties of company directors’ (Ministerial statements 2007)

Hopkins H D, ‘International Acquisitions: Strategic Considerations’ [2008] International Research Journal of Finance and Economics 261, 268

Horn H and Levinsohn J, ‘Merger policies and trade liberalization’ (2001) 111Economic Journal 244

Hosken, Daniel S and Christopher T, ‘The Economic Effects of the Marathon-Ashland Joint Venture: The Importance of Industry Supply Shocks and Vertical Market Structure’ (2004) Journal of Industrial Economics 269

Hughes A, *The Impact of Merger: a survey of empirical evidence for the UK* (Oxford University Press 1989)

Ibáñez D V and Altunbas Y 'Merger and Acquistion and Bank Performance in Europe; The Role of Strategic Similarities' (2004) Working Paper series, European Centre Bank 398/2004

Jeffrey A. K and Aguilera R V, 'Top Management Team Turnover in M&As' (2004) 4 Advances in Mergers and Acquisition 121

Jeffrey Krug, *Mergers and Acquisitions: Turmoil in Top Management Teams* (Business Expert Press 2009)

Jemison and others, 'Corporate Acquisitions: A Process Perspective' (1986) 11(1) Academy of Management Review 145

Jennifer M. Vandeburg, Joan R. Fulton, Susan Hine and Kevin T. McNamara, 'Driving Forces and Success Factors for Mergers, Acquisitions, Joint Ventures, and Strategic Alliances Among Local Cooperatives' (2004) NCR-194 Annual meeting, Las Vegas

Jensen M and Meckling W, 'Theory of the firm: Managerial behaviour, agency costs and ownership structure' (1976) 3 Journal of Financial Economics 305, 360

Jensen M C and Ruback R S, 'The Market for Corporate Control: The Scientific Evidence' (1983) 11(5-50) Journal of financial Economics 1

Jensen M C, 'Agency Costs of Free Cash Flow, Corporate Finance and Takeovers' (1986) 76(2) American Economic Review 36

John A and K Pham, 'Efficiency and price effects on horizontal bank mergers' (2007) Centre for Competition Policy Working Paper, University of East Anglia 7-9

Jovanovic B and Rousseau P L, 'Merger as Reallocation' (2004) National Bureau of Economic Research, Cambridge Working Paper 9279

Joyful Giving' 'FAQ: In-Kind Donations of Stocks, Bonds & Mutual Funds' (2011) Mennonite foundation of Canada

Judge S, *Q & A: Company Law 2008 and 2009* (First edition, Oxford University Press 2008)

Julie A C, *Concise Corporations Law* (5th edn, The Federation Press 2006)

Kaid M B A, *The General Theory of companies (*Arab Renaissance House, 1997)

Kaliouby S, *Business general theory of companies and persons companies* (3th edn, Dar Al-Nahdah Alarabia 1992) Arabic Source

Kang N and Johansson S, 'Cross-border mergers and acquisitions: their role in industrial globalisation' (2000) OECD working paper

Keay A, *Good faith and director's duty to promote the success of their company law* (Macmillan 2011)

Kennedy V A and Limmack R J, 'Takeover activity; CEO turnover and the market for corporate control' (1996) 23 Journal of Business Finance and Accounting 267, 285

Khedr A, Alnuaimi B, "A Guide to United Arab Emirates Legal System" Hauser Global Law School Program, New York University School of Law [2010]

Kholi A, *Courses in Commercial Law* (Second Ed, Dar Al-nahda Alarabia, 1969) Arabic Source

Kintbaa B A *Merger and acquisition between success and failure, Arabic Marktes* (2008)

Kleinert, J & Klodt H, *'Megafusionen: Trends, Ursachen und Implicational'* (Tubingen, 2000)

Kose J and Senbet L, 'Corporate Governance And Board Effectiveness' [1998] 22 Journal of Banking and Finance

Krishnan H A, Miller A and Judge W Q, 'Diversification and Top Management Team Complementarily: Is Performance Improved by Merging Similar or Dissimilar Teams?' (1997) 18 (5) Strategic Management Journal 374

Krug J, 'Top management team and leadership effects of mergers and acquisitions, and global strategy' (2005) Strategic Management Journal

Kuvandikov A, 'Causes of post-merger workforce adjustments' (2010) The York Management School, University of York working paper 1-30

Langford and Male (2001) and Delaney F, (2003), 'Effectiveness of Merger and Acquisition and Corporate Financial Performance in Construction' Napier University in partial 27- 29

Lasfer, M Ameziane, 'On the Monitoring Role of the Board of Directors: The Case of the Adoption of Cadbury Recommendations in the UK' (2004) 9 Emerald Group Publishing Limited 287

Laurence Stybel, *The Role of the Board of Directors during M&A Deal Making* (The Acfai University Press, 2011)

Laurent S, ‘Capital Structure Decision: The Use of Preference Shares and Sarkhou Y, ‘Shares and it’s trading in Joint Stock Companies in the Kuwaiti Law’ (PhD thesis), Unversity of Cairo 1982

Lehto and Böckerman, ‘Analysing the Employment Effects of Mergers and Acquisitions’ (2008) 68, 1 Journal of Economic Behavior & Organization 112

Lehto E and Ockerman P B, ‘Analysing the employment effects of Mergers and Acquisitions’ [2008] Journal of Economic Behaviour and Organisation 112-124

Levinsohn J, ‘Testing the imports as market disciplines hypothesis’ (1993) 35 Journal of International Economics 1, 22

Lewis A and McGlinchy, ‘The International Comparative Legal Guide to Mergers & Acquisitions 2010, A practical cross-border insight into mergers & acquisitions’ London’ (2010) Global Legal Group Ltd.

Lipton M and Brownstein A R, ‘Takeover Responses and Directors' Responsibilities - An Update’ (1984-1985) Journal of Law 1403

Lus A, *Global Human resources Lawyers* (Laboris Publication 2009)

Macfarlanes, ‘Establish A business in the UK A guide for overseas companies’ (2011) Corporate and M&A 7

Mack R, Gerrard M and Frey, N, *An IS Perspective on Mergers and Acquisitions: A Six-Stage Handbook. In: Strategic Analysis Report* (Gartner Research 2002)

Mahmoud F, ‘The responsibility of members of the Board of Directors of shareholding Company’ [1980] Business Conference, Cairo 7

Mahmoud M P, *Moral Personality of commercial Company: Terms of Acquisition and the Borders of Protest by it; A comparative study between the Egyptian and French and English Law* (2nd edn, Cairo Publications 2002)

Malcolm A and David P, ‘UK Competition Policy and Shareholder Value’ (2007) 18 The Impact of Merger Inquiries British Journal of Management 27, 43

Malinauskaite J, "A dive Into 'Unknown' Waters: A critical Analysis of the EC Merger Control Mechanism and Policy and its Application in th Baltic Countries" PhD thesis, Westminster University, [2006], 70, 76

Manuela C and others ‘Large Merger Recoils and Spin Flips from Generic Black Hole Binaries’ (2007) 659 (1) the Astrophysical Journal Letters

McCann J E & Gilkey R, Joining *Forces - Creating & Managing successful Mergers & Acquisitions* (Englewood Cliffs 1988)

McClure B, 'The Basics of Mergers and Acquisitions' [2010] Investopedia 1, 15

McGuckin R H & Nguyen S V, 'The Impact of Ownership Changes: a view from Labour Markets' [2001] International Journal of Industrial Organisation739, 762

McLean H, 'Protection for Transferred Employees' (1993) 52 (2) The Cambridge Law Journal 214, 217

McMullen J, 'An Analysis of the Transfer of Undertakings (Protection of Employment) Regulations 2006' (2006) 35 (2) Industrial Law Journal 119

McMullen J, 'Recent judicial and legislative developments in the law of transfer of undertakings' (2006) 35 (63) Industrial Law Journal 24, 28

McMullen J, 'Takeovers, Transfers and Business Re-organizations' (1992) 21 Industrial Law Journal 1

Meador A L and others, 'Development of Prediction Models for Horizontal and Vertical Merger' (1996) 9 (1) Journal of Financial and Strategic Decisions 11, 23

Mehrez A M, *Companies Merger from the Legal side; A comparative Study* (Dar Al-Nahda Al Arabiya, 1985) Arabic source

Mehrez A, *The Integration of Companies from A legal Perspective: A comparative study* (Dar Al-nahdah Alarabia 1985) Arabic Source

Meisel F, *Corporate and Commercial Law: Modern Developments* (Lloyds of London Press Ltd, London 1996)

Mercadal B Janin P, *Memento Practice trading companies* (14th edn, Lefebvre 1983-1984)

Milman D, *Corporate and Commercial Law: Modern Developments* (Lloyds of London Press Ltd 1996)

Milman D, *From Servant to Stakeholder: Protecting the Employee Interest in Company Law in D. Feldman*

Mitchell M L and others, 'Price pressure around mergers' (2004) 59 Journal of Finance 31, 63

Moffatt J, *Employment Law* (2th edn, Oxford University Press 2006)

Mohamed A, *The General Theory of Commercial Companies* (Alnaser Library 1988) Arabic Source

Mohamed A, *The Legal System for the Share of Labor in Commercial Companies* (Arab Renaissance House 1990)

Mohamed B K *Commercial Companies-General Theory for the Company* (First edition, Dar Al-Nahda Al Arabia 1997) Arabic Source

Mohamed M A, *A relationship of the project with suppliers and customers* (Facility knowledge 1998)

Morse G, Charlesworth & Morse, *Company Law* (16th edn, Sweet & Maxwell 1999)

Mulherin J H and Boone A L, 'Comparing Acquisitions and Divestitures' (2000) 6 Journal of Corporate Finance 117, 139

Mustafa K T, *Commercial Companies* (Dar university publications 2000)

Mustafa K W, *Civil liability for members of the Board of Directors in Shareolding Company* (Dar Al-nashr 1965) Arabic Source

Mylonakis J, 'The Impact of Banks Mergers & Acquisitions on their Staff, Employment & Effectiveness'(2006) 1450-2887 (3) International Research Journal of Finance and Economics 122, 135

Nakamura H.R, 'Motives, Partner Selection and Productivity Effects of M&As: The Pattern of Japanese Mergers and Acquisition' (PhD thesis, Stockholm School of Economics 2005)

Nicholas I, 'The Corporation, its Former Directors and Legal Professional Privilege' (1997) 9(1) Bond Law Review10

Nutall R, 'An Empirical Analysis of the Effects of the Threat of Takeover on UK Company Performance' (1999) Nuffield College, University of Oxford, Working Paper No. 5

O'Brien D, 'Developments in Horizontal Consolidation and Vertical Integration' (2005) 449 The National Center for Agricultural Law Research and Information, University of Arkansas School of Law 575

Obeid R, *Commercial Companies in Egyptian Law* (5th edn, Arabic Culture House 1997)

P L Davies, *The Regulation of Takeovers and Mergers* (Sweet & Maxwell 1976)

Parkinson J.E, *Corporate power and responsibility* (Oxford University Press 1993)

Pasha A T, 'Effects of Merger on Management: Case Study of a Bank' [2010] European Journal of Economics, Finance and Administrative Sciences

Pass C, 'Corporate Governance and The Role of Non-Executive Directors in Large UK Companies: An Empirical Study' (2002) Bradford University School of Management, Working Paper No 02/25

Patrick R Parsons and Robert M Frieden, *The Cable and Satellite Television Industries* (Needham Heights: Allyn & Bacon 1998)

Paul P. Davies, *Introduction to Company Law* (2nd edn, Oxford University Press 2002)

Pautler P A, 'The Effects of Mergers and Post-Merger Integration: A Review of Business Consulting Literature' [2003] Bureau of Economics Federal Trade Commission

Pavel S and Lu Q, 'Do Stock Mergers Create Value for Acquirers?' (2009) 64 Journal of Finance 1061, 1097

Pehr-Johan, 'Nor back Globalisation and profitability of cross-border mergers and acquisitions' [2008] Research Institute of Industrial Economics

Penningtion R, *Company Law* (7th edn, Butterworth 1995)

Picot G, *Handbook of international mergers and acquisitions: Preparation, Implementation and Integration* (Palgrave Macmillan 2002)

Pilsbury S and Andrew M, 'Are Horizontal Mergers and Vertical Integration a Problem?' [2009] Joint Transport Research Centre

Prentice D and Holland P R J, *Contemporary issues in corporate governance* (Clarendon Press 1993)

Radwan A, '*Commercial Companies in Kuwait Comparative Law*' (Ashgate Law 1978)

Radwan A, *Joint Stock Companies and the Public Sector* (Dar Al-Arab Thought 1983) Arabic Source

Reda E, *Commercial Companies in the Egyptian Law* (5th edn Dar Al Arab culture) Arabic Source

Reed S Fand others, *A Merger and Acquisition Buyout Guide* (4th edn, McGraw-Hill 2007)

Rhoades S A, ‘Efficiency effects of horizontal (in-market) bank mergers’ (1993) 17 Journal of Banking and Finance 411,422

Richmond, *Turmoil in Top Management Teams Following Mergers and Acquisitions* (Business Expert Press 2009)

Rickford J, *The European Company: Developing a Community Law of Corporations* (Antwerp 2003)

Rigamonti S, ‘Mergers and Shareholders' Wealth in the Insurance Industry’ [2001] Catholic University of the Sacred Heart of Milan - Department of Economics and Business Administration

Robert H and others, ‘The Impact of Ownership Change on Employment, Wages and labour productivity in US manufacture (1977–1987)’ (2001)19 Centre for Economic Studies, US Bureau of the Census, International Journal of Industrial Organization

Roll R, ‘The Hubris Hypothesis of Corporate Takeovers’ (1986) 59 Journal of Business 199, 216

Ross S, ‘The economic theory of agency’ (1973) 63 The principal's problem American Economic Review 134, 139

Roy C and Kaye M, The International Labour Organization: A Handbook for Minorities and Indigenous Peoples (Minority Rights Group International and Anti-Slavery International 2002)

Salim R A, *Explanation Profusions of Companies Law* (2nd edn, Kumar Press 2001)

Sarkhou J, ‘The Legal Framework for Integration between the Kuwaiti Banks’, A comparative Study’ [1993] Journal of Law 51

Sealy and Worthington S, Cases *and Materials in Company Law* (8th Ed, Oxford University Press 2007)

Sealy L and Worthington S, *Cases and Materials in Company Law* (8th edn, Oxford University Press 1992)

Sealy L, ‘Bona Fides’ and ‘Proper Purposes’ in Corporate Decisions’ (1989) 15 Monash U.L.R. 263

Sealy L. S, *Cases and Material in Company Law* (5th Ed, Butterworth's, 1992)

Seely A, 'Takeovers: the public interest test' [2011] Business & Transport Section, House of Common Library 2, 18

Selwyn N *Law of Employment* (14th edn, Oxford University Press 2006)

Shafiq M, *Mediator in the Commercial Law* (3rd edn, Egyptian Renaissance Library 1976)

Shafiq M, *Mediator in the Egyptian Commercial Law* (2nd edn, Dar Alnahdah Al-arabia 1991) Arabic Source

Shafiq M, *The Mediator in Commercial law* (3rd edn, Dar Al-Fikr 1957) Arabic Source Shammari T, *Mediator in the study of the Commercial Companies Law and its amendments* (3rd edn, Dar Al-Khair 1999) Arabic Source

Shafiq M, *The Project with Multimedia Nationalities* (Cairo University Press 1978)

Shammari T, *Mediator in the study of Kuwaiti Companies Law and its amendments; A comparative study* (3th edn, no publisher 1991)

Sherman A J, *Merger and Acquisition from A to Z, Strategic and Practical Guidance for Small- and Middle-Market Buyers and sellers* (Andrew Sherman 1998)

Shleiffer A and Summers L, *Breach of Trust in Hostile Take-over's In: Auerbach, A J (ed) Corporate Take-overs: Causes and Consequences* (University of Chicago Press 1988)

Shrubsall V, 'Employment Rights and Business Transfers - Changes to the Acquired Rights Directive' [1998] Web Journal of Current Legal Issues in association with Blackstone Press Ltd

Smith I, Thomas G, *Employment Law* (9th edn, Oxford University Press 2008)

Sobhi M, "Workers' rights and duties in Islam" [2010], available at: http:// www.onefd.edu.dz, accessed 21/11/2012

Spaeth S and Garriga H, 'Corporate Strategy Mergers & Acquisitions' [2002] Department Management, Technology and Economic

Spyros I, 'Stock price reaction to M&A announcements: Evidence from the London Stock Exchange' (2010) 16 Journal of Money, Investment and Banking 31, 32

Starkman P E, 'Mergers and Acquisition: A Checklist of Employment Issues' (2000-2001) 13 DePaul Business Law Journal 47, 47

Stiles P, 'The roles and responsibilities of boards of directors in large UK companies' (PhD Thesis, University of London 1998)

Sudarsanam P S, *The Essence of Mergers and Acquisitions* (Prentice Hall 1995)

Sudarsanam S and others, 'Shareholder Wealth Gains in Mergers: Effect of Synergy and Ownership Structure' (1996) 23(5/6) Journal of Business Finance and Accounting 673, 698

Sudarsanam S, *Creating Value from Mergers and Acquisitions: The Challenges* (Pearson Educational Ltd 2003)

Sudarsanarn P S, *The essence of mergers and acquisitions* (Prentice Hall 1995)

Suhaibani I S and Mussa A, 'Merger and Acquisition; Global Financial Turmoil and new Opportunities' (2008) Investment Research Al Rajhi Financial Services Co

Suhaibani S and Mussa A, *Merger and acquisition global financial turmoil and new opportunities* (Rajhi Financial Services 2008)

T. Cannon, *Corporate Responsibility* (Pitman 1994)

Taha M K, *Commercial Companies* (Arabic Publications House 2000)

Taha M K, *Lebanon Commercial Law* (First edition, Dar Al Nahda Al-Arabia, 1968) Arabic Source

Tharwat A A, *Explaining the new Egyptian Commercial Code* (3th edn, Dar Al-nahdah Alarabia 2000) Arabic Source

Timothy J and Herndon M, *The complete guide to mergers and acquisitions: process tools to support M&A* (John Wiley & Sons. Inc 2007)

Tuch C and O'Sullivan N, 'Acquisitions on firm performance: A review of the evidence' [2007] International Journal of Management Reviews 148

Vickers J, *Merger Policy in Europe: retrospect and prospect* (Office of Fair Trading 2007)

Vijgen D, 'Shareholder wealth effects of M&A's in the Western part of Continental Europe' (Master thesis, University of Maastricht 2007)

Vitali M L, ‘Classes of Shares and Share Redemption in Italian and UK Company Law: The Peculiar Case of the Redeemable Shares’ (2006) 10 (2) Electronic Journal of Comparative Law 1, 39

Walsh J P, ‘Top Management Turnover Following Mergers and Acquisitions Strategic’ (1989) 9 (2) Management Journal 173, 183

Wanjiru N, *Property in work: the employment relationship in the Anglo-American firm; Studies in modern law and policy* (Ashgate 2007)

Weatherill S, *Cases and Materials on EU Law* (8th edn, Oxford University Press 2007)

Wedderburn, ‘Employees, Partnerships and Company Law’ (2002) 31 Industrial Law Journal 99

Weinberg M, ‘The Price Effects of Horizontal Mergers’ (2008) 4 (2) Oxford Journals Economics & Law Journal of Competition Law & Economics 433, 447

Williamson O E, ‘Corporate governance’ (1984) 93 Yale Law Journal 1197, 1230

Williamson O, ‘Markets and Hierarchies: Analysis and Antitrust Implications’ (1975) Free Press, New York

Wynn-Evans C, ‘The On-going Saga of TUPE and Contractual Variations Power v Regent Security Services Limited’ (2007) 36 Industrial Law Journal 480, 485

Wynn-Evans C, ‘TUPE, Collective Agreements and the Static–Dynamic Debate’ (2010) 39 (3) Oxford Journals Law Industrial Law Journal 275, 279

Wynn-Evans C, *Blackstone's Guide to the New Transfer of Undertakings Legislation* (Oxford University Press 2006)

Yamilky A, *Commercial Law, Comparative Study of Companies* (Dar of the Culture for Publishing and Distribution 2006)

Yano M, ‘Trade imbalance and domestic market competition policy’ (2001) 42 International Economic Review 729, 50

Younis A H, *Commercial Companies* (House of the Arab Thought 1991)

Zahra S A & Pearce J A, ‘Boards of directors and corporate financial performance: A review and integrative model’ [1989] Journal of Management 291, 334

Zhang A and H Chen, ‘Horizontal Mergers in A liberalizing World Economy’ (2002) 7 Pacific Economic Review 359, 76

Zhao L, ‘CEO Turnover after Acquisitions: Are Bad Bidders Fired?’(2006) 1 Journal of Finance

- ***Electronic References***

‘Deutsche Telekom and France Telecom Complete UK Merger’ <http://www.mobilemarketingmagazine.co.uk/content/deutsche-telekom-and-france-telecom-complete-uk-merger> accessed 4 May 2011

‘Globalisation and Mergers in India’ <http://business.mapsofindia.com/globalisation/mergers-india.html> accessed 22 September 2010

‘M&A volumes in GCC to reach $25b in 2010’ (*Saudi Gazette* 2010) <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentID=2010050571366> accessed 3 June 2011

‘Merger between the Companies and its Impact on Staff’ (*Shobokshi H Report* 2005) <http://www.alarabiya.net/programs/2005/10/24/17993.html> accessed 12 December 2010

‘Merger of T-Mobile UK - Orange UK Completed’ <http://news.softpedia.com/news/Merger-of-T-Mobile-UK-Orange-UK-Completed-139037.shtml,> accessed 4 May 2011

Bhat P, ‘Impact of Mergers & Acquisition on Employees & Working Conditions’ (*Law article; Indian Legal article* 2010) <http://www.123oye.com/job-articles/cyber-law/mergers-acquisitions.htm> accessed 11 November 2011

Burch I R, Morgan A G, Jack G and Wolf J G, ‘Is acquiring-firm shareholder approval in stock-for-stock mergers perfunctory’ (*Financial Management Association* 2004) <http://findarticles.com/p/articles/mi_m4130/is_4_33/ai_n8689970/> accessed 5 May 2011

Convertible Debt in the UK’ (*Bristol Business School, University of the West of England* 2000] <http://www.ssrn.com/> accessed 28 March 2012

M A, 'Managing change in biotech: Mergers and acquisitions, neuter biotechnology' (2007) <http://www.nature.com/nbt/journal/v25/n6/full/nbt0607-689.html> accessed 30 June 2010

Mobark N, 'Merger between the Companies and its Impact on Staff'(2005) <http://www.alarabiya.net/programs/2005/10/24/17993.html accessed 12 December 2010

Williamson M, 'UK firms 'resuming merger and acquisition activity' (2010) <http://www.heraldscotland.com/business/corporate-sme/uk-firms-resuming-merger-and-acquisition-activity-1.1074017> accessed 1 June 2011

- ***Laws***

The UK Companies Act 2006

The UK Cross-Border Merger Act 2007

The UK TUPE Act 2006

The State of Qatar Commercial Companies Law No (5) of 2002

The State of Qatar Labour Law No (2) of 2004

The UAE Commercial Companies No (8) of 1984

The UAE Labour Laws No (8) of 1980

- **Laws Cases**

  - ***The UK and EU Laws Cases***

Alemo-Herron and Others v Parkwood Leisure Ltd [2010] IRLR 298, CA

Arie Botzen and others v Rotterdamsche Droogdok Maatschappij BV [1985] EUECJ R-186/83

Arie Botzen And Others v Rotterdamsche Droogdok MaatschappijBv C-186/83, R-186/83, [1985] EUECJ R-186/83, [1985] ECR 519orland's Trustee v Steel Brothers & Co Ltd [1901] 1 CH 279

Ayse Suezen v Zehnacker Gebäudereinigung GmbH Krankenhausservice [1997] EUECJ C-13/95, [1997] ECR I-1259

B Aberdeen Railway Co v Blaikie Bros [1854] 1 MACQ 461

Donoghue V Doncaster Amalgamated Collieries. Ltd. Nokes V Same [1939] 2 K. B. 578; reversed by the House of Lords on Appeal, [1940] A. C. 1014

EMPLOYMENT APPEAL TRIBUNAL [2009] UKEAT/0456/08/ZT

Enterprise Managed Services Ltd v Dance & Ors (Transfer of Undertakings: Dismissal or automatically unfair dismissal) [2011] UKEAT 0200_11_2109

Extrasure Travel Insurances Ltd V Scattergood' [2003] 1 B.C.L.C. 598

Keir and Williams's v Hereford and Worcester County Council [1984] IRLR 91

Lee,Behrens & Co, [1962] CH 927

Litster v Forth Dry Dock and Engineering Co Ltd [1988] UKHL 10

Marshall v Southampton & South West Hampshire Area Health Authority (No 2) (1993) IRLR 445

Morgan V. Fry [1967] 3 W.L.R. 65 (Widgery J), [1967] 3 W.L.R. 65

Neptune (Vehicle Washing Equipment) Ltd v Fitzgerald (No.2) [1995]

Nokes v Doncaster Amalgamated Collieries Ltd [1940] AC 1014

Norris, J. [2011] EWHC 257 (CH)

Norris, J. [2011] EWHC 257 (CH)

Office of Fair Trading and others v IBA Healthcare Ltd [2005] 1 All ER 147

P Bork International A/S (in liquidation) v Foreningen Arbejdsledere I Danmark (C-101/87) [1989] IRLR 41

Parke v Daily News Ltd [1962] CH 927

Partco Group Led v Wragg [2004] BCC 782

Polkey v A.E. Dayton Services Ltd [1988] ICR 142, HL

Practice Direction (Crime: Majority Verdicts) [1967] 1 WLR 1198; [1967] 3 All ER 137; (1967) 51 CrAppR 454, CA; 31/7/67

Primlake Ltd (In Liquidation) v Matthews Associates [2006] EWHC 1227 (Ch, [2007] 1 B.C.L.C. 666

Rigby v Ferodo Ltd [1988] ICR 29

Rob Lant and Joel Phillips"M&A Tax Matters [2010]

Rye Investments Ltd v Competition Authority, High Court (Competition) Cooke J, [2009] IEHC 140

Salomon v *Salomon & Co* [1897] AC 22

Schlichting v Hendrikus Bartol and others [1992] E.C.R. 1-3189 1-458 C-63/91

Scottish Co-operative Wholesale Society Ltd. v. Meyer [1959] AC 324

Shepherd v Williamson & Anor [2010] EWHC 2375 (CH)

Simtel v Rebak [2006] EWHC 572 (QB), [2006] 2 B.C.L.C. 571

Sir Geoffrey Mills, *Controlling Companies*(Unwin Hyman 1988)

Smartex Limited [2006] CSIH36 XA125/05

Sophie Redmond v. Bartol [1992] IRLR 366

Spijkers v Gebroeders Benedik Abattoir CV [1986] 2 CMLR 29

Spijkers v Gebroeders Benedik AbattoirCV [1986] ECR 1119, [1986] ECR 1119 EC 24/85

Suzen v Zehnacker Gebaudereinigung GmbH Krankenhausservice [1997] IRLR 255

Sweetin v Coral Racing Employment Appeal Tribunal [2005] IRLR 252

Tapere v South London & Maudsley NHS Trust [2009] UKEAT 0410_08_190

Thompsons, 'Labour and European law review' [1996] (5) LELR 1996

Ubereering BV v Nordic Constriction company Baumanagement, Gmbh (NCC) [2002] E. C. R. 1-9919, 461

Viggosdottir v Islandspostur [2002] IRLR 425

Viggosdottir V. Islandspostur HF [2002] IRLF 42

Ward Abbott v. Bottes Building [2004] ICR 919[2004] IRLR 304

Werhof v Freeway Traffic Systems GmbH & Co KG [2006] IRLR 400 ECJ

West Mercia Safety wear Ltd v Dodd [1988] BCLC 250

○ Arabic Law Cases

Judgement of the Egyptian Appeal Court No(27) (Y 51k meeting September, 26, 1981), al-shrabiny Grip, G10

Judgement Egyptian Appeal Court No (83) (22K 1959), Technical Office, p. 798

Judgement Egyptian Appeal Court No (113), 28 s, meeting 18/12/1973 p. 24, p. 12

Judgement Egyptian Appeal Court No (2193) year 55K meeting 07/ 05/ 1990

Judgement Egyptian Appeal Court No (284), year 34 k, meeting, 7/ 12/ 1967, s18 p 1851

Judgement Egyptian Appeal Court No (29, 45K (Meting January 3, 1979) al-shrbiny Grip, G5, p. 13

Judgement Egyptian Appeal CourtNo (392 - K51, Year 1982) al-shrbiny Grip, G11, p. 105

Judgement Egyptian Appeal Court No (972), year 49S, meeting 14/ 05/ 1984

Judgement Egyptian Appeal CourtNo (363), year 52k, meeting 12/ 05/ 1986

Judgement Egyptian Appeal Court No (1687) for year (50) Session 13/ 05/ 1986

Judgement Egyptian Appeal Court No (213) of 21s, session 10/03/1955, super heater journal (36) of 1956,

Judgement Egyptian Appeal Court No (459) for the year 44 Q, meeting 1, March [1980]

Judgement Egyptian Appeal Court No (679) for year (40) Session 19/04/ 1976, 977

Judgement Egyptian Appeal Court No (127) of 32 s, meeting of April 7, 1966, the Technical Office, p. 821

Judgement Egyptian Appeal Court No(121) s 28 years meeting 29.01.1979, S. 1430

Judgement Egyptian Appeal Court No(1687) to the year 50 BC, the session 03/05/1985

Judgement Egyptian Appeal Court No (8-192) Labour discrimination, April 26, 1993

Judgement of Egyptian Appeal Court No (27) year 51 k, meeting 26/ 12/ 1981, S32, 2423

Judgement of Egyptian Appeal Court No (453), year 41K, meeting 07/ 02/ 1983, S34, A 1

Judgement Egyptian Appeal Court No (1299), year 49K, meeting 28/ 11/ 1983

Judgement Egyptian Appeal Court No (213) of 21s, session 10/03/1955, super heater journal (36) of 1956, 345.

Jordanian Court Excellence No. 697/95 (30-2661 to 2667)

Judgement of Egyptian Appeal court, (19 April 1976), a Technical Office Year 27, p977.

Judgement of Egyptian Appeal No (679) s 40—Session 19/04/1976, Distinguish human No. 697/95 (30-2661 to 2667

Judgement of Jordanian Court of Cassation in Resolution No. 1544 (2001 m distinguish (the five) as of July 23, 2001

Judgement of Jordanian Court of Cassation in Resolution No. 1544/2001 m distinguish (the five) as of 23/07/2001). 713

Judgement of Jordanian Court of Cassation No. 1544/2001 meeting, date of 23/07/2001,

Judgement of Jordanian Court of Cassation No. 246/2004 dated 28.6.2004 m Publications,

Judgment Distinguish of Jordanian Court No. 697/95 (30-2661 to 2667)

Judgement of Egyptian Court of Cassation (Appeal No. 113, p. 28 s Session, of 18/12/1973, pp24-128

Appeal No. 121 s 28 years, meeting 29.01.1979, S. 1430, p433

Judgment Jordanian Court Excellence No. 697/95 (30-2661 to 2667)

Judgment of Jordanian Excellence Court No. 284/95 of 25/03/1995

Judgement of the Egyptian Court of Cassation No 15, 1977

The judgement Jordanian Court Excellence Number 697/95 (30-2661 to 2667)

judgement of Egyptian Court of Cassation Number 213 s 21 years, meeting March 10th 1955, year, 36 January-June 1956, p.345 and 677.

The Judgement of Egyptian Court of Cassation date 12/ 5/ 1974

The Judgement of Egyptian Court of Cassation, December 26, 1981

The judgement of the UAE appeal court, in appeal No (108 and 109) of 2009

Judgement Jordanian Court Excellence Number, 697/95 (30-2661 to 2667)

Judgement Egyptian Appeal Court, Appeal No (213) of 21s, session 10/03/1955, super heater journal (36) of 1956, 345.

judgement of Egyptian Court of Cassation Number 213 s 21 years, meeting March 10th 1955, year, 36 January-June 1956, p.345 and 677.

Judgement of Egyptian Court of Cassation, December 26, 1981

Judgement of Jordanian Court of Cassation in Resolution No. 1544 (2001 m distinguish (the five) as of July 23, 2001,

Judgement of Jordanian Court of Cassation No. 1544/2001 meeting, date of 23/07/2001

Judgement of Jordanian Court of Cassation No. 246/2004 dated 28.6.2004 m Publications,

Judgement of the Competition Appeal Tribunal: Hutchinson 3G (UK) Ltd v Office of Communications, [2005] All ER (D) 396 (Nov), paragraph 31

Judgement of the Egyptian Court of Cassation N 363, year 52, meeting 12/ 05/ 1986

Judgement of the Rye Investments Ltd v Competition Authority, High Court (Competition) Cooke J, [2009] IEHC 140

Judgement of the UAE appeal court, in appeal No (108 and 109) of 2009

Judgements of the Egyptian Court of Cassation representative in verdicts: appeal N (435), year 41k meeting 07/ 02/ 1983, S34 p 1, p 426,

Judgment Jordanian Court Excellence No. 697/95 (30-2661 to 2667)

Judgment of European Court of Justice, [2005] All E.R. (EC) 1059; [2005] E.C.R. I-987;

Appeal (N 127 (Y 32 (1966), Technical Office, p. 821 and appeal (N 29 (Y 32 (1966), Technical Office, p. 401

Judgment of Jordanian Excellence Court No. 284/95 of 25/03/1995

Judgement Egyptian Appeal Court No (113), p. 28 s Session, of 18/12/1973, p. 24, p. 128,

Egyptian Commercial Companies Law No (159) of 1981

Egyptian Court of Cassation Judgement February 15, 1977, the Technical Office, No. 2.1964

Egyptian Court of Cassation Judgement February 15, 1977, the Technical Office, No. 2.1964

Egyptian Court of Cassation Judgement February 15, 1977, the Technical Office, No. 2.1964, Part (2.3.2) of this Chapter

Egyptian Denunciation 19 April 1976 Group Technical Office Year 27.1976, p977

Judgement of Egyptian Appeal No (679) s 40—Session 19/04/1976, Distinguish human No. 697/95 (30-2661 to 2667

Appeal No. 113, p. 28 s Session, of 18/12/1973, p. 24, p. 128

Egyptian Denunciation, April 19, 1976, Group of the Technical Office Year 27.1976 p. 977

Judgement of Egyptian Court of Cassation May 12, 1986, Veto judgment, 3 March, 1973

Judgement Egyptian Appeal CourtNo (1687) to the year 50 BC, the session 03/05/1985

- ***Reports of the International Labour Organization (ILO),***

Report for discussion at the Tripartite Meeting on the Employment Impact of Mergers and Acquisitions in the Banking and Financial Services Sector, International Labour Organisation (ILO), Sect oral Activities Programme [2001] 1,116

The employment effects of mergers and acquisitions in commerce, Report for discussion at the, Tripartite Meeting on the Employment Effects of Mergers and Acquisitions in Commerce, 2003, International Labour Organisation, Geneva, 1,62