



The Recent Development of Holding Companies Under the Iraqi Law

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ABSTRACT

Emerging holding companies are now a universal necessity as a result of rapidly expanding domestic and international business transactions. Due to holding companies has a significant impact on the national economy, legislation increasingly focuses on them. Concisely, the holding company dominates the administrative and financial aspects of its subsidiaries, and as a result, it casts votes on the board of directors of the subsidiary in favour of the holding company's interests. The research focus on the legal gaps in various aspects of the holding company, for instance, the concept of liability and domination criteria.

The main purpose of this study is to display the effectiveness of the recent amendment to the Iraqi Company Law in 2019 to create a legal basis for holding companies and to describe holding companies in different transitional periods in Iraqi law.

The research is divided into three chapters; the first chapter provides a general description of the holding company. Then, clearly, holding companies in Iraq, such as recent sorts of companies, were legalized at the end of 2019, when the Iraqi Representative Council amended Company Law No. 21 and issued No. 17 of 2019 to legalize holding companies. As well, the second chapter analyzes domination measures over the subsidiaries, while the third chapter pertains to the holding companies' liability. In the conclusion, the researchers present some results and recommendations.



Introduction

Groups of companies are a modern fact in the business world. Therefore, corporations create groups to conduct operations in a coordinated manner in order to be aligned with the interests of the whole group. Hence, the holding company plays an immense role in conducting, directing, and dominating the subsidiaries within the group. Holding companies are an influential way to lure foreign investment to the national market. A holding company doesn't engage in any direct dealings with customers or buyers. mainly, it is established to dominate the subsidiaries only by casting votes on the members of the boards of directors of the subsidiaries. As usual, Iraq is lagging in terms of legal updates. However, to be more reliable and consistent with Iraq's legal system, the Iraqi legislators included a new sort of company in the amendment to Iraqi Companies Law No. 17 of 2019, which is the Holding company. The amendment law is a progressive step, but it also contains some loopholes that are visible in some aspects.

Despite knowing the subsidiaries independence as a separate legal entity, the term "holding company" refers to a joint-stock company or limited liability company that conducts the subsidiaries through controlling stocks or a board of directors. The holding company doesn't participate in any direct operations, it only monitors and guides subsidiaries in the management of a business. The presence of these types of companies in Iraq has become an urgent need. In order to promote economic growth and a direct investment strategy that benefits the country's economy.

1. Problem Statement

Jurists and traders expressed concern over the lack of legal regulation of holding companies in Iraq. The Iraqi Parliament eventually passed inadequate Company Law No. 17 in 2019 to regulate holding companies and outline most holding company procedures. In the research, we will concentrate on addressing the loopholes in various aspects of the holding company. The Iraqi lawmaker apparently does not determine the objective of the holding company, which is an obvious issue. Also, concentrate holding company liability in front of the subsidiaries because the Iraqi legislator does not explicitly limit holding company liability in front of subsidiaries. Also, point out the domination criteria of the holding company over subsidiaries because this is a contentious issue that needs to be clarified to prevent the holding company from using unfair opportunities to dominate the subsidiaries and using them against other shareholder's interests.

The distinction between holding companies and subsidiaries in terms of financial and legal status is the source of a large number of issues. For instance, in the case of subsidiary bankruptcy and loan problems, in that case, the subsidiary creditors will be stuck with this legal problem because that law doesn't provide a legal remedy in those circumstances. Therefore, the creditors of the subsidiary do not have a legal solution to resort to to regain their money or assets. So, it was an undeniable problem in the Iraqi legislation during the research.



2. The Aim of the Research

Iraq suffers from the absence of comprehensive legal regulation of holding companies because they are one of the most significant types of companies worldwide. The research is going to answer several questions concerning holding companies on an internal and international level. It will disclose a comprehensive understanding of the holding company in accordance with international standards, with a particular focus on Iraqi legislation. The researchers aim to neatly determine the loopholes of the holding company and offer a legal solution to any of the legal lacunae that have been missed due to the amended company law, which ignores some significant related aspects that contain liability and the relationship between the holding company and subsidiaries. Furthermore, display the effectiveness of the recent amendment to the Iraqi Company Law in 2019 to create holding companies and be beneficial to the Iraqi economy. To fulfill the aim of the research, we will concentrate on a number of points:

1. Provide a general understanding of the holding companies because they have recently developed in the Iraqi legal environment. So, the research will compare the Iraqi holding companies with holding companies in different states.
2. Describe holding companies in different transitional periods in Iraq.
3. Combination of varied types of domination and controlling criteria of the holding company on the subsidiaries.
4. Concentrate on the holding company liability because there is a deep gap in Iraqi company law, so the study will endeavour to reach a proper settlement during research.

3. Research Methodology

This study primarily concentrated on a critical legal analysis of holding company. meanwhile, some topics provide comparative sides to enhance the readers understanding. The research was written with a focus on legal and jurisprudential perspectives for the holding companies.

4. Hypothesis

The researchers have thought of several topics to discuss:

1. Holding companies is an important factor in improving the national economy.
2. Concept of an Iraqi holding company between Iraq and different legislations.
3. The amended law is sufficient to activate holding companies in Iraq.
4. How were holding companies legalized before 2019.
5. Delimit the liabilities of the holding companies in front of the subsidiaries.

5. Research Structure

In spite of the conclusion and reference, the research is divided into three separate chapters. The first is to give a comprehensive understanding of the holding



company concept. The second chapter is about how the holding company dominates over the subsidiaries. Following that, we will discuss the liability of the holding company in front of the subsidiaries.

Chapter 1: General Understanding of the Holding Companies

Holding companies are the new form of company in Iraqi law that requires further conversation. Therefore, the research in this chapter intends to propose a comprehensive understanding of the essential aspects of holding companies.

1.1 Backdrop of the Holding Company's Control Over its Subsidiaries

It is necessary to retrieve the history of the holding company in order to glean any pertinent information about its development. The United States of America became the culmination of holding companies worldwide because it was the first state to legalize it. The first attempt, which began in New York in the ninth century and then appeared in New Jersey. In spite of what is traditionally assumed by jurists, New Jersey was the first state to contain a legislative framework for holding companies. But in fact, the holding company originated in New York under Act 1853, which allows the health insurance companies to be holding companies' by investing capital in domestic companies (Freedland, 1955, p. 373). Subsequently, the holding company acquired a broader purview according to the New Jersey Corporate Act of 1893 (Freedland, 1955, p. 373). Consequently, the holding company spanned across the United States, and it gradually proliferated in Europe. Lebanon was the first Arabic state and Middle East country to mention a holding company in legislative decree No. 45 of June 24, 1983 (Jasm, 2021, p. 21). Furthermore, Iraq legalized holding companies for the first time by issuing Law No. 17 in 2019 (Holding Company Amendments), this has led to considerable progress for Iraq in the field of holding companies.

1.2. Holding company concept under Iraqi law.

The divergent legal frameworks for holding companies in different countries have led to a contentious perception of holding companies. Each of the legal frameworks relies on different measurements to define the holding company. For instance, several legal systems depend on the domination criteria, while others depend on the contribution criteria or nature of the operation. Hence, for more clarity, we will disclose definitions for holding companies under Iraqi laws from different sources.

Before 2003, managing holding companies was not subject to any legal regulations, but after that year, some steps were taken.

Following the overthrow of previous governments, the Coalition Provisional Authority was founded to govern Iraq until establishing a legitimate government. During that duration, the Coalition Provisional Authority issued Decree No. 39, which pertains to foreign investment. It describes all of the necessary procedures and tools for starting foreign investment, but the decree makes no mention of regulating holding



companies in any way. The term “holding companies” emerges in Iraqi law for the first time in Article 1 of 2004 Iraqi Bank Law No. 94, which pertains to definitions and briefly defines Bank Holding Company, which states” a company that owns or controls a bank” Also in the same article, define subsidiary, which state “A company that controls a bank and other company that is controlled by the company that controls the bank” (Iraq Banking Law, 2004)

The most recent advancement in the field of holding companies in Iraqi legislation is the last amendment to the Iraqi Company Law, which added a new opportunity for corporates called “holding company”. Specifically, according to the Iraqi amendment to Company Law No. 19 of 2019, Article 7 Paragraph A state "The holding company is a joint stock or limited liability company that controls a company or joint stock or limited liability called subsidiaries” (Iraqi Company Law No.21 Of 1997 with its amendments, 2019). It means the holding company is the joint stock or limited liability company that obtains sufficient shares of the subsidiaries to manage the company and influence the subsidiary's decisions. More obviously, the holding company is a legal entity created to combine the companies based on the predominance of the management and sharing of the subsidiaries (Hussien Faidhallah and Dana Abdulkarim & Jala Yahya, 2022, p. 17). If a company becomes the owner of more than half the capital of its subsidiarys or dominates the board of directors’ subsidiary, it is referred to as a holding company. Furthermore, the Iraqi legislator emphasizes domination criteria for defining holding companies because they explicitly use the “control” term over subsidiaries in Article 7. As a result, in order to become a holding company, it must control a subsidiary.

In addition, the same article states that “the name of the company must, in addition to its type, be accompanied by a (Holding) word that is mentioned in all papers, advertisements and correspondences issued by the company”. It indicates the holding word must be attached to every deed that was issued by the holding company. Furthermore, the Iraqi Company Law specifies the holding company purposes in the second paragraph of Article 7, such as inception and decisions, securities, loans, etc.

In spite of Iraq, the research is going to discuss holding companies according to Jordanian holding companies. According to jurisprudence, the term “holding company” was initially established in Jordanian Company Law No. 22 in 1997 and then influenced Iraqi law and was incorporated into Iraqi Company Law (Hussien Faidhallah and Dana Abdulkarim & Jala Yahya, 2022, p. 20). The Jordanian law states:” A Holding company is a public shareholding company which has financial and administrative control over one or more Companies called subsidiaries”. (Jordanian Company Law No. 22 of 1997 and its amendments , 2006).

The Jordan Law only mentions one type of company that can become a holding company, which is the public shareholding company, whereas it doesn’t mention any particular kind of subsidiary company. Meanwhile, Iraqi law allows both joint-stock and limited companies to become holding companies, therefore, the research observes a narrower opportunity for companies to change to holding under Jordanian law. However, Iraqi law permits more than one sort of company to become a holding company, which is joint stock and limited liability, Therefore, when compared to



Jordanian law, Iraqi law offers companies more opportunity to become holding companies.

The researchers consent with the definition of the Iraqi Law for holding companies because it provides the opportunity for more than one company to become a holding company and specifies significant companies such as joint stock and limited liability companies that can function as holding and subsidiary companies.

1.3. Holding Company Objective

Holding companies have an important role in the economic life of each country, Iraqi law, after 2019, realize the importance of this type and embeds it in the Iraqi legal infrastructure.

The vast majority of various laws include specific provisions for holding company purposes. It is also possible for the companies to determine their aim in the memorandum of association (Dana Abdulqadir and Abdulbasit Mawlud , 2020, p. 69). The main aim of legislators is to add holding companies to company law to support the national economy. However, the term” national economy” in the Iraqi Company Law has been criticized because, holding companies are generally not domestic and intend to attain maximum profit by way of foreign traders and investors (Muqdad Sam Al-Juboori and Hadeel Adnan Al-Ani & Othman Ayad Al-Juboori, 2020, p. 41). In Article 7, paragraph 2, the Iraqi legislator outlined the holding company's purposes and enumerated all of the holding company's objectives, including:

- a. Owing movable and immovable funds in the framework of the company's activity (Iraqi Company Law No.21 Of 1997 with its amendments, 2019).
- b. Establishing and managing its subsidiaries or participating in the management of other companies to which it contributes (Iraqi Company Law No.21 Of 1997 with its amendments, 2019).
- c. Investing funds in stocks, bonds and securities (Iraqi Company Law No.21 Of 1997 with its amendments, 2019).
- d. Providing loans, guarantees and financing to its subsidiaries (Iraqi Company Law No.21 Of 1997 with its amendments, 2019).
- e. Owning patents, trademarks, franchises and other moral rights, exploiting and leasing them to its subsidiaries or others (Iraqi Company Law No.21 Of 1997 with its amendments, 2019).

The objectives of holding companies are constrained by most laws, and Iraq uses the same method. Holding companies in Iraq are only allowed to engage in the seven activities listed under the specific provisions of the Iraq Company Law (Jasm, 2021, p. 9). As well, the objectives of the Iraqi holding company are ambiguous because they are not stated explicitly, but are impliedly expressed, such as "exclusively" objectives. Therefore, holding companies prohibit and do not allowed contributions to any commercial activities regardless of the aforementioned purposes (Dana Abdulqadir and Abdulbasit Mawlud , 2020, p. 69). s



Chapter 2: Controlling holding companies over subsidiaries

In the chapter, the research discusses the general criteria of dominance while disclosing the dominance creiteria in Iraqi law.

2.1. Holding Company Dominance Criteria over Subsidiaries

A company does not obtain a holding annex without domination. That is why domination is an essential trait of the holding company (Jasim, 2021, p. 74). Owning subsidiary shares by the holding companies is not for commercial activity only, the main aim is to dominate the subsidiary operations (Ibrahim M. , 2007, p. 84). The holding company has a significant impact on the entire basic matters of the subsidiaries; for instance, the management and decisions are influenced by the holding company representatives on the board of directors of the subsidiaries (Jasm, 2021, p. 3). Furthermore, subsidiaries' activities trended and controlled in favor of the holding company strategy. Regardless of domination, legal frameworks distinguish holding companies from subsidiaries because both of them have specific legal and financial entities, therefore, there are two respective companies (Allami, 2021, p. 640). The laws implement various ways to control the subsidiaries, but the most prominent approach bifurcates into management and financial dominance, despite other methods such as factual, etc. In general, there are various types of dominions. Which compromise:

1. **Management Domination:** Management domination from holding companies to subsidiaries is fundamentally based on centralization. Hence, through this dominance, the holding company closely monitors and guides the practices of its subsidiaries (Ali AL-rufaiee and Ali Dhari, 2007, p. 4). It indicates that the holding company instructions and decrees are carried out by its subsidiaries (Muscat, 2016, p. 445). Holding companies should use one of the following methods to achieve management dominance:
 - Acquire more than half the subsidiary shares in order to cast majority votes on the board of directors to take subsidiary decisions in favor of the holding company, also to appoint and remove the board of directors of the subsidiaries (Ibrahim M. , 2007, p. 84).
 - Alternatively, without owing any shares in subsidiaries, the holding company is granted the authority to remove and appoint members of the board of directors by the subsidiary's memorandum of association. (Muscat, 2016, p. 445).
2. **Financial Domination:** Ownership of more than half of the subsidiary's shares will allow this sort of dominance, as well as, the holding company concentrating on setting out a specific financial policy for the subsidiaries and continuing to oversee their financial activities, and developing the production plan of the subsidiary. The financial dominance establishes a financial relationship between the holding company and its subsidiaries, the holding company sets up the financial policy of the subsidiary and borrows money to



finance the subsidiaries, (Ali AL-rufaiee and Ali Dhari, 2007, p. 27). Additionally, the holding company distributes the profit ratio between subsidiaries and determines the price of the goods produced by the subsidiaries (Ali AL-rufaiee and Ali Dhari, 2007, p. 27). ss

3. **Actual Domination:** When formal arrangements are missing or absent; then the “de facto” will appear to settle the situation. For instance, the holding company own a sufficient portion of the subsidiaries' capital, while, the vast majority of the subsidiary board directors will not be present in the public meeting. As a result, the holding company takes advantage of the absent other shareholders' opportunity and controls the majority votes of the board (Hussien Faidhallah and Dana Abdulkarim & Jala Yahya, 2022, p. 22). It means that without owning more than half of the subsidiarys capital, the holding company becomes the dominant shareholder of the subsidiary. According to this way, dominance can only be obtained by taking advantage of the absence of the members of the board of directors of the subsidiary (Dana Abdulqadir and Abdulbasit Mawlud , 2020, p. 58).
4. **Domination Agreement:** It is common in most laws. in this manner of domination, the holding company has adequate power to direct the subsidiary in favor of its interests (Bringezu, 1973, p. 145). It happens when the holding company concludes a contract or agreement with the subsidiary to carry out its goals under subsidiaries shadow, such as managing and directing the policies of the subsidiary, which are in line with the holding company's strategies (Dana Abdulqadir and Abdulbasit Mawlud , 2020, p. 58). Eventually, the subsidiary must comply with the holding company orders as per the agreement.
5. **Domination through Merger:** Merger is a significant method of dominance because it combines the stocks and Labour forces of two companies, paving the way for more effectively concentrating for enterprise breakthrough. In other word, because two or more company are unable to conduct business in accordance with their respective stocks, they voluntarily resort to mergers to obtain business aims and reduce expenditures (Ibrahim M. , 2007, p. 85).
6. **Split-ups:** It appears that when the company proliferates ventures and business activities, the master company segments into two or more companies, each pertaining to a specific field, for instance, one of them for marketing and the other for producing. According to split-ups, the leading company should remain as a holding company while others become fledgling companies. Meanwhile, the holding company should take one of the following steps: either control an appointee and discharge the board of directors or own more than half of the fledgling capital (Ibrahim M. , 2007, p. 84).



Different national laws do not regulate all forms of domination. So, the national laws legalized several forms of domination and ignored others. Iraqi law does not regulate all types of dominance. According to Article 7, paragraph 1, the company has two options to become a holding, the first is management dominance, and the second is financial dominance. In the next subchapter, the research will focus this aspect clearly.

2.2. Holding Company Dominance in Light of Iraqi Law

In reality, the holding company's dominance is its most notable feature. Article 7, paragraph 1 of the Iraqi Company Law emphasizes the necessity of holding company dominance over subsidiaries (Iraqi Company Law No.21 Of 1997 with its amendments, 2019). Meanwhile, the subsidiary continues to operate as an independent legal entity, but under the supervision of the holding company (Ibrahim F. J., 2021, p. 20). The Iraqi law makes obvious mentions of both essential types of domination, the management dominance that results from the holding company's controls over the subsidiary board of directors and financial dominance, which occurs when the holding company owes more than half the capital of the subsidiary (Hussien Faidhallah and Dana Abdulkarim & Jala Yahya, 2022, p. 20). This clearly indicates that one of two ways could lead to an Iraqi company becoming a holding company. Understanding Article 1 reveals that the dominance rules for joint stock companies and limited liability companies were different under Iraqi law. For instance, if the company becomes the holding of a limited liability company it must own more than half of the subsidiary capital in addition to controlling management. But, in order for a company to become a holding company for a joint stock company, it company must either have a control board of directors or own more than half of the shares, if only one of the previous measures is adopted, it indicates that the company has become a holding of the joint stock company. The intention of Iraqi legislator is difficult to understand because the dominance criteria between joint stock and limited liability companies are duality (Hussien Faidhallah and Dana Abdulkarim & Jala Yahya, 2022, p. 20). Also, Hussein Faidhallah, Dana Abdulqadir and Jala Yahya repeated the Iraqi legislator embedding duality in the domination criteria between limited liability companies and joint stock companies, while it was dispensable. Additionally, the research supports what the professors mentioned and believes that duality is an undeniable loophole in Iraqi company law because it is unnecessary and raises blurry.

In spite of, legal dominance by management and financial dominance, the Iraqi Company Law indirectly allows actual dominance as a form of dominating subsidiaries. Additionally, according to Article 1 Paragraph 3 of Iraqi law, actual dominance can exist even if the majority of the shares are not owned by the holding company. This type of dominance occurs when the majority management team of the subsidiary is absent and the holding company takes advantage of the opportunity to direct the general assembly of the subsidiary because of the absence, despite not owning more than half of the subsidiary capital (Hussien Faidhallah and Dana Abdulkarim & Jala Yahya, 2022, p. 22).



The Iraqi Company Law only mentions three types of domination criteria: legal domination, which includes management and financial domination, and actual domination, but it doesn't determine the mechanism of actual domination. The Iraqi law ignored merger and split-up, as well as domination agreement. The research reaches the opinion that the Iraqi legislator should provide a wider opportunity to the companies to dominate subsidiary through other kinds of domination, which contain split-up and merger, as well as domination agreement criteria.

Chapter 3: Liability of the Holding Companies

The liability of the holding companies is an important topic in the research because the law should specify the liability of the holding companies to prevent the holding company from using the subsidiary for deception purposes. This chapter will be divided into three sub-chapters.

3.1. Overview of the Holding Companies Liability

Liability is established based on the real connection between persons, as that connection is what determines the responsibility of both parties, and it is usually a contract concluded between two or more persons that explains the obligations and responsibilities of each person. If one of them violates his obligations, contractual liability results for him, and he must bear the consequences (Hasan, 2022).

These laws indicated the responsibility of the company's board of directors in the event of the company's inability to pay its debts, as stated in the Jordanian Companies Law in Article (159), which states: "The chairman and the Board of Directors of a Public Shareholding Company shall be jointly and severally responsible towards the shareholder for any default or negligence in the management of the Company. However, upon the liquidation of the Company and the existence of a deficit in its assets, in a manner that renders the Company unable to meet its obligations, and should the reason for such a deficit be the default or negligence of the chairman and members of the Board or its general manager or auditors, the Court shall have the right to hold any of the aforesaid persons liable for the debts of the Company in full or in part, as the case may be. The Court shall determine the amounts the said persons are liable for and whether they are jointly liable or not".(Jordanian Company Law, Article 159 in 2006)."

In connection with Iraqi Law, we have to concentrate on Article (120) of the Iraqi Companies Law is close to this meaning, as it stipulates, "The Chairman and members of the Board of Directors must exercise the same diligence in managing the company's interests as they exert in managing their own interests and managing it peacefully and legally, provided that they do not deviate in this from the care of a normal person." People like them, and they are responsible before the General Authority for any work they carry out in this capacity (Iraqi Company Law, Article 120 ,1997)."



Liability arises when contractual obligations are breached. Due to the holding company's dominance over the subsidiary, the holding company Liability will appear during a relationship with subsidiaries. Normally, the holding company is not liable for any infractions or unpaid debts of the subsidiary. Therefore, the holding company has a respective legal entity, accountabilities, and rights (Martin Petrin and Barnali Choudhory, 2018, p. 771). According to general principles, the holding company is not liable for the illicit operations of the subsidiaries. In certain circumstances, the holding company will be held liable for the subsidiary's actions. For example, if the holding company commits wrongdoing or abuses its power in front of the subsidiary, the latter subsidiary will be able to sue the holding company for damages, and the holding company will demand compensation for those damages.

In accordance with the most recent amendment to company law, the Iraqi legislator doesn't set forth specific provisions for the liability of the holding company. Therefore, it is an evident loophole in Iraqi law because liability is highly significant in regulating holding companies. Generally, the Iraqi Company Law determines liability of the joint-stock and limited liability companies. Hence, according to the memorandum of association, the shareholders of those companies have limited liability for the debts and obligations of the company based on their nominal value (Forlian Amereller and Stephan Jager and Ahmed S. Al- Janabi , 2010, p. 49). It means that only the company's capital is a guarantee for the creditors of that company, excluding the shareholders private capital. Hence, in a loss, the shareholders of a company only suffer a loss of the nominal value of their shares (Dana Abdulqadir and Abdulbasit Mawlud , 2020, p. 60). There is a huge gap in the liability of the holding company. However, in certain cases, the holding company will be liable in some exceptional situations, particularly if the holding company tries to hide behind the cover of limited liability for its interest or gambles in the interest of the creditors and other unlawful transactions (Dana Abdulqadir and Abdulbasit Mawlud , 2020, p. 74). As a result, the Iraqi legislation doesn't specify the liability and non-liability of the holding company but implicitly returns to the nature of the relationship between the holding and subsidiary (Kate, 2022, p. 761). The holding company will bear responsibility and be subject to strict liability if it engages in any of the following acts: either failure to conduct the subsidiary or arbitrariness.

3.2. Holding company failure to conduct subsidiary

Error is one of the fundamental principles of civil liability, which means that anyone who makes an error and harms someone else must compensate he or she, therefore, any wrongdoing and illicit operations carried out by holding company representatives who harmed the subsidiary are the responsibility of the holding company, based on the principle that the holding company is the manager of the subsidiary. The holding company's liability is limited by the representatives of the board members and directors. Therefore, the holding company representative on the subsidiary's board of directors must run the subsidiary company in the best interests of the subsidiary. On the contrary, the holding company will be held liable if its



representatives commit a serious error or violate any law, internal regulation, or memorandum of association (Fady Tawakol and Walaa Ibrahim & Nayel Alomran , 2021, p. 11). Furthermore, it has been proven, pursuant to Article 120 of the Iraqi Company Law, that “The chairman and the members of the board of directors shall make their efforts for company interests and manage them correctly and legally to the same extent as their own ones and not less than the usual person and they shall be responsible before the general assembly for any work in this capacity (Iraqi Company Law No.21 Of 1997 with its amendments, 2019)”. It implies that the directors and board members who represent the holding company in a subsidiary must take the missions of the subsidiary seriously in order to avoid being held liable for any error that were made and caused harm to others, otherwise, the holding company will be held liable for any incurred errors that harmed others, hence, the holding company must be kept at arm’s length from illegal actions that cause harm to others. Additionally, the Iraqi Civil Law describes the illegal acts stipulated in Article 204, which states that” every infringement became a cause to harm others except what was mentioned in the previous clauses require compensation” (Iraq Civil Law no. 40 of 1951., 1951) it means, the Iraqi Civil Law confirms the idea of compensation in consideration of an unlawful act, but must have a causal relationship between the error and the harm.

3.3. Arbitrariness

In order to acquire broad transactional power among subsidiaries, the holding company should act in good faith. Furthermore, the holding company must not intentionally tempt or harm others if this is done, as stated in Iraqi civil law, which is embedded in general principles in Articles 6-7. If it causes damage the subsidiary interest, it must be facing tort liability (Iraq Civil Law no. 40 of 1951., 1951). No doubt, the holding company has the right to deal in its shares, but it must ensure that the dealing does not damage to the subsidiary. For example, selling the subsidiary shares to the subsidiary competitor is definitely an infringement of the law and internal regulations of the subsidiary. In general, the holding company will be responsible for any arbitrariness (Khandan, 2020, p. 481). Also, Iraqi Civil Law Articles 6-7 should be implemented over the Iraqi holding company in any case of arbitrariness and negligence acts of the holding company against the subsidiary, the holding company is liable.

In the absence of an obvious article of Iraqi legislation governing the holding company’s liability is the huge loophole in the Iraqi Company Law. As aforementioned, several Iraqi legal laws can be used indirectly to determine holding company liability in terms of arbitrariness and negligence, such as Articles 6-7 in the Iraqi Civil Law.

4. Conclusion

Following a description of previous holding company aspects based on various perspectives in the study, the researcher reached the results, which comprise:

1. Before 2019, Iraqi legislation didn’t mention holding companies: therefore, during that time, holding companies fell into the legal gap.



2. The last amendment to the Iraqi company law and the incorporation of the holding company were good steps to make this type of company more prevalent.
3. The holding company is defined as a joint-stock or limited liability company that exercises dominance over another joint-stock or limited company known as a subsidiary. Under Iraqi law, only the joint stock and limited liability company can become a holding company, and similarly, only the joint stock and limited liability company can become a subsidiary, it is mentioned that Iraqi law prohibits other types of companies from becoming holding companies or subsidiaries.
4. Iraqi legislation doesn't specify a mechanism for domination over the subsidiaries because the Iraqi company law only mentions financial and management domination, and the Iraqi law does not mention procedures for domination.
5. Under current company law, it is indirectly understood that the objective of the holding company as exclusively to restrain the holding companys main objectives and activities.
6. Iraqi company law doesn't mention the liability of the holding companies in front of the subsidiaries, so according to justice principles, suppose holding companies have limited liability.
7. Both holding companies and subsidiaries have independent personal statutes therefore they are two different legal entities; hence, holding companies are protected from downturn by the subsidiaries.

Recommendations:

1. The lawmaker should adopt joint liability for the holding company instead of limited liability in order to ensure fairness between the two types of companies. Because limited liability can sometimes be used to create unfairness and the holding company can deviate from real liability, they should also regulate the relationship between the holding companies and subsidiaries.
2. The current amended company law needs to be modified again and receive experience from developing countries in the field of holding companies.
3. The Iraqi legislator should provide specific procedures for the establishment of holding companies because the Iraqi legislator does not determine the establishment procedure of holding companies because the Iraqi legislator only regulates the establishment of joint stock and limited liability companies.
4. However, the merger and split-up are necessary, therefore, both of the ignored modes of dominance should be included in the upcoming amendment to the Company Law, and the Iraqi legal system must regulate both of them in a sensible and modern way.



References

Books :

1. **Hussien Faidhallah and Dana Abdulkarim & Jala Yahya. (2022). Ravay yasay kompanyakany Iraq w hamwarkrdnawakan (Interpretation of the Iraq companies law and amendments). Sulaymaniyah : Yadgar .**
2. **Muscat, A. (2016). Liability of the holding company for the debts of its insolvent subsidiaries. Routledge .**
3. **Hasan, H. A. (2022). The extent of the holding company's responsibility for the obligations of its subsidiaries - a comparative study. Baghdad: Comparative Law Library.**

Journal articles:

1. **Ali AL-rufaiee and Ali Dhari. (2007). "Tabiaat alaqa al-sharika al-qabitha blsharikat al-tabiaa (the nature of the holding company's relation with the subsidiary companies). Journal of Legal Science , 1-57.**
2. **Allami, S. k. (2021). Sijad Allami, "Mechanisms for the holding company to control its subsidiaries (A comparative study between the Iraqi and Egyptian laws). The Journal Of Law Research , 630-655.**
3. **Al-Noaimi, B. (2020). Awjah al-qanunia lsaytara al-sharika al-qabitha ala sharika al-tabiaa fe thui qanun al-sharikat Al-Emarate al-jadid raqam 2 lsana 2015 (legal aspect of the holding companys control over its subsidires in the light of the new UAE companies law no. 2 2015). Sharjah Journal , 270-312.**
4. **Ausuble, D. P. (1986). Fducation Psychology Acognitive. New York: Rinhart. Bringezu, V. (1973). Parent - Subsidiary relations under German law. The International Lawyer , 138-157.**
5. **Dana Abdulqadir and Abdulbasit Mawlud . (2020). Al-nidham al-qanuny llsharika al-qabitha fi al-qanun al-iraq -drasa tahlilia mqarnna (Legal system of holding company in iraqi law-comparative and analysis study). Rafidain Of Law Journal , 50-89.**
6. **Fady Tawakol and Walaa Ibrahim & Nayel Alomran . (2021). The Legal Basis For a Holding Companys Liability For its Subsidiaries Debt: Comparative Analysis Of The UAE And The Egyptian Legal System . Journal of Legal, Ethical and Regulatory Issues , 1-14.**
7. **Forlian Amereller and Stephan Jager and Ahmed S. Al- Janabi . (2010). Legal Guide to Doing Business in Israq . Baghdad: Mena Associates and FULLBRIGHT .**
8. **Freedland, F. (1955). History of Holding Company Legislation in New YorkState: Some Doubts as to the "New Jeresy" Tradition . Fordham Law Review , 369-411.**



9. Ibrahim, F. J. (2021). Mlahadhat fe al-qanun raqam (17) Isana 2019 al-maadl lqanun al-sharikat raqam (21) Isana 1997 (Notes on the Law n. 17 – 2019 which Modification the Company Law n. 21-1997). Jouran of Law College , 1-24.
10. Ibrahim, M. (2007). Tabiat al-alaqa al-qanunia bein kl mn al-sharika al-qabitha w al-sharika al-mtaadt al-jnsiat mn jhat w al-sharikat al- tabia lkl mnha mn jhat ixra (Nature of legal relationship between holding company and multinational company other side subsidiaries with. AL Manart Journal, 73-107.
11. Jasim, M. (2021). Al-sharikat al-qabidha fe al-tashrei al-Iraqi fe thui al-qanun raqm 17 Isanat 2019- drasa mqarna (Holding companies in Iraqi legislation in the light of Law No. 17 of 2019- a comparative study). JOURNAL OF AL-QALAM UNIVERSITY COLLEGE/ KIRKUK , 63-100.
12. Jasm, F. (2021). Mlahadath fe al-qanun raqam (17) Isana 2019 al_maddal lqanun al-sharikat raqam (21) Isana 1997 (Notes on the law no. 17 - 2019 which modification the company law no. 21 - 1997"). Journal Of Law College - Al-Nahrain University, 1-24.
13. Jorani, E. (2020). Holding companies according to the amendment of the Iraqi Companies Law no. 17 of 2019. Tikrit University Journal for Rights , 119-148.
14. Kate, E. (2022). Ahkam al-sharika al-qabidha fe al-tashri al-iraqi (The provisions of the holding company in the Iraqi legislation). Iklil For Humanities Studies , 751-768.
15. Khandan, S. (2020). The Legal basis for holding company liability in the field of Iraqi legislation provisions . Journal of the Iraqi University , 474-489.
16. Martin Petrin and Barnali Choudhory. (2018). Group Company Liability . European Business Organization Law Review , 771-796.
17. Muqdad Sam Al-Juboori and Hadeel Adnan Al-Ani & Othman Ayad Al-Juboori. (2020). Holding companies under Iraqi amended companies law. The MENA Business Law Review , 40-44.
18. Sasi, S. (2013). Holding companies and parent company and subsidiaries in the Algeria commercial law. Algeria: University of Oum El- Bouaghi .

Legislations:

1. Federal Law No. 2 of 2015 AD on Commercial Companies, (2015). UAE.
2. French Company Law, (1985).
3. Iraq Banking Law,(2004).
4. Iraq Civil Law no. 40 of 1951.
5. Iraqi Company Law No.(21) Of 1997 with its amendments, (2019).
6. Jordanian Company Law No. 22 of 1997 and its amendments, (2006).
7. United Kingdom Company Act, (2006).



Online Materials:

1. Andreas Müller and Sébastien Maury and Thomas Linder, Roberta Venturi Lechartier, André Güdel. (2013). https://ub-swasearch.ub.unibas.ch/de/detail/swasearch_9961619790105504 . Retrieved from KMPG: <https://ub-swasearch.ub.unibas.ch/de>

دواين بهرەو پيشچوونەکانی کۆمپانیای پکيفکار له ژير رۆشنایي ياسای عيراقی

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پوختە

سەرھەڵدانی کۆمپانیای پکيفکار تێستا پێستییەکی جیھانیە لە ئەنجامی فراوانبونی خیرایی مامەلە ی بازگانی ناوخی و نێودەهولەتی. بەھۆی گرنگی کاریگەری کۆمپانیای پکيفکار لەسەر ئابوری ناوخی یاسادانەران بە شپۆھەکی بەرفراوان تیشکیان خستە سەر کۆمپانیای ناوبراو. بە ڕوونتر، کۆمپانیای پکيفکار زالدەبیت بەسەر لایەنی کارگێری و دارایی کۆمپانیا شوین کەوتوووەکان، وە لە ئەنجامدا دەنگەکانی ئەنجومەنی بەرپۆردنی کۆمپانیای شوین کەوتوو بە دەست دەھینیت لە پینا و بەرژەوھندی کۆمپانیای پکيفکار . ئەو تووژینەوھە سەرئەخاتە سەر بۆشایە یاساییەکانی لە لایەنە ھەمەجۆرەکانی کۆمپانیای پکيفکار وەك چەمکی بەرپرسیاریەتی و پێوھەرەکانی بەلادەست بوون.

بۆیە ئامانجی سەرھەکی تووژینەوھە کە بریتییە لە پێشاندانی کاریگەری نوێترین ھەمواری یاسای کۆمپانیای عێراقی سالی ۲۰۱۹ بۆ دروستکردنی بنەمایەکی یاسایی بۆ کۆمپانیای پکيفکار. وەھەرھەوا شیکردنەوھە دەستەواژە ی کۆمپانیای پکيفکار لە کاتە جیاواژەکان لە یاسای عێراقی.

ئەم تووژینەوھە دابەش دەبیت بۆ سەر سێ باس، باسی یەكەم باسیکی گشتی کۆمپانیای پکيفکار دەکات. دواتر بەرونتر باسی کۆمپانیای پکيفکار کراوە لە عێراق وەك جۆریکی نوێی کۆمپانیا لە عێراق کە بە یاسایی کراوە لە کۆتایی ۲۰۱۹ ئەنجومەنی نوێنەران ی عێراق یاسایی ژمارە ۲۱ ھەموارکردووە و یاسایی ژمارە ۱۷ سالی ۲۰۱۹ ی دەرکرد بۆ بە یاسایی کردنی کۆمپانیای پکيفکار. ھەرھەوا لە باسی دووھم شروۆفە ی پێوھەرەکانی بەلادەستی دەکەین بەسەر کۆمپانیای شوینکەوتوو . وە باسی سێھەم پەيوەندیدارە بە بەرپرسیاریەتی کۆمپانیای پکيفکار. لە کۆتاییدا تووژەر کۆمەڵیک دەرتەنجام و راسپاردە دەخاتەروو.

کلیلە ووشەکان: کۆمپانیای پکيفکار، یاسای کۆمپانیایکان، کۆمپانیا شوینکەوتوووەکان، بەرپرسیاریەتی.



التطورات الحديثة للشركات القابضة في ظل القانون العراقي

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الملخص

أصبحت الشركات القابضة الناشئة الآن ضرورة عالمية نتيجة للتوسع السريع في المعاملات التجارية المحلية والدولية. بسبب تأثير الشركات القابضة بشكل كبير على الاقتصاد الوطني، تركز التشريعات بشكل متزايد عليها. بإيجاز ، تهيمن الشركة القابضة على الجوانب الإدارية والمالية لشركاتها التابعة، ونتيجة لذلك، يدلي بأصواته في مجلس إدارة الشركة التابعة لمصلحة الشركة القابضة، يركز البحث على الثغرات القانونية في مختلف جوانب الشركة القابضة ، مثل ، مفهوم المسؤولية ومعايير الهيمنة.

الغرض الرئيسي من هذه الدراسة هو عرض فعالية التعديل الأخير لقانون الشركات العراقي في عام 2019 لإنشاء أساس قانوني للشركات القابضة ووصف المصطلح الشركات القابضة في فترات انتقالية مختلفة في القانون العراقي، ينقسم البحث إلى ثلاثة المباحث. يقدم المبحث الأول وصفا عاما للشركة القابضة. ثم ، من الواضح أن الشركات القابضة في العراق ، مثل الأنواع جديد من الشركات، تم تقنينها في نهاية عام 2019 عندما قام مجلس النواب العراقي بتعديل قانون الشركات رقم 21 وأصدر رقم 17 لعام 2019 لإضفاء الشرعية على الشركات القابضة. بالإضافة إلى ذلك ، يحلل المبحث الثاني تدابير الهيمنة على الشركات التابعة ، ويتعلق المبحث الثالث بمسؤولية الشركات القابضة. في الختام، يقدم الباحث بعض النتائج والتوصيات.

الكلمات المفتاحية: الشركة القابضة، قانون الشركات، الشركات التابعة، المسؤولية.