

LEGAL LOOPHOLES THAT ALLOW ACQUISITION IN COMPANIES

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***Abstract**--As interested researchers, we ought to diagnose the legal loopholes in companies that allow acquisition, whether in the same company or among different companies within our field of study. This is necessary to obtain suitable solutions to the lawmakers and to be included in a legal text that covers these loopholes in the law, for instance, the Iraqi Companies Act No. 21, 1997 (edited). This subject is broached in three sections: the first section discusses the number of votes the corporates possess and their representation by others. The second section broaches the mock writing and its conditions, while the third section studies the waiver of the right to vote, and fraudulent ways of some corporates to obtain votes. In this way, through extrapolation of legal texts and doctrinal teachings, several legal loopholes that allow the acquisition to some companies with respect to others, or that possibly encourage the emerge of acquisition activity, have been identified.*

***Keywords**--Legal Loopholes, Acquisition in Companies, Votes held by the corporate, Graphical conditioned writings,*

I. Introduction

The number of votes held by the corporate and being represented by others

The right to vote is an essential means to ensure the active participation. The general rule of voting is that for every corporate one vote but some laws as Egyptian companies Act No 159 of 1981 edited, allows issuing multiple corporate votes and some corporates with double voting [1]. This is considered an administrative right to the partner to participate in the vote of resolutions and matters relating to the general body of the company under specific proportions according to the law[2] and corporate rights. Voting is an expression of the will of the corporate and shareholder and a management act. It also gives the freedom of expression and addresses the problem of arbitrariness. Voting is a pre-decision that provides protection for minority rights from majority abuse by imposing complete rights under effective decisions [3].

This section highlights the issue of determining shareholder-owned votes on behalf of others, and it's worth mentioning that Iraqi companies Act No 21/1997 edited, did not put a script determines the number of votes that the contributor can have especially significant shareholders who own considered stock through exercising the right of vote in public authority meetings. There is no minimum number of shares which has all shareholders equally as well

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as no specific maximum votes to be owned by shareholders on the public authority either as genuine or by an agent [4]so that it achieves control by some shareholders by controlling company decisions through access to many decisions. This could lead to the emergence of signs of acquisition effects resulting in majority control contribute to the company in this regard [5].

Another point of view [6] authorizes (A share gives the partner the right of attending the public authority meetings and participate in the vote as well as to get a share of the profits and part of liquidation surplus at the end of the company.... In addition, due to the importance of using the right to vote, it is considered as the key to the corporate policy that can be used for the purpose of controlling the company if some shareholders or someone intend to acquire the maximum number of shares which makes possession of some votes to achieve the majority required for a decision in plenary).

The acquisition is considered legal as it is a purely voluntary work towards the will of the company or shareholders. However, it can bring legal consequences if led to financial acquisition to one over another whether it is for or against the will. This leads to the call for structured acquisitionpracticed legally that restrict companies in the stock market finance.

The acquisition has been known as (the purchase of assets and transfers the ownership of a company by another possessing company) [7]. In the English jurisprudence view [8], the acquisition is the purchase of possession of a company by another one, which conforms to the earlier definition. In this way, acquisition can be defined as: a legal action to control, which is achieved in either buy a number of shares or an agreement to achieve a majority to govern the company and enable effective decisions for the affairs of subsidiaries under their control. In addition, acquisition may result in obtaining the majority of votes by buying all or part of the shares of the company. Generally, holding companies take this attribute by controlling the management of other companies in a position that controls decisions made by the plenary or the company's general assembly [9].Therefore, the Egyptian legislature has tended to emphasize that having the possible major votes can influence the management of companies, and has directed the voting system to prevent such influences [10].

The French lawmaker referred to the right to vote according to the number of shares owned by a corporate or representatives in a company, which can directly or indirectly control another company [11]. It is not permissible in the French legislature to allow shares with multi-vote. However, there are exceptional cases for some companies such as French development companies and mixed-economy companies working outside the French borders. This aims to prevent foreign companies to control national projects and to give the lead of these projects to national companies without allowing capitalism [12] and protecting national companies from acquisition according to Article (492) of French companies act number (705) of 1985. The application of the principle of proportionality on foreign shareholders in the French national companies also touched the English Companies Act (46) of the vote in the 2006 article (552) and pointed to the individual control (controls alone) and controlling the company in accordance with

an agreement with its members or with a subsidiary [13]. Moreover, the English legislature referred to the article (322) to the voting on a poll.

According to Egyptian jurisprudence view [14], the acquisition applies in voting rights to contractual agreements for waiving votes, which seems to us that this view encourages the acquisition. The Iraqi legislature also gave the right to vote without the necessity to attend or vote at the general assembly [15] and the shareholder may speak on behalf of the other members [16], which allows the partner to vote on behalf of other members [17]. This permits the director or the manager of the company to take control of small shareholders who own stock or weak percentage quotas and are ignorant of many things about the company and only matter for obtaining profits. In addition, the acquisition allows agreements between two companies to let the holding company take control in order to maintain the concentration of power in the hands of a group who have the larger proportion of votes and then take the control of holdings and seize opportunities to the advantage of both companies [18].

Referring to the General provisions of the corporate company of the Iraqi companies Act No 21/1997 edited, the article (91/I) of the law stated that (A company partner could hire others on their behalf by a certified agency attorney to attend the debate and vote in the general meetings on behalf of other members of this purpose). It seems to us that this encourages control of the directors and delegate director general on meetings of the company and its decisions. This is confirmed by the Lebanese legislature (2/F3) of the law of the banks and equity trading and issuance shares in banks and trading and debt issuance and owning a property by Lebanese banks (308) of 2001. This law stated that the president, assembly members, employees and managers could not have any preferential shares whether directly or indirectly or under the guise of a third person, natural or by anyhow [19].

Thus, the Iraqi legislature permitted shareholders that are not members of the assembly of the company to appoint one of the members in attendance at meetings of the general assembly of shareholders. It seems from text article (91) of the Iraqi companies Act edited, there is possibility to obtain significant votes in making decisions towards own interests because Iraqi legislature does not specify voting on behalf of the member of the same company, unlike the case in other laws such as Egyptian [20] and French [21].

In this way, it seems necessary for the Iraqi legislature to adopt laws that worked already to avoid the abuse of this authority by others who benefit of it, as the Egyptian legislature had singled out articles about it. Article (9) of the implementing regulation of the law of the Egyptian capital (95) in 1992 states that (shareholder may not be represented by proxy votes beyond the allowed in the regulations). While article (8) of the implementing regulation of the law of the Egyptian capital (95) in 1992 stated the lower and upper limits of proxy votes to represent the shareholder at the general meeting by, which is a number that should not exceed 10% of the total nominal share of the company capital represented by the proxy shareholder and up to 20% of the shares represented at the meeting as authentic or deputies. This is essential to reduce the dominance of holders corporate that have a large contribution to the company. Another point of view [22] expressed that the absence of real contribution shareholders in meetings, the limited number of shareholders personally in the general assembly meetings of the company and shareholders

docility behind other shareholders will give them a blank agreement on proxies to attend and vote, which increases the process of blank agreements dramatically within businesses. This seems to be relevant and a legal rule must be developed to address the shortcomings of this process to avoid negative effects

II. Graphical conditioned writings

Some of the founders and members of the holding companies resort to urge some persons to graphical writing about the new stock to their advantage [23] in order to obtain the maximum number of shares to ensure control of the company [24]. This allows enabling them to be decision makers in corporate affairs. Therefore, graphical writing is “a fake mode hides the real mode” [25]. The Iraqi companies Act No 21/1997 edited, has not included provisions that prohibit graphical conditioned writings whether it is fundamental or subscription to the capital increase. This could be depending on the subscription form, which is made by the founders in liaison with the corporate companies. However, this cannot prevent holding companies from circumventing the law through graphical writings for the purpose of obtaining the largest possible number of votes to achieve the majority and then the success in the acquisition and expansion at the expense of others contributor shareholders. Therefore, excluding the suspicious votes is vital to achieving the genuine representation of the shareholders and the company [26].

In general, the Iraqi [27]and Egyptian [28]legislature ban the founders from taking advantage of nominal shares within a specific period of time, not less than a year from the date of establishing the company otherwise should be urged to allocate profits of a minimum of 5%. This is to prevent the suspicious graphical writing for the purpose of acquisition and to ensure the serious establishment of the company by taking precautions acquisition check. If some preferences happen for some shareholders over others, then it is contrary to the interests of the company [29].

With reference to the provisions concerning corporate companies as most suitable to the characteristics of the holding companies, the article (47) from Iraqi companies Act No. 21 of 1997 edited [30], indicated the excess subscription shares. This remaining surplus encourages the emergence of acquisition activity when producing the general shares [31].

On the other hand, some views adapt the possibility of increasing the interest of majority-winning contributor over the rest of the shareholders as considered the most caring about the company interest due to the excessive benefit [32].Thinking of this approach makes one finds it encouraging to acquire corporate decisions that may be contrary to the public interest for the company, and it may harm the interests of the shareholders in the holding company and its partners.

III. Waiving the votes and the fraudulent ways to obtain them

The right to vote is one of the most important rights that helps the shareholder benefit for justice and freedom among shareholders and allows the participation in the fateful decisions taken by public authority of the company. The right to vote is a promotion of justice [33]that addresses the problem of abuse to the minority right by members of the assembly or the directors, which has an active impact on company management. Although the Iraqilegislation

call for nominating the assurance on company arrows [34], there is a growing corporate acquisition, which prevents equality among shareholders in holding companies. This results from the permissible trading of shares without the need for approval by the shareholders of the companies except those contained in the article (64) of Iraqi companies act number 21 of 1997 edited. By looking at the Iraqi companies' texts (21) of 1997 edited, a lack of explicit prohibition of waiver of the vote can be observed.

In the absence of explicitly of the Iraqi legislature regarding agreements and restrictions on the convention of voting as a legislator, although it is vital to have the voting agreement temporarily. For that long voting agreement, it should be compatible with the principles of justice and freedom [35]. On the other hand, the long-term agreement may arise financial benefits agreements that are harmful to the company. The Iraqi legislature perhaps adopted the text of articles 4 (iii) [36] and (94) from Iraqi companies Act No 21/1997 edited, in addressing legislative deficiencies giving the general assembly of the company a validity of legislation with appropriate decisions and that means the possibility of constricting the convention by the company's general assembly. This has the authority and the power to develop what they find fit of constraints to act in the interest of the share of the company. This should take into consideration not to harm the interests of its companies, which should prove good faith agreements between companies. In this way, acquisitions could be encouraged, and this may result from the agreement in which it allows control more than half of the voting rights [37]. This requires not to adopt the law explicitly regarding the voting agreements, which leads to consequent problems. By extrapolating the above code, it can be seen that the Iraqi legislature approved the inclusion of terms in the contract company as a limitation in the article (98/II) (unless the contract of the company requires a higher percentage than that) [38].

The Egyptian legislator stated that waiver of the shareholders of one of the companies that the company wants to acquire their shares in exchange for shares increase in the company's capital is allowed [39]. Restrictions of votes in plenary meetings [40] could be illegal and contrary to the public interest and if the holding company took control of most of voting rights in accordance with an agreement made by the shareholders in companies. This could make the holding company an actual director to the companies with actual control given by the majority vote (factual control) [41].

Through the research, we found that the Iraqi legislature was silent for selling stock to hostile buyers. This should include imposing restrictions on disposition of shares by its acquisition of the right to vote. We suggest this proposal to be taken into consideration as being necessary to prevent acquisitions [42]. However, the Iraqi legislature article (100) allowed 5% of the company shares as a campaign to object to the decisions of the company's general assembly within seven days from the date of a decision. In addition, the Iraqi legislature has organized the provisions of company systems and the mechanism holding the company's general assembly, which state that the general assembly members who own most of the shares should give the minority shareholders the right to attend and vote on company decisions and this is emphasized by article (92/I) from the in the same law.

In this context, paragraph (19) of international financial reporting standard (3) for the year 2011 stated that (the control of the holding company on an economic unit occurs when the holding company owns more than half the voting rights in that company, unless it cannot prove that it is not technically a control property) [43].

The impact of acquisition agreement highlights the restrictions on disposal of stocks and stock transmission consent. The authority conditions affecting the free exercise of the right to vote in the general body of companies is inconsistent with the right of each shareholder in the company since the contributor will be restricted to shares. This could be left to the discretion of the judge [44] to distinguish between voting agreements that can be admitted and erroneous voting agreements. The judge then decides that those agreements are being temporary and should not be contrary to public order and morals and could not cause harm to shareholders or companies. Even though the only validity of the opinion when it sings the introduction of explicit legal text. The vote agreement must be intact right to contribute and members should not give up their right to intervene in the affairs of the company.

The French legislature has come up with some restrictions on those agreements. It looked at the validity of agreements between a company and one of the board members that is credited by law [45]. Stating that (all agreements must be subject to prior approval and authorization from the board of directors) except for ongoing operations or agreed on normal terms. The French legislature required the general assembly of a company to be informed about any agreement [46]. Also, such agreements should be shown to public authority for authentication. This includes when a company resorted to buying an unfair price that does not agree with the true value of the stock, which is considered unjust that is arbitrarily a right issue resulting in increased share contributor at the expense of another contributor illegally. This entails infringement of the principle of good and decent companies [47]. Another opinion [48] states that acquisitions are made on the basis of price higher than the stock price in the stock market, and the right to access and check is permissible when the stock price is changing.

In terms of the percentage of change in stock prices (rise or fall), the tenth annual report pointed to the stock market for the year 2013 that the price is calculated as 10% from the previous closing price of the stock [49]. In addition, when the company's stock price higher or lower in two consecutive sessions, the price will be blocked in the third meeting for the query from the company whether there is a substantial event affect price or not. The query will be disclosed immediately after the meeting via email and get an answer from the company and posted on the website to avoid suspension of trading on its stock to reach the right decision in a subsequent meeting [50].

In this way, some companies may control the fortunes of other companies with access to a large number of votes in violation of rules of public authority decisions through fraudulent methods and this could affect the company's decisions by circumventing the law. In this context, another view [51] claims that some members of the board of directors are willing to grant number of shares for other shareholders to vote for them in order to achieve acquisition.

Furthermore, it may emerge the acquisition of the holding company in voting through tempting some shareholders with material benefits to get them to accept the company's decisions or some shareholders may resort to illegal ways through mock voting or buying votes besides that members of the board of directors to grant some shareholders number of shares to vote for them to acquire the company and related accessories [52]. Particularly that of the holding company can get a majority vote in the meeting of the board of directors without owning majority shares of the company. Thus, taking control of the company with agreement [53]. This highlights the impact of acquisition of the right to vote and an impressive proportion.

It should be noted that the decline in stock value and its circulation promotes the increased acquisition activity between shareholders when holding companies offset weak faith contribute to passive shareholders who confined their attention to obtain profits [54]. Which enhances control of wishing to acquire corporate activity. Furthermore, it highlights the acquisition by voting in the company that controls the decisions for the interests of the general body of the holding company as a dominant company on account of its subsidiaries under its control. It may be the decision of the holding company for a company of its subsidiaries and to the detriment of the company or other companies that the holding company possesses. Another way that might use a company's vote adopted on buying products from one of its subsidiaries imposed at a certain price and sell it at a higher price to another company of its subsidiaries in detriment of the first company. This makes the company profit and self-interest at the expense of other companies [55].

Therefore, article (3/3) of the corporate governance rules in the Egyptian stock exchange no. 11 of 2007 activated the rule of equality between shareholders to avoid confiscation of minority rights and to avoid deviation from company decisions which adversely affects its purpose. It will inevitably impact of acquisitions while holding company controls on most of the capital and a majority of voting rights in the company under control [56]. So, the Egyptian judiciary assured to hold the responsibility on the ones in control of the holding company on the basis of personal and moral exploitation to the company seized. It also put responsibility on bank of Egypt as control over other companies acquiring majority Stocks that enables them to capture votes in these companies. The Bank interventions are arbitrarily seized company direction, because the bank intervenes in decisions used by that company's board of directors, and financial relations in these companies were practiced by the bank. Besides that, all decisions made by the board of directors was seized under the bank's estimate [57].

In this regard, some shareholders have powers that grant them to achieve personal interests [58], and in this context the Iraqi banks Act (94) for the year 2004 decided in the article (17/4), which is related to most of the members of the board of directors and the bank (that they should not work full time for the bank). It could be noticed that the previous text is not drafted properly. Uncertainty encourages the hostile takeover among shareholders which becomes against the will of the board of directors of the company targeted by acquisition. When a strong and successful company in financial market take control of a weak company or stumble to change the loser management by a strong one this leads to an acquisition too and could result in the buyout offer to buy stock shares. Acquisition

could affect the decisions of other companies whether related to banks or not as a competition in the stock market to satisfy its expansionist aims.

IV. Conclusion and Recommendation

After completion of this research, which is focused on studying the legal loopholes that encourage acquisition activity, several conclusions and recommendations have been drawn as follows:

Conclusion

- Acquisition highlights seducing some shareholders by decision makers in the company by material benefits to get them to accept decisions concerning the fate of the company or some shareholders may resort to illegal ways through mock voting or vote buying or the members of the board of directors to grant some shareholders number of shares to vote for them to acquire the company and related accessories. The Iraqi project gives the right to vote without contributing, which means it is unnecessary to attend or vote at the general authority, attend meetings could be in person or on behalf of authenticity, unlike in other French and Egyptian laws as they reduced the dominance of the owners and their significant contributions in the company.
- English and French legislatures addressed the right to vote as well as the texts of Iraqi companies Act No 21/1997 edited, but noted the lack of an explicit provision that prohibits waiver of right to vote – although the Iraqi legislature to call and confirm stock on it explicitly.
- The Iraqi legislator has not put a text to determine the number of votes held by the shareholders, in particular those who own a large number of shares through the exercise of voting rights in general meetings
- Egyptian companies Act No 159 of 1981 edited, authorizes the issuance of multiple share votes and shares with double vote. Unlike the Iraqi legislator, which does not allow multiple shares. In certain cases, authorized the issuance of shares to a lower or higher value as well as the French legislator went to issue shares with multiple votes in exceptional cases.
- Iraqi companies Act No 21/1997 edited, did not put restrictions on the disposition of shares and consequent acquisition of the right to vote in the event of a sale of stock to the company's forefront runner, and called for that because this restriction is necessary to prevent the acquisition.

Recommendation

- We ask the Iraqi legislature to enact legal provisions for acquisition and should be structured according to the law practiced by listed companies in the stock market like the rest of the laws as Egyptian laws, French and English.
- Hostile takeover should be reduced between companies who have resorted to acquisitions by putting pressure on target company's shareholders to sell their shares, wishing to acquire in exchange for

compensation for those who accept this through the lure of attractive benefits and encouraging discount prices. So, small businesses are unable to cope with such methods then responds to acquisition because of a lack of capital and low financing compared to those companies targeted acquisitions. Our call is to process through these legal loopholes in some laws including Iraqi companies Act 21 of 1997.

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