

## The Adequacy of Legal Regulation of Acquisition and Consortium as a Mean of Economic Focus in Jordanian Legislation: A Comparative Study

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### **Abstract:**

*The economic focus of commercial companies is one of the mechanisms and means that resulted in modern legal thought, relative to the inclusion of innovative economic methods represented by the conglomeration of companies and small and large commercial establishments under the umbrella of a giant company with a tight legal framework that defines the provisions related to the procedures and the effects of such gatherings and economic blocs that rule over Huge capitals have a profound impact on economic growth at the national and global levels, and the need has emerged to surround the economic concentration operations of companies with this tight legislative framework in light of the radical changes that the global economic system has witnessed as a result of the globalization of competition. Community Verified icon, And the special principles it stipulated in the field of trade liberalization, which prompted companies to unite in the form of large conglomerates in order to preserve their presence in the market and face the economic crises that they may be exposed to, since their survival on their own has become a useless choice and rather a danger to them, given the simple capabilities and Ltd. that it owns and which will not help it pay the risk on its behalf.*

### **Keywords:**

*companies; economic focus; acquisition; consortium; merger*

## **I. Introduction**

The economic focus increases the complexity and ramifications in separating the forms of concentration and adapting them in a proper legal manner because it aims to mobilize the energies and financial, human, scientific, and technological capabilities to establish units capable of adapting to the requirements of the modern era. However, because it is viewed as a solution, it is a double-edged sword. If small and medium-sized businesses wish to keep operating in the market, they should merge with bigger businesses.

In the context of the economic focus of companies, the researcher has chosen to examine a part of this topic, namely, the adequacy of the legal regulation of acquisitions and alliances as a means of economic concentration in companies in the Jordanian Companies Law. The legal regulation of economic focus in Jordanian legislation is one of the means of economic concentration in companies that researchers address in Jordanian legislation related to the subject of research, namely Jordanian Civil Law No. 43 of 1976, Jordanian Companies Law No. 22 of 1997 and its amendments, and Competition Law No. 33 of 2004.

### **1.1 Research Problem**

The problem with research is that there is no uniform and comprehensive legal regulation of the economic focus in Jordanian legislation; The Competition Law regulated the general provisions on economic concentration in the Competition Law No. 33 of 2004, while

regulating the economic concentration of commercial companies in the Jordanian Companies Law No. 22 of 1997 and its amendments, in addition to the lack of knowledge of all aspects of the legal provisions governing focus in the Companies Law.

### **1.2 Objectives of the Research**

The objectives of the research are:

- 1- Concept of corporate economic concentration.
- 2- Identification of the acquisition and its concept and importance as a means of economic concentration in commercial enterprises.
- 3- To take stock of the concept of consortium and to indicate its nature, characteristics and importance as a legal means of economic concentration in companies.
- 4- Demonstrate the adequacy of legal regulation in Jordanian legislation for acquisition and coalition as a means of economic concentration in corporations.

### **1.3 The Importance of Research**

The importance of this research, in addition to its novelty in dealing with the concept of economic concentration, lies in the fact that it deals with this concept with regard to commercial companies in Jordanian law by addressing two means of economic focus, which are acquisition and consortium, and they are two means that did not have sufficient legislative organization in the Jordanian companies law. The Jordanian acquisition of premature and under the concept of ownership, the Companies Law came devoid of any mention of the coalition between companies, despite the fact that it is common among them in practice and at the international and national levels in the implementation of major projects, especially in recent years, which resulted in confusion in practice and in the financial markets, and from here comes the conclusion the importance of this research in shedding light on aspects of legislative shortcomings in regulating these two methods, despite their importance.

## **II. Review of Literatures**

The comparative research approach will be adopted by analyzing the texts of laws related to the subject of the research to find out their aims and contents and compare them with their counterparts in the laws under comparison. The historical approach will be used when rooting for the emergence of the concept of economic concentration in jurisprudence and its legislative development.

### **Research Structure:**

- THE FIRST TOPIC: the concept of economic focus for commercial companies.
  - The first requirement: the definition of economic focus and its characteristics
  - The second requirement: the development of the concept of economic concentration historically and the motives for its emergence.
- THE SECOND TOPIC: acquisition as a means of economic focus for commercial companies.
  - The first requirement: the concept of acquisition of commercial companies and its types.
  - The second requirement: acquisition procedures and its effects
- THE THIRD TOPIC: the consortium as a means of economic concentration for commercial companies.
  - The first requirement: the concept and nature of the consortium.
  - The second requirement: the legal organization of the consortium.

## **First Topic**

### **Concept of economic concentration of commercial enterprises**

The researcher divided this research into two demands, which addressed the definition and characteristics of economic concentration and the second, the origin and evolution of the concept of economic concentration historically and the motivation for its emergence.

## **First requirement**

### **Definition and characteristics of economic concentration**

The researcher addressed this requirement in two sections, devoted to the definition of economic concentration in section I, and set out in section II the characteristics of economic concentration and its importance for business.

## **Section I: Introduction to corporate economic focus**

### **Definition of economic concentration in doctrine**

Scholars have defined economic concentration by several varying definitions in the linguistic form but give the same meaning: The combination of several industrial enterprises concerned with a particular industry with one or a few projects rather than being dispersed among many, so that the production of the unified enterprise, which has been small in multiple projects, is increased (Bayoumi, 2000).

One or more companies join an existing company, such that the merged company terminates, and their financial liability is transferred to the merger or by the merger (Basbous, 2010). An industrial complex which includes adjustments in the structure of the market, loss of the autonomy of these combined enterprises in exchange for the strengthening of the economic authority of the group (Claude, 1992).

### **Second: Defining economic focus in legislation:**

The Jordanian legislator defined economic concentration in Paragraph (a) of Article (9) of the Competition Law No. (33) of 2004 as: For the purposes of this law, every act that results in a total or partial transfer of ownership or usufruct rights of property, rights or shares, stakes or obligations of an enterprise to another enterprise that would enable an enterprise or group of enterprises to control, directly or indirectly, another enterprise or group of enterprises (Jordanian Competition Law, 2004).

The French legislator defined economic concentration in Article (39) of the 1986 law, saying: "Economic concentration is every collection project resulting from any contract, whatever its form, that includes the transfer of ownership or part of the property, rights, or bonds of economic aid in order to enable an economic aid to monitor aid." another economist or exercise certain influence over him (The French Law, 1986)

## **Section II: Economic focus characteristics and importance for business**

### **1. The economic focus is complex:**

Article 87 of the Civil Code No. 43 of 1976 defines a contract by saying: A contract is the link between an offer made by one of the contractors to the acceptance and consent of the other in a manner that proves its effect on the contract and entails that each person is bound by his obligations to the other (Jordanian Civil Law, 1976).

### **2. Flexibility of provisions regulating economic focus.**

The provisions regulating the economic concentration are marked as complementary provisions, and since they are complementary, they give the members of the economic

Concentration great freedom in setting whatever terms and conditions suit them for the formation of the contract without restriction or condition (Mansour, 2019).

3. The economic focus with economic benefit is based on personal consideration

One of the characteristics of the economic focus is that it is based upon personal consideration. The personality of its members is like that of the partnership company, as it is similar to the partnership of persons in terms of responsibility, facilitation and management (Jordanian Competition Law, 2004).

### **The second requirement**

#### **The emergence and development of the concept of economic concentration historically and the motives for its emergence**

Economic concentration is a new legal formula intended to support small and medium financial institutions, and facilitate them to carry out operations that were difficult for them to achieve on their own, such as (research work, market study, publicity, use of new technology in the media and its means, opening import and export offices).

#### **First Topic**

##### **The emergence and development of the economic focus of companies**

The first manifestations of the economic concentration processes appeared in the late nineteenth century, especially in the United States of America. As some aspiring initiatives emerged to control the local and foreign commercial markets by attempting to establish huge economic units by concluding agreements between several companies aimed at monopolizing the production or marketing of certain commodities or setting a unified price policy (Sami, 2014).

Europe was affected by the phenomenon of economic concentration in North America because of its adoption of the same liberal approach, especially after the Second World War (Ferrier, 2005).

The most important legislation on the subject of economic concentration is the law promulgated by the United States of America, including the Sherman Act of 1890, the Clayton Act of 1914 and the Batman Act of 1936 (Hussein, 1986).

As for the countries of the Arab world, there have been major growth in mergers and acquisitions in recent years, with Egypt topping the Arab list with 46 mergers and acquisitions, followed by Kuwait with 25, Saudi Arabia (12), the United Arab Emirates (11), Bahrain (7), and a decline in the number of mergers and acquisitions, due to the political turmoil in the Arab world and the occupation of Iraq experienced by many Arab countries since 2003 (Al-Abadi, 2013).

As for the Jordanian legislator in Competition Law No. 33 of 2004, it is considered an economic concentration of any act in whatever form that results in the total or partial transfer of ownership or rights of use of property, rights or bonds that would enable one or more enterprises to exercise control over the activity of one or more enterprises (Hussein, 2017).

#### **Section two**

##### **Reasons and motives for the economic concentration of companies**

The economic focus of companies is a process that can be based on motives, and these motives may be positive and negative. The researcher will address these motives, respectively:

### **First - Positive Motives for Establishing Economic Focus:**

There are several positive motives from which the economic focus process was launched:

- A- An increase in the efficiency of economic performance: It is noted that in many cases of economic concentration, the main desire of the parties wishing to do so is to achieve more economic efficiency. Because the new entity will be able to optimize the use of economies of scale, and achieve more marketing efficiency (Brik, 2018).
- B- Achieving economic goals: The motive of the process of economic focus may be achieving economic goals, as there are many economic goals that stand behind the grouping of many projects, including: the desire to achieve profits, increase the market power of the project, and reduce business risks or the desire to change management (Youssef, 2014).
- C- Increasing the size of the commercial enterprise: the combined enterprises can reduce the duplication of departments or operations within the enterprise, and thus reduce costs, and usually resort to aggregation in order to get rid of competition in the same product (Shalabi, 2008).

### **Second - the negative motives for establishing economic focus:**

The protection of some companies and institutions from the risk of bankruptcy (Mahrez, 1997), however, there are some negative motives that can be achieved from establishing an economic focus, the most important of which are:

- A- Creating a monopoly or semi-monopoly in a specific economic field: The motive behind establishing the economic focus of companies may be to create a monopoly or semi-monopoly in one of the economic fields, which entails adverse results with regard to the quality, prices, and flow of commodities (Jordanian Competition Law, 2004).
- B- Inflation of enterprises and their control over the market: Sometimes enterprises become enlarged to a large extent, which makes them control and monopolize the market (Noman, 2008).

## **The second topic**

### **The concept of acquisition as a means of economic focus for commercial companies**

Acquisition is one of the methods used by the company to expand its activities and control over other companies, directly or through intermediary holding companies, or major shareholders may resort to obtaining influential shares in the same company, and the acquisition is a preliminary step towards the process of merging one company with another.

### **The first requirement**

#### **First: the definition of acquisition in jurisprudence:**

Jurisprudence defined acquisition by several definitions, and if they differed in the formula, they gave the same meaning. Acquisition was defined as the purchase by a company of the majority of the shares of another company, and thus the first company controls the second company (Syed, 2008).

#### **Second: Definition of Acquisition in Legislation:**

The amended Jordanian Companies Law No. (22) of 1997 defined acquisition through the concept of ownership, which was mentioned in the holding companies and their subsidiaries in Article (204).

### **Types of acquisition**

There are several types of acquisition, the most important of which are:

### **First- Acquisition in terms of the effective percentage:**

- A- Total Acquisition: It is based on a quantitative criterion based on the acquired percentage, and is entirely by purchasing the assets of the acquired company at a rate of more than (50%) and may reach (90%).
- B- Partial acquisition: It is achieved by purchasing part of the company's assets, by purchasing a specific part of the acquired company's shares that may reach (10%) or (30%) (Al-Musawi & Al-Amiri, 2019).

### **Second- Acquisition in terms of acceptance:**

Acquisition is classified in terms of acceptance by the acquiring company into consensual acquisition, compulsory acquisition and hostile acquisition:

- A- Consensual acquisition: A consensual acquisition is achieved when a person submits an acquisition offer - on his own initiative - to the shareholders of a certain listed company in the stock market, and he wishes to acquire its shares (FASB, 1975).
- B- Compulsory acquisition by the purchase offer: The acquisition by the compulsory purchase offer is a total offer that often targets the entire capital of the company to be acquired (Sary El-Din, 2013).

### **The second requirement**

#### **Acquisition procedures and its effects**

The comparative legislation in question regulated acquisition procedures with clear provisions in its relevant laws, and these texts gave companies the right to own other companies.

#### **First section: Acquisition procedures**

The acquisition process and its procedures may be (friendly) or (hostile) (Picon, 1998). The friendly acquisition process takes place with prior agreement with the board of directors of the target company, whatever the form of this agreement, while the hostile acquisition process takes place without agreement with the board of directors.

#### **First: Amicable procedures authorized by laws:**

The company targeted by the acquisition must take a set of procedures, the most important of which are:

- A- Issuing a statement: The target company can issue a statement explaining the opinion of its board of directors immediately after the publication of substantial information regarding the purchase offer within a period specified by the comparative legislation (Jordanian Companies Law, 1997).
- B- The company may apply the agreement restrictions on the trading of shares: The Jordanian legislator did not organize these procedures in detail, so the general rules for the meetings of the General Assembly apply in their regard (Ali, 2009).
- C- Conversion of a joint-stock company into a partnership limited by shares: The Jordanian legislator has authorized the conversion of the company into a limited liability company, a partnership limited by shares, or a private joint-stock company (Jordanian Companies Law, 1997).

#### **Second- The economic effects of the acquisition:**

The most important economic effects of the acquisition is the impact of these operations on the freedom of legitimate competition and the formation of monopolies, and in order to avoid these effects of acquisitions and in all the legal systems that regulated the subject of economic concentration (Ali, 2000).

### **The third topic**

#### **Consortium as a means of economic concentration of trading companies**

There is a new method of implementing huge projects and investments that has spread at the international level, which aims to implement huge government contracts, which require the collection of technical capabilities and high financial resources beyond the capacity of a single natural person, company, or economic entity.

### **The first requirement**

#### **Concept of corporate alliance (consortium)**

The consortium of companies (the consortium) is established through an agreement with a self-entity or an independent legal personality. According to this agreement, the parties to the project are identified, implementation plans are drawn up, funds and technology are provided to it, and the method of cooperation between its parties, whether they are natural or legal persons, must be explained.

#### **First section: Definition of the consortium and its characteristics**

It can be said that this type of alliances and federations has been widely used in international construction contracts since the beginning of the fifties of the last century, as it is the ideal form of contracting between international contractors in the event of a joint contract for the success of this type in the implementation of public occupancy contracts. Thus, in this section, the researcher will deal with the definition of the consortium, and its characteristics, respectively:

#### **First- Definition of (consortium):**

A- Definition of (consortium) in jurisprudence:

Jurisprudence defines (consortium) several definitions, and if they differ in the formula, they give the same meaning. (Consortium) was defined as a retirement arrangement between several companies, all of which undertake to carry out a joint project, without merging into an independent legal or moral entity (Qayed, 2000).

B- Definition of (consortium) in Jordanian legislation:

The Jordanian legislator did not provide a definition of the consortium, which is a form of economic concentration. However, Jordanian commercial laws to some related concepts, such as the concept of the allied company, which is considered one of the most prominent concepts emerging from the consortium (Al-Kasasbeh, 2018).

#### **Second - Characteristics of the consortium:**

There are several characteristics that distinguish the consortium, the most important of which are:

A- The consortium of companies (consortium) is established between a group of companies according to an agreed and written contract, which stipulates the establishment of this consortium in order for there to be joint cooperation between different parties (Hamdan, 2015).

B- The formation of this coalition may be for a fundamental purpose represented in the desire to share investment risks when implementing a specific project, in addition to limiting competition between the parties to the coalition in the foreign and internal markets (Mohammad, 2016).

#### **Second section: The legal nature of the consortium**

Jurisprudence differed on the legal nature of the consortium with several opinions. Some of them believe that the consortium agreement is a joint venture, and some of them see

that it is an agreement establishing an actual company. The researcher will address these opinions, respectively:

**First - The consortium agreement: a joint venture:**

Those who hold this opinion believe that the consortium agreement is a joint venture company if it has two characteristics (gathering and organization) on which the logic of companies in general is based (Jordanian Companies Law, 1997).

**Second - The consortium agreement: an actual company:**

Those who hold this opinion believe that the partnership agreement is an actual company, on the basis that the (consortium) was established to achieve a common goal summed up in the completion of a specific work, in addition to the fact that each of these projects participates in the gain or loss that results from the union (Mutawa, 2007).

**Third - The consortium agreement: a joint venture:**

Those who hold this opinion believe that the coalition of companies (consortium) is considered a partnership company if it fulfills the elements of substantive companies. Its debts are an unlimited personal and joint liability (Sami, 2022).

**Fourth- The consortium agreement is a grouping of companies:**

Those who hold this view believe that the agreement of the consortium of companies (the consortium) is that it brings together a number of large investment companies, competing in a specific industry at the international level, and enjoying an independent legal entity (Choucair, 1961).

**The second requirement**

**The legal organization of the consortium**

The (consortium) results from the effects that are binding on both sides, and since it is one of the temporary agreements, it expires after the completion of the implementation of the project or for any other reason. The second is its effects and its expiry.

**First: The relationship between the consortium members:**

The consortium contracts are among the most important features and effects of the rapid transformations and overlapping developments in the global economic arena. These contracts are also considered a substitute for hostile competitive relations that serve its parties and do not contribute to their development and expansion (Bahgat, 2000).

**Second: The relationship of the consortium members with respect to others:**

The consortium contracts are characterized by the existence of an ambiguous relationship between the companies, and this is due to the fact that this relationship is mixed with cooperation and competition, which adds complexity to the management of this relationship (Balour, 2012).

**First - the effects of the consortium:**

A- The absence of an independent personality for the consortium: As a result, the consortium does not enjoy the benefits of a legal personality that is independent from the persons of the members. It carries out its own part of the business (Taher, 1444H).

B- The absence of solidarity in responsibility between the members of the consortium of companies (the consortium) before each other: This is a natural result of the lack of solidarity in responsibility between the members of this coalition, due to the lack of



independent personality of the consortium from the persons of its members (European Commission, 2007).

### **Second: Termination of the consortium:**

(The Consortium) expires normally and also expires abnormally, as follows:

#### **A- The natural termination of the consortium:**

- 1- The deadlines stipulated in the main contract: This is a recognized matter; Since the contract is the law of the contracting parties, and with the expiration of the deadlines specified for the consortium in the contract, the (consortium) ends automatically (Al-Warfalli, 2015).
- 2- Achievement of the topic of the (consortium) or its termination: The (consortium) ends with the realization of the purpose for which it was established or the expiration of this purpose and this is the second way to the natural termination (Osman, 1993).

#### **B- Abnormal termination of the consortium:**

- 1- For example, the death or dissolution of a legal person. The disappearance of this person, whether through death or dissolution, necessitates the termination of the (consortium) contract (Abdullah, 2018).
- 2- The (consortium) contract expires if the contract includes a rescinding clause ( Qasem, 2021), and considering the (consortium) contract as one of the contracts based on personal consideration.
- 3- The consortium contract expires as a result of circumstances related to the activity of the other party's establishment, such as changing the nature of the activity (Komani, 2006).
- 4- The consortium contract expires by termination as a result of one of the parties breaching its contractual obligations agreed upon in the constituent contract (Maghabghab, 2006).

## **III. Results and Discussion**

After the researcher completed this modest research, she reached a set of results and recommendations, the most important of which are:

The economic focus is one of the mechanisms that resulted in legal and economic thought in the modern era. Its aim is to mobilize energies and provide and mobilize financial, human and scientific and technological capabilities. Its intent is to establish economic units to adapt to the modern data that defines contemporary economic life. The Competition Law No. (33) of 2004 defines economic concentration as ; every act that results in a complete or partial transfer of ownership or usufruct rights of property, rights, or Shares, stakes, or obligations of an enterprise to another enterprise, which would enable an enterprise or group of enterprises to control, directly or indirectly, another enterprise or group of enterprises. The researcher believes that the economic focus encourages competitiveness and achieves positive advantages for the national economy, by strengthening the regional and global competitive position, and by attracting investments by making flexible adjustments that respond to economic changes. The researcher believes that the economic focus achieves stability and economic well-being, and works to protect small and medium-sized companies from the dominance of large companies, in addition to limiting the suspicious methods and illegal means pursued by some companies.

Acquisition is one of the methods used by the company to expand its activities and control over other companies, directly or through intermediary holding companies, or major shareholders may resort to obtaining influential shares in the company itself. The amended Jordanian Companies Law No (22) of 1997 defined the acquisition in Article (204) in Paragraph (a) that: “A holding company is a public shareholding company that exercises financial and administrative control over a company or other companies called subsidiaries in one of the following ways; owns more than half of its capital and or has control over the composition of its board of directors.

The researcher confirms that the acquisition in its economic sense is one of the most important methods used by companies to expand the scope of their markets and promote their products and economic activities in order to increase their profits and achieve more revenues. The acquisition also increases and develops the competitiveness of companies.

The consortium is established through an agreement with a self-entity or an independent legal personality, and according to this agreement, the parties to the project are identified, implementation plans are drawn up, funds and technology are provided to it, and the method of cooperation must be indicated between its parties, whether they are natural or legal persons. The Jordanian legislator did not offer a description of the consortium, but he made references to several related concepts in some of the country's commercial laws, such as the idea of the associated firm, which is regarded as one of the consortium's most well-known concepts. The researcher believes that this multilateral agreement works to achieve cooperation and integration by sharing potential risks as a result of investment operations and thus limiting economic setbacks. As well as, it constitutes an administrative organization in which companies gather, and it constitutes a financial organization through participation and financial gathering, which helps reorient investment policies in a sound and effective manner that achieves the desired economic development.

In the light of the results of the study, the researcher recommends that the Jordanian legislator add texts to the Companies Law No (22) of 1997 amended, dealing with economic concentration and explaining its provisions and effects. It is distinguished from its independence from the executive authority, and these bodies are subject to judicial oversight

#### **IV. Conclusion**

One of the mechanisms that led to modern legal thought is the economic focus of commercial companies, which is in relation to the inclusion of innovative economic methods represented by the conglomeration of businesses and small and large commercial establishments under the management of a giant company with a strict legal framework that defines the provisions related to the processes and outcomes of such gatherings and economic blocs that rule over society. Huge capitals have a significant impact on national and international economic growth, due to the significant changes that the global economic system has undergone as a result of the globalization of competition; a necessity has arisen to enclose the economic concentration operations of firms with this stringent legal framework. a community-verified icon, and the unique guidelines it established in the area of trade liberalization, which led businesses to come together as sizable conglomerates in order to maintain their presence in the market and deal with potential economic crises.

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