

Transformation Of Public Sector Companies From A Legal Perspective - A Comparative Study

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¹Received: 24 July 2024; Accepted: 25 September 2024; Published: 13 October 2024

ABSTRACT

These companies may face obstacles that limit their activity and growth as a result of an emergency or lack of prior planning or the combination of public company ownership and management, so the state resorts to transforming and restructuring these companies to get rid of their negative effects. Through privatization or transformation and restructuring of public sector companies as commercial tools with legal dimensions, as an integrated set of procedures with a legal framework, the state aims through them to achieve economic reform and move towards market competition, by reducing state intervention and opening the field more widely to the private sector, through a set of modern methods. Some of them require transferring the ownership of public companies in whole or in part to the private sector or by retaining ownership of the funds to the state while delegating the basic tasks to the private sector, through several methods and means including lease, concession, management and licensing contracts, while the state retains the right to supervise and monitor these projects to follow up on the progress of the privatization process according to the economic plan set for them. So it is a legal process that results in the final expiration of the legal personality of the public company as in liquidation, as this procedure results in a set of effects that affect the company, employees and customers, as they will be subject to a legal system that differs from the legal system that governed them. When these companies are privatized and transformed, they will be subject to another legal system that differs from the system that governed them in all their internal and external relations. In Iraq, if a specific company is privatized, it goes beyond the scope of the Iraqi Public Companies Law and falls under the scope of Private Companies Law No. (21) of 1997. Whether this transformation or privatization is into private or mixed companies, it is governed by this law in the details that we will see. It has advantages and disadvantages as well. In fact, we find that despite the advantages and disadvantages that arise from these two methods, they are in fact one of the two main solutions for the public company to be freed from the obligations that lead to its end.

INTRODUCTION

After maintaining public sector companies became costly for many developing countries due to a set of economic reasons that led to this result, the largest part of public funds and administrative efforts became directed to activities that are not related to improving and developing the economic reality of these companies, all of which led many governments to resort to a policy of transformation to get rid of the burden of chaos, losses and interventions and increase the scope of competition with the private sector so that the public company is more capable of meeting the needs of individuals with greater flexibility as a result of increasing the value of both companies.

It is necessary to strive to improve the reality of public sector companies, and the many problems they suffer from that have made them unable to keep pace with developments and modern technology. By meeting the needs of the market and even covering their basic expenses, it was necessary for us to search for what contributes to the advancement of the national economy and benefit from the experiences of countries that preceded us in this field. It is worth noting that most countries that still adhere to public sector companies suffer from recurring economic crises, which have constituted a great burden on these countries in addition to the inability of these companies to compete in local and global markets. It is worth noting that the use of these economic tools does not mean the final exclusion of the state's

¹ How to cite the article: Yosif H.S., Al-Dubaisy W. (October 2024); Transformation Of Public Sector Companies From A Legal Perspective - A Comparative Study; *International Journal of Development in Social Sciences and Humanities*; Vol 18, 10-27

role from managing the helm of these companies and relying on the private sector to always provide services to the citizen, and working side by side using joint cooperation methods.

The importance of the research

The importance of our choice of the topic of transforming public companies into private companies comes as a result of the call launched by the permanent Iraqi constitution of 2005 to encourage the private sector under the text of Article (25) thereof

The importance of this research also lies from the legal point of view on the theoretical and practical levels. On the theoretical level, the importance of knowing the most important obstacles and problems raised on the theoretical level is highlighted, and the importance of this topic is highlighted in considering public sector companies as part of the country's national wealth and also representing the executive tool of the state. On the practical level, the importance of knowing what is related to the issue of successive losses incurred by these companies in Iraq and their inability to pay the salaries of their employees has recently emerged clearly, considering the shift towards privatization as one of the most important solutions in the law of these companies to rid them of this crisis they are currently going through.

Research Objectives

The aim of the research is to identify the problems that public sector companies are suffering from at this time and the huge losses they are exposed to and how this defect can be addressed by using the experiences of countries that have gone through this matter. In addition to knowing the statement of what is limited to transformation and restructuring and the advantages and disadvantages of transformation and its types and effects and forms and methods and means and procedures and knowing the position of comparative laws on it, in order to identify the areas of deficiency and deficiency in the texts that dealt with this topic, and to develop legal solutions to confront them by proposing amendments to what should be amended, and legislating what should be legislated from legal texts, and indicating to the legislator the need to re-adjust many of the legal texts regulating the research topic and formulating and creating them.

Research Problem

The basic problem raised by the research topic is limited and we try through answering several questions to decipher the contents of this topic, the most important of which are: Focusing on knowing how the transformation is carried out from public companies to the private sector? By studying the reality of their major problems and evaluating them, what is the role of transformation as a means of solving the problems that these companies suffer from? How effective are the current legal texts in addressing this imbalance? Who are the competent authorities in carrying out the transformation process? What are the legal implications? Does the transformation of public companies require that they be restructured first? Has the Iraqi legislator adopted legal restructuring? We will try to answer these questions in light of this legal study.

Research Methodology

In order to cover all aspects of our research topic, we adopted the analytical, foundational, descriptive and comparative approach at the same time, as we will analyze, explain, criticize and praise everything that is mentioned in the legislative texts, judicial rulings or jurisprudential opinions. We also followed, in part, the foundational approach by returning branches to their origins, in addition to following the comparative approach by comparing the laws that approved and regulated the work of public sector companies with their own laws in both Iraq and Egypt.

Research plan

In order to cover all the details of the research and to stand on its various data in a manner consistent with its specificity, we have divided it into two basic requirements. In the first requirement, we will address the legal concept of transformation, and in the second requirement, we will address the legal provisions of transformation and restructuring and its procedures.

THE LEGAL CONCEPT OF TRANSFORMATION AND RESTRUCTURING OF PUBLIC SECTOR COMPANIES

The transformation of a public sector company into a private company receives the attention of countries due to its close connection to the economic, commercial and social activity of the state, and the resulting advantages represented by the state's dedication to the basic tasks of limiting government interference in the management of these companies and the resulting efficiency of management and improvement of products. The idea of the state undertaking economic activity has gradually eroded as a result of the economic crises it has experienced as a result of the fragile government administration that does not adhere to market mechanisms, competition, development and modern technology, the effects of which have been weak performance efficiency, poor product quality and disguised unemployment, in contrast to private sector companies that have suppressed, as previously mentioned, all modern global developments. This continuous development of economic factors has forced public sector companies to develop in order to be able to keep pace with globalization. For modernity. As one of the most important formulas for development is to resort to a system or method of transformation towards the private or mixed sector, as this method results in resorting to the mechanisms of the free market and legitimate competition. It is no secret that the social, political and economic conditions and the pressures of international organizations and unions represented by the World Bank and the International Monetary Fund play a role in encouraging the transformation towards the private sector to play its role in developing the national economy (). There is no doubt that the modern trend is mostly towards liberalizing the economy and introducing modern production methods, and one of its most prominent features is privatization, and it came as a result of many factors that pushed the economies of different countries to reduce the leadership role of the public sector, and increase the role of the private sector or to create a kind of coexistence between the two sectors, given the characteristics that the private sector enjoys that make its role effective in the process of economic development, from administrative skill and flexibility in decision-making and production efficiency. In order to achieve better service with high quality and speed in responding to the public needs of citizens and the optimal use of resources and organization of flour to reach the desired goal (). Accordingly, we will divide this requirement into two main branches. In the first branch, we will explain what is meant by transformation into public sector companies, and in the second branch, we will explain the reasons, advantages and disadvantages of transformation into public sector companies, according to the following:

Explaining what is meant by transformation into public sector companies

The legislation did not define what is meant by transformation (), and it did well in that, because the task of setting definitions is the responsibility and task of jurists. Some jurists have previously defined it as "a company leaving its old form and taking another form" (), but this definition focused on the form aspect only and did not focus on the content of the transformation through its subjection to legal provisions that differ from the legal provisions that govern it. In addition, it is not necessary for the transformation to change the legal form into public sector companies, because the transformation of subsidiary companies in Egypt into private joint-stock companies does not change the legal form of the company through the transformation, because both companies take the form of a joint-stock company, but rather the type changes.

Another opinion of jurisprudence defined it as "the transformation of a legally existing company into another type of companies stipulated in the law after amending its contract and taking the procedures required by law for this purpose" (). However, this definition focused on the type aspect without drawing attention to the legal form of this transformed company. Transformation can be defined as a set of legal procedures that aim to change the form of the existing company or change its type to a new legal system governing the new company. Restructuring means (a set of procedures that aim to correct the technical, economic or financial structures in a way that enables the company to continue successfully, and this is generally achieved by making changes in the product mix, increasing production and rationalizing costs). It is also defined as (a set of activities that may change the nature and scope of any company, and restructuring may affect the settlement of assets and liabilities, management style, production methods and size of employment) (). Some countries have moved in their legislation towards the necessity of restructuring before carrying out the transformation process, as in Egypt and Jordan, while the Iraqi legislator did not include restructuring as a condition for carrying out the transformation process. This is because restructuring requires the transformation of a public company into a public joint-stock company in which the capital is divided into shares, unlike public companies in which the capital is a single share, because carrying out the restructuring process facilitates the transformation process, considering that the restructuring process requires a fair evaluation of the funds of public companies. This results in the public joint-stock company being a successor to the restructured public company. As for the legislative

positions, regarding the position of the Egyptian legislator, he referred in the Public Sector Bodies and Companies Law No. (97) of 1983, in the title of Chapter Six of Book Two on Public Sector Companies, to the transformation, merger, division and expiration of public sector companies, in addition to that he referred in Article (46) thereof to the method of estimating the net assets of the company in the event of merger and division, but there are no detailed articles regulating the provisions of transformation in it, in addition to the absence of any provisions related to transformation in the executive regulations of this law issued by Presidential Decree No. (90) of 1985. As for the Public Business Sector Companies Law No. (203) of 1991, it did not include any indication, neither near nor far, of the permissibility of transforming public sector companies; this is because the legislator, when he addressed the third chapter on the merger, division and liquidation of holding and subsidiary companies of this law. "We find that the companies that may be transformed into private companies are the subsidiary companies, and the latter take the form of a joint-stock company. If it is transformed into a private company, it retains this form before and after the transformation (). It is noted from the previous legal texts and their sequence, and despite their issuance during different time periods, that all of them, although they regulate the transformation of the public sector into the private sector or vice versa, this is not considered a transformation in the exact sense; This is because the company after its transformation remains retaining the form it had before the transformation, which is the form of a joint-stock company, and thus this is not considered a transformation in the concept of changing the legal form of the company, but rather the transformation here is done by amending the legal system of the company, so this form can be considered one of the special forms of transformation (), but this opinion is subject to review; This is because the transformation may be by changing the legal form of the company or it may be by amending the legal system to which the company is subject, and thus the latter is also considered a transformation. In addition to what was previously mentioned about the lack of a text in the Public Business Sector Companies Law that permits the transformation. As for the position of the Iraqi legislator in the Public Companies Law, it did well to regulate the provisions for the transformation of public companies in principle, unlike other laws. The legislator in this law regulated The provisions of transformation are set out in Chapter Nine in Articles (35-38), and Article (35) of the Public Companies Law No. (22) of 1997, as amended, states that (a public company may be transformed into a joint-stock company with the approval of the Council of Ministers). That is, the transformation of public sector companies in Iraq is either into a private joint-stock company or a mixed joint-stock company, because the term joint-stock came in an absolute form, and with the approval of the Iraqi Council of Ministers, which the legislator is supposed to open the way for public companies to transform into other forms of companies, especially (joint-stock, limited, and holding), which the legislator did not do when he issued the last amendment to the Private Companies Law No. (17) of 2019 and did not take into account what was stated in the draft amendment to the Private Companies Law submitted to the Iraqi Council of Representatives ().

Statement of the reasons, advantages and disadvantages of transformation into public sector companies

1- Loss of public sector companies ():

This matter is considered one of the most important reasons that lead to the transformation of public companies into private companies, "The loss of the public company may lead to its liquidation, which results in the expiration of the company as an economic unit, so it is better to transform it into a private company because the transformation of the public company into a private company results in the premature expiration of the public company without being followed by liquidation, in addition to increasing its economic capabilities, and thus achieving greater profits. On top of that, the transformation gives the public company the opportunity to achieve its goals and ensures its continuity and development as an economic unit as a result of not achieving its goals when it was a public company due to the losses it suffered" ().

"To avoid this, the state supports these companies to extinguish their losses, as they depend on the funds provided to them by the state to continue their continuity, and this matter is considered an easy drain on the state budget" (). "So, their transformation into private companies through sale was better than supporting them to become a source of financing for the public treasury instead of draining it" (). This is what we find its basis in Article (13) of the Public Companies Law, which stipulates that (If the company's losses reach 25% of its nominal capital, the company's board of directors must prepare an economic assessment specifying the causes of the loss and presenting proposed treatments for it, and submitting it to the ministry to take the appropriate decision in this regard). Likewise, in Article (14) of the same law, it states that (If the company's losses reach 50% of its nominal capital, the ministry must prepare an economic assessment and submit it to the Council of Ministers to take the appropriate decision regarding the continuation or liquidation of the company). It would have been more appropriate for the legislator to add a text to Article (13) allowing him to transform or liquidate the company when the loss reaches (25%) and not to limit the

transformation when the loss reaches the percentage specified in Article (14) referred to above. The same applies to the Egyptian legislator, who has taken the loss as one of the reasons for transformation. Article (38) of the Egyptian Business Sector Companies Law No. (203) of 1991 stipulates that (if the company's losses reach half of its issued capital, the board of directors must take the initiative to call an extraordinary general assembly to consider dissolving the company or continuing it). That is, if the company's losses reach half of its issued capital, the board of directors of the holding or subsidiary company may take the initiative to call an extraordinary general assembly to consider dissolving the company, if it becomes clear that supporting it leads to a burden on the economy. Or continuing the company if it practices an indispensable activity. Note that the subsidiary public companies are the ones that are transformed into private companies, not the holding companies.

2- Benefiting from the advantages enjoyed by private sector companies (): "It is clear that private companies practice their activities under free market mechanisms and work to improve the performance of projects and introduce modern technology in their work performance and improve the quality and type of products" (). In contrast to what public sector companies do in monopolistic or semi-monopolistic markets, and are far from competitive markets. "As a result of the public company operating in a monopolistic climate, some countries, such as Egypt, recommended that the public company that is to be transformed into a private company should not enjoy a monopoly so that it does not turn from a public monopoly into a private monopoly, because the purpose of the transformation is for these companies to operate after their transformation in a market dominated by competition." (). "The public company is considered less efficient than the private company, as it contains additional workers and its management costs are high, in addition to the fact that its profits are modest and its productivity is weak. In addition to that, it is entrusted with a number of social tasks that limit its ambitions for profit." (). "The private company is distinguished by providing material and moral incentives and encouraging the spirit of creativity and innovation among its employees, which in turn is reflected in the quality and type of products and their development with distinctive specifications capable of competing with imported products, unlike the case of public companies, which are characterized by a decline in moral and material incentives, which in turn led to inventions and innovations and consequently a decrease in the level of productivity and the lack of quality and improvement of products." (). The characteristics of private companies were a motive and a basic reason for the transformation of public sector companies into private companies to benefit from these advantages.

3- Change in the state policy directed towards the economy:

The political and economic conditions as well as international organizations represented by the World Bank and the International Monetary Fund weighed heavily on the national economy. "As for the political conditions, which are represented by a certain party adopting within its government program a policy that gives the private sector an important role in economic activity or what is called privatization, which is considered a way to transform public companies into private companies (private or mixed joint stock) one of its methods (). As for the international organizations represented by the World Bank and the International Monetary Fund, the International Monetary Fund, in cooperation with the World Bank, plays an important role towards developing countries to change their economic approach through structural adjustment programs focused on The transformation is one of its pillars. The International Monetary Fund focuses on supporting developing countries through loans granted to them on condition that they reconsider developing their economy. As for the World Bank, it prefers to support projects affiliated with the private sector rather than projects affiliated with the public sector because the World Bank considers itself a partner of the private sector. Through this support, countries move towards changing economic policy towards supporting and developing the private sector in order to advance the national economy through private sector companies. Therefore, the transformation of public sector companies into private companies entails a set of advantages:

1- Reducing the state's financial burdens by not spending on public sector companies:

The state's expansion in economic activity and its increased intervention in it, and public sector companies have received significant support in various forms such as cash transfers and privileges decided by the state for some companies, in addition to the support policy, this company may not achieve sufficient profits to cover its production costs, so such companies have become a burden on the state budget to help these companies continue their activity. Instead of the state providing financial facilities or extinguishing the losses of these companies, considering that this matter in itself is a drain on the state treasury, the state converts some public companies into private companies, which generates a net return and income for the state by stopping the financial support that public companies are accustomed to.

2- Good management and the ability to compete:

It is no secret that management in general and company management in particular have a great impact on improving the company's performance, increasing its production, reducing expenses and increasing revenues, which leads to increasing profits and providing goods in a better and cheaper way (). On the contrary, we find that private companies strive to choose management that enjoys high efficiency and works according to market mechanisms and competition in a way that is far removed from the style and methods of the generalities that the state follows in choosing managers of public companies.

"It is also known that the state or public sector has involved itself in managing projects that would have been better left to the private sector because it has the administrative experience in managing these projects, and thus the burden placed on the state sector is reduced by allowing the private sector to take its desired role in economic activity" (). It is worth noting that the management of private sector companies is much more efficient than the state's management of public sector companies.

3- The state's dedication to performing basic tasks:

It is appropriate to mention that the public sector has burdened itself with more than it can bear and through public companies has suffered from structural imbalances resulting from increased borrowing and indebtedness, insufficient public capital, accumulation of inventories and increased balances owed to others (). As a result, the state's abandonment or withdrawal from some economic activities by transforming public companies into private companies may lead to the state's dedication to performing its basic tasks and functions that cannot be assigned to the private sector, such as security, judiciary, defense and external representation, and performing these tasks and functions with high efficiency ().

That is, the transformation to the private sector leads to the state being relieved of expensive expenses that burden the state budget and lead to confusion in administrative and financial work, which ultimately leads to the loss of public sector companies. When they are transformed, the state is dedicated to performing basic activities, shedding light on them and managing them well, such as security, foreign policy and others.

Therefore, the transformation of public sector companies into private companies also entails a set of disadvantages, the most important of which are:

1- Dispensing with some workers:

The transformation of public sector companies into private companies leads to the dismissal of some workers, as some private companies seek to get rid of unnecessary and unproductive workers who do not have the qualifications required to continue working or create new jobs that depend on advanced technology that leads to the reduction of some workers. This is considered by some to be a disadvantage that prevents the transformation process. However, this opinion is subject to review because reality dictates the opposite, as the transformation may sometimes lead to an increase in the workforce, i.e. it creates new job opportunities (). This disadvantage can also be addressed by providing new job opportunities by expanding the activity of the transformed company.

2- Monopoly:

As we mentioned previously, public companies practice monopolistic activity and are not subject to the mechanisms of the legitimate competition market, as such a matter represents a disadvantage and creates a fearful obsession in society, as the transformation leads to a private monopoly instead of a public monopoly. However, reality indicates that such a transformation may lead to breaking the monopoly and providing an atmosphere of competition under the free market mechanism, and thus working to provide goods with better quality, quality and efficiency. Some countries have sought to maintain the monopoly of some public sector companies over certain economic projects and have rejected their monopoly by private companies. "On this basis, some countries, such as France and Egypt, when transforming public companies, have excluded companies that enjoy an actual monopoly or special advantages in order to protect consumers" (). It is worth noting that the concept of monopoly is subject to consideration, because the state remains monitoring and following up by supervising the prevention of monopoly and protecting legitimate competition through various legislative means and setting the relevant conditions for that.

3- Foreign investor control over national companies:

The transformation of public sector companies into private companies may result in the entry of foreign investors due to their financial capacity and technical and administrative knowledge, especially when public companies suffer from financial and administrative weakness. However, this may lead to foreigners controlling these companies. Therefore, national legislation has sought to determine the percentage of foreign ownership in companies to be transformed.

In France, the percentage of foreigners in the shares they own has been set at 20% of the company's capital, and the Minister of Economy may reduce this percentage if circumstances arise that require it. However, this does not apply to citizens of the European Common Market countries, according to the amendment introduced to the French Privatization Law, which was included in the new amended Law No. (19) of July 1993 (. As for Egypt, the Public Business Sector Companies Law No. (203) of 1991 and its executive regulations did not include any text restricting the freedom of foreigners to subscribe to the issued capital of subsidiary companies. According to the Arab and Foreign Capital Investment Law No. (43) of 1974, a percentage of not less than 49% of the capital of the company established in accordance with the provisions of Law (159) of 1981 must be offered to Egyptians, whether natural or legal persons, and this offer shall be for a period of one month, during which they alone have the right to subscribe to this percentage. Capital Law No. (95) of 1992 did not include any restriction on foreign ownership of company shares, which means that foreigners may purchase any percentage of the shares offered for sale. As for the company offering its shares for subscription, 49% of the shares must be allocated for subscription to Egyptians in accordance with Article (37) of Companies Law No. (159) of 1981 (. In Iraq, a foreigner can acquire membership in an Iraqi company as a founder, shareholder or partner unless he is prohibited from such membership by virtue of a law or a decision issued by a competent court or an authorized government agency (.)

LEGAL PROVISIONS FOR TRANSFORMATION AND RESTRUCTURING AND ITS PROCEDURES

These companies will be subject to a legal system that differs from the legal system that governed them. When these companies are privatized and transformed, they will be subject to another legal system that differs from the system that governed them in all their internal and external relations (. In Iraq, if a certain company is privatized, it will go beyond the scope of the Iraqi Public Companies Law and fall under the scope of Private Companies Law No. (21) of 1997. It will be governed by the provisions of this law, whether this transformation or privatization is to private or mixed companies, it will be governed by this law in the details that we will see (.)

On this basis, and despite all the aforementioned defects, transformation in public sector companies remains the most successful means of realistic and legal solutions to all the problems facing public companies, especially in the basic case, which is the successive losses of public sector companies. Therefore, we will divide this requirement into two branches, as we will discuss in the first branch the legal procedures followed to carry out the transformation process, and in the second branch we will discuss the legal effects resulting from carrying out the transformation process as follows: -

The legal procedures followed to carry out the transformation process

The legal procedures for the transformation of public sector companies into private companies, as we mentioned previously, there are laws of countries that impose the necessity of restructuring as the first legal procedures for the transformation, because the restructuring leads to dividing the capital into shares that are fully owned by the restructured company, as this matter results in the company resulting from the restructuring replacing the public companies in its rights and obligations (.), then this procedure results in complete freedom for the restructured public sector companies to choose the appropriate method or style for the transformation through direct sale or in the stock market or to workers or any other method stipulated by law. "The process of restructuring the public company does not mean that the transformation process has ended, but rather it is considered the first stage of the transformation of the public company, whereby it takes the form of a joint-stock company and its capital is divided into shares, then at a later stage it is transformed into a private company" (. "In Egypt, we find that the issuance of the Public Sector Companies Law No. (203) of 1991 aimed to facilitate the transformation of public companies into private companies, so that the activity of the public sector is limited to activities that do not attract the private sector" (.). Therefore, according to the provisions of this law, the public sector companies subject to the provisions of the Public Sector Bodies and Companies Law No. (97) of 1983 were restructured, as the holding companies replaced the public sector bodies, and the subsidiary companies replaced the companies that were supervised by these bodies as of the date of issuance of the Public Business Sector Companies Law without any need for any other procedure, and all rights and

obligations are transferred to the companies that replaced the old companies, and this law also required them to take the form of a joint-stock company (). It is worth noting that holding companies may not trade their shares except among public companies or individuals, i.e. it is inconceivable that these companies will become private, i.e. by selling their shares to the private sector, and that the sale or transformation will be limited to subsidiary companies ().

"As for France, public companies may take the form of public industrial or commercial institutions or take the form of joint-stock companies in which the state owns all of its shares or owns them jointly. The restructuring process was limited to industrial and commercial institutions that were intended to be transformed into private companies, as the Renault Industrial Corporation was transformed into a joint-stock company by law issued on 7/24/1990" ().

The same applies to the Jordanian legislator, as Article (8) of the Jordanian Companies Law No. (22) of 1997 stipulates that (despite what is stipulated in this law: - A - It is permissible by a decision of the Council of Ministers based on the recommendation of the Minister, the Minister of Finance and the competent minister to convert any institution, authority or official public body into a public joint-stock company operating according to economic principles and the government owns all of its shares, with the exception of the institution, authority or public body that was established pursuant to a special law, in which case its special law must be amended before converting it into a public joint-stock company pursuant to the provisions of this article). That is, the Jordanian legislator adopted restructuring as a fundamental procedure in preparation for the process of transformation from a public company to a private company. As for the Iraqi legislator, he did not adopt restructuring as a preliminary procedure to carry out the transformation process by transforming it into a public joint-stock company whose capital is divided into shares fully owned by the state, similar to what is practiced in Egypt and Jordan. Rather, Article (35) of the Iraqi Public Companies Law No. (22) of 1997 stipulates that (public companies may be transformed into a joint-stock company with the approval of the Council of Ministers), meaning that the transformation is directly into a private or mixed joint-stock company, due to the generality of the text (). This text did not specify who has the right to request the transformation? And is it possible to transform at any time? As for who has the right to request the transformation, the ministry or the entity not affiliated with a ministry has the right to request the Council of Ministers to transform the company, and this happens when the company is in unusual and difficult circumstances and not in normal and natural circumstances; because the transformation occurs as a result of a defect in the public company. It is worth noting that when the Iraqi legislator issues the text on the transformation of a public company into a joint-stock company, this public company can be transformed into a private or mixed joint-stock company in accordance with the provisions of Companies Law No. (21) of 1997. The general rule is that this transformation is to the private sector only, unless the state wishes to contribute to these companies, in which case the public company is transformed into a mixed company (), and this is what Article (38) of this law indicated, which stipulated that (the state sector's contribution to the new company is determined in accordance with the legal provisions). The effective legal provisions are the provisions of the Private Companies Law, related to the provisions of mixed companies and the percentages specified for them according to what has been mentioned.

Therefore, we call on the Iraqi legislator to keep pace with what the Egyptian and Jordanian legislators have adopted regarding the necessity of carrying out the restructuring process by transforming into public joint-stock companies whose shares are fully owned by the state, and all rights and obligations are transferred to them from the public company, and then this procedure is followed by carrying out the process of transforming into a private or mixed joint-stock company.

As for the procedures for transforming the public company, when the conditions for transformation are met and the founding parties take the initiative to request the transformation, the owning party must submit a study of the economic and technical feasibility that includes the objectives, justifications, importance and reasons for the transformation, as well as an evaluation of the company's assets (), as the most difficult of these procedures is the difficulty of evaluation, because there are many public sector companies that are established for the purpose of achieving non-economic or commercial goals, and therefore they do not have a commercial character and are not consistent with the profits they achieve, which leads to a decrease in their price when evaluating and selling. The poor performance of the stock market and stock exchanges in developing countries also hinders the evaluation and sale process. The evaluation process must be real and fair. If the assets are evaluated at more than their real price, it will lead to individuals refraining from buying, and if they are evaluated at less than the real price, it will lead to buyers getting rich.

As for the position of the Egyptian legislator in the Public Business Sector Companies Law, we find that it did not specify the rules for evaluating the company's assets, except in the case of an in-kind share that enters into the capital upon establishment or increase. In this case, the founders request the competent minister to verify the estimation by forming a specialized committee to examine this matter. This law has allowed holding companies to seek the assistance of experts to carry out the evaluation process ().

In France, the evaluation of the assets of a public company that is to be transferred to the private sector is done by having specialized expert offices review the company's accounts and ensure the soundness of its financial position. These offices may seek the assistance of the company's auditor in their work and then submit a report on the results of their work to the Participations and Transfers Committee (). The same applies to the Jordanian legislator, as the assessment of assets for the purpose of carrying out the transformation process is in two stages: first, restructuring, then the transformation process (). As for the position of the Iraqi legislator, Article (36) of the Public Companies Law stipulates that (the Ministry shall prepare a study of the economic and technical justifications for the transformation, and the method of evaluating the value of the capital shares and the method of selling them, and shall submit them to the Council of Ministers to take the appropriate decision regarding them) (). It is worth noting that this text requires instructions clarifying the transformation mechanism, in terms of estimating the company's assets, and whether the study prepared by the Ministry, which is a non-neutral entity, is sufficient; because it is the seller of the company, and it is assumed that the task of estimation should be entrusted to experts known for their competence and integrity, and the mechanism of sale was not specified, whether the shares are sold through public subscription, closed subscription, or through tenders ()? We reiterate what we preferred previously, regarding the preparation of the feasibility study, which should be entrusted to universities or specialized and highly efficient research centers. As for the evaluation, the Iraqi legislator has given public companies the freedom to determine the evaluation procedures and methods (), but this matter is subject to an exception, related to the fact that the funds of public companies in Iraq are public funds owned by the state as private property, so any sale of continents or movables is done through a sale at a public auction by forming an evaluation committee by the competent minister or his authorized representative and with a group of members in accordance with what is in effect in the law on the sale and lease of state funds. In conclusion, the evaluation process in Egypt and Jordan is done in two stages: public companies are evaluated for the purpose of converting them into holding companies or subsidiary companies, then another evaluation for the purpose of converting them into private companies. As for Jordan, the assets of the official public institution are evaluated for the purpose of converting them into public joint-stock companies, then the evaluation is done again if the state decides to convert them into private companies. As for Iraq, the evaluation is for their conversion into a private or mixed joint-stock company according to what was stated above. As for the methods used to carry out the transformation process, there are many methods, so we must search for the most famous of them: public subscription, sale to employees, and sale by public auction in the stock market. Regarding public subscription (), which is represented by offering shares of public companies for sale for public subscription by the public, which is characterized by expanding the ownership base and leads to investors not monopolizing the shares for sale (). The subscription must be complete, i.e. it is done with all the shares of the company offered for subscription, because the lack of full subscription makes the company's capital insufficient for the purpose for which it was established. The Iraqi legislator considers the subscription successful if it reaches (75%) of the total subscribed shares. If the subscription does not reach this limit, the founders have the right to reduce the capital, unless they decide to withdraw from the establishment (). The subscription must also be final and completed and not suspended on a condition or added to a term, otherwise it is void. The subscription must also be serious, i.e. not formal. As for the positions of the legislation, we find that the French legislator has adopted the method of public subscription, which is considered the most common method in France, by offering shares for sale to the public (). The same is the case for the Egyptian legislator, who has adopted the method of selling shares of subsidiary companies after evaluating them and presenting them to the boards of directors and general assemblies of companies and determining the selling price of the share and notifying the General Authority for the Capital Market (). The Iraqi legislator has granted the competent ministry in the Public Companies Law the right The authority or the entity not affiliated with the Ministry of Freedom to choose any method it deems appropriate, including public subscription ().

As for the position of the Iraqi legislator on this method, the capital in the public company consists of one share or several shares, not shares, this matter represents an obstacle to this transformation in this method, as this method requires that the capital be divided into shares. However, the Iraqi legislator in the Public Companies Law allowed narrow subscription upon transformation, as it allowed the allocation of a percentage of the capital to be subscribed by workers and affiliates ().

And it was approved by the dissolved Revolutionary Command Council in its decision No. (100) of 1995, which permitted the transformation of the establishment, companies and factories into private or mixed companies. This decision gave priority in subscribing to the shares of companies resulting from the transformation to specific categories (). The provisions of the subscription are taken from the Companies Law No. (21) of 1997.

The second method is the method of selling to the company's employees or the entity that represents them, as it is considered one of the important methods in the transformation process. Among its advantages is that it leads to the employees maintaining their jobs in the company, as well as improving production, reducing costs, increasing the efficiency of the economic unit, increasing the employees' loyalty and motivating them to give more. It is also criticized for lacking transparency and the ability to compete with the public because the sale is limited to employees only.

As for the position of comparative legislation on this method. In Egypt, we find that the Public Business Sector Companies Law No. (203) of 1991 did not stipulate that employees purchase their shares directly, but some () believe that employees can buy their companies' shares, as the holding company may sell a number of its shares directly to employees, so they become shareholders with the same rights and duties that result from the status of shareholder.

As for the position of the Iraqi legislator, the Iraqi Public Companies Law approved the employees' ownership of a certain percentage of the company's nominal capital through subscription (). However, it did not specify the amount of this percentage, but rather left the matter to the Council of Ministers to determine this percentage.

The third method is selling in an auction () or a public auction in the stock market. According to this method, all the steps and procedures of the public auction are followed, including publishing the invitation to enter the auction several times to provide the opportunity to participate for the largest number of investors wishing to buy. The announcement is preceded by preparing a bulletin that includes all the information about the assets and shares offered for sale (). The method of selling in a public auction has several advantages, including that its procedures are characterized by publicity and transparency, in addition to being suitable for small companies and less susceptible to collusion between the various parties (). It also ensures that the state obtains the highest possible price for the sale. On the other hand, this method has disadvantages, represented by the fact that following it results in the exclusion of small investors who cannot bid (). In contrast to the method of public subscription, which allows individuals with limited income to participate in purchasing shares of public companies. As for the position of legislation on this method, we find that the Egyptian legislator considered this method a method for transforming public companies into private companies. We find that the Egyptian government program's general procedures and guidelines manual has mentioned this method for transforming public companies by selling the assets and shares of public companies in a public auction if the company is small. In the field of selling shares in a public auction, the Egyptian legislator stipulated the preparation of a sales bulletin and that this bulletin be approved by the company's board of directors and approved by the Capital Market Authority (). As for selling assets in a public auction, the extraordinary general assembly of the holding company has been authorized to sell the assets of subsidiary companies in two cases stipulated in Article (26) of the executive regulations of the Egyptian Public Business Sector Companies Law, which are: - (The company may not dispose of the sale of an asset from the main production lines except with the approval of the extraordinary general assembly according to the following: 1- That the company is unable to operate these lines economically or that continuing to operate them leads to incurring certain losses. 2- That the sale price is not less than the value estimated by the committee stipulated in Article (19) of the law). The sale is by auction in both cases only. As for the position of the Iraqi legislator on selling by public auction, it is the most prevalent with regard to the transformation of public companies into private companies. The Companies Law did not explicitly stipulate it, but rather gave the right to the founding party to choose the appropriate method, including this method, and this sale is subject to the provisions of the Law on the Sale and Lease of State and Public Sector Property in Iraq through the formation of sales committees by a decision of the competent minister or the head of the entity not affiliated with a ministry or whomever they authorize, and this sale is also subject to Resolution No. (140) of 1993 of the dissolved Revolutionary Command Council (). The method of this sale is not without defects and warnings, as this sale is directed at the company's real estate and movable property, as some may prefer to buy movable property and others buy real estate, which leads to the expiration of the company and not its transformation, and this sale also leads to affecting the price by decreasing it, and it also leads to the non-operation of the public company due to the distribution of the company's property among the buyers, or the company's activity is changed. On this basis, we recommend to the Iraqi legislator that if the sale is made in accordance with the Law on the Sale and Lease of State Property, it is preferable for the sale to be to the strategic investor because he is considered the ideal investor in this case so that the company is not sold at a low price.

Some believe that the Iraqi legislator should not permit the sale of shares of public companies that are to be converted into private companies unless the companies are restructured by converting them into joint-stock companies whose shares are fully owned by the relevant ministry, and these shares are tradable on the stock market. This opinion is justified in that the restructuring of a public company results in dividing the capital into Shares so that they are listed in the stock market to facilitate the process of selling them.

Article (37) of this law states, "After the Cabinet approves the transformation, the Ministry shall prepare a new contract for the company and submit it with the Cabinet's approval to the Registrar." If the Cabinet approves the transformation of the public company into a joint-stock company, the relevant authorities represented by the Ministry or the entity not affiliated with the Ministry shall be notified of the Cabinet's decision, as these authorities shall take the necessary measures by preparing the new contract or statement related to the transformation, and linking it with the Cabinet's approval of the transformation, in addition to linking the feasibility study with it, to be submitted to the Companies Registrar's Department, Public Companies Division, in order to indicate that transformation, as the Ministry is supposed to be obligated to a specific period for the purpose of submitting the priorities to the Registrar. In addition, if the Ministry is the competent sectoral authority for the company, considering that its activity falls within the Ministry's activity, it is the party that sold the company or relinquished ownership of the company, so how does it draw up the contract, while it is required that it be drawn up by the parties that are bound by it, which are the parties that acquire the company's shares, or at least ratify the contract (). It is clear from the above that the above opinion is valid and correct, so that the Ministry is no longer competent. Then the Ministry will complete the remaining procedures at its own expense, which include the necessity of publishing the transformation decision in the Official Gazette and the special bulletin of the Registrar. If the transformation decision is published, the company will acquire its new legal personality starting from the date of the last publication of the transformation decision (). Article (37) of the Public Companies Law, paragraph four, came with a provision that has not been previously regulated in other comparative legislations and is worthy of appreciation, as it stipulated that (the Council of Ministers, when a company is transformed into a joint-stock company, may specify a certain percentage of the nominal capital of the company to be allocated to the members of the transformed public company to subscribe to it as founders), as this law granted the Council of Ministers the right if it deems it necessary for the company's employees to contribute to the capital through subscription to shares determined by the Council, or the employees of the company to be transformed may request the Council of Ministers to allocate a percentage of the shares to them, as this consideration can be interpreted as honoring and encouraging the members of the transformed company for the efforts they have made in the success or attempt to make the company successful in the past or in the future, given that their connection to this company is closely linked.

Legal Effects of the Transformation Process

As for the legal effects resulting from the transformation process, the first is the continuation of the legal personality of the company to be transformed, i.e. its non-expiration during the transformation phase; The transformation of a public company means the premature expiration of the public company, not followed by its liquidation. This effect results in the financial status of the transformed public company remaining continuous and owned by the company on both sides, assets and liabilities, as well as the eligibility of the public company to be transformed to practice its usual activity within the limits of the purpose of its establishment, as well as the continuation of its nationality, domicile, name and purpose, in addition to the extension of the procedures for registering the public company. As for the position of the Egyptian legislator on this effect, we find that Article (2) of the Public Business Sector Companies Law stipulates that (holding companies shall replace public sector bodies subject to the provisions of Law No. (97) of 1983 referred to, and subsidiary companies shall replace companies supervised by these bodies, as of the date of the enforcement of this law and without the need for any other procedure). That is, it indicates that holding companies and their subsidiary companies shall replace public sector bodies and companies. This results in the expiration of the legal personality of public sector bodies and companies and the acquisition of legal personality by holding companies and their subsidiary companies. As for French legislation, the French legislator has issued many laws that include procedures for restructuring some public industrial and commercial establishments. These procedures are a change in the legal form of public establishments by converting them into national joint-stock companies. This leads to the expiration of the legal personality of public establishments as a public legal person and the emergence of a new legal personality for the company resulting from the restructuring (). This is what the Jordanian legislator also followed under the provisions of Article (8) of the Jordanian Companies Law No. (22) of 1997. As for the Iraqi legislator, Article (37/3) of the Public Companies Law No. (22) of 1997 stipulates that (the joint-stock company acquires legal personality starting from the date of the last publication of the transformation decision). Jurists differed in determining the publication, and one opinion of jurisprudence () goes, "that the legal personality of the public company expires

upon the adoption of the transformation decision by the Council of Ministers and that the joint-stock company resulting from the transformation acquires personality by publishing this decision." While another opinion of jurisprudence () goes to "that the expiration of the legal personality of the public company and the acquisition of the joint-stock company resulting from the transformation occur at the same time, which is the date of the last publication of the transformation decision." This opinion is justified as it protects third parties in good faith who deal with these companies.

As for the second effect resulting from the transformation process for public sector companies, it is subject to a legal system with a new form and new legal provisions that differ from the legal system that governed the work of public sector companies. When a public company that was subject to a law governing it transforms into a joint-stock company subject to a law that differs from the law that governed the work of the first company, the transformed company must change its form to a joint-stock company, and it must adopt a new legal system in its management and legal organization in the future.

As for the position of the Egyptian legislator, we find that subsidiary companies are subject to the Public Business Sector Companies Law No. (203) of 1991, and when the subsidiary company transforms into a private company, we find that it is outside the application of this law, and is subject to the provisions of the Private Companies Law No. (159) of 1983.

As for The Iraqi legislator has subjected public companies to a special law, Law No. (22) of 1997. When they are transformed into a joint-stock company (private or mixed), they will be subject to the provisions of Companies Law No. (21) of 1997, as amended. The company resulting from the transformation is obligated to amend its contract and change its name (), and it also proceeds to form a general assembly from all its members (), as well as form a board of directors for the private and mixed joint-stock company (), and appoint an authorized manager from its members or from others with experience and expertise in the field of the company's activity (). The accounts of the mixed joint-stock company are also subject to the oversight and auditing of the Financial Supervision Bureau, and the accounts of the private joint-stock company are subject to the oversight and auditing of auditors appointed by the company's general assembly (). As for the third effect, which is the transfer of rights and obligations by the transformation from a public company to a private company, i.e. the private company becomes a general successor to the public company in terms of its rights and obligations. The purpose of this transition is to maintain the stability of the legal status of transactions and to avoid any harmful effects on the national economy.

As for the position of the Egyptian legislator, Article (2) of the Public Business Sector Companies Law No. (203) of 1991 stipulates that (All rights of the abolished public sector entities and companies, including usufruct and rental rights, shall be transferred to the holding company and its subsidiaries, as the case may be, and it shall bear all its obligations and be fully responsible for them). That is, the legislator adopted this principle.

In France, the rights and obligations of public projects are transferred upon their restructuring to the joint-stock company resulting from the restructuring. Perhaps the most prominent example of this transfer is what was decided by the French law issued on 7/26/1996, pursuant to which the French General Telecommunications Corporation was transformed into a joint-stock company whose shares are fully owned by the state. Pursuant to this transformation, the rights and obligations of the aforementioned company were transferred to the joint-stock company resulting from the transformation, which is considered a general successor to the public establishment (). As for the Jordanian legislator, we find that he has clearly and explicitly indicated the application of the provisions of general succession when the institution, authority or official public body is transformed into a public joint-stock company (). This means that when public joint-stock companies are transformed into private companies, the latter becomes a public successor to the public joint-stock company.

As for the Iraqi legislator, he did not stipulate the transfer of rights and obligations from the public company to the joint-stock company, but this does not mean that rights and obligations cannot be transferred because the process of transforming the public company requires the transfer of the rights and obligations of the public company to the company resulting from the transformation. However, there is a decision of the dissolved Revolutionary Command Council No. (100) of 1995, which stipulated in paragraph (3/2/A) that (the value of its assets is estimated according to the prevailing prices, taking into account its rights and obligations, and the estimated value is considered the capital of the joint-stock company). That is, all rights and obligations are transferred and transferred to the joint-stock companies. Taking these rights and obligations into account in the estimation process indicates the transfer of rights and obligations to the company resulting from the transformation.

As for the legal basis on which the idea of transferring rights and obligations to the company to be transformed is based, the case of the transformation and transfer of rights and obligations can be measured by the case of the transfer of rights and obligations from the merged company to the merging company or resulting from the merger in the case of a merger of companies, considering that the transformation and merger result in the premature dissolution of the public company that is not followed by its liquidation. Article (34/2) of the Iraqi Public Companies Law stipulates that (the rights and obligations of the merged company or companies shall be withdrawn and transferred to the new company), meaning that the transfer of rights and obligations from the public company to the private company finds its basis in the idea of the general succession of the private company and its legal and practical solutions in place of the public company in the manner that we have explained in comparative legislation, and the general successor (is the one who succeeds the predecessor in all or a common part of his financial liability) (). We suggest to the Iraqi legislator the necessity of adding this text to the provisions of the Iraqi Public Companies Law and closing the door to interpretations. As for the effects of the transformation on the company's creditors, it does not entail any harmful effects on the company's creditors due to the change in its legal form, as the creditors continue to maintain their general guarantee on the company's funds before and after the change. Accordingly, if the company's funds increase after the transformation, they are included in the general guarantee of the old creditors whose debts arose before the transformation, and they are also considered a guarantee for the new creditors whose rights arose after the transformation. Creditors may not request additional guarantees from the partners if they wish to change the legal form of the company (). As for the effects of the transformation on the partners and the company, the rights acquired by the company or the partners cannot be affected, and the transformation in public companies does not entail a change in the obligations imposed on the company before the transformation. As for the partner's liability for the company's debts, this liability may be subject to aggravation or mitigation, depending on the form the company takes as a result of the transformation process. From the date of issuance of the transformation decision, the partners are subject to all the rules of the new form, and their new rights are established from the date of this transformation (). The public company to be transformed retains its rights and obligations prior to the transformation process, and the state's responsibility for previous obligations remains in place according to the previously preferred opinion, unless the company's creditors accept otherwise (), in which case the responsibility is transferred to the form of the new company according to its new legal system. It is clear from the above that the means of transformation in companies owned by the public sector represents one of the effective solutions for the survival, continuity and success of these companies, in which all or part of the ownership is transferred to the private sector. For private. However, if the founders of public sector companies want to maintain their status while addressing their problems, they should resort to merger as one of the solutions, or they can resort to restructuring public companies, using the method of administrative and technical restructuring that leads to reducing waste of public money and reducing financial and administrative corruption. The best evidence of this is what happened in terms of governance for the American General Motors Company, as it is considered one of the oldest successful experiments in the modern era. It began in the eighties of the last century and continued and developed with the movement of global trade, but its success was linked to international, global and local practices. Conclusion

Through the study of "Legal Merger of Public Sector Companies: A Comparative Study", we have reached several conclusions, most of which we have mentioned in detail in their respective places, and we will present them in what follows in a more specific manner, in addition to some proposals that we deem to present regarding the subject of this study as follows:-

CONCLUSIONS

1- In Iraq, public sector companies have recently suffered greatly, which affected them and led to their loss and collapse, as they have reached the point of incurring very large debts, such that continuing with them has become not an easy matter, as it is necessary to provide adequate treatment for what these companies are suffering from by introducing modern management methods (privatization, restructuring, transformation, merger and liquidation) as a result of the socialist management that led to their inability to compete with the private sector at this stage, and that the state aims to transform these losing companies into profitable ones, through the state budget directed at supporting the losing companies among them, by supporting them with grants to pay the salaries and wages of workers.

2- The Iraqi Public Companies Law did not refer the provisions that do not contain a specific text to the provisions of the Iraqi Companies Law No. (21) of 1997, which shows the possibility of adopting the referral despite the lack of a specific text on it, on the description that the Private Companies Law is a general law that governs companies in

general in what is not contained in a specific text in other laws to the extent that it does not conflict with the provisions of the Public Companies Law.

3- The Iraqi legislator considered in the Public Companies Law the employees and users of companies as public employees subject to the provisions of the service laws for employees working in the public sector, contrary to what the Egyptian legislator went for and did well in that by considering them workers subject to the provisions of the Labor Law and considered as employees with regard to the crimes they commit in connection with the job, such as embezzlement and others, as it would have been more appropriate for the Iraqi legislator to follow what the Egyptian legislator did.

4- Privatization is one of the most important legal treatments for troubled public sector companies. It is also a global phenomenon that aims to achieve economic development and give a greater role to the private sector and work side by side with the public sector. Privatization has many methods through which the private sector can be introduced with its expertise and management. Some of them transfer ownership and some do not transfer ownership. The process of choosing one method over another by the state depends on various factors related to the state itself and the nature of the legal system of the company. Therefore, making a privatization decision alone is not sufficient unless some other requirements are available to ensure the success of this process, which is represented by preparing public opinion and correcting the conditions of public companies to be privatized, evaluating the status of companies and choosing the appropriate privatization method.

5- The Iraqi legislator did well in the Public Companies Law by giving workers the right to own shares in the company, but he did not specify this percentage of shares. By owning, they combine the characteristics of workers and owners, which is one of the effective privatization methods that motivate workers to increase productivity.

6- The process of transforming a public company is a legal process that occurs during the life of the company and comes to address the failure cases that the company suffers from in order to avoid expiration. It focuses primarily on changing the ownership of the shares of the public company. The transformation process is subject to the Public Companies Law and the Law on the Sale and Lease of State Property No. (21) of 2013, as the company resulting from the transformation can be taken in Iraqi law as a private or mixed joint-stock company.

7- The transformation leads to the expiration of the legal personality of the company and its economic project is transferred to the company resulting from the transformation, but the public company does not lose its legal personality except from the date the company resulting from the transformation acquires its legal personality, starting from the date of the last publication of the transformation decision, and all rights and obligations are transferred to the private company as its general successor. This succession differs from the general succession stipulated in the general rules, as it requires the transfer of all rights and obligations from the predecessor company to the successor company without taking into account the inheritance rules related to the death of a natural person.

8- The Iraqi legislator did not address the issue of restructuring the public company in a way that facilitates its transformation into a private company, while the restructuring process requires transforming public companies into joint-stock companies whose capital is fully owned by the state and then transferring them to private companies in the manner it deems appropriate.

9- The process of evaluating the assets of the public company is done once and is for the purpose of transforming it into a private or mixed joint-stock company. As for comparative legislation, the evaluation is in two stages. The first stage involves evaluating the company upon its restructuring, and the second stage involves evaluating it for the purpose of transforming it into a private company.

10- The Iraqi legislator was not successful in formulating Article (36) of the Public Companies Law, which stated that the ministry must submit a study on the economic and technical feasibility that includes the objectives, justifications, importance and reasons for the transformation. In addition, the ministry determines the method of sale and how to evaluate the capital of the transformed public company, to be submitted to the Council of Ministers for its approval. How can one rely on the study prepared by the ministry, which is not a neutral party; because it is the seller of the company, as the task of estimation is supposed to be entrusted to well-known experts or to the offices that Specialized and known for its competence and integrity, or it can be entrusted to specialized universities or specialized research centers. The Iraqi legislator was also not successful in formulating Article (37/First) of the Public Companies Law, when it stipulated that the Ministry, which is the selling party, prepares the new contract for the company that agrees

to convert it, as it is the party that sold the company or relinquished ownership of the company, so how does it prepare the contract, while it is required that it be prepared by the parties that are bound by it, which are the parties that acquire the shares.

RECOMMENDATIONS

1- We call on the Iraqi legislator to unify the provisions of public and private companies in one law (towards one law for companies), so that one provision applies to companies to avoid all problems that occur from contradiction or duplication or the existence of a legislative deficiency in one law without the other, taking into consideration the special nature of each company.

2- We recommend that the Iraqi legislator add an article related to the inadmissibility of bankruptcy of public companies according to the prevailing opinion in jurisprudence to resolve the dispute, and we suggest that it be in the following form (It is not permissible to declare bankruptcy of public companies subject to the provisions of this law), in addition to that we recommend that the Iraqi legislator stipulate that (It is permissible to restructure or rebuild public companies with the aim of saving the project with a plan developed by the founding bodies and approved by the Council of Ministers within a period of thirty days from the date of its receipt).

3- We call on the Iraqi legislator to count the members and employees of public sector companies as workers subject to the provisions of the current Iraqi Labor Law No. (37) of 2015 and not to count them as public employees subject to civil service laws as the Egyptian legislator did. This allows them to move with the economic project of the public company to the private company.

4- We suggest amending the legal articles that contain the two phrases wherever they appear (Executive Director) - (Governing Council) in the Public Companies Law and replacing them with the two phrases (Prime Minister) - (Council of Ministers).

5- We recommend that the Iraqi legislator add a special text regarding how to estimate the in-kind share, and we suggest that it be in the following form (The in-kind share provided in public companies shall be estimated by a committee formed by a decision of the competent minister upon his request, headed by a judge of the Court of First Instance specializing in commercial lawsuits at the location of this share, and with the membership of a representative of the Ministry of Finance, a representative of the Financial Supervision Bureau, a representative of the Real Estate Registration, and a representative of the Chamber of Commerce at the location of the share. The committee shall submit its report within a period of sixty days from the date of its formation to the minister for approval within thirty days from the date of submitting the report to him. In the event of non-approval, a joint meeting shall be held within thirty days from the date of objection to the report to take the appropriate decision regarding it by majority. If approval is obtained, the competent ministry shall take the necessary action).

6- We call on the Iraqi legislator to organize the privatization process and legislate a special law for it or include in the Companies Law detailed and comprehensive provisions regulating the privatization process, in a way that sets rules and procedures that outline the legal framework for this important policy, its requirements, methods, and treatment of the resulting effects. The privatization law must also include correcting the company's conditions and restructuring it, and that there be a special evaluation committee, which is entrusted with evaluating the assets of the public company, which should be a group of economic experts and specialists in financial and accounting matters who are selected by the Council of Ministers and submitting its recommendations to the Council for approval of those recommendations.

7- We suggest that the company's capital should be divided into shares owned by the state instead of being a single share, in order to determine the value of the shares offered for subscription by a specialized, neutral evaluation committee and setting a specific price in dinars as a minimum that cannot be lowered. In addition, this matter has become an urgent necessity for the success of the privatization process, especially when adopting methods of privatization that transfer ownership to facilitate the sale.

8- We suggest the necessity of determining the percentage that the worker can own in the company's shares, such as (10%) as a maximum, and setting rules and foundations for employee ownership that are not devoid of government support for this important segment, which guarantees them the right to manage, in addition to giving the right to increase the percentage to the Council of Ministers.

9- We suggest addressing the restructuring of the public company within the provisions of the Public Companies Law before converting it into a private or mixed joint-stock company, so that it is converted into a joint-stock company owned by the relevant ministry and operates according to commercial principles, then it is converted into a company affiliated with the private sector, and the task of evaluating the company's assets is entrusted to a committee formed for this purpose, and this committee includes a number of experts in financial, economic and legal matters, and this committee is headed by the relevant minister.

10- We recommend that the Iraqi legislator add a special text on how to estimate the in-kind share, and we suggest that it be in the following form (The in-kind share provided in public companies shall be estimated by a committee formed by a decision of the competent minister upon his request, headed by a judge of the Court of First Instance specialized in commercial lawsuits at the location of this share, and the membership of a representative of the Ministry of Finance, a representative of the Financial Supervision Bureau, a representative of the Real Estate Registration, and a representative of the Chamber of Commerce at the location of the share. The committee shall submit its report within a period of sixty days from the date of its formation to the Minister for approval within thirty days from the date of submission of the report to him. In the event of non-approval, a joint meeting shall be held within thirty days from the date of objection to the report to take the appropriate decision regarding it by majority. If approval is obtained, the competent ministry shall take the necessary action).

11- In addition, we suggest that the Iraqi legislator amend Article (36) to be in the following form (A- The Ministry shall request one of the competent government universities, research centers, specialized consulting centers, or other competent and specialized entities to prepare a study on the technical and economic justifications. B- The value of the capital shares shall be evaluated. The same committee formed for the purpose of estimating the in-kind capital. C- The competent ministry shall determine the method necessary to conduct the sale in accordance with other applicable laws and then submit it to the Council of Ministers).

12- In addition, we propose to the Iraqi legislator that Article (37/First) be in the following form (After the Council of Ministers approves the transformation, the party that acquired the shares shall, in coordination with the competent ministry and within a period of one month from the date of the Council of Ministers' approval of the transformation, prepare a new contract for the company, which shall be submitted with the approval of the Council of Ministers to the registrar to indicate that within a period not exceeding ten days from the date of issuance of the contract).

REFERENCES

First: Legal books:

- 1- Dr. Ahmed Maher, Director's Guide to Privatization, Dar Al-Jamiah, 2003.
- 2- Dr. Ahmed Mahrez, The Legal System of Privatization, 1st ed., without publisher, 1987.
- 3- Dr. Ahmed Youssef Al-Shahat, Privatization and Economic Efficiency, Dar Al-Nil for Printing, Cairo, 2001.
- 4- Dr. Kamel Al-Baldawi, Commercial Companies in Iraqi Law, Dar Al-Kutub for Printing and Publishing, Mosul, 1990.
- 5- Dr. Mustafa Kamal Taha, Commercial Companies, National Center for Legal Publications, Cairo, 2018.
- 6- Dr. Muwaffaq Hassan Reda, Companies Law, Its Objectives, Basis and Contents, Publications of the Legal Research Center, Baghdad, Ministry of Justice, year of publication is recorded.
- 7- Dr. Abdo Mohammed Fadhel Al-Rubaie, Privatization and its Impact on Development in Developing Countries, Madbouly Library, Cairo, 2004.
- 8- Dr. Ahmed Mohammed Mahrez, Commercial Companies, without publisher, Cairo, 2000.
- 9- Dr. Basem Mohammed Saleh, Dr. Adnan Ahmed Wali Al-Azzawi, Commercial Law, Commercial Companies, Legal Library, Baghdad, without year of publication.
- 10- Dr. Hussam Al-Din Abdul-Ghani Al-Sagheer, The Legal System for Merging Companies, 1st ed., Dar Al-Thaqafa for Publishing and Distribution, Cairo, 1987.

- 11- Dr. Hassan Ali Al-Dhanoon, Explanation of Civil Law, Al-Maarif Press, Baghdad, 1970.
- 12- Dr. Saif Mohsen Qaed, The Legal System for Transforming Companies, A Comparative Study, 1st ed., Issued by the Dubai Judicial Institute, Dubai, 2013.
- 13- Dr. Fawzi Muhammad Sami, Commercial Companies, General and Special Provisions, Comparative Study, 1st ed., Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 1999.
- 14- Dr. Latif Jabr Komani, Commercial Companies, Comparative Legal Study, 1st ed., Al-Sanhouri Library, 2015.
- 15- Dr. Muhammad Hamid Abu Saree, The Role of Partnership between the Public and Private Sectors, 1st ed., Al-Masryia for Publishing and Distribution, Cairo, 2018.
- 16- Dr. Mahmoud Khalaf Al-Jabouri, The Legal System of Public Tenders, Dar Al-Thaqafa Library, Amman, 1999.
- 17- Dr. Nariman Abdul Qader, General Provisions for Limited Liability Companies and One-Person Companies, 2nd ed., Dar Al-Nahda Al-Arabiya, Cairo, 1992.
- 18- Muhammad Anwar Hamada, Rules and Procedures for Organizing Tenders, Auctions and Administrative Contracts, Dar Al Fikr Al Arabi, Alexandria, 2003
- 19- Muhammad Saeed Isbra and Bilal Junaidi, Al-Shamel, Dictionary of Arabic Language Sciences and Terminology, 1st ed., Dar Al-Awda, Beirut, 1981.
- 20- Mahmoud Mustafa Al-Zaarir, Privatization Policy, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2004.
- 21- Munir Ibrahim Fandy, Privatization during International Experiences, Preparing for Privatization, Privatization of Economic Projects, Maaref Establishment, Alexandria, 2004.

Second: Theses and Dissertations:

- 1- Enas Muhammad Rashid Al-Mashhadani, Privatization between Theory and Practice in Selected Countries with Special Reference to Iraq, Master's Thesis, College of Administration and Economics, University of Baghdad, 2006.
- 2- Dr. Fawzi Hussein Salman Al-Jubouri, The Right to Ownership in the Face of State Trends in Nationalization and Privatization, PhD Thesis, College of Law, University of Nahrain, 2001.
- 3- Dr. Mahmoud Al-Damardash, Privatization as a Treatment for Structural Proposals in the Public Business Sector, PhD Thesis, College of Law, Cairo University, 1999.
- 4- Dr. Muhannad Ibrahim Fandi Al-Jubouri, The Legal System for Transformation to the Private Sector, PhD Thesis Submitted to the College of Law, University of Mosul, 2002.
- 5- Abdel Nasser Abdel Salam Shobar, Changing the legal form of the company and its consequences, Master's thesis submitted to the Faculty of Law, Cairo University, 2011.
- 6- Mohamed Salem Hashem, Transforming public companies into private companies, a comparative study, a thesis submitted to the Council of the Faculty of Law, Nahrain University, 2007.
- 7- Nagwa Abdullah Samak, The possibility of transforming to the private sector in the manufacturing industries in Egypt, Master's thesis, Faculty of Economics and Political Science, Cairo University, Cairo, 1994.

Third: Research and seminars:

- 1- Basem Abdel Hadi Hassan, The phenomenon of privatization, a field study of its causes, methods and results, First Economic Conference seminar, Center for Research and Studies, Baghdad, May 6-15, 2004.
- 2- Dr. Ahmed Saqr Ashour, Privatization of Public Projects, Its Pillars, Ingredients for Its Success, Symposium on Transformation to the Private Sector, Arab Experiences in Privatizing Public Projects, Arab Organization for Administrative Development, Research and Studies Department, Cairo, 1990.

3- Dr. Hassan Nouri Al-Yasiri, Privatization, A Study of the Experiences of Selected Countries and Prospects for its Application in Iraq, Iraqi Journal of Economic Sciences, Volume 3, Issue (7), University of Baghdad, Baghdad 2005.

4- Dr. Ibrahim Taha Al-Fayyadh, Public Companies, A Research Submitted to the Conference on Law and Development in Iraqi Society Held at Al-Hadbaa University College, Mosul, March 24-25, 2001.

5- Dr. Riyadh Al-Dahal, Privatization Methods, Experiences of Some Developing Countries, Arab Economic Research Journal, Arab Society for Economic Research, Issue (13), Egypt, 1998.

6- Ali Al-Sadiq and others, Efforts and Obstacles to Privatization in Arab Countries, Arab Monetary Fund, Institute of Economic Policies, Research and Discussion Series, May 27-28, 1995, Abu Dhabi.

7- Yusra Al-Samarrai and Nihad Al-Ubaidi, Development of the Public and Private Sectors in the Arab World, a research published in the Journal of Economic and Administrative Sciences, College of Economics, University of Baghdad, Dar Al-Kutub for Printing and Publishing, Volume (5), Issue (14), Baghdad, 1998.

Fourth: Constitutions:

1- Permanent Constitution of the Republic of Iraq for the year 2005.

Fifth: Laws and Legislative Decisions:

1- Iraqi Companies Law No. (21) of 1997 as amended

2- Egyptian Public Business Sector Companies Law No. (203) of 1991

3- Egyptian Companies Law No. (159) of 1981.

4- Egyptian Public Sector Bodies and Companies Law No. (97) of 1983.

5- Iraqi Public Companies Law No. (22) of 1997 as amended.

6- Jordanian Companies Law No. (74) of 2002.

7- Iraqi Labor Law (37) of 2015.

8- Coalition Authority Order No. (64) of 2004

9- French Commercial Companies Law No. (66-537) of 1966.

10- Decision of the dissolved Revolutionary Command Council, its decision No. (100) issued on 9/20/1995

11- Capital Market Law No. (95) of 1992.