JLSB
Journal of Life Science and Biomedicine

J. Life Sci. Biomed. 4(5): 430-434, 2014

ISSN 2251-9939

A Comparative Study on Effects of Acquisitions of Businesses in the Iran and UK Law

Amir Jafari Samet* and Mashiatollah Norouzi
Department of Political Rights, Imam Hossein University, Tehran, Iran

*Corresponding author's e-mail: amir.jafari1355@yahoo.com

ABSTRACT: One of the major issues in the business enterprise rights is integration of the business enterprise. Nevertheless, in the Iran's legal terms does not purpose a place for it and among the rules governing commercial companies now that are enforceable, sentences only rule of Co-operatives 1350 detailing the conditions and the integration effects of these companies. Accordingly, to address the gaps and make the legal basis for registering the integration of business companies in the fourth development plan act, lawmaker has allocate paragraph A of Article 40 to integrate the business company, and generally integration of the business companies of trade law was prescribed. In the Fifth Plan, the above sentence in paragraph (A) of Article 105 was repeated but it seemed that these provisions are flawed from different aspects and pass comprehensive legislation by stating all the terms and effects of the integration is necessary. To address this need in the trade bill, relatively comprehensive provisions for the integration of commercial companies have been provided that in this paper is tried to examine imposed sentences in this case between Iran and the UK.
Keywords: Business Company, Simple Integration, Combined Integration, Trade Bill

Received 14 Jan. 2014
Accepted 19 Mar. 2014

ORIGINAL ARTICLE

INTRODUCTION

The globalization of financial markets and the subsequent establishment of principles of a community's competitive economic system, have prompted the organizations and businesses to maintain the vitality in the competitive environment use a variety of mechanisms such acquisitions of commercial companies, which it has two-fold effect on the market [1]. From one hand it can increases ability to activity of the business companies with integration of their tangible and intangible assets and from the other hand it may cause to create the monopolies and to remove small businesses from the competition [2]. Hence, the lawmakers are looking to create a balance between two conflicting demand in the sense that at the same time enhance the integration, think the way to avoid the monopoly of the legal authority [3].

In Iran's right to 2001 strictly is observed the distributed provisions in this field that is limited to the cooperatives and public companies [4]. Lawmaker in article 35 of the cultural, socio-economic third development plan act of Islamic republic of Iran adopted of 2000 obliged the government to perform appropriate legal actions to abolish monopolies and prevent monopoly activities [5]. This enforced lawmaker to eliminate the shortcoming and efforts to formulate regulations in the context. With the adoption of paragraph A of Article 40 of the Islamic Republic of Iran's economic, social and cultural fourth development plan Act 2004 and the paragraph of Article 105 of the fifth development plan Act, the integration of private businesses was given [6].

Definition and types of integration in law of Iran

In the implementation of general policies of Article 44 by virtue of section sixteen of Article one, business integration is defined as: "integration is an act upon which some company while fading itself legal personality, form a new and single legal personality or enter into another's legal personality."[7] According to Article 105 of the Law of the development, the integration of the business companies is performed by a bilateral and or multilateral forms, which this is expressed in the trade bill in form of two simple and compound integrations. A bilateral integration is equivalent to the company integration through absorption in the UK legal system and in the form of integration, corporate legal personality of the integrated company or companies fade and life of corporate legal personality recipient integration is continued, whereas bilateral or multilateral integration, is equivalent to integration through the formation of a new company in the UK legal system and is performed in this manner that two or more business are combined by signing contracts in one and establish a new trading company with independent legal personality. In the integration, all of the businesses are combined [8], lost their legal personality and are transferred all rights and obligations of the corporation. Moreover, in the trade bill, the integration of businesses are divided into two types, simple and complex, the main distinction between these two is that the combined integration leads to the formation of a new company due to integration of two or more companies in one while the simple integration is not followed such a result.[9]

To cite this paper: Jafari Samet A.and Norouzi M. 2014 A Comparative Study on Effects of Acquisitions of Businesses in the Iran and UK Law. *J. Life Sci. Biomed.* 4(5):430-434.
Journal homepage: http:// jlsb.science-line.com/

Definition and types of integration in British law

In the legal literature of England, several terms are used to describe the concept of integration, despite use of the word Merger is more common. Legal definition of integration in the legal system is documented in Section 1 and 2 of Article 904 of businesses Law in 2006, according to the Article, integration of a business enterprise is defined as the transfer of merger companies or public joint stock companies undertakings, property and liability to an existence public joint stock company or to a new public joint stock company as a result of an agreement and consent [10]. As well, in England law, merge of companies is perform through integration in the particular sense and integration meant acquisition of shares that most of the integrations are done through acquisition of shares. Integration in the particular sense in England law has many formalities such twice going to court for conclusion of the contract of integration and businesses fail without acknowledging the court to integrate other business enterprises. [11]

In the current England law in accordance with paragraph 1 and 2 of Article 904 of the Commercial Companies Law of 2006 without any specifications simple and combined integration of public companies has been accepted. About simple integration with brief formalities although there is no specific term [12], but if the merger companies have 90% or more shares of the merged firms, a court could to delete the approval necessity of merger company's partners and if the merged company be completely dependent on the business enterprise, court can to eliminate the approval necessity of the general assembly All of the merging companies [13]. Before the recent amendments to the Companies Law in England law if the merging companies have 80% or more of the shares of merged companies, the court would to remove the approval necessity of the general assembly of the merging companies. Besides the above, integration according to operations of the merging companies are divided to the horizontal merger, vertical takeover and merger and Cong Lomerate merger and takeover and in terms of behavior of corporate takeover are divided to Hostility Merger and Friendly Merger [14].

Effects of integration of Businesses in Iran's Law

In the merge contracts, the mentioned contracting parties is the merging and merged company or companies that each of them are affected by the merger in such a way [15].

A – The merger effects towards the merger-side companies in Iran's Law

Section I - The merger effects on the merged company or companies

Contract of merger companies in Iran or cause to fading the legal personality of merging or lead to dissolution without treatment of the company [16]. According to Article 605 of the trade bill, simple trade through a or some companies with elimination of legal personality (as the merging company or companies) in the existence company with preservation of the legal entity (as the merger acceptor company) is done and the combined integration is done through the merger of two or more companies merging with the disappearance of their legal personality and create a new company. The matters that can be deduced from the Article is that in the simple integration[17], legal personality of merging companies disappears, and merged enterprise as a separate individual to continue to exist, and in the bilateral or multilateral also two or more corporations integrate in a new corporate their legal personality are disappeared.[18] Disappearance of the Legal personality of merging company or companies means to the companies because of integration will be dissolved by law, but dissolution of the merging companies as previously mentioned does not mean to remain their law personality after dissolution to comply with rules relating to the treatment but as of the merger, the merging firm or firms dissolve without the need to comply with regulations relating to the treatment and their legal personality disappear. Based on Article 606 of company liquidation or formation of a new company bill during merger process does not require the provisions relating to the treatment or formation of a new company [19]. In fact, the merging company or companies after the merger have not the task of ending the current affairs and the implementation of commitments and collection of receivables and assets division, because all rights and obligations as provided by law is transmitted to the merged company or newly established company [20].

Second paragraph - effects of merger on merging companies

According to Article 105 of the Fifth Development Plan, in unilateral integration, acceptor integration enterprise with the absorption of merging company or companies keep their legal personality corporate and in multilateral and bilateral integration [21], a new company with legal personality is created by combining two or more companies merging companies. Well, according Article 610 of the bill, can be said that after the registration of the merger in the Companies Registration Authority, the merging company or newly established company becomes successor merged company or companies subject to their rights and obligations [22]. Hence, the merging companies are responsible to all rights and obligations, liabilities and debts of the merging company or companies and in any case, the transmission of merging company's commitment to merged company are transferred with all the traits, characteristics, ensuring their records. In addition, the obligations of the merging company or companies is also transmitted with all defenses and objections that is relating to it. in this regard is expressed in accordance with Article 612 of the bill, if the realization of the merger, if based on the merger plan, the property with the formal document is not transferred to the merged companies or newly established companies, the Land Registry Office and other agencies will act relevant to the transmission and merging company or the newly established company should be changed their constitution before the merger and in form of integration design or approve the new constitution. In contrast, [23]integrated firm also incurs obligations against the merging companies, for instance in

the contracts relating to the acquisition of shares if the ownership companies of the stock wants to pay in cash the acquired company's stock price, the liabilities of the takeover company could be considered about its finances condition, that is the financial situation of the takeover company should be favorable when takeover.[24] Generally, the agreements before signing a contract includes obligations related to leave the verb (negative) or obligations related to the verb (positive) that is considered during setting the agreement until signing a merger contract.[25]

Effects of integration of Businesses in England's Law

In England law as the provisions relating to mergers and acquisitions of several businesses, the effects of mergers and acquisitions on the merging company or companies or takeover is also different. [26] Integration in the specific sense of the word in the England law is done based on paragraph 26 and 27 and law aspect of the commercial companies approved in 2006. Like bill, based on the above-mentioned provisions of the Law on commercial companies, [27] enterprise integration would to dissolve and disappear the legal personality of merging companies. That is in the merger companies through absorption of legal personality, the merged companies fades and dissolves by integration in merging companies and in integrating from kind of a new company formation also the merging company or companies in a company lose company's legal personality and according to regulations of the integration in the specific meaning of the word in England law also requires the dissolution without treatment of the merging company or companies.[28] Well, businesses is a legal person and fully distinct from and independent of the constituents that based on this, the company can has assets and rights and have been committed. [29]A company is real owner of its property and shareholder has not legal or real possession on the property and therefore cannot meet the company's property. Hence, legal personality of the companies occurs by dissolution of them.

Difference of the merger between UK law and regulations of trade bill, is that since the court initially involved in the merger contract, the dissolution without the merging company or companies treatment is done by court order and the acquisition way of companies shares carried out based on paragraph 28 of Law of companies enacted in 2006 and in accordance with articles 110 and 111 of Law of stop enacted in 1986. [30]

B – Effects of the integration toward the partners or shareholders of the merging companies in Law of Iran

First Paragraph - Effects of the integration on the shareholders of the merged companies

With transferring of rights and obligations of the merging companies, the shareholders of the mentioned company or companies in the subsequent merger of company will lose their rights. For this reason, one of the topics included in the integration plan is required, is the method of payment in integration agreements for the shareholders of the merging companies. There are two main methods (cash and stock) for payment of salary of the merging company's shareholders in the merger agreement. Of course a potential merging takeover or company can use a combination of cash and shares for acquisition and merger of the merging company, which depends on evaluation of the merged company and the financing ability of the merging company. According to Article 599 of the bill, which is in place of contents expression of the integration scheme, Section 9 of the mentioned article considers one of the content of the integration scheme as a determination of the amount and proportion of shares in the new or integrated company for corporate stock or shares to the shareholders or partners. As it can be seen from the above-mentioned provisions of the two Article, reform bill of the second method of payment has predict way of stock or exchange for shares, to wit, in a unilateral integration the merged company instead of shares or contribution of the shareholders of the merged company or companies should pay its company's shares or contribution and in multilateral and bilateral integration also the new company will pay its shares to the shareholders of the merged companies should pay. It's what's called a share in companies and other companies, called contribution. So the contribution shows partners' capital to the company and expounds his salary, the shares and the contribution both state the portion of the shareholders and the partner in the firm. Also pays for shareholders and the partners are set in proportion of the shares or contribution of them in the company [31].

The second paragraph - Effects of the integration on the shareholders of the merging companies

Shareholders of merging companies, with the merger of the companies both in the merger in the proper sense of the word or in the sense of acquisition are not affected a lot, because merger or takeovers company after merging companies,[32] retains its legal personality and continues to its legal life and also in combined integration after the merger, a new company is established which is created from compound of the merger companies and its shareholders are commonly shareholders of the merger companies.[33]

In the new bill of trade act in Article 599 that states exchange for the shareholders of the merged companies only is discussed for shares or contribution of the shareholders or partners of the merging company.[34] Also in Article 599, the reform bill which has focus on the contents related to integration scheme does not provide an paragraph for the shareholders of merging companies and this indicates that the merger of companies would be amended according to the reform bill does not create a significant change in the rights or obligations of the merging companies.

Effects of the integration toward the partners or shareholders of the merger companies in England law

Based on the section 28 of the Business Companies law enacted in 2006 if the offered company can gains a 90% shares of the proposed company shareholders, may earn shares of other shareholders compulsorily, consequently the proposed company is merged in offered company practically. In both types of stock ownership, the company that its shares is bought by the takeover company remain as a legal entity wholly separate of the takeover company but the company loses control over the operations of the company. [35]Well Article 899 of the business company law enacted in 2006 refers to the subject and its legal remedies has been predicted. As well as, Article 110 of the Stop Law in 1986 also is recommended as a complement to this topic.

C – Effects of the integration toward creditors of the merger companies in Law of Iran

The merger agreement in addition to the effects on the shareholders of the merged companies affects the rights of third parties. Third parties in connection with the integrated companies are the creditors (with or without bail) and also those who have a securities holders.

Creditors of the merging companies are creditors with bail or the creditors have no collateral. Accordance with Article 601 of commercial law, creditors who their credit have no collateral can protest to integration within two months after the last advertisements publication of common plan of merger. In this case, the company is obliged to satisfy the creditors and to pay demands of creditors and if deadlines of credit such creditors has not overdue it should meet enough bail and to satisfy creditors on the basis of transferring the credit to the new company or integrated companies. Otherwise any of the creditors without collateral can demand from the court issue a temporary order to delay the registration of the merger to provide sufficient collateral from the company to satisfy the creditors and in accordance with waver if the creditors and the company agree other agreement in the contract will be operated based on the agreement.

The court is obliged to decide in nature dispute out of turn. However, until decision making on the nature of dispute by a court the merging companies still with the preservation of legal personality continue to activities. Credit transferring (accordance Paragraph 3 of Article 292 BC) is the agreement of creditor and a third party based on to transfer the credit of the creditor that is on the obligation of owed to a third party.[36] In other words, transfer and displacement of credit from the creditor's assets to one other property that as a result the transmitted on the same credit with all organs and the characteristics and the related benefits become the successor of the original creditor and it like creditor can to demand its credit from the debtor with the same conditions the audit and against others has the ability to cite it. If the creditors object, the merged company can do the following actions:

•To pay the debt to the creditors.

•If debt of the creditors shall not seek, meet the collateral to their debt.

•Or attract the consent of creditors based on transferring their debt to the new company or the merged companies.

If the company does not perform any of the following actions, the creditors may be issued a temporary order from the business court to delay the registration of trade integration to demand performing the above actions from the integrated company and until commercial court handling the merging companies with preservation of legal personality still continue to operate.[37] Point that worth noting is that if the merged company and creditors have a particular contract in respect of demanding payment, pursuant to the contract and agreement will behave. In the case of creditors with collateral of trade bill about payment of their credit dose not predict the regulations and the reason is that the creditors can to obtain their credit through sell their records, and If the bond proceeds to pay off all their demands are not enough, the company can behave them like unsecured creditors for the rest of their credit [38].

Integration effects toward the creditors of the merging companies in UK law

Outlined in the section was said earlier in the section of integration effects toward the partners or shareholders of the merging companies and it seems is more confused sense, therefore, needs to be reviewed.[39] Finally, it should be noted that is concluded and in the form of conclusions, topics to be included at the end of this article.

REFERENCES

1. Skini, Rabia. 2006. Rights of corporations, Volume I, published by Samt, Tehran,
2. Peru, Roger.2005. Judicial institutions in France, translated by S. Ebrahimi, Deputy of Justice development of the Judiciary, Tehran, 2005 .
3. Khazaei, H.2006 rights of corporations, Volume I, published by Ghanoon, Tehran.
4. Sotoudeh Tehrani, H.1997. Rights of Business, Volume II, published by Dadgostar, Tehran.
5. Saffar, M.J.1994. Legal personality, Neil Publication, Tehran.
6. Alivar, A.1982. Basic financial statements, the audit organization, Tehran .
7. Ameri, F.2009. Focusing on the bill of regulations facilitating competition and Conditions relating to control and prevent the formation of monopolies, Allameh Tabatabai University, Tehran.
8. Amid, H.1987. Persian Culture, Volume I, published by Amir Kabir.
9. Deputy of Justice development of the Judiciary, An Essay on the general policies of Article 44 of the constitution, Volume I and II, Keyhan Publishing.2010. Tehran.

10 . Institute of Audit and Research Services, stock and pricing, Nakhostin publication.2004. Tehran .
11 . Vakili Moghaddam, M.H.2010. Anti-trade agreements, Tehran, Hamegan publishing.
12. Damirchly, M., Hatami, A., Gharaei, M.2002. Commercial Law in the current legal order, Misagh Edalat Publications, Tehran, 2002.
13 . Boyle & Birds.1999. Company law, (London).
14 . Crisvencenzi & john fair Hurst. 2002. Law of the European community, (Longman, London) .
15 . Garner, B.A.2004. Blacks' law dictionary, (west publishing co, eight edition) .
16 . Stephen, S.1999.business law, second edition, (London, Momillan) .
17 . Klark, K. & Ofek E.2004. "Mergers as a means of Restructuring Distressed Firms: an Empirical Investigation "Journal of financial and Quantities Analysis, vole 29.
18 . Martin, E.A.1997. Oxford Dictionary of law, (oxford university press, fourth edition) .
19 . "Accelerating Merger and Acquisition success. 2005. Integrating organizations through content ", (IBM Web sphere edition information content integrator, generic) .
20 . Stig, L. & Morse.2007. "Software systems in - house or Retire- Rxperiences Merger integration strategies from industry.
21 . Beigi Habib Abadi, A.2000. Comparative study of integration of joint stock companies in the law of England and America, PhD thesis on Private Law, Tarbiat Modarres University.
22 . Jafarpour, H.A.2008. Comparative study of Integration of the businesses in the laws of England and trade bill, 2005, MS Thesis, University of Allameh Tabatabai.
23 . Moradi, M.A.1994. Announcement of accounting profit by publishing financial statements and the behavior of stock prices on the Tehran Stock Exchange, MS Thesis, Tarbiat Modarres University.
24 . Sadeghi, T.2007. Principles governing commercial law at the relevant legislation, Theology and Law Journal, Issue 23 .
25 . Mousavis, S.A.1991. Legal and economic evaluation of the alternative tools of market operations and the introduction of new tools, Proceedings of the tenth conference on monetary policy and currency, Institute for Monetary and Banking Studies.
26. Norouzi Shams, M.2005. Look at the competition law in the laws of many countries, Mesbah Journal, Vole XIV, No. 61, February, and March.
27 . Garner, B.2004. Black's law dictionary.
28 . John, H. farer, Farers Company law, (London, Butter Worths, one thousand nine hundred and ninety-seven) .
29 . Martin, Elizabeth a, oxford dictionary of law. (Oxford university press, fourth edition, the 1997th) .
30 . Klark, K. & Ofek, E. Mergers as a means of Restructuring Distressed Firms: an Empirical Investigation, journal of financial and Quantities Analyses.
31 . Department of Agriculture "Cooperative.1991. Merger / consolidation Negotiation", available at: http: // Www.rudev .usda.gov /
32 . Dennis, M.1985. "Merger and market share: the review of economics and statistics ", available at: http: //Ideas.repec.orgle/Pmullo.html /
33 . Haufler, A.2007. "Merger policy and tax Competition ", available at: http: //Epub.ub Muneher.com
34 . Hutchson and mason pllc.2001."Merger and Acquisition basics", triangle techjournal.
35 . Cameron, mark, "Merger and Acquisition of privately companies", available at: http: //Www.whiteglee.com/ Mga.html . /
36 . Larner, Digby, P . 1991 . For a Merger: anatomy of takeovers target ", available at: http: // Www.iht.com . /
37 . Rappaport, A.1998. "Shareholders creating value ", available at: http: // books - Global.investor.com . /
38 . Rausmussen, Kurt, D. 1989. "Mergers and Acquisition: new, Considerations". available at: Www.iuca.com/ Cpajournal / old / Hml .
39. Investopedia company, "what is the Difference between a Merger and a Takeover ", available at: http: // Www.investopedia.com/Ask/Answers/05