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**Transformation of Company Contracts Resulting from Merger under Algerian
Law**

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Abstract :

Merger is considered one of the instruments for business concentration within the framework of economic reforms. It has become a pressing necessity within these reforms, and its achievement requires the interaction of legal, economic, and social factors. Through merger, a group of companies unite to form a single economic entity to confront the challenges imposed by the market, making it an inevitable reality.

Keywords: merger; company; employment contract; agency contract; supply contract.

Introduction

Over the past two decades, the world has witnessed a major transformation in the modern economy, characterized by the phenomenon of economic concentration. This phenomenon requires enterprises to group together in order to strengthen their position at the international level. When companies decide to pursue such concentration, they generally resort to one of its mechanisms, with merger being one of its most prominent forms. For this reason, the Algerian legislator has regulated merger in Articles 744 to 764 of the Commercial Code.

Since merger constitutes an agreement between the acquiring (or merging) company and the acquired (or merged) company, the contracts in which the merged company is a party are not limited in type. The merged company may sell and purchase, lease and rent, supply and import, conclude employment contracts, lend and borrow. However, this study will focus only on a number of contracts of particular importance¹.

It should be noted that the contracts concluded by the acquiring company do not generally raise any legal issues, as they remain valid and unaffected. The fate of the contracts concluded by the merged company, however, is determined by the merger agreement.

This leads us to the central problem of this study:

What is the fate of the contracts concluded by the merged company before the merger process?

And if the general rule states that one may not claim the extinction of the rights and obligations arising from the merged company by invoking the merger, does this implicitly mean the continuation of these contracts under the acquiring company, or is the opposite true?

These questions will be addressed by examining the effects of merger on employment and lease contracts (Section I), followed by a study of the effects of merger on agency, insurance, and supply contracts (Section II).

THE FIRST TOPIC: EFFECTS OF MERGER ON EMPLOYMENT AND LEASE CONTRACTS

Some contracts are closely connected to the essential characteristics and identity of the merged company. This refers not only to employment contracts binding the company and its workers, but also to lease contracts of premises, which involve exceptional legal rules. These contracts are tied to the human element and the role of labor as a fundamental component of the company.

First requirement: Merger and Employment Contracts

It is well established that employment contracts are divided into individual employment contracts and collective employment contracts. Therefore, each type will be examined separately.²

First section: Individual Employment Contracts

The Algerian legislator adopts the principle of the worker's attachment to the establishment. As long as the establishment continues to exist, employment relationships and contracts remain valid and in force, regardless of any change in the employer.³

This principle is explicitly reflected in Article 15 of the Labour Law⁴

“If a change occurs in the legal status of the employer, particularly through inheritance, sale, transfer, assignment, or the establishment of a company, all existing employment relationships and acquired rights as of the date of the change shall remain in effect between the new employer and the workers.”

Accordingly, merger does not result in the termination of employment contracts. Instead, employment contracts automatically transfer from the merged company to the merging or newly formed company, even if the employment contracts or the merger agreement do not expressly provide for this. The transfer occurs by operation of law.⁵

Thus, the beneficiary (merging) companies remain bound by the obligations undertaken by the merged companies, unless these obligations are replaced by new ones.⁶

A practical example of this may be illustrated through a dispute brought before the French Court of Cassation. A complaint was filed against the contested judgment for rejecting the claim of Ms. X, a commercial department manager employed by the limited liability company COUAILAC & BLY. She sought damages for breach of contract, arguing that her employment contract had been unilaterally terminated, as if she had resigned, because she refused to perform new tasks assigned to her due to the company's restructuring.

The companies COUAILAC and BLY had merged with another company, and Ms. X claimed that her job title and salary conditions had been altered.

However, the judges found that the changes resulting from the restructuring did not affect the essential terms of Ms. X's employment contract and were not unreasonable for her. The company had offered to maintain the same working conditions as before, in her position as head of the commercial department, with a reduction in the size of the department but an increase in her previous sales portfolio.

For these reasons, the appeal filed against the decision of 16 November 1961 issued by the Paris Court of Appeal—Ms. X v. COUAILAC & BLY Ltd.—was rejected.⁷

Second section: Collective Employment Contracts

A collective employment contract is an agreement concluded between trade union organizations and the employer after extensive negotiations concerning working conditions and the establishment of rules that must be respected. The process typically culminates in the signing of agreements based on the mutual consent of both parties, and some workers in the company are usually members of the trade union involved.

The Algerian legislator does not require the transfer of collective agreements in the same way it mandates the transfer of individual employment relationships. Thus, upon a merger, the agreement concluded between the merged company and the union ceases to have effect.⁸

According to judicial precedent⁹

The former members of the works council as well as the former trade union representatives did not continue their duties at the time of the council's renewal. However, they remained protected against dismissal during the six months following the expiration of their mandate.

Second requirement: Merger and Lease Contracts

A lease contract is the arrangement by which the lessor grants the lessee the right to use the leased property for a specified period in exchange for a defined rent.¹⁰

To clarify the fate of a lease contract concluded by the merged company before the merger takes place, it is necessary to examine the positions of both the French and Algerian legislators on this issue.

First section: The Position of the French Legislator

Unlike the Algerian legislator, as will be shown, the French legislator has definitively settled the issue of the continuity of lease contracts in the case of a merger. Under French law, lease agreements and all their resulting effects remain in force after the merger, even if the contract contains a clause stating otherwise.

Article 35 of the Decree of 30 September 1953 provides that:

In the event of a merger, the company resulting from the merger replaces the merged companies in all lease contracts and in all rights and obligations arising from them, even if a clause to the contrary exists.¹¹

From the wording of Article 35, it is clear that the rule of continuity of lease contracts and the substitution of the absorbing (or newly formed) company for the merged company applies automatically by force of law.

An example from French jurisprudence illustrates this principle:

In a decision by the French¹² Court of Cassation, the Court overturned a ruling that had ordered the termination of a lease contract.

The case involved a lease dated 14 December 2001 between the company BRAUD, the lessor, and the company SEM, the lessee, which later merged into SARL GARAGE BRAUD (the absorbing company). The latter attempted to relinquish its lease rights without obtaining the approval of the original lessor, which SEM (the merged company) had been required to obtain.

Second section: The Position of the Algerian Legislator

The Algerian legislator did not explicitly regulate this matter, unlike several comparative legal systems. However, he did allow lessors of premises leased to merged or demerged companies to file an objection to the merger or demerger within two months¹³

From this, it is implicitly understood that lease contracts continue to exist and remain in force after the merger¹⁴. According to jurisprudence, the company resulting from the merger remains bound by the terms and conditions of the lease contract, even without the lessor's approval.

Thus, lessors of merged companies have only one option: to file an objection and request guarantees if the merger risks harming or undermining their rights.

The Issue of a Termination Clause

A question arises when the lease contract includes a resolatory clause prohibiting the lessee (the merged company) from transferring the lease rights.

In such a case, does the lease contract transfer to the absorbing company?

The Algerian legislator has remained silent on this point.

However, French jurisprudence has provided an answer. According to a decision by the French Court¹⁵ of Cassation. The lessee (the merged company), despite the existence of a restrictive clause, may still bring partners into the exploitation of the leased premises.

THE SECOND TOPIC: THE EFFECT OF MERGER ON AGENCY, INSURANCE, AND SUPPLY CONTRACTS

A company may conclude an agency contract, an insurance contract, or a supply contract, but it may later be subject to a merger project with another company. This results in the dissolution of the merged company and the disappearance of its legal personality. In such a case, two possibilities arise:

Either the contracts previously concluded by the merged company with third parties continue to exist, or

These contracts are terminated as a result of the merger.

Thus, what is the effect of the merger on the agency contract, the insurance contract, and the supply contract?

First requirement: Merger and the Agency Contract

To understand how merger affects agency, the agency contract must first be defined and its characteristics clarified, followed by an explanation of the impact of merger on the agency relationship.

First section: Definition and Characteristics of the Agency Contract

An agency contract is defined as:

"A contract by which one person authorizes another to perform an act on behalf of the principal and in the principal's name"¹⁶

The agency contract is characterized by several features, including:

It is a consensual contract that is formed by the mutual consent of the principal and the agent.¹⁷

Its object is a legal act or transaction, performed by the agent on behalf of the principal.

It is based on trust and personal consideration between the two parties.

It is a non-binding contract, meaning either party may terminate it at any time. The principal may end it whenever they choose.¹⁸

Second section: The Effect of Merger on the Agency Contract

As previously mentioned, merger leads to the dissolution of the merged company and the disappearance of its legal personality. Since one of the characteristics of an agency contract is that it is based on personal consideration and that the authority of the agent is derived from the authority of the principal, if the principal is prevented from acting, the agent is likewise prevented.

Since one of the causes of termination of agency is the death of either the principal or the agent, what applies to the natural person applies equally to the disappearance of the legal personality of a company.

Therefore, based on the above, the agency contract terminates upon the merger, whether the merged company is the agent or the principal. If the absorbing company wishes to maintain the agency relationship under the same terms as with the merged company, this constitutes a new contract, not a continuation of the previous one.¹⁹

Second requirement: Merger and Insurance and Supply Contracts

Both the insurance contract and the supply contract are essential and necessary for the operation of a commercial establishment and are closely linked to it, to the point that they are considered among its accessories. In this section, we examine the impact of merger on the insurance contract and on the supply contract.

First section: The Effect of Merger on the Insurance Contract

An insurance contract is an agreement under which the insurer undertakes to pay the insured, or a designated beneficiary, a sum of money, an annuity, or any other financial compensation in the event of the occurrence of the insured risk, in exchange for a specified payment or premiums made by the insured.

Due to the characteristics of insurance as a continuous contract that requires time for its performance, and given that during its execution the legal positions of the parties may change, the fate of the insurance contract concluded by a merged company whose legal personality has ceased is that it transfers to the absorbing company.

This means that the insurance contract is not affected by the merger, as it forms part of the financial estate that transfers to the absorbing company.²⁰

Second section: The Effect of Merger on the Supply Contract

French jurisprudence resolved this issue²¹

Holding that the absorbing company must respect the terms of the supply contract concluded between the merged company and third parties. It may not terminate the contract unless the supplier has committed a contractual breach, such as failure to perform obligations, harming the merged company, or competing with the absorbing company.²²

This judgment is based on the principle that merger results in the transfer of contractual relationships from the merged company to the absorbing company.

One example of disputes raised in this context concerns a company that had, in practice, merged with another company. The two companies began merger procedures, and the absorbing company took over the management of the merged company. However, the assets of the latter were destroyed before the merger agreement was signed and registered, causing the merged company to decide on an expedited dissolution due to the destruction of its capital.²³

Suppliers who had supply agreements with the merged company demanded that the absorbing company continue performing these contracts. The French Court of Cassation accepted this claim, reasoning that although the formal merger procedures were not completed, the merger had occurred in reality, which justified obliging the absorbing company to continue performing the supply contracts concluded by the merged company with third parties.²⁴

Conclusion:

There is no better way to conclude this study than by affirming that merger has become an economic necessity imposed by the rapid technological progress and development witnessed worldwide.

Given the importance of mergers, I attempted to provide a concise overview of the effects of merger on the contracts concluded by a merging company before the merger agreement is executed. This was done by examining certain aspects that I consider essential for answering questions that may arise in this context and for elucidating the rules governing them.

At the level of public interest, the excessive enlargement of enterprises may lead to paralysis, diminishing their capacity for flexibility, efficiency, and prompt decision-making. Regarding employees, particularly executives, mergers may also contribute to increased unemployment.

However, despite these disadvantages, it may be said that mergers can yield positive outcomes, yet also potentially disastrous results. A merger may lead to monopolistic practices, while at the same time it may be used as a means to combat monopoly.

Ultimately, it can be observed that Algerian investors remain hesitant toward this operation, as only a very small number have engaged in merger processes. This is largely due to “the system that prevailed in the country and the slow pace of change,” even though economic necessity requires keeping pace with modern developments.

Therefore, it would have been preferable for the Algerian legislator to devote more attention to the issue of mergers and regulate it with more precise legal provisions, especially given that mergers have become a contemporary and pressing topic.

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¹³ Article 757 of the Algerian Commercial Code

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¹⁶ Article 571 of the Algerian Commercial Code.

¹⁷ Abdul Razzaq Ahmed Al-Sanhouri, Al-Waseet fi Sharh Al-Qanoun Al-Madani, Dar Ihya Al-Turath Al-Arabi, Lebanon, Volume Seven, Part One, p. 391.

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²¹ cass.com, 1 February 1963, No. 01-16-333, bull., No. 88

²² Ahmed Mohamed Mahrez, previously cited reference, p.275.

²³ The meaning of “dissolution without liquidation”: it is the dissolution that does not entail liquidating the company and distributing its assets; instead, the company continues its economic activity within the framework of the absorbing company.

²⁴ Hosni Al-Masri, previously cited reference, p.329