

Corporate Mergers as a Strategic Mechanism for Reshaping the Legal Identity of Distressed Companies A Comparative Study under Lebanese and French Law

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Abstract

This study concludes that corporate merger has evolved into a strategic legal mechanism for rescuing financially distressed companies by enabling institutional restructuring and preserving business continuity as an alternative to liquidation. Rather than serving merely as a means of combining companies or transferring assets, merger operates as a comprehensive legal framework that facilitates the reallocation of assets and liabilities while safeguarding the economic value of the enterprise and protecting the interests of stakeholders. The study further demonstrates that the effectiveness of merger depends on compliance with legal procedures that ensure the protection of shareholders, creditors, and contractual partners, while maintaining an appropriate balance between commercial flexibility and legal certainty. It also highlights the contribution of the French legal system in strengthening the legal framework governing mergers through the principles of universal succession and the continuity of contractual obligations. Finally, the study establishes that the legal effects of merger extend beyond organizational restructuring to encompass the legal personality, rights, obligations, and contractual relationships of the company, thereby confirming its role as an effective instrument for corporate recovery, institutional sustainability, and long-term economic stability within a modern legislative framework.

Keywords: Merger, Patrimony, Legal Personality, Legal Certainty, Transfer of Rights and Obligations

Introduction

Modern corporate law has shifted from traditional insolvency responses toward institutional restructuring, recognizing mergers as a strategic legal mechanism for preserving economically viable enterprises rather than merely transferring assets or combining companies. Beyond corporate reorganization, mergers produce profound legal effects through the universal transfer of assets, liabilities, rights, and obligations, while ensuring the continuity of contractual relationships and balancing the interests of creditors, shareholders, employees, and other stakeholders⁴⁷³⁶. Both French and Lebanese law increasingly embrace this approach, positioning mergers as an essential tool for corporate rescue that reconciles economic continuity with legal certainty⁴⁷³⁷. Against this background, this study examines the legal implications of mergers on corporate personality,

4736 LEGAIS (D.), « Les restructurations sociétaires comme instrument de sauvetage des entreprises en difficulté », Revue des sociétés, Dalloz, 2019, p. 417 et s.

4737 COURET (A.) et LE NABASQUE (H.), Droit financier, 9^e éd., Dalloz, Paris, 2022, p. 734-742.

patrimony, and existing legal relationships, assessing their effectiveness as a mechanism for restructuring distressed companies and safeguarding institutional continuity⁴⁷³⁸.

This study aims to analyze the merger as a pivotal mechanism for reshaping the legal identity of distressed companies, elucidate its underlying legal foundations, and examine its role in preserving the continuity of the economic enterprise. Additionally, it seeks to delineate the legal ramifications generated for both the absorbed and absorbing entities, as well as their respective stakeholders.

Accordingly, the study poses the following central problematique: "To what extent does a corporate merger constitute an effective legal instrument for reshaping the structural identity of distressed companies, while successfully striking a balance between the imperatives of economic recovery, the demands of legal certainty, and the protection of stakeholders' interests?"

This study adopts a combined descriptive, analytical, and comparative methodology. The descriptive method is employed to outline the legal framework governing corporate mergers and identify their essential characteristics, while the analytical method examines the relevant legal provisions, judicial decisions, and doctrinal opinions to assess the effectiveness of mergers as a mechanism for corporate restructuring. The comparative method further evaluates the Lebanese legal framework in light of French law, highlighting points of convergence and divergence and identifying the most effective legal solutions for corporate rescue and governance.

To achieve these objectives, the thesis is divided into two chapters. Chapter One examines the legal framework governing corporate mergers, including their concept, characteristics, forms, legal requirements, procedural stages, and the safeguards afforded to partners, creditors, and other stakeholders. Chapter Two analyzes the legal effects of mergers, focusing on their impact on corporate legal personality, patrimony, and existing contractual relationships, while evaluating their role in restructuring distressed companies, preserving economic continuity, and enhancing legal certainty.

Chapter One: The Procedural Framework Governing Corporate Mergers

A corporate merger is one of the most sophisticated legal mechanisms in company law, requiring strict compliance with procedural safeguards that extend far beyond the parties' agreement. These safeguards ensure the lawful transfer of rights and obligations, protect shareholders, creditors, and third parties, and reinforce legal certainty. Their importance is particularly evident in the restructuring of distressed companies, where the effectiveness of a merger as a rescue mechanism depends on the proper observance of statutory procedures governing the entire transaction⁴⁷³⁹.

Section One: The Legal Framework Governing Corporate Mergers

Despite the growing importance of corporate mergers as a mechanism for restructuring companies and strengthening their economic sustainability, most legal systems refrain from providing a comprehensive statutory definition, leaving its scope to judicial and doctrinal development. This reflects the multifaceted nature of mergers, which extend beyond the mere combination of companies to reshape legal personality, patrimony, and stakeholders' rights. Accordingly, this

⁴⁷³⁸ Cass. com., 7 janv. 2014, n° 12-20.204, *Bull. civ.* [<https://www.legifrance.gouv.fr/juri/id/JURITEXT000028458366/>], consulté le 4 août 2026.

⁴⁷³⁹ DAVIES (P. L.) and WORTHINGTON (S.), *Gower's Principles of Modern Company Law*, 10th ed., Sweet & Maxwell, London, 2016, p. 983-995.

chapter begins by examining the legal concept and characteristics of mergers before exploring their principal forms in comparative company law⁴⁷⁴⁰.

Sub-Section I: The Explanatory Dimension of The Merger Process

The merger process is classified as one of the primary legal channels to which corporations resort in order to reshape their organizational structures and reinforce their capacity for continuity in the face of financial and economic disruptions - particularly within corporate restructuring and rescue strategies. Nonetheless, comparative legal systems, both in Arab and Western jurisdictions, have largely refrained from providing an exhaustive, definitive, and precise definition of this mechanism, leaving the responsibility of defining its true nature and concept to judicial precedent and scholarly jurisprudence. This legislative reluctance is attributable to the complex nature of capital consolidation, as an act that transcends a purely formal interpretation based on the mere union of several companies, affecting through its legal effects the corporate personality, financial estate (patrimoine), and administrative structure of the participating entities⁴⁷⁴¹. In this arena, legal doctrine⁴⁷⁴² has tended to characterize mergers through their systemic effects and implications, defining a merger as an event that results in the consolidation of two or more companies into a single credit entity. This occurs either through the creation of a new legal entity to which all rights and obligations are transferred, or by absorbing one company into another existing one, such that the corporate personality of the merged company lapses and its financial estate devolves entirely to the acquiring company. Along the same lines, French doctrine defines a merger as an act involving the transfer by one or several companies of all their assets to another existing entity - which proceeds to increase its share capital by the financial value of those assets contributed by the merged company- or their transfer to a newly formed company; provided that the acquiring or new company assumes all liabilities of the merged company, while the shares or equity stakes arising from this transaction accrue to the shareholders of the merged company⁴⁷⁴³. The French legislature codified this concept in explicit terms under Article L.236-1 of the Commercial Code, which stipulates that a merger is effected either through the absorption of one company by another existing company, or through the formation of a new company in which the financial estates of the merging companies are consolidated. Furthermore, French doctrine has settled on the principle that the substantive essence of a merger lies in the total and en bloc transfer of the financial estate without the need to follow individual transfer procedures for each of its constituent assets - a structural feature that distinguishes it from other legal transactions, such as the sale of assets or partial assignment thereof⁴⁷⁴⁴.

Paradoxically, and akin to other legal regimes, Lebanese law provided a descriptive, vague characterization of mergers without directly setting out a clear and precise definition. Instead, it merely outlined their rules, procedures, conditions, and defined certain terminology in a scattered manner across various local Lebanese enactments. By way of example, the Lebanese Code of Obligations and Contracts - promulgated in March 1932, effective November 11, 1934, as amended - states under paragraph 5 of Article 656 that the cessation of a business does not release the

4740 COOK (M.), "European Mergers and Competition Policy", Journal of European Business Education, December 1999, p. 32-40.

4741 HAMADA (T. A. A.), Bank Mergers and Privatization, Dar Al-Jamiaa, Alexandria, Egypt, 2004, p. 44.

4742 AL-MASRY (H.), Corporate Mergers and Divisions: A Comparative Study between French and Egyptian Law, Dar Al-Kitab Al-Kanouni, Cairo, Egypt, 2007, p. 88.

4743 ABDEL WAHAB (A.), The Legal Framework of Commercial Company Mergers: A Comparative Study (Palestinian, Jordanian, and Egyptian Law), PhD Thesis, Faculty of Law, Cairo University, Cairo, Egypt, 2012, p. 7.

4744 MERLE (P.), Droit commercial : Sociétés commerciales, 26^e éd., Dalloz, Paris, 2024, p. 1032-1039.

employer from performing their obligations unless caused by force majeure. However, if a change occurs in the employer's legal status, particularly due to inheritance, sale, amalgamation (idgam) of the establishment's form, or conversion into a company, all employment contracts in force on the date of the change remain binding between the new employer and the employees.

Furthermore, in Book II, Title III, Chapter II, Part III of the Code of Obligations and Contracts (concerning bonds convertible into shares) - added pursuant to Legislative Decree No. 54/1977 under Articles 15 through 18 - the legal framework governing convertible bonds sets forth specific requirements and protective remedies when a company undergoes a merger. Prior approval must be obtained from the general assembly of affected bondholders, unless waived due to non-convene or non-approval of the assembly. The board of directors must declare its decision to bypass the bondholders' approval; however, the assembly retains the right to object to the intended transaction, which the court may subsequently either reject or enforce by ordering the provision of guarantees or the redemption of the bonds' value. Bondholders retain the right to convert their bonds into shares in the acquiring or new company, with an adjustment to the conversion basis to ensure proportionality. The general assembly of the acquiring or new company must approve the merger and waive pre-emptive subscription rights, provided that the new entity assumes all obligations of the issuing (merged) company toward the bondholders. This statutory framework aims to protect the rights and interests of convertible bondholders during corporate restructurings⁴⁷⁴⁵. Commenting on the foregoing, we also find that the Lebanese legislature addressed the merger process in the Lebanese Code of Land Commerce, promulgated by Legislative Decree No. 304 of 1942 (as amended by Law No. 126/2019). Under Title IX, four articles generally regulate mergers (Articles 210 to 213) under the heading "On the Merger and Division of Companies," addressing the procedures and effects of mergers.

Paradoxically, Lebanon stood unique among Arab nations by enacting two distinct laws dedicated specifically to bank mergers. The first is the law titled "Facilitating the Merger and Voluntary Liquidation of Banks," promulgated by Legislative Decree No. 8284 on September 28, 1967⁴⁷⁴⁶. As the first law enacted regarding bank mergers, it provided a general concept for bank mergers without offering a strict legal definition. Article 1 thereof states that, within the context of the Decree, "merger" shall mean "any consolidation transaction that leads to a reduction in the number of active banks operating in Lebanon and encompasses the entirety of liabilities and commitments of the banks dissolved as a result of this transaction, excluding equity (capital and reserves)." Paragraph (c) of the same article defines the entity dissolved as a result of the merger process as the "old bank," whereas paragraph (d) defines the bank to which the assets and liabilities of the dissolved entity are transferred as the "new bank."

The second statute is the law titled "Facilitating Bank Mergers," enacted on April 1, 1993, under No. 192/1993⁴⁷⁴⁷. This law similarly omitted a definition, focusing solely on procedural steps to be followed during a merger, its effects, and the termination mechanism for employment contracts. It confined itself to defining the merged bank under Article 1 as the bank that ceases to exist in accordance with the procedures provided under this law, in which case all its assets, rights, liabilities, and obligations are merged into the assets, rights, liabilities, and obligations of another bank designated as the acquiring bank (la banque absorbante). It is worth noting that the Lebanese legislature, under Law No. 192/1993 on "Facilitating Bank Mergers," adopted the legal concept of

⁴⁷⁴⁵ Articles 15-18 of Legislative Decree No. 54/1977.

⁴⁷⁴⁶ Amended by Decree No. 9362 dated 6/2/1968, Legislative Decree No. 10956 dated 2/10/1968, and Decree No. 11460 dated 12/12/1968.

⁴⁷⁴⁷ Amended by Law No. 679 dated 16/3/1998, and Law No. 675 dated 14/2/2005.

bank mergers as a general rule based on Article 2 thereof, which imposed specific conditions for its realization - chief among them being the existence of a preliminary merger agreement requiring the approval of the Central Council of Banque du Liban. By way of exception, the legislature also embraced the economic concept pursuant to Article 10, which stipulated the application of the law's provisions to any bank purchasing all assets and rights of another bank wishing to liquidate its business and strike its name from the list of banks, provided the acquiring bank assumes all of the latter's liabilities and obligations.⁴⁷⁴⁸

In the general framework, provisions governing corporate mergers are set forth in the Lebanese Code of Land Commerce, as amended by Law No. 126/2019, which addressed mergers in the broad sense without dedicating separate, independent provisions to bank mergers. In this context, Article 221 provides that statutory controls must be observed upon the incorporation of a new company resulting from a merger, thereby indicating the applicability of these general rules to banks in their capacity as joint-stock companies (sociétés anonymes) by origin. Furthermore, pursuant to Decree No. 8284 and its amendments (Decrees No. 9362 and 10956), the Lebanese legislature enacted a package of financial and regulatory incentives to encourage bank mergers. These included the appointment of audit experts, the recognition of their valuations while safeguarding banking secrecy, and permission to issue resulting bearer shares. They also encompassed tax and fee exemptions for acquiring or newly formed banks under conditions specified by law, alongside facilities granted to banks electing to convert into financial institutions or pursue voluntary liquidation.

In a parallel approach, economic thought has expanded the concept of mergers beyond the mere extinction of corporate personality⁴⁷⁴⁹ or the transfer of financial estates (patrimoines) to encompass forms of economic concentration and market dominance resulting from the acquisition of shares, assets, or mechanisms of managerial control⁴⁷⁵⁰. This perspective has cast its shadow over financially oriented legislative environments, as clearly reflected in the American Clayton Act and the European Merger Regulation of 1989, both of which subjected certain forms of economic control to regulatory oversight similar to that applied to traditional mergers - underscoring the strategic role of these transactions in reorganizing markets and enhancing corporate competitiveness. However, this conceptual expansion does not negate the core legal constituents of classic mergers, which consist of the universal transfer of financial estates and the consolidation of institutional entities within a unified statutory framework.⁴⁷⁵¹

Moreover, practical realities reveal an increasing reliance on mergers as an effective mechanism for addressing structural imbalances in distressed companies by pooling resources, expertise, and financial solvency within an entity better equipped for ongoing viability. French jurisprudence has affirmed this functional role of mergers, viewing them as a tool for restructuring a company's economic fabric rather than a mere transaction transferring rights and obligations.⁴⁷⁵² Consequently, a merger cannot be reduced to a purely financial or administrative process; rather, it represents a comprehensive legal transformation resulting in the universal transfer of the financial estate in its entirety, as well as the continuation of legal relationships within the framework

4748 NACSIF (E.), Commercial Companies: A Comparative Study in Light of the Latest Amendments and New Provisions Introduced by Law No. 126 Dated 29/3/2019 and Comparative Law, 1st ed., Halabi Legal Publications, Beirut, Lebanon, 2022, p. 589-592.

4749 MAGNIER (V.), Droit des sociétés, 10 éd., Dalloz, 2022, p. 149.

4750 THOMAS (P.), Fusions acquisitions, 2^e éd., RB Édition, 2018, p. 28.

4751 BERK (J.), DEMARZO (P.), CAPELLE-BLANCARD (G.) et COUDERC (N.), Pack Finance d'entreprise - Le manuel et les corrigés, 6^e éd., Pearson, 2024, p. 34-37.

4752 Cass. com., 9 févr. 1999, Revue des sociétés, 1999, p. 377.

of universal succession (succession à titre universel), whereby the acquiring or new company steps into the shoes of the merged company regarding all its rights and obligations. Building upon the foregoing, a merger may be defined as an agreement between two or more companies to pool the entirety of their assets and liabilities (debts, financial obligations, commitments, etc.) jointly - whether by dissolving the merged companies to create a new company, or by absorbing the other companies into one existing entity that remains extant and increases its share capital through the contributions forming the net assets of the absorbed entities. Consequently, the absorbed companies cease to exist, and new equity rights accrue to the partners or shareholders in the acquiring company. The consolidation of partners may occur either through absorption (fusion-absorption), consolidation/amalgamation (fusion-réunion), or by forming a new company that encompasses all merging companies.

Thus, it becomes evident that a merger constitutes a complex legal and economic mechanism in which the imperatives of corporate restructuring converge with the necessities of systemic stability and the protection of corporate stakeholders' interests. However, this mechanism is not confined to a single form; rather, it varies depending on the manner in which companies are consolidated and their financial estates transferred - a reality that necessitates transitioning to the study of the various types of mergers, their distinct forms, and the legal effects flowing from each.

Sub-Section II: Types Of Mergers

The statutory manifestations of merger transactions are diverse and step away from a uniform procedural template; indeed, their models vary according to the nature of the investment activities pursued by the subject companies, the geographical scope of their operations, and the strategic objectives pursued by such measures⁴⁷⁵³. The growing dynamism of the contemporary commercial and financial environment has led to the evolution of mergers from a mere means of capital expansion or market scale enhancement into a pivotal structural tool that reshapes the legal framework of companies - particularly when confronting financial or managerial distress. Consequently, distinct forms of mergers have emerged, differing in their motivations, internal structures, and legal and economic effects, in a manner that precludes framing this process within a rigid statutory paradigm⁴⁷⁵⁴. Along the same lines, legal doctrine and economic literature have settled on categorizing mergers based on several criteria and standards, key among which are the nature of the functional activity of the participating companies, and the criterion of territorial scope or the nationality of the constituent corporate entities. The importance of this classification lies in its capacity to probe the diverse objectives sought by companies through consolidation, while assisting in characterizing the legal implications and economic effects resulting from each specific form. First and foremost, horizontal mergers constitute one of the most common forms of corporate consolidation in modern commercial practice. The essence of their existence manifests when the combination occurs between two or more companies that share the same investment specialization or operate within the identical economic sector, such that they are in active and direct competition within the relevant market⁴⁷⁵⁵. In this scenario, companies seek to consolidate their market standing, expand their customer base, and reduce operational expenditures by pooling human, financial, and material resources into a single corporate structure. This pattern of concentration

4753 MARIAPPAN (V.), "Mergers and Acquisitions: The Human Issues and Strategies", Indian Journal of Industrial Relations, Vol. 39, No. 1, 2003, p. 85-88.

4754 BANERJEE (S.), "Revisiting Bank Mergers: Does Size Matter?", Economic and Political Weekly, Vol. 52, No. 8, 2017, p. 43.

4755 GREVE (H. R.) and ZHANG (C. M.), "Institutional Logics and Power Sources: Merger and Acquisition Decisions", The Academy of Management Journal, Vol. 60, No. 2, 2017, p. 683.

frequently emerges in sectors characterized by fierce competition or financial pressures that compel companies to pursue more stable and secure collaborative models. Horizontal mergers are characterized by their ability to achieve what is known as economies of scale; merging homogeneous activities into a single corporate vessel directly leads to cutting operational and administrative expenses while elevating productive efficiency. It also reinforces the resulting entity's bargaining power vis-à-vis suppliers, clients, and competitors alike.

For this reason, companies suffering from structural distress often resort to this type of merger as a lifeline to overcome financial vulnerabilities by absorbing into, or consolidating with, a company that possesses broader capabilities or a more robust economic standing. Practical examples of horizontal mergers abound; numerous industries have witnessed successful horizontal combinations among companies operating in the same sector, such as the mergers of Exxon and Mobil (1999), Pfizer and Warner-Lambert (2000), HP and Compaq (2002), Anheuser-Busch and InBev (2008), Sirius and XM Radio (2008), Delta Airlines and Northwest Airlines (2008), Facebook and Instagram (2012), American Airlines and US Airways (2013), Kraft and Heinz (2015), Marriott and Starwood Hotels (2016), as well as Dow Chemical and DuPont (2017). These mergers contributed to realizing diverse strategic advantages, such as cost reduction, market expansion, enhanced innovation, and optimized operational efficiency. Paradoxically, the 2006 merger between Disney and Pixar stands out as a prime example of a successful horizontal merger, as it enabled the combination of both parties' creative and technical capabilities, thereby bolstering the group's standing in the global entertainment industry⁴⁷⁵⁶. The Lebanese banking sector similarly witnessed a major milestone represented by the 2003 merger of Bank Audi and Saradar Bank, which reflected a drive toward enhancing financial solvency and competitiveness through the unification of banking resources and activities⁴⁷⁵⁷. This pattern of merger aims to solidify market positioning and refine capital performance while sharpening competitive advantage by consolidating direct competitors. By way of illustration, when a combination occurs between two domestic companies to form a larger entity possessing a wider geographical reach, they become capable of maximizing returns from economies of scale, re-engineering and streamlining operational procedures, and introducing a more comprehensive and diversified suite of services. However, horizontal mergers are not devoid of legal and economic risks; they may lead to the reinforcement of dominant financial market power and the creation of dominant entities that restrict effective, fair competition. From this standpoint, modern legislative frameworks have inclined toward subjecting this category of transactions to oversight by competition authorities and anti-monopoly regulatory bodies, ensuring economic balance and preventing mergers from being perverted into tools for market monopolization. Despite these concerns, horizontal mergers remain among the most effective mechanisms for rehabilitating companies experiencing structural crises, given their capacity to re-integrate operational assets with technical expertise within a unified statutory framework endowed with the attributes of survival⁴⁷⁵⁸.

In contrast to horizontal mergers, vertical mergers (or head-to-tail consolidations) emerge as alliances concerned with linking entities whose activities span different stages of the same production or distribution chain. The organizational relationship between these companies is not based on overt competition, but rather rests on functional and economic complementarity—such as the consolidation of a manufacturing company with a commercial distribution company, or the

4756 "Horizontal Merger Example", *Allegrow*, January 22, 2025 [<https://allegrow.com/horizontal-merger-example/>]

4757 ADAMS (R. M.), JOHNSON (R. L.) and PILLOFF (S. J.), "Market Structure after Horizontal Mergers: Evidence from the Banking Industry", *Review of Industrial Organization*, Vol. 35, No. 3, November 2009, p. 221.

4758 POORNA (A.), "Horizontal Merger", *ClearTax*, February 1, 2024 [<https://cleartax.in/glossary/horizontal-merger/>]

merger of a production entity with a company engaged in logistics, marketing, or supply⁴⁷⁵⁹. A vertical merger aims to achieve integration across different stages of production or distribution, thereby curbing dependence on external third parties, cutting costs, optimizing operational efficiency, and securing the stability of supply and production chains⁴⁷⁶⁰. Despite the capital advantages of vertical mergers, they may likewise raise certain statutory issues, particularly when resulting in a company asserting control over multiple market tiers in a manner that prejudices freedom of competition or obstructs other entities from accessing production and distribution channels. Consequently, specific manifestations of vertical mergers are subjected to regulatory scrutiny, especially when the participating companies enjoy substantial economic influence in the market⁴⁷⁶¹.

Alongside these two statutory mechanisms, the conglomerate (or mixed) merger model takes shape. This refers to a merger taking place between entities operating in distinct financial sectors or investment fields that lack any direct functional link⁴⁷⁶². The statutory or economic objective here does not aim to unify homogeneous businesses or forge integration along production chains; rather, it revolves around diversifying capital portfolios and spreading commercial risks by blending these operations into the crucible of a single legal entity⁴⁷⁶³. Practical illustrations of this include the combination of an industrial entity with a company operating in services, technology, insurance, or the real estate sector. Moreover, conglomerate mergers are distinguished by their strategic orientation; they enable companies to break free from the constraints of single-product specialization and expand into multiple economic fields, thereby acquiring greater flexibility in confronting market volatility and structural crises. It further allows for the diversification of revenue streams and reduces dependency on a single financial sector - offering a beneficial safeguard for companies facing high systemic or operational risks⁴⁷⁶⁴. However, this merger path is inherently bound up with complex organizational obstacles related to the difficulty of exercising managerial control over diverse investment activities within a single corporate structure, divergent structural and administrative philosophies among the merging entities, and the potential lack of functional compatibility among the distinct divisions intended to be unified. Consequently, the success of a conglomerate merger hinges upon high managerial and coordination efficiency, coupled with the formulation of sound strategic plans to govern this functional diversity within the newly created legal entity.

Paradoxically, the classification of merger transactions is not only governed by the criterion of functional activity; its scope extends to rely upon the standard of territorial reach or the nationality of the participating companies. In this regard, a statutory distinction is drawn between domestic mergers and international (cross-border) mergers. A domestic merger occurs when the combination

4759 HAILE (A.), "The Complete Guide to Vertical Merger", *DealRoom*, January 3, 2024 [<https://dealroom.net>]

4760 BETTINAZZI (E. L. M.), MILLER (D.), AMORE (M. D.) and CORBETTA (G.), "Ownership similarity in mergers and acquisitions target selection", *Strategic Organization*, Vol. 18, No. 2, 2020, p. 335-341.

4761 RENNEBOOG (L.), SZILAGYI (P. G.) and VANSTEENKISTE (C.), "Creditor rights, claims enforcement, and bond performance in mergers and acquisitions", *Journal of International Business Studies*, Vol. 48, No. 2, February 2017, p. 174.

4762 BARAKA (Z.), "Banking Mergers Between Globalization and Decision-Making Responsibility", *Journal of North African Economies*, Hassiba Benbouali University, Algeria, No. 2, 2011, p. 176-178.

4763 "Full guide on conglomerate merger: Types, impact, best practices", *M&A Community*, November 7, 2022 [<https://mnacommunity.com>], visited on March 19, 2024.

4764 HASAN (M. M.), IBRAHIM (Y.) and UDDIN (M. M.), "Institutional Distance Factors Influencing Firm Performance: A Hypothetical Framework from Cross-Border Mergers and Acquisitions", *The Journal of Developing Areas*, Vol. 50, No. 6, April 2016, p. 383-385.

takes place between companies belonging to the same state and subject to the identical national legal framework. This path is frequently pursued as a tool to bolster the national economy and enhance the ability of local companies to withstand competitive pressures, particularly in sectors suffering from fragile financial structures or scattered capital resources⁴⁷⁶⁵. This model also facilitates the redistribution of productive factors and technical expertise within the domestic market, contributing to the formation of more resilient and stable economic entities. Furthermore, domestic mergers acquire a vital importance during economic crises; the state or regulatory authorities may actively encourage the absorption of distressed companies into entities more capable of ongoing viability, thereby safeguarding overall financial stability and preventing the collapse of vital sectors⁴⁷⁶⁶. In addition, this form of merger is considered less complex from both procedural and legal standpoints, as it originates and is executed within a unified legislative and judicial framework⁴⁷⁶⁷.

Conversely, an international or cross-border merger manifests when the combination involves companies of different nationalities belonging to different sovereign states, such that the merger operations transcend a single sovereign territory to interact with multiple legal and economic systems⁴⁷⁶⁸. This pathway represents one of the most complex forms of financial concentration due to the pivotal issues it raises regarding conflict of laws, divergent tax and regulatory frameworks, and the determination of the legal system applicable to the corporate entity resulting from the transaction. In this context, paragraph 2 of Article 43 of the Lebanese Code of Land Commerce, as amended by Law No. 126/2019, represents a decisive rule adopted by the Lebanese legislature to resolve the issue of corporate nationality. It provides that all companies incorporated in Lebanon must locate their principal head office within Lebanese territory, thereby conclusively conferring upon them Lebanese nationality, notwithstanding any provision to the contrary. Nationality forms a fundamental cornerstone of a corporate entity's legal personality, akin to a natural person⁴⁷⁶⁹. Nevertheless, this form of merger guarantees tangible strategic advantages: it enables companies to enter new investment environments, expand the horizon of their international operations, leverage foreign technical systems and expertise, and reinforce their global competitive capacity. It also serves as an effective mechanism for repositioning companies operating under financial distress by absorbing them into international entities possessing greater solvency, funding capacity, investment potential, and viability. Among the most prominent successful practical applications of international mergers is the case of the German company Opel, which in 2017 was transferred from the American General Motors to the French Groupe PSA in a cross-border transaction aimed at restructuring and integrating it into a more efficient production framework. This move contributed to reducing costs, consolidating resources, and enabling the company to turn a profit in 2018 after long years of losses⁴⁷⁷⁰. International mergers also manifest within multinational banking institutions, such as the merger of Bankers Trust New York Corporation into the German entity

⁴⁷⁶⁵ BOMBAU (M.), POSCH (L.), CAMMAKER (J.), SOLOMON (Z.) et al., "International Mergers and Acquisitions", The International Lawyer, Vol. 40, No. 2, Summer 2006, p. 328-335.

⁴⁷⁶⁶ RAGOUB (N.) and BEN DEAS (Z.), "Challenges of Arab Regional Banking Mergers Light of Current Transformations", El-Mountada Journal for Economic Studies and Research, Djelfa University, Algeria, No. 3, 2018, p. 78.

⁴⁷⁶⁷ HARTMAN (D.), "The Advantages of Bank Mergers", *Pocket Sense*, September 26, 2017 <https://pocketsense.com>.

⁴⁷⁶⁸ BUCH (C. M.) and DELONG (G. L.), "Cross-Border Bank Mergers", Kiel Institute of World Economics, Kiel Working Paper No. 1070, August 2001, p. 12.

⁴⁷⁶⁹ TYAN (E.), *Droit commercial*, T. 1, Actes de commerce - Commerçants - Fonds de commerce - Sociétés, 2e éd., Hachette Antoine, 2017, p. 418-419.

⁴⁷⁷⁰ ANDERSON (B.), "Opel Returns Healthy Profit After 20 Years Of Losses With GM", *Carscoops*, February 28, 2019 <https://www.carscoops.com/2019/02/opel-returns-healthy-profit-20-years-losses-gm/>

Deutsche Bank, and the combination of HSBC Holding with Republic New York Bank - reflecting a global trend toward creating cross-border financial entities capable of expanding their operational scope and elevating their financing and competitive capabilities. However, the ultimate success of these transactions remains contingent upon the permissible degree of harmonization between divergent legislative systems, as well as ensuring statutory protection for the rights of partners, shareholders, creditors, and employees of the merging companies. Based on the foregoing, it becomes clear that the manifestations of mergers, across their varying patterns, embody a multiplicity of economic ends and legal objectives that companies seek to achieve through the re-engineering of their corporate structure. However, the efficacy of this mechanism is not merely tied to selecting the appropriate merger model; rather, it is intimately connected to the procedural provisions that regulate the execution of this measure and frame its statutory effects. This necessitates transitioning to an analysis of the procedural rules governing the merger process for companies operating under financial distress.

Section Two: Legal Procedures for Proceeding with the Merger Process of Distressed Companies

A merger cannot achieve its legal and economic objectives through mere corporate intention; it requires a strict procedural framework ensuring transparency, validity, and protection of stakeholders' rights. From negotiations and due diligence to approval, publication, and registration, these formal stages are essential - particularly in distressed companies - to guarantee that the merger serves as a genuine restructuring mechanism while preserving legal certainty and preventing harm to creditors and shareholders.⁴⁷⁷¹ .

Sub-Section I: The Preparatory Stage for Proceeding with the Corporate Merger Process

The preparatory stage preceding the corporate merger process occupies a position of utmost importance and gravity, as it is the framework within which initial understandings and the necessary financial and legal valuations to complete the operation take shape. During this stage, management bodies, supported by advisors and experts, manage negotiations, evaluate assets and liabilities, and conduct legal and economic feasibility studies for the merger in preparation for taking the decision on whether to proceed with it or abandon it.⁴⁷⁷² Along these lines, and despite the practical weight of discussions, Lebanese law has not devoted a specific legislative framework to them, whether within the provisions of the Code of Terrestrial Commerce or the rules pertaining to corporate restructuring. What is noticeable here is the restriction of these procedures to falling under the banner of general provisions established in the Code of Obligations and Contracts, specifically Article 172, which discloses that a consensual contract is that which is discussed and bargained over in its terms and set freely between contracting parties, in addition to Article 178 of the same code, which consolidates the principle of freedom of negotiation and contracting.⁴⁷⁷³ From this, it is deduced that the Lebanese legislature empowered interested parties with the ability to direct the course of their talks in accordance with self-interest requirements and the principle of good faith, without shackling them with mandatory procedural constraints. In the midst of this legislative absence, jurisprudence undertook the pivotal burden of establishing the legal concept of negotiations, regarding them as a preliminary phase witnessing the exchange of visions, proposals, and available options, seeking to settle on a final compromise regarding the contractual bond to be

⁴⁷⁷¹ COZIAN (M.), VIANDIER (A.) et DEBOISSY (F.), Droit des sociétés, 36^e éd., LexisNexis, Paris, 2023, p. 682-694.

⁴⁷⁷² AL-MAAMARI (A. A.), Mergers of Multinational Commercial Companies: A Comparative Jurisprudential and Legal Study, Dar Al-Kitab Al-Kanouni, Cairo, Egypt, 2010, p. 76.

⁴⁷⁷³ Article 178 of the Lebanese Code of Obligations and Contracts, effective date: 09/03/1932.

established⁴⁷⁷⁴. In the same direction, a group of commentators leaned toward characterizing them as communication channels conducted directly or through intermediaries between several parties, interspersed with the exchange of data, technical research, and opinions, desiring to explore the most appropriate mold for the prospective contractual bond and define the rights and obligations generated by it⁴⁷⁷⁵. Hence, negotiations are not classified merely as physical acts or preliminary endeavors; rather, they are a self-standing systematic phase that imposes specific behavioral liabilities on interested parties, at the forefront of which is safeguarding the principle of good faith and refraining from arbitrariness when abstaining from continuing negotiations⁴⁷⁷⁶.

In this vein, the importance of the pillar of good faith manifests clearly during the convergence of merger efforts pertaining to distressed companies, given the possibility of one party succumbing to a weak economic position that makes it more susceptible to the negotiating conduct of the other side. Accordingly, abruptly breaking off negotiation links in an arbitrary and unlawful manner, or utilizing exchanged data in a way that causes damage to the other company, would open the door to activating civil liability provisions with reference to general rules. For liability in this scenario does not stem merely from reneging on the merger project, but rather arises as a consequence of fault based on arbitrariness in exercising the negotiating capacity or breaching the presumed duties of trust, confidentiality, and integrity.

In addition to the above, the matter of secrecy and confidentiality falls within the essential pillars that characterize this preliminary phase, given the negative repercussions that publicity of merger data might produce, reflecting on the commercial reputation of the companies, their financial solvency, or their relations with those dealing with them. Based on this, companies often resort to surrounding merger talks with a fence of absolute confidentiality, whether under independent contracts or based on the professional duty imposed on participating advisors and experts. Paradoxically, the Lebanese legislature explicitly codified this principle within the scope of bank mergers, where Article 3 of Law No. 192/93 regarding facilitating bank mergers mandated maintaining the confidentiality of negotiations, to guard against disturbances that early disclosure of these transactions might cause in the structure of the financial sector. Although this provision relates to banking activity, the same justifications can be extended to the merger of commercial companies in general, especially when the companies concerned are listed on financial markets or connected to a broad network of commercial and investment relations⁴⁷⁷⁷.

Following that, when the negotiation stage results in a preliminary understanding between its parties, companies transition toward drafting the draft merger agreement, or what is termed the preliminary merger contract⁴⁷⁷⁸. This document represents a foundation upon which all subsequent procedures are established, as it absorbs the results reached through negotiations and defines the legal and organizational framework for the proposed merger process. Usually, boards of directors or managers, assisted by experts and advisors, undertake the task of jointly preparing this

⁴⁷⁷⁴ EL-AOUGI (M.), Civil Law, Part One: The Contract with an Introduction to Civil Obligations, 6th ed., Halabi Legal Publications, Beirut, Lebanon, 2016, p. 164.

⁴⁷⁷⁵ AL-ABOUDI (A.), Contracting via Means of Instant Communication and Their Evidentiary Weight in Civil Law, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 1997, p. 85.

⁴⁷⁷⁶ AL-ALWANI (F.), General Provisions on Negotiation and Contracting, 1st ed., Bait Al-Hikma, Baghdad, Iraq, 2000, p. 15. AL-JUBOURI (Y. M.), Al-Mabsut in the Explanation of Civil Law, Part One: Sources of Personal Rights, Volume One (The Contract), Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2010, p. 94. AL-JAMAL (S. H. A.), Contracting via Modern Communication Technologies, 1st ed., Dar Al-Nahda Al-Arabia, Cairo, Egypt, 2006, p. 95.

⁴⁷⁷⁷ AL-SANHOURI (A. A.), Theory of Contract, Part One, 2nd ed., Halabi Legal Publications, Beirut, Lebanon, 1998, p. 239.

⁴⁷⁷⁸ Defined by the Lebanese Code of Commerce as amended by Law No. 126/2019 as a merger project.

draft in preparation for submitting it to competent bodies within the structure of the companies for ratification. Within the local Lebanese legislative scope, the concept of the draft merger was explicitly codified under Article 213 bis 2 of the Code of Terrestrial Commerce, as amended by Law No. 126/2019, which imposed on involved companies the drafting of a merger proposal that absorbs the deal's pillars⁴⁷⁷⁹. The aforementioned article also provided an exclusive list of basic information required to be proven at the core of the proposal, including the names of the concerned companies, their legal form, registered office, reasons and conditions for the merger, determination of asset and liability values, exchange ratio of shares or stakes, and cash premium, if any, in addition to the amount of the merger premium. It is noted that Lebanese law did not stop at the mandatory nature of drafting a written merger proposal; rather, it attached significant legal effects to the failure of this requirement, because writing in this context is not classified merely as an evidentiary tool, but rather represents an element for the validity of concluding the operation itself. This approach also appears in the Law on Facilitating Bank Mergers No. 192/93, as its Article 2 made it mandatory to attach the preliminary merger agreement to the approval request submitted to the Banque du Liban, asserting that the existence of this contract is considered an inevitable requirement to proceed with merger procedures.

Conversely, on the comparative level, French legislation similarly organized this stage precisely, as Article L. 236-6 of the French Commercial Code provided for the obligation to draft the merger proposal jointly by the concerned companies. The decree issued on March 23, 1967, particularly Article 254 thereof, also specified the data required to be included in the details of the project, including reasons for the merger, its objectives, controls, valuation of the merged company's assets and liabilities, and determination of the mechanism for offsetting shares or stakes and the value of the merger premium⁴⁷⁸⁰. The role of the draft merger is not confined to controlling contractual ties between negotiating companies alone, but extends to include guaranteeing the rights of shareholders, creditors, and other stakeholders linked to the corporate structure. For this reason, Lebanese law, pursuant to Article 213 bis 2 of the Code of Terrestrial Commerce, mandated depositing the merger document at the Commercial Register registry and publishing a summary thereof in the Official Gazette, in one of the local newspapers, or through electronically designated standard channels, guaranteeing third parties the ability to review it and exercise their right to object, when necessary. The law also granted creditors the right to challenge the merger within a specified deadline, to protect their general guarantee and prevent using the merger as a tool to harm their rights or evade existing obligations. Added to this is the role of the auditors appointed by the judge overseeing the Commercial Register to evaluate the merger project and verify the soundness of the financial and regulatory bases upon which it was built.

Thus, it becomes clear that the preliminary period for corporate mergers does not appear as mere initial communications or administrative arrangements; rather, it constitutes a fully fledged legal stage aimed at building the regulatory framework for the operation and ensuring the balance of interests connected to it before entering the implementation phase. However, drafting the draft merger is not sufficient on its own to produce its legal effects, as the operation remains in need of completing a bundle of subsequent procedures related to ratification, supervision, and publicity, which entails moving to examine the transactions following the stage of drafting the draft merger agreement.

4779 AL-HAYEK (O. S.), Merger of Commercial Companies in Light of the Provisions of the Amended Lebanese Land Commerce Law, op. cit., p. 19.

4780 SHAHIN (H. I.), Banking Mergers: A Comparative Study, op. cit., p. 115.

Sub-section II: Procedures Subsequent to the Stage of Preparing the Draft Merger Agreement

The procedural path for a corporate merger is not completed merely by drafting the merger document or reaching the initial agreement between the parties, as the latter remains a preliminary document⁴⁷⁸¹ that produces no effects except after being submitted to the competent bodies and completing approval, supervision, publication, and registration procedures⁴⁷⁸². The importance of this stage emerges in that it transforms the merger from a preliminary agreement into an enforceable legal act against the company, shareholders, creditors, and third parties, while ensuring that it is not utilized to harm rights or evade obligations⁴⁷⁸³. Paradoxically, in Lebanese law, the experience of bank mergers presents a clear model of prior administrative supervision over mergers, as Law No. 192/93 regarding facilitating bank mergers subjected every merger operation between two or more banks to the approval of the Central Council of the Banque du Liban. which issues an initial decision within a sixty-day deadline from submitting the application, then a final decision within thirty days from depositing the documents proving the fulfillment of required conditions, provided that the final decision, upon approval, includes striking off the merged bank from the list of banks. The law considered the lapse of these two deadlines without an explicit decision as an implicit rejection of the application, reflecting the exceptional nature of banking supervision and its connection to the sector's safety. As for the amendment contained in Law No. 675 dated February 14, 2005, its scope remains confined to the mechanism and standards of soft loans that may be granted to the acquiring bank, without transferring the authority to approve the merger from the Central Council to the Council of Ministers. Some opinions have suggested that this amendment transferred the authority to approve the merger to the Council of Ministers; however, a precise reading of the text reveals that its scope is restricted to the mechanism and standards of soft loans, not to the decision of approval or rejection of the merger itself. This is confirmed by the text of Article 8 of the decree pertaining to the mechanism and standards of soft loans, which stated that the Central Council of the Banque du Liban specifies in its final decision regarding the merger operation all other conditions for soft loans, such as interest rate, term, margin, and guarantees, indicating that the authority for the final decision remains in the hands of the Central Council, not the Council of Ministers⁴⁷⁸⁴.

As for commercial companies in general, Law No. 126/2019 introduced important amendments to the Lebanese Code of Terrestrial Commerce, particularly through Articles 213 bis and following, subjecting the merger project to a clearer institutional logic on the basis that a merger touches upon the essence of the company, its legal personality, its capital, and the rights of partners or shareholders⁴⁷⁸⁵. Therefore, the approval of the highest decision-making body within the company is not considered a formal procedure, but rather an essential guarantee to ensure that the decision did not remain trapped within the will of the board of directors or managers, but was issued by the

4781 BERGER (A. N.), DEMSETZ (R. S.) and STRAHAN (P. E.), "The Consolidation of the Financial Services Industry: Causes, Consequences, and Implications for the Future", *Journal of Banking & Finance*, Vol. 23, Issues 2–4, 1999, p. 138.

4782 "Dutch Supreme Court Rules in Favor of Bank of America and ABN Amro Merger", *insideARM*, July 13, 2007 [<https://www.insidearm.com/news/00009715-dutch-supreme-court-rules-in-favor-of-bof/>]

4783 JAGTIANI (J.) and BREWER III (E.), "How Mergers Affect the Quality of Bank Lending", *Journal of Financial Intermediation*, Vol. 9, Issue 3, 2000, p. 297.

4784 Decree No. 1423 dated February 23, 2009, regarding the special system for the mechanism and criteria of soft loans granted pursuant to the provisions of Article 6 of Law No. 192 dated 4/1/1993 as amended, relating to facilitating bank mergers.

4785 DELIS (M. D.) and STAIKOURAS (P. K.), "The Impact of M&As on the Performance of EU Banks: Short- and Long-Term Effects", *Journal of Economics and Business*, Vol. 63, Issue 1, 2011, p. 107.

direct stakeholders in the legal entity⁴⁷⁸⁶. Added to this, Article 213 bis 2 of the Lebanese Code of Terrestrial Commerce mandated depositing the draft merger with the registry of the competent Commercial Register and publishing a summary thereof to enable creditors and third parties to inspect it and exercise their right to object when necessary. Added to this is the role of the judge overseeing the Commercial Register in appointing special control commissioners to evaluate the operation and prepare a reasoned report on its financial and legal elements, particularly the valuation of assets and liabilities, the share/stake exchange ratio, and the merger premium. Article 213 bis 5 also provided for specific exemptions in cases where one company owns all the shares of the other company. Conversely, in French law, the path subsequent to preparing the draft merger takes a precise and organized character; Article L. 236-6 of the French Commercial Code provided for the preparation of the draft merger jointly by the participating companies, provided that it is deposited and published in accordance with legal procedures. The decree issued on March 23, 1967, particularly Article 254, also specified the content of the draft merger and the data that must be included, including the legal form, name, and registered offices of the companies, the reasons, objectives, and conditions of the merger, the determination and valuation of transferred assets and liabilities, the rights exchange ratio, and the value of the premium or consideration granted to share or stake holders. Following this deposit and publication, competent assemblies are convened to take the merger decision, such that the project does not acquire its final character except after the approval of the decision-making bodies in the concerned companies. French law also guarantees the protection of creditors by enabling them to object to the merger within a specified deadline from the date of publication, in accordance with the mechanisms provided for in the articles related to protecting creditors of merged companies. Objection does not necessarily lead to an automatic stay of the merger; rather, it opens the way for the court to assess the necessary guarantees or reject the objection if its lack of seriousness is proven. In parallel, this balance demonstrates that French legislation does not obstruct the merger merely due to the presence of an objecting creditor, but at the same time, it does not leave creditors without protection in the face of an operation that might affect their general guarantee. Furthermore, comparative experiences show that ratification of the merger does not end the procedural path; rather, it opens the stage of implementation and integration. In Lebanese bank mergers, for example, the final decision results in transferring the rights and obligations of the merged bank to the acquiring bank, including contracts, lawsuits, deposits, debts, guarantees, and employment contracts, with the obligation to publish relevant decisions in the Official Gazette and two local newspapers. As for commercial companies, registration procedures in the Commercial Register serve a similar function, as they define the moment the merger takes effect and its consequences, particularly the transfer of financial liability, the dissolution of the merged company when applicable, and the modification of the acquiring company's capital or the emergence of a new company.

It is necessary to point to the idea of not overlooking the practical dimension subsequent to approval, as the success of a merger depends not only on the issuance of the legal decision, but also on the ability to execute the post-merger integration process⁴⁷⁸⁷: this includes integrating administrative and accounting systems, unifying internal policies, addressing the status of employees, absorbing contracts and obligations, and ensuring the continuity of relations with clients and suppliers. Lebanese law addressed some of these issues explicitly within the framework of bank mergers, permitting the termination of certain employment contracts during the six months

⁴⁷⁸⁶ Articles 3-10 of the Lebanese Law No. 192 of 1993 on Facilitating Bank Mergers.

⁴⁷⁸⁷ Serhiy Kovala, Amanda Annandale, Brett Annandale, & Peter N. Jackson, Post-merger IT Integration in Banking: Literature Review, International Journal of Business and Management; Vol. 18, No. 6, 2023, p 82 & 83.

following the final decision while preserving rights and indemnities. It also approved financial and tax incentives and soft loans for the acquiring bank, revealing a legislative philosophy that considers the merger a rescue tool requiring special legal and financial support at times⁴⁷⁸⁸.

Based on this, it becomes clear that the procedures subsequent to preparing the draft merger agreement constitute a decisive link in transforming the merger from a negotiating project into an enforceable legal reality; they begin with internal and external approvals, pass through deposit, publication, supervision, and registration, and end with producing legal effects against the company, shareholders, creditors, and third parties. However, these procedures, no matter how precise, do not exhaust the examination of mergers, because the true importance of this mechanism appears in the effects resulting from its completion, whether regarding the transfer of financial liability, the extinction of legal personality, or the protection of the rights of creditors, shareholders, and employees - a matter that necessitates moving to the study of the effects resulting from the completion of the merger process.

Chapter Two: The Effects Resulting from the Completion of the Merger Process

The reflection of a merger is not confined to merely organizing the internal structures of distressed companies or altering their corporate mold; rather, it transcends this to bring about fundamental changes that touch upon the company's legal identity, the equity positions of shareholders, the guarantees of creditors, and all existing contractual ties; for this procedure has become a means for rebuilding the legal entity in a manner that ensures the continuity of joint activity, the substitution of financial liability, and the re-sorting of rights and obligations within a disciplined legislative framework⁴⁷⁸⁹. The legal value of the outcomes generated by the merger manifests in being the true test of the success of restructuring and the extent of its capacity to establish institutional continuity, as well as guaranteeing the regular transfer of the components of financial liability - both assets and liabilities - which necessitates a bundle of protective considerations and the extension of judicial supervision to evaluate its effects, prohibiting its deviation into a tool for harming rights holders or evading accrued obligations, in order to achieve a delicate balance between the objectives of economic rescue and the controls for protecting third parties⁴⁷⁹⁰.

Section One: General Effects of Corporate Mergers

As soon as it becomes definitively effective, a merger produces structural effects that transcend contractual characterization to transform into a legal fact reshaping the legal entity and moral personality of the companies participating in it; for it leads, at times, to the dissolution of the merged entity and the substitution of the acquiring company in its place, and at other times, to the extinction of the moral personality of all participating companies for the birth of a newly created entity that succeeds them, making it an ideal means for distressed companies to reconfigure their legal standing by transferring their elements to a more suitable entity⁴⁷⁹¹. These general effects extend to include the reshaping of financial liability, the transfer of undertakings as a universal successor, the increase of capital, the amendment of the articles of association, and the striking off of the extinguished

⁴⁷⁸⁸ Kishore Ramakrishnan and Tom Ciulla, Banking M&A Landscape and Post-Merger Integration Considerations, article published on "Treliaant" website, on the 11th of December 2023. <https://www.treliaant.com/knowledge-center/banking-ma-landscape-and-post-merger-integration-considerations/>

⁴⁷⁸⁹ ABDEL SAMAD (S. H.), Lebanese Corporate Law Between Original Provisions and Amendments, 1st ed., Sader Legal Publications, Beirut, Lebanon, 2022, p. 692.

⁴⁷⁹⁰ Civil Court of Cassation, Decision No. 39/2006, dated 20/2/2006, Legal Informatics Center at the Lebanese University

<http://77.42.251.205/ViewRulePage.aspx?ID=82411&selection=%D8%A7%D9%86%D8%AF%D9%85%D8%A7%D8%AC>

⁴⁷⁹¹ KOLARIC (P.) and VON WACHTER (F.), "The Impact of M&A on European Banks' Productivity: Evidence from Structural Estimation", Journal of Financial Intermediation, Vol. 53, 2023, p. 101.

company's registration from the Commercial Register and the dissolution of its administrative bodies⁴⁷⁹² 'these are inevitable outcomes that both the Lebanese legislature (under the amendments of Law No. 126/2019) and the French legislature (in Article L. 236-1 et seq. of the Commercial Code) were keen to regulate precisely, because they consolidate the idea of universal legal succession in obligations, lawsuits, and ongoing contracts, and bring about a radical change in the identity of the concerned company.

Sub-section I: Effects of the Merger on the Acquiring Company

There is no doubt that the merger, as a legal tool for reshaping the institutional entity of distressed companies, entails direct consequences for the acquiring company, which turns - by virtue of the operation - into the universal successor of the merged company, substituting it in its various rights and obligations. This substitution is not restricted to the transfer of certain financial components or specific rights, but extends to include financial liability with all its positive and negative components, encompassing assets, debts, real and personal rights, contracts, lawsuits, and guarantees. Hence, the acquiring company does not merely acquire the elements of economic strength belonging to the merged company, but also assumes its burdens and obligations, which makes the merger a legal regime established on the idea of universal succession rather than a mere separate transfer of rights and obligations. In this context, the most important effect of the merger manifests in the transfer of obligations and debts accrued on the merged company to the acquiring company, given that the merger leads to the extinction of the legal personality of the distressed company and the comprehensive transfer of its financial liability to the other company⁴⁷⁹³. Consequently, the acquiring company becomes obligated to discharge the previous debts, contracts, and obligations accrued on the merged company, whether these obligations arose from contractual relations, legal liabilities, or existing judicial lawsuits. This principle finds its foundation in the legal nature of mergers based on the unity and indivisibility of financial liability⁴⁷⁹⁴.

Paradoxically, a jurisprudential debate arose regarding the possibility of earmarking a portion of the merged company's assets to settle its debts prior to transferring the remaining assets to the acquiring company, such that the merged company remains independently liable for its debts before the completion of the merger process. Proponents of this view hold that it is practically possible to conduct a form of "partial liquidation" of the merged company, under which existing obligations are settled, and the surplus assets are then transferred to the acquiring company⁴⁷⁹⁵. However, an opposing jurisprudential movement rejected this conception, on the grounds that a genuine merger presumes the transfer of financial liability in all its elements - both assets and liabilities - and that agreeing to transfer assets without liabilities deprives the operation of its legal description as a merger, turning it into a mere transaction transferring assets or a sale of assets. This movement appears more aligned with the legal nature of mergers as enshrined in modern legislations, particularly French law, which clearly adopted the principle of universal transfer of assets and liabilities. Under the provisions of the French Commercial Code, all obligations and debts transfer to the acquiring company by force of law, even if not explicitly mentioned in the merger agreement, given that the substitution of the acquiring company in place of the merged company constitutes an

4792 TANAGHO (S. A. S.), Commercial Companies: A Comparative Study in Lebanese, French, and Egyptian Law, Halabi Legal Publications, Beirut, Lebanon, 2012, p. 521-538.

4793 Cass, Civ, 27 juin 2019, No. 18-18.449. <https://www.legifrance.gouv.fr>

4794 MEHREZ (A.), Commercial Companies, Dar Al-Nahda Al-Arabia, Cairo, Egypt, 2000, p. 654.

4795 HAMAD (N.), Merger of Commercial Companies, Master's Thesis (DEA), Faculty of Law and Political Science, Tunis El Manar University, 2002, p. 128.

inherent legal effect of the merger itself⁴⁷⁹⁶. In this aspect, this transfer comprehensively encompasses contracts, guarantees, commercial and tax obligations, and pending lawsuits, without the need for a novation of obligation or special consent from creditors. French judicial jurisprudence also consolidated this approach when it considered that the transfer of the merged company's debts to the acquiring company does not constitute a novation of debt by changing the debtor, but is rather considered a universal legal transfer of financial liability, making novation rules inapplicable in this domain. This concept was clearly reflected in Article L. 236-3 of the French Commercial Code, which entails the substitution of the acquiring company in place of the merged company regarding all its rights and obligations upon the merger taking effect.

On the Lebanese level, the legislature explicitly consolidated this principle within the provisions of the Lebanese Code of Terrestrial Commerce, as amended by Law No. 126/2019, particularly Article 213 bis 8, which indicated that the acquiring company remains indebted to the creditors of the merged company and substitutes it in these debts "without novation of obligation". This text clearly demonstrates that the transfer of obligations occurs by force of law, without the need to re-establish the legal relationship or obtain special consent from creditors, as long as the merger has fulfilled its legal and procedural conditions. The Lebanese Law on Facilitating Bank Mergers No. 192/93 adopted the same logic, as its first article provided that all assets, rights, and obligations of the merged bank are annexed to those belonging to the acquiring bank. Likewise, the first paragraph of Article 4 came to confirm that the acquiring bank "substitutes immediately and by operation of law the merged bank or banks in all their rights and obligations toward third parties as soon as the final decision of approval for the merger is issued by the Central Council." It is understood from this text that the substitution occurs automatically and comprehensively without the need for the consent of rights holders or even notifying them, reflecting the special nature of the merger as a means for reconfiguring the legal entity of the distressed company and ensuring the continuity of its economic activity within a new or reinforced entity. The effect of the merger is not restricted only to the transfer of obligations, but also results in the acquiring company acquiring a bundle of legal and financial rights and advantages, at the forefront of which is reinforcing its financial standing and increasing its capital. For the merger leads to the transfer of the net assets of the merged company to the acquiring company, which directly reflects on the capital structure of the entity resulting from the operation⁴⁷⁹⁷. Hence, the acquiring company benefits from expanding its asset base, increasing its financing capacity, and enhancing its competitive position, which makes the merger a tool for restructuring and growth simultaneously⁴⁷⁹⁸. It is necessary here to distinguish between a company's capital and its assets. Capital represents the nominal value of contributions provided upon the founding or expansion of the company, whereas assets express the total funds and rights owned by the company at a given moment, which are affected by profits, losses, and market fluctuations. Upon merger, assets and liabilities transfer together to the acquiring company, and its financial standing is reconfigured on the basis of the net value of transferred assets after deducting liabilities⁴⁷⁹⁹.

In this context, the capital increase of the acquiring company is often conducted through in-kind contributions, because transferred assets are not limited to monetary funds, but include real estate,

4796 Boigegrain (N), Mergers in France, published on "CMS Francis Lefebvre" website, 30\11\2021. <https://cms.law>

4797 SADER LEGAL RESEARCH AND STUDIES CENTER, Sader Between Legislation and Case Law: Banking, Sader Legal Publications, Beirut, Lebanon, 2011, p. 398.

4798 NACSIF (E.), Commercial Companies: A Comparative Study, op. cit., p. 39-40.

4799 Cass, Com, 12 juillet 2004, No. 03-12.672. <https://www.legifrance.gouv.fr>

intangible rights, contracts, trademarks, and all other elements of financial liability⁴⁸⁰⁰. Therefore, the shares issued by the acquiring company to the shareholders of the merged company are originally in-kind shares, whose value is determined according to the actual valuation of the net assets of the merged company. Modern legislations were keen to subject this operation to strict supervision to protect shareholders and creditors. In Lebanese law, Article 213 bis 4 of the amended Code of Terrestrial Commerce mandated auditors to prepare a unified report confirming that the net value of the merged company's assets equals or exceeds the proposed increase in the acquiring company's capital. Article 213 bis 6 also provided that the new company resulting from the merger cannot be established except from the contributions belonging to the merged companies.

From a practical perspective, increasing the capital of the acquiring company may raise special problems when one of the two companies holds shares in the other. If the acquiring company holds shares in the merged company, the capital increase is calculated after deducting the value of this shareholding to prevent double valuation. Conversely, if the merged company holds shares in the acquiring company, a portion of the capital is already existing within the acquiring company, which necessitates excluding this portion when calculating the increase resulting from the merger. It is observed that all these results confirm that the acquiring company is not regarded merely as a receiver of the distressed company's assets; rather, it transforms into a legal and economic extension of it, combining the assumption of its burdens with benefiting from its elements of strength. From here, the function of the merger manifests as a means for rebuilding the corporate entity and ensuring the continuity of economic activity, not as a procedure leading to the destruction or liquidation of the economic project. However, the complete picture of the general effects of a merger is not achieved by merely examining the effects of the operation on the acquiring company alone, as the merger entails, in return, deeper consequences for the merged company itself, particularly regarding the extinction of its legal personality, the transfer of its financial liability, and its exit from legal life - a matter that necessitates examining the effects of the merger with respect to the merged (distressed) company.

Sub-section II: Effects of the Merger on the Merged (Distressed) Company

The essential effect of a merger regarding the merged company, particularly if it is distressed, lies in its exit from independent legal life without liquidation, through its dissolution within the acquiring or new company. For the merger does not aim to terminate the economic project, but rather to transfer it with all its assets and liabilities to an entity more capable of continuity, thereby preserving its economic value and sparing it the fate of bankruptcy or liquidation⁴⁸⁰¹. The first of these effects manifests in the fate of the legal personality of the merged company⁴⁸⁰², which is the personality that grants the company an independent financial liability, legal capacity to litigate, a domicile, and a trade name. In this aspect, Lebanese law consolidated this personality for various commercial companies, with the exception of the joint-venture company, which remains, by its nature, not enjoying legal personality toward third parties. Furthermore, the basis of a company's formation appears in Article 848 of the Code of Obligations and Contracts, whereas a joint-stock company acquires its legal regularity after completing its specific foundational conditions, particularly the appointment of the first board of directors and auditors in accordance with what was provided for in Article 93 of the Lebanese Code of Terrestrial Commerce.

4800 ISMAIL (M. H.), "Merger in the Jordanian Companies Draft Law", Mu'tah for Research and Studies, Vol. 1, Issue 1, 1986, p. 181.

4801 Cass. Com., 26 mai 2009, No. 8-12.691. <https://www.lexbase.fr> visited on: 13\4\2024.

4802 HOTEIT (A. M.), Lebanese Commercial Law, Zain Legal Publications, Beirut, Lebanon, 2021, p. 260.

However, this personality, despite its importance, is not perpetual, as it may be extinguished for several reasons, including a merger. Indeed, Article 212 of the Lebanese Code of Terrestrial Commerce explicitly provided that a merger leads to the dissolution of extinguished companies without their liquidation, and the transfer of their financial liability to the beneficiary companies in the state it is in upon the final completion of the operation, including the right of lease. Thus, the legislature distinguishes between dissolution resulting from a merger and dissolution resulting from liquidation; in the former, the legal personality of the merged company ceases while its economic project continues within another entity, whereas liquidation leads to terminating the activity and distributing funds in accordance with general rules. Therefore, following the merger taking effect, the merged company is no longer able to initiate lawsuits or assume obligations in its own name, as the acquiring company substitutes it in rights, duties, and litigation⁴⁸⁰³. Paradoxically, Lebanese jurisprudence consolidated this effect in more than one decision; it was stated in one of the decisions of the Court of Cassation⁴⁸⁰⁴, regarding the examination of the effect of the merger of Bank of Beirut and the Arab Countries (Beirut Riyadh Bank), that after proving the occurrence of the merger and its conjunction with the approval of the Governor of the Banque du Liban and the striking off of the merged bank's name, Bank of Beirut has substituted it in all its rights and duties, and it is no longer possible to direct litigation against the merged bank, but rather against the bank that substituted it. It was also stated in another decision⁴⁸⁰⁵ that Société Générale de Banque au Liban S.A.L. substituted Bank of Lebanon's Recovery S.A.L. in the lawsuit, which necessitates correcting the standing in litigation and considering it directed against the acquiring entity. The importance of these two judicial precedents appears in that they do not treat the merger as a formal fact, but rather as a direct legal cause for the transfer of capacity in litigation and the loss of the merged company's capacity to be a plaintiff or a defendant. In addition to the above, one of the direct results of the extinction of the merged company's legal personality is the lapse of the powers of its administrative bodies. Its board of directors or managers no longer represent it after the merger takes effect. However, this extinction does not erase the prior liabilities of board members or managers whenever arising from errors or violations preceding the merger, whether civil or criminal liability.

In the specific Lebanese framework for bank mergers, Law No. 192/93 defined the merged bank, in its first article, as the bank that is no longer existing in accordance with the procedures provided for in the law. Article 4 thereof also provided for the immediate and automatic substitution of the acquiring bank in place of the merged bank or banks in all their rights and obligations toward third parties as soon as the Central Council's final decision approving the merger is issued. This approach aligns with French law, which, since the Companies Act of 1966, has consolidated the principle of dissolving the merged company without liquidation and the universal transfer of its financial liability to the acquiring or new company, which subsequently settled in Articles L. 236-1 et seq. of the French Commercial Code. Along the same lines, the effect of the merger on the financial liability of the merged company is no less important than its effect on its legal personality. Financial liability, although Lebanese or French law did not establish a direct legislative definition for it, is understood in jurisprudence as the sum of rights and obligations with financial value belonging to the legal

4803 AL-HAYEK (O. S.), Merger of Commercial Companies in Light of the Provisions of the Amended Lebanese Land Commerce Law, op. cit., p. 28.

4804 Court of Cassation, 8th Chamber, Decision No. 42, May 9, 2006, Ramadan v. Bank of Beirut S.A.L., Sader Collection in Cassation, Civil Decisions Part II, Dar Sader Publishing, Beirut, Lebanon, 2006, p. 1238.

4805 Court of Cassation, 8th Chamber, Decision No. 87, January 31, 2006, Société Générale de Banque au Liban S.A.L. case, Sader Collection in Cassation, Civil Decisions Part II, Dar Sader Publishing, Beirut, Lebanon, 2006, p. 1187.

person⁴⁸⁰⁶ ; it includes a positive side represented in assets, rights, and properties, and a negative side represented in debts, obligations, and liabilities. Since the company enjoys an independent legal personality, it has a financial liability independent from the liabilities of partners or shareholders, and it is this liability that transfers upon merger in a universal manner to the acquiring company⁴⁸⁰⁷. The Lebanese legislature expressed this in Article 210 of the Code of Terrestrial Commerce, which defined a merger as the transfer of the financial liability of one or more companies to an existing or new company, and then Article 212 confirmed the transfer of this liability in the state it is in upon the final completion of the operation⁴⁸⁰⁸. Thus, a merger is distinguished from the sale of assets or partial assignment, because the transfer in a merger falls upon the liability as an integrated legal unit, not on individual elements. Therefore, any operation that does not lead to a universal transfer of rights and obligations is not considered a merger in the strict sense, but may rather be an assignment of assets, an in-kind contribution, a sale of a business establishment (fonds de commerce), or a partial reorganization process.

Conversely, on the level of French law, this approach coincides with the principle of transmission universelle du patrimoine (universal transfer of financial liability), which was consolidated by the Companies Act of 1966, particularly Article 371 thereof, and subsequently reinforced by later texts and Executive Decree No. 67/236⁴⁸⁰⁹. French jurisprudence, including the Riom Court of Appeal⁴⁸¹⁰, contributed to consolidating this trend by emphasizing the indivisibility of financial liability upon merger and the necessity of its transfer in all its elements. European Directive No. 78/855 also adopted the same idea in mergers by acquisition or absorption⁴⁸¹¹. confirming that the merger, in European legal philosophy, is not based on the liquidation of the merged company, but on the continuation of its economic liability within another entity.

From a practical perspective, the transfer of financial liability leads to the merged company losing its financial independence immediately upon the merger taking effect, as its assets, debts, contractual and judicial rights, and guarantees transfer to the acquiring company, which becomes the new legal center for everything that existed within its liability. However, this effect does not mean the cancellation of the economic project, but rather its indirect continuation within an entity more capable of survival. Hence, the effects of a merger rest upon two interrelated axes: the extinction of legal personality without liquidation, and the universal transfer of financial liability.

While these general effects demonstrate the impact of a merger on the legal entity of the merged company in terms of its existence and liability, the picture is not complete without examining the special effects generated by the merger against persons and legal relationships connected to the company - a matter that necessitates moving to the study of the special effects arising from corporate mergers.

Section Two: Special Effects Arising from Corporate Mergers

There is no escaping the conclusion that the legal effects of corporate mergers are not confined to the organic shift in the legal personality of the participating entities, but transcend it to bring about a radical transformation in the legal positions of shareholders, creditors, employees, and all contracting parties, as a merger constitutes a manifestation of universal succession that transfers comprehensive financial liability - a matter that necessitates a delicate legislative balance between

4806 IBRAHIM (A. M.), Property and Original Real In-Kind Rights, n.p., Beirut, Lebanon, 2013, p. 61.

4807 KARKABI (M.) and MANSOUR (S.), Civil Law: Property, Sader Legal Publications, Beirut, Lebanon, 2002, p. 93.

4808 Court of First Instance, December 9, 1999, Al-Adl Journal, Issue 2, Beirut, Lebanon, 2000, p. 299.

4809 SHAHIN (H. I.), Banking Mergers: A Comparative Study, op. cit., p. 156.

4810 Cited in: SHAHIN (H. I.), Banking Mergers: A Comparative Study, op. cit., p. 157.

4811 Art 19 de la troisième directive de conseil du 9 octobre 1978.

the requirements of structural development and the protection of acquired rights. Based on this, both the Lebanese and French legislatures⁴⁸¹² surrounded this process with regulatory guarantees and strict publicity procedures ensuring the automatic transfer of obligations and contracts, with the exception of those based on personal consideration (intuitu personae) pursuant to flexible and specific rules⁴⁸¹³.

Sub-section I: Effects of the Merger with Respect to Persons

The effects of a merger do not stop at the boundaries of the company as a legal person, but extend directly to the persons connected with it, whether they are shareholders, creditors, debtors, bondholders, or members of administrative bodies. For the merger, with what it entails of a universal transfer of financial liability and the extinction of the legal personality of the merged company, re-arranges the legal positions of these individuals, and introduces them into a new relationship with the acquiring company or the company resulting from the merger. Hence, the necessity of studying the effects of a merger with respect to persons arises, requiring an examination of how their rights and obligations transfer, and the scope of protection granted to them in the face of changes that may occur in their positions⁴⁸¹⁴.

In the first place, the effect of the merger on shareholders or partners in the merged company stands out⁴⁸¹⁵. For these individuals do not lose their economic status merely due to the extinction of the legal personality of the company in which they held shares; rather, they transfer, in principle, to the acquiring company or the new company resulting from the merger, by receiving substitute shares or stakes corresponding to what they owned in the merged company⁴⁸¹⁶. In a merger by acquisition (absorption), the acquiring company increases its capital and issues new shares to them, whereas in a merger by consolidation (combination), the new company issues shares or stakes distributed to them according to the ratios specified in the merger draft. Therefore, the importance of determining the exchange ratio of shares or stakes and the merger premium in a fair manner emerges, which was consolidated by Article 213 bis 2 of the Lebanese Code of Terrestrial Commerce, as well as reinforced by Article 213 bis 4 through the auditors' report⁴⁸¹⁷. This direction aligns with French law, which emphasizes the fairness and transparency of the exchange ratio and the protection of special or preferential rights where applicable⁴⁸¹⁸. In this context, shareholders of the merged company are not viewed as external third parties to the merger, but as persons whose membership transfers from an extinguished entity to a continuing or new entity. This makes depriving them of fair consideration or unlawfully infringing upon their rights a ground for invoking the liability of those in charge of the operation, particularly in cases of abuse of power or breach of the principle of equality⁴⁸¹⁹. The effect of the merger is no less important with respect to members of the board of directors and managers in the merged company. For upon the merger taking effect and the extinction of the legal personality

⁴⁸¹² Philippe Merle, *Droit commercial: Sociétés commerciales*, 24e édition, Dalloz, Paris, 2020, pp. 932-948

⁴⁸¹³ Yves Guyon, *Droit des affaires*, Tome 1: *Droit commercial général et sociétés*, 12e édition, Economica, Paris, 2003, pp. 673-689

⁴⁸¹⁴ Aslı Demirgüç-Kunt, Harry Huizinga, *Bank Mergers and Financial Stability: Evidence from the Global Financial Crisis*, *Journal of Financial Stability*, Vol. 49, 2020, p. 173.

⁴⁸¹⁵ Cass, Crim, 20 juillet 2011, No. 10-87.348. <https://www.legifrance.gouv.fr>

⁴⁸¹⁶ AL-ARINI (M. F.) and AL-FEQI (M. A.), *Commercial Law: Commercial Acts – Merchants – Commercial Companies*, 1st ed., Halabi Legal Publications, Beirut, Lebanon, 2005, p. 685.

⁴⁸¹⁷ Article 269 of the French Companies Law of 1966.

⁴⁸¹⁸ According to Article 175(1) of the French Companies Law of 1966: "The double voting right is established in the company's articles of incorporation upon its establishment, or by amending its articles through the extraordinary general assembly".

⁴⁸¹⁹ AL-MASRI (H.), *Special Legal Aspects of Merging Investment Companies into Regular Joint-Stock Companies*, Dar Al-Nahda Al-Arabia, Cairo, Egypt, 1986, p. 63.

of this company, the powers of its administrative and representative bodies cease, so its board of directors or managers no longer have the right to represent it before third parties or the judiciary, because the company is no longer existing as an independent legal person⁴⁸²⁰. However, the termination of authority does not mean the lapse of liability for acts preceding the merger⁴⁸²¹, as members of the board of directors and managers remain civilly or criminally liable for errors committed during their management, whenever the conditions for such liability are met⁴⁸²². From a purely legislative perspective, Lebanese law addressed the issue of representation on the board of directors in cases of mergers from an organizational standpoint, as Article 144 of the Lebanese Code of Terrestrial Commerce provides that the board of directors of a joint-stock company consists of at least three members and no more than twelve members. However, Article 210, paragraph 6 permitted raising the maximum limit to twenty members in merger cases, with the goal of facilitating institutional transition and accommodating the representation of companies involved in the operation, without prejudice to governance requirements. French law approaches the issue with a similar logic, allowing a merger, within specific parameters, to temporarily exceed certain regulatory limits to ensure administrative continuity and avoid disruption following the operation⁴⁸²³.

Moving to creditors, the merger directly impacts their position, because the debtor with whom they dealt may cease to exist as an independent legal person, and the acquiring company or new company substitutes it⁴⁸²⁴. However, this change does not lead to the loss of their rights or the novation of their obligations, as Article 213 bis 8 of the Lebanese Code of Terrestrial Commerce provided that the acquiring company remains indebted to the creditors of the merged company and substitutes it without novation of obligation. Article 213 bis 9 also granted creditors the right to object before the competent court within one month from the last publication, and the court may reject the objection or order the payment of the debt, acceptance of guarantees, or imposition of additional guarantees⁴⁸²⁵. As a general rule, objection does not suspend the progress of the merger operation; however, if debts are not paid or the determined guarantees are not provided, the merger does not apply against the objecting creditor, who retains the right to recover their debt from the assets of the merged company without competition from creditors of the acquiring company⁴⁸²⁶. This coincides with Article L. 236-14 of the French Commercial Code, which establishes the substitution of the acquiring company in place of the merged company toward its creditors without novation of debt, while granting them the right to object in accordance with legal conditions⁴⁸²⁷. Thus, the objection does not aim to obstruct the merger, but to protect the general guarantee of creditors against the effects of the universal transfer of financial liability. Along the same lines, and with respect to debtors of the merged company, the effect of the merger manifests in the transfer of the capacity of creditor to the acquiring or new company, so that these debtors

4820 AL-DABBAGH (S. D.), "Legal Aspects of Banking Merger Operations", Journal of the Union of Arab Banks, Vol. 18, Issue 204, 1992, p. 164.

4821 MOKHTAR (M.) and BARBARY (A.), Legal Personality of the Commercial Company, n.p., Cairo, Egypt, 2002, p. 73.

4822 AL-MUHAISEN (O. N.), The Concise in Commercial Companies and Bankruptcy, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2008, p. 77.

4823 COZIAN (M.), DEBOISSY (F.) et VIANDIER (A.), Droit des sociétés, 36^e éd., LexisNexis, 2023, p. 527.

4824 AL-FAYOUMI (L. Y.), Effects Arising from Mergers of Joint-Stock Companies, 1st ed., Halabi Legal Publications, Beirut, Lebanon, 2009, p. 80.

4825 AL-AMRI (A. W.), Merger of Multinational Commercial Companies, Dar Al-Nahda Al-Arabia, Cairo, Egypt, n.d., p. 548.

4826 Cour de Cassation, Chambre commerciale, du 17 octobre 1989.

<https://www.legifrance.gouv.fr/juri/id/JURITEXT000007023393>

4827 Article 236(8) of French Decree No. 11/2009, dated December 5, 2009.

become obligated to perform to the company that substituted the original creditor. In Lebanese law, this transfer is not subject to traditional rules of assignment of rights (cession de créance), because Article 213 bis 8 made substitution existing by operation of law and without novation of obligation. Law No. 192/93 on Facilitating Bank Mergers also confirms this meaning in its fourth article, providing for the immediate and automatic substitution of the acquiring bank in place of the merged bank in all its rights and obligations toward third parties as soon as the final decision approving the merger is issued. Indeed, Lebanese jurisprudence confirmed this approach in a decision issued by the First Court of First Instance in North Lebanon⁴⁸²⁸, where it considered that debtor approval is not required in the case of the transfer of financial liability resulting from a merger, because it involves universal succession, not an assignment of debt subject to Article 281 of the Code of Obligations and Contracts.

As for debtors of the acquiring company, their position is not affected, in principle, by the merger operation, because their creditor has not changed, given that the acquiring company retained its legal personality⁴⁸²⁹. Consequently, they continue to perform to the acquiring company under previous terms, and originally do not have the right to object to the merger merely because it occurred⁴⁸³⁰. However, requirements of transparency and good management dictate that the acquiring company organize the transfer process in a manner that does not lead to loss of documents, disruption of records, or duplication of claims, so as to preserve the integrity of the legal positions of debtors. In addition to the foregoing, bondholders retain a special status, because they are creditors of a distinct nature who enjoy collective organization and special legal protection independent of shareholders; for a bond represents a long-term collective loan that makes its holder a creditor of the company, not a partner in it⁴⁸³¹. with their right to interest and redemption of face value upon maturity. Therefore, a collective body (masse des obligataires) is formed by bondholders, which makes its decisions according to proper procedures that bind all of them⁴⁸³². Accordingly, the acquiring company or new company substitutes the bond-issuing company in all the latter's obligations, whether regarding conversion deadlines, granted operations, or measures necessary to safeguard the rights of bondholders, in accordance with the provisions set forth in this field⁴⁸³³. The Lebanese legislature addressed the status of bondholders in the context of mergers within Articles 213 bis 7, 213 bis 9, and 213 bis 10 of the amended Code of Terrestrial Commerce⁴⁸³⁴. If approved, the acquiring company assumes the bonds and the bondholders become its creditors according to the terms of the draft. However, if rejected, the rejection does not halt the merger operation, but opens the way to exercise legally established rights, including objecting before the court pursuant to Article 213 bis 9. The law also permits not submitting the draft to the assembly if an offer to redeem the debt upon request is presented to bondholders and published according to proper

⁴⁸²⁸ Preliminary Decision issued by the First Chamber of First Instance in North Lebanon, Decision No. unmentioned, dated 30/6/1994, in the case Banco di Roma v. Lebanese Steel Manufacturing Company (Ghandour), Journal of Lebanese and Arab Rights, Issue 5, Vol. 17, p. 64-102.

⁴⁸²⁹ BEN MATOUQ (S.), "An Analytical Study of the Merger Phenomenon in the Arab Banking Sector - Selected Experiences", Journal of Economic Reforms and Integration into the Global Economy, Vol. 16, Issue 1, Algeria, 2022, p. 83.

⁴⁸³⁰ KEASEY (K.), THOMPSON (S.) and WRIGHT (M.), Corporate Governance: Economic, Management, and Financial Issues, 1st ed., Oxford University Press, 1997, p. 79.

⁴⁸³¹ Hall (J), "Bonds vs. Stocks: What's the Difference?", article published on "The Motley fool" website, February 2, 2024. <https://www.fool.com>

⁴⁸³² Article 18 of Legislative Decree No. 54, dated June 16, 1977 – Lebanon.

⁴⁸³³ Court of Appeal of North Lebanon, Decision No. 395, Judicial Bulletin, 1957, p. 690.

⁴⁸³⁴ Commercial Court of Beirut, Decision No. 1984, dated 18/7/1963 – cited in: NACSIF (E.), Commercial Companies: A Comparative Study, op. cit., p. 410.

procedures; if a bondholder does not request redemption within one month from the last publication, they retain their status in the acquiring company under the terms of the merger contract.

As for French law, the legislature granted bondholders special guarantees in the context of mergers, as in certain cases, the merger project must be submitted to their body for approval⁴⁸³⁵. In the event of a lack of quorum or refusal of approval, the company may offer to redeem the value of bonds for those requesting it within a specified deadline, with publication of this offer in accordance with proper procedures. Bondholders also retain, in some cases, the right to resort to the competent court to request protection or guarantees, reflecting a commitment to ensuring that a merger is not used as a means to weaken their credit standing.

Thus, it becomes clear that the effects of a merger with respect to persons are not confined to a single impact, but are distributed among transferring shareholder membership, terminating the powers of the merged company's management while retaining its liability for prior acts, protecting creditors from the risk of weakening their general guarantee, organizing the position of debtors, and establishing special guarantees for bondholders. All these effects confirm that a merger, although a tool for restructuring a distressed company, cannot be carried out in isolation from protecting the stakeholders connected with it. If these effects pertain to the personal positions of rights holders and stakeholders, the merger also raises delicate impacts on existing contractual relationships prior to its occurrence, particularly regarding the continuation or transfer of contracts, or the possibility of relying on termination clauses or prior consent - a matter that necessitates moving to examine the effects of a merger with respect to existing contractual relationships.

Sub-section II: Effects of the Merger with Respect to Existing Contractual Relationships

The extinction of the merged company resulting from a merger does not lead to the dissolution of existing contractual relationships, because a merger is not deemed a liquidation, but rather a universal transfer of financial liability (transmissibilité universelle du patrimoine) to the acquiring or new company. Therefore, ongoing contracts transfer, in principle, to the acquiring entity as a general successor (ayant cause à titre universel) of the merged company, unless the nature of the contract, its text, or the law prevents it. The importance of this rule manifests in the restructuring of distressed companies, as the continuity of contracts constitutes an essential condition for the continuation of economic activity. Regarding employment contracts, the traditional rule was based on considering them as personal contracts (intuitu personae) due to the employee's connection to the employer, which posed a problem when the employer changed as a result of a merger⁴⁸³⁶. However, economic and social developments led to shifting the center of gravity from the person of the employer to the enterprise itself, such that the worker became bound to the economic project more than to the legal person managing it. Hence, modern legislation intervened to protect the continuity of employment contracts upon the transfer of the project or the merger of the company, preventing a merger from becoming a means to eliminate workers or infringe upon their acquired rights. French law explicitly consecrated this orientation in Article L. 1224-1 of the French Labour Code, which provides for the continuation of existing employment contracts upon a change in the legal situation of the employer, particularly in cases of sale, inheritance, merger, or transfer of the project to another entity. It is understood from this text that a merger does not in itself lead to the termination of employment contracts; rather, these contracts transfer to the acquiring company, which becomes

4835 Article 380 of the French Commercial Companies Law of 1966.

4836 Mallon (C), Waisman (S. Y.), The Law and Practice of Restructuring in the UK and US, 2nd Edition, Oxford University Press, Oxford, 2017, p 282.

the new employer, while maintaining the workers' essential rights⁴⁸³⁷. However, French jurisprudence concurrently recognized the possibility for the acquiring company, after the merger, to reorganize the workforce or terminate certain contracts, provided that the legal rules governing dismissal and compensation are respected⁴⁸³⁸. In Lebanese law, Article 656 of the Code of Obligations and Contracts and Article 60 of the Labour Law consecrate the same principle regarding the continuation of employment contracts upon a change of employer due to inheritance, sale, or reorganization, as long as the enterprise continues its activity. It is derived from these two texts that changing the legal form of the employer or transferring the enterprise to an acquiring company does not in itself lead to the termination of employment contracts, so long as the economic activity remains ongoing. These rules are considered protective public policy (ordre public de protection), because their primary purpose is to protect the employee from losing their job as a result of legal operations in which they have no say.

However, Law No. 192/93 on Facilitating Bank Mergers in Lebanon⁴⁸³⁹ established a special regime for employment contracts in the field of bank mergers. It permitted the acquiring bank, within a period of six months from the issuance of the final decision approving the merger, to decide whether to retain certain employees or terminate the service of others, while granting dismissed employees their legal rights and additional compensation of not less than six months' salary, tax-exempt. Despite the specificity of this text in the banking sector, it demonstrates the legislature's attempt to strike a balance between the acquiring entity's interest in reorganizing the workforce and the employees' interest in protection and fair compensation⁴⁸⁴⁰.

The same issue arises with respect to insurance contracts, which are continuous contracts based on the insurance company's obligation to cover a specific risk in exchange for a premium paid by the insured. Article 950 of the Lebanese Code of Obligations and Contracts defined insurance as a contract under which the insurer undertakes obligations upon the occurrence of contingencies to the person or property of the insured, in return for consideration called the premium⁴⁸⁴¹. Since an insurance contract is a continuous time-based contract (contrat à exécution successive), the merger of the insured company or the company that concluded the contract does not originally lead to its expiration; rather, it transfers to the acquiring company within the transferred financial liability⁴⁸⁴². This outcome aligns with the principle of general succession in mergers, as the acquiring company substitutes the merged company in the rights and obligations arising from the insurance contract, whether the merged company was the insured party or the beneficiary of insurance coverage. The contract continues as long as the insured risk exists⁴⁸⁴³, and as long as the financial liability transferred to the acquiring company includes the rights and obligations connected with this contract⁴⁸⁴⁴. Therefore, an insurance contract does not differ in this respect from other

4837 BONNARD (J), droit des sociétés, 2^{ème} édition, Hachette, Paris, 2001, P 77.

4838 Cass.soc, 25 mars 1971, n°70-40.139, Bull.soc. n°153.

4839 Urgent Draft Law Aiming to Amend Article 4 of Law No. 192, Dated 4/1/1993, Regarding Facilitating Bank Mergers.

4840 SHAKER (F.), "Key Incentives to Encourage Banking Mergers in the Arab Region", *As-Safir Newspaper*, Issue 8438, October 29, 1999 <https://archive.assafir.com/ssr/1263535.html>

4841 Assurance (Contrat), Fiches d'orientation, "Dalloz.fr" website, March 2024. <https://www.dalloz.fr>

4842 SHARAF AL-DIN (A.), Provisions of the Insurance Contract, 3rd ed., Dar Al-Kitab Al-Hadith, Cairo, Egypt, 1991, p. 15.

4843 ZAHIR (O. F.), Nominate Civil Contracts: Contracts Relating to the Usufruct of Property, Mansoura University Press, Mansoura, Egypt, 2008, p. 25.

4844 JALAL (M. I.), Legal Protection for the Duration of the Insurance Contract: A Comparative Study between Egyptian, Kuwaiti, and French Law, n.p., n.d., p. 2 et seq.

ongoing contracts that transfer by operation of law to the acquiring company⁴⁸⁴⁵. Lease contracts hold special importance because the company's premises, branches, and operational sites may constitute an essential element of its economic value, and may even be among the main motives for the merger. A lease contract, as a contract granting the tenant the right to use the leased premises for consideration, creates a financial right of economic value, whether viewed as a personal right arising from the contract or as an intangible element of the commercial goodwill (fonds de commerce)⁴⁸⁴⁶. Consequently, the transfer of this right to the acquiring company is a requirement for the continuity of the economic project⁴⁸⁴⁷. Lebanese law settled this issue in Article 212 of the Code of Terrestrial Commerce, as amended by Law No. 126/2019, explicitly providing that a merger leads to the dissolution of extinguished companies without liquidation and to the transfer of their financial liability to the beneficiary companies in the state it is in upon final completion of the operation, "including the right of lease". This phrase is of decisive significance, as it prevents considering the merger an prohibited assignment of lease (cession de bail), and confirms that the transfer of the lease right occurs by operation of law as an effect of the merger.

Paradoxically, before this regulation, the issue raised difficulties in light of exceptional rent laws, particularly when lease contracts contained clauses prohibiting assignment or subletting without the landlord's consent. The Beirut Court of Appeal⁴⁸⁴⁸, held in one of its decisions that the merger of a tenant company into a new entity possessing an independent legal personality could lead to considering the new entity's occupation of the leased premises unlawful if the landlord's consent was not obtained. However, Law No. 192/93 in the banking sector addressed this issue through its fourth article, which consecrated the immediate and automatic substitution of the acquiring bank in place of the merged bank in all its rights and obligations, including lease contracts, without the need for consent or notification of right-holders. As for French law, statutory provisions and case law settled on the transfer of lease contracts to the acquiring company in its capacity as a general successor of the merged company. French Law No. 66-538 and the Decree of March 23, 1967, particularly the provisions relating to the effects of mergers, contributed to consecrating the principle of continuation and transfer of lease contracts without additional formalities. The law also granted landlords the ability to object within a specified timeframe to protect their rights, such that the court may order the provision of sufficient guarantees or, where necessary, take appropriate measures if it appears that the merger prejudices the landlord's rights. As for power of attorney contracts (contrat de mandat), they raise a more delicate issue because they are originally based on personal consideration (intuitu personae) and trust between principal and agent. Lebanese law⁴⁸⁴⁹ defined as a contract by which the principal authorizes the agent to perform one or several acts on their behalf⁴⁸⁵⁰, as defined by French law

4845 AL-SANHOURI (A. R.), Al-Waseet in Explaining the New Civil Law: Aleatory Contracts and the Insurance Contract, Vol. 7, Tome II, Halabi Legal Publications, Beirut, Lebanon, 2009, p. 1141.

4846 Civil Court of Appeal, Decision No. 3/2022, dated 7/1/2022, Legal Informatics Center at the Lebanese University <http://77.42.251.205/ViewRulePage.aspx?ID=135031&selection=%D8%A7%D9%8A> Civil Court of Cassation, First Chamber, Decision No. 1/2020, dated 7/1/2020, Legal Informatics Center at the Lebanese University. <http://77.42.251.205/ViewRulePage.aspx?ID=134636&selection=%D8%A7>

4847 Cass.civ, 9 novembre 2010, n°09-70.726, Bull.civ, n°172. <https://www.legifrance.gouv.fr>

4848 Court of Appeal of Beirut, Decision dated March 3, 1961, Judicial Bulletin, 17th Year, 1961, p. 291.

4849 IBRAHIM (A. M.), Nominate Contracts: Sale – Lease – Power of Attorney, 3rd ed., n.p., Beirut, Lebanon, 2013, p. 425.

4850 Civil Court of Appeal of Beirut, Thirteenth Chamber, Decision No. 729/2000, dated 21/6/2000, Legal Informatics Center at the Lebanese University <http://77.42.251.205/ViewRulePage.aspx?ID=87378&selection=%D8%A7%D9%86%D8%AF>

it is a contract whereby a person empowers another to perform an act for and on behalf of the principal (mandator). By virtue of its *intuitu personae* (personal) nature, a mandate terminates, under general rules, upon the dissolution of the legal entity that created it, unless the mandate was granted in the interest of the agent (mandatory) or a third party. Article 809 of the Lebanese Code of Obligations and Contracts explicitly provides that a mandate granted by a legal person or a company terminates upon the dissolution of such legal person or company. Given that a merger leads to the dissolution of the merged company and the extinction of its legal personality, the general rule dictates the termination of the mandates it had previously granted; such mandates do not automatically transfer to the acquiring company if they are based on personal consideration (*intuitu personae*). The Lebanese Court of Cassation affirmed in its Decision No. 120, dated July 14, 2008, that a mandate granted by a legal person terminates upon the extinction of that entity, distinguishing this scenario from certain procedural situations that do not necessitate a rectification of capacity (*correction de la qualité*) upon the mere death of an agent or loss of capacity under specific circumstances⁴⁸⁵¹. Lebanese jurisprudence further consolidated this orientation in a decision issued by the Head of the Execution Department in Tripoli (No. 12, dated February 28, 2012), ruling that the extinction of the legal personality of a merged bank as a result of a merger leads to the termination of the power of attorney previously granted to its legal representatives, particularly regarding execution or precautionary proceedings, such as filing for an attachment order on clients' assets. It is inferred from this case law that whenever a mandate is tied to the specific entity of the merged company and its trust in a particular attorney-in-fact, it does not automatically survive after the entity's dissolution⁴⁸⁵². However, this ruling does not prevent the acquiring company from ratifying the continuation of the mandate or granting a new power of attorney to the same agent, especially if business necessity or pending litigations so dictate. Furthermore, Article 4 of Law No. 192/93 on Facilitating Bank Mergers may tend to expand the scope of legal subrogation to encompass all rights and obligations, which might allow the transfer of certain mandates connected to the legal estate (*patrimoine*) and ongoing operations. Nevertheless, the personal nature of the mandate contract mandates a cautious interpretation, particularly when an opposing party challenges the agent's capacity (*qualité*) or the continuation of their representation of the acquiring company⁴⁸⁵³. In such cases, the court may require proof of the acquiring company's acceptance of the continuation of the mandate or the issuance of a new power of attorney. Accordingly, it becomes evident that the effect of a merger on existing contractual relationships depends on the legal nature of each contract. Employment contracts generally continue in force in order to protect employees and ensure corporate continuity, subject to any lawful restructuring measures. Likewise, insurance contracts remain effective as part of the transferred financial estate (*patrimoine*), while lease agreements automatically transfer to the acquiring company, a principle expressly recognized under Article 212 of the Lebanese Code of Obligations and Contracts regarding the transfer of leasehold rights. By contrast, mandate contracts (powers of attorney) are governed by a stricter rule because of their personal nature; they generally terminate upon the dissolution of the principal legal entity unless the acquiring company expressly ratifies their continuation or the mandate is intrinsically linked to transferable rights and obligations arising from the merger transaction.

4851 Court of Cassation, First Chamber, Decision No. 120, dated July 14, 2008, Baz Collection, Issue 47, Year 2018, pp. 214–215.

4852 Head of the Execution Department in Tripoli, Decision No. 12, dated February 28, 2012, Al-Adl Magazine, Issue 2, Year 2013, p. 1044.

4853 Civil Court of Cassation, Eighth Chamber, Decision No. 62/2019, dated June 27, 2019, Legal Informatics Center at the Lebanese University <http://77.42.251.205/ViewRulePage.aspx?ID=132387&selection>

In conclusion, although a merger leads to the dissolution of the merged entity, it does not result in a contractual vacuum; rather, it leads to a repositioning of existing legal relationships within the legal estate (patrimoine) of the acquiring or newly formed company. However, despite its importance as a core mechanism for restructuring a distressed corporate entity, a merger does not exhaust all forms of institutional rescue. Certain cases may necessitate adopting alternative mechanisms that are more flexible or less drastic than a merger, justifying the transition to studying alternative legal mechanisms for corporate restructuring⁴⁸⁵⁴.

Conclusion

This study has demonstrated that mergers have evolved beyond a mere mechanism for combining companies into an effective instrument for restructuring distressed enterprises, preserving economic continuity, and balancing rescue objectives with legal certainty. Their success depends on the proper regulation of their effects on patrimony, contractual relationships, and stakeholders' rights, highlighting the need for modern legal frameworks capable of supporting institutional recovery. Accordingly, the study concludes by presenting its main findings and proposing recommendations to enhance the effectiveness of mergers as a corporate rescue tool.

First: Findings

1. Merger constitutes an effective mechanism for restructuring distressed companies by preserving the economic enterprise, ensuring business continuity, and avoiding liquidation.
2. Merger primarily operates through the universal transfer of rights, obligations, and patrimony, thereby maintaining legal and contractual continuity.
3. The comparative analysis reveals that French law provides a more developed and flexible framework for mergers, enhancing their role in corporate rescue and restructuring.
4. The effectiveness of mergers depends on both procedural validity and adequate safeguards protecting partners, creditors, and stakeholders' rights.

Second: Recommendations

1. Modernizing Lebanese merger regulations by establishing a more comprehensive framework that addresses distressed companies and strengthens mergers as a tool for institutional rescue.
2. Enhancing the protection of creditors and stakeholders by reinforcing objection mechanisms and clarifying their legal effects to balance restructuring needs with acquired rights.
3. Establishing clearer rules governing ongoing contracts and legal relationships after mergers to ensure continuity and reduce practical disputes.
4. Adopting an integrated legislative approach linking mergers with corporate governance and preventive restructuring to enable early intervention before insolvency or liquidation.
5. Promoting the use of artificial intelligence as a supportive tool in merger operations, particularly in due diligence, data analysis, risk assessment, and the identification of hidden liabilities, thereby improving the accuracy and efficiency of merger decisions.

Ultimately, merger remains more than merely a legal technique for reorganizing institutional structures; it constitutes a strategic tool for reviving economic entities and preserving their productive and social value. Accordingly, developing the legal framework governing it and strengthening its practical safeguards constitute an essential gateway for establishing a culture of institutional rescue and shifting from the logic of terminating distressed enterprises to the logic of rebuilding and sustaining them in a manner that serves the national economy and safeguards the interests of the various stakeholders involved.

⁴⁸⁵⁴ Fadlallah H, Régime Général des Sociétés (2nd edn, 2026), p 175 – 180.

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