

## СРАВНИТЕЛЬНОЕ ПРАВО

UDC 347.7, 340.5

**The effects of the public joint stock companies' conversion on partners and creditors of the company: A comparative study between the Emirati and the Jordanian laws***R. Madi*<sup>1</sup>, *M. Masn*<sup>2</sup><sup>1</sup> Al Ain University,

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**For citation:** Madi, Ramzi, Muna Masn. 2024. "The effects of the public joint stock companies' conversion on partners and creditors of the company: A comparative study between the Emirati and the Jordanian laws". *Vestnik of Saint Petersburg University. Law* 1: 235–249.  
<https://doi.org/10.21638/spbu14.2024.115>

This paper aims to investigate the concept of conversion and will discuss the effects of conversion on the partners and the company's creditors without discussing the effects of conversion for the converted company. This article compares two jurisdictions in the middle east — United Arab Emirates (UAE), and Jordan. to find out how both jurisdictions have dealt with the effects of the public joint stock companies' conversion on partners and creditors of the company. The article reached a set of findings, for example, it is not permissible for the transferred company to dissociate itself from the contracts that it had concluded before the transfer. The UAE legislator has done well when it explicitly stated that the rights of the partners or shareholders may not be violated towards the shareholders and creditors of the transferred company, holders of loan, bonds, or sukuk, and any interested party. The UAE legislative authority stipulated that the company's conversion would be contingent upon objectors relinquishing their objections. Alternatively, if the court were to issue a final judgment rejecting the objection, or if the company were to promptly settle the debt, or provide substantial guarantees for future debt repayment, the conversion would proceed. Previous studies have been based on one jurisdiction, other than this study, which compared two jurisdictions in the middle east. Also, this article examined the recent commercial companies law issued in the United Arab Emirates. In addition, this article focused on one type of company, which is the public joint stock company.  
*Keywords:* conversion, partners, creditors, public joint stock company, United Arab Emirates, Jordan.

## 1. Introduction

The United Arab Emirates (UAE) Federal Decree-Law No. 32 of 2021 on Commercial Companies<sup>1</sup> (hereinafter Federal Decree-Law No. 32) contained provisions for the conversion of companies in Art. 275 to 284, and the Jordanian Companies Law No. 22 of 1997<sup>2</sup> (hereinafter Jordanian Companies Law No. 22) and its amendments regulate in Art. 215 to 221. However, both laws did not define the concept of “conversion” in the abovementioned laws.

There have been several doctrinal definitions of conversion of companies; it's defined as: “the company changing its form that it has, and taking another form without its demise or termination. Or it is the conversion of a particular company into another type” (Saudi 1988, 131).

It was also defined as “changing the form of the company, such as changing the general partnership company into a limited partnership company, changing the partnership limited by shares into a joint stock company, or changing the limited liability company into a joint stock company, and so on” (Shafiq 1967–1968, 491).

The aforementioned definitions are incomplete because the definition of conversion as “changing the company’s form” does not include some operations that do not lead to a change in the company’s form, for example, conversions of civil companies into commercial companies by taking one of the forms of commercial companies, cannot be considered a change in the form of the company, but rather in its legal system, because the legal nature of the converted civil company has been changed (Saudi 1988, 133). In addition to the foregoing, the conversion of a public sector company into a private joint stock company cannot be considered a change in the form of the company, and the conversion of a foreign company into a national company (cross-border conversion)<sup>3</sup> is not considered a change in the form of the company, as long as its form remains the same, but rather its nationality.

Accordingly, cases of conversion can be envisaged, achieved without affecting the form of the company, where the aforementioned public sector joint stock company remains a joint stock company after the conversion, as well as foreign companies, which converse into national companies, without changing their forms.

Based on the foregoing, it is better to define conversion as “changing the legal system of the company,” because the aforementioned definition leads to the absorption of different forms of conversion; in addition, the conversion leads to the continuity of the legal personality of the company, despite the change of legal rules that control the company, and taking certain situations and procedures after the conversion process (Saudi 1988, 132–135).

Needless to say, conversion is not limited to the company only, as it is permissible to convert any institution, authority, official public body or public utility or any part of it

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<sup>1</sup> Federal Decree Law No. 32 of 2021 on Commercial Companies. Accessed February 10, 2024. <https://uaelegislation.gov.ae/en/legislations/1542/download>.

<sup>2</sup> Jordanian Companies Law No. 22 of 1997. Accessed February 10, 2024. [https://ccd.gov.jo/EBV4.0/Root\\_Storage/AR/EB\\_List\\_Page/نوناة\\_مقر\\_تاكراشلا\\_نوناة\\_1997\\_متلايدعتو\\_22\\_مقر\\_تاكراشلا\\_نوناة\\_1997\\_متلايدعتو.pdf](https://ccd.gov.jo/EBV4.0/Root_Storage/AR/EB_List_Page/نوناة_مقر_تاكراشلا_نوناة_1997_متلايدعتو_22_مقر_تاكراشلا_نوناة_1997_متلايدعتو.pdf). (In Arabian)

<sup>3</sup> For the cross-border conversion, see for example the Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions. Accessed February 10, 2024. <https://eur-lex.europa.eu/eli/dir/2019/2121/oj>.

into a public joint stock company, operating according to commercial bases (Art. 8 of the Jordanian Companies Law No. 22).

It is worth mentioning that conversion of the company, leads in general, to several implications and results of high significance, whether regarding the converted company, the partners, the shareholders or the creditors. However, this article will only discuss the implications of conversion for the partners and the company's creditors without discussing the implications of conversion for the converted company.

To clarify all of these issues, this article was divided into two sections as follows: 1) the effects of company conversion on partners; 2) the effects of conversion for the company's creditors.

## 2. Basic research

### 2.1. *The effects of company conversion on partners*

Among the effects of the conversion for the transferred company is the company's submission to the system of the new form into which it was transformed, and there is no doubt that this would lead to a change in the partner's position, especially in terms of his liability for the company's debts, where he may be exposed to liability or mitigate it according to the form transferred to (Al Sobek 2012, 561). On the other hand, UAE law within the scope of the conversion has authorized the partner who has the right to withdraw from the transferred company in specific cases<sup>4</sup>. In order to clarify all these matters in some detail, we have decided to divide this requirement into two branches as follows: 1) the extent to which partners' positions and responsibilities have changed their rights in exchange for conversion; 2) the right of the partners to object to the conversion and withdrawal from the company.

#### 2.1.1. *The extent to which the partners' positions and responsibilities have changed as well as their right in exchange for conversion*

It is beyond doubt that the conversion of companies will lead to a change in the status of partners or shareholders; as the case may be, especially in terms of liability for the company's debts, this change may lead to a tightening or mitigation of this liability, according to the form transferred to it (Al Sobek 2012, 562). Additionally, the partners or shareholders will have the right to obtain consideration for the conversion.

##### 2.1.1.1. Changing in partners' status and liabilities

If the conversion is from a company of persons — such as a partnership or an active partner in a limited partnership company — to a public shareholding company, as in UAE law, there is no doubt that the status of the partner will mitigate, this mitigation is as follows: — that the partners, after conversion to this form, will be liable for the debts of the limited company to the extent of the shares they own in them (Abu Saada 2017, 417), after

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<sup>4</sup> It is worth noting that the transformation may result in the partner's exit from the transferring company, contrary to what is required by the principle of continuity of legal personality from and the ongoing concern of the company between the partners.

they were liable for all the debts of the company in partnership before the conversion, and therefore, they are not asked about these debts in their own money if the partners' funds are paid to meet them, or if the company suffers a loss, as their liability for this is loss determined based upon the value of their shares in the company only<sup>5</sup>;

— in view of the financial nature of public shareholding companies, where the personality of the partners is not taken into account in the formation of this type of company, it is permissible for a partner in a public partnership or the active partner in a limited partnership company after its conversion into a public shareholding company that he may give up his shares in the company that is transferred to others through trading, and the shares of a partner that can be transferred to his heirs upon his death, as there is no death of one of the partners that results in the termination of the company, as is the case of a joint liability company or the death of the active partner in partnership company;

— the partner, after converting to these forms, does not acquire the status of a merchant (Abu Saada 2017, 417), and accordingly, the bankruptcy of the transferee company (public shareholding) does not entail the bankruptcy of the partner, as if the company ceases to exist after its conversion (i. e. in its new form) from paying its debts, it is not considered a cessation on the part of the partners, since they do not bear personal and joint liability for these debts, as they were before the conversion. Instead, they are liable for debts in a limited company within the limits of their shareholding in the company to which they are transferred, nor will it be their right to include their name in the title of the company, because its title is derived from the purpose for which it was established<sup>6</sup> (Abu Saada 2017, 417); additionally, they may not interfere in the management.

Accordingly, the conversion from a one-person company to a public joint stock company will make the partners are in a better status, and perhaps this mitigation affects the partners' positions after their company's conversion into the form of the public shareholding company is what justifies not requiring the collective consent of the partners to conduct its business sufficiency in it with the approval of the majority required by the articles of association only.

If the conversion from the form of a limited liability company to a form of a public joint stock company, as the case in the UAE and Jordanian legislation, there is no doubt that the partner's position does not change, as it will not be exposed in focus to be mitigated or tightened, as the liability of the partners in the limited liability company is a limited liability to the extent of their shares in the company's capital, due to the fact that the only guarantee to the creditors of this company is their liability for the company and not of the partners, just as the partner in this company does not acquire the capacity of a merchant if he did not have this capacity before, and the bankruptcy of the company does not lead to his bankruptcy. In this way, it is approaching the financial companies, which are represented in the public shareholding companies and private companies' contributions.

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<sup>5</sup> However, this does not prevent the company from recourse against the shareholder for his own funds, in order to fulfill its rights if the shareholder does not pay the value of his shares or the remainder of which, and the proceeds from the sale of his shares were not sufficient to pay the company's dues according to Art. 219 of Federal Decree-Law No. 32.

<sup>6</sup> However, the company may derive its name from the names of the shareholders if the company is incorporated to invest a patent registered in the name of that person, also as if a company for manufacturing a certain medicine, a person has found it and registered it in its name, or founded for investing a store or take the name of this store for it.

Exceptionally, we find that it is possible to ask the partner in the limited liability company personally for liability for the company's obligations in some cases, which are:

— if the director or managers of the company violated the provisions relating to the formation of the name of the company with limited liability, in implementation of the text of Art. 72 of the Federal Decree-Law No. 32;

— he is also liable for joint liability when the number of partners increases at any time after the establishment of the company in excess of the prescribed limit is fifty partners, with the exception of partners who are proven to be unaware of this increase, or if they object to it, pursuant to Art. 75 of the Federal Decree-Law No. 32;

— he shall also be jointly liable for the payment of the difference in the value of the contributions in kind; if it is proven that, there is an increase in the value of the shares or estimation of these shares in implementation of Art. 78 of the Federal Decree-Law No. 32.

If the conversion from a public shareholding company to the form of a limited liability company as under Jordanian law, this will expose the partner's position to stress, because after he owns a share or quotas are negotiable in easy and fast ways, without depending on the acceptance of the company or the rest of the partners in the company and without restricting this trading with any restrictions, as it is in the limited liability company, as subjugation of assigning the share to the right of recovery from the rest of the partners (Abu Saada 2017, 417)<sup>7</sup>, this is in addition to tightening his liability in the company transferred to it (the limited liability company), which will become a partnership in case of exaggeration in evaluating in-kind shares.

In the event of the conversion from a public joint stock company to a private joint stock company or vice versa, according to the UAE and Jordanian laws, we find that there is no change in the status of partners, where the liability of the partners in the transferee company, whether the conversion from a public joint stock company to a private joint stock company, or vice versa, is limited to the extent of their shares in the company because the only guarantee to the creditors of this company, it is the liability of the company and not of the partners, just as the partner in it does not acquire a capacity of a trader just as it was before the conversion.

### 2.1.1.2. The right of partners or shareholders in exchange for conversion

The conversion does not entail the expiration of the company and the demise of its legal personality, which leads to the extinction of the projects that the company was formed to achieve, but these projects remain continuous, and the new company receives them as an in-kind share, and the Emirati legislator must grant each partner or contributor the right to regain his shares. The legislator resorts to this mean to balance the possibility of waiving the share, while preserving personal consideration in the company, and then the law permitted him to waive his share, but on the other hand, the aspect of personal consideration was not completely neglected, but rather, it subjected the assignment of shares to an important restriction (Art. 283/1 of Federal Decree-Law No. 32).

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<sup>7</sup> The legislator resorts to this way to balance between the possibility of waiver of shares and preserve the legal personality of the company and thus, it was legalized to waiver of the shares and subjected the waiver of shares to an important restriction which is the right of partners to restore their funds. For more detail on the right to restore funds, its scope and procedures.

It is the right of the partners to redeem the shares of a shareholder, in the event of conversion, has the right to obtain a number of shares or quotas in the company that was made to transfer as equivalent to the value of the shares or quotas he had in it before the transfer, and in the event that the value of a share is the partner or his shares are less than the minimum stipulated for the nominal value of the share or quotas and must be supplemented in cash. Otherwise, he shall be considered withdrawn from the company, and the value of his share or quotas shall be paid according to their market or book value on the date of conversion, whichever is greater.

Since the conversion of companies entails that the partners or shareholders of the transformed company obtain a number of shares of the new company instead of their shares or quotas in the transformed company, it has established a trend in jurisprudence regarding the conversion of a public shareholding company is that the shares to be distributed must be its shareholders who are of the same quality as the shares they owned in the company before the conversion.

They shall also be of the same number unless the evaluation of the company's assets and property leads to a reduction in this number, and further unless otherwise agreed.

Based upon the foregoing, in the event that the share of the public joint stock company before conversion is of one type and has a new value for the new company to which, the transferee is required to issue and distribute one type of shares to the shareholders are each in proportion to the rights he had in the public shareholding company before the conversion. The shares of the public shareholding company before the conversion were divided in terms of rights and benefits into several types, or divided by value into several classes; the shareholders of this company must receive a number of shares that entitle them to the same rights that were conferred upon them by their shares in the public shareholding company before conversion (Al-Shawarbi 1991, 32).

This means that in the event that a public shareholding company prefers the rights of its shareholders to its assets, then it is a group of shareholders that may obtain shares from the transferee company, which has a right of preference on the shares held by the new shareholders of this company. In the event that the company system is not compatible with the public shareholding before conversion includes, upon its incorporation, a text was authorizing the issuance of preferred shares. The company may amend its articles of incorporation by presenting it to the public assembly to issue preferred shares to be distributed among the old shareholders of the public shareholding company before the conversion was granted the same privileges that were scheduled before the conversion process.

### *2.1.2. The right of the partners to object to the conversion and withdraw from the company*

The principle is that in the event that the shareholders or partners in the company do not object during the date that specified by the legislator in the event that a partner objects to the conversion decision, as this is considered an implicit approval of all shareholders or the partners in the partnership, as the case may be, upon the conversion (Art. 280/5 of Federal Decree-Law No. 32). However, the UAE legislator has authorized the partners or the shareholders to withdraw from the company in the event of an objection to the conversion decision, in compliance with the principle of the authority of the will upon which the company contract is based, as it is one of the consensual contracts.

The UAE legislator stated in the Federal Decree-Law No. 32 of 2021. It is a text that allows partners or shareholders, in case of conversion, to withdraw from the company, in accordance with the Art. 280 of this Decree-Law, partners or shareholders who object to a decision may be made to withdraw from the company and recover the value of the shares or assets, as the case may be, with conditions that is provided for in this Article.

Where the UAE legislator stipulated in the first paragraph of Art. 280 mentioned above that: “A partner or shareholder who objects to the conversion decision may withdraw from the Company and recover the value of his interests or shares, by virtue of an application filed in writing with the Company within fifteen days from the date of completion of the publication of the conversion decision...” The Jordanian legislator also approved in Art. 219/b of the Companies Law No. 22 for the year 1997 — that any concerned entity — stakeholder, partner or creditor of the company — has the right to object to the Minister the transformation decision within thirty days from the date of publishing the last transformation announcement, indicating therein the reasons and justifications for the objection. However, it did not regulate the withdrawal of the objecting partner or shareholder as the case may be, from the transferred company.

It is clear from Art. 280 of the aforementioned decree-law that in the event that the rule is: The partner is committed to remain in the company throughout its term as long as its duration is specified. This is the rule, whose application is not affected by the conversion, as it does not entail the termination of the company, but it is an exception to this rule, the conversion may entail the withdrawal or exit the partner from the transferred company.

This right to withdraw from the company is clear from the text unless only in one case, which is: objecting to the decision to convert the company, and it is noted that the withdrawal mentioned in this case is a right provided that the objecting partner or shareholder states the subject of his objection and the reasons on which it is based, and the damage he claims that the conversion has inflicted on him specifically (Art. 280/2 of Federal Decree-Law No. 32). In addition, the text in this manner does not mean but a legal application to protect the minority — partners or shareholders — who do not wish to convert from the control of the majority wishing to conduct it.

Finally, it is noted that the UAE legislator refers, regarding the conditions of withdrawal, to the aforementioned Article of the Federal Decree-Law regulating this right granted to partners or shareholders who object to the conversion decision, according to which the partners or shareholders who objected to the conversion decision may request.

As the case may be, upon written request their share or quotas and the withdrawing from the company and obtain a refund from the company within fifteen days from the date of completing the publication of the conversion decision, while the Jordanian legislator has not decided the paid value of the shares or quotas, as the case may be, to the partners or shareholders who have expressed their objection to the decision to convert the company.

It is worth noting that the UAE legislator has authorized the objector to resort to the judiciary to decide on a matter.

Objection to the conversion decision, in the event that the company is unable to settle the objections made by submitting their objection to it (to the Court) by the shareholders, partners, creditors of the company, holders of loan bonds or the *sukuk* or anyone with an interest in objecting within a maximum period of thirty days from the date of the ministry

or the authority and the competent authority's receipt of the objection, as the case may be, with a copy of the objection (Art. 280/3 of Federal Decree-Law No. 32), and the objector may not resort to the judiciary only after the expiry of the specified period.

The Jordanian legislator also permitted the objector to resort to the judiciary to decide on the issue of the objection in the event that the submitted objections, or either of them, are not settled within thirty days from the date of the last submission, whereby each of the objectors has the right to appeal the minister's decision to the High Court of Justice within thirty days of the expiry of that period (Art. 219 of the Jordanian Companies Law No. 22). In all cases, the Emirati legislator made the conversion decision suspended, unless the objector waives his objection, or the court decides otherwise, that it rejects the objection with a final ruling, but the Jordanian legislator did not make the decision to convert dependent on Appeal before the court unless the court decides otherwise (Art. 280/4 of Federal Decree-Law No. 32).

As for estimating the value of shares or quotas, the aforementioned Art. 280 of the Decree-Law of the Federal Law indicates how to estimate the value of shares or quotas owned by shareholders or partners as the case may be. In all cases, the value of these shares or quotas is estimated according to their market or book value on the conversion date, whichever is greater, and we conclude from this that in the event that the market value of the shares or quotas is greater than the book value at the time of conversion, it is estimated according to the market value and not the book value, and vice versa, in the interest of the shareholder or partner withdrawing from the company because of his objection to the conversion of the company decision.

In our opinion, from a practical point of view, the shift of the scope in which the law permitted withdrawal from the company does not, in fact, entail an increase in the partner's obligations, because the conversion in this scope is either carried out in the form of the private company shareholding to the form of a public shareholding company or vice versa for the UAE law, or from a company limited by shares, into a limited liability company, or a private joint stock company or vice versa as under Jordanian law.

Nevertheless, in the event of the conversion from the form of partnerships of persons, such as a public partnership and a limited partnership company, to a public joint stock company, as in UAE law, necessarily entails an increase in the partner's obligations towards the company and its creditors, as previously stated.

## *2.2. The effects of conversion for the company's creditors*

The company, during its validity before the conversion, deals with others, as it enters into transactions. Therefore, it is a creditor and a debtor, it has rights with others and has obligations towards them, and here a group of questions is raised in the event that the company was transformed and it had debts in its old form, that is, before the conversion, owed to others. These questions are: What is the outcome of these debts? What is the effect of this conversion on creditors? Are these creditors harmed because of the conversion or increase their guarantees? Will the debt remain the same after making the conversion, or does the conversion result in the production of a new debt?

On the other hand, in the event that there is a guarantee provided to the company's creditors for a debt on it, in order to guarantee this debt that was to be paid by the company's custody, whether it was submitted by one of the partners, or by the director of the

company or by a foreigner from the company (Saudi 1988, 450; Al Sobek 2012, 578). Does the conversion of the sponsored company lead to the termination of the guarantee, or does the guarantee remain as it is despite the conversion?

To clarify these issues in some detail, we will divide these requirements into two sections as follows: 1) the effect of the conversion on creditors; 2) the extent of the validity of the guarantee after the conversion.

### *2.2.1. The effect of the conversion on creditors*

As illustrated above, the UAE legislator has given the partner or shareholder the right to object to the conversion decision, the right to withdraw from the company according to the conditions and procedures previously mentioned. In the event that the conversion process provides partners or shareholders in the transferred company special protection in this way, it is unreasonable that this may harm the creditors of this company, but there must also be protection for others dealing with this company to be converted (Al Sobek 2012, 604).

On the other hand, based upon the continuity of the legal personality of the transferred company and its non-expiration. Therefore, the on-going concern of its financial liability includes what it owes and what is owed to it. The transferred company must bear all the debts that arose in its liability when it took the previous form.

In the event that we peruse the effects of the conversion for creditors in UAE law, we will find that the UAE legislator has dealt with the rights of creditors in the event of conversion, and has been keen to confirm the rule of protection other than those prescribed in the event of conversion, and the inviolability of the rights of its creditors, which is represented in the non-prejudice to the rights of creditors as stipulated in Art. 283/2 of the Federal Decree-Law No. 32 of 2021 as: it stipulates: “After its conversion and re-registration under the new legal form, the Company shall maintain its legal personality and its rights and obligations prior to such conversion. Such conversion shall not discharge the joint partners from the obligations of the Company prior to the conversion unless the creditors agree thereto in writing”.

The UAE legislator has done well when it expressly stipulates in the aforementioned article that there is no violation of the rights of creditors, so that the interests of third parties do not suffer any damage because of this procedure, as well as when the creditors are permitted — through Art. 280 mentioned above of the same decree — to object to the decision of conversion where the legislator has made this decision suspended unless the creditors waive their opposition or the court decides to rejecting it by a final judgment, or if the company pays the debt in the event that it is immediate, or provide sufficient guarantees for the fulfilment later (Art. 280/2 of Federal Decree-Law No. 32).

In application of the principle of not prejudice to the rights of creditors, the following matters must be clarified.

First: In the event that the conversion from the form of a company of persons is a “partnership” or a partnership company to a public shareholding company.

It is known that the liability of the joint partners in partnerships is a joint liability that is absolute and unlimited, and therefore, in the event that the conversion into a company is a form of private company “Partnership” or a partnership company to the form of a public joint stock company, there is no doubt that such a conversion will affect the rights

of creditors, due to the mitigation of the partners' liability for the company's debts because of this conversion, where the partners will become limited liability for the company's debts to the extent of their shares, after they were jointly liable for all the company's debts before the conversion (Al Sobek 2012, 591).

Here, we must differentiate between the debt that arose on the joint liability company or the limited partnership company before conversion, i. e. the company still takes the form of public companies before it becomes a public joint stock company, and between the debt that arose upon it after the conversion, or in other words, we must differentiate between the debt that grew up before the conversion, and the debt that grew up after conversion.

With regard to the *first hypothesis*: i. e. the debt that arose on the joint liability company or the limited partnership company before conversion:

The joint partners in the company shall be liable for the payment of these debts, and thus it shall remain their liability for its performance as personally and in joint liability, without being able to pay the creditor's money, the creditor may recourse to the court on the basis that this joint liability did not exist under the new form that the company has taken it, and it is the form of a public shareholding company, and in this case there is no effect on the position of the partners towards creditors, as this shall not lead to a dilution of the partners' position or liability, and accordingly it is not allowed for a partner to maintain, vis-à-vis creditors, that a change has occurred in his legal position because of this conversion, otherwise such conversion is a means of evading the effects of joint liability; the joint liability is a guarantee for the creditors of the partnership company, and they cannot be deprived of it by such a conversion (Fahim 1986, 189).

With regard to the *second hypothesis*: i. e. the debt that arose from the partnership company or the limited partnership company after its conversion into a public shareholding company:

The lesson here is the time of the emergence of the debt, and therefore, this creditor does not have the right to adhere to the status of the partner in the partnership before the conversion, but the partner has the right to hold on changing his legal status because of the conversion (Al Sobek 2012, 597).

Therefore, the creditors whose debts arose after the company was transformed into a public joint stock company cannot claim his dues from the partners who owe their debt to the company based on their liability, which before the conversion was a liability partnership, that is absolute and unlimited, as long as this debt has arisen after the conversion to the new form, and accordingly the creditors cannot have the right to recourse against the partners in the new form they transferred to it on the basis that he is liable and that this liability no longer exists against these partners before the conversion into a joint partnership because of changing the form the company into a public shareholding company. Instead, they are liable for the company's debts in a limited liability or partnership to the extent of their shares.

Second: In the event that the conversion from a public shareholding company to a partnership limited by shares or a limited liability company or a private joint stock company or vice versa.

In these cases, the situation is not different for the partner, and therefore, the transferred company bears the debt in a limited liability within the limits of their shares or quotas according to the form it has been transformed into, because there is no tightening

the partner's liability because of this conversion. In limited liability companies, creditors are entitled to a guarantee except for the company itself, without the personal debts of the partners, on condition that they have paid their dues according to their shares in full upon incorporation of the company (Abu Saada 2017, 402)<sup>8</sup>, and they did not commit acts that affect the public guarantee of the creditors.

However, as an exception to this rule, the partners are liable personally in their own money for the debts of the company, regardless of the amount of their shares, in two cases: 1) the partners committing fraud and deception towards the company, or seizing its funds, selling them for their own account and requesting the company's liquidation and dissolution (Abu Saada 2017, 403); 2) in the event that the partners guarantee the company's creditors to pay the debts and loans, then they are asked to pay based on the sponsorship contract and not as partners (Abu Saada 2017, 403)<sup>9</sup>.

In addition to the partners' liability towards the company and third parties in the two previous cases, they are claimed and guarantee every damage resulting from their retention of money from the company's funds, and they are obligated to return it, as compensation for the damage (Abu Saada 2017, 403)<sup>10</sup>.

The same applies to private shareholding companies, where the shareholder's commitment to the company is limited to payment of the value of his shares in the company; In the event that the shareholder gives his full share to the company, he has no liability where the company is liable for the debts of its creditors, and in the event that he does not provide his share or the remainder of it, he is only liable for the limits of the shares that he owns without recourse to his own funds in his relationship with the company's creditors, and in the event that the company suffers a loss, his liability for these losses is determined by the value of his shares, that is, the shareholder in the private shareholding companies only required to pay the extent of his share in the capital (Abu Saada 2017, 417).

### *2.2.2. The extent of the validity of the guarantee after the conversion*

A surety is a contract whereby a person guarantees the performance of an obligation, by undertaking to the creditor this obligation in the event that the debtor does not fulfil it himself, as the liability of a person who is the guarantor includes the liability of a debtor

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<sup>8</sup> See: Dubai Court of Cassation, Appeal No. 32/2010, dated 03.04.2011, Real Estate Appeal, where the Court ruled that: "It is decided in the judiciary of this court is that a partner in a limited liability company is not liable for its debts except to the extent of his share in the capital paid completely upon establishment of the company. The creditors are entitled to a guarantee except from the company itself has its own legal personality without the personal liability of the partners, and that as long as the partners have paid their shares in the company without going beyond the estimation of the value of the shares in kind, it is not permissible to question them after that, and the creditors are not allowed to make any claim to them regarding the company's debts". Hereinafter for Courts see: *Qistas*. Accessed February 10, 2024. <https://qistas.com/en>.

<sup>9</sup> Where the partners are claimed according to the manager's actions that fall within the scope of his competencies and within the limits of their shares that the partners owe the company's debts unless they guarantee the company's debts, and Dubai Court of Cassation has ruled that: "In the event that the partners in the limited company are not liable except to the extent of their shares in its capital, except that they and other guarantors are obligated to pay the debts and loans that they borrow by guaranteeing them under the surety contract that they conclude with the creditor, where the basis of their liability is the surety contract and not their relationship with the company as partners in it". See: Appeal No. 241 of 98, session 18.10.1998.

<sup>10</sup> See: Dubai Court of Cassation, Appeal No. 239 of 2007. Session 23.06.2008, Commercial Appeal.

in the implementation of his obligation<sup>11</sup>. As a condition of guardianship, the guarantor shall be qualified to it<sup>12</sup>.

The basic principle in the guarantee is that it responds to an existing and specified debt at the time of its submission, and this is the normal guarantee, except that there are other forms of guarantee that contradict this principle, which can be given in a future debt or potential debt, and for an unlimited period, and this is the public warranty. This is what the banks provide from the credits of banks, and in current accounts, where in this form it is agreed that the guarantor is bound by a guarantee of all amounts owed by the company from opening the credit or the account balance, and this is the common form for surety (Al Sobek 2012, 603; Fahim 1986, 148; Saudi 1988, 465).

Accordingly, in the event that the company is in its first form a debtor, and there is a guarantee presented to guarantee the debt that arose in the company, the question that arises here is:

Does the conversion of the guaranteed company, or the conversion of the guarantor entail termination of the guarantee, or does it remain in place despite the fact that the guarantor or guaranteed company has converted? On the other hand, in the words, will this guarantee or this guarantor guarantees the company's obligations after the transfer of any of the sponsoring or sponsored company?

We have already mentioned that the conversion does not affect the legal personality of the transferred company, meaning that it does not lead to its termination and the establishment of a new legal personality, but the legal personality of the transferred company shall remain in addition to the financial liability as well.

Accordingly, there is no change in the person of the debtor, no renewal of the original guaranteed obligation, and there is no change in the person of the debtor and creditors maintain the status of guarantees that was given to them before the conversion, especially the value of the guarantee given by the company's managers<sup>13</sup>.

Considering that the companies' conversion does not produce a new legal personality, the value of the guarantee always plays its role.

The guarantor remains bound by the guarantee, and he cannot get rid of it by holding on to its expiry due to the conversion, as the transfer of the sponsored company does not lead to the termination of the guarantee<sup>14</sup>.

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<sup>11</sup> See: Art. 1056 of the UAE Civil Transactions Law (Accessed February 10, 2024. <https://legaladviceme.com/legislation/126/uae-federal-law-5-of-1985-on-civil-transactions-law-of-united-arab-emirates>), corresponding to Art. 950 of the Jordanian Civil Law (Accessed February 10, 2024. <https://www.wipo.int/edocs/lexdocs/laws/ar/jo/jo019ar.pdf> (In Arabian)).

<sup>12</sup> See: Art. 1058 of the UAE Civil Transactions Law, corresponding to Art. 952 of the Jordanian Civil Law.

<sup>13</sup> The Jordanian Court of Cassation confirmed this ruling, that "it is evident from the papers that by electing <...> as an authorized person. By signing on behalf of the company for the period from 24.10.2015 to 24.10.2019 and on a date later than the date of transferred the company to the Companies Registry was suspended under Book No. <...> date 02.11.2020), and accordingly, the signature of the aforementioned shall be on the special agency deed as an authorized representative of the company on the date of signing the agency on 10.06.2018 in accordance with the provisions of the law, and since the Tax Appeal Court took another approach, its decision submitting it to cassation..." (Judgment No. 469 of 2021, Court of Cassation in its legal capacity, issued on 11.07.2021).

<sup>14</sup> This is what the Jordanian Court of Cassation ruled by saying that "it was evident from the papers that the defendant had obtained a loan under a contract for flexible Financing No. 34/86/11 dated 01.04.1986 from Refco Insurance Company, which was transferred to the Middle East Investment Bank Company, the name was changed to Société Générale Bank, and the financing contract provided for granting

Accordingly, in the event that the guarantee provider or the guarantor is also a company, so the conversion of the guarantor or guarantor company also does not affect the guarantee, but instead, it remains existing despite the conversion by the company providing the guarantee (Abu Saada 2017, 403)<sup>15</sup>.

Whereas it is from the banking customs that the company, in the open credit, issues commercial papers in favour of the bank for the value of the debts arising from the credit, and for the bank to obtain the signature of the guarantor on these papers as a backup guarantor, such a habit is one of the means by which banks are keen to make payment insurance, and therefore, it is not sufficient by itself to consider the guarantee expired, but this is considered a kind of guarantee to be taken by the bank in order to preserve its debts before the company as a discretionary authority to consider that the guarantor's signature on the commercial paper is merely a confirmation of his guarantee and undertaking to pay the company's debts arising from the credit secured by the guarantee (Fahim 1986, 172; Saudi 1988, 467).

To sum up, it is taken into account that the guarantor has the right to recourse to the unlimited guarantee at any time before the debt is established. Nevertheless, this return hardly benefits the guarantor, because in the event that he is a partner in the company or remained as a partner in it after the conversion, he may fear going back on the guarantee so as not to harm the company's credit (Saudi 1988,466; Fahim 1986, 173).

Here it becomes evident to us that the position of the guarantor in the public partnership or unlimited guarantee needs protection when the company is in the process of conversion, but providing this protection is not a retreat from the principle of continuity of legal personality of the transferred company, but by reference to the public rules of guarantee to search for a way to save it from expiry in case of conversion, so that the guarantor is not harmed because of this Fahim 1986, 173; Saudi 1988, 468).

Based upon the aforementioned, we believe that the transfer of the guarantor company, or the transfer of the guaranteed company does not result in the termination of the guarantee where it remains in place despite the fact that the sponsoring or sponsored company has converted, and there is no way for the guarantee to expire in any case unless only by reference to the general rules of guarantee, in view of the reasons that lead to the expiry thereof.

### 3. Conclusions

At the end of the research, we reached a number of results and recommendations, with regard to the effects of the conversion of the public shareholding companies.

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the defendant a loan. The plaintiff claims that since it is established that the defendant owes the plaintiff and the defendant failed to pay the installments and interest, and the amount claimed is owed. According to the loan contract, while the defendant claims that it has not been paid, it follows that the litigation exists between the plaintiff and the defendant where that what was stated for this reason necessitates a response" (Judgment No. 3983 of 2021, Court of Cassation in its legal capacity, issued on 26.09.2021).

<sup>15</sup> Whereas the partners are not bound by the company's debts unless they guarantee the company's debts, and Dubai Court of Cassation has ruled — that "the partners in the limited liability companies are not required to pay its debts except to the extent of their shares in its capital, except that they and other guarantors are obligated to pay the debts and loans that the company borrowed with their guarantee under the surety contract that they undertake payment to the creditor, where the basis of their liability is the surety contract and not their relationship with the company not as partners in it". See: Appeal No. 241 of 98 session dated 18.10.1998.

### ***3.1. Results***

It is not permissible for the transferred company to dissociate itself from the contracts that it had concluded before the transfer. Instead, these contracts shall remain existing and ongoing, and all that is required in this case is to replace the name of the transferred company by the name of the transferee company as one of the parties to these contracts, except for this formal procedure, all terms of these contracts remain unchanged.

The UAE legislator has done well when it explicitly stated that the rights of the partners or shareholders may not be violated towards the shareholders and creditors of the transferred company, holders of loan, bonds, or *sukuk*, and any interested party whereby the interests of any of these people are not exposed to any damage because of the conversion, as the Legislator permitted all of them to object to the conversion decision, in the event that this objection is justified.

The UAE legislator made the decision to convert the company conditional on the objectors waiving their objection or in case the court shall rule to reject it by a final judgment, or the company shall pay the debt in the event that it is urgent, or submit sufficient guarantees to meet its debt in the future. Meanwhile, the Jordanian legislator did not make the decision to convert the company depending on the Appeal filed before the court unless the court decides otherwise.

The research reveals the fact that the UAE legislator, in confirmation of the protection of the rights of partners, has granted partners or shareholders — in addition to the right to object to the conversion decision — the right to withdraw from the company and recover the value of the shares or quotas, in compliance with the principle of dominion of will, upon which company's articles of association is based, while the Jordanian legislator did not stipulate the right of the partner or the shareholder who objects to the conversion decision to withdraw from the company.

It was revealed by the research that the conversion of the guarantor company, or the conversion of the guaranteed company does not result in the termination of the guarantee, as it remains in place despite the conversion of any of its parties. The guarantor remains bound by the guarantee, and cannot get rid of it by adherence to its expiry due to the conversion. There is no way to terminate the guarantee in this case except by referring to the general rules of guarantee, in consideration of the reasons that lead to the expiration of the warranty.

### ***3.2. Recommendations***

The UAE legislator has legalized in all cases that the partner or shareholder who objects to the conversion decision to withdraw from the company and recover the value of his share or quotas, in compliance with the principle of authority of free will, based upon which the company articles of association is established as it is a consensual contract, while the Jordanian legislator did not stipulate that the partner or shareholder who objects to the conversion decision has the right to withdraw from the company, and accordingly we recommend that the Jordanian legislator shall necessarily stipulate the right of the partner or shareholder who objects to the decision of conversion to file an application to withdraw from the company.

It was evidenced by this research that the UAE legislator has made the decision to convert the company dependent — in the case of objecting to it — on the will of partners or creditors, unless the objectors drop their objection or if the court orders a refusal of this objection pursuant to an arbitral final judgment, or if the company pays the debt in the event that it is urgent, or provide sufficient guarantee to pay it in the future. Meanwhile, the Jordanian legislator had a different position, as it did not make the conversion decision dependent on filing an Appeal to the court unless the court decides otherwise. In this regard, we recommend that the Jordanian legislator should follow the path of the Emirati Legislator and make the conversion decision suspended until the court decides on the objection submitted to it pursuant to a final judgment, in order to preserve the rights of partners and third parties.

## References

- Abu Saada, Mustafa A. 2017. *UAE Commercial Law in accordance with the provisions of the Federal Law No. 2 of March 2015 Concerning the Commercial Companies*. Sharjah, Brighter Horizon Publ. (In Arabic)
- Al Sobek, Mustafa M. H. 2012. *The legal regulation for converting the companies: A comparative study*. Alexandria, Dar Al Wafaa Legal Bookshop. (In Arabic)
- Al-Shawarbi, Abdel Hamid H. 1991. *Encyclopedia of commercial companies, companies of persons, money and investment, knowledge foundation*. Alexandria, Monsha'at Al Ma'aref. (In Arabic)
- Fahim, Morad M. 1986. *Conversion of companies*. Alexandria, Monsha'at Al Ma'aref. (In Arabic)
- Saudi, Mohammed T. 1988. *Changing the legal form of the limited liability companies*. Cairo, Segel Al Arab Printing Press. (In Arabic)
- Shafiq, Mohsen. 1967–1968. *Summary in commercial law*. In 2 parts, part 1. Cairo, Dar Al-Nahda Al-Arabiya. (In Arabic)

Received: June 11, 2022  
Accepted: November 2, 2023

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