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Legal Conditioning of Public Offers to Buy Shares

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Abstract

Public shares purchase offerings are made by the person publicly notifies the shareholders of the target company of the acquisition that he has a desire to acquire the shares they own in the company at a specified price in cash or by exchanging shares for shares, note that these public offers are made from shares that form part of the capital and gives the right to vote on the decisions issued by the company's board of directors. This means that the public shares purchase offerings is the acquisition and control over the board of directors of a particular company and the decisions it issues.

Keywords: *Public Shares, Shareholders, Companies, Capital.*

Introduction

Companies are divided into small companies and large companies from the perspective of the capital size of these companies and their presence in the market, where all companies seek to take over the market and achieve their economic gains and abundant profit, and that calls for the exclusion of competing companies. Facing this situation in the market, small companies either surrender and declare their bankruptcy before the large and giant companies or prove their existence by searching for ways to control the market, hence the idea of economic blocs was present, and this aims at achieving economic integration among joint activities.

There are two types of public offerings; the first type is the public offering to acquire the shares of a particular company, while the second type is the public offering of sale, and our study will discuss the first type of public offering.

The importance of the study is evident by looking at the economic entities, we find that public shares purchase offering and taking over the company's board of directors included all commercial activities through companies making deals that achieve cooperation to reap economic gains and enhance their ability to compete with other companies in the market.

The problem of the research is that the purchase offerings are submitted by people who do not seek to invest their money in the long term, but merely speculate by buying the shares in question, waiting a little while and then selling them to achieve a quick profit, and this affects the target company, which requires protecting the minority of shareholders in the target company.

The methodology used in this study will be a comparison among the provisions of the Egyptian, Kuwaiti and Iraqi laws regarding the subject of the research, as well as the provisions of the implementing regulations and directives of the laws mentioned above.

The Concept of Public Shares Purchase Offerings

The emergence of public shares purchase offerings comes down to the desire of legal, financial and economic experts in European countries to avoid the risks that result from the process of aggregating the shares of a company by purchasing them from the stock market. Therefore, we will divide this topic into

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two themes, in the first theme we discuss the nature of public shares purchase offerings, and in the second theme we discuss the legal characterization of public shares purchase offerings.

The Definition of Public Shares Purchase Offerings

The Egyptian Capital Market Law No. 95 of 1992 did not define public shares purchase offerings, but the executive regulations of the aforementioned law defined it as "the purchase offering is the offering presented to the shareholder subject of the offer, whether it is in exchange for cash purchase or exchange for other securities or a mixed offer, and whether it was a compulsory or optional offering" (Article 326 of the Executive Regulations of the Capital Market Law No. 95 of 1992).

As for the Iraqi law, it did not define public shares purchase offerings and did not regulate this process through legislative texts, but this does not mean that it did not define this process, as it referred to it in some provisions and called it acquisition, for example, the disclosure regulations in the Iraq Stock Exchange stipulated that "If the listed company owns more than 5% of the capital of another company, the annual financial statements must be issued in a unified manner in addition to the company's own statements".

Likewise, in Kuwaiti law, acquisition is defined as "the offer, attempt, or request to own all the shares of a listed company or all the shares of any class or classes within a listed company, other than the shares owned by the offeror or its affiliated or allied parties on the date of the submission of the offering" (Article 71/1 of Law No. 7 of 2010, and Article 247/1 of the Executive Regulations of Law No. 7 of 2010).

Law jurists have defined public shares purchase offerings as "an irrevocable pledge addressed to shareholders in a company whose shares are traded in the stock market to purchase a quantity of shares owned by them at a specified price, often higher than the stock market price, or in exchange for giving them alternative shares) (Mu'min, 2009).

Others defined it as "a process by which a natural or legal person notifies the shareholders of a company by proclaiming its desire to acquire the shares they own in return for a price paid in cash or by exchanging shares, whenever these securities are issued by companies listed in the stock market or companies that have issued securities through a public offering or through a public introduction, even if it is not listed on the stock market) (Al-Hamdani, 2018).

Others defined it as "a legal mechanism that allows a specific project to increase its financial share in the market of a particular activity, by acquiring part of the capital of projects operating in the same activity, and this is done through public shares purchase offerings of these companies) (Abu Saleh, 2016) and (Abdullatif, 2014).

On our part, we define public shares purchase offerings as "a notification issued by the person wishing to buy shares of a specific company to the shareholder of his desire to buy these shares listed in the stock market, often at a price higher than the stock market or exchanging them for alternative shares).

The Importance of Public Shares Purchase Offerings

Activating the stock market: The public shares purchase offerings of a company whose shares were issued in public subscription and they are listed in the stock market or not listed in the stock market, leads to the revitalization of the stock market to increase the supply and demand for the shares of this company.

Preventing stock price manipulation: Since public offerings enjoy the disclosure of the legal and economic information of the company, as well as the requirement of equality among all shareholders wishing to sell, this narrows the limit on speculators who manipulate the prices of securities in the market, and those wishing to speculate only have to submit a competing offer during the validity period of the offer (Raghib, 2006).

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Entering a new market: If a particular company wants to enter new markets, its first option is to search for a company with similar activity, and it tries to acquire it, and then it has entered the market through the most direct routes, and even if the cost has increased somewhat, all what the companies that follow this policy will think is to enter the market as soon as possible, and they do not care if the cost increases since their choice of the acquired company is carefully studied, because this guarantees them a new market, where they can double their sales, as well as if these markets were characterized by increased demand for the products of this acquiring company (Al-Hamdani, 2018).

Restructuring the capital of the company: The acquisition may be due to organizational considerations related to restructuring, as companies or large groups tend to sell and dispose of subsidiaries or assets of activities not related to the original activity of these groups, thus assets or companies belonging to giant companies are acquired by small companies (Siri El-Din, 2013).

Protecting minority shareholders:"A person who is interested in the shares of a specific company may not purchase during his offer for the purpose of acquiring the target company except through a public offering expressed in his positive affirmation. If the person interested in obtaining the shares of the target company outside the framework of this offer and during the validity of the offer period, he is obligated to give the salable shareholders an increase in the purchase price in order to achieve equality among the shareholders participating in the public offering" (Article 5-2-11 of the General Regulations of the CMF in France).The content of this Article was included in Article 61 bis/2 of the executive regulations of the Egyptian Capital Law. "shareholders who did not participate in the public offering after the expiry of its term are allowed to withdraw from the company with appropriate conditions in order to preserve their rights after changing the capital distribution structure and replacing the members of the board of directors of the old company" (Article 5-6-1 of the CMF General Regulations in France.)

The acquisition of the board of directors of companies through public shares purchase offering eliminates the monopolies that have a serious impact on the state's economy.

Public shares purchase offerings provide the opportunity for companies to gather and concentrate as an entry point to benefit from the advanced technology that is not available in the company targeted for acquisition through their public shares purchase offering (Fathi, without a year of publication).

Achieving control while remaining in the target company: Achieving control over the company is a major objective of acquisition and ownership for the person wishing to purchase, for his affirmative response allows him to re-form the company's board of directors and control the voting in the general assembly without sacrificing the independent legal personality of the target company, and its continuity is based on practicing the purpose for which it was founded or controlling the financial and industrial policy of the company to be acquired. This behavior is distinguished from other methods of achieving control, such as merging or buying shops, by the company to be acquired continues to enjoy its legal personality and financial liability, and it maintains its assets, liabilities and opponents in addition to its workers, which provides confidence for workers and creditors who fear in other cases controlling and sacrificing their interests, as the company retains its nationality and is subject to the provisions of national law, which reduces the harmful effects and national opposition to foreign investments (Raghib, 2006).

The Legal Characterization of Public Shares Purchase Offerings, Its Types and Conditions.

In this theme, we will discuss the legal characterization and types of public shares purchase offerings, as follows:

First: The legal characterization of public shares purchase offerings

The public shares purchase offerings are considered positive, because they include a firm assertion from the offerors to conclude the contract when it is accepted by the shareholders of the company to be acquired. This adaptation can also be given in the English Companies Law and French Law for Public Shares Purchase Offerings (Fathi, without year of publication) because the AMF Regulation, the City Code Rules

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and the regulations of the English Companies Law, all of them obligate the public offeror to abide by what is stated in their offering towards the shareholders of the company to be acquired, which means that the submission of public offerings has a firm and final will on the part of the offerors to conclude the contract if these offers are accepted by the shareholders of the company to be acquired (Abdul Latif, 2014).

Second: Types of public shares purchase offerings

Considering the return of fulfillment: it is divided into purchase public offerings, exchange public offerings and mixed public offerings.

Cash purchase public offerings are the offers in which the offerors express their desire publicly to the shareholders of the target company for an irrevocable commitment, to acquire what is approved for sale from the shares they own in this offer in exchange for cash (Mahdi, 1991).

As for the exchange purchase public offerings, they take the form of shares in exchange for their acquisition, which are exchanged for the shares of the company to be acquired over the 90 days preceding the process, which enabled it to acquire the aforementioned percentage.

As for the consideration when it is mixed, here the purchase consideration is a mixture of cash and in-rem, i.e. shares in a company owned by the offerors (Abu Saleh, without year of publication).

In view of the nature of the offers: there are the original offers and the competing offers. Article 346 and Article 347 of the Capital Market Law Regulations No. 95 of 1992 have presented the competing purchase offerings by regulation, as it allows at least 5 days before the validity period of the original purchase offering expires to submit a competitive purchase offerings draft. However, in order to agree to deposit the competitive offerings draft, it is required that the prices of the purchase offerings be in cash, and that the increase should not be less than 2% of the price of the original purchase offers or the previous competition, as the case may be. The Financial Supervisory Authority may also accept competitive purchase offerings, even if they do not include a higher price, if they include a fundamental modification in the terms submitted for the benefit of the shareholders who own these shares (Ahmed, 2008).

Considering Purchase Quantity

Total purchase offer and partial purchase offer, for total purchase offer, under which the offerors are obligated to acquire all the shares that were submitted by the shareholders of the company to be acquired for sale within the framework of the purchase offers, and it may reach 100% of the company's capital. It is clear that this type of offering allows each shareholder in the company to be acquired to sell what they want from the quantities of shares that are owned by them without the offerors having the right to refuse not to buy this quantity of shares and limit the offer to buy some of them .

As for the partial purchase offers, they are the offers that allow the offerors to set a specific ceiling for the number of shares that they wish to acquire within the framework of the given offer, so that whenever the number submitted by the shareholders exceeds this ceiling, the offerors may refuse the increase (Abu Saleh, without publication year). The Egyptian legislator permitted that it be on part of the shares of the company to be acquired, but provided that the offer is directed to all shareholders who own the shares to be acquired, thus it is not permissible for the offer to be directed to some shareholders without others, this matter is limited to optional purchase offerings (Article 335 from the List of Purchase Offerings).

Considering the satisfaction of the target company: Friendly takeovers and hostile or unfriendly takeovers; friendly takeovers are preceded by negotiations or examination (on the company to be acquired and the signing of memoranda of understanding between the offerors and the shareholders.

This means that the friendly takeover s must be approved by the board of directors of the company to be acquired, meaning that the friendly takeover is not surprising for the target company or its shareholders. Also, the offerors disclose their intention before submitting the offering (Al Mulla, 2012).

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As for the hostile takeovers, they happen when the offerors suddenly come forward to purchase without disclosing and without any prior arrangement on the takeover with the management of the company to be acquired.

The offering is hostile when the offerors are aware of the issues of the company to be acquired, as if one of the main shareholders in it or a competing company was aware of the situation of its competitors. Usually hostile offerors resort to this method to make the competitors miss the opportunity (Ahmed, 2008).

Considering the free will of the offerors: Optional offers, which is the original, and other compulsory offers. Compulsory offers means affirmative to purchase directed by those who have actual control to the shareholders who own the shares, whether in return for the purchase in cash or exchange for other shares.

Actual control is a situation, agreement or ownership of shares, whatever their percentage, that leads to control over the decisions issued by the board of directors (Al-Mahi, 2017).

The percentage required for the offering to be mandatory according to Egyptian law is that the person owns one-third of the capital or voting rights in the company to be acquired (Article 353 of the Executive Regulations of the Capital Market Law No. 95 of 1992. The percentage required in Kuwaiti law for the offering to be compulsory is the ownership of more than 30% of the shares of the company that has the right to vote (Article 74 of the Kuwait Capital Markets Authority Law No. 7 of 2010).

As for the optional offerings, they are made if the conditions and terms for the compulsory offerings are not available. These two types of offerings are subject to the same provisions when the offers are submitted.

Optional purchase offerings differ from others in many matters, as it is not permissible for its offerors, either alone or jointly with others, to acquire more than a third of the capital of the company to be acquired, so the optional offers do not achieve actual control. Also, offerors are obligated to buy the percentage they announced (Al-Sayed, 2016). The optional offers may be attached to a condition.

The Means to Address Public Shares Purchase Offerings

The board of directors of the company to be acquired uses several means against the process of public shares purchase offerings, whether these offerings are case or possibility, for the purpose of protecting the company from being acquired and falling into the hands of its competitors, as well as to protect the minority of shareholders who remained in the company and did not participate in the proposed offering. Therefore, in the first theme we are going to discuss the bases to addressing public shares purchase offerings, while the second theme will deal with the mechanism to addressing public shares purchase offerings.

The Bases to Addressing Public Shares Purchase Offerings

]The ownership remains even if it is transferred to another person, as changing the legal form of the legal person does not lead to its expiration, because the disposal is permissible on the money it composes of. Therefore, it is correct for a person to remain, especially in the commercial field, as he has a special nature that suits the purpose of investing the capital, because the right of ownership remains even if it is transferred to another person. From this point of view, the targeted owner has the right to buy his property and to protect his property from actions, even if they were legal, which have detrimental to his legitimate interest (Al-Sanhouri, 2004).

According to Article 327 /Para. 2 of the Executive Regulations of the Egyptian Capital Market Law, the board of directors of the company to be acquired has the right to take measures for the purpose of addressing the public offering to purchase its shares, as long as these measures achieve the interest of the company and the partners together. This was confirmed by Article 250 of the Executive Regulations of the Kuwaiti Capital Market Authority Law.

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Since the board of directors of the company to be acquired has the right to face the public shares purchase offering of its company, and this defense is legitimate; it must do its best and take all legal measures and means to address this offering, and it must notify the shareholders of all the serious offers, and even potential offers that may be posed to shareholders. Since the board of directors is an agent on behalf of the shareholders, it must act in a way that achieves the company and the shareholders interests together, as it is not allowed to stand idly by and not defend the company, because it is considered an endorsement of its inability and inefficiency for the management. The legitimacy of the defense depends on two conditions:

Taking legal and material means to organize the defense of the company, for example, increasing the capital or cooperating with friendly companies to organize what guarantees the return of the offer to the company.

The means of defense must be legitimate, in other words, they must be compatible with the laws and regulations in force, and that the company's board of directors should not resort to devious means (Raghib, 2006).

There are cases where the defense is illegitimate:

Agreeing to place a restriction in the company's articles of association that prohibits the shareholder from disposing of the shares as well as for the assignment of these shares, this contradicts the law, whether in Egypt, Iraq or Kuwait, as it was decided that it is not applicable against the originator of the public offering of shares within the scope of his offer, as the text of the agreement in the general system of the company to be acquired listed in the stock market should stem from a legislative obligation.

Harmful actions during the validity of the offer and which are a material event. The management of the company to be acquired from the date of publishing the decision of the Financial Supervisory Authority to approve the drafts of the public offering of purchase and the information memorandum in the stock market until the date of the announcement of the offer result shall not perform any actions that are considered a material harmful event. They are prohibited from doing some of the following actions (Al-Salous, 2010):

Taking a decision to increase the capital or issue loan bonds convertible into shares if this increase would make the acquisition offers impossible or burdensome, unless the decision to increase the capital was taken before the lapse of at least 30 days from the date of publishing the decision of the Financial Supervisory Authority to approve the drafts of public offering purchase and information memorandum.

Fundamentally affecting the company's assets, increasing its financial obligations or impeding the development of the company's activity in the future, unless these actions were carried out within the framework of the usual actions for the company to carry out its activities, and on a date prior to the decision of the Financial Supervisory Authority to approve the drafts of public offering of purchase and the information memorandum (Ibrahim El-Sayed, 2014). Nevertheless, the company's board of directors may protect the company from the public offering of purchase through a competitor's offer from one of the friendly companies during the offering, as this method does not infringe the regulations set by the law, which the company's board of directors must abide by during the validity of the public offering of purchase. It remains for the board of directors to take all legitimate means and precautions that prevent the offer from being offered or fail if it is made (Al-Salous, 2010). There are rules and principles to protect and defend the company to be acquired approved by jurisprudence and the judiciary, which must be taken into consideration by the people involved in the public offerings of purchase especially the board of directors of the company to be acquired. These rules or principles are:

Commitment to good faith: This obligation must prevail in all actions in public offerings of purchase and other legal actions, as fraud makes the disposition voidable. The information issued by the company submitting the offer, the information issued by the company to be acquired, and the actions issued by the two companies must be transparent and honest, and the shareholders' acceptance or rejection of the presented offer stems from a sound will that is not tainted by any defects, otherwise the disposition is suspended or subject to revocation (Ahmed, 2008).

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Compliance with the laws and regulations in force, as defending the company to be acquired is not legitimate unless it adheres to the legal rules that regulate the process of public offering of shares purchase, as well as adherence to the regulations of the aforementioned law and the legal rules for the stock market (Raghib, 2006).

Respecting the articles of association of the company to be acquired. The board of directors of the target company may not violate the rules stipulated in the company's articles of association, as they may not increase or decrease the capital. This procedure is considered essential for the management, which may not be carried out during the validity of the public offering of purchase, thus the board of directors may, after obtaining the approval of the General Assembly in an exceptional meeting, reduce or increase the company's capital as a precaution if it senses that a public offering on the company's shares provided that the decision is implemented within 3 years from the date of its issuance in accordance with the law.

Respecting transparency. The board of directors of the target company remains, in all cases, committed to making the procedures public and transparent and not to resort to illegal and devious means like spreading rumors that affect the shareholders' decision, and the defense measures must ensure the protection of the interests of its shareholders and the interest of the company being an independent legal and economic entity (Salous, 2010).

Achieving the interests of the company to be acquired and the majority of shareholders. The company's board of directors protects the interests of the company and the majority of shareholders by standing up to it and defending the company from any infringement that affects its right to own property. The board of directors is obligated to prioritize the interests of the shareholders and the company as an independent legal and economic entity, and the interest of this legal person is in its continued existence and taking into account its employees, creditors, customers and suppliers, and all these persons are related to it and have an interest in the continuation of the company. Also, the board of directors must take into account the interests of the shareholders or the majority of them, because it is difficult to obtain unanimity of the shareholders regarding the rejection or acceptance of the public offering of purchase with the intention of acquiring the company, thus it should at least obtain the approval of the majority in order to achieve the principle of freedom of management for the company.

There are many cases in which the interests of the majority of the shareholders conflict with the interests of the company and the duty of the management in the company is to remove this conflict and reconcile the two interests. If the company's board of directors is unable to remove this conflict, it resorts to the judiciary, because the majority of the shareholders see that it is in their interest to act, thus they do this act even if it would harm the interest of the company, and the board of directors is not entitled to sacrifice the interest of the majority of shareholders or the interest of the company in return for personal benefits from the owner of the public offering of purchase (Ibrahim Al-Sayed, 2014).

Publicity of defense. The principle of publicity relates to an important principle, which is the principle of transparency in taking measures to protect against the public offering of purchase, so the company's board of directors, when informing them of the offer, must inform all shareholders through letters sent to their addresses, or by an announcement in the newspapers, or by the general assembly inviting the shareholders' to pose the topic before them and see the extent of its approval of the offer, and the company's board of directors must not limit the notification to the major shareholders only, and the board of directors of the company that submitted the offer and the board of directors of the company to be acquired shall abide by this (Raghib, 2006).

The Mechanism to Addressing Public Shares Purchase Offerings

The purpose of the process of public offering of shares purchase is to control the board of directors of a particular company; there may be a prior agreement between the offerors of the public offer and the board of directors of the company to be acquired, this is called amicable offer, and there may not be any agreement between the offerors and the board, the public shares purchase offering then is called hostile, and here the board of directors resort to taking several means to address this offer, these means may be legal or illegal:

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First: The legal means to addressing public shares purchase offerings

According to Article (327/E) of the Executive Regulations of the Capital Market Law, the board of directors of the company to be acquired may take the necessary means, in order to confront the public shares purchase offerings, as long as these means take into account the interest of the company. Therefore, the board of directors of the company to be acquired may do the following:

Issuing a statement clarifying the opinion of the board of directors when publishing and announcing sensitive and material information about the public offering of purchase within a period of 15 days from the date of publication, but this statement must include the feasibility of the offering and the consequences of its importance for the company, its shareholders and its employees. Giving an opinion is compulsory and not optional if the price offered for purchase is an exchange of shares, the offer is mixed or if the shares to be acquired are active in the stock market, and the offered cash purchase price is less than the average trading price in the stock market within 6 Months preceding the date of filing the public offering (Article 388 of the Executive Regulations of the Capital Market Law No. 95 of 1992).

Changing the company's structure. This mean is represented in taking the legal form that prevents the offerors from putting forward a public offering on the company's shares to be acquired, knowing that these means may be compatible with some companies but not others, and this depends on the size of the company's capital.

A joint stock company may be converted into a limited partnership, because the offeror cannot join the company except as a limited partner, while the management remains in the hands of the general partners, and therefore control remains in their hands in the company's board of directors (Ahmed, 2008).

The Egyptian Companies Law authorized the conversion of a partnership limited by shares (Article 136/1 of the Egyptian Companies Law No. 159 of 1981 as amended by Law No. 3 of 1998). However, the failure to provide for the transfer of the joint-stock company does not mean that it is not permissible. The majority of jurists in Egypt allow this transfer to the joint-stock company. Transfer is permissible for all types of companies as long as they have a legal personality and that they have a contract or their articles of association allow them to do so (Taha, 1996) (Sarie El-Din, 2002) (Al-Arini, 1999). Converting the company to be acquired into a partnership limited by shares keeps its management in the hands of the general partners in the company, and the offeror can only be in the position of the limited partner who does not have the right to take over the management. This method has been followed by Yves Saint Laurent and Disneyland European companies (Al-Salous, 2010).

As for the Iraqi law, joint stock companies may not be converted to any other type of company (Article 153).

As for the Kuwaiti law, the legislator was explicit in that it permitted the transformation of companies of all kinds (Article 281 of Companies Law No. 25 of 2012).

The company's purchase of its shares, and the company resorts to this method for many reasons such as its connection to its purpose, as is the case with the professional banks in trading and mortgaging shares, the desire of the majority of the shareholders in the company without having the enough money to buy the company's shares, to prevent a sudden unexpected drop in the value of shares in the stock market or because of the company's reduction of its capital.

Adopting this method to prevent the public shares purchase offering is fraught with many risks, including the necessity of the company canceling its shares or disposing of them urgently; because this purchase leads to the union of the company's responsibility, as it is a creditor and debtor at the same time, on the one hand, and on the other hand, the range of the company's purchase of its shares is limited to a number of shares, where it does not discourage the hostile offering to control and acquire the company's shares (Fathi, without publication).

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Enhancing the voting rights of the old shareholders. The company may face the public offering of purchase from the new shareholders, by giving multiple or double voting rights in the general assembly provided for in the company's articles of association, without the new shareholders enjoying this right, whether the entry of new shareholders through a capital increase or through a public offering to buy the company's shares and acquire its board of directors.

Strengthening the conditions for convening the general assembly. The company's board of directors can tighten the specific conditions for the required number, so that the general assembly sessions are valid whether in its ordinary or exceptional meetings and the board of directors can also set a higher percentage of the majority needed in the general assembly to weaken the position of the entrant (new) shareholders and that they do not influence the decision of the General (Momen, 2009).

A full authorization for the preferred shares. The board of directors of the company may obtain a full authorization to freely dispose of the preferred shares in relation to their voting rights, transfer them and distribute the profits and other rights related to them at the time of issuance of these shares based on a provision that allows this in the company's articles of association. The board of directors can use these shares in the face of the public offering to buy the shares and prevent controlling the board of directors of the company targeted by the acquisition (Al-Hamdani, 2018).

Increasing the company's indebtedness. The company's board of directors works very quickly and suddenly to inflict the company with heavy financial commitments that frustrate the offerors, but this does not represent a salvation for the company from acquisition rather it represents suicide for it, as this method is called poison pills (Abdul Latif, 2014).

Strengthening relations with shareholders. The board of directors of the target company can strengthen its relationship with the shareholders of the company by several means, including increasing the percentage of profits and distributing them to them, issuing new shares with high returns or forming share owners for the purpose of buying the shares that are offered every month, so that they do not pass to undesirable people.

Increasing the capital. The board of directors has the right to increase the company's capital, but the timing of its use during the period of submitting the public offering of purchase is one of the most important defensive measures against acquisition and control, as the capital increase leads to the difficulty of managing the necessary funds in light of the large number of shares, thus, it is difficult for the offeror to raise the offer price to entice shareholders to sell their shares (Amarna, 2014).

Issuance of investment certificates and participation bonds. The company to be acquired can resort to means in order to maintain the existing balance for the old shareholders in the company, such as increasing its capital by issuing participation bonds or investment certificates in order for the owners to enjoy attractive financial rights in their profits, and by doing so this procedure achieves two goals: ridding it of stumbling or increasing the company's activities and the difficulty of enticing the old shareholders to acquire their shares (Momen, 2009).

Integration. The use of this method against the public shares purchase offering, whether the company to be acquired from the offer represents the integrating or integrated company, but in the latter case the company has resorted to another option, perhaps more bitter than accepting the public offering of acquisition, and in most cases it will be necessary to submit for a management and new purpose (Ibrahim El-Sayed, 2014). The last solution for the company to be acquired is when it confronts a hostile public offering process, and this could be a better solution than giving in to the offeror (Al-Hamdani, 2018).

This was confirmed by Article 63/6 of the Executive Regulations of the Kuwait Capital Market Authority Law.

Second: The illegal means to address public shares purchase offerings.

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The board of directors of the company targeted for acquisition seeks to preserve the company; it has to confront the public offerings of shares by any means, even if it was illegal. These methods followed by the board of directors of companies targeted for acquisition are many, including:

The board of directors of the company targeted for acquisition imposes restrictions and obstacles that come between the shareholders and the evaluation of the shares according to the basis of proper evaluation (Article 328/Para.2 of the Executive Regulations of the Capital Market Law No. 95 of 1992).

The board of directors' action or behavior that is considered a fundamental and harms the company since the date of the issuance of the decision of the General Authority of Financial Supervision in the capital market to approve the draft of public shares purchase offering and the information memorandum until the date of announcing the result of the public offering of purchase (Article 343 / Para.1 of the Executive Regulations of the Law of Capital Market Law No. 95 of 1992). The matter is due to the discretion of the court in the actions or issues that are considered fundamental and harmful events according to the effects they have, whether on the shareholders or others (Amarna, 2014).

The board of directors takes a decision to increase the company's capital or to issue bonds that are convertible into shares whenever it would make the public offering of acquisition cumbersome or might make it impossible, unless the decision to increase the capital was taken before the lapse of at least 30 days since the date of publication of the general assembly decision in the market to approve the draft of public offering of purchase and the information memorandum (Article 343/A of the Executive Regulations of the Capital Market Law No. 95 of 1992).

The company's purchase of its shares either directly or indirectly during the validity period of the public offering of purchase, if they constitute part of the capital or allow the ownership of part of it (Article 351/Para.1 of the Executive Regulations of the Capital Market Law No. 95 of 1992).

Carrying out defensive measures with the so-called poison pill without authorization from the shareholders owning the shares, which require that there be an explicit approval by the shareholders to follow this defensive method. Shareholders can sue the board of directors before the competent courts in this case whenever harm is achieved by using this defensive method against the public offering submitted to purchase the shares (Amarna, 2014).

The board of directors of the company to be acquired conducts an act that would fundamentally affect the company's assets and increase its financial obligations or may impede the company's development in the future, unless these actions were carried out within the framework of the normal business of the company's activity and on a date prior to the date of the Capital Market Authority's decision to approving the draft of public offering of purchase and information memorandum (Article 343/b of the Executive Regulations of the Capital Market Law No. 95 of 1992) (Article 281 of the Executive Regulations of the Kuwait Capital Markets Authority Law No. 7 of 2010).

Conclusion

The Findings

The public shares purchase offerings is a process submitted by the offeror to the shareholders through the board of directors of the company to be acquired, or the offeror submits it to the authority competent to monitor the stock market, whether it is in the Egyptian law (the Financial Supervisory Authority) or Iraqi law (Iraqi Bonds Commission).

The process of public shares purchase offerings is a legitimate legal method. The offeror has the right to address his offer to the shareholders of the company to be acquired, provided that he does not violate the law and the instructions in his offer to the shareholders.

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The public shares purchase offerings are not the same, they are types, and these types are divided according to different perspectives: in terms of fulfillment it is divided into public offerings of purchase and public offerings of exchange, and it is also mixed. In terms of the nature of offerings, there are original offerings and competing offerings, in terms of purchase quantity, there are total and partial purchase offerings, in terms of the target company's satisfaction, there are friendly and hostile purchase offerings and in terms of the offerors' free will, there are optional offerings which are the original, and others are mandatory offerings.

The board of directors of the company to be acquired has to commit itself along the validity period of the public offering not to do any action that would abstract the offer, and must carry out the usual management only.

The board of directors of the company targeted for acquisition can defend itself by several means whether they were legal, legitimate or illegal, especially when defending itself against what is called by hostile or unfriendly takeovers.

Recommendations

We hope that the Iraqi legislator will organize the process of public shares purchase offering with special provisions, whether when issuing a new law as an alternative to the temporary law, or when amending the temporary Stock Market Law No. 74 of 2004 or adding new regulations for the Iraqi stock market.

We suggest that the Iraqi legislator requires the board of directors of the target company, upon becoming aware of the public shares purchase offering, to notify all the shareholders of the company, and that the notification is not limited to the major shareholders only, in order to achieve the principle of equal treatment. The general assembly notifies the shareholders by inviting them to pose the topic, and take their approval or refusal of the public offering.

We recommend the Iraqi legislator to strengthen the supervisory role on the public shares purchase offerings, in order to ensure the achievement of the principles of this offering.

We recommend that the Iraqi legislator, if the public offering of the target company to be acquired is accepted by the majority, to allow the minority shareholders to withdraw from it by submitting a purchase offer for minority shares, notify the majority of that and announce it to them within a period, purchase offering be in cash and that it shall not be less than the highest price paid by the offeror in the previous purchase offering during the period specified by the authority for submitting the relevant purchase offering in order to protect the minority shareholders.

We suggest that the Iraqi legislator specify the public shares purchase offerings of foreign companies to local companies on certain activities after obtaining approvals from the State, and to set certain restrictions upon concluding the acquisition contract, in order to protect the country's economy.

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