

THE LEGAL STATUS OF THE MINOR PARTNER IN THE COMPANY

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ABSTRACT: *Abstract The principle that most legislations prohibit the disabled or non-disabled, doing business, and this is only an exception, as is the case for the minor authorized to trade in part of his funds and with the permission of the guardian and the approval of the competent court. However, it is possible to conceive of these businessmen doing business as in the case of the death of one of the partners in the joint company, and he had a minor heir. With the conditions mandated by the Iraqi legislature in the Companies Law, the consent of the heir or his legal representative and the consent of the other partners, and that there is no legal impediment, this young minor may participate in the membership of the company. Accordingly, according to the Iraqi law, according to the jurisprudence of the major, acquires the trait of the merchant, and his responsibility is personal and unlimited and solidarity in the company, and if the company was exposed to bankruptcy, ML of a minor. Hence, it was necessary to identify the most important provisions related to the subject, and the extent to which these special provisions in the Iraqi Trade Law contradict the general rules governing the provisions of minor minors in Iraqi and comparative law.*

Keywords: Legal Status . Company direction

1. INTRODUCTION

The solidarity of the most private sector commercial companies, company common Su DONC in the Iraqi reality or in any other, perhaps due is that this form of companies is one of the simplest formulas commercial companies and the most suitable small business activity (family) and the Mediterranean, which Adject a group of people bound together Strong relationships and mutual trust. However, the scope of activity of these companies does not generally come out of the cycle of simple and medium commercial exploitation, such as the business of consumer or industrial construction simple.

Stipulates (paragraph III / Article 6) of the Iraqi Companies Law No. 21 of 1997 as amended, the composition of these companies that (at least the number of people medicine who are joint venture, two people were not more than twenty - five people, each of the stake in the capital of the company and bear in solidarity, personal responsibility is a limited all the company's obligations) [1]

As stated (first paragraph / article 69) of the same law, that (in the JV partner transferred its stake or part of it to another partner and may not be transferred to third parties except the consent of the Company's General Assembly unanimously, and in each NiCd is done By modifying the company's contract).

From the above definitions, the most important characteristic of this type of company is the responsibility of the personal and corporate partners for the debts of the company, as well as the importance of personal consideration, and the non-transfer of the partner's share to others only subject to certain restrictions. the continuation of the company, if what died one of the partners transferred the stake in the company to the heir of p subject to the conditions stipulated by the Iraq companies in Law Article (70 / first) , which stipulates (if he died a partner in the JV company will continue with his heirs, but if opposed Heir, or legal representative if he is a minor or other

partners Others ' or prevented this mind legal, the company will continue between the remaining partners do not have an heir , but the share of the deceased in the company's funds and estimated this share according to the value of the day of death and paid him in cash and have a share in emerging him in cash and have a share in what after emerging from the rights of the parent company is not as much as those rights are the result of previous operations on death, and in any case, you must modify the company's contract in line with the new status or converted to an individual project is if one partner does not remain).

And in the latter case, the problem is raised if the heir is a minor and the legal conditions provided for by the legislator in the said article have been met with respect to the continuation of the company with the heir.

The importance of the research is to find the legislative protection of the minor partner, within the legal provisions regulating the company of solidarity in Iraqi law, as has been done by some legislation, including the Lebanese law by determining its legal status, by dividing the study in this research into two sections, The definition of the partner in the joint venture and the statement of his responsibility, and the second to the legal adaptation of the minor partner in the company.

1- Research Questions

The research raises a number of questions that can be summarized as follows:

- 1- Who is the partner in the company of solidarity, and what are Msa and late?
- 2- The extent to which the share in the company may be transferred to the minor partner?
- 3- Is it possible to involve the minor in the membership of the company, and does he bear the legal responsibility imposed by the legislator on the partners?
- 4- Does the minor partner acquire the trainee status or not?
- 5- What are the position of Iraqi law and the comparative law of the questions above?

2- Methodology

2.1 the definition of the partner in the company and the statement of responsibility.

The company's contract assumes that there are two or more people. The intervention of several people is necessary to achieve the

economic purpose of the contract, which is the raising of funds and the joint venture. It is not possible to imagine a company based on one person who wishes to benefit solely from the benefits associated with the legal form of the company. Shares or shares of the company was dissolved by force of law, and if a company is held between two people, one of whom is a minor and has been sentenced to invalidation, the company must be dissolved, as the company will not continue with a single person ([2]) but some legislation, including the Iraqi law, allows a person to compose his own company, and allocated part of its assets, not related to the rights of creditors, but the company assets, any allocated to them without other money funds, called this kind of trap data (Limited Liability Company) ([3]).

In contrast, this situation, which is based on the idea of allocation of disclosure is not permissible in some legislation, including the Lebanese law, which is based mainly on the principle of unity of disclosure, and that the funds go with all of the debtor guarantors to meet its debts ([4]) and if a dealer in Lebanon wanted to devote part of his money to ensure business operations, it will not be able to do so only if agreed with others to set up a company that determine the responsibility of each partner which by its share, but one person cannot establish and determine the responsibility of the company for the project, which aims to achieve [5]. Hence the importance of the definition of the partner in the company solidarity (first requirement), and the statement of responsibility (the second requirement):

The first requirement: To identify the partner in the company.

Most of the legislation, including Iraqi law and Lebanese law, followed by jurisprudence, remained silent on the concept of a partner in a company. Iraqi companies Law in force, that the solidarity company as a (company consists of a number of natural persons and not more than twenty - five, each of them a stake) [6], Article 69 (1) of the law states that (in a joint company the partner may transfer his share or part thereof to another partner).

Iraqi Companies Law in force has charted a new course Fu Put a different rule under Article (70) thereof, that ((if the partner died in the JV company will continue with the heirs)), subject to the availability of certain conditions set by the above - mentioned article.

The Lebanese law stipulates Article 46 of the Law of Commerce that the Solidarity Company, ((..... and makeup between two or several people)), as well as material approved (55) of the Act, that (The partner may not alienate others from his share in the benefits of the company, only with the consent of all partners), which concludes from this text that the full-time quota for third parties, the introduction of a new partner in the company is not permissible except with the consent of all partners ([7]) and if one of the partners died and had a spouse or a branch, the company will continue between the neighborhoods of

partners ([8]) the company turned into a simple recommendation company, and be the heirs of these limited partner status [9].

From the extrapolation of the above texts, it is clear that the status of the partner in the joint company is determined according to his contribution to the capital of the company [10] he is the founder of either partner (the first branch), or he is a founding partner (section II):

Section One: Founding Partner.

The co-founder of determining under a controversial between the Fiqh before it intervenes some legislation to resolve this dispute explicitly, and in this regard, there appeared two tendencies, the first narrows the definition of the founder, and called for the traditional trend, and the second seat in the development of the concept of partner founder who called the modern trend, to find out the founder of the concept of solidarity in the company show the specific directions of the founder of the first, and the position of the Iraqi and Lebanese law specified Second:

A first: trends identified for the concept of a founder.

1- Traditional trend (arrow direction).

The owners of this trend tend to narrow the definition of the founder, it shortens the description of (whoever signed the contract of the company), as long as the contract requires the signatories to seek to establish the company [11] and is based on the owners of this opinion that the founder as long as may be held accountable criminal in case of violation of the incorporation procedure, so it should be limited to describe the founder on any shareholder Brass company's capital and signed a contract here Constituent Assembly, because it alone, which is available for the friendly intention of carrying Liability arising from the establishment of the company [12] The legislation adopted this concept explicitly, the former Egyptian law [13] and UAE law [14] it has taken the French judiciary in some of its provisions in the traditional sense, as the Palace of the definition describes himself as a founder in the project company system or prospectus [15].

And builds on the foregoing, the founder, according to this trend, it must be a shareholder of the company's capital and have signed a contract on the company, which is the signing of a person earns the status of the founder.

2. The modern trend (and not a Sa).

The majority goes to the Fiqh expansion of the founder of the concept, that this description includes both.

participate actively involved in the company's structure to take responsibility, arising from the establishment of that if it does not sign a contract established, it has known that, the person who made him the idea of establishing the company,

The initiation of established procedures [16] or is the person who takes the initiative in establishing the company and proceed to the necessary measures to achieve this purpose [17].

The founder here is not only signing the company contractor system but is the one who took the initiative to establish the company [18] and of legislation in this direction taken by the Companies Law Egyptian, No. 159 of 1981, stipulates Article (7) of it is that the founder (both participate actively involved in the foundation bearing structure arising from that responsibility, and apply the provisions of Article (89) of this Law, and shall be deemed to be the basis in particular of whoever signed the initial contract and applied for the license to establish the company or

provided an in-kind share upon its establishment.

According to the above, the owners of this trend broadens the concept of institutional Q to include in addition to the impact on the company's contractor Ndhamba, the person who initiates incorporation procedures, and in turn, we go with this latest trend that expands the concept of the founder.

Secondly: the position of the Iraqi and Lebanese law to determine the founder of the concept.

The Iraqi legislation is one of the legislation that adopted the traditional trend implicitly (the narrow trend), and this can be inferred from the provisions of article 13 of the Iraqi Companies Law in force, which states. The founders shall prepare a contract for the company signed by them or by their legal representatives.

The Lebanese law did not give a definition of the founder, but it was founded according to the principles of jurisprudence and settled by diligence, the idea of establishing the company and the worker to put the idea into practice or the participant to bring it into existence through its activity, The capital of the company, as a prelude to the establishment and dissemination, does not require to be a person has done all of the above acts to be established, but only one activity took the initiative and the work led to the establishment of the company [19].

The legislator of Lebanon has passed many provisions that dealt with the legal status of the founder of that, his statement of the conditions that must be met [20] defines the limits of its obligations and responsibilities for his [21].

Although From the non-reference to the founder by an explicit provision, notes that the Lebanese jurisprudence adopted the concept of the broad trend as a basis for determining the status of the founder.

It should be noted that the founding partner in the JV partner is called solidarity so that an official with the rest of the partners and for the solidarity of all the company's debts.

Second paragraph: The non-founder partner.

Based on the above, the possibility of defining this Partner, That person is the founder, who passed on to him the ownership of capital in the company (presser's share) after the completion of the incorporation procedure, thus the new partner in the company of solidarity, either the person them concession to him for the stake sale or bother (first), or the person's heir (Second).

A first: ASSIGNEE partner.

(Article 69) of the Iraqi Companies Law stipulates that "in a joint company of a partner, the transfer of its share or part thereof to another partner shall not be transferred except by third parties. Except with the approval of the General Assembly unanimously, in all cases, this is done by amending the company contract). The parent may not transfer his share to third parties except with the approval of the general assembly of the company unanimously and subject to the restrictions stipulated by

law. As the partner to transfer his share to others freely and without taking into account the legal restrictions, the company loses the most important characteristics are based on personal consideration and such freedom is contrary to the nature of personal consideration [22]. But the partner transferred its stake to another partner without taking into account the limitation provided by law, shall be for a partner to give up his share or part of it to a partner, provided the company's contract amendment [23] that does not result in this concession to increase the number of partners legally set limit [24] and had to Article 35 of the Iraqi Companies Law, pointing any amendment to this data within thirty days from the date of the legal act or judgment or incident that require notation, it is not considered the amendment shall take effect only after ratification by the Registrar of Companies, and published In the Special Bulletin, and in a local newspaper.

Secondly: the heir partner.

The inheritor partner means the person to whom the ownership of the share capital is transferred from his heir after his death. Article (70) of the Companies Law in force (if the partner in the joint company dies, the company will continue with his heirs). The Lebanese law did not permit the participation of the heir in the company of solidarity, and if he died one of the partners, the company is among the neighborhoods will continue, and if the deceased spouse or a branch, the company will continue with these and have their recipe partners recommendation, and the company turned to another type [25].

The following is noted:

The Iraqi legislator called the joint partner a description of both the founding partner and the non-founding partner, whether he acquired the share in the joint-stock company or any transfer of ownership.

The pain u Ra Lebanese, he made the person the founder and the person Assignee for the stake in the company's corporate partner, and called the partner of solidarity, and make the husband or branch heir (In the case of the death of a partner in the JV) partner in a simple recommendation evil KE, and the so-called partner status Not recommended.

2.2 the responsibility of the partner in the company's solidarity and the implications of them.

The responsibility of the partners in the Company is the result of the Company's own obligations. It is a personal, joint and unlimited liability (Section I). This liability has a number of effects (Section II):

Section 1: The responsibility of the partner in the company.

The responsibility of the partner in the partnership is personal and unlimited (first), and solidarity (second):

A first: personal responsibility and is not limited.

The liability of the partner in the company is personal and unlimited, as stipulated in Article (35) of the Iraqi Companies Law in force , It is enough to prove that the creditor company commitment to what arises has the right to pursue them, even after the dissolution of the company and liquidation [26] Zacharia in Solidarity Company responsible for the company's debts personal responsibility in their own money, so that the creditors of the company have their own guarantee at the disposal of the company and ensure that additional on receivables personal partners FLOCK it with the creditors of the partners, and any limitation of liability partner null and void against third parties [27].

And some see, passport that includes the company's contract clause determining liability in the face of the partners of each other [28] and as the base of responsibility URTICARIA as own his money for the company's debts, but found in the original protection of the creditors of the company, i.e the sense of protecting the rights of creditors, and as those of the right to waive their rights to go some, to the passport to the company's creditors in a particular deal To relinquish this rule, which was initiated for his own benefit [29].

Another view, This liability is not limited to the partner on the debts of the company, in view of the special organization of the company as the signing of the undertakings of the company gets entitled [30], and since the commercial title includes the names of all partners, as if each partner has committed to the company's obligations in person, and became the Alcazar element of the negative components of the negative, and from the view of some that this opinion is purely formal and the basis of this responsibility is that the solidarity company consists Of a number of traders who combine activity and work together, it cannot arise from that of a legal person who makes certain contributions between the debtor and the partners. There is another view that the liability of the unlimited partner can only be interpreted as an obligation of the partners in the text of the law [31].

The **bottom line is** we go with the view, that is the basis of a limited partner for the company's obligations under the responsibility of the text of the law does not affect the validity of the previous reasoning [32]. And that the acquisition of partners for the capacity of a merchant in the company is the cause of this responsibility is limited as Saji statement that later [33] if the person can acquire the status of the merchant and determines its obligations arising from this part of the financial status of his duty, but just to ask for these obligations in each discharged.

Secondly: the responsibility of the corporate partner. The partners in the solidarity company are asked to take joint responsibility for the debts and obligations of the company. This provision is derived from the text of an article (35) of the Iraqi Companies Law in force which states that (... and also it is the responsibility of solidarity in the company of solidarity) [34]. Also stipulated in Article 46 of the Lebanese Code of Commerce, that the partners (... officials personally and in solidarity for the company's debt). It is agreed that this responsibility in solidarity company is the core of the company and its backbone and is a list of the text of the law [35] and if a partner or more of these joint liability exempted under the Company's contract or a subsequent agreement, this agreement the counting invalid, unless the publication according to the origins of this condition exemption refers to the company to another type of solidarity (v simple commandment or limited liability) , But if the third party does not know it does not count towards

him ([36]) unless waived this rule expressly prescribed for him and protect him and accept the condition Almkzo ([37]) .

This joint liability and affect the activity of the company's two - way, first, among the partners themselves drives them all to work and concern for the interests of the company's keenness on their personal interests completely, and the second trend, towards others where strengthens the trust placed company in terms of the guarantees provided by the repayment of debt beyond the capital The company as long as the company's own funds are also guarantors of it ([38]) . When dealing with the company, it depends on the financial solvency of the joint partners and not only on the company's financial solvency. The creditors of the company collect the company's money and the partners' money, due to the personal consideration on which the company is based.

Finally, it should be noted that the solidarity between the partners comprising the company is at the time of contracting [39] whether they were assigned to the work of the administration or not, or that the business address of the company that includes all of their names, or the name of one of them without the other [40].

Section II: Effects of the liability of the partner in the company.

Former iniquity that personal responsibility is not limited to corporate partners in the JV is one of the most important characteristics of this company and this entails several responsibilities triggering a concerned with :

A first: Every creditor has the right to prosecute any of the partners in the JV time of conclusion of the contract.

This is what Article 37 of the Companies Law of the Iraqi force , as (for the creditors of the company's corporate sued or sue any partner was a member of the time of the commitment and partners are committed to fulfilling the face of solidarity may not be implementation partner funds before the company's warning) [41] .

It is noted from the above that this solidarity between the company and partners gives the creditor the right to sue the company and partners together, but the text of the law requires the company's warning first execution on its funds and when the inadequacy of that money is back on the partners, taking into account the legal status of a partner, as it may be a later partner to join the company, Vaharik who withdraws from the company after its establishment, it asks for the company's debts until the withdrawal of them, on condition that raises the name of the brand name of the company if it is included here [42].

As for the partner who is organized later to the company after the emergence of debt, the original he is asking for the debts of the company all without distinction between the debts before and after the entry [43] , while some see the passport of a partner organizer later request to be excused from the emerging debt before entering if explicitly stipulated that when joining the company [44] .

Second A: The partner in the JV is for the creditors of the company as a partner sponsor of solidarity is not normal.

The original according to the general rules that all partners are in solidarity to meet their debts, and this is determined by Article (1031) of the Iraqi Civil Code [45], which gives the option of the creditor to claim his religion willing debtor student or student sponsor.

But the Iraqi legislature came out on this original exemption under Article (37) of the Iraqi Companies Law, where he made solidarity among partners on the one hand , and between

them and the company on the other hand, the consequences of this solidarity that the creditor may effect on the company's money as well as money partners to obtain. But it is not permissible for the creditor to execute the partner's money before the company's warning. In this way, the French and Egyptian courts [46], that it is not permissible for the company's creditors partner or claim execution on his own funds only if the availability of two conditions:

First, to prove that religion CONSEQUENTIAL on the company by virtue of issued against the Company, represented in the person of its director, and this provision is an argument on the partner so that the partner may be implemented without funds pilgrims to get a judgment against him [47], and second, that the creditor to fulfill the company's warning.

This trend, which is called for by the judiciary, is due to the prevention of the arbitrariness that the partner receives from the company's creditors. The application of these rules to their release without any condition or condition is free of damage, as it opens to the company's creditors the recourse to personal partners' funds without recourse to the company. And the seriousness of the religion, as well as opening the door to malicious actions against partners to defame their reputation and their trust in the commercial circles, the logic requires that the company's creditors begin to claim as the original debtor [48], and perhaps this is the thing that made some believe that the Fiqh partner responsibility in this company backup responsibility).

Third A: the bankruptcy of the company leads to the bankruptcy of the partners.

The bankruptcy of the company lead to the bankruptcy of all the partners stipulates Article (36) of the Companies Act in force on that rule (if the company Abeeft considered each partner were insolvent) [50]. Despite receipt of the text, which emphasizes the necessity of this rule, but it can be inferred from except for the text of Article (37) of the Companies Act, which passed the legislature execution on the money debtor, provided by the creditor first warning of the company, where the creditor does not resort to the implementation of the funds partner of the religion of respect to the company only after proving that the Company's ability to repay this debt, thus they can be implementation partner funds that the partners are obligated to the debts of the company personally and in solidarity, the inability of these default was the court that defamed in the same judgment the bankruptcy of the company and the bankruptcy of the partners.

If the bankruptcy of a joint company leads to the bankruptcy of the joint partners, the opposite is not true. The bankruptcy of one of the joint partners for failing to meet a debt owed to it does not lead to the bankruptcy of the company and will continue between the partners and liquidate the share of the insolvent partner. Bankruptcy), with the obligation to amend the company contract in accordance with the new status or that the

consequent transformation of the company into an individual project if there is only one partner [51]).

Fourth A: acquisition of all partners recipe merchant.

The majority of the jurisprudence believes that the partner in the company is a trader and that the legislator does not explicitly state that all the partners in the joint company acquire the trait of the merchant as well as the company's acquisition of this status. The advanced judgment is a logical result of the personal and unlimited liability, The legal partner who is required to start the commercial activity and not be a person who is prohibited by law from practicing commercial activity whether it is due to the nature of the centers they occupy or for any other reason. If the company ceases to pay its debts, The month of bankruptcy (bankruptcy), this also entails the bankruptcy of the partners.

Although the acquisition of partner status merchant, it is not like Wen binding duties assessed on the merchant [52], maintenance of commercial books Kaltazamh or registration in the commercial register, as long as the company carry out such duties, except they are subject to the provisions of bankruptcy law as decided by [53].

The second topic: the conditioning legal u Rick minor in the company of solidarity

Determining the adaptation of the legal partner of a minor in the company of solidarity, raises a number of the questions, perhaps the most important is, the availability of legal conditions required by the status of the merchant (first requirement), and the extent of the acquisition of a minor partner in the company of solidarity for this trait (second requirement):

The first requirement: The legal conditions required to acquire a person as a merchant.

Article VII of the Iraqi Trade Act, that (is a merchant every person or legal Tabieia carries in his name and for his account on the face of a professional commercial activities in accordance with the provisions of this law) [54], as stipulated in Article VIII of the law (requires the merchant to be enjoying the legal capacity).

It is clear that there are three basic conditions for the acquisition of the trait of the merchant by the natural person is to take advantage of the business and to join it with his own and his account (the first branch) and to enjoy the legal capacity (**Section Two**):

The first branch: To be a professional businessman and to engage in his name and account.

Most legislation requires the natural person to turn professional business (first), this business carries his name and sense, ie on the face of independence (second a), so that the trader acquires the status.

A well A: The turn professional business.

The means of professionalism, dedication activity and head of the usual way to accomplish a particular job in order to achieve profit [55], or the person taking a business from one of his main activities (alone or with other activities), is reliable and practiced frequently, and relies on the profits derived from them as a primary source of income and income on which he relies [56].

So who does commercial work individually in an emergency of, or within a particular activity is not considered a yolk luxury trade, and if repeated a to do work in there unfamiliarity, without becoming a habit as a major source of revenue the person is recommended, it is not considered a professional trade, Alaat the fact that Yad not Is a professional, the difference between them

is the intent and the result, the way is not usually doing business, but the purpose of doing [57].

For this see the majority of jurisprudence, the professional condition is based on two elements first, doing business on the face of repetition and permanence and, secondly, in order to gain or profit so that all forms of income or a considerable part of it [58]. If the original under the legal provisions require that the person engaged in business on the face of professionalism even acquire the status of the merchant, but the legislator decided exception to this rule, the first is after AD Giving recipe merchant employers small crafts despite Mzawelthm business [59], and the second, is not to acquire the state and people of public moral of the recipe mentioned, although some of its business and the subordination of these only workers to the Trade Act [60].

Second A: that carries on business in his name and for his account.

In addition to being a business person, it is necessary to conduct such business in his name, account, and independence. Therefore, not all professionalism can confer on a person the status of a trader. Rather, the business should be carried out in the name and account of the person who employs it. Risks arising from the commercial exploitation, the fact that trade is based on credit, this credit is a personal element bears the risks of a person - based act [61], and thus it can be said the existence of two communities of people:

First, do not acquire the status of the merchant even though they engage in commercial activity, the absence of independence element in the practice mentioned activity, and those working in the shops, also from practicing trade on behalf of others, including (the legal representatives of the under civil or Aadimiha or interdicted them Kalule or guardian or values), as well as the agent of the commercial, which works on behalf of his client and his account, whose sole task to negotiate and conclude contracts or provide services, such a person does not acquire the status of the trader [62], the presence of hanger of dependency, and also does not acquire the status of the merchant, the managing director of the company limited contribution and members of the joint stock company management, but acquires this company status with personal independent moral for people of shareholders, provided that the purpose is to engage in a business As stipulated by law, that these are mere representatives of the company [63].

Second, the acquisition of a person status Alta traction despite practicing commercial activity on behalf of others, unlike the above acquires all of the commission agents, and the broker in the stock market [64], the recipe merchant so as to provide a measure of independence in the exercise of trade, which represents the acquisition of those merchant status exception out of the base, which requires the availability requirement of independence.

Section Two: Have legal capacity.

Some commercial legislation provides for certain age to acquire a civil person crisis, which enables him to exercise commercial activity, as is press's in, if Article 18 of the law of the United Arab Emirates Business Transactions on (both completed twenty - one calendar year and has not a legal objection to be welcome [65].

While some laws merely to refer the provisions concerning legal capacity (commercial and civil), to the provisions of the general rules of civil law, as is the case in Iraqi law (a well of), and Lebanese law (second a):

A well A: National legal trader in the Iraqi law.

Under the provisions of Article (8) of the Trade Law, the Iraqi legislator is required to have the legal capacity and legal capacity to organize in accordance with the general rules under the provisions of the Iraqi Civil Code. A person shall not have legal capacity unless he is 18 years of age according to Article (106) of the Iraqi Civil Code. The provisions of the civil of public order shall not be violated, except as provided on a minor authorized to trade under the provisions of Article 99 of the Civil Code, which is considered the actions of those who have reached the age of fifteen and then his guardian and authorization from the court to trafficking, enjoy legal capacity, that This is by some of his money [66].

Second A: Al Ahli of the legal trader in Lebanese law.

Unlike the Iraqi law expressly provided, the person should enjoy the natural capacity of the legal status of the acquisition of the merchant, it did not t ensure that most of the legislation comparative of text Al Z this condition, as is the case in Lebanese law.

In accordance with the general rules, the Lebanese enterprise, as stipulated in Article (377) of the Law of Obligations and Contracts, (the seller and buyer must be entitled to the obligation), and the seller is entitled to complete the thing or waive the right to which the sale is made.

It was considered Article (215) of the same law that (each person sm Olathe a mitten -year- old is worthy of commitment unless authorized not to his incompetence in the legal text).

The principle permission is civil is complete, and the exception is to rule legal text, as is the case on a for minor pain characterized authorized by the guardian of trade as an experiment, here is considered the people of trade, within the limits of authorization (Article 968 of the Journal of the Lebanese verdicts of justice).

Which provides Like t insulting the person status of the merchant in the Iraqi law and Lebanese law, when it was enjoying the legal capacity according to the general rules, ie the completion of eighteen years of age, the same age of civil is required to conduct business, while recognizing the existence of exceptions established by the provisions of both laws on the small authorized Trade by the Lord. The verification of these conditions, professionalism, and practice of commercial work on behalf of the person and his account, and be enjoying his capacity as legal, it acquires the status merchant, and the merchant is proving a recipe all the means of proof, including evidence of personal [67].

The second requirement is the extent to which the minor partner acquires the merchant's status.

Originally that all partners in the company have the required legal capacity that allows them to exercise their work in the company, may not be a minus civil or Adimha, Wallach Trac in the company 's corporate membership, but it is possible to imagine

a minor person in the company 's corporate involvement in one case, and if he died partner And he had a minor branch, here raises the question about the extent to which this person acquired the trait of the merchant or not? We show the position of Iraqi law (section I), and the position of Lebanese law (section II):

Section I: The position of Iraqi law.

T brief most of the legislation the company continues between the neighborhoods in the event of the death of one of the partners , but the position of such legislation is different in giving a recipe merchant partner in the company, in Iraqi law does not provide expressly to acquire a partner in the JV (recipe merchant), but only with reference to the responsibility of this personal solidarity is not limited [68].

From here, some believe, again partner in the JV, the recipe merchant through what some referred to the texts, including what is mentioned in Article 36 of the Iraqi Companies Law, which requires the insolvency partner in the case of insolvency of the company, Valaasar means bankruptcy by Iraqi law, And bankruptcy is a system that applies only to the merchant, and as long as each partner in the company acquires the trait of the merchant it is not right to be a partner who can not be a merchant in accordance with the provisions of the Iraqi Trade Law , and the partner must have fulfilled all the conditions mentioned in law to acquire Person Trader Character .

Therefore, if one of the partners died and his share in the company passed to the heir [69] and did not oppose all other partners, and not to oppose the heir or his legal representative, and there is no legal impediment to the participation of the heir, the company will continue with the heir, although a minor , and have the continuation of the activity of the company , either directly or through his representative (of the Crown), has also handled its share in the company and assign them to third parties [70], as entrusted the care of a minor law yen , No. 78 of 1980, to take care of minors Directorate authority to grant permission to the s a grate in practicing commercial activity, has indicated Article 78 of the full law that , request ownership transferred by one money heirs of a senior or a request from the shrine take a grate, ownership of a minor in the estate can not take a decision, unless there is no harm to the minor.

Hence, if the minor has an interest in the continuation of the commercial activity, such as the commercial property being the subject of the estate, it represents a successful project. The interest requires continuing the practice of the activity and granting the minor permission to do so. Otherwise, if the shop is stagnant, mentions, in this case, may take care of the Directorate of minors, to refrain from granting permission and the liquidation of a minor share in the said shop, and in all cases, the Court should appoint a deputy for the minor [71].

The following can be observed:

- The Iraqi legislator did not stipulate the commercial eligibility required of the person, in order to participate

in the company, but left it to the general rules in the Civil Code governing the eligibility.

- The Iraqi legislator did not distinguish between the transfers of the share to the partner, whether he enjoys legal capacity or be deficient or lack of eligibility, but provided for specific conditions of availability may be inherited to participate in the company.

- Iraqi legislator did not expressly provide for the acquisition of a partner in the company's corporate status of the trader, but pointed to his responsibility (personal note - solidarity Co., Ltd.) in only the company, so if it is exposed the company to bankruptcy, the each partner which is exposed to this bankruptcy including a minor partner, the progress the representative of the minor does not acquire the status of the merchant and practiced commercial activity on behalf of a minor partner, as this activity is engaged in the name and account full insisted , in the sense that a minor partner official's even a ton for the company 's debts and obligations , not only to the extent provided by the share in the capital, but it extends mass Aolath to include special discharged, and b Altdha With the rest of the partners, as if these debts are their personal debts to third parties .

Paragraph the second of : the position of the law of the Lebanese .

The partner of the Tadamon Trading Company acquires the status of the merchant by virtue of the law, in accordance with the provisions of some legislation, including the provisions of Article (53) of the Lebanese Trade Law, that " every partner in a solidarity company is considered to be engaged in trade under the title of a company . of them acquire legal status of the merchant, and the bankruptcy of the company leads to personal bankruptcy for both partners) , and thus is a partner like a trade deal under his own title company, and the bankruptcy of the company 's lead to personal bankruptcy for both partners, and called the partner here partner solidarity [72], and if one of the partners died, does not lead to the dissolution of the company as stipulated in Article 66 of the Law of the Lebanese trade , it continues between the neighborhoods of partners on one of two ways:

First: If the partner does not leave a spouse or branch, ie his heirs or other heirs, the company shall continue to work and hand over to the heirs the rights of their heirs, without having to enter the company as a partner or have the right to demand that, The company here shall be by law .

Second: If the heir has a husband or a branch, the company becomes a simple recommendation company, and these heirs have the status of the recommended partner, so we have a new company different in form and type of partners [73].

Making progress notes, that Alma the Lebanese Re has made the relationship of the deceased Ballwart in case of death, mainly in giving the legal form of the company, and if not for a gene pair or a branch in a company will continue and remain in the company of solidarity retain the rule of law , but if he had a pair or a branch in a company turned into a simple recommendation company, so if it was one of the branches is a minor , it does not acquire the status of the merchant, and determine the responsibility Bmekdmath, and his partner recipe is not a creditor of the company, and handles the company like a third party, and may not be Interfere in the management of its business, even if the intervention is dependent on the power of attorney [74].

And we appreciate the advanced ruling, which was brought by Alma Ra Lebanon is in two aspects:

First: in the legislative protection of minors in non-prescription merchant Giving it and the consequent pLi this trait of the burden may weigh heavily on the minor and pour into a non-interest.

Second: taking into account the personal consideration of the company's solidarity. Although the Iraqi law did not explicitly include a provision on the glowing verdict of which was brought by the Lebanese law, but the lack of interest requires little thrown in the business environment, which it calls the legislator Iraq to claim me to text not to make a minor partner, a partner in solidarity in the company solidarity, and not Giving recipe merchant it, and if the interests of the minor require only Stmrrar to engage in commercial activity , P here can determine the responsibility of a minor, and can be those represented by Qanon- after being granted permission , to continue to engage in business without Giving recipe merchant minor, representing Wallace exception of the original year , which makes N partner responsible for personal and unlimited Old Security .

3. CONCLUSION

Through a for research on the subject of (the legal status of a minor partner in the company of solidarity) we can reach a number of conclusions and recommendations Npinha successively:

- 1- Legal legislation did not establish a specific concept for a partner in a joint venture company, and did not distinguish between the partner as a founder or non-founder partner.
- 2- We concluded that the partner in the joint venture company is either a founding partner, a new partner is ready (a full-time partner or an heir).
- 3- The Iraqi legislator and the Lebanese, did not provide the required person commercial civil, in order to participate in the company, but t rec it to the general rules in civil law that civil control.
- 4- The Iraqi legislator did not distinguish between the transfer of the share to the partner, whether he enjoys legal capacity or be deficient or lack of eligibility, but provided for specific conditions of availability may be inherited to participate in the company.
- 5- Otherwise stipulated by Alma Ra Lebanese from the acquisition of a partner in the company 's corporate status of the merchant, the Iraqi legislator did not provide for it, but only with reference to the partner responsible for (personal unlimited solidarity) in the company, so if the company is exposed to bankruptcy, each partner In which he is exposed to this bankruptcy, including the minor partner .
- 6- The representative of the minor does not acquire the status of merchant and engage in commercial activity on behalf of the minor partner, as he carries out this activity in the name and account of the minor, meaning that the minor partner is responsible the third party for the debts and obligations of the company not only by the amount of his share in the capital, To include his own debt, and in solidarity with the rest of the partners, as if these debts are their

personal debts to others.

4. Recommendations:

From this we recommend the Iraqi legislator Balti:

- 1- To explicitly specify the acquisition partner in the company 's status of the merchant, on the GRAS t stated in the law of trade Lebanese in Article (53), with the stipulation should not be carrying out the duties prescribed by law, the trader taken, Lq William the company in this matter.
- 2- As an exception to the foregoing, the interest requires not to involve the small in the commercial environment, which requires the Iraqi legislator to stipulate not to make the partner a minor partner in the solidarity company, and not to qualify Trader, and if the interest of the minor requires continuing to engage in commercial activity, here The minor's liability can be determined, and the legal representative may, after granting permission, continue to practice the commercial activity without classifying the trader as a minor, which is an exception to the general principle that makes the partner's responsibility personal, unlimited and cooperative.

And what supports the position of the Iraqi legislator under the provisions of Article 46 of the Law of Commerce, which obligations minus the eligibility or lack thereof arising from his signature on the transfer in any form void for him, which shows the form of protection that can be found by the legislator to protect the minor, which entails the first door It is necessary to exclude the trait of the merchant.

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