



THE LEGAL FRAMEWORK OF CORPORATE GROUPS IN ALGERIAN LAW

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Abstract: *The corporate group is considered an advanced form of economic concentration introduced by the contemporary capitalist system, which is based on the idea of conglomerating and uniting enterprises by concentrating material and human resources to undertake the burdens of large economic projects that individual economic units are unable to carry out alone. The group consists of a collection of companies with independent legal personalities, but they are subject to a unified economic management, exercised by one of the companies that leads the group, typically referred to as the holding company. This company exerts control over the rest of the companies, referred to as subsidiaries, by controlling the majority of their capital or owning the majority of voting rights by law, agreement, or de facto.*

Keywords: *corporate group - holding company - parent company - subsidiaries - control.*

Introduction:

Commercial companies are among the most significant phenomena of social life, existing throughout all eras since the dawn of civilization. They have grown and expanded over time as human needs evolved in line with social development, becoming the backbone of economic, commercial, and financial life both domestically and internationally.

Perhaps the most prominent type of commercial company is joint-stock companies, as they are better equipped to gather capital. They are often involved in economic projects that require substantial financial resources compared to other types of commercial companies, making them the ideal model for entities that develop the economy and the best vessel for accommodating major projects.

However, despite the position held by joint-stock companies, recent times, particularly in the latter half of the last century, have shown signs of their inability and limitations in keeping pace with the significant developments in the business world. Large-scale economic projects, which often surpass the boundaries of a single state, have become increasingly challenging for a single company to accomplish or achieve.

Contemporary and innovative economic developments and changes have compelled commercial companies to enhance their operations and performance and reorganize their structures. This has led them to resort to economic conglomeration and to concentrate and centralize their capital. One of the most popular legal methods for economic concentration is what is known as a "corporate group."

The corporate group is considered one of the most important economic phenomena in the contemporary global economy, given its significant impacts on various economic aspects both within a state's territory and beyond. This is due to the economic and legal characteristics that distinguish it and have earned it a prestigious position in the business world.

Algerian legislation has included, since the enactment of the Commercial Law in 1975, certain provisions that allow for the formation of corporate groups. Furthermore, with the wave of amendments that Algeria experienced in the early 1990s, additional legislative texts were introduced to regulate corporate groups, albeit in a simplified manner.

Based on this information, the following issue has been raised: How has the Algerian legislator organized the corporate group?



To answer this question, we will rely on a descriptive approach by addressing the key legislative and regulatory texts related to the research topic, as well as an analytical approach to analyze the content of these texts.

Thus, we have decided to divide this study into two main axes:

- Axis One: The Concept of Corporate Groups
- Axis Two: The Internal Structure of Corporate Groups.

Axis One: The Concept of Corporate Groups:

A corporate group is a factual or real situation of a collection of companies that forms an economic conglomerate by operating as a unit, while legally remaining independent of one another.

I. Definition of Corporate Groups:

The corporate group has not been given a specific legal structure in Algerian law, which requires us to seek out doctrinal definitions to help us understand the legal definitions.

1. Doctrinal Definition of Corporate Groups:

The term "corporate group" refers to "a group of companies that engage in similar or distinct economic activities and are subject to unified economic management, with one company at the head of the group controlling its financial assets. This leading company is called the parent company, which exercises control over the member companies by owning a portion of their capital (Houssien, 2005, p. 29).

Dr. Philippe Merle argued that the term "corporate group" has an economic connotation and does not represent an independent legal entity, as the group lacks legal personality. It consists of a collection of companies, each with its own legal entity, yet they are interconnected in such a way that one of these companies, referred to as the parent company, subjects the remaining companies to its authority either by law or in practice. The parent company exercises oversight over the other companies and forms the decision-making unit within the group (Merle & Fauchon, 2014, p. 827).

Francis Lefebvre defines it as "a group composed of several companies, each of which maintains its legal independence, yet they are interconnected by various relationships, with one being the parent company that controls the other subsidiaries, exercises oversight over the group, and forms the center of decision-making. There is a distinction between the legal status that imposes independence and the economic status that imposes dependency (Lefebvre, 2006, p. 15).


2. Legal Definition of Corporate Groups:

The Tunisian legislator attempted to define the corporate group through Article 461 of the Tunisian Companies Code, which considers a group to be a collection of companies that are independent from one another legally but are linked by common interests. The parent company exerts legal or actual influence over the other subsidiary companies and exercises oversight in a manner that leads to a unified decision-making process within the group. However, this conglomerate does not have a separate legal entity, as it does not possess legal personality (Tunisian Companies Code, Article 461).

In contrast, the Algerian Commercial Law does not provide a definition of the group but merely outlines its foundations, which include the legal independence of the companies within the group, as well as their subjection to the oversight of the holding company, whether by law, in practice, or through agreement (Ordinance No. 75-59, 1975, Articles 729 & 731)

Unlike the Commercial Law, Algerian tax legislation attempts to define the group through Article 138bis of the Law on Direct Taxes and Similar Fees, which defines the group as a combination of two or more joint-stock companies that are legally independent yet form a single economic entity. The company at the head of the group is called the parent company, and the other subsidiaries are subject to its control by owning at least 90% of their share capital, which cannot be wholly or partially owned by another company that could assume the role of a parent company, except for oil companies and those governed by other laws in addition to commercial law (Law No. 07/12, 2007).

From our review of the various definitions, we observe a near-consensus among scholars and even legislations that have attempted to define the group regarding the essential elements that must be present for a corporate group to exist. These elements are:

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- A collection of companies, each possessing independent legal personality.
 - Legal independence of the companies under a unified economic control and oversight exercised by the company at the head of the group.
 - The exercise of this control through technical tools and methods derived from company law, primarily stemming from the parent company's ownership of the majority of the capital of the subsidiaries.

From this, we can define a corporate group as an economic conglomerate composed of several companies, one of which is referred to as the holding company, while the others are termed subsidiaries. Each company is legally independent of the others, yet they form a single economic unit through the dependency relationship imposed by the holding company on the subsidiaries, using methods derived from company law, primarily through the parent company's ownership of the majority of the subsidiaries' capital, either directly or indirectly, enabling it to impose its oversight over these companies by law, in practice, or by agreement.

II. Distinguishing Corporate Groups from Other Legal Commercial Forms:

To understand the true meaning of corporate groups, it is essential to distinguish them from other systems that are often confused with them, such as economic interest groups and multinational corporations.

1. Distinction Between Corporate Groups and Economic Interest Groups:

Many researchers confuse economic interest groups with corporate groups, mainly due to the linguistic similarity between the two terms, as both represent modern forms of economic concentration. Therefore, it is necessary to shed light on the various points that either unite or differentiate them:

A. Similarities Between Groups and Aggregates:

- Both consist of a collection of companies that form an economic unit aimed at achieving the interests of each of these companies while retaining their legal personality and financial independence.
- The activities carried out by both corporate groups and economic interest groups are of a commercial nature, and both are subject to the provisions of commercial law (Algerian Commercial Law, Articles 729-732 bis 4).
- Both aim to enhance the competitive capabilities of the various economic units that constitute them and to coordinate their efforts through financial operations among them (Algerian Commercial Law, Articles 796-799 bis 4).

B. Differences Between Corporate Groups and Economic Interest Groups:

- The economic interest group forms an independent legal entity distinct from the economic units that comprise it, due to its legal personality, which it acquires upon registration in the commercial registry (Algerian Commercial Law, Articles 799). In contrast, a corporate group lacks any legal entity; it is merely an economic unit formed by a collection of companies that are legally independent of one another, but are subject to a single centralized strategic plan determined by the company at the head of the group, known as the holding company.
- According to (Algerian Commercial Law, Articles 796), an economic interest group is established through a written contract concluded among the member units which is published and registered in the commercial registry and includes a set of mandatory data specified by laws and regulations (Algerian Commercial Law, Articles 797). Conversely, a corporate group is formed through the control of the holding company over the subsidiaries, using means and tools derived from company law.
- Members within the economic interest group maintain complete independence in performing their tasks, whereas the independence of companies within the corporate group is relative, as their relationship with the holding company stems from the latter's ownership of shares or stocks in the subsidiaries, granting it priority in oversight and management.

2. Distinction Between Corporate Groups and Multinational Corporations:



Multinational corporations are defined as "a group of parent or subsidiary companies, each engaged in production activities in different countries and subject to the control of a single company, the parent company, which manages all these subsidiaries within a unified global framework (Ghanem, 2003, p. 326).

From this definition, it becomes clear that the most significant factor distinguishing multinational corporations from domestic corporate groups is the international aspect. The activities of multinational corporations extend beyond national borders to other countries, meaning that these companies operate in multiple geographical areas and possess different nationalities.

Axis Two: Internal Structure of Corporate Groups

A corporate group is composed of several companies, one of which is the holding company that controls the other subsidiaries, exercises oversight over the group, and forms the decision-making center.

I. Conceptual Framework of the Holding Company and Subsidiaries:

The holding company and subsidiaries are essential components for forming a corporate group, as they adopt one of the legal forms prescribed for commercial companies.

1. Concept of the Holding Company:

A. Definition of the Holding Company:

Jordanian legislation defines the holding company as a public joint-stock company that exerts financial and administrative control over one or more other companies, known as subsidiaries, by owning more than half of their capital and/or controlling the composition of their board of directors (Jordanian Companies Law, 1997, Article 204).

The Tunisian legislator defined it as a company at the head of a corporate group with its own legal personality, subjecting the remaining subsidiaries to its oversight to achieve unified decision-making within the group, either through direct or indirect participation in the capital of each of the companies within the corporate group, utilizing legal or actual influence (Tunisian Commercial Companies Code, Article 461).

French legislation addressed the holding company in the 1966 Companies Act under the title "Subsidiary and Joint-Stock Companies," distinguishing between a holding company and a joint-stock company. It considered the former to be one that owns the majority of a subsidiary's capital (Law No. 66/537, 1966, Article 354), while ownership ranging from 10% to 50% of another company's capital would classify as a joint-stock company (Law No. 66/537, 1966, Article 354).

However, the French legislation transitioned from this superficial definition to a more precise and comprehensive definition with the amendment to the Companies Act in 1985. It emphasized the various legal mechanisms that enable a holding company to control other companies and make them subsidiaries, including:

- Direct or indirect ownership of a portion of the subsidiary's capital, allowing the holding company to obtain the majority of votes in the general assemblies of that company.
- Sole ownership of the majority of voting rights in that company through an agreement with other partners or shareholders, provided that this agreement does not harm the interests of the company.
- Effective control over the decisions of the general assemblies based on the voting rights held.
- Partnership or shareholding in that company, granting authority to appoint or dismiss the majority of its administrative or supervisory bodies.
- Control is presumed when direct or indirect ownership exceeds 40% of the voting rights, with no other partner or shareholder directly or indirectly holding a larger share (French Commercial Code, Article L233-3).

For Algerian legislation, when the Commercial Law was enacted in 1975, it implicitly attempted to define the holding company by discussing the definitions of subsidiaries and joint-stock companies. It considered a company to be a subsidiary when the latter owned more than half of its capital (Algerian Commercial Code, Article 729, before amendment). If ownership did not exceed



this threshold, it was considered a joint-stock company (Algerian Commercial Code, Article 730, before amendment).

What we observe from this legislative attempt is the superficiality and lack of precision with which the legislator addressed the holding company. It did not provide a comprehensive definition nor clarify the means of establishing dependency between the holding company and its subsidiaries, despite mentioning the concept of financial participation that exceeds half of the subsidiary companies' capital as the only means to achieve the element of dependency (Ourouane, 2016, p. 207).

We attribute this to the nature of the economic system adopted by Algeria during that period, which was a socialist system characterized by state monopoly over foreign trade and restrictions on domestic trade.

After the economic transformations Algeria experienced in the late 1980s and the wave of deep reforms affecting various sectors, particularly the economic sector, we find that the Algerian legislator changed its position regarding the holding company. This change was reflected in the amendment to the Commercial Law in 1996 (Order No. 96/27, 1996), where it defined the holding company as:

- A company that owns more than 50% of the capital of another company (Algerian Commercial Code, Article 729).
- A company that directly or indirectly owns a part of its capital, allowing it to obtain the majority of votes in the general assemblies of that company.
- A company that solely owns the majority of the votes in that company through an agreement with other partners or shareholders, provided that this agreement does not conflict with the interests of the company.
- A company that exercises actual control over the decisions of the general assemblies based on the voting rights it possesses.
- A company that directly or indirectly owns more than 40% of the voting rights, with no other partner or shareholder directly or indirectly holding a larger share (Algerian Commercial Code, Article 731).

From this definition, we can see that the commercial legislator announced the term used to describe this company, designating it as a "holding company," which is mentioned in the final paragraph of Article 731 of the Commercial Code: "... the company that controls one or more companies according to the previous paragraphs, for the purposes of applying this section, is called the holding company."

As for Algerian tax legislation, it defines the holding company differently from the definition in commercial law. Referring to Article 138 bis of the Law on Direct Taxes and Similar Fees, it uses the term "parent company" instead of holding company for the company at the head of the group, which must have direct ownership of at least 90% of the capital of the subsidiaries.

B. Legal Form of the Holding Company:

Referring to the various legal texts regulating the holding company in Algerian commercial legislation, it is found that no specific legal form is required for the holding company. Therefore, it can adopt any of the corporate forms defined by the legislator in commercial law.

In contrast, according to the Law on Direct Taxes and Similar Fees, Article 138 bis specifies a single and exclusive legal form that the parent company and its subsidiaries must adopt to be eligible for the specific tax regime applicable to corporate groups, which is that of a joint-stock company. This makes it clear that this provision explicitly excludes all other forms of companies recognized in commercial law.

The Algerian legislator's exclusion of other corporate forms from the tax regime for groups is not logically justified, especially since many groups include companies that do not take the form of joint-stock companies. This is in contrast to the French legislator, who opened the door for any legal entity belonging to the group to be subject to the distinctive tax system for corporate groups, provided that the aggregate results of its activities are subject to corporate income tax (Ben Zrae, 2014, pp. 252-253).

In our view, capital companies, particularly joint-stock companies, represent the optimal legal framework for holding companies due to their characteristics, particularly their reliance on the financial consideration of partners without regard for personal considerations. This has made them a highly effective tool for attracting the necessary internal and external capital needed to promote large economic projects.

2. Concept of Subsidiary:

The dependency of a subsidiary company on its holding company varies based on the latter's investment in it. Dependency may occur through majority ownership of the subsidiary's capital by the holding company or through minority voting rights, either by law, agreement, or in practice.

A. Definition of Subsidiary:

It is also referred to in the literature as a "child company" or "branch company." It possesses an independent legal personality and must meet the necessary objective and formal conditions for establishing the chosen commercial form (kadi, 2004, p. 20). It should have a purpose independent of that of the controlling company, an independent financial entity, a nationality, and a specific headquarters (Malecki, 2000, p. 453), meaning it is a company subject to the control of another company.

The legal definition is provided in Article 729 of the Algerian Commercial Law, which states: "If a company owns more than 50% of the capital of another company, the latter shall be considered a subsidiary of the former." This means that a company is classified as a subsidiary when the majority of its capital is owned by another company.

However, upon examining Article 731 of the Algerian Commercial Law, which attempts to define the concept of the holding company, we find that the term "subsidiary" is applied to a company in other instances even without majority ownership of the capital.

A company is considered a subsidiary if another company owns part of its capital directly or indirectly, allowing the latter to obtain the majority of votes in its general assemblies. A subsidiary is also defined if another company holds a majority of the votes based on an agreement with other partners or shareholders. Furthermore, a company is classified as a subsidiary when another company has practical control over its decisions based on the voting rights it holds, or when it directly or indirectly owns more than 40% of the voting rights (Ourouane, 2016, pp. 259-260).

From the above, we can conclude that the Algerian legislator relied on two main criteria to define a subsidiary. It did not only limit itself to the quantitative criterion of majority ownership of capital to identify a subsidiary; rather, it employed a mixed and composite criterion to encompass all situations where a company may be subject to the control and oversight of another company.

B/ The Legal Form of the Subsidiary:

Algerian commercial legislation does not require a specific legal form for the subsidiary, allowing it to adopt any form of companies defined by the legislator in commercial law. The choice of form is based on the circumstances of its establishment and its objectives. When the subsidiary is entrusted with significant industrial and commercial activities that require substantial funds and a large workforce, the appropriate form for it is that of a joint-stock company (Zaidi, 2014, p. 224). Regarding Algerian tax legislation, only joint-stock companies are qualified to be subject to the special tax system for corporate groups. This is evidenced by the establishment of a concept for corporate groups, which indicates that it is "an economic entity consisting of two or more legally independent joint-stock companies. (Tax and Similar Charges Law, Article 138 bis). This means that the legislative text explicitly excludes all other forms of companies recognized in commercial law.

II. Means of Control of the Holding Company over its Subsidiaries:

The holding company enjoys an element of control, which manifests in several aspects, including administrative and financial control, both of which form the basis of the relationship between the holding company and its subsidiaries.

1. Administrative Control:

Control over the administration occurs at the level of the general assemblies of the subsidiaries, and it can either be individual control through owning a majority of voting rights or joint control that the holding company acquires through what are known as voting agreements (Article 731 of



the Commercial Code), which often take place covertly to obtain votes from partners in a certain direction. The subject matter of these agreements may be documented outside the company's articles of association, and they should not harm the interests of the monitored company to be valid (Beloula, 2013, p. 261).

Owning a majority of votes in the general assemblies of the subsidiaries is sufficient as it allows for the appointment and dismissal of directors and board members. Additionally, at the level of the general assembly, the holding company can maintain control over its subsidiaries and avoid the obligations imposed by such control, merely by being a shareholder with rights (Mzahem, 1992, p. 151), which is known as effective control.

This type of control allows the holding company to act as a director or board member of the subsidiary, granting it the right to exercise administrative control. Without administrative control, the holding company would not be authorized as a special legal organization to operate according to the purpose for which it was established, and it could become a burden on the commercial company without a justification for its existence (Al-Kandari, 2018, p. 38).

2. Financial Control:

In addition to the administrative control enjoyed by the holding company over its subsidiaries, it also possesses financial control, which is based on the holding company's ownership of the majority of the capital of each of its subsidiaries. This allows the holding company to determine the financial policy of the subsidiaries, as it funds their activities either through borrowing from outside the group or internally, or by adopting a self-financing method using the resources of each type of subsidiary (Ismail, 1990, p. 113).

Moreover, the holding company specifies for each of its subsidiaries the amount of profits to be distributed each financial year, the amount to be retained in reserves, and the level of liquidity to be maintained in each subsidiary, as well as how to utilize any surplus funds.

The impact of the holding company's financial control on its subsidiaries is evident during the establishment phase of the subsidiaries, as they face various financial pressures from the formation of their financial structure, which primarily relies on the holding company. Many subsidiaries are observed to be established with minimal capital from the holding company and local financing, leading to insufficient financial resources to meet their needs. Consequently, these subsidiaries remain in constant need of financial support from the holding company, which provides financial assistance through loans, thus ensuring additional financial control over its subsidiaries (Lamzari, 2019, p. 101).

Conclusion:

After studying this topic, we observe that a corporate group does not have any legal entity in itself; rather, it is an economic unit formed by a group of legally independent companies from one another. However, they are subject to a single central strategy determined by the holding company to achieve the objective for which the corporate group was created, which is to generate profit through the holding company's investment in its funds, either solely through its subsidiaries or through its participation in their economic activities.

From this study, we reached the following conclusions:

- There is a lack of a specific definition for corporate groups in Algerian legislation, as the Algerian legislator has not established a specific legal framework governing corporate groups in detail. Only certain texts, such as those regulating subsidiaries, participations, and monitored companies, have referred to some of the foundations upon which the group is based.
- The general principles of commercial company law grant the holding company the freedom to manage and control its subsidiaries, as it owns the majority of the capital or voting rights. It holds full authority in the general assembly and can thus appoint itself as the managing director or as an actual manager in the subsidiaries.
- Although subsidiaries enjoy independent legal personality, they remain relatively dependent in practice concerning their relationship with the holding company due to the control exercised by the latter.



- If we consider this relationship from the perspective of the holding company, it is one of administrative and financial control. However, from the perspective of the subsidiaries, it is a relationship of administrative and financial dependency.
- There is a discrepancy between the provisions of commercial law and the laws governing direct taxes and similar taxes in defining the quantitative criteria for the percentage of contributions concerning the member companies in the group.
- Despite being a specific law, commercial law has not defined the legal form of the holding company and subsidiaries, unlike tax law, which has restricted it to joint-stock companies.

Based on the findings of this study, we propose several suggestions, including:

- Amending the Algerian commercial law to include a specific section in the book on commercial companies that addresses corporate groups in terms of the organizational framework for their establishment, operation, and termination.
- Organizing clear legal texts regarding the relationship between the holding company and its subsidiaries to avoid the ambiguity surrounding this relationship in terms of responsibilities, obligations, and resulting rights.
- Harmonizing the definitions of the majority of capital that the holding company must own in its subsidiary under both Algerian commercial law and Algerian tax law.

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