

E-Company Domicile in the Iraqi Legislations¹

Dr. Mohammad Amer Shenjar, Shahad Maher Bashar

The College of Law-Al-Bayan University, Iraq

Date of Receiving: 24th November 2021;

Date of Acceptance: 24th January 2023;

Date of Publication: 06th February 2023

ABSTRACT

Every natural and juridical person should have a domicile that serves as their place of residence. It is also necessary for the company to have a domicile because it is a direct application of a juridical person's concept. It could go even further than that; certain legislation may go so far as to base the company's nationality on its domicile. With the advent of E- Companies and the transformation of life in many of its aspects from the real world to the virtual one, it is now necessary to investigate all the peculiarities of the formation of this type of company and investigate all the ramifications of granting legal identity to the E- Company. The research examines the notion of the domicile of the E- Company, and will confine the scope of the study to Iraqi law due to the significance of its influence on the evolution of general concepts in the requirements related to the E- Company, including the domicile, which cannot match its conventional view with the E- Company, which is intended to be established and run exclusively through the Internet with no physical entity. The research's conclusion explains how to strike a balance between the traditional domicile in a conventional company and the domicile in the E- Company. The adoption of the electronic domicile concept in the Iraqi legal framework is a clear example of how traditional theories related to the domicile may be reweighed in order to include and integrate the E- Company. Iraqi legislative models are also mentioned in relation to how they can be modified in adopting the concept of e-company domicile in the Iraqi legal framework.

Keywords: *company; E- Company; electronic domicile; traditional domicile; activity center; electronic contract; electronic incorporation; management center*

INTRODUCTION

Today's world is largely controlled by technology in general and the Internet in particular. The term Electronic Company (E-Company), refers to a modern organizational structure made up of geographically distant employees who share tasks and interact virtually with little to no direct face-to-face contact⁽²⁾.

It is also known as (the business that operates online and has no geographical boundaries because personnel communicate electronically)⁽³⁾.

According to their types, E-Companies can be categorized into three categories:

The first category is businesses that specialize in electronic advertising and have a physical presence in the area where they operate. These businesses also have websites on the Internet that they use for advertising and to boost their revenue and profits. Because there is a true and genuine reality of the company that can be obliged to implement the law, such E- Companies do not pose any legal issues.

¹ *How to cite the article:*

Shenjar M.A., Bashar S.M., E-Company Domicile in the Iraqi Legislations, IJLMS, Jan-Mar 2023, Vol 7, Issue 1, 16-25

² Dr. Najm Abboud Najm, Electronic Administration - Strategy, Functions and Problems, Dar Al-Marikh Publishing House, Riyadh, 2004.

³ Ibid, p. (357).

The second category consists of businesses that provide straightforward electronic services. This style of business indicates that the organization is grounded in the real world. It can be established in accordance with legal documents in its conventional and explicit sense, but in addition to that, it develops a website for it online, attempting to accomplish two things through it: The first of these is represented in marketing campaigns that expand its customers and boost profits, and the second involves offering some basic solutions to customers without compromising the company's legitimacy.

Finally, the third type of E- Company is one in which the business is entirely electronic, conducts all of its operations online, offers all of its services to customers over the internet, and replaces its physical location on the ground with a virtual one on the internet known as the website or electronic home⁽⁴⁾. This type of companies will be the subject of our study.

The significance of this topic begins with the benefits provided by E- Companies. These businesses have a large customer base, which enables them to be set up to perform their tasks with ease and deal with clients who want to work with them and enjoy the benefits of their services, as well as to offer clients the best and most extensive services when compared to businesses of a similar nature. In the operations of real or genuine businesses, all of the money is allocated to the provision of services without being allocated among the expenses of the company itself.

Among the aforementioned benefits, a question is posed which go in one of two directions: first, how can a company that lacks a physical address, or more specifically, one that lacks a true internal domicile, be registered in accordance with the information supplied in its memorandum of organization and the official documents that must be submitted to formally grant it a legal personality?

The second: How will the litigation and fairness of the right holder be in the case of a disagreement with this company, whether between the client or customers or between another company or institution with this E- Company? What regulation will be used? And what about other such queries that remain unanswered? Through this research, there will be an attempt to provide answers that are deemed logical, by conducting the following research plan:

1. The Concept of the Company's Electronic Domicile
 - 1.1 Introducing the E- Company's Domicile
 - 1.1.1 Defining the Company's Electronic Domicile.
 - 1.1.2 Distinguishing the Electronic Domicile from the Traditional Domicile of the Company.
 - 1.2 The Requirements and Conditions of the E- Company's Domicile.
 - 1.2.1 Requirements for the E- Company's Domicile.
 - 1.2.2 Conditions of the E- Company's domicile.
2. The Effects of the E- Company' Domicile
 - 2.1. The substantive effects of the E- Company's domicile.
 - 2.1.1. Determining the nationality of the company.
 - 2.1.2. The establishment of the company in the amended Iraqi Companies Law No. (21) Of 1997.
 - 2.2. The procedural effects of the E- Company's domicile
 - 2.2.1. The formalities required in the amended Iraqi Companies Law No. (21) Of 1997.
 - 2.2.2. Formalities in notifications and submission to court.

THE FIRST TOPIC

1. The Concept of the Company's Electronic Domicile

Domicile plays a significant role in people's lives and is closely related to nationality in deciding the applicable legislation and the competent court in the event of a dispute, so long as this disagreement involves a foreign element. Most national legislation has accepted this principle, and the Iraqi legislature included residence as one of the fundamental factors determining the law that applies to all issues involving a foreign element and the court that decides them⁽⁵⁾.

⁴ Dr. Munir Muhammad Al-Janabihi and Mamdouh Muhammad Al-Janabihi, *Electronic Companies*, Dar Al-Fikr Al-Jamii, Egypt, 2008.

⁵ Article (25/1) of the Iraqi Civil Code states the following: "The contractual obligations shall be governed by the law of the state wherein lies the domicile of the contracting parties if they have a common domicile; where they have different domiciles the law of the state within which the contract was concluded will be applied unless the contracting parties have agreed (otherwise) or where it would be revealed from the circumstances that another law was intended to be applied."

All of the above applies to the homeland with its traditional and recognized idea. One of the traditional legal notions that has undergone alteration is the idea of domicile and the domicile of the E- Company, which will be discussed in this paper, as scientific life has developed and technological work has expanded, another virtual world born of technology has emerged for us. This section will cover the following two topics; defining the E- Company's domicile, and establishing the parameters and requirements for the domicile of the E- Company, both of which will be successively outlined in this section.

1.1. Introducing the Electronic Domicile of the Company

To be aware of the comprehensive definition of the electronic domicile, we will attempt to make it clear through: Firstly, defining the electronic domicile, and secondly, attempting to differentiate between the electronic domicile from the traditional one.

1.1.1. Defining the Company's Electronic Domicile.

The term "domicile" refers to a person's connection to a specified place through either living there or using it as a hub for their interests, businesses, and family relationships. It serves as a tool for the geographical distribution of people ⁽⁶⁾.

(Savini) defines domicile as "the place that a person freely chooses to dwell in permanently and to be the center of his legal relations and preoccupation" ⁽⁷⁾. In addition, it is defined by (Story) as "the region that a person has taken as his actual, permanent, and continuous shelter, and he has made it the center of his activity, and if he departed it, he has the intention of returning to it." (Dacey) defines it as the area or country that serves as a person's residence, while it may occasionally be the area or country that the law regards as his home whether he actually resides there or not ⁽⁸⁾.

Summing up the definitions presented by philosophers of law, we conclude that the domicile in its traditional form is defined as "the geographical space or the territorial area that a person intends to take as a residence or a headquarters of business" ⁽⁹⁾.

Based on the foregoing, the traditional domicile is: Firstly, the place where the person resides with the intention of staying for an indefinite time, and Secondly, the headquarters of the business administration or is the place where the family and professional ties are based.

Accordingly, the laws differed by setting a specific definition of domicile, so the first set of legislation defined the domicile as the place of business, and among these legislations is the French Civil Code of 1804 in Article 102, which stipulates (The domicile of a French person, as to the exercise of his civil rights, is at the place where he has his main establishment.) According to the French law, in the case of the multiplicity of places, the French civil code stipulates: "A change of domicile takes place in consequence of an actual residence in another place, in addition to the intention to fix one's main establishment there".⁽¹⁰⁾

And the Italian Civil Code of 1942 in Article 43, which stipulates that: "the term domicile means the individuals' principle place of business or interests. The presence of a domicile in Italy is regardless of the effective presence of the individual". ⁽¹¹⁾

Domicile under British law also appears in three types, firstly, Domicile of origin the domicile of one's father at the time of one's birth; secondly, Domicile of choice in which an adult person choose a place to be his-her domicile;

⁶ Assist. Prof. Dr. Muhammad Jalal Hassan, The International home as an officer for the award for acts of conflict rules (analytical and comparative study), research published in the Scientific Journal of the University of Sulaymaniyah, No. (1), Vol. 1, published on June 17, 2017.

⁷ Quoted from: Dr. Abdel Hamid Abu Heif, Private International Law, Part 1, Dar Al-Nahda Al-Arabiya, Cairo, 1986.

⁸ Quoted from: Dr. Hisham Ali Sadiq, Nationality, Domicile, and Foreigners Center, Mansha'at al-Maaref, Alexandria, 1924.

⁹ Quoted from: Dr. Abd al-Rasoul Abd al-Rida al-Asadi, Private International Law, Al-Sanhoury Library, 2018, p. 162.

¹⁰ Dr. Badr Al-Din Al-Moneim Shawqi, International Special Relations, provisions of nationality, domicile and the headquarters of foreigners, Al-Ashry Press, 2005.

¹¹ Dr. Hassan Mohammed Al-Hadawi and d. Ghaleb Ali Al Daoudi, Private International Law, Part 1, Nationality, Domicile, headquarters of Foreigners and Its Provisions in Iraqi Law, Legal Library, Iraq – Baghdad.

Thirdly, domicile of dependency - children under the age of 16 will automatically obtain the domicile of the person upon whom their domicile is dependent (usually their father).

As for the second set of legislation, it defined the meaning of domicile with the place of residence, and from these legislations the Swiss Civil Code which defines the person's domicile: "A person's domicile is the place in which he or she resides with the intention of settling", as well as the Turkish Civil Code in Article (19) and the German Civil Law in Article (7) The Egyptian Civil Code No. 131 of 1948 in Article 40/1 also went to that, as it stipulated that it is the place where a person usually resides (¹²).

The Iraqi legislator conforms to the second set of legislators. It stipulates in Article (42) of the amended Civil Law No. (40) of 1951 that the domicile is the place wherein a person normally resides permanently or temporarily, and a person may have more than one domicile.

All of the aforementioned is true for the recognized homeland in its conventional structure and concept, but if we shift our focus from the physical world to the virtual one that was formed with the advancement of informatics and technology, the situation changes.

Some defined (¹³) the website via the Internet as the virtual home (electronic home), because it allows the person or business to reveal to the public its intended commercial goal.

The electronic domicile may not be accessible to everyone and may require entering a password or paying a subscription fee, or it may be accessible to everyone and may be searched by any search engine on the Internet (¹⁴).

Additionally, none of the aforementioned changes the concept of the electronic home that we previously mentioned when defining the E- Company's domicile.

Regarding the legislative aspect, our limited research didn't show up any state laws that define the electronic domicile in detail. Even in the laws that deal with electronic transactions did not include a definition that specifically describes the concept of the electronic domicile.

Iraqi law is seen as being relatively new in the area of technology and still needs a lot of work to keep up with advancements in the sector.

In conclusion, we can say that the domicile of the E- Company is to take a space from the Internet or cyberspace and to launch a website so that customers can contact the E- Company using it as a basis for correspondence.

1.1.2. Distinguishing the Electronic Domicile from the Traditional Domicile of the Company

The traditional domicile of the company is referred to as the company's domicile (¹⁵) in the legal system, and the company's domicile is where its primary administrative center (¹⁶), i.e., the location of the board of directors or the authorized manager.

And the Iraqi civil law emphasized in Article (48/6) that the company's domicile is the place wherein lies its head office (administrative center) (¹⁷), as for the Iraqi law, even a foreign company whose main center is outside the Iraqi borders, is obligated to open an administrative center inside Iraq so that it can conduct its work through it, in order for the latter to be the place where the foreign company conducts its business in Iraq (¹⁸).

¹² Quoted from: Dr. Abd al-Rasoul Abd al-Rida al-Asadi, Private International Law, Al-Sanhoury Library, 2018, p. 164.

¹³ Dr. Faten Hussein Hawwa, Websites and Intellectual Property Rights, first edition, Dar Al Thaqafa for Publishing and Distribution, Jordan, 2014, page: 64

¹⁴ Ibid. page:65-66

¹⁵ Dr. Elias Nassif, The Commercial Law, Part Two, Commercial Companies, Owaidan Publications, Beirut and Paris, second edition, 1992.

¹⁶ Dr. Mahmoud Al-Kilani, Commercial and Banking Encyclopedia, Volume Two, Commercial and Electronic Legislation (a comparative study), House of Culture for Publishing and Distribution, Jordan, first edition, 2007.

¹⁷ Article (48/6) of the Iraqi civil law in force states: "A juristic person has a domicile which is deemed to be in the place wherein lies its head office (administrative center); the companies which have their head offices abroad and have business in Iraq their head office in regard to the bylaws will be deemed to be the place wherein lies its business management in Iraq."

¹⁸ Dr. Farouk Ibrahim Jassem, The Brief on Commercial Companies, The Legal Library, Baghdad, Iraq, second edition, 2011.

As for the electronic domicile, it differs from what was mentioned above, as it does not represent the company's domicile, and it is not specified by its main administrative position. A company can be managed from Iraq one day, and in another day from any foreign country.

If we assume that the defined location within the Internet is the same as the electronic domicile, then this site can be located in the nation from where the Internet connection is made. In every instance, a company's virtual location is entirely different from the concept of a traditional domicile.

1.2. The Requirements and Conditions of the E- Company's Domicile.

No matter what kind of business the E- Company engages in, the electronic domicile must adhere to one of the standards that the traditional domicile does in order to be recognized as a legitimate domicile for the E- Company. Along with all other prerequisites being satisfied in both the traditional and electronic domiciles of the E- Company. We shall make it clear through our explanation of the aforementioned in the following subsections:

1.2.1. The Requirements of the E- Company's Domicile.

Legislators concurred on the significance of the domicile and how it affects a company's ability to obtain nationality. They decided to establish a variety of standards or principles for judging whether someone qualifies for nationality. The right to have a domicile is one of the most significant outcomes of the creation of this personality, and these conditions can thus be adjusted to the domicile provided to companies as a legal entity. Any company's creator has the power to specify the domicile requirements necessary to bestow the desired nationality on the legal entity created under his or her own direction. However, they did not agree on which of these requirements should be used to determine the company's nationality and, consequently, the proper domicile on the basis of which the nationality might be obtained.⁽¹⁹⁾

The majority view supported using the company's primary management center as the requirement for conferring nationality to the company. In light of this, the company obtains the nationality of the country in which it is situated, i.e., in accordance with its domicile or its main management center. For instance, if a company is founded in Italy, i.e., if Italy is its domicile, then its nationality is Italian ⁽²⁰⁾, and many countries' legislation has adopted this criterion ⁽²¹⁾.

We find it challenging to apply this criterion to the domicile of the E- Company for a number of reasons, including:

The E- Company lacks a physical location that may serve as its primary headquarters. Cyberspace is a virtual, nonexistent place, and the E- Company is an emerging enterprise there. Everything in it is therefore virtual, even the E- Company's headquarters. An electronic business can, as we previously indicated, operate from Iraq occasionally and from another country other than Iraq on the same website. Any of the countries may be thought of as their "domicile" in the conventional sense so that we may set up the legal implications on it.

The company's activity center, its center of exploitation, or the practice of the activity are among the factors for identifying the domicile of the company, and they lead to the conclusion that the company is granted the nationality of the domicile of its primary activity ⁽²²⁾.

It is challenging to apply this criterion to an E- Company in order to determine its domicile because, unlike a traditional company, an E- Company is not restricted to a single location. Without having more than one branch, it can function similarly in multiple locations. A detailed identification of the center of activity is necessary in order for that location to be regarded as the company's home because the E- Company depends on the capacity of its large client base.

¹⁹ For more details see Dr. Basem Mohamed Saleh and d. Adnan Ahmed Wali Al-Azzawi, Commercial Law, Commercial Companies, Legal Library, Baghdad, p. 48.

²⁰ For more details see Dr. Akram Yamalki, Commercial Law, Commercial Companies, A Comparative Study, Beit Al-Thakafa for Publishing and Distribution, Jordan, third edition, p. 38.

²¹ An example of this was also taken by the Italian and Jordanian Civil Code.

²² Awni Muhammad Fakhri, Legal Regulation of Multinational Corporations and Globalization, First Edition, Beit Al-Hikma, Baghdad, 2004, pp. 40-52.

The administrative criterion, which is one of the criteria utilized, is to identify the company's nationality. It focused on the notion that the company's founders have the right to decide a country of their choice in order to give the founding company that country's nationality (23).

We advocate using the founders' choice as a criterion to determine the domicile of the E- Company. When a legal dispute arises, whether with another E- Company, a traditional company, an institution, or a natural person, we can base our decision on which law will be applied to it in order to satisfy the conditions of its establishment or the application of a particular law in those situations.

1.2.2. The Conditions of the E- Company's Domicile.

A set of conditions that must be completed in the traditional company's domicile (the company's administrative center) were agreed upon by the jurisprudence. The following is a summary of these conditions:

1. That the company's domicile is real: It is intended that the company's administrative center be real and not fictitious, so that it can arrange its requirements, the first of which is the company's acquisition of the nationality of the domicile of its management.

2. That the domicile should not be fraudulent: The jurisprudence stipulated that the specific domicile should be the actual primary residence of the company and not mention a fraudulent domicile, so that the company might plan to avoid applying the law of actual domicile.

3. That the domicile be serious; The company's integration into the country's economy serves as the reason for choosing this domicile (24).

We do not find that all of the conditions are met when we try to adapt the above conditions that must be met in defining the company's main center of administration, which is the company's domicile in the opinion of legislation and most jurists and commentators on commercial law.

The company can have a real website that does not alter on the Internet, and this website is not false, but we find that the last requirement relating to seriousness is difficult to satisfy with a virtual or electronic domicile.

Finally, the conditions for verifying the traditional domicile may not fully apply to the (virtual) electronic domicile, causing difficulties in defining it.

2. The Effects of the E- Company' Domicile

We established in the last section that the E- Company must also have an electronic domicile. The concept of electronic domicile has a set of impacts, some of which are objective and can be noticed through substantive legal documents, and the other procedural and can be observed through procedural legal texts, as we shall explain below:

2.1. The substantive Effects of the E- Company's Domicile

The objective effects of the company's electronic domicile within Iraqi legislation manifest themselves in two important matters, namely determining the nationality of the E- Company and establishing the E- Company in light of the amended Iraqi Companies Law No. (21) of 1997, which we will explain in the following two sub-sections:

2.1.1. Determining the Nationality of the Company.

Given the interdependence of the company's (juristic person's) nationality and its domicile, one of the conventions in this topic is to determine the company's nationality based on the company's domicile. We did study on the criterion for identifying the domicile of the electronic corporation, and due to the ineffectiveness of other criteria in finding the domicile, we favored the criterion of will. When we are able to determine the E- Company's domicile, we can grant it a certain nationality.

²³ Dr. Hashem Khaled, Nationality of the Company, Comparative Study, Dar Al-Fikr University, Alexandria, Egypt, 2012, p. 101 and beyond.

²⁴ Ibid, page: 169-181.

And, in light of Article (49) of the Iraqi Civil Code, which states: “(1) The legal regulation of foreign juristic persons – companies, societies, or otherwise- shall be governed by the law of the state within which lies their actual head office”, (2) where a foreign juristic person has however commenced its main activity in Iraq the Iraqi law shall apply thereto.”

According to the above paragraph, the Iraqi legislator has specified the necessity of applying the main administrative center, as well as the standard of the place of activity for companies whose main center of administration is outside Iraq, but they carry out their tasks within Iraqi borders, and this explains the Iraqi legislator's departure to combine two standards for granting citizenship to Iraqi juristic persons who meet one or both of those two cases ⁽²⁵⁾.

And by trying to apply what was mentioned to the E- Company, we find, according to our point of view, the main administrative center and the place of exploitation on the E- Company have a normative shortcoming, and therefore it is difficult to grant the E- Company an Iraqi nationality.

2.1.2. The Establishment of the Company in the Amended Iraqi Companies Law No. (21) Of 1997.

The provision of the requirements stipulated in the Companies Law ⁽²⁶⁾ is required for the establishment of the traditional company, and in Iraqi legislation, we find in Article (13) of the Companies Law No. (21) of 1997, which stipulates: “The founders shall prepare a contract for the company which is signed by them or their legal representative, The contract shall contain at a minimum:

First: The company's name and corporate form,

Second: The company's head office, which must be in Iraq.

Third: The purposes for which the company is established and the general nature of the business to be transacted.

Fourth: The company's activity derived from its objective, provided that it is within one of the economic sectors and the security of other sectors related to its activity. This paragraph has been suspended by virtue of the order issued by the dissolved Coalition Provisional Authority No. 64 of 2004..

Fifth: The company's capital divided in quotas and shares.

Sixth: The method of distributing profits and losses in the joint liability company.

Seventh: The number of elected members in the board of directors of the private joint-stock company.

Eighth: The names of the founders and their nationalities, professions, permanent addresses, and the number of shares they own as well as their percentage of the capital.”

By adapting aforementioned about the possibility of establishing an E- Company in accordance with the requirements needed by the Iraqi Companies Law in force, we find that the conflict between the requirements of the Companies Law on determining the main headquarter of the company and its requirement that it be within Iraqi borders is inconsistent with the E- Company's idea that the limits of its actual location in Iraqi lands cannot be determined. It appears and performs its functions in cyberspace. Thus, the current Iraqi Companies Law does not permit the establishment of an E- Company; however, if we consider an E- Company established in one of the legal systems that can be established outside of Iraqi borders, it is required that this foreign E- Company have a branch or a foreign commercial entity within Iraqi borders. Thus, the current Iraqi Companies Law does not permit the establishment of an E- Company; however, if we consider an E- Company established in one of the legal systems that can be established outside of Iraqi borders, it is required that this foreign E- Company have a branch or a foreign commercial entity within Iraqi borders. According to Iraqi Ministry of Trade Instruction No. 149 dated February 29, 2004, (1) the chief management official in Iraq; (2) the agent for service of legal process in Iraq; and (3) the authorized representative for filings with the Registrar of Companies (all of three must reside in Iraq).

²⁵ Dr. Haider Adham Al-Tai, Provisions of the Nationality of a Natural and Legal Person in Iraqi Legislation, Al-Sanhoury, Baghdad, 2016, p. 169.

²⁶ Dr. Latif Jabr Komani, Commercial Companies, A Comparative Legal Study, 2006, p. 78

In summary, we find that the Iraqi Companies Law in force and the accompanying instructions issued according to it have not yet recognized the idea of a virtual site (website), and therefore it is difficult to recognize an E- Company.

2.2. The Procedural Effects of the E- Company's Domicile

In this section, we will explain the consequences of having an E- Company and the impact of the E- Company's domicile on compliance with procedural laws, through the following :

2.2.1. The Formalities Required in the Amended Iraqi Companies Law No. (21) of 1997

Article (17/first) of the Iraqi Companies Law stipulates that the application for establishment be attached to the company contract ⁽²⁷⁾, and the idea of submitting the application attached to the contract within the practical reality means that the founders of the company submit it physically and not electronically, but in theory there is nothing to prevent the delivery of a copy of the contract via the Internet, the idea here is retaining its content, but the method of delivery is different.

In fact, the problem lies in the extent to which the Iraqi Companies Law can be taken with a company contract held through the Internet. The Iraqi legislator did not specify how the contract was concluded. The regulations for concluding the contract, identifying how the offer and acceptance occurred, and the degree of their safety from any defect of consent, arise here.

As for the E- Company, there are two assumptions, the first of which is that the contract is concluded in its traditional form, and the second of them is that the contract is concluded electronically, and the signing of it is done electronically too.

The concern here is: Does the Iraqi Companies Law accept such a contract?

We see no reason to object to the Registrar of Companies being the authority that grants the legal personality of the company following the Iraqi Companies Law in force. The law required the delivery of a contract, but it did not specify how to finalize the deal or turn it over to the registrar. We can explain this from the start of the article's text by the idea of a firm being held electronically.

2.2.2. Formal Procedures in Notifications and Submission to Court.

The legal person represented by the company acquires an autonomous personality with complete legal capacity and all the authorities to establish rights and duties for it upon its emergence ⁽²⁸⁾. On the other hand, it is subject to the judiciary for the emergence of this legal personality, whether owing to a disagreement between the company and its original partners or between it and another company or institution, and in this case it is necessary to be subject to the judiciary.

We can observe that the matter begins with the notifications. Although the Iraqi courts have implemented electronic notification, the notification is specific to the entity, and those who represent the company before the justice are present.

In the case of E- Companies, notice can be deemed to occur, even if it is done electronically, but the objective of notification may not be met due to the disputed party's ignorance of the E- Company's actual domicile, who the founders are, and what their nationalities are.

One of the issues that can arise in conflicts is the formation of an E- Company by founders of different nationalities. In this case, we are attempting to determine which law must be applied and the contract that was made between the

²⁷ Article (17/first) of the Iraqi Companies Law states the following (The application for incorporation is submitted to the Registrar and the following attachments:

1. Company's contract.

2. The subscription document of the joint-stock company signed by the founders.

3. A statement from the bank or banks proving that the capital required in Article 28 has been deposited.

²⁸ Dr. Mustafa Kamal Taha and Dr. Wael Anwar Bundaq, *The Foundations of Commercial Law*, Dar Al-Fikr Al-Jamii, 2013, p. 323

parties, as well as when the company's contract was held and to which law it can be subjected, and whether the company's contract was signed via the Internet or otherwise (29).

CONCLUSION

After reviewing the concept of the domicile and comparing it to the traditional and electronic domicile, as well as our endeavor to clarify the influence of this electronic domicile on the company, we arrived at a set of results and recommendations:

RESULTS

1. The Iraqi legislation did not work on developing a specific and clear definition of the virtual or electronic homeland, and this resulted in the jurists and law commentators neglecting to address, explain and clarify this issue.

2. After discussing the criteria for determining the domicile of the company, it became clear to us that there are multiple criteria that are applicable to the company's traditional domicile, but the Iraqi legislator preferred the criterion of the company's establishment center, but this criterion is not as effective when it is applied to E- Companies in determining their domicile, so we suggested that in order to decide the E- Company's domicile we refer to the location of the company's actual administration center.

3. Under Iraqi law, the E- Company cannot be granted Iraqi nationality since the provisions of Article (45) of Civil Law No. (40) for 1951 cannot be implemented..

4. There is the option of submitting the company's electronic contract to the Companies Registrar Office, but this will collide with determining the company's location, which is also meant to be electronic but was not taken into consideration by the Iraqi legislature.

5. The E- Company cannot be subject to litigation according to the concepts of Iraqi legal provisions, but it can be reported to the Iraqi judiciary to accept electronic judicial notifications.

RECOMMENDATIONS:

1. Develop and adapt the original traditional rules and principles in accordance with scientific advancement and its ramifications on the development of traditional concepts in all issues, including the formation of electronic commercial companies.
2. To urge Iraqi legislators to adopt the formulation of legal texts clarifying what is meant by some traditional concepts that have changed due to technological progress, such as the domicile, and to construct definitions of the basic concepts that may arise.
3. We urge the authorities responsible of enforcing the law to consider the text's sense rather than its literal interpretation, so that texts with established legal standards are in accord with any change and can be applied without the need to amend or repeal any statute.
4. The need for a special statute to govern all legal provisions pertaining to E- Companies. The law governs the procedures for forming legal companies and defining their domicile. In addition, specifying the legislation to be applied to any conflicts that may occur as a result of this company's commercial activities.

REFERENCES

First: Legal books:

1. Dr. Akram Yamalki, Commercial Law, Commercial Companies, A Comparative Study, House of Culture for Publishing and Distribution, Jordan, 3rd edition.
2. Dr. Elias Nassif, Commercial Law, Part Two, Commercial Companies, Owaidan Publications, Beirut and Paris, 2nd edition, 1992.

²⁹ Dr. Munir Muhammad Al-Janabihi and Mamdouh Muhammad Al-Janabihi, Electronic Companies, Dar Al-Fikr Al-Jamii, Egypt, 2008

3. Dr. Basem Mohamed Saleh, and Dr. Adnan Ahmed Wali Al-Azzawi, Commercial Law, Commercial Companies, Legal Library, Baghdad.
4. Dr. Badr Al-Din Ald Al-Moneim Shawqi, International Special Relations, provisions of nationality, domicile and the Headquarters of foreigners, Al-Ashry Press, 2005.
5. Dr. Hassan Mohammed Al-Hadawi and Dr. Ghaleb Ali Al Daoudi, Private International Law, Part 1, Nationality, Domicile, Headquarters of Foreigners and Its Provisions in Iraqi Law, Legal Library, Iraq – Baghdad.
6. Dr. Haider Adham Al-Tai, Provisions of the Nationality of a Natural and Juridical Person in Iraqi Legislation, Al-Sanhoury, Baghdad, 2016.
7. Dr. Abdel Hamid Abu Heif, Private International Law, Part 1, Dar Al-Nahda Al-Arabiya, Cairo, 1986.
8. Dr. Abd al-Rasoul Abd al-Rida al-Asadi, Private International Law, Al-Sanhoury Library, 2018, p. 162.
9. Dr. Awni Muhammad Fakhri, Legal Regulation of Multinational Corporations and Globalization, 1st Edition, Beit Al-Hikma, Baghdad, 2004.
10. Dr. Faten Hussein Hawwa, Websites and Intellectual Property Rights, 1st edition, Dar Al Thaqafa for Publishing and Distribution, Jordan, 2014.
11. Dr. Farouk Ibrahim Jassem, The Brief on Commercial Companies, The Legal Library, Baghdad, Iraq, 2nd edition, 2011.
12. Dr. Latif Jaber Komani, Commercial Companies, A Comparative Legal Study, 2006.
13. Dr. Mahmoud Al-Kilani, Commercial and Banking Encyclopedia, Vol. 2, Commercial and Electronic Legislation (a comparative study), House of Culture for Publishing and Distribution, Jordan, 1st edition, 2007.
14. Dr. Mustafa Kamal Taha and Dr. Wael Anwar Bundaq, The Foundations of Commercial Law, Dar Al-Fikr Al-Jamii, 2013.
15. Dr. Munir Muhammad Al-Janabihi and Mamdouh Muhammad Al-Janabihi, E- Companies, Dar Al-Fikr Al-Jamii, Egypt, 2008.
16. Dr. Najm Abboud Najm, Electronic Administration - Strategy, Functions and Problems, Dar Al-Marikh Publishing House, Riyadh, 2004.
17. Dr. Hashem Khaled, Company's Nationality, a comparative study, Dar Al-Fikr University, Alexandria, Egypt, 2012.
18. Dr. Hisham Ali Sadiq, Nationality, Domicile, and Foreigners Headquarters, Mansha'at al-Maaref, Alexandria, 1924.

Second: Research:

1. Assist. Prof. Dr. Muhammad Jalal Hassan, The International home as an officer for the award for acts of conflict rules (analytical and comparative study), research published in the Scientific Journal of the University of Sulaymaniyah, No. (1), Vol. 1, published on June 17, 2017.

Third: Laws:

1. Iraqi Civil Code No. (40) of 1951, amended.
2. Iraqi Companies Law No. (21) of 1997 amended.
3. Ministry of Trade- Ministerial Instruction NO. 149 dated February 29, 2004