INVESTIGATION OF THE EXECUTIVE AND RESIGNATION OF DIRECTORS IN A JOINT-STOCK COMPANY IN IRAN'S LAW

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ABSTRACT. “The most important part of joint stock companies is executive pillar or the company's executives. And the importance of the operation of this section of the company is how to choose individuals whether as genuine or legal, they must have the requirements of this post, otherwise the company will face major challenges. It should be noted that the relationship between the company and the director is separate from the shareholders vicegerency with the director, it means there is no direct relationship between the manager and the shareholder. Contrary to the opinion of some lawyers who consider the director as a lawyer, nowadays, this relationship has to be considered from the point of view of the dealership from many other points of view. There is a legal solution to how to install and dismiss and resign managers in such companies, but in the case of the administrator's resignation, due to the limited number of managers, the performance of the company's executive branch will be distorted, So, this article, while reviewing the pillar of the company, will also examines the state of the past.

KEY WORDS: Joint Stock Company, Manager, Removal and Installation, Power of Attorney, Representative, Resign

1. INTRODUCTION

In the commercial field, an important part of corporate issues is allocated to joint stock companies, As much as a bill of 300 articles on this issue has been approved by the legislature. In this bill, almost all brokerage deals related to general joint stock companies and particular joint stock companies in separate divisions, one of which is related to the board of directors. this writing will discuss, how to choose a board of directors, their authority, the conditions for installing and dismissing and accepting their resignation, the manner in which their work is supervised and the tasks performed by each one. By studying this section, it becomes clear what role the Board plays in managing the company. In particular joint stock companies they are at least 5 boarder of directors and in general joint stock companies they're at least 3 of them. In Iran, most companies operate in the majority of certain joint-stock companies, which often board of directors have all of the company’s shares, and in such cases, the board's resignation creates problems that sometimes causes a board member demandes the liquidation of the company, especially where he has a special ability of managing the company and he is not willing to run the company. In general companies, the same applies, but in general companies, they usually predict formalities that are not impaired by the resignation of a member of the company's
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management. Decisions of the members of the board of directors in the company will cause the company's profit and loss, and therefore their decisions and their performance will be significant. So because of that, the members of the board of directors should put the stock as collateral to commit themselves to good work in the company. The question now is, how does the board member's resignation affect the company? Is the board obliged to accept the resignation of the members of the board of directors? What effect does it have on the company's management if they do not accept the resignation? The answer to these questions is the reason for this article. Therefore, we will examine it in a general definition of the board of directors, how to select, dismiss, and resign its members.

2. MANAGER DEFINITION

The Commercial Law has not provided a definition of the manager and with careful consideration in the commercial law of 1932 and The bill to amend part of the Commercial Law approved in 1347 does not provide any definition from the director and it is similar in studying the laws of some countries, such as the corporate laws of England in 1948 and 1967. What can be said about the definition of management in internal law is the definition in the terminology of the manager's definition: "...

In Commercial terminology, manager is the one who has the current work of the business or company, such as the director of the trading company and the garage manager, etc ... (Jafari langroudi, 2009, 632)

What can be said about the manager is that the elected director is the trusted shareholder to carry out the current affairs of the company and must have the necessary qualifications and characteristics related to the objectives and subject of the company and if the selection and installation of him does not include accuracy and sensitivity, it will challenge the company's goals. For example, if a person who does not have the ability to run a company that operates in the field of computer is installed as a manager, he will not be able to advance the goals of the company. "The role of management is to increase the level of activity and success of companies in the capital market, production and work, and therefore managers must be selected from among the deserving people ... "(Erfani, 1999, 26)

It should be noted that there is a different understanding of the director in the society. "In relation to the definition of managers, there is a significant difference between the meaning of the director in the law governing corporate and customary understanding and even the legal community. In the bill amending the Commercial Code of 1968 wherever of the named managers, it means the members of the board of directors. In this definition, the CEO is explicitly mentioned along with the term "managers" in order to exclude the concept of managers. However, at the same time, he is considered to be the actual manager of a joint stock company. (Pasban & Niknejad, 2011)

However, in articles 109, 112 and 114 of the above law, the term "directors" is used to describe the board of directors and in Article 133 of the Commercial Code, the Commercial Code of 1968 applies the terms of directors and executives, and states: "Managers and Executives cannot conduct transactions such as company transactions that involve competing with the operations of the company. According to Article 110 of the Bill on Amendments to the Law on the Business, it is possible to choose legal persons as the company's management. Therefore, the manager can be a genuine or legal person, though, ultimately, the legal person chosen by the shareholders as the director must nominate one person as his permanent representative for the management tasks and that the person being introduced can be outside the company. (Eskini Rabia, 1996, 175)
2-1 **Persons who can not be selected as managers**

According to Article 111 of the Commercial Code, the following persons can not be elected to the company's management:

1. those who have been sentenced to bankruptcy
2. Persons who have been deprived of all or part of the rights of a person due to committing a crime or one of the following statements during the period of deprivation:
   - Robbery, betrayal, fraud, misconduct, misrepresentation, fraud, manipulation, seizure of public property.

By reviewing the above article, it can be understood that since the main motive for the shareholders to form a company is financial issues, the legislator has tried to prevent the company from managing the company by financial crimes perpetrators.

2-2 **Manager’s time limit**

According to Article 109 of the Commercial Code: The term of directors is set out in the statute, but this period will not exceed from two years. Re-election of directors is also possible. Also, according to Article 136, if the term of management has expired, until the election of the new director, the former directors will continue to be responsible for the company's management and administration. If the authorities are not obliged to attend the General Assembly, any interested party may apply to the Registrar of Companies for the nomination of the General Assembly for the selection of directors. The spirit of the above article expresses the importance of the role of managers and, despite the expiration of their term of office, the law continues to prescribe and authorize the abovementioned persons.

3. **HOW TO CHOOSE MANAGER**

According to the third paragraph of Article 74, the first directors of the company shall be elected by the founder’s General Assembly and the next election of the members of the Board shall be by the General Assembly in accordance with Article 108 of the same Law. And in accordance with Article 110, a legal person can be elected as a member of the board of directors. A legal person has the same civil liability as a genuine person and must nominate one as his permanent representative to the company. This person will be liable to a legal person. In accordance with Articles 112 and 113, in case of death, the resignation of the principal if members of their number is less than the minimum required, the members of Ali al-Badl shall be appointed in accordance with the articles of association and will be replaced by the ordinary general assembly. If the member of Ali al-Badl is not determined or their number is less than the amount required to hold vacancies, The members of the board of directors should immediately invite the general assembly, and if they refuse, they should ask from the inspector. In the absence of owning vacancies for more than six months, any beneficiary must sue the company for liquidation. The re-election of directors is possible, that is to say, each of the main members and Ali al-Badl Board of Directors, can be elected repeatedly and successively to the main and Ali al-Badl membership or vice versa. If the services and management of a member of the board of directors give rise to shareholders' consent, and he himself again volunteers to become a member of the board of directors, and there was no legal prohibition for this, In such a situation where the necessary facilities are available and barriers are missing, the law has logically made it possible for him to re-elect him for membership. (Hasani, 2004, 113)

According to Article 108 of the amending law, the first directors of joint stock companies shall be elected by the general assembly of the founder and subsequent directors by the general ordinary assembly, which may determine the duration of the management of directors, but according to the commercial law and the statute of the company, the term of management of directors shall not exceed from two years. The
number of votes for managing the management in article 75 of the amending bill and article 20, paragraph 3, of this law have been determined, but it seems that there is a disturbance in terms of number of votes. "This is an apparent conflict. The first members of board of directors of the joint stock company, whether they are elected by the general assembly or by the shareholders of the company (without the formation of the founder’s general assembly), must be elected by the majority anticipated in article 75 above. Only paragraph 3 of Article 20 obliges all shareholders of a particular company to sign the record of the meeting (which clearly includes how to choose board members and the number of votes each of them has earned). (Naghizadeh & Hashemi, 2015)

Considering that article 109 of the said law allows reelection of directors to be considered, this question arises as to whether it is possible to anticipate the extension of management in the statute?

For example, in the company's statute of association it is proposed that the term of management of directors be extended for five consecutive terms, and in the latter case, it can be said that the need to convene a general meeting with the topic of selection of managers in the foreseeable period is discarded and, based on the company's articles of association, Management of the directors will be automatically extended?

Perhaps it can be assumed that the anticipation of the extension of the term of management of managers and its implementation in the company's articles of association, while respecting the limitation contained in Article 108, which is for a period of two years, will create a kind of confidence for managers, to has a long-term planning to advance the company's goals.

It should be noted that according to Article 107 of the amending law, there will always be the possibility of dismissal of directors for their elected representative. In a few cases, an organization except the General Assembly may select managers and the possibility of occurrence is when the company is state-owned and according to the statute of the state company, the selection of some directors is responsibility of the company's founder’s. In accordance with Article 4 of the General Accounting Law of the State approved on (1987, August,23), A state-owned company, is a company clearly defined by the law, or nationalized or confiscated by the law or the competent court, and is known as a state-owned enterprise, and more than 50% of its capital belongs to the state. Each commercial enterprise Created through state-owned enterprise investments, and more than 50% of its shares are owned by state-owned companies, is a state-owned company (Sotoudeh Tehrani, 2016, 182)

4. NUMBER OF MANAGERS

The board of directors can not be alone in general or particular joint stock companies. The question is how many managers in each of these companies are? According to Article 17-225 L of the French Trade Act, the minimum and maximum number of administrators is specified so that the minimum number of managers is 3 and the maximum number of managers is 18, and according to this minimum number of managers can not be less than 3 persons. (Eskini, 166)

Article 107 of the amending bill is stipulated: "... the number of members of the board of directors in public corporations shall not be less than five." Precisely in Article 3 of this law, which stipulates that the number of shareholders in a joint-stock company should not be less than 3 persons, there is a contradiction between these two articles in such a way, in relation to the minimum number of moderations in the above companies between 3 and 5 persons. Some lawyers have resolved the existing conflict in a way: "... This problem can be solved in this way by saying that Article 107 is in effect on Article 3 and therefore, The number of partners in the public corporation must be at least 5 people, but, what is the minimum number of directors in a particular
joint stock company? The legislator has not made any special predictions in this regard, but because the board is not individual in any case and its decisions should be made to the majority of the votes cast (Article 121 of the 1347 bill), the number of board members can not be less than three Otherwise, a majority will not be created. (Eskini, 167)

Under French law, the maximum number of directors has been determined, while in the Amendment Act of 1968 the maximum number of directors is not set and, in if all shareholders want to be manager, there will be no legal restrictions, and in this case, the office of the company will be suspended, therefore, the maximum number of managers In stock companies it seems necessary. The question is whether the directors of the company are exclusively from among the shareholders, or is it possible to have individuals from out of the company? In accordance with Article 107 of the amending law, “The Board of Directors of the Joint Stock Company, which is elected by the shareholders and will be generally or partially canceled ...”, according to Article 114 of the same law, directors shall determine the number of shares the articles of association The company has decided to have it. This number of shares should not be less than the number of shares required by the Statute to cast ballots in the general assemblies. This is the number of shares to provide for damages that may be incurred by managers individually or jointly to company. The shares are nominal and can not be transferred. As long as the manager of the company does not receive from the company's current account, the shares will remain in the company's fund as collateral.

According to Article 107 of this law, the condition to elect as a director is being a shareholder. But another group considers the interpretation of this article to be subject to Article 115 of the same law and allows the selection of directors from among non-shareholders, provided that they perform the bonds in Article 115. (Sotoudeh Tehrani,184-185)

5. MANAGER POSITION
Regarding to the position of managers in the company, there are different theories. Article 51 of the Commercial Code states The responsibility of the managers of a company against the partners is the same responsibility that a lawyer has against the client. The appearance of this article has led some lawyers (Farouhi, 1993, 161) to assign the managers as a partner lawyer and assumed the responsibility of the managers against the partners as the lawyer's duty against the client. (Kashani, 1993, 32-33) seems that to be using the terms (words) of removal (deinstallation) and installation closer to mind the lawyer's relationship, but sometimes there is no distinction between the character of the partners and the company. About the relationship of the lawyer, this relation should be said to belong to the lawyer's contract, which is considered as a lawyer, (Mohaghegh Helli, 1995, 251) while there is a very close relationship between the attorney and subrogation. while there is no direct relationship between the properties and the managers and what is the relationship between the company's manager and Pillars such as general assemblies and other corporate pillars. (Katouzian,2011,111) the manager is one of the supreme pillars of each joint-stock company. In the relationship between a lawyer and a client, there is the possibility of a lawyer's dismissal from the client if it isnt possible in the relationship between the manager and the properties. Also, In Permissable agreement in with the decease each of the parties, the agreement ends, while the manager or the deceased doesn't manage any of the partners. Pasban & Nikandish, 9-40)

The idea that the managers of the joint stock company are attorneys and representatives of the swindlers are no longer a big fan of today. Because the corporation has certain principles and rules. By accepting the legal personality for the company, the managers of the company are one of the pillars of the company, and
they are legally bound by the law and their responsibility is against the company, not against the current partners in most Countries are not the managers of joint stock companies representing shareholders, but one of the components of the company and the representative of the company, the legal personality is separate from the character of the partners, and the law determines their duties and powers. (Sotoudeh Tehrani, 179)

Another group considers the employment relationship between the manager and the company accepting this view and in accordance with Article 12 of the Civil Liability Act, which obliges employers to compensate for the losses incurred by their workers it's known to third parties that it should be considered that the company is responsible for the compensation incurred by the manager while in accordance with the Commercial Code, the manager is responsible for his actions.

6. RESPONSIBILITIES AND LIMITS OF AUTHORITY
Primarily managers are the Company representatives and they have any authority to handle affairs of the company but decisions and actions should be in the range of the company. (Khazaei, 68)

In accordance with amendatory Article 118 manager's authority is restricted to the subject of the company and according to this article with statute can limit their authority although these precinct of authority cannot be invoked against third parties. In other word managers, in the event of an outsider by a third-party manager, enter into contracts with third parties their Damage to others limiting their authority would not prevent loss claims from being damaged. The considered question is who is responsible for proving the infarction of managers?

Is this person (lost), that frequently out of the company and managers and shareholders and if third parties, if they are not satisfied with the contract with the company and willing to disturb the cause or the causes, can they claim the termination of the contract for reasons that are limited to the company and the verb Are managers connected? (Taghizadeh & Partners, 222).

7. MANAGER’S DISMISSAL
The General Assembly as well as the members of the Board of managers may dismiss them partially or totally. The Court may also dismiss the members of the Board of managers. A general assembly can be dismissed at any time without any justification. This rule is based on the incorrect idea that the manager is like a lawyer, and because the attorney can be dismissed at any time, the manager in each same. (Eskini, 200) the manager is not attorney level, the general assembly determines the manager but since the manager is a member of the company, it can not be canceled in any circumstances. It is reasonable, considering the principle of dismissal of the manager this solution is inevitable. In any case, as soon as the manager abandons his authority, he loses his competence. The legislator has not made any specific prediction about the successor of the director, if he's dismissed but it is certain that if he dismisses the general meeting, he should at the same time The successor to him, otherwise, in accordance with the unity of the criteria of Articles 112 and 113 of the 1969 statute, in the manner previously stated, the board of managers must be completed. The General Assembly may dismiss the Director-even if his dismissal is not in accordance with the agenda of the Assembly. The Director may not, as a result of this deportation, be insolvent from the Participant unless his dismissal is in accordance with general rules in circumstances where the civil liability of the Disposals For example, in the French judiciary, the manager's sudden dismissal, without being able to defend himself, and in circumstances where his privilege is deductible, constitutes a misuse of rights and the manager can claim his own losses But can not request to return to management. These rules can be applied in salary. (Eskini, 200-201)
8. DIRECTOR'S RESIGNATION

There are different perspectives on whether the manager can resign whenever he wants to. To answer this question, it was necessary to review the relationship between the manager and the company. Is the relationship between the manager with company is like the lawyer with the client, who evaluates it in the context of the lawyer's law, or is this relationship depends to other legal relationships?

If we could consider the manager as an attorney, he would certainly have been able to resign whenever he pleased without having to justify his resignation; but the manager was a pivot of the company's corps and had certain powers that would not be included in the lawyer's mandate and done The giving of these powers is a civil and criminal liability of a person; for this reason, in general, he can not abandon these powers whenever he wishes to, and he will get out of the burdened with obligations arising out of his duties. When the manager can be canceled without justification, he must, of course, be able to resign without justification. However, the legislator has not explicitly given such a right to the manager; therefore, it is a reasonable solution that, until the resignation of the director does not harm the company, we will hold him responsible; for example, if the deadline is The resignation of the managers is foreseen, or the general assembly has determined such a deadline at the time of the appointment of the director, since the manager accepts such conditions in accepting the management, the violation of these conditions will lead to his resignation, and in the event of damages to the persons The benefit will be responsible for this error. The resignation of the manager from management does not necessarily mean his resignation from the company. In fact, the resignation of the non-executive director is the end of his relationship with the company. While the director is obliged to continue his work in the company, except in case he resigns from the work he is engaged in as manager in the management of the company, he will continue to work in accordance with the rules of labor law.(Eskini,199-200) If the resignation of the director is not disturbing and impeding the company's activities and the main members and Ali al-Badl may be replaced by the director of the alternate directors, then the presumption of the resignation of the director should not be discussed, but if the number of company members is insufficient to be replaced, and the resignation of the director causes Disruption of the executive branch, the acceptance of the resignation shall be considered without the consent of the relevant authorities. Since, in accordance with Article 121 of the said bill, the formalization of meetings of the Board of Directors is achieved by the presence of more than half of its members, so when a number of members of the Board of Directors resign or when the number of Ali Bdl members in not enough to hold vacancies to provide the number of members of the board of directors in terms of the amount required to formalize its meetings. In this case, since the board of directors is not in a position to form and take a decision, therefore, until the formation of the ordinary general assembly and the determination of the members necessary for the completion of the board of directors, in fact the company has no one of the three pillars and will delay its current affairs. In this case, it can also be said that for the members of the ingestion, the company will continue to be responsible for the affairs of the company and its management until the election of new directors to complete the board of directors. Of course not about all of them, but with regard to priority and resignation, only for a member or members whose resignation has led to a failure to obtain the necessary standard for formalizing the meetings of the board of directors. "(Hasani, 126)
9. CONCLUSION
Regarding the procedure for dismissing and installing managers in corporate companies and disagreements over the relationship between shareholders and the managers, this relationship should not be considered as a form of lawyer because the relationship between the lawyer and the client is a direct relationship and will be subject to the lawyer's contract. It will have its effects if the relationship between the manager and the shareholder is not the same as the relationship between the lawyer and the client, so that in the conclusion of the lawyer's contract with the death of either party, the rights of the parties are resolved, if they are in the joint-stock company in the case of Death, the manager is still the manager. In accordance with Article 112 of the amending bill, if the management post is left vacant position for any reason and the members of the substitute group are not determined or sufficient to be replaced, it will be in accordance with the provisions of this article, and until then, it seems that the resignation of the manager will remain silent. Due to the resignation of other entities, the company will be forced to dissolve due to lack of legal capacity.

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