

A Comparative Study of Areas of Responsibility of Companies' Managers in 1968 Commerce Law and new Commerce Law Bill

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Received: February 16, 2014

Accepted: November 2, 2014

ABSTRACT

Every commercial company can be investigated from two aspects: first aspect: its internal structure and interactions among its elements and the second aspect is its interactions with other people. Today, third parties who conclude contracts with managers of commercial companies as representatives of companies confront some problems. The present research aims to compare the responsibility span of managers of commercial companies in 1968 law and new Commerce Law Bill in Iran. this research was conducted in 2014. Its objective is applied and it is a descriptive analytical research in terms of methodology. Considering the results of the research which were obtained from theories and laws using content analysis, it was observed that in direct lawsuit, the damaged alleges a lawsuit personally but in indirect lawsuit, shareholders allege lawsuit against offending managers in the name of the company but on their own. Civil liability of managers is also based on fault. In fact, the lawmaker mentions fault aspects of managers in reform bill of 1968 Commerce Law and also refers to shared liability and partnership liability which are exceptions for general rules of liability.

KEYWORDS: commercial company, managers, authorities, liability, new Commerce Law bill

INTRODUCTION

If we look at our society with an economic view and consider economy as one of our basic missions on which The Supreme Leader has put emphasis within the past few years, we must consider commercial companies as the foundation of this economic building and stress on its efficiency and health. Corporate managers play basic roles in fulfillment of economic targets and national laws have considered legal and penal liabilities for them. There are four ideas about legal place of managers: 1. Lawyer of a company, 2. Lawyer of shareholders, 3. Representative of legal person (company), 4. Employee of a legal person (company). Acceptance of one appropriate idea requires deep investigation. Determination of legal place of managers is important because selection of one of the above ideas as preferable idea depicts responsibility span of managers and therefore civil liability of managers can be described according to the role and place of managers. Considering the above discussion, it seems necessary to investigate in detail the legal place and role of managers of commercial companies so that: rights (authorities) and obligations (duties) with respect to their corresponding companies, partners and third parties and secondly, their civil liability is specified considering their authorities and duties. Any commercial company has pillars. Management pillar is the most obvious and in fact it forms the relationships between a company and other persons. Managers act as executive pillars of a company and play undeniable role in promotion and increase of activities. Managers' acts, regardless of the fact that they have administrative or legal nature, can cause civil liability for them. Civil liability of managers of commercial companies which is possible in coercive and contractual form is one of the main subjects in Commerce Law. As a matter of fact, it can be said that transactions which take place by managers on behalf of companies are for the companies and bring liability for companies because commercial companies described in bill 20 of C.L have independent personality with respect to their members (Tehrani, 2011). In all commercial companies, relationship between managers and their corresponding companies is an example of advocacy contract. Therefore, contracts which are concluded by managers are in the name of their corresponding companies and on their behalf. According to Civil Law, all contracts concluded by an advocate in his or her span of authorities brings obligation for client and the representative does not have any responsibility for these contracts. Therefore, the other side of the contract cannot refer to the representative for implementation of contract terms and allege lawsuit on managers. Conclusion of a contract for commercial companies and creation of liability for commercial companies depends on fulfillment of conditions so that if the conditions are met, the companies are liable for transactions and contracts (Eskini, 2007). Since commercial companies are selected by managers and cannot fulfill their obligations on their own, final liability of implementation of company obligations is on managers and if failure to fulfill obligations cause loss to the company, shareholders or third parties, managers must be responsible for losses and damages due to failure to fulfill obligations. Therefore, the main addressees

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of all legal obligations which are apparently on companies are managers (Skini, 2007). If we review regulations on commercial and economic activities we find that general duties of corporate managers are very wide and it is almost impossible to identify and mention all of them. Therefore, we try to mention some of the legal obligations and liabilities of commercial companies managers which are wider than others. Criminal acts of corporate managers are classified in two categories. Exclusive managers' crimes are those which are resulted from obligation violation of managers. Stock company ranks first in terms of the volume of criminal acts. In Commerce Law reform bill, managers' crimes have been reviewed and these crimes cannot be ignored and there is no need for private plaintiff to sue for them but public prosecutor can follow the accused directly. Moreover, when members of board of managers are legal persons, their representatives can be under penal prosecution (Tafreshi, 1999).

RESEARCH THEORETICAL FRAMEWORK

Liability

When a person does not have any alternative but to compensate for another person, he or she is said to be responsible or liable. Liability requires authority. A free and sane person is aware of and responsible for his or her actions. This rule has long existed that when one damages another one, he or she must compensate for the damaged unless the damage is allowed by law or is insignificant. Therefore, an individual's responsibility for compensation of damage he or she exerts is a natural and acceptable rule. Therefore, literal meaning of liability is warranty, liability, reprimand and it also means necessity, obligation and need for responsiveness and what an individual is liable for (Moeen, 2003). In English and then in American legal systems, liability is mixed with fault and it is called fault-driven liability or for short it is called law of faults. Fault liability forms as a result of violation of a legal obligation. In common law, this type of liability is accompanied by special titles like violation, interference, insult and forgery. However, in recent theories, authors have tried to exit traditional frameworks and present general theory of liability. In law, liability means: "liability is referred to an individual's legal obligation to compensate a damage or loss he or she has caused to others, whether this loss is resulted from a fault or resulted from his or her activity (Jafari Langroudi, 2010). If we investigate human from Islamic viewpoint, we come to this final conclusion that "human is responsible"; human is a creature that has determination, freedom to select, thinking power and so on. However, human is a responsible creature from Islamic Viewpoint. Further, it can be said that religion means responsibility. Heavenly books and prophets are all indicators of human responsibility. These indicators direct human towards doing his or her duties and responsibilities (Amid Zanjani, 2003). The question is that what is "sense of responsibility"? in everyday life, many issues and events create some kind of response in us and this response brings active, mental or practical attempts which are called "sense of responsibility" (Yazdaniyan, 2000). There are two kinds of responsibility: ethical and legal. These are defined in the following sentences:

Ethical responsibility

Ethical responsibility refers to guilty conscience and sense of being guilty and is mostly personal. We can hardly reach a constant rule from public judgments and accuse someone. This kind of responsibility is concerned with fault. In ethical responsibility, when an individual's conscience becomes guilty and he or she becomes embarrassed or the public considers an action as unacceptable, responsibility comes to existence, although no one is damaged. In other words, it is a responsibility to which The Lawmaker has not objected and there is no legal executive sanction for it and its sanction is purely internal and conscientious (Jafari Langroudi, 2010).

Legal responsibility

Legal responsibility is a kind or responsibility which is mentioned and covered in law. In other words, it is a kind of responsibility which refers to legal duties and obligations of individuals towards doing or not doing actions and includes all civil and penal responsibilities. The word "legal" differentiates this kind of responsibility from ethical responsibility and it may include reference to common law for determining fault examples (Jafari Langroudi, 2010).

In legal responsibility, there is no fault and no responsibility unless a thought is put to action and an action is not taken. Damage is a condition for existence of responsibility and is one of its pillars. In other words, responsibility depends on damage and even when a small fault results in a great damage, law does not doubt about this responsibility. Legal responsibility brings debt and the damaged can ask court of law to make the responsible person to compensate for him or her. Legal responsibility is classified into four categories: 1. Penal liability, 2. Civil liability, 3. Administrative liability, 4. Military liability. It must be noted that it is possible to have two or more liabilities at once. For instance, an action may cause penal, civil and military liability at the same time (Validi, 2010).

Outside-of-contract responsibility (coercive liability)

Sometimes, without existence of any kind of contract or agreement, one side has to compensate for the other side. For instance, law makes everyone to be careful about their behavior and speech or law imposes some rules and responsibilities on individuals and special classes. Now if an individual acts against these duties and some damage is caused to others, he or she is responsible for compensation of damage. This responsibility is not a contract between him or her and the damaged but it is violation of legal duties. Today, if we use civil responsibility in absolute form, we infer non-contractual (coercive) liability from it (Katouziyan, 2008).

Difference between civil liability and penal liability

In civil liability, the damaged is usually a person but in penal liability, society may also be damaged even indirectly, or its direct impact may address the whole society, without any other person getting damaged. Civil liability is separate from penal liability because penal liability is arisen from legality of crime principle and is concerned with law cases but civil liability does not require law reference. It is not compensation for damage but it is a legal obligation. However, it must be noted that intentional legal actions must be considered as exceptions in penal liability. In civil liability, everyone who causes damage to another person is responsible for its compensation even if the damage is caused as a result of carelessness and unintentionally. This can be generalized to minor offenders and maniacs who lack intention (Bariklou, 2011).

Difference between penal liability or civil liability and administrative liability

Individuals who work for departments of legislation, executive and judiciary systems are responsible for their administrative duties in addition to penal and civil liabilities. However, in administrative offences, no penalties are imposed and only corrective and controlling actions are taken to prevent from repetition and the maximum penalty may be in the form of dismissal and suspension and getting fired of the offender. Sometimes, penal punishment and administrative fault investigation are conducted simultaneously in two courts. Administrative offences are investigated in court of administrative justice and State General Inspection Organization or supervision departments of public organizations and ministries (Yazdaniyan, 2000).

Research hypothesis

1. Three theories of advocacy, legal representativeness and managers' being pillar are proposed in the base of civil liability and managers' being pillar theory is preferred.
2. civil liability of commercial companies' managers is normal and managers' being partnership of liability is an exception and is only referred to in law.
3. it seems that liability resulted from manager's transaction with company, liability resulted from cancelling decisions or actions, liability resulted from company bankruptcy and liability as a result of bankruptcy and liability resulted from check issuing on behalf of the company and board of managers are items in which managers' civil liability are of partnership type.
4. it seems that restricting managers' authorities in some commercial companies in doing transactions with third parties is useless. Further, restriction of managers' authorities is effective in some company types when the restriction items are mentioned in constitution of the company.

RESEARCH METHODOLOGY

Research methodology in this study involved library investigation.

Data were collected by library study and we took notes from books, journals, legal websites and involved investigation of the collected data. Descriptive-analytical analysis was also conducted and experts and professors ideas were also included.

Commercial companies

Company contract

In Commerce Law, there is no definition for company or company contract and bill 20 which starts the first section of chapter 3 immediately refers to different types of commercial companies. However, any company is a contract in which two or more people are gathered to do a commercial affair. It is a necessary contract which must be obeyed by members according to bill 219 of Civil Law and because it is registered based upon Commerce Law; it is valid for third parties. Like other contracts, company contract also obeys general rules of civil law and commerce law and therefore basic conditions of validity of contracts in bill 190 of civil law must be obeyed for the case of company contract.

Commercial companies

The word company comes from European countries regulations and has been introduced in Iranian law system. Company has not been defined exactly in Iranian law. Clause five of bill ??? of the Law of Execution of general policies of 44th principle of the Iranian Constitution defines company as follows: "a company is a legal

person which is established under commerce law or another special law." Of course, this definition is true for commercial companies and is not true for civil companies and civil companies do not have legal personality. Secondly, the law of execution of polices of 44th principle is one of the laws which influences business and commerce and has dealt with company concept as a definition and the lawmaker has intended to define company (Tehrani, 2011).

Criterion for differentiating commercial companies from civil companies

In Iranian law, there is no criterion for distinguishing between civil and commercial companies but it is logical to use difference between a business man and a non-businessman differentiating criterion in this case. According to bill 1 of commerce law, a businessman (or businesswoman) is a person who regularly does commercial acts. In other words, a commercial company is one which deals with commercial acts according to its constitution of contract, whether it is registered formally and has legal parts or it does business in practice (Hasani, 2004).

In contrast, a company which deals with civil actions like mining and farming companies are considered as civil. In spite of this, we can consider the subject and activity area of a company for differentiating it and this does not contradict the fact that sometimes the lawmaker considers company type as a differentiation factor and does not pay attention to its subject and target. Bill 5 of Apartments Ownership Law considers building companies as commercial. This bill states that different types of companies described in bill 20 of commerce law which is involved in building houses and apartments for residence or business are not allowed to do commercial transactions irrelevant to construction activities (Eskini, 2007).

Different types of commercial companies

Individuals companies

Individuals companies are those in which members' personalities are very important. In such companies, members are responsible for company debts which are more than corporate assets and their personal assets are collateral for debts owed to third parties. In such companies, there is no limitation for members' liability. In partnership companies, partners are responsible for all debts and in relative companies; partners are responsible for the ratio of their share (Farahnakiyan, 2011).

Capital companies

In such companies, personality of members is not important but company capital is very important and members are responsible for debts as much as their shares and if company liabilities exceed its assets, creditors are not allowed to refer to members. Creditors can go to members only when members have not paid their share at given time but this has not been mentioned in bill 96 of Commerce Law (passed in 1932) but this can take place in reform bill of commerce law (passed in 1968-bills 6 and 20) (Tehrani, 2011).

Mixed companies

Iranian lawmaker describes a company in which members' liabilities are a mixture of individuals' companies and capital companies. These companies are stock and non-stock mixed companies and in both types, partner members are responsible for managing the company and their liability for debts exceeding assets is unlimited. A member with limited liability in a non-stock mixed company, and a stock member in stock mixed company is not responsible for managing the company and also is not responsible for debts exceeding shares (Hasani, 2004).

Managers' actions nature

Stock companies managers' actions or decisions are either administrative or legal. Although administrative decisions of managers may also have legal effects, by legal actions, we mean decisions and actions which are covered in Commerce Law and commerce law reform bill. Further, administrative actions are those ordinary actions in a company. Company subject is a factor which can help differentiate between managers' legal and administrative actions. Everything which is directly related to company subject is of legal nature and everything which is not directly related to constitution subject is of administrative nature. In this case, if a stock company deals with pharmaceutical distribution, conclusion of commercial contracts with pharmaceutical companies is of legal nature and conclusion of a contract with a transporting agency for transporting medicine to a specific destination is an administrative action. It is obvious that each administrative and legal action has some effects and company has some rights and assignments towards its employees or third parties.

Pillars of commercial companies

A company is organized by three main pillars in a democratic way: decision-making pillar (general assembly), managing pillar (board of managers) and supervising pillar (inspector). General assembly of stock owners is the commander and other pillars are dependent on it and must report to it. None of the important corporate decisions are valid without verification of general assembly. However, the assembly cannot hold a

meeting every day. Therefore, it should select members of board of managers to decide on its behalf. Board of managers holds responsibility for every day running of company and selects a managing director. However, managers cannot be left and must be supervised by inspectors which are selected by assembly. Selection of inspector or inspectors does not mean managers must act under their permission. In fact, the lawmaker trusts in managers and assumes that managers' actions are to company's benefit unless the opposite is confirmed. Verification of managers' offence by inspectors will be followed by heavy penal and civil punishments.

Legal place of managers

Investigation of legal place of managers in a company is very important for determining authorities of companies' managers. This is not only theoretically important but it is practically necessary for the company and shareholders and even third parties which transact with the company. Some believe that managers are advocates of company. Some others believe that corporate managers are representatives of the company. Some experts consider managers as employees of the company. Finally, some experts consider board of managers as a pillar of company (Tafreshi, 1999).

Theory of advocacy

Some law experts believe that relationship between managers and company, especially in stock companies, is based on advocacy relationship. This group is divided in two groups: some consider managers as advocate of shareholders and some others consider them as advocate of company.

Theory of representative of legal person

Considering the defects of advocacy theory, some experts believe that managers are legal representative of companies (legal person). It must be noted that legal representativeness is propounded when someone cannot implement his or her duties collaboratively. In such cases, individuals which have legal conditions are considered as legal representative by law and have the right to use client's assets so that there is no need for specifying their authorities exactly. Therefore, according to theory of "legal representativeness", board of managers of a company does authorities and duties which are clarified by rules and constitution and this brings some responsibilities for commercial company. According to bills 107 and 118 of reform bill of commerce law, managers are representatives of legal person and not representatives of shareholders and managers act within the framework of company constitution and subject on behalf of assembly and company and this indicates that relationship between a manager and a company is a contractual relationship which is mainly analyzed and investigated under the name of representative of legal person (Tehrani, 2011).

Managers as employees of company

Another theory which concerns relationship between managers and companies and is not as valid as other theories (despite all defects of the mentioned theories) is the theory that views managers as employees of a company.

Authorities of managers in stock companies

Literally, authority means selection, acceptance and be free to do an action. In law, it means "the ability to implement others' rights and doing their rights for them.". Therefore, authority is an ability that is given to an individual by a contract and he or she can do others' rights on their behalf. Therefore, an individual's ability is limited by law or contract and actions outside limits are not valid.

In here, it seems necessary to discuss about authorities of managing director who is the representative of a company with respect to third parties. As it was mentioned by managers, bill 118 of reform bill of commerce law means members of board of managers and managing director is a separate pillar. According to bill 125 of reform bill of commerce law, managing director is the representative of company within the framework of authorities given to him or her and is allowed to sign contracts on behalf of the company. As it can be seen, authorities span of managing director is determined by board of managers, except for some limitations specified by constitution.

Stock company, from reform bill of Commerce Law viewpoint

Stock company has some features that differentiate it from other companies. We try to investigate these features based on present regulations and reform bill of Commerce Law. This type of company has some features like quota for the number of members and capital size, division of capital into shares, restriction of members' liability to nominal amount of shares, possibility to submit shares and commercial nature. A comparison of features of such companies in the present valid regulations and reform bill of Commerce Law can yield different results.

Civil liability of managers according to general principles of civil law

Managers are selected by general assembly and run company affairs considering the duties they are given by legal and constitutional regulations. Therefore, a manager should act like a committed trustee and try to fulfill organizational missions and make his or her best to make the company succeed. Managers should be

coordinated in decisions and actions and observe decisions made by general assembly of shareholders and consider constitution regulations as the base of their activities. Managers must take care not to cause damage to the company. Conclusion of any commercial contract must observe the rights of shareholders with minimum shares. Managers must select committed and specialized employees and do corporate duties at best. Now if a manager does not perform well or violates rules and when they do not observe corporate benefits while concluding a contract and therefore cause damage to the company or shareholders or their parties, the beneficiaries have the right to make a lawsuit against them in courts. Therefore, if managers commit a mistake and cause damage to members of third parties and they cannot be prosecuted under the name of violation of general assembly rules or legal or constitutional rules, they will be prosecuted under the permission of bill 1 of civil liability law, which forbids material and spiritual loss to others without legal permission (Damirchili, 2008).

Conclusion

1. in general, legal persons (companies) have three pillars: 1. Decision-maker pillar, 2. Managing pillar, 3. Controlling pillar.

Companies are run according to general principles and rules and these rules are sometimes mentioned in commercial rules and sometimes are mentioned in constitution. However, except for what is mentioned in rules, constitutional items whether in passage or change stage, are dependent on making decisions by a special pillar. Decision-maker pillar holds responsibility for such affairs. General assembly, whether ordinary or special holds responsibility for such affairs.

2. Management of corporate affairs is not possible only with passage of some rules because these are a general view of corporate direction and specify basic policies and principles of a company and it is not possible to deal with details. On the other hand, executive affairs are sometimes specialized affairs and members of general assembly may not be knowledgeable enough to manage the affairs. Therefore, board of managers holds responsibility for doing executive affairs of company.

3. although management of company using the two previous pillars should be complete and flawless, but the affairs may not go well all times. Therefore, a third pillar called controlling pillar is necessary for supervising managers' actions.

4. board of managers has a few absolute and general authorities which are inferred from content of bill 107 of reform bill of Commerce Law: " board of managers members are selected from shareholders and can be dismissed". Of course, this management is related to internal affairs and relationships between company and third parties are run by managing director.

5. managing director of a company is the representative of the company within the framework of authorities given to him by board of managers and is allowed to sign contracts on behalf of the company (bill 125 of reform bill of Commerce Law). In fact, contrary to members of board of managers which have all authorities necessary for management of a company according to bill 118 of reform bill of Commerce Law, managing director owns authorities given to him or her by board of managers. In spite of this, board of managers can give complete authority to managing director unless in cases the subject is beyond company subject or is managed only by board of managers or general assembly.

6. the theory which states that managers are advocate of members of company is not a valid theory and not only we cannot investigate the place of managers from this viewpoint but also this theory has many problems. Therefore, this theory is rejected (whether advocate of shareholders of advocate of company or general assembly). Further, none of the theories of legal representative and employee of company depicts real place of managers in commercial companies (specially stock). Although the above theories tried to eliminate defects of the previous theories, they suffer from new defects. Therefore, none of the theories was able to give us an exact understanding of the place of managers. Therefore, the most complete theory is one that considers managers board as a pillar of a company and members of a company. This theory states that a manager or decision-maker element is a member of the organization of the legal person. It is an organ which manages and runs a company and puts decisions into actions. Contents of bill 17 of reform bill of Commerce Law (passed in 1968) and bill 598 of commerce law (passed in 1332) indicate that the lawmaker, especially after passage of reform bill of Commerce Law, tends to consider managers as members.

7. in Iranian legal system, managers (board of managers) have complete authority and all their decisions are restrict. Therefore, third parties can consider managers' actions as company's actions. Therefore, managers' complete authority is accompanied with goodwill with respect to support for third parties and does not have any limitation and restrictions mentioned in constitution or approvals of general assembly are only valid for the case of relationship between company and managers. In spite of this, bill 118 of reform bill of Commerce Law mentions two exceptions for the principle of complete authorities for managers: one is that managers' activities must be within the framework of corporate subject and the other is that managers' actions must not be specifically run by general assembly. Further, appearance of bill 125 of reform bill of Commerce Law states that managing director is the representative of company in relationships with third parties and holds the right to sign contracts. Therefore, board of managers must not interfere in this case.

8. The lawmaker has mentioned the aspects of managers' faults in reform bill of Commerce Law and also imposed some partnership liability aspects, which are exceptions to general liability rules. Managers have to be careful about their actions and decisions and must try to maintain corporate benefits and must also obey reform bill of Commerce Law rules and other special regulations. Further, they must compensate for damages they cause to members and third parties if they commit faults and they must also compensate for damages they cause as a result of violation of regulations. Managers' actions are regarded as damaging if they violate legal and constitutional rules or approvals of general assembly.

9. we recommend that managers be regarded as businessmen (businesswomen) in addition to company so that the rights of third parties are observed well in case managers go bankrupt.

10. since a limited liability company and a partnership company does not observe third parties rights completely, they cause damage to their rights while bill 118 of reform bill of Commerce Law pays attention to the rights of third parties because restrictions in authorities are not important in accuracy of transactions. Therefore, it is better to correct bill 105 of Commerce Law and consider bill 118 of reform bill of Commerce Law and fortunately this has been included in reform bill of Commerce Law.

11. we had better assume faults for managers whenever we consider manager as responsible in order to maintain third parties rights and corporate rights so that the company and third parties become free from proving fault which is a difficult process.

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