



The Importance of Identifying the Situation of “Conflict of Interests” in the Commercial Companies Law: A Comparative Study in the Iranian Law and the Common Law System

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Abstract

The formation of commercial companies is to secure the common interests of the beneficiaries and take responsibility for the legal entity (company). Along with the creation of a legal entity, the various forms of conflict between beneficiaries were also created; in a way that this will create fundamental challenges in the path of policy-making and management of the company. Legal writings pay less attention to the management of conflict of interest and often talk about the main role of the board of directors and other corporate bodies, regardless of other instances of conflict of interest. However, the importance of identifying the nature of this institution and recognizing it from similar institutions is such that it shows its impact on economic and legal realities. In English law, two ranges of laws have been developed with different degrees of obligation, The "Company Law" which contains binding rules and regulations on the subject of commercial companies, and the "Corporate Governance Directive" which provides recommendatory provisions in the field of company law. Also noteworthy are the European Union directives on commercial companies and "conflict of interest", although these regulations are recommendatory for member states. The Commission Directive of 15 February 2004 on the role of the board of directors and the supervisory board of public companies or the Commission Directive of 14 December 2004 on the compensation regime for directors of public companies are of this type. In Iranian law, in addition to the law amending part of the Commercial Code approved in 1968 and the Commercial Code approved in 1992 regarding joint stock companies listed on the stock exchange, the "Corporate Governance Guidelines" were approved by the Board of Directors of the Securities and Exchange Organization on 27/04/1397, which contains requirements regarding the members of the Board of Directors, the CEO, and general meetings of shareholders. Despite the policies in the domestic laws of countries, dealing with conflicts of interest requires identifying different situations, carefully formulating company laws and Company statutes, and establishing ethical and behavioral standards for managers. Also, the importance of examining conflicts of interest among shareholders is to the extent that, assuming that the majority of shares are owned by minority shareholders, by taking control of the company, they will also take control of



the selection of managers under their command. Accordingly, the standards governing ethical practices and standards are considered a new policy in the field of management and dealing with conflicts of interest. Therefore, scholars in the common law system have well understood the need to strengthen conflict of interest regulations through behavioral standards and consider it a useful tool in the path of management, policy, and dealing with conflicts of interest.

It seems that the lack of sufficient knowledge of managers in the implementation stage of provisions, lack of knowledge of regulations, the complexity of recognizing instances of conflict of interest from similar institutions and each other, and at the same time, the lack of a proper understanding of issues related to ethical and legal liability related to commercial companies will be effective in the management of the company.

Another important aspect of identifying a conflict of interest is recognizing this situation from other similar cases. In most cases, conflict of interest is confused with other forms and situations such as conflict of obligations and corruption, and in some sources, extremist approaches mix the concepts of conflict of interest with corruption and even ethnocentrism. Therefore, identifying this legal entity with a comparative perspective will be very effective and helpful.

The existence of any economic diversity such as property ownership, rights, and benefits for the beneficiaries requires a precise explanation of their relationship with the company. The creation of an independent legal entity, the independence of managers, and the explanation of the position of the beneficiaries will be special for managers. Theorists, by proposing various theories such as separation of ownership from control, agency theory, membership theory, etc., try to analyze the position of managers and resolve conflicts in the company. In civil companies, the proportion of partners' capital can be determined, and the main effect of the company is the expansion of ownership. In these circumstances, due to the multiplicity of relationships between each shareholder and the company and shareholders with third parties, disputes and "conflicts of interest" arise at different levels. Therefore, the idea of creating a fictitious legal entity and creating a shared commitment sheet reduced these problems to some extent, but behind the scenes of the legal entity, another form of conflict of interest appeared that overshadowed the rights and interests of various stakeholders, including shareholders, investors, company employees, society, the government, the environment, etc. Since the establishment of capital companies, the majority shareholder(s) as one of the direct beneficiaries of the company, have been controlling the affairs; to deal with this situation, the theory of "separation of ownership from control" was proposed, whereby by separating the right of the majority shareholder(s) to the decision-making power in the company, their dominance over the managers was reduced. Also, the lack of necessity of share ownership and the lack of allocation of shares are other effects of this theory, and in commercial companies, managers only receive their management salaries and bonuses. According to this theory, the managers' lack of entitlement to dividends may drive their motivation towards personal interests. Of course, some experts, along with the "agency theory", have identified the "separation of ownership from control" in economic terms to deal with the conflict of interests and problems of



the agency theory. In Iranian law, to ensure the rights of other stakeholders and prevent managers from misusing their assets, according to Article 114 of the Law amending part of the Commercial Code approved in 1347, managers must own shares under the title of "collateral shares".

Keywords: board of directors, ethical standards, conflict of interest, corruption in the company, opportunistic behavior.



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