

A COMPARATIVE STUDY ON THE POSSIBILITY OF FORMING A SOLE CORPORATION IN THE IRANIAN AND US LAWS

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Abstract: Although the new Bill of commercial law and prevailing Laws in the European and American societies indicate the possibility of the possibility of forming a sole corporation, but it is not possible to form a personal firm under existing regulations, especially the existing commercial law. In the essay, by using from a comparative study on US commercial law and through analytical issues, we point out that, in the analytical view (not legal), formation of such corporations not only does not face any obstacles but also can be beneficial in various ways. So we present benefits of Sole Corporation and finally discuss the management and liquidation of these Corporations. Purpose of the Study: The study tries to study the issue comprehensively and completely in

order to clarify its hidden angles and to avoid repetitions in order to present a relevant research to the country's legal community. Due to the lack of research on the sole corporation in the United States, we try to benefit from the original books and articles published in the US. Research Method: The library method and books written by prominent law professors on this subject is used. Necessity of research: There is less subject matters that can be found in the case fir research, and this new issue is one of the subjects due to lack of approved rules, so we decided to present a rational research source

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Introduction:

Although in many European and American countries, to form the sole corporations have been legalized and its effects have been manifested, necessity of discussing on the sole corporations or any other legal institutions in Iran is subject for society. From the first text in Iranian law on the sole corporation or company until its' entry into the legislative field has been needed for more than seventy years, although some have argued for various reasons that such a requirement is in our current legal-economic system. But opponents or not to pay attention by lawmakers, for obvious reasons, has made some legal texts and theories, except a few texts, express historical evolution of the formation of sole corporation in the world and the existence of this company by considering the state-owned companies in Iran and so justification for establishing such a company is not unavailable for researchers. Therefore, in this article, despite defining a sole corporation, we try to present the ambiguities regarding to the establishment of this type of company (Sole Corporation) in Iranian law and

management of the company and its system of responsibility and the advantages and disadvantages of forming a sole company. The following pages are an attempt to summarize the reasons for the formation of a sole corporation in the US. (Abbas Niazi and Iam Kamarkhani and Mohsen Jalilian, Investigation of sole corporation in Iranian Law by a Comparative View, Quarterly Journal of Economic Law, 2016: 2)

Possibility of forming a sole corporation in the legal and analytical views

Businessmen, who act as individually, have the unlimited liabilities versus third parties, and all property, including commercial and private property, is security for their debt to their creditors. These people cannot divide their property in terms of unity of property and only partially guarantee their debt and keep any other part of it free from any interference. In such a situation, a community would easily be willing to commerce with businessmen due to his strong backing. Businessmen offset risk of their activities from their assets while establishing a sole

corporation allows individuals to operate without incurring all risks. By establishing such companies, individuals will be able to trade their assets and to impose their inexperience risks to others. In such case, pessimism and mistrust are prevalent and to evade responsibility is provided. It is clear that the adverse effects of this method firstly affect on the economy and commerce, as it increases risk coefficient of economic activities for individuals who trade in a sole corporation. (Mahmoudi, paper on the possibility of forming Sole Corporation, 2003: 5)

By according the above-mentioned, it may be argued that various provisions of the Commercial Code, such as Articles 190, 183, 162, 141, 116, 94 of 1311, require the cooperation and participation of at least two persons to form a limited, relative and partnership limited liability Company. Articles 107 and 3 of the amending Bill of Trade Act 1347 also required the existence of at least three and five partners respectively for the formation of a Private and Public Joint Stock Company (Private and public Held Co).

On the other hand, asset's dissolution and to limit liability to the

amount of capital of a company is not limited to the sole corporation. Individuals with the establishment of a public corporation, a private equity and a limited liability company also pursue this purpose. Thinkers of today's societies not only disagree with such companies, but also strongly support them because of their undeniable role in the society economy. Therefore, asset's dissolution and to limit liability cannot be a reason to oppose with sole corporation.

In addition, by establishment of such companies, the risk coefficient of economic activities for individuals who trade with a sole corporation will not increase significantly. At first, because the phrase (Sole Corporation) after the name of the company indicates company status and level of responsibility of its sole corporation, and persons knowingly know the status of the company enter into a transaction with it, secondly, credibility of such companies may be more than companies with more partners. (Mahmoudi, *Ibid*, 7: 1382)

It is clear that the non-prescription of such companies causes individuals to enter the company to meet the requirement of personal partnerships

multiplicity, his contribution constitutes a small percentage of the company's capital (eg, one or two or five percent). This person may not have had a role in raising capital, and a percentage of the firm's capital has been formally allocated to him, in which case both formulation will cause divisions in the future and should be avoided. (Skini, Business Companies, Vol. 2, 2011: 174)

Registering company in US:

Depending on the type of business in US, type of authorities and amount of taxes will vary. Company registration in US can be done in 4 types and concepts, two of which relate to Sole Corporation as follows. (John English, Earnings Opportunities, Translated by Khalil Razavi and Vahideh Etemad, Pendar Publishing, 1997)

1- Limited Liability Company

A Limited Liability Company in the United States is a Complex company with a commercial nature that allows a person or entities to conduct their business without risking their capital. This is possible by limiting liabilities and definitions of the Articles of Association.

Limited Liability Company is the most appropriate option in the field

of international trade in terms of taxation and trade options for non-US applicants who want to continue their business in the United States. Many investors, who want to regist a firm in the region, are exempt from taxation; they can achieve this goal by registering a limited liability company (LLC).

The most important benefits of registering a limited liability companies in the United States as follows:

- LCC companies are established easier for non-residents without excessive bureaucracy. In some states, there is no need for initial capital and it isn't income tax.

2. Monopoly Company (exclusive)

A sole corporation is an entity that a person establishes a business as a sole firm without any cooperation with another person or company, any debts and other responsibilities are undertaken by the principal.

Advantages and Disadvantages of Registering a Limited Liability Company in the United States and its accordance with Iranian Law

Registering a limited liability company in the US has advantages

compared to joint stock companies, which helps applicants for having the best option to achieve their goals. One of the most important advantages of registering a limited liability company in the US is that there is no need for company executives, and then shareholders and directors of a limited liability company, or LLC, can to hold their board meetings in other countries as well.

Akhavy, a (No Full Name) (1940), Non partner corpoation, Justice Ministry of collection law, No. 149, pp. 63-65

Another advantage of registering a limited liability company in the United States is that there is no need for board members to be as shareholders, and depending on the circumstances in each state for registration, only one to three persons can to register a limited liability company in the United States.

Not to pay income tax on corporations in some states is another advantage of registering a corporation in the United States.

Charlesworth & Geoffrey Morse, Law Company, 15th Ed, Sweet & Maxwell, 1997

Some US states have provided advantages to applicants for registration of a limited liability company, one of the most important of which is the lack of necessity for the initial capital to register a limited liability company in the United States. In this case, applicants for a US company registration can to enter the state without the required capital and apply for US company registration. Ansari, vali-o-Alah, (2013), Administrative contrasts law, Hoghoughdan publication, second edition (In Persian)

In Iran, civil company's transformation to a trading company has two advantages:

- To creating more capital by raising the capital of each partners.
- Security for Partners due to their capital separation from personal property.

Here, human's creative mind raises a new question: If two or more individuals can to separate their capital brought to the company from the personal property, why should not a single person have this ability? The design of this question is the basis of a new invention that we call it as a sole corporation neglectly.

A sole corporation allows individuals to transfer unilaterally part of their property to the assumed entity of a sole corporation and to separate their property. Therefore, by using this security pattern that exists for business firm partners also creates a single person to accomplish it by resorting to the company. In contrast, the company's registration also has its disadvantages.

The most important of these disadvantages are follows:

- In a sole corporation, one person is solely responsible for all debts and liabilities.
- The person who registers a sole corporation must pay taxes for employees and employer.

History of forming a sole corporation in Iran

Despite of above-mentioned cases, idea to form a sole corporation is not unusual in our law, and even the legislator has approved the establishment and operation of such corporations. Article 4 of the Act of General Accounting approved on 10/6/1366 permits to establish companies with a single member (government). Also the Act on

Registration of Branches or Agencies of Foreign Companies approved 21/8/1376 and its Implementing Regulations approved in 1/1/1378 which absolutely permits foreign companies (both single member companies and companies with multiple partners) to operate in Iran. We describe it.

Article 4 of the Iranian General Accounting Act

Article 4 of the Iranian General Accounting Act approved in 10/6/1366 makes it possible to establish a single-member business (government). It provides: "A state-owned corporation is a specific entity that is established by law as a corporation, or has been nationalized or confiscated by law or a competent court and is recognized as a state corporation and more Fifty percent of its capital is owned to the government. Any business firm created by the investment of state-owned companies is considered a state-owned company as long as more than fifty percent of its shares are owned by state-owned companies." According to the above article, many state-owned companies have been set up, with 100% of their capital being nationalized or confiscated and owned by the state and

engaged in business as well as trading companies with only one person (government) as a member. State-owned businesses are therefore public-law entities formed with a single member.

2- The Law on Registration of Branches or Agencies of Foreign Companies approved in 21/8/1376 and its Implementing Regulations approved in 11/1/1378.

Single article of the Act provides: "Foreign companies which are recognized as lawful companies in their country, while reciprocal action by the country, and shall to do in such matters as may be determined by the Government of the Islamic Republic of Iran within the framework of laws and regulations. Article 1 of the Implementing Regulations of the Act also provides: Foreign companies which are recognized as lawful companies in their country, while reciprocal action in their respective countries, can to work in Iran in the following areas.

According to the above-mentioned cases, because single member companies may be legally recognized in the countries where are registered, they

may operate in Iran under this law and it's implementing regulations.

The formation of a single member company is accepted in most countries such as England, France, Italy and Germany. Let us now consider the rules of American law in this case:

According to the Companies Act 1916, minimum partners which is required for the formation of a private limited company is two partners, but amendments on the commercial law of 1996 also provided formation of a single member limited liability company.

The possibility of forming different companies in single-member companies

Through explaining various kinds of companies in commercial law, we answer the question of what kind of companies can be analytically formed as a single member company.

Limited liability Company

In according to Article 94 commercial law, the formation of a limited liability company with a single member is not legally possible; On the other hand, by considering how to operate the limited liability company, it

is almost like a privately owned joint-stock company in the United Kingdom and a limited liability company in the United States that is possible with one partner. (Mahmoudi, Investigating the Possibility of Forming the Single partner Companies, 2003: 14: 14 and Isa Tafreshi, an Analysis of the commercial Corporate Law, Vol. 1, 2009: 132)

Cooperative Partnership Co. and Proportional Liability Partnership Company

Analytically, the formation of Cooperative Partnership Co. and Proportional Liability Partnership Company with single member does not face with any obstacles. In case of insufficiency of assets of Cooperative Partnership Co. and Proportional Liability Partnership Company to pay all the Company's debts, the single member would be responsible to pay all the Company's debts.

Therefore, these two companies are coming together and find the same effect. Because in Cooperative Partnership Co. a single member will be responsible to pay all debts due to the Cooperative partnership responsibility, and in the Proportional Liability

Partnership Company, a single member will be responsible to pay all debts due to have its 100% shareholding. (Isaa Tafreshi, Analytical Discussion of Business Law, Vol. 1, 2009: 138)

Managing a sole corporation

If a single partner manages the corporate unit, he will also be its' owner alongside of all liability, of course, this case is not prohibited according to the new business law bill. There are two ways to manage a sole corporation: 1. the sole proprietor which is known as the company's shareholder, he/she elects a director or directors to manage the company, in this case, the shareholder of the company is the same person and the company's affairs are merely delegated to another. 2. The shareholder himself / herself will be the managing director, who will then act as a legal person. And for this case, the employer-employer relationship is not a debate, and responsibility for all activities will be on the company itself, of course, discussions on the guaranty is an exception. (Abbas Niazi and ayyaam Kamarkhani and Mohsen Jalilian, Investigation of sole corporation in Iranian Law with a Comparative View,

Quarterly Journal of Economic Law, 2016: 9)

End of Company's Life in a sole corporation

The end of a company's life has two distinct aspects or stages that can be interpreted as credit and practical aspects. The end-of-life credit aspect is the nature of the company and due to it; legal personality of the company is lost. This aspect or end of company's life is referred as dissolution. The practical aspect of end-of-life is on the determination of company's assets in which the company's assets are converted into cash, its demands are received and debts and liabilities are fulfilled. After the stage, if the surplus to be exists, it is divided between the partners according to their rights and interests in law and Articles of association. In this case of the company's end of life, they use a legal word as liquidation.

The dissolution of a sole corporation may also be voluntary or forced. The only difference between these companies and the companies with more partners is that its voluntary

dissolution is based on the will of only sole member.

Conclusion:

1. The idea to form a sole corporation is not only unusual in our law, but also accepted on the state-owned companies. Therefore, the Iranian legislator can to elaborate this idea and apply it for the private business firms. However, it is noted that permission to run such companies should be considered through securing third parties' rights.

2- In Iran, to form a sole corporation is possible only as the public and private limited liability companies, since only in these companies, the company's assets are separated from the partners' assets and in other companies; the partner guarantees the payment of company's debt after liquidation. So only in such companies a partner can to have the necessary risk.

3. a sole corporation due to its unique nature differs from other companies in its formation, management and dissolution, so that its formation and dissolution (except of bankruptcy) is accomplished with a will and unlike other companies, the necessary decisions

are made by a single member without observing the certain formalities.

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