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Review article

Review of effects extent and consequences of invalidity in mixed non-stock corporation

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ABSTRACT

Businesses, in commercial law and the bill passed in 2011 was considered, and a general classification of capital companies, individuals, cooperatives are classified as mixed, that is, they will make a few companies. Mixed Company Mixed Company is a non-stock of the subsidiary. In this study, Essay on the draft Commercial Code Act 90 has been, and according to the company, the combination of a partnership, or limited liability company, in case the company must invest cash payments and share partnership non- cash partners, as well as calendar and give up on its company, and if they do not fulfill the following conditions, corporate formation, and it is bound to valid, in addition, non-compliance with the rules and regulations concerning the form of company formation business law, the company is considered valid ways.. In addition to the nullity of the company, which has also been noted, such invalidity against third persons who are, or appear to have such a trust can not be invoked.

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1. Introduction

In Iranian Commercial Code, the definition of a business enterprise is not enough, however, different definitions of each of the rights Elite Trading Company have provided, among which a few are mentioned below:

1. Some say " it is a commercial enterprise, a group of people together to share capital, which means that instead of operating in order to gain profit, and they will divide it among themselves" (Emami, 1999).

2. Certain commercial enterprises are defined as "a company that marry, trade law makes it legal origin of private rights, and sometimes its own legal personality, also known company (Jafari Langroodi, 1967).

3. Certain this definition, commercial companies offer " is a commercial enterprise, the organization that is formed between two or more persons, in which each share in cash or kind or work in putting, to engage in business operations, and gains and losses resulting to split (Sotoodeh Tehrani, 1994)

4. Others consider that such a "bond company that, by two or more persons agree to do, have to share the potential benefits of jointly do business" (Saqari,, 1964).

5. According to another definition, which made a number of commercial companies, "the company's business is a contract whereby one or more persons agree, that brought together their own capital will be formed to develop and the institution for which purpose a form shall be allocated and the benefits and potential losses resulting from the use of capital share" (Skini, 1996).

The draft reform legislation, as well as the Commercial Law Reform Act 2011, the definition of a business enterprise is not provided.

2. non-stock identification in mixed company

Mixed non-stock corporation, in Article 141 of the Commercial Code, this is defined as " mixed company is a non -stock company, business affairs under a special name, one or more persons associate sponsor, and one or more limited liability partnership No equity is formed. Partner of the sponsor, who is responsible for all debts, may also be found on the company's assets. Partner with limited liability, is someone who, Responsibility only up to the amount of capital that the company made , or can be. The company name, the phrase "mixed company ", and at least one of the partners sponsor name to be incorporated. This company is formed primarily by the two parties. The first category are those who have capital and business investment are going, but do not understand the business. The second category are those who have money but are aware of the business, and will not work as an employee of the capitalists, but want to work for themselves, these two groups can agree on, and the conglomerate consists of non-stock given, in which case the first batch of partners, limited partners and the second category, unlimited liability partnerships are that they will be responsible for managing the company (Damirchili, 2002) do not need any of the partners, have a business capacity, and none of them are not a businessman. Therefore, a legal person other than a trader (a government agency with independent legal personality), it can be a partner in a joint enterprise (Skini,1996). Partner of the sponsor, who pays the amount of the investment company, responsible for all the debts of the firm may find in addition to their property. That is, if the capital adequacy of the company did not ask creditors, creditors are able to guarantee the assets of individual partners, or to all of them, as well as partnerships go, and that part of his quest, the assets of the company have not received, will collect if the partners have limited liability only about himself, the company was liable to the creditors and the creditor no right of recourse to the personal assets of partners are mentioned last (Erfani, 2009), as opposed to a partner sponsor, which is solely responsible for payment of all debts of the company, partner, Ltd, about the part that the company has is responsible. According to Article 143, which provides: "Each of the partners with limited liability, whose name is part of the company name, the creditors of the company will be the sponsor partner. Each violation of such an appointment, the partners are given is ineffective against third parties. " The appearance comes as Article 143 of the Commercial Code, liability partnerships partner whose name is part of the company name, only against third parties, and hence can not be partners, liability partnerships are cited, and indeed his responsibility in the company, the as other partners has limited liability. And Article 146 of the Commercial Code, provides that "if the partners Ltd, trading companies, and the emergent obligations of

the transaction, the transaction parties, the ruling partner, the sponsor will, unless it is clear, the deal the law, the company does » Finally, a mixed non-stock corporation, before the registration obligations of any limited liability partnership against third parties with respect to these obligations, the sentence will sponsor a partner, unless the prove of limited liability entities shall inform him have (Article 150 of the Commercial Code), (Skini,1996 and Damirchili, 2002). Iranian Commerce Act, on conglomerate of non-equity capital, no not specified, only taking the phrase " a person who is a partner with limited liability, his liability is only up to the amount of capital, the Company shall or may be ", we can conclude that, in the mixed non-stock corporation, capital only from liability partners, limited paid sponsor partner without put capital with labor and industry, responsible for corporate governance, and the receiving end of some corporate interests, and typically share partner, or partners, guarantors, half or a third or a quarter is determined, thus, non-stock investment conglomerate, is only an investment partner, or partners in Charge limited, leaving the company, and associate sponsor is not required, as investor what the company wants (Sotoodeh Tehrani, 2004). Mixed non-stock companies, like other companies should be required to be registered and Co., Company Statute set up and signed, and to register. Because Article 142 of the Commercial Code provides: "Subject to the provisions below, the relationship between the partners, the function wills Company Statute." Therefore, the company does not have a separate statute regulating, but not join any, partners Company Statute addition, the statute also to adjust. After setting Company Statute, which is signed by all the partners, the Company Statute, including a certified copy of the statute, if the statute is set separately, the registration application must be submitted to the Companies Registration Office, is the same as profit Company Statute in partnership firms were explained. In Company Statute, especially the partner or partners sponsor names, and company executives must be explained. Company Statute After registration, company registration office, notary statement, a summary of Company Statute in the Official Gazette, and one large newspaper Mass-circulation is (Sotoodeh Tehrani,2004). Mixed non-stock corporate governance, responsible partner or partners of the sponsor, and the scope of authority and responsibility, comply with the provisions of the partnership, thus, the administrator has full powers, and each partner is guarantor for loans confirmations, mixed Non-stock Corporation, its effect will be to find another. Partner of the limited liability company has the right to run, and if the partner transaction for the Company to fulfill the obligations they emergent trading partner of the sponsor warrants will be traded on the opposite side, unless it is clear that the transaction represent the company does (Derived 145 and 146 of the trade law), the share of transfers Partners, the same administrators, the partnership have been predicted, and thereby ensures that none of the partners could contribute to another move unless the consent of all partners (Erfani, 2009), the complex non-stock dividend on the company, the business has set certain rules, but according to (Article 142 of the Commercial Code), Company Statute or statutes, how to divide profits among partners It will determine, in this case, the relationship between the partners, the function is Company Statute or statute. If the partners are not specified in the order, according to the general principles and criteria for the unity of Article 119 of the Commercial Code, the profit sharing ratio of the partners listed in the firm will be. Partners Ltd, the benefits that the company has really benefited, or otherwise, such as that of the company that bears his own portion of it has to be given to the partner. The capital of the company, the company 's creditors to demand payment guarantee, the legislature in Article 154 of the Commercial Code, provides that " partner, Ltd, the branch can not be found, unless deducted from capital caused her, not now... " (Skini,1996 and Hasani, 2006).

According to Article 532 of the Commercial Code reform bill in 2011 : " Mixed non-stock company, a company that, through one or more associate sponsor, and one or more limited liability partnership, is formed, and its capital divided into shares, or any other securities not. Responsibility of the sponsor partners, the creditors, and their relationships with each other, subject to the provisions of the partnership, according to recent legislation mentioned in mixed company name other than stock, at least one of the partners is properly cited. If the company name, including the names of all partners is not guaranteed, it is listed after the name of the partner or partners, a phrase such as, " Partner " or "brothers" to be incorporated. Each of the Partners Ltd, which is listed among the company, the creditors of the company, is a partner sponsor. Thus, contrary to any agreement between the partners may be set against the third party is invalid (Articles 533 and 534 of the Commercial Law Reform Act 2011), the complex non- equity investment company, registered at not more than five million RLS, below. Mixed

record for Non-stock Corporation, the total cash capital confirmations, and all non-cash assets to be submit calendar. Articles 535 and 536 of the Commercial Law Reform Act, (2011) for the administration and supervision of joint ventures Non-stock, Article 538 reform bill commerce Act 2011 provides: " managers only by partners sponsor, and they unanimously, inspection only by the partners Ltd, and a simple majority of votes are elected. This material may not be contrary to the provisions of the constitution, decreed otherwise. Mixed non-stock corporation, the partners ensures reasons barrier, which prevents firms are partnerships, such as joint stock companies, the far- left ideas, and people with little propensity to form this type of company, do not show, and makes way for the formation of corporations and limited liability are open.

3. Invalidity respects, the combined non-stock corporation

Contract like any other contract, must have a health condition, contained in Article 190 of the Civil Code, the partners must have the capacity and consent, the matter must be commercial, and not hesitating and not against the law. In the form of non-compliance must be said that if, in the Calendar Company Statute rate Partners -kind contribution is not set, the company is void. As mentioned earlier, when a partnership is formed, the total investment confirmations cash and non-cash share Calendars and Partners be surrendered. The cash capital commitment by the partners to be confirmations, and non-cash share Calendars and submit Partners not, the company would not exist. In the case of non- equity conglomerate, the legislature has not expressly prescribed rule, but given that the company is a combination of partnership and limited liability company, the company also must pay all cash capital, and the share Partners -kind partners is also a calendar and give up on its company. If these conditions are not fulfilled, the company is not formed, and otherwise invalid (Skini, 1996).

- Mixed non-stock corporation, the mere agreement of the parties can not be formed, but the formation of the contract is closed out a series of measures which the legislature has prescribed. In fact, the lack of formality trade law as a form of non-compliance with company formation, which is now valid (Bahramian, 2014).

4. Valid results, the combined company non stock

Because Non stock conglomerate, composed of a limited liability company, or partnership, and according to Article 96 and 118 of the Commercial Code, we can say that, mixed non-stock company, which is formed when all the cash capital confirmations and Partners non-cash share Calendars and must be surrendered. Sanctions for non-compliance of these conditions, the company is valid. The purpose of nullity, nullity is relative, although the partners, there is not a commercial enterprise, and the formation of this company is not against third parties, but the fact that despite the apparent company legally have trusted, reliable no third party beneficiaries to the contrary, the fact that they have a right to invoke. To third parties, primarily the person or persons contracting with the company's liability partnership, which is only related to the case, the practice is documented nullity. If so, the founding partner and co-founder of the company, in violation of the law or the articles of association, and violations of the other shareholders or third party losses are entered, each beneficiary can appeal to the general regulations projections regarding civil liability in court competent to fight the plan (Damirchili, 2002), on a criminal charge against a clause (Article 115 of the Commercial Code), the founders and managers who, unlike Indeed, the payment of all contributions Partners cash and cash Partners share your calendar and submit the documents to the companies Registration Office, they are still too said, is dishonest, and according to Article 1 of the law to punish the perpetrators of aggravated bribery, and embezzlement and fraud 1 to 7 years in prison, will be sentenced. Check the company's 202 medley non stock the provisions of the Act relating to the business of refining companies will follow. In accordance with the foregoing materials, the treatment manager, or managers of the company, unless someone else sponsors partners from abroad or from their treatment is given. In case of disagreement between partners sponsor, to the designated administrator, the court shall appoint persons to treatment, and Non sponsor partners also have the right, for supervising one or more persons to determine treatment. Check Task Manager, end the current work, and the implementation of commitments and debt collection, and the share of the company 's assets and

affairs of the material (208 to 212 of the Commercial Code), anticipated, and the topic of Partnerships, has been discussed. In accordance with Article (152 Commercial Code), the conglomerate non stock, liquidated and Partner Ltd, yet all or part of their Partners share paid, or to be refunded after confirmations, creditors have the right company, the equivalent of what for the remaining portion of Partners directly against partner with limited liability, litigation, and if the company is insolvent, the administrator has the right (Erfani, 2009) Defeasance, the Company may, in addition, shall include any decision or action of the various organs of the company, must be taken, however, if it is, the decision or act contrary to the provisions of the law and the statutes of the company. In each of these three cases, the beneficiary can go to court and ask the company to void formation or decision or action.

5. Conclusions

Given that neither the Act nor the Trade and Commercial Law Reform Act 2011, the definition of commercial companies offering has not been proposed, defining an obstacle occurs, the controversy in this area ends.

To form a joint stock company in Iran, at least two people are required to work, the first category are those who have invested, and intend to have a commercial venture, but do not understand the business. The second category are those who, not capital, but are aware of the business, as an employee of the capitalists do not want to work.

Invalidity of the company, which is a result of non-compliance with regulations, legislation has been enacted to create it. 's Invalidity verdict as now, by the court, there is no other company but can not invalidate the rights of third parties, and any one of the founders or shareholders or auditors can not rely on third parties to do the invalidation.

References

- Bahramian, M., 2004. in invalidation ways businesses, private rights of master's Science and Research Branch. Kermanshah thesis., 2014-p116.
- Emami, S.H., 1999. Civil rights, Volume IV, Tehran, p259.
- Erfani, M., 2009. Business Law, Volume II, Forest Publications, first edition., Tehran 2009. Pp.117 '206 '208 ' 211.
- Damirchili, M., 2002. Commercial Law in the current legal order, justice Covenant Press, second edition, 2002 summer. Pp. 1 of 332 subtitles302 '334.
- Jafari Langroodi, M.J., 1967. Terminol., rights, Tehran, No 3105.
- Hasani, H., 2006., Commercial law, including all lawful, publication rates, Fourth Edition, summer, p 334
- Saqari, M., (1964). Business Law. Academ. Press., p 185.
- Skini, R., 1966. Business Law, Volume I, published by Samt, Tehran, pp 17 '96'97 '181'193.
- Sotoodeh Tehrani, H., 2004. Business Law, Volume I, Publications of Justice, Ninth Edition, 2004-pp 145'285'288.