

**Research Article**

## **Legal Position and Jurisdiction of Executive Manager in Joint Stock Companies in the Legal System of Iran**

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### **ABSTRACT**

The managers are critical foundations of business companies. Since the management is one of major elements in decision and formation of the company's relation with other persons out of company, the position of managers has been considered as an important factor. The reformation bill of commercial law approved in 1968 about the joint stock companies has distinguished the general management and practical management from each other. It concedes the practical management to executive managers and general management to the board of directors. As a result, the executive manager is anticipated to be one of the most prominent practical factors

The article 125 bill of reformation of commercial law about the jurisdiction of the executive manager .puts: "the executive manager is representative and has authority to sign based on the range of jurisdiction that has been stipulated by the board of directors". Due to this article, the executive manager is responsible about third parties so he is one of important fundamentals of the joint stock company that has gained authority based on the determined jurisdiction by the board of directors.

**Key Terms:** Executive Manager, Board of Directors, Joint Stock Company, Authority, Jurisdiction.

### **INTRODUCTION:**

The management of joint stock companies is one most controversial discussion in relation to other joint stock companies. The position of companies' manager has been ever considered by a number of legal experts, specially the legal situation and jurisdiction of executive manager that is assumed as one of the most important executional foundations of every company. The executive manager is elected from the board of directors or out of it. Some authors have construed executive manager as an employee and others as the company's lawyer.

The board of directors never interferes in practical management of the company in European countries and it is conceded to certain persons who are called executive manager.

According to the legal system of Iran, the executive manager is elected based on articles of association or by the board of directors. An executive manager is responsible for all affairs in a company and it should be mentioned that a legal person cannot be appointed to this position and he should be a natural person. Analysis of legal position and the domain of executive manager's authority is one of the most important issues due to his prominent role in joint stock companies and his responsibility to respond third parties. It is believed that majority of joint stock companies' problems will be solved by illustration exact position of executive manager. This paper aims to examine the legal position of executive manager, his limitation or realm of

jurisdiction by analysis various approaches and views. Present research will be accomplished by dividing into four sections: 1. Legal position of executive manager, 2. the jurisdiction domain of executive manager, 3. the limitation of executive manager and 4. Individual rights and responsibilities of the executive manager.

### **1. Legal position of executive manager**

In the bill of commercial law, the management of Joint Stock Company is divided into two parts; the board of directors and the executive manager. While the executive manager is the most fundamental position in a company, the responsibility of the board of directors is to supervise and control his performance. Although the commercial companies are managed by the board of directors, there is no doubt that someone should be responsible to handle the business affairs because customers cannot refer to all members of the board of directors and also, if the members attempt to consider all aspects, they will cause company to lose benefit by making progress slow. Therefore, one of the members or someone out of the boards of director will be elected as an executive manager to have the authority to sign commercial documents and sell or buy (Ebadi 1997, 118).

Article 124 in definition of Joint Stock Company puts: "the board of directors should appoint at least one natural person as an executive manager and specify his domain of jurisdiction, time periods of responsibility and stipend". If the executive manager be a member of the boards of directors, his time period of management should be the same with his membership in the board. Accordingly, the chairman of the directors board cannot be the executive manager of same company unless by getting approval of three quarters of votes in general assembly. Although there is a remark in commercial law as it put: "the board of directors may dismiss the executive manager whenever they venture" (article 4).

Based on what was mentioned earlier, it is perceivable that the board of directors'

responsibility is limited to making decisions and general management of company however, the responsibility of the executive manager is execution of the board's decisions, practical management of company and presenting applicable solutions about company's problems. There are some disagreements about legal situation and legal nature of the executive manager's relation with company as some assume him to be company's employee and others as its lawyer as follow:

A. Legal experts who believe there is no employing relation between company and executive manager in labor law and the executive manager is the lawyer of company, commonly pertain two ratiocinations: Firstly, since the executive manager is the member of the boards of directors and is supposed to own some stocks in his name, he is responsible according to managers' law and will be involved in company's benefit and loss. Second, according to different articles of the bill of commercial law's reformation about responsibility and authority of the executive manager, especially article 124 and its note and also article 125, one cannot put the executive manager as a worker or employee. The executive manager is the company's representative and as a legal person, there is a legal compliance relation between him and the company that never results in the authentication of an employee and employer relationship. However, he may be perceived as an employee and receive benefits according to labor law only if he has been elected from company's workers. In the case of disposal, he would not cut his relation with company unlike the case that the executive manager is elected from directors board (Damirchi and others 2001, 139).

According to article 126 nobody may manage more than one company at the same time although the accomplishments of a person who has the position of executive management in more than one company are valid to stock owners and third parties so he will have the

responsibilities of executive management's position.

The period of membership has been promulgated in law and the time period of executive manager's responsibility is based on the board of directors' decision. Although there is specific law about the time period of management, it seems that this period cannot be more than two years. According to article 124, the executive manager cannot be in the management position in two or more companies even though he has been elected out of the board of directors. In this case, there is no problem and obstacle in signing employment contract but it would be problematic if the executive manager is elected from the board's members because board's directors are about to dismissal anytime. It should be mentioned that the period of management is limited in joint stock companies and directors cannot accomplish tasks other than what they are advocate for so the position of execution management which is determined by the boards of directors should be verified after each reelection (Sotoudeh 2009, 212).

There is a certain monthly salary for the executive manager who spends most of his time for company's affairs. This salary is related to company's expenses which means that whether company make benefit or not, the executive manager would be paid. Even there is a possibility of receiving some percent of benefit as remuneration (Sotoudeh 2009, 214).

In any case, the executive manager is anticipated as the company's representative who is responsible about company and third parties along with other members of the board of director according to law.

## **2. The jurisdiction domain of executive manager:**

The executive manager is responsible about general accomplishments which are necessary for company's progression. These tasks commonly include buy and sell, registering contracts, hiring

workers and members and also representing company in courts.

Basically, execution management is a stewardship affair so the executive manager is not supposed to accomplish his tasks by others (lawyers) unless this right is given to him due to company's article of association or by the board of directors. In this case, the executive manager may choose some assistants although he would be responsible for their performance so he should supervise them (Damirchi and others 2001, 142). According to article 125, the executive manager is assumed to represent company and have authority to sign based on the virtue of the jurisdiction vested in him by board of directors. Since the executive manager lacks legal jurisdiction and law has not specified any clear domain of authority, his jurisdiction is determined by the board of directors.

Dr. Karim Kiyani believes that the executive manager of joint stock company is authorized about third parties to accomplish tasks so his jurisdiction cannot be limited (159). The basis of this opinion is Article 135 of reformation bill of commercial law which according to it: "the executive manager and other managers' whole actions and performances are valid and effective about third parties so it is not justifiable to accept excuses about lack of exercise of formalities. However, Dr. Eskini refutes this idea by explaining that the article 135 is not about the essence of executive manager's authority but it points out that the accomplishments of the executive manager cannot be perceived as invalid due to deficiencies on his election's procedure. Therefore, against the members of the board of directors who have the supreme jurisdiction in management and to do their responsibilities according to article 118 of the bill of reformation on commercial law, the executive manager can perform based on the authority which has been given to him by the board of directors. Accordingly, the board of directors may give him full authority, in this

case, he would have complete jurisdiction unless there be some cases beyond the company's affairs, general assembly or the board of directors' qualification (Eskini 2008, 168-69).

It can be argued that as the article 125 clearly states the measure of executive manager's authority and options is based on the amount of jurisdiction which the board of directors concedes to him however, the stipulations of article 118 is about the board of directors downrightly and also, the article 135 is not an explanation mainly about the limitation and domain of the board of directors' jurisdiction but it is a declaration about the unpredictable nature of nullification of managers' (directors and executive managers) election process about third parties. Therefore it is unjustified by referring to provisions of article 118 and 135 about the executive manager's jurisdiction precinct (Damirchi and others 2001, 142).

### **3. The legal limitations related to executive manager's jurisdiction:**

As it was discussed previously the executive manager merely owns the authority which has been awarded to him by the board of directors. The board of directors may grant him full jurisdiction in which case he would have supreme authority but if his domain of jurisdiction is determined based on article of association, the executive manager is obliged to observance. There are some limitations apart from what the board of directors or the article of association has stipulated about the executive manager's range of authority as follow:

#### **3.1. The theme of company's observance**

From the legal point of view the importance of company is based on its theme and it is the exact reason of the authority of the board of directors' limitation due to theme of the company in article 118. The executive manager like the members of the board of directors cannot act beyond the theme of the company even if the board of director has conceded such options to him. Since the board of directors does not own such

authority, consequently they cannot investiture it to the executive manager. In addition, third parties who have stipulated a contract with executive manager beyond the theme of company may not propose it versus company for the reason that the executive manager as a representative and someone that attains his authority from the board of directors based on article 124, it is beyond the theme of company.

#### **3.2. The competency of general assembly**

If the board of directors cannot interfere in the affairs beyond the competency of general assembly, the executive manager who attains his authority from the boards of directors cannot interfere in these affairs too.

#### **3.3. The Specific competence of the boards of directors**

The legislator has put some affairs in the board of directors' specific competence field. Affirmation on this competency means that the executive manager is not supposed to have authority to act in these fields even though the board of directors permits the executive manager to enterprise specific activities including determining chairman, vice-president of the board of directors, accomplishment the tasks which are in the specific competence realm of the chairman of the board of directors or vice-president and permission to take loan for the members of the board of director from banks or other financial institution.

#### **4. Individual rights and responsibilities of the executive manager:**

The board of directors has the authority to elect one of company's employees as the executive manager. The relation between the executive manager and company is not similar to the relation between the members of the board of directors with the company and for this very reason, the legislator has prognosticated a salary and not the right to attend for the executive manager like other employees of the company based on the article 124 of the bill of reformation in commercial law. About the right to attend, it

should be explained that as we discussed the matter previously, an executive manager is supposed to spend all his time in the company and for the company's benefits while the members of the board of directors do not accomplish any task except holding meetings in some cases.

In case of being a member of the board, an executive manager is not entitled to attend in the board of directors' meetings unless it is held in times out of the company's office hours. In this case due to his contract with the company, he will be paid according to labor law. Any rewarding for the executive manager who is not the member of the board of directors would be based on the general rules governing the employment of company staffs.

If we aim to summarize the executive manager's legal situation and personal obligation, we should point that the executive manager is able to work in the company with two specific titles: 1. As an executive manager; in this case he will have the contract similar to contract law so he is dismissible anytime and cannot demand to compensate a loss unless it happens due to company's fault. 2. As the employee of the company; in this case, his contract should be based on the regulations of labor law so he would receive same salary and benefits that the labor law has specified for the company's employees. Whenever an executive manager is the employee of the company, dismissing him won't affect his work condition but if he is merely the executive manager of the company, dismissing him will result in his discontinuity of his relation with the company so for example, he cannot request to return the company by referring to the department of labor. It has been assigned that the board of directors may dismiss the executive manager whenever they want according to the note of article 124 of the bill of reformation in the commercial law. It has the requisite form and one cannot stipulate its converse (Eskini 2008, 167).

## CONCLUSION:

It is considered that the legislator has not included the executive manager in any category of managers according to the bills of reformation in commercial law in 1968. The fact is that the executive management is one of the most important positions in administration of a joint stock company. It is also a delegated position from the board of directors which its domain of jurisdiction, wage and the period of assignment is determined by the board of directors so the board is free to limit the authority of the executive manager. Therefore, the election of the executive manager is one of the exclusive power realms of the board of directors and shareholders cannot elect the executive manager of the company directly. By the exact analysis of the critical position of the executive manager in a company, the author of this paper believes that legislator should concede the permission of the election of executive manager to shareholders at least in some cases.

As it was discussed, the executive manager's authority is based on the extent of jurisdiction that the board of directors has granted to him. Therefore, this paper aims to suggest that legislator should stipulate some conditions about the level of executive manager's jurisdiction instead of granting all authority to the board of directors in electing the executive manager's jurisdiction.

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