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Study the legal effect of the companies managers decisions in beyond of stipulated authorities in constitution

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Abstract

Growing trade relations and the establishment of commercial companies, are appropriate the validity of the contracts, especially contracts for corporations to the smallest companies to attract any capital, must be accurately evaluated with respect to the matters set forth in the statute. Companies should take action about their issue, but sometimes, they concluded that the transaction out of the statute is to affect the community and the rights of others to be treated, therefore the company authorization to contract out of the statute be examined and its legal status must be clear. The ruling concluded that the contract out of the statute is invalid and does not have legal protections. But is these contracts are invalid and can be authorized. Or basically they are invalid and cannot be authorized. Contractual rights of the parties in the transaction have a good faith and the rights of third parties that may be associated with this condition, must be determined. In French, trade out of the statute contracts against the contract parties with good faith, is valid. It is clear that the constitution is effective in capacity, willingness and authority of the company's charter. On the other hand, invalidating the contract eliminates security of the trade, while the law should seek to strengthen trade ties between individuals, therefore, should seek a remedy and till to amend regulations it is better to apply the contracts, using cause (Tasbib) and no harm (Lazarar) rules, legal doctrines and jurisprudence as compensation.

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Introduction

The role of joint stock companies in the international and internal community is known to all. This part of legal entities is responsible for solemn and important and sensitive affairs of communities. The advances in sciences and the growing variety of issues, beside the significance and sensitivity of the tasks entrusted to these companies entails more control on them. One way of control of the companies is to make sure that trading companies have a field of business and work in the same field so as to reduce unreal investments and control the managers' authorities.

To ensure the effect of this control tool the legislature has notified that the contracts outside the subject of the articles of association are invalid in an attempt to prevent imposing such contracts to companies and hence prevent consequent losses to investments and creditors of the company. Sometimes companies enter into contracts to gain more profit or benefit from the economic conditions of society and their intended interests or perform legal acts that are beyond the subjects stipulated in the articles of association. These contracts are created as a legal state in society and associate with others and seemingly create rights and duties for the parties thereto. The aim of this paper is Study the Legal Effect of the Companies Managers Decisions in beyond of Stipulated Authorities in Constitution.

Materials and methods

Method of analytical and descriptive

The method in this analytical and descriptive study was library and internet. We have attempted to study the standing and credit of the contracts of trading companies and specify the philosophy and the reason of choosing specific field(s) of activity for these companies and find its role in the legal and legitimate effects of the transactions not in relation with the field of activity mentioned in the articles of association or contrary to such fields taking into account the regulations governing commercial relations.

Appropriate method

This helped us determine whether or not the parties to contract and third parties are ignorant or aware of the contracts beyond the fields anticipated in the articles of association. It is obvious that good faith or bad intention of these parties will be effective in choosing the appropriate method. It has been tried to clarify the basis and role of the capacity of commercial companies and the role of the company's articles of association in determining its capacity and the quality and scope of capability of the company and the position of managers in notifying the will of the legal entity to clarify the responsibility of commercial companies and managers in compensating for the damages incurred following the contracts drawn out of the fields of activity mentioned in the articles of association.

Result and discussion

Regulations Governing the Decisions of Company and its Managers

To determine the scope of competency of commercial companies it is necessary to set a standard as a benchmark to determine the scope of competency of the company so that the commercial company could act within its competencies based on such standard. For this purpose the legislature has required that the company's field of business should be mentioned in the articles of association and articles of incorporation.

Unlike legal entities, commercial companies do not enjoy complete freedom to make contract with others as they are bound to observe their scope of power and regulations according to the articles of association when making contracts. Such limitations include accordingly the company's field of activity, the geographical location of the company, and the identity of the parties to contract and other legal regulations.

Regulations, Rules and Articles of Association of the Company

Some companies have been incorporated according to law and their articles of association have been approved by Majlis (consultative assembly).

Some legal regulations do now allow commercial companies perform some activities. Nonetheless if unauthorized fields of activity have been anticipated in the companies' articles of association, the companies could not disregard legal regulations because such cases have been stipulated in their articles of association.

On the other hand the company's business must be within its scope of the activities. Shareholders purchase shares with regard to the business of the company and hence expect that company managers perform business within the scope mentioned in the articles of association instead of other activities beyond the subject of the articles of association. The subject mentioned in the articles of association is among the fundamental agreements of founders and share purchasers which are considered as part of the obligations of these two groups. Accordingly one party cannot disregard such agreement and ignore it unilaterally.

Approvals of the General Meetings and the Board of Directors

General meetings and the board of directors are the decision making authorities in commercial companies. General meeting here means ordinary general meeting. Basically, the general meeting is held once a year. The ordinary general meeting may make decisions in all affairs of the company unless for the issues which should be decided by other meetings. Among the important decisions which should be taken in the meeting is selecting managers of the company and deciding to divide profits and reserve among shareholders.

The State of the Contracts beyond the Regulations Governing the Company and its Articles of Association

Sometimes a commercial company may have been entered into a contract which is not stipulated in the articles of association or the articles of association may be silent on such a contract.

In other cases the commercial company may have set some regulations on entering into contracts and a contract may be drawn contrary to such regulations. The regulations may in turn be the result of legal regulations or a merely internal approval.

Contracts Contrary to the Regulations and Articles of Association

Sometimes the contracts made by commercial companies may be contrary to legal requirements. As stated above, these regulations could be imperative rules of law or complementary provisions. It is possible that penal provisions or penalties have been considered for imperative rules of law. In some cases, the contract made by the company could be contradictory to the articles of association, i.e. some transactions may have been prohibited in the articles of association but managers could still make such contracts.

Contracts Contrary to the Approvals, Pillars and Internal Regulations of the Company

In some cases due to the span of the activity of a commercial company and the domain of its transactions, unified instructions are prepared on making transactions and provided to the concerned parties to the contract. Some companies consider general approvals for handling the company's affairs in the form of directives or bylaws based on the nature of their activity and the related rapid changes. In some occasions contracts may be concluded regardless of these directives or bylaws. Then the validity of the contract should be examined.

Contracts beyond the Approval of General Meetings and the Board of Directors

The approvals that are made by general meetings and particularly the board of directors are prone to changes and should be determined at the earliest possible time. According to the provisions of article 118 of the 1968 legal bill, the managers of the company have full power to manage the company.

This provision is aimed at preserving the rights of third parties because managers are regarded as the company representatives against third parties. On the other side, their powers are within the company's field of business. Therefore, the said provision is an imperative rule of law and no contrary rule should be conditioned in the company's articles of association or general meetings as it is of no effect to limit their powers against third parties with good faith (Shayegan, 1996).

Contracts beyond the Company Bylaws and Regulations

The issues which a commercial company faces permanently should be tackled through predetermined criteria and bylaws. The other reason of determining regulations in the form of bylaws may be the different locations of company's business. These regulations are an intraorganizational issue and have no effect in the capability and capacity of the company.

Effects of the Contracts Made beyond the Subject of the Articles of Association and Regulations of the Company

Sometimes, the contract made by a commercial company is contrary to the conditions and regulations stipulated in the articles of association or the regulations that have implemented have been ignored in the contract. If the said regulations are the same as legal regulations, violation of each of regulations will have the same effect as violating the legal regulations because these regulations are in fact repeating the law in order to stress on their observation.

On the other side, these regulations may not be the repetition of the law, in which case such principles and regulations will be regarded as an internal issue of the commercial company. Hence when a contract is made contrary to such regulations will invalidate it before third parties (Shayegan, 1996).

Effects of the Contract in Relation with the Company

A commercial company is a creditworthy personality and those who make contract represent the company as if the company has made the contract according to the unified opinion of managers

The Relation of the Company and Party to Contract

Principally, when a commercial company makes a contract as a party to contract, it will be influenced directly by the contract. But the contract could be of effect when it is concluded explicitly. Regarding the provisions of article 588 of commerce law, a theory may be developed that the commercial company could enjoy all rights. Therefore, if the right of doing business in some areas is not stipulated in the articles of association of the commercial company, it does not mean that the company has no power and will in making that types of transactions. Instead, it will mean that the commercial company has no right of making such types of contracts according to the articles of association. In other words the company will have the capacity to obtain rights but will have no capacity to exercise rights and discharge obligations (Jafari Langroudi, 1978). If the contracts are contrary to the internal regulations of the company, the internal rules of one side could not be imposed on the other side of the contract because the parties to contract are equal and no party can impose its rules without the consent of the other party and the basis of obligations of parties is the contract made in between.

The Relationship between the Company and the Decision Making Manager

When a contract is made by the managers of the company, the managers are regarded as the agents of the legal entity and responsible for the contract effect. When the manager of the company steps beyond its powers and makes a contract outside the powers of the company, the quality of attributing the contract to the commercial company will depend on a theory that is accepted.

If the contract is within the scope stipulated in the articles of association, the contract will be valid and executed although it may be contrary to the internal regulations or bylaws of the company. In this case managers would be responsible before the company. However, if the contract is made outside the areas of activity stipulated in the articles of association, manager should compensate for the incurred damages.

The decision making manager(s) should respect the internal regulations of the company and act accordingly (Sotoodeh Tehrani, 2009). Manager of the company is a part of the company which should act according to the regulations of the company when making decisions.

Effects of the Contract Made Outside the Authorized Fields of Activity toward the Direct Party to the Contract with the Company

Some transactional relations may be created between a commercial company and its party to contract. This contract will have various consequences in the contractual relations between the two sides whether the contract is valid or invalid. For the contract enjoy legal validity it should have been made based on principles and regulations. But if the contract lacks the required principles and regulations, it will have no validity and will create no rights for the parties thereto. However, if the other party has good faith, it will be entitled to demand compensation of damages assuming that a sound contract has been made and expenses have been paid for its implementation. The effects will be different if a party makes the contract with the knowledge that the contract is beyond the company regulations (Hasani, 2006).

Good Faith of the Party to Contract

A third party may spend costs and make other subsidiary contracts for the execution of its main contract. In this case, the other party may think of execution of the contract and assumes that the contract is within the regulations.

Therefore, one may assume that the performed transaction is within the legal powers of the company before third parties and the transactions will be of credit in relation with such persons and will have legal credit.

In this case the internal relations of shareholders and members of the board of directors and managing director will not be associated with the performed transaction and such parties will be responsible to compensate for the damages incurred by shareholders. (Ghaem Magham Farahani, 1989), or if the contract is invalid the incurred damages should be compensated.

Another assumption is that all persons are assumed to be aware before the law. Legal entities are authorized to perform activities within the scope of the company's field of business and have no will beyond the company's business and are not authorized to exercise their will for any reason whatsoever.

This is announced through the official gazette and the gazette is accessible. Therefore, transaction with a joint stock company without examining its powers is regarded as the rule of action where the third party has acted to its loss and no one except the third party will be entitled to be punished for the carelessness. In this case the damages incurred by third party will not be compensated (Kartoozian 1987).

The Assumption of Lack of Good Faith

In some cases, the contractual party is informed about the status of the company and its scope of powers and enters into contract with the company in relation with the subjects beyond the articles of association. For example, a manager makes a contract with the company after completion of its tenure (Kartoozian, 1987). Such a person cannot be regarded as a person who is unconscious about the company affairs.

The price of contract may not be in conformity with the plausible and customary price of the object of contract. Such cases indicate the bad intention of the party to contract.

Effects of the Contracts beyond the Subject Matter toward Third Parties

Sometimes when a person makes a contract with a commercial company, the concluded contract generates some effects in society as a two-will product, leading to rights and duties for third parties that have no role in the contract.

One of the effects of the contracts that commercial companies make with other parties is that the contract is directly effective in the company's assets and properties. As a direct party to the contract the company is influenced by it and the contract can be executed. If the company fails to execute the contract for any reason, the competent authorities may be asked to oblige the company to execute the contract. Even if we assume that the contract is not capable of being executed, the damages incurred due to non-execution of the contract could be compensated through the company assets (Nasiri, 1991).

In some cases, the contracts made between commercial companies and other parties will bring about results as a legal phenomenon in society. Based on the contract made between the two persons, the creditors of each of these two parties may gain a new source to demand their rights.

Moreover, they may lose some of the sources they had to demand their rights. On the other side, these types of contracts may lead to making some other contracts following the initial contract between each party with a third party. In this case, some rights could be created for third parties based on the new contract.

One of these cases is the relationship between third parties and the party to contract of the company. Namely,

a new contract is made between such person and third parties following the contract made between the company and its main party.

The legal status of these persons who are regarded as third party in the contract between the commercial company and its contractual party should be specified in the contracts of the company following the initial contracts (Skini, 1996).

Conclusion

Regarding the expansion of legal entities particularly the companies, the interests of modern society entails other necessities. Managers of commercial companies (personal companies and investment companies) are appointed by the shareholders or stakeholders of the company and are entrusted with the duty to handle the company. Therefore, the profit and loss of the activities and measures of managers should be directed toward these managers. According to the newly developed theory, managers of the company are the pillars of the company. Therefore contracts may be made by the company outside the subjects stipulated in the articles of association and the managers should compensate for the damages incurred on third parties.

The best way is the implementation of the contract, not just to fulfill the contractual obligations, however, as a way of compensating for the losses incurred due to implementation of the contract. Articles 2 and 3 of tort law may be helpful in this reasoning. Therefore, if the party to transaction fails to vindicate its rights within a contractual agreement, it will be entitled to vindicate its rights to compensate for the incurred damages. Here the assumption is that managers are the pillars of the company before the contractual parties outside the company. Still, they are responsible before the company as regards the internal issues of the company.

After compensating for the damages incurred by the person party to the contract with the company, the company may take measures against the offending manager and demand for compensation of damages.

If we look at this issue assuming that managers of the company are the representatives of the legal entity, we may benefit from the unified criterion set in articles 364, 365, and 366 of commerce law on commission work and compensating for the damages in a way that supplies the purpose of the contract. We can also benefit from the rule of enrichment without legal cause or the principle of harm to create safety in commercial relations and preserve discipline in transactions.

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