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Original article

Investigating the formation of single member company at the act of England, Germany, France and Iran

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ABSTRACT

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The single member company was introduced in the nineteenth century as a new phenomenon in act of commercial companies, and European country finally accepted it after a century of silence and hesitation. Among different countries, the single member companies have been faced with major changes in England, Germany, and France. Regarding the various procedures relating to the formation of this type of company, this research attempts to provide a comprehensive survey about this type of company in the act of the proposed countries and the act of Iran, which recently is going to accept these companies. The aim is to answer the following questions: 1-Which type of company can be proper for a single member company? 2-How many is the minimum members for formation and continuing? Can the legal entities establish a single member company? Is there a limit to establish the single member companies for legal and real entities?

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1. Introduction

The single member companies have been introduced by different titles such as single member companies, one-man company, one-man corporation, ‘one-person company/corporation and so forth. Nevertheless, the “single member companies” is more usual and has been widely used in act books. Since the Liechtenstein has

accepted the single member companies in its act, many countries have accepted this type of company in their act. In the process of forming this company, only one member (legal or real entity) is involved, and has an independent character from the single member, with the same features and specifications of other commercial legal entities such as name, nationality, domicile, or assets (Beihui, 2012). According to the prevailing procedure, the single-member limited liability company has one shareholder (partner) who is either legal or real person, which means that all stocks belong to one shareholder. The single partner profile must be legally registered in one entry and be accessible for the public. In the act of the most European countries such as England, the single member company has been presented against the common and sole proprietorship companies. It is obvious that the single member company has only one member, and therefore is different with the other common companies. The common companies have mainly been established by two or more partners of shareholders (Whether the establishers or the people have bought the shares). Therefore, the common company is a common name and title for all company except the single partner companies. A single person mainly establishes a company with regard to all legal conditions. The company is usually formed for a specific purpose, which is typically making the profit. Thus, only one person provides all capital cost of the company and single member company is similar to the other companies (Tessema, 2010). Individual ownership of a commercial association is single. The owner is the person who owns the land. About a registered property, the owner is the person who owns the property and the property is registered in her/his name at the official office (Elizabeth, 2001). In the case of registered land owner's personal photos of the property owner and the property registered in his name is recorded. In other words, he/she is a person who trades without any partnership with the others. A separate and independent entity cannot be distinguished for him/her established company.

2. Materials and methods

2.1. Investigation in the act of the European Countries

In this section, it is attempted to describe and analyze the components of single-member companies in the European countries. The issues are divided into two categories as formation and managing-dissolution. Discussions about the formation comprise two issues as partner (shareholder) and company. These issues are discussed as follows;

2.1.1. Partner (Shareholder)

There is a procedure in some European countries when a single member company is established, more than one person should be there as formality. With respect to this issue, in this paper, the minimum necessary persons for formation a company are considered.

a. The minimum persons for formation a company

In the most countries, in order to formation a single-member limited liability company, only one partner is necessary. In other words, during formation of the company, more than one person is not necessary (Anthony, 2007). Nevertheless, in some countries such as Ireland, in order to maintain the nature of contract and cooperation of the persons, being of two persons is still necessary to establish a company. However, this issue seems to be formality. Based on the article 7 from the England 2006 act, the formality partner who is merely a formal shareholder of a company is not required any more (Charles and Weinstein, 2009). In the England act, all private limited companies can have one partner, but in the public limited companies, the number of members should be at least two persons. Therefore, the topic of members can be divided into two categories as establishment and continuance. In the establishment topic, in some countries, attending at least two persons is required when a company is established (Ireland), But in the most countries, at least one is required. On the continuance topic, one person is enough whether legal or real person.

b. Member Type

Currently single member is possible whether be a real or legal person that means the single member can be a legal entity (Stephen, 2006). French Commercial code at article L223-5 stipulates that limited liability company cannot establish another limited liability company with a single member. In France, the legal entity was firstly unable to from several single member companies, but, some modifications were performed later and, the legal

entity can now do that. However, the legal entities cannot form a single member company at the act of this country (Radenkovic, 2005). In Germany, one or more real or legal person may form a limited liability company and, there is no a limitation in founders, the company's liability is limited to the capital. The real entities can form any number of single-member companies. In Belgium and Italy, the real person who forms a single-member company has unlimited responsibility versus the obligations of the company. This is because a real person cannot form more than one single partner company. Europe Union instructions doesn't present any limitation in this post, but it has given permission to the member countries that concerning formation of company by real and legal persons (single member company and the other persons) ratify some limitations from view of the numbers. In European companies or societies European (SE), the shareholders can be real or legal entities, but if they have a partner (shareholder), but if a European company is single member, the single member should be an another European company. This means that the real or legal entities don't have permission to form a single member company except this company (Greven and Storm, 2008). As seen, the countries have different procedures to accept the formation of single member company by real or legal entities; these differences are from view of formation permission and numbers of company that they are authorized to establish. In this regard, the countries are divided into three categories:

- Real entities have no limitations but legal entities are limited (France)
- Real and legal entities have no limitations (Germany act and Europe Union instructions about single member company)
- Real entities are limited and legal entities have no limitations (the SE companies)

It is possible to evaluate the topic from two views: first: can the persons form the companies successively? For instance, real entity "a", single member person "b" and person "b", "c" and etc. Second: can the persons form any number of single member companies as parallel, For instance? real entity "a" forms single member companies "L", "M" and "Z". In explanation of the second issue, it should be said that this issue provides less problems than first one and real and legal entities can forms several companies. As in the current situation, two people have authorization to from any number of companies. Thus, there is no such rational and legal restriction in the current procedure of the countries. But about the first issue and sub-linear relationship, some limitations are required to be provided. Because it causes the sequential formation of the companies, and liquidation and bankruptcy or inactivity provides some questions that answering seems to be very difficult according to current practice of the world act. Perhaps assuming such companies is low, but without deterrent act, they are likely formed. For instance, if one of the intermediate companies loses the formation condition, how will be the situation of next companies? Of course, with respect to the current management of the world, even such formation would not be problematic. Nevertheless, this procedure may lead to formality formation of some companies and lack of knowledge as well as economic instability. Permission for formation the company to real and legal entities is a helpful and useful issue, because the people need mobility and freedom in the trade, and this issue has been accepted by all specialists of the economic that the people attends to their own profits more than society's profits. It may be said when there are several people in the company, its performance is better than when it has one member; in contrast, it should be said that in the current situation of the world, professional management and specialty comes first. Therefore, the persons (owners) can entrust the management of their company to professional qualification to make more profit. Therefore, all persons should be allowed, but the number of companies, which a person can perform, should be limited. Because the unlimited permission for formation of company leads to successive companies that, do not have suitable activity. Thus, the limitation seems to be necessary in this regard. This issue that some countries such as France have prohibited the legal entities from formation of single member companies, is a different situation with the procedure of the other countries. Because the persons have a little difference from the view of nationality and, permission of formation such companies to legal entities is such as permission for establishing a solicitor-ship or branch; why the large companies with financial and management abilities should not have permission to form such companies?

2.1.2. Company

a. The states of formation

According to the act of the countries which have accepted this type of company, having single member either can be from the initial (scilicet one person forms the company) or it is possible after formation of the company by two or more persons, the company become single member through decreasing the members (Charles and

Weinstein, 2009). In general, it can be said that first method: from the initiate and second method: changing the company. Changing the company is occurred through transferring all shares of a company to one partner and liquidation proceed is not required. Delivering a special form is not necessary, but statement should be issued to declare changing the company to single member.

b. The structure of company

In these countries, can all companies form by one person? In French act, only in limited companies have been accepted. However, in England act, two segmentations have been issued for categorizing the companies: the limited and unlimited companies. Private and Public Companies. The limited company is a type of company in which the member responsibility is limited to the statute, and in unlimited company, the member responsibility is unlimited. Article 12 from act 2006 of England clearly accepted the limited single member company. From the next paragraph of that article, the unlimited company has been known as permitted. In the definition of public and private company, the number of members is not important and article 6 from the proposed act have defined the public and private companies. Eventually, in the England act, there is no a limitation in this regard. The European Union instruction has also considered no limitation in this issue such as England act. However, this procedure has not been accepted by some member countries and they have considered the difference between public and private companies. For instance, the Germany act has adopted the stock company format for this type of company, but the French and most of the European countries disagree with this procedure (Radenkovic, 2005). Based on the Spanish act, there is no a limitation in this regard for public and private companies (Greven and Storm, 2008). In the Belgium act, the limited liability company can be formed with one partner, but there is limitation about the other companies (Andenas and Wooldridge, 2009). In Australia act, for both public and limited liability companies, at least one person to from the company is enough and therefore, in the act of this country, there is no a limitation in this regard (Andrew, 2002). With respect to this, adopting the formation of single-member companies can be divided into two groups: first group: there is no limitation such as the European Union instruction, England and Germany; second group: only in the format of limited liability company such as France. It is question that in the current situation, which procedure is suitable and better. The European Union instruction also known as director 1989, has not limitation, but in this instruction has been denoted that the member countries have adopted which type of company so far. All of them have accepted the limited liability company. This issue is justifiable, because one of the main reasons for the adoption of such company is to remove the unlimited liability of single member against the decisions and debts. Because if it is, has the same imperfections of the trade by real persons (the single ownership in England) that are contrary to the principles of company adoption. Only some countries such as Italy and Belgium have accepted the guaranteed liability that means in these countries the single member company has a different nature from the other countries. In fact, the liability responsibility for the partner has consistence with isolation of the company character from the founder character.

c. Time of formation the legal entity

In most European countries, the time of formation a company is the time of confirmation the registration, this is true for both public and private companies. In England, formation of legal entity by registration has been announced since 1844 and after registration; company character will be separated from the partner character. In German act is required to pay at least a quarter of the shares at the time of registration. In French act, the minimum capital to register the limited and private company has not been established and accordance with article L229-1 of the French Commercial code, the legal entity is subject to registration. Before discussing about the time of legal entity realization, it is necessary to study the procedure of company registration especially in England act.

d. Responsibility against the company liabilities

According to the French and German act, when a company is single partner, his/her decisions should be registered and signed, and before registration, the person who tries to from the company is responsible for the company liabilities. In the case of violation, his/her actions will be voided, but after registration, due to the existence of a separate legal entity for company, he/she is responsible.

3. Results and discussion

3.1. The status of these companies in Iran Law

In this section, in first an investigation in different rules is carried out and then, the causes of proceed to adopt single-member company in Iran's act is presented. In another issue, the bill and proceed to form this company is addressed.

3.2. Existence of the legal vacuum for establishment of the company and its reasons

In different rules, there is no a company that the minimum necessary persons for its formation and continuance be one person. However, the major reasons for rejection of this company (Despite having been in existence for almost half a century) should be referred:

- In Iranian trade act legislation at 1311 (solar calendar) and amended bill of trade act at 1347 (solar calendar) has been referred to the French Commercial code. At that time, the French commercial code did not recognize single member company and at 1986 the commercial code of this country accepted the single member company with limited liability. However, the Iran commercial act has remained intact since that time.
- The French commercial code has not presented a definition of commercial company, but this vacuum has been filled with article 1832 of civil act and based on this article "A company is formed by two or more persons who agree to devote their property or industry to a special purpose and share the profits (this deal is under a contract)". According to this article, the single member company is not possible based on the French civil code. However, this opportunity has been created at 1986 in commercial act. Thus, the civil code prevented the formation of such a company in that country. In Iran civil code, the company has been defined, but the definition is specified to civil company that does not have legal entity. In the commercial code, in the definition of all companied except partnership companies, at least two persons are required.
- Probably the thirty years of delay in the acceptance of the company in Iran, may be related to the juridical definition of company, civil code bases and Knowing contract company. The company in Persian means "sherkat" and sherkat is a word which means participation and corporation in the works and this issue is not possible unless with two or more people. In the formation of all acceptable companies in commercial code, the contract is required and this is not possible only with presence of two people, because the article 183 of civil code has denoted that the contract is between two or more people.
- Doubt in the jurisprudence of this business entity: this company is a new and unprecedented company in Islamic act and its acceptance has been disputed. But with the positive experience of participating in European countries, the juridical justification of this company becomes more prevalent.

One of the made legal has defined the commercial company as "Trading company is a contract whereby one or more persons agree that brought together an independent investment". Therefore, the author looks at the possibility of forming a single member company in Iran, otherwise he did not need to declare the phrase "one person." Some authors know this definition as negligence or because of attention to the European countries act. Nevertheless, with existence of the phrase "contract", it seems unlikely that he looks at the act of the other countries. Apparently, according to the term contract and general definition in article 183 of the civil act that has known the contract as an agreement between one or more persons against another or others, it can be seen as the result of negligence. Besides, this author denotes that two or more persons are mandatory to form a company.

3.3. Apply for admission of this commercial company and surveying its conditions in the being passed bill

Formation of single member company has not been unheard of in our country (but not in the way that is now common in Europe), for instances, following cases can be pointed out: 1-The Public Audit Act which was enacted at 1366 (solar calendar) allowed the formation of such a company. 2- Also, the act of registering the foreign branch or agencies which was enacted at 1376 (solar calendar) and its regulations enacted at 1377, page 132. Some people believe that the single member companies can be divided into two categories: the first public share and private share company, complex and corporation company. 2- Limited liability company, partnership, and relative. The first group cannot be formed as single member company and the second group has this capability. From view of comparative analysis, in the partnership and relative company it does not matter that one person has unlimited or relative liability or several persons, if not enough assets, the creditor can refer to the single member. In the limited

liability company, it is suitably possible, because in this type of company, the members are only responsible against their share from partnership. It should be noted that all European countries have consensus that a limited liability company can be formed with single member, but there is disagreements about the other types of companies. In the complex company, single member is not possible, since the complex means two or more people. In the public share company, the shares must be offered to the public and single member situation is in contrast to this concept, but about the private share company, this imitation is not exist, because in this company the shares have been distributed and the liability of the members is subject to their shares. Therefore, as the limited liability company that asset is not divided to the shares, in the private share company the asset is divided to the shares and there is no an inherent limitation. It is worth mentioning that in the French Commercial Code which has many similarities to Iran act, the both public and private company has not been accepted. In the England act, the public Company has been accepted, but, the public company in England act means legal entity, which is limited from view shares and guarantee, and its minimum asset should be fifty thousand pounds (UK Companies Act, 2006). In the under approval bill of commercial code, according to article 479, in the formation of limited liability company, the capability of forming single member company has been provided. In addition, this act like the French Commercial Code only has accepted the company with limited liability. In this act, the term "person" is used to define the company, unlike the commercial law in which the term "individual" is used, and this issue prevents the interpretation of "person" as a real entity, because person can be legal or real entity. So according to the defined term "person", it can be said that legal entities can also form a single member company. With respect to the issue that this type of company only has been accepted in the form of limited liability company, the single member liability is subject to his/her capital and has no responsibility over it. In the article 488 of the under approval bill, about the formation a single member company, the proposed method in European countries has been regarded. (Having single member from the initial or decreasing the members after formation). It should be noted that articles 479, 480, 488, 489 in the trading bill of Iran which is under approval, have discussed about the formation and management of the single member company.

4. Conclusions

A company which needs one legal or real person for formation and continuance is called single member company. This company has a independent legal character like the other common companies. Based on the current procedure in England, Germany and French, the minimum persons to form such companies is one person, and there is no any limitation for formation of parallel or series companies. It seems that providing the limitation in series companies is justifiable. About the form of the company, the mentioned countries have denoted the limited liability company as an appropriate form, because this form is better than the partnership company in which the partner is always guarantor. The formation of the company is possible with two methods as having single member from the initial or decreasing the members after formation. In Iran law, after 19 years from approving the last corrections of the trading code at 1366 (solar calendar), formation of such a company has been unconsciously permitted only for government. It must be noted that the purpose of lawmaker from codification of such a law is not to accept the single member company, but it focuses to form the company by government. The problems to the adoption of such a company are: skeptical in the jurisprudence bases, adaption of Commercial Code from the French Commercial Code and lack of coordination with its corrections, and emphasis and focus on the literally mean of "company" in jurisprudence and fiqeh. Recently, following has been referred at a new bill for business: in this bill, the term "person" is used instead of the term "individual" and therefore, the legal and real entity can form the single member company. This act has not provided any limitation for number of managers and also their character from the view of being legal or real entity. There are two methods to from this company: from the initial and changing after formation. In order to support the third parties, the single member Company's financial statements should be approved by the official accountant. However, it seems that registering such cases and the executives' trading and single member could better protect the rights of the third parties.

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