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Managerialism in Germany and centralism in Iran: Two tier board, one tier control in Germany and one tier board, two tier control in Iran

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What are the similarities and differences between the corporate governance laws in Iran and Germany? Which is more compatible with the requirements of control? In comparison to the managerialism in Germany there is some kind of directorialism in Iran which works as a means of centralism in this country. Decision making, enforcement and inspector-ship are not duly separated from each other in Germany.

Key words: Corporate governance, Germany, Iran, two-tier system, one-tier system.

INTRODUCTION

Allegedly, the corporations’ decision making power in Germany is concentrated in the hands of senior managers and has resulted in managerialism. In comparison this study is to show that there is some kind of directorialism even centralism in Iran. At the coming chapter it would be shown that managerialism is almost impossible in Iran and at the chapter after it would be shown how some kind of directorialism in Iran is imaginable. At the concluding remarks it would get clear that there is somekind of centralism in the private-joint-stock-company (PJSC) as a sample of the Iranian companies.

Allegedly, the classic large corporations in Germany appear to share one core common feature: managerialism, which means that power over the enterprise, is concentrated in the hands of senior managers, who enjoy large discretion in decision-making (Tungler, 2000). If so, regarding the discretionary decision making power it can be proved that there is some kind of not managerialism but directorialism in Iran and regarding the general assembly (GA) meeting’s central multi-aspect controlling power there is even some kind of centralism in this country. In fact, the subject of this study on one hand is a conflict between the decision making and enforcement (Baums and Scott, 2005) on the other hand on the old conflict of ownership and control or the principal and agent (Jensen and Meckling, 1976) and at last on the “distinction between management and control” (Hopt and Leyens, 2004).

In fact, to overcome the corporate governance problems, “corporate should principally strive to increase long-term shareholder value” (Hansmann and Kraakman, 2001; Andre, 1998). One of the ways of advancing that objective is to impose fiduciary duties (Frankel, 1983), and in particular a duty of loyalty, on corporate officers, managers and directors (Baums and Scott, 2005). According to studies, there is a direct relationship between investor confidence in capital markets and effective corporate governance (Sarra, 2002).

The subject of this study would be the public joint stock company (PJSC) in Bill Amending a Part of the Commerce Act of Iran, 1969 (BACAI) which is likely to be replaced by the Tentative Commercial Code of Iran (TCC) ratified on April 12, 2012 by the Majles (Iranian Parliament) and pending to be approved or disapproved by the Guardian Council, compared with the public limited company (AG) in German Stock Corporation Act (AktG), 1965. Although BACAI is a bill and has not yet matured to become an Act of parliament, but the Legislature does not hesitate to accept it as a law and judiciary enforces it in its court decisions. At least it can be stated that this bill having a precedent of 43 years is now an established source of commercial law custom in Iran. The TCC if approved would be tentatively enforceable for a period of five years. However, it contains not an entirely new set of provisions but largely a collection of already existent
scattered Acts and regulations including the BACAI. PJSC (Sherkate Sahamie Aam) in Iran has four mandatory organs: the manager/s may do not even have, board of directors (BoD), inspector/s and general assembly (GA) whereas in Germany respected organs of the AG (Aktiengesellschaft) are: management board (Vorstand), Supervisory board (Aufsichtsrat) and general meeting (Tungler, 2000). In Iran as like as in Germany (Tungler, 2000), an auditor must be elected and called by the board of directors to check whether the provisions of law and charter are met or whether the documents misrepresent the company's situation. In Germany, the supervisory board proposes the balance sheet auditor, the general meeting elects him/her and the management board appoints him/her (Prigge, 1997). In Iran, in despite to PJSCs, auditing is not required for private companies. In respect to PJSCs, auditing must be done by the chartered accountants deployed by the manager. PJSCs have inspectors and accountants therefore in fact there is almost no need for the audit.

**METHODOLOGY**

This is primarily a theoretical study based on making comparison between the German and the Iranian corporate governance systems. For this purpose, pertinent legal provisions of those countries have been compared to each other and this comparison has led to emergence of some concluding remarks which in turn have been summarized in the topic.

**Manager(s) in Iran - No managerialism**

The manner in which manager/s is appointed or dismissed, the way in which the executive power divides among the managers in case of plurality, exceptional decision making power of manager/s, no controlling power for the manager/s over board of directors, and controlling power of the board of directors over manager/s in despite to sole executive power of the manager/s and possibility of manager/s appointment from among board of directors members shows that managerialism is almost impossible in Iran.

**Appointment and dismissal of manager/s**

In general, in Iran the manager/s is appointed and dismissed by the board of directors. His/her salary as well as the scope of authority is determined by the same board and he/she has to obey the instructions of the board even in day to day business of the company. He/she works under that board's supervision and his/her decisions may be overridden by the board. At last, his/her self-delings need to be approved by the board. This much of dependence to the board of directors does not let the manager/s to shape up some kind of managerialism.

In Iran, manager(s) of the company is appointed by the board of directors (BACAI, § 124). Despite in Germany (Tungler, 2000), most of the companies in Iran appoint only one manager and establishing a management board is not common. However, the manager may be allowed to have some officers under him/her. There is no legal restriction against appointment of women for this position but judicial persons are not allowed to be appointed. The latter is an imperative provision and cannot be agreed against by the GA meeting or by the articles of association of the company. However, articles of association of the company or decisions of the GA meeting may prevent the appointment of women or men or appointment of certain persons for such a position.

Nobody can be at the same time manager of more than one company (BACAI, § 126). A manager may become a share or stockholder in another company, even he/she may become a director or even the chairman of another company's board of directors but he/she is prohibited to become a manager of another company. This prohibition is only about the companies; otherwise, he/she may become a manager of one or more partnerships (non-incorporated), or non-commercial institutions.

Further, he/she like as in Germany (Tungler, 2000), can be, as an imperative provision, dismissed by the same board at any time without any cause in Iran and by contrast for ‘important cause’ in Germany (AktG, § 84(3)). In fact, the contract made for appointment of the manager is not of a binding nature, whenever the board of directors decides, he/she can be fired and whenever he/she decides so may resign. The manager as well principally does not need any cause for his resignation. As well his/her scope of authority is determined by the same board (BACAI, § 124). Even his/her salary is determined by the board of directors.

He/she like as in German (AktG, § 76) management board decides on his/her own business judgment (AktG, § 93(1)(2) and a rule developed by the courts; cf. the decision of the German Federal Civil Court in ARAG/Garmenbeck, BGHZ 135, 244 (1997)) and acts for the day to day business of the company under the instructions of the board of directors. In Germany, the supervisory board (SB) is precluded from being involved in the day to day management of the company (AktG, § 111), although, “the supervisory board has the right to ask the management board for any information about the company. It can comment on management board decisions. The management board may disregard the supervisory board’s opinion, but in doing so it must justify its actions. In addition, if the articles of association so provide, specific types of transaction need to be approved by the supervisory board” (AktG, 111; Clarke, 2004). In Iran, in case decisions of the manager conflicts with the decisions of the board of directors or decisions of the GA meetings or provisions of the articles of association, he must give up his own decision although, in fact, he/she does not have a direct relationship with the general assembly's of the company. On the other hand, the manager/s do not even have the whole authority for enforcing the decisions of the company. That power is divided among the other boards and even if appointed; if their scope of authority is not the same, they would have to establish a board similar to the German one, but despite their similar scope of authority, the decision making in which would be by unanimous consent rather than by majority.

In case the board of directors appoints more than one manager, principally they are not to establish a board of managers and decide and act together by majority vote. This is because usually the scope of their management is different; therefore, they do not have to interfere in the subjects laid under the authority of the other one/s. Each of them has autonomous power for doing whatever he/she is in charge of. But in Germany, while each management board member is usually assigned one or more area of responsibility, resolutions of the board must be adopted as an interpretative rule unanimously (AktG, § 77(1)).
However, the board of directors in Iran is not legally prevented from appointing more than one manager for accomplishing a certain task. In such a case, each of them cannot decide and act independently from the other/s unless they unanimously decide so. He/she would have to decide and act jointly with the others. In such a case a board of managers for the subject matter of manager-ship of them will take place. However, in such a board of managers or managers’ board, they cannot decide by majority vote and they would have to decide by unanimous consent. This is because possibility of decision making by majority vote is an exceptional and imported provision to Iran, and as it is an exception, cannot be extended to other similar cases. In such doubtful cases we inevitably must refer to the principles and here as a principal the decisions must be taken by unanimous consent of the all appointed for this certain subject matter.

Despite what is current in Germany, practically and legally Iranian system of corporate governance is not a two-tier (Burbridge, 2003) but as like as the American corporate governance structure (Vagts, 1999) it is a unitary board system. However, for all German stock corporations, two-tier system is obligatory irrespective of their size and workforce (Tungler, 2000). There are opinions for (Owen, 2003) or against (Senechal, 2003) the two-tier system in Germany. In Iran, the unitary board system is usual not only for joint stock companies but also for every other company. Joint stock companies for decision making purposes (not executive purposes) would have only one board, called the board of directors (BACAI, § 107). There may be another board called the inspectors board but it is not comparable to a managers or directors board, because it has no managerial function.

Exceptional decision making power of the manager/s

Principally manager/s is not allowed to decide about a company related subject unless otherwise proves. On the other hand, he/she has every authority to execute the companies rights unless otherwise proves. Therefore, decision making about the manner of execution of company’s rights and fulfillment of its responsibilities that is, about day to day business of the company belongs to the manager unless the board of directors, the GA meetings’ decision, articles of association or the Law provides otherwise.

In cases of uncertainty and ambiguity, as a rule the manager/s does not have a power for decision making unless otherwise proves. This cannot be said about the enforcement power which he/she has. Enforcement power belongs merely to the manager/s and board of directors or GA meetings do not share him/her. Therefore, out of the two kinds of power which the managers have, that is, the power for decision making and the power for enforcement of their own decisions and decisions of the upper authorities and provisions of the GA meetings, their power for decision making is exceptional and must be interpreted narrowly and strictly. This is because the power for decision making is being given to them by the board of directors and when it is skeptic whether a certain power is given to him/her or not, it is presumed that principally he/she is not availed of that right unless otherwise proves.

The manager may have other duties as well. Suppose, according to the articles of association of the company, the manager has the right to give an independent report to annual general assembly of the company. In such a case, the manager/s although appointed by the board of directors but has a direct responsibility for giving such a report to the board even if an order has not been issued by the board of directors for doing so. But, in most of the cases in which the manager/s is likely to enforce the decisions, and those decisions belong to the board of directors or GA meetings, there would be a need for issuance of an order from the board of directors at first. As a matter of fact, although decisions must be enforced by the manager/s, but the board of directors decides how, where and in which manner these decisions to be enforced.

There is as well another point. In case there is skepticism whether a decision is about day to day matters or about matters ranging higher, with regard to the formerly said principle of Board of Directors competency for decision making, such a matter must be deemed as higher ranging and at the discretionary power of the board of directors unless otherwise proves.

No control of board of directors by the manager/s

Manager/s has not to interfere in board of directors’ meeting sessions taking place. He/she does not principally (unless with board’s call) take part in that boards meeting sessions. Even in acquiring required information the board is not solely dependent on the manager/s. Self-dealings of the manager/s needs to be approved by the board of directors but dealings of the directors with the company besides the approval of the board of directors and the respects of GA meeting does not need to be approved by the manager/s.

In Iran the manager/s works as a hand of the company. However, despite in Germany (Tungler, 2000), the manager does not set the agenda for the company, does not prepare the meeting documents, and does not send these documents to the board members. All these normally are done independently from the manager by the chairman or vice-chairman of the company. If the chairman or his vice does not call for the forming a session of the board of directors, it would be the responsibility of inspector/s to do so, and if he/she as well refused, a composition of members of the company, holding at least 20% of the equity capital, meeting certain conditions, may call for the session of the board of directors to take place (BACAI, § 122). Presence of the chairman or the vice-chairman in the session is not required for making decisions. According to the law, manager has no right to call for and form the meeting session of board of directors.

In Iran, board members are divided by law into two types: full time, part time (BACAI, § 134). Full time members are always in the company fully informed of the current affairs in it. However, forming committees for the board of directors although not compulsory or common, are not prohibited by the law. In fact in Iran the board of directors like the supervisory board in Germany is not only to supervise (Hamilton, 2003), monitor (Pearstein, 2002) and control (Eisenberg, 1999) the manager/s but also to direct the company towards achieving its predetermined goals and doing its object clause. In Germany, “The supervision of the management includes the inspection of their dealings in terms of legality, economy, and utility” (AktG, § 76(1); Vagts, 1966). In fact, there are several dangers: the managers may work less hard than if they were working for themselves (‘slaking’); the managers may avoid share of the work load (‘shrinking’); and the managers may use the company resources for their own benefit (‘rorting’) (Farrah, 2005). But in comparison, this is only a small part of the task the board of directors in Iran is obliged to do.

In Iran (BACAI, § 129) self-dealings of manager/s need to be informed to and approved by the GA meeting as well the board of directors. In Germany (AktG, § 112; Baums, 2005) transactions of a member of the management board and the corporation may not be approved by the interested manager. Iranian law (BACAI, § 132) as well as the German law (AktG, § 89; German Banking Act, § 15) contain strict provisions that specifically regulate a corporation’s loans to managers.

Control of manager/s by the inspector/s

The GA meeting appointing and removing the inspector/s as its resident representative and watchdog, controls the board of directors, manager(s) and staff in the company. The inspector/s
expresses his/her views on the annual accounts of the company and on the reports prepared by the directors for use of the GA meeting. Inspector in despite to vertical control of the board over the manager, provides a horizontal control over the manager/s. The inspector has a very vast area of competence for making inspections in respect to the company but he/she does not and has not to intervene in the direction or management of the company and it would have no function other than the inspector-ship. No PJSC can continue its function for a long time without having an inspector/s appointed.

The GA meeting each year elects one or more inspectors. It may at any time remove all or any of them (BACAI, § 144). In this way another organ is provided by law to enable the GA to control the board of directors as well as the manager/s. The inspector/s is bound to express his/her views on the correctness and preciseness of the abstract of assets, the statement of operations for the fiscal year, the profit and loss account and the balance sheet which the directors have prepared for submission to the GA meeting and, in the same GA meeting on matters and items of information which the directors have made available to the GA meeting (BACAI, § 148). Inspector is the resident watchdog of the GA at the company. Presence of inspector/s bars the stockholders from referring to the company for inspecting the companies' affairs and from disturbing the directors, manager/s, officers and staff. In this way, the board of directors is under permanent and, in practice, expert inspection. Control of GA to the board of directors and control of the same board to the manager/s can be deemed as a vertical control. In this way, the control provided by the inspector/s can be deemed as a horizontal one which takes place not only in respect to board of directors but also in respect to manager/s.

The inspector/s may at any time carry out any kind of investigation or examination and demand and examine the records, data and other information concerning the company (BACAI, § 149). Therefore, the inspector/s duty is not merely limited to expressing views on the abstract of assets, the profit and loss account and the balance sheet of the company.

The inspector/s is as well bound to report when he/she observes any miscarriage or fault in the affairs of the company attributable to the directors or the manager of the company to the next GA meeting. If, in the course of discharging their functions, they become aware of the existence of a crime, they must notify the competent judicial authorities and report this conduct of affairs to the next GA meeting (BACAI, § 151). Therefore, the inspector has a very vast area of competence for making inspections in respect to the company. He/she not only watches the conduct of board of directors and manager/s, but as well observes the conduct of anybody else in the company. It is worth noting that the inspector/s does not and has not to intervene in the direction or management of the company and it would have no function other than the inspector-ship. Surely as mentioned in Article 147 of the BACAI, the inspector/s cannot be a director or a manager of the company or one of their relatives or employees.

If the inspector/s observes any miscarriage or fault in the abstract of assets, balance sheet and profit and loss account of the company without having received the report of the inspector/s, such approval has no legal effect and is thus considered null and void (BACAI, § 152). This is the sanction for deploying the inspector/s in the company and hence no PJSC can continue its function for a long time without having an inspector/s appointed. In this connection, fixing the fees of inspector/s is considered within the function of a GA meeting (BACAI, § 155) and this keeps the inspector independent from the board of directors.

This independency is necessary for the inspector to be able to accomplish his/her duties. On the other hand, although the inspector/s is independent from the board or manager but regarding necessity of his/her approval for the boards annual reports, the board is dependent on him/her. From this viewpoint, the inspector/s is located in a rank higher than the boards one.

Solo executive power of the manager/s

Only manager/s may enforce the rights, decisions and provisions of the company and he/she may sign substituting from the company. In case more than one manager is appointed, each one would be agent of the company with respect to his/her area of power. He/she takes every authority from the board of directors. In legal proceedings and litigations for or against the company, he/she represents the company. He/she decides who to be the legal representative of the company.

Principally only manager/s may enforce the rights, decisions and provisions of the company (BACAI, § 124). Therefore, only the manager/s may sign substituting from the company. Surely those who are allowed by the manager/s may sign substituting the manager. Manager of the company is its sole agent. In external relations of the company, the company is known by its manager/s. This is called ‘personification of the corporation’ (Ercklentz, 1979) and that is to some extent true. In case there was more than one manager, the company not only would be deemed as one person but also regarding its area of power. To be a manager is a personal position and cannot be transferred to others. For instance, the checks of the company inevitably must bear his/her signature. It must be noted that in Iran, he/she has not the authority to bind the corporation, unless the board of directors delegates those particular powers to him/her. In fact, unless in respect to very common day to day affairs, he/she has no authority unless otherwise is provided by the board of directors.

In legal proceedings and litigations for or against the company, he/she as like as the management board in Germany (Tungler, 2000) represents the company. During the proceedings if he/she accepts something, that is deemed as acceptance of the company and when he/she rejects or objects something that is the company’s rejection or objection. In this connection, he/she decides who to be the legal representative of the company. In case, the board of directors introduces somebody other than the manager to the bank as the person who is to sign the checks on behalf of the company, such an appointment is null and void. It as well would be null and void in case the board of directors introduces somebody other than the manager to the court as a representative of the company.

Member of the board of directors as a manager

Manager(s) need not to be one of the stockholders. He/she may be a director of the board of directors, even chairperson or vice-chairperson of that board. In such a case, the chairman not only is the head of the decision making organ of the company but also sole enforcement organ. In such a case his control gets more difficult. This is against the division of power principle in the corporation.

Despite what about the board of director’s members, managers needs not to be one of the stockholders. But it is not legally prohibited. Therefore, a manager may be one of the stockholders, even he/she may be a director of the board of directors. Even, he/she may be chairman of the board of directors. But for being a chairman as well as manager as it is common in the US (Owen, 2000) represents the company. During the proceedings if he/she accepts something, that is deemed as acceptance of the company and when he/she rejects or objects something that is the company’s rejection or objection. In this connection, he/she decides who to be the legal representative of the company. In case, the board of directors introduces somebody other than the manager to the company, such an appointment is null and void. It as well would be null and void in case the board of directors introduces somebody other than the manager to the court as a representative of the company.

According to German law it is prohibited to join the supervisory board members into the management board because this jeopardizes the efficiency of control (AktG, § 105(1)). The situation in Iran is not the same, because, in Iran one of the board members may occupy the manager’s position even as a sole member. Worse is the situation in which the chairman of the board of directors gets the sole executive member of the company. In such a case, the chairman not only is the head of the decision making organ of the company but also sole enforcement organ. So, he/she affects the
decisions and enforces them as he desires. In such a case his control especially in cases like self-dealing (Baums, 2005) would be so difficult. This in fact ruins the division of power principle of the corporation. Allegedly, this is the major difference between a unitary board and a two-tier board (Owen, 2003). There are two other major differences, in Germany; labor has a function in the corporation's governance structure, a principal called codetermination (Codetermination Act, 1976), and German financial institutions play a much larger role in the governance of German corporations (Richardson, 2003).

Hypothesis 1: With vertical and horizontal controls, managerialism is almost impossible in Iran.
Hypothesis 2: Two-tier board in Iran is possible but with different disciplines.

BOARD OF DIRECTORS - REASONS FOR THE POSSIBLE DIRECTORALISM IN IRANIAN PJSCS

Overwhelming authority of the board of directors and that board’s structural characteristics such as having a vast array of authorities and tasks, power to make decisions about every matter, and no provision imposing codetermination, despite having judicial persons as its members, and widely allowed interlocking directorship shows how some kind of directorialism in Iran is imaginable.

Overwhelming authority of the board of directors

The board of directors has a vast array of authorities for accomplishing the tasks considered for it. However, it has no direct executive power. The board has power to decide and make instructions in almost all the affairs of the company. It represents the stockholders, appoints the manager/s and determines the dividable profits.

Authorities considered for the board

The first reason for some kind of directorialism in Iran is that the board of directors has power to decide and make instructions for enforcement of its decisions in almost all the affairs of the company. Principally in case of doubt, every matter must be presumed to be in the authority of the board of directors unless otherwise proves. So, in case there was a doubt whether some subject must be decided about by the GA meeting or manager or the board of directors, it must be presumed that the board of directors has the authority unless otherwise proves. The otherwise to be proved there would be a need for a legal provision, a provision of the Articles of Association of the company or a decision of the authorized GA meeting of the company. In this connection, only a few tasks are legally left for extraordinary GA meetings (BACAI, § 83) and in practice every decision cannot be delayed for ordinary General Assembly’s meeting. However, in Iran as well a corporate governance mechanism is designed by law to keep the directors and managers within the reasonable bounds.

Despite all the authorities which the board of directors is availed of, it may not enforce its decisions or decisions of the GA meetings of the company or provisions of the Articles of Association of the company by itself. It needs at least to appoint one manager to get the decisions executed by him/her. Even for enforcing its own decisions, it needs to appoint at first at least one manager. It may however, divide this power and appoint different managers for different parts of object clause of the company. For example, it may appoint one manager for exports and another one for imports of the company, or one for internal and another for external affairs of the company. In such a case, every decision or provision must be enforced by the respective manager. Surely the board of directors cannot execute and enforce the decisions or provisions of the company; even members of the board of directors all together have not the required power to enforce the decisions or provisions. This is some kind of inability they suffer from; maybe it is producing some kind of distribution and division of power among decision making and enforcing organs of the company as favored by some authors (Lipton, 1987). General Assembly as well by itself cannot enforce its decisions.

As a matter of law, manager/s takes the power to enforce the decisions and provisions of the company from the board of directors, so the board of directors is availed of the power not to enforce the decisions and provisions but to delegate somebody else to enforce them. Therefore, this is some kind of special right which
can be transferred without being applicable by the transferor.

Surely decisions of the board of directors should not be ultra vires. Therefore, the afore-mentioned principle is curbed by the ultra vires doctrine. Even if the board of directors makes ultra vires decisions or those decisions are made by the GA meetings of the company, the manager/s in case found out has not to enforce them. Namely, the managers are obliged to compare the decisions with the object clause of the company and if they found out those decisions to be ultra vires, they must not enforce them. In this connection, there will not be any difference between the decisions of the board of directors, decisions of the GA meetings and provisions of the Articles of Association.

Tasks of the board of directors

The board of directors continuously represents the stockholders between their meetings and guards their interests; appoints the manager/s and determines his/her duties; calls GA’s meetings; prepares, examines and submits annual financial statements (balance sheet, and profit and loss account); prepares and submits to the inspector/s six monthly reports of the company’s accounts; prepares legal reserves of the company; and determines the dividable profits.

Board of directors in Iran and supervisory board in Germany have some common functions (Hopt, 1997). They continuously represent the stockholders between their meetings and guard their interests, appoint manager/s (in Germany: management board (AktG, § 84) comprising of one or more members (AktG, § 76(1)), and determine their duties; call General Assemblies meetings (BACAI, § 120); prepare, examine and submit annual financial statements (BACAI, § 232) (in Iran: balance sheet, and profit and loss account). But there are differences as well; in Iran despite in Germany, the board of directors does not provide a written report on the result of the audit for the stockholders meeting. It just submits that report to the tax authorities. In Iran, auditor’s report is not to be read and ratified by the board of directors or the GA meetings of the company (BACAI, § 116), that report to the tax authorities. In Iran, auditor’s report is not submitted to the GA meeting of the company. It just submits that report to the tax authorities. In Iran, auditor’s report is not to be read and ratified by the board of directors or the GA meetings of the company, the manager/s in case found out has not to enforce them. Namely, the managers are obliged to compare the decisions with the object clause of the company and if they found out those decisions to be ultra vires, they must not enforce them. In this connection, there will not be any difference between the decisions of the board of directors, decisions of the GA meetings and provisions of the Articles of Association.

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Structure of the board of directors

In Iran no company can subsist without having a board of directors. Although the ordinary GA meeting of the company may be able to accomplish some of the tasks of the board of directors but from legal viewpoint its presence is a must. Judicial persons are not deprived from becoming a member to the board of directors but employees do not normally have any representative in the board. Ordinary GA meeting may dismiss all or some of the members of the board of directors without cause and formalities. Interlocking directorship is not legally barred and members of the board of directors legally are only elected for up to 2 years renewable terms. The most powerful person in a PJSC is the chairman of the board of directors.

Membership requirements and dismissal of the board of director’s members

In Iran the board of directors comprises at least of 5 persons. Women and judicial persons are not deprived from becoming a member to the board of directors. In this country employees do not normally have any representative in the board though banks may dominate that board. In Iran as well the stocks volume can determine the number of representatives which can be elected by the stockholder for occupying the board of director’s seats. As an imperative provision, whenever the ordinary GA meeting so decides it may dismiss all or some of the members of the board of directors without cause and formalities. This shows the stockholders meetings controlling power over the board of directors.

In Iran the board of directors comprises at least of 5 persons (BACAI, § 107) whereas in Germany, subject to exception, the supervisory board usually consists of at
least three and at most twenty one members depending on the stated capital of the company (AktG, §§ 90,95).

Women are not deprived from becoming a member to the board of directors, as well besides individuals, in despite to Germany (AktG, § 100), judicial persons may become a member to the board of directors (BACAI, § 110). It does not matter if all members of the board become judicial persons. Every stockholder is deemed as just one person, therefore even if having a great share of stock in the company; he/she/it cannot occupy more than one seat in the company by him/her/itself. The position of membership is personal and it cannot be subrogated to others. However, every stockholder can utilize the rights pertaining to his/her/its stocks to vote deliberately to whoever prefers.

In the board of directors despite in the supervisory board, there is no difference between the directors in respect to their seniority. In Germany, the size of the supervisory board varies according to the number of workers employed. With the exception of special regulations which apply to the coal, iron and steel industries, the employees elect either a third or a half of the members of the supervisory board, depending on the size of the corporation. The one third equal footing co-determination applies according to the Labor Management Relations Act 1952, to all corporations with at least 500 but fewer than 2000 employees, and parity co-determination according to the Co-determination Act 1976, in companies with a workforce exceeding 2000. (Tungler, 2000; Hirt, 2003; Hopt, 1997). In this country, despite the fact that there is an even number of employee elected and shareholder elected representatives on the board, there is only “quasi-parity”, because the chairman, who is elected by the shareholders, has a casting vote (Judgment, 1982: 83 BGHZ 106; Judgment, 1982: 83 BGHZ 144; Judgment, 1982:83 BGHZ 151; Hirt, 2002; Hopt, 1994). But in Iran as like as in the German companies with less than 500 employees, every member of the board of directors is solely elected by the stockholders (BACAI, § 108), and employees do not have any representative in the board of directors although, this provision seems to be an interpretative one. This is because, in emerging economies like Iran, firms are typically dependent on inside equity capital (La Porta et al., 1998) and the number of employees in companies is not much or they are not well organized. Definitely, all decisions in the company does not affect the employees, therefore, even if they are going to be shared in decision making, that must be decisions on subjects related to them and affecting their destiny not all. The stake for the stockholders and employees is not always of the same kind and of the same degree. However, in this way, it is not beneficial for the German companies to employ more than 500 workers. Therefore, they must not engage in labor intensive subjects.

In Iran, as like as in Germany (Andre, 1996), board of directors may be dominated by representatives of the banks (Gevurtz, 2002). Banks may join the board due to their ownership or as proxies and in practice much greater voting power accrues to German banks from exercise of proxies than from ownership (Kim, 1995). The majority of German investors are financial institutions (Andre, 1996) and large investment blocks (Chantayian, 2002); therefore, the whole system is called “bank-focused” (Kim, 1995; Sarra, 2002; Schroder, 1966). German banks have been viewed as barriers to corporate control shifts and therefore, German stock corporation law has been stated as “the biggest poison pill of all” (Maier-Reimer, 1992). Despite their substantial voting power, German banks’ economic stake in AGs is primarily the result of corporate lending (Macey and Miller, 1995). In fact, lenders control borrowers directly by purchasing equity positions and thereby obtaining representation on corporate boards of directors (Roe, 1991). This may as well legally happen in Iran (BACAI, § 158). As well “a bank representative on a supervisory board may use special information and influence to initiate an acquisition of that company by one of the bank’s other industrial clients” (Joachim, 1991). This is as well legally quite possible in Iran. This is because at present the Iranian banks due to many decades of economic inflation and local currency devaluation have come to a great financial strength and are looking for investment opportunities. However, “such a relationship was often viewed critically because of the potential for the banks to manipulate certain companies” (Owen, 2003). In fact, one of the big problems for German corporate law is controlling the power of these major shareholders (Kim, 1995).

As it was already said, in Iran as well the volume can determine the number of representatives which can be elected by the stockholder for occupying the board of director’s seats and if the number of representatives exceeds half the members, surely the chair would be of their choice.

One thing that board of directors members suffer from is that as an imperative provision, whenever the GA meeting so decides it may dismiss all or some of the members of the board of directors without cause (BACAI, § 107). As well there are no formalities required for enforcing this dismissal. In Germany Under AktG, those members of the supervisory board elected by the shareholders may be removed prior to the end of their term “without cause” by a vote of 75% of the votes actually cast (AktG, § 103(1)). The German corporate charter may provide for a different percentage (Otto, 1991). In Iran a vote of 51% of the votes cast in an ordinary GA meeting is enough for this purpose. This means that the stockholders meetings have controlling power over the board of directors and the supervisory board.

Nomination process and election of the new member/s

In Iran, institutional investors as stockholders with respect
to the bulk of their investment in the company may influence the nomination of board of directors' members. However, nomination process for election of board of directors' members in Iran is not as much important as it is in Germany.

In Germany, “the most relevant sources of influence on the nomination of supervisory board members are institutional investors, the full board, the CEO and to a certain extent nominating committees” (Tungler, 2000). In Iran, as well institutional investors as stockholders with respect to the bulk of their investment in the company may influence the nomination of board of directors' members. But Iranian companies do not have management boards to make such an influence, however, in case the office term for full board of directors is not expired and one or a few of them are to be changed or renewed, the members in office may influence the nomination.

This could be easier if the chairman of the board of directors happened to be an executive member of the company as well, but to cover the risk, exceptionally in making decision about appointing or dismissing a member of the board by the General Assembly’s meeting the chairman of the board would not be the chairman of the GA meeting (BACAI, § 101). Notwithstanding, he/she may nominate some persons. There may be nominating committees formed among the stockholders which can influence such a nomination and election.

In Iran, the manager gets elected by the board of directors. In case he/she is not a member of the board of directors and his term of office remains to be ended at the time when the term of office for the board members is over, he/she due to holding office may somehow influence the nomination and as a result the election. However, a manager of the company is not necessarily a stockholder; therefore, he may not be accepted by the stockholders warmly to influence them.

In Iran, it is common for the stockholders to nominate themselves for the board of directors' membership. It may as well be done by those individual stockholders willing to give their votes to him/her. However, it is open for every barrier-less stockholder (BACAI, § 111) to stand as a candidate for the board of directors membership. Persons under guardianship, bankrupt persons, and those with final conviction for financial crimes depriving them of their civil rights, for the duration of such deprivation are barred. Therefore, nomination process for election of board of directors' members in Iran is not as much important as it is in Germany.

**Hypothesis 4.** There is some kind of directorialism in Iran.

**Interlocking directorship in the board of directors**

Interlocking directorship is not legally barred in Iran. Therefore, without any need for taking permission of the General Assembly, a member of the board of directors is allowed to be a member in numerous other companies' board of directors. A holding company may join in the board of directors of its subsidiaries and associates as many as they are. Manager of a company may as well become a member of the board of directors in the same company or in any and many other companies. In Iran, in cases of hostile takeover attempts between two companies served by one person, in one as a manager and in the other as a member of the board of directors, there is no requirement for his/her resignation.

When a director is in more than one supervisory board, seemingly he/she must base decisions on each board only on the interest of the respective corporation, keep each corporation's business secrets without using them for the benefit of other corporations, and devote time and energy to these corporations in proportion to the time mandated by each of them (Joachim, 1991). But despite such difficulties, as like as in Germany (Tungler, 2000), interlocking directorship (Joachim, 1991) or “multiple loyalties” is not legally barred in Iran. This is notwithstanding the probability of trade secrets leakage between two competing companies. Therefore, without any need for taking permission of the General Assembly, in Iran as well a member of the board of directors is allowed to be a member in many other companies' board of directors. In Germany, membership is allowed at most in 10 supervisory boards (Tungler, 2000), but, in Iran there is no such a restriction. However, in Iran even in state companies practically a member of the board of directors does not join to board of directors of more than a few companies. However, as an example, as in Iran despite in Germany, a judicial person as well can be elected as a member to the board of directors, a holding company may join in the board of directors of its subsidiaries and associates as many as they are. This provision can be deemed as an advantage for Iran’s law in controlling the connected companies. Surprisingly, as the company itself gets elected as a member, it may delegate in turn different natural persons for taking part in different sessions of the company in which it is a board member (BACAI, § 110). However, only a natural person can be elected as the chairman or vise-chairman of the board of directors. Therefore, the person delegated by the judicial member of the board of directors may as well personally step up to one of these positions (BACAI, § 119 note 1).

As well, despite in Germany, there is no provision making the candidates for board of directors to disclose their offices and mandates before the election. As a result, one board of directors’ member may join the boards of numerous corporations and as members of the board of directors of a PJSC should be elected out of its stockholders, so such a person should at the same time be a stockholder of all of them.

As well, a manager of a company may become a member of the board of directors in the same company or
in any and many other companies. But, no body is allowed to become a manager in more than one company. In this connection, there is no difference whether the second company is an Iranian or a foreign, as well there is no difference whether the second company is a PJSC or any other kind. In this connection, there would be no difference between those who are sole manager and those who are sharing ones. As well, there would be no difference between state, private and cooperative companies. Being appointed as a manager after dismissal, resignation or expiry of position from the present company is surely allowed.

Despite what is in Germany, in Iran, in cases of hostile takeover attempt between two companies served by one person, in one as a manager and in the other as a member of the board of directors, there is no requirement for his/her resignation. Because, if both companies are PJSCs, making decision about taking another company over is with the ordinary general assembly of a company (BACAI, § 109), in case it decided to do so there would be no need for the manager who is as well a board member in the target company, to refrain from making the required agreements and arrangements to conclude the takeover. Making decision about being taken over is in the extraordinary general assemblies’ authority (BACAI, § 83). If it decided so the manager of the company even if a board member to the other company has not to refrain from enforcing the required arrangements and agreements. In any of these procedures, there is nothing to be done by the members of the board of directors. Therefore, there is no discussion about their behavior in respect to the situation of takeover in the company.

Hypothesis 3. Interlocking directorship in Iran has more potential for causing harm.

Term of election of board of directors members

Members of the board of directors in Iran legally are only elected for up to 2 years renewable terms. There is no rule to limit their tenures. The law does not require a certain ceiling age for barring the candidature of over-aged persons. The board of directors elects a chairman and one vice-chairman (BACAI, § 119). The most powerful person in a PJSC is the chairman of the board of directors. This is because, he chairs the board of directors which while having the most decision making power, controls the manager who is availed of sole executive power too. In Iran, as well as in Germany, generally there may be more than one vice chairman but the law has not required for more than one. The board of directors as like as the supervisory board (AktG, § 107(3); Tungler, 2000) may form subcommittees to prepare negotiations, and to control the implementation of decisions. But despite the situation in Germany, forming subcommittees in Iran is not common.

Under the Stock Corporation Law, a majority of seventy-five percent of the votes cast in a general meeting is necessary for recall of members of the supervisory board for replacement (AktG, § 103 (1)). That is 51% of the votes in Iran (BACAI, § 88). This means that, in Iran in comparison to Germany, members of the board of directors can be more easily removed from their position. This makes the General Assembly more powerful to control the affairs of the company.
Conclusion

In summary, the manner in which manager/s is appointed or dismissed, the way in which the executive power divides among the managers in case of plurality, exceptional decision making power of manager/s, no controlling power for the manager/s over board of directors, and controlling power of the board of directors over manager/s in despite to sole executive power of the manager/s and possibility of manager/s appointment from among board of directors members showed that managerilism is almost impossible in Iran. On the other hand, overwhelming authority of the board of directors and that board’s structural characteristics such as having a vast array of authorities and tasks, power to make decisions about every matter, and no provision imposing codetermination, despite having judicial persons as its members, and widely allowed interlocking directorship showed how some kind of directorialism in Iran is imaginable. But the directorialism in fact in Iran is tainted by the overall centralism applied through GA meetings direct supervision and scrutiny as well through deploying inspectors. In fact in Iran there is some kind of two-tier control system in which at first stage inspector/s controls the board of directors and manager/s, and at the second stage the board of directors controls the manager/s. As both of them, namely inspector/s and board of directors are under the supervision of the GAs’ meetings, therefore, there is some kind of centralism in Iran in favor of the stockholders.

In despite to Germany which is to improve corporate governance has put forward the German Code of Corporate Governance (‘GCCG’) in June 2000 (Tungler, 2000; Wolff, 2004), there is no such a code introduced in Iran. The newly introduced TCC in Iran unless very slightly does not change the provisions of BACAI on corporate governance. In fact, the German model of two-tier system is not very much different from unitary board system. Being two or one tier is not very important. The important thing is the division of power in the company. The codetermination and banks representatives in the company are not inherent features of the two tier system and it is quite possible and according to some authors favorable (Lutter, 2001) to have such a system without them. May be the inspector or the inspectors’ board, as suggested by some authors (Krackhardt, 2005), as the judiciary like organ designed in the Iran’s law; can solve the problem of corruption in the German companies. In fact, half of the inspectors job in Iran is likely in Germany being done in respect to management board by the supervisory board, to the extent that it is said that “the main function of the supervisory board of an AG is to supervise the management (AktG, § 111(1)) by means of the control and inspection of the managers’ actions” (Joachim, 1991). Said ‘half’, because half other must be done in respect to board of directors self. As well, it is stated that “in order to implement its supervisory duties, the board may, among other things, inspect and supervise the books, records, and assets of the corporation” (AktG, § 111(2); Joachim, 1991). As well “directors have the right to ask for experts’ advice on certain matters, in particular, when examining the company’s books and records” (AktG, § 109(1), 111(2); Grossfeld and Ebke, 1978). In fact, the supervisory board may challenge any aspect relating to the corporation (Joachim, 1991). These are the same rights which in addition to the board of directors, inspectors according to Iran’s law are availed of.

The problem in Germany is that the interests of equity investors are insufficiently represented in corporate governance (Macey and Miller, 1995). On the other hand, codetermination as well may have benefits, for example, it surely would have positive effects on making decisions preventing the company’s closure and bankruptcy even if it is extensively indebted. On the other hand, in case stockholders are as well employees of the company, codetermination would make no sense. But if employees get stockholder, other stockholders would be under pressure. In countries like Iran in them companies due to economic problems get easily closed and employees dismissed, co-determination can be useful.

Hypothesis 5. Codetermination and banks are not characteristic features of the two-tier board system.

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