

ppi 201502ZU4645

Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185 Depósito legal pp
197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela



Vol.40

N° 73

Julio

Diciembre

2022

Sole companies: analysis and feasibility in Iran and the United States of America

DOI: <https://doi.org/10.46398/cuestpol.4073.55>

Bagher Narimani *

Alireza Lotfi **

Mozaffar Bashokooh ***

Abstract

The purpose of the article was to analyze the legislation governing sole proprietorships in Iran. Although the new draft commercial law and the existing laws in European and American companies indicate the possibility of forming a sole proprietorship, it is not possible in Iran to form a sole proprietorship under the existing regulations, especially the existing commercial law. Methodologically in the essay, based on a comparative study on American commercial law and through analytical issues, we point out that, from the analytical (not legal) point of view, the formation of such corporations not only does not face any strong obstacles, but also, it can be beneficial in various ways. We then present the benefits of the Single Corporation and finally discuss the administration and liquidation of these Corporations. Everything allows us to conclude that, the idea of forming a sole corporation is unusual in Iran, but it is also accepted by the state-owned companies. Therefore, the Iranian legislator can develop this idea and apply it to private business enterprises. However, it is noted that permission to run such companies should be considered while ensuring the rights of third parties.

Keywords: sole proprietorship; state-owned enterprise; legal entity; nominal partner; comparative analysis.

* PhD student, Department of Law, Ardabil Branch, Islamic Azad University, Ardabil, Iran. ORCID ID: <https://orcid.org/0000-0003-0394-0519>

** Assistant professor (Corresponding author), Department of Law, Ardabil Branch, Islamic Azad University, Ardabil, Iran. ORCID ID: <https://orcid.org/0000-0002-0401-3920>.

*** Assistant professor, Department of Law, Ardabil branch, Islamic Azad University, Ardabil, Iran. ORCID ID: <https://orcid.org/0000-0003-0152-7480>

Empresas únicas: análisis y viabilidad en Irán y Estados Unidos de América

Resumen

El objetivo del artículo fue analizar la legislación que regula a las empresas únicas en Irán. Si bien el nuevo proyecto de ley comercial y las leyes vigentes en las sociedades europeas y americanas indican la posibilidad de formar una corporación única, no es posible en Irán constituir una firma unipersonal bajo las regulaciones existentes, especialmente la ley comercial vigente. Metodológicamente en el ensayo, a partir de un estudio comparativo sobre el derecho comercial estadounidense y a través de cuestiones analíticas, señalamos que, desde el punto de vista analítico (no legal), la formación de tales corporaciones no solo no enfrenta ningún obstáculo fuerte, sino que también, puede ser beneficioso de varias maneras. Entonces presentamos los beneficios de la Corporación Única y finalmente discutimos la administración y liquidación de estas Corporaciones. Todo permite concluir que, la idea de formar una corporación única es inusual en Irán, pero también es aceptada por las empresas estatales. Por lo tanto, el legislador iraní puede desarrollar esta idea y aplicarla a las empresas comerciales privadas. Sin embargo, se señala que el permiso para dirigir tales empresas debe considerarse asegurando los derechos de terceros.

Palabras clave: corporación única; empresa estatal; entidad jurídica; socio nominal; análisis comparativo.

Introduction

Although forming sole corporations have been legalized in many European and American countries, and its effects have been manifested, the necessity of discussing the sole corporations or any other legal institutions in Iran is subject to society. From the first text in Iranian law on the sole corporation or company, until its entry into the legislative field has been needed for more than seventy years, although some have argued for various reasons that such a requirement is in our current legal-economic system.

But opponents or not, paying attention to lawmakers for obvious reasons has made some legal texts and theories, except a few texts, express the historical evolution of the formation of the sole corporation in the world and the existence of this company by considering the state-owned companies in Iran and so the justification for establishing such a company is not unavailable for researchers.

Therefore, in this article, despite defining a sole corporation, we try to present the ambiguities regarding the establishment of this type of company

(Sole Corporation) in Iranian law and management of the company and its system of responsibility, and the advantages and disadvantages of forming a sole company. The following pages are an attempt to summarize the reasons for the formation of a sole corporation in the US. (Abbas Niazi and Iam Kamarkhani and Mohsen Jalilian, Investigation of the sole corporation in Iranian Law by a Comparative View, Quarterly Journal of Economic Law, 2016: 2)

1. Possibility of forming a sole corporation in the legal and analytical views

Businessmen, who act as individuals, have unlimited liabilities versus third parties, and all property, including commercial and private property, is security for their debt to their creditors. These people cannot divide their property in terms of the unity of property and only partially guarantee their debt and keep any other part of it free from any interference. In such a situation, a community would easily be willing to commerce with businessmen due to his strong backing. Businessmen offset the risk of their activities from their assets while establishing a sole corporation allows individuals to operate without incurring all risks.

By establishing such companies, individuals will be able to trade their assets and impose their inexperience risks on others. In such cases, pessimism and mistrust are prevalent and to evade responsibility is provided. It is clear that the adverse effects of this method firstly affect the economy and commerce, as it increases the risk coefficient of economic activities for individuals who trade in a sole corporation. (Mahmoudi, paper on the possibility of forming Sole Corporation, 2003).

By according the above-mentioned, it may be argued that various provisions of the Commercial Code, such as Articles 190, 183, 162, 141, 116, 94 of 1311, require the cooperation and participation of at least two persons to form a limited, relative and partnership limited liability Company. Articles 107 and 3 of the amending Bill of Trade Act 1347 also required the existence of at least three and five partners respectively for the formation of a Private and Public Joint Stock Company (Private and public Held Co).

On the other hand, asset dissolution and limiting liability to the amount of capital of a company are not limited to the sole corporation. Individuals with the establishment of a public corporation, private equity, and a limited liability company also pursue this goal. Thinkers of today's societies not only disagree with such companies but also strongly support them because of their undeniable role in the society's economy. Therefore, asset dissolution and limited liability cannot be a reason to oppose the sole corporation.

In addition, with the establishment of such companies, the risk coefficient of economic activities for individuals who trade with a sole corporation will not increase significantly. At first, because the phrase (Sole Corporation) after the name of the company indicates company status and level of responsibility of its sole corporation, and persons knowingly know the status of the company enter into a transaction with it, secondly, the credibility of such companies may be more than companies with more partners. (Mahmoudi, 2003).

It is clear that the non-prescription of such companies causes individuals to enter the company to meet the requirement of personal partnerships multiplicity, his contribution constitutes a small percentage of the company's capital (e.g., one or two or five percent). This person may not have had a role in raising capital, and a percentage of the firm's capital has been formally allocated to him, in which case both formulations will cause divisions in the future and should be avoided (Skini, 2011).

2. Registering a company in US

Depending on the type of business in the US, the type of authorities and amount of taxes will vary. Company registration in the US can be done in 4 types and concepts, two of which relate to Sole Corporation as follows. (Earnings Opportunities, 1997).

2.1. Limited Liability Company

A Limited Liability Company in the United States is a Complex company with a commercial nature that allows a person or entity to conduct its business without risking its capital. This is possible by limiting liabilities and definitions of the Articles of Association.

Limited Liability Company is the most appropriate option in the field of international trade in terms of taxation and trade options for non-US applicants who want to continue their business in the United States. Many investors, who want to register a firm in the region, are exempt from taxation; they can achieve this goal by registering a limited liability company (LLC).

The most important benefits of registering a limited liability company in the United States are as follows:

- LCC companies are established easier for non-residents without excessive bureaucracy. In some states, there is no need for initial capital, and it isn't income tax.

3. Monopoly Company (exclusive)

A sole corporation is an entity that a person establishes a business as a sole firm without any cooperation with another person or company, any debts and other responsibilities are undertaken by the principal.

3.1 Advantages and Disadvantages of Registering a Limited Liability Company in the United States and its accordance with Iranian Law

Registering a limited liability company in the US has advantages compared to joint stock companies, which helps applicants for having the best option to achieve their goals. One of the most important advantages of registering a limited liability company in the US is that there is no need for company executives, and then shareholders and directors of a limited liability company or LLC, can hold their board meetings in other countries as well. (Akhavy, a (No Full Name) (1940), non-partner corporation, Justice Ministry of collection law).

Another advantage of registering a limited liability company in the United States is that there is no need for board members to be shareholders, and depending on the circumstances in each state for registration, only one to three persons can register a limited liability company in the United States.

Not paying income tax on corporations in some states is another advantage of registering a corporation in the United States. (Charlesworth & Geoffrey Morse, Law Company, 15th Ed, Sweet & Maxwell, 1997).

Some US states have provided advantages to applicants for registration of a limited liability company, one of the most important of which is the lack of necessity for the initial capital to register a limited liability company in the United States. In this case, applicants for a US company registration can enter the state without the required capital and apply for US company registration.

Ansari, vali-o-Alah, (2013), Administrative-contrasts law, Hoghoughdan publication, second edition (In Persian).

In Iran, a civil company's transformation into a trading company has two advantages:

- To create more capital by raising the capital of each partner.
- Security for Partners due to their capital separation from personal property.

Here, a human's creative mind raises a new question: If two or more individuals can separate their capital brought to the company from personal

property, why should not a single person have this ability? The design of this question is the basis of a new invention that we call sole corporation neglect.

A sole corporation allows individuals to transfer unilaterally part of their property to the assumed entity of the sole corporation and to separate their property. Therefore, using this security pattern that exists for business firm partners also creates a single person to accomplish it by resorting to the company. In contrast, the company's registration also has its disadvantages.

The most important of these disadvantages are as follows:

- In a sole corporation, one person is solely responsible for all debts and liabilities.
- The person who registers a sole corporation must pay taxes for employees and employer.

4. History of forming a sole corporation in Iran

Despite of above-mentioned cases, the idea to form a sole corporation is not unusual in our law, and even the legislator has approved the establishment and operation of such corporations. Article 4 of the Act of General Accounting approved on 10/6/1366 permits to establish companies with a single member (government). Also, the Act on Registration of Branches or Agencies of Foreign Companies approved on 21/8/1376, and its Implementing Regulations approved on 1/1/1378 which absolutely permits foreign companies (both single member companies and companies with multiple partners) to operate in Iran. We describe it.

4.1. Article 4 of the Iranian General Accounting Act

Article 4 of the Iranian General Accounting Act approved on 10/6/1366 makes it possible to establish a single-member business (government). It provides: "A state-owned corporation is a specific entity that is established by law as a corporation or has been nationalized or confiscated by law or a competent court and is recognized as a state corporation and more than fifty percent of its capital is owed to the government.

Any business firm created by the investment of state-owned companies is considered a state-owned company as long as more than fifty percent of its shares are owned by state-owned companies. According to the above article, many state-owned companies have been set up, with 100% of their capital being nationalized or confiscated and owned by the state and engaged in business as well as trading companies with only one person (government) as a member. State-owned businesses are therefore public-law entities formed with a single member.

4.2. The Law on Registration of Branches or Agencies of Foreign Companies approved on 21/8/1376 and its Implementing Regulations approved on 11/1/1378.

The single article of the Act provides: “Foreign companies which are recognized as lawful companies in their country, while reciprocal action by the country, and shall to do in such matters as may be determined by the Government of the Islamic Republic of Iran within the framework of laws and regulations. Article 1 of the Implementing Regulations of the Act also provides foreign companies which are recognized as lawful companies in their country, while reciprocal action in their respective countries, can work in Iran in the following areas.

According to the above-mentioned cases, because single-member companies may be legally recognized in the countries where are registered, they may operate in Iran under this law and its implementing regulations.

The formation of a single-member company is accepted in most countries such as England, France, Italy, and Germany. Let us now consider the rules of American law in this case:

According to the Companies Act 1916, the minimum number of partners which is required for the formation of a private limited company is two, but amendments to the commercial law of 1996 also provided the formation of a single member limited liability company.

5. The possibility of forming different companies in single-member companies

By explaining various kinds of companies in commercial law, we answer the question of what kind of companies can be analytically formed as single-member companies.

6. Limited liability Company

According to Article 94 of commercial law, the formation of a limited liability company with a single member is not legally possible; on the other hand, by considering how to operate the limited liability company, it is almost like a privately owned joint-stock company in the United Kingdom and a limited liability company in the United States that is possible with one partner. (Mahmoudi, 2009: 132).

6.1. Cooperative Partnership Co. and Proportional Liability Partnership Company

Analytically, the formation of Cooperative Partnership Co. and Proportional Liability Partnership Company with a single member does not face any obstacles. In case of insufficiency of assets of Cooperative Partnership Co. and proportional Liability Partnership Company to pay all the Company's debts, the single member would be responsible to pay all the Company's debts.

Therefore, these two companies are coming together and finding the same effect. Because in Cooperative Partnership Co. a single member will be responsible to pay all debts due to the Cooperative partnership responsibility, and in the Proportional Liability Partnership Company, a single member will be responsible to pay all debts due to having its 100% shareholding. (Isaa Tafreshi, Analytical Discussion of Business Law, Vol. 1, 2009: 138)

6.2. Managing a sole corporation

If a single partner manages the corporate unit, he will also be its owner alongside all liability, of course, this case is not prohibited according to the new business law bill. There are two ways to manage a sole corporation: 1. the sole proprietor is known as the company's shareholder, he/she elects a director or directors to manage the company, in this case, the shareholder of the company is the same person and the company's affairs are merely delegated to another. 2. The shareholder himself/herself will be the managing director, who will then act as a legal person.

And for this case, the employer-employee relationship is not a debate, and responsibility for all activities will be on the company itself, of course, discussions on the guarantee is an exception. (Abbas Niazi and Ayyaam Kamarkhani and Mohsen Jalilian, Investigation of the sole corporation in Iranian Law with a Comparative View, Quarterly Journal of Economic Law, 2016: 9)

6.3. End of Company's Life in a sole corporation

The end of a company's life has two distinct aspects or stages that can be interpreted as credit and practical aspects. The end-of-life credit aspect is the nature of the company and due to it; the legal personality of the company is lost. This aspect or end of a company's life is referred to as dissolution. The practical aspect of end-of-life is the determination of the company's assets in which the company's assets are converted into cash, its demands are received and debts and liabilities are fulfilled. After the stage, if the surplus exists, it is divided between the partners according to their

rights and interests in law and the articles of association. In this case of the company's end of life, they use a legal word as liquidation.

The dissolution of a sole corporation may also be voluntary or forced. The only difference between these companies and the companies with more partners is that their voluntary dissolution is based on the will of the only sole member.

Conclusion

1. The idea to form a sole corporation is not only unusual in our law, but also accepted by state-owned companies. Therefore, the Iranian legislator can elaborate on this idea and apply it to private business firms. However, it is noted that permission to run such companies should be considered by securing third parties' rights.
2. In Iran, forming a sole corporation is possible only in the public and private limited liability companies, since only in these companies, the company's assets separated from the partners' assets, and in other companies, the partner guarantees the payment of company's debt after liquidation. So only in such companies, a partner can have the necessary risk.
3. A sole corporation due to its unique nature, differs from other companies in its formation, management, and dissolution. So that its formation and dissolution (except for bankruptcy) are accomplished with a will, and unlike other companies, the necessary decisions are made by a single member without observing certain formalities.

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UNIVERSIDAD
DEL ZULIA

CUESTIONES POLÍTICAS

Vol.40 N° 73

*Esta revista fue editada en formato digital y publicada en julio de 2022, por el **Fondo Editorial Serbiluz**, Universidad del Zulia. Maracaibo-Venezuela*

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