

Comparative Analysis of Qualifications and Disqualifications of Directors: Commercial Act of Iran and Common Law Countries

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ABSTRACT

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The directors of companies oversee almost all business operations and are the most important figures in corporate governance. Every company relies on its directors and board to succeed. Directors are crucial to a company since it is the work of directors to supervise and manage its operations. Director duties must be understood and executed responsibly. A person can be a director if meets legal conditions. This study meticulously compares the director's qualification and disqualification under the Commercial Act of Iran to common law countries including Australia, the UK, Malaysia, and Singapore. Such a comparison would reveal whether parts of the Iranian Commercial Act needed change or improvement.

Contribution/Originality: This study provides insights into how the Iranian Commercial Act approaches the qualifications and disqualifications of company directors as compared with common law countries. It analyses the weaknesses in the Commercial Act of Iran and offers recommendations for how the corporate governance practices of Iran can be improved.

1. Introduction

The most significant individuals in corporate governance are the company's directors, who oversee nearly all business-related tasks. If they are highly effective, the company will thrive even with limited resources; if they are not, the company will struggle to perform well, regardless of the resources available.

Generally, the success of any company depends on the ability of its directors and the effectiveness of its board. A director is critical to a company as they supervise and manage its business and must be properly qualified (Kishore, 2017). Thus, a person is entitled to be appointed director if he fulfills certain legal requirements.

This paper discusses the qualification and disqualification of the director under the Commercial Act of Iran compared with the qualification and disqualification of the director under common law countries such as Australia, the UK, Malaysia, and Singapore rigorously. Such comparison would be necessary to determine the area that needed reform or improvement regarding the Commercial Act of Iran.

2. Literature Review

2.1. Qualification of Director Under Commerce Act of Iran

In Iran's legal system, qualifications for positions in companies or organizations are divided into general and specific. General qualifications apply to all positions and are detailed in the Civil Act of Iran. Specific qualifications vary by position and refer to specific laws. For example, the specific qualifications for a director would refer to commercial law, though these are not clearly defined within Iran's commercial law.

Any actions or omissions in Iran's legal system are generally founded on the premise of free will. Articles 190-191 of the Civil Code establish this principle. The General qualifications are referred to the article 190 of the Civil Act of Iran, which is related to the essential elements of a valid contract and states that:

- (1) The intention and mutual consent of the parties in a contract
- (2) The capacity of parties:
- (3) The subject matter of a contract shall be determined
- (4) The subject matter shall be according to the Sharia laws and legal rules.

In addition to general qualifications, the Specific qualifications should be referred to the commercial Act, which mentions the following;

Share qualification; According to Article 114 of the Reformative Articles of Commercial Code (RACC) 1969, directors must hold a number of shares as determined by the company's articles of association. These shares serve as a guarantee against losses caused by directors' violations and must not be fewer than the shares required for voting at general meetings. Article 115 states that directors must possess the necessary shares at appointment or obtain them within one month. Failure to meet this requirement necessitates vacating the office. The share qualification guarantees the director's conduct, and the company's auditor must report any violations to the annual general meeting.

2.2. Qualifications of the Director Under Common Law Countries

In the first instance, a company director occupies a fiduciary position vis-à-vis the company and the shareholders, acting as the guardians of all corporate activities. The Companies Acts in Singapore and Malaysia outline minimum eligibility requirements for directors, but these are limited. For example, there is no requirement for specific educational or professional qualifications. Additional requirements should perhaps be prescribed to raise the governing standards in Singapore and Malaysia generally.

In addition to the Companies Act, the company's memorandum, articles of association, or shareholder agreements may impose further eligibility criteria. For instance, the constitution may mandate all directors to be Singapore residents, not just one.

As a matter of best practices, directors should possess core competencies such as financial literacy, business experience, leadership, and strategic thinking. Visionary qualities may also be valuable. The aim is to have a dynamic and responsive board with directors contributing relevant expertise. The qualifications under common law are as discussed in this section.

2.2.1. Natural Person

The laws in Singapore and Malaysia require that a company director be a natural person at least 18 years of age (Chan, 2007). This means that corporations, partnerships, and businesses cannot be directors of a company because only an individual can exercise discretion in moving forward since the company itself is inanimate (Anandarajah, 2004). Similarly, Section 201B (1) of the Australian Corporations Act specifies that a company's director must be an individual, not a body corporate, for the business to be legally recognized. However, in *Standard Chartered Bank of Australia Ltd v Antico* the court held that a corporate body could be a shadow director controlling another company. It is usual for a company's constitution to state that a director need not be a shareholder, but this is a prerequisite in some companies.

Additionally, according to section 201D (1) of this Australia Corporations Act of 2001, a person cannot be appointed a director unless they give prior written consent and relevant information. The company is required to maintain the consent. Therefore, a failure to do so constitutes an offense under the Act (Julie, 2013). Similarly, this written consent was also required by both the Singapore Companies Act of 2006 and Malaysia Companies Act 2016 under sections 173C(a) and 201, respectively.

According to Corporation Act of Australia (Section 201A), a proprietary company must have at least one director who ordinarily resides in Australia. In private companies with a single director and one shareholder, an additional director can be appointed by the founder, who must record and sign the appointment to make it official. Consequently, a person can simultaneously hold the positions of director and secretary of a public or proprietary company (Julie, 2013). However, section 242 in Company Act of Malaysia 2016 and section 171, subsection 1E Company Act of Singapore 2017, a person is prohibited to act in a dual capacity it means that a director and secretary shall be different person.

Furthermore, under the UK company statute, a corporation may serve as a director of another business. However, according to Section 155 of the Company Act of the United Kingdom, at least one additional natural person must serve as a director for this to be legally permitted. Currently, this requirement is not in effect. However, when implemented, it will have significant implications. For instance, company formation services and parent firms have relied on nominee company procedures to serve as directors of their subsidiaries. With this change, forming a business with just one director will no longer be possible. Instead, a corporate director must be appointed alongside at least one natural person.

Individual corporations may include further limits on who may and may not participate as directors in their articles of association to allow them more time to make any required revisions. Examples include articles that require directors to own shares and articles that establish the minimum amount of shares a director must own (John, 2017).

2.2.2. Full Age and Capacity

A person must be of full age to be a company director. Section 145(2) of the Companies Act of Singapore and section 196 (2) of the Malaysian Companies Act provide that only persons at least 18 years old can be appointed directors. Malaysia Companies Act 2016 removes the maximum age limit for directors. Thus, someone 70 years old could be appointed as a director. There are no statutory academic qualifications to be appointed as a company director in countries like Australia, Malaysia, and Singapore. The only legal requirement for directors in the Company Act of Australia, Section 201B, is that they must be at least 18 years old. The Act does not set an upper age limit. However, a company's constitution may impose additional age and other restrictions affecting the company's general principle (Julie, 2013).

Under UK law, according to section 157 (1) CA 2016, a person shall be appointed as a director if he or she attained the age of 16 years. Alternatively, in the well-known case of the Marquis of Bute, ultimately, it was established that a baby as young as six months might be nominated to serve on the board of directors for a limited corporation. However, the Act permits the government to enact rules outlining the conditions under which an individual under the age of 16 may be nominated to the board of directors of a company (John, 2017).

2.2.3. Share Qualification

In Singapore and Malaysia, there is no legal necessity for a director to own a share as noted in section 97 of Company Act of Malaysia 2016. However, the articles of association of a company may require that directors hold shares before being appointed. Alternatively, an agreement between the company and the director can be drafted to meet this requirement. The company's articles of association may mandate that all directors hold a specific share qualification. He/she shall obtain his qualification within two months after his appointment or such a shorter period as it is fixed by the articles of association as stated in section 124 Malaysia Company Act 1965 and revised in 1973.

Consequently, if an individual accepts a directorship knowing that a specific number of shares is required, they must be considered to have agreed to obtain the qualification shares within the prescribed period. Failure to meet this requirement within the specified time is considered an offense. (Tjio, et al., 2015; Government of Malaysia, "Companies Act 1965, s 124 (1)(3)).

The holder of qualification shares must be a person the company may safely deal with regarding his shares, regardless of his interest in the shares, to qualify as a holder. At common law, holding shares as several joint holders constitutes a sufficient qualification. However, the Malaysian Companies Act 1965 requires that the share qualification be held by the director solely and not as one of several joint holders unless otherwise provided by the articles of association (Chan, 2007).

In particular, there is nothing in Malaysia Companies Act 2016 that specifically states that a director is necessary to possess qualification shares 'in his or her own right. Holding shares in "his own right," as defined by the Act, means holding them in one's own right rather than in the right of another person (or entity). It means that the individual holding the shares must keep them so that the firm can safely deal with him about them, regardless of his interest in the shares. Therefore, a director can hold

qualification shares as a trustee for another to meet the director's shareholding qualification per the articles of association. Additionally, the act is silent on the procedure when a company increases the share qualification and the timeframe for directors to obtain additional qualification shares (Chan, 2007).

In Australia, the Corporations Act does not require directors to own shares in their company. However, a company's constitution may mandate a specific number of shares for appointment. It may also require new directors to purchase shares within a set timeframe after appointment. Failure to meet these requirements can result in revocation of the directorship (Julie, 2013).

2.3. Disqualification of Director Under Commercial Act of Iran

According to the laws of Iran, certain persons are not qualified to be a director in the company. As mentioned by Mohammad (2012), the disqualifications of the director can be divided as follows:

According to Article 141 of the Constitution of the Islamic Republic of Iran (1979), government officials, including the president, vice-president, ministers, and government employees, cannot hold multiple positions in institutions with government or public capital. This prohibits them from being members of the Islamic Consultative Assembly, practicing as attorneys or legal advisers, or holding positions as president, managing director, or board member of any private company. Academic positions such as researchers and roles in cooperative companies are exempt from this rule.

- (1) Specific disqualification according to Article 117 of Amendment Bill 1969 of Commerce Act of Iran, A person cannot become a director or undertake the role of managing a corporation if he has been convicted of any offenses as follows;
 - a) Legally incapacitated persons and those convicted as bankrupt are not appointed as directors.
 - b) Those who are convicted of such offenses or have been deprived of social rights, wholly or partly, during their deprivation: theft, breach of faith, swindling, and other offenses which are considered either as breaches of trust or swindling, embezzlement, deception or misappropriation of public property.

Thus, a company's director may face disqualification during their tenure. Any beneficiary has the right to petition the court for the director's removal (Rabia et al., 2008). However, according to Article 117 of the Amendment Bill 1969 of the Commerce Act of Iran, all actions undertaken by a director are deemed valid vis-a-vis third parties. Disqualifications of the director do not provide grounds for third parties to invalidate the director's actions.

2.4. Disqualification of Directors in Common Law Countries

A person does not need any formal qualifications to be a company director. Therefore, it may seem odd that there is an entire act, the Company Directors Disqualification Act UK 1986, dedicated to the disqualification of directors. The name of the Act is slightly misleading in that section 1(1) provides that under Section 6, a court may issue a disqualification order against a person, prohibiting them from:

- a) Being a company director,

- b) Being a company liquidator,
- c) Being a receiver or manager of a company's property,
- d) Directly or indirectly participating in the promotion, formation, or management of a company.

In *Re Gower Enterprises Ltd*, the court had to consider the question 'What is a disqualification order?' the answer, according to Robert Reid QC (sitting as a deputy High Court Judge), is that the originating summons applies for an order. The order itself, if granted, must contain the full wording of s1 (1) (a) – (d) of the Act. It is not open to select any one or more of the four categories of disqualification in s1, the reason being that provisions are cumulative so that the 'or' which joins them is conjunctive. In *Gower Enterprises*, the wording of the originating summons followed an established practice adopted in the majority of disqualification cases, whereby the summons only asked for disqualification under s1(1)(a) and (d). Robert Reid QC felt that this practice was incorrect but felt that the claim for 'further and other relief' in the summons was sufficient to cover all of the categories in s1 (1) (a)–(d). In any event, he said that he would, in this particular case, have granted leave to amend the application. Still, the safest action resulting from this case is for the originating summons to contain the full wordings of s1. The courts have stated that the Act aims to protect the public from directors' misconduct and unfitness, which is not intended as a punitive measure. However, later decisions, have recognized the reality of a disqualification order being made. For instance, in *Re Cedec Ltd*, Balcombe LJ, said;

“While a disqualification order is not of itself penal, it is restrictive of the liberty of the person against whom it is made, and its contravention can have penal consequences under section 13.”

Thus, a director can be disqualified for several reasons, including wrongful trading, fraudulent trading, 'unfit' conduct, and unacceptable behaviour. The Company Directors Disqualification Act 1986 (CDDA) contains little-known but significant powers to ban “unfit” directors from directorship of a limited liability company.

This action is taken only when it is proven the director has acted wrongfully, fraudulently, or just very poorly. There are three main types of director disqualification as outlined below;

2.4.1. Automatic Disqualification for Conviction of Certain Offences

Under Australian law, as codified in the Corporations Act, directors can be disqualified or dismissed from their positions. The Act also permits shareholders to dismiss directors in both public and private companies under certain circumstances. When a director violates the Act, (s)he is automatically disqualified from holding a position on the board of directors:

- Corporations Act of Australia section 206B(1)(b)(ii) stated in the event that someone is convicted of a dishonesty-related offense that is punishable by a minimum of three months imprisonment;
- Corporations Act of Australia section 206B(3)(4) highlighted that if it is an undischarged bankrupt or has failed to comply with any insolvency procedures that have been mandated;
- Is convicted of certain criminal offenses.

- Corporations Act of Australia section 206B(1) stated if someone is found guilty based on an indictment of certain major offenses (for example, an offense involving the company's commercial or financial condition);
- Corporations Act of Australia section 206B(1)(b)(i) stated that if they are found guilty of specific violations of the Act and sentenced to more than 12 months in jail.

If the individual is imprisoned, they will be disqualified for five years after their release. Assume the person was not imprisoned for a period of time. In this case, the disqualification period is five years from the date of conviction (s 206B (2)). Before the automatic disqualification period of five years expires, the Australian Securities and Investments Commission (ASIC) may apply to the court for an extension of the disqualification period for a further period of up to 15 years (section 206BA) (Lipton and Welsh, 2010).

Under Malaysian and Singaporean law, a person convicted of certain offenses cannot serve as a director, promoter, or participate in company management without court permission for five years following their conviction or release from prison. The specified offenses under Malaysia Companies Act 2016, according to sections (213(2), 217(2), 218(2), and 228) include;

- An offense involving a company's promotion, establishment, or management,
- Any fraud or dishonesty offense is penalized by a three-month or longer sentence in jail.

Furthermore, under Section 155 (1) of Companies Act of Singapore, a person is prohibited from becoming a director and undertaking the role of managing a corporation if he has been convicted of any offense:

1. concerning the promotion, formation, or management of a corporation;
2. involving fraud or dishonesty, punishable on conviction to a term of imprisonment; or
3. under section 155 of the Companies Act of Singapore.

A person who is persistently in default of the relevant requirements of the Companies Act and who has been adjudged guilty of an offense or has against himself an order under section 13 or 399 Corporation Act of Singapore and who has acted as director, promoter, or person concerned in the management of a company without the leave of the court is guilty of an offense.

In *Quek Leng Chye v Attorney General*, two persons were convicted under the Singapore Companies Act s 147, and both applied for leave to act as directors. Their offense was the unlawful issue of invitation letters to public members to subscribe for shares in a company. The Privy Council refused the application because the appellants had failed to discharge the onus to satisfy the court that they possessed a high degree of commercial integrity, which was required, or those exercising influential managerial functions in limited companies where the public was accorded adequate financial protection.

Similarly, in Malaysia, fraud or dishonesty are not essential ingredients of the criminal offense of insider trading contained in the Securities Industry Act (Rachagan et al., 2010).

A director's disqualification undertaking is the process by which a person is prohibited from becoming a company director for a specific amount of time under the laws of the United Kingdom. For example, being involved or participating in the marketing, development, or management of a company without the consent of the court would be considered a criminal offense under CDDA 1986 s 18(2), CDDA 1986 s 2(A), CDDA 1986 s 18(3).

A director may be obliged to pay the fees and expenses expended in the proceedings up to and including the day on which the undertaking is given. If they believe the claimed conduct occurred, many directors prefer to offer an undertaking at the earliest possible time rather than later. An undertaking enables people to leave the matter of disqualification behind them and continue with their lives. If a director is unsure whether or not to offer an undertaking, he or she should seek independent expert counsel. Directors who violate a disqualification order or undertaking are committing a criminal offense and can be fined or imprisoned for a maximum of two years if found responsible under CDDA 1986 s 1 A (2), CDDA 1986 s 7 (2A).

They may also be disqualified for an additional length of time under S13 of the CDDA 1986. When someone violates an order or undertaking, they may also be held personally accountable for any obligations incurred by the firm during the period in which the order or undertaking was violated. Consider the scenario in which the disqualified director requests that someone act on their behalf. In that instance, the individual may also be prosecuted and/or disqualified, and he or she may be held personally accountable for the obligations of the corporation (Gower and Davies, 2008).

According to the Criminal Code (Cth), section 206A (1) is a strict liability offense; ASIC v Edwards. A violation of section 206A can result in a \$5000 fine and/or a year in prison. However, according to ASIC v Edwards, section 206A (1) does not give a court the authority to force a person to stop violating it. As a result, under s 206A (1), the court had no power to formalize the subject director's promise that he would not manage companies in violation of article 206A through a court order (1). In ASIC v Reid, While a breach of § 206A(1) did not necessarily necessitate criminal proceedings, it was concluded that because the section comprised an offense, the applicable burden of proof was beyond a reasonable doubt, rather than the civil standard of balance of probability. ASIC has announced a national initiative (26 June 2007) to guarantee that directors who have been banned from managing businesses do not continue to manage corporations in violation of section 206A.

2.4.2. Automatic Disqualification due to Undischarged Bankrupt

Under the Corporations Act 2001 of Australia, subsections 206B (3) and (4). For example, suppose a director is an undischarged bankrupt or has entered into personal insolvency. In that case, directors are automatically disqualified from managing corporations and cease to be directors, alternate directors, or secretaries of a company unless the director has been given leave by the Court to manage corporations. A person is a 'bankrupt' if they have been declared bankrupt under the provisions of the Bankruptcy Act and have not been discharged from the bankruptcy. The bankruptcy is registered with Australian Financial Security Authority (AFSA). Such persons who

continue to manage corporations without the leave of the Court are guilty of an offense under the *Corporations Act* (section 206A of the *Corporations Act*). Section 206B subsections 2, 3, and 4 do not specify a fixed disqualification period. As a result, the restriction against managing companies remains in effect until the individual is no longer disqualified or until section 206G grants authority to manage the company.

In other words, for a director who becomes bankrupt, his office is automatically vacated unless permission to manage the corporation is given under sections 206G, 203B, and 206A(2). These provisions are not punitive but rather designed to protect the public. The prohibition's legislative policy protects the public from dishonest, or incompetent company directors (Julie, 2013).

Furthermore, the Company Directors Disqualification Act 1986 (CDDA) establishes legislative prohibitions on serving as a director under UK law. According to this legislation, individuals still in the process of being discharged from bankruptcy or subject to a bankruptcy restrictions order are forbidden from serving as directors of limited liability corporations. Acting in contravention of these regulations constitutes an unlawful act under CDDA 1986 s 11.

Other grounds for disqualification from serving as a director include sexual harassment and discrimination. Under CDDA 1986 s 12, failure to pay under a county court administration order disqualifies a person from acting as a director or liquidator, or from being involved in the promotion, formation, or management of a company. Additionally, statutory auditors must be independent; hence, a person cannot be both a director and an auditor of the same company.

The CDDA also specifies that individuals under the age of 16 cannot be appointed as directors, although this disqualification does not affect appointments that only take effect once the individual turns 16 (CDDA 1986 s 157(1)).

Regarding Phoenix companies, the CDDA addresses scenarios where a company that has gone into insolvent liquidation and a person who was a director or shadow director of the company at any time within 12 months before the liquidation is disqualified from being involved in the management of a new company with the same or a similar name, as outlined in the Insolvency Act 1986 s 216(1).

Additionally, a bankrupt individual or an undischarged bankrupt is not permitted to serve as a director of a company unless the court grants authorization under Section 148 of the *Companies Act of Singapore* and Section 198(3) of the *Malaysian Companies Act 2016*. According to these laws, a bankrupt individual and an undischarged bankrupt cannot serve as directors or participate in the management of any corporation without court leave or written permission from the Official Assignee. Acting as a company director without such permission constitutes an offense. The penalty for breaching Section 148(1) of the *Companies Act of Singapore* is a fine, imprisonment for up to two years, or both. An undischarged bankrupt may seek court leave or written authorization from the Official Assignee to serve as a director of a Singapore or international corporation, or to be involved in the management of a Singapore or foreign company, provided that they have served notice of their intention to apply for such permission to the Minister and the Official Assignee under Section 148(1) of the *Companies Act of Singapore* and Section 198 of the *Malaysian Companies Act 2016*.

The purpose of the ban on bankrupts from company management is to protect the public from imprudent actions that could cause financial loss, not to punish the individual. When determining whether to grant leave, the key question is whether it serves the interests of the public, investors, shareholders, creditors, and those dealing with the company. Other factors to consider include:

1. the nature of the offense for which the director was convicted;
2. the director's general character;
3. the structure and nature of the business of the company.

Presumably, leave will be given if the court is sufficiently satisfied that the bankrupt is likely to be trustworthy enough to manage and direct the funds of a corporation. A bankrupt who has been acting as a director subsequently has his bankruptcy annulled. The annulment does not have the effect of retrospectively validating his directorship (Anandarajah, 2004).

2.4.3. Disqualification by Court Order

The Company Directors Disqualification Act of 1986 (CDDA) empowers the court to bar a person from serving as a director, liquidator, administrator, receiver, or manager of a company, or from being involved or participating in the promotion, formation, or management of a company in any way, directly or indirectly, for the period specified in the disqualification order.

The Australian Securities and Investments Commission (ASIC) may petition the court under Section 206C of the Corporations Act 2001 in Australia to disqualify a person from management for a period of time that the court deems suitable if there has been a civil penalty clause violation. The statutes contain various civil penalty sections that deal with the obligations of directors (such as section 181, duty to act in good faith and for a proper purpose). Directors who are subjected to ASIC's actions are routinely disqualified under section 206C. In the case of *ASIC v Adler*, for example, under Section 206C of the Corporations Act 2001, Mr. Adler was found to have broken many civil penalty rules and was disqualified from managing companies for a period of twenty years. The length of time spent in prison is one of the elements examined by Santow J in establishing the duration of court-ordered disqualifications. These are some of them:

- Adequately disciplining serious violations, especially where dishonesty is observable;
- Extent of damage incurred by the company;
- If the accused was in a place of authority and took advantage of it;
- A need to prevent existing and anticipated misappropriation of the company structure by preventing the accused, particularly and others generally, from engaging in similar conduct (Du Plessis, 2017).

In a broader context, the directors' personality, the essence of the alleged violations, the corporation's composition, and indeed the nature of its corporate, including the preferences of shareholders, creditors, and workers, the threats to the general public from the jury's progression, and the directors' sincerity and professionalism, will all be deciding factors. For example, the case of *ASIS v Adler* involved numerous violations of the Companies Act. Similarly, in *ASIC v Sydney Investment House equities Pty Ltd*, the court considered the following elements in assessing whether or not to apply the Section

206C disqualification. The defendant's position in the corporation heightened the danger of damage from violations of the relevant directors' duties rules, which occurred over a long time.

Also, while making a similar observation, Austin J in *ASIC v Parkes* refers to several factors directly applicable to the present case and its circumstances. Austin J took into account some factors, including:

“The contraventions that I have found include some very serious contraventions;

“Those contraventions have led to loss and damage on the part of companies and investors, contrary to the protective purpose of the relevant provisions of the Corporation Law;”

“The defendant's contraventions have been recurrent, arising in the context of three different sets of companies”;

The judge then says that the prohibition for 25 years will effectively prevent the defendant from managing a corporation for the rest of his life. It will not prevent him from earning income as an employee or using his undoubted financial skills under proper supervision.”

In a case when the defendants made sincere and discernible efforts to change and repair the harm they had caused. Repaying misused funds, showing (sincere) guilt or repentance, and so forth. The shortest disqualification periods, up to three years, were warranted for individuals who had no intention of holding a position of influence in a corporation in the near future, followed professional advice, or cooperated to expedite legal procedures.

According to Section 206D of the Australia Corporations Act 2001, ASIC can request the court to bar a person from being an officer of two or more failed companies within the past seven years for up to 20 years. The court must be convinced that the person's management contributed to the companies' failures and that creditors were left unpaid. When considering disqualification, the court may examine the person's behavior toward the company's management (Michael, 2017).

If an individual, or the business they served as an officer, violates the Corporations Act, the Australian Securities and Investments Commission (ASIC) may apply to the court for disqualification from management (at least twice). Section 206E(1)(a)(i) applies when ASIC seeks to disqualify a person in circumstances where the corporate body has violated the Corporation Act, and it requires ASIC to show that the person failed to take reasonable steps to avoid the violation on each of the occasions on which the violation occurred. The time of disqualification is specified in Section 206E, and the period specified in Section 206C, or whatever duration the court deems suitable.

A person's conduct regarding the administration, business, or property of a corporation may be considered by the court under Section 206E(2). The case of *ASIC v Australian Investors Forum Pty Ltd (No. 3)* demonstrates how disqualification under this clause can be proven. Due to their involvement in extraordinarily egregious conduct, the directors were barred from serving on the board for 25 years. Factors considered include dishonesty and fraud with intent to defraud, significant financial losses, involvement in fields like management or financial consulting that can cause substantial financial

damage, disregard for the law and corporate regulations, and prior convictions (Bowley, 2017). The court concluded that the language of s 206E (2) made it clear that it was not limited to imposing a penalty for contraventions but to safeguard members of the general public from injury in any form.

In Malaysia, pursuant to Section 199 of the Companies Act 2016, court orders restrict certain persons from serving as director or from being directly or indirectly involved in or participating in the management of a corporation for a period of five years following the date of the order. According to this section, a person may be barred from acting as a director of a company if he or she has served as a director of two or more insolvent firms in the past five years. Because of his or her actions as a director, the court judges that the individual is unfit to be involved in the management of a company. According to Lord Diplock in *Queck Leng Chye v AG*, in exercising its discretion to grant leave, the court should consider the following;

- The nature of the offense and the applicant's involvement;
- The applicant's general character;
- The structure and nature of the business and;
- The interests of and risks to the general public, shareholders, creditors, and employees (Rachagan et al., 2010).

As a result, a director of an insolvent company may be disqualified from serving as a director of any other company in the future. The Minister or the Official Receiver may file an application to have such a person disqualified from holding public office. The conditions that must be completed before a director can be removed from office in this manner are as follows:

- a) The director has been involved with a company that went into insolvent liquidation while he was a director or within three years after he ceased being one.
- b) The director's conduct, whether in the current company or another, makes him unfit to be a director or to manage a company under Section 149(2)(a) of the Singapore Companies Act 2006. There is no Malaysian equivalent.

In *Re Deaduck Ltd (in liquidation)*, the English High Court held that in considering disqualification applications under section 6 of the Company Directors Disqualification Act 1986. The director had not been guilty of dishonesty or commercially flagrantly culpable behaviour. Substantially similar to section 149 of Singapore's Companies Act.

According to Anandarajah (2004), when deciding whether to disqualify a director for inappropriate conduct, the court may consider the following factors::

- a. Whether there has been any misfeasance or breach of duties by the director;
- b. Whether there has been any misapplication or retention of company funds or company property which the director has to account for;
- c. The extent to which a director's obligation for the failure of the firm to keep the various company records up to date extends;
- d. The extent of the director's responsibility for any failure by the company to supply any goods or services already paid for;

- e. The extent of the director's responsibility for the disposition of any company property after the commencement of a winding-up; and
- f. Whether the company's insolvency is attributable to its carrying on business in an industry with a high risk of insolvency under section 149(6) of the Company Act of Singapore.

The disqualified person may apply for leave to participate in a company's management. At the hearing of the application, the Minister or Official Receiver may bring the court's attention to relevant matters. For example, in the case of *Re Barings Plc*, the English High Court considered the factors relevant to approving a disqualified director to act under section 149(13) Companies Act of Singapore (No 3). In this case, the court held that in considering whether or not to grant leave, it should, in particular, pay attention to the nature of the defects in company management that led to the disqualification order and ask itself whether, if leave were granted, a situation might arise in which there would be a risk of recurrence of those defects.

Ultimately, the court must prioritize the protective function of disqualification provisions when deciding whether to grant leave. Directors face serious consequences for their involvement in insolvent trading, as highlighted in the discussion. For instance, in *Re Magna Alloys and Research Pty Ltd*, the court emphasized that the policy behind disqualification is to protect the public and prevent the misuse of the corporate structure to the financial detriment of investors, shareholders, creditors, and others dealing with the company. Therefore, directors must acquaint themselves with all relevant duties and responsibilities when a company enters insolvency.

Over the past three decades, the Company Directors Disqualification Act 1986 (CDDA 1986) in the United Kingdom has undergone numerous amendments, expanding the grounds for disqualification. According to the National Audit Office, the Insolvency Service spent £22 million on disqualification work between 1997 and 1998. In contrast, the future damages to creditors anticipated to be avoided due to these disqualifications totaled only £11 million. A significant development occurred in 2002 when the CDDA 1986 was amended to include disqualification for competition infringements, integrating corporate law and competition law.

Recent proposals to amend the director disqualification regulations include some modifications listed below:

- A court could force directors who are disqualified from compensating victims.
- When assessing whether or not to disqualify a director, a court may take into account previous business failures and international behaviour.
- Following a company's insolvency, the time limit for beginning disqualification procedures will be increased from two to three years.
- Company directors convicted of a criminal offense outside of the United Kingdom may be barred from serving on the board of a British company.

If a company director's conduct has rendered him or her unfit to be involved with a company's management, the court might issue disqualification orders against him or her under Section 149(2)(b) of the Company Act of Singapore 2006. At the moment, the

court's considerations in determining whether a director is qualified to run a company are confined to proof of the director's misbehaviour or breach of any fiduciary duty owed to the company (Mugarura, 2016).

It is important to compare the UK's disqualification regime to other countries with similar restrictions. A person is disqualified in Singapore if convicted of any fraud or dishonesty offense punishable by at least three months in prison, whether committed "in Singapore or overseas" Under section 154(1), Company Act of Singapore 1967.

In summary, in Australia, the United Kingdom, and Singapore, a person may be forbidden from holding the position of director in more than one country. Additionally, there are instances in which a person is disqualified in one country but is nonetheless eligible to serve as a director in another country, such as Malaysia.

A disqualification decision issued in the United Kingdom will not always bar a person from becoming a director in other jurisdictions with similar rules addressing directors' disqualification (e.g., Malaysia and Iran) and vice versa (Grassinger, 2017). All in all, according to the Commercial Act of Iran, a director will be disqualified forever if he/she is convicted of any offense or any default, which is also likely or possible under Australian law.

While in other countries like Singapore, the UK, and Malaysia. There is a specific period for a director to be disqualified after serving. On the other hand, such a person can nevertheless be appointed to the director position. An individual can, for example, be barred from managing a firm for up to 15 years in the United Kingdom. Disqualification of a director in Australia can only be sought through a court application filed by the country's major corporate regulator. Application from other organizations and individuals is permitted in the United Kingdom, Singapore, and Malaysia.

3. Research method

This study adopts a qualitative research methodology, focusing on doctrinal perspectives. It utilizes primary resources, including Acts, laws, and relevant decisions of the Council of Ministers, which are considered laws in Iran's legal system. This approach allowed the researcher to explore fundamental principles and interpret legal texts logically without needing validation from external sources. The benefit of this method is the degree of certainty it confers on the interpretation (Hutchinson & Duncan, 2012).

Additionally, secondary resources such as journals, articles, case laws, and jurists' interpretations are referenced to provide a comprehensive understanding of the legal framework and to support the analysis of directors' qualifications and disqualifications. This allowed the researcher to evaluate existing laws intensively and recommend changes to any rules found lacking. Hutchinson & Duncan (2012) emphasize the advantages of this method.

In the context of this study, reference is made to common law countries (Australia, the UK, Malaysia, and Singapore) to contextualize directors' qualifications and disqualifications in anticipation of potential reforms in Iran. The insights from the reviewed literature were categorized into topics and sub-topics, culminating in important findings. This categorization helped to systematically compare the

qualifications and disqualifications of directors, highlighting both commonalities and differences across jurisdictions and providing a comprehensive basis for recommending specific reforms to the Iranian Commercial Act.

4. Discussion and Findings

Generally speaking, all jurisdictions examined have the same disqualifying objectives - explicitly, "to protect the public, maintain high business standards, and prevent criminal and fraudulent behaviour" - while the means by which each objective is achieved varies. Only 11 parts of the Australian Competition and Consumer Act apply to exclusions from competition (sections 206A to 206G of the 2001 Act). While it is governed by a separate Act in the United Kingdom, known as the CDDA 1986, which comprises 36108 sections and four Schedules. Upon application, disqualification is based on the Australian model, which includes civil penalty provisions, involvement with several bankrupt companies, and repeated violations of the 2001 Act, all of which are grounds for disqualification under this model. According to the United Kingdom's disqualification-on-application methodology, the concept of "unfitness" is the primary basis for disqualification.

Depending on Australian legislation, a person can be barred from holding a position for the remainder of their life. However, in the United Kingdom, orders for the maximum disqualification period are rarely issued.

The disqualification procedures in Malaysia and Singapore are significantly less established or, more accurately, are utilized far less frequently than those in Australia and the United Kingdom. When compared to other common laws, such as in the United Kingdom, Australia, Singapore, and Malaysia, Iran's Commercial Act failed to address the issue of director disqualification. As a rule, every corporation law model should be developed with the public's best interests in mind to maintain investor confidence in the financial markets. As a result, individuals who are unfit to serve as corporate executives should be removed from consideration.

Regarding the qualification of directors, the Companies Act in Singapore, Malaysia, and Australia outlines minimum eligibility requirements for directors, but these are not extensive. For instance, there is no stipulation that a director must meet a certain educational standard or possess professional qualifications. To enhance governance standards, additional requirements should be considered for Singapore and Malaysia. The institutes of directors in these countries can play a crucial role in improving directors' professional qualifications. Besides the Companies Act, additional qualifying requirements might be set by a company's memorandum, articles of formation, and shareholder agreements. For example, a company's constitution and articles of association may mandate that all directors be Singapore residents, not just one. In Australia, similarly, there are no statutory academic, business, or other qualifications required to be appointed as a director of a public or proprietary company.

Nevertheless, directors should also possess certain core competencies such as financial literacy, organization experience, leadership, and strategic thinking. In addition, directors must have a significant degree of commitment to the company and its board. They should have adequate time for meeting preparation, near-perfect meeting attendance, and ongoing education about its business, environment, and topical issues.

The board should have individual directors who contribute special expertise relevant to the company, such as manufacturing, marketing, finance, accounting, and international or other appropriate experience. Most importantly, the board should consist of a majority of independent directors.

5. Conclusion

The Commercial Code of Iran does not mention all the above requirements discussed. The law also does not state that the article of association may require and determine directors' qualifications. Hence, there is a gap in the regulatory framework that needs to be addressed to ensure comprehensive governance and accountability for directors in Iran.

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