

## Duties of Directors under the Iranian Law: A Rigorous Review in Comparison with Other Jurisdictions

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### ABSTRACT

Directors' duties establish legally enforceable standards to ensure that directors act in their company's best interests. As individuals, directors may not always act perfectly, but they officially represent the company and must adhere to their responsibilities. Effective prosecution and clear communication about the legal implications of non-compliance are essential. To avoid breaching their duties, directors must understand their initial obligations. These essential responsibilities, known as principles, assure shareholders that their investments are managed by capable individuals. A director's role as a manager of significant assets requires adherence to reasonable and proper company operation standards. This study compares the duties of directors under Iranian law with those of other jurisdictions including the UK, Australia, and Malaysia, and provides key recommendations for reform at instances where the Iranian Company laws may be lacking or less effective.

**Contribution/Originality:** This study enhances our understanding of how directors' duties are conceptualized and enforced in different jurisdictions and identifies where the Iranian laws fall short. The findings serve as a basis for proposing reforms concerning directors' duties and a foundation for further discussion on corporate governance reforms in Iran.

## 1. Introduction

The duties of directors are regarded as an important component of corporate law. The establishment of duties has resulted in the establishment of a set of legally enforced norms to ensure that directors do not act in ways that are detrimental to the best interests of their company. The company's economic prosperity can be predicted if the directors do their jobs to the best of their abilities within the limits of their authority. There is an effect on the third party, which includes both shareholders and constituents. Creditors and employees may be harmed if the director, for example, fails or refuses to fulfil their responsibilities.

Given that the directors are also people, their actions will not always be flawless. However, directors are representing the corporation in their official capacity. As a result, the responsibilities are in place to assist them in remembering the method they should use (Companies Act, 2006, Section 170-177: Kershaw, 2012). Aside from the effective prosecution, the directors must be reminded that there will be legal consequences for their actions if they fail to comply with the applicable legal requirements (Dignam et al., 2011).

Similarly, as stated in the Company Act 2006, Section 172 (2), for a corporation to be successful, certain things must occur on a regular basis and it must be run honestly (Honds, 2007). When a person is appointed as a director, he or she gains power, trust, and loyalty. If a strict duties list is not implemented, the person may allow the power he or she possesses to lead him or her down unprofitable or dishonest paths.

Due to the necessity of duties, it is obvious that directors are obligated to act responsibly and not violate their individual duties as a result of their existence. The directors will be held accountable to the corporation if they engage in such behaviour. It is even more important to establish obligations in the first place because the directors do not want to be in breach of their duties.

The shareholders are often referred to as the organization's founders when they operate as the company's owners, just as the directors' key responsibilities are referred to as the company's principals (McLaughlin, 2013; Dignam, 2011). As a result, shareholders have the right to be confident that the company in which they have invested is in competent hands and will be managed appropriately (McLaughlin, 2013). When a director is appointed, it is immediately clear that a person capable of managing a valuable asset has been hired. The necessary obligations must be established so that the shareholders understand that the director is required to act reasonably and to administer the organisation appropriately (Institute of Directors, The Director's Handbook, 2010). Thus, this present study reviews rigorously the duties of directors under the Iranian Law in comparison to other jurisdictions such as United Kingdom, Australia, Singapore and Malaysia and proposes some recommendations to the Iranian laws.

## **2. Literature Review**

### **2.1. The Directors' General Duties are Owed to whom?**

The general perspective is that when a director owes duties to the company, it primarily means to the shareholders as a whole, rather than to any individual shareholder. While there may be varying opinions on the corporation's direction, there is general agreement that the interests of the shareholders should take precedence over those of other stakeholders. Creditors, for instance, might believe that directors owe them duties and may request actions that prioritize repaying debts, even if such actions could harm the company's operations.

Alternatively, If the majority of shareholders bear the burden of obligations, they may petition the board to act in their individual interests rather than in the collective interest of all shareholders. In different countries, various approaches exist to determine who is responsible for directors' duties. Since the early twentieth century, corporations in the UK have owed obligations to the government. Section 170(1) of the Companies Act 2006 specifies that directors' duties are to the company, meaning the shareholders as a whole.

Even if shareholders with voting control influence directors to act in their favour, the law mandates that duties are owed to the general group of shareholders.

Swinfen Eady J. decision in *Percival v Wright* (1902) established the foundation for corporate responsibilities in English common law. The argument that "company" referred to employees was rejected. In this case, the director failed to disclose to all shareholders that some were being pushed to sell their shares during secret takeover negotiations. The court found that the directors had not breached their fiduciary duties. It ordered the director to disclose the takeover talks, as a delay could harm shareholders. Since the directors did not initiate the approaches to shareholders, they were not required to inform them of the takeover negotiations that were yet to be determined.

The preceding case of *Percival v Wright* establishes that fiduciary duties are generally owed to the company rather than individual shareholders. However, there may be exceptional circumstances in which a fiduciary duty is owed to shareholders. For example, in *Allen v Hyatt*, the directors approached the shareholders and offered them options to buy their shares under the guise that this would aid in the company's sale negotiations. This was false, and the directors intended to sell the shares and pocket the profit. It was determined that the directors had become the shareholders' agents and owed them a fiduciary duty in that capacity. They had to account for the profit they had made.

The basic principle in *Percival v Wright* is that duties are owed to the company. Only in exceptional circumstances will directors owe duties to shareholders, as recently confirmed by the Court of Appeal in *Peskin v Anderson*. Four formal members of the Royal Automobile Club complained that the directors failed to inform them of the club's demutualization negotiations. As a result, they were not eligible for the substantial cash benefits of around £34,000 each. The claim was denied because there were no exceptional circumstances that required the directors to disclose the demutualisation plans and negotiations.

Furthermore, under s309(1) CA 1985, the director owes a limited indirect duty to the company's employees "to have regard in the performance of their functions for the interests of the company's employees as well as the interests of its members generally." However, according to Section 309 (2) of the same CA 1985, the obligation is owed to the company and the company alone, and it is enforced in the same manner as any other fiduciary duty owed to a company by its directors. Employees are not well protected as a result of this. The duty is thus only indirectly owed to the employees via the company. Personal action against directors cannot be used by an employee to enforce a breach of duty.

Likewise, without employee participation on the board of directors, employees are unable to ensure that this duty is carried out. Finally, if the company is insolvent, the directors owe duties to the creditors of the company. Again, this is an indirect duty owed to the company that can be enforced by a liquidator.

Given that this procedure was also used in the United Kingdom, it has also been recognised in situations involving other countries, including Australia and New Zealand. In addition to this decision, it was likewise stated that the directors' duties are not owing to either the creditor or the shareholders and joint personnel of the corporation.

According to Section 170(1) of the Companies Act and the case of *Multinational Gas and Petrochemical Co Ltd v Multinational Gas*, the directors duties are exempt from the necessity that they fulfil their duties in the best interests of the company and the shareholders have no recourse against them. According to *Multinational Gas v Multinational Gas*, the directors have solely fiduciary duties to the company (Dignam et al., 2020). In a similar vein, Ruler Cullen agrees with this notion, stating that the only master of the director is the company in his speech (Dignam et al., 2020).

However, it is widely acknowledged in the United Kingdom that duties are owed entirely to the entity in question (Shepherd et al., 2015). A similar situation exists in which the general duties of directors may be owed to individuals other than the company, as it is obvious from the examples above.

The decision in *Peskin v Anderson* is relevant to shareholders. The Court of Appeal confirmed that extraordinary circumstances are needed to justify directors' fiduciary duty to specific shareholders. Former Royal Automobile Club Ltd (RAC) members sued, claiming the director owed them a duty to disclose sale terms. The appeals court dismissed the case, stating the director's primary duty was to the corporation, and special conditions were required to impose fiduciary duties on directors to specific shareholders.

Duties are generally owed by the corporation as a whole, including members under the common law countries. Moreover, it is because of exceptional conditions that tend to be held the other way round. None of the director's duties is owed to the creditors except on specific bankruptcy instances in which the shareholders' interests might replace the creditors' interests (Gerner-Beuerle et al., 2013).

Many practices are in place in civil law countries. Some countries follow the corporation's idea as one entity owed the duties, for instance, Germany and France (Davies, 2006). Directors owe their duties to both the company and the shareholders in the USA (Huebner et al., 2008). In the case of Italy, on the other hand, directors owed their duty to the corporation, the creditors, the shareholders, and other third parties (West, 2017).

## 2.2. Types of Duties

Directors' duties generally fall into two categories; the duty of care and the duty of loyalty. The duty of care requires directors to exercise care, expertise, and diligence in managing the company's affairs. The duty of loyalty mandates that directors prioritize the company's interests over their own, avoiding conflicts of interest. Directors must act in the corporation's best interest while also managing responsibly and prudently, ensuring their personal interests do not jeopardize the company's welfare (Paolini, 2014).

Whether civil law or common law jurisdictions are applied to them, the duties are the same in both situations. Duties, on the other hand, are often described in general terms. When it comes to avoiding disputes, the duty of care is less specific than the duty of diligence (Gerner-Beuerle et al., 2013). The presence of a precise list of duties in common law countries, on the other hand, is more prevalent than it is elsewhere (Gerner-Beuerle et al., 2013). This is undoubtedly the situation for the duty of loyalty as

it is explicit in providing numerous circumstances where the interest of the directors are conflicting or may be in conflict with the corporation's interests.

In summary, there is no clear distinction in applying the duty of care between common law and civil law jurisdictions. Both systems use dual subjective and objective standards, though they differ in specificity and comprehensiveness. (Gerner-Beuerle et al., 2013).

The duties of care and loyalty range from one jurisdiction to the next in terms of their formalisation and implementation (Dotevall, 2016). Therefore, it is ideal to examine how these duties are applied in different jurisdictions and observe the various approaches taken to address this issue.

The most authoritative source for the law governing directors' duties in Iran is the Iranian Company Law 1968 (Articles 107–143). The original Act, introduced in 1932, included the directors' code. In 1968, the Act was revised, removing 72 articles (21 to 93) and adding 300 new articles. However, no changes were made to the sections addressing directors' duties.

The principal source of legislation in Iran is the Company Legislation, and it is here that the majority of the law relating to directors' duties may be found today. Regarding the duties of directors, article 142 of the bylaws specifies that directors must conform to the constraints outlined in the association's bylaws. Furthermore, the item states that any breach of legitimate guidelines or defined provisions in the organisation articles or minutes holds all directors individually or jointly accountable.

Article 143 defines the directors' liability in the event of a breach of their responsibilities. If a corporation goes into liquidation and there are insufficient safeguards to pay off all of its debts, it is stated that the directors may be held liable for the debts incurred as a result of their violation of the legitimate guidelines in the association articles or minutes of general meetings that caused the corporation's impairment.

### *2.2.1. Duties of Loyalty Under Iranian Law*

Article 118 mentions the duty to act within powers. The association's articles and resolutions set the directors' power limits during general meetings. If directors act outside these limits, they will be held liable.

Article 129 was the first instance where the Iranian constitution addressed conflicts of interest. The company's bylaws expressly prohibit any transaction involving the company and a person related to the director, directly or indirectly. When the board approves such a transaction, an immediate report must be drafted and distributed to the general meeting. Auditors are responsible for scrutinizing all aspects of the transaction. After the auditor's report is completed, the general meeting will vote on it, excluding the involved director. If the board votes against the director's participation in the agreement, a resolution to prevent their involvement will be presented.

A conflict of interest arises when a director approaches the board about a transaction with a potential conflict, as defined in Article 130. Article 130 outlines a conflict of interest and requires that, after thorough discussion, the director may proceed only with the board's permission. If the transaction results in a loss for the company, both the

board of directors and the managing director are equally and severally liable. Article 131 states that if the conflict of interest is not disclosed to the board and the transaction proceeds, the board has a minimum of three years to cancel such transactions.

In Article 132, it is known that the directors are not allowed to acquire any personal loans from the corporation. Nor entitled to utilise the business's security to gain any personal loans. Article 133, on the other hand, is concerned with corporate opportunity, and it states that directors are not permitted to engage in any activities that are competitive with business transactions. Any transactions considered to be in rivalry with the corporation that causes the corporation a misfortune will make the director repay the corporation for such loss.

Other duties, such as directors' fiduciary duties, can be found in the agency general rule under the Fiqh Act. To be more specific, the agents must act to the greatest extent possible within the scope of their authority as agents and to the greatest possible benefit of their principal. The majority of agency-related concerns are decided on a case-by-case basis by Iranian judges in most circumstances. As a result of applying the general Fiqh agency rule, there is no consistency in the decisions made under this system, as comparable circumstances may result in different decisions.

Coexisting alongside one another is the legal code and Islamic law. In circumstances where there is a law from both sources that refers to a specific incident, Islamic law takes precedence over the legal code, and vice versa.

### *2.2.2. Duty of Care Under Iranian Law*

When it comes to the issue of the duty to exercise reasonable care, only Articles 141 and 114 of the Iranian Company Law of 1968 are necessary to consider. As stated in Article 141 of the Iranian Company Law of 1968, if a threat to the value of a corporation's shares appears, a director may be held accountable for neglecting to notify the company's shareholders of the threat. In a situation where the director knows about the menace and disregards letting the investors know about it, the director is considered careless should the issue damage the corporation's investment.

### *2.2.3. Association Articles*

This Article stipulates that the obligations of directors must be detailed in the articles of organization. Essentially, it shifts the responsibility from the law to provide a full description of directors' duties to the association's bylaws and the company's bylaws. Legal consultants will amend the articles to address this gap. Investors, aware of the importance of defined duties in legal law, will ensure their inclusion. The development of association articles is typically done by solicitors or shareholders.

However, if shareholders draft the articles of incorporation, there is a risk they may omit fundamental responsibilities necessary to safeguard their interests. Even with legal advice, the articles might be too limited and fail to adequately cover all essential duties.

To add another layer of protection to their operations, several corporations have incorporated the *Sherkat Nameh*, or "corporation letter," into their organization articles. This document, provided by judges, allows companies to confer additional authority

within their association articles. It includes various rules and regulations that corporations can choose to adopt or reject.

The agreed-upon guidelines will be incorporated into the articles as separate clauses. Once the company is formed, the articles of incorporation will be signed and submitted to the Ministry of Justice for examination and approval. This ensures that all shareholders agree with the articles of incorporation.

The association's articles of incorporation include regulations that apply to the directors, shareholders, dealings with third parties, and the organization's overall corporate procedure, in addition to describing the directors' duties. The breadth of each director's liability for indemnity is determined by the court in each case.

#### *2.2.4. Good Faith*

No matter the circumstances, Islamic law imposes a fundamental need to operate with integrity in all transactions. In the course of transactions, contract formulation, and contract execution, parties are expected to operate in good faith, according to Islamic law.

According to Islamic tradition, Ghaedeye Ehsan is a principle of impartiality derived from the Hadith. This principle applies not only to corporate law but also to certain civil proceedings. It essentially requires parties to act calmly and decently, and to refrain from exploiting the contract's terms to abuse the other party's rights. Some scholars see it as a precondition for fair and ethical behavior in contractual relationships.

Amalo bel Niat adheres to the ideal of good faith as well as the duty to act in the best interests of others, all of which are emphasised. Thus, for example, someone who goes into contract arbitration to have access to confidential information of others defies the duty to act in good faith of Islamic law. Moreover, a lender bears an obligation to give their borrower a grace period should the person fail to pay the debt (Akaddaf, 2001).

#### *2.2.5. Enforcement*

In the Iranian Company Law, only Articles 276 and 277 address the enforcement of the company's rights. Article 276 states that only shareholders holding over 20% of the capital can challenge the director, and this challenge must be personally funded by those shareholders. Article 277 of the association's articles of incorporation supports Article 276 by stating that no provision may be added that contradicts Article 276. Thus, the articles cannot include any provision allowing shareholders to dispute directors based on their individual share of the capital.

### **2.3. Shortcomings of director duties under the Iranian law**

#### *2.3.1. Legal Framework for Directors' Duties*

The complexity of the director's duties arises from multiple sources of law, making them difficult to follow. Legal ambiguities have led to the allocation of tasks among Fiqh, Iranian Company Law, and the articles of association. A single source of legislation defining these duties would be preferable.

There is also misinterpretation and doubt about directors' duties concerning shareholders and directors. Judges face challenges as the duties are spread across the articles of association, detached articles, and legal and Islamic law principles. This requires judges to sift through various sources to determine the relevant rule, thereby creating uncertainty. Additionally, some laws are outdated, further complicating interpretation. If corporate law in Iran were regularly updated with new cases, it would become clearer and easier for judges to make accurate decisions.

The 2007 joint-stock companies' law, with its 300 new articles, failed to detail directors' duties, causing confusion among directors and the board. Although it aimed to address issues related to the directors, the board structure remains unclear and needs improvement. This section will suggest adopting elements from Malaysia's company law and common law countries.

### *2.3.2. Articles of Association Defining Duties*

As previously stated, the directors are liable for any laws or provisions imposed by the articles of association, as stated in article 142 of the articles of association.

“The directors and the managing director of a company are responsible either individually or jointly, as the case may be, vis-a-vis the company and third parties in respect of any infringement of legal regulations or the provisions stipulated in the articles of association or the minutes of general meetings.”

Instead of having a single universal set of responsibilities, each company has its own, due to the duties and standards in its articles. This variability is a significant hurdle in the legal system for directors' duties. Directors in Iran face different levels of culpability, leading to situations where a decision could have legal consequences in one company but not in another. This inconsistency raises concerns for both directors and shareholders. A general level of liability is needed to ensure consistent and reliable decisions from directors and judges.

To ensure directors are accountable, shareholders currently can only include duties in the company's constitution. In Iran, there is no comprehensive list of duties due to a lack of legal sources, making shareholders ultimately liable for directors' decisions. Consequently, many businesses fail to properly combine fiduciary duties with the duty to exercise reasonable care (West, 2017). This failure occurs because shareholders, often lacking the necessary knowledge, handle this responsibility on their own (West, 2017).

If shareholders draft a company's articles of association without a lawyer, they may fail to assign sufficient duties. This leads to inconsistency in directors' duties across the country. As a result, some companies' articles may emphasize certain duties over others, creating an imbalance in responsibilities. Even when a lawyer is involved, there is no guarantee that the articles will include appropriate provisions tailored to the company's objectives and goals.

If an Iranian company's articles of association do not specify any obligations, it might seem unnecessary for directors to know these duties. However, unaware directors may act without understanding their liabilities. Directors must know their obligations to

make informed decisions and understand the legal ramifications. This awareness is crucial for their well-being and the company's long-term success, as informed directors are less likely to harm the company's performance.

### *2.3.3. Duties of Loyalty*

Articles 129 to 133 deal with the issue of a conflict of interest, although the articles are overly specific about the scope of the responsibility. Rather than having a duty to prevent conflicts of interest in the first place, the director has a responsibility to provide explanations for circumstances in which he or she may find oneself in legal difficulty. Directors, for example, are prohibited from doing so under Article 129.

“Without the permission of the board of directors, be a party, whether directly or indirectly, to a transaction consummated with or on account of the company or share in the said transaction. Even if allowed, the board of directors shall be bound to inform the inspector(s) immediately of the transactions allowed by them and, simultaneously, submit a report to the next ordinary general meeting. A board member or managing director who has an interest in such transactions shall not be allowed to vote at a meeting of the board of directors and general meetings when such transactions are put to motion.”

On the other hand, article 130 alludes to article 129 by explaining that, according to the article:

“If, as result of such transactions, losses are inflicted on the company, then the board of directors and the managing director or the director or directors having an interest who sanctioned such transactions shall be jointly responsible to indemnify the company.”

A similar allusion is made to article 129 in Article 131, which states that,

“If transactions are performed in the absence of approval of the board of directors, and the ordinary general meeting does not confirm such transactions, then they will be rescindable. The company shall be entitled to apply to the court and obtain an injunction of decision of such transactions within three years from the date of their conclusion and if concluded secretly, within three years from the date they were discovered. In any case, the responsibilities of the interested director or directors or managing director vis-a-vis the company remain intact.”

In addition, the various situation of liability was considered in article 132 and 133, stated as follows,

“The managing director and the directors except for legal entities will not be allowed to obtain any loan credit facilities from the company; the company will not be allowed to guarantee or assume the obligation of payment of their debts.”

“The directors and the managing director shall not be allowed to conclude transactions identical to the transactions of the company which are considered to compete with the company. Suppose any director, acting in contradiction of the purport of this article, inflicts a loss to the company by his violation. In that case, he shall be held responsible for indemnifying the company's losses. The losses mentioned in this article purport actual losses incurred or reductions in profit.”

Thus, these articles lack breadth, and numerous conflicts of interest are not addressed. Provisions to prevent third parties from influencing directors' decisions, for example, are absent. In a nation where public and family corporations constitute a significant portion of corporate stock, there is a need for a law holding directors liable for allowing their decisions to be influenced to the detriment of the corporation.

#### *2.3.4. Duties of Care*

While article 141 alludes to a specific risk of carelessness, it is dreadfully explicit in that it is a broad obligation of care in all circumstances. In the absence of law, directors can do significant harm to a corporation with no liability. As for the stakeholders, it is a severe apprehension as the shareholder's interest is continually uncovered with no defence. Presently, the shareholders can depend on trust or observation for their interest protection. The shareholders that know about the threat would be wise to put duty in the association articles.

#### *2.3.5. Good Faith*

In Iran, the existence of good faith is only recognised by Islamic law, as there is no other legal framework in place to address the issue. Ghaedeye Ehsan and Al'Amalo bel Niat, both found in Ghaedeye Ehsan, include two of the most extensive interpretations of the law of good faith ever documented in Arabic. They are not intended for use in company law applications; rather, they are generic statutes that can be applied to company law issues in some circumstances. Furthermore, in the event of a failure to perform a duty, the restrictions are almost seldom invoked by the courts.

To protect themselves from lawsuits for acts of irresponsibility, directors need some level of legal protection. Currently, the law is not comprehensive enough to offer this protection. If the duty of reasonable care were enforced, a good faith provision would be an integral part of the legal framework.

#### *2.3.6. Enforcement*

In 2011, an update to enforcement was proposed, recommending amendments to paragraphs 276 and 277. This would allow any minority investor to bring an action against a director, regardless of their shareholding proportion, and exempt stockholders from lawsuit costs. Although the proposal was rejected, it highlighted recognition of shortcomings in Iran's enforcement of duty violations.

Dispute resolution within corporations is common in corporate law, except for proceedings against the directors. Directors who have brought damage to firms may have family or political connections. Penalty may come in the form of fines or

suspension without pay. If a director lacks connection, the appropriate way forward is to excuse them, which is viewed as the most helpful instrument for managing directors' improper actions. However, excusing a director does not compensate the company for losses incurred due to the director's activities.

Article 114 is particularly relevant to breaches of the duty of care. It requires a director's share to be a security interest in the company, serving as a revenue source. If a director negligently harms the corporation, the corporation may sue the director. A court can confiscate a director's share if it is proven they acted improperly, and the money should be returned to investors to compensate for the harm caused (Article 52 of the Iranian Company Law of 1933).

### **3. Research Method**

The study was conducted through a qualitative research methodology, emphasizing doctrinal perspectives. Primary sources such as Acts, laws, and relevant case laws were carefully selected to ensure a comprehensive foundation for the analysis of directors' duties in Iran in comparison to other jurisdictions. Furthermore, relevant journal articles and books were referenced to support the interpretation of legal principles.

Initially, the literature review focused on identifying the types of director duties in Iran by consulting relevant materials. Insights and findings from each piece of literature were systematically organized to comprise: 1. duties of directors in Iran and 2. shortcomings of director duties under Iranian law. After establishing these duties, we examined their shortcomings through a close examination and comparison with other jurisdictions, such as the UK, Australia, and Malaysia. This comparative analysis highlighted differences and similarities in the legal frameworks governing directors' responsibilities and provided a detailed understanding of the areas where Iranian laws were lacking.

The study concludes by making key recommendations based on the findings. These recommendations aim to enhance the Iranian legal framework by incorporating best practices from the examined jurisdictions.

### **4. Discussion of Findings**

The Iranian legal system is widely acknowledged to have failed to address the duty of directors and the rights of shareholders, as well as the role and duty of directors. However, by examining practices in countries like the United Kingdom, Australia, Singapore, and Malaysia, Iran can learn how these jurisdictions have evolved their practices over time. By studying their experiences, Iran may find a variety of solutions.

Firstly, the shareholders' only way to ensure that the directors are held accountable for their duties is to include them in the articles of incorporation. This is a serious issue that must be addressed with caution. Except for the Iranian constitution, there is no other source of law in Iran that establishes a comprehensive separation of duties. As a result of this arrangement, individual shareholders will be responsible for making long-term decisions.

As a result, many businesses fail to incorporate fiduciary and reasonable care duties, leading to significant financial losses. Shareholders, lacking expertise, often justify failing to include suitable duties or excluding them entirely. If shareholders do not seek legal

advice while drafting the charter, a reasonable division of responsibilities will be missing. This leads to inconsistency in Iran regarding the extent of directors' duties. Additionally, the articles of association in several companies may emphasize certain duties over others, resulting in uneven inclusion of various responsibilities.

Similarly, there is no guarantee that a legal representative preparing the articles will properly arrange duties to meet the organisation's requirements. It is debatable whether understanding duties is irrelevant for Iranian organisations whose articles of association do not include them, as directors are not obligated to carry out unspecified responsibilities. When directors are duty-bound but uninformed, they may act without considering the risks. Directors must understand their responsibilities because their actions may differ if they do not know what they are legally required to do. This knowledge is crucial for their protection, as they might otherwise make decisions without fully understanding the legal implications. It is also vital for the company's safety, as informed employees are less likely to take actions harmful to the company.

As a result, a single solution may be capable of addressing both of the issues raised above to some extent. Iran could follow the lead of many other jurisdictions studied in this research, such as the United Kingdom, Australia, Singapore, and Malaysia, and incorporate responsibilities into Iranian statute law, as has been done in many other countries.

The Iranian Company Law of 1968 may need to be amended to include director responsibilities. The duties of directors should be included in part one, section six (articles 107 through 143), which now contains the regulations governing directors. This would ensure a consistent level of responsibility across Iran and greater consistency in decision-making during official business. With all directors sharing the same tasks, there would be a higher likelihood of consistency among them.

Second, Iran should replace any current legal statute that refers to fiduciary duties with a transplant of five fiduciary duties from the United Kingdom's legal system to replace any current legal statute that refers to fiduciary duties: "the duty to avoid conflicts of interest, the duty not to accept benefits from third parties, the duty to declare interest in proposed transactions or arrangements, the duty to exercise independent judgement, and the duty to promote adherence to the law." All of the above-mentioned responsibilities will contribute to the development of comprehensive legislation dealing with all forms of corruption and third-party interference.

In Iran, the director is not liable for general damages caused by irresponsible decision-making if the company suffers as a result of the director's negligence. This is because if no type of liability is established, the directors will be free to take whatever risks they want because there will be no consequences for their decisions. As a result, shareholders have faith in the directors' ability to make sound business decisions.

To resolve the issue, a thorough duty of care must be established in statutory law, with the directors held accountable for any violations of that obligation. In the United Kingdom and Australia, for example, directors of public companies are required to exercise reasonable care, skill, and diligence, which must be carried out in accordance with objective and subjective standards. The dual standard is critical when it comes to imposing culpability. The directors are held accountable for their decisions, which are based primarily on their own knowledge and abilities.

The Australian Business Judgment Rule would have been a better and more effective solution to the problem than importing the double standard obligation of care, skill, and diligence into Iranian Company Law from UK law. If the Business Judgment Rule were included in this duty of care, it would provide reasonable protection for both directors and shareholders in the event that a demonstration of negligence is brought against them in the future.

A shift in enforcement methods could be achieved by amending two provisions of Iranian Company Law. Firstly, to facilitate shareholder lawsuits against directors, the company's charter should allow any shareholder, regardless of ownership, to sue on the company's behalf at the company's expense. Articles 276 and 277 must be repealed to enable this. Currently, Iranian shareholders have limited ability to take action against directors due to differing director duties compared to jurisdictions like the UK, Australia, Singapore, and Malaysia.

Another reason shareholders were unable to file numerous lawsuits against directors was the lack of necessary legal tools. However, new legislation governing directors' responsibilities has been enacted. Shareholders should be able to use this to file legal actions against directors when there is a suspicion of a legal violation. Additionally, derivative proceedings allow shareholders, including minority shareholders, to file lawsuits on their own behalf if the board of directors does not initiate the lawsuit.

This will significantly increase minority shareholders' influence, which is currently underutilized. Incorporating the Business Judgment Rule into Iranian law would provide significant benefits, as would adopting duties of care similar to those in other countries. Increased protection would benefit both shareholders and directors. The Business Judgment Rule would shield directors from unfair claims related to their decisions, complementing the primary goal of due diligence, which is to benefit shareholders.

Another critical point is that, while much of Iranian Company Law was adapted from the French Civil Code, it omitted structures-in-process scenarios, a significant oversight. In France, there are approximately 230 commercial courts (Herzog & Weser, 2014). The lack of business courts and the insufficient caliber of judges assigned to hear commercial cases disappoint corporations that file lawsuits in Iran. Therefore, to address the numerous commercial issues arising in the country, Iran must establish a regional commercial court. Specializing these courts' judges in business matters is expected to enhance their proficiency and reliability in handling such cases.

Certain legal restrictions prevent Iranian businesses from establishing corporate structures that meet their needs. The Iranian Company Law has not been consistently updated, forcing businesses to comply with outdated regulations. For instance, Article 72 requires that anyone appointed as a company director must also be a shareholder (UA, 2012). This constraint forces shareholders to select directors from among themselves. If a company needs to hire a non-shareholder director, they must assign that person a share to meet the qualification requirement. This situation affects many non-governmental organizations. To address this, efforts can be made to amend the rule, allowing shareholders to appoint directors based on skills and expertise without having to allocate shares.

Another constraint is the requirement that all limited liability companies have two directors in order to operate legally in Iran. To comply with the law, organisations that would otherwise be single-shareholder corporations create token shareholders in order to remain in compliance.

Iran can learn from countries like the United Kingdom and Australia, which have addressed similar issues. In both countries, it is not a statutory requirement for directors to own stock in the companies they serve (Keay, 2015). In Australia, directors were once required to own at least one share, but this was deemed illegal and repealed by the Company Law Review Act of 1998 (Cassidy, 2006; Section 223(1) of the Company Law Review Act, 1998). Similarly, in the UK, a law requiring directors to own a share was repealed and is now considered antiquated and restrictive (Cox, 2015). Iran can benefit by updating its laws to allow the appointment of directors based on their skills and expertise, without the need for them to hold shares.

Quoting French et al., (2016):

“It was also common for a company’s articles of association to require its directors each to hold a certain number of shares in the company. Share qualifications are now much less common, and the model articles of association in SI 2008/3229 do not mention them”.

All of the model nations appear to agree that requiring directors to be shareholders is not a viable requirement for businesses to operate efficiently and effectively. To prevent this impediment to corporate progress, Article 72 of the Iranian Company Law must be repealed.

Unlike the laws of the United Kingdom and Australia, Iranian law would not require any legislation requiring shareholders to be excluded from the articles of association, which would limit directors' ability to make decisions on behalf of shareholders. The methods used by Singapore and Malaysia may be best suited to Iran. The requirement can be incorporated into the articles of incorporation of a corporation. As a result, any corporation that wants to keep its directors chosen from among its shareholders could amend its articles of incorporation to meet the requirement (French et al., 2016).

A limited liability company must have at least two directors, according to the Revised Uniform Commercial Code, which was recently updated. As a result, reducing the number of shareholders is required to allow individuals who choose to act autonomously to form companies. As a result, allowing single-shareholder companies to operate in Iran is preferable.

## 5. Conclusion

This study examined company law, focusing on the duties of directors in Iran. The formation of companies in Iran is unique compared to other jurisdictions, with most Iranian laws tracing back to civil law. Iran's legal system has incorporated elements from other countries' legal systems, now seen as important legislative aspects. However, revisions to the country's corporate legislation have been restricted. The Islamic Consultative Assembly strongly resists updating this legislation. Despite amendments in 1968, the duties of directors have remained unchanged since 1932.

The new edition of Iranian Company Law provides more details on share structures, the complexities of company formation, and the appointment of directors, but not on the fulfillment of their responsibilities. According to Article 142 of the constitution, the functions of directors are governed by the company's articles of association. Iranian Company Law includes few provisions on duties of loyalty and does not elaborate on their essential characteristics. If a director acts within the scope of their powers as specified in Article 118 but fails to define the extent of those powers in the articles, they violate the articles. Sections 129 through 133 of the report detail explicit conflicts of interest, but the need to avoid conflicts of interest is not broad enough to cover all situations where a person's interests might be at odds.

Similarly, Articles 141 and 144 nearly address the duty of reasonable care but focus instead on protecting against directors' negligence. These provisions eliminate any obligation for directors to exercise reasonable care, skill, and diligence, although they do allow companies to sue incompetent directors. Current articles do not hold directors liable for damages caused to companies and offer no statutory protection for directors. When actions are brought against those who have acted decently or in good faith, the articles of association are the mechanism through which shareholders can specify a sequence of duties. This approach is theoretically acceptable if all shareholders delegate sufficient duties with the help of a certified legitimate professional.

In reality, however, many shareholders do not seek legal counsel when drafting their articles of incorporation. Moreover, even those who do seek legal assistance cannot ensure that the provisions will cover all eventualities. Relying heavily on the articles of association to develop independently is a practice that should be avoided, as it exposes directors to inconsistent levels of risk across different jurisdictions.

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