

Studying the concept of dissolution of commercial compaies and its difference with similar concepts

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Abstract: The dissolution of the company means the end of its normal life, which in fact, by announcing it, the company begins a new period of its life. During the period of commercial dissolution, the scope of the company's activity is limited and its managing organization is also changed. In this way, the end of dissolution means the end of the life of the company's legal personality. In commercial law, the cancellation of the commercial company is the result of non-compliance with the regulations that the legislator has established for the formation of a company. Of course, it should be kept in mind that nullification has a different meaning than dissolution. In changing the status of the company, if a company changes its form to another company, it is a change in form and there is no need for commercial dissolution, but if the company is merged with another company, the change is material.

Keywords: dissolution, integration, cancellation, conversion, commercial dissolution

INTRODUCTION

Commercial companies, like any other legal entity, can reach the end of their life or activity for various reasons. The end of the life of a legal entity is related to the concept of dissolution. It can be claimed that dissolution has a broader concept than what the legislator has listed. Some jurists have considered invalidity of a commercial company as one of the causes of dissolution. What will be discussed in this scientific article is the explanation of the meanings of commercial dissolution, integration, annulment, transformation and commercial dissolution. Also, the explanation of the difference of each of the mentioned words, firstly, the literal and terminological definition of dissolution, in the next step, the difference between dissolution and similar concepts such as company conversion, disintegration, integration and dissolution is stated.

Purpose of the Research: to explain the concept of dissolution and to explain the difference between dissolution and similar concepts.

Research question: Is there a fundamental difference between the concept of dissolution of a commercial company and the similar concepts of invalidation of a

company, integration, dissolution, annexation and transformation, or are they used synonymously?

The importance of Research

Knowing the legal concepts is an important and fundamental matter, so that by using these words correctly and logically, many legal problems can be prevented, which arise due to ignorance of these meanings. Understanding the legal concepts of companies is also very important. By being aware of them, partners can better organize contracts or partnership letters at the time of establishing companies.

Research Methods

The method used in this study is a basic research method by using document analysis in the field of dissolution of commercial companies and similar concepts. The library method was used to collect the necessary information by using written sources such as books, laws, regulations, bills, procedures, treatises, and scientific articles. Researcher has also tried to utilize up-to-date legal and administrative literature and discourses by using reputable scientific websites.

The Literal Meaning of Dissolution

The literal meaning of dissolution is the destruction and dismantling of an object, and it is also the dissolution of an object into another object. Terminological concept of dissolution

Dissolution is the deterioration of a contract that has occurred correctly, which is at the discretion of the holder of the option to apply it. Also, the deterioration of the institution can be with the department or company or association or assembly or a branch of the court branch. (Jaafari Langroudi, 2023, p. 681). The action of the process of setting up an organization or institution or the destruction of a party or company can be dissolution. (Sadr Afshar and others, 2002, p. 147). There are differences between different examples of business dissolution in the term, which are stated below:

Dissolution of rhythm: after the occurrence of a rhythm, due to some reasons, that rhythm may be divided into two or more rhythms, which in more detailed terms is called "dissolution of a single rhythm into multiple rhythms".

Dissolution of the contract: Dissolution of the contract means the termination and annulment which is with the consent of the parties. Also, dissolution of marriage can be considered as one of the complications of a valid marriage, the causes of which are: exercising the option of rescission, rescission without rescission, and rescission. (Sadr Afshar and others, 2002, p. 147). Also, splitting a contract into two contracts is also used in some cases as the concept of dissolution.

In corporate law, winding up is a term used to terminate the normal life of a business company. The word dissolution may be considered synonymous with the word liquidation. If this cannot be the case and winding up is a step before dissolution of the company. In the phase of winding up, the decision is made to end the normal

activity of the company, but during the dissolution, the company is pushed towards the end of the life of the legal entity. (Khwaja Piri, 1989, p. 24). An English lawyer defines the stage of winding up and liquidation as follows: winding is actually a stage where the company's assets and properties are collected and sold, and then the company's obligations and debts are fulfilled. In case of surplus assets, the balance is divided between the partners "according to the articles of association". This author also compares the dissolution and liquidation of a commercial company or the dissolution of the estate of a natural person, and considers the dissolution of a legal entity as the liquidation of the estate of a deceased (natural person), with the difference that in the case of a commercial company, the liquidation of property precedes the death of the company, but the liquidation of the estate The real person takes place after his death (Stephen, 1994: 495).

The jurisprudential concept of liquidation also agrees with the concept, and jurists have also mentioned in this regard.

Dissolution and Similar Legal Concepts

The word dissolution can be compared to other legal concepts that include similar definitions, and now we will examine the concept of liquidation of the company with other concepts close to it.

Dissolution and Conversion

The meaning of company conversion is to change the form and shape of the company without destroying its legal personality and without creating a new legal personality. For example, a private joint stock company is converted to a public joint stock company. Regarding the benefits of company conversion, it can be acknowledged that if the company is converted from one type to another, the company retains its legal personality. This makes the issue of liquidation of the company and its consequences, such as liquidation of debts and claims, not be raised.

Also, some privileges may be given by law to companies that have work experience for a certain period of time, in which case the period of activity of the former company is also considered as the experience of the new company. On the other hand, if the government establishes tax concessions for the establishment of new companies for specific economic reasons, it is assumed that these companies are exempted from paying profit tax for one year, in this case only companies can benefit from this privilege. which did not exist before in some form or existed and were dissolved and the existing companies cannot use these privileges by changing their form; Because their transformation does not mean the birth of a new legal personality. On the contrary, the payment of company registration fee is only given to companies that are newly established, and if a company has already been registered in a certain form, changing its form does not constitute the establishment of a new company, and as a result, the

partners of such a company will be exempt from paying the registration fee. was (Qolizadeh, 2004, p. 55).

Creating a company is a contractual matter, and the will of the partners is unimpeded in changing the statutes and liquidating the company. Therefore, it should be accepted that the transformation of the company should be accepted according to the agreement of the will of the partners. It should be added that the conversion of a company is not effective in the rights of individuals, and thus, if a company was previously a partnership and had a debt in the same period, the responsibility of the company in paying the said debt remains a partnership. But compared to the post-transformation era, the company's activity will be in the form of a new company (Demircheli et al., 2012, p. 329).

Another question about how to maintain the legal personality of the company in the state of transformation is whether the company will continue by maintaining its previous legal personality, or should we imagine the formation of a new legal personality? Because the dissolution of the company requires a series of special steps and the foundation of a system that was previously created with effort collapses. This is incompatible with the spirit of conversion, which is done in order to gain more credit and income. It is also in the interest of the partners to maintain the legal personality, both in terms of liquidation and registration and its costs and expenses.

Based on these considerations, it is quite logical to accept the preservation and survival of the company's legal personality in the state of conversion. Dr. Rabia Skini has written in this context: "If we believe that every company can be transformed into another company, without its previous legal personality disappearing and a new legal personality being formed, such a matter may include privileges for the partners of the company, depending on the case. or the government" (Eskini, 2016, p. 44).

Dissolution and Separation

Separation is one of the cases that causes a change in the legal status of the company. Splitting is not a common thing in business companies, especially in joint-stock companies. Rather, disintegration is against the nature of commercial companies, however, since the will of the partners created the company, the disintegration of the company must be done with the consent and will of the partners. Therefore, the dissolution plan should be prepared by the company managers and proposed to the extraordinary general meeting.

Dissolution and Integration

Commercial integration also changes the legal personality of the company, so it is necessary to clarify the concept of integration and its types in detail.

The Concept of Integration

Integration is an Arabic word that literally means to combine two things, unite and mix (Moin, 2007, p. 181). In corporate law, an integration is the control of two or

more companies by another company. This concept of integration is opposite to decomposition. Thus, in integration, a company takes control of one or more other companies, while in a commercial separation, the control of a company is in the hands of two or more other companies. In developed countries, the integration of commercial companies is a common thing, and by taking advantage of the regulations of merger and concentration of companies, it is possible to use the facilities and management of other companies at the lowest cost. In this way, large economic projects that require a lot of capital and cooperation can be implemented. On the other hand, it minimizes the risk of bankruptcy of the business company. (Habibabadi, 2001, p. 11).

Integration of business companies is a way to secure the company's financial resources and also to cut down intermediaries. A joint-stock company is based on the capital of the partners, and the personality of the partners is not very important in the company. In fact, there are mostly stock companies that are the subject of mergers and to acquire capital, they merge other stock companies. Usually, the integration and dissolution of commercial companies is done without separation formalities (Habibabadi, 2010, p. 12).

Types of integration

In most countries, the legal integration of companies is done in two ways, which are actual integration and de-facto integration.

A: Actual or Legal Integration

The actual integration is usually done in two ways: Simple Integration and Combined Integration.

A1. Simple Integration: It is a contract by which one company dissolves another company. As a result of this contract, the second company loses its legal personality. The first company continues its activity while maintaining its legal personality and name. The first company pays cash for the shares of the shareholders of the second company. It also gives them its company's shares while increasing the capital to a proportionate amount, but the integration company does not have a direct effect on the shares of the first company's shareholders.

According to the integration agreement, all assets, debts, claims and obligations of the second company are transferred to the first company. The first company is responsible for all the debts and obligations of the second company. On the other hand, all claims against the second company will be transferred to the first company.

A2. Combined Integration: According to this contract, the parties agree that two or more companies will be dissolved and a completely new company will be created from them. The two previous companies lose their legal personality and become part of the new company, and a new legal entity is created.

A combined integration is similar to a simple integration in terms of works. The only difference is that a completely new company is created in a combined integration.

In this way, the shareholders of the previous companies will receive the proportional amount of the shares of the new company in exchange for their shares, and all the assets, debts, claims and obligations of both companies will be transferred to the new company. It should be noted that if the shareholders in a simple integration receive only the remaining shares of the company in exchange for their shares or in a combined integration, they have only received the shares of the new company, they are exempt from paying taxes, because they have not received money for their shares, and only the shares have been exchanged.

The establishment of this rule facilitates the willingness of most companies to integrate, because the shareholders of the companies can facilitate the integration companies without paying taxes. In the proposed bill, this type of integration is also called bilateral or multilateral merger. (Habibabadi, 2001, p. 66).

B: De-facto integration

This type of integration is also of two types, they are acquisition of assets and acquisition of shares:

B1. Acquisition of assets: This type of integration is done as a result of the purchase of the assets of one company by another company. After concluding the contract, the legal personality of the company whose assets are purchased remains. But usually in this case, the company is dissolved by the decision of its body and the resulting funds are distributed among the shareholders.

In general, a company that buys the assets of another company is not responsible for the obligations of the selling company.

B2. Acquisition of shares: In this type of integration, a contract is concluded between one company and the shareholders of another company. In other words, the integration company's request may be rejected by the board of directors of the integration company. In this case, the board of directors of the integration company may enter into a transaction with the shareholders themselves and directly purchase the shares of the shareholders. Then, when he acquired the appropriate amount of shares, he caused the liquidation of the company.

When a company acquires the shares of another company, a new relationship between them is usually created as an original company and a subsidiary company. The purchase of another company's shares is done in order for the buyer company to take control of the other company. In this way, it can be changed the board of directors of the company or obtained the majority in the decisions of the general meetings. Integration and competing companies sometimes cause a company to monopolize the market of goods or services, and this in itself causes high prices and ultimately creates pressure and losses on the consumer.

In the laws and regulations of most countries, including the United States and England, there are strict laws against integrations and monopolies. Sometimes it causes

government intervention to improve the integration process. including the Sherman and Kafiton law in American Legal System, which even provides criminal provisions in this field for violators.

Dissolution and Annulment of the Company

The annulment of the company is the result of non-compliance with the regulations that the legislator has established for its formation. According to a general rule, a company is not void except in cases where the law has explicitly provided for this (Skini, 2016, p. 122).

If the legal regulations are not observed in the formation of a public or private joint-stock company, according to the request of any beneficiary, the court will issue a decision to invalidate the company after the hearing. Therefore, non-compliance with the regulations that are considered regarding the formation and registration of a public or private joint-stock company will cause the joint-stock company to be invalid. This invalidation can never affect the rights of third parties and the founders, managers, inspectors, and shareholders of the company cannot invoke this type of invalidation against third parties (Hosni, 2011, p. 204, Article 270).

CONCLUSION

By reading this article, we get the following results:

The annulment of a commercial company means the end of the normal life of the company, which actually starts a new period of its life with its announcement. During the period of commercial annulment, the scope of activity of the limited company and its governing body changes. The end of the annulment operation is considered the end of the life of the company's legal personality.

The annulment of the company is the result of non-compliance with the regulations that the legislator has established for the formation of the company.

The conversion of a joint-stock company to another company or vice versa is one of the cases that causes the company's dissolution in some legal systems.

An integration is the control of two or more business companies by another company. This concept of integration is opposite to decomposition. This means that in an integration, a company takes control of one or more other companies, while in a demerger, the control of a company is in the hands of two or more companies.

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